

Recorded

JUNE 24, 2004 AT 01:20PM

SHARON A. MARTIN

REGISTER OF DEEDS

WASHINGTON COUNTY, WI

Fee Amount: \$55.00

## Developer's Agreement

---

# WESTMINSTER PLACE DEVELOPER'S AGREEMENT

55-23

An agreement governing development of Westminster Place and imposing current and future obligations and restrictions on the lots within Westminster Place , including special assessments for maintenance of storm water management facilities and 18<sup>th</sup> Avenue, and restrictions on the grading of lots and construction of houses.

The restrictions and obligations imposed by this Agreement are not limited to those set forth above.

Return to:

City of West Bend – Clerk's Office  
1115 S. Main St.  
West Bend, WI 53095

This Agreement is made this 22 day of JUNE, 2004, by and between MENSCH LLC and LANDVATTER FARM LLC, collectively known as the Developer, (the "Developer"), and the CITY OF WEST BEND, a municipal corporation of the State of Wisconsin, located in Washington County, Wisconsin, (the "City").

WHEREAS, the Developer is the owner of Westminster Place, which is described on the attached Exhibit A, in the City of West Bend, Washington County, Wisconsin; and,

WHEREAS, the City Plan Commission has recommended to the Common Council that the Westminster Place Subdivision Plat, (the "Plat"), be approved on the condition that the Developer enter into an Agreement with the City relative to the manner and method by which the Plat will be developed in accordance with Chapter 18 of the Municipal Code;

NOW, THEREFORE, in consideration of the approval by the City of the Plat prior to the installation and completion of all required improvements, it is agreed as follows:

#### SECTION I. IMPROVEMENTS

##### A. Streets

1. The streets depicted in the Plat shall be constructed by the Developer as shown on the Plat in accordance with the design plans prepared by Kapur & Associates, and as approved by the City Engineer on December 17, 2003.
2. The Developer shall construct and install curb and gutter on both sides of each street within the Plat.
3. The Developer shall construct all streets including gravel base and install the curb and gutter in accordance with the standard specifications of the City.
4. The second course of asphalt shall be installed in all streets in the plat within one year after the completion of the base course of asphalt or by June 1, 2005, whichever is earlier.
5. Oversizing. Schloemer Drive and Hawthorn Drive require oversizing. The Developer shall be paid \$9,600.00 for the cost of oversizing which the City shall pay within 30 days upon final acceptance of the streets by the City.
6. 18<sup>th</sup> Avenue Improvements. The City intends to reconstruct 18<sup>th</sup> Avenue at some future date and to special assess those improvements in accordance with Section VI, Paragraph G of this Agreement.
7. The Developer shall complete Hawthorn Drive from the easterly boundary of the Plat to Bobolink Lane. The Developer shall install sidewalk along the north side of Hawthorn Drive but not along the south side.

B. Sanitary Sewer Collection

1. The Developer shall furnish, construct and install sanitary sewer in accordance with the design plans prepared by Kapur & Associates, and as approved by the City Engineer on December 17, 2003.
2. The Developer shall install sanitary sewer service laterals to serve each lot in the Plat.
3. All sanitary sewer main and lateral construction shall be done in accordance with standard specifications of the City and shall be completed prior to the application of the first lift of asphalt street pavement.

C. Water Distribution

1. The Developer shall furnish, construct and install water main in accordance with the design plans prepared by Kapur & Associates, and as approved by the City Engineer on December 17, 2003.
2. The Developer shall install water service laterals to serve each lot in the Plat.
3. All water main and service lateral construction shall be done in accordance with standard specifications of the City and shall be completed prior to the application of the first lift of asphalt street pavement.

D. Storm Sewers and Storm Water Management Facilities

1. The Developer shall furnish, construct and install storm sewers in accordance with the design plans prepared by Kapur & Associates and as approved by the City Engineer on May 4, 2004.
2. All storm sewer construction shall be done in accordance with standard specifications of the City and shall be completed prior to the application of the first lift of asphalt street pavement.
3. The Developer shall construct all storm water management facilities as required by the Developer's Storm Water Management Plan as approved by the City on April 30, 2004.
4. Outlot 1 Block 5 and Outlot 1 Block 3 of the Plat and the storm water management facilities therein, shall be owned and maintained by the City. The City may at any time inspect, repair, alter, maintain, replace or reconstruct the storm water management facilities in Outlot 1 Block 5 and Outlot 1 Block 3 and assess the costs thereof in accordance with Section III, Paragraph B, of this Agreement.

