

**AGENDA
STORMWATER UTILITY
COMMITTEE**

**MONDAY, DECEMBER 1, 2014
ROOM 202
5:30 P.M.**

***Patrick Juliana, Chairman
Scott N. Gordon, Vice Chairman
Steve Bostrom***

***Eric Haugaard
Rhonda Jenkins
Jan Michalski***

Approval of minutes of regular meeting held on November 17, 2014.

1. Acceptance of Project 13-1016 Resurfacing Phase III (Base Bid: 34th Avenue – 86th Place to 88th Place, 44th Avenue Cul-de-Sac south of 87th Place, 87th Place Cul-de-Sac west of 42nd Avenue; Alternate 1: 26th Avenue – 34th Street to 31st Street; Alternate 2: 40th Street – Sheridan Rd to 8th Avenue) which has been satisfactorily completed by Cicchini Asphalt, LLC (Kenosha, Wisconsin). The final amount of the contract is \$564,979.02. (\$87,258.50 Stormwater funds) **(Districts 1, 6, 9 & 14)** *(also referred to Public Works Committee)*
2. Development Agreement between the City of Kenosha and Keno Wells, LLC for property at 5821 5th Avenue. (5th Avenue Lofts) **(District 2)** *(City Plan Commission approved 8-0)* *(also referred to Public Works Committee)*
3. Permanent Storm Sewer Easement and Agreement between Keno Wells, LLC, and 5th Avenue Lofts, LLC and the City of Kenosha, Wisconsin. **(District 2)**
4. Stormwater Management Practices Maintenance Agreement for Stormwater Management Facilities between the City of Kenosha, Wisconsin and Keno Wells, LLC and 5th Avenue Lofts, LLC. **(District 2)**

INFORMATIONAL: Project Status Report

CITIZENS COMMENTS RELATED ONLY TO JURISDICTION OF STORMWATER UTILITY COMMITTEE

ALDERMAN COMMENTS

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE CALL 653-4050 BEFORE NOON ON THE DATE INDICATED FOR THIS MEETING.

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

STORMWATER UTILITY COMMITTEE
- MINUTES -

MONDAY, NOVEMBER 17, 2014
5:30 P.M.

Patrick Juliana, Chairman
Scott N. Gordon, Vice Chairman
Steve Bostrom

Eric Haugaard
Rhonda Jenkins
Jan Michalski

The regular meeting of the Stormwater Utility Committee was held on Monday, in Room 202 of the Municipal Building. The following members were present: Chairman Patrick Juliana, Vice Chairman Scott N. Gordon, Aldermen Steve Bostrom, Eric Haugaard, Rhonda Jenkins, and Jan Michalski. The meeting was called to order at 5:49PM. Staff members in attendance were Mike Lemens and Shelly Billingsley.

Approval of minutes of special meeting held on October 30, 2014 and regular meeting held on November 3, 2014.

It was moved by Alderman Haugaard, seconded by Alderman Michalski to approve. Motion passed 6-0.

1. Acceptance of Project 12-1421 Simmons Island Boardwalk Phase IA Development (5001 4th Avenue) which has been satisfactorily completed by H&H Civil Construction, LLC (Collins, Wisconsin). The final amount of the contract is \$501,330.20. **(District 2)** *(Park Commission approved 5-0) (also referred to Public Works Committee)*
It was moved by Alderman Gordon, seconded by Alderman Jenkins to approve. Motion passed 6-0.
2. Acceptance of Project 13-1025 56th Street Resurfacing (56th Street – Sheridan Road to 13th Avenue) which has been satisfactorily completed by Cicchini Asphalt, LLC (Kenosha, Wisconsin). The final amount of the contract is \$579,330.50 (\$103,949.26 Stormwater Funds). **(District 2)** *(also referred to Public Works Committee)*
It was moved by Alderman Gordon, seconded by Alderman Haugaard to approve. Motion passed 6-0.
3. Disbursements for the month of October 2014.
It was moved by Alderman Michalski, seconded by Alderman Gordon to approve. Motion passed 6-0.

INFORMATIONAL: Project Status Report

ADJOURNMENT - There being no further business to come before the Stormwater Utility Committee, it was moved, seconded and unanimously approved to adjourn the meeting at 5:52PM.



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT
FLEET MAINTENANCE
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT
WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS
MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

November 24, 2014

To: Eric Haugaard, Chairman, Public Works Committee
Patrick Juliana, Chairman, Stormwater Utility Committee

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works/City Engineer

Subject: Acceptance of Project 13-1016 Resurfacing Phase III

Location: Base Bid: 34th Avenue – 86th Place to 88th Place, 44th Avenue Cul-de-Sac south of 87th Place, 87th Place Cul-de-Sac west of 42nd Avenue
Alternate 1: 26th Avenue – 34th Street to 31st Street
Alternate 2: 40th Street – Sheridan Rd to 8th Avenue

Please be advised that the above referenced project has been satisfactorily completed by Cicchini Asphalt, LLC, Kenosha, Wisconsin. This project consisted of full depth saw cutting, removing and replacing concrete curb and gutter, sidewalk and driveway approaches, replacing storm sewer inlets, leads and manholes, concrete and asphalt milling, excavation, curb ramps with detectable warning fields, traffic control and landscaping.

It is recommended that the project be accepted in the final amount of \$564,979.02 (\$477,720.52 for resurfacing funds and \$87,258.50 for storm sewer funds). Original contract amount for resurfacing was \$472,480.12 plus \$47,019.88 for contingency for a total of \$519,500.00; original contract amount for storm sewer was \$84,278.00 plus \$8,222.00 for contingency for a total of \$92,500.00; total contract amount was \$612,000.00. Funding was from CIP Line Item IN-93-002 and SW-95-001.

Planning & Zoning Division 625 52nd Street - Room 308 Kenosha, WI 53140 262.653.4030	Kenosha City Plan Commission FACT SHEET	November 20, 2014	Item 6
Development Agreement between The City of Kenosha and Keno Wells, LLC and 5th Avenue Lofts, LLC for property at 5821 5th Avenue. (5th Avenue Lofts) (District 2) PUBLIC HEARING			

LOCATION/SURROUNDINGS:

Site: 5821 5th Avenue

NOTIFICATIONS/PROCEDURES:

The alderperson of the district, Alderperson Jenkins, has been notified. The Public Works and Stormwater Utility Committees will also review the Agreement, the Common Council is the final review authority.

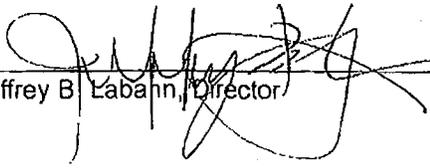
ANALYSIS:

- A Condition of the Certified Survey Map and previously approved Conditional Use Permit was that the Developer enter into a Development Agreement.
- The Agreement details public improvements which will be the responsibility of the Developer, including the resurfacing of 4th Avenue.

RECOMMENDATION:

A recommendation is made to approve the Development Agreement.


 Rich Schroeder, Deputy Director


 Jeffrey B. Labahn, Director

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF KENOSHA
AND KENO WELLS, LLC AND 5TH
AVENUE LOFTS, LLC

Document Number

Document Title

This space is reserved for recording data

Return to

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

Parcel Identification Number

12-223-31-487-003

DEVELOPMENT AGREEMENT

Between

**THE CITY OF KENOSHA, WISCONSIN
A Municipal Corporation**

And

**KENO WELLS, LLC
A Wisconsin Limited Liability Company**

And

**5TH AVENUE LOFTS, LLC
A Wisconsin Limited Liability Company**

THIS DEVELOPMENT AGREEMENT, (“AGREEMENT”) effective as of the last date of execution is entered into between the City of Kenosha, Wisconsin, a municipal corporation duly organized and existing under the laws of the State of Wisconsin (“CITY”), and Keno Wells LLC, and 5th Avenue Lofts, LLC, each being a Wisconsin limited liability company with principal offices located at 4011 80th Street, Kenosha, WI 53142 (“DEVELOPER”), collectively referred to as the Parties.

WITNESSETH:

WHEREAS, DEVELOPER is the owner of approximately 1.1 acres of real estate in the City of Kenosha which is legally described on attached Exhibit A and shown on the certified survey map attached as Exhibit B, hereinafter referred to as “REAL ESTATE”; and,

WHEREAS, DEVELOPER desires to develop REAL ESTATE for multi-family and commercial purposes; and,

WHEREAS, REAL ESTATE is zoned B-4 Mixed Use at the time of execution of this AGREEMENT which permits the multi-family and commercial development set forth in this AGREEMENT; and,

WHEREAS, the Plan Commission of CITY and the CITY Public Works Committee have recommended to the Common Council and the Common Council of CITY has approved a certified survey map attached as Exhibit B for REAL ESTATE on the condition that DEVELOPER enter into this AGREEMENT relative to the manner and method by which REAL ESTATE is to be developed subject to the requirements of this AGREEMENT; and,

WHEREAS, the Plan Commission of CITY has recommended to the Common Council and the Common Council of CITY has approved a conditional use permit attached as Exhibit C for REAL ESTATE on the condition that DEVELOPER enter into this AGREEMENT relative to the manner and method by which REAL ESTATE is to be developed subject to the requirements of this AGREEMENT; and,

WHEREAS, DEVELOPER agrees to develop REAL ESTATE as provided in the certified survey map, the conditional use permit, and this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the Parties, including the approval by CITY of a certified survey map and conditional use permit for REAL ESTATE, the Parties agree that REAL ESTATE will be developed as provided in the certified survey map, the conditional use permit, and this AGREEMENT.

I. IMPROVEMENTS

A. Storm Water Drainage Facilities.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct and install storm water drainage facilities throughout REAL ESTATE and the public rights-of-way, including storm and surface water drainage facilities, in accordance with CITY specifications, the conditional use permit, the certified survey map, the Storm Water Management Plan approved by CITY Engineer, the Storm Sewer Plan approved by CITY Engineer, and all Federal and State environmental laws, rules, and regulations.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall apply for and obtain a Post-Construction Runoff Permit from CITY and shall submit to CITY any required financial guarantee all in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha entitled Post-Construction Stormwater Management Ordinance. No land disturbing construction activity as defined in Chapter XXXVI of the Code of General Ordinances shall be permitted until the Post-Construction Runoff Permit is issued by CITY. All land disturbing construction activities and the design, construction, installation and maintenance of the storm water drainage facilities shall be done in compliance with Chapter XXXVI of the Code of General Ordinances, the approved Stormwater Management Plan, the approved Storm Sewer Plan, the approved Maintenance Agreement, the Post-Construction Runoff Permit, and all Federal and State environmental laws, rules, and regulations.
3. DEVELOPER, at DEVELOPER'S cost and expense, shall prepare all plans, specifications, and calculations for all storm water drainage facilities and submit them to CITY Engineer for written approval which must be obtained prior to construction of the storm water drainage facilities. The storm water drainage facilities required by the conditional use permit and this AGREEMENT shall comply with the performance standards set forth in Section 36.07 of the Code of General Ordinances for the City of Kenosha, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations.
4. CITY shall cooperate with DEVELOPER in obtaining all permits required by any governmental unit or regulatory agency for the storm water drainage facilities required by the conditional use permit and this AGREEMENT, including storm water drainage facilities extensions and connections.
5. Title to all storm water drainage facilities, including retention/detention basins and outlet structures, located within REAL ESTATE or any easements located within REAL ESTATE as shown on the certified survey map and the approved Storm Sewer Plan, shall be retained by DEVELOPER or conveyed by DEVELOPER to an owners' association

approved by CITY, DEVELOPER, or the owners' association as the case may be, shall be responsible for the maintenance and operation of all storm water drainage facilities located within REAL ESTATE or in any easement located within REAL ESTATE as shown on the certified survey map and the approved Storm Sewer Plan, and shall enter into a Maintenance Agreement with CITY in accordance with Section 36.10 of the Code of General Ordinances for the City of Kenosha to provide for their maintenance and operation. The Maintenance Agreement shall be recorded with the Kenosha County Register of Deeds and shall be binding upon all current and subsequent owners of land served by the storm water drainage facilities. The Maintenance Agreement shall include among its provisions the following:

- a. identification of the storm water drainage facilities and designation of the drainage area served by the storm water drainage facilities.
- b. a schedule for the regular maintenance, repair, replacement, and operation of the storm water drainage facilities consistent with the Storm Water Management Plan.
- c. identification of the DEVELOPER, landowner or the owners' association responsible for the maintenance, repair, replacement, and operation of the storm water drainage facilities.
- d. requirement that the DEVELOPER, landowner, or owners' association maintain, repair, replace, and operate the storm water drainage facilities in accordance with the schedule included in subparagraph b. above.
- e. authorization for CITY to access REAL ESTATE to conduct inspections of storm water drainage facilities as necessary to determine whether the storm water drainage facilities are being maintained, repaired, replaced, and operated in accordance with the Maintenance Agreement.
- f. requirement that CITY maintain public records of the results of the inspections of the storm water drainage facilities, to inform DEVELOPER, landowner or the owners' association of the inspection results, and to specifically indicate any corrective actions required to bring the storm water drainage facilities into proper working condition.
- g. agreement that DEVELOPER, landowner or the owners' association responsible for the maintenance, repair, replacement, and operation of the storm water drainage facilities be notified by CITY of any maintenance problems requiring correction and that any specified corrective actions be undertaken within a reasonable time as determined by CITY.
- h. authorization for CITY to perform or have performed on CITY'S behalf, maintenance, repairs, or replacements of the storm water drainage facilities upon the failure of the DEVELOPER, landowner or owners' association to do so as directed by CITY and to impose a special charge pursuant to Section 66.0627 of the Wisconsin Statutes against all benefited REAL ESTATE for the charges incurred by CITY in performing or having performed on CITY'S behalf the maintenance,

repairs or replacement to the storm water drainage facilities which are the subject of the Maintenance Agreement.

