

RESOLUTION NO. 2019-38

RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA TO APPROVE A DEVELOPMENT AGREEMENT FOR A 28 LOT PHASE OF PRAIRIE PATHWAYS SUBDIVISION; THE NEWPORT GROUP, LTD, OWNER / NANCY WASHBURN, AGENT

The Village Board for the Village of Caledonia resolves as follows:

WHEREAS, in 2005, a 301 parcel conservation subdivision was platted named Prairie Pathways Subdivision.

WHEREAS, the subdivision has been developed in phases and this phase includes 28 lots in the subdivision.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Development Agreement between the Village of Caledonia, Village of Caledonia Sewer Utility District, Village of Caledonia Water Utility District, Tri City National Bank, Reesman's Excavating and Grading, Inc. and The Newport Group, LTD. as set forth in **Exhibit A** attached hereto and incorporated herein (the "Development Agreement"), is hereby authorized and approved, and the Village President and Village Clerk are authorized to execute said agreement and Village staff are authorized to take all such actions necessary in furtherance of the Development Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 6th day of May, 2019.

VILLAGE OF CALEDONIA

By: _____

James R. Dobbs
Village President

Attest: _____

Karie Pope
Village Clerk

DEVELOPMENT AGREEMENT

28 LOT PHASE OF PRAIRIE PATHWAYS SUBDIVISION

THIS DEVELOPMENT AGREEMENT, (the “Agreement”), effective as of the date last executed by any Party hereto, is made and entered into by and between **THE NEWPORT GROUP, LTD**, a Wisconsin Limited Liability Company, (the “Developer”), its successors and assigns, **TRI CITY NATIONAL BANK** a Wisconsin financial institution, its successors and assigns, (the “Mortgagee”), the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin, its successors and assigns (the “Village”), the **VILLAGE OF CALEDONIA SEWER UTILITY DISTRICT** and **THE VILLAGE OF CALEDONIA WATER UTILITY DISTRICT**, being two separate utility districts established by the Village of Caledonia under the laws of the State of Wisconsin (herein jointly and severally referred to as the “Utility District” and/or “District” in the singular tense, and **REESMAN’S EXCAVATING & GRADING, INC.**, being a Wisconsin Corporation (the “Contractor”) (Developer, Mortgagee, Village, Utility District and Contractor are collectively referred to as “the Parties”);

INTRODUCTION

A. The Village is located in Racine County, Wisconsin. The Utility District (through the respective two utility districts noted above) owns and operates the District System.

B. Developer is the sole record-title owner of the 28 parcels of real property previously platted (hereinafter referred to as the "Property") located in the Village of Caledonia, Racine County, Wisconsin, and which is legally described and depicted on the attached **Exhibit A**.

C. The Village has previously approved, subject to conditions, the final plat of “Prairie Pathways,” being a subdivision of the Property (“the Subdivision”), upon compliance

with the ordinances of the Village, which require that the Developer enter into a suitable contract with the Village relative to the construction of roads and other improvements on the Property.

D. As a part of the creation of the Property, the Developer wishes to contract directly with the Contractor for the purpose of constructing the Subdivision System.

E. Once constructed by the Contractor and upon acceptance by the Village and the District, the ownership of the Subdivision System will then be transferred and conveyed by formal action to the Village and the District which may be by Resolution or motion and become a part of the municipal District System.

F. The ordinances of the Village allow and permit the Developer to directly contract with the Contractor to build and construct the Subdivision System and the Storm Water Utilities (hereinafter collectively referred to as the "Construction Project"), provided that the Construction Project is undertaken and done pursuant to the terms and provisions of this Agreement. The above-named parties are entering into this Agreement for such purposes, and for such other purposes as set forth in this Agreement.

G. Any and all applications, the pre-development agreement, and accompanying plans, schedules, exhibits, and other documents filed with the Village are incorporated by reference herein, as modified by any written or formal approvals of the Village and Utility District.

H. The Mortgagee will hold a mortgage interest in the Property and joins as a party to this Agreement solely for purposes of agreeing that the Agreement shall survive any foreclosure of the Mortgagee's mortgage.

I. This phase of the Subdivision is comprised of Lots 175 through 178, 198 through 218 and 248 through 251 for a total of 28 lots.

J. The Developer desires to complete improvements and development of the Property located in the Village in a manner as described herein, and for that purpose cause the installation of certain Public Improvements, hereinafter defined.

K. Wisconsin Statute Section 236.13 and the applicable Village Ordinances provide that as a condition for final approval, the governing body of a municipality may require the Developer make and install or have made and installed, any new Public Improvement, including the Subdivision System, reasonably necessary in the Property, and the Developer may provide an irrevocable letter of credit or other surety approved by the Village guaranteeing that the Developer will make and install or have made and installed those improvements in the Property within a reasonable time.

L. The Village believes that the orderly planned development of the Property will best promote the health, benefit, safety and general welfare of the community.

NOW THEREFORE, in consideration of the granting of approval by the Village of the development of the above described Property, and the covenants herein contained, and other good and valuable consideration, the adequacy and sufficiency which is acknowledged by all parties, it is mutually agreed as follows:

1. **Introduction is Correct.** The Parties agree that the foregoing “Introduction” is true and correct and is hereby incorporated into this Agreement by reference.

2. **Definitions.**

District System shall mean the Village’s municipal sanitary sewerage system and a municipal water system operated by the Utility District.

Public Improvements shall mean all public improvements to be constructed under this Agreement, including grading, erosion control, drainage and all requisite public improvements, Public Roads, including any required curb and gutter, Storm Water Utilities and the Subdivision System.

Public Roads shall mean all public rights-of-way in the Subdivision, including any required curb and gutter.

Storm Water Utilities shall mean the storm sewer utilities.

Subdivision System shall mean the sanitary sewerage system and/or the watermain system in the Subdivision.

3. **Consent of the Village and District.** The Village and District hereby grant permission to the Developer and the Contractor to undertake and do the Construction Project for the Property as a private project on private property (as opposed to a Village/District project requiring compliance with the public bidding statutes).

4. **Construction Project.** The Property Public Improvements construction shall be undertaken and done by Contractor, and Developer shall be solely responsible for the payment of all costs and expenses for the Property construction. The Contractor and Developer expressly understand and agree that the Village and the District will not be liable or responsible in any manner for any of the said costs and expenses of the Property construction.

5. **Code of Ordinances Incorporated.** The Code of Ordinances of the Village, as amended from time-to-time, is hereby incorporated into this Agreement, and Developer and Contractor agree to perform all of the obligations imposed upon Developer and/or Contractor by the terms and provisions of such ordinances, as applicable. Without limitation, Developer specifically acknowledges that it must pay all applicable fees, which include, but are not limited

to, applicable impact fees, land division fees, and others. Notwithstanding the foregoing, impact fees for an individual home's construction shall be paid at the time of building permit for said home.

6. **Public Improvements; Dedication, Construction, Guaranty Period.**

(a) **Property Improvements Generally.** Developer shall prepare, at its expense and per applicable Village ordinances and the requirements of this Agreement, complete plans for construction of the Property's Public Improvements, including for the Public Roads, the Subdivision System as further described under Section 7 of this Agreement, and Storm Water Utilities as shown on the approved **Exhibit A** to this Agreement, and approved plans prepared by Pinnacle Engineering Group and dated April 4, 2019 and professional engineered stamped April 4, 2019 for the Public Improvements which are incorporated herein by reference (the "Plans"). The Public Improvements', Public Roads', Subdivision System and Storm Water Utilities' design and plans shall conform to the Village's minimum standards for public utilities and public roads then in effect unless otherwise agreed to in writing by the Developer and the Village, and such plans and specifications shall be submitted to and approved by the Village. In the event of any conflict between the minimum design standards in the Village's Code of Ordinances and the requirements of this Agreement, the more restrictive shall control except as expressly provided for in this Agreement. The Developer acknowledges and agrees that it is solely responsible for all costs of construction and installation of Property improvements and Public Improvements.

