VILLAGE OF WINDSOR
BOARD RESOLUTION 2016-38

APPROVAL OF AMENDMENT TO THE UTILITY AGREEMENT
FOR PHASE 1 OF THE PLAT OF PLEASANT HILL ESTATES AND CERTAIN LOTS AT
WOLF HOLLOW AT PLEASANT PRAIRIE CREEK

WHEREAS, Pleasant Hill Estates, LLC ("Developer") is ready to proceed with Phase 1 of the
above-referenced Development; and

WHEREAS, in order to do so, Developer must enter into an agreement regarding installation of
public water and sewer infrastructure to serve Phase 1 ("Utility Agreement"); and

WHEREAS, the Utility Agreement 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 Utility Agreement and the letter of
credit amounts, and recommend that the Village Board approve the Utility Agreement, 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 Utility Agreement, and authorizes execution of the Utility
   Agreement by the Village President and Village Clerk on behalf of the Village of Windsor.

2. At such time as the Utility Agreement is fully executed, the Utility Agreement 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 April 7, 2016, by a vote of 4 in favor and 0 opposed.

VILLAGE OF WINDSOR

Robert E. Wipperfurth, President

Bruce Stravinski, Trustee

Monica M. Smith, Trustee

Excused Presence

Incorporated by Reference:
Exhibit A Utility Agreement

Attested by:

Tina Butteris, Deputy Village Clerk
UTILITY AGREEMENT
RE: PLEASANT HILL ESTATES
PHASE I
SEWER AND WATER EXTENSION

AGREEMENT made this ___ day of April, 2016, by and between the Village of Windsor (the "Village"), a municipal corporation, having offices located at 4084 Mueller Road, DeForest, WI 53532; and Pleasant Hill Estates, LLC., a Wisconsin limited liability company (the "Developer") having offices located at 102 North Holiday Drive, Suite 1, Waunakee, Wisconsin 53597, regarding water and sewer utility infrastructure necessary for development of Phase 1 of

See Exhibit A

Tax Parcel Number (PIN)

This is NOT Homestead Property
the Plat of Pleasant Hill Estates and the Wolf Hollow Replat, as hereinafter described in Exhibit 1.

WITNESSETH:

WHEREAS, the Developer previously recorded the Plat of Pleasant Hill Estates ("Pleasant Hill") and has permitted and agreed to a replat of a portion thereof that is now a part of the Final Plat of Wolf Hollow at Pleasant Prairie Creek, a Replat, consisting of Lots 325-338 thereof ("Wolf Hollow Replat"); and

WHEREAS, the Developer and the Village are contemporaneously entering into Amendments Nos. 1 and 2 to Pleasant Hill Estates Development Agreement (the "Other Agreement"), relating to the construction of certain public infrastructure as described therein; and

WHEREAS, the Other Agreement does not relate to an extension of sewer and water facilities to serve Pleasant Hill and the Wolf Hollow Replat; and

WHEREAS, the Parties desire to address matters associated with such sewer and water extensions by entering into this separate agreement.

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

1. GENERAL PROVISIONS

   (a) Recitals. The recitals hereto are hereby incorporated by reference.

   (b) Code of Ordinances. This Agreement is in addition to and not in derogation of any of the existing ordinances set forth in the Code of Ordinances of the Village, which Code of Ordinances (the "Ordinances") remains applicable to Pleasant Hill and the Wolf Hollow Replat (as hereinafter described) in its entirety.

   (c) Utility Engineer. For purposes of this Agreement, whenever the term "Utility Engineer" is used, it shall mean the engineering firm designated by the Village to provide engineering services with respect to its public water and sewer systems. The Village does hereby designate Baxter & Woodman (Jerry D. Groth) (608-277-1230) as its Utility Engineer.

2. PLATTING AND DEDICATION OF EASEMENTS. [Intentionally Omitted.]
3. PUBLIC IMPROVEMENTS AND PHASES OF CONSTRUCTION.

(a) Public Improvements. The Developer shall construct and install, at its own cost and expense, all necessary sewer and water facilities (the "Public Improvements") required by the Village in order to provide such services to Pleasant Hill and the Wolf Hollow Replat. The Developer's obligation to construct and complete the 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 lots or the improvements thereon. The obligation of the Developer to construct the Public Improvements required hereunder is absolute.

(b) Phases of Construction. The Developer contemplates that the Public Improvements required to be constructed, will be constructed in phases, not to exceed eighteen (18) in number. The Public Improvements for the first phase ("Phase One") are described on Exhibit 1 attached hereto and incorporated by reference. Phase One construction affects certain lots located in Pleasant Hill and the Wolf Hollow Replat (the "Lots"), as the case may be, which lots are identified on Exhibit 1. Construction of Phase One will commence on or about April 15, 2016, and be substantially completed on or about November 15, 2016. These commencement dates and completion dates shall not be changed, except with the prior written consent of the Utility Engineer. Subsequent phases of construction of additional Public Improvements shall be commenced only upon approval of the Village; and in such event, such subsequent phases shall be added to the terms of this Agreement by means of the parties entering into an addendum hereto, together with associated exhibits describing the additional Public Improvements.