6. DEVELOPER, at DEVELOPER'S cost and expense, shall grant to CITY a Maintenance Easement to the storm water drainage facilities located within REAL ESTATE required by the conditional use permit and this AGREEMENT authorizing CITY to inspect, maintain, repair, or replace the storm water drainage facilities in accordance with the Maintenance Agreement. The Maintenance Easement shall be recorded with the Kenosha County Register of Deeds and shall be binding upon all current and subsequent owners of land served by the storm water drainage facilities.
7. DEVELOPER, at DEVELOPER'S cost and expense, shall complete the construction and installation of the fully functional storm water drainage facilities required by the conditional use permit and this AGREEMENT without defect, damage or non-conformance with this AGREEMENT, all approved plans, specifications and calculations, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations.
8. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with certified copies of the results of all tests and inspections of the storm water drainage facilities required by CITY, including density tests certifying proper compaction of storm water drainage facilities trench back fill.
9. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the storm water drainage facilities, including retention/detention basins and outlet structures. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with written certification by a professional engineer registered in the State of Wisconsin that the storm water drainage facilities, including retention/detention basins and outlet structures, were designed, constructed, installed, completed, and function as intended in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, the approved Stormwater Management Plan, the approved Storm Sewer Plan, the approved Maintenance Agreement, the Post-Construction Runoff Permit, and all Federal and State environmental laws, rules, and regulations. The "as-built" plans shall be provided to CITY in print and digital form acceptable to CITY Engineer. DEVELOPER shall obtain approval of the "as-built" plans from CITY Engineer prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE.
10. CITY shall accept the storm water drainage facilities required to be designed, constructed, and installed by DEVELOPER pursuant to the conditional use permit and this AGREEMENT which are located in the public rights-of-way upon the following:
 - a. completion of the storm water drainage facilities in accordance with all approved plans, specifications and calculations, the Code of General Ordinances for the City of Kenosha, all Federal and State environmental laws, rules, and regulations, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional storm water drainage facilities without defect, damage or nonconformance with this

AGREEMENT, all approved plans, specifications and calculations, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations.

c. providing CITY with certified copies of the results of all tests and inspections of the storm water drainage facilities required by CITY, including density tests certifying proper compaction of storm water drainage facilities trench backfill.

d. approval by CITY Engineer of the stamped and certified "as-built" plans of the storm water drainage facilities, including retention/detention basins and outlet structures, required pursuant to Section I.A.9 of this AGREEMENT.

e. providing CITY with a Maintenance Agreement for the maintenance and operation of the storm water drainage facilities, including retention/detention basins and outlet structures, located within REAL ESTATE in form acceptable to CITY.

f. providing CITY with a Maintenance Easement for the storm water drainage facilities, including retention/detention basins and outlet structures, located within REAL ESTATE in form acceptable to CITY.

g. payment of all fees and charges required to be paid by DEVELOPER for the storm water drainage facilities pursuant to the Code of General Ordinances for the City of Kenosha and this AGREEMENT.

h. receipt of final lien waivers from all contractors, subcontractors, and suppliers.

i. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination, for work performed on such portions of the improvements located within public rights-of-way.

j. certification of items a - i above by CITY Engineer.

k. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer, the City of Kenosha Board of Public Works, and the Storm Water Utility Committee of the storm water drainage facilities.

11. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance and operation of the storm water drainage facilities lying within the public rights-of-way within REAL ESTATE unless and until the storm water drainage facilities are accepted by CITY. Upon acceptance of the storm water drainage facilities, CITY shall have full jurisdiction and ownership of the storm water drainage facilities located within the public rights-of way and be responsible for their maintenance and operation, subject to the guarantee of DEVELOPER provided in this AGREEMENT.

12. DEVELOPER shall indemnify, defend and hold harmless CITY, the Kenosha Water Utility, their officers, employees and agents from and against any and all claims, liability, loss, charges, damages, costs, expenses, judgments, settlement expenses and attorney fees, which any of them may hereafter sustain, incur or be required to pay arising out of, or in any way related to, the design, construction and installation of the storm water drainage

facilities required by the conditional use permit and this AGREEMENT which causes storm and surface water to flow in full or part upon any private property. Upon the filing with CITY or the Kenosha Water Utility of a claim for damages arising out of the acts which DEVELOPER herein agrees to indemnify, defend and hold CITY, the Kenosha Water Utility and their officers, employees and agents, the CITY or the Kenosha Water Utility shall notify DEVELOPER of such claim, and in the event that DEVELOPER does not settle or comprise such claim, the DEVELOPER shall undertake the legal defense of such claim both on behalf of the DEVELOPER and CITY and/or the Kenosha Water Utility and their officers, employees and agents. It is specifically agreed that CITY and/or the Kenosha Water Utility, at CITY'S and/or the Kenosha Water Utility's cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against CITY and/or the Kenosha Water Utility or any of their officers, employees or agents for any cause for which DEVELOPER is liable herewith shall be conclusive against DEVELOPER as to liability and the amount of damages. Any damages, costs or expenses, including attorney fees, sustained, incurred or paid by CITY and/or the Kenosha Water Utility, their officers, employees or agents arising out of the acts which DEVELOPER herein agrees to indemnify, shall be reimbursed through DEVELOPER'S assurance required pursuant to this AGREEMENT or through such other means as the CITY and/or the Kenosha Water Utility, in their sole discretion, deem appropriate. This paragraph shall survive installation of the storm water drainage facilities to effectuate its purpose.

13. The storm water drainage facilities required by the conditional use permit and this AGREEMENT shall be installed and functional prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE.

B. Streets, Curb, and Gutter.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct, and install all street improvements, including improvements to 4th Avenue, and all curbs and gutters in accordance with CITY specifications, the conditional use permit, the certified survey map, the Street Plan approved by CITY Engineer, and all Federal and State environmental laws, rules, and regulations. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the design, construction, and installation of all street improvements, including improvements to 4th Avenue, and all curbs and gutters from CITY Engineer.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall remove abandoned driveway approaches and replace with curb and gutters and lawn park grass. DEVELOPER, at DEVELOPER'S cost and expense, shall rubblize existing 4th Avenue concrete pavement and resurface with three (3) inches of hot mix asphalt from curb to curb.
3. DEVELOPER shall not perform any street paving or install any curbs and gutters after November 15th of any calendar year without the express written approval of CITY Engineer. No street paving or curb and gutter installation will be permitted after December 1st of any calendar year. Street paving and installation of curb and gutter may commence after April 1st of any calendar year with the approval of CITY Engineer.
4. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the street

improvements, including the improvements to 4th Avenue, all curbs and gutters, and sidewalks. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with written certification by a professional engineer, registered in the State of Wisconsin, that the street improvements, including the improvements to 4th Avenue, and all curbs and gutters were designed, constructed, installed, completed, and function as intended in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations. The "as-built" plans shall be provided to CITY in print and digital form acceptable to CITY Engineer. DEVELOPER shall obtain approval of the "as-built" plans from CITY Engineer prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE.

5. CITY shall accept the street improvements, including the improvements to 4th Avenue, and all curbs and gutters required to be designed, constructed, and installed by DEVELOPER pursuant to the conditional use permit and this AGREEMENT which are located in the public rights-of-way upon the following:

a. completion of the street improvements, including the 4th Avenue improvements, and all curbs and gutters in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, all Federal and State environmental laws, rules, and regulations, and compatibility with attached and adjacent systems, facilities and improvements.

b. construction, installation and delivery of the fully functional street improvements, including the 4th Avenue improvements, and all curbs and gutters without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations.

c. providing CITY with certified copies of the results of all tests and inspections of the street improvements, including the 4th Avenue improvements, and all curbs and gutters required by CITY, including density tests certifying proper completion of street, curb and gutter trench backfill.

d. approval by CITY Engineer of the stamped and certified "as-built" plans of the street improvements, including the 4th Avenue improvements, all curbs and gutters, and sidewalks required pursuant to Section I.B.4 of this AGREEMENT.

e. payment of all fees and charges required to be paid by DEVELOPER for the street improvements, including the 4th Avenue improvements, and all curbs and gutters pursuant to the Code of General Ordinances for the City of Kenosha and this AGREEMENT.

f. receipt of final lien waivers from all contractors, subcontractors, and suppliers.

g. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination, for work performed on such portions of the improvements located within public rights-of-way.

h. certification of items a - g above by CITY Engineer.

i. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer and the City of Kenosha Board of Public Works of the street improvements, including the 4th Avenue improvements, and all curbs and gutters, and rights-of-way.

6. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance of the street improvements, including the 4th Avenue improvements, and all curbs and gutters required by the conditional use permit and this AGREEMENT, including snow plowing, unless and until the street improvements, including the 4th Avenue improvements, and all curbs and gutters, are accepted by CITY. Upon acceptance of the street improvements, including the 4th Avenue improvements, and all curbs and gutters, CITY shall have full jurisdiction and ownership of the street improvements, including the 4th Avenue improvements, and all curbs and gutters, and shall be responsible for their maintenance subject to the guarantee of DEVELOPER provided in this AGREEMENT.

C. Other Utilities and Utility Easements

1. DEVELOPER, at DEVELOPER'S cost and expense, shall locate and install all other utilities throughout REAL ESTATE in accordance with utility specifications, the conditional use permit, the certified survey map, the plans approved by CITY Engineer and all Federal and State environmental laws, rules, and regulations. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the location and installation of the utilities from CITY Engineer.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall provide easements for utilities, which shall be shown on the certified survey map and the plans approved by CITY Engineer.
3. Easements for utilities may be modified or terminated only by CITY or other utility and only in the event CITY or other utility determine that the easement, in full or in part, is no longer required to provide essential service.

D. Erosion Control

DEVELOPER, at DEVELOPER'S cost and expense, shall prepare and submit to CITY an Erosion and Sediment Control Plan in accordance with Chapter XXXIII of the Code of General Ordinances for the City of Kenosha entitled Land-Disturbing Erosion and Sediment Control Ordinance. DEVELOPER, at DEVELOPER'S cost and expense, shall apply for and obtain an Erosion Control Permit from CITY and shall submit to CITY the cash assurance all in accordance with Chapter XXXIII of the Code of General Ordinances. No land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances shall be permitted until the Erosion and Sediment Control Plan is approved by CITY, the cash assurance is paid to CITY, and the Erosion Control Permit is issued by CITY. All land disturbing construction activities undertaken by DEVELOPER shall be done in compliance with Chapter XXXIII of the Code of General Ordinances, the approved Erosion and Sediment Control Plan, the Erosion Control Permit, and all Federal and State environmental laws, rules, and regulations. The Erosion and Sediment Control Plan shall include the location and duration of topsoil

stockpiles. DEVELOPER, at DEVELOPER'S cost and expense, shall remove all topsoil stockpiles from REAL ESTATE in accordance with Chapter XXXIII of the Code of General Ordinances and all Federal and State environmental laws, rules, and regulations prior to the issuance of any Temporary Certificate of Occupancy by CITY.

E. Grading

1. DEVELOPER, at DEVELOPER'S cost and expense, shall grade REAL ESTATE in accordance with CITY specifications, the conditional use permit, the certified survey map, the Grading Plan approved by CITY Engineer, and all Federal and State environmental laws, rules, and regulations. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the Grading Plan from CITY Engineer prior to commencement of any land disturbing construction activities.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with "as-built" grading plans stamped by a professional engineer registered in the State of Wisconsin. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY, with written certification by a professional engineer registered in the State of Wisconsin that the grading was designed, constructed, installed, completed, and functions as intended in accordance with the approved plans and specifications, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations. The "as-built" plans shall be provided to CITY in print and digital form acceptable to CITY Engineer. DEVELOPER shall obtain approval of the "as-built" plans from CITY Engineer prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE.

