

THIS AGREEMENT, By and between Heritage Development of Wisconsin hereinafter known as "Developer", and the City of Milwaukee, a municipal corporation, hereinafter known as "City";

WITNESSETH:

IN CONSIDERATION of the sum of One Dollar (\$1.00) to each party in hand paid by the other, receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter contained.

WHEREAS, The Developer is the owner of the 70-acre site located generally east of North Granville Road at West Donna Drive. This site is more particularly described by Exhibit "A"; and

WHEREAS, The Developer has requested an agreement providing for the installation of various public improvements required to serve a single family residential development on a portion of the property shown on Exhibit "B" (Preliminary Subdivision Map for the site), said residential development to be known as River Ridge, Phase I. There are 148 lots planned for the entire site. Phase I would consist of 37 lots; and

WHEREAS, The requested public improvements to serve the Phase I area could be installed under the terms of an out-of-program agreement upon condition that title to such facilities shall vest in the City of Milwaukee subject to conditions more fully hereinafter stated. Subsequent phases of development are contingent upon resolution of sewer service issues. Should those issues be resolved an amendment to this Agreement or a subsequent Agreement will be required prior to development of any additional phases.

NOW, THEREFORE, In consideration of these premises and the mutual benefits herein accruing and for other good and valuable considerations,

IT IS AGREED, By and between the parties hereto that:

1. Funding Obligation

Developer agrees to provide all funds necessary for design and construction of the public improvements, easement preparation as may be required, water fittings, materials inspections, construction inspections and any related City work necessitated by the project.

2. Design Option

Upon mutual concurrence of Developer and the Commissioner of Public Works, Developer may let and administer design contracts for the sewer, water, and paving infrastructure required to serve Phase I. In the event Developer contracts for engineering design, plans shall be prepared to City specifications and approval by the Commissioner of all such plans shall be required prior to commencement of any improvement work.

3. Construction Option

Upon mutual concurrence of Developer and the Commissioner of Public Works, Developer may let and administer construction contracts for one or more of the public improvements covered by this Agreement. In the event Developer manages one or more public improvement construction contracts, City shall perform its normal inspections during the course of construction. In addition, Developer agrees to comply with and administer on behalf of the City, all applicable City rules and requirements pertaining to EBE and local resident involvement in the construction contracts.

Developer shall not authorize any changes in improvement plans without the prior approval of the Commissioner of Public Works. All payments to contractors must be pre-approved by the Commissioner.

4. Site Grading

Developer agrees to pregrade the Phase I area including proposed public street rights-of-way. Grading plans shall be reviewed and approved by the Commissioner of Public Works. The grading plan must be approved prior to design engineering of the public improvements. Grading shall be to within three (3) inches of the roadway subgrade as established in the paving plans. Grading shall match design grades at the right-of-way line. Material in any fill areas shall be placed in accord with Section 401.5 of the City of Milwaukee Department of Public Works Street Construction Specifications dated July 1, 1992. The Developer is responsible for obtaining any and all permits required to undertake grading activities.

5. Subdivision

Developer agrees to submit a final subdivision map for the site and to develop the site in accord with the subdivision map as approved.

6. Water Improvements

Water main will be installed in street rights-of-way and in easement, as may be necessary, to serve Phase I. In addition, water main may be constructed in planned street rights-of-way outside the limits of Phase I in order to provide a closed loop system.

Per paragraph 2, plans for water main improvements shall be prepared by either the City's Department of Public Works (DPW) or by the Developer. If plans are prepared by DPW, the estimated cost is \$ 16,000. The estimated cost to constructing and inspecting the water improvements are as follows:

Construction	\$ 162,250
Inspection (including fittings & materials)	\$ 71,750

7. Sewer Improvements

Storm and sanitary sewers will be installed in street rights-of-way to serve Phase I. Per paragraph 2, plans for storm and sanitary sewers shall be prepared by either the City's DPW or by the Developer. If prepared by DPW, the estimated cost is \$ 22,500. The estimated cost of constructing and inspecting the sewer improvements are as follows:

Construction	\$ 315,000
Inspection	\$ 22,500

Regardless of who prepares the sewer plans, review and approval of the plans by the Milwaukee Metropolitan Sewerage District is required.

