

**VILLAGE OF WINDSOR
BOARD RESOLUTION 2016-30**

**APPROVAL OF AMENDMENT TO THE UTILITY AGREEMENT
FOR PHASE 3A OF THE PLAT OF PRAIRIE CREEK AND CERTAIN LOTS AT WOLF
HOLLOW AT PLEASANT PRAIRIE CREEK**

WHEREAS, State at Main Development, LLC (“Developer”) is ready to proceed with Phase 3A of the above-referenced Development; and

WHEREAS, in order to do so, Developer must enter into an amendment of prior agreements regarding installation of public water and sewer infrastructure (“Utility Agreements”) to serve Phase 3A (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:

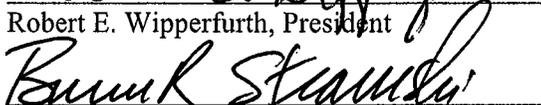
1. The Village Board hereby approves the Amendment, and authorizes execution of the Amendment by the Village President and Village Clerk on behalf of the Village of Windsor.
2. At such time as the Amendment is fully executed, the Amendment shall be recorded in the Dane County Register of Deeds office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

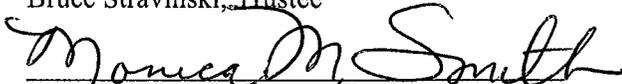
VILLAGE OF WINDSOR



Robert E. Wipperfurth, President



Bruce Stravinski, Trustee



Monica M. Smith, Trustee

Excused Absence

Donald G. Madelung, Trustee

Excused Absence

Alan Buchner, Trustee

Attested by:


Tina Butters, Deputy Village Clerk

Incorporated by Reference:
Exhibit A Amendment



8 9 8 5 3 3 0
Tx:8755094

ADDENDUM NO. 5
TO
UTILITY AGREEMENT
RE: PRAIRIE CREEK SEWER AND
WATER MAIN EXTENSION –
PHASE: 3A

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
5228439**

04/20/2016 1:38 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 7

Return To:

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

SEE EXHIBIT A

Tax Parcel Number (PIN)

This is NOT Homestead Property

ADDENDUM NO. 5
TO
UTILITY AGREEMENT
RE: PRAIRIE CREEK –
SEWER AND WATER MAIN EXTENSION
PHASE: 3A

AGREEMENT made as of this 24th day of March, 2016, by and between the Village of Windsor (the "Village"), a municipal corporation having offices located at 4084 Mueller Road, DeForest, WI 53532; and State at Main Development, LLC., a Wisconsin limited liability company (the "Developer"), having offices located at 200 North Main Street, Oregon, Wisconsin 53575, regarding water and sewer utility infrastructure necessary for development of Phase 3A of the lands hereinafter described.

AS APPROVED

7

WITNESSETH:

WHEREAS, Windsor Sanitary District No. 1 (the "District") and Gorman & Company, Inc., a Wisconsin corporation ("Gorman") have previously entered into a Development Agreement dated April 11, 2006, as amended by Addendum No. 1 dated October 2, 2012; by Addendum No. 2 dated October 14, 2013; by Addendum No. 3 dated June 4, 2014; and by Addendum No. 4 dated July 13, 2015 (herein collectively the "Utility Agreement") relating to a land division occurring within the Town of Windsor, which land division is referred to as the "Plat of Prairie Creek" (herein the "Plat"); and

WHEREAS, the Utility Agreement was subsequently assigned by Gorman to the Developer named herein in December of 2012; and

WHEREAS, the Developer permitted and agreed to replat a portion of the Plat that is now known as the Final Plat of Wolf Hollow at Pleasant Prairie Creek, a Replat (the "Wolf Hollow Replat");

WHEREAS, the District no longer exists because of the incorporation of the Village on November 9, 2015, such that the Village is the successor thereto and possesses all of the District's assets and liabilities, including but not limited to being the District's assignee of the Utility Agreement; and

WHEREAS, the Developer proposes to proceed with an additional phase of development of Wolf Hollow Replat and Plat, and to extend thereto certain water and sewer facilities; and

WHEREAS, the Utility Agreement contemplates that the extension of sewer and water to the balance of the Plat would be done in various phases; and

WHEREAS, in connection with each phase, the Utility Agreement provides that an Amendment to the Utility Agreement shall be entered into, addressing specific concerns associated with such Phase.