F. LED Street Lighting

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design and install a complete system of LED street lighting throughout REAL ESTATE in accordance with CITY specifications, the conditional use permit, the certified survey map, the Lighting Plan approved by CITY Engineer, and all Federal and State environmental laws, rules, and regulations. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the LED street lighting system from CITY Engineer.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with "as-built" plans of the LED street lighting, including street light conduits and pull boxes, stamped by a professional engineer registered in the State of Wisconsin. DEVELOPER, at DEVELOPER'S cost and expense, shall provide CITY with written certification by a professional engineer registered in the State of Wisconsin that the LED street lighting, including street light conduits and pull boxes, were designed, constructed, installed, completed, and function as intended in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules and regulations. The "as-built" plans shall be provided to CITY in print and digital form acceptable to CITY Engineer. DEVELOPER shall obtain approval of the "as-built" plans from CITY Engineer prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE.

3. The LED street lighting installation in the public rights-of-way shall be completed and presented to CITY for acceptance prior to, or concurrent with, DEVELOPER presenting the street improvements, including the 4th Avenue improvements, and all curbs and gutters to the CITY for acceptance.
4. CITY shall accept the LED street lighting system required to be designed and installed by DEVELOPER pursuant to the conditional use permit and this AGREEMENT located in the public rights-of-way upon the following:
 - a. completion of the LED street lighting system in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, all Federal and State environmental laws, rules, and regulations, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional LED street lighting system without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations.
 - c. receipt of final lien waivers from all contractors, subcontractors, and suppliers.
 - d. approval by CITY Engineer of the stamped and certified “as-built” plans of the LED street lighting, including street light conduits and pull boxes, required pursuant to Section I.F.2 of this AGREEMENT.
 - e. receipt of DEVELOPER’S affidavit of compliance with prevailing wage rate determination, for work performed on such portions of the improvements located within public rights-of-way.
 - f. certification of items a – d above by CITY Engineer.
 - g. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer and the City of Kenosha Board of Public Works of the LED street lighting system.

G. Landscaping.

1. DEVELOPER, at DEVELOPER’S cost and expense, shall design and install landscaping throughout REAL ESTATE and the public rights-of-way in accordance with CITY specifications, the conditional use permit, the certified survey map, the Landscaping Plan approved by CITY Engineer, and all Federal and State environmental laws, rules, and regulations. DEVELOPER, at DEVELOPER’S cost and expense, shall obtain approval of the Landscaping Plan from CITY Engineer.
2. DEVELOPER, at DEVELOPER’S cost and expense, shall remove and lawfully dispose of all rubbish, dead trees, branches, brush, tree trunks, shrubs, and other natural growth within REAL ESTATE inconsistent with the approved Landscaping Plan.

3. DEVELOPER, at DEVELOPER'S cost and expense, shall finish grade all lawn park areas within REAL ESTATE with six (6) inches of topsoil.
4. Landscaping shall be completed and presented to CITY for acceptance prior to or concurrent with DEVELOPER presenting the street improvements, including the 4th Avenue improvements, and all curbs and gutters to the CITY for acceptance.
5. CITY shall accept the landscaping required to be designed and installed by DEVELOPER pursuant to the conditional use permit and this AGREEMENT located in the public rights-of-way upon the following:
 - a. completion of the landscaping in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, all Federal and State environmental laws, rules, and regulations, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. installation and delivery of the landscaping without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations.
 - c. receipt of final lien waivers from all contractors, subcontractors, and suppliers.
 - d. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination, for work performed on such portions of the improvements located within public rights-of-way.
 - e. certification of items a – d above by CITY Engineer.
 - f. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer and the City of Kenosha Board of Public Works of the landscaping.

H. Sidewalks.

1. DEVELOPER, at DEVELOPER'S cost and expense, shall design, construct, install, repair and replace sidewalks throughout REAL ESTATE in accordance with CITY specifications, the conditional use permit, the certified survey map, the Site Plan, the Street Plan approved by CITY Engineer, the Americans With Disabilities Act standards and guidelines, and all Federal and State environmental laws, rules, and regulations. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications for the design, construction, installation, repair, and replacement of the sidewalks from CITY Engineer.
2. Sidewalks shall be five (5) feet wide and shall be constructed of a minimum of four (4) inches of Portland cement concrete over a two (2) inch aggregate base. The portion of sidewalks extending through any driveway approach shall be constructed of a minimum of eight (8) inches of Portland cement concrete over a two (2) inch aggregate base. Sidewalks

shall be constructed and installed in accordance with the requirements of Section 5.05 of the Code of General Ordinances.

3. Sidewalks shall be installed, repaired, and replaced prior to CITY issuance of any Temporary Certificate of Occupancy for any improvements within REAL ESTATE.
4. CITY shall accept the sidewalks required to be designed, constructed, installed, repaired, and replaced by DEVELOPER pursuant to the conditional use permit and this AGREEMENT which are located in the public rights-of-way upon the following:
 - a. completion of the sidewalks in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, all Federal and State environmental laws, rules, and regulations, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the sidewalks without defect, damage or nonconformance with this AGREEMENT, all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations.
 - c. providing CITY with certified copies of the results of all tests and inspections of the sidewalks required by CITY, including density tests certifying proper compaction of sidewalk trench backfill.
 - d. approval by CITY Engineer of the stamped and certified "as-built" plans of the sidewalks required pursuant to Section I.B.4 of this AGREEMENT.
 - e. receipt of final lien waivers from all contractors, subcontractors, and suppliers.
 - f. receipt of DEVELOPER'S affidavit of compliance with prevailing wage rate determination, for work performed on such portions of the improvements located within public rights-of-way.
 - g. certification of items a -- f above by CITY Engineer.
 - h. approval by the Common Council of the City of Kenosha upon recommendation by CITY Engineer and the City of Kenosha Board of Public Works of the sidewalks.
5. DEVELOPER, at DEVELOPER'S cost and expense, shall be responsible for the maintenance of the sidewalks required by the conditional use permit and this AGREEMENT. Upon acceptance of the sidewalks, CITY shall have full jurisdiction and ownership of the sidewalks located in the public rights-of-way. DEVELOPER shall be responsible for the maintenance of the sidewalks in accordance with the Code of General Ordinances for the City of Kenosha.

I. Street and Regulatory Signs.

1. DEVELOPER shall reimburse CITY for CITY's actual cost for materials, labor, and installation of street name signs required by CITY within forty-five (45) days of being invoiced by CITY.
2. DEVELOPER shall reimburse CITY for CITY'S actual cost for materials, labor, and installation of regulatory signs required by CITY within forty-five (45) days of being invoiced by CITY.

J. Survey Monuments.

DEVELOPER, at DEVELOPER'S cost and expense, shall install survey monuments placed in accordance with the requirements of Section 236.15 of the Wisconsin Statutes.

II. PRE-CONSTRUCTION AND CONSTRUCTION ACTIVITIES.

A. Pre-Construction Activities.

1. The public improvements required to be made pursuant to the conditional use permit and this AGREEMENT constitute a project of public works subject to the municipal prevailing wage and hour scales pursuant to Section 66.0903 of the Wisconsin Statutes and Chapter DWD 290 of the Wisconsin Administrative Code. DEVELOPER, at DEVELOPER'S cost and expense, shall comply with the municipal prevailing wage and hour scales pursuant to Section 66.0903 of the Wisconsin Statutes and Chapter DWD 290 of the Wisconsin Administrative Code in connection with the public improvements required to be made pursuant to the conditional use permit and this AGREEMENT. CITY shall cooperate with DEVELOPER in requesting the Department of Workforce Development to determine the prevailing wage rates for all trades or occupations required to complete the public improvements. Prior to CITY accepting any of the public improvements required to be made pursuant to the conditional use permit and this AGREEMENT, DEVELOPER shall file with the CITY an affidavit of compliance with the prevailing wage rate determination on the form prescribed by the Department of Workforce Development pursuant to Chapter DWD 290.145 of the Wisconsin Administrative Code.
2. DEVELOPER shall provide CITY Engineer with complete itemized cost estimates certified by DEVELOPER'S civil engineer for the public improvements and private storm water drainage facilities required to be made by DEVELOPER pursuant to the conditional use permit and this AGREEMENT prior to the solicitation of bids.
3. Any bidder on any of the public improvements required to be made by DEVELOPER pursuant to the conditional use permit and this AGREEMENT shall be pre-qualified by CITY. DEVELOPER shall not award any contract for any public improvements required to be made pursuant to the conditional use permit and this AGREEMENT to any bidder who has not been pre-qualified by CITY.
4. DEVELOPER, at DEVELOPER'S cost and expense, shall raze all structures within REAL ESTATE prior to the issuance of any permits by CITY for the construction or installation of any of the improvements required to be made pursuant to the conditional use permit and

this AGREEMENT. DEVELOPER, at DEVELOPER'S cost and expense, shall apply for and obtain a raze permit from CITY and any other permits required by any Federal and State environmental laws, rules, and regulations prior to razing, removing and disposing of any structures within REAL ESTATE. DEVELOPER, at DEVELOPER'S cost and expense, shall raze, remove, and dispose of all structures within REAL ESTATE in accordance with the Code of General Ordinances for the City of Kenosha and all Federal and State environmental laws, rules, and regulations.

5. No construction or installation of any of the improvements required to be made pursuant to the conditional use permit and this AGREEMENT shall commence prior to all of the following:
 - a. all required assurances have been received and approved.
 - b. the certified survey map has been approved by the Common Council, signed by CITY, and recorded with the Kenosha County Register of Deeds.
 - c. the conditional use permit has been approved by the Common Council, signed by DEVELOPER, and recorded with the Kenosha County Register of Deeds.
 - d. the maintenance agreement and maintenance easement have been approved by the Common Council, signed by all Parties, and recorded with the Kenosha County Register of Deeds.
 - e. this AGREEMENT has been approved by the Common Council, signed by all Parties, and recorded with the Kenosha County Register of Deeds.
 - f. all structures within REAL ESTATE have been razed, removed and disposed of in accordance with the Code of General Ordinances for the City of Kenosha and all Federal and State environmental laws, rules, and regulations.
 - g. all plans and construction specifications for the construction or installation of any of the improvements required to be made pursuant to the conditional use permit and this AGREEMENT have been reviewed and approved by CITY Engineer.
 - h. all permit fees have been paid.
 - i. a pre-construction meeting attended by DEVELOPER, CITY, contractors and any consultants' inspectors has been held.
 - j. written authorization to proceed has been given by the Director of Community Development and Inspections following certification of items a-i above by the Director of Community Development and Inspections
6. Upon receiving written authorization to proceed from the Director of Community Development and Inspections, DEVELOPER shall notify CITY in writing no less than two (2) working days in advance of the date for the commencement of the construction of the improvements required to be made pursuant to the conditional use permit and this

AGREEMENT. This notification requirement shall also apply to the resumption of construction following a work interruption of over fifteen (15) consecutive working days.

B. Construction Activities

1. Construction access to REAL ESTATE shall be as shown on the Erosion and Sediment Control Plan approved by CITY Engineer. Construction staging areas shall be as shown on the Construction Phasing Plan approved by the Department of Community Development and Inspections and CITY Engineer. DEVELOPER, at DEVELOPER'S cost and expense shall design, construct and install the construction access and construction staging areas in accordance with CITY specifications, the conditional use permit, the certified survey map, the approved Erosion and Sediment Control Plan, the approved Construction Phasing Plan, and all Federal and State environmental laws, rules, and regulations. DEVELOPER, at DEVELOPER'S cost and expense, shall obtain approval of the plans and specifications and all required permits for the design, construction, and installation of the construction access and construction staging areas from the Department of Community Development and Inspections and CITY Engineer.
2. DEVELOPER, at DEVELOPER'S cost and expense, shall apply for and obtain all required permits from CITY prior to the closing of any public streets or sidewalks and shall comply with the Code of General Ordinances for the City of Kenosha regarding the closure of public streets and sidewalks. DEVELOPER, at DEVELOPER'S cost and expense, shall repair any damage to public streets and sidewalks which may occur as a result of the razing, removing, disposing and construction of any structures within REAL ESTATE.
3. DEVELOPER, at DEVELOPER'S cost and expense, shall abandon any wells on REAL ESTATE in accordance with the requirements of the Wisconsin Department of Natural Resources, Chapter NR 812 of the Wisconsin Administrative Code and Section 32.09 of the Code of General Ordinances for the City of Kenosha. DEVELOPER shall provide copies of well abandonment reports to CITY and the Kenosha Water Utility.
4. CITY shall provide engineering and inspection services during construction of the improvements required by the conditional use permit and this AGREEMENT to ascertain DEVELOPER'S compliance with all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations. The cost for the engineering and inspection services shall be based upon the hourly rate of the CITY employees performing the services plus indirect costs. The DEVELOPER shall pay CITY for all engineering and inspection services provided by CITY within forty-five (45) days of being invoiced. The engineering and inspection services provided pursuant to this paragraph shall not relieve DEVELOPER, DEVELOPER'S employees, or DEVELOPER'S contractors from constructing and installing the improvements required by the conditional use permit and this AGREEMENT in accordance with all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations, or from providing CITY all stamped "as-built" plans and all "as-built" plan certifications required by this AGREEMENT.