E. Sidewalks

*Decorah Rd. 12 D  
JBU*

1. The Developer shall construct and install sidewalks on both sides of Highlandview Drive, Schloemer Drive, Buckingham Lane, Westminster Court and Abby Road within the Plat in accordance with the standard specifications of the City. The City shall install sidewalk as it abuts the City owned outlots.
2. 18<sup>th</sup> Avenue Sidewalk Improvements. As a part of the reconstruction of 18<sup>th</sup> Avenue, the City intends to construct sidewalk along 18<sup>th</sup> Avenue and to special assess those improvements in accordance with Section VI, Paragraph G of this Agreement.
3. Sidewalk Maintenance. Each lot owner abutting 18<sup>th</sup> Avenue and Decorah Road shall be responsible for snow and ice removal of all sidewalk abutting their property.

F. Street Lamps

The Developer shall pay for the installation of street lamps and restoration including the restoration required by the installation of underground wiring. Street lamps shall be placed at intervals and in locations as set forth on a street lamp plan approved by the City Engineer and the WE Energies. The type and specifications of the street lamps must be approved by the City Engineer prior to installation.

G. Street Trees

The Developer shall install street trees in each lot within the Plat. Prior to installation of any street tree the Developer shall submit and have approved by the City a landscape plan identifying the location, species, and planting size of all trees.

H. Street Signs

The Developer shall pay for the installation of all traffic control signs and street name signs in accordance with City specifications as determined by the City Engineer and the Director of the City's Department of Public Works. Pursuant to Tax 11.68 of the Wisconsin Administrative Code, the Developer shall pay sales tax on the cost of installation of street signs.

I. Erosion Control Plan

Prior to the commencement of construction, the Developer must receive approval from the City of an erosion control plan which conforms to the provisions of Chapter 22 of the West Bend Municipal Code. The Developer shall comply with the approved erosion control plan.

J. Grading Plan

1. The Plat and individual lots shall be graded in conformity with the Developer's "Final" Grading Plan dated January 27, 2004, as approved by the City Plan Commission on February 3, 2004, which is on file in the City's Department of Community Development.
2. Upon completion of the grading of the Plat the Developer shall submit to the City an as-built grading plan identifying the grades as established by the Developer. The Developer shall certify that the grades on the as-built grading plan are in conformance with the final approved grading plan.

K. Completion Date

All work and improvements for which a completion date is not otherwise specified shall be completed on or before December 31, 2004.

L. Installation of Improvements

Following the completion date set forth in the preceding paragraph, the City may perform, install, replace, repair or construct, or arrange for the performance, installation, replacement, repair or construction, of any work or improvements not completed by the Developer in accordance with this Agreement and the City's standard specifications. Prior to proceeding with such performance, installation, replacement, repair or construction, the City shall give the Developer written notice of any deficiency in the Developer's performance and allow not less than 20 business days for the Developer to correct such deficiency. The Developer shall pay the City all costs associated with such performance, installation, replacement, repair or construction. The City may draw on the Letter of Credit for such costs prior to incurring the costs pursuant to Section III, Paragraph A of this Agreement.

M. Utilities

In accordance with Chapter 18 of the Municipal Code, all utilities serving the Plat including but not limited to electric power, natural gas, telephone and cable, shall be installed underground. Except as otherwise provided in this section, all utility equipment appurtenances, conduits, lines and structures, shall be installed along side or rear yard lot lines and shall not be permitted in the front yard without written approval by the City.

N. Water Utility Wellhouse

The City of West Bend Water Utility owns Outlot 1, Block 2 which is used for a well house. The City Water Utility agrees to improve this well house to the following standards within three years of the date of approval of this Agreement:

- 1) the well house shall be 1,600-2,000 square feet in size
- 2) the maximum building height shall be two stories

- 3) the garage doors shall be no more than ten (10) feet in height
- 4) foundation and yard landscaping compatible with a residential neighborhood shall be installed.
- 5) all equipment shall be enclosed and screened
- 6) natural materials and earthtone colors shall be used in the exterior finish of the structure
- 7) the power supply to the well house shall be underground.

## SECTION II. APPROVAL AND TRANSFER OF IMPROVEMENTS

### A. Inspection

All improvement construction shall be inspected and tested by the City Engineer or a consultant retained by her to assure that it complies with all construction and improvement requirements of the City. Prior to the City Engineer's inspection and approval of sanitary and storm sewers, the Developer shall have performed, at its cost, a television inspection of those utilities. Before any sureties or other financial guarantees are released to the Developer, the City Engineer shall report the satisfactory completion and recommend acceptance of improvements to the Board of Public Works and Common Council. The Developer shall pay the actual cost of such inspections as required by Section 18.10 of the West Bend Municipal Code.

### B. As-Builts

After completion of all public improvements and prior to final acceptance of those improvements, the Developer shall prepare and have approved by the City as-built documents in accordance with Section 18.09(7) of the West Bend Municipal Code.

