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**AGENDA
PUBLIC WORKS COMMITTEE
VILLAGE OF SUSSEX
6:00 P.M. TUESDAY, JULY 12, 2016
SUSSEX VILLAGE HALL – LOWER LEVEL**

Pursuant to the requirements of Section 19.84, Wis. Stats., notice is hereby given of a meeting of the Village of Sussex Public Works Committee, at which a quorum of the Village Board may attend in order to gather information about a subject which they have decision making responsibility. The meeting will be held at the above noted date, time and location. Notice of Village Board Quorum, (Chairperson to announce the following if a quorum of the Village Board is in attendance at the meeting: Please let the minutes reflect that a quorum of the Village Board is present and that the Village Board members may be making comments under the Public Comments section of the agenda, during any Public Hearing(s) or if the rules are suspended to allow them to do so.)

1. Roll call.
2. Consideration and possible action on minutes of the regular Public Works meeting on June 7, 2016.
3. Comments from citizens present and correspondence/communications received from citizens.
4. Consideration and possible action on bills for payment.
5. Consideration and possible action on Utility Items:
 - A. Update on PSC order on Water Rates
6. Consideration and possible action on Sidewalk and Street Items:
 - A. Ordinance to repeal and recreate Chapter 7 subsection 7.54 entitled "Obstruction and Encroachments" of the Village of Sussex Municipal Code.
7. Consideration and possible action on Other Public Works Items:
8. Staff report, update and issues, and possible action regarding subdivision, developments, and projects:
 - A. Engineer's Report
 - B. Developer's Agreement for Sussex IM (South) Project
 - C. Developer's Agreement for Sussex Town Center Phase 2
9. Other discussion for future agenda topics
10. Adjournment.

Tim Dietrich
Chairperson

Melissa Weiss
Asst. Village Administrator

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact Jeremy Smith at 246-5200.

VILLAGE OF SUSSEX
SUSSEX, WISCONSIN

Minutes of the Public Works Committee meeting held on June 7, 2016.

Tim Dietrich called the meeting to order at 6:00 p.m.

Members present: Rick Vodicka, Trustees Tim Dietrich, Bob Zarzynski and Lee Uecker

Members excused: None

Staff present: Administrator Jeremy Smith, Asst. Administrator Melissa Weiss, Administrative Services Director Casey Griffiths, Village Engineer Judy Neu, and Assistant Director of Public Works Dennis Wolf.

Others present: Trustee Pat Tetzlaff, President Greg Goetz and Bill Wiesneski.

A quorum of the Village Board was present at the meeting.

A motion by Uecker seconded by Vodicka, to approve the minutes of the May 3, 2016 Public Works Committee meeting, as presented. Motion carried.

Comments from citizens present and correspondence/communications received from citizens:

There was no one present who wished to be heard.

Consideration and possible action on bills for payment:

A motion by Zarzynski, seconded by Uecker, to recommend that the Village Board approve the Public Works bills for payment in the amount of \$1,434,949.24 as presented. Motion carried.

Consideration and possible action on Utility Items:

A motion by Vodicka, seconded by Zarzynski, to recommend that the Village Board accept the 2015 CMAR Resolution. Motion carried.

A motion by Vodicka, seconded by Uecker, to recommend that the Village Board accept the agreement with SEH for Design and Building of Radium Treatment. Vodicka amended his motion to include recommending approval of the phase 1 and 2 cost adjustments to the agreement, Uecker seconded the amendment. Motion carried

A motion by Zarzynski, seconded by Vodicka to recommend that the Village Board approve DNR Stormwater Grant Amendment #2 for the Spring Creek Daylighting project. Motion carried.

Consideration and possible action Sidewalk and Street Items:

A motion by Dietrich, seconded by Zarzynski to recommend that the Village Board approve the easement for gas main in Old Brooke Square Park. Motion carried.

Other Public Works Items:

A motion by Vodicka, seconded by Zarzynski to recommend that the Village Board approve the sale of street lights to Al Frantl in the amount of \$50 per light. Motion carried.

Engineer's Report.

Ms. Neu provided an update on the Main Street Reconstruction project, construction of the new playground in Weyer Park, and updates on various development projects.

A motion by Vodicka, seconded by Uecker to recommend that the Village Board approve the amendments to the covenants to the Village Estates subdivision. Motion carried.

Other discussion for future agenda topics:

None

A motion by Vodicka, seconded by Uecker to adjourn the Public Works Committee meeting at 6:40 p.m.
Motion carried.

Respectfully submitted,

Casen J. Griffiths
Administrative Services Director

VILLAGE OF SUSSEX
PUBLIC WORKS COMMITTEE
BILLS FOR PAYMENT

7/12/2016

VENDOR	AMOUNT		%COMPLETED	NOTES
ADVANTAGE PURCHASING, LLC	\$ 314,352.92	VOS CIVIC CENTER MATERIALS	63%	
FIRST AMERICAN TITLE INS. CO.	\$ 610.00	ASSOC. BANK CMS FEES - MAIN STREET RECON.	100%	PREPAID - DUE TO DUE DATE
GILES ENGINEERING ASSOC., INC.	\$ 3,450.00	CONSTRUCTIO MATERIALS TESTING - MAIN STREET RECON.	100%	
KAHLER SLATER	\$ 13,198.58	PROF. SERV. 5/1-28/2016	94%	
NEENAH FOUNDRY	\$ 16,416.25	TREE GRATE & FRAME - MAIN STREET RECON.	100%	PREPAID - DUE TO DUE DATE
NORTH STAR ENV. TESTING, LLC	\$ 1,750.00	PRE-DEMO ASBESTOS INSPECTION - MAIN STREET RECON.	100%	
R.A. SMITH NATIONAL	\$ 2,485.26	MEIJER INFRASTRUCTURE IMP. - PROF. SERV. 5/1-31/2016	100%	BILL TO DEV. - ROCKFORD CONSTRUCTION
R.A. SMITH NATIONAL	\$ 36,103.60	MAIN STREET RECONSTRUCTION - PHASE I - PROF. SERV. 5/1-31/16	20%	
RUEKERT-MIELKE, INC.	\$ 5,785.00	2016 GIS ANNUAL SERV.- PROF. SERV. 4/16-5/13/2016	100%	
RUEKERT-MIELKE, INC.	\$ 4,131.14	WOODSIDE RIDGE - PROF. SERV. 4/16-5/13/2016	100%	BILL TO DEVELOPER - MIKE KAEREK
RUEKERT-MIELKE, INC.	\$ 1,825.55	SUSSEX VILLAGE - PROF. SERV. 4/16-5/13/2016	100%	NATURE'S PATH & MAIN ST.
RUEKERT-MIELKE, INC.	\$ 316.25	PHOSPHORUS O. EVAL. REPT - PROF. SERV. 04/16-05/13/2016	ONGOING	
RUEKERT-MIELKE, INC.	\$ 460.00	2016 GIS ANNUAL SERV.- PROF. SERV. 5/14-6/10/2016	100%	
RUEKERT-MIELKE, INC.	\$ 188.75	NATURE'S PATH - WASTEWATER IMPACT CALCULATIONS	100%	
RUEKERT-MIELKE, INC.	\$ 108.75	2016 GIS ANNUAL SERV. VILLAGE DATA - PROF. SERV. 4/16-6/10/2016	100%	
RUEKERT-MIELKE, INC.	\$ 715.54	WOODSIDE RIDGE - PROF. SERV. 5/14-6/10/2016	100%	BILL TO DEV. - MIKE KAEREK
RUEKERT-MIELKE, INC.	\$ 596.25	MAIN STREET RECONSTRUCTION - PHASE I - PROF. SERV. 4/16-5/13/2016	ONGOING	
RUEKERT-MIELKE, INC.	\$ 112,123.00	MAIN STREET RECONSTRUCTION - PHASE I - PROF. SERV. 1/1-5/13/2016 - FINAL DESIGN	100%	
RUEKERT-MIELKE, INC.	\$ 1,155.00	MAIN STREET RECONSTRUCTION - PHASE 1 - PROF. SERV. 3/19 - 4/15/16	ONGOING	
RUEKERT-MIELKE, INC.	\$ 5,267.80	MAIN STREET RECONSTRUCTION - PHASE 1 - ASSOC BANK CSM	100%	
SHORT ELLIOT HENDRICKSON, INC.	\$ 827.34	WELL #4 & 5 - RADIUM REDUCTION	ONGOING	
VINTON	\$ 834,385.97	MAIN STREET RECONSTRUCTION - PHASE I	26%	
VISU-SEWER	\$ 1,253.75	STORM SEWER INSPECTION - PIGGLY WIGGLY - MAIN ST. RECON	100%	
TOTAL	\$ 1,357,506.70			

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 7 SUBSECTION 7.54 ENTITLED "OBSTRUCTIONS AND ENCROACHMENTS" OF THE VILLAGE OF SUSSEX MUNICIPAL CODE.

WHEREAS, from time to time Ordinances need to be refreshed to reflect best practices; and

WHEREAS, the Ordinance did not include language to address a use in the Village right-of-ways which would be above grade; and

WHEREAS, the Village of Sussex has the authority to control its right-of-ways under applicable Wisconsin laws, including, but not limited to, Wisconsin Statutes Section 61.34, 61.36, 66.0425 and 182.07; and

WHEREAS, the Village of Sussex is concerned about public safety and welfare and included language to Chapter 7 to regulate the types of uses in the Village right-of-way; and

NOW, THEREFORE BE IT ORDAINED by the Village Board of the Village of Sussex, Waukesha County, Wisconsin, that:

SECTION 1. Chapter 7 of the Village of Sussex Village Code Subsection 7.54 entitled Obstructions and Encroachments is hereby repealed and recreated as follows:

7.54 OBSTRUCTIONS, EXCAVATIONS AND ENCROACHMENTS FOR ABOVE GRADE USE OF RIGHT-OF-WAY.

(1) AUTHORITY. This section is adopted pursuant to the Village authority to control its right-of-ways under applicable Wisconsin laws, including, but not limited to, Wisconsin Statutes Section 61.34, 61.36, 66.0425, and 182.017.

(2) PURPOSE AND FINDINGS.

(A) Purpose and Findings. In the exercise of governmental functions the Village has priority over all other uses of the public rights-of-way. The Village desires to anticipate and minimize the number of obstructions and excavations taking place therein and to regulate the placement of facilities in the rights-of-Way to ensure that the rights-of-way remain available for public services and safe for public use. The taxpayers of the Village bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by Persons who locate facilities therein.

The Village finds with increased use of the public rights-of-way there are increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.

The Village finds occupancy and excavation of its rights-of-way causes costs to be borne by the Village and its taxpayers, including but not limited to:

1. Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair or restoration costs to the roadway associated with the actual excavation into the public right-of-way.
4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way.

In response to the foregoing facts, the Village hereby enacts this ordinance relating to administration of and permits to excavate, obstruct and/or occupy the public rights-of-way which results in above grade use of the right-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of above grade uses currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the Village a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the Village as they use the right-of-way of the Village, as well as to ensure the structural integrity of the public rights-of-way.

(3) OBSTRUCTIONS AND ENCROACHMENTS PROHIBITED. No person shall encroach upon or obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which ~~he is the~~they are the owner or occupant, except as provided in sub. (24) and (5).

(24) EXCEPTIONS. The prohibition of sub. (43) shall not apply to the following:

(A) Signs and clocks attached to buildings which project not more than 6 feet from the face of such building and which do not extend below any point 10 feet above the sidewalk, ~~street or alley.~~

(B) Awnings which do not extend below any point 7 feet above the sidewalk, ~~street or alley.~~

(C) Official signage, official traffic control devices, and utilities owned or leased by the Village

(D) Goods, wares, merchandise or fixtures being loaded or unloaded which do not extend more than 3 feet on a sidewalk, provided such goods, wares, etc., do not remain thereon for more than 3 hours.

(E) Racks or platforms for the display of merchandise of at least 18" above the sidewalk and extending not more than 24" from the building to which attached. A use permitted by an outdoor establishment permit or auxiliary use granted under Chapter 17 of the Zoning Code.

(F) Building materials for the period authorized by the Village Board which shall not obstruct more than 1/2 of the sidewalk or more than 1/3 of the traveled portion of the street, and which do not

interfere with flow in the gutters.

(G) Mailboxes for the collection of mail from the United States Postal Service are exempted from sub if they comply with the Village's standard for mailbox dimensions and installation guidelines.

(H) A legally placed above grade use in existence prior to AUGUST 1, 2016.

~~(35) CONDITIONS WITH EXCEPTIONS PERMIT REQUIRED. If an encroachment, obstruction, or encumbrance excavation results in the above grade use of the right-of-way then an above grade right-of-way permit from the Village is required prior to the encroachment, obstruction, or encumbrance excavation being established. This standard also applies to any new encroachment, obstruction, or encumbrance excavation added to either a previously approved above grade use or one that was legally placed prior to August 1, 2016.~~

(A). Application requirements.

1. An above grade right -of- way permit application shall be filed with the Village Engineer.

2. The applicant shall pay the above grade right-of-way permit fee shall be paid. The above grade right-of-way permit fee shall be in the amount as established by Resolution of the Village Board, and may be amended from time to time. In addition a professional fee charge back agreement shall be signed to ensure compliance with Village Ordinance that professional fees incurred by the Village to review said applications are not paid by the taxpayer, but by the applicant seeking special review and benefit.

3. The applicant shall provide aA detailed plan with structural engineering, scale drawings, visual rendering, and survey showing the exact location, size, appurtances and or attachments of the equipment or structure to be placed in the right-of-way, along with the exact location of all streets, sidewalks, utilities, trees, and any other obstructions in the vicinity of the proposed installation, and the location of structures on abutting properties shall be provided.

4. The applicant shall provide aA detailed report describing shall be provided with potential hazards to the public from said equipment, structure, and impacts due to location on safety for the driving public, pedestrians, and owners and users of adjacent property for such things as, but not limited to; fall zone, fire, explosion, chemical, environmental impacts, and vehicle crash impacts. Said report shall indicate the risk of the safety hazard and the proposed design element to address said safety hazard. An expert in the appropriate field of study shall issue their findings for the same for any above ground right of way permit that is associated with 7.54(2)(C). The Village Engineer may require the applicant's report to be provided by a structural engineer or other expert approved by the Village Engineer, if the Village Engineer deems it to be necessary to have such an expert opinion in light of the circumstances of the application, for the protection of public health and safety, in which case the applicant shall provide such an opinion at the applicant's cost.

5. The plan must show how the installation and maintenance of said above grade right-of-way use will not impact snow or grass removal from the terrace, sidewalk or street, or conflict with the operation or maintenance of vehicular travel and existing utilities above or below ground.

6. An alternatives analysis shall be provided to show what options other than locating above grade in the right-of-way exists and the approximate costs of such alternatives.

(B) Application process.

