

**DEVELOPMENT AGREEMENT  
LISBON ROAD WATER MAIN**

This Development Agreement (“AGREEMENT”) is between United Financial Group, Inc., a Wisconsin corporation with a business address of 660 W. Ridgeview Drive, Appleton, WI 54911 (“Developer”); and the Village of Menomonee Falls, a municipal corporation of the State of Wisconsin, located in Waukesha County (the “Village”). It is based upon the following:

- A. Developer is the owner of approximately 30.00 acres of land in the Village. This land is located in the Southeast ¼ of the Southwest ¼ of Section 32, Town 8 North, Range 20 East; and further described in Exhibit "A" attached to this Agreement (the “Property”).
- B. The Developer proposes to install certain municipal water main improvements in or along Lisbon Road and dedicate them to the Village. These improvements are located as shown in Exhibit “B” attached to this Agreement. The Village is prepared to accept the dedication of these improvements, provided they are constructed according to Village Specifications and without cost to the Village.

NOW, THEREFORE, based on the above, the parties agree as follows:

**Section I. Improvements**

A. Public Water Facilities

- 1. Before beginning construction of improvements, the Developer shall provide the Village with construction plans which are sealed and signed by the Developer’s Engineer. All public water facilities and plans shall conform to all federal, state, county and Village specifications, regulations and ordinances.
- 2. The design and construction plans for the municipal water system shall be reviewed and approved by the Village Engineering Department, and all approvals received from the Wisconsin DNR prior to starting construction.
- 3. Developer shall construct, install, furnish and provide a complete system of water distribution and all appurtenances, in accordance with the plans, specifications and drawings on file in the Village and with established standards of the Village as directed by the Village Director of Engineering and Development
- 4. Water mains shall be designed and installed to the limits as directed by the Village with sizes to accommodate the development of adjacent lands.
- 5. Construction of the water distribution system will be completed, dedicated to and accepted by the Village. The water distribution system shall be completed and dedicated no later than one year from the date of this Agreement. The Director of Engineering and Development may extend this deadline in up to one year increments upon receipt of a formal written request by the Developer.
- 6. Upon the Village’s inspection, water sampling, testing and concurrence that all punch-list items have been completed for the public water system improvements, the Developer shall promptly take all necessary actions to connect and otherwise render such improvements usable. The Village will complete this inspection, testing and sampling at the Developer’s cost.

B. Quality of Work.

1. All work performed under the provisions of this Agreement shall be done in a workmanlike manner in accordance with the Wisconsin Standard Specifications for construction and established standards and specifications of the Village as directed by the Director of Engineering and Development.
2. The Village Engineer may make reasonable changes to the construction plans for any of the public improvements that are necessary to correct oversights, omissions, and errors, to compensate for changing site conditions, or to complete fully the work in accordance with sound engineering practices. Developer shall perform the work as changed entirely at its expense without claim for reimbursement.

**Section II. Dedication and Acceptance.**

A. Upon Completion by Developer.

1. Subject to all of the other provisions of this Agreement and the exhibits referred to herein, after completion of all of the above-described public improvements, the Developer shall, without charge to the Village, unconditionally give, grant, convey, and fully dedicate the same to the Village, its successors and assigns, forever, free and clear of all encumbrances whatever, together with, including without limitation because of enumeration, all structures, mains, conduits, pipes, lines, and appurtenances 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.
2. When all public improvements are completed and acceptable to the Village as called for under this Agreement, such public improvements will be formally accepted by the Village Board. A document for formal Dedication and Acceptance shall be recorded with the Waukesha County Register of Deeds. After acceptance of the dedication, the Village shall have the right to connect or integrate other water or other facilities with those provided here-under as the Village decides, with no payment or award to, or consent required of, the Developer. The Village will not accept any improvements that do not fully comply with Village standards and specifications. Claims of financial hardship by the Developer shall not be considered a reason for the Village to accept substandard materials or work. .

B. Completion by Village Following Developer Default

1. If Developer does not complete the installation of and dedication of improvements by the dates established herein, the Village is authorized to take one or more of the following actions:
  - a. Pursuant to subsection (C) of Section III below, the Village may complete and take title to said improvements. The Village is authorized to take this action in addition to any remedy available to the Village under the financial guarantee. The decision by the Village to take this action shall not constitute a waiver of any remedy under the financial guarantee.
  - b. Upon notice to the Developer and its issuer or holder of the financial guarantee provided pursuant this Agreement pursue one or more of the remedies available under the financial guarantee.