(b) **Storm Water Utilities and Subdivision System Construction.** Developer's design engineer shall stake all the Storm Water Utilities and Subdivision System prior to construction. Developer shall be responsible for constructing the Storm Water Utilities and Subdivision System at Developer's expense and per approved Plans. Developer's construction

work shall be subject to inspection by the Village, or the Village's designee. Developer shall construct the Storm Water Utilities and the Subdivision System utilizing granular backfill, as set forth in the approved Plans and as required by Village ordinances. The recorded Subdivision Plat is conditioned upon the Village's acceptance of the Subdivision's Public Improvements and the Property (and the lots therein) being serviced with public sewer and water services by the Utility District (the "Utility"), and Developer agrees to enter into agreements to grant said Utility District, as appropriate all easements, if applicable and deemed necessary for the furnishing of public sewer and water services to the lots in said Property.

After the Storm Water Utilities and Subdivision System have passed final inspection and testing, and after all lien waivers for the work completed on the Subdivision System and the Storm Water Utilities have been provided to the Village, the Village shall accept ownership of the Subdivision System and easements for access to the Storm Water Utilities.

(c) **Public Roads Construction.** After acceptance of the Storm Water Utilities and Subdivision System by the Village, the Developer and Contractor shall thereafter construct, at Developer's expense, the Public Roads, except asphaltting, in compliance with applicable Village standards and ordinances for public roads. When such construction, except asphaltting, has been completed by the Developer and Contractor, inspected, tested and approved by the Village Director of Public Works, and after all lien waivers respecting the Public Roads have been provided to the Village, the Village shall accept such construction, subject to maintenance guarantees then provided in the Village ordinances, this Agreement and such other guarantees as the Village Board may deem necessary to protect the Village in the event that there is an identified deficiency in the construction that warrants a longer guarantee period of time. It is anticipated that the Public Roads construction, except for surface asphaltting, as described herein shall be done in 2019. If

construction is delayed, the Developer and Contractor shall also be responsible for the maintenance and plowing of the Property's Public Roads at its expense prior to the asphalt binder courses having been installed. The Developer and Contractor shall be responsible for regrading and shaping the Public Roads at its expense prior to the asphalt work being done in accordance with Village's duly-bid public road work (annual paving program) contract. After construction of base course of the Public Roads is approved and accepted by the Village, the Village's asphalt contractor shall fine grade the stone base and install four and one-half (4½) inches of binder asphalt, in two (2) layers per Village Director of Public Works specifications, on all such Public Roads or parts thereof within the Property which the Developer and Contractor are required to construct hereunder. The Village Director of Public Works shall inspect such work for compliance with Village ordinances and if such work complies, shall accept such work which shall constitute "substantial completion" in accordance with Sec. 236.13, Wis. Stat.

The surface asphalt and final work shall not be done until after the Property has been at least 95% developed, meaning 95% of the lots have received occupancy permits and all required Property improvements have been installed and approved by the Village. If the Property is not 95% developed within two (2) years of installation and acceptance of the binder course of asphalt, the surface course and final work shall be installed/completed in accordance with the following schedule and upon authorization to proceed from the Village Director of Public Works:

- a. If two (2) years expires in the months of January to May, then no later than November 1st in the year prior to expiration.
- b. If two (2) years expires in the months of June to September, then no later than June 1 in the year of expiration.

- c. If two (2) years expires in the months of September to December, then no later than September 1 in the year of expiration.

When authorized to install the surface course of asphalt by the Village's Director of Public Works, the Village's asphaltting contractor shall patch if necessary, based on inspection by the Village Director of Public Works. A final inspection shall be completed by the Village Director of Public Works or designee to determine if any repairs need to be made. The binder course should be swept clean prior to placing any tack coat. The Village's asphaltting contractor shall install one and one-half (1-1/2) inches of surface asphalt and Developer and Contractor shall complete the final work except manhole and water box adjustments on such Public Roads in the Property. Developer agrees that it is financially responsible for the costs for all asphalt and installation of the asphalt binder and surface courses, but the Village shall be responsible to perform such work, either directly or through contracted third-parties. Developer and Contractor shall also abide by the provisions of Resolution 2000-26, relating to street barricades, which is incorporated herein by reference.

7. **Subdivision System Construction Project.**

(a) **Approval of Construction Project Plans.** Prior to any work being done on the Construction Project, (i) the Developer shall first obtain the written approval from the District's engineers of all of the specifications, drawings, blueprints, diagrams and plans for the Construction Project (hereinafter collectively referred to as the "Plans"), and (ii) the Contractor shall first have a Pre-construction meeting with the District's engineers regarding the Construction Project. The Plans shall be of a type and format, and have such content, as the District's engineers may require. Additionally, the Plans shall also be submitted to the District's engineers in an electronic format approved by the District's engineers. Developer and Contractor expressly

understand and agree that, in the event the Developer does elect to undertake and do the Construction Project, the Subdivision System shall then be constructed and done in strict compliance with the Plans approved by the District's engineers

(b) **Full Inspections.** The Construction Project shall be inspected by the District's engineers, and all costs of such inspections shall be paid for by Developer. The Contractor shall provide to the District its work schedule (the "Work Schedule") for the Construction Project prior to any work on the Construction Project being undertaken, such Work Schedule (i) to specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the District's engineers. The Work Schedule shall not be increased or expanded in time or scope of work without first providing to the District's engineers at least 48 hours prior written notice of such changes to the Work Schedule. Developer and Contractor understand that it is the intent of the Village and District to have one or more inspectors at the construction site at all times for the work on the Subdivision System and as needed at other times while the work on the Construction Project is being performed. The District Engineers and/or their inspector(s) at the construction site shall have the full right and authority to stop work on the Construction Project whenever they believe that any such work or materials are not in compliance with the approved Plans for the Construction Project, and in such event the Contractor shall then immediately cure any such failure of compliance before proceeding with any other work on the Construction Project. Notwithstanding the foregoing right and authority granted to the District's engineers (to stop the Construction Project in the event of a failure of compliance with the approved Plans), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, the Contractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the Construction Project, and (ii) the direction

of all laborers and personnel doing the work on the Construction Project (except for the inspector(s) hired by the District's engineers), and (iii) all means and methods required to do the Construction Project.

(c) **One-Year Guarantee.** Developer and Contractor shall, and hereby do, jointly and severally guarantee to the Village and the District that all work and materials furnished and performed on and for construction of the Subdivision System shall be free from defects for a period of One (1) Year from the date on which the Village and District in writing accept ownership of the Subdivision System as described in subsection (d) below. This one-year guarantee, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Developer's and/or Contractor's duties under this Agreement to construct the Subdivision System in strict compliance with the approved Plans for the same. In the event any defect(s) is discovered during such One-year time period, the District and/or Village shall notify the Developer and Contractor in writing, and the Developer and Contractor shall cause such defect(s) to be corrected within Sixty (60) calendar days (or within such shorter period designated by the Village or District if the public health and safety so require). If the Developer and/or Contractor shall fail to do so within such 60-day time period (or if the public safety sooner requires the remedied work to be done and the Developer/Contractor are not able to timely do so), then the District and/or Village may cause such defect(s) to be corrected, and the Developer and Contractor shall be liable to the District and/or Village for any costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

(d) **Transfer of Ownership.** Upon the full completion of the Subdivision System and upon the Village and the District then accepting the same in writing, the ownership of the

Subdivision System shall, effective as of the date of the said written acceptance by the Village and District, be transferred and conveyed to the Village and the District by Resolution or Motion. With respect to such transfer/conveyance of ownership to the Village and District:

1) The said transfer/conveyance shall be deemed to occur and become effective immediately and automatically at the time of the written acceptance of each completed Subdivision System by both the Village and the District, without any further documents being required;

2) The said transfer/conveyance shall include transfer of ownership of the Subdivision System located in the dedicated Village rights-of-way, and if necessary, easements in private land located within the Property as determined by the Village and the District of a sufficient depth and width to allow the Village and the District to access, maintain and/or replace such Subdivision System, if for some reason it is located outside of Village rights-of-way; and

3) The said transfer/conveyance of ownership, however, shall not include any portion of the sewer laterals and/or water laterals that are located outside of the public right-of-way and/or outside of any Village/District easement area(s).

