

Contract Routing Form

ROUTING: Routine

printed on: 09/26/2014

Contract between: B & B Ventures of Wisconsin LLC
and Dept. or Division: Engineering Division
Name/Phone Number:

Project: Approving plans & specs for Ph 1 Subdivision Hawk's Crossing
& First Addition Hawk's Crossing

Contract No.: 2373
Enactment No.: RES-14-00590
Dollar Amount: 5,000.00

File No.: 34736
Enactment Date: 08/07/2014

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	9.29.2014	9.29.14
Director of Civil Rights	9.30.2014	9/30/14 [Signature]
Risk Manager	10-1-14	10/2/14 RLV
Finance Director	10-2-14 KLS	10-22-14
City Attorney 1349	10-22-14	10-28-14
Mayor	10-28-14	10-29-14

Please return signed Contracts to the City Clerk's Office
Room 103, City-County Building for filing.

PO # 81532373

Original + 1 Copies

10/21/14 KLS✓

09/26/2014 10:44:09 enjls - Janet Schmidt, 261-9688

Dis Rights: OK / N/A / Problem - Hold
Prev Wage: AA / Agency / No
Contract Value: See above
AA Plan: 30 DAYS
Amendment / Addendum #
Type: POS / Dvlp / Sbdv / Govt
Grant / PW / Goal / Loan / Agrmt

SDR



CITY OF MADISON - WISCONSIN

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File #: 34736 Version: 1 Name: Approving plans & specs for public improvements required to serve Phase 1 of the Subdivision known as Hawk's Crossing and the First Addition Hawk's Crossing & authorizing construction to be undertaken by the Developer, & Rescinding File ID No. 34582, Priv

Type: Resolution Status: Passed

File created: 7/2/2014 In control: BOARD OF PUBLIC WORKS

On agenda: 8/5/2014 Final action: 8/5/2014

Enactment date: 8/7/2014 Enactment #: RES-14-00590

Title: Approving plans and specifications for public improvements required to serve Phase 1 of the Subdivision known as Hawk's Crossing and the First Addition Hawk's Crossing and authorizing construction to be undertaken by the Developer, and Rescinding File ID No. 34582, Private Contract No. 2373. (1st AD)

Sponsors: BOARD OF PUBLIC WORKS

History (3)	Text
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Fiscal Note

Est. cost not to exceed \$5,000.00

Funds available in Acct. No. CS53-58250-810354-00-53B2373

Title

Approving plans and specifications for public improvements required to serve Phase 1 of the Subdivision known as Hawk's Crossing and the First Addition Hawk's Crossing and authorizing construction to be undertaken by the Developer, and Rescinding File ID No. 34582, Private Contract No. 2373. (1st AD)

Body

WHEREAS, the developer, B&B Ventures of Wisconsin, LLC, has received the City of Madison's approval to create the subdivision known as The Ripp Addition to Linden Park and the First Addition to the Ripp Addition to Linden Park; and,

WHEREAS, Section 16.23(9) of the Madison General Ordinances requires the developer to install the public improvements necessary to serve the subdivision; and,

WHEREAS, Section 16.23(9) of the Madison General Ordinances allows the developer to install the improvements in construction phases provided that a Declaration of Conditions, Covenants, and Restrictions is executed for those lots included in future construction phases until such time as surety is provided to the City to guarantee the installation of the public improvements to serve said lots; and,

WHEREAS, the developer proposes to provide public improvements to serve Lots 7-13, 15-20, 24-27, OL 1 as Phase 1; and,

WHEREAS, on July 15, 2014 the project was approved as File ID No. 34582; and,

WHEREAS, the Developer wishes to change the plat name to Hawk's Crossing and the First Addition to Hawk's Crossing.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Mayor and City Clerk are hereby authorized and directed to execute a Contract For the Construction of Public Improvements That Will be Accepted by the City of Madison For Hawk's Crossing and the First Addition Hawk's Crossing, Phase 1, with B&B Ventures of Wisconsin, LLC.
2. That the plans and specifications for the public improvements necessary to serve this phase of the subdivision are hereby approved.
3. Th...

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**CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS
TO BE ACCEPTED BY THE CITY OF MADISON
HAWK'S CROSSING AND FIRST ADDITION TO HAWK'S CROSSING - PHASE I
CONTRACT NO. 2373
PROJECT NO. 53B2373

MADISON, WISCONSIN**

THIS CONTRACT for the Construction of Public Improvements to be Accepted by the City (hereafter "Contract" or "Agreement") is made and entered into by B&B Ventures of Wisconsin, LLC, of Madison, Wisconsin ("Developer"), and the City of Madison, ("City"), a Wisconsin municipal corporation located in Dane County, Wisconsin. This Agreement is effective as of the date signed by the Mayor on behalf of the City.

RECITALS

1. WHEREAS, the Developer has received approval from the City for a subdivision plat, a copy of which is incorporated by reference.
2. WHEREAS, Section 16.23(9) of the Madison General Ordinances (MGO) requires that provisions be made for the installation of public sanitary sewer facilities, storm sewer and drainage system, water mains and water service laterals, the grading of public and private lands, erosion and stormwater runoff control, street improvements, street signs and pavement marking to serve the development. Section 16.23(9) also permits the installation of said public improvements by construction phases.
3. WHEREAS, the Developer proposes to complete the installation of the required public improvements to serve Lots 7-13, 15-20, 24-27, OL 1, hereinafter "Construction Phase 1". Subsequent construction phases will be defined in scope by future *Contracts For The Construction Of Public Improvements To Be Accepted By The City*.
4. WHEREAS, as a condition of approval of phased development in said subdivision, the Developer is required to execute a Declaration of Conditions, Covenants, and Restrictions for all lots included in future construction phases, until such time as surety is provided to the City to guarantee the installation of public improvements to serve said lots.