1. The Village Engineer shall review said permit application and determine if all application materials have been submitted within 15 days of receipt of the initial application.

(a). If all application materials are not complete the Village shall provide written notice to the person on the application that said application is incomplete. The applicant shall have up to 30 days from the date of initial application to provide a complete application or the application shall be deemed insufficient and denied. The Village shall have 60 days to review and act on the permit from the date that the Village determines the application is complete and all fees paid.

2. The Village Board shall hold a public hearing as reasonably soon as possible after application materials have been deemed complete by the Village Engineer and proper notification period for a class 1 notice and notice to all properties within 200 feet of the proposed installation.

3. The Village Board ~~at conclusion of the public hearing~~ shall ~~at that meeting or the next regularly scheduled Village Board meeting~~ give consideration to the application, the testimony received at the public hearing, staff and expert reports, or other information as the Village Board determines appropriate. The Village Board shall consider public safety, alternative options, and the public good when considering an above grade right-of-way permit. The Village Board may grant the permit, grant the permit with conditions, or deny the permit.

4. RIGHT-OF-WAY RESTORATION. The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit to the satisfaction of the Village Engineer. In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for thirty-six (36) months thereafter.

The permittee shall perform repairs and restorations according to the standards and with the materials specified by the village engineer. The village engineer shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The village engineer in exercising this authority shall be guided by the following standards and considerations:

(a) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.

(b) The traffic volume carried by the right-of-way.

(c) The character of the neighborhood surrounding the right-of-way; the pre-excavation condition of the right-of-way.

(d) The remaining life-expectancy of the right-of-way affected by the excavation.

(e) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way.

(f) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Methods of restoration may include, but are not limited to, patching, replacement of the right-of-way base, restoration of landscaping, and milling and overlay of the entire area of the right-of-way affected by the work. During this thirty-six (36) month period, it shall, upon notification from the Village Engineer, correct all restoration work to the extent necessary using the method required by the Village Engineer. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Village Engineer.

If the permittee fails to restore the right-of-way in the manner and to the condition required by the Village Engineer, or fails to satisfactorily and timely complete all repairs required by the Village Engineer, the Village Engineer, at his or her option, may do such work. In that event, the permittee shall pay to the Village, within thirty (30) days of billing, the cost of restoring the right-of-way.

5. BOND. Prior to commencing the work, any permittee performing work within the right-of-way shall post a financial guarantee in an amount approved by the Village Engineer and in a form approved by the Village Attorney, provided that the limitations of Wisconsin Statutes Section 66.0425(2) shall apply as applicable. If, thirty-six (36) months after completion of the restoration of the right-of-way, the Village Engineer determines that the right-of-way has been properly restored, the surety on the performance bond shall be released.

6. INDEMNIFICATION AGREEMENT. Before any person, entity, or utility commences work pursuant to this section, such person, entity or utility shall file an agreement with the Village Clerk to hold the Village harmless, indemnify, and defend the Village from and against any and all injury and damage of any kind caused or occurring as a result of such work. The agreement shall be in a form approved by the Village Attorney, and shall have continuing effect during the course of such work and for all time that the obstruction or facilities or installation remain within the right-of-way, and thereafter until such obstruction is removed and the site is fully restored to the satisfaction of the Village Engineer.

7. RESERVATION OF RIGHTS. The Village retains all rights in Village right-of-way. The grant of a right-of-way permit per this section does not constitute a waiver of any Village rights and remedies regarding ongoing compliance obligations toward such installations. All persons, entities and utilities installing obstructions, encroachments or conducting excavation in Village right-of-way shall remove or relocate the obstruction, encroachment or excavation upon 10 days notice, except as otherwise provided by law.

8. COMPENSATION. The Village may require payment of compensation, in an amount determined by the Village Board, for the grant of any permit pursuant to this section, provided that compensation for more than applicable fees and cost recovery shall not be required of utilities that have the right to use the right-of-way by Wisconsin Statutes Section 182.017(1r).

9. Timeline deadlines in this process may be waived by written mutual agreement of the applicant and the Village.

10. Administrative Decision appeals may be made under Chapter 24 of the Municipal Code of the Village of Sussex.

11. Approval of a permit pursuant to this section does not waive the requirement to comply with all other applicable laws and ordinances. All applicable federal, State, Waukesha County, and Village of Sussex codes, statutes, regulations, administrative rules, ordinances and other laws must be followed.

SECTION 2. The Clerk is hereby directed to adjust this Ordinance and the Municipal Code for clerical, formatting, numbering, or code cross referencing purposes to implement the above Ordinance and administer the Municipal Code of the Village of Sussex.

SECTION 3. The several sections of this Ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of the court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections, or portions thereof the ordinance which shall remain in full force and effect. Any other ordinances are hereby repealed as to those terms that conflict.

SECTION 4. This ordinance shall take effect immediately upon passage and posting or publication as provided by the law.

Passed and adopted this _____ day of _____, 2016.

Gregory L. Goetz, Village President

ATTEST: _____
Casen J. Griffiths, Clerk-Treasurer

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 7 SUBSECTION 7.54 ENTITLED "OBSTRUCTIONS AND ENCROACHMENTS" OF THE VILLAGE OF SUSSEX MUNICIPAL CODE.

WHEREAS, from time to time Ordinances need to be refreshed to reflect best practices; and

WHEREAS, the Ordinance did not include language to address a use in the Village right-of-ways which would be above grade; and

WHEREAS, the Village of Sussex has the authority to control its right-of-ways under applicable Wisconsin laws, including, but not limited to, Wisconsin Statutes Section 61.34, 61.36, 66.0425 and 182.07; and

WHEREAS, the Village of Sussex is concerned about public safety and welfare and included language to Chapter 7 to regulate the types of uses in the Village right-of-way; and

NOW, THEREFORE BE IT ORDAINED by the Village Board of the Village of Sussex, Waukesha County, Wisconsin, that:

SECTION 1. Chapter 7 of the Village of Sussex Village Code Subsection 7.54 entitled Obstructions and Encroachments is hereby repealed and recreated as follows:

7.54 OBSTRUCTIONS, EXCAVATIONS AND ENCROACHMENTS FOR ABOVE GRADE USE OF RIGHT-OF-WAY.

(1) **AUTHORITY.** This section is adopted pursuant to the Village authority to control its right-of-ways under applicable Wisconsin laws, including, but not limited to, Wisconsin Statutes Section 61.34, 61.36, 66.0425, and 182.017.

(2) **PURPOSE AND FINDINGS.**

(A) **Purpose and Findings.** In the exercise of governmental functions the Village has priority over all other uses of the public rights-of-way. The Village desires to anticipate and minimize the number of obstructions and excavations taking place therein and to regulate the placement of facilities in the rights-of-Way to ensure that the rights-of-way remain available for public services and safe for public use. The taxpayers of the Village bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excessive deterioration of its rights-of-way is the frequent excavation by Persons who locate facilities therein.

The Village finds with increased use of the public rights-of-way there are increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.

The Village finds occupancy and excavation of its rights-of-way causes costs to be borne by the Village and its taxpayers, including but not limited to:

1. Administrative costs associated with public right-of-way projects, such as registration, permitting, inspection and supervision, supplies and materials.
2. Management costs associated with ongoing management activities necessitated by public right-of-way users.
3. Repair or restoration costs to the roadway associated with the actual excavation into the public right-of-way.
4. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public rights-of-way.

In response to the foregoing facts, the Village hereby enacts this ordinance relating to administration of and permits to excavate, obstruct and/or occupy the public rights-of-way which results in above grade use of the right-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of above grade uses currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the Village a legal framework within which to regulate and manage the public rights-of-way, and to provide for recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the Village as they use the right-of-way of the Village, as well as to ensure the structural integrity of the public rights-of-way.

- (3) **OBSTRUCTIONS AND ENCROACHMENTS PROHIBITED.** No person shall encroach upon or obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which they are the owner or occupant, except as provided in sub. (4) and (5).
- (4) **EXCEPTIONS.** The prohibition of sub. (3) shall not apply to the following:
 - (A) Signs and clocks attached to buildings which project not more than 6 feet from the face of such building and which do not extend below any point 10 feet above the sidewalk.
 - (B) Awnings which do not extend below any point 7 feet above the sidewalk.
 - (C) Official signage, official traffic control devices, and utilities owned or leased by the Village.
 - (D) Goods, wares, merchandise or fixtures being loaded or unloaded which do not extend more than 3 feet on a sidewalk, provided such goods, wares, etc., do not remain thereon for more than 3 hours.
 - (E) A use permitted by an outdoor establishment permit or auxiliary use granted under Chapter 17 of the Zoning Code.
 - (F) Building materials for the period authorized by the Village Board which shall not obstruct more than 1/2 of the sidewalk or more than 1/3 of the traveled portion of the street, and which do not interfere with flow in the gutters.

(G) Mailboxes for the collection of mail from the United States Postal Service are exempted from sub if they comply with the Village's standard for mailbox dimensions and installation guidelines.

(H) A legally placed above grade use in existence prior to AUGUST 1, 2016.

(5) PERMIT REQUIRED. If an encroachment, obstruction, or excavation results in the above grade use of the right-of-way then an above grade right-of-way permit from the Village is required prior to the encroachment, obstruction, or excavation being established. This standard also applies to any new encroachment, obstruction, or excavation added to either a previously approved above grade use or one that was legally placed prior to August 1, 2016.

(A) Application requirements.

1. An above grade right-of-way permit application shall be filed with the Village Engineer.

2. The applicant shall pay the above grade right-of-way permit fee. The above grade right-of-way permit fee shall be in the amount as established by Resolution of the Village Board, and may be amended from time to time. In addition a professional fee charge back agreement shall be signed to ensure compliance with Village Ordinance that professional fees incurred by the Village to review said applications are not paid by the taxpayer, but by the applicant seeking special review and benefit.

3. The applicant shall provide a detailed plan with structural engineering, scale drawings, visual rendering, and survey showing the exact location, size, appurtenances and or attachments of the equipment or structure to be placed in the right-of-way, along with the exact location of all streets, sidewalks, utilities, trees, and any other obstructions in the vicinity of the proposed installation, and the location of structures on abutting properties.

4. The applicant shall provide a detailed report describing potential hazards to the public from said equipment, structure, and impacts due to location on safety for the driving public, pedestrians, and owners and users of adjacent property for such things as, but not limited to; fall zone, fire, explosion, chemical, environmental impacts, and vehicle crash impacts. Said report shall indicate the risk of the safety hazard and the proposed design element to address said safety hazard. The Village Engineer may require the applicant's report to be provided by a structural engineer or other expert approved by the Village Engineer, if the Village Engineer deems it to be necessary to have such an expert opinion in light of the circumstances of the application, for the protection of public health and safety, in which case the applicant shall provide such an opinion at the applicant's cost.

5. The plan must show how the installation and maintenance of said above grade right-of-way use will not impact snow or grass removal from the terrace, sidewalk or street, or conflict with the operation or maintenance of vehicular travel and existing utilities above or below ground.

6. An alternatives analysis shall be provided to show what options other than locating above grade in the right-of-way exists and the approximate costs of such alternatives.

(B) Application process.

1. The Village Engineer shall review said permit application and determine if all application materials have been submitted within 15 days of receipt of the initial application.

(a). If all application materials are not complete the Village shall provide written

notice to the person on the application that said application is incomplete. The applicant shall have up to 30 days from the date of initial application to provide a complete application or the application shall be deemed insufficient and denied. The Village shall have 60 days to review and act on the permit from the date that the Village determines the application is complete and all fees paid.

2. The Village Board shall hold a public hearing as reasonably soon as possible after application materials have been deemed complete by the Village Engineer and proper notification period for a class 1 notice and notice to all properties within 200 feet of the proposed installation.

3. The Village Board shall give consideration to the application, the testimony received at the public hearing, staff and expert reports, or other information as the Village Board determines appropriate. The Village Board shall consider public safety, alternative options, and the public good when considering an above grade right-of-way permit. The Village Board may grant the permit, grant the permit with conditions, or deny the permit.

4. RIGHT-OF-WAY RESTORATION. The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit to the satisfaction of the Village Engineer. In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for thirty-six (36) months thereafter.

The permittee shall perform repairs and restorations according to the standards and with the materials specified by the village engineer. The village engineer shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case-by-case basis. The village engineer in exercising this authority shall be guided by the following standards and considerations:

(a) The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.

(b) The traffic volume carried by the right-of-way.

(c) The character of the neighborhood surrounding the right-of-way; the pre-excavation condition of the right-of-way.

(d) The remaining life-expectancy of the right-of-way affected by the excavation.

(e) Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way.

(f) The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Methods of restoration may include, but are not limited to, patching, replacement of the right-of-way base, restoration of landscaping, and milling and overlay of the entire area of the right-of-way affected by the work. During this thirty-six (36) month period, it shall, upon

notification from the Village Engineer, correct all restoration work to the extent necessary using the method required by the Village Engineer. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Village Engineer.

If the permittee fails to restore the right-of-way in the manner and to the condition required by the Village Engineer, or fails to satisfactorily and timely complete all repairs required by the Village Engineer, the Village Engineer, at his or her option, may do such work. In that event, the permittee shall pay to the Village, within thirty (30) days of billing, the cost of restoring the right-of-way.

5. BOND. Prior to commencing the work, any permittee performing work within the right-of-way shall post a financial guarantee in an amount approved by the Village Engineer and in a form approved by the Village Attorney, provided that the limitations of Wisconsin Statutes Section 66.0425(2) shall apply as applicable. If, thirty-six (36) months after completion of the restoration of the right-of-way, the Village Engineer determines that the right-of-way has been properly restored, the surety on the performance bond shall be released.

6. INDEMNIFICATION AGREEMENT. Before any person, entity, or utility commences work pursuant to this section, such person, entity or utility shall file an agreement with the Village Clerk to hold the Village harmless, indemnify, and defend the Village from and against any and all injury and damage of any kind caused or occurring as a result of such work. The agreement shall be in a form approved by the Village Attorney, and shall have continuing effect during the course of such work and for all time that the obstruction or facilities or installation remain within the right-of-way, and thereafter until such obstruction is removed and the site is fully restored to the satisfaction of the Village Engineer.

7. RESERVATION OF RIGHTS. The Village retains all rights in Village right-of-way. The grant of a right-of-way permit per this section does not constitute a waiver of any Village rights and remedies regarding ongoing compliance obligations toward such installations. All persons, entities and utilities installing obstructions, encroachments or conducting excavation in Village right-of-way shall remove or relocate the obstruction, encroachment or excavation upon 10 day notice, except as otherwise provided by law.

8. COMPENSATION. The Village may require payment of compensation, in an amount determined by the Village Board, for the grant of any permit pursuant to this section, provided that compensation for more than applicable fees and cost recovery shall not be required of utilities that have the right to use the right-of-way by Wisconsin Statutes Section 182.017(1r).

