

**AGENDA
STORMWATER UTILITY
COMMITTEE**

**MONDAY, DECEMBER 21, 2015
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 December 7, 2015.

1. Development Agreement between the City of Kenosha and the Kenosha Water Utility and Continental 315 Fund LLC. (Springs at Kenosha) **(District 16)** *(City Plan Commission approved 7-0) (also referred to Board of Water Commissioners and Public Works Committee) (Backup is included in Public Works Committee packet)*
2. Stormwater Drainage Facilities Maintenance Agreement between the City of Kenosha, Wisconsin and Continental 315 Fund LLC (Springs at Kenosha). **(District 16)**
3. Permanent Storm Sewer and Detention Pond Easement and Agreement between Continental 315 Fund LLC and the City of Kenosha, Wisconsin (Springs at Kenosha). **(District 16)**
4. Disbursements for the month of November 2015.

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, DECEMBER 7, 2015
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, December 7, 2015 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 5:45 PM. Staff members in attendance were Shelly Billingsley, Acting Director of Public Works; Alderman Jack Rose.

Approval of minutes of special meeting held on November 9, 2015 and regular meeting held on November 16, 2015.

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

1. Addendum to Professional Services Agreement with Mandlik and Rhodes Information Systems, Inc., for Redemption Processing of Yardwaste Coupons. *(also referred to Finance Committee)*
It was moved by Alderman Michalski, seconded by Alderman Jenkins to approve. Motion passed 6-0.
2. First Amendment to the Development Agreement between the City of Kenosha and Keno Wells, LLC and 5th Avenue Lofts, LLC. (District 2) *(City Plan Commission approved 9-0) (also referred to Public Works Committee)*
It was moved by Alderman Jenkins, seconded by Alderman Haugaard 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 5:48 PM.



Thursday, December 10, 2015 at 5:00 pm
Municipal Building
625 52nd Street - Room 202 - Kenosha, WI 53140

Development Agreement between the City of Kenosha and the Kenosha Water Utility and Continental 315 Fund LLC. (Springs at Kenosha) (District 16) PUBLIC HEARING

NOTIFICATIONS AND APPROVAL REQUIREMENTS:

Aldersperson Johnson, District 16, has been notified. The Agreement will be reviewed by the Public Works Committee and Board of Water before final approval by the Common Council.

LOCATION AND ANALYSIS:

Site: West of 125th Avenue at 71st Street

1. The Developer is proposing to construct a multi-family development on the site which requires a Conditional Use Permit and a Certified Survey Map. Public improvements are required as a condition of the development.
2. The attached Agreement denotes each of the Developers responsibilities in constructing the improvements, including 71st Street.
3. An additional Agreement will be required for future development of the other lots.

RECOMMENDATION:

A recommendation is made to approve the Development Agreement.

Rich Schroeder, Deputy Director

Jeffrey B. Labahn, Director

/u2/acct/cp/ckays/1CPC/2015/DEC10/10Staff-devagree-Springs.doc

DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF KENOSHA AND THE
KENOSHA WATER UTILITY AND
CONTINENTAL 315 FUND LLC

Document Number

Document Title

This space is reserved for recording data

Return to:

Jonathan A. Mulligan
Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

03-121-01-420-212

Parcel Identification Number

DEVELOPMENT AGREEMENT

Between

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

And

**THE KENOSHA WATER UTILITY
A Municipal Water Utility**

And

**CONTINENTAL 315 FUND 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"), the Kenosha Water Utility, a municipally owned public water utility duly organized and existing under the Code of General Ordinances for the City of Kenosha and Section 66.0805 of the Wisconsin Statutes ("Utility"), and Continental 315 Fund LLC, a Wisconsin limited liability company with principal offices located at W134 N8675 Executive Parkway, Menomonee Falls, Wisconsin 53051 ("Developer"), collectively referred to as the Parties.

WITNESSETH:

Whereas, Developer is the owner of approximately 48.46 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, together with the land comprising portions of 71st Street, 130th Avenue and 67th Street to be dedicated to the public for street purposes, all of which is hereinafter referred to as the "Real Estate"; and,

Whereas, Developer desires to develop a portion of the Real Estate for commercial purposes as fourteen, twenty unit apartment buildings and a clubhouse on Lot 1 shown on the certified survey map attached as Exhibit B (the "Phase I Development"); and

Whereas, the Phase I Development of the Real Estate by Developer requires the design, construction and installation by Developer of certain utility improvements, street improvements, stormwater drainage facilities, and other improvements, all of which are more fully described in this Agreement; and,

Whereas, the Parties acknowledge and agree that the improvements to be made by Developer pursuant to this Agreement are to be completed, dedicated and accepted by City, Utility, and the Wisconsin

Department of Transportation, as the case may be, prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate; and,

Whereas, the Real Estate is zoned TRD-2 Traditional Multiple Family Residential District, FW Floodway District, SWO Shoreland Wetland Overlay District, and AIR-4 Airport Overlay District Overflight at the time of execution of this Agreement which permits the 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 the Real Estate on the condition that Developer enter into this Agreement relative to the manner and method by which the Phase I Development of the Real Estate is to be developed subject to the requirements of this Agreement; and,

Whereas, the Plan Commission of City has approved a conditional use permit attached as Exhibit C for the Phase I Development of the Real Estate on the condition that Developer enter into this Agreement relative to the manner and method by which the Phase I Development of the Real Estate is to be developed subject to the requirements of this Agreement; and,

Whereas, Utility is the accepting and approving agency for City with respect to sanitary sewerage facilities and water supply and distribution facilities for the Real Estate, and Utility is willing to approve the provision of sanitary sewerage and water supply to the Phase I Development of the Real Estate subject to the terms and conditions of this Agreement; and

Whereas, Developer agrees to develop the Phase I Development of the 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 for the Real Estate and a conditional use permit for the Phase I Development of the Real Estate, and the provision by Utility of sanitary sewerage and water supply, the Parties agree that the Phase I Development of the Real Estate will be developed as provided in the certified survey map, the conditional use permit, and this Agreement.

I. IMPROVEMENTS

A. Sanitary Sewerage Facilities

1. Developer, at Developer's cost and expense, shall design, construct and install complete sanitary sewerage facilities serving the Phase I Development of the Real Estate, including the mains and appurtenances which are to be located in public rights-of-way, in accordance with Utility specifications, the conditional use permit, the certified survey map, the Sanitary Sewer Plan approved by Utility General Manager, all Wisconsin Department of Natural Resources (WDNR) requirements, and all Federal and State environmental law, 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 the sanitary

sewerage facilities from Utility General Manager prior to construction or installation of the sanitary sewerage facilities. Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications for the design, construction and installation of the sanitary sewerage facilities from the WDNR prior to construction or installation of the sanitary sewerage facilities. Developer shall provide copies of all WDNR approvals to Utility upon receipt.

2. Developer, at Developer's cost and expense, shall obtain all permits required by any governmental unit or regulatory agency for the construction and installation of the sanitary sewerage facilities required by the conditional use permit and this Agreement, including sanitary sewerage extensions and connections, prior to the construction and installation of the sanitary sewerage facilities. City and Utility shall cooperate with Developer in obtaining all permits required by any governmental unit or regulatory agency for the construction and installation of the sanitary sewerage facilities required by the conditional use permit and this Agreement, including sanitary sewerage extensions and connections.
3. Subject to the terms of the conditional use permit and this Agreement, Utility shall allow Developer to extend and connect the sanitary sewerage facilities required by the conditional use permit and this Agreement to the sanitary sewerage facilities of Utility at Developer's cost and expense including payment by Developer of all fees, user fees, inspection fees, impact fees, charges or special assessments required to be paid pursuant to any federal, state, county, City or Utility laws, ordinances, resolutions, rules, regulations, the conditional use permit and this Agreement.
4. Developer, at Developer's cost and expense, shall complete the construction and installation of the fully functional sanitary sewerage facilities required by the conditional use permit and this Agreement without defect, damage or non-conformance 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, all WDNR requirements, and all Federal and State environmental laws, rules and regulations.
5. Developer, at Developer's cost and expense, shall provide Utility with copies of the results of all tests and inspections of the sanitary sewerage facilities required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of sanitary sewerage facilities trench backfill.
6. Developer, at Developer's cost and expense, shall provide Utility with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the sanitary sewerage facilities. Developer, at Developer's cost and expense, shall provide Utility with written certification by a professional engineer registered in the State of Wisconsin that the sanitary sewerage facilities were designed, constructed, installed, completed, and function as intended in accordance with the approved Sanitary Sewer Plan, the Code of General Ordinances for the City of Kenosha, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. The "as-built" plans shall be provided to Utility

in print and digital form acceptable to Utility General Manager. Developer shall obtain approval of the "as-built" plans from Utility General Manager prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

7. Utility shall accept the sanitary sewerage 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 sanitary sewerage facilities in accordance with all approved plans and specifications, the Code of General Ordinances of the City of Kenosha, all WDNR requirements, 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 sanitary sewerage facilities 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations.
 - c. providing Utility with copies of the results of all tests and inspections of the sanitary sewerage facilities required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of sanitary sewerage facilities trench backfill.
 - d. approval by Utility General Manager of the stamped and certified "as-built" plans of the sanitary sewerage facilities required pursuant to Section I.A.6. of this Agreement.
 - e. payment of all fees and charges required to be paid by Developer for the sanitary sewerage facilities pursuant to the Code of General Ordinances 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 or in any easement located within the Real Estate.
 - h. certification of items a - g above by Utility General Manager.
 - i. approval by Utility Board of Water Commissioners upon recommendation of Utility General Manager of the sanitary sewerage facilities.

8. Developer, at Developer's cost and expense, shall be responsible for the maintenance and operation of the sanitary sewerage facilities required by the conditional use permit and this Agreement, including locate requests, unless and until the sanitary sewerage facilities are accepted by Utility. Upon acceptance of the sanitary sewerage facilities, Utility shall have full jurisdiction and ownership of the sanitary sewerage facilities located in the public rights-of-way and be responsible for their maintenance and operation subject to the guarantee of Developer provided in this Agreement.
9. The sanitary sewerage facilities required to be designed, constructed, and installed pursuant to Section I.A.1. of this Agreement, shall be installed, functional and accepted by Utility prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

B. Water Supply and Distribution Facilities

1. Developer, at Developer's cost and expense, shall design, construct, and install, complete water supply and distribution facilities serving the Phase I Development of the Real Estate, including the mains and appurtenances which are to be located in public rights-of-way, in accordance with Utility specifications, the conditional use permit, the certified survey map, the Water Main Plan approved by Utility General Manager, all WDNR requirements, 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 the water supply and distribution facilities from Utility General Manager prior to construction or installation of the water supply and distribution facilities. Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications for the design, construction and installation of the water supply and distribution facilities from the WDNR prior to construction or installation of the water supply and distribution facilities. Developer shall provide copies of all WDNR approvals to Utility upon receipt.
2. Developer, at Developer's cost and expense, shall grant to Utility an easement across and through that certain portion of the Outlot 2 Area shown on the certified survey map attached at Exhibit B for the purpose of ingress and egress by Utility to the real estate owned by Utility located at 13010 75th Street, Kenosha, Wisconsin identified at Tax Parcel No. 03-121-01-301-445, shown as Detail "A" on the Outlot 2 Area on the certified survey map attached as Exhibit B. The easement shall be subject to approval by Utility Board of Water Commissioners upon recommendation of Utility General Manager. The easement shall be recorded with the Kenosha County Register of Deeds at Developer's expense and shall be binding upon all current and subsequent owners of the Real Estate. The easement shall also be shown on the certified survey map for the Real Estate.
3. Developer, at Developer's cost and expense, shall obtain all permits required by any governmental unit or regulatory agency for the construction and installation of the water supply and distribution facilities required by the conditional use permit and this Agreement,

including water supply distribution facilities extensions and connections, prior to construction and installation of the water supply distribution facilities. City and Utility shall cooperate with Developer in obtaining all permits required by any governmental unit or regulatory agency for the construction and installation of the water supply and distribution facilities required by the conditional use permit and this Agreement, including water supply distribution facilities extensions and connections.