(c) Time. Time is of the essence for purposes of commencement and completion of the construction of the Public Improvements and for all other purposes of this Agreement.

(d) Definitive Plans. Prior to commencement of construction of any phase of construction of the Public Improvements, the Developer shall prepare definitive and final plans and specifications, complying with the provisions of Section 8 hereof and other applicable provisions of this Agreement. No work on any such phase shall commence unless and until the Village approves of the same and until the Developer has deposited with the Village the surety required under Section 11 below. The Village shall review all such plans and specifications within a reasonable period of time (as determined by the Village in its sole discretion) following the submittal thereof. Each subsequent phase of construction of the Public Improvements shall be added to this Agreement by means of the parties executing an addendum hereto, describing such phase and addressing items specific thereto.

(e) Lot Sales. There shall be no sale or transfer by Developer of Lots described on Exhibit 1 until (i) completion of all Public Improvements affecting such lot,
including but not limited to, construction of utility services of water, sanitary sewer, electrical, cable, television and telephone being provided to the subject lot; and (ii) until completion of construction of the street improvements, exclusive of the final asphalt surface layer. Nothing herein, however, shall prohibit Developer from marketing of the Lots or selling or transferring Lots conditioned upon the satisfactory completion of the stated Public Improvements.

(f) Other Agreement. This Agreement supplements the Other Agreement insofar as it relates to the 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 11 below. However, the Developer may combine the letter of credit required under Section 11 below with any letter of credit required under the Other Agreement; provided the combined letter conforms to the requirements of this Agreement.

4. CONTRACTORS ENGAGED BY DEVELOPER.

(a) Approval. The Developer agrees to engage contractors for all construction of the Public Improvements who shall first be approved for such work by the Utility Engineer and who shall qualify with every applicable requirement of the Village and any Ordinance, rule or regulation thereof. Prior to the commencement of construction on any phase of construction of the Public Improvements, the Developer shall furnish to the Utility Engineer the names of all contractors and subcontractors, together with a classification of the work performed by each and copies of all construction documents relating to the construction of the Public Improvements. Such submittal shall be prior to the commencement of construction of any of the Public Improvements by any contractor(s) on such Phase. All construction documents are subject to the prior review and approval of the Village.

(b) Indemnity. The Developer shall require all contractors engaged in the construction of the Public Improvements to indemnify and hold the Village and its engineers and consultants harmless from and against any and all claims, losses, damages, costs and expenses which such contractors may or might incur in connection with the construction of the improvements. Such indemnification and hold harmless clause shall be in form and in content acceptable to the Village Attorney and shall be included in each contract which the Developer has with a contractor.

(c) Insurance. The Developer shall also require all contractors engaged in the construction of the Public Improvements to maintain such reasonable insurance as shall be required by the Village’s Attorney and Utility Engineer; and upon demand, furnish to the Village’s Attorney and Utility Engineer, a current certificate of insurance to evidence such insurance. All such insurance shall comply with the provisions of Section 7 below.

5. CONSTRUCTION RELATED ACTIVITIES.
In connection with the construction of the Public Improvements, it is hereby agreed as follows:

(a) **Scheduling.** The Developer agrees that no work shall be scheduled for construction of the Public Improvements without the Village’s approval of the starting date(s) and construction schedule. The Village may require the Developer to attend a pre-construction conference for the purpose of scheduling construction-related activities.

(b) **Costs.** The Developer further agrees that the Village shall not be responsible for any costs or charges related to the construction of the Public Improvements, except those specifically enumerated hereinafter; and that the Developer is responsible for all such costs, except as otherwise expressly provided for herein.

(c) **Construction Related Activities.** The construction of each phase of the Public Improvements described herein shall be completed on or before the completion date(s) as described in Section 3(b) hereof, unless otherwise extended in writing by the Village. The Developer shall retain the services of a consulting engineer to provide necessary construction administration and staking. The Village may provide periodic construction inspection and material testing as necessary during construction of the improvements. The Village shall have the right to inspect the construction of the Public Improvements as and when they are completed; and the Village may certify such improvements as being in compliance with the standards and specifications of the Village. The Village requires that all sewer lines be televised by the Developer as a condition precedent to the acceptance thereof by the Village. A copy of the DVD showing the televising shall be delivered to the Village prior to its acceptance of the dedication of the Public Improvements. The Developer shall provide at least ten (10) working days prior written notice to the Village and its Engineer prior to commencement of actual construction of any Phase of construction of the Public Improvements. No such notice shall be given unless and until the Developer has paid all costs and expenses required under Section 9 below. Prior to any inspection and certification, if appropriate, the Developer shall present to the Village valid lien waivers from all persons providing materials and/or performing work on the Public Improvements for which certification is sought. Certification by any representative of the Village does not constitute a waiver by the Village of the right to draw funds under the surety hereinafter referred to, on account of defects in or failure of any Public Improvement that is detected or which occurs following the date of such inspection and certification. The Developer further agrees that the dedication of streets and right-of-ways and the dedication of the Public Improvements will not be accepted by the Village until they have been inspected and approved by the Utility Engineer; and until all outstanding engineering and inspection fees (including engineering and inspection charges of the Village) have been paid in full and affidavits; and lien waivers are received by the Village indicating that the contractors, suppliers and subcontractors have been paid in full for all work and materials furnished in order to construct the Public Improvements. Upon completion of the Public Improvements and acceptance of the same by the Village, ownership and control of the Public Improvements shall be turned over without any restrictions to the Village, free and clear of all liens and encumbrances.
(d) **Sewer and Water Facilities.** The sanitary sewer and water mains and the respective service laterals comprising a portion of the Public Improvements shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by the Developer is submitted to the Village. (This is necessary for sewer and water utility valuation.) In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained by the Wisconsin State Laboratory of Hygiene. If requested by the Village, the Developer shall flush the water mains upon notice from the Utility Engineer. The Village will obtain appropriate bacteriological samples and arrange for testing at the Wisconsin State Laboratory of Hygiene, with the assistance of the Developer's Contractor(s). Unless the Utility Engineer determines otherwise, all sewer and water mains/pipes shall be pressure tested; and all such water and sewer main tests shall be observed and approved by the Village's designated representative. Upon completion of the Public Improvements and acceptance of the same by the Village, ownership and control of the Public Improvements shall be conveyed by appropriate deed of conveyance without any restrictions to the Village, free and clear of all liens and encumbrances.