2. The issuer or holder of said financial guarantee shall pay to the Village all costs for such completion including, but not limited to, materials, construction, legal fees, financing costs, engineering, inspection and administrative costs, upon demand.

3. If the issuer or holder of said financial guarantee fails in whole or in part to take any actions required in this subsection (B) or by the financial guarantee, in addition to its' other remedies, the Village at its' sole discretion shall be empowered without notice of hearing, to impose a special assessment upon the Property for the amount of the completion costs, payable with the next succeeding tax roll.

C. Village Responsibility for Improvements

The Village shall not be responsible to perform repair or maintenance on the Public Water Facilities until they are dedicated and accepted by the Village Board.

**Section III. Developer Guarantee.**

A. Satisfactory Financial Guarantee.

1. Before the start of construction, the Developer shall file with the Village Clerk or one of the following as a financial guarantee to the Village as assurance for the faithful performance of and payment for any and all work to be performed pursuant to this Agreement:
  - a. a bond in the form as attached as Exhibit "E",
  - b. an irrevocable letter of credit, or
  - c. cash on deposit
2. Such financial guarantee shall be approved by the Village Attorney and shall be in the amount identified on the attached Exhibit "D" and described as "Total Funds Required for Financial Guarantee". The amount shall be sufficient to fund all financial guarantees required under this Agreement.
3. If the Developer provides an irrevocable letter of credit, Developer shall maintain the letter of credit during the term of this Agreement and shall provide the Village with proof of renewal of the letter of credit at least sixty (60) days prior to the expiration date, if any, of the letter of credit. The failure to provide proof of renewal shall constitute a default under this Agreement.
4. The financial guarantee provided under this subsection may include the post-completion guarantee required under subsection (D) below.

B. Reduction and Release of Guarantee.

1. From time to time, as work is completed and inspected, and as proper invoices are presented for completed work, the Village may authorize reductions in the amount of the financial guarantee held by the Village, in accordance with the Village's current procedures for such reductions. Requests sent to the Village for reductions to the financial guarantee will not relieve the Developer of the obligations identified in this Agreement.

2. Any financial guarantee provided by Developer pursuant to this Agreement shall be in full force and effect and shall not expire until 14 months after substantial completion of the improvements.

C. Village Remedies upon Developer Default.

1. If Developer should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if it or its contractors should disregard statutes, ordinances, regulations, orders, or the instruction of the Village Building Inspector or the Director of Engineering and Development, or upon failure of performance by Developer or Developer's contractor or sub-contractors to construct, install, furnish and provide any improvement required under this Agreement, or upon any other Developer default or failure to perform under any provision of this Agreement, the Village, upon the certificate of the Director of Engineering and Development that sufficient cause exists to justify such action, without prejudice to any other right or remedy of the Village, including the right to damages or any other remedy available under the financial guarantee, and after giving Developer and its issuer or holder of the financial guarantee provided pursuant to this Agreement at least fifteen (15) days' written notice and opportunity to cure, may (i) enter and take occupancy of the Property as is necessary to finish the work, (ii) take possession of the premises and of all materials thereon as is necessary to finish the work, and (iii) draw upon any letter of credit or other financial guarantee posted or filed by Developer and finish the work by whatever method the Village may deem expedient. Developer shall pay Village the entire cost of so completing the work if funds available from any letter of credit or other financial guarantee posted by the Developer are insufficient to cover the entire cost.

2. Whether or not the Village Board elects to take charge of the work, Developer shall be liable to Village for its damages sustained by Developer's failure to complete the work on time in addition to the cost of completion of the work.

D. Post-Completion Guarantee.

1. To ensure the good quality of materials, workmanship and maintenance of the public improvements, as required pursuant to Village ordinance and this Agreement, the Developer shall provide the guaranty and warranty set out in paragraph (2) below and the post-completion financial guarantee as required in paragraph (3) below.

2. Post-Completion Guaranty and Warranty

a. The Developer guarantees the required public for a period of fourteen months after the date the public improvements are substantially completed.

b. The Developer further warrants the public improvements for a period of one year after the date the document for formal Dedication and Acceptance of the improvements by the Village Board is recorded with the Waukesha County Register of Deeds.