CONTRACT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS TO BE ACCEPTED BY THE CITY:

NOW, THEREFORE, the Developer and the City hereby agree as follows:

SECTION I - GENERAL CONDITIONS

A. Prequalification of Contractors

The Developer shall furnish the City Engineer with the names of all Contractors and their subcontractors, with the classification of the work they perform, prior to any work beginning.

B. Nondiscrimination and Affirmative Action

(The term "Contractor" used in this paragraph shall be synonymous with the term "Developer" used in the remainder of this Agreement, and the term "Contract" shall be synonymous with the term "Agreement.")

1. Nondiscrimination.

In the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

2. The following section applies to all contractors employing fifteen (15) or more employees: (MGO 39.02(9)(c).)

The Contractor agrees that, within thirty (30) days after the effective date of this contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the contract is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

3. Articles of Agreement for Affirmative Action, Release of Payment:

The "ARTICLES OF AGREEMENT" below shall apply to this Agreement.

RELEASE OF PAYMENT: (MGO 39.02(9)(e)1.b.) (Applies only to agreements that include payment to the contractor by the City.) All contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below, prior to release of payment.

ARTICLES OF AGREEMENT

Article I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

Article II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

Article III

The contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

Article IV

(This article applies only to non-public works contracts).

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

☐ A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison Ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.

☒ B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

Article V

(This article applies only to public works contracts).

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City, including the contract compliance requirements. The contractor agrees to submit the model affirmative action plan for public works contractors in a form approved by the Director of Affirmative Action.

Article VI

The contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

Article VII

In the event of the contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the contractor ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime contractor from recovering the amount of such damage from the noncomplying subcontractor.

Article VIII

The contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance. (This article applies to public works contracts only).

Article IX

The contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE and WBE" shall be substituted for the term "small business" in this article).

C. Preconstruction Meeting

The Developer further agrees to coordinate a preconstruction meeting with the City Construction Engineer.

D. Construction Plans

The Developer further agrees to work from Construction Plans that have been approved by the Common Council. The plan shall be prepared by the Developer or by the City Engineer from data submitted by the Developer, as determined by the City Engineer. The Developer shall note that Plan Commission approval of the project does not constitute approval of the improvements within the public right-of-way. Separate approval is required. The Plan shall be signed by the City Engineer.

E. City Approval of Starting Dates

The Developer further agrees that no work shall be scheduled for the above-mentioned improvements without the City Engineer's and Water Utility Manager's approval of starting date and schedule.

F. Notification of Work

The Developer further agrees to notify the City Construction Engineer two (2) working days prior to beginning work or resuming work in the right-of-way.

G. Change Order to Work

The Developer further agrees that the City shall not be responsible for any costs or changes related to this project except those specifically enumerated and agreed in this or other written agreements between the City and the Developer.

H. Acceptance of Work

The Developer further agrees that the acceptance of public improvements is conditioned on completion of the following:

1. That all outstanding engineering and inspection charges indicated herein have been paid in full.
2. That affidavits and lien waivers are received by the City indicating that the Contractor has been paid in full for all work and materials furnished under this contract.
3. That a complete breakdown of costs incurred by the Developer is provided to the City for the following public improvement components in the public right of way and within public easements:
 - a. Sanitary sewer and sanitary sewer laterals. Acceptance of the work requires televising of all sewer mains at the Developer's expense.
 - b. Water main and laterals.
 - c. Storm sewer and storm water management facilities. Acceptance of the work requires televising of all sewer mains at the Developer's expense
 - d. Streets including sidewalks, pavement marking, signage and street plantings.
 - e. Street lighting.
 - f. Other items of work within the Public Right of Way.
4. That the water main is tested and a bacteriologically safe sample is obtained by testing at the local health department. The Water Utility will flush the main and obtain the samples required for this testing.

The maintenance of specified public improvement components becomes the responsibility of the City upon acceptance of those components by the Common Council

I. Time of Completion

All work specified herein shall be completed within eighteen (18) months from the date of this agreement by the Developer.

J. Indemnification and Insurance

To the fullest extent permitted by law, the Developer shall indemnify, defend and hold harmless the City, its officials, officers, agents, employees, and consultants from and against all suits, claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense: (a) is attributable to bodily injury, sickness, disease, death, personal injury, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and, (b) is caused in whole or in part by any negligent act or omission of the Developer, its Contractor, their agents, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by law regardless of the negligence of any such party.

In any and all claims against the City, its officials, officers, agents, employees or consultants, by any employee of the Developer, its Contractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of

them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or other person or organization under workers' compensation, disability benefit, or other employee benefit acts, statutes or laws.

The obligations of the Developer under this paragraph J. shall not extend to the liability of the City's consultants or consultants' agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, and designs or specifications.

The Developer shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Developer's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Such insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Developer shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Developer shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City Risk Manager. If any of the policies required above expire while this Contract is in effect, Developer shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:

City of Madison
ATTN: Risk Management, Room 406
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703

The Developer shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Developer and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

The Developer shall require all Contractors engaged in the construction of this project to maintain the insurance required by Section 107.4 of the *City of Madison Standard Specification for Public Works Construction*, and to submit a current Certificate of Insurance with the City Engineer prior to the commencement of any work under this contract.

K. Weapons Prohibition

The Developer shall prohibit, and shall require its contractors or subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the contractor's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

L. Guarantee of the Work

The Developer agrees to guarantee all work performed under this contract, except tree and shrubbery planting, for a period of one year from the date of final acceptance by the City Common Council, against defects in workmanship or materials. If any defect should appear during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at his own expense. This expense includes total and complete restoration of any disturbed surface or component of the improvement to the standard provided in the plans and specifications, regardless of improvements on lands where the repairs or replacement is required.