(e) **Maintenance and Repair.** The Developer agrees to provide for maintenance and repair of all Public Improvements until such improvements are formally accepted by the Village through resolution(s) adopted by its Village Board as provided for in Section 6(b) below. The Village will endeavor to provide timely notice to the Developer whenever inspection reveals that a Public Improvement does not conform to the Village's adopted standards and specifications or is otherwise defective. The Developer shall have ten (10) working days from the issuance of such notice to correct or substantially correct the defect. It is agreed that the Village shall not declare a default under this Agreement during the aforesaid ten (10) working day correction period on account of any such defect unless it is clear that the Developer does not intend to correct the defect or unless the Village determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat. The Developer shall have no right to correct defects in or failure of any Public Improvements found to exist or occurring after the Village accepts dedication of the Public Improvements, unless the Village agrees otherwise.

(f) **Sanitary Sewer Laterals.** The Developer shall install sanitary mains and laterals to serve all lots within the Plat in accordance with existing laws and regulations and plans and specifications approved by the Utility Engineer. The Village agrees to allow connection of the sanitary mains and laterals installed by Developer to the existing Village Sanitary Sewer Utility and will thereafter provide Municipal Sanitary Sewer Service to the Lots described on Exhibit 1.

(g) **Water Mains and Service Pipes.** The Developer shall install water mains, including pipes, hydrants, tees, valves, crosses and related appurtenances and water service laterals to serve all lots within the Plat and as required by the plans and specifications approved by the Utility Engineer and approved by the State of Wisconsin Department of Natural Resources in addition to the other approvals required by this
Agreement. The Village agrees to allow connection of the water mains, laterals and appurtenances to the existing Village Water Utility and will thereafter provide Municipal Water Utility Service. No curb boxes shall be located within areas intended for sidewalk and/or driveway installations.

(h) Guarantee. The Developer agrees to guarantee and warrant all work performed under this Agreement for a period of eighteen (18) months from the date of final written acceptance by the Village Board of the last Public Improvement completed by the Developer for each phase of construction under this Agreement, against defects in workmanship or materials. If any defect should arise during the guarantee period, the Developer agrees to make the required replacement or acceptable repairs of the defective work at its own expense. This expense includes total and complete restoration of any disturbed surface or component of the Public Improvement to the standard provided in the plans and specifications approved by the Village, regardless of improvements on land where the repairs or replacement is required. All guaranties or warranties for materials or workmanship which extend beyond the aforesaid eighteen (18) month guarantee period shall be assigned by the Developer to the Village as beneficiary.

(i) Cost Breakdown. The Developer shall, upon substantial completion of the Public Improvements, provide to the Village a final cost for all of the costs associated with the construction thereof. Such final cost breakdown shall be in such form and content as the Village may reasonably require.

(j) Compliance. The Developer shall comply with all applicable laws, the Ordinances, rules and regulations in effect, as promulgated by all governmental bodies having appropriate jurisdiction thereof.

6. ACCEPTANCE OF WORK.

(a) Liens and Other Information. In addition to all of the requirements contained herein, the Developer agrees that the Public Improvements for any phase will not be accepted by the Village until (i) all outstanding charges to be paid by the Developer under the Ordinances have been paid in full, (ii) affidavits and lien waivers are received by the Village indicating that all contractors (and subcontractors, laborers, materialmen, etc.) providing work, services or materials in connection with the Public Improvements have been paid in full for all such work, services and materials (iii) the Village has received evidence satisfactory to it that no liens or other encumbrances (except those approved in writing by the Village) encumber the Public Improvements, (iv) and a reproducible set of "as built plans" for the Public Improvements has been furnished to the Village, certified by a registered engineer and in reproducible form, and (v) a copy of any digitally encoded data or information relating to the Public Improvements in such form as the Village may reasonably require.