4. Subject to the terms of the conditional use permit and this Agreement, Utility shall allow Developer to extend and connect the water supply and distribution facilities required by the conditional use permit and this Agreement to the water supply and distribution facilities of Utility at Developer's cost and expense including payment by Developer of all fees, user fees, inspection fees, impact fees, charges or special assessments required to be paid pursuant to any federal, state, county, City or Utility laws, ordinances, resolutions, rules, regulations, the conditional use permit and this Agreement.
5. Developer, at Developer's cost and expense, shall complete the construction and installation of the fully functional water supply and distribution facilities required by the conditional use permit and this Agreement without defect, damage or non-conformance 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations.
6. Developer, at Developer's cost and expense, shall provide Utility with copies of the results of all tests and inspections of the water supply and distribution facilities required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of water supply facilities trench backfill.
7. Developer, at Developer's cost and expense, shall provide Utility with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the water supply and distribution facilities. Developer, at Developer's cost and expense, shall provide Utility with written certification by a professional engineer registered in the State of Wisconsin that the water supply and distribution facilities were designed, constructed, installed, completed, and function as intended in accordance with the approved Water Main Plan, the Code of General Ordinances for the City of Kenosha, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. The "as-built" plans shall be provided to Utility in print and digital form acceptable to Utility General Manager. Developer shall obtain approval of the "as-built" plans from Utility General Manager prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.
8. Utility shall accept the water supply and distribution facilities required to be designed, constructed and installed by Developer pursuant to this Agreement which are located in the public rights-of-way upon the following:

- a. completion of the water supply and distribution facilities in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, all WDNR requirements, 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 water supply and distribution facilities 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations.
 - c. providing Utility with copies of the results of all tests and inspections of the water supply and distribution facilities required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of water supply and distribution facilities trench backfill.
 - d. approval by Utility General Manager of the stamped and certified "as-built" plans of the water supply and distribution facilities required pursuant to Section 1.B.7. of this Agreement.
 - e. payment of all fees and charges required to be paid by Developer for the water supply and distribution facilities pursuant to the Code of General Ordinances 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 or in any easement located within the Real Estate.
 - h. certification of items a - g above by Utility General Manager.
 - i. approval by Utility Board of Water Commissioners upon recommendation of Utility General Manager of the water supply and distribution facilities.
9. Developer, at Developer's cost and expense, shall be responsible for the maintenance and operation of the water supply and distribution facilities required by the conditional use permit and this Agreement, including locate requests, unless and until the water supply and distribution facilities are accepted by Utility. Upon acceptance of the water supply and distribution facilities, Utility shall have full jurisdiction and ownership of the water supply and distribution facilities located in the public rights-of-way and be responsible for their

maintenance and operation subject to the guarantee of Developer provided in this Agreement.

10. The water supply and distribution facilities required to be designed, constructed, and installed pursuant to Section I.B.1. of this Agreement, shall be installed, functional and accepted by Utility prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

C. Stormwater Drainage Facilities

1. Developer, at Developer's cost and expense, shall design, construct and install stormwater drainage facilities located within the Real Estate and the public rights-of-way for the Phase I Development of the Real Estate, including storm and surface water drainage facilities, in accordance with City and Wisconsin Department of Transportation (WDOT) specifications, the conditional use permit, the certified survey map, the Stormwater Management Plan approved by City Engineer, the Storm Sewer Plan approved by City Engineer, all WDNR requirements, 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 by Developer until the Post-Construction Runoff Permit is issued to Developer by City. All land disturbing construction activities and the design, construction, installation and maintenance of the stormwater 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 Stormwater Drainage Facilities Maintenance Agreement, the Post-Construction Runoff Permit issued to Developer, all WDNR requirements, 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 stormwater drainage facilities and submit them to City Engineer for written approval which must be obtained prior to construction of the stormwater drainage facilities. The stormwater 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. Developer, at Developer's cost and expense, shall obtain all permits required by any governmental unit or regulatory agency for the construction and installation of the stormwater drainage facilities required by the conditional use permit and this Agreement,

including stormwater drainage facilities extension and connections. City shall cooperate with Developer in obtaining all permits required by any governmental unit or regulatory agency for the construction and installation of the stormwater drainage facilities required by the conditional use permit and this Agreement, including stormwater drainage facilities extensions and connections.

5. Title to all stormwater drainage facilities for the Phase I Development of the Real Estate, including retention/detention basins and outlet structures, located within the Real Estate or any easements located within the Real Estate as shown on the certified survey map, the approved Stormwater Management Plan and the approved Storm Sewer Plan, shall be retained by Developer or conveyed by Developer to an owners' association upon notice to City. Developer, or the owners' association as the case may be, shall be responsible for the inspection, maintenance and operation of all stormwater drainage facilities for the Phase I Development of the Real Estate located within the Real Estate or in any easement located within the Real Estate as shown on the certified survey map, the approved Stormwater Management Plan and the approved Storm Sewer Plan, and shall enter into a Stormwater Drainage Facilities Maintenance Agreement with City in accordance with Section 36.10 of the Code of General Ordinances to provide for their inspection, maintenance and operation. The Stormwater Drainage Facilities Maintenance Agreement shall be subject to approval by the Common Council for the City of Kenosha upon recommendation by City Engineer, the City of Kenosha Board of Public Works, and the Stormwater Utility Committee. The Stormwater Drainage Facilities Maintenance Agreement shall be recorded with the Kenosha County Register of Deeds at Developer's expense and shall be binding upon all current and subsequent owners of the Real Estate. The Stormwater Drainage Facilities Maintenance Agreement shall include among its provisions the following:
 - a. identification of the stormwater drainage facilities and designation of the drainage area served by the stormwater drainage facilities.
 - b. a schedule for the regular inspection, maintenance, repair, replacement, and operation of the stormwater drainage facilities consistent with the approved Stormwater Management Plan.
 - c. identification of the landowner or the owners' association responsible for the inspection, maintenance, repair, replacement, and operation of the stormwater drainage facilities.
 - d. requirement that the landowner or the owners' association inspect, maintain, repair, replace, and operate the stormwater drainage facilities in accordance with the schedule included in subparagraph b. above.
 - e. authorization for City to access the Real Estate to conduct inspections of the stormwater drainage facilities as necessary to determine whether the stormwater

drainage facilities are being maintained, repaired, replaced, and operated in accordance with the Stormwater Drainage Facilities Maintenance Agreement.

f. requirement that City maintain public records of the results of the inspections of the stormwater drainage facilities, to inform the landowner or the owners' association of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater drainage facilities into proper working condition.

g. agreement that the landowner or the owners' association responsible for the inspection, maintenance, repair, replacement, and operation of the stormwater 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, inspection, maintenance, repairs, or replacements of the stormwater drainage facilities upon the failure of the 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 the Real Estate for the charges incurred by City in performing or having performed on City's behalf the inspection, maintenance, repairs or replacement to the stormwater drainage facilities which are the subject of the Stormwater Drainage Facilities Maintenance Agreement.

6. Developer, at Developer's cost and expense, shall grant to City a Stormwater Drainage Facilities Easement to the stormwater drainage facilities for the Phase I Development of the Real Estate located within the Real Estate required by the conditional use permit and this Agreement authorizing City to inspect, maintain, repair, or replace the stormwater drainage facilities in accordance with the Stormwater Drainage Facilities Maintenance Agreement. The Stormwater Drainage Facilities Easement shall be subject to 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 Stormwater Utility Committee. The Stormwater Drainage Facilities Easement shall be recorded with the Kenosha County Register of Deeds at Developer's expense and shall be binding upon all current and subsequent owners of the Real Estate. The Stormwater Drainage Facilities Easement also shall be shown on the certified survey map of the Real Estate.
7. Developer, at Developer's cost and expense, shall complete the construction and installation of the fully functional stormwater 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, all WDNR requirements, and all Federal and State environmental laws, rules and regulations.

8. Developer, at Developer's cost and expense, shall provide City with copies of the results of all tests and inspections of the stormwater drainage facilities required by City, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of stormwater drainage facilities trench backfill.
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 stormwater 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 stormwater 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 Stormwater Drainage Facilities Maintenance Agreement, the Post-Construction Runoff Permit issued to Developer, all WDNR requirements, 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 to Developer for any improvements within the Phase I Development of the Real Estate.
10. City shall accept the stormwater 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 stormwater drainage facilities in accordance with all approved plans, specifications and calculations, the Code of General Ordinances for the City of Kenosha, all WDNR requirements, 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 stormwater 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, all WDNR requirements, and all Federal and State environmental laws, rules and regulations.
 - c. providing City with copies of the results of all tests and inspections of the stormwater drainage facilities required by City, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of stormwater drainage facilities trench backfill.

d. approval by City Engineer of the stamped and certified "as-built" plans of the stormwater drainage facilities, including retention/detention basins and outlet structures, required pursuant to Section I.C.9. of this Agreement.

e. providing City with the Stormwater Drainage Facilities Maintenance Agreement for the inspection, maintenance and operation of the stormwater drainage facilities, including retention/detention basins and outlet structures, located within the Real Estate in form acceptable to City.

f. providing City with the Stormwater Drainage Facilities Easement for the stormwater drainage facilities, including retention/detention basins and outlet structures, located within the Real Estate in form acceptable to City.

g. payment of all fees and charges required to be paid by Developer for the stormwater 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 Stormwater Utility Committee of the stormwater drainage facilities.

11. Developer, at Developer's cost and expense, shall be responsible for the inspection, maintenance and operation of the stormwater drainage facilities required by the conditional use permit and this Agreement located within the public rights-of-way unless and until the stormwater drainage facilities located within the public rights-of-way are accepted by City. Upon acceptance of the stormwater drainage facilities located within the public rights-of-way, City shall have full jurisdiction and ownership of the stormwater 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 Utility, their officers, employees and agents (the "Stormwater Indemnified Parties") from and against any and all claims, liability, loss, charges, damages, costs, expenses, judgments, settlement expenses and reasonable attorney fees, which any of them may hereafter sustain, incur or be required to pay to the extent arising out of, or related to, the design, construction and installation of the stormwater 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 public or

private property provided that such indemnity shall not extend to the gross negligence or willful misconduct of the Stormwater Indemnified Parties and further provided that the Stormwater Indemnified Parties are not waiving any common law or statutory immunities, limits of liability, monetary liability limitations or notice requirements. Upon the filing with City or Utility of a claim for damages arising out of the acts which Developer herein agrees to indemnify, defend and hold City, the Utility and their officers, employees and agents harmless, the City or Utility shall notify Developer of such claim, and in the event that Developer does not settle or compromise such claim, Developer shall undertake the legal defense of such claim on behalf of Developer, City and/or Utility and their officers, employees and agents. It is specifically agreed that City and/or Utility, at City's and/or 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 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 reasonable attorney fees, sustained, incurred or paid by City and/or Utility, their officers, employees or agents arising out of the acts which Developer herein agrees to indemnify, shall be reimbursed through Developer's assurances required pursuant to this Agreement or through such other means as the City and/or Utility, in their sole discretion, deem appropriate. This paragraph shall survive installation of the stormwater drainage facilities to effectuate its purpose.

