

**VILLAGE OF GERMANTOWN
N112 W17001 MEQUON ROAD
GERMANTOWN, WI 53022**

MEETING: REGULAR MEETING OF THE VILLAGE BOARD

DATE AND TIME: MONDAY, August 17, 2020 7:00 p.m.

**LOCATION: Germantown Village Hall Board Room
N112 W17001 Mequon Road**

NOTICE: Pursuant to the current recommendation of the Centers for Disease Control and Prevention limiting the size of public gatherings, capacity within the Board Room will be limited. Members of the body and citizens may also attend the meeting virtually through the WebEx platform, Meeting #: 126 578 8518 Password: Bvtum8GYd54 which can be accessed by phone at 408-418-9388 or by logging on <https://villageofgermantown.my.webex.com/villageofgermantown.my/j.php?MTID=m5db383706cc71d055621759ccc639128>

Citizens wishing to view the meeting are encouraged to watch the live broadcast of the meeting through Channel 25 on Spectrum cable, or the livestream on the Village's website. Citizens not wishing to attend the meeting personally or virtually may submit any public comments by sending an email to comments@village.germantown.wi.us by 4 p.m. on the day of the meeting so that it can be provided to the members of the body for their consideration.

AGENDA

- I. **CALL TO ORDER:** *This meeting has been given public notice in accordance with Section 19.83 and 19.84, Wis. Stats, in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.*
- II. **ROLL CALL:**
- III. **PLEDGE OF ALLEGIANCE:**
- IV. **PRESIDENT'S REPORT:**
- V. **ANNOUNCEMENTS OF FORTHCOMING EVENTS OF PUBLIC INTEREST
COMMITTEE AND DEPARTMENT REPORTS:**
 - A. The following individuals will be given the opportunity to make announcements of future municipal activities: Village President, Village Board Members, Village Administrator, Village Attorney, Village Clerk, And Department Heads, to include:
 - B. Election Update.
- VI. **CITIZEN INPUT/PUBLIC APPEARANCE on items not subject to a public hearing:**

Please be advised per §19.84(2), information will be received from the public. It is the policy of this municipality that there be a three (3) minute time period, per person, with time extension per the Chief Presiding Officer's discretion; be further advised that there may be limited discussion on the information received, however, no action will be taken under public comments. (15 minutes) Written Public Comments should be directed to comments@village.germantown.wi.us, by 4 p.m. on Monday, August 17.

VII. CONSENT AGENDA:

- A. Approval of Minutes August 3, 2020 Regular Village Board Meeting, and August 10, 2020, Special Village Board Meeting.
- B. Accounts payable/payroll
 - 1. August 4, 2020 Payroll (Hourly) \$ 260,369.32
 - 2. August 10, 2020 Accounts Payable \$ 1,736,017.96
 - 3. August 15, 2020 Payroll (Salary) \$ 108,326.99

The following items were forwarded from **Public Safety** with a unanimous recommendation.

- A. Change over two 2020 New Squads – Police Department.

VIII. OLD BUSINESS:

- A. Status of 2020 Budget Savings Plan, Resolution 41-2020, Directing the Village Administrator to Implement 2020 Budget Savings Plan.

IX. PUBLIC HEARINGS:

- A. None.

X. NEW BUSINESS:

- A. Dheinsville Historical Society, Picnic License, Temporary Class “B” Fermented Malt Beverage and Wine License, for Annual Hunsrucker Oktoberfest, September 25 - 27, Dheinsville Historical Park.
- B. Village of Richfield Utility Extension Discussion.
- C. Resolution 50-2020, Safebuilt Professional Services Agreement for Building Permitting & Inspection Services.
- D. Resolution 51-2020, Adoption of WI DSPS Commercial Plan Review Fee Schedule.
- E. Resolution 52-2020, Veridian Development Agreement for Veridian Homes, LLC, Agent for VHKE LLC, Property Owner - N104 W14942 Donges Bay Road
- F. Police Response to Protests.
- G. Discussion of Hildebrand Claim. The Village Board may convene into closed session per Wis. Stats. §19.85(1)(g) for the purpose of conferring with Legal Counsel who is rendering advice concerning strategy to be adopted by the Village with respect to litigation in which it is involved or is likely to become involved and then may reconvene into open session to take such action as it deems appropriate; and,

XI. ADJOURNMENT.

The next regular meeting of the Village Board will be on Monday, September 21, 2020 at 7:00 p.m.

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 please contact the Village Clerk at (262)250-4740 at least 2 days prior to the meeting.

**VILLAGE OF GERMANTOWN
VILLAGE BOARD MEETING MINUTES
August 3, 2020**

CALL TO ORDER: The meeting was called to order at 7:00 p.m. by President Wolter.

ROLL CALL: Present: President Wolter, Trustees Baum, Hudson, Miller, Myers, Pieper, Wing, and Zabel. Absent Excused Trustee Kaminski. Also present: Administrator Kreklow, Clerk Braunschweig, Attorney Sajdak, Director Retzlaff, Director Schroeder, and Manager Tucker. Clerk's Note: This was a partial Virtual Webex Meeting.

PLEDGE OF ALLEGIANCE:

PRESIDENT'S REPORT:

No Report.

**ANNOUNCEMENTS OF FORTHCOMING EVENTS OF PUBLIC
INTEREST/DEPARTMENT AND COMMITTEE REPORTS:**

- A. The following individuals will be given the opportunity to make announcements of future municipal activities: Village President, Village Board Members, Village Administrator, Village Attorney, Village Clerk, And Department Heads, to include:
- B. Introduction of Germantown School Superintendent, Brett Stousland. Brett Stousland was in another meeting and will be introduced upon his arrival.
- C. Election Update.

Clerk Braunschweig announced that there is an August 11 Partisan Primary. Polls will be open from 7 am – 8 pm at their normal poll locations. The Village Hall is open for absentee voting, Tuesday – Thursday 8 am – 5:30 pm; Friday 8 am-5 pm. We are taking precautions as done with the April election, masks, table guards, poll book labels,

-The last Partisan Primary saw 1,957 voters. Of that number there were 340 absentee ballots. 13,585 registered voters at that time. 14% voter turnout.

-With this election there are nearly 3,300 absentee ballots in process. 13,726 registered voters. 24% turnout.

Clerk Braunschweig commented that there are absentee postcard mailers that have been mailed by political parties. These are not from the Village or the State.

The Elections Commission will mail out absentee ballot request forms at the beginning of September. These are not ballots these are the request forms.

CITIZEN INPUT/PUBLIC APPEARANCE on items not subject to a public hearing:

President Wolter read public comments.

Kristine Huber of Windsong Circle East submitted comments via email. President Wolter read her comments. She commented on the Veridian Preliminary Plat Approval. She commented on the walking path and bridge.

Deb Denton of Crabtree Lane submitted comments via email. President Wolter read her comments. She commented on the Veridian Preliminary Plat Approval. She commented on an extension of a buffer along the East side of the plot and to remove buckthorn, the number of homes not to exceed 16, no vinyl siding, access path with a bridge, and the zoning.

Kristine Huber of Windsong Circle East sent a comment to the Plan Commission meeting via email. President Wolter read her comments. She commented on the Veridian Preliminary Plat Approval. She commented on the shape of the SW Storm basin.

Bob Fitzgerald of Windsong Circle East sent a comment to the Plan Commission meeting via email. President Wolter read his comments. He commented on the Veridian Preliminary Plat Approval. He commented that the project to commence in 12 months, extension of a buffer along the east side of the plot and removal of buckthorn.

Sue MacGillis of Hidden Pond Court sent a comment to the Plan Commission meeting via email. President Wolter read her comments. He commented on the Veridian Preliminary Plat Approval. She commented in agreement of the amendments and for the area to stay natural.

Solomon and Cynthia Johnson of Windsong Circle West sent a comment to the Plan Commission meeting via email. President Wolter read the comments. They commented on the Veridian Preliminary Plat Approval. They commented in agreement of the amendments and developers agreement.

Lilibeth Yao of Windsong Circle had submitted comments via email and came to the podium to speak in regard to the Veridian Preliminary Plat. She commented on the use of natural building materials, avoiding a cookie cutter look, buildings completed in one year, and no noxious weeds.

Mary Hudson of Windsong Circle West came to the podium to speak in regard to the Veridian Preliminary Plat. She commented that she is Tr. Hudson's wife. She spoke about landscape, buffering, trees, and walking paths.

Jan Miller of Windsong Circle had submitted comments via email and came to the podium to speak in regard to the Veridian Preliminary Plat. She commented on an extension of buffer, removal of invasive species, not to exceed 16 homes, reverting back to original zoning if project is not commenced by April 6, 2021, no vinyl siding, and no cookie cutter look.

John Plenke of Windsong Circle East had submitted comments via email and came to the podium to speak in regard to the Veridian Preliminary Plat. He commented on dumping of soil and report from the DNR.

Germantown School Superintendent, Brett Stousland arrived and introduced himself. He has an open door policy. K-5 Schools will start on September 1. Tr. Zabel commented on possible School District and Village Board meetings to be on the fifth Monday of the month.

CONSENT AGENDA:

- A. Approval of Minutes July 20, 2020 Regular Village Board Meeting.
- B. Accounts payable/payroll
 - 1. July 21, 2020 Payroll (Hourly) \$ 258,982.72
 - 2. July 25, 2020 Accounts Payable \$ 223,921.90
 - 3. July 31, 2020 Payroll (Salary) \$ 107,594.06
 - 4. July 31, 2020 Accounts Payable \$ 2,114.80

The following items were forwarded from **General Government and Finance** with a unanimous recommendation.

- C. Acceptance Of 2019 Comprehensive Annual Financial Report (CAFR).

Motion (Myers/Baum) to approve Consent Agenda Items A-C. Roll Call Voted Carried Unanimously.

OLD BUSINESS:

- A. None.

PUBLIC HEARING:

- A. None.

NEW BUSINESS:

- A. Resolution 47-2020, Germantown Soccer Club 2020-2022 Field Usage Agreement.

Motion (Myers/Baum) to approve Resolution 47-2020, Germantown Soccer Club 2020-2022 Field Usage Agreement. Motion carried unanimously.

- B. Preliminary Subdivision Plat for a 16-Lot Residential Subdivision, Veridian Homes, LLC, Agent for VHKE LLC, Property Owner - N104 W14942 Donges Bay Road.

Director Retzlaff presented information for the 16-Lot Residential Subdivision Preliminary Subdivision Plat for Veridian Homes, LLC, Kinderberg Estates. The site location was shown and reviewed. This is for a 16-lot, 14.7-acre single-family residential development. The lot size is consistent with the Rs-4 zoning district requirement. The preliminary plat highlights were reviewed. The landscape plan has been received and reviewed by staff with request of additional landscaping. There will be removal of invasive species and placement of additional trees. The Park and Recreation Commission indicated additional landscaping and adding the bridge path feature to the south-end of the park. The conditions were reviewed.

MOTION (Baum/Miller) to approve Preliminary Subdivision Plat for a 16-Lot Residential Subdivision, Veridian Homes, LLC, Agent for VHKE LLC, Property Owner - N104 W14942 Donges Bay Road with the eight conditions.

Discussion of the landscaping plan ensued. The landscaping plan will be part of the development agreement. The developer has not created an HOA yet. The Development agreement will have language for the HOA. Discussion ensued of vinyl siding. Discussion ensued of the bridge.

There is an erosion control and grading plan requirement. Not typical for the DNR to oversee the creation of a storm water basin. Normally staff oversees the erosion control and grading plan.

Discussion ensued of reverting back to the A-2 zoning if nothing is developed in one year. This would be part of the development agreement.

Discussion of building materials and architecture requirements ensued. Attorney Sajdak commented that we want to see the covenants but cannot impose building materials requirements and architecture requirements as long as the building code is met.

AMENDMENT MOTION (Myers/Hudson) for a path walkway and bridge installed between lots 4 & 5. The bridge crosses the drainage area. Amendment motion carried unanimously.

AMENDMENT MOTION (Hudson/Zabel) to amend condition number 2 and add lots 8 & 9 for additional landscaping; buffer for the adjacent Heritage Hills subdivision along the rear property lines or in the outlot area abutting Lots #5, 6, 7, 8 and 9. Amendment motion carried. Wing voted no.

AMENDMENT MOTION (Zabel/Wing) to amend condition number 6 to require subdivision deed restrictions and covenants drafts to be submitted prior to Development Agreement Approval. Amendment motion carried unanimously.

Discussion ensued of the reverting back to the A-2 zoning if development does not occur. Once public improvements have commenced the property cannot revert back to A-2 zoning. The financial guarantees are in place to pay for the public improvements.

Roll Call vote on original motion as amended carried. Hudson, Wing, Zabel voted no.

Motion (Baum/Zabel) to take items out of order and move to new business item E. Motion carried unanimously.

- E. Resolution 48-2020, A Resolution Authorizing the Assignment and Partial Release of a Development Agreement with Goldendale Road Germantown LLC for the Approximately 45.6 Acres of Land Located at the Southwest Corner of Goldendale and Rockfield Roads.**

Motion (Myers/Baum) to approve Resolution 48-2020, A Resolution Authorizing the Assignment and Partial Release of a Development Agreement with Goldendale Road Germantown LLC for the Approximately 45.6 Acres of Land Located at the Southwest Corner of Goldendale and Rockfield Roads. Motion carried unanimously.

Motion (Baum/Zabel) to go back to new business item C. Motion carried unanimously.

C. Organizational Structure Finance Functions.

Administrator Kreklow reported on the item. He commented on the recent retirement in the Finance Department and an additional retirement that is coming up. The transition is being planned. The Clerk and Support Services Manager are working to take on additional responsibilities. The change in the structure will improve service levels by cross training existing staff and sharing responsibilities. Existing staff as the Clerk and Support Services have background in finance. This is a growth opportunity for them to take on additional responsibilities. The Audit contains information on segregation of duties. It is best practice to segregate duties and the changes in structure would allow the segregation of duties. There would be budget savings.

The proposed organizational changes would divide the Finance Director functions between the Support Services Manager and Clerk. The Clerk would take on additional responsibilities and the title would change to Clerk / Treasurer.

The deputy treasurer, deputy clerk / treasurers, and utility clerk would report to the Clerk Treasurer.

This would give additional opportunities for growth and development and benefit the Village.

Motion (Zabel/Myers) to approve that the organizational changes as presented occur.

Discussion ensued of the current staffing and this fits the existing staff. Attorney Sajdak reported that the combination Clerk / Treasurer position is used throughout the State. Net savings to the Village is \$30,000 - \$40,000 annually. Motion carried unanimously.

D. Classification and Filling of Deputy Clerk / Deputy Treasurer Position.

Motion (Myers/Baum) combine Deputy Clerk / Deputy Treasurer Positions and fill positions. Discussion ensued of the job description and the addition of the Adobe Software, hours of work and may attend meetings. Roll Call Vote carried unanimously.

F. Resolution 49-2020, Resolution Relating to Village of Germantown COVID-19 Emergency Declaration.

Motion (Myers/Baum) to approve Resolution 49-2020, Resolution Relating to Village of Germantown COVID-19 Emergency Declaration. Motion carried unanimously.

ADJOURNMENT.

ADJOURNMENT: There being no further business, the meeting adjourned at 8:50 p.m.

The next regular meeting of the Village Board will be on Monday, August 17, 2020 at 7:00 p.m. There will be a special meeting on August 11, 2020 at 7:00 pm.

Respectfully Submitted,

Deanna Braunschweig

Deanna B. Braunschweig, WCMC/CMC
Village Clerk

**VILLAGE OF GERMANTOWN
VILLAGE BOARD SPECIAL MEETING MINUTES
August 10, 2020**

CALL TO ORDER: The meeting was called to order at 7:32 p.m. by President Wolter.

ROLL CALL: Present: President Wolter, Trustees Hudson, Miller, Myers, Pieper, Wing, and Zabel. Absent Excused Trustee Baum, Kaminski. Also present: Clerk Braunschweig, Attorney Sajdak, and Manager Tucker. Clerk's Note: This was a partial Virtual Webex Meeting.

CITIZEN INPUT/PUBLIC APPEARANCE on items not subject to a public hearing:

None.

NEW BUSINESS:

Extension of Liquor Fermented Malt Beverage License Premise: Von Rothenburg Bier Stube, Charles Hastings, Agent, N116W15841 Main Street / N116 W15863 Main Street. Expanded fenced in outdoor area of the beer garden, an additional 20% larger than its current size. A fence to the South will be included. Additional 6-8 tables with designated area for customers with pets. The plan also includes the stage being relocated to the South fence line.

Motion (Myers/Pieper) to approve Extension of Liquor Fermented Malt Beverage License Premise: Von Rothenburg Bier Stube, Charles Hastings, Agent, N116W15841 Main Street / N116 W15863 Main Street. Expanded fenced in outdoor area of the beer garden, an additional 20% larger than its current size. A fence to the South will be included. Additional 6-8 tables with designated area for customers with pets. The plan also includes the stage being relocated to the South fence line.

Discussion of the extension of premise ensued. Discussion ensued of a possible additional fence. Neighbor and business relations have come a long way. This will allow the social distancing and allow the business to continue.

Motion carried. Wing voted no.

ADJOURNMENT.

ADJOURNMENT: There being no further business, the meeting adjourned at 7:37 p.m.

The next regular meeting of the Village Board will be on Monday, August 17, 2020 at 7:00 p.m.

Respectfully Submitted,

Deanna Braunschweig

Deanna B. Braunschweig, WCMC/CMC
Village Clerk

**BUSINESS OF THE PUBLIC SAFETY COMMITTEE
& Village Board GERMANTOWN, WI**

MEETING DATE: August 03, 2020 & August 17, 2020

AGENDA ITEM: New Business

ITEM TITLE: Squad Change Over

SUBMITTED BY: Lt. Patrick Merten

SUMMARY EXPLANATION:

The Police Department is requesting authorization for funds previously budgeted for in order to change-over two new 2020 Ford Police Interceptor Utility vehicles.

I have received a quote from General Fire Equipment Co., Inc to change-over the two new squads.

Squad 12 - \$14,766.97

Squad 17 - \$14,841.87

ATTACHMENT: ORDINANCE___ RESOLUTION_____ OTHER ☒ X

Two quotes from General Fire Equipment Co., Inc for complete change-over of two squads.

RECOMMENDATION:



General Fire Equipment Co., Inc

975 North Hawley Rd
Milwaukee, WI 53213

Phone: 414/475-0959

Order Number B18405-B

Order Date 07/21/20

Bid Expiration Date 10/21/20

Required Date 07/21/20

Bill To:

Germantown Police Department
P.O. Box 96
N112 W16877 Mequon Road
Germantown, WI 53022

Ship To:

Germantown Police Department
P.O. Box 96
N112 W16877 Mequon Road
Germantown, WI 53022

THIS IS A BID/ESTIMATE

Customer	Ship Via	F.O.B.	Terms	Purchase Order Number	Salesperson	Reference No.
GERM02	Install	Origin	Net 25 Days		BW03	
Qty. Ordered	Qty. Shipped	Item Number	Unit of Measure	Unit Price		Extended Price
	Back Ordered	Item Description (Customer Part No.)		Discount %	Tax	
1	0	MOT-MMGSK		1.75		1.75
		Antenna Base Gasket		N		
1	0	INS-BATTERY		105.00		105.00
		High amperage battery, 27 AHR		N		
1	0	INS-BB		35.00		35.00
		Right Angle battery Hold Down Bracket, Powder Coated		N		
1	0	AME862		38.00		38.00
		Amerex Heavy Duty Vehicle Bracket, Fits 5# Extgs		N		
4	0	INS-B1004		14.00		56.00
		Right Angle Bkt, 1-1/2" x 3-1/4"(Slot) x 6-1/8"(Slot)		N		
1	0	001		2950.00		2950.00
		Labor Charges For Installation Of Equipment Into Squad		N		
				Shipping Subtotal		350.00
				Non Taxable Subtotal		14416.97
				Taxable Subtotal		0.00
				Tax		0.00
				Total Order		14766.97

Phone: 414/475-0959

Order Number B18411-B**Order Date 07/21/20**

Bid Expiration Date **10/21/20**

Required Date 07/21/20

Bill To:

Germantown Police Department
P.O. Box 96
N112 W16877 Mequon Road
Germantown, WI 53022

Ship To:

Germantown Police Department
P.O. Box 96
N112 W16877 Mequon Road
Germantown, WI 53022

THIS IS A BID/ESTIMATE

Customer	Ship Via	F.O.B.	Terms	Purchase Order Number	Salesperson	Reference No.
GERM02	Install	Origin	Net 25 Days		BW03	
Qty. Ordered	Qty. Shipped	Item Number	Unit of Measure	Unit Price		Extended Price
	Back Ordered	Item Description (Customer Part No.)		Discount %	Tax	
2	0	SOUEENT3B3-		178.80		357.60
		Sound-Off Surface Mount LED Intersection Module, Each	N			
2	0	SOUPMP2BKUMB3-		25.00		50.00
		Under Mirror Bracket Per Side for 2020 PI Utility	N			
2	0	SOUEENL148-		321.60		643.20
		Sound-Off nLine 48" Rocker Panel Light (1/RED 1/BLUE)	N			
1	0	UNIX218016-0002		361.83		361.83
		Unity 6" LED Xtreme Post Mount Spotlight assy w/ Black Head	N			
2	0	SOUEENFSGS2-		160.50		321.00
		Sound-Off nForce Single Deck/Grill Mount 10-16v, 9 LED	N			
		(SIDE REAR WINDOW R/B)				
1	0	INS-MISC		35.00		35.00
		White hi intensity LED Back up bulbs	N			
2	0	EIG-E106		85.50		171.00
		6 lamp Hi-Output Surface Mount LED Light w/ Flasher (LP KIT R/B)	N			
1	0	INS-BLP		35.00		35.00
		Custom Black Poly License Plate Bracket	N			
2	0	EIG-E106		85.50		171.00
		6 lamp Hi-Output Surface Mount LED Light w/ Flasher (TURD 1/RED 1/BLUE)	N			



General Fire Equipment Co., Inc

975 North Hawley Rd
Milwaukee, WI 53213

Phone: 414/475-0959

Order Number **B18411-B**

Order Date 07/21/20

Bid Expiration Date 10/21/20

Required Date 07/21/20

Bill To:

Germantown Police Department
P.O. Box 96
N112 W16877 Mequon Road
Germantown, WI 53022

Ship To:

Germantown Police Department
P.O. Box 96
N112 W16877 Mequon Road
Germantown, WI 53022

THIS IS A BID/ESTIMATE

Customer	Ship Via	F.O.B.	Terms	Purchase Order Number	Salesperson	Reference No.
GERM02	Install	Origin	Net 25 Days		BW03	
Qty. Ordered	Qty. Shipped	Item Number	Unit of Measure	Unit Price		Extended Price
	Back Ordered	Item Description (Customer Part No.)		Discount %	Tax	
1	0	INS-BATTERY		105.00		105.00
		High amperage battery, 27 AHR		N		
1	0	INS-BB		35.00		35.00
		Right Angle battery Hold Down Bracket, Powder Coated		N		
4	0	INS-B1004		14.00		56.00
		Right Angle Bkt, 1-1/2" x 3-1/4"(Slot) x 6-1/8"(Slot)		N		
1	0	001		2950.00		2950.00
		Labor Charges For Installation Of Equipment Into Squad		N		
				Shipping Subtotal		350.00
				Non Taxable Subtotal		14491.87
				Taxable Subtotal		0.00
				Tax		0.00
				Total Order		14841.87

**VILLAGE OF GERMANTOWN
WASHINGTON COUNTY**

RESOLUTION NO. 50-2020

SAFEBUILT WISCONSIN LLC 2020-2021 PROFESSIONAL SERVICES AGREEMENT

WHEREAS, the Village of Germantown is seeking a consultant to perform building permit processing & building inspection services in accordance with the Village's adopted building codes and ordinances for the remaining period of time in Fiscal Year 2020 and Fiscal Year 2021; and

WHEREAS, Village Staff has met with and discussed a proposal by Safebuilt Wisconsin LLC to provide said services in a manner that is expected to provide an enhanced level of efficiency and overall increase in the level of services provided to Village residents, property owners and developers when compared to the Village's current delivery of such services through the existing Inspection Services division of the Community Development Department; and

WHEREAS, On August 17, 2020, the General Government & Finance Committee met and recommended approval of the Professional Services Agreement proposed by Safebuilt Wisconsin LLC attached hereto; and

NOW THEREFORE BE IT RESOLVED, that the attached Agreement between the Village of Germantown and Safebuilt Wisconsin LLC is hereby approved.

Introduced by: _____

Adopted: August 17, 2020

Vote: Ayes: _____ Nays: _____

Dean M. Wolter, Village President

ATTEST:

Deanna Braunschweig, WCMC/CMC
Village Clerk

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN VILLAGE OF GERMANTOWN, WISCONSIN
AND SAFEbuilt WISCONSIN, LLC**

This Professional Services Agreement (“Agreement”) is made and entered into by and between Village of Germantown, Wisconsin, (“Municipality”) and SAFEbuilt Wisconsin, LLC, a wholly owned subsidiary of SAFEbuilt, LLC, (“Consultant”). Municipality and Consultant shall be jointly referred to as “Parties”.

RECITALS

WHEREAS, Municipality is seeking a consultant to perform the services listed in Exhibit A – List of Services, (“Services”); and

WHEREAS, Consultant is ready, willing, and able to perform Services.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Municipality and Consultant agree as follows:

1. SCOPE OF SERVICES

Consultant will perform Services in accordance with codes, amendments and ordinances adopted by the elected body of Municipality. The qualified professionals employed by Consultant will maintain current certifications, certificates, licenses as required for Services that they provide to Municipality in accordance with State of Wisconsin SPS 305 of the Administrative Code. Consultant is not obligated to perform services beyond what is contemplated by this Agreement.