(b) Resolution. Acceptance by the Village shall be evidenced by the adoption by its Village Board of a resolution to the foregoing effect. Upon completion and acceptance of the Public Improvements in such phase of construction by the Village,
ownership and control of the said Public Improvements shall be turned over without reservation to the Village, by the execution and delivery of a Bill of Sale therefor. Upon satisfaction of the conditions set forth in this Agreement, the Village shall accept the Public Improvements located in such phase of construction.

7. **INDEMNIFICATION AND INSURANCE REQUIRED OF PRIVATE CONTRACTORS.**

The Developer hereby expressly agrees to indemnify, save and hold harmless the Village, its engineers, employees, officers and agents from and against all claims, costs, suits, causes of actions, demands and liability of every kind and nature, for injury or damage received or sustained by any person or persons or property, whomsoever and whatsoever, in connection with, or on account of the performance of the work contemplated hereby and the construction of the Public Improvements. The Developer further agrees to aid and defend the Village in the event the Village is named as a defendant in any action concerning the performance of the work pursuant to this Agreement, except where such suit is brought by the Developer. It is hereby agreed that the Developer is not an agent or employee of the Village. The Developer shall require all Contractors engaged in the construction of the Public Improvements to comply with the Village's contract requirements pertaining to damage claims, indemnification of the Village and insurance. The Developer shall also require contractors engaged in the construction of the Public Improvements to maintain a current certificate of insurance on file with the Utility Engineer. The Contractor(s) so engaged should be 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.

8. **SPECIFICATIONS FOR PUBLIC IMPROVEMENTS.**

The Developer agrees to install the Public Improvements specified in this Agreement in strict accordance with the plans and specifications approved by the Utility Engineer and subject to the following further conditions:

(a) The installation of the Public Improvements shall be done in strict accordance with the Village’s Ordinances, orders, rules and regulations in effect as of the date of commencement of construction of each Phase of construction.

(b) The Developer shall install and maintain during the course of construction and until the Public Improvements have been finally accepted by the Village, such grading, erosion control and barricades as may be required by the Utility Engineer and any other governmental authority having appropriate jurisdiction thereof.

(c) No installation of the Public Improvements shall commence until plans and specifications have been approved by the Utility Engineer, and the State of Wisconsin, Department of Natural Resources, the Madison Metropolitan Sewerage District and any other governmental authorities having jurisdiction thereof, in addition to any other approvals required under this Agreement. When required by the Village, the
Public Improvements shall be provided in locations, sizes and depths necessary to serve future development.

(d) Where standards and/or specifications have not been established by the Village, all work shall be made in accordance with established engineering practices as designated and approved by the Utility Engineer.

(e) All water service laterals one and one-half (1½) inches in diameter or smaller shall be completed with the curb stop and box. All other water service laterals two (2) inches in diameter or larger shall be completed with a controlling valve and road box.

(f) Any lot described on Exhibit I that is designated or zoned for more than one building shall be served by separate building sewers and water laterals to each building, unless the Village Board determines otherwise.

9. CHARGES PAYABLE PRIOR TO CONSTRUCTION OF PUBLIC IMPROVEMENTS.

The Developer agrees to pay to the Village the following charges prior to commencement of any Phase of construction (or such earlier date as may be required by the Village) of the Public Improvements:

(a) All outstanding area special charges or special assessments levied or assessed against the areas and/or lots within Pleasant Hill or the Wolf Hollow Replat by any governmental body having jurisdiction thereof, including but not limited to the special assessment levied by the Village or its predecessor in interest, for the construction and installation of the 16-inch water main previously installed to provide water service to Pleasant Hill or the Wolf Hollow Replat and additional areas of the Village.

(b) All outstanding area charges, fees, connection fees or other charges levied, assessed or charged by the Madison Metropolitan Sewerage District for construction of downstream sewerage facilities.

(c) All legal fees, engineering fees and other third party costs or expenses incurred by the Village in connection with the drafting and preparation of this Agreement, or the enforcement of any obligation hereunder by the Village.

(d) The sums due under Section 21 below.

All fees resulting from the land division or the construction of Public Improvements under the jurisdiction of other governmental authorities shall be paid as and when due to such other authorities.

10. DEVELOPER TO REIMBURSE VILLAGE FOR COSTS SUSTAINED.
The Developer shall reimburse the Village for its costs of design, inspection, testing, construction and associated legal and administrative work required in connection with the construction of the Public Improvements or any phase thereof. The Village's costs shall be determined as follows:

(a) Consulting, inspection, engineering and legal fees shall be actual costs to the Village on the basis of submitted invoices.

(b) The cost of Village administrative or fiscal work connected with the project, other than normal duties.

(c) Village equipment involved with the described Lots shall be based on the hourly rate for each individual piece of equipment. The hourly rate shall be the current rate established by the Village at the time of involvement.

(d) The actual costs of Village materials incorporated into the work including transportation costs.

(e) The cost of the Village's employees' time engaged in any way with the construction of the required Public Improvements based on the charge out rates per hour or established from time to time by the Village.

