



Waukesha Water Utility

SERVING WAUKESHA SINCE 1886

115 DELAFIELD STREET
WAUKESHA, WI 53188-3615

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MEMORANDUM

Date: October 21, 2019

To: Dan Duchniak, P.E.

From: Chris Walter, P.E.

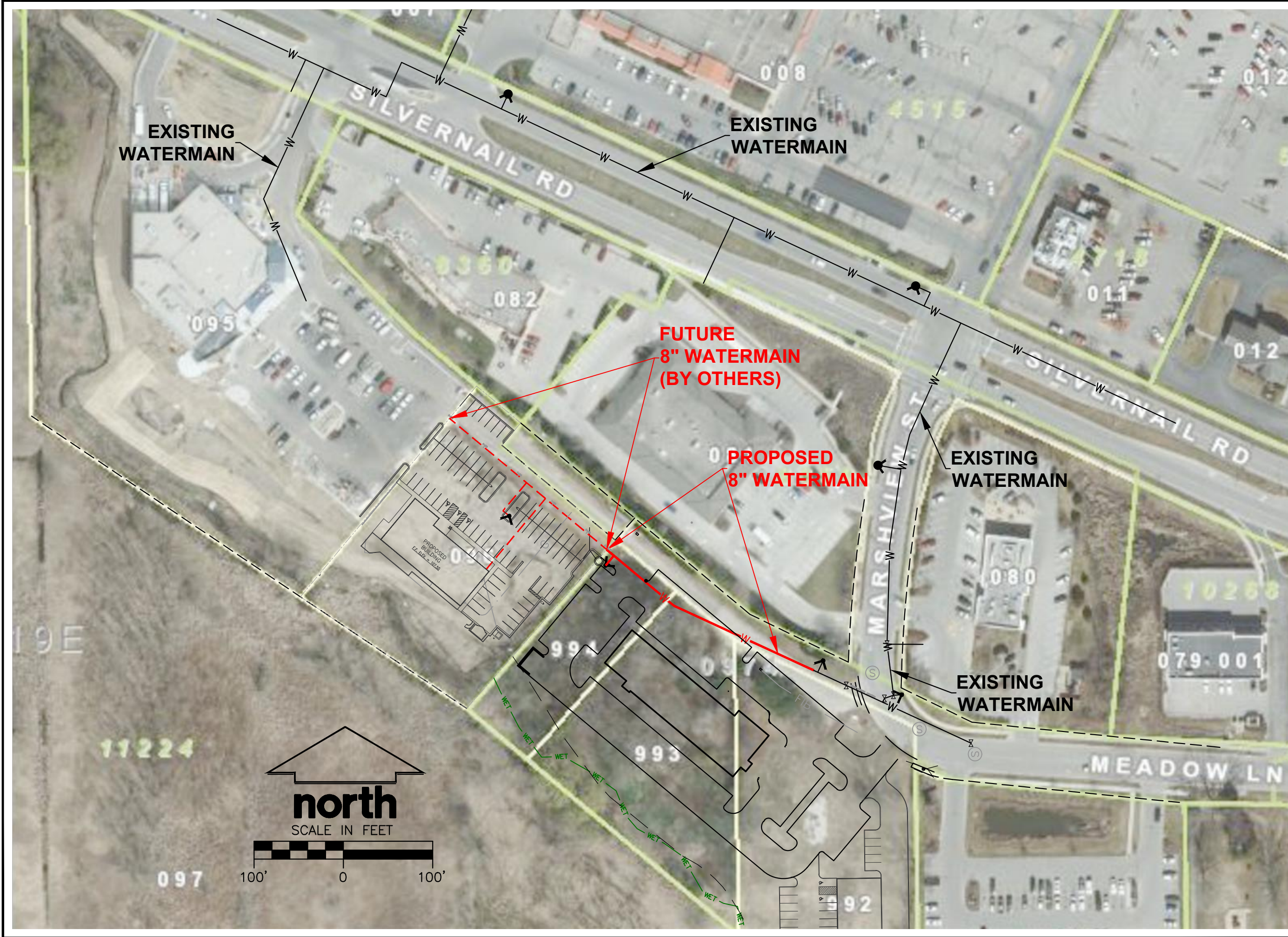
Re: Avid Hotel - Developer's Agreement

Kingbird Real Estate is proposing to extend water main for the above project. The project involves a four (4) story, 40,000 square foot building at the southwest corner of Meadow Lane and Marshview Street. This Developer's Agreement is regarding the approximately 229 feet of 8-inch water main extension proposed for the project. The water main will be installed within an easement that was approved by the Commission in September, at no cost to the utility.