3. Post-Completion Financial Guarantee

a. Unless the Developer has provided it as a part of the financial guarantee required under subsection (A) above, the Developer shall, within five business days of the date of substantial completion, provide

a post-completion guarantee bond in a form approved by the Village Attorney and containing the additional provisions noted below.

- (1) The post completion financial guarantee shall be in an amount totaling 10 percent of the total cost of the completed public improvements plus the estimated amount of any uncompleted public improvements as determined by the Village Director of Engineering and Development.
  - (2) The financial guarantee shall be for a period of fourteen months after the date of substantial completion of the public improvements.
  - (3) The Village shall have access to such funds and the right at its' sole discretion to call or draw upon such funds to correct or repair any defect or deficiency if the Developer fails to honor this guarantee to the satisfaction of the Village. The date the public improvements are considered substantially completed shall be the date as determined by the Director of Engineering and Development that ninety percent of the public improvements by cost are completed and the improvements have been completed to the satisfaction of the Director of Engineering and Development.
- b. The Village Director Engineering and Development shall give Developer, and the issuer or holder of the aforesaid financial guarantee at least fifteen (15) days' written notice and opportunity to cure or such lesser time as may be called for in the financial guarantee before calling or drawing upon the financial guarantee or acting to correct or repair any defect or deficiency, except that nothing shall preclude the Village in the event of an emergency from acting within a lesser period of time, with or without written notice, to correct or repair any defect or deficiency in any improvement provided pursuant to this Agreement. The Developer agrees for itself and for any contractor it retains to do any work in the development that the Village at its sole discretion shall determine which events constitute an emergency.

#### **Section IV. Method of Improvement.**

- A. The Developer shall only engage contractors for work included in this Agreement who are pre-qualified by the Village to perform the work.
- B. The Developer shall use materials and make the various installations in accordance with the Village approved plans and specifications made a 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.
- C. Access to or withdrawal by Developer of all or any part of escrowed or secured funds required under Section III of this Agreement shall be permitted only with the approval of the Village.

## **Section V. Developer Responsibility to Indemnify.**

### **A. Compliance with Law and Regulations.**

Developer shall, in the performance of this Agreement, comply with and give all stipulations and representations required by all applicable federal, state and local laws, ordinances and regulations. Developer shall also require such compliance, stipulations and representations with respect to any contract entered into by Developer with others (pertaining to the work covered by this Agreement) as may be required by all applicable federal, state and local laws, ordinances and regulations.

### **B. Indemnification Agreement.**

1. In addition to, and not to the exclusion or prejudice of, any other provision of this Agreement, Developer shall indemnify and hold harmless the Village, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, action, suits, judgments, costs, expenses, attorneys' fees and the like, to whomsoever owed and by whomsoever and whenever brought or obtained, which may in any manner result from or arise in the course of or out of the performance of the work and this Agreement, expressly including though not limited to negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of Developer, or its officers, employees, agents, workmen, or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect whatever, and including claims arising under any federal, state or local law including Worker's Compensation laws.
2. If a claim is made against the Village arising out of the work and/or this Agreement, the Village agrees that it shall, within ten (10) days of its notice thereof, notify the Developer and any liability insurance carrier designated by the Developer. The Developer shall thereafter provide full cooperation in defense of the claim. The Developer shall, at the option of the Village, defend any claim on behalf of the Village in which case the Developer or its insurer is authorized to act on behalf of the Village in responding to any claim to the extent of this indemnity. Such authorization includes the right to investigate, negotiate, settle and litigate any such claim and control the defense thereof.
3. Developer shall, at its expense, obtain and carry comprehensive general liability insurance with combined single limits of at least \$1 million for one person and at least \$1 million per occurrence, and at least \$1 million property damage (or such higher amounts as the Village shall from time to time reasonably determine). Such policies shall cover both Developer and the Village and its' agents, employees, and officials, and all insurers shall agree not to cancel or change the same without at least ten (10) days' written notice to the Village. A certificate of Developer's insurance evidencing such insurance shall be furnished to Village prior to starting construction of any public improvements. Each such policy shall provide that no act or default of any person other than the Village or its agents shall render the policy void as to the Village or affect the Village's right to recover thereon.
4. In every case, but not as a limitation on the liability of the Developer to the Village, where judgment is recovered against the Village on such claim, if such notice has been given to Developer, any judgment thereon shall be conclusive

upon Developer as to the amount of damages and as to its liability to Village to the extent litigated therein.