The Developer agrees to guarantee all tree and shrubbery planting for a period of two years from the date of final acceptance by the City Common Council, in accordance with Section 209.6 of the *City of Madison Standard Specifications for Public Works Construction*.

M. Specifications for Improvement

The Developer agrees to install the improvements specified in this Agreement in accordance with the plans and specifications approved by the Common Council and in accordance with the *City of Madison Standard Specifications for Public Works Construction* and the following conditions:

1. Grading, Erosion Control, Barricades, and Traffic Control:

- a. The Developer shall undertake the grading, erosion control and barricade requirements for streets whose right-of-way are contained within the development to subbase grades established by the City Engineer and approved by the Common Council, said grading shall include the grading of the terraces to a sidewalk grade established by the City Engineer and in accordance with the Madison Standard Typical Street Sections and Standard Detail Drawings of the Specifications.
- b. The Developer shall grade the terrace of those existing streets which abut the plat to a sidewalk grade or a grade established by the City Engineer.
- c. The Developer shall grade vision clearance triangles on corner lots to a maximum height of two (2) feet above the proposed curb elevation within the triangular space formed by two intersecting street lines or their projections and a line adjoining said points on said street lines located a minimum of twenty-five (25) feet from such street intersections. No structures, screenings, plantings, or embankments of any kind are allowed within this triangular area if they violate Section 27.05(2)(bb), MGO.
- d. The Developer shall furnish, install barricades, signs and other traffic control devices as specified by the City Traffic Engineer at all street ends.
- e. The Developer shall prepare a traffic control plan, which shall be submitted for approval to the Traffic Engineering Division. Work shall not begin until the traffic control plan is approved by the Traffic Engineering Division and a copy of the approved traffic control plan has been submitted to the Construction Engineer. The Developer shall furnish, install and maintain during construction, barricades, signs, pavement markings and other traffic control devices as specified on the approved traffic control plan or as directed by the City Traffic Engineer.
- f. The Developer shall obtain an Erosion Control and Stormwater Management Permit for the erosion and runoff control as required by Chapter 37, M.G.O. prior to the grading, utility installation or other land disturbance activity. A permit shall be obtained for each construction phase. The Developer shall adhere to conditions specified on the permit and grants the right-of-entry on the development to designated personnel of the City to inspect and monitor compliance with this Agreement.

Prior to acceptance, the Developer shall submit a post construction erosion control plan to the City. This plan shall address erosion control in the interim between the completion of the public works improvements specified in this contract and ultimate development. The Developer shall install those facilities and structures required by the post development erosion control plan.

- g. The Developer shall not disturb, grade, fill or store materials on public property or property required to be dedicated, unless specifically approved by the City's representative. The Developer shall clean up, topsoil, seed and mulch any public property, which is disturbed. The Developer shall grade, topsoil, seed and mulch all public or dedicated frontage at a 4:1 slope to meet existing grade, unless it is

specified otherwise or permitted by the City's representative. The Developer shall provide and install any erosion control measures required on public property or property to be dedicated due to the grading specified in this contract.

2. Sanitary Sewer Facilities:

- a. The Developer shall install sanitary sewer mains, sanitary sewer access structures and laterals to serve all lots within the development. No construction shall commence until plans and specifications have been approved by the Madison Metropolitan Sewerage District and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement.
- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by the using an Electronic Ball Marker System. Therefore, the Developer shall install the 3M™ Electronic Marker System (EMS) 4" extended Range 5' Ball Markers-Wastewater (model #1404-XR) for each sanitary sewer lateral. The City shall supply all the required markers to the Developer or his Contractor (generally requires 2 per lateral) and the Contractor shall install them per the manufacturer's requirements or as directed by the City Engineer. Costs of supplying the ball markers shall be billed to the Developer in accordance with the billing terms of this agreement. If the Developer wishes to use alternate means of complying with this State Statute, it must be approved in advance by the City Engineer.

3. Storm Sewer and Public Drainage System:

- a. The Developer shall install a public drainage system including all storm sewer mains, mainline structures, inlets, lateral pipes, greenways, culverts, and detention/retention basins in accordance with the plans approved by the City Engineer unless other arrangements have been approved by the City Engineer as detailed in the supplemental conditions. Any field changes by the City Engineer shall become part of the approved plan and shall be incorporated at the Developer's expense.
- b. In accordance with Wisconsin State Statute 182.0175(2r), any person who, after December 31, 2006, installs a nonconductive sewer lateral shall also install a locating wire or other equally effective means for marking the location of the lateral. The City of Madison has chosen compliance with this Statute by the using an Electronic Ball Marker System. Therefore, the Developer shall install the 3M™ Electronic Marker System (EMS) 4" extended Range 5' Ball Markers-Wastewater (model #1404-XR) for each storm sewer lateral. The Storm Sewer Electronic Markers shall be provided where non-metallic storm sewer pipe is installed in the public Right of Way, and where no access or inlet structures are available on the surface to allow the pipe to be visually located. City shall supply all the required markers to the Developer or his Contractor (generally requires 2 per lateral) and the Contractor shall install them per the manufacturer's requirements or as directed by the City Engineer. Costs of supplying the ball markers shall be billed to the Developer in accordance with the billing terms of this agreement. If the Developer wishes to use alternate means of complying with this State Statute, it must be approved in advance by the City Engineer.
- c. The detention/retention basin(s) shall be over-excavated and constructed to serve as an interim sediment trap. The volume of over excavation shall be calculated to collect the anticipated sediment from the plat over a minimum period of 2-years. In general, this over-excavation will be two (2) feet minimum. In the case of a retention basin, the minimum standard depth shall be seven (7)

feet as measured from the normal water level. This will result in an initial depth of nine (9) feet.