(f) The cost of mileage reimbursed to the Village which is attributable to the Developer's activities, which reimbursement shall be at the rate of $0.37 per mile.

(g) The cost incurred by the Village in connection with the inspection and approval of the Public Improvements.

(h) Unless the amount totals less than $50.00, the Village shall bill the Developer monthly for expenses incurred by the Village. Bills outstanding for more than thirty (30) days shall accrue interest at a rate of 1% per month. Bills outstanding for more than 60 days shall be paid by withdrawal from the Letter of Credit as hereinafter described. Amounts less than $50.00 shall be held for billing by the Village until amounts total more than $500.00, or until the conclusion of project activities.

(i) Nothing contained herein shall limit the Village's right to collect, or the Developer's obligation to pay, any fees or costs required by State law or local ordinance.

11. SURETY.

(a) Letter of Credit. The Developer shall furnish a separate irrevocable Letter of Credit to the Village for each Phase of the development of the Plat, prior to the commencement of construction of such Phase. The Letter of Credit for water & sewer for Phase One shall be in the amount of $361,961.00. (See Exhibit 2 for surety determination for all improvements.) For subsequent phases, the Letter of Credit shall be in an amount equal to 120% of the estimated construction and engineering inspection
The Letter of Credit for each Phase of the development of the Plat shall be managed separately. The Developer shall provide the Utility Engineer with estimated costs of all improvements for the particular Phase, which costs shall be approved by the Utility Engineer prior to the furnishing of the Letter of Credit. The estimated construction cost shall be based on a basis of a unit price cost per item as specified in this Agreement. The Letter of Credit (or any renewal thereof) shall be payable to the Village and shall bear an expiration date no earlier than one year from its issue date. The Developer shall renew or replace each Letter of Credit not less than 10 days prior to its expiration date in such amount as remains required by this Agreement. If a renewal or replacement Letter of Credit is not provided, the Village may draw the remaining balance on the expiring Letter of Credit during the last ten days prior to its expiration. All Letters of Credit shall be subject to release or reduction as set forth in 11(c) below. Any release or reduction must be in writing and signed on behalf of the Village. The Developer agrees not to sell affected individual or multiple lots or to commence construction of any phase of construction prior to providing the Village the Letter of Credit therefor. The Letter of Credit shall be in such form and content as counsel to the Village may reasonably require.

(b) Payment Under Letter of Credit. Upon the Developer's failure to timely correct defects or failure to timely perform, the Village shall have the right to cure such defects or improvements. The Village shall be entitled to draw against the Letter of Credit as needed for payment of such costs. Such Letter of Credit shall be payable to the Village at any time upon the presentation of (i) a sight draft drawn on the issuing bank in the amount to which the Village is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Village official stating that the Developer is in default of this Agreement; and (iii) the original of the Letter of Credit. The amount received under the Letter of Credit shall be used by the Village for the purposes specified in this Agreement. The Village may use the money to pay private contractors directly for reasonable materials, labor, or any services rendered under contract with or on behalf of the Village. The proceeds of the Letter may be used to reimburse the Village for payments made by the Village to provide contractors and/or reimburse the Village for the reasonable value of any materials, labor or services the Village supplies or provides in connection with the project should the Developer fail to perform. The proceeds of the Letter may also be used by the Village to pay or reimburse the Village for all engineering, inspection, consulting, legal fees and administrative and fiscal costs incurred, or services performed at its cost, by or on behalf of the Village in connection with the project should the Developer fail to perform. When making payments to contractors, the Village shall obtain or provide lien waivers or affidavits as it deems appropriate, and provide the Developer with a complete accounting.

(c) Reduction of Letter of Credit. As work progresses on installation of improvements constructed as part of this Agreement, the District's Engineer, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of surety as hereinafter provided, for each phase of construction of the Public Improvements. When portions of construction (water, sanitary sewer, street, or other improvements) are completed by the Developer, and determined
acceptable by the District's Engineer, the Village Board may, upon submission of lien waivers by the Developer's contractors, reduce the amount of surety. Once the construction of the Public Improvements have been substantially completed, and provided the Developer is not in default under this Agreement, the amount of the surety shall be reduced to an amount equal to the total cost to complete any uncompleted Public Improvements, plus 10% of the total cost of the completed Public Improvements. Public Improvements are considered to be substantially completed at the time 100% of the Public Improvements being constructed are completed.

(d) **Accounting.** In the event that the Village concludes that there has been a default by the Developer under this Agreement and exercises its right to draw upon the Letter of Credit pursuant to this Section 11, the Village shall provide to the Developer from time to time but no less often than once every ninety (90) days, a written report of the status of the payments made under the Letter of Credit. The Developer may inspect the Village construction and payment records upon request. However, the Village exclusively retains the right to determine, among other things, questions of design, specifications, construction cost, performance, contract compliance, and payment in connection with this work. The Developer agrees that in the absence of fraud on the part of the Village, the Village's decisions on such matters, including design, specifications, construction cost, performance, contract compliance or payment question shall control and shall be final.

