

**VILLAGE OF WINDSOR
BOARD RESOLUTION 2016-72**

**APPROVAL OF FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
FOR PHASE 2 OF REVERE TRAILS AND ADJUSTMENT OF INFRASTRUCTURE
REQUIREMENTS FOR CONNECTION TO STH 19**

WHEREAS, the Town of Windsor entered into a Development Agreement for Phase 1 of the Plat of Revere Trails ("Plat"); and

WHEREAS, the Developer wishes to proceed with Phase 2 of the Plat, all on the terms set forth in the attached First Amendment to the Development Agreement, a copy of which is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the signed Original Development Agreement is attached hereto as Exhibit B and incorporated by reference; and

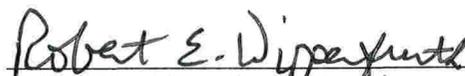
WHEREAS, the Village Board has reviewed the above documents and considered relevant information and hereby approves the First Amendment, all as set forth herein.

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

1. The First Amendment to the Development Agreement is hereby approved. The Village President and Village Clerk are authorized to execute same on behalf of the Village of Windsor.
2. The Director of Planning & Development shall obtain the notarized signature(s) from the Developer and shall thereafter record the First Amendment to Development Agreement at the Developer's expense.

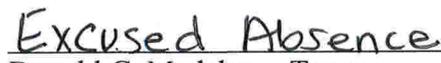
The above and foregoing Resolution was duly adopted at a meeting of the Village Board of the Village of Windsor on May 19, 2016, by a vote of 4 in favor and 0 opposed.

VILLAGE OF WINDSOR


Robert E. Wipperfurth, President


Bruce Stravinski, Trustee


Monica M. Smith, Trustee


Excused Absence
Donald G. Madelung, Trustee


Alan Buchner, Trustee

Attested by:

Tina Butteris, Deputy Village Clerk

Incorporated by Reference:

- Exhibit A First Amendment to Development Agreement v5
- Exhibit B Original Development Agreement (signed)

**PLAT OF REVERE TRAILS,
VILLAGE OF WINDSOR,
DANE COUNTY, WISCONSIN:**

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
REVERE TRAILS SUBDIVISION – PHASE 2**

This First Amendment to Development Agreement (the "First Amendment") regarding the Revere Trails Subdivision (the "Development") is entered into by and between the Village of Windsor, a Wisconsin municipal corporation ("Village") and MHG Properties, LLC ("Developer") to be effective when signed by both parties.

RECITALS

WHEREAS, the Town of Windsor and MHG Properties, LLC, a Wisconsin limited liability company, entered into a Development Agreement dated March 18, 2013 (the "Original Agreement"), which Original Agreement was recorded in the Dane County Register of Deeds Office as Document # 4981831 on April 25, 2013; and

WHEREAS, the Developer has completed the installation of public improvements to serve Lots 10-32 and 42-45, and Outlots 5-7 in the Development ("Phase 1"); and

WHEREAS, the Developer now wishes to proceed with the installation of public improvements to serve Lots 1-9, 33-41 and 46-52, and Outlots 1-3 in the Development ("Phase 2"); and

WHEREAS, the Developer wishes to be relieved of certain obligations with respect to construction of a full intersection at Forest Park Drive and STH 19 and further wishes to modify its development plan for Phase 3 of the Development by changing the anticipated use from commercial to residential development; and

WHEREAS, the Developer and Village of Windsor, as the successor to the Town of Windsor, wish to amend the Original Agreement so that the Developer may commence Phase 2 of the Development and certain decisions related to Phases 2 and 3 of the Development can be confirmed and agreed upon, all on the terms set forth more fully in this First Amendment; and



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**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

DOCUMENT #

5239621

06/06/2016 2:34 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 8

Exhibit A to Resolution

RETURN TO:

Amy Anderson Schweppe
Village of Windsor
4084 Mueller Road
DeForest, WI 53532

2016-72

DRAFTED BY:

Constance L. Anderson, Village Attorney
Anderson Consults, LLC, Madison, WI
Connie@AndersonConsultsWI.com

PARCEL IDENTIFICATION NUMBERS:

See EXHIBIT **B**

WHEREAS, the Original Agreement and the First Amendment shall be collectively referred to hereafter as the “**Development Agreement.**”

AGREEMENT

IN WITNESS WHEREOF, in consideration of the above recitals, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and Developer agree as follows:

1. **Amendments to Original Agreement.** The Original Agreement shall be amended as follows:
 - 1.1. **Article I - General Conditions, Section A. Improvements, Paragraph (2).** Paragraph (2) shall be deleted and replaced with the following:

In addition to any and all other obligations in this Agreement, the Developer, at its sole cost, shall construct the Phase 2 Improvements as shown in the Revere Trails Development Construction Drawings prepared by MSA Professional Services (“Developer’s Engineer”), sealed and signed by Joseph M. DeYoung on March 13, 2013, which are incorporated by reference as if set forth in full herein.