This construction and all other erosion control measures shall be installed prior to any other plat grading or utility construction. An inspection and approval by the City Engineer must be obtained prior to start of other plat improvements.

- d. Upon completion of improvements, the detention/retention basin, greenways, infiltration basins or other related storm water management feature shall be reconstructed to the original approved design prior to acceptance by the City. Prior to beginning this reconstruction the Developer shall provide an as-built to the City Engineer such that the extent of the work to be completed can be determined. This as-built shall consist of cross sections including the "safety bench" and slopes of the banks, both above and below the water surface. Additionally, sufficient random shots shall be taken on the floor of the basin to determine how much (if any) dredging shall be required. The as-built submittal must be sealed by a Professional Land Surveyor or a Professional Engineer. The other components of the stormwater system may be accepted independently of the detention / retention basin greenways, infiltration basins or other related storm water management feature. Final acceptance areas seeded with Prairie mix, shall be delayed a minimum of (1) year to ensure proper seeding and stabilization has been achieved.
- e. Prior to the issuance of building permits, the Developer shall submit a master storm water drainage plan to the City Engineering Division for review and approval, in accordance with the conditions of Plat approval.

The master storm water drainage plan shall be submitted to City Engineering in digital format. The digital plan shall contain, at a minimum, lot corner elevations on an overlay of the recorded plat map of the development. Other information, as needed, such as contours and cross sections may be provided in either digital or hard copy. The digital record shall be provided using the state plane coordinate system - NAD 27.

No building permits shall be issued prior to City Engineering's approval of this plan.

- f. If the Developer chooses to have the detention/retention basin and/or greenway designed by his/her engineer, the Developer shall have those plans approved and provided to City Engineering a minimum of one week before the issuance date agreed to in the contract schedule. The plans shall be sealed by a Professional Engineer and shall be on 11" x 17" sheets. Further, the plans shall be of sufficient detail to allow construction of the basin/greenway and shall include all seeding specifications (as approved by City Engineering), detail drawings and contour maps/cross sections of the basin/greenway. Plans shall not be issued until these sheets are provided and approved by City Engineering.

4. Water Mains and Water Service Laterals:

- a. The Developer shall install water mains, including pipe, hydrants, tees, valves, crosses and related appurtenances and water service laterals to serve all lots within the development and as required by the plans and specifications prepared by the Water Utility and approved by the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement. All water service laterals two (2) inches in diameter and smaller shall be completed with a curb stop and box. All water service laterals three (3) inches and larger shall be completed with a controlling valve box. All materials used shall conform to *City of Madison Standard Specifications For Public Works Construction*. The City Water Utility will furnish all pipes and fittings over ten (10) inches in diameter and the Developer will furnish all other required materials.

5. Streets and Sidewalks:

- a. The Developer shall install Madison Standard Concrete Curb and Gutter and other types of curb and gutter as specified, Madison Standard Sidewalk with Madison Standard Crosswalks, and the specified Standard Pavement on all streets within the development.
- b. The Developer shall comply with all provisions as outlined in Section 107 of the City of Madison Standards for Public Works Construction. The Developer or his agent shall contact City Forestry to review the trees prior to any trimming or removal. Prior to the closure of this contract City Forestry shall do a final inspection of the trees. A Tree Removal Permit shall be issued by City Forestry prior to removal of any City owned trees.

6. Runoff Control Structures:

The Developer shall install the runoff control structures including related storm sewers required by the Erosion Control and Stormwater Management Permit and the plans and specifications approved by the City Engineer.

7. Section Corners:

All PLSS section and witness corners (including center of sections) situated within the subdivision, or within planned improvement areas for the development thereof, must be included in final survey data transmittal. Any PLSS section and/or witness corners, including center of sections, must be perpetuated by the Developer's contracted Professional Land Surveyor. In the event any PLSS section corner, including center of sections, are disturbed or destroyed as a result of any form of construction included in the private contract and private construction associated with this subdivision Development, the PLSS restoration must be completed by the Developer's contracted Professional Land Surveyor, at the sole cost of the Developer. New PLSS tie sheets must be filed by the contracted Professional Land Surveyor in accordance with Wisconsin Administrative Code AE-7.08.

8. Signs:

The Developer shall pay all costs associated with the installation of all traffic signs and structures as required by the plans and specifications prepared by the City Traffic Engineering Division, including City furnished materials, labor, inspection and engineering. The Developer following the provisions in the Standard Specifications for Public Works Construction may install temporary street name signs.

9. Pavement Markings:

The Developer shall pay all costs associated with the installation of all pavement markings as required by the plans and specifications prepared by the City Traffic Engineering Division, including City furnished materials, labor, inspection, and engineering.

10. Street Lights:

The Developer shall pay all costs associated with the installation of street lighting, conduit and structures as required by the plans and specifications prepared by the City Traffic Engineering Division including City furnished materials, labor, inspection and engineering. The Developer shall install street lighting facilities per the City-prepared plans and specifications.

N. Fees Payable Prior to Construction

The Developer agrees to pay the City the following charges prior to construction beginning:

1. All outstanding area charges levied against lots within the development by the City and the Madison Metropolitan Sewerage District for the construction of downstream sanitary sewer facilities.
2. An amount determined by the City Water Utility to reflect the cost to the Water Utility of furnishing water mains and fittings whose diameter is in excess of ten (10) inches. Said amount shall be based upon the cost of furnishing ten (10) inch diameter pipe and fittings, irrespective of the size of the pipe actually furnished by the Water Utility, it being the intent of the Water Utility to pay the difference in cost between ten (10) inch diameter pipe and the pipe and fittings actually furnished.