13. The stormwater drainage facilities required to be designed, constructed, and installed pursuant to Section I.C.1. of this Agreement, shall be installed and functional, and the stormwater drainage facilities located within the public rights-of-way shall be accepted by City prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

D. Streets, Curbs, and Gutters

1. Developer, at Developer's cost and expense, shall design, construct, and install all street improvements and curbs and gutters on 71st Street and 125th Avenue in accordance with City and WDOT specifications, the conditional use permit, the certified survey map, the Street Plan approved by City Engineer, the 2016 Total Improvements set forth in the letter from the WDOT dated June 18, 2015, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. Prior to execution of this Agreement by City and Utility, Developer, at Developer's cost and expense, shall convey or cause to be conveyed to City, free and clear of all liens and encumbrances, 7,616 square feet, more or less, of land located in the northwest corner of the intersection of 71st Street and 125th Avenue to be used for the construction of 71st Street and dedicated to the public for street purposes. Prior to execution of this Agreement by City and Utility, Developer, at developer's cost and expense, shall grant to City a Temporary Turnaround Easement shown on the certified survey map attached as Exhibit B for the west terminus of 71st Street. Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications for the street improvements and curbs and gutters from City Engineer, and

the WDOT. Developer, at Developer's cost and expense shall obtain all required permits for the design, construction, and installation of all street improvements and curbs and gutters from City Engineer, the WDOT provided that City hereby agrees to submit a permit application to WDOT for a public street extension if required, and the WDNR prior to construction or installation of the street improvements and curbs, and gutters.

2. Developer, at Developer's cost and expense, shall obtain all permits required by any governmental unit or regulatory agency for the construction and installation of the street improvements and curbs and gutters required by the conditional use permit and this Agreement. City shall cooperate with Developer in obtaining all permits required by any governmental unit or regulatory agency for the street improvements and curbs and gutters required by the conditional use permit and this Agreement.
3. Developer, at Developer's cost and expense, shall grade all streets to approved subgrade prior to the installation of any utilities. 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 subgrades. 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 subgrades 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 WDOT specifications. The "as-built" plans of the street subgrades shall be provided to City in print and digital form acceptable to City Engineer. Developer shall obtain approval of the "as-built" plans of the street sub grades from City Engineer and WDOT prior to the installation of any utilities.
4. 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. Developer shall not perform any street paving or install any curb and gutter within State of Wisconsin public rights-of-way during any portion of the calendar year prohibited by the State of Wisconsin.
5. 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 all curbs, 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 all curbs, gutters and sidewalks were designed, constructed, installed, completed, and function as intended in accordance with the approved Street Plan, the Code of General Ordinances for the City of Kenosha, all WDNR requirements, 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 and the WDOT prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

6. City shall accept the street improvements and all curbs and gutters on 71st Street 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 or in any Temporary Turnaround Easement located within the Real Estate upon the following:
 - a. completion of the street 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 WDNR requirements, 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 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, all WDNR requirements, and all Federal and State environmental laws, rules and regulations.
 - c. providing City with copies of the results of all tests and inspections of the street improvements and all curbs and gutters, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of street, curb and gutter trench backfill.
 - d. approval by City Engineer of the stamped and certified "as-built" plans of the street improvements and all curbs and gutters required pursuant to Section 1.D.5. of this Agreement.
 - e. payment of all fees and charges required to be paid by Developer for the street 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 City 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, all curbs and gutters, and rights-of-way.

7. Developer, at Developer's cost and expense, shall be responsible for the maintenance of the street improvements and all curbs and gutters required by the conditional use permit and this Agreement, including snow plowing, unless and until the street improvements and all curbs and gutters are accepted by City. Except as otherwise provided in this Section I.D.7., upon acceptance of the street improvements and all curbs and gutters, City shall have full jurisdiction and ownership of the street improvements and all curbs and gutters which are located in the public rights-of-way and shall be responsible for their maintenance subject to the guarantee of Developer provided in this Agreement. Upon acceptance of the street improvements and all curbs and gutters and until completion of the Phase I Development, City shall periodically conduct an inspection of the street improvements and all curbs and gutters located in the public rights-of-way. Any damage to the street improvements and curbs and gutters relating to the construction of the Phase I Development discovered during any inspection by City shall be removed, repaired and replaced at Developer's cost and expense as directed by City Engineer. Failure of the Developer to perform the required corrective action in the specified time following written notice from the City Engineer shall constitute a default under this Agreement whereupon the City may do or cause the work to be done and charge the cost for the work against any assurances provided pursuant to this Agreement or impose a special charge and/or special assessment against the Phase I Development in the event there is no applicable assurance or the assurance is insufficient as provided for in Section III.A.6. of this Agreement.
8. The street improvements and curbs and gutters required to be designed, constructed, and installed pursuant to Section I.D.1. of this Agreement shall be completed, dedicated, and accepted by City and the WDOT, as the case may be, prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

E. Other Utilities and Utility Easements

1. Developer, at Developer's, cost and expense, shall locate and install all other utilities serving the Phase I Development of the Real Estate in accordance with utility specifications, the conditional use permit, the certified survey map, the plans approved by City Engineer, all WDNR requirements, 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 and Utility General Manager.
2. Developer, at Developer's cost and expense, shall provide easements for utilities, which shall be shown on the certified survey map for the Real Estate and the plans approved by City Engineer and Utility General Manager.

3. Easements for utilities may be modified or terminated only by City, Utility, or other utility and only in the event City, Utility, or other utility determine that the easement, in full or in part, is no longer required to provide essential service.

F. Erosion Control

1. 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. Developer, at Developer's cost and expense, shall apply for and obtain all WDNR permits in any way related to land disturbing activities or land disturbing construction activities within any wetlands located within the Real Estate or any public rights-of-way. No land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances shall be permitted by Developer until the Erosion and Sediment Control Plan is approved by City, the cash assurance is deposited with City, all permits in any way related to land disturbing activities or land disturbing construction activities within any wetlands within the Real Estate or any public rights-of-way are issued by WDNR, 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 issued to Developer by City, all permits required by any governmental unit or regulatory agency, all WDNR requirements, 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 in accordance with Chapter XXXIII of the Code of General Ordinances, all WDNR requirements, and all Federal and State environmental laws, rules and regulations prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.
2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency in any way related to erosion and sediment control required by the conditional use permit and this Agreement prior to commencement by Developer of any land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances.

G. Grading

1. Developer, at Developer's cost and expense, shall grade the Real Estate in accordance with City specifications, the conditional use permit, the certified survey map, and the Grading Plan approved by City Engineer, all WDNR requirements, 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 by Developer of any land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances.

2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency in any way related to the grading required by the conditional use permit and this Agreement prior to commencement by Developer of any land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances.
3. 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 Grading Plan, the Code of General Ordinances for the City of Kenosha, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. The "as-built" grading plans shall be provided to City in print and digital form acceptable to City Engineer. The initial "as-built" grading plan to be provided by Developer shall include property line grades at 25 foot intervals and grades at locations of grade differences to illustrate drainage patterns, public improvements, the entire storm sewer system and all stormwater drainage facilities. For subsequent "as-built" submittals, Developer shall submit a revised "as-built" grading plan which shall include all previously approved "as-built" grading plan information together with all additional "as-built" grading plan information for the construction phase for which the issuance of any Temporary Certificate of Occupancy is being requested. Developer shall obtain approval of the "as-built" grading plan from City Engineer prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within each construction phase contained within the approved construction phasing plan on file with the Department of Community Development and Inspections..

H. LED Street Lighting

1. Developer, at Developer's cost and expense, shall design and install a complete system of LED street lighting on 71st Street and 125th Avenue in accordance with City, and WDOT specifications, the conditional use permit, the certified survey map, the Lighting Plan approved by City Engineer, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. Developer, at Developer's cost and expense, shall provide City with all shop drawings and cut sheets for the LED street lighting system and shall obtain approval of the LED street lighting system from City Engineer and the WDOT prior to construction and installation of the LED street lighting system.

2. Developer, at Developer's cost and expense, shall obtain all permits required by any governmental unit or regulatory agency for the construction and installation of the LED street lighting system required by the conditional use permit and this Agreement prior to construction and installation of the LED street lighting system.
3. Developer, at Developer's cost and expense, shall provide City with "as-built" plans of the LED street lighting system, 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 system, including street light conduits and pull boxes, were designed, constructed, installed, completed, and function as intended in accordance with the approved Lighting Plan, the Code of General Ordinances for the City of Kenosha, all WDNR requirements, and all Federal and State environmental laws, rules and regulations. The "as-built" plans of the LED street lighting system shall be provided to City in print and digital form acceptable to City Engineer. Developer shall obtain approval of the "as-built" plans of the LED street lighting system from City Engineer and the WDOT prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.
4. The LED street lighting system in the public rights-of-way shall be completed and presented to City for acceptance prior to, or concurrent with, presenting the street improvements and all curbs and gutters to the City and the WDOT for acceptance.
5. 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 WDNR requirements, 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, all WDNR requirements, 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 system, including street light conduits and pull boxes, required pursuant to Section I.H.3. 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 - e 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.

6. Developer, at Developer's cost and expense, shall be responsible for the maintenance and operation of the LED street lighting system required by the conditional use permit and this Agreement located within the public rights-of-way unless and until the LED lighting system located within the public rights-of-way is accepted by City and the WDOT, as the case may be. Upon acceptance of the LED lighting system, City shall have full jurisdiction and ownership of the LED street lighting system located in the public rights-of-way and be responsible for its maintenance and cost of operation subject to the guarantee of Developer provided in this Agreement.
7. The LED lighting system required to be designed, constructed and installed pursuant to Section I.H.1. of this Agreement shall be completed and accepted by City and the WDOT, as the case may be, prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

I. Landscaping

1. Developer, at Developer's cost and expense, shall design and install landscaping throughout the public right-of-way on 71st Street in accordance with City specifications, the conditional use permit, the certified survey map, the Landscaping Plans approved by City Engineer, all WDNR requirements, 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 and the WDOT prior to installation of the landscaping.
2. Developer, at Developer's cost and expense, shall protect existing trees within the public right-of-way on 71st Street in accordance with Section 34.10 of the Code of General Ordinances for the City of Kenosha entitled Tree Protection and shall apply for and obtain a Tree Protection Permit from City.
3. 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 inconsistent with the approved Landscaping Plan. Developer, at Developer's cost and expense, shall apply for and obtain a raze permit from City prior to removing any structures.

4. Developer, at Developer's cost and expense, shall finish grade all lawn park areas on 71st Street with six (6) inches of topsoil.
5. The landscaping shall be completed and presented to City for acceptance prior to or concurrent with Developer presenting the street improvements and all curbs and gutters to the City and the WDOT for acceptance.
6. 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 WDNR requirements, 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, and the Code of General Ordinances for the City of Kenosha, all WDNR requirements, 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.
7. Developer, at Developer's cost and expense, shall be responsible for the maintenance of the landscaping required by the conditional use permit and this Agreement located within the public rights-of-way unless and until the landscaping located within the public rights-of-way is accepted by City.
8. The landscaping required to be installed pursuant to Section I.I.1. of this Agreement shall be completed and accepted by City prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

J. Sidewalks

1. Developer, at Developer's cost and expense, shall design, construct and install sidewalks for the Phase I Development of the Real Estate in the public rights-of-way 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, all WDNR requirements, 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 the sidewalks from City Engineer.
2. Sidewalks in the public rights-of-way 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 in the public rights-of-way shall be constructed and installed in accordance with the requirements of Section 5.05 of the Code of General Ordinances.
3. City shall accept the sidewalks 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 sidewalks in accordance with all approved plans and specifications, the Code of General Ordinances for the City of Kenosha, the Americans with Disabilities Act standards and guideline, all WDNR requirements, 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, the American with Disabilities Act standards and guidelines, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations.
 - c. providing City with copies of the results of all tests and inspections of the sidewalks, including density tests certified and stamped by a professional engineer registered in the State of Wisconsin 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.D.5. 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.