### C. Dedication

Subject to all of the other provisions of this Agreement and the exhibits hereto attached, the Developer shall, upon completion of the above described improvements, unconditionally, and without charge to the City, give, grant, convey and fully dedicate the same (excepting sanitary sewer laterals and water laterals lying outside of dedicated right-of-way) to the City, its successors and assigns forever, free and clear of all encumbrances whatever; together with (without limitation because of enumeration) all land, buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and habiliments which may in any way be a part of or pertain to such improvements, together with any and all necessary easements for access thereto.

### D. Acceptance

Following completion and dedication of the improvements and upon written request by the Developer, the City Engineer shall forthwith inspect the improvements, and if the improvements meet all requirements, the City Engineer shall report completion of the improvements to the Board of Public Works and Common Council. The City shall

thereupon accept such improvements in accordance with Section 18.09(7)(e) of the West Bend Municipal Code. The City shall thereafter have the right to connect or integrate other utility facilities with the facilities provided hereunder without payment or award to, or consent required of, the Developer. The City Clerk shall provide the Developer with a certified copy of the Common Council Resolutions accepting improvements hereunder which the Developer may record to evidence compliance with this Agreement.

E. Improvement Guarantee

The Developer guarantees all improvements against defects which appear within a period of one year from the date of acceptance by the City as herein provided and shall pay for any damages resulting therefrom to City property.

F. Title

1. The Developer warrants that the Developer is the owner of all property within the Plat, that the Developer has full right and authority to make the agreements, warranties, consents and waivers in this Agreement and that upon recording the City shall have good, indefeasible title to all interests in property dedicated or conveyed to the City by the plat, this Agreement or other instruments required by this Agreement.
2. Prior to recording the Plat, the Developer shall provide the City with title evidence acceptable to the City showing that the Developer has title as warranted above.
3. The Developer shall defend, indemnify and hold the City harmless from any claims, suits or damages related to the City's acquisition or ownership of interests in property including, but not limited to, claims for inverse condemnation or relocation benefits under Chapter 32, of the Wisconsin Statutes.

SECTION III. FINANCIAL GUARANTEE

A. Letter of Credit

The Developer shall provide to the City an irrevocable letter of credit issued pursuant to Chapter 405 of the Wisconsin Statutes in the initial amount of \$ 1,296,349 which shall assure the faithful performance of the Developer's obligations under this Agreement. Exhibit B is attached only to show the calculation used to determine the amount of the letter of credit. The amount of the credit may be reduced from time to time by the Department of Community Development in amounts equal to the value of improvements which have been installed, completed and accepted by the City or shall be increased in the event of delay in the installation of improvements and the escalation of costs. In no event shall the amount of the credit be reduced below the aggregate total estimated cost of the improvements not yet installed or accepted plus 15%. The letter of credit shall be payable to the City and shall be conditioned upon and guarantee to the City the performance by the Developer of his obligations under this Agreement. The letter of credit shall be approved as to form by the City Attorney.

*JLM 11/0*

B. Preservation of Assessment Rights

In addition to other remedies provided to the City by this Agreement, the City shall have the right, without notice or hearing, to impose special assessments on the lots in the Plat for any amount to which the City is entitled by virtue of this Agreement. This provision constitutes the Developer's consent to the installation by the City of all public improvements required by this Agreement and acknowledgment of special benefit and the Developer's waiver of notice and hearing on, and consent to, all special assessment proceedings as described in Sec. 66.0703(7)(b) of the Wisconsin Statutes.

C. Remedies Not Exclusive

The remedies provided in this section are not exclusive. The City may use any other remedies available to it under the Agreement or in law or equity in addition to, or in lieu of, the remedies provided above.

SECTION IV. PERMITS AND FEES

A. Park Fees or Land Dedication

The Developer shall pay park fees for each dwelling unit in lieu of dedication of lands for park and recreation purposes. At the time of Plat approval the Developer shall pay to the City park fees in the amount of \$130,614.00.

B. Building Permits

The City shall not issue building permits for lots within the Plat if any of the following conditions have not been met:

1. The Developer has complied with the provisions of this Agreement.
2. The Developer has installed and the City has accepted the sanitary sewer main and laterals, the water main and laterals, the storm sewer main and appurtenances, and the gravel base.
3. The Developer has submitted and the City has approved an as-built grading plan in accordance with Section I, Paragraph J of this Agreement.

C. Occupancy Permits

The City will not issue an occupancy permit for any dwelling within the Plat until all fees are paid, and all dedications and improvements are approved and accepted by the City in accordance with this Agreement, except the second lift of asphalt street pavement need not be installed provided there is a sufficient financial guarantee under Section III, Paragraph A hereof to insure the installation of the second lift.



## SECTION V. LEGAL REQUIREMENTS & PUBLIC RESPONSIBILITY

### A. LAWS TO BE OBSERVED

The Developer shall at all times observe and comply with all federal, state and local laws, regulations and ordinances which are in effect or which may be placed in effect which may affect the conduct of the work to be accomplished under this Agreement (the "Work"). He shall indemnify and save harmless, the City and all its agents, officers and employees, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation or order, whether by himself or his agents, employees or contractors. The Developer shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the work to be completed under this Agreement.