The Developer shall complete the construction of Forest Park Drive to STH 19 as part of Phase 2. Forest Park Drive shall be constructed as an asphalt roadway with concrete ribbon curb to Station 26+60 shown on Sheet 22 of the Construction Drawings. From Station 26+60 south to STH 19, ribbon curb shall not be required and the asphalt roadway shall be constructed with 2 foot compacted gravel shoulders. Forest Park Drive shall be constructed and fully paved concurrent with other Phase 2 roads. Notwithstanding any other provisions of the Original Agreement to the contrary, Developer shall have until September 30, 2016 to complete the construction of the Phase 2 improvements (including the Phase 2 roads), which shall include the construction of Forest Park Drive to STH 19 and the right-in, right-out connection to STH 19 referred to below. TIME IS OF THE ESSENCE. Failure to meet the deadline shall constitute a breach of the Agreement, unless the delay is solely a result of force majeure. Any extensions beyond September 30, 2016 shall require approval by the Village Board of the Village of Windsor.

The primary access point for construction traffic and builders shall be from STH 19 through Forest Park Drive. The Developer shall direct its contractors, builders, and purchasers of lots that construction traffic and builders should use the specified route.

The Developer’s Engineer shall submit to the Village Engineer revised drawings showing a right-in right-out connection to STH 19. Provided that the Village Engineer has no objection to same, the Developer shall obtain all necessary permits from state and local approving authorities to construct the connection to STH 19 as set forth in the approved drawings.

No building permits shall be issued in Phase 2 until the binder course has been installed on all Phase 2 roads in accordance with the standards set forth in the Village ordinances.”

- 1.2. Article I - General Conditions, Paragraph H. **Guarantee of the Work.** Delete the (3) references to “18 months” and replace with “14 months.”
- 1.3. Article I - General Conditions, Paragraph J. **Specifications for Improvements.** Add the following: “Revised final plans showing the new connection to STH 19 shall be submitted to the Village Engineer for review along with a summary of improvements to be constructed in Phase 2 under this First Amendment. No construction shall commence until the Village has provided notice of no objection to the revised final plans and the summary of improvements.”
- 1.4. Article I - General Conditions, Paragraph M. **Surety.** Insert the following: “5. The security for performance of Phase 2 shall be by means of a letter of credit in a form acceptable to the Village Attorney. The amount of the letter of credit shall be equal to 120% of the costs of the required public improvements in Phase 2, as determined by the Village Engineer based on the opinion of probable cost prepared and submitted to the Village by the Developer Engineer.”
- 1.5. Article I - General Conditions, Paragraph N. **Subdivider's Designated Project Manager.** Delete and replace with the following: “The Subdivider/Developer hereby authorizes Randall Grobe to serve as the Project Manager. Mr. Grobe shall act as the Developer’s representative during the construction phase of the installation of these Improvements. The Project Manager shall be available during construction hours on the job site and for emergency situations at the following telephone number 608-217-6115. The Project Manager’s mailing address for this construction project shall be: 1715 Ashford Lane, Waunakee, WI 53597.”
- 1.6. Article I - General Conditions, Paragraph S. **Limitation on Conveyance of Lots Outside of Phase I.** Delete paragraph and replace with the following: “**Limitation on Conveyance of Lots Outside of Phase 2.** The Developer agrees to execute and record, in a form approved by the Village Attorney, an instrument prohibiting the conveyance to third parties of lots outside of Phases 1 and 2 of the Development (other than to a bona fide financial institution as a mortgagee for the costs of development and construction of the project by Developer), without the consent of the Village of Windsor. The Village agrees to execute and record an instrument which removes the deed restriction and permits conveyance of lots in Phases 1 and 2 to third parties after the public improvements required by the Original Agreement and this First Amendment are completed as agreed.”
- 1.7. Article II - Supplemental General Conditions, Paragraph J. **Notice.** Delete Subdivider and replace with:

Randall S. Grobe
MHG Properties, LLC
1715 Ashford Ln.
Waunakee, WI 53597

2. Approval of Construction on Phase 2 Lots Subject to Conditions. By execution of this First Amendment, the Developer agrees to each and all of the conditions set forth herein. The Village's approval of this First Amendment is subject to the following conditions which are accepted by the Developer, and are all as set forth herein:

2.1. As per Article- I - General Conditions paragraph Q. **Parks Improvements** (2) shall read as follows: Developer shall provide no less than five (5) business days advance notice to the Village Director of Development & Planning of each closing for the sale of a residential lot in the Plat. Developer shall have an affirmative duty to provide notice to the title company or other closing agent that Developer is obligated to and shall pay to the Village at the closing of each residential lot sale the current Park Improvement Fee, at the rate in effect as of the date of closing. This obligation is personal to the Developer and survives the closing of the transaction in which the residential lot sale is conveyed to a third party. Fees collected from Revere Trails subdivision shall be used for improvements to a Park constructed as part of Phase 3. Until all Park Improvement Fees due on Phase 2 lots have been paid in full by the Developer, the Village shall not approve future phases of the Development.