- 4. 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.
- 5. Sidewalks in the public rights-of-way shall be completed and accepted by City prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

K. Street and Regulatory Signs and Traffic Controls and Signals

- 1. Developer shall reimburse City for City's actual cost for materials, labor, and installation of street name signs required by City for 71st Street and 125th Avenue within forty-five (45) days of being invoiced by City.
- 2. Developer, at Developer's cost and expense, shall purchase and install all regulatory signs required by City for 71st Street and 125th Avenue.
- 3. Developer, at Developer's cost and expense, shall design, construct and install traffic controls on 71st Street and 125th Avenue in accordance with City and WDOT specifications, the conditional use permit, the certified survey map, and the letter from the WDOT dated June 18, 2015. 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 traffic controls required by this paragraph from City and the WDOT prior to the construction and installation of the traffic controls.
- 4. The traffic controls required to be designed, constructed, and installed pursuant to Section I.K.3. of this Agreement shall be completed, dedicated and accepted by City and the WDOT, as the case may be, prior to City issuance of any Temporary Certificate of Occupancy to Developer for any improvements within the Phase I Development of the Real Estate.

L. Survey Monuments.

Developer, at Developer's cost and expense, shall install 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 City and Utility 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 City and Utility public improvements required to be made pursuant to the conditional use permit and this Agreement. Prior to City and Utility accepting any of the City and Utility public improvements required to be made pursuant to the conditional use permit and this Agreement, Developer shall file with the City and Utility 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 and Utility General Manager with complete itemized cost estimates certified by Developer's civil engineer for the public improvements and private stormwater drainage facilities required to be made by Developer pursuant to the conditional use permit and this Agreement prior to the execution of this Agreement by City and Utility.
3. Any bidder on any of the City and Utility public improvements required to be made by Developer pursuant to the conditional use permit and this Agreement shall be prequalified by City and Utility. 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 or Utility.
4. Developer, at Developer's cost and expense, shall raze all structures within the Real Estate prior to the issuance of any permits by City to Developer in any way related to land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances, or in any way related to the construction or installation of any of the improvements required to be made by Developer 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 the Real Estate. Developer, at Developer's cost and expense, shall raze, remove, and dispose of all structures within the Real Estate, and shall remediate the 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 land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances by Developer shall commence and no construction or installation of any of the improvements required to be made by Developer 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 Access Easement to the Real Estate owned by Utility, has been approved and signed by the Kenosha Water Utility Board of Water Commissioners, signed by Developer, and recorded with the Kenosha County Register of Deeds.
 - e. the Stormwater Drainage Facilities Maintenance Agreement and the Stormwater Drainage Facilities Easement have been approved by the Common Council, signed by City and Developer, and recorded with the Kenosha County Register of Deeds.
 - f. this Agreement has been approved by the Common Council, the Kenosha Water Utility Board of Water Commissioners, signed by all Parties, and recorded with the Kenosha County Register of Deeds.
 - g. all plans and construction specifications for land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances have been reviewed and approved by City Engineer and Utility General Manager and all other plans and construction specifications for the construction or installation of any of the improvements required to be made by Developer pursuant to the conditional use permit and this Agreement have been reviewed and approved by City Engineer and Utility General Manger.
 - h. all permit fees have been paid and all permits have been issued for the work intended to be performed prior to the performance of any such work.
 - i. a pre-construction meeting attended by Developer, City, Utility, 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 and Utility 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 the 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, all WDNR requirements, 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 prior to construction and installation of the construction access and construction staging areas.
2. Developer, at Developer's cost and expense, shall apply for and obtain all required permits from City and the WDOT prior to the closing of any public streets and shall comply with all applicable ordinances, laws, rules, and regulations regarding the closure of public streets.
3. Developer, at Developer's cost and expense, shall abandon any wells and septic systems on the 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 Utility.
4. City and Utility 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, all WDNR requirements, 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 and Utility employees performing the services plus indirect costs. Developer shall pay City and Utility for all engineering and inspection services provided by City and Utility within forty-five (45) days of being invoiced. The engineering and inspection services provided pursuant to this paragraph shall not relieve Developer, its employees or 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations, or from providing City and Utility all stamped "as-built" plans and all "as-built" plan certifications required by this Agreement.

5. Developer, at Developer's cost and expense, shall complete a televised inspection of the completed sanitary sewerage facilities required by this Agreement. The televised inspection shall be performed by an inspection service acceptable to Utility. Videotapes and written logs of all sanitary sewerage facilities inspections shall be provided to Utility for review. Any repairs or cleaning identified by the televised inspection shall be promptly performed by Developer and the effected area shall again be subject to a televised inspection. Utility reserves the right to perform the televised inspection of the completed sanitary sewerage facilities at Developer's cost and expense. Developer shall reimburse Utility for the cost of the televised inspection within forty-five (45) days of being invoiced by Utility.
6. Developer, at Developer's cost and expense, shall complete a televised inspection of the completed stormwater drainage facilities required by this Agreement. The televised inspection shall be performed by an inspection service acceptable to City. Videotapes and written logs of all stormwater drainage facilities inspections shall be provided to City for review. Any repairs or cleaning identified by the televised inspection shall be promptly performed by Developer and the effected area shall again be subject to televised inspection. City reserves the right to perform the televised inspection of the completed stormwater drainage facilities at Developer's cost and expense. Developer shall reimburse City for the cost of the televised inspection within forty-five (45) days of being invoiced by City.
7. Utility, at Utility's sole discretion, reserves the right to retain independent testing services in the event Utility determines proper testing is not being performed by Developer or the results of Developer's testing does not conclusively establish to Utility's satisfaction the proper completion of the sanitary sewerage facilities and the water supply and distribution facilities required by this Agreement. Developer shall reimburse Utility for the cost of the independent testing services within forty-five (45) days of being invoiced by Utility.
8. 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.

9. Developer, at Developer's cost and expense, shall use granular trench backfill under all pavement and within twenty-four (24") inches thereof in accordance with City and Utility specifications, the conditional use permit, the certified survey map, and the approved plans. Developer, at Developer's cost and expense, shall provide City and Utility copies of the results of all tests and inspections of the granular trench backfill certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of the granular trench backfill.

III. ASSURANCE OF COMPLETION OF PUBLIC IMPROVEMENTS AND PRIVATE STORM WATER DRAINAGE FACILITIES

A. Assurances Required

1. Prior to execution of this Agreement by City and Utility, Developer shall deposit with the Utility General Manager an assurance in the form of cash or an irrevocable letter of credit in an amount established by Utility General Manager equal to one hundred twenty-five (125%) percent of the Utility's estimated cost of sanitary sewerage facilities, water supply and distribution 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. Prior to execution of this Agreement by City and Utility, 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's estimated cost of all other public improvements, private stormwater 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. The assurances required pursuant to this paragraph shall be in addition to any other assurances which may be required pursuant to this Agreement and the Code of General Ordinances for the City of Kenosha for the development of the Real Estate which is the subject of the conditional use permit and this Agreement.
2. The assurances required pursuant to Section III. A.1. of this Agreement shall be used to secure Developer's cost of designing, constructing and installing the public improvements and private stormwater drainage facilities required pursuant to the conditional use permit and this Agreement, and to compensate City and Utility for City's and Utility's cost of completing the public improvements, private stormwater drainage facilities, and performing the engineering and inspection services and testing services related thereto, required to be made and provided pursuant to the conditional use permit, this Agreement, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations in the event Developer fails to do so within the time frame required by this Agreement and 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations. The assurances required pursuant to Section III.A.I. of this Agreement shall also be used to assure compliance with Developer's guarantee provided in this Agreement.

3. In the event the assurances required pursuant to Section III.A.1. of this Agreement are insufficient to cover one hundred twenty five (125%) percent of the actual cost of the public improvements, private stormwater 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations, Developer upon written demand by City or Utility shall deposit with the City Clerk-Treasurer or Utility General Manager additional assurances in the form of cash or an irrevocable letter of credit in an amount established by City or Utility equal to one hundred twenty-five (125%) percent of the actual cost of the public improvements, private stormwater 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, all WDNR requirements, 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 Utility, 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 or Utility. 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 and Utility may draw upon the irrevocable letter of credit 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 stormwater drainage facilities required to be made pursuant to the conditional use permit and this Agreement for which Developer shall have deposited an assurance, then upon written request of Developer, and upon the written recommendation of City Engineer and Utility General Manager, as the case may be, the assurance may be reduced in the amount reasonably recommended by City Engineer and Utility General Manager. In no event shall the assurance be reduced below one hundred twenty-five percent (125%) of the City Engineer's and Utility General Manager's reasonable estimate of the cost of the remaining public improvements, the private stormwater drainage facilities, the engineering, testing and inspection services related thereto, the environmental conditions related thereto, and the guarantee obligations required to be made and provided pursuant to the conditional use permit, this Agreement, all WDNR requirements, and all Federal and State

environmental laws, rules, and regulations. Prior to the reduction of any assurance, Developer shall submit to City and Utility 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 and Utility General Manager, as the case may be, until expiration of Developer's guarantee provided in this Agreement. City and Utility 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, all WDNR requirements, and all Federal and State environmental laws, rules, and regulations, City and/or Utility 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 Real Estate in the event there is no applicable assurance or the assurance is insufficient. The remedies available to City and Utility 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 or Utility, unconditionally give, grant, convey and fully dedicate the public improvements to City and Utility, 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 and Utility to effectuate the dedication of the public improvements pursuant to this paragraph. Upon dedication, City and Utility shall have the right to connect or integrate the dedicated public improvements unto the facilities of City and Utility without charge, award of damages or consent of Developer. Dedication shall not constitute acceptance of any improvement by City or Utility.

B. Guarantee of Public Improvements

1. Developer shall guarantee all public improvements, required to be made by Developer 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 or the Kenosha Water Utility Board of Water Commissioners. Developer, at Developer's cost and expense, shall make any required repairs. City and Utility reserve the right to perform any required repairs to the public improvements which City and Utility deem necessary on a time and material basis. Developer shall reimburse City and Utility for the cost of repairs within forty-five (45) days of being invoiced by City or Utility.

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 or Utility of any utility improvement located in such portion of the Real Estate. Developer, at Developer's cost and expense, shall make any required repairs. City and Utility reserve the right to perform any required repairs which City and Utility deem necessary on a time and material basis. Developer shall reimburse City and Utility for the cost of repairs within forty-five (45) days of being invoiced by City or Utility.
3. The assurances 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 and Utility for City's and Utility'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 and/or Utility may do or cause Developer's guarantee work to be done and impose a special charge and/or special assessment against the Real Estate for the cost of the work.