**Section VI. Village Right to Inspect.**

A. Village Right of Access to Property.

1. Agents and employees of Village shall at all reasonable times have access to the work wherever it is in preparation or progress and Developer shall make appropriate arrangements for such access and for inspection.
2. If any work is covered up without the inspection, approval or consent of the Village, Developer will, if required by the Village, uncover the work at Developer's expense for examination by the Village. After the examination under this section is complete, Developer will pay costs of replacement.
3. Re-examination of questioned work not falling under the previous paragraph may be ordered by the Village. If the Village orders such re-examination under this section, the Developer shall uncover the work. If such work is found to be in accordance with the applicable plans, specifications and regulations, Village shall pay the cost of re-examination and replacement. If such work is found not to be in accordance with such plans, specifications and regulations, Developer shall pay such cost.

B. Approval by Village.

All work shall be done subject to the approval of the Village's representatives. They shall decide all questions which arise as to the amount, quality, and acceptability to materials furnished, work performed, manner of performance, rate of progress of the work, interpretation of plans, specifications and regulations and acceptable fulfillment of this Agreement. Materials shall be furnished and work shall be performed in conformity with Village Standards and Specifications, and with the plans and specifications received by the Director of Engineering and Development and on file in the Village and construction industry standards in the Village and the Greater Milwaukee Area.

C. Disclaimer of Liability.

The Village disclaims any and all liability arising from inspection or any failure to inspect any improvement constructed by Developer. Developer shall indemnify and hold the Village harmless against any claim arising from the actions of the Village or its agents in relation thereto.

**Section VII. Miscellaneous Provisions.**

A. Covenants to Run with the Land.

The terms of this Agreement are covenants running with the land and binding on the Village and the Developer and any and all successors and assigns.

B. Assignments.

Developer shall not assign this Agreement or obligations arising hereunder without the prior written consent of the Village.

C. Recording.

The Village will record this Agreement with the Waukesha County Register of Deeds. The Village will charge the Developer for the recording fees and provide a fully

executed copy of this Agreement with recording information to the Developer for their records.

D. Standards.

The terms "established standards of the Village", "Village Standards and Specifications" and others similar there to used in this Agreement shall mean those standards, specifications, guidelines, or other rules which are in effect on the date of this Agreement.

E. Force Majeure.

The deadlines for Developer's performance under this Agreement shall be extended for periods of time during which the Developer's performance is prevented due to causes which are outside the control of the Developer and which cannot be avoided by the exercise of due care by the Developer, including industry wide strikes or labor troubles, casualty, shortage of materials, weather conditions, and other acts of God.

F. Plans and Documents

The Developer shall provide the Village the plans and documents identified in Exhibit "C" attached hereto prior to acceptance by the Village Board of the improvements.

G. GIS System Data

The Developer shall obtain the GPS field data for the as-built Public Water Facilities to update the Village GIS System. All data shall be tied into the Wisconsin State Plane Coordinate System – South Zone (NAD 1927) and the National Geodetic Vertical Datum of 1929. GPS field data shall be in ESRI shape file format. All costs for the collection and integration of GPS field data shall be paid for by the Developer.

H. Payment of Village Engineering, Inspection, Administrative, and Miscellaneous Costs and Fees by Developer

1. The financial guarantee to be filed by the Developer under Section III of this Agreement shall include all amounts identified on the attached Exhibit "D" which includes the costs described as "Total Estimated Village Engineering, Inspection, Administrative and Miscellaneous Costs" as assurance for the payment of all Village engineering, inspection, administrative, and miscellaneous costs and fees.
2. The Developer agrees to pay all Village engineering, inspection, administrative, and miscellaneous costs and fees associated with the public improvements. This obligation to pay the Village's costs and fees related to the public improvements also includes all internal or external engineering, inspection, administrative, and miscellaneous costs or fees incurred by the Village for work performed by or on behalf of the Village. The Developer agrees that the Village shall bill the Developer periodically for amounts due to the Village under this agreement. The Developer agrees to pay such amounts to the Village within thirty (30) calendar days of billing by the Village. Any amount not received by the Village within this 30-day period shall accrue interest at the rate of 18 percent per annum commencing on the date of billing through the date payment is received by the Village.
3. In addition to any other remedy, if the Developer fails to pay any such amount when due, the Village at its sole discretion shall be empowered without notice of hearing, to impose a special charge for the amount of said deficiency, upon the



Property. This charge shall be payable with the next succeeding tax roll. Notwithstanding any of the foregoing payments by Developer for inspection services, any and all inspectors who provide such services shall be under the supervision, direction and control of the Village.