The Developers Agreement is our standard agreement and contains no exceptions.

Recommended Motion: Move to approve the Developer's Agreement with Kingbird Real Estate for Avid Hotel.

Enc.



JSD Professional Services, Inc.
• Engineers • Surveyors • Planners

"BUILDING RELATIONSHIPS WITH A COMMITMENT TO CLIENT SATISFACTION THROUGH TRUST, QUALITY AND EXPERIENCE"

• CIVIL ENGINEERING
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MILWAUKEE REGIONAL OFFICE
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WAUKESHA, WISCONSIN 53188
262.513.0666 PHONE | 262.513.1232 FAX

MADISON | MILWAUKEE
KENOSHA | APPLETON

www.jsdinc.com

SERVICES PROVIDED TO:
AVID HOTEL

PROJECT:
AVID HOTEL

PROJECT LOCATION:
CITY OF WAUKESHA
WAUKESHA COUNTY, WI

JSD PROJECT NO.: 18-8713A

SEAL/SIGNATURE:

ALTHOUGH EVERY EFFORT HAS BEEN MADE IN PREPARING THESE PLANS AND CHECKING THEM FOR ACCURACY, THE CONTRACTOR AND SUBCONTRACTORS MUST CHECK ALL DETAIL AND DIMENSIONS OF THEIR TRADE AND BE RESPONSIBLE FOR THE SAME.

SURVEYED BY: _____
DRAWN BY: _____
CHECKED BY: _____

PLAN MODIFICATIONS:	DATE:

DIGGERS HOTLINE
Call 811 or (800) 242-8511
Milwaukee Area (262) 432-7910
Hearing Impaired TDD (800) 542-2289
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SHEET TITLE:
WATERMAIN
LOCATION
MAP

SHEET NUMBER:
EX-1

THESE PLANS AND DESIGNS ARE COPYRIGHT PROTECTED AND MAY NOT BE USED IN WHOLE OR IN PART WITHOUT THE WRITTEN CONSENT OF JSD PROFESSIONAL SERVICES, INC.

**DEVELOPER'S AGREEMENT
FOR
AVID HOTEL WATER MAIN**

THIS AGREEMENT, made this _____ day of _____, 20____, between _____ hereinafter referred to as the "DEVELOPER", and the City of Waukesha Water Utility hereinafter referred to as the "UTILITY".

WITNESSETH:

WHEREAS, the DEVELOPER is the owner of the land that is within the territory served by the UTILITY, said land being described on **EXHIBIT A** (*a legal description with a map showing the described lot configurations*) attached hereto and incorporated herein, hereinafter referred to as the "SUBJECT LAND"; and

WHEREAS, the DEVELOPER desires to obtain water service for the SUBJECT LAND; and

WHEREAS, the DEVELOPER agrees to construct Improvements as herein described in accordance with the terms of this Agreement, the UTILITY *Specifications for Installation of Water Main and Appurtenances*, as well as the rules and regulations of the UTILITY on file with the State of Wisconsin Public Service Commission, all laws and regulations governing the Improvements on the SUBJECT LAND, and the final approved plans on file in the UTILITY'S office; and

WHEREAS, THE DEVELOPER and UTILITY desire to enter into this Agreement in order to ensure that the DEVELOPER will make and install all UTILITY water system Improvements which are deemed necessary by the UTILITY to serve the SUBJECT LAND and further that the DEVELOPER shall dedicate the UTILITY water system Improvements to the UTILITY without cost to the UTILITY; and

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the UTILITY and DEVELOPER agree as follows:

DEFINITIONS

Throughout this Agreement, the following terms shall have the described meaning, unless the context clearly indicates a different meaning:

1. Commission shall mean the Waukesha Water Utility Commission of the City of Waukesha, Wisconsin.
2. Specifications shall mean the requirements, obligations, and conditions set forth within the body of this Agreement, pertaining to the method or manner of performing the work to construct the Improvements, the quantities and the quality of materials to be furnished under this Agreement.
3. Utility shall mean the City of Waukesha Water Utility and/or the designated representative of the City of Waukesha Water Utility, Waukesha, Wisconsin.
4. Developer shall mean the sub-divider or developer, as identified within this Agreement.
5. Stub lateral shall mean the buried piping from the water main to the property line or edge of easement.
6. As-built drawings shall mean drawings which specify the location of all Improvements where installed and include a description of the item including the type, make, materials used and any unusual characteristics.

