

**VILLAGE OF WINDSOR
BOARD RESOLUTION 2016-26**

**APPROVAL OF AMENDMENT TO THE UTILITY AGREEMENT
FOR THE PLAT OF WOLF HOLLOW AT PLEASANT PRAIRIE CREEK
FOR THE DEVELOPMENT OF PHASE 5**

WHEREAS, Wolf Hollow Windsor, LLC (“Developer”) obtained approval of the Final Plat of Wolf Hollow at Pleasant Prairie Creek, a Replat (“Replat”) located in the Village of Windsor, Dane County, Wisconsin, all as set forth in Town Board Resolution 2015-47, which is incorporated herein by reference; and

WHEREAS, development of the Plat of Wolf Hollow and the Replat has occurred in phases, and Developer is ready to proceed with Phase 5 of the Replat; and

WHEREAS, Developer is ready to proceed with development of Phase 5, and in order to do so must enter into an amendment of prior agreements regarding installation of public water and sewer infrastructure (“Utility Agreements”) to serve Phase 5 (the “Amendment”); and

WHEREAS, the Amendment is attached as Exhibit A and incorporated by reference as if set forth in full herein; and

WHEREAS, Village staff and consultants have reviewed the Amendment and the letter of credit amounts, and recommend that the Village Board approve the Amendment, all as set forth herein.

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

1. The Village Board hereby approves the Amendment, and authorizes execution of the Amendment by the Village President and Village Clerk on behalf of the Village of Windsor.
2. At such time as the Amendment is fully executed, the Amendment shall be recorded in the Dane County Register of Deeds office by the Director of Planning & Development, at the Developer’s expense.

The above and foregoing Resolution was duly adopted at a meeting of the Village Board of the Village of Windsor on March 24, 2016, by a vote of 3 in favor and 0 opposed.

VILLAGE OF WINDSOR

Robert E. Wipperfurth
Robert E. Wipperfurth, President

Bruce R. Stravinski
Bruce Stravinski, Trustee

Monica M. Smith
Monica M. Smith, Trustee

Excused Absence
Donald G. Madelung, Trustee

Excused Absence
Alan Buchner, Trustee

Attested by:
Tina Butteris
Tina Butteris, Deputy Village Clerk

Incorporated by Reference:
Exhibit A Amendment



8 9 9 2 0 6 9
Tx:8759505

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
5232746**

05/09/2016 12:10 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 8

**AMENDMENT NO. 6
TO UTILITY AGREEMENT RE:
PHASE 5 OF SEWER AND WATER
EXTENSIONS
TO WOLF HOLLOW**

Return To:

Attorney Timothy D. Fenner
Axley Brynelson, LLP
Post Office Box 1767
Madison, WI 53701-1767

See Exhibit 2

Tax Parcel Number (PIN)

This is NOT Homestead Property

**AMENDMENT NO. 6
TO UTILITY AGREEMENT RE: PHASE 5**

AGREEMENT made as of this 24th day of March, 2016 by and between the Village of Windsor, a municipal corporation (the "Village"); and Wolf Hollow Windsor, LLC, a Wisconsin limited liability company (the "Developer") regarding water and sewer utility infrastructure necessary for development of Phase 5 of the Plat of Wolf Hollow at Pleasant Prairie Creek, a Replat (the "Replat").

WITNESSETH:

WHEREAS, Windsor Sanitary District No. 1 (the "District") and Wolf Hollow, LLC (the "Assignor") have previously entered into that certain Development Agreement dated June 13, 2005; as amended by Amendment No. 1, dated August 28, 2006; by Amendment No. 2, dated June 19, 2009; by Amendment No. 3, dated November 11, 2010; by Amendment No. 4, dated

August 25, 2014; and by Amendment No. 5 dated July 27, 2015 (herein collectively the "Prior Agreement"); and

WHEREAS, the Assignor has conveyed, transferred and assigned unto the Developer all of the Assignor's right, title and interest in and to the Plat hereinafter described in the Prior Agreement and the additional agreements described in Amendment No. 5 to the Prior Agreement, to the Developer, who has assumed the obligations of the Assignor as provided for herein.