2.2. In addition to the dedication of park land for Phase 1 and Phase 2, and for other good and valuable consideration, the Developer agrees to and shall dedicate for park land purposes one-tenth acre per single-family residential dwelling unit to be created by the future re-platting of the current Outlots in Phase 3. Land used for stormwater management purposes shall not count toward this requirement. Based on the estimate of 40 residential dwelling units in Phase 3, the Developer agrees to and shall dedicate 4 acres of land in Outlot 2 for park purposes. The land so dedicated for park purposes shall be located in Outlot 2 adjacent to the Big Hill Conservancy, as generally depicted on Exhibit A, which is attached hereto and incorporated by reference. The conveyance of land to the Village within Outlot 2 provided above shall occur concurrent with execution of this First Amendment. If it is later determined that there are more than 40 residential dwelling units in Phase 3, then, at the Village's option, the Developer shall either pay fees in lieu of dedication or dedicate additional land sufficient to satisfy the obligation to the Development, all as determined by the Village.

2.3. The Developer agrees that the minimum square footage of single-family residential lots in Phase 3 shall be no less than 12,000 square feet.

2.4. The Village agrees to support and make a good faith effort to obtain approval from CARPC and the DNR of the Village's application for an Urban Service Amendment

Exhibit B

Phase 2, Plat of Revere Trails

Lot Number	Parcel Identification Number	Lot Number	Parcel Identification Number
Lot # 1	196/ 0910-334-0501-0	Lot # 46	196/ 0910-331-6716-0
Lot # 2	196/ 0910-334-0512-0	Lot # 47	196/ 0910-334-0717-0
Lot # 3	196/ 0910-334-0523-0	Lot # 48	196/ 0910-334-0728-0
Lot # 4	196/ 0910-334-0534-0	Lot # 49	196/ 0910-334-0739-0
Lot # 5	196/ 0910-334-0545-0	Lot # 50	196/ 0910-334-0760-0
Lot # 6	196/ 0910-223-0556-0	Lot # 51	196/ 0910-334-0771-0
Lot # 7	196/ 0910-334-0567-0	Lot # 52	196/ 0910-334-0782-0
Lot # 8	196/ 0910-331-6408-0		
Lot # 9	196/ 0910-331-6419-0	Outlot # 1	196/ 0910-334-6250-0
Lot # 33	196/ 0910-334-0593-0	Outlot # 2	196/ 0910-334-6275-0
Lot # 34	196/ 0910-334-0604-0	Outlot # 3	196/ 0910-331-6750-0
Lot # 35	196/ 0910-334-0615-0		
Lot # 36	196/ 0910-334-0626-0		
Lot # 37	196/ 0910-334-0637-0		
Lot # 38	196/ 0910-334-0648-0		
Lot # 39	196/ 0910-334-0659-0		
Lot # 40	196/ 0910-334-0670-0		
Lot # 41	196/ 0910-334-0681-0		



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**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**AGREEMENT FOR PUBLIC IMPROVEMENTS AND
OTHER MATTERS RELATING TO REVERE TRAILS,
TOWN OF WINDSOR, DANE COUNTY, WISCONSIN -
PHASE I**

DOCUMENT #

4981831

04/25/2013 3:08 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 19

Exhibit B to Resolution

DRAFTED BY AND RETURN TO:

2016-72

MICHAEL J. LAWTON
BOARDMAN & CLARK LLP
1 S PINCKNEY ST STE 410
MADISON, WI 53703-4256

PARCEL IDENTIFICATION NUMBER(S)

068/091033460010, 068/091033460120, 068/091033460230
068/091033460340, 068/091033460450, 068/091033460560
068/091033400070, 068/091033400180, 068/091033400290
068/091033400400, 068/091033400510, 068/091033400620
068/091033400730, 068/091033400840, 068/091033400950
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068/091033460820, 068/091033460930, 068/091033461040
068/091033461150, 068/091033461260, 068/091033461370
068/091033461480 & 068/091033461590

**AGREEMENT FOR PUBLIC IMPROVEMENTS AND OTHER MATTERS
RELATING TO REVERE TRAILS, TOWN OF WINDSOR, DANE COUNTY,
WISCONSIN- PHASE I**

~~THIS AGREEMENT, made and entered into this 18th day of March, 2013, by and~~
between MHG Properties, LLC, a Wisconsin limited liability company (collectively,
"Developer"), and the Town of Windsor ("Town"), a municipal corporation located at
Windsor, Wisconsin.

WHEREAS, the Developer has received approval by the Town of Windsor of a
conventional plat and development known as Revere Trails, Town of Windsor, Dane
County, Wisconsin, located along STH 19 in the Town ("Development"), and Developer
wishes to record such plat at this time;

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

WHEREAS, the Windsor Subdivision Ordinance requires that provisions be made
for the grading of public lands, erosion and stormwater runoff control and street and trail
improvements required to serve the Developer's Development;

WHEREAS, the Developer now wishes to proceed with the installation of public
improvements to serve Lots 10-32 and 42-45, and Outlots 5-7 in the Development ("Phase
I");

WHEREAS, the purpose of this Agreement includes, but is not limited to, the
avoidance of harmful consequences of land development prior to satisfactory completion of
improvements, or prior to the payment of improvement costs;

WHEREAS, this Agreement is made for the mutual benefit of the Developer and the
Town in order that public improvement requirements will be fully complied with;