Consultant shall provide the Services using Community Core Systems hardware and software package in accordance with the provisions of Exhibit C.

2. CHANGES TO SCOPE OF SERVICES

Any changes to Services between Municipality and Consultant shall be made in writing that shall specifically designate changes in Service levels and compensation for Services. Both Parties shall determine a mutually agreed upon solution to alter services levels and a transitional timeframe that is mutually beneficial to both Parties. No changes shall be binding absent a written Agreement or Amendment executed by both Parties.

3. FEE STRUCTURE

In consideration of Consultant providing services, Municipality shall pay Consultant for Services performed in accordance with Exhibit B – Fee Schedule for Services.

4. INVOICE & PAYMENT STRUCTURE

Consultant will invoice Municipality as SAFEbuilt, LLC, on a monthly basis and provide all necessary supporting documentation. All payments are due to Consultant within 30 days of Consultant’s invoice date. Payments owed to Consultant but not made within sixty (60) days of invoice date shall bear simple interest at the rate of one and one-half percent (1.5%) per month. If payment is not received within ninety (90) days of invoice date, Services will be discontinued until all invoices and interest are paid in full. Municipality may request, and Consultant shall provide, additional information before approving the invoice. When additional information is requested Municipality will identify specific disputed item(s) and give specific reasons for any request. Undisputed portions of any invoice shall be due within 30 days of Consultants invoice date, if additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute.

5. TERM

This Agreement shall be effective on the latest date on which this Agreement is fully executed by both Parties. The initial term of this Agreement shall begin on effective date and end on December 31, 2021, subsequently, Agreement shall automatically renew for twelve (12) month terms, unless prior notification is delivered to either Party sixty (60) days in advance of the renewal date of this Agreement. In the absence of written documentation, this Agreement will continue in force until such time as either Party notifies the other of their desire to terminate this Agreement.

6. TERMINATION

Either Party may terminate this Agreement, or any part of this Agreement upon ninety (90) days written notice, with or without cause and with no penalty or additional cost beyond the rates stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) days of the termination.

All structures that have been permitted, a fee collected, and not yet expired at the time of termination may be completed through final inspection by Consultant if approved by Municipality. Consultant's obligation is met upon completion of final inspection or permit expiration, provided that the time period to reach such completion and finalization does not exceed ninety (90) days. Alternately, Municipality may exercise the option to negotiate a refund for permits where a fee has been collected but inspections have not been completed. The refund will be prorated according to percent of completed construction as determined by Consultant and mutually agreed upon by all Parties. No refund will be given for completed work.

7. FISCAL NON-APPROPRIATION CLAUSE

Financial obligations of Municipality payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Municipality, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

8. MUNICIPALITY OBLIGATIONS

Municipality shall timely provide all data information, plans, specifications and other documentation reasonably required by Consultant to perform Services. Municipality grants Consultant full privilege, non-exclusive, non-transferable license to use all such materials as reasonably required to perform Service.

9. PERFORMANCE STANDARDS

Consultant shall perform the Services using that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services. Consultant represents to Municipality that Consultant retains employees that possess the skills, knowledge, and abilities to competently, timely, and professionally perform Services in accordance with this Agreement.

10. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of Municipality. Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for Municipality under this Agreement. Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with Consultant.

Consultant and Municipality agree that Consultant will provide similar service to other clients while under contract with Municipality and Municipality acknowledges that Consultant employees may provide similar services to multiple clients. Consultant shall at its sole discretion assign and reassign qualified employees, as

determined by Consultant, to perform services for Municipality. Municipality may request that a specific employee be assigned to or reassigned from work under this Agreement and Consultant shall consider that request when determining staffing. Consultant shall determine all conditions of employment for its employees, including hours, wages, working conditions, promotion, discipline, hiring and discharge. Consultant exclusively controls the manner, means and methods by which services are provided to Municipality, including attendance at meetings, and Consultant's employees are not subject to the direction and control of Municipality. Except where required by Municipality to use Municipality information technology equipment or where requested to perform the services from office space provided by the Municipality, Consultant employees shall perform the services using Consultant information technology equipment and from such locations as Consultant shall specify. No Consultant employee shall be assigned a Municipal email address as their exclusive email address and any business cards or other IDs shall state that the person is an employee of Consultant or providing Services pursuant to a contractual agreement between Municipality and Consultant.

11. ASSIGNMENT

Neither party shall assign all or part of its rights, duties, obligations, responsibilities, nor benefits set forth in this Agreement to another entity without the written approval of both Parties; consent shall not be unreasonably withheld. Notwithstanding the preceding, Consultant may assign this Agreement to its parent, subsidiaries or sister companies (Affiliates) without notice to Municipality. Consultant may subcontract any or all of the services to its Affiliates without notice to Municipality. Consultant may subcontract any or all of the services to other third parties provided that Consultant gives Municipality prior written notice of the persons or entities with which Consultant has subcontracted. Consultant remains responsible for any Affiliate's or subcontractor's performance or failure to perform. Affiliates and subcontractors will be subject to the same performance criteria expected of Consultant. Performances clauses will be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

12. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold harmless Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of Municipality, from and against any and all third-party claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities ("Claims") alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that any such Claims are caused by the negligence of Consultant or any officer, employee, representative, or agent of Consultant. Consultant shall have no obligations under this Section to the extent that any Claim arises as a result of Consultants compliance with Municipal law, ordinances, rules, regulations, resolution, executive orders or other instructions received from Municipality.

To the fullest extent permitted by law and without waiver of sovereign immunity, Municipality shall defend, indemnify, and hold harmless Consultant, its officers, employees, representatives, and agents, from and against any and all Claims alleging personal injury, including bodily injury or death, and/or property damage, but only to the extent that such Claims are caused by (a) the negligence of, or material breach of any obligation under this Agreement by, Municipality or any officer, employee, representative, or agent of Municipality or (b) Consultant's compliance with Municipal law, ordinances, rules, regulations, resolutions, executive orders or other instructions received from Municipality. If either Party becomes aware of any incident likely to give rise to a Claim under the above indemnities, it shall notify the other and both Parties shall cooperate fully in investigating the incident.

13. LIMITS OF LIABILITY

EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, CONSULTANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR INFRINGEMENT. IN NO EVENT SHALL CONSULTANT OR MUNICIPALITY BE LIABLE TO ONE ANOTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION,

DAMAGES FOR LOST PROFITS, LOST REVENUES. LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY OTHER THAN WITH RESPECT TO PAYMENT OF OBLIGATIONS FOR SERVICES. EXCEPT WITH RESPECT TO PAYMENT OBLIGATIONS, IN NO EVENT SHALL THE LIABILITY OF MUNICIPALITY OR CONSULTANT UNDER THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENDED CONDUCT, OR OTHERWISE) EXCEED THE AMOUNT OF FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT.

14. INSURANCE

- A. Consultant shall procure and maintain and shall cause any subcontractor of Consultant to procure and maintain, the minimum insurance coverages listed below throughout the term of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to Municipality. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- B. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease – policy limit, and one million dollars (\$1,000,000) bodily injury by disease – each employee. Worker's compensation coverage in "monopolistic" states is administered by the individual state and coverage is not provided by private insurers. Individual states operate a state administered fund of workers compensation insurance which set coverage limits and rates. Monopolistic states: Ohio, North Dakota, Washington, Wyoming.
- C. Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultant's, and products. The policy shall contain a severability of interest provision and shall be endorsed to include Municipality and Municipality's officers, employees, and consultants as additional insureds.
- D. Professional liability insurance with minimum limits of one million dollars (\$1,000,000) each claim and two million dollars (\$2,000,000) general aggregate.
- E. Automobile Liability: If performance of this Agreement requires use of motor vehicles licensed for highway use, Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than \$1,000,000 combined single limit each accident.
- F. Municipality shall be named as an additional insured on Consultant's insurance coverage.
- G. Prior to commencement of Services, Consultant shall submit certificates of insurance acceptable to Municipality.

15. THIRD PARTY RELIANCE

This Agreement is intended for the mutual benefit of Parties hereto and no third-party rights are intended or implied.

16. OWNERSHIP OF DOCUMENTS

Except as expressly provided in this Agreement, Municipality shall retain ownership of all work product and deliverables created by Consultant pursuant to this Agreement and all records, documents, notes, data and other materials required for or resulting from the performance of Services hereunder shall not be used by Consultant for any purpose other than the performance of Services hereunder without the express prior written consent of Municipality. All such records, documents, notes, data and other materials shall become the exclusive property of Municipality when Consultant has been compensated for the same as set forth herein, and Municipality shall thereafter retain sole and exclusive rights to receive and use such materials in

such manner and for such purposes as determined by it. Notwithstanding the preceding, Consultant may use the work product, deliverables, applications, records, documents and other materials required for or resulting from the Services, all solely in anonymized form, for purposes of (i) benchmarking of Municipality's and others performance relative to that of other groups of customers served by Consultant; (ii) sales and marketing of existing and future Consultant services; (iii) monitoring Service performance and making improvements to the Services. For the avoidance of doubt, Municipality Data will be provided to third parties only on an anonymized basis and only as part of a larger body of anonymized data. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored in Consultant's secure proprietary software pertaining to Municipality will be exported into a CSV file and become property of Municipality. Notwithstanding the preceding, Consultant shall own all rights and title to any Consultant provided software and any improvements or derivative works thereof.

Upon reasonable prior written notice, Municipality and its duly authorized representatives shall have access to any books, documents, papers and records of Consultant that are related to this Agreement for the purposes of audit or examination, other than Consultant's financial records, and may make excerpts and transcriptions of the same at the cost and expense of Municipality.

17. CONSULTANT ACCESS TO RECORDS

Parties acknowledge that Consultant requires access to Records in order for Consultant to perform its obligations under this Agreement. Accordingly, Municipality will either provide to Consultant on a daily basis such data from the Records as Consultant may reasonably request (in an agreed electronic format) or grant Consultant access to its Records and Record management systems so that Consultant may download such data. Data provided to or downloaded by Consultant pursuant to this Section shall be used by Consultant solely in accordance with the terms of this Agreement.

18. CONFIDENTIALITY

Consultant shall not disclose, directly or indirectly, any confidential information or trade secrets of Municipality without the prior written consent of Municipality or pursuant to a lawful court order directing such disclosure.

19. CONSULTANT PERSONNEL

Consultant shall employ a sufficient number of experienced and knowledgeable employees to perform Services in a timely, polite, courteous and prompt manner. Consultant shall determine appropriate staffing levels and shall promptly inform Municipality of any reasonably anticipated or known employment-related actions which may affect the performance of Services. Additional staffing resources shall be made available to Municipality when assigned employee(s) is unavailable.

20. DISCRIMINATION & ADA COMPLIANCE

Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin or any other category protected by applicable federal or state law. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of Equal Opportunity laws. Consultant shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by Municipality at any time during the term of this Agreement.

21. PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. Consultant shall not knowingly employ or contract with an illegal alien to

perform work under this Agreement and will verify immigration status to confirm employment eligibility. Consultant shall not enter into an agreement with a subcontractor that fails to certify to Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant is prohibited from using the E-Verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

22. SOLICITATION/HIRING OF CONSULTANT’S EMPLOYEES

During the term of this Agreement and for one year thereafter, Municipality shall not solicit, recruit or hire, or attempt to solicit, recruit or hire, any employee or former employee of Consultant who provided services to Municipality pursuant to this Agreement (“Service Providers”), or who interacted with Municipality in connection with the provision of such services (including but not limited to supervisors or managers of Service Providers, customer relations personnel, accounting personnel, and other support personnel of Consultant). Parties agree that this provision is reasonable and necessary in order to preserve and protect Consultant’s trade secrets and other confidential information, its investment in the training of its employees, the stability of its workforce, and its ability to provide competitive building department programs in this market. If any provision of this section is found by a court or arbitrator to be overly broad, unreasonable in scope or otherwise unenforceable, Parties agree that such court or arbitrator shall modify such provision to the minimum extent necessary to render this section enforceable. In the event that Municipality hires any such employee during the specified period, Municipality shall pay to Consultant a placement fee equal to 25% of the employee’s annual salary including bonus.

23. NOTICES

Any notice under this Agreement shall be in writing and shall be deemed sufficient when presented in person, or sent, pre-paid, first class United States Mail, or delivered by electronic mail to the following addresses:

If to Municipality:	If to Consultant:
Jeff Retzlaff, Community Development Director Village of Germantown N112 W17001 Mequon Road Germantown, Wisconsin 53022 Email: jretzlaff@village.germantown.wi.us	Joe DeRosa, CRO SAFEbuilt, LLC 3755 Precision Drive, Suite 140 Loveland, CO 80538 Email: jderosa@safebuilt.com

24. FORCE MAJEURE

Any delay or nonperformance of any provision of this Agreement by either Party (with the exception of payment obligations) which is caused by events beyond the reasonable control of such party, shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance.

25. DISPUTE RESOLUTION

In the event a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, Parties agree first to try in good faith to settle the dispute by mediation, before resorting to arbitration, litigation, or some other dispute resolution procedure. The cost thereof shall be borne equally by each Party.

26. ATTORNEY’S FEES

In the event of dispute resolution or litigation to enforce any of the terms herein, each Party shall pay all its own costs and attorney’s fees.

27. AUTHORITY TO EXECUTE

The person or persons executing this Agreement represent and warrant that they are fully authorized to sign and so execute this Agreement and to bind their respective entities to the performance of its obligations hereunder.

28. GOVERNING LAW AND VENUE

This Agreement shall be construed under and governed by the laws of the State of Wisconsin and all services to be provided will be provided in accordance with applicable federal, state and local law, without regard to its conflict of laws provisions.

29. COUNTERPARTS

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Agreement, scanned signatures shall be as valid as the original.

30. ELECTRONIC REPRESENTATIONS AND RECORDS

Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement and scanned signatures emailed by PDF or otherwise shall be as valid as the original. Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

31. WAIVER

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

32. ENTIRE AGREEMENT

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the Parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.



Thomas P. Wilkas, CFO
SAFEbuilt Wisconsin, LLC

July 31, 2020

Date

Signature
Village of Germantown, Wisconsin

Date

Name and Title
Village of Germantown, Wisconsin

EXHIBIT A – LIST OF SERVICES

1. LIST OF SERVICES

Building, Electrical, Plumbing, and Mechanical Inspection Services

- ✓ Consultant utilizes an educational, informative approach to improve the customer's experience.
- ✓ Perform code compliant inspections to determine that construction complies with approved plans
- ✓ Meet or exceed agreed upon performance metrics regarding inspections
- ✓ Provide onsite inspection consultations to citizens and contractors while performing inspections
- ✓ Return calls and emails from permit holders in reference to code and inspection concerns
- ✓ Identify and document any areas of non-compliance
- ✓ Leave a copy of the inspection ticket and discuss inspection results with site personnel

Plan Review Services

- ✓ Provide plan review services electronically or in the traditional paper format
- ✓ Review plans for compliance with adopted building codes, local amendments or ordinances
- ✓ Be available for pre-submittal meetings by appointment
- ✓ Coordinate plan review tracking, reporting, and interaction with applicable departments
- ✓ Provide feedback to keep plan review process on schedule
- ✓ Communicate plan review findings and recommendations in writing
- ✓ Return a set of finalized plans and all supporting documentation
- ✓ Provide review of plan revisions and remain available to applicant after the review is complete

Permit Technician Services

- ✓ Provide qualified individuals to perform the functions of this position
- ✓ Facilitate the permitting process from initial permit intake to final issuance of permit
- ✓ Review submittal documents and request missing information to ensure packets are complete
- ✓ Provide front counter customer service as necessary
- ✓ Answer questions concerning the building process and requirements at the counter or over the phone
- ✓ Form and maintain positive relationships with Municipal staff and maintain a professional image
- ✓ Determine permit fees based on Municipal fee schedule as established by ordinance, if requested
- ✓ Work with Municipal Clerk to facilitate Freedom of Information Act (FOIA) requests, if requested
- ✓ Provide inspection scheduling and tracking to ensure code compliance
- ✓ Act as an office resource to inspectors in the field
- ✓ Process applications for Municipal Boards and Commissions – if requested
- ✓ Provide input, tracking and reporting to help increase efficiencies

Zoning Administration Services

Consultant will provide:

- ✓ Basic (1 & 2 family) zoning administration associated with building permit applications including:
 - Land use, setbacks, structure/building heights and dimensions, lot coverage and parking

Municipality will administer:

- ✓ The review of commercial zoning including but not limited to the review of annexations, rezoning, conditional use permits, commercial site plans, land divisions and variance applications

Reporting Services

- ✓ Consultant will work with Municipality to develop a mutually agreeable reporting schedule and format

2. COMMUNITY CORE SYSTEMS TERMS AND CONDITIONS

- ✓ Provide Community Core in accordance with the terms and conditions of Exhibit C.
- ✓ Consultant staff will be on-site during initial start-up and provide training to Municipal staff

3. MUNICIPAL OBLIGATIONS

- ✓ Municipality will provide codes books for front counter use
- ✓ Municipality will provide office space, desk, desk chairs, file cabinets, local phone service, internet, use of copier and fax
- ✓ Municipality to adopt commercial plan review fee schedule and obtain delegated status

4. TIME OF PERFORMANCE

- ✓ Perform Services during normal business hours excluding Municipal holidays
- ✓ Combination Inspector will be on-site five (5) days a week; Monday - Friday for eight (8) hours a day
- ✓ Permit Technician will be on-site five (5) days a week; Monday – Friday for eight (8) hours a day
- ✓ Electrical Inspector and second Combination Inspector will be dispatched based on activity levels
- ✓ Consultants representative(s) will be available by cell phone and email
- ✓ Additional Inspectors will be dispatched on an as-needed basis

Deliverables			
INSPECTION SERVICES	Inspections requested before 4:00 p.m. completed the following business day		
TWO HOUR INSPECTION WINDOW	Permit holder may request a phone call the morning of the inspection with a two (2) hour ETA inspection time		
MOBILE RESULTING	Provide our inspectors with field devices to enter results immediately		
PRE-SUBMITTAL MEETINGS	Provide pre-submittal meetings to applicants by appointment		
PLAN REVIEW TURNAROUND TIMES	Provide comments within the following timeframes: Day 1 = first full business day after receipt of plans and all supporting documents		
	<u>Project Type:</u>	<u>First Comments</u>	<u>Second Comments</u>
	✓ Single-family within ✓ Multi-family within ✓ Small commercial within (under \$2M in valuation) ✓ Large commercial within	5 business days 10 business days 10 business days 15 business days	5 business days or less 5 business days or less 5 business days or less 10 business days or less

EXHIBIT B – FEE SCHEDULE FOR SERVICES

1. FEE SCHEDULE

- ✓ Municipality and Consultant will review the Municipal Fee Schedule and valuation tables annually and make adjustments to reflect increases in the cost incurred by Consultant in providing Services.
- ✓ Consultant fees for Services provided pursuant to this Agreement will be as follows:

Service Fee Schedule:	
Inspection Services (permits issued after service start date)	62% of Municipal fee as established by ordinance
Inspection Services (permits issued prior to service start date)	\$90.00 per inspection
After Hours/Emergency Inspection Services	\$100.00 per hour – two (2) hour minimum
Residential Plan Review Services	62% of Municipal fee as established by ordinance
Commercial Plan Review Services ✓ Building, HVAC and Plumbing - Requires State of Wisconsin approval for Delegated/Certified Municipal Authority - Consultant will provide service based upon approval granted by the State of Wisconsin	*90% of Municipal established fee as adopted by ordinance
*Consultant fees set forth above for Commercial Plan Review Services are inclusive of the fees required to be paid to the Wisconsin Department of Safety and Professional Services pursuant to Chapter SPS 361 and 302 of the Wisconsin Administrative Code for the Commercial Plan Review and Reporting Services provided by the Consultant pursuant to this Agreement. Consultant shall remit the fees required to be paid to the Wisconsin Department of Safety and Professional Services when due.	
Permit Technician Service	Included in percentage of fees above
Activities/Meetings Where No Permit Fee is Generated - As requested by Municipality	
Normal Business Hours – 8:00 am to 5:00 pm	\$85.00 per hour – one (1) hour minimum
Other Than Normal Business Hours	\$100.00 per hour – one (1) hour minimum
Time tracked includes roundtrip travel time between Consultant’s office and Municipality/inspection site.	

EXHIBIT C-TERMS & CONDITIONS

Meritage Systems CommunityCore: Description of Services

This order form is subject to the [terms of service](#) and [privacy policy](#).

Meritage reserves the right to amend the terms of service and privacy policy at any time and without prior notice.

Applications and Services		One-Time Set-Up Fee	Annual Support and Licensing Fee	Number of Users
CommunityCore Including InspectorConnect iOS mobile app for building and code inspections				
Legacy Data Import: Permitting Transfer of historical permit data from legacy system, assumes availability of readable data file or CSV				
GIS Integration: Permitting				
Contractor & Business Licensing			Included	
CommunityConnect Online Permitting Anywhere, anytime access for contractors to apply for permits, pay fees, check status, request inspections and upload plans		Includes Setup of CommunityCore Preferred Merchant Account for Credit Card Processing		
Online Payments Non-Preferred Merchant Account: additional fee if Meritage Systems is not a preferred provider			NA	
One Day On-Site System Training		INCLUDED IN SET-UP FEE	NA	
Total:				

CommunityCore Permit Management Features:

PAYMENT SHALL BE PURSUANT TO SECTION 5

- Permitting and Inspection Management
- Address Import Setup
- Inspections (including mobile access & when available, InspectorConnect app for iOS tablets)
- Contractor and Business Registration
- Plan Review Tracking and simple Planning/Zoning permits and workflow
- Reporting and Data Import/Export
- Complete configuration of permit type, terminology, fee structures, documents and user roles and permissions
- Permit Documents: Standard set of Permits, CO, TCO configured with your jurisdiction logo and information
- Customs Documents: Available for an additional charge
- Reports: Library of standard reports
- Custom Reports: Available for an additional charge
- Online Training for startup and post startup, ongoing and customer support
- Personalized support, including configuration updates
- Automatic updates of new features

***In addition to the three (3) user licenses included, extra licenses are available at \$1,500 per user, due annually.**

These Service Terms of Use ("Agreement") constitute a contract between Meritage Systems, Inc., with offices at 3755 Precision Drive, Suite 140, Loveland, CO 80538 ("Meritage"), and you ("Customer"). This Agreement includes and incorporates the Order Form with which Customer purchased the Services and any subsequent Order Forms (submitted in written or electronic form), our Privacy Policy and our Copyright Policy. By accessing or using the Services, you agree to be bound by this Agreement. If you are entering into this Agreement on behalf of a company, organization or other entity, you represent that you have such authority to bind such entity and are agreeing to this Agreement on behalf of such entity. If you do not have such authority to enter into this Agreement or do not agree with these terms and conditions, you may not use the Services. Meritage reserves the right to revise this Agreement from time to time, at our sole discretion. By accessing or using the Services after such revisions, you agree to be bound by the revised Agreement.

1. Definitions. For purposes of this Agreement, the following initially capitalized terms have the following meanings:

1. "Account" means an account allowing access to the Services created in Customer's name.
2. "Fees" means the fees for the Services.
3. "Confidential Information" means (a) all nonpublic information disclosed or made available under this Agreement that relates to the provision or receipt of the Services or either party's financial condition, operations or business, and which is clearly identified as confidential at the time of disclosure, (b) the Technology, (c) the Documentation, (d) the Customer Information that is not publicly available, and (e) the User IDs.
4. "Customer Information" means all data, information or other content entered by or collected from Customer or any User that is entered into the Services by Customer or any User while accessing the Services. Customer Information includes any third-party information collected by Customer or any User and entered into the Services.
5. "Documentation" means the online help files and instruction manuals (whether in print or electronic form) that relate to the use of the Services that have been provided or made available by Meritage to Customer.
6. "Go-Live Date" means the date on which the Services, hosted on a Production Server, become active.
7. "Intellectual Property Rights" means any and all intellectual property rights throughout the world, including, without limitation, any and all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and any and all other legal rights protecting intangible proprietary information.
8. "Order Form" means the form executed by the parties that describes the Services and any setup fees associated with the Services.
9. "On-boarding" means the Set-Up and the Training, as specified in the Order Form.
10. "Production Server" means the server on which the Services will be hosted.
11. "Start of Service Date" is the date of commencement of operation of the services by Customer or 120 days following the Effective Date, whichever is first.
12. "Services" means the publicly-available, online building department services provided by Meritage through its CommunityCore application, which can be accessed through the web site located at www.app.communitycore.com and such other sites as may be designated by Meritage (each, the "Site" or collectively, the "Sites").
13. "Set-Up" means defining workflows and permit types, entering fee schedules and setting up Users. The purpose of Set-Up is to configure the Production Server on which the Services for Customer will be hosted.
14. "Set-Up Fees" means the fees for Set-Up specified in the Order Form.
15. "Subscription Fees" means the annual subscription fee specified in the Order Form.
16. "Technology" means the software, hardware and other technology used by or on behalf of Meritage to provide the Services, and all data, information and other content included on or accessible through the Services, except for any Customer Information.
17. "Training" means the services intended to familiarize Users on the use of the Services, as described in Section 4, and to verify configuration of the Production Server.
18. "User ID" means each unique User identification name and password used for access to and use of the Services through the Account.
19. "User" means anyone accessing the Services through Customer's Account.

2. Customer's Access To And Use Of The Services.

20. Customer's Right to Access the Services. Subject to the terms of this Agreement Meritage grants to Customer a limited, non-exclusive, non-transferrable license to access and use the Sites and Services as specified in the Order Form during the term of this Agreement, solely for Customer's own internal business purposes. Except as set forth in this Agreement, Customer is not receiving any right or license to use, or any ownership interest with respect to, the Sites, Services or any Technology or Intellectual Property related to the Sites or Services. Customer acknowledges that the Services are hosted by third-party hosting providers contracted by Meritage. Meritage reserves the right to change hosting provider from time to time and without notice to Customer.