5. CITY, at CITY'S sole discretion, reserves the right to retain independent testing services in the event CITY reasonably determines proper testing is not being performed by DEVELOPER or the results of DEVELOPER'S testing does not conclusively establish to CITY'S satisfaction the proper completion of the improvements required by the conditional use permit and this AGREEMENT. DEVELOPER shall reimburse CITY for the cost of the independent testing services within forty-five (45) days of being invoiced by CITY.
6. DEVELOPER, at DEVELOPER'S cost and expense, shall use granular trench backfill under all pavement and sidewalks and within twenty-four (24") inches thereof in accordance with CITY specifications, the conditional use permit, the certified survey map, and the approved plans. CITY shall test the granular backfill for proper compaction. Developer shall reimburse CITY for the cost of testing within forty-five (45) days of being invoiced by CITY.

III. ASSURANCE OF COMPLETION OF PUBLIC IMPROVEMENTS.

A. Assurance Required.

1. Prior to execution of this AGREEMENT by CITY, DEVELOPER shall deposit with the City Clerk-Treasurer an assurance in the form of cash or an irrevocable letter of credit in an amount established by CITY Engineer equal to one hundred twenty-five (125%) percent of the CITY Engineer's estimated cost of all public improvements, private storm water drainage facilities, the engineering and inspection services and the testing services related thereto, and the environmental conditions related thereto, required to be made and provided pursuant to the conditional use permit, this AGREEMENT, and all Federal and State environmental laws, rules, and regulations. The assurance required pursuant to this paragraph shall be in addition to any other assurance which may be required pursuant to the Code of General Ordinances for the City of Kenosha and Federal and State environmental laws, rules, and regulations for the development of REAL ESTATE which is the subject of the conditional use permit and this AGREEMENT.
2. The assurance required pursuant to paragraph 1 shall be used to secure DEVELOPER'S cost of designing, constructing and installing the public improvements and private storm water drainage facilities required pursuant to the conditional use permit and this AGREEMENT and to compensate CITY for CITY'S cost of completing the public improvements, private storm water drainage facilities, and performing the engineering and inspection services and testing services required to be made and provided pursuant to the conditional use permit, this AGREEMENT, and all Federal and State environmental laws, rules, and regulations in the event DEVELOPER fails to do so in a timely manner in accordance with this AGREEMENT, all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations. The assurance required pursuant to paragraph 1 shall also be used to assure compliance with DEVELOPER'S guarantee provided in this AGREEMENT.
3. In the event the assurance required pursuant to paragraph I is insufficient to cover one hundred twenty five (125%) percent of the actual cost of the public improvements, private storm water drainage facilities, the engineering and inspection services and testing services related thereto, and the environmental conditions related thereto, required to be made and

provided pursuant to the conditional use permit, this AGREEMENT, and all Federal and State environmental laws, rules, and regulations, DEVELOPER upon written demand by CITY shall deposit with the City Clerk-Treasurer additional assurance in the form of cash or an irrevocable letter of credit in an amount established by CITY equal to one hundred twenty-five (125%) percent of the actual cost of the public improvements, private storm water drainage facilities, the engineering and inspection services and testing services related thereto, and the environmental conditions related thereto, required to be made and provided pursuant to the conditional use permit, this AGREEMENT, and all Federal and State environmental laws, rules, and regulations.

4. Any irrevocable letter of credit to be used by DEVELOPER as an assurance pursuant to this AGREEMENT shall be issued by a financial institution authorized to do business in the State of Wisconsin having a financial standing acceptable to the CITY, and the form of any irrevocable letter of credit shall be approved in advance by the City Attorney. Any irrevocable letter of credit approved for use by the City Attorney as an assurance pursuant to this AGREEMENT shall remain in effect until completely drawn upon or released by CITY. If for any reason, any irrevocable letter of credit approved for use as an assurance pursuant to this AGREEMENT is about to expire and has not been renewed by DEVELOPER, CITY may draw upon the irrevocable letter of credit in an amount not to exceed one hundred twenty five percent (125%) of the CITY Engineer's reasonable estimate of the cost of the remaining public improvements, the private storm water drainage facilities, the engineering, testing and inspection services related thereto, and the environmental conditions related thereto, required to be made and provided pursuant to the conditional use permit, this AGREEMENT, and all Federal and State environmental laws, rules, and regulations, and the DEVELOPER'S guarantee obligations pursuant to Section IV B. of this AGREEMENT, and retain the proceeds as a cash assurance pursuant to this AGREEMENT.
5. If and to the extent DEVELOPER shall properly complete portions of the public improvements and private storm water drainage facilities required to be made pursuant to the conditional use permit, this AGREEMENT, and all Federal and State environmental laws, rules, and regulations, for which DEVELOPER shall have deposited an assurance, then upon written request of DEVELOPER, and upon the written recommendation of CITY Engineer, the assurance may be reduced in the amount reasonably recommended by CITY Engineer. In no event shall the assurance be reduced below one hundred twenty-five percent (125%) of the CITY Engineer's reasonable estimate of the cost of the remaining public improvements, the private storm water drainage facilities, the engineering, testing and inspection services related thereto, the environmental conditions related thereto, and guarantee obligations required to be made and provided pursuant to the conditional use permit, this AGREEMENT, and all Federal and State environmental laws, rules, and regulations. Prior to the reduction of any assurance, DEVELOPER shall submit to CITY a waiver of lien current to date from all contractors, subcontractors and suppliers. The balance of the remaining assurance shall remain on deposit with the City Clerk-Treasurer until expiration of DEVELOPER'S guarantee provided in this AGREEMENT. CITY shall release the balance of the remaining assurance within forty-five (45) days following expiration of DEVELOPER'S guarantee provided in this AGREEMENT.
6. In addition to all other remedies, occupancy permits may be withheld by CITY until the City of Kenosha Department of Community Development and Inspections certifies that the

requirements of Chapter XVII of the Code of General Ordinances have been met. In the event any work specified in the conditional use permit and this AGREEMENT is not completed in accordance with this AGREEMENT, all approved plans and specifications, the conditional use permit, the certified survey map, the Code of General Ordinances for the City of Kenosha, and all Federal and State environmental laws, rules, and regulations, CITY may do or cause the work to be done and charge the cost for the work against any assurance provided pursuant to this AGREEMENT or impose a special charge and/or special assessment against the benefited REAL ESTATE in the event there is no applicable assurance or the assurance is insufficient. The remedies available to CITY pursuant to this paragraph shall not relieve DEVELOPER of DEVELOPER'S guarantee provided in this AGREEMENT.

IV. DEDICATION AND GUARANTEE OF PUBLIC IMPROVEMENTS.

A. Dedication of Public Improvements.

Subject to all other provisions of this AGREEMENT, the conditional use permit and the certified survey map, DEVELOPER shall, upon completion of all of the public improvements and without charge to CITY, unconditionally give, grant, convey and fully dedicate the public improvements to CITY, free and clear of all liens and encumbrances together with all buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and habiliments which may in any way be a part of or pertain to the public improvements together with any and all easements necessary for access to the public improvements. DEVELOPER shall execute such documents deemed necessary by CITY to effectuate the dedication of the public improvements pursuant to this paragraph. Upon dedication, CITY shall have the right to connect or integrate the dedicated public improvements unto the facilities of CITY without charge, award of damages or consent of DEVELOPER. Dedication shall not constitute acceptance of any improvement by CITY.

B. Guarantee of Public Improvements.

1. DEVELOPER shall guarantee all public improvements required by the conditional use permit and this AGREEMENT against all defects due to faulty design, materials or workmanship of which DEVELOPER is notified in writing within a period of one (1) year from the date of acceptance of the subject public improvement by the Common Council of the City of Kenosha. DEVELOPER, at DEVELOPER'S cost and expense, shall make any required repairs. CITY reserves the right to perform any required repairs to the public improvements which CITY deems necessary on a time and material basis. DEVELOPER shall reimburse CITY for the cost of repairs within forty-five (45) days of being invoiced by CITY.
2. DEVELOPER shall be responsible for any settlement of fill material which may occur in any public utility trenches in any right-of-way or easement for a period of one (1) year from the date of the last acceptance by CITY of any utility improvement located in such portion of REAL ESTATE. DEVELOPER, at DEVELOPER'S cost and expense, shall make any required repairs. CITY reserves the right to perform any required repairs which CITY deems necessary on a time and material basis. DEVELOPER shall reimburse CITY for the cost of repairs within forty-five (45) days of being invoiced by CITY.

3. The assurance required to be provided by DEVELOPER pursuant to Section III of this AGREEMENT shall be used to assure DEVELOPER'S guarantee of the public improvements pursuant to this Section IV and to compensate CITY for CITY'S cost of performing any repairs to the public improvements guaranteed by DEVELOPER pursuant to this AGREEMENT. In the event there is no applicable assurance or in the event the assurance is insufficient, CITY may do or cause DEVELOPER'S guarantee work to be done and impose a special charge and/or special assessment against the benefited REAL ESTATE for the cost of the work.

V. DEVELOPER INDEMNIFICATION.

DEVELOPER shall indemnify, defend and hold harmless CITY, its officers, employees and agents from and against any and all claims, liability, loss, charges, damages, costs, expenses, judgments, settlement expenses and attorney fees, which any of them may hereafter sustain, incur or be required to pay arising out of or in any way related to: the razing, removing or disposing of any structures within REAL ESTATE; any environmental conditions affecting REAL ESTATE; requirements imposed by the Code of General Ordinances for the City of Kenosha; requirements imposed by all Federal and State environmental laws, rules, and regulations; the design, construction and installation of any of the public improvements required by the conditional use permit and this AGREEMENT; or any claim for labor, materials or supplies furnished in connection with any of the public improvements required by the conditional use permit and this AGREEMENT. Such obligation of indemnity shall not apply to claims, liability, loss, charges, damages, costs, expenses, judgments, settlement expenses and attorney fees which any of the indemnified parties hereunder may sustain as a result of a failure of the CITY to maintain any of the public improvements subsequent to the CITY'S acceptance of the same as provided hereunder. Upon the filing with CITY of a claim for damages arising out of the acts which DEVELOPER herein agrees to indemnify, defend and hold CITY, its officers, employees and agents harmless, the CITY shall notify DEVELOPER of such claim, and in the event that DEVELOPER does not settle or comprise such claim, the DEVELOPER shall undertake the legal defense of such claim both on behalf of the DEVELOPER and/or CITY and its officers, employees and agents. It is specifically agreed that CITY, at CITY'S cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against CITY or any of its officers, employees or agents for any cause for which DEVELOPER is liable herewith, shall be conclusive against DEVELOPER as to liability and the amount of damages. Any damages, costs or expenses, including attorney fees sustained, incurred or paid by CITY and/or its officers, employees or agents arising out of the acts which DEVELOPER herein agrees to indemnify, shall be reimbursed to CITY and/or its officers, employees and agents through the DEVELOPER'S assurance required pursuant to this AGREEMENT or through such other means as the CITY in its sole discretion deems appropriate. This paragraph shall survive installation of the public improvements to effectuate its purpose.

VI. CITY RESPONSIBILITIES.

Upon application by DEVELOPER and upon payment by DEVELOPER of all required fees, CITY shall process all permit applications and will issue all CITY permits required for the development of REAL ESTATE provided DEVELOPER is in compliance with all CITY conditions of approval, all Federal and State environmental laws, rules, and

regulations, the conditional use permit, the certified survey map, this AGREEMENT, and all standards for the issuance of the required CITY permits set forth in applicable federal, state, county, or CITY laws, ordinances, resolutions, rules and regulations in effect as of the date the permit is to be issued unless otherwise specified.

VII. MISCELLANEOUS.

A. Notice

Any notice required to be given in this AGREEMENT by any of the Parties is to be by certified mail with return receipt or by personal service addressed to DEVELOPER and CITY set forth below. Either Party may designate a different address by delivering, sending, or serving written notice of such change of address upon the other Party. Notice shall be effective as of the date of delivery, if by hand, or mailing if by certified mail.