12. **MISCELLANEOUS**

(a) **Recording of Plat Restrictions.** The Developer shall record all Plat restrictions as required by the Village of Windsor or this Agreement.

(b) **Developer's Designated Project Coordinator.** The Developer hereby appoints Gary Blazek P.E., Vierbicher Associates, Inc., as its Project Coordinator. The Project Coordinator shall act as the Developer's representative during the construction phase of the installation of these improvements.

(c) **Village's Designated Inspector.** The Village hereby appoints the Utility Engineer, presently Jerry D. Groth, as its designee as the Project Inspector. Any correspondence or notification by the Village's Engineer may be made to the Project Coordinator designated in Section 12(b) above.

(d) **Effective Date.** This Agreement shall be effective as of the date and year first written above.

13. **SUPPLEMENTAL GENERAL CONDITIONS**

(a) **No Vested Right Granted.** Except as provided by law, or as expressly provided in this contract, no vested right in connection with this project shall inure to the Developer, nor does the Village warrant by this Agreement that the Developer is entitled to any other approvals required.
(b) **No Waiver.** No waiver of any provisions of this Agreement shall be deemed or constitutes a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Village and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Village's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

(c) **Amendment/Modification.** This Agreement may be amended or modified only by a written amendment approved and executed by the Village and the Developer.

(d) **Default.** Except as otherwise provided for herein, default is defined herein as a breach of or failure to comply with the terms of this Agreement. The parties reserve to themselves all remedies available at law or equity as necessary to cure any default as well as monetary damages. The Village also reserves to itself the right to draw on a Letter of Credit or other surety provided hereunder in addition to pursuing any and all other available remedies. Remedies shall include, but not be limited to, stopping all construction of the Public Improvements within Pleasant Hill and/or the Wolf Hollow Replat and prohibiting the transfer or sale of lots contained therein. Further, in the event the Developer shall default on any of its obligations hereunder, the Developer shall pay to the Village a penalty of $100.00 per day for each day a default continues without a cure; provided however, that the Village gives to the Developer written notice of such default and the Developer fails to cure the same within ten (10) days thereafter.

(e) **Entire Agreement.** This Agreement, and written amendments, and any referenced attachments thereto, shall constitute the entire agreement between the Developer and the Village.

(f) **Attorneys’ Fees.** In the event of any such default by the Developer, the Developer shall reimburse the Village for all costs of enforcement incurred by the Village in exercising its rights and remedies hereunder, including but not limited to reasonable attorneys’ fees and disbursements.

(g) **Time.** For the purpose of computing the commencing, abandonment, and completion periods and time periods for Village action, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist shall not be included if such times prevent the Developer or Village from performing their/its obligations under this Agreement.

(h) **Severability.** If any part, term, or provision of this Agreement is held by the Courts to be illegal or otherwise not enforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision, and rights of the parties will be construed as if the illegal and/or unenforceable part, term, or provision was never part of this Agreement.
(i) **Benefits.** The benefits of this Agreement to the Developer are personal and shall not be assigned without the express written approval of the Village. 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. There is no prohibition on the right of the Village to assign its rights under this Agreement. The Village shall release the original Developer's Letter of Credit if it accepts new security from any successor developer. However, no act of the Village shall constitute a release of the original Developer from its liability under this Agreement.

(j) **Miscellaneous.**

(1) The Developer agrees that it will defend, indemnify and hold the Village harmless from and against any and all losses, claims, liabilities, damages, expenses and costs, including attorneys' fees, arising from damage to property or injuries to persons occurring in connection with the Plat or the construction of the Public Improvements. This indemnification shall apply whether or not the Village is also negligent in connection with any such loss, except that such indemnification shall not apply for any loss arising out of the willful misconduct of the Village or its agents or employees.

(2) No approval by the Utility Engineer or the Village Attorney or any other person acting on behalf of the Village shall be construed as a waiver of any other requirements of the Village's Ordinances, or any other ordinances, or statute or regulation governing the Public Improvements. It is understood that the Developer has selected and appointed all Contractors, and the Village shall have no responsibility whatsoever for the Contractors or for the quality of materials or workmanship provided by such Contractors. No authority granted herein to the Village in connection with the review or approval of the Contractors, or the Public Improvements, shall be deemed to create any liability whatsoever on the part of the Village.

(3) This Instrument is intended to express the mutual intent of the parties and they agree that it was mutually drafted by them. The terms of this instrument have been negotiated by the parties hereto and the language used in this instrument shall be deemed to be the language chosen by the parties hereto to express their mutual interest. This instrument shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or a portion thereof to be drafted, or in favor of the party receiving a particular benefit under this
instrument. No rule of construction will be applied against any person.

(4) Notwithstanding anything to the contrary contained herein, the Developer has previously deposited with the Village funds pursuant to a Service Agreement. The purpose of the deposit is to allow the Village to pay for certain costs and expenses incurred by the Village in negotiating the terms and provisions of this Agreement and giving preliminary engineering review to the scope of the Public Improvements as contemplated herein. It is hereby agreed that the execution of this document does not extinguish the Service Agreement and the Service Agreement continues on. The Village is authorized to apply the funds on deposit to defray any costs and expenses incurred by the Village.