WHEREAS, the Town of Windsor will be injured in the event of the Developer's
failure to fully and completely perform the requirements of this Agreement; and

WHEREAS, the mutual promises, covenants, and obligations contained in this
Agreement are authorized by state law and the Town's subdivision ordinance;

Now, therefore, in consideration of the promises and the mutual obligations and
benefits provided hereunder, the Developer and the Town agree as follows:

ARTICLE I - GENERAL CONDITIONS

A. **Improvements.** (1) The Developer shall construct and install, at its expense, those on-site and off-site public improvements applicable to all lots in Phase I of the Development, as set forth in the plans for the Development prepared for Developer by MSA Professional Services, Inc., and particularly including the following items: installation of public storm water management facilities, public streets, gas, electric, and telephone. All of the foregoing required public improvements shall be referred to hereafter as "the Improvements." At a minimum, all of the Improvements shall meet the requirements of the Town subdivision ordinance. The Developer's obligation to complete the Improvements will arise at such future date as is agreed upon between the parties. In addition, the Developer agrees to construct improvements required to connect the Development to existing utilities, including facilities required outside of the boundaries of the Development, and to dedicate said Improvements, rights-of-way, and stormwater facilities to the Town. The engineering plans for all paths to be constructed by Developer in Phase I shall be completed by Developer's engineer and approved by the Town Engineer prior to the commencement of any construction of public improvements within the Subdivision. Phase I construction access shall be from STH "19" only. The Phase 1 construction and emergency access from STH "19" shall be constructed by the Developer to the south end of Phase I to serve as a construction and emergency access for Phase 1 of the Development, with a width of 14 feet and a surface of not less than 8 inches of gravel.

(2) In addition to any other obligation in this Agreement, the Developer shall complete Forest Park Drive, as a paved road with the binder layer of asphalt paving, from the end of Phase I to STH 19, no later than the earlier of the following to occur: (a) the "required completion date," as defined hereafter, arising after the 26th lot within the Property has been sold by Developer to a third-party, or (b) June 30, 2016, but in the case of both (a) and (b) above the completion date for the finish layer of asphalt shall be governed by the Phase II development agreement. The "required completion date" under (a) above for all work on Forest Park Drive required under this paragraph (other than the finish layer of asphalt) shall be the first June 30 arising after the 26th lot within the Property has been sold by Developer to a third-party, except that if the 26th lot within the Property has been sold by Developer to a third-party during the period of June 30-September 1 of a given calendar year, then in such event the "required completion date" shall be deemed to be no later than November 15 of that calendar year. All work governed by this paragraph shall be done in accordance with plans prepared by Developer and for which the Town Engineer has issued a written statement of "no objection". This paragraph shall not prevent Developer from completing Forest Park Drive to STH 19 as a paved road at an earlier date than (a) or (b) above, if provided for in a Phase II development agreement which may be entered into by the parties subsequent to this Agreement.

B. Contractors Engaged By Developer. The Developer agrees to engage contractors for all construction included in this Agreement who shall perform such work to the standards of the Town and who shall comply with every requirement of the Town's subdivision ordinance and standards in performing such work. The Developer shall furnish the Town Engineer with the names of all contractors and their subcontractors, with the classification of the work that they will perform, not less than seven (7) calendar days prior to any work beginning.

C. Town Approval Of Starting Dates. No land disturbances or work shall begin without the Town Engineer's approval of a starting date and schedule which shall be submitted by the Developer to the Town Engineer a minimum of seven (7) calendar days before work is scheduled to begin. The final plans and specifications, signed by the Developer's Engineer, shall be submitted to the Town Engineer. A starting date will not be approved until (1) a written statement of "no objection" with respect to the final plans and specifications for the Improvements has been issued by the Town Engineer and (2) the Letter of Credit required by this Agreement has been furnished to the Town.

D. Responsibility for Costs. The Developer further agrees that the Town shall not be responsible for any costs or charges related to this project except those specifically enumerated and agreed to in this or other written agreements between the Town and the Developer.

E. Acceptance of Work.

1. The Town shall inspect the Improvements as they are completed and, if acceptable to the Town Engineer, certify such Improvements as being in compliance with the standards and specifications of the Town. Such inspection and certification, if appropriate, will occur within fourteen (14) days of written request by the Developer to have the Town inspect any Improvement. Before obtaining certification of any such Improvement, the Developer shall present to the Town valid lien waivers from all persons providing materials or performing work on the Improvement for which certification is sought.

2. The Developer further agrees that the dedication of right-of-way improvements and the required public improvements will not be accepted by the Town until they have been inspected and approved by the Town Engineer and, furthermore, until all outstanding Town-incurred costs, including engineering and inspection charges indicated herein, have been paid in full and affidavits and lien waivers are received by the Town indicating that the contractors and their suppliers have been paid in full for all work and materials furnished under this contract.

3. The Developer agrees to provide for the maintenance and repair of all required public improvements until such Improvements are accepted by the Town.