7. Water main shall mean buried pipe located in right-of-way or easement by which water is delivered to more than one customer.
8. Water service shall mean the furnishing of public water supply for fire protection and domestic uses.
9. Water system shall mean any aggregate of piping and appurtenances associated with furnishing public water supply to the customers of the Utility.
10. Improvements shall be all construction activities described in the attached specifications.
11. Offer of Dedication shall mean the DEVELOPER has notified the UTILITY of project completion and has corrected all deficiencies, and has expressed intent to donate the value of the project.
12. Acceptance shall mean dedication accepted, all invoices relating to the project have been paid, and lien waivers and affidavits received.

SECTION I. PRELIMINARY PLAN PREPARATION & APPROVAL PROCESS

A. PLAN PREPARATION & APPROVAL PROCESS

1. The DEVELOPER shall submit a written request to the General Manager of the UTILITY for water service and public water main to be installed to serve the SUBJECT LAND. The request shall include the official recorded legal description which will include a map showing the location and the lot configurations of the area proposed to be served.
2. DEVELOPER shall submit to the Utility one (1) set of preliminary plans and specifications. The preliminary plans and specifications shall show, at minimum, the size and location of the main, valves, and hydrants, the preliminary fire flow calculations, the utility easement locations, and the sizes, depths, and locations of the storm and sanitary sewers. DEVELOPER shall also submit site grading plan, utility plans, soil erosion control plan, information regarding unusual construction requirements, etc. to the UTILITY for engineering analysis and comment.

B. UTILITY ENGINEERING ANALYSIS & DEVELOPER REVISIONS/SUBMITTAL OF FINAL PLANS

1. After reviewing the first submittal of preliminary plans and specifications, the UTILITY shall send comments to the design engineer on any items that do not meet the UTILITY requirements or that require revisions, additions, or clarifications of the engineering plans or contract documents. The design engineer shall then revise the plans and make a second submittal to the UTILITY for the review and approval process.
2. When the plans are finalized, the DEVELOPER shall submit to the UTILITY three (3) sets of complete plans for the proposed water service including one (1) set of the Wisconsin Department of Natural Resources (WDNR) water main extension submittal. In addition, the DEVELOPER shall submit to the UTILITY an electronic CAD file of the final plans consistent with the UTILITY'S current format.
3. DEVELOPER shall provide to the UTILITY written certification from the DEVELOPER'S Engineer that the water system plans are in conformance with all applicable laws, including, but not limited to, the rules and regulations and procedures of the UTILITY and the Wisconsin Department of Natural Resources (WDNR) prior to the start of construction of Improvements.

4. The UTILITY will forward the water main extension submittal to the Wisconsin Department of Natural Resources (WDNR) and will request approval from the UTILITY Commission, or its designee. The plans and the WDNR submittal shall be subject to the approval of the UTILITY and the WDNR. The UTILITY shall provide to the DEVELOPER written proof that the UTILITY and the WDNR have approved said plans.

SECTION II. PREQUALIFICATION, PREPAYMENT, INDEMNIFICATION, INSURANCE & PREVAILING WAGE DETERMINATION

A. CONTRACTORS PREQUALIFICATION

The DEVELOPER shall furnish the UTILITY names of all contractors and their subcontractors, with the classification of the work they perform, prior to any work beginning. The UTILITY shall verify that contractors and subcontractors are pre-qualified. Construction of Improvements shall not begin until all contractors and subcontractors have been pre-qualified.