O. Developer to Reimburse the City for Costs Sustained

1. The Developer shall reimburse the City for its actual cost of design, inspection, testing, construction, erosion control review and inspection, and associated legal and real estate expenses for the required public improvements for the project. The City's expenses shall be determined as follows:
 - a. The cost of City employees' time engaged in the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the respective Division/Department to represent the City's cost for statutory expense benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.25.
 - b. The cost of City equipment employed, including all televising of sewer mains.
 - c. The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 29% of the cost of the materials.
 - d. All consultant fees associated with the project at the invoiced amount plus 10% for administration.
 - e. Damages to trees in accordance with the fee schedule outlined in section 107.14(i).
2. The Developer shall advance to the City the following payments/deposits:
 - a. An amount equal to an estimate of the City's expenses, as prepared by the participating City Divisions/Departments, at the time the Developer files a Development Agreement. At the conclusion of the project, the respective agencies shall bill the actual cost to the Developer. In the event that the actual cost is calculated to be less than the advanced amount, the difference shall be refunded to the Developer. In the event the advance is less than the actual amount, the Developer shall be billed the difference and payment shall be a condition precedent to acceptance of any major components of construction. The estimated cost of services to be performed by the City is as follows:

City Engineering Division \$ 35,000.00 (Make check payable to City of Madison).

Madison Water Utility \$ 7,000.00 (Make check payable to Madison Water Utility).

City Traffic Engineering Division \$ 6,750.00 (Make check payable to City of Madison).
(\$6,250 electric and lighting)
(\$500.00 signing and marking)

Charges for services performed for the construction of improvements in subsequent construction phases shall be on the basis of charges for such services in effect at the time of construction of said Subsequent Construction Phases, the estimated cost being deposited with the participating City Divisions/Departments prior to construction.

P. Surety

1. The Developer agrees to enter into a Construction Escrow Agreement to provide surety in the amount of \$515,000, which shall be integral with this contract. The Construction Escrow Agreement shall detail the terms and condition of the surety requirement and shall be for the amount estimated by the City, which shall cover the entire cost of the public infrastructure improvements with a minimum of 10% retainage added. The Construction Escrow Agreement shall detail the release of surety under this contract.
2. Upon acceptance by the City Common Council of the improvements constructed as part of this agreement, the City agrees to reduce the surety to an amount equal to an estimate of the City Engineer to secure performance of the guarantee described in this agreement.

Q. Developer's Designated Project Coordinator

The Developer hereby appoints Ryan Quam, Quam Engineering, rquam@quamengineering.com, 838-7750, as the Project Coordinator, said individual who shall act as the Developer's representative during the Construction Phase of the installation of these improvements.

R. Penalties

The Developer further agrees that failure to comply with the provisions of this agreement shall have the following results:

1. Forfeiture of all payments/deposits under Par. O, and
2. Extension of the guarantee in Par. L to two (2) years, and
3. The City holding the surety in Par. P until such time as the guarantee expires.

SECTION II - SUPPLEMENTAL CONDITIONS

- A. The Developer shall construct public sanitary sewer main and laterals, water main and service laterals, storm sewer and drainage system to serve Hawk's Crossing and First Addition to Hawk's Crossing - Phase I.
- B. The Developer shall construct sanitary sewer laterals and water service laterals on Ancient Oak Lane. The Developer shall be required to patch the existing roadway in accordance with the City's Pavement Patching Criteria.
- C. The Developer shall construct Madison Standard street improvements, including sidewalk on both sides, on the following streets:
 - Sundance Drive from Ancient Oak Lane to Pine Hollow Place
 - Pine Hollow Place from Sundance Drive to the west line of Lot 7
- D. The Developer shall construct a temporary turn around on Pine Hollow Place, in accordance with the plans approved by the City Engineer, and provide for a temporary turn around easement that will terminate upon the completion of the roadway construction.
- E. The Developer shall construct a stormwater management pond located within Outlot 1. The Developer shall construct storm sewer to discharge to the existing stormwater management pond within Linden Park, in accordance with the plans approved by the City Engineer.
- F. The Developer shall execute a Declaration of Conditions, Covenants, and Restrictions restricting the sale or transfer of Lots 1-6, 14, 22, 23, inclusive of Hawk's Crossing, and Lots 28-30 of the First Addition to Hawk's Crossing, until such time as surety is provided to the City to guarantee the installation of public improvements to serve said lots.
- G. All damage to the pavement on Pine Hollow Place, Sundance Drive and Ancient Oak Lane adjacent to this development shall be restored in accordance with the City of Madison's Pavement Patching Criteria.
- H. The Developer shall replace all sidewalk and curb and gutter which abuts the property which is damaged by the construction, or any sidewalk and curb and gutter which the City Engineer determines needs to be replaced because it is not at a desirable grade regardless of whether the condition existed prior to beginning construction.
- I. This plat is subject to Impact Fees that are due and payable at the time of application for building permits. Building permit holds shall be placed on all lots with outstanding fees. The Developer shall execute a Declaration of Conditions, Covenants and Restrictions for recording at the Dane County Register of Deeds along with an Impact Fee Schedule.
- J. After acceptance of said improvements by the Common Council, the Developer shall submit an itemized invoice, based on final quantities and costs, to the City Engineer, for the street improvements on Ancient Oak Lane adjacent to OL 1. After approval by the City Engineer, the City shall reimburse the developer, up to the statutory limit, in accordance with Section 16.23(9)(d)(6)(d) of the Madison General Ordinances.
- K. The Developer shall execute a waiver of hearing and notice for assessments for public infrastructure related to this contract. Upon successful completion and close out of this contract the waiver shall be considered null and void. In the case the Developer is unable or unwilling to install the improvements as required the City shall then hire a contractor for the installation of the public infrastructure and assess all lots covered under this contract for said improvements.
- L. The Developer shall provide a temporary limited easement with the recording of the plat on Pine Hollow Place adjacent to proposed lots 1-6, 22, 23, of Hawk's Crossing and Lots 28-30 of the First Addition to Hawk's Crossing. The temporary limited easement shall expire upon the completion of the construction of Pine Hollow Place.
- M. The Developer shall execute a waiver of hearing and notice for the street improvements on Pine Hollow Place.