9. Timeline deadlines in this process may be waived by written mutual agreement of the applicant and the Village.

10. Administrative Decision appeals may be made under Chapter 24 of the Municipal Code of the Village of Sussex.

11. Approval of a permit pursuant to this section does not waive the requirement to comply with all other applicable laws and ordinances. All applicable federal, State, Waukesha County, and Village of Sussex codes, statutes, regulations, administrative rules, ordinances and other laws must be followed.

SECTION 2. The Clerk is hereby directed to adjust this Ordinance and the Municipal Code for

clerical, formatting, numbering, or code cross referencing purposes to implement the above Ordinance and administer the Municipal Code of the Village of Sussex.

SECTION 3. The several sections of this Ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of the court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and not affect the validity of all other provisions, sections, or portions thereof the ordinance which shall remain in full force and effect. Any other ordinances are hereby repealed as to those terms that conflict.

SECTION 4. This ordinance shall take effect immediately upon passage and posting or publication as provided by the law.

Passed and adopted this _____ day of _____, 2016.

Gregory L. Goetz, Village President

ATTEST: _____
Casen J. Griffiths, Clerk-Treasurer



N64W23760 Main Street
Sussex, Wisconsin 53089
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Email: info@villagesussex.org
Website: www.villagesussex.org

MEMORANDUM

To: Melissa Weiss, Assistant Village Administrator / Public Works Director
From: Judith A. Neu, Village Engineer
Date: July 8, 2016
Re: Engineering Monthly Report – June 2016

Main Street Reconstruction – Phase 1:

- Work for the next month will consist of completion of sidewalk and pavement in Stage 1 Main Street, street lighting and traffic signal work, removal of the Youth Hall building, and the start of public utility work in Stage 2 East of Orchard Drive, which is scheduled for July 18. Private utility work may start sooner.
- The intersection of Main Street and Orchard Drive (formerly Stage 4) has been completed and was opened to traffic on July 6.
- Stage 1 of Main Street will be open on Friday, July 15, 2016. The signals at Main/Civic Campus driveway will not be operational for several more weeks. This will be under 4 way stop sign control until the signals are operational.
- There will be some finishing touches to be completed in Stage 1 and on the Civic Campus after the road is opened to traffic.
- Some work on the electric line replacements north of Main Street is expected to start shortly.

Miscellaneous

- Installation of the poured in place is expected next week.

Radium

- Met with PSC and DNR to brief them on our work plan for the water system.

Developments:

- Village Estates: Work was completed by June 15, 2016 deadline.
- Woodside Ridge (Butler Farm): Road and utilities are complete. Some punch list items remain.
- Sussex Preserve: Utility work is complete. Road construction is underway with curb and gutter installation completed over the last few days. Pavement should be done in the next few weeks.
- Johannsen Farms: Road and utility plans have been reviewed. Developer plans to have the construction completed by winter.
- Marchese / Duchow: Phase 1 is complete, some punch list items remain. Phase 2 plans, including extension of Freiheit Court, the water main loop, and sanitary sewer extension, have been reviewed.
- Sussex IM: Water main and Path Extension plans have been reviewed.

END.

**DEVELOPER'S AGREEMENT FOR
SUSSEX IM
VILLAGE OF SUSSEX, WAUKESHA COUNTY, WISCONSIN**

THIS AGREEMENT made this _____ day of _____, 2016, between Sussex IM Real Estate LLC, a Wisconsin Limited Liability Company, with offices at N65W24770 Main Street Sussex, Wisconsin, 53089, hereinafter called "DEVELOPER", and the VILLAGE of Sussex in the County of Waukesha and the State of Wisconsin, hereinafter called the "VILLAGE".

RECITALS:

WHEREAS, the DEVELOPER owns land for development in the VILLAGE, said land being described on **EXHIBIT A** attached hereto and incorporated herein, hereinafter called "SUBJECT LANDS"; and

WHEREAS, the DEVELOPER desires to develop a manufacturing and office building with parking lot in two phases. Phase 1 will consist of a 87,500 square foot building and Phase 2 will consist of an addition of a 71,000 square foot building, as illustrated on the Site Plan and set forth as **EXHIBIT B**, attached hereto and incorporated herein, hereinafter called "DEVELOPMENT" by use of the standard regulations as set forth in Wisconsin Statutes and the municipal ordinance regulating land division and development; and

WHEREAS, Wisconsin Statutes provides that as a condition of approval, the governing body of a municipality within which the SUBJECT LANDS lie may require that the DEVELOPER make and install any public improvements reasonably necessary and/or that the DEVELOPER provide financial security to ensure that the DEVELOPER will make these improvements within a reasonable time; and

WHEREAS, said SUBJECT LANDS are presently zoned BP-1, Business Park District, which allows the above-described DEVELOPMENT; and

WHEREAS, the DEVELOPER may be required to grant additional easements over a part of the SUBJECT LANDS for paths, sidewalks, sanitary sewer, storm sewer and water; and

WHEREAS, the DEVELOPER and VILLAGE desire to enter into this agreement in order to ensure that the DEVELOPER will make and install all public improvements which are reasonably necessary and further that the DEVELOPER shall dedicate the public improvements to the VILLAGE, provided that said public improvements are constructed to municipal specifications, all applicable government regulations, this agreement and as required by the VILLAGE Engineer, without cost to the VILLAGE; and

WHEREAS, this agreement is necessary to implement the VILLAGE zoning and land division ordinances; and

WHEREAS, the DEVELOPER agrees to develop SUBJECT LANDS as herein described in accordance with this agreement, conditions approved by the VILLAGE Plan Commission and VILLAGE Board, conditions of certain agencies and individuals in the County, all VILLAGE ordinances and all laws and regulations governing said development; and

WHEREAS, the DEVELOPER will soon be seeking from the Plan Commission and VILLAGE Board of the VILLAGE approval of a Certified Survey Map setting forth the lands to be part of the DEVELOPMENT, along with various easements, restrictions, and conditions of said approval, attached hereto and incorporated herein, hereinafter called "CSM" as **EXHIBIT C**.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the DEVELOPER does hereby agree to develop SUBJECT LANDS as follows and as otherwise regulated by VILLAGE ordinances and all laws and regulations governing said development:

SECTION I. IMPROVEMENTS

DEVELOPER shall, at DEVELOPER's sole cost and expense, develop the SUBJECT LANDS and construct the Improvements in accordance with the approved Plans and Specifications incorporated herein as follows:

A. Roadway and Path Improvements:

DEVELOPER shall, at its sole cost and expense, complete, or cause the completion of, the grading, construction, and surfacing of any necessary improvements to Lisbon Road/CTH K as necessitated by any traffic study, State, County, and or the VILLAGE including curbs and gutters, and perform and complete work and improvements, all as shown on and in accordance with approved plans and specifications and subject to the following:

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER'S Engineer or Surveyor that all public street and sidewalk plans are in conformance with all federal, state, county and VILLAGE specifications, regulations and ordinances, and written proof provided to the VILLAGE Engineer evidencing review and approval of said plans.

2. The Development includes roadway improvements in the County Highway System and DEVELOPER shall receive all necessary final approval for the same and complete said improvements as detailed in **EXHIBIT D**, "County Roadway

Improvement Plans” per the permit from the County. DEVELOPER shall comply with all County conditions of approval and rules for working on and completing the roadway improvements.

3. The DEVELOPER shall construct a ten foot wide paved path to the specifications of the VILLAGE for a route extending from the southwestern property boundary north to the edge of the delineated wetland. Easement for the path is noted on the CSM.

4. DEVELOPER shall install all planned improvements in accordance with the approved plan of said DEVELOPMENT and the plans and specifications on file in the VILLAGE Clerk's office.

5. The date for completion of these improvements shall be determined between the parties, but in no case shall be later than November 15, 2016, or as extended by the VILLAGE Board.

6. DEVELOPER shall furnish "as-built" plans showing changes from the construction plans, pursuant to specifications approved by the VILLAGE Engineer. Said "as-builts" shall be on reproducible Mylar and digital file, and shall include field locations and hydrant valves and curb stops, if any.

7. Contractors working on the development are required to clean up all mud, dirt, stone or debris on the streets, sidewalks, and paths no later than the end of each working day. In addition, the DEVELOPER shall have ultimate responsibility for cleaning up any and all mud, dirt, stone or debris on the streets until such time as the final lift of asphalt has been installed by the DEVELOPER and Final Acceptance is granted by the VILLAGE Board. The VILLAGE shall make a reasonable effort to require the contractor, who is responsible for placing the mud, dirt, stone or debris on the street, sidewalk, and path, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER shall clean up the streets, sidewalk, and path within twenty-four (24) hours after receiving a notice from the VILLAGE. If said mud, dirt, stone or debris is not cleaned up after notification, the VILLAGE will do so at the DEVELOPER's expense, at the option of the VILLAGE.

B. SANITARY SEWER:

DEVELOPER shall, at its sole cost and expense, complete, or cause the completion of, the grading, construction, and provision of any necessary improvements to the sanitary sewer system to serve the DEVELOPMENT as required by the VILLAGE

all as shown on and in accordance with approved plans and specifications and subject to the following:

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER's Engineer that the sanitary sewer plans are in conformance with all Federal, State and VILLAGE of Sussex specifications, regulations, ordinances and guidelines.
2. To construct, furnish, install and provide a complete sewerage system for the SUBJECT LANDS, all in accordance with the plans, specifications and drawings on file in the VILLAGE Clerk's office and all applicable Federal, State and VILLAGE of Sussex ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the VILLAGE of Sussex and as approved by the VILLAGE Engineer.
3. DEVELOPER shall furnish "as-built" plans of the sanitary sewage system for the SUBJECT LANDS, including locations of laterals to lot lines, pursuant to specifications that must be approved by the VILLAGE Engineer prior to the issuance of building permits. Said "as built" plans shall be on reproducible Mylar and digital file, and shall include field locations, if any.
4. The sanitary sewer system for the SUBJECT LANDS shall be televised and the DEVELOPER shall be responsible for the repair of any defects as determined by the VILLAGE Engineer, and to supply the video tape to the VILLAGE, and clean all sewer lines in accordance with accepted sanitary engineering standards prior to the acceptance of the improvements by the VILLAGE.

C. WATER:

DEVELOPER shall, at its sole cost and expense, complete, or cause the completion of, the grading, construction, and provision of any necessary improvements to the water system to serve the DEVELOPMENT as required by the VILLAGE all as shown on and in accordance with approved plans and specifications and subject to the following:

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER's Engineer that the water plans are in conformance with all Federal, State and VILLAGE of Sussex specifications, regulations, ordinances and guidelines.
2. To construct, furnish, install and provide a complete water for the SUBJECT LANDS, all in accordance with the plans, specifications and drawings on file in the

VILLAGE Clerk's office and all applicable Federal, State and VILLAGE of Sussex ordinances, specifications, regulations and guidelines for the construction of water systems in the VILLAGE of Sussex and as approved by the VILLAGE Engineer.

3. DEVELOPER shall furnish "as-built" plans of the water system for the SUBJECT LANDS, including locations of laterals to lot lines, pursuant to specifications that must be approved by the VILLAGE Engineer prior to the issuance of occupancy permits. Said "as built" plans shall be on reproducible Mylar and digital file, and shall include field locations, hydrant valves and curb stops, if any.

4. Prior to Occupancy Permit the Hydrants shall be sandblasted and repainted at DEVELOPER's cost to address any damage done to the paint of the Hydrant by DEVELOPMENT.

5. Developer shall provide a hydrant easement and maintenance agreement for the subject property to ensure proper maintenance and access to the hydrant is maintained. Said easement and maintenance agreement shall be attached and incorporated herein as **Exhibit E**, hereinafter known as "Hydrant Easement and Maintenance Agreement".

D. SURFACE AND STORMWATER DRAINAGE:

DEVELOPER shall at its sole cost and expense, complete or cause the completion of the construction, installation, and provision of adequate facilities for storm and surface water drainage in accordance with the plans and specifications subject to the following:

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER'S Engineer or Surveyor that all surface and stormwater drainage facilities and erosion control plans are in conformance with all federal, state, county and VILLAGE regulations, guidelines, specifications, laws and ordinances, and written proof that the VILLAGE Engineer and the Wisconsin Department of Natural Resources, if applicable, have reviewed and approved said plans.

2. Adequate facilities for surface and stormwater drainage shall be provided for the DEVELOPMENT with adequate capacity to transmit the anticipated flow from the development and adjacent property, in accordance with all plans and specifications on file in the VILLAGE Clerk's office, and all applicable federal, state, county and VILLAGE regulations, guidelines, specifications, laws and ordinances, and as reviewed and approved by the VILLAGE Engineer and the

Wisconsin Department of Natural Resources, if applicable, including where necessary as determined by the VILLAGE Engineer, curb, gutter, storm sewers, catch basins and infiltration/retention/ detention basins.

3. DEVELOPER agrees that the site grading and construction of surface and stormwater drainage facilities shall be completed before any occupancy permit may be granted.

4. To maintain roads free from mud and dirt from construction of the DEVELOPMENT.

5. DEVELOPER, as owner, upon transfer of ownership, his heirs, successors and assigns running with the SUBJECT LANDS shall be responsible for the maintenance, operation, and replacement of all storm/surface water facilities (including detention and retention facilities and appurtenant equipment) as set forth in the VILLAGE approved Stormwater Management Practices Maintenance Agreement attached hereto as **EXHIBIT F**. This includes, but is not limited to, the responsibility for, on a routine and emergency basis, as needed, conducting all dredging and/or cleaning of the storm/surface water facilities and equipment to assure that they perform in accordance with the approved plans and specifications. Developer shall have the Storm water Practices Maintenance Agreement recorded in the form of a deed restriction in a form approved by the Village Attorney on the property prior to the issuance of any building permit.

6. DEVELOPER shall clean all storm sewers, if any, prior to issuance of an occupancy permit.

7. The VILLAGE retains the right to require DEVELOPER to install additional surface and stormwater drainage measures if it is determined by the VILLAGE Engineer within the first year after the surface and stormwater drainage plan as designed and/or constructed in the DEVELOPMENT on the SUBJECT LANDS have been established with occupancy permits does not provide reasonable stormwater drainage within the DEVELOPMENT and surrounding area.

8. To furnish "as-built" plans of the entire drainage system, including finished grades of infiltration retention and detention facilities pursuant to specifications approved by the VILLAGE Engineer prior to the issuance of occupancy permits. Said "as built" plans shall be on reproducible Mylar and digital file, and shall include field locations of all drainage improvements and hydrant valves and curb stops, if any.

E. GRADING, EROSION AND SEDIMENT CONTROL:

DEVELOPER shall, at its sole cost and expense, grade, and maintain all required erosion and sediment control measures on the SUBJECT LANDS in accordance with the approved plans and specifications on file with the VILLAGE Clerk subject to the following:

1. Prior to commencing site grading and excavation, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER'S Engineer or Surveyor that said plan, once implemented, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including proof of notification of land disturbances to the State of Wisconsin Department of Natural Resources, if applicable, and written proof that the VILLAGE Engineer and the Wisconsin Department of Natural Resources, and the Army Corps of Engineers, if applicable, have approved said plans.