B. PRE-PAYMENT REQUIRED

1. PAYMENT OF COSTS FOR ENGINEERING, INSPECTION, AND ADMINISTRATIVE FEES

The UTILITY'S fees, expenses, costs and disbursements for the Improvements shall be pre-paid by the DEVELOPER or their agent at the time the DEVELOPER submits this Agreement to the UTILITY. This Agreement shall be submitted to the UTILITY at least one month prior to the start of construction of Improvements. These incurred fees are relative to the construction, installation, dedication and acceptance of the development improvements covered by this Agreement, including without limitation by reason of enumeration, design, engineering, review, supervision, inspection, all costs associated with UTILITY'S preparation of "as-built" drawings (including CAD and GIS integration), payment for the water system as defined in the UTILITY Rules and Regulations as on file with the Wisconsin Public Service Commission, and legal, administrative and fiscal work. UTILITY employee costs shall be based on regular UTILITY billing rates for any time actually spent on the project. Any costs for outside consultants shall be charged at the rate the consultant charges the UTILITY. The estimated amounts of the UTILITY'S costs are listed below. At the conclusion of the Improvements, the UTILITY shall reconcile the above costs as described in Section VI paragraph A. If written notice is received from the DEVELOPER that they do not wish to proceed with the project, the UTILITY will invoice the DEVELOPER for actual costs.

2. RECORDING

The UTILITY will record this agreement with the Register of Deeds and the cost of recording shall be paid by the DEVELOPER.

3. PAYMENT OF GUARANTEE

The DEVELOPER shall pay for any damages to UTILITY property and/or Improvements resulting from faulty materials or workmanship. This guarantee shall not be a bar to any action the UTILITY might have for negligent workmanship or materials.

The guarantee amount shall be pre-paid by the DEVELOPER at the time the DEVELOPER submits this Agreement to the UTILITY, prior to beginning construction of Improvements. The DEVELOPER shall guarantee against defects due to faulty materials or workmanship, provided that such defects appear within a period of one (1) year from the date of the acceptance of Improvements, by providing the UTILITY with cash or a Letter of Credit in a form acceptable to the UTILITY in an aggregate amount of one hundred percent (100%) of the total cost of all Improvements. A Performance Bond that guarantees the workmanship for a period of three (3) years may be accepted by the UTILITY in lieu of cash or a Letter of Credit. If a period of one (1) year does not remain on the Performance

Bond after acceptance, the DEVELOPER will need to extend the expiration date to cover the guarantee period. (The three (3) year Performance Bond includes the twenty-four months to complete the Improvements and the twelve month guarantee period.)

4. TOTAL AMOUNT OF PREPAYMENTS

These are the amounts which the DEVELOPER shall pay prior to the construction of Improvements. The estimated amounts of the UTILITY'S costs and guarantee of Improvements, as mentioned above, are as follows:

Guarantee of Improvements	\$34,350.00
Deposit of Engineering & Inspection	\$10,000.00
Tapping Fees of Existing Water Mains	\$ 0

C. GENERAL INDEMNITY

In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement or documents incorporated herein by reference, the DEVELOPER shall indemnify and save harmless and agree to defend and pay any and all legal, accounting, consulting, engineering and other expenses relating to the defense of any claim asserted or imposed upon the UTILITY, its officers, agents, employees and independent contractors arising out of this Agreement, as stated above by any party or parties.

D. INSURANCE

The DEVELOPER, at their expense, shall maintain Insurance from a carrier with an AM Best's rating of an A- or better, in the form and in the amounts required by and approved by the UTILITY. A current Certificate of Insurance must be provided to the UTILITY prior to the start of construction and will be held at all times through the expiration of the guarantee period. The DEVELOPER will provide the UTILITY with a current Certificate of Insurance naming the UTILITY as an "additional insured" on the general liability, auto, and umbrella policies. A waiver of subrogation is required on all policies. In addition, DEVELOPER'S contractors and any other individual working on the SUBJECT LAND in the performance of this Agreement shall be required to provide the UTILITY with insurance coverage in the same form and amounts as the DEVELOPER. The DEVELOPER will be responsible for providing the UTILITY with the contractor/supplier's current Certificate of Insurance through the end of the guarantee period.

General Liability:	\$2,000,000 General Aggregate, Per Project \$2,000,000 Products-Completed Operations Aggregate, Per Project
Automobile:	\$1,000,000 Combined Single Limit, Per Accident for B.I. & P.D.
Workers Comp:	\$1,000,000/\$1,000,000/\$1,000,000
Umbrella Liability:	\$5,000,000/\$5,000,000, \$10,000 Max. Self-Retention Each Occurrence/ Aggregate

This insurance shall not be cancelled or limited in scope or coverage unless thirty days prior written notice is given to the UTILITY.