If to DEVELOPER:

Keno-Wells, Llc/
5th Avenue Lofts, LLC
Attn: S.R. Mills
4011 80th Street
Kenosha, WI 53142

with copies to:

Hotvedt & Terry, LLC
Attn: John E. Hotvedt
4015 – 80th Street, Suite H
Kenosha, WI 53142

If to CITY:

City Clerk/Treasurer
Municipal Building, Room 105
625 -52nd Street
Kenosha, Wisconsin 53140

with copies to:

Director of Public Works
Municipal Building, Room 305
625 -52nd Street
Kenosha, Wisconsin 53140

Office of the City Attorney
Municipal Building, Room 201
625 -52nd Street
Kenosha, Wisconsin 53140

B. Land Dedications and Impact Fees.

DEVELOPER, at DEVELOPER'S cost and expense, shall provide for all land dedications required by Chapter XVII of the Code of General Ordinances. DEVELOPER shall pay all impact fees in accordance with Chapter XXXV of the Code of General Ordinances prior to the CITY issuance of a building permit.

C. Assignment.

DEVELOPER may assign this AGREEMENT to Citi Bank, N.A. for collateral purposes associated with financing the construction of the improvements required to be made pursuant to the conditional use permit and this AGREEMENT. No other assignment of this AGREEMENT is permitted without the prior written consent of the CITY. Any unauthorized assignment shall be a breach of this AGREEMENT. Any assignment shall be conditioned upon the assignee entering into a written agreement with CITY through which the assignee agrees to be bound by all of the terms, conditions, and obligations of this AGREEMENT. No assignment shall relieve DEVELOPER of any of DEVELOPER'S obligations under this AGREEMENT in the event of breach or default by the assignee. No assignment shall be inconsistent with the terms of this AGREEMENT. The assignee shall have all rights, privileges, and obligations as granted DEVELOPER under this AGREEMENT.

D. Integration.

This AGREEMENT and the other documents incorporated by reference herein embody the entire agreement and understanding between the Parties and supersede all prior agreements and understandings relating to the subject matter hereof.

E. Defaults.

No default shall arise under this AGREEMENT unless the non-defaulting Party has provided the defaulting Party written notice of default and twenty (20) days to cure the default.

F. Severability.

Any covenant, condition or provision of this AGREEMENT held to be invalid or unenforceable by a court of competent jurisdiction shall be considered deleted from this AGREEMENT, but such deletion shall in no way affect the application or validity of the remaining covenants, conditions or provisions of this AGREEMENT which shall be given effect without the invalid or unenforceable covenant, condition or provision and to this extent, the covenants, conditions and provisions of this AGREEMENT are declared to be severable.

G. Recordation.

This AGREEMENT shall be recorded in the office of the Register of Deeds for Kenosha County, Wisconsin, and all costs of recordation shall be paid by DEVELOPER.

H. Exhibits, Plans, Agreements, and Easements Incorporated By Reference.

The exhibits attached to this AGREEMENT and the plans, agreements and easements referred to in this AGREEMENT are made a part of this AGREEMENT and are incorporated herein by reference. The plans referred to in this AGREEMENT will be on file with the City of Kenosha Department of Community Development and Inspections upon review and approval by CITY Engineer.

I. Choice of Law and Venue.

This AGREEMENT, the conditional use permit and the certified survey map shall be construed and enforced according to the laws of the State of Wisconsin. The Parties agree that any matter which may be brought or pursued in court shall be brought and maintained only in the Circuit Court for Kenosha County, Wisconsin, and each Party consents to said venue and the court's personal jurisdiction over each Party.

J. Waiver of Breach or Violation not Deemed Continuing.

Any Party may, to the extent legally allowed, (a) extend the time for performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations or warranties of the other Party contained in this AGREEMENT or in any document delivered pursuant to this AGREEMENT and (c) waive any compliance by the other Party with any of the agreements or conditions contained in this AGREEMENT. The waiver by any Party of a breach or violation of any provision of this AGREEMENT shall not operate as or be construed to be a waiver of any or other subsequent breach or violation of any provision of this AGREEMENT. No breach or violation of any provision of this AGREEMENT shall be waived except by an agreement in writing signed by the waiving Party.

K. Construction.

The Parties agree that each Party has contributed substantially and materially to the preparation of this AGREEMENT and that as a result, this AGREEMENT shall not be construed more strictly against one Party or another merely by virtue of the fact that it may have been prepared primarily by counsel for CITY.

L. Time of the Essence.

It is understood and agreed by the Parties that time is of the essence with respect to the provisions of this AGREEMENT specifying dates and deadlines.

M. Binding Effect.

This AGREEMENT shall run with REAL ESTATE and shall be binding upon DEVELOPER, DEVELOPER'S successors and assigns, and DEVELOPER'S successors in title. The guarantee of DEVELOPER set forth in Section IV shall be for the period specified therein. Any recorded easements, agreements, covenants, and restrictions shall be binding for the time set forth therein, or if no time is specified, for the time provided under applicable Wisconsin law.

N. Amendment.

This AGREEMENT may only be amended by the mutual written consent of the Parties and subject to the approval of any such amendment by the Common Council for the City of Kenosha.

VIII. AUTHORIZATION.

- A. DEVELOPER represents to CITY that DEVELOPER is a Wisconsin limited liability company, is in good standing in Wisconsin, that all acts which are a condition precedent to entering into this AGREEMENT have thereby taken place, and that the individual executing this AGREEMENT on behalf of DEVELOPER has the authority to do so and to bind DEVELOPER to the terms and conditions of this AGREEMENT.

- B. CITY enters into this AGREEMENT by authority of action taken by its Common Council on the _____ day of _____, 2014.

Signature Pages Follow

5TH AVENUE LOFTS, LLC,
a Wisconsin Limited Liability Company

By: 5TH AVENUE LOFTS MEMBER, LLC,
a Wisconsin Limited Liability Company,
its Managing Member

By: BEAR DEVELOPMENT LLC,
a Wisconsin Limited Liability Company,
its Authorized Member

By: STEPHEN R. MILLS, Authorized Member

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014 Stephen R. Mills, Authorized Member of Bear Development LLC, Authorized Member of 5th Avenue Lofts Member, LLC, Managing Member of 5th Avenue Lofts, LLC, a Wisconsin limited liability company to me known to be the person who executed the foregoing instrument and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission expires/is: _____

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 1 AND LOT 2 OF CERTIFIED SURVEY MAP NO. _____ RECORDED WITH THE KENOSHA COUNTY REGISTER OF DEEDS ON _____, 2014 AS DOCUMENT NO. _____, BEING THE RE-DIVISION OF PART OF LOTS 1, 2, AND 3 IN BLOCK 45 OF THE ORIGINAL TOWN OF SOUTHPORT, BEING A PART OF SE 1/4 OF THE SE 1/4 OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 23 EAST, IN THE CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN.

Parcel Identification Number: I2-223-31-487-003

EXHIBIT B
CERTIFIED SURVEY MAP

CERTIFIED SURVEY MAP NO. _____

BEING THE RE-DIVISION OF PART OF LOTS 1, 2 AND 3 IN BLOCK 45 OF THE ORIGINAL TOWN OF SOUTHPORT, BEING A PART OF SE 1/4 OF THE SE 1/4 OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 23 EAST, IN THE CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN.

SURVEYOR'S CERTIFICATE

I, Mark R. Madsen, hereby certify: THAT I have prepared this Certified Survey Map at the direction of the Owner;

THAT the exterior boundaries are described as Being the re-division of part of Lots 1, 2 and 3 in Block 45 of the Original Town of Southport being part of the Southeast 1/4 of the Southeast 1/4 of Section 31, Township 2 North, Range 23 East in the City Kenosha, Kenosha County, Wisconsin, described as follows: Commence at a point on the East line of said Southeast 1/4 located N01°47'29"W 656.74 feet from the Southeast corner of said section; thence S79°03'45"W 13.78 feet along the Easterly projection of the Northerly line of 59th Street to the point of beginning of this description; run thence S79°03'45"W 158.18 feet along said North line to the East line of 5th Avenue; thence N10°36'44"W 270.38 feet along said East line to the South line of 58th Street; thence N79°12'25"E 198.75 feet along said South line to the West line of 4th Avenue; thence S02°04'15"E 273.14 feet along said West line to the point of beginning. Containing 1.107 Acres. (48,214 Sq. Ft.)

THAT I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and the Land Division Control Ordinance of the City of Kenosha.

THAT such map is a true representation of all exterior boundaries of the land surveyed and the land division thereof made;

November 7, 2014

Mark R. Madsen
Mark R. Madsen



Nielsen Madsen & Barber, S.C.
1458 Horizon Blvd, Suite 200
Racine WI 53406
(262) 634-5588

OWNER'S CERTIFICATE

KENO WELLS, LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner do hereby certify that said company caused the land described on this map to be surveyed, divided, mapped, and dedicated as represented on this Certified Survey Map. KENO WELLS, LLC, does further certify that this Certified Survey Map is required by s. 236.10 or 236.12 to be submitted to the following for approval or objection: City of Kenosha

IN WITNESS WHEREOF the said KENO WELLS, LLC has caused these presents to be signed by

By: Bear Development, LLC, its sole member
By: S. R. Mills, its authorized member

This _____ day of _____ 2014

STATE OF WISCONSIN)
COUNTY) SS

Personally came before me this _____ day of _____, 2014, the above named S.R. Mills President of the KENO WELLS, LLC, to me known to be the person who executed the above and foregoing instrument and acknowledged the same.

My commission expires: _____

Notary Public, _____, WI

Printed Name: _____ SEAL

CITY OF KENOSHA CERTIFICATE

Resolved that this Certified Survey Map has been submitted to and approved by the Common Council of the City of Kenosha on this _____ day of _____ 2014.

Mayor Keith G. Bosman

Debra L. Salas, Clerk/Treasurer

EXHIBIT C
CONDITIONAL USE PERMIT

**CONDITIONAL USE PERMIT
STATE OF WISCONSIN**

Document Number

The Common Council of the City of Kenosha, Wisconsin, hereby grants to Keno Wells, LLC, owner of the parcel, described with more particularity in the legal description attached hereto as "Exhibit A" and incorporated herein by reference a Conditional Use Permit for a 60-unit apartment building, as approved by the Common Council on November 3, 2014. This Conditional Use Permit is binding upon all future successors, assigns, owners, lessees, and/or tenants and shall be considered a covenant that runs with the land.

The following Exhibits are attached hereto:

- Exhibit A - Legal Description
- Exhibit B - Site Plan
- Exhibit C - Operational Plan

The full approved plan set is on file with the Department of Community Development & Inspections at the Municipal Building, 625 52nd Street, Room 308, Kenosha, WI 53140.

Recording Area

Name and Return Address:

City of Kenosha
Community Development & Inspections
625 52nd Street - Room 308
Kenosha, WI 53140

Effective Date: November 14, 2014

The following Conditions of Approval shall apply to the property described in "Exhibit A":

Parcel Identification Number

12-223-31-487-003

5th Avenue Lofts at 5821 5th Avenue
CONDITIONS OF APPROVAL

1. The following Conditions of Approval will run with the land and shall be included in a document recorded with the Kenosha County Register of Deeds:
 - a. The applicant shall obtain all required construction permits from the Department of Community Development & Inspections. This includes, but is not limited to Raze, Erosion Control, Building, Plumbing, Electrical and Occupancy permits.
 - b. The applicant shall obtain a Driveway, Sidewalk, Street Opening and Parking Lot permit from the Department of Public Works.
 - c. All signs shall comply with Chapter 15 of the Code of General Ordinances and the applicant shall obtain sign permits for all new signs. A separate submission and permits are required for all signs. Sign information provided under the Conditional Use Permit is for reference only and does not constitute sign permit approval.
 - d. The development shall be constructed per the approved plans on file with the Department of Community Development & Inspections, Room 308, 625 52nd Street, Kenosha, WI 53140. Any changes to the approved plans shall require an amendment to the Conditional Use Permit. All changes shall be submitted to the Department of Community Development & Inspections for review and approval.
 - e. Prior to the issuance of any Occupancy permits, all parking areas, drives and designated paved areas shall have the initial lift of asphalt installed. The building exterior shall be completed per the approved plans, the exterior lighting shall be installed and the Conditional Use Permit shall be recorded with the Kenosha County Register of Deeds. All improvements indicated on the plans, including landscaping, shall be installed prior to the issuance of a final Occupancy permit. The recording fees for the Conditional Use Permit shall be submitted by the applicant.
 - f. Compliance with City and State and/or Federal Codes and Ordinances and any Conditions noted in the recorded Developers Agreement. The buildings shall comply with the current Code standards in effect upon application for a building permit.
 - g. All trash containers shall be stored within the enclosure or building. The applicant/owner shall be responsible for waste collection and removal for the development. The City of Kenosha shall not provide waste collection or removal services or incur any cost in this regard.