2. 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 VILLAGE Engineer, the Wisconsin Department of Natural Resources, and Army Corps of Engineers, if applicable.

3. All disturbed areas shall be restored to the satisfaction of the VILLAGE Engineer within seven (7) days of disturbance.

F. LANDSCAPING AND SITE WORK:

DEVELOPER, as owner upon transfer of ownership, his heirs, successors and assigns running with the SUBJECT LANDS shall, at its sole cost and expense, grade, seed, and otherwise landscape the SUBJECT LANDS subject to the following:

1. DEVELOPER shall grade, seed and otherwise landscape the SUBJECT LANDS in accordance with the approved plans and specifications on file with the VILLAGE Clerk.

2. DEVELOPER shall provide and plant all trees/shrub plantings identified on the landscape and Tree preservation plans as set forth in **EXHIBIT G**. Said plans may be amended if approved by the VILLAGE upon request of the DEVELOPER.

3. DEVELOPER shall preserve to the maximum extent possible existing trees, shrubbery, vines, and grasses not actually lying on the public streets, drainage

ways, building foundation sites, private driveways, soil absorption waste disposal areas, paths and trails by use of sound conservation practices.

4. DEVELOPER, as required by the VILLAGE, shall remove and lawfully dispose of buildings, destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish.

5. Landscaping plan approval and removal of unwanted items, including buildings, will be completed and certified as complete by the VILLAGE Engineer prior to the issuance of any building permits.

6. DEVELOPER shall delineate all wetlands that are on or adjacent to private lots by means of cedar posts, as approved by the VILLAGE staff prior to the issuance of building permits.

7. The VILLAGE has the right to trim and remove any features which would interfere with safe operation and maintenance of the VILLAGE right-of-ways and drainage ways.

H. STREET SIGNS AND TRAFFIC CONTROL SIGNS:

DEVELOPER shall, at its sole cost and expense install or cause the installation of all necessary street and traffic control signs on the SUBJECT LANDS subject to the following:

1. Street signs, traffic control signs, culverts, posts and guard rails as required by the VILLAGE or County for the DEVELOPMENT of the SUBJECT LANDS shall be obtained and placed by the VILLAGE, or by the DEVELOPER with approval of the VILLAGE, and the cost thereof shall be paid by the DEVELOPER.

2. All traffic control signs and street signs, as required by the VILLAGE, will be installed within five (5) working days of the placement of the first lift of asphalt.

I. ADDITIONAL IMPROVEMENTS:

DEVELOPER hereby agrees that if, at any time after plan approval and during construction, the VILLAGE Engineer determines that modifications to the plans including additional improvements such as additional drainage ways, erosion control measures, and surface and stormwater management measures 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 as originally set forth by the DEVELOPER, the VILLAGE is authorized to order DEVELOPER, at DEVELOPER'S expense, to implement the same. If DEVELOPER fails to construct the additional improvement within the time

established by the VILLAGE under the circumstances, the VILLAGE may cause such work to be carried out and shall charge against the financial guarantee held by the VILLAGE pursuant to this agreement.

1. If there is any above ground utilities (private or public) on the subject property they shall be buried to the extent technically feasible per Village Ordinance at the sole cost of DEVELOPER.

SECTION II. TIME OF COMPLETION OF IMPROVEMENTS:

The improvements set forth in Section I shall be completed by the DEVELOPER in total within twenty four (24) months of the date of this agreement being signed except as otherwise provided for in this agreement.

SECTION III. FINAL ACCEPTANCE.

Throughout this agreement, various stages of the development will require approval by the VILLAGE. "Final Acceptance" as used herein, however, shall be the ultimate acceptance of all of the improvements in the completed development as a whole, and shall be granted specifically by separate resolution of the VILLAGE Board. The two-year guarantee period provided for in this agreement shall not commence to run until Final Acceptance. The issuance of building permits and approval of various items of development shall not commence the two-year guarantee period.

SECTION IV. DEDICATION OF IMPROVEMENTS:

Subject to all of the other provisions of this agreement, the DEVELOPER and OWNER shall, without charge to the VILLAGE, upon completion of the above described improvements, unconditionally give, grant, convey and fully dedicate the public improvements to the VILLAGE, its successors and assigns, forever, free and clear of all 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. After such dedication, the VILLAGE shall have the right to connect or integrate other improvements as the VILLAGE decides, with no payment or award to, or consent required of, the DEVELOPER or OWNER.

Dedication shall not constitute acceptance of any improvement by the VILLAGE Board. All improvements will be accepted by the VILLAGE Board by separate resolution at such time as such improvements are in acceptable form and according to the VILLAGE specifications. Said resolution shall be recorded, if needed, with the Waukesha County Register of Deeds. DEVELOPER or OWNER will furnish proof to the VILLAGE, prior

to the dedication required, that the public land and improvements proposed for dedication are free of all liens, claims and encumbrances, including mortgages.

SECTION V. ACCEPTANCE OF WORK AND DEDICATION:

When the DEVELOPER shall have completed the improvements herein required and shall have dedicated the same to the VILLAGE as set forth herein, the same shall be accepted by the VILLAGE Board if said improvements have been completed as required by this agreement and as required by all federal, state, county or VILLAGE guidelines, specifications, regulations, laws and ordinances and approved by the VILLAGE Engineer.

SECTION VI. APPROVAL BY VILLAGE NOT TO BE DEEMED A WAIVER.

The ultimate responsibility for the proper design and installation of streets, water facilities, drainage facilities, ditches, landscaping and all other improvements are upon the DEVELOPER. The fact that the VILLAGE or its engineer, or its attorney, or its staff may approve a specific project 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.

SECTION VII. GUARANTEES OF IMPROVEMENTS:

A. Guarantee. DEVELOPER shall guarantee after Final Acceptance, the public improvements described in Section I hereof, against defects due to faulty materials or workmanship, provided that such defects appear within a period of two years from the date of Final Acceptance. The DEVELOPER shall pay for any damages to VILLAGE property and/or improvements resulting from such faulty materials or workmanship. This guarantee shall not be a bar to any action the VILLAGE might have for negligent workmanship or materials. Wisconsin law on negligence shall govern such situations. If the DEVELOPER fails to pay for any damages or defects to VILLAGE property and/or improvements, and the VILLAGE is required to draw against the cash or letter of credit on file with the VILLAGE, the DEVELOPER is required to replenish said monies up to the aggregate amount of ten percent (10%) of the total cost of all improvements.

B. Obligation to Repair. The DEVELOPER shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of the DEVELOPER'S guarantee and shall leave the improvements in good and sound condition, satisfactory to the VILLAGE Board at the expiration of the guarantee period.

C. Notice of Repair. If during said guarantee period, the improvements shall, in the reasonable opinion of the VILLAGE Staff, require any repair or replacement which, in their 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 VILLAGE 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 VILLAGE in the aforementioned notification, after notice has been sent as provided herein, the VILLAGE Board may cause such work to be done, but has no obligation to do so, either by contract or otherwise, and the VILLAGE Board may draw upon such guarantee security to pay any costs or expenses incurred in connection with such repairs or replacements. Should the VILLAGE Board incur costs and expenses in repairing or replacing any portion of the improvements covered by this guarantee in excess of the amount of the guarantee security, then the DEVELOPER shall pay any excess cost or expense incurred in the correction process within 30 days of date of invoice by Village.

D. Maintenance Prior to Acceptance.

1. All public improvements shall be maintained by the DEVELOPER so they conform to the approved plans and specifications at the time of their Final Acceptance by the VILLAGE Board. This maintenance shall include routine maintenance. In cases where emergency maintenance is required, the VILLAGE Board 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 by DEVELOPER within thirty (30) days of invoice by the VILLAGE. The DEVELOPER'S obligation to maintain all improvements shall expire at the expiration of the guarantee period.
2. Street sweeping and dust suppression shall be done by the DEVELOPER on a regular basis as needed to ensure a reasonably clean and safe roadway until approved by the VILLAGE Administrator. Should the DEVELOPER fail to meet this requirement, the VILLAGE Board will cause the work to be done and will bill the DEVELOPER on a time and material basis. Said bill shall be paid by DEVELOPER within thirty (30) days of invoice by the VILLAGE.
3. In the event drainage problems arise within the SUBJECT LANDS or related activities on the SUBJECT LANDS, the DEVELOPER shall correct such problems to the satisfaction of the VILLAGE Staff. Such correction measures shall include, without limitation because of enumeration, cleaning of soil, loose aggregate and construction debris from culverts, drainage ditches and streets; dredging and reshaping of siltation or retention ponds; replacing of siltation fences; sodding and seeding; construction of diversion ditches, ponds and siltation traps; and restoration of all disturbed areas. This responsibility shall continue until such time as the roads, ditches, and other disturbed areas have become adequately vegetated and the VILLAGE Board is satisfied that the DEVELOPER has restored all areas which were disturbed because of this development.

SECTION VIII. VILLAGE RESPONSIBILITY FOR IMPROVEMENTS:

The VILLAGE shall not be responsible to perform repair, maintenance, or snow plowing, unless otherwise approved by the VILLAGE Administrator, on any public improvements until accepted by the VILLAGE Board.

SECTION IX. RISK OF PROCEEDING WITH IMPROVEMENTS PRIOR TO APPROVALS OF CSM:

If a DEVELOPER proceeds with the installation of public improvements or other work on the site prior to approval of the CSM, it proceeds at its own risk as to whether or not the CSM will receive all necessary approvals. The DEVELOPER, prior to commencement of the installation of public improvements or other work on site, shall notify the VILLAGE of the DEVELOPER'S intention to proceed with the installation of public improvements or other work on site, prior to approval of the CSM. Additionally, DEVELOPER shall make arrangements to have any public improvements and/or other work on site inspected by the VILLAGE Engineer.

SECTION X. FINANCIAL GUARANTEE:

Prior to the execution of this agreement by the VILLAGE BOARD, the DEVELOPER shall file with the VILLAGE cash or a letter of credit (**EXHIBIT H**) setting forth terms and conditions in a form approved by the VILLAGE Attorney in the amount as approved by the VILLAGE Engineer as a guarantee that the DEVELOPER will perform all terms of this agreement no later than one year from the signing of this agreement except as otherwise set forth in this agreement. If at anytime:

- A. DEVELOPER is in default of any aspect of this agreement, or
- B. DEVELOPER does not complete DEVELOPER's obligations, or cause the completion of DEVELOPER's obligations, concerning the installation of the improvements within the time period(s) set forth in this Agreement unless otherwise extended by this agreement or by action of the VILLAGE Board, or
- C. DEVELOPER is, at any time, in default of any obligation due under Section XIX of this Agreement, or
- D. DEVELOPER fails to receive all necessary approvals for, and record the CSM for the DEVELOPMENT with the Register of Deeds of Waukesha County on or before November 1, 2017,

Developer shall be deemed in violation of this agreement and the VILLAGE Board shall have the authority to restrict disbursement of financial incentives or portions thereof.

The amount of the financial guarantee may be reduced from time to time as and to the extent that the portion of work required under this Agreement is completed and paid for, provided that the remaining financial incentive is sufficient to secure payment for any remaining improvements and also provided that no reduction shall occur until it is approved in writing by the VILLAGE Administrator.

The VILLAGE shall be empowered in addition to its other remedies, without notice or hearing, to impose a special charge for the amount of said completion costs, upon each and every unit in the development payable with the next succeeding tax roll.

SECTION XI. OCCUPANCY PERMIT:

It is expressly understood and agreed that unless otherwise expressly agreed to in writing by the VILLAGE Administrator upon request by the DEVELOPER, no Occupancy permit shall be issued for any building unless otherwise authorized by the VILLAGE Administrator, until the VILLAGE Engineer has determined that:

- A. The installation of the public improvements serving the SUBJECT LANDS for which a building permit is requested has been completed and accepted by the VILLAGE Board.
- B. The site grading and construction of surface and stormwater drainage facilities required to serve such buildings are completed, are connected with an operating system as required herein, are cleaned as needed, and are accepted by the VILLAGE Board.
- C. All landscaping and removal of unwanted items, including buildings, has been certified as complete by the VILLAGE Engineer.
- D. All required grading plans have been submitted to, reviewed by and approved by the VILLAGE Engineer.
- E. DEVELOPER has paid in full all permit fees, outstanding assessments against the SUBJECT LANDS, and reimbursement of administrative costs as required by this agreement.
- F. DEVELOPER has prepared appropriate deed restrictions and or easements which are approved by the VILLAGE, filed with the VILLAGE Clerk and recorded with the Register of Deeds.
- G. All destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish are removed from the development and disposed of lawfully.

H. All required "as built" plans for the SUBJECT LANDS have been submitted and approved by the VILLAGE Engineer.

I. All public and private utilities have been installed in the SUBJECT LANDS, including (unless waived by the VILLAGE Administrator), the path, sidewalks, sanitary sewer system, and the water system.

J. DEVELOPER is not in default of any aspect of this agreement as determined by the VILLAGE Administrator.

SECTION XII. RESERVATION OF RIGHTS AS TO ISSUANCE OF OCCUPANCY PERMIT:

The VILLAGE reserves the right to withhold issuance of an Occupancy Permit if DEVELOPER is in violation of this agreement.

SECTION XIII. MISCELLANEOUS REQUIREMENTS

DEVELOPER and/or OWNER shall:

A. EASEMENTS:

OWNER shall provide any easements including vision easements on SUBJECT LANDS deemed necessary by the VILLAGE Engineer before the CSM is signed and such easements shall be along lot lines if at all possible. In particular easements may be necessary for the sidewalk and or path, and stormwater, and private utilities.

B. MANNER OF PERFORMANCE:

Cause all construction called for by this agreement to be carried out and performed in a good and workmanlike manner.

C. SURVEY MONUMENTS:

Properly place and install any lot, block or other monuments required by State Statute, VILLAGE Ordinance or the VILLAGE Engineer.

D. STORMWATER MANAGEMENT PRACTICES MAINTENANCE AGREEMENT:

Execute and record said agreement. Said language, once approved shall be recorded at the Waukesha County Register of Deeds and attached herein as **EXHIBIT F**.

E. GRADES:

Prior to the issuance of a building permit the DEVELOPER or their agent shall furnish to the Building Inspector of the VILLAGE a copy of the stake out survey showing the street grade in front of the lot, the finished yard grade, the grade of all four corners of the

building, and the building corner grades of the adjacent buildings where applicable, as existing and as proposed.