### B. PUBLIC PROTECTION AND SAFETY

The Developer shall be responsible for all damage, bodily injury or death arising out of the Work whether from maintaining an "attractive nuisance" or otherwise. Where apparent or potential hazards occur incident to his conduct of the Work, the Developer shall provide other reasonable safeguards.

### C. DEVELOPER'S RESPONSIBILITY FOR WORK

The Work shall be under the charge and care of the Developer until all improvements have been accepted by the City.

### D. INSURANCE REQUIREMENTS

#### General

The Developer shall obtain insurance acceptable to the City as required under this section. The Developer shall maintain all required insurance under this section until improvements have been accepted and during any subsequent period in which the Developer does work under this Agreement pursuant to the improvement guarantee or otherwise.

#### Certificates of Insurance

Certificates of Insurance on all policies specified shall be filed with the City Clerk which shall include a fifteen (15) day prior written notice of material change or cancellation to the City and which clearly state that liability insurance is provided and, if applicable to work under this Agreement, explosion, collapse and underground coverage. Explosion, collapse and underground coverage may be provided by the Developer's contractor.

Insurance

Where the City does not specify other limits for liability insurance, the minimum limits of liability shall be as follows:

|   |             |                                   |
|---|-------------|-----------------------------------|
| Employer's Liability  | \$100,000   | Per occurrence<br>(if applicable) |
| Comprehensive Motor Vehicle<br>Liability, Bodily Injury &<br>Property Damage combined | \$1,000,000 | Per accident<br>(if applicable)   |
| Comprehensive General Liability<br>Bodily Injury                                      | \$2,000,000 | Per occurrence                    |
| Property Damage   | \$2,000,000 | Aggregate                         |

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

Other coverages shall include the following:

Completed Operations and Products Liability

The Developer shall provide completed Operations and Products Liability coverage for the life of the Agreement and maintain coverage for a period of (one) 1 year after the improvements have been accepted by the City. The liability limits shall be as required above for Comprehensive General Liability.

Owner's Protective liability (Independent Contractor Insurance)

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

Insurance required under this Agreement shall be carried with an insurer authorized to do business in Wisconsin by the Wisconsin Commissioner of Insurance. The City reserves the right to disapprove any insurance company.

E. INDEMNIFICATION

The Developer shall indemnify and hold harmless the City, its officers, agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or

destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part, by any negligent act or omission of the Developer, his Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder; provided, however, that such indemnification shall not extend to directions by the City or its employees to perform acts if the acts are performed in accordance with such direction. A claim for indemnification under this section shall be conditioned upon the City giving to the Developer, within five business days of receiving the same, written notice of any claim made against the City for which indemnification is sought and if requested to do so by the Developer's insurance carrier, the City shall tender the defense of such claim to the Developer's insurance carrier.

In any and all claims against the City, its officers, agents and employees, by any employee of the Developer, his Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer, the Contractor or any Subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

F. PERSONAL LIABILITY OF PUBLIC OFFICIALS

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

SECTION VI. MISCELLANEOUS PROVISIONS

A. Survey Monuments

The Developer has certified that all survey or other monuments required by statute or ordinance have been properly placed and installed. Any monuments disturbed during construction of improvements shall be restored.

B. Zoning

The City does not guarantee or warrant that the lands subject to this Agreement will not at some later date be rezoned, nor does the City agree to rezone the lands into a different zoning district. Any rezoning that may take place shall not void this Agreement.

C. Indemnification for Environmental Contamination

The Developer shall indemnify, defend, and hold the City and its officers, employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including reasonable fees for attorneys, consultants, and experts) that arise as a result of the

presence or suspected presence in or on the real property dedicated or conveyed to the City by, under, pursuant to, or in connection with the Plat or this Agreement (including, but not limited to, street right of way and park land) of any toxic or hazardous substances arising from any activity occurring prior to the acceptance of all improvements. Without limiting

the generality of the foregoing, the indemnification by the Developer shall include costs incurred in connection with any site investigation or any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence or suspected presence of toxic or hazardous substances on or under the real property, whether in the soil, groundwater, air or any other receptor.

The City shall immediately notify the Developer of the discovery of any contamination or of any facts or circumstances that reasonably indicate that such contamination may exist in or on the real property. The City also agrees that following notification to the Developer that contamination may exist, the City shall make all reasonable accommodations to allow the Developer to examine the real property and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws.