V. DEVELOPER INDEMNIFICATION

Developer shall jointly and severally indemnify, defend and hold harmless City, Utility, their officers, employees and agents (the "Indemnified Parties") from and against all losses, proceedings, claims, liability, charges, damages, costs, and penalties, whether initiated or sought by governmental authorities or private parties, including, but not limited to, reasonable attorney fees and expenses, expert witness fees and expenses, engineering fees and expenses, environmental consultant fees and expenses, investigating fees and expenses, remediation costs, including without limitation any financial assurances required to be posted for completion of remedial work and costs associated with administrative oversight, settlement expenses, and judgments, which any of them may hereafter sustain, incur or be required to pay whether incurred in connection with any judicial or administrative process or otherwise, to the extent arising out of or related to: the razing, removing or disposing of any structures within the Real Estate; any environmental conditions affecting the Real Estate; the presence or alleged presence of hazardous material on or under the Real Estate whether as a result of activities on the Real Estate or on surrounding real estate; the actual or alleged violation of any Federal or State environmental law, rule or regulation; 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 or private stormwater drainage facilities 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 provided that such indemnity shall not extend to the gross negligence or willful misconduct of the Indemnified Parties and further provided that the Indemnified Parties are not waiving any common law or statutory immunities, limits of liability, monetary liability limitations or notice requirements. Upon the filing with City or Utility of a claim for damages arising out of the acts which Developer herein agrees to indemnify, defend and hold City, Utility, their officers, employees and agents harmless, the City and/or Utility shall notify Developer of such claim, and in the event that Developer does not settle or comprise such claim, Developer shall undertake the legal defense of such claim both on behalf of Developer and/or City and Utility and their officers, employees and agents. It is specifically agreed that City and/or Utility, at City's and 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, 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 reasonable attorney fees sustained, incurred or paid by City, Utility and/or their officers, employees or agents arising out of the acts which Developer herein agrees to indemnify, shall be reimbursed to City, Utility and/or their officers, employees and agents through Developer's assurances required pursuant to this Agreement or through such other means as the City and/or Utility in their sole discretion deem appropriate. This paragraph shall survive installation of the public improvements and private stormwater drainage facilities 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 the Real Estate provided Developer is in compliance with all City and Utility conditions of approval, all WDNR requirements, 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. City shall not be responsible for the installation of any of the 2021 Total Improvements referred to in the letter from the WDOT dated June 18, 2015.

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, City or Utility set forth below. Any Party may designate a different address by delivering, sending, or serving

written notice of such change of address upon the other Parties. Notice shall be effective as of the date of delivery, if by hand, or mailing if by certified mail.

If to Continental 315 Fund LLC: Continental 315 Fund LLC
W134 N8675 Executive Parkway
Menomonee Falls, Wisconsin 53051
Attn: Legal Department

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

If to Utility: General Manager
Kenosha Water Utility
4401 Green Bay Road
Kenosha, Wisconsin 53144

With a copy to: 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 shall not assign or transfer this Agreement without the prior written consent of the City and Utility, which consent shall not be unreasonably withheld. Any unauthorized

assignment or transfer shall be a breach of this Agreement thereby entitling the City and Utility to draw upon the assurances required to be provided pursuant to Section III of this Agreement. Any assignment or transfer shall be conditioned upon the assignee or transferee entering into a written Agreement with City and Utility through which the assignee or transferee agrees to be bound by all of the terms, conditions, and obligations of this Agreement. No assignment or transfer shall relieve Developer of any obligations under this Agreement in the event of breach or default by the assignee or transferee. No assignment or transfer shall be inconsistent with the terms of this Agreement. The assignee or transferee 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 and Utility General Manager.

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 Parties, (b) waive any inaccuracies in the representations or warranties of the other Parties contained in this Agreement or in any document delivered pursuant to this Agreement and (c) waive any compliance by the other Parties 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 the 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 and the Kenosha Water Utility Board of Water Commissioners.

- O. The Parties acknowledge and agree that any future development of the Real Estate beyond the Phase I Development of the Real Estate which is the subject of the conditional use permit attached as Exhibit C and this Agreement shall require approval of a conditional use permit by City and approval of a development agreement by City and Utility.

VIII. AUTHORIZATION

- A. Developer represents to City and Utility 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. Utility enters into this Agreement by authority of action taken by the Board of Water Commissioners on the _____ day of _____, 2015.
- C. City enters into this Agreement by authority of action taken by its Common Council on the _____ day of _____, 2015.

Signature Pages Follow

IN WITNESS WHEREOF, the Parties hereto have hereunto executed this Agreement on the dates below given.

KENOSHA WATER UTILITY
A Wisconsin Municipal Water Utility

BY: _____
JAN MICHALSKI, Chairperson
Board of Water Commissioners

Date: _____

BY: _____
EDWARD ST. PETER
General Manager, Kenosha Water Utility

Date: _____

STATE OF WISCONSIN)
:SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2015, Jan Michalski, Chairperson of the Board Of Water Commissioners, and Edward St. Peter, General Manager of the Kenosha Water Utility, a Wisconsin municipal water Utility, to me known to be such Chairperson and General Manager of said municipal water Utility, and acknowledged to me that they executed the foregoing instrument as such officers as the Agreement of said municipal water Utility, by its authority.

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

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 _____, 2015, 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.

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

CONTINENTAL 315 FUND LLC
A Wisconsin Limited Liability Company

BY: Continental Properties Company, Inc.,
Its Manager

BY: _____
DANIEL J. MINAHAN, Its President

Date: _____

STATE OF WISCONSIN)
:SS.
COUNTY OF _____)

Personally came before me this ___ day of _____, 2015, Daniel J. Minahan, President of Continental Properties Company, Inc., a Wisconsin corporation, the manager of Continental 315 Fund LLC, a Wisconsin limited liability company, to me known to be such President of said corporation, and acknowledged to me that he executed the foregoing instrument as such officer as the Agreement of said limited liability company, by its authority.

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

JOINER AND CONSENT
OF CONTINENTAL 315 FUND LLC MORTGAGEE

The undersigned, on behalf of FirstMerit Bank, N.A., as lender for Continental 315 Fund LLC (“Continental”), hereby consents to the terms and conditions of the foregoing Agreement and subordinates any and all liens that it holds against the Continental parcel and any renewals, extensions, or amendments thereof, to the rights granted pursuant to such Agreement.

Dated this ____ day of _____, 2015.

FIRSTMERIT BANK, N.A.

By: _____

Name: _____

Title: _____

STATE OF _____)

) SS.

COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2015 by _____, as _____ of FirstMerit Bank, N.A., on behalf of said bank.

Notary Public

Name: _____

Notary Public, State of _____

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot One (1), Outlot One (1), Lot Two (2), and Outlot Two (2) of CERTIFIED SURVEY MAP NO. _____, being a division of part of Lot Two (2) of Certified Survey No. 2297 and lands, being a part of the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of the Southwest One-quarter (1/4), and the Northwest One-quarter (1/4) and Southwest One-quarter (1/4) of the Southeast One-quarter (1/4) of Section One (1), in Township One (1) North, Range Twenty-one (21) East, in the City of Kenosha, Kenosha County, State of Wisconsin, recorded in the Office of the Register of Deeds for Kenosha County on _____, 2015, as Document No. _____.

EXHIBIT B
CERTIFIED SURVEY MAP

CERTIFIED SURVEY MAP TO BE INCLUDED UPON DEVELOPER SATISFYING ALL CONDITONS APPROVED BY THE COMMON COUNCIL AND PRIOR TO EXECUTION OF THIS DEVELOPMENT AGREEMENT BY THE CITY AND UTILITY.

EXHIBIT C
CONDITIONAL USE PERMIT

Document Number	CONDITIONAL USE PERMIT STATE OF WISCONSIN
-----------------	--

The City Plan Commission of the City of Kenosha, Wisconsin, hereby grants to North Shore Bank, FSB, 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 280-unit multi-family development, as approved by the City Plan Commission on December 10, 2015. 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 - Public Works Memo
- Exhibit D - Kenosha Water Utility Memo

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: December 15, 2015

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

Parcel Identification Number
03-121-01-420-212

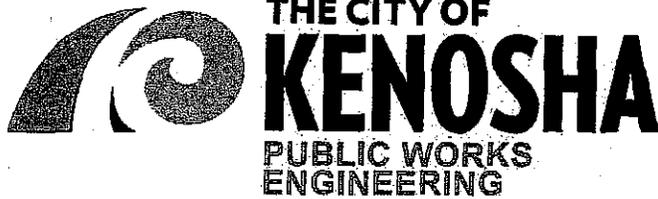
Springs at Kenosha at 12742 71st Street
CONDITIONS OF APPROVAL

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 Erosion Control, Building, Plumbing, Electrical, Fence and Occupancy permits.
 - b. The applicant shall obtain Driveway, Sidewalk, Street Opening, Stormwater and Parking Lot permits 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 twelve (12) months of City Plan Commission approval. Building permits for all other buildings shall be obtained within two (2) years of the City Plan Commission approval of the Conditional Use Permit or the Conditional Use Permit shall be null and void.
 - i. All vehicles shall be parked within 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. Prior to final Occupancy of the building, the applicant shall provide an electronic copy of the following information to the Fire Prevention Bureau:
 - i. Site Plan as-built
 - ii. Floor Plan as-built
 - iii. Site Utilities
 - iv. Sprinkler Plans
 - v. Fire Alarm Plan
2. The following conditions of approval shall be satisfied with City Staff prior to the issuance of any construction permits.
- a. The comments in the Public Works memo dated November 18, 2015.
 - b. The comments in the Kenosha Water Utility memo dated November 19, 2015.
 - c. All buildings must be fully fire alarmed and sprinklered per NFPA Standards. The Knox Box[®] Rapid Entry System is required on all buildings and electronic gate switches along with gate control devices for first responder apparatus. All alarms and sprinklers to be plan reviewed and permitted by the Kenosha Fire Department.
 - d. The proposed cross access from 71st Street to the south property line across Outlot 1 shall be moved to the west. The centerline of the Easement and your easternmost access point north of 71st Street can be no closer than one hundred twenty-five (125') feet.
 - e. A Phasing Plan shall be submitted for review and approval by the City. The Phasing Plan shall be amended to show that both private connections to 71st Street shall be constructed with the first phase.
 - f. The proposed paving for the emergency access to the east lot line must extend to the property line.
 - g. Two (2) different building elevations were provided, but the Site Plan does not include any notation on which building relates to which elevation. Revise the Site Plan to indicate which building is "Building 1A" and which building is "Building 2B".
 - h. Plan C300 shall indicate that all soil stockpiles must be removed prior to issuance of any Occupancy permits.
 - i. A detailed Construction Access Plan shall be submitted for City review and approval.

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lot One (1), Outlot One (1), Lot Two (2), and Outlot Two (2) of CERTIFIED SURVEY MAP NO. _____, being a division of part of Lot Two (2) of Certified Survey No. 2297 and lands, being a part of the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of the Southwest One-quarter (1/4), and the Northwest One-quarter (1/4) and Southwest One-quarter (1/4) of the Southeast One-quarter (1/4) of Section One (1), in Township One (1) North, Range Twenty-one (21) East, in the City of Kenosha, Kenosha County, State of Wisconsin, recorded in the Office of the Register of Deeds for Kenosha County on _____, 2015, as Document No. _____.