F. RESERVE CAPACITY ASSESSMENTS - SANITARY SEWER:

As provided in the VILLAGE Land Division Ordinance, the DEVELOPER, as owner, upon transfer of ownership, his heirs, successors and assigns running with the Subject Lands agrees to pay a reserve capacity assessment to be used for the costs of reserve capacity created by the VILLAGE in the VILLAGE's sanitary sewerage collection and treatment facilities for the benefit of the DEVELOPER. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII, Wisconsin Statutes. The reserve capacity assessments against the above-described property shall be in an amount established by the VILLAGE's Land Division Ordinance and including annual increases.

The DEVELOPER hereby waives, pursuant to Section 66.0703(7) (b), Wisconsin Statutes, any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of special assessments [including, but not limited to, the notice and hearing requirements of Chapter 66 Subchapter VII] and agrees that the municipality may proceed immediately to levy the special assessments as outlined herein.

The DEVELOPER further waives its right to appeal from the special assessments and stipulates that the amount of special assessment levied against its property has been determined on a reasonable basis and that the benefits to its property from the proposed improvements exceed the amount of the special assessment against such property. In addition, the DEVELOPER waives its right under Section 66.0627 and agrees to promptly pay any special charges which may be levied against its property. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII and Section 66.0627, Wisconsin Statutes.

G. RESERVE CAPACITY ASSESSMENTS - WATER:

The DEVELOPER, as owner, upon transfer of ownership, his heirs, successors and assigns running with the Subject Lands agrees to pay a reserve capacity assessment as required in Section 22.23(2) (b) and other relevant sections of the VILLAGE Code, to be used for the costs of reserve capacity created by the VILLAGE in the VILLAGE's water system for the benefit of the DEVELOPER. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII, Wisconsin Statutes. The reserve capacity assessments against the above-described property shall be an amount established in the VILLAGE's Land Division Ordinance and is subject to annual increases.

The DEVELOPER hereby waives, pursuant to Section 66.0703(7) (b), Wisconsin Statutes, any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of special assessments [including, but not limited to, the notice and hearing requirements of Chapter 66 Subchapter VII] and agrees that the municipality may proceed immediately to levy the special assessments as outlined herein. The DEVELOPER further waives its right to appeal from the special assessments and stipulates that the amount of the special assessments levied against its property has been determined on a reasonable basis and that the benefits to its property from the proposed improvements exceed the amount of the special assessment against such property.

In addition, the DEVELOPER waives its rights under Section 66.0627 and agrees to promptly pay any special charges which may be levied against its property. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII and Section 66.0627, Wisconsin Statutes.

H. UNDERGROUND UTILITIES:

Install all electrical, telephone, cable and gas utilities underground. Coordination of installation and all costs shall be the responsibility of the DEVELOPER.

I. PERMITS:

Provide and submit to the VILLAGE requesting the same, valid copies of any and all governmental agency permits.

J. REMOVAL OF TOPSOIL:

DEVELOPER agrees that no topsoil shall be removed from the SUBJECT LANDS without approval from the VILLAGE Engineer.

K. PREVAILING WAGE RATES AND HOURS OF LABOR:

If any aspect of the DEVELOPMENT involves a project of public works that is regulated by Wisconsin Statutes requiring Prevailing wage rates then: (1) DEVELOPER shall pay wage rates to its employees providing work on the DEVELOPMENT not less than the prevailing hourly wage rate as described and regulated pursuant to such statutes and related laws, and (2) DEVELOPER shall comply with the prevailing hours of labor as described and regulated pursuant to such statutes and related laws; and (3) DEVELOPER shall fully comply with reporting obligations, and all other requirements of such laws; and (4) DEVELOPER shall ensure that the DEVELOPER's contractors also fully comply with such laws. DEVELOPER's General Indemnity obligation of this Agreement shall apply to any claim that alleges that work contemplated by this Agreement is being done, or has been done, in violation of prevailing wage rates, prevailing hours of labor, or Wisconsin Statutes Section 66.0903, for any work arising out of this Agreement. If at any time the DEVELOPER per this Agreement is obligated to make public improvements and is

subject to Wis. Stats 66.0903, the Village, if requested by the DEVELOPER, shall make inquiry of the Wisconsin Department of Workforce Development as to the prevailing hours and costs for labor.

L. NOISE:

Make every effort to minimize noise, dust and similar disturbances, recognizing that the SUBJECT LANDS are located near existing residences. Construction of improvements shall not begin before 7:00 a.m. during weekdays and Saturdays, and 9:00 a.m. on Sundays. Construction of improvements shall not continue beyond 7:00 p.m. during weekdays and Saturdays, and 5:00 p.m. on Sundays.

M. DEBRIS:

Have ultimate responsibility for cleaning up debris that has blown from buildings under construction within the SUBJECT LANDS until such time as all improvements have been installed and accepted by the VILLAGE Board. The VILLAGE shall make a reasonable effort to require the contractor, who is responsible for the debris, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER and/or subject property owner shall clean up the debris within seventy-two (72) hours after receiving a notice from the VILLAGE Engineer. If said debris is not cleaned up after notification, the VILLAGE will do so at the DEVELOPER'S and/or subject property owner's expense.

N. DUTY TO CLEAN ROADWAYS:

DEVELOPER shall be responsible for cleaning up the mud and dirt on the roadways until such time as the final lift of asphalt has been installed. The DEVELOPER shall clean the roadways within twenty four (24) hours after receiving a notice from the VILLAGE Engineer. If said mud, dirt and stone is not cleaned up after notification, the VILLAGE will do so at the DEVELOPER's expense. The VILLAGE will do its best to enforce existing ordinances that require builders to clean up their mud from construction.

O. PUBLIC CONSTRUCTION PROJECTS:

If any aspect of the development involves a public construction project subject to the State law, all requirements of the State Public Construction Bidding Law must be satisfied, including but not limited to, providing a performance bond.

P. ZONING CODE:

DEVELOPER acknowledges that the lands to be developed are subject to the VILLAGE of Sussex Zoning Code.

Q. NO AGRICULTURE USE

The DEVELOPER shall not permit any open space or undeveloped lands within the SUBJECT LANDS to be used for any agricultural uses as defined in Tax 18 of the Wisconsin Administrative Code.

SECTION XV. PAYMENT OF COSTS, INSPECTION & ADMINISTRATIVE FEES:

DEVELOPER shall pay and reimburse the VILLAGE promptly upon billing for all fees, expenses, costs and disbursements which shall be incurred by the VILLAGE in connection with this development or 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 and legal, administrative and fiscal work. VILLAGE employee costs shall be based on regular VILLAGE pay rates (or Engineering and administrative overtime, if applicable) plus 60% on the hourly rate for overhead and fringe benefits for any time actually spent on the project. Any costs for outside consultants shall be charged at the rate the consultant charges the VILLAGE. Any such charge not paid by DEVELOPER within thirty (30) days of being invoiced may be charged against the financial guarantee held by the VILLAGE pursuant to this agreement, or assessed against the development land as a special charge pursuant to §66.0627, Wis. Stats.

SECTION XVI. METHOD OF IMPROVEMENT:

DEVELOPER hereby agrees to engage contractors for all work performed by the DEVELOPER under this agreement who are qualified to perform the work. DEVELOPER further agrees to use materials and make the various installations in accordance with the approved plans and specifications, which are made part of this agreement by reference and including those standard specifications as the VILLAGE Board or its Commissions may have adopted and published prior to this date.

SECTION XVII. 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 agrees to accept tender of defense and 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 VILLAGE, its officers, agents, employees and independent contractors arising out of this agreement by any party or parties. DEVELOPER shall also name as additional insured on its general liability insurance the VILLAGE, its officers, agents, employees and any independent contractors hired by the VILLAGE to perform services as to this development and give the VILLAGE evidence of the same upon request by the VILLAGE. It is understood and agreed that the insurance coverage and limits required above shall not limit the extent of DEVELOPER's responsibilities and liabilities pursuant to this Agreement or imposed by law.

SECTION XVIII. VILLAGE RESPONSIBILITY:

A. VILLAGE agrees to allow the DEVELOPER to connect to the VILLAGE of Sussex's municipal water system and sewerage system at such time as the water system and sanitary sewer system required herein has been dedicated to and accepted by the VILLAGE.

SECTION XIX. INSURANCE:

DEVELOPER, its contractors, suppliers and any other individual working on the SUBJECT LANDS in the performance of this agreement shall maintain at all times until the expiration of the guarantee period, insurance coverage in the forms and in the amounts as required by the VILLAGE.

SECTION XX. EXCULPATION OF VILLAGE CORPORATE AUTHORITIES:

The parties mutually agree that the VILLAGE President of the VILLAGE Board, and/or the VILLAGE Clerk, 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.

SECTION XXI. GENERAL CONDITIONS AND REGULATIONS:

All provisions of the VILLAGE Ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be a part of this agreement as fully as if set forth at length herein. This agreement and all work and improvements required hereunder shall be performed and carried out in strict accordance with and subject to the provisions of said Ordinances.

SECTION XXII. ZONING:

The VILLAGE does not guarantee or warrant that the SUBJECT LANDS will not at some later date be rezoned, nor does the VILLAGE herewith agree to rezone the lands into a different zoning district. It is further understood that any rezoning that may take place shall not void this agreement.

SECTION XXIII. COMPLIANCE WITH CODES AND STATUTES:

DEVELOPER shall comply with all current and future applicable codes of the VILLAGE, County, State and federal government and, further, DEVELOPER shall follow all current and future lawful orders of any and all duly authorized employees and/or representatives of the VILLAGE, County, State or federal government.

SECTION XXIV. CSM

DEVELOPER acknowledges that the SUBJECT LANDS are each subject to a conditional CSM approval by the VILLAGE. The DEVELOPER further agrees that it is bound by

these conditions. At such time as the CSM's are approved, if they are, the conditional CSM approvals shall be attached hereto and incorporated herein as **EXHIBIT C**. If there is a conflict between the conditions as forth in said conditional approvals and the Developer's Agreement, the more restrictive shall apply.

SECTION XXV. AGREEMENT FOR BENEFIT OF PURCHASERS:

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

SECTION XXVI. ASSIGNMENT:

DEVELOPER and OWNER shall not assign this agreement without the written consent of the VILLAGE. If required by the VILLAGE, the assignee must agree to all terms and conditions of this document in writing.

SECTION XXVII. PARTIES BOUND:

DEVELOPER and OWNER or their assignees shall be bound by the terms of this agreement or any part herein as it applies to any phase of the development.

SECTION XXVIII. HEIRS & ASSIGNS:

This agreement is binding upon the DEVELOPER, OWNER, their successors and assigns, and any and all future owners of the SUBJECT LANDS. This section allows for VILLAGE enforcement of the terms and conditions of this agreement against all such successors. This section does not, however, grant rights to such successors absent VILLAGE written consent, as described in Section XXVI.

SECTION XXIX. LEGAL RELATIONSHIP:

Nothing in this Agreement shall be construed to create an employer/employee relationship, joint employer, a joint venture or partnership relationship, or a principal/agent relationship.

SECTION XXX. SURVIVAL:

All agreements, representations, or warranties made herein shall survive the execution of this Agreement, performance of this Agreement, and the making of the grants hereunder. This Agreement shall be binding upon the Parties their respective heirs, personal representatives, executors, or successors and assigns.

SECTION XXXI. OWNERSHIP OF SUBJECT LANDS:

DEVELOPER owns the SUBJECT LANDS as of the date of this Agreement and has full power and authority to execute this Agreement.

SECTION XXXII. PARAGRAPH HEADINGS:

The paragraph headings in this Agreement are inserted for convenience only and are not intended to be part of, or to affect, the meaning or interpretation of this Agreement.

SECTION XXXIII. INCORPORATION OF RECITALS:

The recitals to this Agreement are hereby incorporated by reference and made a part of Agreement, and are intended to affect the meaning and/or interpretation of this Agreement.

SECTION XXXIV. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

SECTION XXXV. INTERPRETATION:

This Agreement has been subject to significant drafting by both VILLAGE and DEVELOPER and this Agreement and its wording shall not be construed against the VILLAGE as the drafter of the language should a disagreement arise as to interpretation.

SECTION XXXVI. ENTIRE AGREEMENT:

This Agreement constitutes the entire understanding and agreement between the parties. In the event of a conflict between this Agreement and the VILLAGE Code of Ordinances or any other enabling code, law, or regulation in effect at the time of this Agreement or thereafter, the terms and conditions of the VILLAGE Code of Ordinances in effect at the time of the acceptance by DEVELOPER shall be controlling. If this Agreement is silent with respect to any specific issue, the VILLAGE Code of Ordinances and any applicable Federal and State Statutes shall govern.

SECTION XXXVII. RECORDING OF AGREEMENT:

This Agreement, or a Memorandum thereof, shall be recorded with the Register of Deeds for Waukesha County.

SECTION XXXVIII. AMENDMENTS:

VILLAGE and the DEVELOPER, by mutual consent, may amend this Developer's Agreement at any meeting of the VILLAGE Board. The VILLAGE shall not, however, consent to an amendment until after first having received a recommendation from the VILLAGE'S Plan Commission

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

Sussex IM Real Estate LLC

By: _____

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this _____ day of _____, 2016, the above named _____, Authorized Signatory of Sussex IM Real Estate LLC to me known to be the person who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

VILLAGE OF SUSSEX
WAUKESHA COUNTY, WISCONSIN

VILLAGE President

VILLAGE Clerk-Treasurer

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this ____ day of _____, 2016, the above-named Greg Goetz, VILLAGE President, and Casen J. Griffiths VILLAGE Clerk-Treasurer, of the above-named municipal corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such VILLAGE President and VILLAGE Clerk-Treasurer of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority and pursuant to the authorization by the VILLAGE Board from their meeting on the ____ day of _____, 2016.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

APPROVED AS TO FORM:

VILLAGE Attorney

**DEVELOPER'S AGREEMENT FOR THE SUSSEX TOWN CENTER
DEVELOPMENT PHASE 2
VILLAGE OF SUSSEX, WAUKESHA COUNTY, WISCONSIN**

THIS AGREEMENT made this _____ day of _____, 2015, between **Concord Property Management, LLC**, a Wisconsin Limited Liability Company, with offices N30 W28799 W. Lakeside Drive, Pewaukee, Wisconsin, 53072, hereinafter called "DEVELOPER", and the VILLAGE of Sussex in the County of Waukesha and the State of Wisconsin, hereinafter called the "VILLAGE".