21. Certain Restrictions on Customer's Access. Customer will not, and will not permit any Users or any other party to: a) download or otherwise obtain a copy of the Technology in any form; (b) reverse engineer or otherwise derive the source code of the Service, Sites or Technology or otherwise modify, reverse compile, disassemble, or translate the Service, Sites or Technology or create any derivative works thereof; or (c) use the Service on behalf of any third party or for any purpose other than as described in this Agreement; (d) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Service or use it as a service bureau; (e) post, send, process or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material violating of third party rights; (f) post, send, process or store material containing software viruses, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (g) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or related systems or networks; (h) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the IP Rights and/or Licensor's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the software or on any copies made in accordance with this Agreement; (i) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the intellectual property rights and/or Licensor's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the Service, or Documentation, or on any copies made in accordance with this Agreement; (j) use, or authorize or permit the use of, the Service except as expressly permitted herein; (k) use the Service to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortuous, or defamatory, nor to perform any activity which breaches the rights of any third party.
22. Customer's Use of the Services. (1.a) Accounts/User IDs. Customer will be provided with one or more User IDs to access the Services through the Account. Your Order Form specifies the number of user IDs and Read-Only IDs provided by Meritage to Customer under this agreement ("Subscription Cap"). Each User ID shall be linked to a single User and Customer agrees to limit usage of a User ID to the individual to which the User ID is assigned. Customer may request to increase the number of Users and the parties shall establish the terms under which such additional Users will be added. Customer shall use, and shall ensure that Users use, commercially reasonable efforts to ensure the security and confidentiality of all User IDs. In the event that the confidentiality of a User ID is or may be compromised, Customer shall promptly advise Meritage of the potential or actual compromise. Customer shall be responsible for the use of a User ID by unauthorized users. (1.b) Customer Information. Customer represents and warrants that it has all necessary intellectual and proprietary rights and licenses in and to any Customer Information to permit (i) it and its Users to enter Customer Information into the Services and (ii) to permit Meritage to perform the Services. Customer hereby grants to Meritage a fully paid-up, non-exclusive license to use, reproduce and create derivative works of the Customer Information as reasonably required to perform the Services. (1.c) Necessary Equipment. The Services are provided through the internet and Users must have an internet connection in order to access the Services. Meritage does not provide internet connectivity. Customer will be solely responsible, at Customer's own expense, for acquiring, installing and maintaining all telecommunication services, hardware, software and other equipment as may be necessary for Customer and Customer's Users to connect to, access, and use the Services. Currently, the services may be accessed through the Chrome browser or the iOS mobile app provided they have been maintained to versions supported during the three-year period prior to the date on which access is sought. (1.d) Customer will not use and will not authorize any User to use any open source software in connection with the Services in any manner that requires, pursuant to the license applicable to such open source software, that any Meritage Confidential Information or the Services be (A) disclosed or distributed in source code form, (B) made available free of charge to recipients, or (C) modifiable without restriction by recipients. (1.e) By using the Services, Customer agrees to be bound by the terms of [Meritage's Copyright Policy](#), which terms may be revised by Meritage at its sole discretion. By using the Services after the effective date of any such revision, Customer expressly agrees to be bound by the terms of the revised Copyright Policy.
23. Meritage will use reasonable commercial efforts to ensure that the Services perform substantially in accordance with the description of the services found at www.app.communitycore.com. The Services are subject to modification from time to time at Meritage's sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Meritage.
24. Meritage will use reasonable commercial efforts to make the Services available to Customer and its Users. Notwithstanding the foregoing, Meritage reserves the right to suspend Customer's (or any of its Users') access to the Services: (i) for scheduled or emergency maintenance, (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to Meritage, and fails to correct that breach within the applicable cure period; (iii) in the event that Customer breaches Section 2.2 or Section 7.2 of this Agreement or (iv) as it deems reasonably necessary to respond to any actual or potential security concerns.

25. Customer acknowledges that the Services will require the Users and third parties for whom the Services are being performed by Customer to share with Meritage certain information for the purposes of providing the Services. This information may include personal information (such as email address, and/or phone number) regarding the Users or such third parties which Meritage will use for the purposes of providing the Services. Customer is fully responsible for obtaining the consent of each User and any third party to the use of his/her information by Meritage for purposes of providing the Services. Such use will be subject to and governed by the terms of Meritage's Privacy Policy, the current version of Meritage's privacy policy is available [here](#). Meritage reserves the right to revise the Privacy Policy at its sole discretion. By using the Services after the effective date of any such revision, Customer expressly agrees to be bound by the terms of the revised Privacy Policy.
26. Customer will be fully responsible for Users' compliance with this Agreement. Any breach of this Agreement by a User shall be deemed to be a breach by Customer. Customer will promptly advise Meritage in the event that any User or third party revokes such consent or ceases to be a User. Customer is solely responsible for determining whether the Services are sufficient for Customer's purposes.

3. Set-Up.

Set-Up Services. Subject to the terms of this Agreement Meritage will provide Customer with the Set-Up services as described in the Order Form. Except to the extent provided in the Order Form, no such services will be provided. Customer Responsibilities and Certain Restrictions on Set-Up. Customer is responsible for providing information in a timely manner and in an appropriate format to allow Meritage to provide the Set-Up and for ensuring the Customer resource(s) assigned to provide support to Meritage in performing the Set-Up, along with all Users, have adequate computer skills to perform their tasks. Set up support required beyond the specified Set-Up shall be arranged upon the agreement of the parties and will incur an additional fee. Acceptance. The purpose of Set-Up is to configure the Services for availability on the Go-Live Date. During the Training, Customer will have the opportunity to evaluate the Set-Up and note any configuration errors. Upon discovery of an error, Customer will notify Meritage of the necessary configuration changes and Meritage will modify Set-Up to make the requested changes. Upon completion of Training and prior to the Go-Live Date, Customer shall review and accept the Services by executing a form of acceptance provided by Meritage. Customer acknowledges and accepts that configuration of the Services is limited to the extent accommodated by the current capabilities and limitations of the Services.

4. Training.

27. Training Services. Subject to the terms of this Agreement, Meritage will provide Customer with the Training services as described in the Order Form. Except to the extent provided in the Order Form, no such services will be provided.
28. Delivery. All Training will be provided by Meritage using WebEx or an equivalent service agreed by the parties. Meritage will create a Training site for Customer and its Users to use for Training. In addition to WebEx training, the Training website will provide access to online documentation and training videos that may be accessed by Customer and its Users. Customer and its Users may access the Training web site on an unlimited basis through the Go-Live Date. Customer acknowledges that the Training website may not be available at all times and that Meritage shall have no liability as a result of the unavailability of the Training website.
29. Customer Responsibilities and Certain Restrictions. Customer is responsible for providing information in a timely manner and in an appropriate format to allow Meritage to provide the Training and for ensuring the Customer resource(s) assigned to provide support to Meritage in performing the Training, along with all Users, have adequate computer skills to perform their tasks.
30. Verification of Set-Up. Customer acknowledges that a primary purpose of the Training website is to verify functionality of the Services prior to the Go-Live Date. Customer will have the opportunity to evaluate the Set-Up and note any configuration errors. Upon discovery of an error, Customer will notify Meritage of the necessary configuration changes and Meritage will modify Set-Up to make the requested changes to the Training website.

5. Fees And Payment.

31. . Fees. On the Effective Date, Customer will pay Meritage the Set-Up Fee as specified in the Order Form for Set-Up. In addition, on the Start of Service Date and ending upon the termination of this Agreement, Customer will pay to Meritage the Subscription Fees as specified in Order Form, plus all applicable sales, use and other purchase related taxes (Customer shall be responsible for timely providing Meritage with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes). Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Meritage on account thereof. In the event that Customer

elects to increase the number of Users, the parties shall meet to discuss the impact on Set-Up and Subscription Fees. The Subscription Fees may be increased on an annual basis, as determined by Meritage, provided that any pricing increase will not exceed seven percent (7%) of the Subscription Fees per User for the immediately prior Term, unless the pricing was designated in the applicable Order Form as promotional or one-time. Meritage will provide 30 days advance notice of any increase in the Subscription Fees. By using the Services after the increase in the Subscription Fees becomes effective, Customer agrees to be bound by such new Subscription Fees. FEES AND FEE RATES ARE TO BE CONSIDERED CONFIDENTIAL BY BOTH PARTIES AND NOT TO BE SHARED WITH ANY THIRD PARTY WITHOUT WRITTEN PERMISSION OR AS REQUIRED BY LAW.

32. **Payment.** All Set-Up Fees, Subscription Fees and other fees due under this Agreement (collectively, “Fees”) are payable in U.S. dollars, unless otherwise specified in writing. Except for the Set-Up Fee, which shall be paid prior to the performance of Set-Up, Customer shall pay all Fees and any other amounts set forth on each such invoice issued by Meritage under this Agreement within 30 days of the date of invoice. Fees are payable in advance and are non-refundable. In the event that Customer disputes the amount of any Fees, it shall so notify Meritage within the 30-day payment period. The failure to provide such notice shall be deemed agreement that the Fees are undisputed.

6. Confidentiality.

33. **Obligations.** Each party acknowledges that by reason of the relationship created between the parties by this Agreement, it may have access to certain non-public information of substantial value concerning the other party's business, operations, strategic plans, customers, suppliers, technology, competition and employees. Accordingly, each party as the recipient of Confidential Information (the “Receiving Party”) from the other party (the “Disclosing Party”) will not use any Confidential Information of the Disclosing Party for any purpose other than the providing and receipt of Services under this Agreement. The parties agree the use of the Confidential Information will be in accordance with all terms and conditions of this Agreement. The Receiving Party will not disclose the Confidential Information of the Disclosing Party to any third party except as expressly provided herein and will protect the Disclosing Party's Confidential Information from unauthorized use, access or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Either party may disclose the Confidential Information of the other party to the Receiving Party's employees, subcontractors and advisors who require access to such information for the performance of their obligations, all provided that the employees, subcontractors and/or agents have entered into confidentiality agreements with the Receiving Party that are at least as protective of the Disclosing Party's Confidential Information as are the terms of this Agreement. The Receiving Party shall be responsible for any disclosure or use of the Disclosing Party's Confidential Information by or through any employee, subcontractor or agent of the Receiving Party. For the avoidance of doubt, Customer acknowledges that Meritage utilizes the services of certain third parties in connection with the provision of the Services (such as data hosting) and such third parties will have access to Customer's Confidential Information, subject to compliance with this Section 6. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that, to the extent permitted by law, the Receiving Party notifies the Disclosing Party of such required disclosure in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.
34. **Termination of Obligations.** The Receiving Party's obligations under this Section 6 with respect to maintaining the confidentiality of any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party and is not subject to restrictions on disclosure and/or use; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. The restrictions on use of the Disclosing Party's Confidential Information shall remain in effect for five years subsequent to the earlier of the termination of this Agreement or the date on which the obligation to maintain the Confidentiality of the Disclosing Party's Confidential Information terminates.
35. **Return of Confidential Information.** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the termination of this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing

that it has fully complied with its obligations under this Section 6.3. For the purposes of this Section 6, Data, as defined in Section 7 below, shall not be considered Customer's Confidential Information.

36. Remedies. Each party acknowledges that any breach of any of its obligations with respect to the other party's Confidential Information may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event, the aggrieved party shall be entitled to seek equitable relief in any court of competent jurisdiction without the necessity of posting bond and in addition to such other remedies as may be available to the aggrieved party under law or in equity.
37. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, provided that the terms and conditions may be disclosed if such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis to potential investors or acquirers in Meritage or any entity directly or indirectly controlling the majority voting interest in Meritage.

7. Ownership.

38. Customer's Ownership. Customer retains all right, title and interest in and to the Customer Information Customer or its Users provide to Meritage, other than such information that is subject to disclosure under applicable freedom of information laws and regulations. During the termination notice period specified in Section 9, Meritage will provide Customer Information in the form of Meritage native format files containing permit data to Customer within 10 business days of receipt of a written request for that Customer Information, all at no additional charge.
39. Meritage's Ownership. Meritage retains all right, title and interest in and to, and all Intellectual Property Rights embodied in or related to the Sites, Services, Technology, and any other information or technology used or made available in connection with the Sites or Services, including without limitation any and all improvements, updates, and modifications thereto, whether or not made in conjunction with this Agreement. Meritage's name, logo, and the product and service names associated with the Services are trademarks of Meritage or third parties, and no right or license is granted to Customer to use them separate from Customer's right to access the Services. In the event that Customer or any End User makes any suggestions for the addition of features to, or the improvement of the Services ("Feedback"), Meritage shall, to the maximum extent permitted by law, own all such Feedback, including any Intellectual Property Rights therein, and shall have the right to use such Feedback for any purpose without payment or accounting to Customer or any End User. Customer and/or End User agree to execute any and all materials reasonably required by Customer to perfect Customer's ownership in such Feedback and Intellectual Property Rights, all at Meritage's expense.

8. Data.

40. Meritage will have the right to collect non-personally identifiable data and anonymized information resulting from Customer Information and Customer's use of the Services ("Customer Data") for purposes of (i) benchmarking of Customer's and others performance relative to that of other groups of customers served by Meritage (for the avoidance of doubt, Customer Data will be provided to third parties only as part of a larger body of anonymized data); (ii) sales and marketing of existing and future Meritage services; (iii) monitoring Service performance and making improvements to the Services and Sites.
41. Backup and Recovery. Meritage shall provide, either directly or through its hosting partner, the following recovery services: 7.2.1 Hosting infrastructure recovery processes 7.2.2 Application recovery processes 7.2.3 Data backup with rotation and retention. Backups are done daily, the prior month of daily data is retained, each month is retained for a year, and each year retained until termination of the agreement.

9. Term and Termination.

This Agreement will begin on the Effective Date and will continue in perpetuity until terminated in accordance with the terms of this Agreement or the applicable Order Form. Upon the expiration of the initial term, if any, specified in the Order Form, Customer may terminate this Agreement upon not less than 90 days advanced written notice to Meritage. Except with respect to a failure to timely make any payments required under this Agreement, either party may terminate this Agreement if the other party breaches this Agreement and does not cure such breach within 60 days after being provided with written notice thereof, provided that in the case of Customer such time period will be extended beyond 60 days if Customer is exercising reasonable efforts to cure such breach during such 60-day period. With respect to the failure to timely make any payments, Meritage shall have the right to suspend access to the Services and Sites or, at its option, to terminate this Agreement, in the event that Customer fails to make any required payment within five (5) business days after receipt of notice that the payment

is past due. Upon any termination of this Agreement: (a) all rights and licenses granted to Customer in this Agreement will immediately terminate and Customer shall immediately cease to use the Services and Sites; (b) Meritage will cease performing all Services; (c) all access by Customer and any Users to the Sites and the Services (including all Customer Information) will be suspended; (d) Meritage will discontinue all use of the Customer Information; and (e) all Fees and other amounts incurred under this Agreement prior to such termination or expiration will become immediately due and payable by Customer. Upon the request of Customer following any termination or expiration, Meritage will transfer all Customer Information collected by Meritage either directly to Customer or to Customer's identified third-party partner. Customer shall compensate Meritage for the transfer on a time and materials basis at Meritage's then-current rates and will reimburse all reasonable expenses and costs associated with the transfer. Such expenses and costs shall include, without limitation, travel, consultant costs, hardware expenses, and software costs associated with efforts involved in preparing Customer Information for transfer as well as any costs incurred as part of the physical transfer of Customer Information. Meritage will not be required to issue any refunds for any unearned Fees paid in advance. The provisions of Sections 2.2, 2.3 (section 2.3(b) and as necessary to complete the return of Customer Information), 2.6, 2.7, 5, 6, 7, 8, 9, 10, 11 and 12 of this Agreement will survive termination of the Agreement for any reason.

10. Warranties and Disclaimers.

1. Warranties. Each party represents and warrants to the other party that: (a) such party has all requisite corporate or other applicable power and authority to execute, deliver and perform its obligations under this Agreement; and (b) the execution, delivery and performance of this Agreement by such party has been duly authorized; and will not conflict with, result in a breach of, or constitute a default under any other agreement to which such party is a party or by which such party is bound;.
2. Disclaimers. EXCEPT AS STATED UNDER THIS AGREEMENT, MERITAGE PROVIDES THE SERVICES "AS IS" AND "AS AVAILABLE" AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, TITLE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS RELIED ON NO SUCH WARRANTIES IN ENTERING INTO THIS AGREEMENT. MERITAGE DOES NOT WARRANT THAT THE SERVICES WILL BE FREE FROM LOSS OR LIABILITY INCLUDING THAT ARISING OUT OF ANY THIRD-PARTY TECHNOLOGY, THIRD PARTY ACTION, SUCH AS UNAUTHORIZED ACCESS BY ANY THIRD PARTY, OR ANY ACT OR OMISSION OF CUSTOMER. MERITAGE EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY WITH RESPECT TO COMPLIANCE WITH LAWS, RULES OR REGULATIONS APPLICABLE TO CUSTOMER, WHICH SHALL BE THE SOLE RESPONSIBILITY OF CUSTOMER. MERITAGE DOES NOT WARRANT THE ACCURACY, RELIABILITY OR COMPLETENESS OF customer materials or ANY ADVICE, REPORT, DATA OR DELIVERABLES OBTAINED BY CUSTOMER FROM THE CUSTOMER MATERIALS SUBMITTED TO THE SERVICES, SUCH ADVICE, REPORTS, DATA OR DELIVERABLES ARE PROVIDED "AS IS" AND MERITAGE SHALL NOT BE LIABLE FOR ANY INACCURACY THEREOF. MERITAGE SHALL NOT BE RESPONSIBLE OR LIABLE FOR: (A) ANY DAMAGES IF, AND TO THE EXTENT, CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS OBLIGATIONS, AS SET FORTH IN THIS AGREEMENT OR AN ORDER FORM; (B) ANY CORRUPTION, DAMAGE, LOSS OR MIS-TRANSMISSION OF CUSTOMER MATERIALS, UNLESS SUCH TRANSMISSION IS THE RESPONSIBILITY OF MERITAGE; OR (C) THE SECURITY OF CUSTOMER MATERIALS DURING TRANSMISSION FROM CUSTOMER'S FACILITIES TO THE CLOUD PLATFORM. Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Meritage is not responsible for any delays, failures, or other damage resulting from such problems.
3. Customer represents and warrants that it: (A) owns or has the right to use all Customer Information and to submit and store such Customer Information on the Site and the infrastructure supporting the Site and Services; and (B) has all necessary licenses and permissions for usage of any third-party software or other information or material supplied or provided by Customer to Meritage in an Order Form or otherwise used in connection with the Services. Customer hereby grants to Meritage the right to use all Customer Information, including any third-party software solely for the purposes of this Agreement, including any Order Form, and the performance of Meritage's obligations hereunder and any Order Form.

11. Certain Liabilities, Limitation of Liability.

4. Customer will, at Customer's own expense, indemnify, defend, hold harmless against, and pay all costs, damages and expenses (including reasonable attorneys' fees) awarded against or incurred by Meritage based on, any claims, allegations or lawsuits that may be made or filed against Meritage by any person to the extent arising from or relating to any breach by Customer of any representation and warranty under this Agreement; or (b) alleging that use by Meritage in accordance with this Agreement of Customer Information, Customer Data or Customer Confidential

Information infringes or misappropriates the Intellectual Property Rights of, or has caused harm or damage to, a third party.

5. Limitation of Liability. EXCEPT TO THE EXTENT ARISING FROM A BREACH OF CONFIDENTIALITY OR OF SECTIONS 2.2 OR 7, OR AS ARISING UNDER OBLIGATIONS OF INDEMNIFICATION, IN NO EVENT WILL EITHER PARTY, INCLUDING ITS VENDORS, HOSTING SERVICE PROVIDERS, OR ITS LICENSORS, BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA, OR PROFITS, OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE OR OTHERWISE), ARISING IN ANY WAY IN CONNECTION WITH OR OUT OF THE USE OF THE SITES OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT TO THE EXTENT ARISING FROM A BREACH OF CONFIDENTIALITY OR OF SECTIONS 2.2 OR 7, OR AS ARISING UNDER OBLIGATIONS OF INDEMNIFICATION OR CUSTOMER'S OBLIGATION TO MAKE PAYMENTS, EACH PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SITES OR THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO MERITAGE HEREUNDER AS OF THE DATE OF THE ACT OR OMISSION GIVING RISE TO THE LIABILITY. EACH PARTY ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, EACH PARTY'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

12. General Provisions.

6. Notwithstanding anything else, Customer may not provide to any person an export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.
7. This Agreement will be binding upon the parties to this Agreement and their permitted successors and assigns. Neither party may assign, delegate or transfer this Agreement or any of its rights or obligations (in whole or in part) under this Agreement (whether by operation of law or otherwise) to any third party without the other party's prior written consent. Notwithstanding the foregoing, either party may assign this agreement to any successor in interest to such party's stock, assets or business, whether by way of sale, merger, reorganization or other form of transaction, provided that such party provides the other party with notice of such assignment and that the successor in interest agreed in advance to assume all right, obligations, liabilities, and responsibilities of the assigning party under this Agreement. Any assignment or transfer in violation of the foregoing shall be null and void.
8. Nothing in this Agreement confers or is intended to confer, expressly or by implication, any rights or remedies upon any person or entity not a party to this Agreement.
9. This Agreement shall be governed by and construed in accordance with the laws of Colorado without regard to conflicts of law principles. Customer agrees that it will only bring any action or proceeding arising from or relating to this Agreement in a federal court in the District of Colorado or in state court in Larimer County, Colorado, and Customer irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts by Meritage.
10. The parties hereto are independent parties, not agents, employees or employers of the other or joint ventures, and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other.
11. Any notice to the other party required or allowed under this Agreement must be delivered in writing by express courier, personal delivery, or by certified mail, postage pre-paid to the address for the party listed in the first paragraph of this Agreement.
12. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.
13. Meritage may use Customer's name as a reference and publicize Customer as a customer of Meritage.
14. Unless otherwise amended as provided herein, this Agreement will exclusively govern Customer's access to and use of the Services and the Sites and is the complete and exclusive understanding and agreement between the parties, and supersedes any oral or written proposal, agreement or other communication between the parties, regarding Customer's access to and use of the Services and the Sites. This Agreement may be amended or modified only by a writing signed by both parties.
15. All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/31/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER RBN Insurance Services 303 E Wacker Dr Ste 650 Chicago IL 60601		CONTACT NAME: PHONE (A/C, No, Ext): 312-856-9400 FAX (A/C, No): 312-856-9425 E-MAIL ADDRESS: rdelich@rbninsurance.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Hartford Fire Insurance Co.	
		INSURER B: Hartford Casualty Insurance Co	
		INSURER C: Navigators Insurance Company	
		INSURER D: Twin City Fire Insurance Co.	
		INSURER E: Great American E&S Ins. Co.	
		INSURER F:	

COVERAGES**CERTIFICATE NUMBER:** 579716425**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y		83UENZV3951	10/3/2019	10/3/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			83UENPY9100	10/3/2019	10/3/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			CH19EXC885600IV	10/3/2019	10/3/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☒ N	N / A	83WECE0623	5/12/2020	5/12/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Professional Liability			TER285-99-95	10/3/2019	10/3/2020	Each Claim/Aggregate 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Village of Germantown and its officers, consultants and employees are additional insured as respects the General Liability as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**Village of Germantown
N112 W17001 Mequon Road
Germantown WI 53022

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY RBN Insurance Services		NAMED INSURED SAFEbuilt Holding Company SAFEbuilt, LLC (See Attached) 3755 Precision Drive, Ste 140 Loveland, CO 80538	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Named Insureds (continued):

SAFEbuilt Arizona, LLC
SAFEbuilt Carolinas, LLC
SAFEbuilt Colorado, LLC
SAFEbuilt Florida, LLC
SAFEbuilt Georgia, LLC
SAFEbuilt Illinois, LLC
SAFEbuilt Louisiana, LLC
SAFEbuilt New Mexico, LLC
SAFEbuilt Ohio, LLC
SAFEbuilt Oregon, LLC
SAFEbuilt Texas, LLC
SAFEbuilt Michigan, LLC
SAFEbuilt Washington, LLC
SAFEbuilt Wisconsin, LLC
LSL Planning, LLC
Meritage Systems, Inc.

If required by a written contract, the following forms apply on a blanket basis.

General Liability:

Form HG0001 09 16 Additional Insureds; Primary and Non-contributory; Waiver of Transfer of Rights of Recovery Against Others to Us

Auto Liability:

HA9916 0312 Commercial Automobile Broad Form Endorsement includes Additional Insureds and Waiver of Subrogation

Workers Compensation:

WC 00 03 13 Waiver Of Our Right to Recover from Others

**VILLAGE OF GERMANTOWN
WASHINGTON COUNTY**

RESOLUTION NO. 51-2020

**ADOPTION OF THE WISCONSIN DEPARTMENT OF SAFETY AND
PROFESSIONAL SERVICES (DSPS) FEE SCHEDULE & AUTHORIZATION TO
OBTAIN DELEGATED PLAN REVIEW AUTHORITY**

WHEREAS, the Village of Germantown is seeking a consultant to perform building permit processing, plan review & building inspection services in accordance with the Village's adopted building codes and ordinances for the remaining period of time in FY 2020 and FY 2021; and

WHEREAS, the Village has agreed to enter into a Professional Services Agreement with Safebuilt Wisconsin LLC to provide said services; and

WHEREAS, On August 17, 2020, the General Government & Finance Committee met and recommended approval of the Professional Services Agreement proposed by Safebuilt Wisconsin LLC that includes provisions requiring that the Village adopt the current WI Department of Safety & Professional Services (DSPS) commercial plan review fee schedule attached hereto, and, to obtain "delegated plan review authority" from WI DSPS that would enable Safebuilt Wisconsin LLC to provide commercial plan review services to the residents, property owners, contractors and developers doing business in the Village; and

WHEREAS, On August 17, 2020, the General Government & Finance Committee met and recommended (1) approval of the Professional Services Agreement proposed by Safebuilt Wisconsin LLC; (2) that the Village adopt the WI DSPS commercial plan review fee schedule; and that Village Staff be authorized to pursue delegated plan review authority from the WI DSPS; and

NOW THEREFORE BE IT RESOLVED, that the Village Board of the Village of Germantown agrees to adopt the WI DSPS commercial plan review schedule attached hereto as Exhibit A, and, authorizes Village Staff to coordinate with Safebuilt Wisconsin LLC to prepare and submit the necessary application to the WI DSPS to obtain "delegated plan review authority" for and/or on behalf of the Village of Germantown.