N. The Developer shall assume all risks and responsibility for any construction under this agreement started prior to plat recordation. Surety shall be required for staking of the lots and shall be maintained with this contract until all lots in Hawk's Crossing and First Addition to Hawk's Crossing are staked. The City Engineer shall authorize the start of construction only after the Hawk's Crossing and First Addition to Hawk's Crossing Subdivision requirements are satisfactorily completed.

IN WITNESS WHEREOF, the parties hereto have set their hand(s) at Madison, Wisconsin.

B&B VENTURES OF WISCONSIN, LLC

BY: [Signature] 9-17-14
(signature) Date
Bryan Sipple
(print name and title of person signing)

BY: _____
(signature) Date

(print name and title of person signing)

CITY OF MADISON, WISCONSIN

BY: [Signature] 10/29/14
Paul R. Soglin, Mayor Date

APPROVED AS TO FORM:

BY: [Signature] 10/28/14
Michael May, City Attorney Date

BY: [Signature] FOR 9-29-2014
Maribeth Witzel-Behl, City Clerk Date

APPROVED:

BY: [Signature] 10/2/14
Eric T. Veum, Risk Manager Date

COUNTERSIGNED:

BY: [Signature] 10/27/14
David Schmiedicke, Finance Director Date

CONSTRUCTION ESCROW AGREEMENT

This Construction Escrow Agreement is made and entered into as of the 24th day of September, 2014, by and among Settlers bank ("Settlers"), Preferred Title LLC ("Title Company"), the City of Madison (the "City") and B&B Ventures of Wisconsin, LLC ("Developer").

RECITALS

A. The City and Developer have entered into a *Contract for the Construction of Public Improvements to be Accepted by the City of Madison – Hawk's Crossing and First Addition to Hawk's Crossing, Phase 1* (the "Subdivision Contract"), under which Developer is obligated to install certain public and private infrastructure improvements as a part of its development and continued build out of Phase 1 of the Hawk's Crossing and First Addition to Hawk's Crossing subdivisions, City Project Number 53B2373, Contract Number 2373 (the "Project").

B. Pursuant to the Subdivision Contract Developer is required to furnish a surety acceptable to the City in the amount of Five Hundred Fifteen Thousand Dollars (\$515,000.00) to secure Developer's performance under the Subdivision Contract.

C. Developer has selected Settlers to provide its surety and the City has agreed to accept such surety from Settlers in the form of a cash deposit to be held by Title Company.

D. The parties wish to state their agreement with respect to the deposit of Settlers's funds with Title Company, the withdrawal of such funds, and the release of such funds.

AGREEMENT

Therefore, in consideration of the mutual and reciprocal covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Deposit to Title Company. Settlers agrees that it will deposit with Title Company the maximum amount of Five Hundred Fifteen Thousand Dollars (\$515,000.00) (the "Escrowed Funds") to be disbursed by Title Company as provided herein for the sole purpose of paying for work performed as required by the Subdivision Contract or as otherwise provided in this Agreement. The Escrowed Funds shall be deposited prior to the commencement of construction of the Project.

2. Draw Requests. Developer may request disbursement to the prime contractor or subcontractors only to the extent of the amount of the Subdivision Contract work satisfactorily completed or materials actually incorporated into the Project, less a retainage equal to ten percent (10%). Whenever Developer desires disbursement of any Escrowed Funds, Developer shall submit to Settlers and Title Company an application for a payment request signed by Developer and in a form and detail satisfactory to Settlers and the Title Company, including an itemized list of the type of work, original estimated cost to complete such work, the amount previously

disbursed for such work, if any, the amount requested to be disbursed under the draw request, the estimated cost of completing such work and the portion of the work still to be completed. Such request shall be accompanied by a completed Application for Payment signed by Developer's prime contractor, Developer's project engineer, Quam Engineering, LLC ("Project Engineer") and by Developer. Prior to submission of the first draw request, Developer shall have provided to Settlers, the City and Title Company the name of each person, corporation or other entity who has a contract either as a direct contractor with Developer or as a subcontractor, under which payment may be required for work done, materials supplied or services furnished in connection with the construction of the Project, and the type of work, material or services and the amount covered by each of their respective contracts with Developer or Developer's prime contractor. It is understood that only those contractors whose names and contract descriptions have been furnished to Title Company, the City and Settlers shall be entitled to receive disbursements under this Agreement. In addition, Developer shall submit to Settlers and/or Title Company the items set forth below:

a. Prior to applying for the release of payment, the Developer shall provide a payment request to the City Engineer for review and approval. The City Engineer shall have ten (10) calendar days after receipt to review and either approve or disapprove such request. The request for payment will constitute approval from the Developer that the contractors have satisfactorily installed the improvements as required. Included in the request for payment, Developer shall submit such other supporting evidence as may be reasonably requested by Title Company and/or Settlers to show that the work and materials for which funds are being disbursed will be free from all possible construction lien claims. Prior to approval of the request for payment, the City shall verify that the work performed up to the date of the applicable draw request has been inspected and accepted by the City, in accordance with the plans and specifications and the Subdivision Contract. If the City Engineer has not responded to Developer's request for approval within ten (10) calendar days with either an approval or disapproval then the City Engineer will be deemed to have approved the application for payment. If the City Engineer disapproves the application, the City Engineer and the Developer agree to cooperate with each other until such time as the City Engineer approves the application for payment; and