(e) **Reimbursement for Costs.** The Developer shall, within Thirty (30) Days after receiving a written itemized invoice(s) from the District for the same, reimburse and pay to the Village and/or District all engineering, inspection, administrative and legal costs incurred by the Village and/or District with respect to the Construction Project. This shall expressly include, but not be limited to, (i) all engineering costs incurred in the review of the Plans for the Construction Project, and (ii) all inspection costs for the Construction Project, and (iii) all legal costs of the District's attorney pertaining to the Construction Project and/or this Agreement.

(f) **Right of Village/District To Complete The Project.** If the Developer commences the Construction Project (by having the Contractor commence actual excavation work and/or construction work on site) but then fails for any reason to complete or finish the Construction Project, then, in addition to any and all other remedies available to the Village and/or the District under the law:

1) The Village and/or District may, at its option, complete and finish the said Construction Project by doing such remaining work (the "Completion Work") as a publicly-bid Village project; and

2) The Developer shall pay to the Village and/or District all costs incurred by the Village/District in doing the Completion Work; and

3) Without in any manner limiting its available remedies under the law, the Village and/or District may obtain payment of all such costs for the Completion Work through a levy of special assessments and/or special charges (collectively referred to as the "Special Assessment") on the Property pursuant to the terms and provisions of Section 66.0703 of the Wisconsin Statutes and/or any other applicable statutes. Developer hereby waives all procedural rights that Developer may have under the laws of the State of Wisconsin with respect to such an imposition of the Special Assessment on the Property for items required of Developer herein. This waiver includes, but is not limited to, the requirement of a written notice and a public hearing as required under Section 66.0703 of the Wisconsin Statutes and/or any other special assessment statutes.

4) Additionally, the "Completion Work" described above may also consist of the following other types of work should the Village and/or District so elect:

(i) Undertaking whatever work may be necessary to protect and maintain the Subdivision System at its then-existing stage of completion; and/or

(ii) Removal of part or all of the Subdivision System and restoration of the disturbed areas of the Property.

(g) **Grant of Easements**. The Developer will grant to the Village and the District an easement (the "Easement") for the purpose of installing, operating, using, maintaining, repairing, and/or replacing the Subdivision System, if for some reason any portion of the Subdivision System is constructed outside of the Village rights-of-way, ultimately being transferred to the District under the provisions of above Section 7 of this Agreement. If determined to be necessary, Developer will execute and deliver to the District a separate written easement agreement (the "Easement Agreement") that memorializes and confirms the easement rights of the Village and District to install, operate, use, maintain, modify, improve, repair, and/or replace (i) any presently-existing sanitary sewer and watermain facilities already located on the Property, and (ii) the new Subdivision System that will be constructed on the Property under the terms and provisions of this Agreement. The Easement Agreement shall identify and describe the location of all such sanitary sewer and water facilities. When the Construction Project is completed, however, and the final as-built drawings of the new Subdivision System are completed, the said as-built drawings shall be inserted into and used in the Easement Agreement to identify and describe that portion of the Easement Agreement pertaining to the Sewer and Water System. (In this fashion, the final as-built easement areas will replace any possible initial easement areas that were originally based on the Plans, but ended up

being at a variance with the final, as-built location of the Sewer and Water System.) The Developer shall provide and no building permits shall be issued until the Village receives a Master Easement Exhibit from the Developer showing all easements, including WE Energies or other utility easements located on the Property and lots in this phase. The Developer shall provide these documents in a format acceptable to the Village Director of Public Works.

(h) **Manhole/Valve Box Adjustment Costs.** In addition to any other monies payable by the Developer to the District under this Agreement, the Developer shall pay to the District the following one-time fees: A fee of Five Hundred Dollars (\$500.00) for each manhole that will be constructed and installed by the Developer and/or Contractor as a part of the Construction Project and a fee of Fifty Dollars (\$50.00) for each valve box that will be constructed and installed by the Developer and/or Contractor as a part of the Construction Project to be finished by the Village's Utility District.

8. **Drainage Facilities.**

(a) **Construction.** Developer and Contractor agree to design, construct, and install, at its expense, all the Storm Water Utilities as specified and set forth in the Village-approved plans and specifications described in Section 6 hereof. In the event the Storm Water Utilities are not completed within two (2) years from the date hereof, the Village Board shall have the right to review the plans in light of conditions then existing or expected in the area and to modify the plans to meet any such conditions. The Developer and Contractor shall construct and complete the Storm Water Utilities pursuant to any such revised plans. All such work shall be subject to approval and acceptance by the Village Board and the Village's Utility Commission. Construction of all drainage facilities within the outlot shall be completed prior to the issuance of any building permits for lots within the Property. Any damage occurring to the Public Improvements or to any other

drainage structures or appurtenances, including drainage tiles, shall be repaired, restored or rerouted by Developer in accordance with this Agreement.

(b) **Maintenance**. Further, Developer shall be liable and responsible for the proper maintenance of the storm water easements described on the Attached Exhibit D for these 28 Lots, including any detention or retention basins if applicable. Such maintenance shall include the control of weed and algae growth. Such liability and responsibility shall continue with Developer until such time as the ownership of each lot is transferred and such subsequent owner assumes such obligations through their membership in the Prairie Pathways Homeowners Association. Such responsibility has been delegated to the Prairie Pathways Homeowner's Association, a Wisconsin non stock corporation previously formed (the "Homeowner's Association") through the Restrictive Covenants recorded as Document #2071827 in February of 2006 (the "Restrictive Covenants") (attached as **Exhibit C**) and the Grant of Conservation Easement and Stewardship Plan recorded as Document #2072548 February 15, 2006 (attached as **Exhibit E**) . Such maintenance shall be carried out in conformity with applicable Village ordinances, applicable recorded Restrictive Covenants governing the Homeowner's Association, Grant of Conservation Easement and Stewardship Plan and any written directive for corrections or maintenance from the Village.

(c) **Grant of Easements**. The Developer will grant to the Village an easement for the purpose of maintaining and repairing the Storm Water Utilities located on the Property. Developer will execute and deliver to the Village a separate written easement agreement that memorializes and confirms the easement rights of the Village to maintain and repair the Storm Water Utilities on the Property. The Easement Agreement identifies and describes the location

of all such Storm Water Utilities on the Property and shall be recorded with the Racine County Register of Deeds.

(d) **Default.** In the event of any default in the obligations to properly repair damage caused during construction or to maintain the drainage easements, including any retention or detention basins, the Village may cause said maintenance to be provided and may charge the Developer or subsequent owner or Homeowners' Association. In addition, the Village, at its option, may cause all such costs including any engineering, legal, and administrative costs with respect to the same, to be assessed against the Property or the lot within the Property that is assigned responsibility for such drainage facility, all as provided in Sections 66.0627 and 66.0703, Wis. Stats., and applicable Village ordinance.