WHEREAS, the Prior Agreement relates to the development of a real estate project known as the "Plat of Wolf Hollow" and the Plat of Wolf Hollow at Pleasant Prairie Creek, a Replat (herein collectively, the "Plat"), which is located within the Village; and

WHEREAS, the Prior Agreement requires the Developer to construct various public improvements, *i.e.*, sanitary sewer and public water facilities within the Plat; and

WHEREAS, Section 3(b) of the Prior Agreement contemplates that the "Public Improvements" as defined therein will be constructed in phases; and

WHEREAS, the Developer has substantially completed Phases One, Two, Three and Four of the construction of the Public Improvements; and

WHEREAS, the Developer desires to proceed with the construction of an additional phase of construction (herein "Phase 5"); and

WHEREAS, the Village was incorporated on November 9, 2015, causing the District to be dissolved and all its assets and liabilities to be conveyed to the Village; and

WHEREAS, the Village is the successor to the District for purposes of the Prior Agreement and this Amendment.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein as well as other good and valuable consideration moving from each party to the other, it is hereby agreed as follows:

1. Recitals. The recitals hereto are hereby incorporated by reference.
2. Nature of Agreement. This Agreement is intended to supplement the Prior Agreement, insofar as it relates to construction of the Public Improvements required for Phase 5. In the event of any conflict between the terms and provisions of this Agreement and the Prior Agreement, the terms of this Agreement shall control with respect to Phase 5 Public Improvements.
3. Public Improvements – Phase 5. The Developer shall construct and install, at its own cost and expense, all Public Improvements (the "Public Improvements") required by the Village in order to provide sewer and water services to the area designated as Phase 5 of the Plat, which Public Improvements are more particularly described on Exhibit 1 attached hereto and incorporated by reference and which Public Improvements affect the Lots in the Plat that are

described on said Exhibit 1. The Developer's obligation to construct and complete such Public Improvements shall arise upon execution of this Agreement; and shall be independent of any obligation of the Village as contained herein. The Developer's obligation to construct and complete the Public Improvements is not conditioned upon the commencement of construction of improvements on any of the lots set forth in the Plat or upon the sale of any such lot or the improvements thereon. The obligation of the Developer to construct the Public Improvements required hereunder is absolute. With respect to the construction of the Public Improvements required for Phase 5, it is specifically agreed as follows:

(a) The Public Improvements for Phase 5 shall commence on or before May 1, 2016 and be substantially completed on or before August 15, 2016. These commencement dates and completion dates shall not be changed, except with the prior written consent of the Village's engineer. The final asphalt coating on the public streets located within Phase 5 shall be completed on or before August 15, 2017. Subsequent phases of construction of additional Public Improvements in additional phases shall be commenced only upon approval of the Village; and in such event, such subsequent phases shall be added to the terms of the Prior Agreement by means of the parties entering into an addendum thereto.

(b) All of the terms and provisions of the Prior Agreement are applicable to the Public Improvements described in Exhibit 1 hereto, including but not limited to Sections 3 through 10 and 12 through 21.