D. Restrictive Covenants

1. Lot Grading and Building and Driveway Construction

- A. All lot grading and building construction activities shall conform to the intent of the approved "Final" Grading Plan.
- B. All lot grading and building construction plans as proposed on Plats of Survey, including building recertification surveys, shall conform to the intent of the approved "Final" Grading Plan.
- C. All lot grading, including all finished grades and final lot landscaping shall conform to the intent of the approved "Final" Grading Plan.
- D. All lot improvements, including but not limited to, driveways, retaining walls, drainage swales, landscaping berms, patios, decks, swimming pools and accessory structures, shall be completed in a manner in accordance with the approved "Final" Grading Plan and Storm Water Management Plan, and shall not adversely affect adjoining lots.
- E. In accordance with Section 17.38(4) of the City Municipal Code, all lot owners in the Plat shall install, within 12 months from the date of building permit issuance, a driveway pavement surface of asphalt or portland cement concrete.

2. **Preservation of Private Easements**

All private drainage easements shown on the Plat shall be preserved and maintained by property owners in accordance with the approved Grading Plan and Storm Water Management Plan.

3. **Soil Mitigation**

Building construction methods within the Plat, as they pertain to site preparation, footings and foundations, shall be consistent with the requirements of the Soil Mitigation Plan attached as Exhibit C .

The foregoing covenants are binding upon the Developer and the owners of all lots within the Plat and may be enforced by the City, the Developer, or any owner of a lot within the Plat.

E. **Public Easements**

All easements dedicated to the City or the public on the Plat or by this Agreement grant the City the right to construct, install, maintain, inspect, repair and replace the designated improvements in, on, over or under such easements. Lots within the Plat shall not be used in a manner which interferes with the City's easement rights. The City's only obligation to restore the property after any use by the City of its easements shall be to grade the soil, replace topsoil and plant grass seed.

F. **Soil Compaction Certification**

The Developer shall obtain certification of the soil compaction from a qualified soils engineer and approval of the compaction shall be obtained from the City Engineer for those portions of lots that are substantially filled prior to issuance of building permits.

G. **18<sup>th</sup> Avenue Assessments**

The City intends to reconstruct 18<sup>th</sup> Avenue adjoining the Plat and may levy special assessments in accordance with Section III, Paragraph B of this Agreement, against all of the lots in Westminster Place for those improvements which may include but are not limited to storm sewer, sidewalk, curb and gutter, street lights, and street widening.

**SECTION VII. APPROVAL**

This Agreement shall be effective if the City approves the Plat and causes the same to be signed and endorsed by the appropriate officers. The Developer shall thereupon provide the City with a conformed mylar copy of the Plat in accordance with Section 18.05(11) of the West Bend Municipal Code.

SECTION VIII. AMENDMENTS

The City and the Developer may, by mutual written consent, amend this Developer's Agreement.

SECTION IX. BINDING EFFECT

The Developer warrants that it is the owner of all property within the Plat and has full right and authority to make this Agreement. This Agreement and the grants, warranties, obligations, consents and waivers contained herein shall run with the land and be binding upon the Developer and its successors and assigns including all individual lot owners within the Plat.

IN WITNESS WHEREOF, the Developer has caused this Agreement to be signed this

15<sup>TH</sup> day of JUNE, 2004.

MENSCH LLC, by:

Joseph G. Altschaefl  
Member - Joseph G. Altschaefl

Nick R. Didier  
Member - Nick R. Didier

**ACKNOWLEDGMENT**

STATE OF WISCONSIN )  
) ss.  
WASHINGTON COUNTY)

Personally came before me the 15<sup>th</sup> day of June 2004, the above named Joseph G. Altschaefl and Nick R. Didier to me known to be the persons who executed the foregoing document and acknowledged the same.

Rita A. Thomas  
Rita A. Thomas

Notary Public, State of Wisconsin  
My Commission is Permanent. If not, expiration date is: 9-26-04.

LANDVATTER FARM LLC, by:

Peter J. Didier  
Member - Peter J. Didier

Nick R. Didier  
Member - Nick R. Didier

**ACKNOWLEDGMENT**

STATE OF WISCONSIN )  
) ss.  
WASHINGTON COUNTY)

Personally came before me the 16<sup>th</sup> day of June 2004, the  
above named Peter J. Didier and Nick R. Didier to me known to be the persons who executed  
the foregoing document and acknowledged the same.

*Rita A. Thomas*  
Rita A. Thomas

Notary Public, State of Wisconsin  
My Commission is Permanent. If not, expiration date is: 9-26-04.

Accepted by the Common Council of the City of West Bend this 22 day of JUNE,  
2004.