- h. The applicant shall meet all applicable Conditions of Approval and obtain a building permit within six (6) months of Common Council approval of the Conditional Use Permit or the Conditional Use Permit shall be null and void.
 - i. All vehicles shall be parked within the designated paved areas.
 - j. All improvements, including landscaping, shall be maintained per the approved plans. Any damaged fencing, landscaping or building shall be replaced or reconstructed per the approved plans.
 - k. Cross access shall be provided to adjacent parcels if required at a future date by the City.
 - l. Compliance with the Operational Plan.
 - m. The entirety of the Wells building shall be razed prior to the issuance of any Construction permits.
2. The following conditions of approval shall be satisfied with City Staff prior to the issuance of any construction permits:
- a. The Drainage Plan shall be revised and resubmitted for review and approval addressing comments listed in the Public Works memo dated September 24, 2014.
 - b. The Utility Plan shall be revised and resubmitted for review and approval addressing the comments listed in the Kenosha Water Utility Memo dated September 4, 2014.
 - c. An Operational Plan shall be submitted indicating construction commencement and completion dates, management and operational control, Deed Restrictions (if any) and By Laws or Property Owner's Association Articles of Incorporation.
 - d. The lawn park areas must be landscaped in accordance with the Zoning Ordinance. The existing trees will probably be destroyed or damaged during demolition of the existing structure. The grass in the lawn park area will be damaged. The Plan shall indicated that the lawn park areas will be restored.
 - e. The Site Plan shall include dimensioned exterior wall measurements for the building footprint.
 - f. The Fire Protection Plan shall include:
 - i. A remote Fire Department Connection.
 - ii. A standpipe system to be included in the sprinkler system.
 - iii. An alarm system to be installed per code including a command post.
 - g. The Building Plan must be revised to show compliance with the Vision Clearance Triangle at the driveway onto 4th Avenue. The Site Plan must also indicate what the "T" symbol with square around it is. Whatever this items is, if it is taller than three (3') feet, it shall be removed from the Vision Clearance Triangle.
 - h. A Construction Phasing Plan shall be submitted that shall include the construction staging area location.
 - i. A Developer's Agreement shall be approved and executed prior to the issuance of a Footings and Foundation Permit.
 - j. A letter shall be submitted for the file that indicates that the project will not seek a tax-exempt status.
 - k. The Site Plan shall show that the sidewalk around the entire block shall either be fully installed, repaired or replaced before a final Occupancy Permit is approved for Phase One.

Dated this ____ day of _____, 2014

_____ Signed

_____ Print Name



ENGINEERING DIVISION
 SHELLY BILLINGSLEY, P.E.
 CITY ENGINEER
 PARK DIVISION
 JEFF WARNOCK
 SUPERINTENDENT
 FLEET MAINTENANCE
 MAURO LENCI
 SUPERINTENDENT

STREET DIVISION
 JOHN H. PRIJIC
 SUPERINTENDENT
 WASTE DIVISION
 ROCKY BEDNAR
 SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
 SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
 TELEPHONE (262) 653-4050 · FAX (262) 653-4056
 EMAIL PUBLICWORKS@KENOSHA.ORG

TO: Brian Wilke, Development Coordinator

FROM: Michael M. Lemens, P.E.
 Director of Public Works

Shelly Billingsley, P.E.
 City Engineer

Shelly Billingsley
9-26-14

DATE: September 24, 2014
SUBJECT: PLAN REVIEW COMMENTS
Project Description: 5th Avenue Lofts
Location: 5821 5th Avenue

SEP 26 2014

Our staff has reviewed the plans for this project. The following comments are provided:

Parking Lot Ordinance Compliance	Sufficient	Deficient	Not Applicable
Parking Lot Paved	X		
Standard Stall Width		X	
Parking Lot Layout		X	
Parking Lot Lighting Shown		X	
Parking Lot Lighting Adequate		X	
Handicapped Parking		X	
Driveway Locations		X	
Driveway Width		X	
Passing Blister or Accel/Decel Lanes			X
Sidewalks Adequate		X	
Drive Thru Lane Design			X

Public Streets	Sufficient	Deficient	Not Applicable
Geometric Design			X
Pavement Width		X	
Pavement Thickness Design		X	
Established Grades		X	
Plan Details		X	
Sidewalks		X	
Street Lights		X	

Site Grading/Drainage	Sufficient	Deficient	Not Applicable
Drainage Plan		X	
Storm Sewer		X	
Storm Water Detention		X	
Drainage Calculations		X	

Project Approval/Permits Needed	Yes	No	Not Applicable
Project Approved for Permitting		X	
Withhold Permits: See Comments	X		
Approve Footing/ Foundation Only (per condition)		X	
Parking Lot Permit Required	X		
Driveway Permits Required	X		
Sidewalk Permit Required	X		
Street Opening Permit Required	X		
Stormwater Permit Required	?		
Erosion Control Required	X		
State Permit Required	X		

Grading & Drainage Comments:

1. On sheet C-4.0 it states that the parcel is 1.11 acres and the disturbed area will be 0.83 acres. From the plans it appears that the entire parcel will be disturbed. Show a limits of disturbance line on the plans to show what is proposed to be disturbed.
2. If project is to disturb more than one acre then a stormwater permit is required. The disturbed area will be subject to the City's post-construction stormwater requirements for a redevelopment site which include a 40% total suspended solids reduction. If the current phase of the development involves less than one acre of disturbance then no post construction stormwater requirements would have to be met now, but when the next phase is constructed the requirements would have to be met for both phases. It is recommended that the current plan be designed to accommodate this so that phase 1 improvements would not need to be redone in future phases.
3. Provide storm sewer sizing calculations.
4. Storm manhole 1 is called out on sheet C-6.0 as a doghouse manhole. This should be a standard type A manhole per the City's standard detail.

5. Proposed grading plan calls for lot 2 to be graded so that runoff is directed over the sidewalk in the southeast corner of the lot. Install a catch basin in this corner of the lot and direct runoff to the catch basin so runoff does not drain over the sidewalk.
6. Proposed grading plan shows some water from lot 2 being drained onto lot 1 and being collected by catch basin 2.1. If runoff from lot 2 is to be drained onto lot 1 then a drainage easement will be required between the two lots.
7. Provide more detailed plans on the inlet relocation and storm sewer work within 4th Avenue.

Traffic Comments:

8. New sidewalk around entire block.
9. First floor garage parking stall dimensions to be per ordinance table 1 and 2 in section V page 40-41.
10. Remove existing unused approaches and replace with full head curb.
11. East side of 4th Av remove unused approaches and gravel and replace with new sidewalk.
12. Conduct Phase I Report and remediate any identified areas.
13. Install no parking signs on west side of 4th Av.
14. Wheel stops missing on parking stalls.
15. With 105 bedrooms in development, only 60 parking stalls seems inadequate
16. One handicap stall for every 25 stalls, with only 2 shown on plan need one more handicap parking stall.
17. In surface parking lot, west most parking stall may require driver to back entirely out of lot and into street.
18. Where is trash truck supposed to park to load trash from trash room?
19. Manhole adjustments should be made using rings not bricks.
20. Reconstruct 4th Av pavement curb to curb not just 11 feet.
21. Sheets C 9 through STD 10 missing from submittal.

cc: Jeff Hansen
Shelly Billingsley
Greg Holverson
Kile Kuhlmeier
Gerard Koehler
Anthony Stupar
Chase Kuffel

Engineering Services
4401 Green Bay Road
Kenosha WI 53144

Phone (262) 653-4315
Fax (262) 653-4303



"Providing and Protecting Kenosha's Greatest Natural Resource"

MEMO

To: Brian Wilke, Development Coordinator

From: Ian C. Bagley, P.E., Water Engineer

Date: September 4, 2014

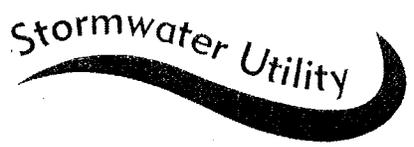
Subject: 5th Avenue Lots

Location: 5821 5th Avenue

The Kenosha Water Utility (KWU) has reviewed the submittal for the above referenced project. Further information from the Developer is required before the Utility can complete this review. Please withhold all permits until the following information is submitted.

1. The plans provided were not to a discernible scale, making a detailed review difficult. Plans printed to scale shall be provided with the resubmittal.
2. Show the water meter size and location, including a detail or diagram, on the construction plans, not with the MEP submittal. The water meter shall have unobstructed access, twelve inches (12") from the inside wall, twelve to twenty-four inches (12"-24") above the floor. The meter shall have a valve, preferably a ball valve, on the inlet and outlet pipe.
3. Water services larger than two inches (2") shall be flushed and bacteria tested in accordance with Rule 06-34 of the Kenosha Water Utility Rules and Regulations.
4. KWU will need to inspect the existing water and sanitary sewer service removals or abandonments.
5. The water service connection will require a tapping sleeve and valve, to be provided by KWU. As the tapping valve is greater than ten feet (10') from the property line, an additional valve will be required between the curb & gutter and the sidewalk in accordance with Rule 06-03 of the Kenosha Water Utility Rules and Regulations. This second valve will function as the service valve for the development.
6. Please note that the water service connection will require a deposit of \$1,800.00 which must be paid prior to scheduling the connection.

CC: Mr. Robert Carlson, P.E., Director of Engineering Services



We have a stake in our lake!

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
CATHY AUSTIN, P.E.
ASSISTANT CITY ENGINEER
KILE KUHLMEY
SOIL EROSION SPECIALIST

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

DEPARTMENT OF STORMWATER UTILITY
MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL SWU@KENOSHA.ORG

November 25, 2014

To: Patrick A. Juliana, Chairman
Stormwater Utility Committee

From: Shelly Billingsley *Shelly Billingsley*
Deputy Director of Public Works/City Engineer

Subject: Permanent Storm Sewer Easement and Agreement between Keno Wells, LLC, and 5th Avenue Lofts, LLC and the City of Kenosha, Wisconsin.

BACKGROUND/ANALYSIS

The City Attorney's office has prepared an easement and agreement between the City and Keno Wells, LLC and 5th Avenue Lofts, LLC. Staff has reviewed the agreement and has no objections.

RECOMMENDATION

Staff recommends approval.

SAB/kjb

PERMANENT STORM SEWER
EASEMENT & AGREEMENT BETWEEN KENO
WELLS, LLC AND 5TH AVENUE LOFTS, LLC
AND THE CITY OF KENOSHA, WISCONSIN

Document Number

Document Title

This space is reserved for recording data

Return to:

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

12-223-31-487-003

Parcel Identification Number

PERMANENT STORM SEWER
EASEMENT & AGREEMENT

Between

KENO WELLS, LLC
A Wisconsin Limited Liability Company

And

5TH AVENUE LOFTS, LLC
A Wisconsin Limited Liability Company

And

THE CITY OF KENOSHA
A Municipal Corporation

This Permanent Storm Sewer Easement and Agreement (“Easement and Agreement”) effective as of the last date of execution is entered into between KENO WELLS, LLC, and 5TH AVENUE LOFTS, LLC, each a Wisconsin limited liability company, each with principal offices located at 4011 80th Street, Kenosha, Wisconsin 53142 as (“Grantor”) and the City of Kenosha, a municipal corporation duly organized and existing under the laws of the State of Wisconsin (“Grantee”).

Grantor is the owner of real estate legally described on Exhibit A situated in the City of Kenosha, County of Kenosha, State of Wisconsin, hereinafter referred to as “Real Estate.”

Grantor, in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions below provided, does hereby grant to Grantee a permanent easement, in, to and under and across that certain portion of the Real Estate legally described and shown on Exhibit B (the “Easement Area”) to install, construct, expand, replace, maintain, and repair storm sewer and appurtenances as described in the Conditional Use Permit, the executed Development Agreement and the Stormwater Management Practices Maintenance Agreement for Stormwater Maintenance Facilities, copies of which are on file with the City of Kenosha Department of Community Development and Inspections and the Department of Public Works, (hereinafter “Permitted Work”) for the purposes of conveying and detaining storm sewerage over, across, through, and under the Real Estate, together with the right to, within the Easement Area, excavate and refill ditches and/or trenches, install appurtenances, and the further right to, within the Easement Area,

remove trees, bushes, undergrowth, and remove other structures and obstructions interfering with the Permitted Work.

Grantor shall have and retain all other rights not granted to Grantee to the use and occupancy of the Easement Area, provided that no structure, landscaping or paving shall be erected or placed over or upon the Easement Area without the advance, written approval of the Director of Public Works of the City of Kenosha, and then subject to reasonable conditions, such as, but not limited to, replacement or removal of authorized improvements at the cost of Grantor, when required by Grantee. Unauthorized improvements on the Easement Area by Grantor are subject to removal by Grantee.

For the purpose of performing Permitted Work, Grantee shall have the right to enter and pass over and use the Real Estate and the lands of Grantor reasonably adjacent thereto for the temporary transportation, laying down, and storage of materials, backfill, tools and equipment, the depositing and removal of excavated materials, and for other purposes incidental to the Permitted Work. Upon completion of Permitted Work, restoration of the Easement Area by the Grantee shall be limited to backfilling ditches and/or trenches, topsoil, seeding and debris removal. Upon completion of Permitted Work, Grantor, at Grantor's cost and expense, shall be responsible for all other restoration within the Easement Area and surrounding property to the condition prior to such Permitted Work.