Introduced by: _____

Adopted: August 17, 2020

Vote: Ayes: _____ Nays: _____

Dean M. Wolter, Village President

ATTEST:

Deanna Braunschweig, WCMC/CMC
Village Clerk

EXHIBIT A**9. Fee Calculation Instructions**

Fee Schedule Summary: Wisconsin Building Code
Calculate appropriate fee on page 4 and enter total on Page 5.

Building, heating and ventilation, fire alarm and suppression plans. Fees relating to the submittal of all building and heating and ventilation plans (new, addition, alteration) and fire alarm and fire suppression plans shall be computed on the basis of the total gross floor area of each building, area of addition or area of alteration and shall be determined in accordance with Table SPS 302.31-1 or Table 302.31-2

Table 302.31-1
Plan Review Fees for
Buildings Not Located in Municipalities That Perform Inspections as an agent of the Industry Services Division

Area (Square Feet)	Building Plans	HVAC Plans	Fire Alarm System Plans	Fire Suppression System Plans
Less than 2,500	\$300	\$180	\$50	\$50
2,500 - 5,000	350	250	100	100
5,001 - 10,000	600	350	150	150
10,001 - 20,000	800	450	200	200
20,001 - 30,000	1,200	600	250	250
30,001 - 40,000	1,600	900	400	400
40,001 - 50,000	2,100	1,200	550	550
50,001 - 75,000	2,900	1,600	800	800
75,001 - 100,000	3,600	2,200	1,100	1,100
100,001 - 200,000	6,000	2,900	1,400	1,400
200,001 - 300,000	10,500	6,700	3,300	3,300
300,001 - 400,000	15,500	9,800	4,800	4,800
400,001 - 500,000	18,500	12,000	6,300	6,300
Over 500,000	20,000	13,500	7,100	7,100

Table 302.31-2
Plan Review Fees for
Buildings Located in Municipalities that Perform Inspections as an Agent of the Industry Services Division

This table may be utilized for projects in municipalities that are delegated to perform inspections of the object type(s) that you are submitting as a certified municipality and/or agent of the department. Reduced fees do not apply to state owned buildings. Check the following list <https://dsps.wi.gov/Documents/Programs/CommercialBuildings/DelegatedMunicipalities.pdf>.

Area (Square Feet)	Building Plans	HVAC Plans	Fire Alarm System Plans	Fire Suppression System Plans
Less than 2,500	\$250	\$150	\$30	\$ 30
2,501 - 5,000	300	200	60	60
5,001 - 10,000	500	300	100	100
10,001 - 20,000	700	400	150	150
20,001 - 30,000	1,100	500	200	200
30,001 - 40,000	1,400	800	350	350
40,001 - 50,000	1,900	1,100	500	500
50,001 - 75,000	2,600	1,400	700	700
75,001 - 100,000	3,300	2,000	1,000	1,000
100,001 - 200,000	5,400	2,600	1,200	1,200
200,001 - 300,000	9,500	6,100	3,000	3,000
300,001 - 400,000	14,000	8,800	4,400	4,400
400,001 - 500,000	16,700	10,800	5,600	5,600
Over 500,000	18,000	12,100	6,400	6,400

NOTES:

- A. **Plan entry fee of \$100.00** shall be submitted with each submittal of plans to the department in addition to the plan review and inspection fees with the exception of structural component submittals.
- B. A fee reduction may be taken for plans involving **multiple identical buildings** located on the **same site** and **submitted at the same time**: The fees for the submittal of building, heating and ventilation plans for the first building shall be determined in accordance with the appropriate Table 302.31-1 or 302.31-2 on the basis of the total gross area of one building. The fee for each of the remaining identical buildings shall be computed on the basis of an area of less than 2,500 square feet.

10. CALCULATION OF FEES

- A. Determine Project Area:** The area of a floor is the area bounded by the exterior surface of the building walls or the outside face of columns where there is no wall. Area includes all floor levels such as subbasements, basements, ground floors, mezzanines, industrial equipment platforms, balconies, lofts, decks, all stories and all roofed areas including porches and garages, except for cantilevered canopies on the building wall. Use the roof area for free standing canopies. Total project area is the summation of all floor areas that are part of this project. Attach a separate sheet if necessary for the calculations below:

Floor Level (specify)	Length	X	Width	=	Area
		X		=	_____
		X		=	_____
		X		=	_____
		X		=	_____
		X		=	_____
Total Project Area				=	_____

- B. Determine Fee Table:** Determine the appropriate fee table based on the project location.

C. Compute Total Fee

- **Building Fee** (from table) [\$_____ .00] + [No. of Add'l identical Bldgs _____ X Min. Fee \$_____ .00] = \$_____ .00
- **HVAC Fee** (from table) [\$_____ .00] + [No. of Add'l identical Bldgs _____ X Min. Fee \$_____ .00] = \$_____ .00
- **Fire Alarm Fee** (from table) [\$_____ .00] + [No. of Add'l identical Bldgs _____ X Min. Fee \$_____ .00] = \$_____ .00
- **Fire Suppression Fee** (from table) [\$_____ .00] + [No. of Add'l identical Bldgs _____ X Min. Fee \$_____ .00] = \$_____ .00
- **Miscellaneous Fee** No. of Buildings _____ x \$250.00 \$_____ .00
(plans submitted within 8 months of denial, separate footing/foundation, independent bleacher plans more than 10 feet apart, structural framework, kitchen exhaust hoods, etc)
- **Permission to Start Construction** No. of Buildings _____ X (\$75.00) \$_____ .00
- **Revision to previously reviewed, but not denied, plans** No. of Buildings _____ X (\$75.00) \$_____ .00
(This includes submittal of revised plans, within 30 days, after an additional information/hold action)
- **Additional number of plan sets** No. of Plan sets in excess of 5 _____ X (\$25.00/set) \$_____ .00
- **Components** \$_____ .00
Trusses, precast, metal bldg, joist girders, etc. If submitted with a current building project, the minimum \$100 submittal fee has been met. If submitted as a follow up to a previously submitted plan there is no additional fee. If submitted as a stand-alone project or submitted following final inspection of the building, fee is \$250.
- **Other** \$_____ .00
- **Submittal Fee** (required for each and every separate submittal of choices above with the exception of structural building component submittal) \$_____ **100.00**
- **Additional sets of approved plan sets requested after plan approval** No. of plan sets _____ X (\$25.00) \$_____ .00
- **Plan approval extension** (\$120.00) \$_____ .00

Make checks payable to Industry Services Division	Total Amount Due	\$_____
If designer wishes to be invoiced, complete box 7d on page 3.		Revenue Code 7648

11. Appointment, Scheduling Information, and Plan Submittal Checklist.

To schedule for other than revisions – do not use this form. Instead you can use IS's 24-hour web scheduling site: [Plan Review Scheduling](#) to request an appointment date while you are still working on the plans.

For revision reviews, stand-alone HVAC reviews, and stand-alone fire appointments, email this form to dspssbplanschedule@wi.gov or fax to 877-840-9172.

Web scheduling allows you to request an appointment time. You will receive via email an appointment confirmation with an appointment date, transaction ID number, assigned reviewer, and required fees based on what you entered. Scheduled plans must be received in the office of the appointment no later than two working days before the confirmed appointment. Check our Website: <http://dsps.wi.gov/Plan-Review>. You may email technical code questions to DspSbBuildingTech@wi.gov.

Madison 4822 Madison Yards Way 53705 PO Box 7302 Madison, WI 53707-7302 TTY Contact Through Relay Fax (for sending questions or additional info to reviewers) 608-283-7404	Hayward 10541 N. Ranch Road Hayward, WI 54843 715-634-4870 Fax (for sending questions or additional info to reviewers) 715-634-5150	Onalaska/La Crosse 2850 Midwest Dr, Ste 104 Onalaska, WI 54650 608-785-9334 Fax (for sending questions or additional info to reviewers) 608-785-9330	Green Bay 2331 San Luis Place Green Bay, WI 54304 920-492-5601 Fax (for sending questions or additional info to reviewers) 920-492-5604	Waukesha 141 NW Barstow Street 4 th Floor Waukesha, WI 53188-3789 262-548-8600 Fax (for sending questions or additional info to reviewers) 262-548-8614
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**VILLAGE OF GERMANTOWN
WASHINGTON COUNTY**

RESOLUTION NO. 52-2020

VERIDIAN DEVELOPMENT AGREEMENT FOR VERIDIAN HOMES LLC

WHEREAS, Village Staff and the Village Attorney have worked to create a Development Agreement for Veridian Homes LLC, VHKE LLC, for the Veridian – Kinderberg Estates Subdivision; and,

WHEREAS, the General Government and Finance Committee has reviewed and recommended the attached Development Agreement; and,

NOW THEREFORE BE IT RESOLVED that the Village Board of the Village of Germantown, does hereby approve of the attached Development Agreement for Veridian Homes LLC, VHKE LLC, for the Veridian – Kinderberg Estates Subdivision.

Introduced by: _____

Adopted: August 17, 2020

Vote: Ayes: ____ Nays: ____

Dean M. Wolter, Village President

ATTEST:

Deanna Braunschweig, WCMC/CMC
Village Clerk

**VERIDIAN-KINDERBERG ESTATES SUBDIVISION
DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into by and between the **Village of Germantown**, a municipal corporation of the State of Wisconsin located in Washington County, hereinafter called the "Village," and VHKE, LLC, a Wisconsin limited liability company, hereinafter referred to as "Developer."

WHEREAS, the Developer has certain lands within the Village under ownership or contract to develop, said lands being more specifically described in Exhibit A (the "Property"),

WHEREAS, Developer has submitted for approval by the Village a development plan for a proposed single-family residential subdivision (the "Development" or "Subdivision") to be located in the Village of Germantown on lands described in Exhibit A which Developer proposes to complete as described in the plans submitted to the Village, and as ultimately approved by it; and

WHEREAS, the Village may require that Developer make and install any public improvements reasonably necessary and/or that Developer execute an acceptable form of financial guarantee to ensure that those improvements will be made within a reasonable time; and further that the acceptance of dedication of these improvements may be conditioned upon the construction of such improvements according to Village specifications and without cost to the Village; and

WHEREAS, it will be necessary that Developer construct and install water main, sanitary sewer, storm sewer, landscaping, lighting, and roadway facilities in public right-of-way and storm water management facilities in a dedicated easement on the subject Property, and the Village will require that such plans and designs be approved and permitted, and that the Developer furnish an appropriate financial guarantee; and

WHEREAS, it will be necessary that the Developer ensure that the subdivision plat, development agreement and covenants & restrictions shall contain adequate notice to the future owners of Lots #9, #10, #11 and the southwest open space outlot that use of the area is subject to the provisions of the gas distribution easement agreement (Doc#1394627).

WHEREAS, The Village seeks to protect the health, safety and general welfare of the Village as a whole and, in particular, property owners who abut the site or are potentially affected by the project through application of the Municipal Code and rules and regulations of governmental agencies with jurisdiction.

NOW, THEREFORE, in consideration of these recitals, the mutual agreements, benefits and responsibilities outlined herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I - REQUIRED IMPROVEMENTS

1.01 GENERALLY. Developer, entirely at its own expense, shall, except as herein provided, design and install the public improvements required by Sec.18.08 of the Municipal Code in accordance with the provisions of that section and as directed by the Village Engineer or Village Board. It is the intent of this Agreement that all public improvements shall be installed by Developer. Notwithstanding the foregoing, the public improvements described in this Agreement are deemed to be undertaken for a public (not a private) purpose.

1.02 SANITARY SEWERAGE SYSTEMS. Developer shall extend and install public sanitary sewer with privately owned lateral stubs extending to the edge of right-of-way to provide wastewater utility service to all 16 lots within the Subdivision. Sanitary sewer shall be connected to the existing sanitary sewer manhole in Preserve Parkway by installing coring into the manhole and reworking the bench and installing a boot. All disturbed roadway, curb/gutter, sidewalk and turf shall be restored in-kind. Backfill shall be slurry around the manhole and crushed recycled concrete mechanically compacted for the remaining trench within the Right-of-Way.

Developer shall design and submit to the Village Engineer for review and approval all proposed plans, specifications and contract documents for all sanitary sewerage system facilities before authorization for construction will be given. Design and installation shall conform to Milwaukee Metropolitan Sewerage District Ch. 2 Rule, Wisconsin Department of Natural Resources Standards, Sec. 18.08(7) of the Municipal Code, and the Village Design, Drafting & Construction Standards & Specifications, Sec. 5.0 "Sanitary Sewer System Requirements". All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village. All sanitary sewer improvements that are to be transferred to the Wastewater Utility shall be contained within the Village right-of-way or a utility easement. The easement shall be dedicated to the Village through plat (provided that said plat also contains specific terms associated with the easement and not just a location) or an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney.

Public utility permits shall be applied for by Developer and secured from the Village Engineering Dept. Wisconsin Department of Natural Resources and Milwaukee Metropolitan Sewerage District sanitary sewer extension forms shall be prepared by Developer and provided to the Village Engineer. All sanitary sewer improvements that will be transferred to the Village shall be inspected by Wastewater Utility personnel prior to acceptance by the Public Works & Highway Committee. The Wastewater Utility may televise the sewer, create a punch list of defects, and perform one follow-up televised inspection at no expense to Developer. Additional follow-up televised inspections shall occur at Developer expense.

Sanitary sewer main and lateral trenches in an existing roadway shall be aggregate slurry backfilled. Street resurfacing required due to surface disturbance for connection to the Village sanitary sewer shall be inspected and approved by the Highway Superintendent prior to acceptance

by the Public Works & Highway Committee. Lateral ends shall be marked with green painted maple heart boards 2" x 4". A minimum of 6 feet of engineered fill shall be maintained over the pipe in all areas of installation.

1.03 WATER SUPPLY FACILITIES. Developer shall extend and install public water main with publicly owned lateral stubs extending to the edge of right-of-way to provide potable water utility service to all 16 lots within the Subdivision. In addition, the water main shall be connected to the existing water main on Donges Bay Road and at Lincoln Drive to cause a water supply from two sources. All trenches in Village right-of-way shall be backfilled with slurry or crushed recycled concrete as directed by the Director of Public Works.

Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for all water supply facilities before authorization of construction will be given. Design and installation shall conform to Sec. 18.08(8) of the Municipal Code and the Village Design, Drafting & Construction Standards & Specifications, Sec. 6.0 "Water Distribution System Requirements". All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village. All water utility improvements that are to be transferred to the Water Utility shall be contained in Village right-of-way or a 20-foot utility easement dedicated to the Village. The easement shall be dedicated to the Village through plat (provided that said plat also contains specific terms associated with the easement and not just a location) or an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney.

Public utility permits shall be applied for by Developer and secured from the Village Engineering Dept. and the Wisconsin Department of Natural Resources with water main extension forms prepared by Developer and submitted to the Department of Natural Resources. All water supply improvements that will be transferred to the Village shall be inspected by Water Utility personnel prior to acceptance by the Public Works & Highway Committee.

Water main and lateral trenches in an existing roadway shall be backfilled with aggregate slurry or crushed recycled concrete. Street resurfacing required due to surface disturbance for connection to the Village water supply system shall be inspected and approved by the Highway Superintendent prior to acceptance by the Public Works & Highway Committee, pavement shall be replaced in-kind. Lateral ends shall be marked with blue painted maple heart boards 2" x 4". A minimum of 6 feet of engineered fill shall be maintained over the pipe in all areas of installation.

1.04 OTHER UTILITIES. Developer shall be responsible for and cause electrical power, telephone, cable and natural gas facilities to be installed in such manner as to make proper and adequate service available to each occupied building in the Subdivision. All such services shall be located underground in accordance with applicable codes. Design and installation shall conform to Sec. 18.08(11) of the Municipal Code. Public utility and/or work-in-right-of-way permits shall be applied for by Developer and secured from the Village Engineering Dept. Private utility permits shall be applied for and secured from the Village Building Inspection Dept.

1.05 GRADING AND SURFACING OF PUBLIC STREETS. All Development streets shall be graded and surfaced in accordance with Sections 18.08(2), (3) and (5) of the Municipal Code and shall be located and be of the dimensions as depicted on the site Development Plan. The Development's internal roads shall have an urban cross section for vehicular access to all lots within the Subdivision. The final layer of street surfacing shall be installed within 30 days of the issuance of an occupancy permit for the 80 % of the lots within the Subdivision except as may be directed by the Village Engineer. Disturbed edges of existing asphalt created by connecting to existing Village or County streets shall be saw-cut full road width prior to resurfacing.

Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for all grading, street surfacing, concrete curb and gutter, sidewalks, and traffic signs and street signs before authorization for construction will be given. Design and installation shall conform to Sec. 18.08(2), 18.08(3), 18.08(4), 18.08(6), and 18.08(13) and 18.08(15) of the Municipal Code and the Village Design, Drafting & Construction Standards & Specifications, Sec. 3.0 "Grading and Erosion Control Requirements" and Sec. 8.0 "Roadway Requirements". All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village. All grading, street surfacing, concrete curb and gutter, traffic signs and street signs that are to be transferred to the Village shall be contained in Village right-of-way dedicated to the Village.

Final yard grades, building elevations and contours shall conform to a 0.25-foot tolerance as compared to the grading plan pursuant to Sec. 14.076 of the Municipal Code. Developer shall not export topsoil without permission from the Public Works & Highway Committee pursuant to Sec. 17.441 of the Municipal Code. Topsoil may be stored on site at a location approved by the Village Engineer or as indicated on approve plans.

Work-in-right-of-way permits shall be applied for by Developer and secured from the Village Engineering Dept. All grading, street surfacing, concrete curb and gutter, sidewalks, and traffic signs and street signs related to the Subdivision that will be transferred to the Village shall be inspected by Engineering Dept. and Highway Dept. personnel prior to acceptance by the Public Works & Highway Committee.

1.06 CURB AND GUTTER. Developer shall construct, at a minimum, concrete curb and gutter in accordance with Sec. 18.08(4) of the municipal Code within the Development at the locations depicted on the approved Site Development Plan.

1.07 IMPROVEMENTS TO STREETS ABUTTING SUBDIVISION. Developer shall install an entrance intersection connecting the Subdivision's internal roads to Preserve Parkway.

Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for all improvements to streets abutting development before authorization for construction will be given. Design and installation shall conform to Sec.

18.08(15) of the Municipal Code and the Village Design, Drafting & Construction Standards & Specifications, Sec. 3.0 "Grading and Erosion Control Requirements" and Sec. 8.0 "Roadway Requirements". All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village. All improvements to streets abutting development that are to be transferred to the Village shall be contained in Village right-of-way dedicated to the Village.

Work-in-right-of-way permits shall be applied for by Developer and secured from the Village Engineering Dept. All improvements to streets abutting the Subdivision that will be transferred to the Village shall be inspected by Engineering Dept. and Highway Dept. personnel prior to acceptance by the Public Works & Highway Committee.

Developer shall remain responsible for maintenance of all monument signs and boulevard islands.

1.08 SIDEWALK/PATHWAY. Developer shall, at its sole cost, install a paved walk/path/emergency access within an easement in the 15-20 foot wide outlot between Lot #11 and Lot #12 as shown on the approved plans to connect to the existing walkway/path on the north side of Donges Bay Road. The proposed emergency access path shall be installed in accordance with the minimum pavement and other design standards recommended by the Fire Department requirement and subject to approval by WE Energies pursuant to the gas distribution easement agreement (Doc#1394627).

Developer shall, at its sole cost, install a 5' wide paved walking trail within a 10' Pedestrian Easement located between Lot #4 & Lot #5 as shown on the approved plans. Walking Trail shall start at the back of curb of Blackbird Point and terminate at the existing walking trail in Kinderberg Park. The walking trail shall include a bridge to cross the existing drainage ditch within Kinderberg Park, the design of the bridge shall be approved by the Village Engineer, Park and Recreation Director and Community Development Director.

With the exception of the improvements located within Kinderberg Park, maintenance and replacement of the improvements installed under this section shall be at the sole cost and responsibility of the Developer or its assigns.

1.09 STREET SIGNS & MARKINGS. A street sign marking plan shall be submitted by Developer as required in Section 2.03 for review and approval by the Village Engineer. Developer shall pay to the Village Treasurer the cost of all materials and installation of street signs by the Village, pursuant to Section 18.08(13) of the Municipal Code. Street signs to include at a minimum stop signs, street name signs, pedestrian walk sign and traffic directional signs. Markings at a minimum shall include stop bars and any other miscellaneous markings as required for public safety.

1.10 EROSION CONTROL. Developer shall install and maintain erosion and sediment control devices within the Subdivision and for all related work abutting the Subdivision.

Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for all construction site erosion and sediment control before authorization for construction will be given. Design and installation shall conform to Wisconsin Department of Natural Resources Conservation Practice Standards, Ch. 29 of the Municipal Code, and the Village Design, Drafting & Construction Standards & Specifications, Sec. 3.0 "Grading and Erosion Control Requirements". All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village.

Work-in-right-of-way permits shall be applied for and secured from the Village Engineering Dept. Wisconsin Department of Natural Resources construction site storm water permit forms shall be prepared by Developer and submitted to the Department of Natural Resources. An erosion control permit shall be applied for and secured from the Village Building Inspection Dept.

Developer shall monitor and mitigate off-site tracking through use of tracking pads and daily sweeping of streets. In event Developer defaults in keeping the Village streets clear of tracking, the Developer will reimburse the Village for performing street sweeping services within 30 days of invoice. In event Developer defaults payment, the Village may charge the Developer's escrow account or draw from the Developer's financial guarantee to recover such costs. Notwithstanding the foregoing, the right of the Village to respond to off-site sediment tracking hereunder shall not excuse Developer from strict compliance with required erosion control measures or be considered a substitute or replacement for such measures.

Developer shall remove and dispose of all erosion and sediment control devices after landscaping and after 85% successful vegetative cover has been achieved to the satisfaction of the Village Engineer.

1.11 POST-CONSTRUCTION STORMWATER MANAGEMENT AND STORMWATER DRAINAGE FACILITIES. Developer shall install publicly owned storm sewer to adequately drain publicly owned roadways within the Subdivision and shall install publicly owned roadway ditches and storm sewer abutting the Subdivision per the approved plans. Developer shall install privately owned storm sewer, ditches, and swales to adequately drain privately owned lands within the Subdivision per the approved plans. Developer shall install and maintain privately owned wet detention ponds to control storm water runoff peak flows and volumes in conformance with MMSD requirements and to control storm water runoff water quality in conformance with Wisconsin DNR requirements prior to discharge from the Subdivision. The privately-owned storm sewers, ditches, swales, wet detention ponds, and dry pond shall be situated in privately owned easements.

Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for all post-construction storm water management and storm water drainage facilities before authorization for construction will be given. Design and installation shall conform to Wisconsin Department of Natural Resources Conservation Practice Standards, Milwaukee Metropolitan Sewerage District Ch. 13 Rule, Ch. 27 and Sec. 18.08(10) of the Municipal Code, and the Village Design, Drafting & Construction Standards & Specifications, Sec. 7.0 "Storm Water Management Requirements" and Sec. 4.0 "Storm Water Conveyance System Requirements". All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village.

Work-in-right-of-way permits shall be applied for by Developer and secured from the Village Engineering Dept. Wisconsin Department of Natural Resources and Milwaukee Metropolitan Sewerage District storm water management forms shall be prepared by Developer and provided to the Village Engineer.

Developer shall prepare, submit to the Village Engineer for review, and record with the Washington Co. Register of Deeds a Declaration of Covenant for Storm Water Management Facility Maintenance before applying for an occupancy permit. Developer shall prepare and submit to the Village Engineer a Storm Water Management Facility Compliance Report and an Engineering/Construction Certification letter before applying for an occupancy permit.

1.12 LANDSCAPING. Developer shall provide permanent landscaping, including topsoil, seeding, trees and other vegetation, of all publicly owned rights of way and privately-owned common areas within and abutting the Subdivision. Developer shall also provide temporary landscaping of privately-owned lots to establish and maintain vegetative cover.

Developer shall design and submit to the Village Zoning Administrator for approval all proposed plans, specifications and contract documents for all landscaping before authorization for construction will be given. Design and installation shall conform to Sec. 17.085 and 17.43(5) of the Municipal Code. All such documents shall be prepared in accordance with state and local standards by a Landscape Architect registered in the State of Wisconsin and submitted stamped and signed for review by the Village Zoning Administrator and by all applicable governmental agencies. Implicit in this provision is the right of the Village Zoning Administrator and Building Inspector to require document revisions and modifications in the best interests of the Village.

A minimum of 4" of topsoil (i.e., after settlement) free of deleterious materials shall cover all areas of the site not covered by impervious roofs and/or pavements. Section 17.441(4)(a) prohibits topsoil export without special exception by the Village Public Works & Highway Committee.

All landscaping related to the Subdivision that will be transferred to the Village shall be inspected by Engineering Dept. and Highway Dept. personnel prior to acceptance by the Public Works & Highway Committee. All landscaping related to the Subdivision in privately owned

areas shall be inspected by Community Services Dept. personnel prior to issuing an occupancy permit. It shall be the responsibility of the Developer or its assigns for the perpetual maintenance of any subdivision sign(s), all landscaping in private landscape easements and the private drainage easements.