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 and Definitions. The recitals hereto are hereby incorporated by reference. Whenever the term "District Engineer" appears in the Utility Agreement, it shall mean the "Utility Engineer" as designated by the Village. The Village does hereby designate Baxter & Woodman (Jerry D. Groth – 608-277-1230) as the Utility Engineer.

2. Description of Phase 3A. For purposes of this Addendum, the Developer shall construct and install, at its own cost and expense, those onsite and offsite sanitary sewer and water facilities generally described on Exhibit 1 attached hereto and incorporated herein (the "Phase 3A Public Improvements"). The lots to be affected by such extension are described on Exhibit 1. Such extension is herein referred to as the "Construction of Phase 3A" of the Overall

Public Improvements; and this Addendum is entered into and pursuant to the provisions of the Utility Agreement. Construction of Phase 3A will commence on or about May 1, 2016, and be substantially completed on or about August 15, 2017. These commencement dates and completion dates cannot be changed, except with the prior written consent of the Utility Engineer. The final asphalt coating on the public streets located within Phase 3A shall be completed on or before August 15, 2017. Subsequent phases of construction of additional public improvements of the remaining lots in the Plat and the Wolf Hollow Replat shall be commenced only upon approval by the Village; and in such event, such subsequent phases shall be added to the terms of the Development Agreement by means of the Parties entering into an additional addendum.

3. Construction of Phase 3A Public Improvements. The Parties agree that all provisions of the Utility Agreement shall be applicable to the construction of Phase 3A of the Public Improvements as described in Exhibit 1 hereto. Without in any way intending to limit the generality of the foregoing, Sections 3-10 and 12 through the balance of the Utility Agreement are applicable to Phase 3A Public Improvements.

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 3A Public Improvements shall be in the sum of \$370,332, which is inclusive of the cost of construction of Phase 3A 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 3A 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 3A, 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 the Fifth Amendment to Development Agreement re: Prairie Creek Subdivision," of even date herewith (the "Other Agreement"), which relates to the development of the Plat and to the Wolf Hollow Replat. This Agreement supplements the Other Agreement insofar as it relates to the Public Improvements described on Exhibit 1. 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. MMSD and Related Fees. The Developer shall pay to the Village, upon demand, all fees, connection charges or other impositions due as a result of the construction of the Phase 3A Public Improvements and the connection thereto to the water and sewerage systems of the Village.

6. Runway Sewer Reimbursement. The Developer, the Village (as successor to 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 two 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 10.81 REUs (based on revised total number of REUs), which amounts to \$8,618.49 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, or apply the amount of the overpayment as a setoff against other outstanding obligations that Developer has with the Village, as mutually agreed. Upon receipt of such payment or application of such setoff, 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.

7. Binding Effect. This Addendum No. 5 is binding upon the Parties, their successors and assigns.

In Witness Whereof, the Parties have executed this Agreement the day and year first written above at Windsor, Wisconsin.

[SIGNATURES ON FOLLOWING PAGES.]

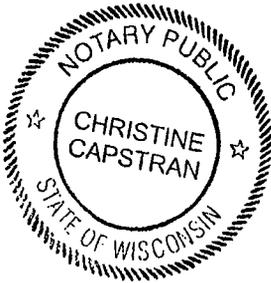
VILLAGE OF WINDSOR

By: Robert E. Wipperfurth Attest: Tina Butteris
Name: Robert E. Wipperfurth Name: Tina Butteris
Title: President Title: Deputy Village Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 7th day of April 2016, the above named Robert E. Wipperfurth and Tina Butteris, President and Deputy Village Clerk, respectively of the Village of Windsor, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Christine Capstran
Notary Public, State of Wisconsin
My Commission: 9-3-17