~~4. The Town will provide timely notice to the Developer whenever inspection reveals that an Improvement does not conform to the standards and specifications or is otherwise defective. The Developer shall have thirty (30) days from the issuance of such notice to correct or substantially correct the defect. The Town shall not declare a default under this Agreement during the 30-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 Town determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat.~~

F. **Time of Completion.** All work specified herein will be completed within twelve (12) months after the commencement of construction under this Agreement, except for the finish layer of asphalt on the public streets, which shall be installed pursuant to Town policy at a later date. Construction shall commence at such time as is mutually agreed upon by and between Subdivider and Town.

G. **Indemnification and Insurance Required of Private Contractors.** The Developer hereby expressly agrees to indemnify and hold the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of, the performance of work at the development site and elsewhere pursuant to this Agreement, except to the extent caused by the willful or negligent act or omission of the Town or its officers, employees, agents or contractors. The Developer further agrees to defend the Town in the event that the Town is named as a defendant in an action concerning the performance of work pursuant to this Agreement, except where such suit is brought by the Developer. The Developer is not an agent or employee of the Town. The Developer shall require contractors engaged in the construction of this project to maintain a current Certificate of Insurance on file with the Town Clerk in amounts which are approved by the Town Engineer.

H. **Guarantee of the Work.** The Developer agrees to guarantee and warrant all work performed under this contract against defects in workmanship or materials for a period of eighteen (18) months from the date of acceptance by the Town of the Improvements completed by the Developer under this Agreement, and for a period of eighteen (18) months from the date of acceptance by the Town of the final layer of asphalt with respect to such work. If any defect should appear during the guarantee period, the Developer agrees to make 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 Improvement to the standard provided in the plans and specifications. All guaranties or warranties for materials or workmanship which extend beyond the eighteen (18) month guarantee period shall be assigned by the Developer to the Town.

I. **Compliance with Law.** The Developer shall comply with all relevant laws, ordinances and regulations in effect at the time of this Agreement when fulfilling its obligations under this Agreement.

J. **Specifications for Improvements.** The Developer shall be required to fully comply with any and all provisions of the Town's Subdivision Ordinance, whether or not specifically addressed in this Agreement, and with the construction plans and specifications for which the Town Engineer has issued a written statement of "no objection". Attached hereto is a summary of the improvements to be constructed under this Agreement. The final plans prepared by MSA Professional Service, Inc. for the project, dated 08/07/2012, and to which the Town Engineer has issued a written statement of "no objection" are incorporated by reference herein and made a part hereof.

1. Grading, Erosion Control and Barricades:

- a. The Developer shall furnish, install and maintain during construction and until the Improvements are accepted by the Town, all barricades and signs as specified by the Town Engineer at all points where new rights-of-way extend or intersect existing streets and all street ends. Developer shall maintain a "road closed" barrier(s) in place at the northerly entrance to the plat of Revere Trails to prevent non-emergency access to the plat at such location until such time as the binder layer of blacktop is installed on all of the streets in Phase I of the Development.
- b. The Developer shall obtain the approval of the Town Engineer for erosion and runoff control measures in accordance with the approved plans for such matters, as required by Town Ordinances, prior to grading, utility installation or any other land disturbance activity. Separate approvals shall be obtained for each construction phase. The Developer shall adhere to conditions of the approval and grants the right-of-entry on the Development to designated personnel of the Town to inspect and monitor compliance with this requirement.

2. Streets, Street Lighting, Trails and Storm Water Management: The Developer shall install ditches and storm water management facilities, and pavement on all streets within the Development, to the established standards and/or specifications of the Town, and in accordance with the plans for all such matters for which a written statement of "no objection" has been issued by the Town Engineer. Curb and gutter and public sidewalks shall not be required to be constructed within the Development. Except where otherwise indicated on the plans, street lighting shall not be required in this Development, other than street lighting at the intersection of STH 19 and Forest Park Drive. Also, the entrance sign at the plat entrance on STH 19 will have lighting as part of the sign installation. Developer will remove and seed those portions of the street right-of-way bulb on Forest Park Drive immediately north of the plat which are not required to maintain driveway access to the residences abutting such bulb, at such time following completion of installation of the binder layer of asphalt in Phase I of the Development as is specified by the Town Engineer.

The Developer shall install the trail system as represented by the Developer to the Town Board or shown on the final plat, and as depicted in the plans and specifications for the project for which a written statement of "no objection" has been issued by the Town Engineer, at the expense of the Developer, in accordance with the following schedule:

(a) All trails serving Phase I, as provided in the Developer's plans and specifications for Phase I for which the Town Engineer has issued a written statement of "no objection", shall be constructed by the deadline for other improvements in Phase I.

(b) All trails located north of the culvert crossing of the drainageway on Forest Park Drive within the plat of Revere Trails, and which are not located within a public street right-of-way, shall be completed no later than the earlier of the following to occur: (a) the "required completion date," as defined hereafter, arising after the 26th lot within the Property has been sold by Developer to a third-party, or (b) June 30, 2016. The "required completion date" under (a) above for all work on Forest Park Drive required under this paragraph shall be the first June 30 arising after the 26th lot within the Property has been sold by Developer to a third-party, except that if the 26th lot within the Property has been sold by Developer to a third-party during the period of June 30-September 1 of a given calendar year, then in such event the "required completion date" shall be deemed to be no later than November 15 of that calendar year.