14. NOTICES.

Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after such notice is mailed, regular postage, addressed as follows:

(a) To the Village: Village of Windsor
4084 Mueller Road
DeForest, WI 53532

(b) To the Developer: Pleasant Hill Estates, LLC
ATTN: Kevin Acker, Managing Member
102 North Holiday Drive, Suite I
Waunakee, WI 53597

15. RECORDING.

The Village may record a copy of this Agreement at the Register of Deeds Office for Dane County, Wisconsin, and all costs of recording shall be paid for by the Developer. The Developer's obligations contained herein shall run with the lands described in Pleasant Hill and the Wolf Hollow Replat.

16. LAW AND JURISDICTION.

This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin. In the event of any dispute concerning any provision hereof or in the event of any action to seek enforcement hereof, it is hereby agreed that venue of any such action is in the Circuit Courts for Dane County, Wisconsin.
17. **NO BAR TO FUTURE ASSESSMENTS.**

In the event the Village should determine to further extend or expand the Public Improvements serving the lands in Pleasant Hill and the Wolf Hollow Replat, nothing contained herein shall in any way be construed as prohibiting or preventing the Village from levying special assessments to finance the cost of such extension or expansion, all in accordance with applicable provisions of Wisconsin law.

18. **EFFECTIVE DATE.**

This Agreement shall be effective as of the date of its execution by all parties.

19. **DEVELOPER'S WARRANTY OF FEE SIMPLE TITLE TO PLAT.**

The Developer represents that it is the lawful owner of the lands comprising Pleasant Hill and the Wolf Hollow Replat; and that the lands are free and clear of all liens or encumbrances except none.

20. **PRIOR AGREEMENT**

(a) The Village, the Developer and others have previously entered into the “Agreement By and Among the Towns of Windsor, Windsor Sanitary Village No. 1, Prairie Creek, LLC, Acker Windsor Family, LLC and Pleasant Hill Estates, LLC Relating to Construction and Financing of Public Sewers and Water Facilities,” dated January 27, 2005 (the “Prior Agreement”). Pursuant to the Prior Agreement, the Village has extended the “Interceptor” as defined therein. The Prior Agreement requires the Developer to pay to the Village a proportionate share of the cost of construction of the Interceptor. Since the date of the Prior Agreement, there have been a number of changes to the developments described therein, which changes have affected the number of REU’s attributable to each such development. By this Agreement, the Village (as the successor to Windsor Sanitary District No. 1) and the Developer desire to amend the Prior Agreement to correspond to the provisions of Section 20(b) below. In the event of any conflict between the terms and provisions of the Prior Agreement and this Section 20, Section 20 shall control.

(b) The number of REUs assigned to the Plat of Pleasant Hill Estates and the Wolf Hollow Replat (herein collectively the “Plats”) shall equal 159. As of April 1, 2016, the value of each REU shall equal $797.27, inclusive of interest at the rate of 5.0% per annum. Phase 1 consists of 18 Lots in the Plats; and correspondingly, there are 18 REUs attributable to such Lots. Accordingly, the Developer shall pay to the Village on or before April 1, 2016 the sum of $14,350.86 (and if not paid by such date, the per diem rate of interest is $0.11 per REU thereafter). Notwithstanding anything to the contrary contained herein, the foregoing sum shall be paid in full on or before June 1, 2016.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

VILLAGE OF WINDSOR

By: Robert E. Wipperfurth
Name: Robert E. Wipperfurth
Title: President

Attest: Tina Butteris
Name: Tina Butteris
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.

Pamela McLain
Print Name: Pamela McLain
Notary Public, State of Wisconsin
My Commission: 8/9/19
STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this 7th day of April, 2016, the above named Kevin Acker, as Managing Member of Pleasant Hill Estates, LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same in such capacity.

Print Name: Ramona Wipperfurth
Notary Public, State of Wisconsin
My Commission: July 20, 2018
Phase One: Lots 6-9, 47-48, 57-58, Pleasant Hill Estates, and Lots 325, 327-332, 336-338, Wolf Hollow at Pleasant Prairie Creek, Village of Windsor, Dane County, Wisconsin. See phasing map, which is attached and incorporated by reference.

Public Improvements: Plans entitled “Street and Utility Improvements, Prairie Creek-Phase 3A and Pleasant Hill Estates-Phase 1, Village of Windsor Wisconsin” dated January, 2016 (the “Plans”) and prepared by Vierbicher (Developer Engineer); designed to Village specifications. Utility Engineer reviewed and has no objections. Developer to proceed with construction and installation per the Plans.
<table>
<thead>
<tr>
<th>Bid Item Ref. No.</th>
<th>Description</th>
<th>Unit of Measure</th>
<th>Estimated Quantity</th>
<th>Unit Price</th>
<th>Item Total</th>
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**Sanitary Sewer Subtotal** | **$18,424.00**

|                  | Water Main - 8" D.I. | LF | 1,510 | $46.00 | $69,460.00 |
|                  | Water Main - 6" D.I. | LF | 40 | $54.00 | $2,160.00 |
|                  | Relay Watermain - 16" D.I. | LF | 370 | $120.00 | $44,400.00 |
|                  | Gate Valves - 16" | EA | 10 | $6,600.00 | $66,000.00 |
|                  | Gate Valves - 6" | EA | 4 | $2,000.00 | $8,000.00 |
|                  | Gate Valves - 8" | EA | 6 | $5,500.00 | $33,000.00 |
|                  | Styrofoam Insulation (8"x4"x2" Thick) | EA | 10 | $180.00 | $1,800.00 |
|                  | Water Service Lateral - 1" Copper | LF | 760 | $26.75 | $20,330.00 |