This Easement and Agreement shall run with the land and be binding upon the heirs, successors and assigns of the parties hereto. However, this Easement and Agreement shall not take effect until it is fully executed by the Grantor and Grantee. Each person who executes this Easement and Agreement certifies that they are acting within the scope of their respective authority in doing so.

This Easement and Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Grantor, Grantee and their respective successors and assigns shall have all rights to enforce this Easement and Agreement at law or in equity.

SIGNATURE PAGES FOLLOW

GRANTOR:

KENO WELLS, LLC
A Wisconsin Limited Liability Company
By: Bear Development, LLC, its member

By: _____
STEPHEN C. MILLS, Manager

Date: _____

By: _____
STEPHEN R. MILLS, Manager

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014 Stephen C. Mills and Stephen R. Mills, as Managers of Bear Development, LLC, the sole member of KENO WELLS, LLC, a Wisconsin limited liability company, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission expires/is: _____

GRANTOR:

5TH AVENUE LOFTS, LLC,
a Wisconsin Limited Liability Company

By: 5TH AVENUE LOFTS MEMBER, LLC,
a Wisconsin Limited Liability Company,
its Managing Member

By: BEAR DEVELOPMENT LLC,
a Wisconsin Limited Liability Company,
its Authorized Member

By: STEPHEN R. MILLS, Authorized Member

STATE OF WISCONSIN)

:SS.

COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014 Stephen R. Mills, Authorized Member of Bear Development LLC, Authorized Member of 5th Avenue Lofts Member, LLC, Managing Member of 5th Avenue Lofts, LLC, a Wisconsin limited liability company to me known to be the person who executed the foregoing instrument and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission expires/is: _____

GRANTEE:

THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation

BY: _____
KEITH G. BOSMAN, Mayor

Date: _____

BY: _____
DEBRA SALAS, City Clerk/Treasurer

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, KEITH G. BOSMAN, Mayor, and DEBRA SALAS, City Clerk/Treasurer of the CITY OF KENOSHA, WISCONSIN, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

DRAFTED BY:
Jonathan A. Mulligan
Assistant City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

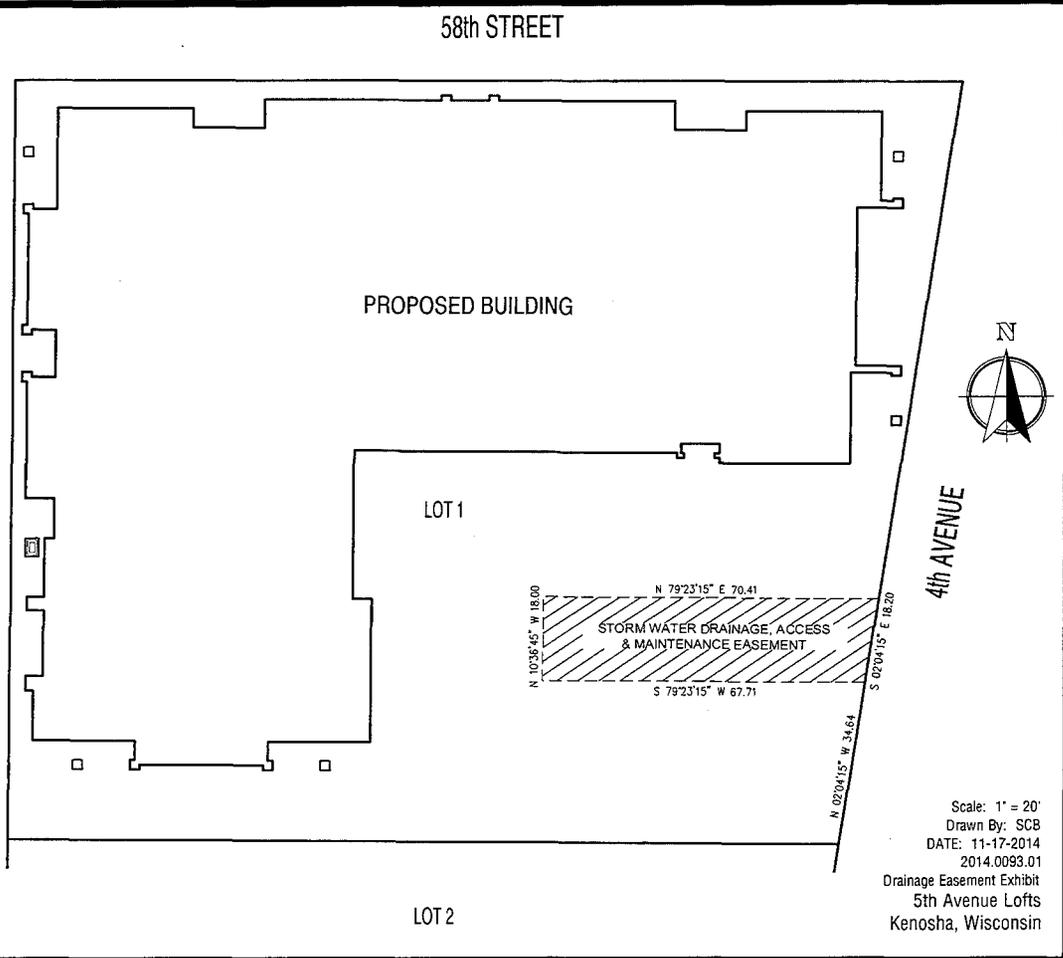
LOT 1 AND LOT 2 OF CERTIFIED SURVEY MAP NO. _____ RECORDED WITH THE KENOSHA COUNTY REGISTER OF DEEDS ON _____, 2014 AS DOCUMENT NO. _____, BEING THE RE-DIVISION OF PART OF LOTS 1, 2, AND 3 IN BLOCK 45 OF THE ORIGINAL TOWN OF SOUTHPORT, BEING A PART OF SE 1/4 OF THE SE 1/4 OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 23 EAST, IN THE CITY OF KENOSHA, KENOSHA COUNTY, WISCONSIN.

Parcel Identification Number: 12-223-31-487-003

EXHIBIT B
EASEMENT AREA

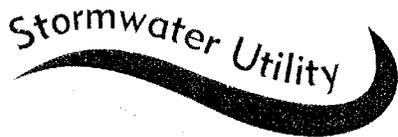
STORM WATER DRAINAGE, ACCESS & MAINTENANCE EASEMENT

Being part of the Southeast 1/4 of Section 31, Township 2 North, Range 23 East, in the City of Kenosha, Kenosha County, Wisconsin, described as follows: Begin at a point on the West right-of-way of 4th Avenue located N02°04'15"W 34.64 feet from the Southeast corner of Lot 1 of proposed Certified Survey Map, run thence S79°23'15"W 67.71 feet; thence N10°36'45"W 18.00 feet; thence N79°23'15"E 70.41 feet to the West line of said right-of-way; thence S02°04'15"E 18.20 feet along said right-of-way to the point of beginning. Containing 1,243 s.f.



Nielsen Madsen & Barber S.C.
Civil Engineers and Land Surveyors
1458 Horizon Blvd, Suite 200, Racine, Wisconsin 53406
Phone (262) 634-5588 * Facsimile (262) 634-5024 * Website nimbosc.net

Scale: 1" = 20'
Drawn By: SCB
DATE: 11-17-2014
2014.0093.01
Drainage Easement Exhibit
5th Avenue Lofts
Kenosha, Wisconsin



We have a stake in our lake!

DEPARTMENT OF STORMWATER UTILITY

MICHAEL M. LEMENS, P.E., DIRECTOR

SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
CATHY AUSTIN, P.E.
ASSISTANT CITY ENGINEER
KILE KUHLMEY
SOIL EROSION SPECIALIST

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

4

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL SWU@KENOSHA.ORG

November 25, 2014

To: Patrick A. Juliana, Chairman
Stormwater Utility Committee

From: Shelly Billingsley 
Deputy Director of Public Works/City Engineer

Subject: Stormwater Management Practices Maintenance Agreement for Stormwater Management Facilities between the City of Kenosha, Wisconsin and Keno Wells, LLC and 5th Avenue Lofts, LLC

BACKGROUND/ANALYSIS

The City Attorney's office has prepared a stormwater management practices maintenance agreement for stormwater management facilities between the City and Keno Wells, LLC and 5th Avenue Lofts, LLC. Staff has reviewed the agreement and has no objections.

RECOMMENDATION

Staff recommends approval.

SAB/kjb

STORMWATER MANAGEMENT PRACTICES
MAINTENANCE AGREEMENT FOR
STORMWATER MANAGEMENT FACILITIES
BETWEEN THE CITY OF KENOSHA,
WISCONSIN, AND KENO WELLS, LLC AND 5TH
AVENUE LOFTS, LLC

Document Number

Document Title

Return to:

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

Parcel Identification Number

12-223-31-487-003

STORMWATER MANAGEMENT PRACTICES
MAINTENANCE AGREEMENT FOR STORMWATER
MANAGEMENT FACILITIES

Between

THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation,

And

KENO WELLS, LLC
A Wisconsin Limited Liability Company

And

5TH AVENUE LOFTS, LLC
A Wisconsin Limited Liability Company

THIS AGREEMENT, effective as of the last date of execution is entered into between the City of Kenosha, Wisconsin, a municipal corporation duly organized and existing under the laws of the State of Wisconsin (“CITY”) and KENO WELLS, LLC, and 5TH AVENUE LOFTS, LLC, each a Wisconsin limited liability company, each with principal offices located at 4011 – 80th Street, Kenosha, Wisconsin 53142 (“OWNER”), collectively referred to as the Parties.

W I T N E S S E T H:

WHEREAS, OWNER owns the real estate legally described on Exhibit A situated in the City of Kenosha, County of Kenosha, State of Wisconsin, hereinafter referred to as “REAL ESTATE”; and,

WHEREAS, the CITY, the OWNER, and the OWNER'S successors and assigns, including any owners' association, agree that the health, safety and welfare of the residents of the City of Kenosha, Wisconsin, require that on-site stormwater drainage facilities hereinafter referred to as “Stormwater Management Facilities” be designed, constructed and maintained on the REAL ESTATE to properly manage stormwater runoff in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, the Conditional Use Permit, the Development Agreement between the CITY and OWNER, and this Agreement; and

WHEREAS, the CITY requires that on-site Stormwater Management Facilities are adequately maintained by the OWNER and the OWNER'S successors and assigns, including any owners' association, in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, the Conditional Use Permit, the Development Agreement and this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements of the Parties, CITY and OWNER agree as follows:

1. The OWNER and the OWNER'S successors and assigns, including any owners' association, shall regularly inspect the Stormwater Management Facilities on the REAL ESTATE as often as conditions require, but in any event at least twice each year. The Stormwater Inspection and Maintenance Checklist attached to this Agreement as Exhibit B, and by this reference made a part hereof, shall be used for the purpose of the regular inspections of the Stormwater Management Facilities on the REAL ESTATE. The OWNER and the OWNER'S successors and assigns, including any owners' association, shall keep the Stormwater Inspection and Maintenance Checklist from past inspections, as well as a log of maintenance activity indicating the date and type of maintenance completed for a period of three (3) years following such inspection or maintenance. The Stormwater Inspection and Maintenance Checklist and the Maintenance Log shall be made available to the City Stormwater Utility for review. The purpose of the inspections is to assure safe and proper functioning of the Stormwater Management Facilities on the REAL ESTATE. The inspections shall cover all Stormwater Management Facilities on the REAL ESTATE, including, but not limited to, conveyance systems, berms, outlet structures, basin areas and access roads. Any deficiencies shall be noted in the Stormwater Inspection and Maintenance Checklist.

2. The OWNER and the OWNER'S successors and assigns, including any owners' association, shall adequately maintain all Stormwater Management Facilities on the REAL ESTATE, including, but not limited to, all pipes and channels built to convey stormwater to and from the Stormwater Management Facilities, as well as all structures, improvements and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as keeping the Stormwater Management Facilities in good working condition so that the Stormwater Management Facilities are performing their design functions and are maintained in accordance with the Stormwater Maintenance Standards attached to this Agreement as Exhibit C, hereinafter referred to as "Maintenance Standards".

3. The OWNER and the OWNER'S successors and assigns, including any owners' association, hereby grant permission to the CITY, its authorized agents and employees, to enter upon the REAL ESTATE to inspect the Stormwater Management Facilities whenever the CITY deems necessary. The purpose of inspection is to investigate reported deficiencies, respond to citizen complaints, and to determine compliance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, the Conditional Use Permit, the Development Agreement, and this Agreement. The Director of the CITY Stormwater Utility, or designee thereof, shall provide the OWNER and the OWNER'S successors and assigns, including any owners' association, copies of the inspection findings and a directive to commence with corrective actions, if necessary. Corrective actions shall be taken within a reasonable time frame as established by the Director of the CITY Stormwater Utility.