9. **Public Improvements Cost, Security, Guaranty Period.**

(a) **Public Improvements Costs and Security.** In order to secure Developer's satisfactory completion of the Public Improvements including but not limited to the Storm Water Utilities, Public Roads and Subdivision System, Developer has opted to post with the Village a letter of credit, in a form and from an issuer satisfactory to the Village, in an amount of \$1,119,217.90 (the "Security"), which amount equates to 120% of the Public Improvements' estimated total cost (excluding the cost for asphalt) as set forth on **Exhibit B** which is incorporated herein by reference. Developer has opted to post a cash bond for the cost of the binder and surface course of asphalt plus 10% which funds the Village shall use to pay the costs of the binder and surface course of asphalt to be installed by the Village's asphalt contractor (the "Cash Bonds"). The amounts of the Cash Bonds are as set forth as the Cash Deposit on **Exhibit B**. Developer shall post the Security and the Cash Bonds with the Village prior to the required staking by the Developer. After completion satisfactory to the Village as set forth in this

Agreement of each of (1) the Storm Water Utilities and Subdivision System, and (2) the Public Road's stone course, the Village shall release that portion of the Security that is attributable to the estimated cost of the completed work upon receipt by the Village of lien waivers, as shown on **Exhibit B** hereto. The release of security shall be accomplished incrementally as portions of the work are completed and accepted by the Village. Thereafter, no additional portion of the Security shall be released until Substantial Completion satisfactory to the Village of the Public Road's binder course of asphalt. The Village will pay costs for asphaltting from the Cash Bonds and send a copy of the invoice to Developer for the asphaltting work completed by the Village's contractor for its records. After invoices have been paid for any asphaltting work and the binder course has been accepted, only that portion of the Security necessary to secure completion of the remaining Public Improvements work, excluding the cost for surface asphaltting, plus 10% of the original Security total, shall be retained by the Village as security for an additional fourteen (14) months to secure the Developer's obligations during the Guaranty Period and to ensure completion of the remaining Public Improvements. In consideration for, and to ensure the long term integrity of the binder course of asphalt and to reduce Developer's costs under the Guaranty Period, the Developer offered to renew the letter of credit for the amount remaining if the letter of credit extends beyond 14 months notwithstanding the provisions under Section 236.13, Wis. Stat. In calculating the retention amount of the security, such amount shall not include the original 20% contingency. Developer may, at its option, substitute an additional cash bond for the remaining amount on the letter of credit for the remaining Public Improvements work, plus 10% of the original Security.

The Cash Bonds for the construction of the Public Road, including for the binder and surface asphalt, shall include a 10% contingency amount which the Village may utilize for repair and maintenance of the Public Roads, as well as for additional amounts needed to complete

the asphaltting of the streets if the Developer does not perform, after notice, its repair, maintenance and/or reconstruction responsibilities during the Guaranty Period. In the event any such fund is inadequate to pay for such work, the Developer, upon written demand by the Village, shall pay to the Village any such deficiency. In addition to any other remedies the Village may have, the Village shall be entitled to impose a special assessment against the Property in the Subdivision for any deficiencies not paid in accordance with Section 33 of this Agreement.

If Developer fails to complete the Public Improvements, not including the surface course of asphalt, within six months of initial staking, the Village shall draw on the Security and Cash Bonds without further notice to Developer to complete the remaining Public Improvements.

(b) **Guaranty**. Developer shall warrant and guarantee the Public Improvements (except for the Subdivision System which has a separate guaranty period under Section 7(c) of this Agreement) in good condition and in compliance with the Village's standards and specifications for a minimum period of two (2) years after acceptance of the base course of asphalt or until the installation of the surface course of asphalt, whichever period of time is greater (the "Guaranty Period"). After the surface course is installed and accepted, the Developer shall be liable for all maintenance (except snow plowing) and repair of the Road, shoulders and curb and gutter for a period of at least one (1) year. The Village Board may require a longer guaranty period based upon the site conditions, time when construction is to be carried on, and any other factors affecting the road or its stability. In the event any defect(s) is discovered during such one-year time period, the District and/or Village shall notify the Developer and Contractor in writing, and the Developer and Contractor shall cause such defect(s) to be corrected within Sixty (60) calendar days (or within such shorter period designated by the Village or District if the public health and safety so require). If the Developer and/or Contractor shall fail to do so within such

60-day time period (or if the public safety sooner requires the remedied work to be done and the Developer/Contractor are not able to timely do so), then the District and/or Village may cause such defect(s) to be corrected, and the Developer and Contractor shall be liable to the District and/or Village for any costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

If the Guaranty Period is extended beyond the length of the letter of credit, another letter of credit shall be tendered (or the existing one renewed upon the mutual agreement of the Developer and the Village) to the Village as a replacement for the length of the Guaranty Period. In the case of the asphaltting work for the Public Roads, this Guaranty Period includes the time period between acceptance of the binder course of asphalt and installation and acceptance of the surface course of asphalt. The Guaranty Period, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Public Improvements. The Village shall utilize any or all retained Security and/or Cash Bonds during the Guaranty Period toward the costs of any necessary repairs of the Public Improvements if Developer does not directly or adequately perform, after notice, its repair and maintenance responsibilities under this Agreement. The Parties recognize that the Guaranty Period lasts longer than 14 months and if the Developer does not directly or adequately perform, after notice, its repair and maintenance responsibilities under this Agreement and the Village takes action to perform the repair and maintenance, the Developer shall reimburse the Village for costs incurred in doing so within thirty (30) days of written notice of such costs. If Developer fails to reimburse the Village for such costs, including but not limited to actual attorney's fees and costs, engineering fees and costs, and administrative costs, in addition to any other remedies the Village may have, the Village shall be entitled to specially assess its costs against the Property in accordance with Section 34 of this Agreement.

(c) **General Inspections.** The Public Improvements shall be inspected by the Village's Director of Public Works, or his designee or the Village's consulting engineers, and all costs of such inspections shall be paid for by Developer. The Contractor shall provide to the Village its work schedule for Public Improvements prior to any work being undertaken, such schedule shall (i) specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the Village's Director of Public Works. Developer and Contractor understand that it is the intent of the Village to have one or more inspectors presents as needed while the work on the Public Improvements is being performed. The designated inspectors at the construction site shall have the full right and authority to stop work on the Property project whenever they believe that any such work or materials are not in compliance with the approved Plans and Specification, and in such event the Contractor shall then immediately cure any such failure of compliance before proceeding with any other work. Notwithstanding the foregoing right and authority granted to the Village's inspectors (to stop the work in the event of a failure of compliance with the approved Plans and Specifications), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, the Contractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the work, and (ii) the direction of all laborers and personnel doing the work (except for the inspector(s) hired by Village), and (iii) all means and methods required to do the work.

10. **Outlot Restrictions.** Developer has previously restricted the use of the outlots, as identified on the previously recorded final plat, in the Declaration of Restrictive Covenants, Conservation Easement and Stewardship Plan for Prairie Pathways Subdivision to require the maintenance and protection of the outlots. The outlot in this phase of 28 lots, (Outlot 10) is subject to the Stewardship Plan and Conservation Easement Agreement already entered into and

previously recorded as Document #2072548 to address Storm Water Utilities maintenance. Developer shall implement such plan prior to turning over the maintenance responsibilities of the outlot to the Homeowner's Association. Thereafter, the Homeowner's Association shall be responsible for the maintenance and management of the outlot. The Village shall have no ownership interest in, nor any responsibility, for the Outlot except in the case to ensure proper maintenance of any drainage easements by the Homeowner's Association under Section 8 above.