RECITALS:

WHEREAS, the DEVELOPER owns land for development in the VILLAGE, said land being described on **EXHIBIT A** attached hereto and incorporated herein, hereinafter called "SUBJECT LANDS"; and

WHEREAS, the DEVELOPER desires to develop a portion of the SUBJECT LANDS by means of creating five lots with an outlot for stormwater to allow for the construction of the approximately 2,100 square foot Taco Bell with associated parking lot on Lot 1 of CSM 11349, a potential 4,000 square foot bank or similar retail building with associated parking lot on Lot 2 of CSM 11349, which was Phase 1 of the project, and Phase 2 includes an approximate 5,000 square foot Kwik Trip with car wash on Lot 1 of phase 2, and a future commercial development on lot 2 of phase 2 with a cell tower relocated to Lot 3 of phase 2 as illustrated on the Site Plan and set forth as **EXHIBIT B**, attached hereto and incorporated herein, hereinafter called "DEVELOPMENT" by use of the standard regulations as set forth in Wisconsin Statutes and the municipal ordinance regulating land division and development; and

WHEREAS, Wisconsin Statutes provides that as a condition of approval, the governing body of a municipality within which the SUBJECT LANDS lie may require that the DEVELOPER make and install any public improvements reasonably necessary and/or that the DEVELOPER provide financial security to ensure that the DEVELOPER will make these improvements within a reasonable time; and

WHEREAS, said SUBJECT LANDS are presently zoned B-2, Regional Business District, with a PDO, which allows the above-described DEVELOPMENT with portions as a permitted use and portions as a conditional use; and

WHEREAS, the DEVELOPER may be required to grant additional easements over a part of the SUBJECT LANDS for sanitary sewer, storm sewer and water main; and

WHEREAS, the DEVELOPER and VILLAGE desire to enter into this agreement in order to ensure that the DEVELOPER will make and install all public improvements which are reasonably necessary and further that the DEVELOPER shall dedicate the public improvements to the VILLAGE, provided that said public improvements are constructed to municipal specifications, all applicable government regulations, this agreement and as required by the VILLAGE Engineer, without cost to the VILLAGE; and

WHEREAS, this agreement is necessary to implement the VILLAGE zoning and land division ordinances; and

WHEREAS, the DEVELOPER agrees to develop SUBJECT LANDS as herein described in accordance with this agreement, conditions approved by the VILLAGE Plan Commission and VILLAGE Board, conditions of certain agencies and individuals in the County, all VILLAGE ordinances and all laws and regulations governing said development; and

WHEREAS, the DEVELOPER will soon be seeking from the Plan Commission and VILLAGE Board of the VILLAGE approval of a Certified Survey Map setting forth the lands to be part of the DEVELOPMENT, along with various easements, restrictions, and conditions of said approval, attached hereto and incorporated herein, hereinafter called "CSM" as **EXHIBIT C**, which shall be attached as approved, if it is.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the DEVELOPER does hereby agree to develop SUBJECT LANDS as follows and as otherwise regulated by VILLAGE ordinances and all laws and regulations governing said development:

SECTION I. IMPROVEMENTS

DEVELOPER shall, at DEVELOPER's sole cost and expense, develop the SUBJECT LANDS and construct the Improvements in accordance with the approved Plans and Specifications incorporated herein as follows:

Improvements for Phase 2 generally include public roadway improvements to STH 164, Main Street, and the Prospect Circle frontage roadway, and the extension of Freiheit Court a new signalized intersection at Main Street, public sidewalk with public cross access easement to the property to the South of the SUBJECT PROPERTY, and through Lot 1 of the proposed CSM and Lots 1 and 2 of CSM No. 11349 to Prospect Circle frontage Roadway, water and sewer lateral (private) for Kwik trip, extension of public sanitary sewer and public water main, stormwater conveyance both public and private, private utility extensions of phone, cable, power, and natural gas, and necessary grading, erosion control to serve Kwik Trip proposed Lot 1 and future development of proposed Lot 2, including the necessary access for the Cell Tower on proposed Lot 3 of phase 2.

A. Roadway and Sidewalk/Path Improvements:

DEVELOPER shall, at its sole cost and expense, complete, or cause the completion of, the grading, construction, and surfacing of any necessary improvements to Freiheit Court, Main Street (Silver Spring/CTY HWY VV), Prospect Circle frontage roadway, and STH 164 as necessitated by any traffic study, State, County, and or the VILLAGE including curbs and gutters and sidewalks, and perform and complete work and improvements, all as shown on and in accordance with approved plans and specifications and subject to the following:

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER'S Engineer or Surveyor that all public street and sidewalk plans are in conformance with all federal, state, county and

VILLAGE specifications, regulations and ordinances, and written proof from the VILLAGE Engineer and other approving authorities evidencing review and approval of said plans.

2. DEVELOPER shall grade and install all planned public streets, improvements and sidewalks including necessary traffic signals in accordance with the approved development plan of said DEVELOPMENT and the plans and specifications on file in the VILLAGE Clerk's office.

3. DEVELOPER shall complete all improvements no later than September 1, 2017 , unless extended by the VILLAGE Board.

4. DEVELOPER shall maintain Village streets, sidewalks, and paths, including snowplowing, unless otherwise approved by the VILLAGE Administrator, until accepted by Resolution by the VILLAGE Board. Once the first lift of asphalt is established VILLAGE will provide snowplowing service for the Village roadways and DEVELOPER shall pay VILLAGE at a rate of \$250 per hour for said plowing service to ensure the roadway is open and safe for public and emergency access until the roadway is accepted by Resolution by the Village Board. The VILLAGE shall provide snow plowing service in a manner consistent with that of the rest of the Village and shall in no way be responsible to DEVELOPER for any damage caused to infrastructure by snow plowing operations. DEVELOPER shall properly ramp any manholes prior to November 1 of each year to ensure safe snow plow operations.

5. DEVELOPER shall furnish "as-built" plans showing changes from the construction plans, pursuant to specifications approved by the VILLAGE Engineer. Said "as-builts" shall be on reproducible Mylar and in digital file, and shall include field locations and hydrant valves and curb stops, if any.

6. Contractors working on the development are required to clean up all mud, dirt, stone or debris on the streets, sidewalks, and paths no later than the end of each working day. In addition, the DEVELOPER shall have ultimate responsibility for cleaning up any and all mud, dirt, stone or debris on the streets until such time as the final lift of asphalt has been installed by the DEVELOPER and Final Acceptance is granted by the VILLAGE Board. The VILLAGE shall make a reasonable effort to require the contractor, who is responsible for placing the mud, dirt, stone or debris on the street, sidewalk, and path, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER shall clean up the streets, sidewalk, and path within twenty-four (24) hours after receiving a notice from the VILLAGE. If said mud, dirt, stone or debris is not cleaned up after notification, the VILLAGE will do so at the DEVELOPER's expense, at the option of the VILLAGE.

7. DEVELOPER shall provide an access easement, for the benefit of cross traffic across proposed Lot 2 of phase 2 to the parcel south of the SUBJECT Lands, and through proposed Lot 1 of phase 2 and Lots 1 and 2 of CSM No. 11349 and to the Prospect Circle frontage roadway from Freiheit Court. Said easement, shall be approved as to form by the

VILLAGE Attorney and attached herein as **Exhibit D**, hereinafter known as Cross Access Easement.

8. DEVELOPER shall provide an Easement, attached as **Exhibit E**, hereinafter known as the "Sidewalk Easement", which shall be established over the public sidewalks to the maximum extent of ten (10) feet off of the edge of the sidewalk towards the Lot where said area falls outside of the proposed right-of-way to ensure the VILLAGE is able to repair the sidewalk.

9. DEVELOPER shall complete improvements on the State and County portions of the roadway system as contemplated by the plans approved by the VILLAGE. If VILLAGE is in anyway obligated to those entities to guarantee or make said improvements or issue the permit application for the same, DEVELOPER shall ensure additional letter of credit amounts under this agreement to protect the VILLAGE from any costs associated with completion of these public, but non-VILLAGE right of way work.

B. SANITARY SEWER:

DEVELOPER shall, at its sole cost and expense, complete, or cause the completion of, the grading, construction, and provision of any necessary improvements to the sanitary sewer system to serve the DEVELOPMENT as required by the VILLAGE all as shown on and in accordance with approved plans and specifications and subject to the following:

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER's Engineer that the sanitary sewer plans are in conformance with all Federal, State and VILLAGE of Sussex specifications, regulations, ordinances and guidelines and written proof that the VILLAGE Engineer has approved said plans.

2. To construct, furnish, install and provide a complete sewerage system for the SUBJECT LANDS, including laterals to lot lines, all in accordance with the plans, specifications and drawings on file in the VILLAGE Clerk's office and all applicable Federal, State and VILLAGE of Sussex ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the VILLAGE of Sussex and as approved by the VILLAGE Engineer.

3. DEVELOPER shall furnish "as-built" plans of the sanitary sewage system for the SUBJECT LANDS, including locations of laterals to lot lines, pursuant to specifications that must be approved by the VILLAGE Engineer prior to the issuance of building permits. Said "as built" plans shall be on reproducible Mylar and digital file, and shall include field locations, if any.

4. The sanitary sewer system for the SUBJECT LANDS shall be televised and the DEVELOPER shall be responsible for the repair of any defects as determined by the VILLAGE Engineer, and to supply the video tape to the VILLAGE, and clean all sewer lines in accordance with accepted sanitary engineering standards prior to the acceptance of the improvements by the VILLAGE.

C. WATER:

DEVELOPER shall, at its sole cost and expense, complete, or cause the completion of, the grading, construction, and provision of any necessary improvements to the water system to serve the DEVELOPMENT as required by the VILLAGE all as shown on and in accordance with approved plans and specifications and subject to the following:

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER's Engineer that the water plans are in conformance with all Federal, State and VILLAGE of Sussex specifications, regulations, ordinances and guidelines and written proof that the VILLAGE Engineer has approved said plans.

2. To construct, furnish, install and provide a complete water system for the SUBJECT LANDS, including laterals to lot lines, all in accordance with the plans, specifications and drawings on file in the VILLAGE Clerk's office and all applicable Federal, State and VILLAGE of Sussex ordinances, specifications, regulations and guidelines for the construction of water systems in the VILLAGE of Sussex and as approved by the VILLAGE Engineer.

3. DEVELOPER shall furnish "as-built" plans showing changes from the construction plans, pursuant to specifications approved by the VILLAGE Engineer. Said "as built" plans shall be on reproducible Mylar and digital file, and shall include field locations and hydrant valves and curb stops, if any.

4. In conjunction with the final lift of asphalt the hydrants shall be sandblasted and repainted at DEVELOPER's cost to address any damage done to the paint of the Hydrant by DEVELOPMENT and building construction.

5. DEVELOPER shall provide an Easement, attached as **Exhibit F**, hereinafter known as the "Water Main Easement", which shall be established not less than 20' wide centered over the water main in any areas where the Water Main including its 20' construction and maintenance zone is not within the right of way, in order that the Village may maintain the public water main in perpetuity. The site shall be so designed that access to this water main is available year around and at all times.

D. SURFACE AND STORMWATER DRAINAGE:

DEVELOPER shall at its sole cost and expense, complete or cause the completion of the construction, installation, and provision of adequate facilities for storm and surface water drainage in accordance with the plans and specifications subject to the following:

A. Lot 2 of phase 2 shall have storm water pond or storm water feature on site to serve said lot. Lot 1 of Phase 2 shall be served by the stormwater facilities already constructed in phase 1 of the development.

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER'S Engineer or Surveyor that all surface and stormwater drainage facilities and erosion control plans are in conformance with all federal, state, county and VILLAGE regulations, guidelines, specifications, laws and ordinances, and written proof that the VILLAGE Engineer and the Wisconsin Department of Natural Resources, if applicable, have reviewed and approved said plans.
2. Adequate facilities for surface and stormwater drainage shall be provided for the DEVELOPMENT with adequate capacity to transmit the anticipated flow from the development and adjacent property, in accordance with all plans and specifications on file in the VILLAGE Clerk's office, and all applicable federal, state, county and VILLAGE regulations, guidelines, specifications, laws and ordinances, and as reviewed and approved by the VILLAGE Engineer and the Wisconsin Department of Natural Resources, if applicable, including where necessary as determined by the VILLAGE Engineer, curb, gutter, storm sewers, catch basins and infiltration/retention/ detention basins.
3. DEVELOPER agrees that the site grading and construction of surface and stormwater drainage facilities shall be completed before any occupancy permit may be granted.
4. To maintain roads free from mud and dirt from construction of the DEVELOPMENT.
5. DEVELOPER by separate agreement, recorded on the CSM as owner, upon transfer of ownership, his heirs, successors and assigns running with the SUBJECT LANDS shall be responsible for the maintenance, operation, and replacement of all storm/surface water facilities (including detention and retention facilities and appurtenant equipment) as set forth in the VILLAGE approved maintenance agreement attached hereto as **EXHIBIT G**. This includes, but is not limited to, the responsibility for, on a routine and emergency basis, as needed, conducting all dredging and/or cleaning of the storm/surface water facilities and equipment to assure that they perform in accordance with the approved plans and specifications. Developer shall have the Stormwater Maintenance Agreement recorded in the form of a deed restriction in a form approved by the Village Attorney on the property prior to the issuance of any building permit. Proposed Lot 1 of this CSM will drain into the regional pond constructed in outlot 1 of CSM No. 11349. Proposed Lot 2 of this CSM will have its own storm water feature on Lot 2 in which the owner of Lot 2 will be responsible to maintain.
6. DEVELOPER shall clean all storm sewers, if any, prior to issuance of an occupancy permit.
7. The VILLAGE retains the right to require DEVELOPER to install additional surface and stormwater drainage measures if it is determined by the VILLAGE Engineer within the first year after the surface and stormwater drainage plan as designed and/or constructed in the DEVELOPMENT on the SUBJECT LANDS have been established

with occupancy permits does not provide reasonable stormwater drainage within the DEVELOPMENT and surrounding area.

8. To furnish "as-built" plans of the entire drainage system, pursuant to specifications approved by the VILLAGE Engineer prior to the issuance of occupancy permits. Said "as built" plans shall be on reproducible Mylar and digital file, and shall include field locations and hydrant valves and curb stops, if any.

9. DEVELOPER shall provide the VILLAGE with a permanent easement, attached as **EXHIBIT G-1**, in recordable form, granting the VILLAGE the right but, not the obligation to access, construct, repair, replace, and maintain improvements located outside of right of ways required in this Section I.D. For those portions of G-1 that are not yet known as Lot 2 of Phase 2 does not yet have a user said easement(s) shall be provided at such time as Lot 2 of Phase 2 is developed. Will not know where the easement on Lot 2 will be until Lot 2 has a development plan.

E. GRADING, EROSION AND SILT CONTROL:

DEVELOPER shall, at its sole cost and expense, grade, and maintain all required erosion and sediment control measures on the SUBJECT LANDS in accordance with the approved plans and specifications on file with the VILLAGE Clerk subject to the following:

1. Prior to commencing site grading and excavation, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER'S Engineer or Surveyor that said plan, once implemented, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including proof of notification of land disturbances to the State of Wisconsin Department of Natural Resources, if applicable, and written proof that the VILLAGE Engineer and the Wisconsin Department of Natural Resources, and the Army Corps of Engineers, if applicable, have approved said plans.