(c) The Developer, the Village (as successor to the Windsor Sanitary District No. 1 (the "District")) and others previously entered into an "Agreement," dated January 27, 2005 (the "Reimbursement Agreement"), relating to the construction of the "Interceptor" as defined therein, by the District for the benefit of the Developer and others. The Reimbursement Agreement provides that the Developer and others would reimburse the District for the cost of construction of the Interceptor based upon an REU cost recovery methodology. The Developer has, over the course of constructing four prior phases of construction of the Public Improvements to the Plat, paid to the District various sums using such methodology. Since the date of execution of the Reimbursement Agreement, at least two of the development projects described therein have been changed, such that the total number of REUs attributable to all such projects has changed. Because of this change, the cost per REU has been reduced and as a result, the Developer has overpaid in an amount equal to 6.96 REUs (based on revised number of total REUs), which amounts to \$5,548.99 determined as of March 31, 2016, inclusive of interest. (Interest accrues at the rate of \$0.11 per outstanding REU per day thereafter until paid) (the "Overpayment"). The Village shall pay to the Developer the Overpayment on or before June 1, 2016. Upon receipt of such payment, it is agreed: (i) the Reimbursement Agreement by and between the Village and the Developer is terminated, and of no further force or effect; (ii) the Developer has no further obligation to pay any more monies to the Village under the Reimbursement Agreement; and (iii) the Village has no further obligation to pay to the Developer any further sums (other than the Overpayment) described therein, including but not limited to cost recoveries from lands other than the Plat.

4. Surety.

(a) The Developer shall comply with the provisions of Section 11 of the Utility Agreement with respect to the Surety, except that the Irrevocable Letter of Credit for Phase 5 Public Improvements shall be in the sum of \$288,421.70,¹ which includes the cost of construction of Phase 5 Public Improvements and the Village's anticipated cost of inspection/administration of such construction. The Developer shall provide the Letter of Credit to the Village on or before commencement of the Phase 5 Public Improvements. With respect to the Surety so provided, the Parties agree:

(1) All of the provisions of Section 11 of the Utility Agreement are applicable hereto.

(2) With respect to any Guaranty following acceptance of the Public Improvements for Phase 5, the Developer shall be required to secure the Developer's performance for the period of the Guaranty provided for herein, by posting a Letter of Credit, in an amount sufficient to provide adequate security to the Village during the period of Guaranty, which amount shall be determined by the Village's engineers in their reasonable discretion.

(b) The Village and the Developer have also entered into "Amendment No. 1 to the Agreement for Public Improvements and Other Matters Relating to the Development of Phase 5 of the Plat of Wolf Hollow at Pleasant Prairie Creek, a Replat" (the "Other Agreement"), which relates to the development of Phase 5 of the Replat. This Agreement supplements the Other Agreement insofar as it relates to the Public Improvements described on Exhibit I. In all other respects, the Other Agreement shall control. In the event the Other Agreement requires the posting of adequate surety to insure construction of any public infrastructure referred to therein, such surety shall be in addition to that required in Section 4(a) above. However, the Developer may combine the letter of credit required under Section 4(a) above with any letter of credit required under the Other Agreement; provided the combined letter conforms to the requirement of this Agreement.

5. Additional Expenses. In accordance with the provisions of Section 9 of the Prior Agreement, the Developer shall reimburse the Village for any and all charges or expenses incurred by the Village in connection with the negotiation, execution and implementation of this Agreement, including but not limited to legal fees, engineering fees and other third party costs or expenses.

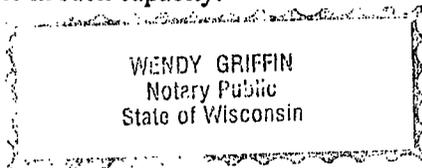
¹ Note: The full amount of the Village's surety requirement, including water & sewer utility infrastructure and general public infrastructure, is \$602,295.00.

DEVELOPER:
WOLF HOLLOW WINDSOR, LLC, a
Wisconsin limited liability company by its
Managing Member

By: *[Signature]*
Name: Matt K. Neumann, President
Title: Neumann Companies, Inc.,
sole member

STATE OF WISCONSIN)
 Waunakee) ss.
COUNTY OF ~~DANE~~)

Personally came before me this 12 day of April 2016, the above named Matt K. Neumann, as President of Neumann Companies, Inc., sole member of Wolf Hollow Windsor, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same in such capacity.