11. **Street Lights.** The Developer shall be liable for the costs of purchasing and installing ornamental street lights in areas deemed necessary in the judgment of the Village's Director of Public Works, in addition to a standard street light which shall be placed at the entrance to the Subdivision. Said lights must be approved by the Village and WE Energies. The street lighting plan, including the type of street light to be permitted, which shall be submitted to the Village's Director of Public Works for approval, is incorporated herein by reference. The installation, maintenance, and repair costs for street lights shall be the sole responsibility of the Developer, until the streets are accepted by the Village Board. The Developer shall also be responsible for payment of the applicable street light fee of **\$550.00** per light for each standard light and **\$900.00** per light for each ornamental street light, which fee represents the cost of operating each light for the three year period following the execution of this Agreement per Village of Caledonia Resolution 2007-21.

12. **Street Markings and Signage.** The Developer shall be responsible for the costs of procuring and installing all pavement markings and street signage within or adjacent to the Property. Pavement markings, if any, may include stop lines at intersections, striping for right turn lanes, and any other pavement markings required by the Village's Director of Public Works.

Signage shall include all stop signs, street signs and other signs required by the Village's Director of Public Works. The street sign and pavement marking plan, which shall be created by the Village Director of Public Works, is incorporated by reference. The Developer authorizes the Village to have the necessary Public Roads markings and signs installed and shall reimburse the Village on a time and material basis.

13. **Sale of Lots.** Developer or its successors in title shall not sell, convey or transfer any land abutting upon a street or portion thereof dedicated by such plat until the following have occurred: (1) this Agreement is executed and recorded; (2) all Security has been deposited with the Village (by such time as is herein provided); (3) the Storm Water Utilities and Subdivision System have been installed and accepted by the Village; and (4) all Public Roads, except asphaltting, have been constructed in accordance with the terms of the Village's subdivision ordinance, the Village standards for construction of streets and highways, other applicable Village ordinances, and this Agreement.

14. **Sewer and Water.** The approval of the plat of the Subdivision was conditioned upon the Subdivision being serviced with public sewer and water service by the Village's Utility Districts. Except as otherwise set forth in this Agreement, the sewer and water system within the Property shall be designed, constructed, and installed at the sole expense of the Developer pursuant to plans submitted to and approved by the Village and the Utility District. All fees applicable to the connection and service of the Property to the public sewer and water systems shall be borne by Developer or individual lot owners, and any use of such systems shall be subject to all applicable use restrictions. All such work shall be pursuant to plans and specifications approved by the Utilities and the Village.

15. **Reimbursement of Costs.** The Developer acknowledges and agrees that it is solely responsible for all costs related to the installation of Subdivision Public Improvements. In addition, the Developer agrees to reimburse the Village for its costs related to the Property including costs incurred by the Village to review conceptual, preliminary and final plans plat associated with the Property and to review, revise and/or draft any agreements, easements, deed restrictions or other documents associated with the Property. Such costs shall also include the costs of Village's retained engineers, attorneys, inspectors, agents, and subcontractors. Developer understands that legal, engineering, and all other consultants retained by the Village are acting exclusively on behalf of the Village and not Developer. Developer entered into a predevelopment agreement with the Village and paid to the Village the sum of \$3,000 as a deposit for such reimbursements. This Section supersedes the predevelopment agreement, and the parties intend that the reimbursement account and process set up by the predevelopment agreement shall continue uninterrupted as needed to cover expenses incurred under this Agreement. If at any time said deposit becomes insufficient to pay expenses incurred by the Village, Developer shall deposit required additional amounts within fifteen (15) days of written demand by the Village. If Developer does not deposit the required amount within the time required, the Village may suspend additional work or review as to the plans and specifications under consideration until the deposit is received. Within sixty (60) days after completion of all construction contemplated under this Agreement, the Village shall furnish Developer with a statement of all such costs incurred by it with respect to such Property. Any excess funds shall be remitted to Developer, and any costs in excess of such deposit shall be paid by Developer upon demand. Any interest earned on said deposit shall remain the property of the Village to partially offset administrative expenses associated with planning and development.

16. **Land Division Fee.** Pursuant to Section 14-3-3(c), the Developer previously paid a land division fee for 301 parcels created at the time the Prairie Pathways Plat was recorded as a cash payment to the Village.

17. **Utilities and Utility Laterals.** Developer is responsible for all costs associated with all private utilities servicing the Property including, without limitation, the cost of underground installation of cables, wires, pipes, laterals, etc. for electric, gas, telephone, and cable television services, if any. Developer shall fully restore, at its expense, any Village right-of-way that has been disturbed due to its installation of utilities, lighting or landscaping. The Village shall not take ownership of any utility laterals.

18. **As-Built Plans.** Upon written acceptance of all improvements by the Village, the Developer's engineer, at the Developer's expense, shall provide to the Village one complete set of Grading and Stormwater facilities as-built plans and profile sheets and the Village's engineer, at the Developers expense shall prepare and provide to the Village one complete set of Sanitary Sewer and Water Main plans on reproducible mylar or similar material as agreed by the Village Public Works Director, two sets of prints indicating actual constructed locations and elevations, and one set of electronic drawings (PDF) and associated files compatible with a computer-aided design (CAD) system maintained by the Village. The as-built plans shall be prepared by modification of the construction drawings to reflect as-built data for streets, water mains, storm and wastewater collection systems, site grading, and all other relevant public improvements. Changes to base and other maps and official drawings not provided by the Developer's as-built drawings, but necessitated by actions of the Developer, shall be reimbursed to the Village by the Developer whether or not such items are enumerated in this Agreement.

19. **Building Permits and Lot Construction.** Until the Public Improvements, except surface course of asphalt, provided herein to be installed to service the Subdivision have been installed to the reasonable satisfaction of the Village Utility Director and Director of Public Works, no building permits shall issue as to lots in the Property; provided, however, that building permits may issue as to lots fronting on streets within the Property if the binder course for the streets has been installed and accepted by the Village. In the sole discretion of the Village's Director of Public Works, building permits may issue prior to the installation and acceptance of the binder course if there are any delays that occur in paving after acceptance of the base road construction. The intent of the foregoing provision is to not delay building permits due to unforeseen delays in paving with the Village's paving contractor. If paving delays extend into winter, then the Developer shall be responsible for plowing of the snow through winter months on the Village's rights-of-way that are unpaved. Construction activities related to improvements upon any lot shall not spill over or occur on any outlot within the Property, except for construction activities contemplated or provided for in the landscape plan for the Outlot. Finished yard grades and grading plans must be approved by the Village Director of Public Works before construction may commence and the lot owner shall be responsible for the costs of any review at the time of building permit review.

20. **Hydrants.** The Developer shall, at its expense, provide pre-painted hydrants of a design and construction satisfactory to Village staff and consistent with the Village's color code system in those areas of the Property specified by the Village.

21. **Laws To Be Observed.** The Developer and Contractor shall at all times observe and comply with all federal, state and local laws, regulations and ordinances (collectively, the "Laws") which are in effect or which may be placed in effect and impact the conduct of the work to be accomplished under this Agreement to construct the Public Improvements and Private

Improvements, inclusive of repairs, replacements and alterations (**the “Work”**). The Developer and Contractor shall indemnify and hold harmless the Village and its agents, officers and employees, against any claims or liability directly arising from or based on the violation of any such Laws by the Developer or its principals, agents, employees or contractors, except to the extent that such claims or liability arise by virtue of the negligence or willful misconduct of the Village and any of its agents, contractors, officers or employees. The Developer and Contractor shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the Work to be completed under this Agreement.

22. **Public Protection and Safety.** The Village shall not be responsible for any damage, bodily injury or death arising out of the Work whether from maintaining an “attractive nuisance” or otherwise, except as caused by the negligence or willful misconduct of the Village or any of its agents, contractors, officers or employees. Where apparent or potential hazards actually known by the Developer and Contractor that occur incident to the conduct of the Work, the Developer and Contractor shall provide reasonable safeguards. Developer shall, however, still be solely responsible for the means and the methods used for the construction of the Work. The Village, Developer and Contractor do not waive, and shall retain, all defenses to third party claims pursuant to applicable law.