TO: Brian Wilke, Development Coordinator

FROM: Shelly Billingsley, P.E.
City Engineer

Shelly Billingsley
11-18-15

DATE: November 18, 2015
SUBJECT: PLAN REVIEW COMMENTS
Project Description: Springs at Kenosha
Location: 71st Street and 125th Avenue

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	X		
Erosion Control Required	X		

Grading & Drainage Comments:

1. COMPLETE
2. Sheet C102, Site plan note #21 calls for a car care area with an oil and water separator. Provide a detail of the oil/water separator. The only plumbing sheet submitted was Sheet P6.02 which did not show anything regarding the oil/water separator?
3. Sheet D100 – Conflicting information on abandoned in place vs remove existing storm sewer. Storm sewer shall be removed. Need to follow up with WisDOT to determine if Abandoning will be allowed at the intersection 125th Ave.
4. Storm sewer pipe materials are not labeled on the plan. All storm sewers within the City's right of way and entering or exiting the detention pond must be RCP. Found the note that stated All Pipe is to be HDPE unless otherwise noted, however, only 2 pipes were observed to be RCP an all others were not labeled in the street on sheets C502 & C503.
5. The erosion control plans were not reviewed as a part of the CUP process. They will be reviewed when an erosion control permit application is submitted to the City.
6. The project will require a stormwater maintenance agreement before occupancy can be issued. A template of the agreement will be sent separately to the project engineer.
7. The project will require that a stormwater permit be issued prior to construction. This can only be issued once staff concludes that the plans meet the City's stormwater ordinance and all stormwater related items are approved.
8. COMPLETE
9. All stormwater ponds will need to have an access easement for City use if needed. Easement shown on CMS, need to show on plan set.
10. COMPLETE
11. COMPLETE
12. COMPLETE
13. COMPLETE
14. COMPLETE
15. COMPLETE

16. COMPLETE
17. COMPLETE
18. COMPLETE

New Drainage Comments for Review #2:

19. Provide concurrence letters/approval of work letters (or permits) from Wisconsin DNR and Army Corp.
20. Pond overflow must be constructed following instructions in "Overflow Capacity" section of Appendix F in the Developers Review Application Packet, change overflow detail accordingly. 18 inches of rip-rap is required beneath the turf reinforcement.

Traffic Comments:

1. Need Lighting Plan with photometrics shown for parking lot, 71st Street, and 125th Avenue.
2. COMPLETE
3. COMPLETE
4. COMPLETE
5. The proposed retaining wall on the south side of the end of 71st Street will need a railing. Provide a structural plan of the wall signed by a PE and a detail of a proposed railing/fence. All walls greater than 5' in height require a railing/fence and will need a permit to install.
6. COMPLETE
7. COMPLETE
8. COMPLETE
9. COMPLETE
10. COMPLETE
11. COMPLETE
12. COMPLETE
13. Review of TIA still in progress.
14. COMPLETE.
15. COMPLETE
16. Sidewalk ramp at east end of 71st Street needs to be moved to the intersection of 125th Avenue.
17. Asphalt pavement mix is PG58-28.
18. COMPLETE
19. COMPLETE

New Traffic Comments for Review #2:

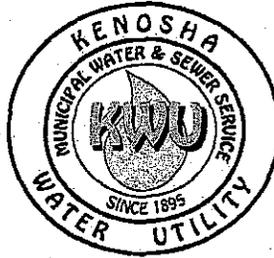
20. Need parkway trees in right-of-way on north side of 71st Street.
21. The proposed retaining wall on the south side of the end of 71st Street will need a railing/fence. Provide a structural plan of the wall signed by a PE and a detail of a proposed railing/fence. All walls greater than 5' in height require a railing/fence and will need a permit to install. Sheet C912 Retaining wall detail does not show the fence or railing. Sheet L104 states to see Sheet C911 which does not exist. Show retaining wall off-set from the right-of-way. Indicate on a detail the distance the grid is being placed into the right-of-way.
22. WisDOT may determine the exact location of the handicap ramp at SW corner of 71st Street and 125th Avenue.
23. Sidewalk on north side of 71st Street needs to extend to the east property line and line up to the new sidewalk along the west side of 125th Avenue.
24. A corner easement for the public sidewalk on the SW corner of 71st Street and 125th Avenue may be needed depending on grades.
25. The driveway openings need an approved variance for the Street Type Opening. Submit a formal request for variance to show high volume driveway per Chapter 5.085(C)(8a-c) of the City Ordinance. Request should be addressed to the City Engineer, Shelly Billingsley for her approval.

cc: Cathy Austin; Shelly Billingsley; Greg Holverson; Kile Kuhimey; Gerard Koehler, Kevin Risch

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: November 19, 2015

Subject: Springs at Kenosha Revised Plans (Review #2)

Location: 71st Street and 125th 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. Based on the two inch (2") meter size shown on the plans, each building will incur a sanitary sewer connection fee of \$26,252.00 which must be paid prior to connecting. It is assumed that this is the same meter size for all buildings, including the Clubhouse and Car Care Area. Please advise if this is incorrect.
2. Please note that all private fire hydrants shall be painted "Caution Blue" (Mueller Paint Code JS) and not red. Only public fire hydrants shall be painted red.
3. The November 4, 2015 response letter indicated that there were details on the plans regarding the adjustment of the valve vault along the north side of 71st Street near Station 10+45. However, there are no notes regarding adjustment of the vault apparent on the plan. Please provide details regarding this as well as any adjustment necessary to Existing Sanitary Manhole 2 at the southwest corner of the intersection of 71st Street and 125th Avenue.
4. Written authorization must be provided for KWU access to the sampling manhole south of the Car Care Area.

The following comments are in reference to specific items on the plans:

Sheet C603

- Please label SAN MH 5 as an outside drop manhole.

Sheet C702

- The check valve and vault at Sta. 0+33.08 will not be owned or maintained by KWU and shall be moved north of the north right-of-way line of 71st Street.

Sheet C703

- The check valve and vault at Sta. 20+26.93 will not be owned or maintained by KWU and shall be moved north of the north right-of-way line of 71st Street.
- There must be a valve directly north and south of the check valve in accordance with NR 811.63.
- The eight inch (8") valve at Sta. 20+21.88 will be in a valve box and not in a vault as the profile note indicates.

Sheet C802

- There is insufficient separation between the proposed private sanitary sewer and the existing water main near Station 3+00. The top of the existing 12" water main is approximately 713.1± and the bottom of the proposed 8" sanitary sewer is approximately 714.2±. Please revise the sanitary sewer to provide adequate separation or offset the water main accordingly to provide eighteen inches (18") of vertical separation at the crossing.
- The profile note regarding water main and sanitary sewer separation near Sta. 2+60 shall state that the water main shall be offset over the sanitary sewer, not underneath. The water main in this location will already be 4-5 feet deeper as a result of the roadway buildup and placing it even deeper will make it more difficult to maintain.
- Any public water main offsets shall be made with ductile iron pipe in order to maintain electrical conductivity of the existing ductile iron main. Additionally, all offsets will need to be coordinated with the residents at 13106 and 12912 75th Street as their water main service will need to be interrupted.
- Please label SAN MH 1 as an outside drop manhole.
- The stationing for SAN MH 14 appears to reference a different alignment than 71st Street and needs to be revised.

Sheet C803

- The stationing for the water main offset near Sta. 8+00 appears to reference a different alignment than 71st Street and needs to be revised.
- The water main offset near Sta. 8+00 shall be offset over the storm sewer, not underneath. The water main in this location will be very difficult to maintain if it is offset underneath the storm sewer. Also, see the previous comments from Sheet C802 regarding offsets of the public water main.
- Provide information for the sanitary sewer and water main services to the south near Sta. 14+00. There is currently no length, slope, or invert elevations shown for these services. Additionally, there will need to be a tapping valve for the water service as well as a service valve within ten feet (10') of the south right of way.
- Provide the length and slope of the sanitary sewer main between EXIST. SAN MH 2 and SAN MH 15.

- The existing sanitary sewer main east of EXIST. SAN MH 2 is drawn with a storm sewer line type and must be revised.

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

STORMWATER DRAINAGE FACILITIES
MAINTENANCE AGREEMENT BETWEEN
THE CITY OF KENOSHA, WISCONSIN, AND
CONTINENTAL 315 FUND LLC

Document Number

Document Title

Return to:

Jonathan A. Mulligan
Office of the City Attorney
City of Kenosha
625 52nd Street, RM 201
Kenosha, WI 53140

03-121-01-420-212
Parcel Identification Number

STORMWATER DRAINAGE FACILITIES
MAINTENANCE AGREEMENT

Between

THE CITY OF KENOSHA, WISCONSIN
a Municipal Corporation

And

CONTINENTAL 315 FUND 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 Continental 315 Fund LLC, a Wisconsin limited liability company, with principal offices located at W134 N8675 Executive Parkway, Menomonee Falls, Wisconsin 53051 (“Owner”), collectively referred to as the Parties.

W I T N E S S E T H:

Whereas, Continental 315 Fund LLC 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 the “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 as shown on the plans approved as part of the Conditional Use Permit and the Development Agreement (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 and this Agreement; and

Whereas, the City requires that the 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, the City and the Owner agree as follows:

1. The Owner of Lot 1 and the Lot 1 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 of Lot 1 and the Lot 1 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 with respect to the Stormwater Management Facilities indicating the date and type of maintenance completed ("Maintenance Log") 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 upon request 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 of Lot 1 and the Lot 1 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 of Lot 1 and the Lot 1 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 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 of Lot 1 and the Lot 1 Owner's successors and assigns, including any owners' association, copies of the inspection findings ("Inspection Reports"), specifically indicating any corrective actions required to bring the Stormwater Management Facilities into 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 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 of Lot 1 or the Lot 1 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 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 following notice from the Director of the City Stormwater Utility, the City may take one or more of the following actions:
 - a. Issue a citation to the Owner of Lot 1 or the Lot 1 Owner's successors and assigns, including any owners' association 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 of Lot 1 or the Lot 1 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 in accordance with Section 6 below. Except for the Stormwater Management Facilities required pursuant to 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, this provision shall not be construed to allow the City to erect any structure of a permanent nature on the land of the Owner or to make any alterations to any existing structure on the Real Estate. 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 the Owner of Lot 1 or the Lot 1 Owner's successors and assigns submits a revised Stormwater Inspection and Maintenance Checklist and confirms to the satisfaction of the Director of the City Stormwater Utility that all required corrective actions have been taken.
5. The Owner of Lot 1 and the Lot 1 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 of Lot 1 or the Lot 1 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 of Lot 1 and the Lot 1 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 the Owner of Lot 1 and the Lot 1 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 overnight delivery service, addressed to the respective Party at the addresses stated below:

a. Owner:

Continental 315 Fund LLC
c/o Legal Department
W134 N8675 Executive Parkway
Menomonee Falls, WI 53051

b. City:

City Clerk/Treasurer
City of Kenosha
625 52nd Street, Room 305
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 any Permanent Storm Sewer and Detention Pond Easement and Agreement by and between the Owner and the 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 _____, 2015, 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.

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

CONTINENTAL 315 FUND LLC
a Wisconsin Limited Liability Company
By: Continental Properties Company, Inc., its
Manager

By: _____
DANIEL J. MINAHAN, its President

Date: _____

STATE OF WISCONSIN)
:SS
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, 2015, Daniel J. Minahan, President of Continental Properties Company, Inc., the Manager of Continental 315 Fund LLC, a Wisconsin limited liability company, to me known to be such President of said corporation, and acknowledged to me that he executed the foregoing instrument as such authorized signatory as the agreement of said corporation as manager of said limited liability company by its authority.

Notary Public, County of Waukesha
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

Lot One (1) and Outlot One (1) of CERTIFIED SURVEY MAP NO. _____, being a division of part of Lot Two (2) of Certified Survey No. 2297 and lands, being a part of the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of the Southwest One-quarter (1/4), and the Northwest One-quarter (1/4) and Southwest One-quarter (1/4) of the Southeast One-quarter (1/4) of Section One (1), in Township One (1) North, Range Twenty-one (21) East, in the City of Kenosha, Kenosha County, State of Wisconsin, recorded in the Office of the Register of Deeds for Kenosha County on _____, 2015, as Document No. _____.