I. No Third Party Beneficiaries.

This Agreement is not intended to benefit or to be enforceable by any person other than the Village, the Developer, and their respective successors and assigns, which shall not include, for the purposes of this paragraph, any person who has not assumed all of the benefits and obligations of this Agreement.

J. Amendment of Agreement

The Village and the Developer may, by mutual written agreement, and after approval of the Village Board, amend this Agreement at any time. The Village Board shall not, however, approve an amendment without having first considered the recommendations of the Village staff on the proposed amendment.

K. Severability

If a court of competent jurisdiction adjudges any section, clause, provision or portion of this agreement invalid, such part shall be severed from the Agreement, and the remainder of the Agreement shall survive and shall not be affected thereby.

L. No Threat to Public Health or Safety

Notwithstanding any language in this Agreement to the contrary, the Developer shall not do, nor permit any other person subject to the direction or control of Developer to do, anything in connection with the performance of the Developer's obligations under this Agreement that poses a threat to the public health or safety.

M. No Rule of Construction Against Drafter

The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual consent, and or rule of construction shall be applied against any party as the drafter of this agreement.

N. Effective Date

This agreement shall become effective from and after the last to occur of the following events:

1. The Village Board's approval of the Agreement
2. The execution of this Agreement by the Developer.

O. Entire Agreement

This Agreement is the entire agreement of the parties. All prior agreements, commitments, promises, offers, representation and statements made by or on behalf of the parties with respect to the subject matter of this Agreement are hereby terminated and shall have no further effect.

P. Governing Law

The law of the State of Wisconsin shall govern all issues relating to this Agreement.

**END OF TEXT. SIGNATURE PAGES AND EXHIBITS FOLLOW.**

**DEVELOPER**

IN WITNESS WHEREOF, **United Financial Group, Inc.** has caused this Agreement to be signed this \_\_\_\_ day of \_\_\_\_\_, 2017.

United Financial Group, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_, Title: \_\_\_\_\_

State of Wisconsin)

) ss.

County of \_\_\_\_\_)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2017, the above named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument in his respective official capacity as \_\_\_\_\_ of United Financial Group, Inc. and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said corporation and by its authority.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ County, Wisconsin  
My Commission Expires on \_\_\_\_\_

**VILLAGE OF MEMOMONEE FALLS**

Approved by the Village Board of the Village of Menomonee Falls on the \_\_\_\_ day of \_\_\_\_\_, 2017.

By: \_\_\_\_\_  
Joseph Helm  
Village President

Attest: \_\_\_\_\_  
Janice Moyer  
Village Clerk

Approved as to Form: \_\_\_\_\_  
Michael J. Morse, Village Attorney

This instrument was drafted by:  
Brian C. Hornickel, P.E.  
Senior Civil Engineer  
Village of Menomonee Falls

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

# EXHIBIT "A"

## LEGAL DESCRIPTION:

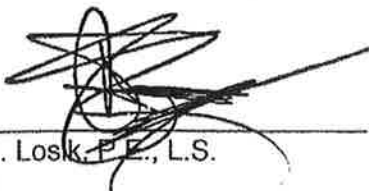
All that part of the Southeast 1/4 of the Southwest 1/4 of Section 32, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southeast corner of the said Southwest 1/4 Section; Thence North 00°01'28" West and along the East line of the said Southwest 1/4 Section, 65.01 feet to a point on the North Right-of-Way line of "Lisbon Road" (C.T.H. "K"); Thence South 88°45'19" West and along the said North Right-of-Way line of said "Lisbon Road" (C.T.H. "K") being parallel to and at a right angle distance of 65.00 feet from the South line of the Southeast 1/4 of said Section 32, 1.22 feet to a point; Thence South 89°03'04" West and along the said North Right-of-Way line being parallel to and at a right angle distance of 65.00 feet from the South line of the said Southwest 1/4 Section, 128.78 feet to the place of beginning of lands hereinafter described;