23. **Survey Monuments.** The Developer and Contractor shall exercise all reasonable efforts to assure that all survey or other monuments required by statute or ordinance will be properly placed and installed. Any monuments disturbed during construction of improvements shall be restored by Developer and Contractor.

24. **Street Trees.** In the previously recorded Declaration of Restrictive Covenants, the Developer has required the planting of one to two trees per lot or building of a species approved

by the Village of at least two inches in diameter measured at six inches above the top of the root ball. The trees shall be planted and maintained by the lot owner in the area adjacent to the Village's right-of-way in accordance with a tree planting plan previously approved by the Village. A mixture of trees shall be chosen from an approved list provided by the Village.

25. **Drain Tile.** Any drain tile or other drainage structure or appurtenance damaged during construction shall be repaired and restored to its condition prior to such construction, or rerouted or replaced, if necessary, by Developer and Contractor in the reasonable opinion of the Village Utility Director or Director of Public Works, and provide a permanent record of such work to the Village.

26. **Erosion Control.** During the course of the development of the Subdivision, the Developer shall be responsible to ensure that reasonable steps are taken to prevent erosion from lands within the Subdivision and the siltation therefrom being carried into streets rights-of-way, street-side ditches, drainage ditches, easements, culverts, drains, waterways, lakes and streams. To prevent such erosion and siltation the Developer shall conform to the practices as set forth in the erosion control plan located in the Construction Plans and all Construction Site Storm Water Permits issued by the Department of Natural Resources. In the event of any such erosion or siltation, the Developer and Contractor shall be responsible for removing all such siltation from and restoring all such rights-of-way, ditches, easements, culverts, drains, waterways, lakes and streams. All such compliance and work hereunder shall be done without cost to the Village. The Developer shall be responsible for ensuring that its contractors utilize construction means and methods that minimize, to the extent possible, nuisance-type impacts to the surrounding landowners. Prior to the start of construction, the Developer shall obtain a land disturbance permit from the Village.

27. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

28. **Indemnification/Hold Harmless Agreement.** The Developer hereby does, jointly and severally, expressly agree to indemnify and hold the Village, Utility District, and their respective elected and appointed officers, employees, engineers and agents harmless from and against all claims, judgments, damages, costs, expenses and liability of every kind and nature, including but not limited to any reasonable actual fees for attorneys and experts retained by the Village and/or Utility District in conjunction with this Agreement, for any injury or damage received or sustained by any person or entity in connection with, on account of, or in any way relating to the Property, Construction Project, and Subdivision System including Developer's performance of work relating thereto, or this Agreement and any other liability of any nature whatsoever, that may arise, directly or indirectly as a result of:

- a) The Village and District entering into this Agreement; and/or
- b) The Developer and Contractor undertaking and doing the Construction Project(s);
and/or
- c) The Developer and/or Contractor failing to comply with the terms and provisions of this Agreement and/or the Development Agreement.

Such indemnification, however, shall not apply to any intentional torts and/or acts of negligence on the part of the releases and shall not apply to injury or damage arising, in whole or in part, due to negligence or willful misconduct of the Village, Utility District, or any of their agents, contractors, officers or employees. The Developer further agrees to aid and

defend the Village or its agents (at no cost to the Village or its agents) in the event they are named as a defendant in an action concerning or relating in any way to the Property or Subdivision or this Agreement, unless said suit is brought by the Developer or due to negligence or willful misconduct of the Village, Utility District, or any of their agents, contractors, officers or employees. The Developer and Contractor are not agents or employees of the Village. All work or obligations to be performed by the Developer and Contractor pursuant to the terms of this Agreement shall be done in accordance with (i) all applicable state, federal and local laws, rules, ordinances and regulations; and (ii) the terms and provision of this Agreement.

29. **Indemnification for Environmental Contamination.** The Developer, Contractor or Homeowners' Association, as applicable, shall indemnify, defend, and hold the Village, Utility District, and their respective elected and appointed officers, employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including actual fees for attorneys and consultants) that arise as a result of the presence in or on property owned by the Village or Utility District or any Village right-of-way ("Village Parcels") of any toxic or hazardous substances in excess of the minimum levels allowed by applicable law (collectively, the "Substance") arising from any activity conducted by the Developer, Contractor, or any third parties, or by the Developer's respective employees, agents or contractors, except as to injury or damage arising, in whole or in part, due to negligence or willful misconduct of the Village, Utility District or any of their agents, contractors, officers or employees. Without limiting the generality of the foregoing, this indemnification shall specifically include any costs incurred by the Village in connection with any remedial, removal, or restoration work required by any local, state, or

federal agencies because of the presence of the Substances on or in the Village Parcels, whether in the soil, groundwater or air unless its due to the Village's willful neglect or misconduct.

The Village and Utility District agree that they will immediately deliver written notice to the Developer and Contractor of the Utility District's discovery of the Substances in or on the Village Parcels. Following delivery to the Developer and Contractor of written notice of the Village's or Utility District's claim as required under this Section, the Village and Utility District shall make all reasonable accommodations to allow the Developer, Contractor or Homeowner's Association to examine the Village Parcels and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws.

In the event the Developer and Contractor is obligated to indemnify the Village and Utility District against claims arising under this Section, Developer and Contractor shall take all necessary steps to ensure that the Village and Utility District receive written confirmation from the appropriate governmental authority of the satisfactory completion of the required remediation, removal or restoration work including, without limitation, a no further action letter, final case closure letter or confirmation that the presence of such toxic or hazardous substances affecting the Village Parcels migrated from an offsite source (the "Closure Documents"). The Closure Documents may be predicated upon any contingency or restriction approved by the appropriate governmental authority for groundwater or any use or as a deed restriction or registration in any registry including, without limitation, the GIS Registry. Developer, Contractor or Homeowner's Association shall be responsible for any continuing obligation imposed by any appropriate governmental authority as a continuing indemnity for the Village and the Utility District.

30. **Insurance Requirements.**

(a) **General:** The Developer and Contractor shall obtain insurance reasonably acceptable to the Village as required under this section and such insurance which shall, by specific endorsement to said policy, name the Village and Utility District, on a primary and non-contributory basis, as an additional insured or loss payee as the Village shall direct. The Developer and Contractor shall maintain all required insurance under this section until the Village has accepted dedication of all Public Improvements and for the duration of the Guaranty Period. Insurance required under this Agreement shall be carried with an insurer authorized to do business in Wisconsin by the Wisconsin State Insurance Department. The Village reserves the right to reasonably disapprove any insurance company.

(b) **Certificates of Insurance:** Where the Village does not specify other limits for liability insurance, the minimum limits of liability shall be as follows:

Employer’s Liability	\$100,000.00 per occurrence
Comprehensive Motor Vehicle Liability,	\$1,500,000.00 per Bodily Injury Accident & Property Damage Combined
Comprehensive General Liability Bodily Injury	\$1,500,000.00 per accident; \$2,000,000 per project General Aggregate
Property Damage Combined	\$1,000,000.00 aggregate; \$2,000,000 per project General Aggregate
Worker’s Compensation	Statutory Limits
Builder’s Risk (as deemed applicable by Village)	All Risk Type; Total Value of Project
Installation Floater	All Risk Type; Total Value of Project

Umbrella \$2,000,000 aggregate

The Developer and Contractor may furnish coverage for bodily injury and property damage for Comprehensive Motor Vehicle Liability and Comprehensive General Liability through the use of primary liability policies or in a combination with an umbrella excess third party liability.