b. Prior to Title Company providing payment, a waiver of construction lien from the prime contractor covering claims for all work done and materials supplied and covered by the respective draw request as approved by Settlers in the form required by Title Company and approved by the City;

c. Prior to Title Company providing payment, waivers of construction liens from all the subcontractors covering claims for all work done and materials supplied and covered by all draw requests up to and including the current application for advance (except that a final waiver of construction lien in full from each respective subcontractor shall accompany the application for advance which requests the final payment for such subcontractor) approved by Settlers in the form required by Title Company and approved by the City. In the event Title Company discovers a misstatement in any affidavit,

statement or certificate furnished pursuant to this Agreement, it shall make no further disbursements until such misstatement has been corrected;

d. IT IS EXPRESSLY UNDERSTOOD THAT IT IS THE DUTY OF THE TITLE COMPANY TO COLLECT LIEN WAIVERS ONLY FROM THE SUBCONTRACTORS AND MATERIAL SUPPLIERS DISCLOSED ON THE DRAW REQUEST FORMS SET FORTH IN SECTION 2 HEREIN, AND SHALL HAVE NO LIABILITY FOR LIEN CLAIMS MADE BY ANY PARTIES NOT INDICATED ON SAID FORMS. NOTWITHSTANDING ANY OTHER LANGUAGE IN THIS AGREEMENT, ANY OBLIGATION ON THE PART OF TITLE COMPANY TO COLLECT LIEN WAIVERS SHALL BE CONSIDERED MET BY ITS COLLECTION OF COPIES OF LIEN WAIVERS RATHER THAN ORIGINALS;

e. Evidence that any other required governmental approvals and certificates have been obtained;

f. Payment to the Title Company of \$295.

3. Limit on Draw Requests.

a. Developer may submit no more than four (4) draw requests for the initial construction of the street, sanitary sewer, storm sewer and water main construction. Additional draws may be requested for the final surface paving and the final stormwater management features that may not be completed with the initial construction. Such draw requests may be submitted no more than once every thirty (30) days, with the exception of the final draws. Title Company and Settlers have at least ten (10) business days to process a draw request and verify the acceptability of the request. Title Company shall not disburse any funds pursuant to a draw request until it provides to Settlers written affirmative title insurance coverage insuring Settlers against any lien (other than Settlers' mortgage) including, but not limited to, affirmative mechanics' lien coverage as to all mechanics liens as of the relevant disbursement date, subject only to any encumbrances permitted by Settlers.

b. From time to time the City Engineer may in his discretion agree that a certain amount of Escrowed Funds can be released from escrow because such funds in his sole discretion are no longer needed to successfully complete the Project. If the City Engineer agrees to such release, in his sole discretion, then such excess funds shall belong to Settlers and shall be delivered promptly to Settlers, provided that Settlers has not given the Settlers Termination Notice (as hereafter defined). If Settlers has given the Settlers Termination Notice, then such excess funds shall belong to Developer and shall be delivered promptly to Developer.

4. Final Payment. The final payment of the full amount of the prime contractor's contract shall not be disbursed until final completion of the Project has occurred, the Project has successfully passed the required warranty period, and the City is satisfied that the Project has been completed in accordance with all the requirements set forth in the Subdivision Contract.

Notwithstanding the foregoing, the City Engineer may approve a final payment prior to the expiration of the warranty period, provided Title Company retains escrowed funds in an amount equal to the estimate of the City Engineer of the cost of any work remaining to be completed and accepted and an amount necessary to insure performance of work against defects in workmanship and materials arising during the warranty period. Upon achievement of final completion and expiration of the warranty period, as determined solely by the City, Title Company shall release the retainage to the prime contractor.

5. Confirmation of Disbursement. Within ten (10) business days after each disbursement, Title Company shall deliver to Settlers and the City written confirmation that the disbursement was made in accordance with this Agreement.

6. Records. Title Company shall keep records showing the names of all the contractors to whom payment is made by Title Company, the date of each payment and the amount of each payment, which records may be inspected by the Developer, the City and Settlers.

7. Inspections. The City shall be responsible for making inspections of the Project during the course of construction and shall determine to its own satisfaction that the work done or materials supplied by the prime contractor or subcontractors to whom payment is to be made out of each advance has been properly done or supplied in accordance with the Subdivision Contract but such inspections shall not expand the time restriction for approving or disapproving an application for payment as set forth in Section 2(a) of this Agreement. Title Company and Settlers shall not be required to, although either or both may, conduct inspections of the Project. Neither Settlers nor Title Company insure that the improvements will be completed, or that, when completed, the improvements will be in accordance with the Subdivision Contract and plans and specifications, or that sufficient funds (other than those to be provided hereunder) will be available for completion, or that the certification of the inspector/architect shall be accurate. The City shall not be required to tabulate quantities for payment. Developer or its Project Engineer shall validate the quantities and supply tabulations of the construction to the City to verify the work was completed.