Continuing thence South 89°03'04" West and along the said North Right-of-Way line being parallel to and at a right angle distance of 65.00 feet from the said South line of the said Southwest 1/4 Section, 158.99 feet to a point of curvature; Thence Northwesterly 666.78 feet along the said North Right-of-Way line and the arc of a curve, whose center lies to the Northeast, whose radius is 2799.93 feet, whose central angle is 13°38'40", and whose chord bears North 84°07'36" West, 665.21 feet to the Southeast corner of Certified Survey Map No. 321; Thence North 09°09'04" East and along the East line of said Certified Survey Map No. 321, 394.21 feet to the Northeast corner of said Certified Survey Map No. 321; Thence North 87°42'56" West and along the North line of said Certified Survey Map No. 321 and coincident with the North line of lands described in Document No. 646658, in Volume 1028, at Page 5, 309.02 feet to a point; Thence South 00°13'37" East, 3.16 feet to the Northeast corner of lands described in Document No. 481043, in Volume 777, at Page 18; Thence North 87°37'37" West and along the North line of said lands described in Document No. 481043, in Volume 777, at Page 18, 132.10 feet to a point on the West line of the East 1/2 of the said Southwest 1/4 Section; Thence North 00°13'37" West and along the said West line of the said East 1/2 of the said Southwest 1/4 Section, 685.69 feet to a point; Thence North 89°46'23" East, 1330.94 feet to a point on the said East line of the said Southwest 1/4 Section; Thence South 00°01'28" East and along the said East line of the said Southwest 1/4 Section, 908.07 feet to the Northeast corner of Certified Survey Map No. 1533; Thence South 89°03'04" west and along the North line of said Certified Survey Map No. 1533 and being parallel to the said South line of the said Southwest 1/4 Section, 130.00 feet to the Northwest corner of said Certified Survey Map No. 1533; Thence South 00°01'28" East and along the West line of said Certified Survey Map No. 1533 and being parallel to the said East line of the said Southwest 1/4 Section, 250.00 feet to the point of beginning of this description.

Said Parcel contains 1,306,800 Square Feet (or 30.0000 Acres) of land, more or less.