EXHIBIT B

Stormwater Inspection and Maintenance Checklist				
Owner:		Phone No.:		
Parcel No.:		Address:		
City:		State:		
Zip:		Contact Name:		
Date of Inspection (mm/dd/yy):		Inspection	<input type="checkbox"/> 6 Month <input type="checkbox"/> Other _____	
Time of Inspection	Start:		Name of Individual Performing Inspection (please print):	
	End:			
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				
Wet Detention Basin				
Outlet Structure Condition				
Next Structure Downstream				
Mowing (Monthly or >6")				
Condition of Plantings				
Condition of Water Plants				
Erosion				
Invasive Plants	Yes	No		
	-	-	Sediment Level	
Sediment Level				
Dredging Required	Yes	No		
Vegetated Swales				
Pesticides and Fertilizers Used	Yes	No		
Mowing Height				
Sediment Level			height	
Erosion	Yes	No		
Litter and Debris	Yes	No		
Proper Drainage	Yes	No		
Vegetated Swales				
Proper Drainage	Yes	No		
Mowing Height				
Sediment Level			height	
Erosion	Yes	No		
Level Spreader Condition				
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
Storm Water Maintenance Standards

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. Detention Basins – General
 - a. Dry or Wet Detention Basins
 1. Outlet Structure Maintenance: Trash grates shall be examined for debris accumulation after any storm that has significant runoff (observed flow in street gutters). Any debris on the trash grate shall be removed and disposed of offsite. If significant debris has passed the trash grates, it will be necessary to lift the grate to remove that debris. If debris passing the trash grate or vandals attempting to plug the outlet is a problem, then revisions should be made in the trash grate. Any time a trash grate needs replacement, the replacement grate must be constructed of stainless steel. Any blockage of the basin outlet must be addressed immediately. Blockage of the lower stages of the outlet structure must be cleared within 48 hours to avoid substantial die-off of the flooded grass areas. Any time a substantial portion of the grass area becomes damaged, the entire bottom area of the detention basin will need to be reseeded.
 2. Downstream Stormwater Conveyance: Upon detection of storm water failing to completely drain down to the basin discharge elevation, an investigation shall be made to determine the cause. Any obstruction or sediment buildup in the downstream pipes or drainage-way must be removed within 30 days and

any damage to the basin such as wave terraces or grass die-off due to the water back up shall be repaired.

3. Mowing: The grass areas must be mowed when the grass reaches a height of 6 inches or monthly during the growing season – whichever occurs first. At no time shall the detention basin be mowed when the bottom or side slopes are still soft after recent storage of storm water. Any ruts created by mowing shall be graded closed or filled with topsoil, seeded, and covered with a tackifier type mulch within one week of the damage. The type of mower used shall be such that a mulch type grass clipping is produced. Grass cut only at the ground level, such as with a sickle bar, tends to be carried to the outlet by storm water where it plugs the trash grate.
4. Maintenance of Plantings: All planting of trees and bushes shall be maintained in good condition. An examination of the plantings shall be made each Spring and Fall and any dead trees or bushes replaced at that time. The replacement shall be in kind or with a suitable species approved by the City Forester. All planting shall receive regular watering during the first few years until they become well established. Mulch beds shall be maintained around the plantings to discourage the growth of weeds and to conserve moisture. The area immediately around the plantings shall be kept free of weeds by pulling or weed whipping each time the grass is mowed. Bushes mowed off or tree bark girdled by the mowing equipment shall be replaced by a specimen of similar size.
5. Erosion: Any area bare of suitable vegetation shall, within 30 days of discovery or the onset of suitable weather, have any erosion repaired, filled with three inches of topsoil, seeded, and covered with a tackifier type mulch. On slopes of 10 to 1 or greater the repair shall be covered with turf reinforcement before placement of the top two inches of topsoil.
6. Invasive plant species: Invasive plant species such as purple loose strife or canary reed grass shall not be allowed to become established in the detention basin. At the detection of such species a control program shall be established and progress in their control shall be included in the yearly report.
7. Use of chemicals: No fertilizer or weed killer shall be used with the detention basin parcel.
8. Alterations to the detention basin: No alterations may be made to the detention basin in the way of grading, additional discharges to the basin, plantings etc without permission from the Storm Water Utility.

b. Wet Detention Basins – In addition to the above requirements

9. Mowing: Any vegetation growing at the edge of a permanent pond shall not be mowed since this ruts the edge of the pond and puts debris in the water. Any undesirable vegetation around the permanent pond should be removed mechanically and in accordance with DNR regulations and guidelines.
10. Control of water plants: Some water plants are desirable as they provide a balance environment for aquatic life and aid in the removal of nutrients from the storm water. Growth along the edge of the pond stabilizes the shoreline against erosion and discourages geese from using the pond. Excessive growth should be controlled by mechanical removal of the plants. Any use of chemicals in the pond must be in conformance with DNR regulations and guidelines and receive prior approval from the Kenosha Stormwater Utility. If the shoreline erodes due to lack of proper stabilization some other means of protection such as the placement of boulders will be required. The control of algae is not a required maintenance item since the objection to algae is mainly based on esthetics.
11. Sediment removal: Soundings shall be taken every 5 years to determine the amount of sediment deposition. More than 2 feet of sediment in any area shall require excavation of the sediment from that area. If more than 25% of the pond bottom has greater than 1 foot of sediment the entire pond will need to be dredged or excavated to the original elevation.

7. Vegetated Swales

- a. Pesticides and Fertilizers: Chemicals shall be used in moderation and only as needed to promote healthy dense vegetation.
- b. Mowing: The swale shall be mowed or cut to the height needed for proper function.
- c. Sediment Removal: When infiltration rates impeded or sediment is 2 inches. Care shall be taken to ensure that the swale is not being compacted during removal process.
- d. Erosion: Any area bare of suitable vegetation shall, within 30 days of discovery or the onset of suitable weather, have any erosion repaired, filled with three inches of topsoil, seeded, and covered with a tackifier type mulch. On slopes of 10 to 1 or greater the repair shall be covered with turf reinforcement before placement of the top two inches of topsoil.

- e. Litter and Debris: Swales shall be examined for debris accumulation after any storm that has significant runoff (observed flow in street gutters). Any debris within the swale shall be removed and disposed of offsite.
 - f. Proper drainage shall be maintained in all dry bottom detention basins to reduce mosquito breeding. No standing water shall be evident with one day of the complete drainage of the basin. Any such poorly drained area will need to be regraded or tiled.
8. Other Devices will be reviewed on a case by case basis.

PERMANENT STORM SEWER AND
DETENTION POND EASEMENT AND
AGREEMENT BETWEEN CONTINENTAL 315
FUND 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

Part of 03-121-01-420-212
Parcel Identification Number

PERMANENT STORM SEWER AND DETENTION POND
EASEMENT AND AGREEMENT

Between

CONTINENTAL 315 FUND LLC
A Wisconsin Limited Liability Company

And

THE CITY OF KENOSHA
A Municipal Corporation

This Permanent Storm Sewer and Detention Pond Easement and Agreement (“Easement and Agreement”) effective as of the last date of execution is entered into between Continental 315 Fund LLC, a Wisconsin limited liability company with principal offices located at W134 N8675 Executive Parkway, Menomonee Falls, Wisconsin 53051 (“Grantor”) and the City of Kenosha, a municipal corporation duly organized and existing under the laws of the State of Wisconsin with offices located at 625 52nd Street, Kenosha, Wisconsin 53140 (“Grantee”).

Grantor is the owner of the real estate legally described on Exhibit A situated in the City of Kenosha, County of Kenosha, and State of Wisconsin, hereinafter referred to as the “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 non-exclusive 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, reconstruct, repair, remove, replace, inspect, and maintain, storm sewer, stormwater ponds and appurtenances as described in the Conditional Use Permit, the executed Development Agreement, the approved Stormwater Management Plan, and the Stormwater Management Drainage Facilities Maintenance Agreement, copies of which are on file with the City of Kenosha Department of Community Development and Inspections and the Department of Public Works, all of which is hereafter referred to as the “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, cut or trim trees, shrubs, bushes, plants, undergrowth, fences, pavement or any other structures and obstructions interfering with the Permitted Work. Grantor will not push, plow or deposit snow, ice, or debris within the Easement Area.

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, upon reasonable notice to Grantor, except in case of emergency in which event Grantee shall provide such notice to Grantor as Grantee is reasonably able to provide under the circumstances, to enter and pass over and use Outlot 1 in order to use the Easement Area 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, including restoration of any landscaping, any fencing, any concrete and asphalt surfaces, or any other structures 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:

CONTINENTAL 315 FUND LLC
A Wisconsin Limited Liability Company

By: Continental Properties Company, Inc., its
Manager

By: _____
DANIEL J. MINAHAN, President

Date: _____

STATE OF WISCONSIN)
:SS.
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, 2015, Daniel J. Minahan, President of Continental Properties Company, Inc., the Manager of Continental 315 Fund LLC, a limited liability company, to me known to be such President of said corporation, and acknowledged to me that he executed the foregoing instrument as such officer as the agreement of said corporation as manager of said limited liability company, by its authority.

Print Name: _____
Notary Public, Waukesha County, WI.
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 _____, 2015, 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

Outlot One (1) of CERTIFIED SURVEY MAP NO. _____, being a division of part of Lot Two (2) of Certified Survey No. 2297 and lands, being a part of the Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of the Southwest One-quarter (1/4), and the Northwest One-quarter (1/4) and Southwest One-quarter (1/4) of the Southeast One-quarter (1/4) of Section One (1), in Township One (1) North, Range Twenty-one (21) East, in the City of Kenosha, Kenosha County, State of Wisconsin, recorded in the Office of the Register of Deeds for Kenosha County on _____, 2015, as Document No. _____.

EASEMENT EXHIBIT

STORMWATER ACCESS & MAINTENANCE EASEMENT

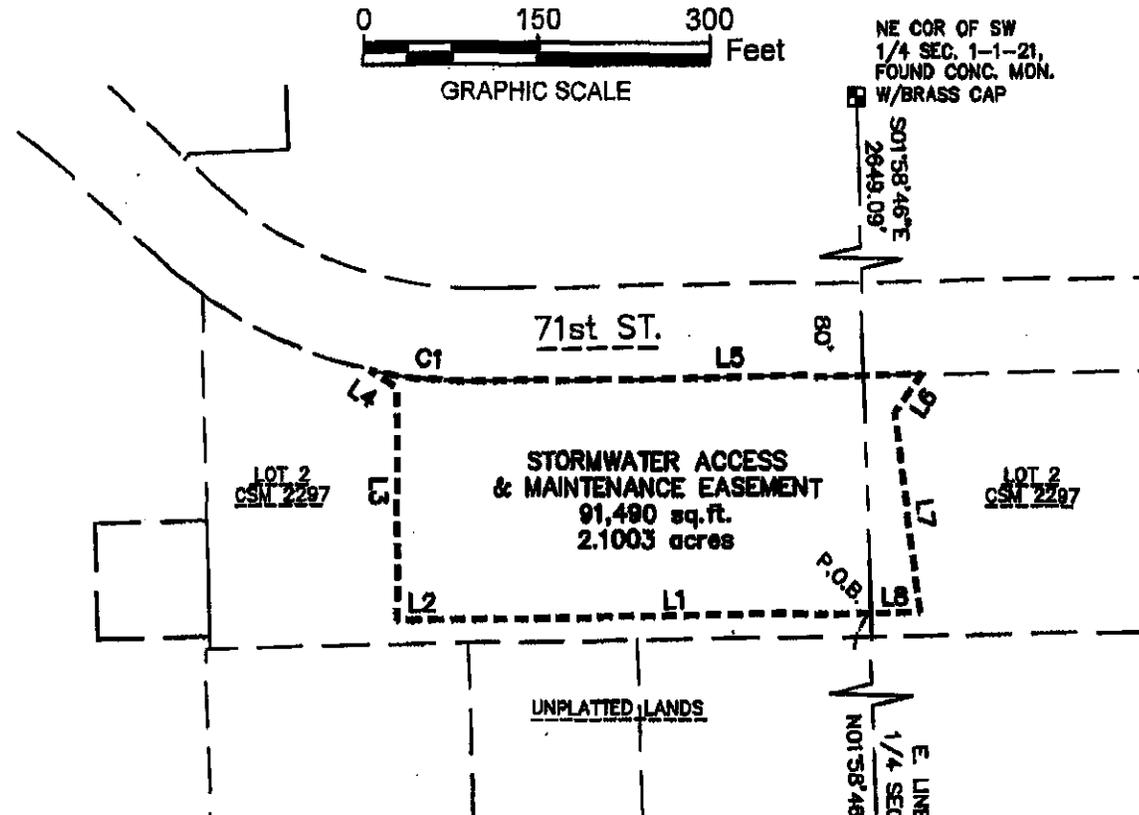
Situated on 71st Street, in the City of Kenosha, Kenosha County, Wisconsin.