(c) All trails within the plat of Revere Trails that are located south of the culvert crossing of the drainageway on Forest Park Drive, including, but not limited to, trails serving Outlots 1 and 2, shall be constructed at such time as further development

takes place on Outlots 1 or 2, as specified in the development agreement for such lands.

(d) All other trails within the plat of Revere Trails shall be built by the Developer at such time as is specified in the Phase II or other development agreement(s) for Revere Trails, including a trail within the right-of-way of Revere Pass and Son of Liberty Drive, from the southerly intersection of Revere Pass with Forest Park Drive, northerly to Son of Liberty Drive and then westerly to the westerly boundary of the Development.

All trails to be constructed by Developer shall be constructed in accordance with plans to be prepared by Developer and for which a written statement of "no objection" has been issued by the Town Engineer.

3. General Standards: Where standards and/or specifications have not been established by the Town, all work shall be done in accordance with established engineering practices, as designated and approved by the Town Engineer.

4. Future Public Facilities: Developer shall not be required to install any public streets, public utilities or other facilities beyond those needed to serve the Development, or needed to connect the Development to existing utilities. Developer will be responsible to make any necessary driveway arrangements with the owner of the residence abutting Forest Park Drive at the intersection with STH 19 to satisfy the requirements of the Wisconsin Department of Transportation, to the satisfaction of the Town Engineer.

K. **Fees Payable Prior to Construction.** The Developer agrees to pay the Town for all outstanding fees and assessments levied against lands within the Development prior to the start of construction of street improvements within the Development.

L. **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 for the required public improvements. The Town's costs shall be determined as follows:

1. The cost of Town employees' time engaged in any way with the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the Town representing the Town's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.

2. The cost of Town equipment employed.
3. The cost of mileage reimbursed to Town employees which is attributable to the land division.
4. The actual costs of Town materials incorporated into the work, including transportation costs, plus a restocking and/or handling fee not to exceed 10% of the cost of the materials.
5. The costs incurred by the Town in connection with the review and approval of the Development as well as the cost for review and approval of other related documents, including deed restrictions.
6. The actual cost of consultant, inspection, engineering, and legal fees at the invoiced amount, incurred by the Town for the purposes of the review, construction, inspection and testing of the proposed development and public improvements.
7. Unless the amount totals less than \$50.00, the Town shall bill the Developer monthly for expenses incurred by the Town. Bills outstanding for more than thirty (30) days shall accrue interest at the rate of 1-½ % per month.

M. Surety.

1. The Developer agrees to furnish the Town, prior to the commencement of any work under this Agreement, with surety in the form of an irrevocable letter of credit, in a form deemed acceptable by the Town Attorney, in the amount to be approved by the Town Engineer, to secure performance of this contract in accordance with the Town's Subdivision Ordinance. The letter of credit shall be payable at sight to the Town and will bear an expiration date not earlier than twelve (12) months after the date of delivery to the Town. The Letter of Credit shall include a provision requiring that the Town be given written notice not less than forty-five (45) days and not more than sixty (60) days prior to the expiration of the letter. Developer shall provide a new letter of credit satisfactory to the Town not less than ten (10) days prior to the expiration of any earlier letter of credit sufficient to cover the balance of any work to be performed by Developer hereunder and any sum required to secure the guarantee in paragraph H above. The letters of credit will be payable to the Town at any time upon presentation of (i) a sight draft on the issuing Bank in the amount to which the Town is entitled to draw

pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Town official stating that the Developer is in default under this Agreement; and (iii) the original of the letter of credit.

2. ~~As work progresses on installation of Improvements~~ constructed as part of this contract, the Town 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. When portions of construction (street, storm water or other improvements) are completed by the Developer, and determined acceptable by the Town Engineer, the Town Engineer is authorized, upon submission of lien waivers by the Developer's contractors, to reduce the amount of surety.

3. Upon acceptance by the Town of the Improvements constructed as part of this Agreement, the Town agrees to reduce the surety to an amount which does not exceed fifteen percent (15%) of the cost of the Improvements, as estimated by the Town Engineer, to secure performance of the guarantee described in this Agreement.

4. Developer agrees to provide written notice of the expiration of any letter of credit (or replacement letter of credit) provided for herein not less than forty-five (45) days nor more than sixty (60) days prior to its expiration, by sending notice to the following address:

Town Clerk
Town of Windsor
4084 Mueller Road
DeForest, WI 53532

N. **Developer's Designated Project Manager.** The Developer hereby appoints Randy Grobe as the Project Manager. Said individual shall act as the Developer's representative during the construction phase of the installation of these Improvements. The Project Manager shall be available during construction hours on the job site or available by telephone at 608-217-6115. During non-construction hours, the Project Manager shall be available for emergency situations at the following telephone number: 608-217-6115. The mailing address for this construction project shall be as follows: 5413 Tonyawatha Trail, Madison, Wisconsin 53716.