Date: 4/19/11

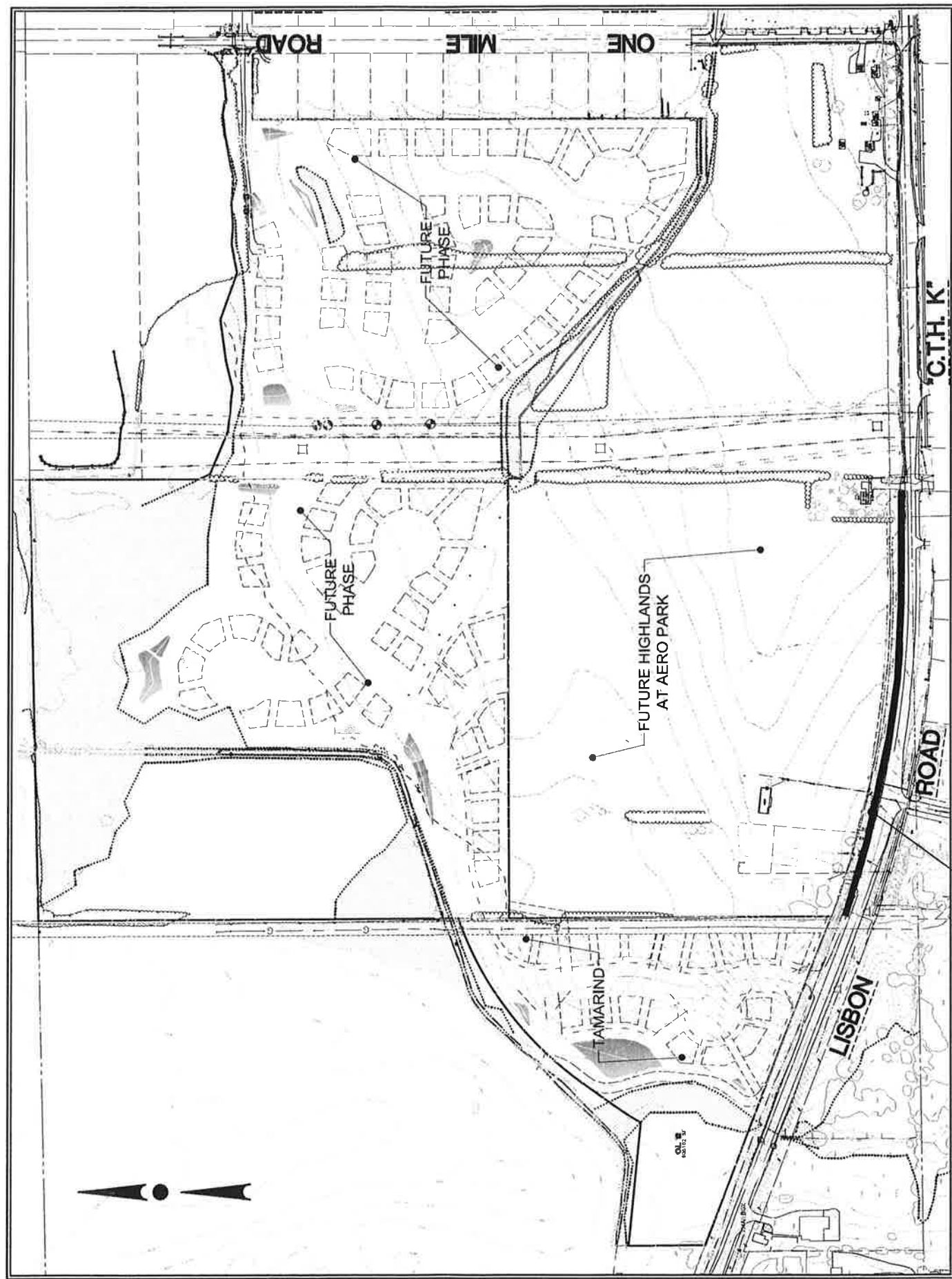


Michael J. Losik, P.E., L.S.  
President  
**LOSIK ENGINEERING-DESIGN GROUP, LTD.**  
P. O. Box 1967  
Brookfield, WI 53008  
Phone: (262)790-1480 Fax: (262)790-1481

**EXHIBIT "B"**

**LOCATION OF PUBLIC WATER IMPROVEMENTS**

# EXHIBIT "B"



WATER MAIN  
EXTENSION

## EXHIBIT "C"

Plans and documents to be provided by the Developer to the Village prior to acceptance of the Improvements by the Village Board:

1. Complete set of construction as-built drawings for water main on standard size mylar\*, Adobe PDF format and AutoCAD format (\*.DWG) on computer CD. Plan and profile sheets shall indicate as-built data without removing original data from the drawings.\*\* These as-built drawings shall be labeled as "As-builts" on each sheet and shall be stamped and signed by a Professional Engineer.
2. GPS As-built field data for the Public Water Facilities to update the Village GIS System. All data shall be tied into the Wisconsin State Plane Coordinate System – South Zone (NAD 1927) and the National Geodetic Vertical Datum of 1929. GPS field data shall be in ESRI shape file format.
3. All necessary permits must be obtained from other agencies including but not limited to: the Wisconsin Department of Transportation, the Wisconsin Department of Natural Resources, the U. S. Army Corps of Engineers, or Waukesha County Department of Public Works.
4. An itemized list of final quantities and costs for the Public Water Facilities.

\* Mylar shall be double matte 0.004" minimum thickness. Xero-graphic mylar reproductions are not acceptable.

\*\* Water main as-builts shall include measurements between all valves and fittings, and any variation in elevation from the approved plan.

## EXHIBIT "D"

### VILLAGE ENGINEERING, INSPECTION, ADMINISTRATIVE AND MISC. COSTS

ESTIMATED AMOUNT	ITEM
\$ 1,000	Village administration and legal expenses.
\$ ??,000	Village administration, staff review, and construction inspection of public water distribution system (10%)
\$ - 0 -	Erosion Control Fees
<u>\$ ??,000</u>	Total Estimated Village Engineering, Inspection, Administrative and Miscellaneous Costs.

### DEVELOPMENT PUBLIC IMPROVEMENT COSTS

ESTIMATED AMOUNT	ITEM
\$ ??,000	Public Water Main and Appurtenances
\$ ??,000	Construction Contingency (10%)
\$ ?,000	Engineering (non-Village – Const. Staking, As-built Plans, GIS Data)
<u>\$ ???,000</u>	Total Development Public Improvement Costs
<u>\$ ???,000</u>	Total Funds Required for Letter of Credit or other Financial Guarantee.