Wendy Griffin
Wendy Griffin (Print Name)
Notary Public, State of Wisconsin
My Commission: *2/5/17*

THIS INSTRUMENT WAS DRAFTED BY:
Attorney Timothy D. Fenner.
Axley Brynson, LLP
Post Office Box 1767
Madison, WI 53701-1767
(608) 257-5661

F:\EAFDATA\2955\48302\01880136.DOC
CLA v2

EXHIBIT 1

Wolf Hollow Phase 5
 Surety Determination
 Wolf Hollow Windsor, LLC
 Water and Sanitary Sewer
 Lots 309-324 & 339-347
 Village of Windsor, WI
 3/11/2016

Bid Item Ref. No.	Description	Unit of Measure	Estimated Quantity	Unit Price	Item Total
Sanitary Sewer					
	Sanitary Sewer - 8" PVC	LF	831	\$ 28.50	\$ 23,683.50
	Sanitary Sewer - 12" PVC	LF	337	\$ 37.00	\$ 12,469.00
	Existing Sanitary Sewer Manhole Connection	EA	2	\$ 1,800.00	\$ 3,600.00
	Adjust Existing Sanitary Manhole	EA	2	\$ 340.00	\$ 680.00
	Sanitary Sewer Service Lateral - 4"	LF	1,191	\$ 22.00	\$ 26,202.00
	Sanitary Sewer Access Structure - 48"	EA	9	\$ 3,400.00	\$ 30,600.00
	Internal Chimney Seals	EA	11	\$ 620.00	\$ 6,820.00
	Sanitary Sewer - Rock Excavation	TF	400	\$ 20.00	\$ 8,000.00
	Televise Sanitary Sewer	LF	1,459	\$ 3.10	\$ 4,522.90
	Sanitary Sewer By-pass Pumping	LS	1	\$ 6,500.00	\$ 6,500.00
Sanitary Sewer Subtotal					\$ 123,077.40
Watermain					
	Water Main - 8" D.I.	LF	1,240	\$ 46.00	\$ 57,040.00
	Water Main - 6" D.I.	LF	45	\$ 54.00	\$ 2,430.00
	Connect to Existing Water Main	EA	1	\$ 2,200.00	\$ 2,200.00
	Polystyrene Foam Insulation	EA	3	\$ 180.00	\$ 540.00
	Gate Valves - 8"	EA	3	\$ 2,500.00	\$ 7,500.00
	Gate Valves - 6"	EA	2	\$ 2,000.00	\$ 4,000.00
	Hydrant - New	EA	2	\$ 3,900.00	\$ 7,800.00
	Copper Water Service Lateral - 1"	LF	1,208	\$ 26.75	\$ 32,314.00
	Watermain - Rock Excavation	TF	230	\$ 15.00	\$ 3,450.00
Watermain Subtotal					\$ 117,274.00
Construction Subtotal					\$ 240,351.40
Statutory Contingency					\$ 48,070.30
Surety Total					\$ 288,421.70

EXHIBIT 2
LOTS IN PHASE 5 OF WOLF HOLLOW REPLAT

Lots and Parcel Identification Numbers Affected (all PIN #s begin with 068/)

Lot 309	0910-294-4979-0
Lot 310	0910-294-4990-0
Lot 311	0910-294-5001-0
Lot 312	0910-294-5012-0
Lot 313	0910-294-5023-0
Lot 314	0910-294-5034-0
Lot 315	0910-294-5045-0
Lot 316	0910-294-5056-0
Lot 317	0910-294-5067-0
Lot 318	0910-294-5078-0
Lot 319	0910-294-5089-0
Lot 320	0910-294-5100-0
Lot 321	0910-294-5111-0
Lot 322	0910-294-5122-0
Lot 323	0910-294-5133-0
Lot 324	0910-294-5144-0
Lot 339	0910-294-5169-0
Lot 340	0910-294-5180-0
Lot 341	0910-294-5191-0
Lot 342	0910-294-5202-0
Lot 343	0910-294-5213-0
Lot 344	0910-294-5224-0
Lot 345	0910-294-5235-0
Lot 346	0910-294-5246-0
Lot 347	0910-294-5257-0