2. 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 VILLAGE Engineer, the Wisconsin Department of Natural Resources, and Army Corps of Engineers, if applicable.

3. All disturbed areas shall be restored to the satisfaction of the VILLAGE Engineer within seven (7) days of disturbance, if the area has not been worked on within seven days

F. LANDSCAPING AND SITE WORK:

DEVELOPER, as owner upon transfer of ownership, his heirs, successors and assigns running with the SUBJECT LANDS shall, at its sole cost and expense, grade, seed, and otherwise landscape the SUBJECT LANDS subject to the following:

1. DEVELOPER shall grade, seed and otherwise landscape the SUBJECT LANDS in accordance with the approved plans and specifications on file with the VILLAGE Clerk.

DEVELOPER shall provide and plant all trees/shrubs/plantings identified on the landscape and Tree preservation plans as set forth in **EXHIBIT H**. Said plans may be amended if approved by the VILLAGE upon request of the DEVELOPER.

DEVELOPER shall preserve to the maximum extent possible existing trees, shrubbery, vines, and grasses not actually lying on the public streets, drainage ways, building foundation sites, private driveways, soil absorption waste disposal areas, paths and trails by use of sound conservation practices.

2. DEVELOPER, as required by the VILLAGE, shall remove and lawfully dispose of buildings, destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish.

3. Landscaping and removal of unwanted items, including buildings, shall be completed and must be certified as complete by the VILLAGE Engineer prior to the issuance of any building permits.

4. DEVELOPER shall delineate all wetlands that are on or adjacent to private lots by means of cedar posts, as approved by the VILLAGE staff prior to the issuance of building permits.

5. The VILLAGE has the right to trim and remove any features which would interfere with safe operation and maintenance of the VILLAGE right-of-ways and drainage ways.

H. STREET SIGNS AND TRAFFIC CONTROL SIGNS:

DEVELOPER shall, at its sole cost and expense install or cause the installation of all necessary street and traffic control signs on the SUBJECT LANDS subject to the following:

1. Street signs, traffic control signs, culverts, posts and guard rails as required by the VILLAGE for the DEVELOPMENT of the SUBJECT LANDS shall be obtained and placed by the VILLAGE, or by the DEVELOPER with approval of the VILLAGE, and the cost thereof shall be paid by the DEVELOPER.

2. All traffic control signs and street signs, as required by the VILLAGE, will be installed within five (5) working days of the placement of the first lift of asphalt.

I. STREET LIGHTS:

DEVELOPER shall, at DEVELOPER's sole cost and expense install or cause the installation of a street lighting system in the DEVELOPMENT according to a plan prepared by DEVELOPER and on file with the VILLAGE Clerk and approved by the VILLAGE of Sussex prior to issuance of

occupancy permits. The Lighting Plan shall be **EXHIBIT I**, which shall be attached to this agreement prior to the approval of an occupancy permit for any building.

J. ADDITIONAL IMPROVEMENTS:

DEVELOPER hereby agrees that if, at any time after plan approval and during construction, the VILLAGE Engineer determines that modifications to the plans including additional improvements such as additional drainage ways, erosion control measures, and surface and stormwater management measures 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 as originally set forth by the DEVELOPER, the VILLAGE is authorized to order DEVELOPER, at DEVELOPER'S expense, to implement the same. If DEVELOPER fails to construct the additional improvement within the time established by the VILLAGE under the circumstances, the VILLAGE may cause such work to be carried out and shall charge against the financial guarantee held by the VILLAGE pursuant to this agreement.

SECTION II. TIME OF COMPLETION OF IMPROVEMENTS:

The improvements set forth in Section I above for Phase 2 shall be completed by the DEVELOPER in total within twenty four (24) months of the date of this agreement being signed except as otherwise provided for in this agreement.

SECTION III. FINAL ACCEPTANCE.

Throughout this agreement, various stages of the development will require approval by the VILLAGE. "Final Acceptance" as used herein, however, shall be the ultimate acceptance of all of the improvements in the completed development as a whole, and shall be granted specifically by separate resolution of the VILLAGE Board. The one-year guarantee period provided for in this agreement shall not commence to run until Final Acceptance. The issuance of building permits and approval of various items of development shall not commence the one-year guarantee period.

SECTION IV. DEDICATION OF IMPROVEMENTS:

Subject to all of the other provisions of this agreement, the DEVELOPER shall, without charge to the VILLAGE, upon completion of the above described improvements, unconditionally give, grant, convey and fully dedicate the public improvements to the VILLAGE, its successors and assigns, forever, free and clear of all 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. After such dedication, the VILLAGE shall have the right to connect or integrate other improvements as the VILLAGE decides, with no payment or award to, or consent required of, the DEVELOPER.

Dedication shall not constitute acceptance of any improvement by the VILLAGE Board. All improvements will be accepted by the VILLAGE Board by separate resolution at such time as such improvements are in acceptable form and according to the VILLAGE specifications. Said

resolution shall be recorded, if needed, with the Waukesha County Register of Deeds. DEVELOPER or OWNER will furnish proof to the VILLAGE, prior to the dedication required, that the public land and improvements proposed for dedication are free of all liens, claims and encumbrances, including mortgages.

SECTION V. ACCEPTANCE OF WORK AND DEDICATION:

When the DEVELOPER shall have completed the improvements herein required and shall have dedicated the same to the VILLAGE as set forth herein, the same shall be accepted by the VILLAGE Board if said improvements have been completed as required by this agreement and as required by all federal, state, county or VILLAGE guidelines, specifications, regulations, laws and ordinances and approved by the VILLAGE Engineer.

SECTION VI. APPROVAL BY VILLAGE NOT TO BE DEEMED A WAIVER.

The ultimate responsibility for the proper design and installation of streets, water facilities, drainage facilities, ditches, landscaping and all other improvements are upon the DEVELOPER. The fact that the VILLAGE or its engineer, or its attorney, or its staff may approve a specific project 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.

SECTION VII. GUARANTEES OF IMPROVEMENTS:

A. Guarantee. DEVELOPER shall guarantee after Final Acceptance, the public improvements described in Section I hereof, against defects due to faulty materials or workmanship, provided that such defects appear within a period of one years from the date of Final Acceptance by providing the Village with cash or letter of credit in a form acceptable to the Village Attorney in an aggregate amount of 10 percent of the total costs of the improvements. The DEVELOPER shall pay for any damages to VILLAGE property and/or improvements resulting from such faulty materials or workmanship. This guarantee shall not be a bar to any action the VILLAGE might have for negligent workmanship or materials. Wisconsin law on negligence shall govern such situations. If the DEVELOPER fails to pay for any damages or defects to VILLAGE property and/or improvements, and the VILLAGE is required to draw against the cash or letter of credit on file with the VILLAGE, the DEVELOPER is required to replenish said monies up to the aggregate amount of ten percent (10%) of the total cost of all improvements.

B. Obligation to Repair. The DEVELOPER shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of the DEVELOPER'S guarantee and shall leave the improvements in good and sound condition, satisfactory to the VILLAGE Board at the expiration of the guarantee period.

C. Notice of Repair. If during said guarantee period, the improvements shall, in the reasonable opinion of the VILLAGE Staff, require any repair or replacement which, in their 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 VILLAGE 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 VILLAGE in the aforementioned notification, after notice has been sent as provided herein, the VILLAGE Board may cause such work to be done, but has no obligation to do so, either by contract or otherwise, and the VILLAGE Board may draw upon such guarantee security to pay any costs or expenses incurred in connection with such repairs or replacements. Should the VILLAGE Board incur costs and expenses in repairing or replacing any portion of the improvements covered by this guarantee in excess of the amount of the guarantee security, then the DEVELOPER shall pay any excess cost or expense incurred in the correction process within 30 days of date of invoice by Village.

D. Maintenance Prior to Acceptance.

1. All public improvements shall be maintained by the DEVELOPER -the maintenance agreement on the CSM so they conform to the approved plans and specifications at the time of their Final Acceptance by the VILLAGE Board. This maintenance shall include routine maintenance. In cases where emergency maintenance is required, the VILLAGE Board 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 by DEVELOPER within thirty (30) days of invoice by the VILLAGE. The DEVELOPER'S obligation to maintain all improvements shall expire at the expiration of the guarantee period.

2. Street sweeping and dust suppression shall be done by the DEVELOPER on a regular basis as needed to ensure a reasonably clean and safe roadway until approved by the VILLAGE Administrator. Should the DEVELOPER fail to meet this requirement, the VILLAGE Board will cause the work to be done and will bill the DEVELOPER on a time and material basis. Said bill shall be paid by DEVELOPER within thirty (30) days of invoice by the VILLAGE.

3. In the event drainage problems arise within the SUBJECT LANDS or related activities on the SUBJECT LANDS, the DEVELOPER shall correct such problems to the satisfaction of the VILLAGE Staff. Such correction measures shall include, without limitation because of enumeration, cleaning of soil, loose aggregate and construction debris from culverts, drainage ditches and streets; dredging and reshaping of siltation or retention ponds; replacing of siltation fences; sodding and seeding; construction of diversion ditches, ponds and siltation traps; and restoration of all disturbed areas. This responsibility shall continue until such time as the roads, ditches, and other disturbed areas have become adequately vegetated and—the VILLAGE Board is satisfied that the DEVELOPER has restored all areas which were disturbed because of this development.

SECTION VIII. VILLAGE RESPONSIBILITY FOR IMPROVEMENTS:

The VILLAGE shall not be responsible to perform repair, maintenance, or snow plowing, unless otherwise approved by the VILLAGE Administrator, on any public improvements until accepted by the VILLAGE Board.

SECTION IX. RISK OF PROCEEDING WITH IMPROVEMENTS PRIOR TO APPROVALS OF CSM:

If a DEVELOPER proceeds with the installation of public improvements or other work on the site prior to approval of the CSM, it proceeds at its own risk as to whether or not the CSM will receive all necessary approvals. The DEVELOPER, prior to commencement of the installation of public improvements or other work on site, shall notify the VILLAGE of the DEVELOPER'S intention to proceed with the installation of public improvements or other work on site, prior to approval of the CSM. Additionally, DEVELOPER shall make arrangements to have any public improvements and/or other work on site inspected by the VILLAGE Engineer.

SECTION X. FINANCIAL GUARANTEE:

Prior to the execution of this agreement by the VILLAGE BOARD, the DEVELOPER shall file with the VILLAGE cash or a letter of credit (**EXHIBIT J**) setting forth terms and conditions in a form approved by the VILLAGE Attorney in the amount as approved by the VILLAGE Engineer as a guarantee that the DEVELOPER will perform all terms of this agreement no later than one year from the signing of this agreement except as otherwise set forth in this agreement. If at anytime:

- A. DEVELOPER is in default of any aspect of this agreement, or
- B. DEVELOPER does not complete DEVELOPER's obligations, or cause the completion of DEVELOPER's obligations, concerning the installation of the improvements within the time period(s) set forth in this Agreement unless otherwise extended by this agreement or by action of the VILLAGE Board, or
- C. DEVELOPER is, at any time, in default of any obligation due under Section XIX of this Agreement, or
- D. DEVELOPER fails to receive all necessary approvals for, and record the CSM for the DEVELOPMENT with the Register of Deeds of Waukesha County on or before November 1, 2018

Developer shall be deemed in violation of this agreement and the VILLAGE Board shall have the authority to restrict disbursement of financial incentives or portions thereof.

The amount of the financial guarantee may be reduced from time to time as and to the extent that the portion of work required under this Agreement is completed and paid for, provided that the remaining financial incentive is sufficient to secure payment for any remaining improvements and also provided that no reduction shall occur until it is approved in writing by the VILLAGE Administrator.

The VILLAGE shall be empowered in addition to its other remedies, without notice or hearing, to impose a special charge for the amount of said completion costs, upon each and every unit in the development payable with the next succeeding tax roll.

SECTION XI. OCCUPANCY PERMIT:

It is expressly understood and agreed that unless otherwise expressly agreed to in writing by the VILLAGE Administrator upon request by the DEVELOPER, no building permit shall be issued for any building unless otherwise authorized by the VILLAGE Administrator, until the VILLAGE Engineer has determined that:

- A. The installation of the public improvements serving the SUBJECT LANDS for which a building permit is requested has been completed and accepted by the VILLAGE Board.
- B. The site grading and construction of surface and stormwater drainage facilities required to serve such buildings are completed, are connected with an operating system as required herein, are cleaned as needed, and are accepted by the VILLAGE Board.
- C. All landscaping and removal of unwanted items, including buildings, has been certified as complete by the VILLAGE Engineer.
- D. All required grading plans have been submitted to, reviewed by and approved by the VILLAGE Engineer.
- E. DEVELOPER has paid in full all permit fees, outstanding assessments against the SUBJECT LANDS, and reimbursement of administrative costs as required by this agreement.
- F. DEVELOPER has prepared appropriate deed restrictions and or easements which are approved by the VILLAGE, filed with the VILLAGE Clerk and recorded with the Register of Deeds.
- G. All destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish are removed from the development and disposed of lawfully.
- H. All required "as built" plans for the SUBJECT LANDS have been submitted and approved by the VILLAGE Engineer.
- I. All public and private utilities have been installed in the SUBJECT LANDS, including street lighting fixtures (unless waived by the VILLAGE Administrator), the sanitary sewer system, and the water system.
- J. DEVELOPER is not in default of any aspect of this agreement as determined by the VILLAGE Administrator.

SECTION XII. RESERVATION OF RIGHTS AS TO ISSUANCE OF OCCUPANCY PERMIT:

The VILLAGE reserves the right to withhold issuance of an Occupancy Permit if DEVELOPER is in violation of this agreement.

SECTION XIII. MISCELLANEOUS REQUIREMENTS

DEVELOPER shall:

A. EASEMENTS:

DEVELOPER shall provide any easements including vision easements on SUBJECT LANDS deemed necessary by the VILLAGE Engineer before the CSM is signed and such easements shall be along lot lines if at all possible. In particular easements may be necessary for the sidewalk and or path, and stormwater, and private utilities.

B. MANNER OF PERFORMANCE:

Cause all construction called for by this agreement to be carried out and performed in a good and workmanlike manner.

C. SURVEY MONUMENTS:

Properly place and install any lot, block or other monuments required by State Statute, VILLAGE Ordinance or the VILLAGE Engineer.

D. STORMWATER MANAGEMENT PRACTICES MAINTENANCE AGREEMENT:

Execute and record said agreement. Said language, once approved shall be recorded at the Waukesha County Register of Deeds and attached herein as **EXHIBIT G**.

E. GRADES:

Prior to the issuance of a building permit the DEVELOPER or their agent shall furnish to the Building Inspector of the VILLAGE a copy of the stake out survey showing the street grade in front of the lot, the finished yard grade, the grade of all four corners of the building, and the building corner grades of the adjacent buildings where applicable, as existing and as proposed.