E. PREVAILING WAGE RATES

DEVELOPER shall comply with existing Wisconsin State Statutes regarding Prevailing Wage Rates.

SECTION III. PRIOR TO CONSTRUCTING IMPROVEMENTS

A. PRECONSTRUCTION MEETING

The DEVELOPER agrees to coordinate a pre-construction meeting with the UTILITY. The pre-construction meeting shall be held to ensure the understanding of, and compliance with, the approved

plans and specifications, the proposed method of erosion control, the duties of the resident project representative, the disinfection and bacteriological sampling requirements of NR 811.07(3), and any special conditions listed below.

B. PERMITS

The DEVELOPER shall obtain all permits required to work and pay all the applicable charges and fees associated with these permits. The DEVELOPER shall meet the conditions of all permits and must keep a copy of each individual permit onsite, at all times, throughout construction.

C. CERTIFICATION OF SITE GRADING AND SANITARY SEWERS

DEVELOPER shall provide the UTILITY with certification of site grading and sanitary sewer installation. Said certification shall be in a form that is subject to the approval of the UTILITY.

D. UTILITY APPROVAL OF STARTING DATE

The DEVELOPER agrees that no work shall be scheduled for the above-mentioned Improvements without the UTILITY'S written approval of a starting date and schedule.

If the DEVELOPER proceeds with the installation of public water system Improvements or other work on the SUBJECT LAND site prior to approval of the final plat, it proceeds at its own risk as to whether or not the final plat will receive all necessary approvals. The UTILITY reserves the right to refuse final acceptance of the Improvements and/or dedication if the final plat is not approved.

E. NOTIFICATION OF WORK

The DEVELOPER agrees to notify the UTILITY in writing three (3) working days prior to beginning or resuming work.

F. LINE & GRADE STAKES

The DEVELOPER shall provide line and grade stakes for the water main, as required by the UTILITY. Site grading should be as close to final grade as possible.

G. GRADING, EROSION AND SILT CONTROL

1. Prior to commencing water system Improvements, the DEVELOPER shall ensure that the grading, erosion and silt control plan, once implemented, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including the rules and regulations of the UTILITY, and including proof of notification of land disturbances to the WDNR, if applicable, and written proof that the UTILITY, the City of Waukesha, the County Department of Environmental Resources, Division of Land Conservation, and the Army Corps of Engineers, if applicable, have approved said plans.
2. The DEVELOPER shall cause all grading, excavation, open cuts, side slopes and other land surface disturbances to be so seeded and mulched, sodded or otherwise protected that erosion, siltation, sedimentation and washing are prevented in accordance with the plans and specifications reviewed and approved by the UTILITY, the City of Waukesha, the County Department of Environmental Resources, Division of Land Conservation, the Army Corps of Engineers, the Wisconsin Department of Transportation, and Waukesha County, if applicable.
3. All disturbed areas shall be restored to the satisfaction of the UTILITY and the agencies identified in 1-2 above. Acceptance under Section VII will not be granted until the UTILITY is satisfied that no further erosion control measures are required.

4. The UTILITY has contracted with a soil testing firm to perform compaction testing on the trenches for all projects. The DEVELOPER will be required to meet a minimum compaction of 90% Standard Proctor Density in the bottom three feet and a minimum compaction of 95% Standard Proctor Density in the top three feet of the excavated material or granular backfill. Costs associated with soil compaction will be at the DEVELOPER'S expense.

H. EASEMENTS

The DEVELOPER shall grant any easements on the SUBJECT LAND deemed necessary by the UTILITY, which shall comply with UTILITY standards, and shall be in a recordable form acceptable to the UTILITY. The UTILITY will register all easements with the Register of Deeds at the DEVELOPER'S expense.

I. PUBLIC CONSTRUCTION PROJECTS

If any aspect of the Improvements set forth herein involves a public construction project subject to the State law, all requirements of the State Public Construction Bidding Law must be satisfied.

SECTION IV. DURING CONSTRUCTION OF IMPROVEMENTS

A. SPECIFICATIONS FOR IMPROVEMENTS

The DEVELOPER agrees to install the Improvements to serve the SUBJECT LAND as specified in this Agreement in accordance with the plans, specifications, and drawings approved by and on file in the UTILITY'S office.