O. **Covenants and Restrictions; Stormwater Management Agreement; Maintenance of Trails.** Prior to commencement of construction of work under this Agreement, Developer shall submit the Declaration of Covenants, Conditions and

Restrictions to the Town Board for review and approval as to conformity with the Town's Subdivision Ordinance and any conditions of approval. The Covenants, Conditions and Restrictions shall contain provisions which provide for site plan and architectural review procedures for any lots to insure that the represented quality of the improvements is maintained. Developer shall also enter into the Town's stormwater management agreement, in recordable form satisfactory to the Town Engineer and Town Attorney, prior to the commencement of any work under this Agreement, which agreement shall provide that the Developer shall maintain the stormwater management facilities, at the expense of Developer, until the Town accepts the improvements, and that after acceptance of the improvements by the Town, the homeowner association formed by Developer shall maintain the stormwater management facilities at the expense of the association. In the event the association fails to properly maintain the stormwater management facilities, then the Town's stormwater management agreement shall provide that the Town may enter the property and maintain the stormwater management facilities, with the cost thereof to be charged back as a special charge to the owners of lots within the Development. The foregoing instruments shall be recorded prior to the commencement of any work under this Agreement.

The Town and Developer agree as follows with respect to maintenance of trails constructed by Developer after acceptance thereof by the Town:

(a) Maintenance of trails constructed outside of the boundaries of the plat of Revere Trails shall be the sole responsibility of the Town, at Town expense.

(b) Maintenance of the trails within the plat of Revere Trails (other than those south of the culvert crossing of the drainageway on Forest Park Drive), including the decision as to whether or not to maintain them during the winter season, shall be under the control of the Association, at its expense, until such time as the Town elects to perform the maintenance of such trails under a public maintenance contract, at which point the Town or its contractor shall perform such maintenance, but the cost of such public contract maintenance work on trails within the Development shall be billed by the Town to and paid by the Association annually, and in the event that the Association does not timely pay such statement to the Town for such maintenance services, then the Town may assess the cost thereof to the benefitted lots within the Development as a special charge in the manner for establishing special charges provided by law. The Revere Trails Homeowners Association, Inc. is executing this Agreement to join in and obligate itself to the provisions of this subsection (b) with respect to the maintenance of trails.

(c) Maintenance of the trails within the plat of Revere Trails south of the culvert crossing of the drainageway on Forest Park Drive, including those benefitting Outlots 1 and 2, shall be

determined in a future development agreement between the parties at such time as further development of Outlots 1 or 2 occurs.

P. Survey Monuments. Developer agrees to install all survey monuments for the final plat in the manner required by law and Town ordinance, except that pursuant to the provisions of sec. 236.15(1)(h), Wis. Stats., Developer shall have a period of up to five (5) years after the date of execution of this Agreement by all parties, or the start of construction of the final phase of the Development, whichever comes first, within which to complete installation of all required monuments in the entire Development as required by law and Town ordinance, but all such survey work must be completed for each phase of the Plat by the time of completion of public improvements for such phase of the plat. Developer will provide security in the amount and manner reasonably required by the Town Engineer at the time of commencement of construction of the first phase of the Plat based on estimates from responsible surveying firms, to secure the full costs of such survey monumentation work within such time period. No construction of the public improvements for the first phase of the plat shall be commenced until the Town Engineer has approved the adequacy of the security for the surveying costs.

Q. Park Improvements.

(1) The Town acknowledges that Developer has satisfied all requirements of the Town Subdivision Ordinance with regard to the dedication of park lands or the payment of fees in lieu of dedication of park lands for the Development upon (a) the execution of this Agreement and recording of the plat, and (b) the Developer installing the trail improvements required under this Agreement. The Town also acknowledges the Developer's previous donation to the Town of conservancy lands along the eastern boundary of the Development.

(2) At the time of the closing of each residential lot sale by Developer, Developer shall pay or cause to be paid into the park improvement fund of the Town, the sum of \$1,072.94 per lot for park improvement purposes, which payments shall be in lieu of payment directly to the Town by Developer of park improvement fees for improvement of park land under the Town ordinances. The Town shall not be limited by this Agreement with respect to the use to be made by the Town of the funds paid under this paragraph. The payment provided herein shall be adjusted annually in January of each year, based on the cost index used by the Town to make annual adjustments to the park improvement fee, to reflect the change in such index over the twelve month period ending in December of the preceding year.

(3) Provided that the foregoing procedures are followed, the lot owners within the Development shall not be obligated to pay the park improvement fee for improvement of

park land to the Town under the Town ordinances.

R. **Phasing; Limitation on Sales to Any One Builder.** The phasing schedule for Revere Trails will not exceed 35 single-family lots per calendar year, starting with 2013. Any unused lots allocated to any particular year may be carried over by the Developer to all subsequent years until exhausted. Developer shall not sell more than one-third (1/3) of the lots within the entire Development to the same home builder without approval of the Town of Windsor.

S. **Limitation on Conveyance of Lots Outside of Phase I.** Developer agrees to execute and record, in a form approved by the Town Attorney, an instrument prohibiting the conveyance to third parties of lots outside of Phase I of the Development (other than to a bona fide financial institution as a mortgagee for the costs of development and construction of the project by Developer), without the consent of the Town of Windsor, or until the execution of a development agreement between Developer and the Town of Windsor for particular lots outside of Phase I as to which this prohibition would not then apply.