**EXHIBIT "E"**

**VILLAGE APPROVED BOND LANGUAGE**

**EXHIBIT "E" (Continued)**

**PERFORMANCE BOND**

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**DEVELOPER** (Name and Address):

**SURETY**

(Name, and Address of Principal Place of Business):

**OWNER** (Name and Address):

**DEVELOPER'S AGREEMENT**

Effective Date of Agreement:

Amount:

Description (Name and Location):

**BOND**

Bond Number:

Date (not earlier than Effective Date of the Agreement):

Amount:

Surety and Developer intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

**DEVELOPER AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Developer's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature (attach power of attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**OWNER APPROVAL**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title: (Mayor) (President) (Chairman)

## EXHIBIT "E" (Continued)

1. The Developer and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Developer's Agreement, which is incorporated herein by reference.
2. If the Developer performs the Developer's Agreement, including all warranties, guarantees, payments and reimbursements as described therein, the Surety and the Developer shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. The Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner first provides notice to the Developer and the Surety that the Owner is considering declaring a Developer Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Developer, and Surety to discuss the Developer's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. The Owner shall determine the location of any conference required by this Bond. If the Owner, the Developer, and the Surety agree, the Developer shall be allowed a reasonable time to perform the Developer's Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Developer Default;
  - 3.2 The Owner declares a Developer Default and notifies the Surety.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations.
5. Upon notice from Owner, the Surety shall within 15 days of Owner's notice and at the Surety's expense take one of the actions described in Section 5.1, 5.2, or 5.3, in addition to making payments as described in Section 5.4:
  - 5.1 Arrange for the Developer, with the consent of the Owner, to perform and complete the obligations of the Developer's Agreement;
  - 5.2 Undertake to perform and complete the obligations of the Developer's Agreement itself, through its agents or independent contractors;
  - 5.3 With the consent of Owner, obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for an agreement for performance and completion of the obligations of the Developer's Agreement, arrange for an agreement to be prepared for execution by the Owner and a developer selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Developer's Agreement and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Agreement Price Incurred by the Owner as a result of the Developer Default.
  - 5.4 The Surety shall immediately upon request from Owner, make payment for all sums owed to Owner by Developer pursuant to the Developer's Agreement which Developer has failed for more than 30 days to make payment in full.
6. If the Surety does not commence to proceed as provided in Paragraph 5 within 15 days of Owner's notice, unless extended by Owner in writing, and continue to proceed as soon as practicable and without delay, the Surety shall be deemed to be in default on this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. Surety shall not require the Owner to negotiate or enter a Takeover Agreement, Release, or any written agreement of any kind prior to Surety performing its obligations of this Bond, and any such request by Surety shall be deemed to be a default.
7. If the Surety elects to act under Paragraph 5.1, 5.2 or 5.3 and 5.4, then the responsibilities of the Surety to the Owner shall not be greater than those of the Developer under the Developer's Agreement except as described herein and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Developer's Agreement. The Surety is obligated, for:
  - 7.1 The responsibilities of the Developer for correction of defective-work and completion of the Developer's Agreement, including the full warranty period provided within the Developer's Agreement.
  - 7.2 Additional legal, design professional, and delay costs resulting from the Developer's Default, and resulting from the actions or failure to act of the Surety under Paragraphs 5 and 6, including all actual costs of actions, including litigation, Owner may take to enforce the terms of this Bond against Surety.
  - 7.3 Liquidated damages. Recognizing that the Owner will incur significant damages from Surety's delay, rather than require proof of the amount of such damages, and not as a penalty, Surety shall pay to Owner \$500 per day, for each day that Surety fails to fully comply with the terms of this Bond within the time required by this Bond.
8. The Surety shall not be liable to the Owner or others for obligations of the Developer that are unrelated to the Developer's Agreement. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
9. The Surety hereby waives notice of any change, including changes of time, work, or other terms, to the Developer's Agreement or to related subcontracts, purchase orders, and other obligations.
10. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within six years after a declaration of Developer Default or within six years after the Developer ceased working or within six years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs last. If the provisions of this paragraph are void or prohibited by law, the maximum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.
11. Notice to the Surety, the Owner, or the Developer shall be mailed or delivered to the address shown on the page on which their signature appears.
12. Statutory Bond Reduction. As and to the extent required by Wisconsin Statutes Section 236.13(2)(a)1., and not otherwise, the amount of this Bond shall be automatically reduced upon substantial completion of the public improvements to the amount equal to the total cost to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements, subject to the following. Any such reduction shall not apply to defaults, notices, conditions, claims or occurrences arising prior to substantial completion.