B. TIME OF COMPLETION OF IMPROVEMENTS

All Improvements herein shall be completed by the DEVELOPER and accepted by the UTILITY within twelve (12) months of the date of this Agreement being signed except as otherwise provided in this Agreement.

C. MANNER OF PERFORMANCE

The DEVELOPER shall cause all construction called for by this Agreement to be carried out and performed in accordance with the generally accepted standards of the profession.

D. ADDITIONAL IMPROVEMENTS

The DEVELOPER hereby agrees that if, at any time after plan approval and during construction, the UTILITY determines that modifications to the plans including additional Improvements are necessary in the interest of public safety, are necessary in order to comply with current laws, or are necessary for implementation of the original intent of the Improvement plans, the UTILITY is authorized to order DEVELOPER, at DEVELOPER'S expense, to implement the same.

If DEVELOPER fails to construct the additional Improvement within a reasonable time under the circumstances, the UTILITY may cause such work to be carried out and shall invoice the DEVELOPER for all costs associated with the additional improvement. Payment within thirty (30) days is required for all amounts invoiced by the UTILITY. Interest charges will be applied to all invoices not paid within thirty days.

E. DEBRIS

The DEVELOPER has ultimate responsibility for cleaning up debris that has blown from the Improvements, until such time as the guarantee period has expired. If said debris is not cleaned up after notification, the UTILITY will do so at the DEVELOPER'S expense.

F. UTILITY INSPECTIONS

The UTILITY is granted access to the SUBJECT LAND at all times for inspection of work.

SECTION V. COMPLETION OF IMPROVEMENTS

A. INSPECTION/CORRECTION OF DEFICIENCIES

1. An inspection of the water main Improvements will not be started until pavement, curb, gutter and sidewalk are installed. The DEVELOPER shall initiate an inspection of the Improvements by notifying the UTILITY in writing that the pavement, curb, gutter, and sidewalk are installed and the water main is in an approvable state.
2. The UTILITY will conduct an inspection, prepare a punch list of the deficiencies, and send it to the DEVELOPER. Inspections will only be scheduled between April 1st and October 1st of each year, unless a different date is mutually agreed upon.
3. After receiving a punch list, the noted deficiencies shall be remedied to meet the UTILITY'S requirements. The DEVELOPER shall notify the UTILITY in writing that all deficiencies on the punch list have been corrected. If the deficiencies are not resolved within thirty (30) days, the UTILITY may correct the deficiencies at the expense of the DEVELOPER. The DEVELOPER will be invoiced by the UTILITY for all costs associated with the deficiency corrections and shall make payment within thirty (30) days for such costs to the UTILITY.
4. When the deficiencies have been corrected, the UTILITY shall send a letter to the Developer stating that the deficiencies have been corrected according to the UTILITY specifications.

B. LIST OF COSTS

The DEVELOPER shall provide a written itemized list of costs, along with the contractor's and engineer's invoices to the UTILITY, within thirty (30) days after deficiencies have been corrected. The Main, Hydrant, and Lateral Reporting form, located in Appendix 1, is the list to be submitted to the UTILITY. This itemized list will include the following information:

- a. The cost, quantity, material, and location of all water mains, including valves, crosses, tees, and other appurtenances. Each size, material, and length of main will be separated.
- b. The cost, quantity, size, brand, and location of all hydrants, hydrant valves and leads, and the identification of the water main to which they are attached.
- a. The cost, quantity, size, material, and location of laterals installed from the water main to the property/easement line and curb-box/valve-box.

SECTION VI. RECONCILIATION & DEDICATION

A. DEVELOPER TO REIMBURSE THE UTILITY FOR COSTS SUSTAINED

Upon completion of Section IV and V above, the UTILITY shall reconcile actual costs to the prepayment made by the DEVELOPER within sixty (60) days. In the event that the actual cost is calculated to be less than the prepayment amount, the difference shall be refunded to the DEVELOPER. In the event the prepayment amount is less than the actual amount, the DEVELOPER shall be invoiced for the difference. Payment of the invoice shall be made within thirty (30) days and shall be a condition precedent to acceptance of the construction. Interest charges will be applied to all invoices not paid within thirty days.