The proposed landscape plan dated 8/7/2020 includes a designated "Invasive Species Removal Zone" along the east property line. It is intended that the Developer shall remove invasive plant species within this area on the property and, once completed, Developer will prepare a supplemental landscape plan for review and approval by the Village Zoning Administrator that indicates the number, type, size and location of new evergreen and deciduous trees and shrubs intended to enhance the visual buffer provided by the existing tree line by filling in the gaps created by said invasive species removal. Said supplemental landscape plan shall include: (1) a list and scaled graphic representation of the number, type and general location of the invasive plants removed; (2) a list and scaled graphic representation of the number, type, size to be planted, and location of the trees and shrubs proposed to be installed within said zone. Said supplemental landscape plan shall be submitted prior to the issuance of a building permit for the first lot proposed for development within the Development.

1.13 STREET TREES. Developer shall install street trees in roadway terraces of the Subdivision in a quantity equal or greater than one tree per 50 linear feet as generally depicted in a landscape plan for said street trees and all other common areas and/or outlots within which landscaping will be installed approved by the Village Forester and Community Development Director as required as a condition of preliminary plat approval. The Developer shall install all street trees required herein prior to or concurrent with the installation of all other public improvements. Planting of street trees may be delayed depending on time of year.

Developer shall design and submit to the Village Forester for approval all proposed plans, specifications and contract documents for all street trees before authorization for construction will be given. Design and installation shall conform to Sec. 18.08(14) of the Municipal Code. All such documents shall be prepared in accordance with state and local standards by a Landscape Architect registered in the State of Wisconsin and submitted stamped and signed for review by the Village Forester and by all applicable governmental agencies. Implicit in this provision is the right of the Village Forester to require document revisions and modifications in the best interests of the Village. The Developer shall warranty all street trees, including trees replaced under this warranty, for a period of two (2) growing seasons as required under Sec 18.08(14) of the Municipal Code". In addition, tree species shall be selected from a list of approved trees provided by the Village of Germantown.

Work-in-right-of-way permits shall be applied for by Developer and secured from the Village Engineering Dept. All street trees related to the Subdivision that will be transferred to the Village shall be inspected by Engineering Dept. and Highway Dept. personnel prior to acceptance by the Public Works & Highway Committee.

Developer shall cover all costs and expenses incurred for the plotting and recording of all street and Village maintained trees onto the Village's GIS/Asset ally street tree layer (with detail to include location, specie, caliper, date installed, tree id, address, etc.).

1.14 STREETLIGHTS AND YARD LIGHTS. Developer shall be required to provide streetlights in accordance with Section 18.08(12) of the Municipal Code. Said streetlights shall be of an approved design and furnished and installed by Developer within the Development and all costs for the furnishing and installation of such streetlights shall be borne by Developer. Streetlights shall be LED. Lights and Installation to be completed by We-energies. Village anticipates that two (2) streetlights will be required, one at the intersection of Preserve Parkway and Blackbird Point, and one at the end of the cul-de-sac.

Electric yard lights for each lot in the Development shall be required as provided in Section 18.08(12) of the Municipal Code. Such lights shall be of uniform design throughout the Development to meet industry standards for minimum illumination levels and they shall be installed as part of the original building construction. Provisions for the maintenance of the electric lights shall be included in the deed restrictions recorded by Developer, subject to prior review and approval by the Village Attorney.

Developer shall design and submit to the Village Engineer for approval all proposed plans, specifications and contract documents for street lamps and to the Zoning Administrator for approval of proposed plans, specifications and contract documents for yard lights before authorization for construction will be given. Design and installation shall conform to Sec. 18.08(12) of the Municipal Code. All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. Implicit in this provision is the right of the Village Engineer and Building Inspector to require document revisions and modifications in the best interests of the Village. All streetlights related to the Subdivision that will be transferred to the Village shall be contained in Village right-of-way and shall be inspected by Engineering Dept. and Highway Dept. personnel prior to acceptance by the Public Works & Highway Committee.

Developer shall cover all costs and expenses incurred for the plotting and recording of all streetlights placed in Village right of way onto the Village's GIS/Asset Ally streetlight layer (with detail to include location, ownership, pole material, fixture, etc.).

1.15 SURVEY MONUMENTS. The Developer shall install survey monuments placed in accordance with Sections 18.02(4)(c) and 18.08(1) of the Municipal Code not later than one year (12 months) after the acceptance of this agreement.

1.16 CENTRAL MAILBOXES. Developer shall install the required improvements for a central mailbox cluster at the northeast corner of Lot #16 as shown on the approved plans. Maintenance of the central mailbox area shall be perpetual and the responsibility of the Developer or its assigns.

1.17 GIS MAPPING REQUIREMENTS. The Developer shall be responsible for the cost for placement of sanitary sewer, water main, storm sewer (public/private), roads, street signs, street trees and street lighting in the Villages GIS system. Ruekert-Mielke, Inc performs the support for the Village GIS. Developer is expected to provide record drawings for each item listed

to the Village for review and approval. Approved record drawings will be submitted to Ruekert-Mielke for inclusion into the Village GIS system. The cost for work by Ruekert-Mielke is to be included in the Financial Summery Spreadsheet.

ARTICLE II - CONSTRUCTION

2.01 GENERALLY. Developer, entirely at its own expense, shall construct and install all public improvements and provide all plans, specifications and other documents in accordance with Sec. 18.09 of the Municipal Code or as required by the Village Engineer pursuant to Sec. 18.09. Developer understands and acknowledges that the Municipal Code may be and is subject to revision from time to time, and that such revisions may impose altered or additional obligations on individual and entities creating subdivisions and other developments in the Village, including Developer. Developer hereby agrees that with respect to any such revision which shall be approved by the Village prior to issuance of permits for all public improvements provided for herein, or as mutually agreed upon between Developer and the Village after the commencement of work, Developer shall incorporate any such revision into Developer's plans, specifications and work.

Developer shall provide a schedule of construction setting forth approximate dates of commencement and completion of each phase of the construction. Developer agrees that no work shall be scheduled for the improvements without the Village Engineer's written approval of the starting date and schedule.

A pre-construction meeting shall be scheduled between Developer, the Contractors and the Village prior to commencement of any construction on the improvements. Developer shall, prior to such meeting, notify all utilities of the planned construction and the date and location of the pre-construction meeting.

2.02 BUILDING AND OCCUPANCY PERMITS. No building or occupancy permits shall be issued by the Village for any construction within the Subdivision until all roads, sidewalks, water main, sanitary sewer, storm sewer, and all other improvements required under this Agreement are installed, inspected by the Village Water Utility, Wastewater Utility, and/or Highway Dept., approved by the Village Engineer, the Village has received all record-drawings in accordance with 2.05 below, and have been accepted by the Public Works & Highway Committee.

2.03 REQUIRED PLANS. Developer shall submit to the Village Engineer for approval all of the plans, profiles and specifications required by Sec. 18.09(3) of the Municipal Code. Required plans for improvements shall include the following:

- (1) Grading plans, including interim and final;
- (2) Erosion & sediment control plans, including interim and final;
- (3) Private utility plans and capacity computations, including sanitary sewer & laterals, water main & laterals, and storm sewer & laterals;
- (4) Public utility plans, profiles and capacity computations, including sanitary sewer & laterals, water main & laterals, and storm sewer & laterals;

- (5) Paving plans & profiles, including public roads, curb-and-gutter, Preserve Parkway entrance intersection and five-foot-wide paved walking path from Blackbird Point to the existing walkway in Kinderberg Park including the associated bridge improvement.
- (6) Storm water management plan;
- (7) Landscape plans; and
- (8) Lighting and Street Sign/Pavement Marking plan.

In addition, Developer shall submit to the Village Engineer for approval all specifications before authorization for construction will be given. Implicit in this provision is the right of the Village Engineer to require document revisions and modifications in the best interests of the Village.

2.04 EXISTING FLORA. Developer shall, in accordance with Sec. 18.09(5) of the Municipal Code, make reasonable efforts to protect and retain all existing trees, shrubbery, vines and grasses not actually lying within public roadways, drainage-ways, building foundation sites, private driveways and parking areas, soil absorption waste and disposal areas, paths and trails, except as necessary for implementation of the Development Plan. Such trees are to be protected and preserved during construction in accordance with sound conservation practices, including the preservation of trees by use of wells or islands or retaining walls whenever abutting grades are altered.

2.05 RECORD DRAWING DOCUMENTS. Developer shall have prepared and submitted to the Village Engineering Department, record-drawing documents in both hardcopy and digital format (i.e., AutoCAD .dwg file format) as defined in the Record Drawing Specifications Section (6.3) of the Developer's Handbook. These documents shall be signed and sealed by the engineer of record.

The Record Drawings shall be of all public sanitary sewerage systems, public water supply systems, public storm sewer systems, electric, lighting and traffic control facilities, post-construction certification of all site grading, roads and stormwater management pond(s) drainage facilities. The Record Drawings for street lighting, Street Signage and for electric for street lighting shall include the MUTCD code, size, wording, sign material, sheeting type, date installed, owner, pole material, etc.

All record-drawing measurements shall be prepared using the following approved and accepted survey datum for horizontal and vertical control as referenced to the Village coordinate system being the Wisconsin State Plane Coordinate System, South Zone, based on North American Datum of 1983, 2011 Adjustment, and the North American Vertical Datum of 1988 .

If Developer is unable to furnish the location and digital files as required, the Village Engineer shall complete the record-drawing plans with costs charged back to Developer. Each original or copy shall be certified by Developer's engineer, in accordance with requirements of the Village Engineering Department. Record drawings shall be submitted by Developer and approved by the Village Engineer prior to applying for a Village occupancy permit or subdivision plat approval.

ARTICLE III - DEDICATION AND ACCEPTANCE

Developer agrees that the improvements will not be accepted by the Village until: (i) all outstanding charges to be paid by Developer under the Ordinances have been paid in full, (ii) affidavits and lien waivers are received by the Village indicating that all contractors providing work, services or materials in connection with the improvements have been paid in full for all such work, services and materials, and (iii) the Village has received evidence satisfactory to it that no liens or other encumbrances (except those approved in writing by the Village) encumber the improvements.

Any water main installation shall not be accepted until two consecutive bacteriological safe samples have satisfactorily passed and one pressure test has successfully passed. Developer or his Contractor shall flush the main and obtain the samples required for this testing under the supervision of the Village Engineering Dept. or Water Utility. Upon completion of the water mains and service laterals and acceptance of the system by the Village Public Works & Highway Committee, ownership and control shall be turned over without reservation to the Village.

Developer shall request in writing to the Village Engineer, acceptance of the public improvements. The Village Engineer will order an inspection of the improvements by the Village Water Utility, Wastewater Utility, Highway Dept., and Engineering Dept., and a punch-list of corrections (if needed) shall be forwarded to Developer for completion prior to acceptance. Upon completion of corrective action, Developer shall inform the Village Engineer in writing and request acceptance by the Public Works & Highway Committee. Upon satisfaction of the conditions set forth in this Agreement, and upon written request by Developer, the Village shall accept the improvements (the "Final Acceptance"). The acceptance of the public improvements by the Public Works & Highway Committee shall commence running of the one-year warranty period provided for and in accordance with Section 7.01 of this Agreement. Final Acceptance includes the need to have all newly created public infrastructure i.e. water, storm, sanitary, easements, street trees, signage, streetlights etc. be successfully and accurately recorded to the Village's GIS/Asset Ally layer.

ARTICLE IV - PAYMENT OF FEES

4.01 GENERALLY. Developer shall pay all fees, expenses, costs and disbursements which Developer is required to pay, pursuant to Sec. 18.10 of the Municipal Code. Nothing in this provision, nor in the remaining provisions of this article, shall be construed as exempting Developer, its successors and assigns, from such future fees, expenses, costs, or assessments which might be imposed by way of general operation of law or ordinance, and as otherwise assessable against properties within the Village of Germantown.

4.02 IMPACT FEES. As a condition of the approval of this Agreement by the Village, Developer shall pay to the Village Treasurer tax impact fees/Residential Unit that have been determined in accordance with Sec. 3.14 of the Municipal Code. These fees include:

Water: (\$832.00/Res. Unit)
Parks: (\$736.00/Res. Unit)
Fire: (\$171.00/Res. Unit)
Police: (\$148.00/Res. Unit)
Library: (\$281.00/Res. Unit)
Sewer Connection Fee: (\$4,328.00/Res. Unit)

REC is a residential unit equivalent for pumping and storing municipal water or as per Section 15.07(2) of the Municipal Code and per Resolution No. 27-07, establishing the sewer connection charge. These fees are payable at the time of individual lot Building Permit issuance.

4.03 IMPROVEMENT REVIEW FEE. Developer shall pay a fee based on the cost of required development improvements for all phases of the project to cover the cost of the Village for checking and reviewing plan and specification documents. Such improvement review fee shall be as provided by Sec. 18.10(3) of the Municipal Code. The fee shall be calculated as follows:

- (1) 2.25% of the first \$250,000 of construction costs; plus
- (2) 1.75% of the next \$250,000 of construction costs; plus
- (3) 1.25% of construction costs which exceed \$500,000; plus
- (4) A minimum \$5,000 Developer's Agreement fee pursuant to Section 18.10(3) of the Municipal Code.

4.04 PROFESSIONAL FEES AND INSPECTION FEES. In accordance with Sec. 18.10(4), 18.10(7), and 18.10(8) of the Municipal Code, Developer shall be responsible for all professional (technical and legal) fees incurred by the Village in connection with this Development. Inspection costs shall be reimbursed to Village by Developer, whether performed by the Village Engineering Dept., Water Utility, Wastewater Utility, Highway Dept., or outsourced to a third-party engineering consultant, and shall also be reimbursed for services rendered by the Village Attorney. Developer will be billed for Village personnel at the standard rates presented in Exhibit B. Developer will be billed for third-party engineering consultants by presenting their invoices.

4.05 DATA CONVERSION FEE. In accordance with Section 18.10(13) of the Municipal Code, Developer shall be responsible for all fees associated with the upload of Geographic Information System data incurred by the Village in connection with this project.

4.06 PREPAYMENT OF CERTAIN FEES. Developer, and/or a lot owner in the case of impact fees, shall pay the fees specified in Paragraphs 4.02, 4.03 and 4.05, as itemized in Exhibit D, prior to the issuance of any building permit for the Property.

ARTICLE V - SPECIAL PROVISIONS

5.01 SEWER CONNECTIONS. In accordance with the rules and regulations of the

Village, Developer has been authorized one (1) sewer connection for this Development, subject to the provisions of Sec. 5.02 of this Agreement.

5.02 SEWER CAPACITY. It is understood by and between the parties that the Village, by entering into this Agreement, makes no representations or guarantees with respect to sewer capacity for the Development contemplated by this Agreement. It is understood by Developer that other governmental authorities having jurisdiction may impose limitations or restrictions upon the Village's decision to authorize the sewer connections referred to in Sec. 5.01 of this Agreement.

5.03 WETLAND AND FLOODPLAIN CONDITIONS. It shall be an explicit condition that Developer shall comply with all required regulations and shall obtain all necessary approvals in writing from the appropriate agencies relative to the wetlands and floodplain areas which may be on the Property. Approval of the subject Development Plan by the Village Plan Commission shall not be construed to be Village approval of intrusions into wetland or floodplain areas, or Village approval of filling or modifications to wetlands or floodplain areas. Developer, except as required on approved plans, will not be allowed to grade, fill, or conduct any other type of development within 75 feet of the high water mark of a navigable waterway or 25 feet from a wetland. If the Zoning Administrator suspects the presence of wetlands or navigable stream upon site inspection, an updated delineation will be required. Final delineation of wetlands and navigable streams shall be confirmed by the Southeastern Wisconsin Regional Planning Commission.

5.04 PHASES. Developer has represented that it will construct the public improvements for this project in one phase. All public improvement work associated with the Development shall be completed within one year following the date of issuance of permits for such work by the Village.

ARTICLE VI - FINANCIAL GUARANTY

6.01 AMOUNT. Developer shall deposit with the Village a financial guarantee (certified check, provide an irrevocable letter of credit, or a Performance Bond at the option of the developer) which shall assure the faithful performance of Developer's obligations under this Agreement as itemized in Exhibit B attached hereto and incorporated herein by reference. The Village may in its sole discretion following Developer's request and acceptance by the Village Public Works & Highway Committee of some but not all of the improvements constructed as part of this Agreement, reduce the deposit or letter of credit to the amount estimated by the Village Engineer (in a manner consistent with the Ordinances) to be necessary to secure performance by Developer hereunder. In no event shall the amount of the guaranty be reduced below the aggregate total estimated cost of the improvements not yet installed or accepted, plus fifteen percent (15%). The Village is hereby authorized to contact directly Developer's financial agent from time to time regarding the sufficiency of the financial guaranty. The termination date of the Letter of Credit, following acceptance by the Village shall be no earlier than one year following the date of issuance of permits for public improvement work by the Village. If the public improvements to be undertaken by Developer under this Agreement are not complete within one year following the issuance of permits for such work, for any reason including force majeure under Section 8.03 below and without regard to the fault of Developer, then Developer's obligation to provide a letter

of credit shall be extended through the completion of the work and its inspection and acceptance of dedication by the Village. After construction and total completion of the project and acceptance of the project by the Village Public Works & Highway Committee, the surety will be reduced to 10% of the actual cost of construction for a period of one (1) year (the guaranty period). In the event the original surety would, by its terms, expire prior to the end of the one year guaranty period, or if the guaranty period is extended due to repairs of defects as provided in Sec 7.01, a new surety shall be issued to cover the remaining guaranty period for the 10% of actual original construction costs.

6.02 FORM. The form of the financial guarantee shall be approved by the Village Attorney prior to acceptance by the Village as satisfying Developer's obligation as provided in Section 6.01 above.

6.03 LIABILITY NOT RELEASED. All deposits or Letters of Credit given hereunder are security devices only which in no manner limit the liability of Developer to the Village, however arising and regardless of the amount.

6.04 RESERVATION OF ASSESSMENT RIGHTS. In addition to the remedies for default provided to the Village by this financial guaranty, the Village reserves the right without notice or hearing to impose special assessments or charges for any amounts to which it is specifically entitled by virtue of this Agreement for improvements specifically provided for herein upon the property described in Exhibit A attached hereto. Such special assessments or charges shall be collected on the next succeeding tax roll as are other special assessments or charges. This provision constitutes Developer's Waiver of Notice and Consent to all special assessment or special charges proceedings which may be required by law.

6.05 REMEDIES. At the option of the Village, a material breach of this Agreement shall result in the Village having the right to revoke any and all occupancy or use permits, or to rescind any zoning granted in consideration of the proposed project. Compliance with this contract shall be deemed a condition of any such zoning, which shall revert to the original zoning classification upon action of the Village Board under authority of this provision. As an alternative thereto, and at the option of the Village the Village may impose a liquidated damage penalty in the amount of \$500.00 per diem as until such time as there shall be compliance. In addition, the Village shall have the right to remedy such breach at its expense and assess the cost thereof against the subject property. All remedies as stated herein shall be deemed alternative remedies, and cumulative as and to such other remedies in law or equity as the Village may assert and herein reserves.

ARTICLE VII - GUARANTEE AND INDEMNIFICATION

7.01 GUARANTEE OF IMPROVEMENTS. Developer shall guarantee all dedicated improvements against defects due to faulty materials or workmanship which appear within one (1) year from the date of Final Acceptance by the Village, as provided in Article III of this Agreement. Developer shall repair or replace any such improvements as required by the Village Engineer to eliminate such defects and shall pay for all damages to Village property resulting from such defects. Each repair or replacement performed pursuant to this paragraph shall be guaranteed for

one (1) year from the completion thereof.

7.02 GENERAL INDEMNIFICATION. Developer shall indemnify and hold the Village harmless against and from any and all liability, judgments, costs and expenses incurred by the Village as the result of any action by whomsoever or whenever brought or obtained against the Village or Developer, or both, which may in any manner result from or arise in the course of, out of, or as a result of the carelessness, negligence or neglect of Developer, its agents, contractors or employees. In every case where judgment is recovered against the Village and where notice of the pendency of the suit and an opportunity to defend the same has been given to Developer within ten (10) days after its commencement, the judgment shall be conclusive upon Developer, not only as to the amount of damages, but also as to its liability to the Village.

7.03 CONTRACTOR INSURANCE. Contractors engaged by Developer to perform the work required by this Agreement within public rights-of-way shall, prior to commencing such work, submit to the Village proof of the following:

- (1) Unemployment and Workers' Compensation insurance which is in strict compliance with state laws.
- (2) Personal and public liability insurance having limits of not less than \$1,000,000.00.
- (3) Property damage insurance having limits of not less than \$500,000.00.
- (4) Fire and extended coverage which shall insure against losses and damage to completed work, materials or equipment until the same has been accepted by the Village.

7.04 INDEMNIFICATION FOR ENVIRONMENTAL CONTAMINATION: Developer shall indemnify, and hold the Village and its officers, agents and employees harmless from and against any and all losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorneys' fees, punitive damages, fines, penalties and consequential damages) resulting from or relating in any way to the presence of toxic or hazardous material or substances present or suspected to be present in or on the real property dedicated or conveyed to the Village, pursuant to, or in connection with the platting/subdivision of Developer's Property as more specifically detailed in the terms of this Agreement. For purposes of this Agreement, "toxic or hazardous material or substances" is defined as any pollutant, contaminant, waste or toxic or hazardous chemicals, wastes or substances, including, without limitation, asbestos, urea formaldehyde insulation, petroleum, PCBs, lead, air pollutants, water pollutants, soil pollutants and other substances defined as hazardous or toxic or words of similar import under federal, state or local statute, rule, regulation or order of any government entity having jurisdiction over the control of such wastes or substances.

Upon the Village becoming aware of the occurrences of any event or the existence of any state of facts in respect of which the Village has or will have a claim for indemnification under this Section 7.04 ("Claim"), as soon as reasonably practicable thereafter:

- (a) the Village shall provide Developer notice of the losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorney's fees, punitive damages, fines, penalties, and consequential damages) as and when reasonably apprehended. Notwithstanding anything to the contrary contained herein, the Village's failure to timely notify Developer shall not prevent or in any way impair recovery by the Village unless Developer is materially prejudiced as a result of such failure;
- (b) subject to paragraphs (c) through (f) below, Developer diligently, at its own expense, shall control and shall be responsible for the defense, negotiation and/or settlement of the Claim, including the diligent performance of any remediation associated therewith;
- (c) the Village may at its own expense hire counsel or consultants to monitor the Claim;
- (d) Developer shall not, without the prior written consent of the Village, which consent shall not be unreasonably delayed, withheld or conditioned, settle any Claim;
- (e) Developer shall lose its right to defend, negotiate and settle any Claim if, in the reasonable judgment of the Village, it fails to diligently defend, negotiate or settle such Claim. In the event that Developer has lost its right to defend, negotiate or settle any Claim: (i) the Village shall have the right, without prejudice to its right of indemnification hereunder, at Developer's cost and expense, to defend, negotiate and settle any Claim, and (ii) Developer shall pay such reasonable costs and expenses incurred by the Village within twenty (20) days of receipt of written notice from the Village;
- (f) If Developer does not timely assume responsibility for any Claim, the Village shall have the right, without prejudice to its right of indemnification hereunder, at the sole cost and expense of Developer, to assume control of the defense, negotiation and/or settlement of the Claim, and may engage counsel or other agents, consultants, and contractors to contest, defend, settle or otherwise dispose of such Claim, including, without limitation, hiring any environmental consultant or contractor to perform any remediation necessary to address the Property or the toxic or hazardous materials or substances at the Property.

ARTICLE VIII - TIME OF COMPLETION

8.01 COMPLETION DATE. The work required by this Agreement shall be completed by Developer not later than one (1) year after acceptance of this Agreement by the Village Board.

8.02 DEFAULT. In the event Developer does not complete installation of the public improvements required by this Agreement within thirty (30) days after the Village has served notice of default upon Developer, the Village may complete the same and take title thereto. The costs of doing such work shall be collected as provided in Article VI of this Agreement.

8.03 FORCE MAJEURE. Notwithstanding anything herein to the contrary, in the event that Developer is delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental regulations, orders or decrees, riots, insurrection, war, acts of God, inclement weather, or other reasons beyond Developer's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for the period of such delay.

8.04 SUNSET CLAUSE. The conditions of this Agreement shall terminate two (2) years after Village Board approval unless construction has begun or amended in writing by both parties.

ARTICLE IX - GENERAL PROVISIONS

9.01 PLATTING REGULATIONS. All provisions of the Village's subdivision and platting code as set forth in Chapter 18 of the Municipal Code of the Village which are not inconsistent with or in conflict with any of the provisions of this Agreement 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 herein. This Agreement shall be performed and carried out in strict compliance with and subject to the provisions of Chapter 18.

9.02 APPROVAL TERMS. The approvals granted by the Village for the Developer, are conditioned upon the fact that the Developer's use is not tax-exempt and shall be subject to general property taxation; No tax-exempt use is authorized by the aforesaid approvals. Further, Developer agrees that it will not be entitled to final plat approval if the plat deviates materially from the approved preliminary plat and/or it contains more than 16 lots. Developer agrees that if it does not execute this agreement and provide for the required financial guarantee to ensure timely completion of the public improvements by April 16, 2021 that this Agreement shall terminate and the zoning of the Property shall revert to its original zoning.

9.03 AGREEMENT FOR BENEFIT OF PURCHASER. 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 dwelling unit, building, lot or parcel of land within the Development.

9.04 ENTIRE AGREEMENT. This written Agreement and written amendments and any referenced attachments thereto shall constitute the entire agreement between the Developer and the Village.