(c) **Owner's Protective Liability (Independent Contractor Insurance).**

The liability limits shall be the same as those of the Comprehensive General Liability Policy.

(d) **Homeowner's Association Insurance.** The Homeowner's Association shall provide liability insurance for the outlots, and any Restrictive Covenants shall contain a restriction governing this requirement.

31. **Special Assessments.** Developer agrees, for itself and its successors in interest in the Property, that the Property is specially benefitted by this Agreement and by the Public Improvements provided for by this Agreement. If Developer and/or any Homeowners' Association defaults on any obligations under this Agreement, including but not limited to any financial obligation, Developer agrees, for itself and its successors in interest in the Property, that, in addition to any other remedy at law or in equity that the Village may pursue, the Village shall be entitled to specially assess all its costs relating to such default against the Property, pro rata based on acreage, without need of any procedures that are otherwise required by state statute or village ordinance before a special assessment may be imposed. Developer, for itself and its successors in interest in the Property, hereby waives any and all right to any hearings and to challenge any such special assessment.

32. **Miscellaneous Provisions.**

a. **Incorporation of Attachments.** All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

b. **Non-waiver of Approvals.** Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of the Developer to obtain all necessary approvals, licenses, and permits from the Village in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the Village to approve or disapprove any plans and specifications, or any part thereof, or to impose reasonable limitations, restrictions, and requirements on the Property, construction, and use of the Property as a condition of any such approval, license, or permit, including without limitation, requiring any and all other and further development and similar agreements. The Village will act diligently to review all necessary approvals, licenses, and permits duly requested by the Developer.

c. **Compliance with Laws.** The Property construction shall be undertaken and done in full compliance with:

- i. The terms and provisions of this Development Agreement
- ii. All applicable governmental laws, rules, regulations, statutes and ordinances; and
- iii. All directives, rules and regulations of the Village and District, and its officers, employees and agents (including, but not limited to, the engineers of the District); and
- iv. All drawings, plans, specifications, or diagrams required by and approved by the Village and/or District.

d. **Time of the Essence.** Time is deemed to be of the essence with regard to all dates and time periods set forth herein and incorporated herein.

e. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

f. **Entire Agreement.** This Agreement and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the Village with respect to the matters set forth herein. This Agreement may be modified only in writing signed by all Parties.

g. **Venue and Law Applicable.** This Agreement shall be governed, controlled, interpreted and construed in accordance with the internal laws of the State of Wisconsin. The venue of any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine, Wisconsin.

h. **Originals and Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

i. **Amendments to Agreement.** This Agreement shall not be amended orally but only by the written agreement of the Parties signed by the appropriate representatives of each Party and with the actual authority of each Party.

j. **Agreement Runs with the Land.** This Agreement shall be binding upon the Developer, the Subdivision Homeowner's Association, and their successors in title or assigns, and the provisions hereof shall be covenants running with the land and shall be binding upon the present owners and all subsequent owners of the Property or any portion thereof. This Agreement shall be recorded with the Racine County Register of Deeds. The sale of any lot or parcel within the Property shall not relieve any owners of their continuing liability hereunder except as provided herein. Wherever an obligation herein is designated as that of the Developer or Homeowner's Association or others, the obligation shall be joint and several hereunder; provided, however, that Developer shall not be liable hereunder for any defaults occurring after the sale of all of the lots in the Property and installation and acceptance of all Public Improvements. As Individual lots are

sold, the new owner of the lot shall become obligated to perform under the recorded Restrictive Covenants and their membership in the Homeowner's Association and, in the event the new owner fails to perform, under the previously recorded Restrictive Covenants the Homeowner's Association shall have the right to perform the obligation and to assess the new owner for any expenses. The Restrictive Covenants and Conservation Easement have been previously recorded by the Developer with the Racine County Register of Deeds office as a separate document.

k. **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address, or both:

To Developer:

THE NEWPORT GROUP, LTD
c/o Raymond Leffler
8338 Corporate Drive
Racine, WI 53406
Fax: (262) 898-1341

To the Village and Utility District:

Village Clerk
Village of Caledonia
5043 Chester Lane
Racine, WI 53402
Fax: (262) 835-2388
and to,

Director of Public Works
Village of Caledonia
5043 Chester Lane
Racine, WI 53402
Fax: (262) 835-2388

To the Mortgagee: Tri City National Bank
2704 Lathrop Avenue
Racine, WI 53405
Fax: (262) 554-5866

To the Contractor: Reesman's Excavating & Grading, Inc.
28815 Bushnell Road
Burlington, WI 53105
Fax: (262) 539-2665

l. **Successors and Assignment.** This Agreement is binding upon and enforceable against the Parties' respective successors and permitted assigns. The Village and Utility District may assign its interest in this Agreement to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Village. The Developer and Contractor may not assign its interest in this Agreement without the express written approval of the Village and Utility District.

m. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.

n. **Subordination.** The Mortgagee joins in this Agreement for the sole purpose of agreeing that in the event of the foreclosure of its mortgage interest in the lands of the Property, this Agreement shall survive such foreclosure and the lands in the Property shall remain subject to this Agreement.

o. **The Contractor.** Reesman's Excavating & Grading, Inc. is the general contractor for construction of the Development, being hired and retained by Developer to construct the Property. Reesman's Excavating & Grading, Inc., however, as the general contractor, shall be responsible and obligated to the Village and the District to perform all of the duties imposed upon the "Contractor" under this Agreement.

p. **Force Majeure.** For purposes of this Agreement, the term “Force Majeure” means events or circumstances beyond a Party’s reasonable control, including, without limitation, “acts of God,” fire, flood, other natural calamities, accidents, unusual delays in deliveries, unavoidable casualties, labor disputes, strikes, lockouts or picketing (legal or illegal), wars, riots, acts of terrorism, changes in or unexpected interpretations of applicable statutes, laws, ordinances or regulations, adverse weather conditions, condemnation or other actions of governmental authorities or utility companies or shortages of labor, fuel, power or materials.

q. **Use of Further Subcontractor.** In the event Contractor elects to use a further Subcontractor(s) to do part and/or all of the construction of the Property or Subdivision System, then:

- i. Such further Subcontractor must be pre-approved by the Developer; and
- ii. Such further Subcontractor must be pre-approved and pre-qualified by the Village, which approval shall not be unreasonably withheld, conditioned, or delayed; and
- iii. Such further Subcontractor shall agree to perform all of the duties and obligations imposed upon the Contractor in this Agreement relative to that portion of duties and obligations of the work they are taking over; and
- iv. The general contractor shall still remain a party to this Agreement, and still be responsible for fully performing all of the duties and obligations imposed upon any subcontractor(s) under this Agreement.

r. **Legal Action.** In addition to the provisions set forth in this Agreement, the Village and Utility District may take any and all other appropriate action at law or equity to enforce

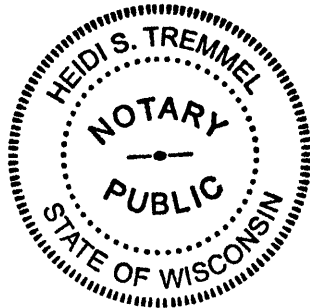
compliance with the provisions of this or any other agreement it may have with the Developer and Contractor pertaining to this project, and in the event of a legal action in which the final determination is in favor of the Village and/or Utility District, the Village and/or Utility District shall be entitled to collect from the Developer and Contractor statutory costs and disbursements, plus its actual attorneys' fees and costs.

TRI CITY NATIONAL BANK

By: [Signature]
John W. Kis, Sr. Vice-Pres
Printed name Title

STATE OF WISCONSIN)
) SS:
COUNTY OF Racine)

Personally came before me this 4th day of June, 2019, the above-named John W Kis to me known to be the individuals who executed the foregoing instrument on behalf of Tri City National Bank and acknowledged the same as the act and deed of said financial institution.