B. DEDICATION

After the DEVELOPER has reimbursed the UTILITY for all costs sustained, as mentioned above, and has provided assurance that the Improvements are in compliance with all federal, state, county, city, or UTILITY guidelines, specifications, regulations, laws and ordinances, the DEVELOPER shall unconditionally give, grant, convey, and fully dedicate the public Improvements to the UTILITY, its successors and assigns forever, free and clear of all liens, claims, mortgages, and encumbrances whatever, together with and including, without limitation because of enumeration, any and all land, buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment appurtenances and hereditaments which may in any way be a part of or pertain to such improvements and together with any and all necessary easements for access thereto. The dedication notification must be in writing (see the Dedication Template in Appendix 2 and the Lien Waiver and Affidavit templates in Appendix 3 & 4).

After such dedication, the UTILITY shall have the right to connect or integrate other Improvements as the UTILITY decides with no payment or award to, or consent required of, the DEVELOPER.

Dedication shall not constitute acceptance of any Improvement by the Utility.

SECTION VII. ACCEPTANCE & MAINTENANCE

Upon receipt of satisfactory dedication, payment of all invoices, and receipt of the completed lien waiver and affidavit, the improvements will be accepted by the UTILITY in writing and WATER SERVICE will be granted. At such time the UTILITY will assume responsibility for all routine maintenance. If a subsequent connection or improvement is made to the originally accepted improvements and the subsequent action is subject to Section 7.00 Main Extension Rule within the Water Utility Operating Rules on file with the Public Service Commission of Wisconsin, the UTILITY shall make the appropriate refund to the DEVELOPER .

SECTION VIII. GUARANTEE & REPAIRS TO IMPROVEMENTS

A. ACCEPTANCE BY UTILITY NOT TO BE DEEMED A WAIVER:

The ultimate responsibility for the proper design and installation of water facilities and all other Improvements are upon the DEVELOPER. The fact that the UTILITY may accept a specific project, this action shall not constitute a waiver, or relieve the DEVELOPER from the ultimate responsibility for the design, performance, and function of the development and related infrastructure.

B. GUARANTEES OF IMPROVEMENTS:

In light of the City's policy that requires the placement of the surface pavement course and all necessary repairs to be completed only if at least half of the parcels in the Development have improvements construction on them, the UTILITY, in its sole discretion, and at the request of the DEVELOPER, reserves the right to reduce the guarantee, prior to acceptance, to an amount between thirty-five percent (35%) and fifty percent (50%). The UTILITY will not consider any guarantee reduction until all of the water distribution system improvements have been installed and deficiencies relating to those Improvements have been corrected.

The remaining guarantee after this reduction is meant to equal or exceed the dollar amount required to cover any repairs or replacements of the water distribution system Improvements that could possibly occur between the time of the pre-final pavement deficiency corrections and the acceptance of the Improvement.

Upon acceptance of the Improvement, constructed as part of this Agreement, the UTILITY, in its sole discretion, reserves the right to further reduce the guarantee to a minimum of twenty-five percent (25%).

C. NOTICE OF AND OBLIGATION TO REPAIR.

In the sole opinion of the UTILITY, if during said guarantee period the Improvements require any repair or replacement which, in the UTILITY'S judgment, is necessitated by reason of settlement of foundation, structure of backfill, or other defective materials or workmanship, the DEVELOPER shall, upon notification by the UTILITY of the necessity for such repair or replacement, make such repair or replacement, at its own cost and expense. Should the DEVELOPER fail to make such repair or replacement within the time specified by the UTILITY in the aforementioned notification, after notice has been sent as provided herein, the UTILITY may cause such work to be done, using funds from the guarantee.

In cases where emergency maintenance is required, the UTILITY retains the right to complete the required emergency maintenance in a timely fashion and bill the DEVELOPER for all such associated costs. Said bill shall be paid within thirty (30) days by the DEVELOPER.

Should payment not be received within thirty (30) days, the UTILITY will draw upon the guarantee security to pay any costs or expenses incurred. The DEVELOPER is then required to replenish said guarantee up to the amount determined at acceptance.

Should the costs or expenses incurred by the UTILITY in repairing or replacing any portion of the Improvements covered by this guarantee exceed the amount of the guarantee security, then the DEVELOPER shall pay any excess cost or expense incurred in the correction process within thirty (30) days. If payment is not made to the UTILITY for the excess costs within thirty (30) days, the UTILITY may terminate the water service to SUBJECT LAND. All costs associated with termination of the water service will be at the DEVELOPER'S expense.