CITY OF WEST BEND

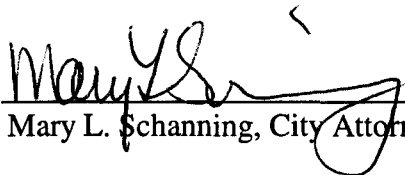
BY: *Douglas Bude*  
Michael R. Miller, Mayor  
*Douglas Bude, Council President*

BY: *Amy Reutema*  
~~Barbara A. Barringer, City Clerk~~  
*Amy Reutema, Deputy*

STATE OF WISCONSIN )  
) ss.  
WASHINGTON COUNTY)

Personally came before me this 22 day of JUNE, 2004, the above named  
Michael R. Miller and Barbara A. Barringer, to me known to be the Mayor and City Clerk,  
respectively, of the City of West Bend, and to me known to be the persons who executed the  
foregoing agreement and acknowledged the same.

*Rita A. Thomas*  
Notary Public, State of Wisconsin  
My Commission is permanent.  
(IF NOT, Expiration Date: 9-26-04)

Approved as to form:  \_\_\_\_\_  
Mary L. Schanning, City Attorney

This instrument was drafted by:

Attorney Karen M. Christianson  
622 Elm Street, P.O. Box 348  
West Bend, WI 53095



## EXHIBIT A

### WESTMINSTER PLACE BOUNDARY DESCRIPTION

Part of the NW1/4 of the NW1/4 and part of the SW1/4 of the NW1/4 of Section 23, Township 11 North, Range 19 East, situated in the City of West Bend, Washington County, Wisconsin, bounded and described as follows:

Beginning at the NW corner of said Section 23; thence South 89°39'01" East, along the northerly line of said NW 1/4, 775.73 feet to the northwesterly corner of Certified Survey Map No.246, as recorded in the Washington County Registry; thence South 01°44'41" East, along the westerly line of said Certified Survey Map No.246, and also parallel with the easterly line of said NW1/4 of the NW1/4, 190.00 feet to the southwesterly corner of said Certified Survey Map No.246; thence South 89°39'01" East, along the southerly line of said Certified Survey map No.246, and also parallel with said northerly line of the NW1/4, 95.00 feet; thence South 01°44'41" East, parallel with said easterly line of the NW1/4 of the NW1/4, 43.00 feet; thence South 89°39'01" East, parallel with said northerly line of the NW1/4, 115.00 feet; thence South 01°44'41" East, parallel with said easterly line of the NW1/4 of the NW1/4, 45.00 feet; thence South 89°39'01" East, parallel with said northerly line of the NW1/4, 90.00 feet; thence North 01°44'41" West, parallel with said easterly line of the NW1/4 of the NW1/4, 45.00 feet; thence South 89°39'01" East, parallel with said northerly line of the NW1/4, 150.00 feet; thence South 01°44'41" East, parallel with said easterly line of the NW1/4 of the NW1/4, 17.00 feet; thence South 89°39'01" East, parallel with said northerly line of the NW1/4, 100.00 feet to said easterly line of the NW1/4 of the NW1/4; thence South 01°43'35" East, along the westerly line of unplatted lands and also along the westerly line of Silverbrook Estates, Addition No.2, and Silverbrook Estates, subdivisions located in the NE1/4 of said NW1/4, as recorded in the Washington County Registry, 910.37 feet to the northerly line of Certified Survey Map No.2429, as recorded in the Washington County Registry; thence North 89°40'05" West, along said northerly line of said Certified Survey Map No.2429, and also parallel with the northerly line of Hawthorn Drive, 99.78 feet to the northwesterly corner of said Certified Survey Map No.2429; thence South 01°44'41" East, along the westerly line of said Certified Survey Map No.2429, and also parallel with said easterly of the NW1/4 of the NW1/4, 210.04 feet to the southwest corner of said Certified Survey Map No.2429, also being a point on the southerly line of said Hawthorn Drive; thence South 89°40'05" East, along the southerly line of said Certified Survey Map No.2429, and also along said southerly line of Hawthorn Drive, 100.06 feet to the southeasterly corner of said Certified Survey Map No.2429, also being the northwesterly corner of Lot 6, Block 3, of Vogt Estates, a subdivision of part of the SE1/4 of said NW1/4, as recorded in the Washington County Registry, also being a point on the easterly line of the SW1/4 of said NW1/4; thence South 01°44'41" East, along the westerly line of said Lot 6, and also along said easterly line of the SW1/4 of the NW1/4, 130.09 feet; thence North 89°40'05" West, parallel with said southerly line of Hawthorn Drive, 480.34 feet; thence North 01°46'34" West, 130.09 feet; thence North 89°40'05" West, 130.09 feet; thence North 88°14'17" West, 80.15 feet; thence North 02°34'43" West, 66.09 feet; thence North 89°40'05" West, 9.56 feet to a point of curvature; thence Southwesterly along the arc of a curve to the left, 92.30 feet, said curve having a radius of 183.00 feet and a chord bearing South 75°53'00" West, 91.32 feet; thence North 28°33'55" West, 81.04 feet; thence South 71°10'26" West, 182.07 feet; thence South 46°24'05" West, 344.24 feet to the intersection of the northerly line of U.S.H.45 with the easterly line of 18th Avenue; thence North 01°40'20" West, along said easterly line of 18th Avenue, 218.20 feet to the southerly line of said NW1/4 of the NW1/4; thence North 89°47'22" West, along said southerly line of the NW1/4 of the NW1/4, 70.04 feet to said westerly line of the NW1/4; thence North 01°40'20" West, along said westerly line of the NW1/4, 1335.25 feet to the Point of Beginning.