8. Use of Escrowed Funds. Developer and Settlers agree that if Developer's performance of its obligations under the Subdivision Contract are not completed to the satisfaction of the City in conformity with the Subdivision Contract after the City has provided Developer and Settlers with written notice of Developer's failure to perform and has given Settlers at least ten business days to give notice to the City and the Developer that Settlers will exercise its remedy to complete the Project in accordance with the Subdivision Contract, then the City has the right, but not the duty, to withdraw the Escrowed Funds for the purpose of: (a) paying Developer's contractors, subcontractors, laborers, suppliers and vendors on the Project for work and/or materials furnished should Developer, Settlers or Title Company fail or refuse to do so; (b) paying for engineering, inspection and testing services required under the Subdivision Contract should Developer, Settlers or Title Company fail or refuse to do so; and (c) completing certain work as required by the Subdivision Contract should Developer fail or refuse to do so. At least ten business days prior to the withdrawal of all or a portion of the Escrowed Funds by the City, the City shall provide written notice to Settlers of Developer's nonperformance and the

City's intent to withdraw and use the Escrowed Funds, along with a detailed description of such use and the dollar amount to be withdrawn. Upon receipt of such written notice and expiration of the application waiting period and provided that Settlers has not given notice that it intends to exercise its remedies to complete the Project in accordance with the Subdivision Contract, Title Company shall release the applicable funds to the City.

9. Interest on Escrowed Funds. The parties hereto agree that Settlers bank will be the depository bank into which the Title Company will hold the Escrowed Funds. The parties hereto further agree that any interest accruing or paid on the Escrowed Funds shall be and remain the property of Developer. Title Company shall not be liable to Settlers or to Developer for interest on any undisbursed funds deposited with Title Company, except to the extent that Title Company fails to disburse funds in accordance with the terms of this Agreement.

10. Incorporation by Reference. The Subdivision Contract, as it may be amended from time to time, is made a part hereof and is incorporated herein by reference.

11. Termination of Agreement. This Agreement shall remain in force and effect until the City Engineer issues a notice of the termination of this agreement. A notice of termination shall not be granted until Developer has fulfilled all of its obligations under the Subdivision Contract and the project is accepted by the City Engineer, the City Traffic Engineer and / or Water Utility Manager. Developer and Settlers agree that the Escrowed Funds shall remain in escrow until such time as the City accepts and approves Developer's performance of its obligations under the Subdivision Contract, including but not limited to the submittal of lien waivers and other required paperwork as detailed in the Subdivision Contract, and payment of all City charges and expenses related to the project. Title Company shall release and return all unexpended Escrowed Funds to Settlers upon the City's final acceptance of the Project if Settlers has not given the Settlers Termination Notice and to the Developer if Settlers has given the Settlers Termination Notice.

12. Duty of Title Company. The duty of Title Company hereunder runs to Settlers only and not to Developer or Developer's contractors. Neither Developer nor its contractor shall have any cause of action against Title Company for breaches by it of its duties hereunder.

13. Termination of Settlers' Obligations. The parties acknowledge that Settlers is making a loan to Developer from which Settlers will fund the deposit of Escrowed Funds and pursuant to which Settlers may be fully repaid before termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if Settlers is fully repaid on its loan to the Developer, it may give notice to the other parties to this Agreement that it is no longer a party of this Agreement ("Settlers Termination Notice"). Effective immediately upon the giving of the Settlers Termination Notice, any rights, responsibilities or obligations of Settlers pursuant to this Agreement shall cease and no party will be required to obtain Settlers' consent or approval of any payment or withdrawal of the Escrowed Funds. In no event shall Settlers be entitled to any of the Escrowed Funds after it has delivered the Settlers Termination Notice.

14. Notices. All notices required or permitted to be given hereunder shall be deemed sufficiently given when personally delivered or when mailed by first class mail, postage prepaid, to the addresses indicated below:

City: Robert F. Phillips, City Engineer
City of Madison
210 Martin Luther King, Jr. Blvd., Room 118
Madison, WI 53703

Settlers: Mr. David M. Fink
Settlers bank
4021 Meridian Drive
Windsor, WI 53598

Developer: Mr. Bryan Sipple
B&B Ventures of Wisconsin, LLC
401 N. Century Avenue
Waunakee, WI 53597

Title Company: Preferred Title LLC
Attn.: Perry Armstrong
2728 Coho Street
Madison, WI 53713

Any party may change the above addresses by written notice to the others.

15. Nondiscrimination. In their performance hereunder, the parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The parties further agree not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, age, color, disability, sex, sexual orientation, gender identity, or national origin.

16. Entire Agreement. This Agreement contains the entire agreement among the parties and there are no other terms, conditions, representations or statements, express or implied, regarding the transactions contemplated hereby. This Agreement may be amended only by written agreement signed by all parties.


17. Assignment. No party may assign its obligations hereunder without the prior written consent of the other parties.

18. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provisions involved and shall not affect the validity or enforceability of the remaining provisions.

19. Counterparts. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement.

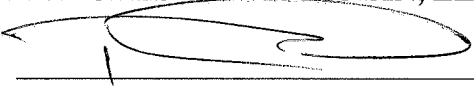
SETTLERS BANK

By: _____


David Fink, President

B&B VENTURES OF WISCONSIN, LLC

By: _____



Bryan Sipple, Member

By: _____


Brandon Ripp, Member


PREFERRED TITLE, LLC

By: _____


Name, Title
CINDY WIRTH
CLOSING Dept Mgr.

CITY OF MADISON

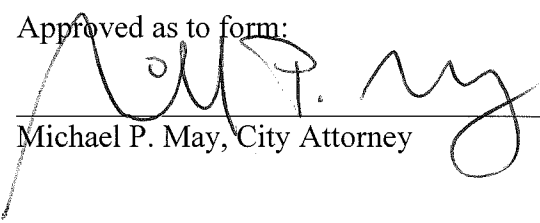
By: _____


Paul R. Soglin, Mayor

By: _____

 FOR
Maribeth Witzel-Behl, Clerk

Approved as to form:


Michael P. May, City Attorney