[Signature]
Notary Public, Racine County, WI
My commission: 2/7/22

VILLAGE OF CALEDONIA

By: James R. Dobbs
James R. Dobbs
Village President

Attest: Karie Pope
Karie Pope
Village Clerk


Personally came before me this 6th day of May, 2019, James R. Dobbs and Karie Pope, Village President and Village Clerk of the Village of Caledonia, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said Village.


Anthony A. Bunkelman
Notary Public, Racine County, WI

Name: Anthony A. Bunkelman

My Commission: July 26, 2019

**VILLAGE OF CALEDONIA SEWER UTILITY DISTRICT
and the VILLAGE OF CALEDONIA WATER UTILITY DISTRICT**

By: 
Howard Stacey
President

Attest: 
Michael Pirke
Secretary

Personally came before me this 8th day of May, 2019, Howard Stacey and Michael Pirke, President and Secretary of the Village of Caledonia Sewer Utility District and the Village of Caledonia Water Utility District, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said Districts.


Notary Public, Racine County, WI

Name: Anthony A. Bunkelman

My Commission: July 26, 2019

REESMAN'S EXCAVATING & GRADING, INC.

By: [Signature]
Chris Reesman
President

Attest: [Signature]
Eric Reesman
Secretary

Personally came before me this 4th day of June, 2019, Chris Reesman and Eric Reesman, President and Secretary of the Reesman's Excavating & Grading, Inc., to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said corporation.

Kim Schmalfeldt
Notary Public, Racine County, WI

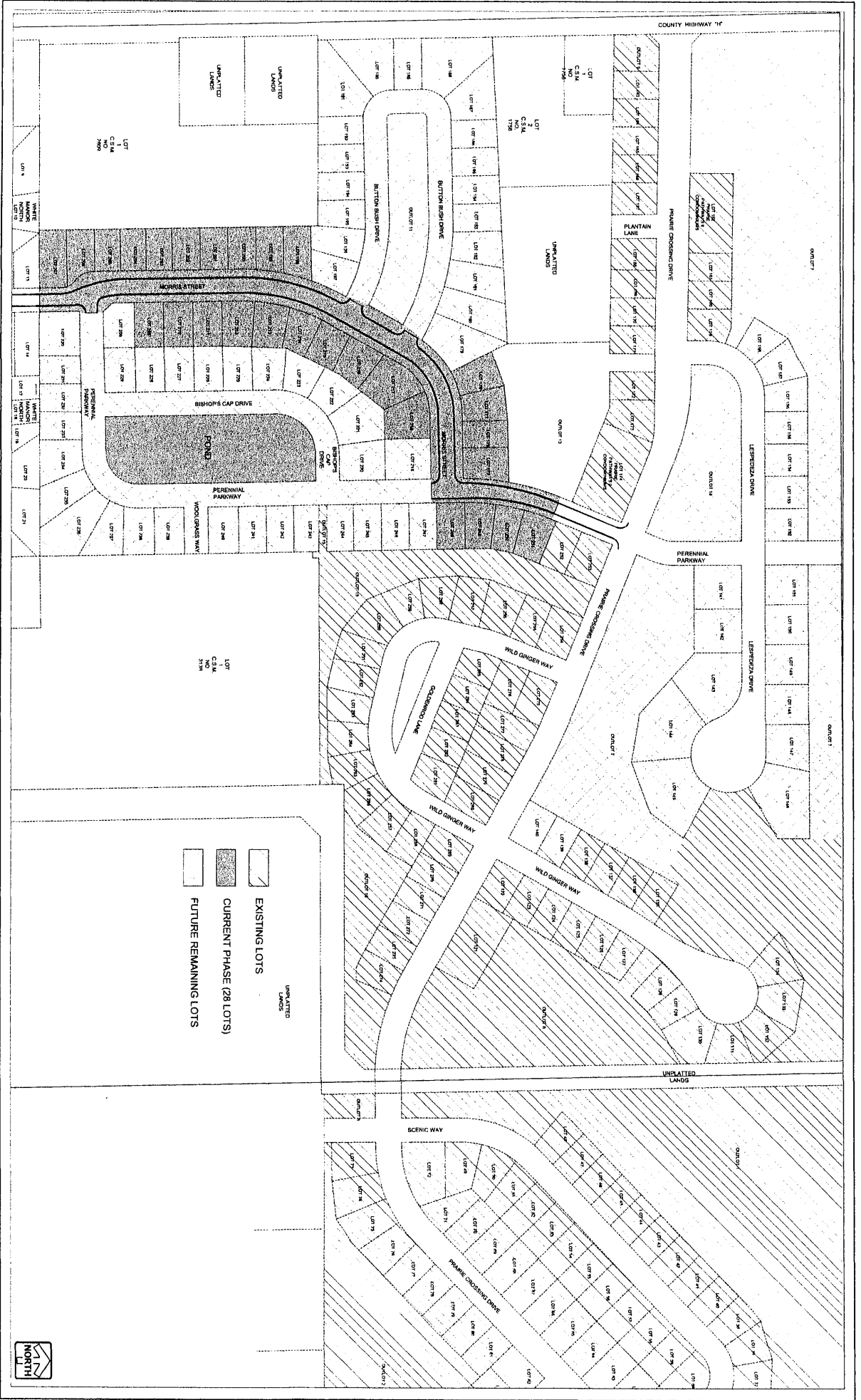
Name: Kim Schmalfeldt

My Commission: 3-14-20

- Exhibit A: Legal Description of Property and Subdivision Exhibit
- Exhibit B: Public Improvements Cost Estimate
- Exhibit C: Restrictive Covenants
- Exhibit D: Storm Water Easement
- Exhibit E: Grant of Conservation Easement and Stewardship Plan

770272.062

Exhibit A = 28 lot Phase



PRAIRIE PATHWAYS - LOT EXHIBIT

PINNACLE ENGINEERING GROUP

15850 W. BLUEMOUND ROAD | SUITE 210 | BROOKFIELD, WI 53005 | WWW.PINNACLE-ENGRCOM

PLAN | DESIGN | DELIVER

PEJOB# 951.00

04/11/2019

EXHIBIT B - PUBLIC IMPROVEMENTS COST ESTIMATE

1. Curb and Gutter (3280 LF @ \$15)	\$49,200.00
2. Roadway and Site Work	\$230,073.48
3. Erosion Control and Site Preparation	\$50,050.23
4. Sanitary Sewer	\$212,489.07
5. Water Main	\$197,981.98
6. Storm Sewer	\$158,596.82
7. Backfill - granular material & utility dirt placement	Included
8. Year 1	\$9,290.00
9. Foth Inspections	<u>\$25,000.00</u>
Total	<u>\$932,681.58</u>

120% (for total Letter of Credit) \$1,119,217.90

After acceptance of all public improvements and during the guaranty period after installation of the surface course of asphalt it is anticipated that the letter of credit will be reduced to \$ 93,268.00 (representing 10% of the cost of the Public Improvements)

CASH DEPOSIT

1. Asphalt Binder (1,970 tons @ \$55/ton)	\$108,350.00
2. Asphalt Surface (660 tons @ \$60/ton)	\$39,600.00
3. Subgrade & Prep for binder 7,495 SY @\$1.50	\$11,242.50
3. Year 2 Improvements	<u>\$2,100.00</u>
Total	\$161,292.50

110% (for total Cash Deposit) \$177,421.75

After substantial completion of the public improvements and during the period between the binder and installation of the surface course of asphalt it is anticipated that the cash deposit will be reduced to \$ 52,535.00 representing (10% of the cost of the Asphalt Binder, and all of the Year 2 Improvements & Asphalt Surface)