F. RESERVE CAPACITY ASSESSMENTS - SANITARY SEWER:

As provided in the VILLAGE Land Division Ordinance, the DEVELOPER, as owner, upon transfer of ownership, his heirs, successors and assigns running with the Subject Lands agrees to pay a reserve capacity assessment to be used for the costs of reserve capacity created by the VILLAGE in the VILLAGE's sanitary sewerage collection and treatment facilities for the benefit of the DEVELOPER. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII, Wisconsin Statutes. The reserve capacity assessments against the above-described property shall be in an amount established by the VILLAGE's Land Division Ordinance and including annual increases.

The DEVELOPER hereby waives, pursuant to Section 66.0703(7) (b), Wisconsin Statutes, any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of special assessments [including, but not limited to, the notice and hearing requirements of Chapter 66 Subchapter VII] and agrees that the municipality may proceed immediately to levy the special assessments as outlined herein.

The DEVELOPER further waives its right to appeal from the special assessments and stipulates that the amount of special assessment levied against its property has been determined on a

reasonable basis and that the benefits to its property from the proposed improvements exceed the amount of the special assessment against such property. In addition, the DEVELOPER waives its right under Section 66.0627 and agrees to promptly pay any special charges which may be levied against its property. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII and Section 66.0627, Wisconsin Statutes.

G. RESERVE CAPACITY ASSESSMENTS - WATER:

The DEVELOPER, as owner, upon transfer of ownership, his heirs, successors and assigns running with the Subject Lands agrees to pay a reserve capacity assessment as required in Section 22.23(2) (b) and other relevant sections of the VILLAGE Code, to be used for the costs of reserve capacity created by the VILLAGE in the VILLAGE's water system for the benefit of the DEVELOPER. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII, Wisconsin Statutes. The reserve capacity assessments against the above-described property shall be an amount established in the VILLAGE's Land Division Ordinance and is subject to annual increases.

The DEVELOPER hereby waives, pursuant to Section 66.0703(7) (b), Wisconsin Statutes, any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of special assessments [including, but not limited to, the notice and hearing requirements of Chapter 66 Subchapter VII] and agrees that the municipality may proceed immediately to levy the special assessments as outlined herein. The DEVELOPER further waives its right to appeal from the special assessments and stipulates that the amount of the special assessments levied against its property has been determined on a reasonable basis and that the benefits to its property from the proposed improvements exceed the amount of the special assessment against such property.

In addition, the DEVELOPER waives its rights under Section 66.0627 and agrees to promptly pay any special charges which may be levied against its property. The municipality shall levy such assessments in conformity with this Agreement, pursuant to Chapter 66 Subchapter VII and Section 66.0627, Wisconsin Statutes.

H. UNDERGROUND UTILITIES:

Install all electrical, telephone, cable and gas utilities underground. Coordination of installation and all costs shall be the responsibility of the DEVELOPER.

I. PERMITS:

Provide and submit to the VILLAGE requesting the same, valid copies of any and all governmental agency permits.

J. REMOVAL OF TOPSOIL:

DEVELOPER agrees that no topsoil shall be removed from the SUBJECT LANDS without approval from the VILLAGE Engineer.

K. PREVAILING WAGE RATES AND HOURS OF LABOR:

If any aspect of the DEVELOPMENT involves a project of public works that is regulated by Wisconsin Statutes requiring Prevailing wage rates then: (1) DEVELOPER shall pay wage rates to its employees providing work on the DEVELOPMENT not less than the prevailing hourly wage rate as described and regulated pursuant to such statutes and related laws, and (2) DEVELOPER shall comply with the prevailing hours of labor as described and regulated pursuant to such statutes and related laws; and (3) DEVELOPER shall fully comply with reporting obligations, and all other requirements of such laws; and (4) DEVELOPER shall ensure that the DEVELOPER's contractors also fully comply with such laws. DEVELOPER's General Indemnity obligation of this Agreement shall apply to any claim that alleges that work contemplated by this Agreement is being done, or has been done, in violation of prevailing wage rates, prevailing hours of labor, or Wisconsin Statutes Section 66.0903, for any work arising out of this Agreement. If at any time the DEVELOPER per this Agreement is obligated to make public improvements and is subject to Wis. Stats 66.0903, the Village, if requested by the DEVELOPER, shall make inquiry of the Wisconsin Department of Workforce Development as to the prevailing hours and costs for labor.

L. NOISE:

DEVELOPER shall make every effort to minimize noise, dust and similar disturbances, recognizing that the SUBJECT LANDS are located near existing residences. Construction of improvements shall not begin before 7:00 a.m. and shall not continue beyond 7:00 p.m. weekdays without prior written approval of the Village Engineer. Saturday working hours shall not begin before 8:00 a.m. and shall not continue beyond 4:00 p.m. There shall be no work on Sundays or holidays.

M. DEBRIS:

DEVELOPER shall have ultimate responsibility for cleaning up debris that has blown from buildings under construction within the SUBJECT LANDS until such time as all improvements have been installed and accepted by the VILLAGE Board. The VILLAGE shall make a reasonable effort to require the contractor, who is responsible for the debris, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER and/or subject property owner shall clean up the debris within seventy-two (72) hours after receiving a notice from the VILLAGE Engineer. If said debris is not cleaned up after notification, the VILLAGE will do so at the DEVELOPER'S and/or subject property owner's expense.

N. DUTY TO CLEAN ROADWAYS:

DEVELOPER shall be responsible for cleaning up the mud and dirt on the roadways until such time as the final lift of asphalt has been installed. The DEVELOPER shall clean the roadways within forty-eight (48) hours after receiving a notice from the VILLAGE Engineer. If said mud, dirt and stone is not cleaned up after notification, the VILLAGE will do so at the DEVELOPER's expense. The VILLAGE will do its best to enforce existing ordinances that require builders to clean up their mud from construction.

O. PUBLIC CONSTRUCTION PROJECTS:

If any aspect of the development involves a public construction project subject to the State law, all requirements of the State Public Construction Bidding Law must be satisfied, including but not limited to, providing a performance bond.

P. ZONING CODE:

DEVELOPER acknowledges that the lands to be developed are subject to the VILLAGE of Sussex Zoning Code.

Q. NO AGRICULTURE USE

DEVELOPER shall not permit any open space or undeveloped lands within the SUBJECT LANDS to be used for any agricultural uses as defined in Tax 18 of the Wisconsin Administrative Code.

SECTION XV. PAYMENT OF COSTS, INSPECTION & ADMINISTRATIVE FEES:

DEVELOPER shall pay and reimburse the VILLAGE promptly upon billing for all fees, expenses, costs and disbursements which shall be incurred by the VILLAGE in connection with this development or 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 and legal, administrative and fiscal work. VILLAGE employee costs shall be based on regular VILLAGE pay rates (or Engineering and administrative overtime, if applicable) plus 60% on the hourly rate for overhead and fringe benefits for any time actually spent on the project. Any costs for outside consultants shall be charged at the rate the consultant charges the VILLAGE. Any such charge not paid by DEVELOPER within thirty (30) days of being invoiced may be charged against the financial guarantee held by the VILLAGE pursuant to this agreement, or assessed against the development land as a special charge pursuant to §66.0627, Wis. Stats.

SECTION XVI. METHOD OF IMPROVEMENT:

DEVELOPER hereby agrees to engage contractors for all work performed by the DEVELOPER under this agreement who are qualified to perform the work. DEVELOPER further agrees to use materials and make the various installations in accordance with the approved plans and specifications, which are made part of this agreement by reference and including those standard specifications as the VILLAGE Board or its Commissions may have adopted and published prior to this date.

SECTION XVII. 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 agrees to accept tender of defense and 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 VILLAGE, its officers, agents, employees and independent contractors arising out of this agreement by any party or parties. DEVELOPER shall also name as additional insured on its general liability insurance the VILLAGE, its officers, agents, employees and any independent contractors hired by the VILLAGE to perform services as to this development and give the VILLAGE evidence of the same upon request by the VILLAGE. It is understood and agreed that the insurance coverage and limits required above shall not limit the extent of DEVELOPER's responsibilities and liabilities pursuant to this Agreement or imposed by law.

SECTION XVIII. VILLAGE RESPONSIBILITY:

A. VILLAGE agrees to pay for the following oversizing costs, if it is determined by the VILLAGE that the oversizing is necessary. The oversizing costs shall be calculated by viewing bids for similar improvements to determine the cost differences between the stated sizes. The VILLAGE reserves the right to determine the bid amounts to be used in this calculation.

1. Cost of increasing the size of the water main from eight inches to a larger size, including the cost of larger main line valves.
2. Cost of increasing the size of the sewer main from eight inches to a larger size.

B. VILLAGE agrees to allow the DEVELOPER to connect to the VILLAGE of Sussex's municipal water system and sewerage system at such time as the water system and sanitary sewer system required herein has been dedicated to and accepted by the VILLAGE.

SECTION XIX. INSURANCE:

DEVELOPER, its contractors, suppliers and any other individual working on the SUBJECT LANDS in the performance of this agreement shall maintain at all times until the expiration of the guarantee period, insurance coverage in the forms and in the amounts as required by the VILLAGE.

SECTION XX. EXCULPATION OF VILLAGE CORPORATE AUTHORITIES:

The parties mutually agree that the VILLAGE President of the VILLAGE Board, and/or the VILLAGE Clerk, 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.

SECTION XXI. GENERAL CONDITIONS AND REGULATIONS:

All provisions of the VILLAGE Ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be a part of this agreement as fully as if set forth at length herein. This agreement and all work and improvements required hereunder shall be performed and carried out in strict accordance with and subject to the provisions of said Ordinances.

SECTION XXII. ZONING:

The VILLAGE does not guarantee or warrant that the SUBJECT LANDS will not at some later date be rezoned, nor does the VILLAGE herewith agree to rezone the lands into a different zoning district. It is further understood that any rezoning that may take place shall not void this agreement.

SECTION XXIII. COMPLIANCE WITH CODES AND STATUTES:

DEVELOPER shall comply with all current and future applicable codes of the VILLAGE, County, State and federal government and, further, DEVELOPER shall follow all current and

future lawful orders of any and all duly authorized employees and/or representatives of the VILLAGE, County, State or federal government.

SECTION XXIV. CSM

DEVELOPER acknowledges that the SUBJECT LANDS are each subject to a conditional CSM approval by the VILLAGE. The DEVELOPER further agrees that it is bound by these conditions. At such time as the CSM's are approved, if they are, the conditional CSM approvals shall be attached hereto and incorporated herein as **EXHIBIT C**. If there is a conflict between the conditions as forth in said conditional approvals and the Developer's Agreement, the more restrictive shall apply.

SECTION XXV. AGREEMENT FOR BENEFIT OF PURCHASERS:

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

SECTION XXVI. ASSIGNMENT:

DEVELOPER shall not assign this agreement without the written consent of the VILLAGE. If required by the VILLAGE, the assignee must agree to all terms and conditions of this document in writing.

SECTION XXVII. PARTIES BOUND:

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

SECTION XXVIII. HEIRS & ASSIGNS:

This agreement is binding upon the DEVELOPER, their successors and assigns, and any and all future owners of the SUBJECT LANDS. This section allows for VILLAGE enforcement of the terms and conditions of this agreement against all such successors. This section does not, however, grant rights to such successors absent VILLAGE written consent, as described in Section XXVI.

SECTION XXIX. LEGAL RELATIONSHIP:

Nothing in this Agreement shall be construed to create an employer/employee relationship, joint employer, a joint venture or partnership relationship, or a principal/agent relationship.

SECTION XXX. SURVIVAL:

All agreements, representations, or warranties made herein shall survive the execution of this Agreement, performance of this Agreement, and the making of the grants hereunder. This Agreement shall be binding upon the Parties their respective heirs, personal representatives, executors, or successors and assigns.

SECTION XXXI. OWNERSHIP OF SUBJECT LANDS:

DEVELOPER owns the SUBJECT LANDS as of the date of this Agreement and has full power and authority to execute this Agreement.

SECTION XXXII. MORTGAGEE CONSENT: The undersigned mortgagee of the property identified in **Exhibit A**, consents to this Developer's Agreement, and acknowledges that its lien of mortgage is superior to the rights of the VILLAGE granted by this Developer's Agreement.

SECTION XXXIII. PARAGRAPH HEADINGS:

The paragraph headings in this Agreement are inserted for convenience only and are not intended to be part of, or to affect, the meaning or interpretation of this Agreement.

SECTION XXXIV. INCORPORATION OF RECITALS:

The recitals to this Agreement are hereby incorporated by reference and made a part of Agreement, and are intended to affect the meaning and/or interpretation of this Agreement.

SECTION XXXV. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

SECTION XXXVI. INTERPRETATION:

This Agreement has been subject to significant drafting by both VILLAGE and DEVELOPER and this Agreement and its wording shall not be construed against the VILLAGE as the drafter of the language should a disagreement arise as to interpretation.

SECTION XXXVII. ENTIRE AGREEMENT:

This Agreement constitutes the entire understanding and agreement between the parties. In the event of a conflict between this Agreement and the VILLAGE Code of Ordinances or any other enabling code, law, or regulation in effect at the time of this Agreement or thereafter, the terms and conditions of the VILLAGE Code of Ordinances in effect at the time of the acceptance by DEVELOPER shall be controlling. If this Agreement is silent with respect to any specific issue, the VILLAGE Code of Ordinances and any applicable Federal and State Statutes shall govern.

SECTION XXXVIII. RECORDING OF AGREEMENT:

This Agreement, or a Memorandum thereof, shall be recorded with the Register of Deeds for Waukesha County.

SECTION XXXIX. AMENDMENTS:

VILLAGE and the DEVELOPER, by mutual consent, may amend this Developer's Agreement at any meeting of the VILLAGE Board. The VILLAGE shall not, however, consent to an amendment until after first having received a recommendation from the VILLAGE'S Plan Commission.

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

Concord Property Management, LLC

By: _____
Roger Duchow, Sole Member

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this _____ day of _____, 2015, the above named Roger Duchow, Authorized Signatory of Concord Property Management, LLC to me known to be the person who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____
VILLAGE OF SUSSEX
WAUKESHA COUNTY, WISCONSIN

VILLAGE President

VILLAGE Clerk-Treasurer

STATE OF WISCONSIN
COUNTY OF WAUKESHA

Personally came before me this ____ day of _____, 2016, the above-named Greg Goetz, VILLAGE President, and Casen Griffiths, VILLAGE Clerk-Treasurer, of the above-named municipal corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such VILLAGE President and VILLAGE Clerk-Treasurer of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority and pursuant to the authorization by the VILLAGE Board from their meeting on the ____ day of _____, 2016.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

APPROVED AS TO FORM:

VILLAGE Attorney

ACKNOWLEDGED AND APPROVED BY
TOWN BANK, Mortgagee of the SUBJECT LANDS

Authorized signatory