9.05 AMENDMENTS. This Agreement may be amended or modified only by an instrument in writing executed by all of the parties to this Agreement.

9.06 OWNERSHIP. Developer certifies and warrants to the Village that all of the owners of the real estate within said Development and all of the land contract vendors and/or mortgagees having interest in said real estate are as follows: VHKE, LLC

9.07 AUTHORITY. Developer, by the undersigned, represents, certifies and warrants that the undersigned has the authority to bind VHKE, LLC.

9.08 NO VESTED RIGHTS GRANTED. Except as expressly provided by law or as expressly provided by this Agreement, no vested rights in connection with this project shall inure to the Developer, its heirs, successors or assigns.

9.09 NO WAIVER. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a duly signed and executed, written amendment by all parties to this Agreement. The Village's failure to act or exercise any right under this Agreement shall not constitute the approval or a waiver of its right to act or exercise any right under this Agreement or a ratification of any wrongful or negligent act by the Developer or the acceptance of any improvement or performance on the part of the Developer.

9.10 APPROVAL. No approval by the Village Engineer or the Village attorney or any other person acting on behalf of the Village shall be construed as a waiver of any of the requirements of the Ordinances, or any statute or regulation governing the improvements.

9.11 COVENANTS AND DEED RESTRICTIONS. All proposed covenants and deed restrictions shall be submitted to and be approved by the Village Attorney prior to recording, and shall include the following:

- (1) ELEVATIONS. A requirement that the lot owner set the final yard grade, building elevations and contours subject to the approval of the Villages Building Inspector and Engineer prior to construction. The lot owner shall also ensure that the lot is graded in accordance with such approval.
- (2) YARD LIGHTS. A requirement that the lot owners install a front yard light that is in conformance with § 18.08(12) of the Municipal Code subject to the approval of the Village Engineer.
- (3) LANDSCAPING. A requirement that each individual lot owner is responsible for installing the minimum landscaping required under § 17.43(5) of the Municipal Code.
- (4) OWNER RESPONSIBILITY. A requirement that a Homeowner's Association is created comprised of all lot owners for purposes of assuming the perpetual maintenance of the walkways and paths required under Section 1.08, of all privately owned storm water management basins, storm sewer, ditches, and swales required under Section 1.11, mailboxes under Section 1.16, and of all other privately owned improvements including the monument entrance sign(s) and commonly owned outlots, easements, and open spaces. In the event that the Homeowner's Association fails to comply with this requirement, or if it

ceases to exist, the individual lot owners shall be severally liable (on a per lot basis) for the costs of such work as a special charge under § 66.0627 of the Wisconsin Statutes.

- (5) **VILLAGE REMEDIES.** The Village shall have the right to remedy deficiencies under the preceding paragraphs, the right to charge Developer for costs incurred and the right to enforce collection of such amounts in accordance with § 66.0627 of the Wisconsin Statutes.
- (6) **ENVIRONMENTAL.** A requirement that the wetland, contained within Outlot #1, depicted on the subdivision plat is to be preserved and protected from development and any uses or activities that would damage or destroy the natural resource features, wildlife and associated habitat therein, including but not limited to, the unnecessary removal of trees or other vegetation, the use of motorized vehicles, recreational hunting, etc.
- (7) **GAS DISTRIBUTION EASEMENT.** The subdivision plat, development agreement and covenants & restrictions shall contain adequate notice to the future owners of Lots #9, #10, #11 and the southwest open space outlot that use of the area is subject to the provisions of the gas distribution easement agreement (Doc#1394627).

9.12 **SEVERABILITY.** If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision; and the right of the parties will be construed as if the part, term or provision was never part of the Agreement.

ARTICLE X - NON-ASSIGNMENT

This Agreement, which is binding upon Developer, Developer's agents, officers, employees, personal representatives, guardians and trustees shall not be assigned by Developer to any individual, firm, partnership or corporation without the express approval of the Village.

IN WITNESS WHEREOF, Developer and the Village have caused this Agreement to be signed in duplicate originals this _____ day of _____, 2019 which shall be the effective date of this Agreement.

[SIGNATURE PAGES FOLLOW]

VHKE, LLC

By: _____

STATE OF WISCONSIN)
) SS
_____ COUNTY)

Personally came before me this ____ day of _____, 2019, the above-named, _____, to me known to be the person who executed the foregoing instrument and to me known to be such _____ of VHKE, LLC, and acknowledged that he executed the foregoing instrument in such capacity.

By: _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

"In Duplicate"

VILLAGE OF GERMANTOWN

By _____
____Dean Wolter, Village President

By _____
____Deanna Braunschweig, Village Clerk

Per Village Board Approval: Dated _____

STATE OF WISCONSIN)
) SS
_____COUNTY)

Personally came before me this ____ day of _____, 2019, the above-named, Dean M. Wolter, Village President, and Deanna Braunschweig, Village Clerk, to me known to be the persons who executed the foregoing instrument and to me known to be the persons who executed the foregoing instrument in such capacity and acknowledged the same.

By _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

Approved as to form:

Brian C. Sajdak, Village Attorney

This instrument was drafted by:
Lawrence W. Ratayczak, P.E., Director of Public Works

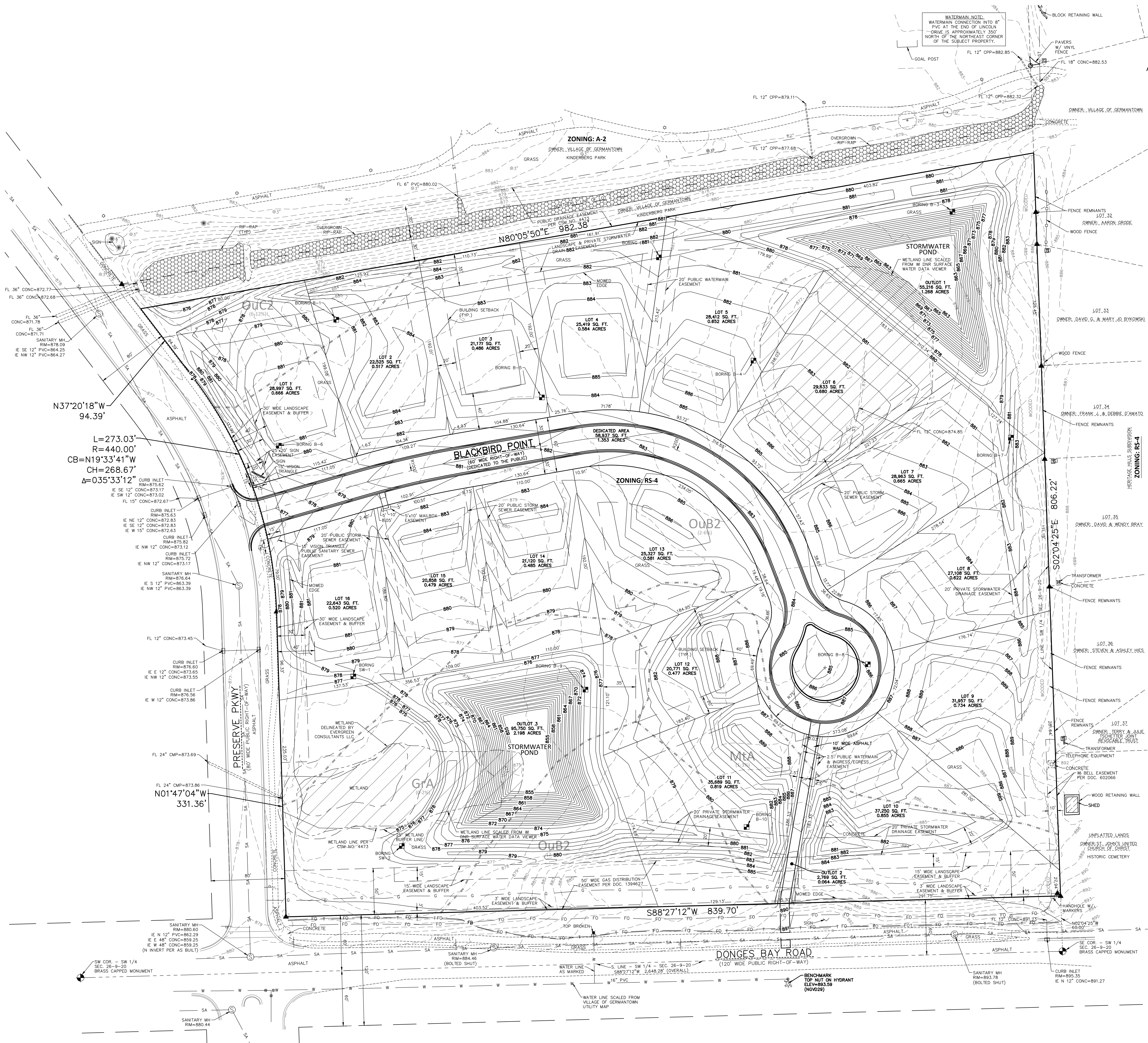
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot 2 of Certified Survey Map No. 4473, recorded in the Washington County Registry on April 6, 1995 in Volume 30 of Certified Survey Maps on Pages 24-27, as Document No. 688873, and being a part of the Northeast 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 26, Township 9 North, Range 20 East, in the Village of Germantown, Washington County, Wisconsin. EXCEPTING THEREFROM the Northerly 30 feet thereof. Containing 14.7 Acres.

EXHIBIT B

PLAT



KINDERBERG ESTATES

LOT 2 OF CERTIFIED SURVEY MAP NO. 4473, RECORDED IN THE WASHINGTON COUNTY REGISTRY ON APRIL 6, 1995 IN VOLUME 30 OF CERTIFIED SURVEY MAPS ON PAGES, 24-27, AS DOCUMENT NO. 688873, AND BEING A PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 20 EAST, IN THE VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN. EXCEPTING THEREFROM THE NORTHERLY 30 FEET THEREOF.

TOTAL AREA
14,704 ACRES
640,516 SQ. FT.

USE STATEMENT
RESIDENTIAL SINGLE FAMILY DEVELOPMENT
19 LOT SUBDIVISION
16 SINGLE FAMILY-ONE DWELLING LOTS
3 OUTLOT

I, Ryan Wilgreen, Professional Land Surveyor, hereby certify that such preliminary plat is a correct representation of all existing land divisions and features.

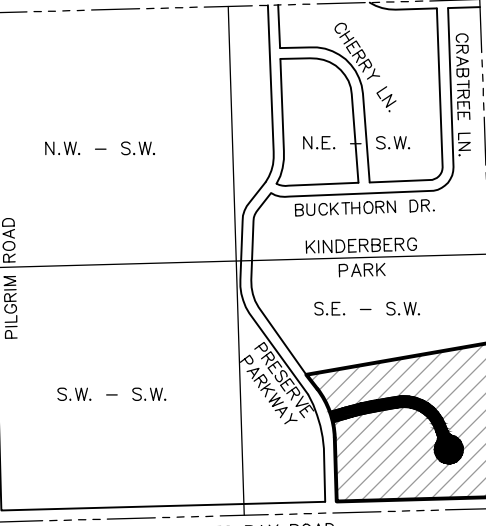
That I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and Chapter 18.04 of the Village of Germantown Code of Ordinances in surveying, dividing and mapping of the same.

Ryan Wilgreen, P.L.S. S=2647
ryan.wilgreen@excel-engineer.com
Excel Engineering, Inc.
Fond Du Lac, Wisconsin 54935
Project No. 2005920

EXISTING/PROPOSED ZONING:
RS-4: SINGLE FAMILY RESIDENTIAL DISTRICT

PRINCIPAL BUILDING SETBACKS
FRONT 40 FEET
SIDE 20 FEET
REAR 35 FEET

LOCATION MAP



SW 1/4 OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 20 EAST, VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN

SCALE: 1" = 1000'

SW 1/4 OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 20 EAST, VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN

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SW 1/4 OF SECTION 26, TOWNSHIP 9 NORTH, RANGE 20 EAST, VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN

NOTES:

WATERMAIN

-Watermain for this development will be provided from the 16" PVC watermain on the South side of Donges Bay Road and from the watermain stub on the West end of Lincoln Drive approximately 300' North of the Northeast corner of the subdivision.

FLOODPLAIN

-Based upon a review of the Federal Emergency Management Agency Flood Insurance Rate Map community panel 55131C0378D and 55131C0379D, each with an effective date of November 20, 2013, the property described hereon falls within Zone "X". Unshaded (areas determined to be outside the 0.2% annual chance floodplain)

OUTLOTS

-Outlot 1 & Outlot 3 of the plat of Kinderberg Estates is owned and shall be maintained by the Kinderberg Estates Homeowners Association and each individual lot owner shall have an undivided fractional ownership of the outlots and that Washington County and the Village of Germantown shall not be liable for any fees or special assessments in the event Washington County or the Village of Germantown should become the owner of any lot in the subdivision by reason of delinquency. The Homeowners Association shall maintain said outlot in an unobstructed condition so as to maintain its intended purpose. Construction of any building, grading, or filling in said outlot is prohibited unless approved by the Village of Germantown. The Homeowners Association grants to the Village the right (but not the responsibility) to enter upon this outlot in order to inspect, repair or restore said outlot to its intended purpose. Expenses incurred by the Village for said inspection, repair or restoration of said outlot may be placed against the tax roll for said association and collected as a special charge by the Village.

LANDSCAPE BUFFERYARD

-Landscape Buffer Easement: This strip is reserved for the planting of trees and shrubs; the building of structures hereon is prohibited.

WETLANDS

-The Wetland shown on this plat were delineated by Evergreen Consultants, LLC on May 07, 2018, as well as wetland lines shown on Certified Survey Map No. 4473, and wetland lines scaled from Wisconsin DNR Surface Water Data Viewer mapping application. Wetlands delineated by Evergreen Consultants, LLC on May 07, 2018 that have been Exempted per #EXE-SE-2018-67-02987 & #EXE-SE-2018-67-03552 and approved for Wetland Fill per GP-SE-2018-67-02321 have not been depicted on this survey.

NO ACCESS

-No direct vehicular access is allowed along Preserve Parkway or Donges Bay Road from any lot or outlot within the subdivision.

LEGEND:

- | | | | |
|---|----------------------|---------|---------------------------------------|
| ⊗ | WATER VALVE IN BOX | — SA — | EXISTING SANITARY SEWER AND MANHOLE |
| ✱ | WATER SERVICE VALVE | — T — | EXISTING UNDERGROUND TELEPHONE CABLE |
| — | EXISTING CURB INLET | — FO — | EXISTING UNDERGROUND FIBER OPTIC LINE |
| □ | TELEPHONE PEDESTAL | — W — | EXISTING WATER LINE AND HYDRANT |
| ⊠ | ELECTRIC TRANSFORMER | — ST — | EXISTING STORM SEWER |
| ⊙ | CABLE TV PEDESTAL | — G — | EXISTING UNDERGROUND GAS LINE |
| ☆ | EXISTING LIGHT POLE | — — | EXISTING CURB AND GUTTER |
| ⊙ | EXISTING SIGN | — — | PROPERTY LINE |
| ⊙ | DECIDUOUS TREE | — — | RIGHT-OF-WAY LINE |
| ⊙ | CONIFEROUS TREE | — — | ADJACENT PROPERTY LINE |
| ⊙ | 1" IRON PIPE FOUND | — 800 — | EXISTING GROUND CONTOUR |
| ⊙ | SOIL BORING | — 800 — | PROPOSED GROUND CONTOUR |
| ⊙ | MONUMENT FOUND | — 800 — | WOODED AREA |

1" = 50'
SCALE
50' 0 50' 100'
FEET

NORTH POINT REFERENCED TO THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE. THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 26 HAS A BEARING OF SOUTH 88°-27'-12" WEST.

OWNER: VYHKE, LLC
6801 S. TOWNE DRIVE
MADISON, WI 53713

SUBDIVIDER: VERIDIAN HOMES, LLC
6801 S. TOWNE DRIVE
MADISON, WI 53713

ENGINEER & SURVEYOR: EXCEL ENGINEERING, INC.
100 CAMELOT DR.
FOND DU LAC, WI 54935

PRELIMINARY PLAT

EXCEL
ARCHITECTS • ENGINEERS • SURVEYORS
Always a Better Plan
100 Camelot Drive
Fond Du Lac, WI 54935
Phone: (920) 926-9800
www.EXCELENGINEER.com

PROJECT INFORMATION

PRELIMINARY PLAT

KINDERBERG ESTATES

DONGES BAY ROAD/PRESERVE PARKWAY • GERMANTOWN, WI 53022

PROFESSIONAL SEAL

SHEET DATES

ISSUE DATE MAY 11, 2020

REVISIONS

JULY 21, 2020

JOB NUMBER

2005920

SHEET NUMBER

PP

100 CAMELOT DRIVE

FOND DU LAC, WI 54935

PRELIMINARY PLAT

100 CAMELOT DRIVE

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PRELIMINARY PLAT

100 CAMELOT DRIVE

FOND DU LAC, WI 54935

PRELIMINARY PLAT

EXHIBIT C

LABOR & EQUIPMENT RATES

LABOR RATES -- 2020

VILLAGE OF GERMANTOWN

POSITION DESCRIPTION	Annual Hourly Rates		
	2018	2019	2020
Director of Public Works	\$75.12	\$78.54	\$80.50
Village Engineer	\$63.29	\$66.17	\$67.83
Project Engineer	\$54.52	\$57.00	\$58.42
Engineer Tech III / Land Surveyor	\$47.83	\$50.00	\$51.25
Land Surveyor/Survey Crew w/Robot	\$139.06	\$145.38	\$149.02
Highway Superintendent	\$54.19	\$56.66	\$58.07
Zoning Administrator/Planner	\$61.57	\$64.37	\$65.98
Civil Engineer	\$40.36	\$42.20	\$43.25
Record Drawing Documentation Preparation	\$48.00	\$50.19	\$51.44
Construction Inspection	\$48.00	\$50.19	\$51.44
Highway Maintenance Worker II	\$45.46	\$47.53	\$48.72
Highway Operators (Traffic Signals)	\$52.79	\$55.19	\$56.57
Water Superintendent	\$54.19	\$56.66	\$58.07
Waste Water Superintendent	\$54.19	\$56.66	\$58.07
Utility Operator	\$46.64	\$48.77	\$49.99
Clerical	\$36.77	\$38.44	\$39.41

NOTE: 2020 rates reflect a 2.5% increase to the 2019 wages.

EQUIPMENT RATES -- 2020

VILLAGE OF GERMANTOWN

EQUIPMENT DESCRIPTION	Annual Hourly Rates		
	2018	2019	2020
Cruz-Air	\$65.99	\$70.01	\$72.11
Case Backhoe & Loader	\$38.95	\$41.33	\$42.57
Michigan Loader	\$49.78	\$52.81	\$54.40
Case/John Deer Loader/Snow Plow	\$84.41	\$89.55	\$92.24
Case/John Deer Loader/Snow Blower	\$114.70	\$121.69	\$125.34
Single Axle Dump Truck (5yd)	\$35.71	\$37.88	\$39.02
Single Axle Dump Truck w/Plow/Aux. Wing/Sander (5 yd)	\$57.35	\$60.84	\$62.67
Tandem Axle Dump Truck	\$47.62	\$50.52	\$52.03
Tandem Axle Dump Truck w/Plow/Aux. Wing/Sander	\$70.34	\$74.62	\$76.86
Quad Axle Dump Truck	\$85.00	\$87.55	\$90.18
1-Ton Patrol Truck (2-3 yd)	\$27.06	\$28.71	\$29.57
1-Ton Truck w/Plow	\$33.55	\$35.59	\$36.66
Truck w/Water Jetter w/Aux. Power Unit	\$54.11	\$57.40	\$59.12
Aerial Lift Truck	\$67.09	\$71.18	\$73.32
3500- Truck w/ Utility Box & Crane		\$65.00	\$65.00
Pickup Truck	\$21.10	\$22.39	\$23.06
Pickup Truck w/Plow	\$30.30	\$32.15	\$33.11
Self Propelled Vibrating Roller	\$41.12	\$43.62	\$44.93
Self Propelled Non-Vibratory Roller	\$37.87	\$40.18	\$41.38
185 cfm Air Compressor (Portable)	\$30.30	\$32.15	\$33.11
Street Sweeper 40 Hp w/Front Mounted Broom	\$40.04	\$42.47	\$43.75
Vacuum Sweeper	\$88.73	\$94.14	\$96.96
Vac All	\$93.06	\$98.73	\$101.69
Sewer line Televising Truck	\$125.53	\$133.17	\$137.17
Combination Sewer Machine (pipe jetter & vac)	\$151.49	\$160.72	\$165.54
Mini Excavator	\$53.05	\$56.28	\$57.96
Skid Steer Loader w/Bucket	\$34.63	\$36.74	\$37.84
Skid Steer Loader w/Snow Blower/Broom	\$37.87	\$40.18	\$41.38
20" Enclosed Trailer		\$15.00	\$15.00
REX Valve Turner		\$83.00	\$83.00
10' Utility Trailer		\$12.00	\$12.00
Tar Kettle	\$36.79	\$39.03	\$40.20
Motorized Mower (24" & Under)	\$14.35	\$15.22	\$15.68
Motorized Mower (25"-47")	\$20.02	\$21.24	\$21.88
Motorized Mower (48" & larger)	\$23.27	\$24.68	\$25.43
Tractor w/Sickle or Flail Mower	\$49.78	\$52.81	\$54.40

Chain Saw	\$13.27	\$14.07	\$14.50
Hydraulic Saw	\$13.27	\$14.07	\$14.50
Hydraulic Pruner	\$13.27	\$14.07	\$14.50
Chipper	\$43.28	\$45.92	\$47.29
Generator (225 Kw)	\$61.68	\$65.43	\$67.40
Generator (Under 10 Kw)	\$27.06	\$28.71	\$29.57
Trailer Mounted Vacuum Excavator & Valve Turner	\$90.90	\$96.43	\$99.33
6 " Pump/Hose	\$33.55	\$35.59	\$36.66
4" Pump/Hose	\$28.14	\$29.85	\$30.75
3" Pump/Hose	\$23.27	\$24.68	\$25.43
Barricades-----DAILY COST	\$3.24	\$3.44	\$3.55
Traffic Control Signs-----DAILY COST	\$1.63	\$1.73	\$1.78
NOTE: 2020 rates reflect a 3% increase of 2019 rates			

EXHIBIT D

FINANCIALS

EXHIBIT "D"**KINDERBERG ESTATES****Residential Single Family Subdivision**

<u>ITEM DESCRIPTION</u>	<u>BASIS</u>	<u>ESTIMATED AMOUNT</u>
Survey Monuments	1.02	\$500.00
Site & Street Grading	1.03 & 1.11	\$359,113.00
Gravel Base and Asphalt Binder Coarse	1.03	\$79,353.00
Asphalt Surface Coarse	1.03	\$24,886.00
Curb & Gutter	1.04	\$39,431.00
Sidewalks / Walk Paths	1.05	\$20,337.00
Sanitary Sewer System	1.06	\$168,000.00
Water System	1.07	\$182,000.00
Other Sewer & Water Facilities	1.08	\$63,434.00
Underground Utilities	1.09	
Street Lights (possibly 2)	1.1	\$10,000.00
Street Signs	1.08	\$1,000.00
Erosion Control	1.11 & 2.04	\$55,556.00
Storm Water System & Drainage includes ponds)	1.12	\$173,389.00
Permanent Barricades	1.13	
SUB-TOTAL		\$1,176,999.00
DATA Conversion Estimated Fee (record drawings)	4.03	\$2,000.00 *
Improvement Review Fee: (public items)	4.03	\$13,224.96 *
Professional Fee (Attorney)	4.05	\$500.00 *
Inspection Fee Estimate (Actual based on construction time)	4.05	\$30,000.00 *
SUB-TOTAL		\$45,724.96
IMPACT & CONNECTION FEE'S TO BE PAID AT THE TIME OF BUILDING PERMIT ISSUANCE		
Sanitary Sewer (16 REC @ \$4,328 / REC)	4.02	\$69,248.00 **
Water (16 REC @ \$832 / REC)	4.02	\$13,312.00 **
Fire (16 REC @ \$171.00 / REC)	4.02	\$2,736.00 **
Police (16 REC @ \$148.00 / REC)	4.02	\$2,368.00 **
Park & Recreation (16 REC @ \$736.00 / REC)	4.02	\$11,776.00 **
Library (16 REC @ \$281.00 / REC)	4.02	\$4,496.00 **
SUB-TOTAL		\$103,936.00
TOTAL (Letter of Credit Amount)		\$1,326,659.96
* Amount to be Paid at Time of Signing of Development Agreement		\$45,724.96
** Amount to be Paid at Time of Building Permit Issuance		\$103,936.00

Document No.

KINDERBERG ESTATES DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

VILLAGE OF GERMANTOWN,
WASHINGTON COUNTY, WI.

Return to:
Angie Christensen
Veridian Homes
6801 South Towne Drive
Madison, WI 53713

PREAMBLE

See Exhibit "B"
(Parcel Identification Numbers)

This Declaration of Protective Covenants, Conditions and Restrictions (the "**Declaration**") is made this ___ day of _____, 20__, by VHKE LLC, a Wisconsin Limited Liability Company (collectively, hereinafter referred to as the "**Declarant**") and/or their successors and assigns.