DEVELOPER:
STATE AT MAIN DEVELOPMENT, LLC

By: Gary J. Gorman
Name: Gary J. Gorman
Title: Managing Member

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 4th day of April 2016, the above named Gary J. Gorman, authorized representative of State at Main Development, LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Stacy L. Evert
Notary Public, State of Wisconsin
My Commission: 5/26/19



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

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EXHIBIT 1

Prairie Creek Phase 3A
 Surety Determination - Village of Windsor
 State at Main Development, LLC
 Water and Sanitary Sewer Only
 Lots 107-115, 129,130,136-141 &
 333-335
 Village of Windsor, WI
 Revised 3/11/2016

Bid Item Ref. No.	Description	Unit of Measure	Estimated Quantity	Unit Price	Item Total
Sanitary Sewer					
	Sanitary Sewer - 8" PVC	LF	1,600	\$ 28.50	\$ 45,600.00
	Sanitary Sewer - 48" Dia. Manhole	EA	9	\$ 3,400.00	\$ 30,600.00
	Sanitary Sewer - 48" Dia. "Dog-House" Manhole	EA	1	\$ 4,000.00	\$ 4,000.00
	Internal Chimney Seals	EA	10	\$ 620.00	\$ 6,200.00
	Sanitary Sewer Service Lateral - 4" PVC	LF	850	\$ 22.00	\$ 18,700.00
	Sanitary Sewer Trench Compaction	LF	2,450	\$ 4.00	\$ 9,800.00
	TV Inspection - Sanitary Sewers	LF	1,600	\$ 3.10	\$ 4,960.00
Sanitary Sewer Subtotal					\$ 119,860.00
Watermain					
	Water Main - 6" D.I.	LF	50	\$ 54.00	\$ 2,700.00
	Water Main - 8" D.I.	LF	1,120	\$ 46.00	\$ 51,520.00
	Relay Watermain - 16" D.I.	LF	370	\$ 120.00	\$ 44,400.00
	Gate Valves - 16"	EA	1.0	\$ 8,600.00	\$ 8,600.00
	Gate Valves - 6"	EA	4	\$ 2,000.00	\$ 8,000.00
	Gate Valves - 8"	EA	4	\$ 2,500.00	\$ 10,000.00
	Styrofoam Insulation (8'x4'x2" Thick)	EA	15	\$ 180.00	\$ 2,700.00
	Water Service Lateral - 1" Copper	LF	920	\$ 26.75	\$ 24,610.00
	Salvage Existing Hydrant	EA	1.0	\$ 1,000.00	\$ 1,000.00
	Hydrant - New w/ Marker Flag	EA	5	\$ 3,900.00	\$ 19,500.00
	Connect to Existing 16" Watermain	EA	1.5	\$ 7,400.00	\$ 11,100.00
	Watermain Trench Compaction	TF	1,540	\$ 3.00	\$ 4,620.00
Watermain Subtotal					\$ 188,750.00
Construction Subtotal					\$ 308,610.00
Statutory Contingency (20%)					\$ 61,722.00
Surety Total					\$ 370,332.00

Exhibit A

Plat of Prairie Creek

<u>Lot</u>	<u>Parcel #</u>
Lot 107	196/ 0910-322-0037-0
Lot 108	196/ 0910-322-0048-0
Lot 109	196/ 0910-322-0059-0
Lot 110	196/ 0910-322-0070-0
Lot 111	196/ 0910-322-0081-0
Lot 112	196/ 0910-322-0092-0
Lot 113	196/ 0910-322-0103-0
Lot 114	196/ 0910-322-0114-0
Lot 115	196/ 0910-322-0125-0
Lot 127	196/ 0910-322-0257-0
Lot 128	196/ 0910-322-0268-0
Lot 129	196/ 0910-322-0279-0
Lot 130	196/ 0910-322-0290-0
Lot 131	196/ 0910-322-0301-0
Lot 132	196/ 0910-322-0312-0
Lot 133	196/ 0910-322-0323-0

Plat of Wolf Hollow at Pleasant Prairie Creek

<u>Lot</u>	<u>Parcel #</u>
Lot 333	196/ 0910-322-3113-0
Lot 334	196/ 0910-322-3124-0
Lot 335	196/ 0910-322-3135-0