Containing 1,718,175 square feet / 39.444 acres of land.

## EXHIBIT B

|                     |             |
|---------------------|-------------|
| Sanitary Sewer      | \$ 225,449  |
| Water Main          | \$ 248,303  |
| Storm Sewer         | \$ 181,439  |
| Gravel              | \$ 73,118   |
| Curb & Gutter       | \$ 64,890   |
| Sidewalk            | \$ 115,875  |
| Asphalt Binder      | \$ 77,391   |
| Asphalt Surface     | \$ 45,453   |
| Street lights       | \$ 28,118   |
| Landscaping         | \$ 30,000   |
| R-O-W Restoration   | \$ 10,000   |
| Street Trees        | \$ 26,000   |
| Street Signs        | \$ 1,224    |
| <br>                |             |
| SUB TOTAL           | \$1,127,260 |
| Contingencies (15%) | \$ 169,089  |
| <br>                |             |
| GRAND TOTAL         | \$1,296,349 |



Construction • Geotechnical  
Consulting Engineering/Testing

June 11, 2004

Mr. James Reinke  
Department of Community Development  
City of West Bend  
1115 S. Main Street  
West Bend, WI 53095

Re: WESTMINSTER PLACE SOIL LOT MITIGATION PLAN

Dear Mr. Reinke:

The purpose of this letter is to set forth a Soil Mitigation Plan for lots governed by Section 18.02(6)(e)(f) of the City Land Division Code.

The attached Table 1 identifies those subdivision lots that are within areas of unsuitable soil associations -- namely, the Radford silt loam series. The lots in question are adjacent to Highlandview Drive and Abby Road. Soil suitability has been taken from the Soil Survey of Washington County, Wisconsin by the U.S. Department of Agriculture, the test pit exploration program completed by CGC, Inc., or from field observations. Based on CGC's review of the available subsoil information within the affected lot areas, it is their opinion that only three of the thirty lots identified in Table 1 display soil conditions somewhat characteristic of the Radford series soils and warrant soil mitigation. These lots are described as Lot Nos. 7, 8 and 16 of Block 1.

The City would be authorized by covenant to enforce the following construction procedures for Lots 7, 8 and 16 of Block 1 to accommodate unsuitable soil associations.

1. The sanitary sewer lateral shall be installed prior to basement excavation. The lateral trench must be excavated to a depth of 6 in. below the elevation of the lateral and backfilled with 6 in. of compacted No. 2 stone. In the event water accumulates in the trench during lateral installation, the trench must be dewatered.
2. Based on planned garage floor elevations, the footings will generally be established within the Radford series soils characterized as consisting of fine silty sand, silt and/or sandy silt. Because these soils appear to be in a somewhat looser condition than the surrounding soils prevalent across the site, all footing grades shall be consolidated with a jumping jack-type of compactor prior to forming and casting of footings. Prior to setting forms, the adequacy of the exposed bearing soils shall be confirmed by a representative of CGC, Inc.



Mr. James Reinke  
Department of Community Development  
June 11, 2004  
Page 2

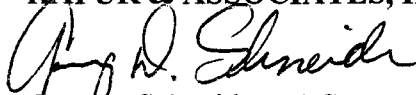
3. Prior to pouring any basement foundation concrete, a minimum of 6 in. of No. 2 clear crushed stone shall be spread in layers over the floor and footing subgrade within the basement excavation. The subgrade shall be undercut or the No. 2 stone may be compacted into the subgrade to the required elevation. Subgrades shall be re-established with clear stone upon completing prescribed undercutting or compaction.
4. In the event water begins to accumulate during basement excavation, temporary dewatering shall occur as necessary to control the water. In such cases, consideration shall be given to stabilizing the subgrade on an as-you-go basis by the immediate placement of a compacted clear stone working mat as portions of the foundation excavation are completed.
5. All footings should be proportioned for a maximum allowable soil bearing pressure of 2000 psf. Minimum footing sizes for perimeter strip footings and isolated column pads are 24-in. wide and 30-in. square.

The covenants authorizing the foregoing construction procedures would also provide that the City is held harmless from any liability for foundation problems associated with the lots described in Table 1.

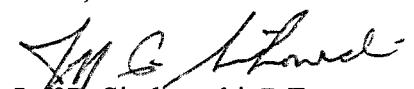
If anything further is required for the Westminster Place Soil Lot Mitigation Plan, please advise.