WHEREAS, Declarant is the owner of real property located in the Village of Germantown, Washington County, Wisconsin, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and desires to build thereon a planned development with housing units and shared common property (the "**Development**"); and

WHEREAS, Declarant desires to provide for the maintenance and enhancement of property values and amenities in said Development, and for the preservation of the properties and improvements thereon, as well as, for the preservation of said Development's distinctive style, and to prevent the erection, or maintenance of poorly designed or constructed improvements; and

WHEREAS, to the above end, Declarant desires to subject said real property, to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has thought it desirable for the efficient maintenance and preservation of the values of said Development to create an Association to which should be delegated and assigned the powers of owning, maintaining and administering the Common Property and facilities, as set forth below, and

administering and enforcing the covenants and restrictions, and collecting and disbursing the Assessments and charges as hereinafter or in the future created or established, and promoting the health, welfare and recreation of the Development's residents. Declarant has incorporated Kinderberg Estates Homeowners Association, Inc. a non-profit, non-stock corporation, under the laws of the State of Wisconsin (the "**Association**") for such purposes; and

WHEREAS, Developer may proceed with the Development in phases, as further set forth below, with subsequent phases, being made subject to this Declaration, as the same may be amended from time to time, by separate written instrument executed and recorded by the Declarant at a later date.

NOW, THEREFORE, the Declarant declares that the real property legally described and depicted in Exhibit "A", attached hereto and incorporated herein by reference, will and shall be sold, transferred and conveyed subject to the easements, covenants, restrictions, assessments, charges and liens hereinafter set forth.

PART A **ASSOCIATION MATTERS**

A-1) Property Subject to Protective Covenants

A) Existing Property. The real property subject to the provisions of these Protective Covenants consists of the plat of Kinderberg Estates, lying north of Donges Bay Road and east of Preserve Parkway, consisting of Lots 1-16 and Outlots 1-3 (hereinafter referred to as either, the "Subdivision" or "Kinderberg Estates". The property is described on Exhibit A, attached hereto and is composed of sixty-nine (69) individual residential lots (hereinafter "Lots").

B) Additional Property. Declarant reserves the right, at any time during the term of these Protective Covenants, to subject other real property (the "Additional Properties") to the provisions of these Projective Covenants and to add the Additional Properties to the Subdivision. The Additional Properties, shall be adjacent to the Subdivision. Developer shall add Additional Properties to the Subdivision by recording with the Register of Deeds for Milwaukee County one or more amendments to this Declaration, with each amendment setting forth the legal description of the Additional Properties thereby added to the Subdivision.

A-2) Definitions.

A) "Association" shall mean and refer to Kinderberg Estates Homeowners Association, Inc., and its successors and assigns.

B) "Common Property" includes all those areas located in the Development which are contained within an outlot and which are intended for common use or are necessary or convenient to the existence, maintenance or safety of the Development. Common Property may also include any additions thereto designated by the Declarant or the Association in any subsequent amendment to this Declaration, and all improvements located on said property, which are intended to be devoted to the common use and enjoyment of members, Owners and Occupants. Common Property shall further include all accessways, traffic calming measures, plantings, landscaping islands or boulevards, which the Village of Germantown is not obligated to maintain. Declarant may, by subsequent amendment or easement, designate parts of certain private lands within the Development as Common Property, rendering the Association responsible for maintenance thereof, without subjecting the same to the ownership provisions contained in Section A-3, below.

C) "Declarant" shall mean and refer to VHKE LLC, a Wisconsin Limited Liability Company and/or its successors and assigns.

D) "Lot" shall mean and refer to individual subdivided lots in Kinderberg Estates, as described and depicted in Exhibit "A", or as may be subjected to the terms of this Declaration in the future. The Lots described herein are now owned by Declarant, but Declarant in the future intends to convey the Lots to purchasers who shall thereupon become members of the Association. The term "Property" or "Properties" shall be synonymous with the term Lot.

E) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any of the Properties described in Exhibit "A". A purchaser of any of said Properties by land contract shall be referred to as "Owner" instead of the land contract vendor.

F) "Occupant" shall mean and refer to the occupant of any of the Properties who shall either be an Owner or a lessee who holds a written lease having an initial term of twelve months or more.

G) "Subdivision" shall refer to the lands described in Exhibit "A" as may be amended by the future addition of Additional Property, if any. The term "Subdivision" is synonymous with the term "Development."

A-3) Membership and Voting Rights.

A) **Members.** Declarant has incorporated the Association. Each Owner of a Lot shall automatically become a member of the Association. By acceptance of the Deed or other instrument of conveyance, the Owner(s) of each Lot consent to such Owner's membership in the Association whether or not specified on the deed to the Owner. Membership in the Association is appurtenant to each Lot. Each Owner of a Lot shall automatically be entitled to the benefits and subject to the burdens relating to such membership in the Association. The Association shall have authority to manage the Common Property. Persons or entities, including a land contract vendor, who hold an interest merely as security for the performance of an obligation, shall not be members of the Association. Tenants of Properties who are not Owners shall not be members of the Association. To the extent that Declarant owns any Lot, Declarant shall be a member of the Association until such ownership terminates.

B) Voting Rights.

1) Each member shall be entitled to one vote for each Lot owned except as set forth in A-3(B) (2) below.

2) When there is more than one Owner of a Lot, said Owners shall only be entitled to one collective vote for each Lot. There shall be no fractional votes or voting. When there is more than one Owner of any Lot, the vote attributable to such ownership must be cast unanimously by all the Owners of that Lot, or it shall not be considered for any purpose.

C) **Proxies.** Any Member may vote by proxy. All proxies shall be in writing and signed by the Owner or in cases where there is more than one Owner, by all Owners of the Lot.

D) **Articles of Incorporation and By-Laws.** The purposes and powers of the Association and the rights and obligations with respect to the members thereof, shall be governed by the Articles of Incorporation and By-Laws of the Association; provided, however, that such Articles of

Incorporation and By-Laws shall be subject to, and shall not contravene, the terms, conditions, benefits and burdens set forth in this Declaration.

E) **First Year's Operating Expenses.** Commencing on the date established for the payment of assessments under Section A-5(B)(1), Declarant shall pay to the Association an amount equal to the estimated operating expenses of the Association for a period of one (1) year, less assessments on Lots owned by Declarant actually paid to the Association for the one (1) year period of time. Said payment may be made in a lump sum or in twelve (12) monthly installments, at Declarant's option. Prior to said date, Declarant shall be solely responsible for payment of all maintenance expenses.

A-4) **Description.**

A) **Responsibility for Assessments.** At the present time, the Declaration is applicable to all Lots located in the Development. Declarant shall turn over to the Association, at the time control is turned over to the Members, any surplus received by the Association of income over expenses. The following table describes the number of assessment units (an "Assessment Unit"), which are assigned to various Lots in the Development based upon their intended use at the present time. The number of Assessment Units for a particular Lot will be divided by the total number of Assessment Units in the Development to arrive at a particular Lot's percentage share ("**Percentage Interest**") of assessments for common area maintenance and other expenses, which the Association is permitted to assess to members under the Declaration. The Declarant shall be responsible for payment of assessments attributable to all residential Lots owned by Declarant, subject at all times to the provisions of section A-3(E). For the purposes of the following table, a single family residence shall be deemed a Dwelling Unit.

<u>Use</u>	<u>Number of Assessment Units</u>
Single Family:	One (1) per Dwelling Unit.

B) **Percentage Interest for Condemnation or Insurance Proceeds.** For the purposes of establishing an Owner's percentage of insurance proceeds or condemnation awards in the event any portion of the Common Property is completely destroyed or taken by eminent domain and is not reconstructed, each Owner shall have a percentage interest in the insurance or condemnation proceeds equal to the Percentage Interest of such Owner under paragraph A-4(A), above.

C) **Conveyance, Lease or Encumbrance of Percentage Interest.** Any deed, mortgage, lease or other instrument purporting to convey, encumber or lease for a period of time in excess of one (1) year (a "**Lease**") any Lot shall be deemed to include the Owner's Percentage Interest in the Common Property and in the insurance proceeds or condemnation awards even though such interest is not expressly described or referred to therein. The conveyance, encumbrance or Lease of an Owner's Percentage Interest in the Common Property independent of the appurtenant Lot and the conveyance, encumbrance or Lease of an appurtenant Lot independent of the Owner's Percentage Interest in the Common Property shall be prohibited.

D) **Association Management.** The Association is required to retain a professional property management company with the experience necessary to perform the duties of the Association (the "**Management Company**"). The Association shall enter into a management contract (the "**Management Contract**") with the Management Company on such terms and conditions as the Association and the Management Company shall agree. The initial Management Company is DSI Real Estate Group, Inc., a Wisconsin Corporation, which is affiliated with the Declarant by reason of common ownership. The

Management Contract between DSI Real Estate Group, Inc. and the Association has not been negotiated on an arm's length basis.

E) General Fund. As used herein, the term "**Surplus**" shall mean the amount by which assessments collected by the Management Company on behalf of the Association to pay for common expenses relating to the Property exceed the common expenses for the fiscal year in question. The Management Company shall deposit and hold any Surplus in the Association's operating account maintained by the Management Company. The Surplus, in the discretion of the Association working in conjunction with the Management Company, may be applied to future Association expenses as they become due, but there shall be no obligation on either the Association's or the Management Company's part to return the Surplus to lot owners.

F) Ownership.

1) The Common Property shall be initially owned by the Declarant until conveyed as provided below.

2) The Common Property shall be conveyed to the Association by the Declarant. The Association shall be responsible for the payment of any and all present and future general taxes, assessments or other charges against any portion of the Common Property owned by the Association. General property taxes, assessments and other charges shall be prorated between the Declarant and the Association based on the date of conveyance by the Declarant to the Association.

G) Damage or Destruction of Common Property by Owner. In the event any Common Property is damaged or destroyed by an Owner or any of his guests, lessees, tenants, licensees, agents or member(s) of his family, including pets, said Owner does hereby irrevocably authorize the Association to repair said damage. The Association shall repair and restore any damaged area to its former condition. The amount necessary for said repair shall become a special assessment upon the Property of said Owner.

A-5) Maintenance of Common Property

A) Maintenance Requirements.

1) **Responsible Party.** Declarant shall initially provide for the care, operation, management, maintenance and repair of the Common Property, until the Common Property is conveyed as provided herein. After such time, the Association shall provide for the care, operation, management, maintenance and repair of the Common Property and shall keep the Common Property maintained in good and safe condition.

2) **General Responsibilities.** Maintenance shall include, but not be limited to, responsibility for landscaping and lawn care, snow removal including shoveling with particular attention being paid to cross walk ramps and islands, improvements to common areas, upkeep of storm water management facilities which may include detention basins and drainage swales, common property lighting and/or other common property utility charges and any special street design features or traffic calming features.

3) In order to carry out its maintenance obligations, the Association may enter into a long-term contract (i.e., no less than ten (10) years) with a reputable property management company ("**Management Company**"), pursuant to which contract the Management Company shall assume the maintenance obligations of the Association as provided herein.

4) Any and all expenses incurred by the Management Company, on behalf of and pursuant to its contract with the Association, in connection with the management and maintenance of the Common Property and administration of the Association shall be deemed to be common expenses (“**Common Expenses**”), including, without limitation, expenses incurred for: landscaping and lawn care; snow shoveling and plowing;; improvements to the Common Property; common grounds security lighting; municipal utility services for Common Property; enforcement of this Declaration (including attorneys’ fees); and maintenance and management salaries and wages.

5) In the event that the Association, the Management Company, and/or any other person or entity then responsible to do so (collectively, the “Association”), fails to maintain the Common Property as required hereunder, the Village of Germantown may serve written notice upon the Association and/or upon the Owner(s) of the Property subject to this Declaration, setting forth the manner in which the Association has failed to maintain the Common Property as required, and demanding that such deficiencies be remedied within thirty (30) days thereof. If the deficiencies set forth in the notice shall not be remedied as required, the Village, in order to preserve taxable values in the area and to prevent the Common Property from becoming a public nuisance, may enter upon said Common Property to remedy and maintain same using its own employees or contracting with others, and taking such actions as is necessary in its sole discretion to correct the failure to maintain. Said entry and maintenance shall not vest in the public any rights to use the Common Property except in the event same is voluntarily dedicated to the public and accepted by the Village pursuant to law. If the Village shall determine that the Association is ready and able to maintain said Common Property as required hereunder, the Village shall then cease to maintain said Common Property and give notice thereof to the Association and/or Property Owner(s). If the Village shall determine that the Association is not ready or willing or able to maintain said Common Property as required hereunder, the Village may, in its discretion, continue to maintain said Common Property. All costs associated with such maintenance and/or corrective action shall be levied as a special charge for current services against all properties, being all the Lots in the Subdivision, benefiting therefrom, according to their Percentage Interests in the Common Property, in accordance with §§ 66.0627 Special Charges for Current Services and Certain Loan Repayments and/or 66.0628 Fees Imposed by a Political Subdivision, of the Wisconsin Statutes as applicable, and applicable provisions of the Germantown Municipal Code, or as a Village special assessment under §§ 66.0701 Special Assessments by Local Ordinance, and 66.0703 Special Assessments, Generally, of the Wisconsin Statutes as applicable, and applicable provisions of the Germantown Municipal Code, at the Village's discretion. The performance of any such work shall not be deemed an act of dedication to the public, nor shall it constitute an assumption by the Village of any duty to perform any other or further work. This paragraph may be amended only with the express consent of the Village. Nothing contained herein nor any act or omission of the Village of Germantown hereunder, shall be construed to create any obligation or liability on the part of the Village of Germantown, its agents or designees, whatsoever.

B) Assessments.

1) The Association, or the Management Company, on its behalf, shall levy annual general assessments (“**General Assessments**”) against each Lot beginning January 1, 2021 for the purpose of maintaining a fund from which Common Expenses may be paid. The General Assessments against each Lot shall be assessed according to their Percentage Interests in the Common Property. General Assessments shall be due in advance on the first day of each year, or in such other manner as the Association may set forth in the Bylaws. Any General Assessment not paid when due shall bear annual interest at a rate of ten percent (10%) until paid and, together with interest, collection costs, and reasonable attorneys’ fees, shall constitute a lien on the Lot on which it is assessed.

2) The Association, or the Management Company, on behalf of and pursuant to its contract with the Association, may, whenever necessary or appropriate, levy special assessments (“**Special Assessments**”) against the Lots for deficiencies in the case of destruction or condemnation, for defraying the cost of improvements to the Common Property or for any other purpose for which the Association and/or the Management Company may determine a Special Assessment is necessary or appropriate for the improvement or benefit of the Subdivision. Special Assessments shall be paid at such time and in such manner as the Association or the Management Company may determine. Any Special Assessment or installment not paid when due shall bear annual interest at a rate of ten percent (10%) until paid and, together with the interest, collection costs and reasonable attorneys' fees, shall constitute a lien on the Lot on which it is assessed.

3) The Association, or the Management Company, on behalf of and pursuant to its contract with the Association, shall have the right to collect all General and Special Assessments and such sums shall constitute a lien on such Lot. The Owner of a Lot, or any portion thereof, shall be personally obligated to pay such charges which were assessed or accrued upon the land owned during the period of Ownership. The Association or the Management Company, on behalf of and pursuant to its contract with the Association, may commence an action against any Owner personally obligated to pay the charges or to foreclose the lien for such charge against any Lots. Any such foreclosure action may be brought at the Association election, either in the same manner as an action to foreclose a real estate mortgage, or as a proceeding to enforce a statutory maintenance lien as provided in Section 779.70, Wis. Stats., to the extent said Section is applicable. Any lien in favor of the Association/Management Company securing unpaid charges arising by virtue of this Declaration shall be subject and subordinate to the lien of any mortgage whether the mortgage is executed or recorded prior to or after the creation of such lien.

C) **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Property shall not release the assessment lien. However, the sale or transfer of any Property pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment(s) as to payments which become due prior to such sale or transfer. No sale or transfer pursuant to foreclosure or proceedings in lieu thereof shall relieve such Property from liability from any assessments thereafter becoming due or from the lien thereof.

D) **Joint and Several Liabilities of Grantor and Grantee.** Upon a voluntary conveyance, the grantee of a Property shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Declaration up to the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessment and any such grantee shall not be liable for, nor shall the Property conveyed be subject to a lien for, any unpaid assessments against the grantor pursuant to this Declaration in excess of the amount therein set forth.

PART B

CONDITIONS, COVENANTS AND RESTRICTIONS

B-1) **Applicability.** The following provisions in this Part B shall apply to all Lots and Outlots, as described in Exhibit “A” and such other Lots or Outlots as may, in the future, be subjected to this Declaration, as the same may be amended from time to time, by Declarant in the sole exercise of Declarant’s discretion.

B-2) **Land Use And Building Type.** Only the following designated uses for Lots and Outlots shall be permitted:

A) Lots 1-16 shall be used for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling unit not to exceed two and one-half stories in height. Each dwelling unit shall have an attached garage of a size to be approved by the Committee, as that term is defined below. The size of a dwelling unit to be constructed on specific Lots shall not be less than the minimum size to be established hereinafter.

B) Outlots 1 and 3 shall be used as stormwater management. The Association will be responsible for the maintenance of the storm water facilities. The Association grants to the Village the right (but not the responsibility) to enter upon these outlots in order to inspect, repair or restore said outlot to its intended purpose. Expenses incurred by the Village for said inspection, repair or restoration of said outlots may be placed against the tax roll for said Association and collected as a special charge by the Village.

C) Outlot 2 between Lots 10-11 shall be used as ten foot (10') wide asphalt walk to connect Blackbird Point to Donges Bay Road and the Association will be responsible for the maintenance of the Outlot. Outlot shall also be used for a watermain connection.

D) The United States Post Office is requiring the use of cluster box units (CBU) for mail delivery. One CBU shall be located on Lot 15

Uses, other than the uses set forth in this section B-2, shall not be permitted on the Lots or Outlots, as applicable, without the prior written approval of the Declarant and Committee (defined in Section B-3 below), as appropriate. After Declarant control of the Association has terminated, approval from the Association and the Committee shall be required.

Except as otherwise provided herein, no buildings, signs or other structures incidental to the use of any Outlot, which have not been approved in advance by the Committee, may be constructed on any Outlot.

All rights-of-way noted on the Plat shall be dedicated as permanent public streets and rights-of-way and shall be improved in accordance with agreements entered into between the Declarant and the municipality in which the Development is located.

B-3) Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by a majority of the Architectural Control Committee (the "**Committee**") as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. There shall be a variation in building elevations on adjacent Lots. Approval shall be as provided below.

B-4) Dwellings and Landscaping. The landscaping to be installed on all Lots must meet or exceed the minimum number of points for foundation planting and cumulative total landscaping points, including foundation planting points as set forth hereafter as described in Exhibit "C", attached hereto and incorporated herein by reference and further described in the Design Guidelines. These requirements are in excess of the minimum landscaping required under Section 17.43(5) of the Village's zoning ordinance. The number of points attributable to various elements of the landscaping to be installed shall be determined by reference to Exhibit "D", attached hereto and incorporated herein by reference and further referenced in the Design Guidelines. The structure and the minimum landscaping requirements shall be completed within nine (9) months after issuance of a building permit. Landscape installed by the Declarant may or may not meet the minimum number of required points. All driveways shall be of

concrete and shall be installed within nine (9) months after substantial completion of the structure. No outbuilding or accessory building of any nature shall be erected on any Lot. No above-ground swimming pools shall be permitted. All Lot areas not used as a building site, or under cultivation as a family garden, shall be planted with grass seed or shall be sodded, and shall be maintained on a regular seasonal basis, including mowing of a frequency of not less than once every fourteen (14) days during the lawn growing season. Maintenance of all improvements on a Lot shall be performed by the Owner. Maintenance shall include, but not be limited to, watering, pruning and routine fertilizing and mulching of all plantings and plant beds, replacement of dead, dying and/or diseased trees and shrubs, prompt removal of weeds, trash and debris from plant beds and areas adjacent to shrubs and trees so as to keep said landscaping in a healthy, attractive and neat condition.

If the Owner of any Lot, after reasonable notice, fails or refuses to install landscaping as described herein, or maintain it as required above, the Committee, through its duly authorized agents or employees, shall have the right to enter upon said Lot at reasonable hours to perform said landscaping and/or maintenance. The costs of the materials and labor to perform such landscaping and/or maintenance shall be assessed against said Lot in accordance with the terms of Section A-5 (B)(2) above, which assessment may be foreclosed or collected in accordance with the terms hereof or collected as provided herein.

B-5) Vehicle and/or Equipment Storage. No inoperable, dilapidated or junk vehicles of any nature may be kept upon any Lot except in a fully enclosed garage. The exterior storage of boats, trailers, travel trailers, campers, motorcycles, recreational vehicles, automobiles or trucks, portable moving and storage containers, mini storage or on-site storage containers (collectively, without limitation by reason of enumeration “**Equipment**”), of any nature is prohibited whether or not screened from public view. No Equipment shall be parked or stored on lawns. The temporary storage of vehicles in a drive area for the purpose of loading or unloading for a period not to exceed twelve (12) hours is permitted. No commercial vehicles, including trucks, semi-trailers, trailers, may be stored or parked overnight on or in front of said Lots except in an enclosed garage

B-6) Easements.

- A) No structure, planting, or other materials shall be placed or permitted to remain within any easement of record (an “**Easement**”) if any, which may damage or interfere with the installation and maintenance of utilities, or which may change, obstruct or retard the flow of water or the direction of such flow through the Easement or through such other drainage channels or swales that may have been created by the Plat or otherwise. The Easements located on each Lot and all improvements therein shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- B) The Public Drainage and Storm Sewer Easements shall be graded with the construction of each principal structure in accordance with the Approved Stormwater Drainage Plan on file with the Village Engineer, as may be amended in accordance with the Village of Germantown’s General Ordinances.
- C) There shall be no vehicular access from Lots 1 and 16 to Preserve Parkway and no vehicular access from Lots 10 and 11 to Donges Bay Road.
- D) Utility easements are set forth on the Plat and are for use of public and private utilities having right-of-way to serve the area.
- E) All rights-of-way noted on the Plat of the Development shall be dedicated as permanent public easements of conveyance and shall be improved in accordance with applicable law.

B-7) Slope and Swale Areas.

A) The graded slopes and swales as established by Declarant shall remain as permanent. Within these slopes and swales, no structure, planting or other material shall be placed or permitted to remain, or other activities undertaken which may damage or interfere with established slope and swale ratios, create erosion or sliding problems or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slopes and swales of each Lot and all improvements in them shall be maintained continuously by the Owner of a Lot, at the Owner's sole expense, except for those improvements for which a public authority or utility company is responsible.

B) In order to control run off, all down spouts and down spout extenders are to drain into a permeable area such as grass or a planting bed.

C) Declarant and the Village of Germantown have agreed to a certain Storm Water Management Plan. In the event of conflict between any plans and such Storm Water Management Plan, the Storm Water Management Plan shall control. Declarant and the Association shall each have the right to enter upon any Lot at any time for the purpose of inspection, maintenance or correction of any drainage condition and the Lot Owner shall be responsible for the cost thereof.

D) Any disputes relating to drainage swales, drainage or other surface water issues, shall be resolved by the Board of Directors of the Association, which may seek the advice of the Village Engineer of the Village of Germantown. The Association shall establish procedures by which such decisions can be heard by the Board of Directors and decided by said Board.

B-8) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or which may have a detrimental effect on the value of other Lots and/or improvements.

B-9) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

B-10) Signs. No sign of any kind shall be displayed to the public view on any Lot except, one professional sign of not more than one square foot, one sign of not more than six square feet advertising the property for sale or rent or signs without regard to size used by the Declarant, a builder or licensed real estate broker to advertise the property during the construction and sales period or to identify the subdivision and/or its Declarant.

B-11) Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No animal enclosure, house, pen or fences or similar device shall be placed on any Lot without the prior written approval of the Committee which may require special landscaping and screening.

B-12) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. No incinerators shall be permitted. Other equipment for the storage or disposal of such material shall be kept in a clean and

sanitary condition. No trash, building materials, debris, leaves, lawn clippings, rocks or earth shall be placed in any Outlot.

B-13) Sight Distance at Intersections. No fence, wall, hedge or shrub planting greater than 2.5 feet shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended.

B-14) Mailboxes. The United States Postal Service requires the installation of cluster box units and individual mailboxes will no longer be installed. Cluster units serving homes in the neighborhood, will be provided by Declarant at Declarant's sole cost and expense. Damaged or missing mailboxes and posts shall be replaced with a unit identical in all respects with that originally provided, at the sole cost and expense of the Owner(s) causing such damage or the Association. The location and placement of the mailboxes shall be at the sole discretion of the United States Postal Service.

B-15) Improvements Within Easements. Any improvements (for example, fences, dog kennels, landscaping) located within any part of a Lot which is subject to a utility easement is subject to removal at the Owner's expense for utility maintenance and other reasons as determined by the party benefitted by the easement. Reinstallation of any improvement would be at the Owner's cost and would also be subject to the discretion of the party benefitted by the easement and is subject to terms and conditions as set forth on the final plat.

B-16) Notices to Owners. The following information is being put of record in order to give record notice to all Owners, mortgagees and other persons and entities having an interest in the Property:

A) Plantings, flower beds, and entry signs (including utility installations connected therewith) constructed and installed by Declarant, if any, shall be deemed a part of the Common Area. The Association is obligated to maintain any entry feature; maintenance shall include electrical charges (if any), sign repair and maintenance of the landscaping including mowing of all lawns and grass areas. The cost of maintenance of said Common Property shall be an assessment against all of the Property in the subdivision in accordance with the Declaration, for so long as such maintenance is necessary or required adversely affects the natural flow of surface or underground waters with in the area permitted. The Association shall be responsible for the care, maintenance and replacement of improvements and landscaping in the Outlets.

PART C

ARCHITECTURAL CONTROL COMMITTEE

C-1) Membership. Declarant shall establish an Architectural Control Committee (the "Committee") consisting of three (3) members. So long as Declarant has title to any Lot subject to this Declaration, the Committee shall be appointed by Declarant. After Declarant no longer has title to any Lot within the Development or at such earlier time as determined by the Declarant, the initial members of the Committee shall resign and the Association shall elect three (3) Owners to serve on the Committee. At any time, Declarant may elect to surrender the selection of the members of the Committee to the Association.

A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor.