Part of Lot 2 of Certified Survey No. 2297, being a part of the Southwest 1/4 of the Southeast 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 1, Township 1 North, Range 21 East, in the City of Kenosha, Kenosha County, Wisconsin, bounded and described as follows:

COMMENCING at the Southeast corner of said Southwest 1/4 Section; thence North 01°58'46" West along the East line of said Southwest 1/4 Section 925.20 feet to the point of beginning of lands to be described; thence South 88°55'00" West 386.38 feet to a point; thence South 90°00'00" West 26.97 feet to a point; thence North 00°00'00" West 200.48 feet to a point; thence North 56°01'03" West 27.53 feet to a point on the South line of proposed 71st Street extension; thence Southeasterly along said South line and the arc of a curve whose center lies to the North, whose radius is 411.00 feet and whose chord bears South 84°04'55" East 100.19 feet to a point; thence North 88°55'00" East along said South line 381.23 feet to a point; thence South 35°28'56" West 40.55 feet to a point; thence South 07°24'21" East 173.03 feet to a point; thence South 88°55'00" West 43.51 feet to the point of beginning. Containing 91,490 square feet or 2.1003 acres.

November 24, 2015

Project No. 166196-CRW



Curve Table				
Curve #	Length	Radius	Chord Bearing	Chord
C1	100.44'	411.00'	S84°04'55"E	100.19'

Line Table		
Line #	Direction	Length
L1	S88°55'00"W	386.38'
L2	S90°00'00"W	26.97'
L3	N00°00'00"W	200.48'
L4	N56°01'03"W	27.53'
L5	N88°55'00"E	381.23'
L6	S35°28'56"W	40.55'
L7	S07°24'21"E	173.03'
L8	S88°55'00"W	43.51'

R.A. Smith National, Inc.

*Beyond Surveying
and Engineering*

16746 W. Bluemound Road, Brookfield WI 53005
282-761-1000 Fax 282-797-7373 www.ra-smithnational.com
Appleton, WI Orange County, CA Pittsburgh, PA

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SHEET 1 OF 1

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R.A. Smith National, Inc.

START DATE FOR SUMMARY: 11/01/15 END DATE FOR SUMMARY: 11/30/15

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
153457	11/04	CONCRETE SPECIALTIES CO.	501-09-50105-355-000	10/15 SW MATERIALS/S	341.00
			501-09-50105-355-000	10/15 SW MATERIALS/S	282.00
				..... TOTAL	623.00
153461	11/04	CICCHINI ASPHALT LLC	501-09-50105-219-000	10/15 ST ASPHALT INS	540.00
153514	11/06	DECKER SUPPLY COMPANY, INC	501-09-50105-378-000	42" TRAFFIC CONES	2,996.27
153516	11/06	MANDLIK & RHODES	501-09-50102-219-000	10/15 YW COUPON PRG	51.32
153527	11/06	ESRI-WI USER GROUP	501-09-50103-264-000	12/3-4 EMMA REED	150.00
153593	11/11	TDS	501-09-50101-227-000	11/15 PHONE SERVICE	225.18
			501-09-50101-225-000	10/15 PHONE CALLS	.60
				..... TOTAL	225.78
153597	11/11	LINCOLN CONTRACTORS SUPPLY	501-09-50105-344-000	10/15-SW TOOLS/SUPPL	276.01
			501-09-50105-344-000	10/15-SW TOOLS/SUPPL	61.56
				..... TOTAL	337.57
153601	11/11	LEE PLUMBING, INC.	501-09-50105-241-000	09/15 ST HVAC, PLUMB	662.63
153603	11/11	WASTE MANAGEMENT OF WI	501-09-50104-253-000	10/15 103.79 TONS	2,587.48
			501-09-50104-253-000	10/15 WDNR TONNAGE	1,349.27
			501-09-50104-253-000	10/15 ENVIRO SURCHG	168.00
			501-09-50104-253-000	10/15 FUEL SURCHARGE	129.05
				..... TOTAL	4,233.80
153604	11/11	VERIZON WIRELESS	501-09-50101-226-000	10/15 PHONE SRV/AIRT	57.71
			501-09-50103-226-000	10/15 PHONE SRV/AIRT	57.70
				..... TOTAL	115.41
153608	11/11	MENARDS (KENOSHA)	501-09-50105-361-000	10/15-SW MERCHANDISE	58.47
			501-09-50105-344-000	10/15-SW MERCHANDISE	9.49
				..... TOTAL	67.96
153625	11/13	MINNESOTA LIFE INSURANCE	501-09-50101-156-000	12/15 PREMIUM	31.02
			501-09-50103-156-000	12/15 PREMIUM	7.40
				..... TOTAL	38.42

START DATE FOR SUMMARY: 11/01/15 END DATE FOR SUMMARY: 11/30/15

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
153646	11/13	MANDLIK & RHODES	501-09-50102-219-000	11/15 YW COUPON PRG	250.51
153649	11/13	VERIZON WIRELESS	501-09-50103-226-000	10/15 EN-DATA PLAN	172.63
			501-09-50106-226-000	10/15 EN-DATA PLAN	43.16
				..... TOTAL	215.79
153667	11/13	QUALITY MUDJACKING SERVICE	501-09-50105-219-000	MUDJACKING	10,000.00
153670	11/13	MENARDS (KENOSHA)	501-09-50105-344-000	10/15 SW-MERCHANDISE	89.80
153671	11/13	DELL COMPUTERS	501-09-50101-363-000	DELL DESKTOPS	2,783.08
153711	11/13	TALMER BANK & TRUST	501-00-13114-000-000	10/15 SW 32034	36.36
153724	11/13	BILLINGSLEY, SHELLY	501-09-50103-362-000	MOBILE PLAN RACKS	302.60
153741	11/13	DECKER, JUSTINE	501-09-50103-261-000	10/15 36 MILES	4.60
153766	11/18	HD SUPPLY WATERWORKS, LTD	501-09-50105-359-000	FERNCO COUPLINGS	2,381.00
153771	11/18	HOLLAND SUPPLY, INC.	501-09-50105-387-000	10/15-SW HYDRAULIC F	287.18
153775	11/18	CONCRETE SPECIALTIES CO.	501-09-50105-355-000	10/15 MATERLS/SUPL	640.00
			501-09-50105-355-000	10/15 MATERLS/SUPL	188.00
				..... TOTAL	828.00
153789	11/18	CDW-G	501-09-50103-363-000	10/15 COMPUTER EQPT	146.74
153850	11/20	ZARNOTH BRUSH WORKS, INC.	501-09-50104-344-000	10/15-SWEEPER PARTS/	520.00
153862	11/20	CONCRETE SPECIALTIES CO.	501-09-50105-355-000	10/15 ST MATERIALS/S	282.00
			501-09-50105-355-000	10/15 ST MATERIALS/S	282.00
				..... TOTAL	564.00
153866	11/20	MANDLIK & RHODES	501-09-50102-219-000	10/15 YW PROG ADMIN	350.00
			501-09-50102-219-000	11/15 YW COUPON PRG	316.98
				..... TOTAL	666.98
153867	11/20	RUEKERT & MIELKE, INC.	501-09-50102-219-000	9/5-10/2 DISCHARGE	5,405.00

START DATE FOR SUMMARY: 11/01/15 END DATE FOR SUMMARY: 11/30/15

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
153881	11/20	POYNETTE IRON WORKS, INC.	501-09-50105-369-000	SELF-DUMPING HOPPER	1,445.50
153887	11/20	GEMPLER'S, INC	501-09-50106-367-000	JACKET	74.70
			501-09-50106-367-000	PANTS	32.60
			501-09-50106-367-000	CLASS 3 VEST	27.20
			501-09-50106-367-000	CLASS 2 VEST	20.35
				..... TOTAL	154.85
153958	11/25	PAYNE & DOLAN INC.	501-09-50105-355-000	10/15 ASPHALT MATERI	461.25
153960	11/25	ZARNOTH BRUSH WORKS, INC.	501-09-50104-344-000	10/15-SWEEPER PARTS/	1,340.00
153969	11/25	T-MOBILE	501-09-50103-226-000	10/8-11/7-WIRELESS C	42.19
153977	11/25	JAMES IMAGING SYSTEMS, INC.	501-09-50101-232-000	11/15 PW-COPIER CHGS	172.22
			501-09-50105-232-000	11/15 ST-COPIER MNT	25.27
			501-09-50105-232-000	10/15 ST-OVERAGES	10.15
				..... TOTAL	207.64
154000	11/25	MENARDS (KENOSHA)	501-09-50105-344-000	11/15 ST MERCHANDISE	59.95
			501-09-50105-344-000	10/15 SW MERCHANDISE	48.10
				..... TOTAL	108.05
154030	11/25	ALLEN, JANELLE	501-00-21128-000-000	REISSUE CK #152959	3,500.00
GRAND TOTAL FOR PERIOD *****					41,783.28

December 18, 2015

TO: Shelly Billingsley, P.E.
Acting Director of Public Works / Stormwater Utility

FROM: Cathy Austin, P.E.
Assistant City Engineer

SUBJECT: Stormwater Utility Project Status Report

- Project #10-1126 Wetland Mitigation Bank** - [Wetlands and Waterways Consulting LLC] Technical memo has been finalized. Working on phase II of project to create cost estimates to re-grade the site to promote wetland conditions. (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 #12-1136 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] (SWU funding also) (6)
- Project #13-1132 – River Crossing Swale Restoration Phase II** – Project has been completed, punch list items remain. (17)
- Project #14-1012 – Resurfacing Phase I** – [Payne & Dolan] Waiting for Closeout Documents. [18th Avenue from 67th to 69th Street, 68th Avenue from 52nd Street to 1000’ N and 51st Street from 68th Avenue to 700’ W] (12, 16)
- Project #14-1013 – CDBG Resurfacing** – [57th St 19th Ave to Viaduct, 17th Ave – 57th St to Cul de sac] Waiting for Closeout Documents.
- Project #14-1131 – Curb and Gutter Repair Program** – [AW Oakes] Punchlist items remain (Stormwater Utility funding also) (Citywide)
- Project #14-1139 Forest Park Sanitary and Sewer Enhancements**– [AW Oakes] – Punchlist items are in progress (15)
- Project #15-1015 – 85th Street Resurfacing** [85th Street – 22nd Avenue to 30th Avenue] Project is complete. Close out process has begun (SWU Funding also) (9)
- Project #15-1018 – 7th Avenue Resurfacing** [7th Avenue – 68th St to 70th St] Waiting for Closeout Documents. (3)
- Project #15-1131 – Curb and Gutter Repair Program** – Project is complete. Close out process has begun (Citywide)

Design Work- Staff is working on the following projects: Detention Basin Dredging, Sump Pump Priorities, SWPPP Updates, 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