Sincerely

**KAPUR & ASSOCIATES, INC.**

  
Gary D. Schneider, RLS  
Senior Associate

**CGC, INC.**

  
Jeff F. Simkowski, P.E.  
Senior Consulting Professional

Encl: Table 1

**TABLE 1**

**Table 1**  
**Summary of Anticipated Bearing**  
**Soil Conditions**

| <b>Lot Designation</b> | <b>PGF Elev., ft</b> | <b>BOF Elev., ft</b> | <b>Test Pit No.</b> | <b>Description of Anticipated Bearing Soil Conditions</b>                    |
|------------------------|----------------------|----------------------|---------------------|--|
| <b>Block 1:</b>        |                      |                      |                     |  |
| 3                      | 990.20               | 981.53               | TP-3                | Brown Fine to Coarse Gravelly SAND; Some Silt, Some Cobbles and Few Boulders |
| 4                      | 992.70               | 984.03               | 1                   | Brown Fine to Coarse Gravelly SAND; Some Silt, Few Cobbles                   |
| 5                      | 995.45               | 986.78               | --                  | * Not Observed *   |
| 6                      | 998.30               | 989.63               | 2                   | Light Brown Fine SAND; Trace to Little Silt                                  |
| 7                      | 1000.70              | 992.03               | TP-4                | Brown Fine Silty SAND and SILT; Little Clay (Very Moist)                     |
| 8                      | 1003.33              | 994.66               | 3                   | Light Brown Fine SAND; Trace Silt  |
| 9                      | 1005.95              | 997.28               | 18                  | Very Stiff, Brown Lean CLAY  |
| 10                     | 1008.57              | 999.90               | 5                   | Hard, Reddish Brown Sandy Lean CLAY  |
| 11                     | 1010.30              | 1001.63              | 4                   | Brown Fine to Coarse Gravelly SAND; Little to Some Silt, Few Cobbles         |
| 12                     | 1010.70              | 1002.03              | --                  | * Not Observed *   |
| 13                     | 1010.50              | 1001.83              | 6                   | Brown Fine to Coarse Gravelly SAND; Little Silt, Few Cobbles                 |
| 14                     | 1008.60              | 999.93               | --                  | * Not Observed *   |
| 15                     | 1006.90              | 998.23               | --                  | * Not Observed *   |
| 16                     | 1004.90              | 996.23               | 7                   | Brown Sandy SILT; Some Clay, Little Gravel                                   |
| <b>Block 2:</b>        |                      |                      |                     |  |
| 2                      | 987.19               | 978.52               | 11                  | Brown Fine to Coarse Gravelly SAND; Little Silt, Some Cobbles                |

Table 1 (cont'd)

| Lot Designation          | PGF Elev., ft | BOF Elev., ft | Test Pit No. | Description of Anticipated Bearing Soil Conditions                          |
|--------------------------|---------------|---------------|--------------|---|
| <b>Block 2: (cont'd)</b> |               |               |              |   |
| 3                        | 990.29        | 981.62        | --           | * Not Observed *  |
| 4                        | 993.26        | 984.59        | 10           | Brown Stratified Fine to Coarse SAND and Sandy GRAVEL; Little Silt          |
| 5                        | 997.67        | 989.00        | --           | * Not Observed *  |
| 6                        | 1003.36       | 994.69        | 9            | Very Stiff to Hard, Brown Lean CLAY   |
| 7                        | 1008.80       | 1000.13       | --           | * Not Observed *  |
| 8                        | 1010.30       | 1001.63       | 8            | ENGINEERED FILL: Stiff, Brown Lean Clay                                     |
| 9                        | 1009.90       | 1001.23       | --           | * Not Observed *  |
| 10                       | 1008.30       | 999.63        | --           | * Not Observed *  |
| 11                       | 1006.70       | 998.03        | --           | * Not Observed *  |
| 12                       | 1004.80       | 996.13        | --           | * Not Observed *  |
| 13                       | 1001.60       | 992.93        | 15           | Brown Fine to Coarse Gravelly SAND; Little Silt, Some Cobbles, Few Boulders |
| 14                       | 993.50        | 984.83        | 16           | Brown Fine to Coarse Gravelly SAND; Little Silt, Few Cobbles                |
| <b>Block 3:</b>          |               |               |              |   |
| 14                       | 994.38        | 985.71        | --           | * Not Observed *  |
| 15                       | 993.70        | 985.03        | 13           | Stiff to Very Stiff, Brown Lean CLAY  |
| 16                       | 993.90        | 985.23        | 14           | Stiff, Brown Lean CLAY  |

Notes: PGF = Proposed Garage Floor  
BOF = Bottom of Footing (= PGF minus 8.67 ft)

DOC# 1054102