The Committee appointed hereunder shall serve for the time period specified in paragraph C-10, below. Any Committee member may resign prior to said date. Such resignation shall be effective upon receipt. If a resignation shall occur, prior to turning over control of the Committee, then the remaining members of the Committee may appoint a replacement.

C-2) Architectural Control. No structure, whether residence, accessory building, tennis or sport court, swimming pool, decks, patios, antenna (whether located on a structure or on a Lot), flag pole, wall, fence, landscaping, recreational equipment or other improvements, including exterior colors and materials to be applied to said improvements, shall be constructed, maintained or performed upon any Lot and no alteration or repainting of the exterior of a structure shall be made unless complete Architectural Review Application (“**Application**”). Plans, specification and plot plans therefore shall have been submitted to and approved in writing by a majority of the Committee. Approval shall also be required for location of improvements with respect to topography and finish grade elevation. Said Application, plans, specifications and plot plans shall show the exterior design, height, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the plans for required landscaping, and the grading plan. A copy of such Application, plan specifications and plot plans as finally approved shall be deposited with the Committee. The Application can be found on the Veridian Homes website www.veridianhomes.com. Select Homeowner Resources (located on the top toolbar), select Architectural Control Committee and select the appropriate application for your request.

C-3) Plan Review. The Committee shall review said Application, plans and specifications as to quality of workmanship and materials, harmony of external design with existing or proposed structures and as to location with respect to topography and finish grade elevation. The Committee shall use the guidelines set forth in this Declaration as an aid in exercising its architectural control responsibilities hereunder, but nothing contained herein or therein shall limit the Committee’s discretion to grant variances from or make changes to, the guidelines, as they shall determine in the sole exercise of their discretion.

C-4) Procedure.

A) Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant for the initial approval of a residential structure. Thereafter, said Committee may charge a “request for action” or “approval” fee not to exceed Fifty and no/100 Dollars (\$50.00) for each such request or approval. The Committee’s approval or disapproval, as required in these Covenants, shall be in writing. In the event the Committee fails to provide, in writing, approval or disapproval within thirty (30) days after application, plans and specifications or any other matters requiring approval have been submitted to it, the request shall be deemed denied.

B) A submission will not be complete, and the thirty (30)-day approval time, as applicable, set forth above shall not commence until all documents required herein have been submitted. All such submissions shall be made to the Committee at the address set forth in this Declaration or to such other address that the Committee may designate.

C) The Committee shall have the sole right to reject any Application and plans which, in the judgment and sole opinion of a majority of its members are not in conformity with this Declaration;

or are not desirable for aesthetic reasons; or are not in harmony with buildings located on the surrounding Lots; or are not in conformity with the general purposes of this Declaration.

D) The Committee shall exercise its sole approval authority and discretion in good faith and each Owner, by acceptance of a deed to, or any other interest in, a Lot, agrees to hold the Committee harmless from any perceived discrepancies in the Committee's good-faith performance of its duties. Refusal of approval of plans by the Committee may be based on any grounds, including purely aesthetic grounds, which in the sole discretion of the Committee shall be deemed sufficient.

E) The Committee may set its own operating procedures consistent with this Declaration and any limitations hereafter imposed by the Association. The costs of operating the Committee shall be assessed by the Association as Common Property expenses, except as permitted below. The Committee may engage consultants (e.g., architects, engineers or attorneys) either on a general or on a case-by-case basis, and the costs thereof may be charged to an applicant. The members of the Committee shall not draw any compensation for serving thereon but may be reimbursed for expenses incurred in performing their duties. All funds relating to the Committee shall be handled by the Association.

F) The owner of a Lot shall submit Plans and Specifications to the Committee at the earlier of (i) at least fifteen (15) days prior to the time that such Plans and Specifications are submitted to the Building Inspector at the Village of Germantown for approval, or (ii) thirty (30) days prior to commencement of construction of the dwelling unit or any improvement. Plans and Specifications must comply with the standards set forth in Section D herein and must be approved by the Committee in writing prior to any application for a building permit to the Village of Germantown, and before any construction or alteration of any improvement may be commenced on any Lot. Upon request of the Lot Owner, the Committee shall issue a written receipt for the Plans and Specifications submitted by or on behalf of the Lot Owner, showing the date of submission.

C-5) Separate Village Approval. Matters which require approval of the Committee may also require approval of the Village of Germantown. Obtaining approval from the Committee and the Village of Germantown is solely the responsibility of the Owner desiring approval. Approval of Plans by the Committee shall not be deemed approval by the Village of Germantown and approval by the Village of Germantown shall not be deemed approval by the Committee.

C-6) Records. Until such time as a replacement Committee is designated, all plans, applications and requests shall be submitted to said Committee at the following address:

Kinderberg Estates Homeowners Association, Inc.
Architectural Control Committee
6801 South Towne Drive
Madison, Wisconsin 53713
acc@veridianhomes.com

C-7) Committee Liability. Neither the Committee nor any member thereof shall be liable for damages to any person submitting request for approval or to any Owner of any Lot by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests. The Committee is not responsible for ensuring that the application and plans submitted by an Owner are in compliance with applicable laws, rules, regulations, ordinances or customary and typical building practices. The Committee does not review plans for structural design.

C-8) Indemnification. Each member or former member of the Committee, together with the personal representatives and heirs of each such person, shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney's fees, asserted against, incurred by or imposed in connection with or resulting from any claim, action, suit or proceeding, including criminal proceedings, to which such person is made or threatened to be made a party by reason of service as a member thereof, except as to matters resulting in a final determination of gross negligence or willful misconduct on the part of such member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of such person as a member in the matter involved. This right of indemnification shall be in addition to all other rights and defenses. All liabilities, losses, damages, costs and expenses incurred or suffered by the Association in connection with this indemnification shall be a Common Property expense. Nothing in this Section C-8 shall be deemed an indemnification of such person with respect to such person's status as an Owner, occupant or otherwise.

C-9) Variance. The Committee shall have the power and absolute discretion to authorize a variance from any of the requirements of this Declaration if it finds that the strict application thereof would, in its sole discretion and opinion, result in difficulties or undue hardship to the Lot owner or in the event the architecture of the proposed Lot improvement is such as to present, in its opinion, a particularly pleasing appearance compatible with other houses in the development.

C-10) Successor to Committee. Declarant may turn over control of the Committee to the Members of the Association at any time, and shall turn over control when Declarant no longer has any ownership interest in the Property. At such time as Declarant turns over Committee control, the Association's Board of Directors shall designate not less than three (3) or more than five (5) Members of the Association to serve and act as the Committee for all purposes hereunder.

PART D **DESIGN GUIDELINES**

D-1) Single Family Dwelling Units.

A) Architectural Character. Architecture within the Development will be developed with a variety of American vernacular architectural styles in mind. These architectural styles, while not a comprehensive list, will offer a unique mixture of styles for the development, and will be applied with proportions and character in mind. The overall character of the development will be created so that the architectural styles are compatible and the overall cohesion of styles will help foster a unique setting without stifling the architectural creativity on the individual building level, creating a varied but integrated community. The following styles are permitted:

Cottage	Craftsman	Four Square	Farmhouse	Saltbox
Prairie	Shingle	Traditional	Classical	Southern Traditional

The requirements as itemized in the following section will be used as applicable to the context of the specific architectural style. Declarant reserves the right to grant variances in its sole discretion. Where Village zoning or Architectural Review Board is more restrictive, such requirements will govern.

B) Unit Size and Setbacks.

1) Unit Size. The total minimum finished living area of a one (1) story dwelling unit shall be 1,700 square feet and for a two (2) story dwelling, the total minimum dwelling unit shall be 2,000 square feet.

2) Setbacks. The required minimum building setbacks are shown on the plat (front yard is forty feet (40'), interior side yard is twenty feet (20') and rear yard is thirty feet (30') and corner side yard is twenty five feet (25').

C) Front Porch. Usable front porches are encouraged as both visual and functional design elements. A usable open front porch is defined as having a minimum depth of 6'-0", and a minimum width of 8'-0".

1) Porch post style should be consistent with the overall architectural style of the home. Minimum standard porch design details include the following; porch posts or alternate per plan, porch balustrades, when provided, of nominal 2" x 2" square wood at a maximum of six inches (6") on center; and newel posts that are compatible with the design of the column posts. Porch columns and railings shall be painted to match the trim color of the house.

D) Attached Garage.

1) There shall be a minimum of a two (2) car, 20' x 20' garage per dwelling unit.

2) The maximum garage width exposed on the front elevation containing front facing doors shall be no greater than fifty percent (50%) of the overall building width.

3) A front-entry garage cannot project beyond the face of the home or the open porch. For homes without porches adjacent to the garage, the garage face must be set back a minimum of 2'-0" from the front elevation or otherwise comply with the applicable zoning classification requirements.

4) Tandem, split or side entry garages are encouraged for three (3) or four (4) car garages. For three (3) car front entry garages, the third stall must have a minimum setback of the greater of 2' from the two-car garage line or as required by compatible roof design. Overall garage width must comply with zoning and design guideline standards.

5) The garage door shall be a raised panel design painted to match the siding on the home. The use of windows in the door, appropriate to the architectural style, is encouraged. The maximum single garage door size is 8' x 18".

E) Ornamental Design Elements.

1) Ornamental design elements, such as dormers, shutters, window wrap window grids, gable vents, pilasters, pediments, etc., shall be used in a manner consistent with the overall architectural style of the home.

2) Window wrap or shutters and window grids are required on all elevations. Gable vents, minimum 5½" horizontal trim, and/or eyebrow roofs are required on front elevation gables greater than 10'-0" in width and are encouraged on other gables as deemed appropriate by the Architectural Control Committee.

3) The shutters shall be wood or polystyrene with colors as approved by the Architectural Control Committee or of other material or color as deemed acceptable by the Architectural Control Committee. Panel or louver design shutters shall be used as appropriate to home materials & style.

4) The window wrap shall be minimum 3½” wood or composite as approved by the Architectural Control Committee and used with box outs or when part of the standard plan.

5) Gable vents shall be the NuWood triangle or peaked series or equivalent for the front elevation, and side elevations facing a public street, or other design approval by the Architectural Control Committee. Other gable ornamentation as appropriate to architectural style may be allowed or required by the Architectural Control Committee.

F) Roof/Facias/Soffits/Eaves.

1) Roof Standards:

- a) Roof design must be consistent with the overall architectural style of the home. Roof forms and pitches as established on individual styles may not be altered without approval by the Architectural Control Committee.
- b) Roof material shall be Owens Corning Oakridge 30 architectural shingle or equal and in colors as approved by the Architectural Control Committee. Rubber roofing is allowed on flat roof areas and metal roofing is allowed on feature elements.
- c) Use of an eyebrow roof or projecting gable is required at brick walls not extending into a gable are encouraged, as appropriate, at double gable returns and porch column caps.
- d) Hip roof design, porches or other elements deemed appropriate by the Architectural Control Committee may be used in lieu of specific gable requirements.

2) Fascia, Soffit and Eave Standards:

- a) Facia shall be 8” minimum aluminum with colors as approved by the Architectural Control Committee, wood or composite material may be used when appropriate to the architectural style.
- b) Aluminum soffit and eave color shall match fascia.
- c) A minimum 12” overhang is required at typical eaves and gable ends. However, 6” is allowable with projections less than 6’-0” in width, such as the fireplace chase and a small bay window, and beyond structure line at open porches. Larger overhangs may be required as appropriate to the architectural style.

G) Exterior Wall Surfaces.

1) Siding material may be vinyl or composite material as approved by the Architectural Control Committee. Shingle or vertical board and batten siding is encouraged for accent areas appropriate to the style of the home. Colors shall be approved by the Architectural Control Committee.

2) Windows may be vinyl; vinyl clad, aluminum clad or wood with colors as approved by the Architectural Control Committee.

3) Variation of wall planes on primary elevations is encouraged.

4) Any elevations facing public streets or spaces shall have a minimum of three (3) windows with wrap trim or shutters and window grills and one gable trim detail as appropriate.

5) The use of brick or stone is encouraged as appropriate to architectural style. When brick is used, it shall be on full wall surfaces from foundation to eaves or on a two-story elevation at least to the second floor windowsill line. When brick is used, a soldier course window heads and rowlock sills are required. Additional details (i.e. projecting belt course and projecting corner accents) are encouraged as appropriate. Stone may be used as full wall surfaces or as a base course to first floor sill line. Brick or stone facing must terminate at an inside corner.

6) Brick or stone material and color selections shall be as approved by the Committee and harmonious with overall neighborhood palette, as well as with the specific home design and be used consistently on all elevations.

D-2) Other Improvements.

A) **Fences** All fencing must receive prior written approval of the Committee and shall comply with any requirements set out below. The Committee may also require the installation and maintenance of landscape materials for screening and aesthetic purposes. All fence material shall be constructed of vinyl. Zoning approval and/or building permit from the Village of Germantown may be required to construct fencing. Committee approval does not supersede the need for any municipal approvals or permits.

1) Fencing must consist of vinyl. The fence style permitted is the PlyGem Stratford Vinyl, Exhibit E.

a) All fencing shall be erected finish side out, (i.e. pickets on the outside of the rail facing the street or neighboring lot).

b) Posts shall be spaced a minimum of 72" and a maximum of 96" on center. Rails shall be discontinuous and abut into the posts.

c) Gates are permitted and shall be consistent with the fencing style. All gates shall open into the lot.

d) Fencing color by PlyGem Fence/Railing of White is the only color permitted.

2) Appropriate uses of fencing:

a) Fencing shall be limited to rear and side yards only.

b) Fencing shall meet up with the corners of the home or garage and may not project past the front face of home or garage.

- c) Only one fence is permitted along adjoining properties. Corners of adjoining properties fencing shall intersect at common corners.
 - d) Fencing at side yards of corner lots shall be placed a minimum of 6 inches from the property line (approximately 1 foot from sidewalk), unless further restricted by Village ordinance.
- 3) Inappropriate use of fencing:
- a) Fencing in front yards shall not be permitted.
 - b) Fencing shall not occur in freestanding segments or be placed arbitrarily.
 - c) Fencing shall not meet porch or deck corners.
 - d) Fencing shall not interfere with utility equipment. Your utility companies shall be consulted for current requirements and the most restrictive shall apply.

B) Decks. All decks must receive prior written approval of the Committee and shall comply with any requirements set out below. The Committee may also require the installation and maintenance of landscape materials for screening and aesthetic purposes. Zoning approval and/or building permit from the Village of Germantown may be required to construct a deck. Committee approval does not supersede the need for any municipal approvals or permits.

- 1) Appropriate deck design shall incorporate the following criteria:
- a) Deck(s) shall be proportionate in size to the footprint of the dwelling
 - b) Deck(s) shall be proportionate in length and width
 - c) Deck(s) shall not project past the rear or side yard setbacks
 - d) Deck(s) at side yards of corner lots may not project past the corner of the home or garage for that side facing the street.
 - e) Deck(s) must be stained or painted
- 2) Inappropriate deck design:
- a) Deck(s) in front yards shall not be permitted.
 - b) Deck(s) shall not occur in freestanding segments or be placed arbitrarily on the lot.
 - c) Deck(s) shall not interfere with utility equipment. Your utility companies shall be consulted for current requirements and the most restrictive shall apply.

D) Accessory Outbuildings. No outbuilding, shed or accessory building of any nature shall be erected on any Lot.

E) Antennae/Wind Powered Electric Generators. No wind powered electric generators, exterior television, radio receiving or transmission antennae, satellite signal receiving station or dish shall be placed or maintained upon any portion of a Lot without prior written approval of the Committee.

- 1) Appropriate antennae or satellite dish placement:
 - a) Only one antennae or satellite dish shall be allowed per lot.
 - b) The location of the satellite dish can be any of the following and shall not be visible from the curb directly in front of the home:
 1. On a pole in the backyard and located close to the home.
 2. Attached to the deck.
 3. On the rear roof line of the home.
 - a. A satellite dish shall not project past the uppermost roof ridgeline. This method is not recommended by the Committee as you may have water infiltration issues if the dish is not properly installed and roof repairs may not be covered under the applicable roof warranty.
- 2) Inappropriate antennae or satellite dish placement:
 - a) Antennae or satellite dish in front or side yards shall not be permitted.
 - b) Antennae or satellite dish shall not interfere with utility equipment.

F) Firewood Storage. No firewood or woodpile shall be kept on any lot unless it is neatly stacked, placed in the rear yard and screened from street view by plantings or a fence first approved in writing by the Committee.

G) Solar Collectors. No active solar collector or apparatus may be installed on any Lot unless such installation is first approved in writing by the Committee, which shall consider the aesthetic and sun reflection effects on neighboring structures. Solar collectors or apparatus installed flat against or parallel to the plane of the roof shall be preferred.

H) Lighting. Exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity that such lighting will not disturb the residents of adjacent Lots. Uniform post lights specified by the Declarant shall be installed on the Lot at the time of finished grading of the yard at a location specified by the Declarant. Each post light shall be connected to an electrical power source at the time of installation and shall be maintained in a clean and operating condition at all times thereafter, provided, however, that post lights shall weather naturally and therefore shall not be painted or stained. Any replacement of such post lights shall be accomplished by the Lot Owner, and only with a post light of the same specifications, height and appearance and in the same location as the original post. The post light specified by the Declarant is equipped with a photoelectric sensor for automatic use from dusk to dawn, therefore, no Lot Owner may install a turn-off switch for the post light. It is the Owner's responsibility to maintain the lights so that they are always operational.

I) Landscaping Requirements. Pursuant to Section B-4 of the Declaration of Conditions, Covenants and Restrictions, Developer hereby imposes upon all Lots described in Exhibit

“A”, attached hereto and incorporated herein by reference (and any Additional Property), the requirement that the Owners thereof install landscaping on such Lots which meets or exceeds the minimum number of points for landscaping set forth in Exhibit “C”. The number of points attributable to various elements of the landscaping to be installed shall be determined by reference to Exhibit “D”, attached hereto and incorporated herein by reference. All terms, covenants and conditions of Section B-4 of the Declaration of Conditions, Covenants and Restrictions, as amended herein, shall be applicable to the landscaping to be installed pursuant to the terms of this paragraph. Landscape installed by the Declarant may or may not meet the minimum number required. These are in excess of the minimum required by Section 17.43(5) of the Village’s zoning ordinance.

PART E

GENERAL PROVISIONS

E-1) Term. This Declaration shall run with the Property and Common Property, and shall be binding on Declarant and all Owners and their successors and assigns, and all persons claiming under them for a period of twenty-five (25) years from the date recorded, after which time said Declaration shall be extended automatically for successive periods of five (5) years each unless an instrument signed by a majority of the Owners agreeing to change said Covenants in whole or in part or to terminate the same.

E-2) Enforcement. The Declarant (or either one of them if more than one), Architectural Control Committee or any Owner shall have the right to enforce by any proceedings at law or in equity all restrictions, conditions and covenants created or imposed herein, against any person or persons violating or attempting to violate any covenant, by any action to either restrain violation or to recover damages, or both including reasonable attorney fees. Failure to enforce any covenant, condition or restriction herein shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation of this Declaration the Committee shall have the right to assess and collect from the violating party a fine for such violation equal to the greater of (i) the actual damages suffered on account of the violation, or (ii) the sum of \$100.00 per day for each day the violation remains outstanding plus (iii) all costs of collection and enforcement, including actual attorney fees.

E-3) Severability. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

E-4) Model Homes. So long as Declarant shall own any Lot in the Development, Declarant shall be permitted to maintain model homes in the Development, including therein a sales office for the purpose of sales and marketing of its homes.

E-5) Parade of Homes. So long as Developer shall own any Lots in the Development, (“Lot”). Developer reserves the right to submit some or all of said Lots as a site for the Parade of Home Metropolitan Builders Association (the “Parade”). In the event that some or all of said Lots are selected as a site for a Parade, this Declaration of Protective Covenants, Conditions and Restrictions shall, as to the Lots enrolled in the Parade, for a limited period of time ending 48 hours after the conclusion of the Parade, be deemed temporarily altered and modified, to the extent necessary, to permit the Metropolitan Builders Association to hold its Parade in this Development pursuant to the then current Parade Rules and Checklist of the Metropolitan Builders Association. All purchasers of Lots, and/or their successors and assigns, shall take title subject to this specific reservation by the Developer and shall waive all rights to object to violations of this Declaration of Protective Covenants, Conditions and Restrictions by the Developer, the Metropolitan Builders Association, or any of the builders or participants in the Parade for the period of the Parade as set forth above, including the closing of any public or private streets in the Parade area. All Lot

owners appoint the Developer their attorney-in-fact to execute all necessary petitions; applications and consents to facilitate said street closings for the Parade.

E-6) Governing Law. This Declaration shall be construed and enforced in accordance with the terms of the laws of the State of Wisconsin. The terms of this Declaration are not intended to replace or affect any applicable laws, ordinances, rules or regulations of the Village of Germantown.

E-7) Notices.

A) Notices to Declarant shall be given to Declarant at the following address: 6801 South Towne Drive, Madison, WI 53713.

B) Notices to an Owner of any Lot within the Development shall be given in care of the street address of the Lot.

C) Any party may change its address by written notice given to the other parties. Party, its successors and/or assigns, may change said addresses by notice properly given hereunder.

E-8) Amendment and Release. At any time until Declarant conveys all of the Lots which comprise the entire Property, or turns control of the Association over to its Members, whichever occurs first, Declarant may modify or amend this Declaration, or alter or grant variances to the terms hereof, without the consent of any Member, Owner or Occupant, their Mortgagees or any other party, including the Association and its Board of Directors. Except as provided in Section A-5 (A)(5), above, these restrictions or any part thereof may be cancelled, released or amended in writing as to the entire Plat or any part thereof by the Declarant at any time until Declarant conveys all of the Lots or until the Declarant turns over control to the Committee, whichever comes first. After the Declarant has sold all of the Lots or otherwise released or assigned its right to enforce this Declaration, then this Declaration or any part thereof may be released, cancelled, amended or waived hereof in accordance with the provisions of Section E-1, above.

E-9) No Waiver. Whenever a waiver, consent or approval is required or permitted herein, it must be express and in writing; no waiver, consent or approval shall be implied. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or any other provision of this Declaration.

E-10) Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

E-11) Including. Whenever used herein, the term “including” preceding a list of one or more items shall indicate that the list contains examples of a general principle and is not intended as an exhaustive listing.

E-12) Captions. The captions and article and section headings in this Declaration are intended for convenience and reference only and in no way define or limit the scope or intent of the various provisions hereof.

E-13) Remedies. All remedies herein are cumulative.

IN WITNESS WHEREOF, the said VHKE _____ LLC, a Wisconsin Limited Liability Company has caused these presents to be signed and sealed this ____ day of _____, 20__.

VHKE _____ LLC

By: _____
David Simon, Authorized Officer and Signatory

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

Personally came before me this _____ day of _____, 20__, David Simon an officer of VHKE _____ LLC, a Wisconsin Limited Liability Company, to me know to be such persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers, by its authority for the purposes therein contained.

Notary Public
Dane County, Wisconsin
My Commission Expires: _____, 20__

**CONSENT TO DECLARATION OF
COVENANTS AND RESTRICTIONS**

The undersigned, hereby consents to the forgoing Declaration of Conditions, Covenants and Restrictions for the Plat of Kinderberg Estates.

Dated at Madison, Wisconsin this _____ day of _____, 20__.

By: _____

Print Name: _____

Print Title: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me, a notary public for the above State and County, this _____ day of _____, 20__, the above named _____, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Print Name:

Notary Public, State of Wisconsin

My Commission Expires: _____

Exhibit “A”

Description of Kinderberg Estates

Lots 1-16, Outlots 1-3, Kinderberg Estates, Village of Germantown, Washington County, Wisconsin

DRAFT

Exhibit “B”
Lots in Kinderberg Estates

Lot #	Tax ID Number	Address
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		

Outlot #	Tax ID Number
1	
2	
3	

EXHIBIT “C”

Total Minimum Points for Landscaping

Lot(s)	Minimum Points for Foundation Plantings	Total Minimum Points for Landscaping
1-16	350	500

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EXHIBIT "D"
Landscaping Elements

Elements	Point Schedule
A) <i>Small Shade Trees (balled and burlaped)</i> (1.5"-2" caliper at 6" from the roots)	50
B) <i>Medium Shade Trees (balled and burlaped)</i> (2"-3" caliper at 6" from the roots)	100
C) <i>Large Shade Trees (balled and burlaped)</i> (3"-4" caliper at 6" from the roots)	150
D) <i>Extra-Large Shade Trees (balled and burlaped)</i> (4" + caliper at 6" from the roots)	200
E) <i>Ornamental Trees (balled and burlaped)</i> (1.5"-2" caliper at 6" from the roots)	50
F) <i>Small Evergreen Trees</i> (3' to 4.5' when planted)	25
G) <i>Medium Evergree Trees</i> (5' to 6.5' when planted)	50
H) <i>Large Evergreen Trees</i> (7' + when planted)	100
I) <i>Evergreen Shrubs</i> (18" minimum diameter)	20
J) <i>Small Deciduous Shrubs</i> (18" to 35" in diameter)	10
K) <i>Medium Deciduous Shrubs</i> (35" to 60" in diameter)	15
L) <i>Large Deciduous Shrubs (balled and burlaped)</i> (60" or greater in diameter)	25
M) <i>Decorative Retaining Walls</i> (Points are per face foot. Boulders, timbers, and stones only – no concrete walls included.)	10
N) <i>Paver Stone Walks, Paths or Patios</i> (Points per square foot – no driveways included.)	1
O) <i>Planting Beds</i> (Points per square foot – must be decorative stone or mulch.)	1

The final point totals must consist of a balanced variety of the listed elements acceptable to the Architectural Control Committee. Existing vegetation, trees and shrubs may be included in the point totals if they are properly protected and maintained during the construction process and located as such on the landscape plans submitted to the Architectural Control Committee for approval.

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