4. If the OWNER or the OWNER'S successors and assigns, including any owners' association, fails to maintain the Stormwater Management Facilities on the REAL ESTATE in good working condition such that the Stormwater Management Facilities on the REAL ESTATE are not performing their designed control of the quantity and quality of stormwater acceptable to the Director of the CITY Stormwater Utility, or designee thereof, and does not perform the required corrective actions in the specified time, the CITY may take one or more of the following actions:

a. Issue a citation to the OWNER or the OWNER'S successors and assigns under Section 36.13 of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time.

b. Perform the corrective actions identified in the Inspection Report and assess the OWNER or the OWNER'S successors and assigns, including any owners' association, for the cost of such work and all administrative costs associated with performing such work. The cost of such work shall be assessed against the REAL ESTATE as a special charge pursuant to Section 66.0627, Wisconsin Statutes. This provision shall not be construed to allow the CITY to erect any structure of a permanent nature on the land of the OWNER outside of the easement area for the Stormwater Management Facilities. It is expressly understood and agreed that the CITY is under no obligation to routinely maintain or repair the Stormwater Management Facilities on the REAL ESTATE, and in no event shall this Agreement be construed to impose any such obligation on the CITY.

c. Revoke the Stormwater Quality Credit and/or Stormwater Quantity Credit as defined in Chapter VIII of the Code of General Ordinances for the City of Kenosha, as may be amended from time to time, until OWNER submits a revised Operation and Maintenance Report or a minimum of one (1) year.

5. The OWNER and the OWNER'S successors and assigns, including any owners' association, will perform the work necessary to keep the Stormwater Management Facilities on the REAL ESTATE in good working order, as appropriate. The minimal amount of maintenance required to be performed on the Stormwater Management Facilities shall be in accordance with the Maintenance Standards attached as Exhibit C which may be amended by CITY from time to time.

6. In the event CITY, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials and the like, the OWNER and the OWNER'S successors and assigns, including any owners' association, shall reimburse the CITY within thirty (30) days of receipt of written demand for payment of all actual costs incurred by the CITY hereunder. Failure of the OWNER and the OWNER'S successors and assigns, including any owners' association to reimburse the CITY within thirty (30) days shall result in the costs being assessed against the REAL ESTATE as a special charge pursuant to Section 66.0627, Wisconsin Statutes.

7. Under this Agreement, CITY assumes no responsibility or any liability in the event the Stormwater Management Facilities on the REAL ESTATE fail to operate properly and OWNER and the OWNER'S successors and assigns, including any owners' association, shall indemnify, defend and hold harmless CITY, its officers, employees and agents against any such claims.

8. This Agreement shall be attached as an exhibit to any document which creates an owners' association that is responsible for maintenance of the Stormwater Management Facilities on the REAL ESTATE, shall be recorded at the Kenosha County Register of Deeds, shall constitute a covenant running with the land, and shall be binding on the OWNER and the OWNER'S successors in interest, including any owners' association. The OWNER shall provide the Director of the CITY Stormwater Utility with a copy of any document which creates

an owners' association that is responsible for maintaining the Stormwater Management Facilities on the REAL ESTATE.

9. All notices, requests, demands and other matters required to be given, or which may be given hereunder, shall be in writing and shall be deemed given when delivered in person or when deposited in the United States mail, certified, return receipt requested, postage prepaid, or equivalent private delivery service, addressed to the respective Party at the addresses stated below:

a. OWNER:

Keno-Wells, LLC/
5TH Avenue Lofts, LLC
Attn: S.R. Mills
4011 80th Street
Kenosha, WI 53142

with copies to:

Hotvedt & Terry, LLC
Attn: John E. Hotvedt
4015 – 80th Street, Suite H
Kenosha, WI 53142

b. CITY:

City Clerk/Treasurer
City of Kenosha
625 52nd Street, Room 105
Kenosha, Wisconsin 53140

With copies to:

Director, Stormwater Utility
City of Kenosha
625 52nd Street, Room 305
Kenosha, Wisconsin 53140

and

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

11. Nothing contained herein shall be deemed to be a dedication of the Stormwater Management Facilities on the REAL ESTATE to the public. OWNER reserves all rights to use the REAL ESTATE for all purposes not inconsistent with the rights granted to the CITY herein or in that certain Permanent Storm Sewer Easement and Agreement by and between the OWNER and CITY in connection with the Stormwater Management Facilities.

Signature Pages Follow

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the dates below given.

CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation,

By: _____
KEITH G. BOSMAN, Mayor

Date: _____

By: _____
DEBRA SALAS, City Clerk/Treasurer

Date: _____

STATE OF WISCONSIN)
) SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, KEITH G. BOSMAN, Mayor, and DEBRA SALAS, City Clerk/Treasurer, of the CITY OF KENOSHA, WISCONSIN, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said corporation, by its authority.

Name: _____
Notary Public, Kenosha County, Wisconsin
My Commission expires/is: _____

KENO WELLS, LLC
A Wisconsin Limited Liability Company
By: Bear Development, LLC, its member

By: _____
STEPHEN C. MILLS, Manager

Date: _____

By: _____
STEPHEN R. MILLS, Manager

Date: _____

STATE OF WISCONSIN)
):SS.
COUNTY OF)
KENOSHA

Personally came before me this _____ day of _____, 2014 Stephen C. Mills and Stephen R. Mills, as Managers of Bear Development, LLC, the sole member of KENO WELLS, LLC, a Wisconsin limited liability company, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission expires/is: _____

5TH AVENUE LOFTS, LLC,
a Wisconsin Limited Liability Company

By: 5TH AVENUE LOFTS MEMBER, LLC,
a Wisconsin Limited Liability Company,
its Managing Member

By: BEAR DEVELOPMENT LLC,
a Wisconsin Limited Liability Company,
its Authorized Member

By: STEPHEN R. MILLS, Authorized Member

STATE OF WISCONSIN)

:SS.

COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014 Stephen R. Mills,
Authorized Member of Bear Development LLC, Authorized Member of 5th Avenue Lofts
Member, LLC, Managing Member of 5th Avenue Lofts, LLC, a Wisconsin limited liability
company to me known to be the person who executed the foregoing instrument and
acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission expires/is: _____

Drafted By:
JONATHAN A. MULLIGAN
Assistant City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

EXHIBIT B

STORMWATER INSPECTION AND MAINTENANCE CHECKLIST

5th Avenue Lofts Stormwater Inspection and Maintenance Checklist

Owner: <u>5th Avenue Lofts</u>	Phone No.: <u>262-842-0454</u>			
Parcel No. <u>12-223-31-487-003</u>	Address: <u>5821 5th Avenue</u>			
City: <u>Kenosha</u>	State: <u>Wisconsin</u>			
Zip: <u>53140</u>	Contact Name: <u>Josh Molter</u>			
Date of Inspection (mm/dd/yy): _____	Inspection <input type="checkbox"/> 6 Month <input type="checkbox"/> Other _____			
Time of Inspection Start: _____ End: _____	Name of Individual Performing Inspection (please print): _____			
Weather Conditions during Inspection: _____				
Stormwater Facility Inspection				
Condition	Good	Bad	Requires Maintenance	Notes: (Condition / Corrective Action)
General Site Conditions				
Greenspace				
Curb & Gutter				
Catch Basins				
Stormsewer				
Gutters/Downspouts				
Underground Storage Systems				
Outlet Structure Condition				
Inlet Pipe Conditions				
Sediment Level	height		% of Area	
Floating debris	Yes	No		
Cracked or Damaged Sections	Yes	No		
Signature of Inspector _____	Date _____			
Signature of Owner _____	Date _____			

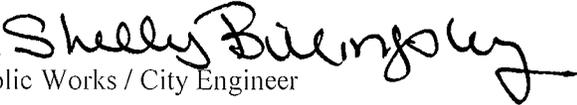
EXHIBIT C
STORMWATER MAINTENANCE STANDARDS

5th Avenue Lofts
Storm Water Maintenance Standards – Reference Only

1. Greenspace: Vegetation shall be maintained to prevent erosion caused by stormwater runoff. An inspection shall be made at least every 6 months. If vegetation is no longer in good condition it shall be replanted.
2. Curb & Gutter: All curb and gutter shall be inspected every 6 months. This inspection shall include the condition of the gutter and the cleanliness of the gutter. This shall be maintained to allow for proper drainage of the area.
3. Storm Sewer: All storm sewers shall be inspected once a year. This inspection shall include the condition of the main line storm sewers to ensure that the system is functioning according to the design requirements.
4. Catch Basins and inlets: All catch basins and inlets shall be inspected every 6 months and periodically cleaned to remove accumulated sediment.
5. Gutters and Downspouts: All building's gutters and downspouts shall be inspected every 6 months and periodically cleaned to remove accumulated sediment.
6. Underground Detention Facilities
 - a. Sediment Removal: Detention Chambers must be cleaned, when it exceeds 15% of the storage area, to remove accumulated trash, sediment and other debris or more often based on manufacturer's recommendations. This debris must be removed from the pipes and not allowed to travel downstream.
 - b. Annual Inspections:
 - 1.The Drain Inlets and outlets shall be inspected for debris and obstructions to ensure that runoff can move freely within the facility.
 - 2.Inspect facility for floating debris and sediment buildup.
 - 3.The Detention Chambers shall be inspected to ensure that they are not cracked or damaged and all necessary repairs must be made.
 - 4.The permanent water level shall be measured to ensure the device is not leaking.

November 26, 2014

TO: Michael M. Lemens, P.E.
Director of Public Works / Stormwater Utility

FROM: Shelly Billingsley, P.E. 
Deputy Director of Public Works / City Engineer

SUBJECT: Stormwater Utility Project Status Report

- Project #10-1126 Wetland Mitigation Bank** - [Wetlands and Waterways Consulting LLC] Technical memo was submitted to DNR and Army Corp. (16)
- Project #11-1128 Multi-Plate Pipe Storm Sewer Inspection and Evaluation** – [Ruekert-Mielke] Staff is working with consultant on recommendations and cost estimates. (2 and 7)
- Project #11-1135 Stormwater Management Plan Development** – Staff continues to work through City watershed by watershed. (City wide)
- Project #12-1111 Misc. Storm Sewer – Sump Pump Connections** – Staff is preparing plans and specs for construction in 2015. (12)
- Project #12-1136 Pike River Monitoring (Fund for Lake Michigan Grant)** – Consultant is working on draft report. (1 & 4)
- Project #13-1012 - Resurfacing I** – [Stark] Waiting for Closeout Documents. [Lincoln Road intersection at 28th Avenue, Lincoln Road intersection at 22nd Avenue, 70th Street from 39th Avenue to 40th Avenue] (Stormwater Utility funding also) (13, 15)
- Project #13-1013 -CDBG Resurfacing** – [Stark] Waiting for Closeout Documents. [13th Court from Washington Road to 43rd Street, 41st Street from 22nd Avenue to 350 ft. east of 21st Avenue] (Stormwater Utility funding also) (6)
- Project #13-1131 - Sidewalk and Curb and Gutter** – [AW Oakes] Waiting Closeout Documents. (Public Works funding also) (Citywide)
- Project #14-1012 – Resurfacing Phase I** – [Payne & Dolan] Project is near completion, only pavement markings and punchlist items remain. [18th Avenue from 67th to 69th Street, 68th Avenue from 52nd Street to 1000' North and 51st Street from 68th Avenue to 700' West] (12, 16)
- Project #13-1417 - Tree Removal** – Project underway. (Parks funding) (Citywide)
- Project #14-1131 – Curb and Gutter Repair Program** – [AW Oakes] Punchlist items remain (Stormwater Utility funding also) (Citywide)
- Project #13-1132 – River Crossing Swale Restoration Phase II** – No bids were received will re-advertise in Spring of '15. (17)
- Project #13-1133 – Oil Drop-Off Structures** – Street Division Personnel will be constructing shelters in winter when time allows for installation in spring. (2,15)
- Project #14-1139 Forest Park Sanitary and Sewer Enhancements**– [AW Oakes] –Work has begun. Sanitary Sewer and Watermain work are 100% Completed. Storm Sewer is 90% completed. The grading work on 61st Street is complete and paving is expected between November 28th and December 2nd. The grading work on 65th Street is on-going and paving is expected the first week of December. Final restoration will be completed in the spring of 2015. (15)

Design Work- Staff is working on the following projects: Detention Basin Dredging, Sump Pump Priorities, SWPPP Updates, Website Design, GPS Data Forms, Storm Sewer Investigation for Roadway Projects, Permit Compliance, SWU Reporting, Pollution Prevention Structures, Stormwater Management Facility Inspections, Miscellaneous Storm Sewer, projects for contractor and SWU crews, Yardwaste coupons