SECTION IX. MISCELLANEOUS

A. EXCULPATION OF UTILITY CORPORATE AUTHORITIES

The parties mutually agree that the UTILITY's signators hereto have entered into and are signatory to this agreement solely in their official capacity and not individually, and shall have no personal liability or responsibility hereunder; and personal liability as may otherwise exist, being expressly released and/or waived.

B. CORPORATE AUTHORIZATION

The individuals executing this Agreement on behalf of the DEVELOPER represent that they are duly authorized to bind the DEVELOPER contractually. The DEVELOPER represents that the execution of this Agreement is not prohibited by its articles of incorporation, by-laws, operating agreement, partnership agreement, limited-partnership agreement, or other internal operating orders, or by any applicable law, regulation or court order.

C. AGREEMENT FOR BENEFIT OF PURCHASERS

The DEVELOPER agrees that in addition to the UTILITY'S rights herein, the provisions of this Agreement shall be for the benefit of the purchaser of any lot or any interest in any lot or parcel of land in the SUBJECT LANDS.

D. ASSIGNMENT

The DEVELOPER shall not assign this Agreement without the written consent of the UTILITY. The assignee must agree to all terms and conditions of this document in writing.

E. PARTIES BOUND

The DEVELOPER or its assignees shall be bound by the terms of this Agreement or any part herein as it applies to any phase of the development.

F. HEIRS & ASSIGNS

This Agreement is binding upon the DEVELOPER, owners, their successors and assigns, and any and all future owners of the SUBJECT LANDS.

G. GOVERNMENTAL IMMUNITIES AND NOTICE REQUIREMENTS PRESERVED

Nothing in this Agreement shall be construed to be a waiver or modification of the immunities or notice requirements imposed by Wis. Stats.893.80 or any other law.

H. ASSISTANCE OF COUNSEL, VOLUNTARY CONTRACT

The DEVELOPER acknowledges that it has either had the assistance of legal counsel in the review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understands each of the Agreements terms, conditions and provisions, and their effects; and that this Agreement is executed freely and not under conditions of duress.

I. GOVERNING LAW AND JURISDICTION

This Agreement shall be constructed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Agreement, it will be filed in the State Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

SECTION X. UTILITY RESPONSIBILITIES

- A. The UTILITY agrees to pay for the oversizing costs, if it is determined by the UTILITY that the oversizing is necessary. These costs will be paid in accordance with UTILITY Policy. For the purpose of calculating oversizing costs, the Utility will use 12-inch ductile iron as the base line cost.
- B. The UTILITY agrees to collect additional customer contributions and pay the same to the DEVELOPER, where applicable, from customers connecting laterals to the mains designated by the DEVELOPER, in accordance to UTILITY operating Rule 7.05(C).

SECTION XI. AMENDMENTS

The UTILITY and the DEVELOPER may amend this Agreement by the mutual consent of the UTILITY and the DEVELOPER.

IN WITNESS WHEREOF, the DEVELOPER and the UTILITY have caused this Agreement to be signed by their appropriate officers and their corporate seals (if any) to be hereunto affixed in two original counterparts the day and year first above written.

DEVELOPER

By: R. T. [Signature]

Title: Property Manager

STATE OF Wisconsin

COUNTY OF Waukesha

Personally came before me this 17 day of October, 2019, the above named Ryan Malone, Authorized Signatory of King Bird Real Estate, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Kimberly A. Heinschmidt
NOTARY PUBLIC, STATE OF WI
My commission expires: 8/16/23

WAUKESHA WATER UTILITY
WAUKESHA COUNTY, WISCONSIN

Daniel S. Duchniak, P.E., General Manager

Joseph J. Piatt, Commission President

G. J. Zinda, Commission Secretary

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this _____ day of _____, _____, the above-named _____, and _____, of the above-named Waukesha Water Utility, to me known to be the persons who executed the foregoing instrument and to me known to be such UTILITY General Manager and UTILITY Commission President, and UTILITY Commission Secretary, respectively, of said entity and acknowledged that they executed the foregoing instrument as such officers as the deed of said entity by its authority and pursuant to the authorization by the UTILITY Commission from their meeting on the _____ day of _____, _____.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

As Revised November 1, 2018
Instrument drafted by Christopher Walter, Waukesha Water Utility