T. **Subdivision Signage.** Subdivider shall erect quality Development entry signage at one or more entrances to the Development, at the expense of Developer, which signage shall include a statement that the Development is "A Windsor Neighborhood".

U. **Heavy Truck Traffic; Road Damage.** All construction traffic entering and exiting the Development during Phase I shall enter and exit from STH 19, including construction traffic associated with Phase I construction and the construction of residences in Phase I. This shall not prohibit passenger automobile traffic, nor any non-construction related traffic, from using any other entrances or exits from the Development. The Town may charge to the Developer the cost of any unreasonable damage occurring to existing Town roads (excluding existing conditions and normal wear and tear), which is attributable to truck traffic using existing Town roads to enter and exit the Development for construction of Phase I or construction of residences within Phase I, provided however, that Developer shall first be given written notice of any such damage and a reasonable opportunity to repair such damage at the Developer's own cost prior to being assessed for any such costs by the Town.

V. **Annexation.** Developer agrees that at no time will the Developer petition to annex or attach all or any part of the Property to any city or village under applicable annexation or boundary agreement laws, without the consent of the Town of Windsor.

ARTICLE II - SUPPLEMENTAL GENERAL CONDITIONS

A. **No Vested Rights Granted.** Except as provided by law, or as expressly provided in this Agreement, no vested right in connection with this project shall inure to the Developer. Nor does the Town warrant by this Agreement that the Developer is entitled to any other required approvals.

B. **No Waiver.** No waiver of any provision of this Agreement shall be deemed or constitute 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 Town and 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 Town'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 Town and the Developer.

D. **Default.** A default is defined herein as the Developer's breach of, or failure to comply with, the terms of this Agreement. The Town reserves to itself all remedies available at law or equity as necessary to cure any default. The Town also reserves to itself the right to draw on a letter of credit or other surety provided hereunder in addition to pursuing any other available remedies. Remedies shall include, but not be limited to, stopping all construction in the approved final plat and prohibiting the transfer or sale of lots. Remedies shall be cumulative, and the exercise of one shall not preclude the exercise of others.

E. **Entire Agreement.** This written Agreement, and written amendments, and any referenced attachments thereto, shall constitute the entire agreement between the Developer and the Town.

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

G. **Time.** For the purpose of computing the commencement, abandonment and completion periods, and time periods for Town or Developer 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 Town from performing their/its obligations under the Agreement.

H. **Severability.** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the 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 Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer.

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

If to Developer:	Randall S. Grobe MHG Properties, LLC 5413 Tonyawatha Trail Madison, WI 53716
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If to Town:	Town of Windsor 4084 Mueller Road DeForest, WI 53532 Attn: Town Clerk
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K. **Recordation.** The Town may record a copy of this Agreement in the Register of Deeds office. All cost of recording shall be paid by the Developer.

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

REVERE TRAILS CONDOMINIUM
PARCEL IDENTIFICATION NUMBERS

068/091033460010	068/091033460120	068/091033460230
068/091033460340	068/091033460450	068/091033460560
068/091033400070	068/091033400180	068/091033400290
068/091033400400	068/091033400510	068/091033400620
068/091033400730	068/091033400840	068/091033400950
068/091033401060	068/091033401170	068/091033401280
068/091033401390	068/091033401500	068/091033401610
068/091033401720	068/091033401830	068/091033401940
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068/091033162080	068/091033162190	068/091033162300
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068/091033163070	068/091033163180	068/091033163290
068/091033163400	068/091033403810	068/091033403920
068/091033404030	068/091033404140	068/091033404250
068/091033404360	068/091033404470	068/091033404580
068/091033404690	068/091033404800	068/091033460710
068/091033460820	068/091033460930	068/091033461040
068/091033461150	068/091033461260	068/091033461370
068/091033461480	068/091033461590	



PROFESSIONAL SERVICES

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MEMO

To: Kevin Richardson, Town Engineer
From: James Bongard, Engineering Technician
Subject: Revere Trails - Summary of Public Improvements
Date: March 13, 2013

The following items are the summary of the Public Improvements for the Revere Trails Development.

3,650 LF – Roadway (22' wide pavement)
6,675 LF – Ribbon Curb
180 LF – 12" RCP Culvert
100 LF – 24" RCP Culvert
130 LF - HERCP Storm Sewer (19-Inches x 30-Inches I.D.)
110 LF - HERCP Storm Sewer (24-Inches x 38-Inches I.D.)
260 LF - HERCP Storm Sewer (48-Inches x 76-Inches I.D.)
80 LF - HDPE Culvert (12-Inches I.D.)
770 SY – Asphalt Trails 3.5" Thick
16,000 SF – Stormwater Management Basins

Offices in Illinois, Iowa, Minnesota, and Wisconsin

2901 International Lane, Suite 300, Madison, WI 53704-3133

(608) 242-7779 (800) 446-0679

FAX: (608) 242-5664 WEB ADDRESS: www.msa-ps.com

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