**Water Main Subtotal** | **$203,210.00**

|                  | Storm Sewer - 6" PVC | LF | 70 | $20.00 | $1,400.00 |
|                  | Storm Sewer - 12" RCP | LF | 140 | $35.00 | $4,900.00 |
|                  | Storm Sewer - 18" RCP | LF | 200 | $53.00 | $10,600.00 |
|                  | Storm Sewer - 24" RCP | LF | 40 | $40.00 | $1,600.00 |
|                  | Storm Sewer - 27" RCP | LF | 220 | $95.00 | $20,900.00 |
|                  | Storm Sewer - 30" RCP | LF | 320 | $80.00 | $25,600.00 |
|                  | Storm Sewer - 36" RCP | LF | 90 | $120.00 | $10,800.00 |
|                  | Storm Sewer - 24" CMP | LF | 116 | $60.00 | $6,960.00 |
|                  | Storm Sewer Apron Endwall - 15" RCP | EA | 1 | $1,500.00 | $1,500.00 |
|                  | Storm Sewer Apron Endwall - 18" RCP | EA | 1 | $1,600.00 | $1,600.00 |
|                  | Storm Sewer Apron Endwall - 24" RCP | EA | 2 | $2,100.00 | $4,200.00 |
|                  | Storm Sewer Apron Endwall - 30" RCP | EA | 1 | $2,600.00 | $2,600.00 |
|                  | Storm Sewer Apron Endwall - 36" RCP | EA | 1 | $3,600.00 | $3,600.00 |
|                  | Storm Sewer Apron Endwall - 24" CMP | EA | 4 | $1,600.00 | $7,200.00 |
|                  | Storm Sewer Manhole - 48" | EA | 4 | $2,100.00 | $8,400.00 |
|                  | Storm Sewer Manhole - 60" | EA | 6 | $2,700.00 | $16,200.00 |
|                  | Storm Sewer Field Inlet - 40" | EA | 1 | $2,700.00 | $2,700.00 |
|                  | Storm Sewer Curb Inlet - 2' x 3' Precast Box W/ Frame & Grate | EA | 10 | $2,100.00 | $21,000.00 |
|                  | Storm Sewer - 48" Diameter Catch Basin W/ 2x3' Intal | EA | 1 | $3,200.00 | $3,200.00 |
|                  | Storm Sewer - 60" Diameter Catch Basin W/ 2x3' Intal | EA | 1 | $3,200.00 | $3,200.00 |
|                  | Storm Sewer - 72" Diameter Catch Basin W/ 2x3' Intal | EA | 1 | $4,300.00 | $4,300.00 |
|                  | Storm Sewer Trench Compaction | TF | 1,436 | $2.00 | $2,872.00 |

**Storm Sewer Subtotal** | **$187,332.00**

|                  | Streets | CY | 800 | $28.00 | $22,400.00 |
|                  | Geotextile Fabric - Street Subgrade | SY | 410 | $2.50 | $1,025.00 |
|                  | Finish Grading | LF | 1,700 | $5.80 | $9,660.00 |
|                  | HMA Pavement - Upper Layer (1-3/4"), Type E1 | SY | 5,530 | $6.30 | $34,839.00 |
|                  | HMA Pavement - Lower Layer (2-1/4"), Type E1 | SY | 5,530 | $6.00 | $33,180.00 |
|                  | HMA Pavement - Bike Path (3") | SY | 940 | $11.00 | $10,340.00 |
|                  | Clean and Tack Coat Binder | SY | 5,530 | $0.40 | $2,212.00 |
|                  | Crushed Aggregate Base Course - 12" thick under Temporary | SY | 2,700 | $9.00 | $24,300.00 |
|                  | Crushed Aggregate Base Course - 10" thick under Roadway | SY | 5,530 | $8.00 | $44,240.00 |
## Exhibit 2 to Utility Agreement

### page 2 of 2

<table>
<thead>
<tr>
<th>Item Description</th>
<th>SY</th>
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<th>SF</th>
<th>Estimate</th>
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**Streets Subtotal** $290,404.50

**Construction Subtotal** $779,270.50

**Statutory Contingency (20%)** $155,854.10

**Surety Total** $935,124.60
EXHIBIT A

Lots and Parcel Identification Numbers Affected:

Plat of Wolf Hollow at
Pleasant Prairie Creek

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<tr>
<th>Lot #</th>
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<tbody>
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Plat of Pleasant Hill Estates

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