8. Paving Improvements

All streets in Phase I will be improved to an urban cross-section standard design, which typically includes asphalt pavement, concrete curb and gutter, and concrete sidewalk. Developer may subsequently request that certain sections of sidewalk be deleted from the project. Separate action of the Milwaukee Common Council will be required to delete any sidewalk areas.

Per paragraph 2, plans for paving improvements shall be prepared either by the City's DPW or by the Developer. If

prepared by DPW, the estimated cost is \$ 12,000. The estimated costs for constructing and inspecting the paving improvements are as follows:

Construction	\$ 375,000
Inspection	\$ 60,000

9. Utility Laterals

Sanitary sewer and water laterals will be installed for each lot. These may be contracted out by the City or may be installed by Developer under permit from the City's Department of Neighborhood Services. Under the latter option, the Neighborhood Services Department would inspect the work. The cost of laterals is not included in the preceding sewer and water estimates. If installed by the City, Developer shall provide funding therefor.

10. Street Lights

No street lights will be installed in the Phase I area. If and when subsequent phases of the development are undertaken, it will be determined whether public street lights will be included.

11. Street Trees

Street trees will be planted by the City along both sides of the Phase I streets. The estimated cost for these street trees is \$ 31,200. There is no additional cost for design engineering or inspections.

12. Storm Water Management Plan

A Storm Water Management Plan for the entire site is required. This plan must be submitted to the City Engineer and approved

by him prior to the commencement of any on-site improvement work including grading. It is understood that actual storm water management improvements for Phase I area may consist of only a portion of those improvements that may be required for buildout of the entire site. Any storm water management improvements required for Phase I shall be constructed by Developer. Ownership and maintenance of these improvements shall be the responsibility of the Developer or of any subsequent Home Owner's Association.

13. Other Improvements

Developer agrees that any utility and access improvements necessary to serve the site in addition to those listed above shall be its responsibility and shall be undertaken by Developer at its sole expense. Developer further agrees that the City shall review and approve plans for any work to occur in the public right-of-way. Permits necessary for any such work shall be obtained by Developer or other responsible parties.

14. Easements

Developer agrees to provide, where necessary and at no cost to the City, all easements and other property rights required to construct, operate and maintain the public improvements described herein. All on-site easement areas are to be pre-graded by the Developer prior to the construction of public improvements therein. It shall be the Developer's responsibility to obtain any permits and/or easements or other property rights necessary for the operation and maintenance of the storm water management system and outlets, as approved.

15. Private Utilities

Developer agrees that all private utility lines necessary to provide telephone, communications, electrical, and gas services to the development shall be installed underground, except where the City Plan Commission finds that such underground installations are not feasible.

16. Design Engineering Deposit

In the event DPW designs the public improvements, Developer shall deposit a total of \$50,500 with the City to cover the estimated cost of design engineering, easement preparation and other City costs anticipated prior to actual construction.

In the event Developer designs the public improvements, DPW shall review and approve them. The estimated cost of such review is \$25,000.

Design work, whether by DPW or by Developer, shall not begin until the final subdivision map has been approved and recorded, the Storm Water Management Plan has been approved, and the site grading plan has been approved.

17. Funding Guarantee For Construction

The Developer shall submit an irrevocable Letter of Credit or other funding guarantee, satisfactory in format to the City Attorney, in an amount equal to the estimated construction contract cost (\$852,250) for the public infrastructure improvements described herein prior to the award of any public improvement contracts, whether privately or publicly let.

Any and all irrevocable Letters of Credit shall guarantee that the Developer's bank or savings and loan will provide the required funds to cover the contract cost of installing the applicable infrastructure improvements and will, upon simple request by the Commissioner of Public Works and the City Treasurer, release same to City as required, all such funds to be furnished interest free. The Letter-of-Credit or other funding guarantee shall be submitted to the City prior to the City or the Developer entering into any contracts for installation of public improvements.

18. City Force Work Costs

The total estimated cost for construction engineering (field inspections, contract management, materials and fittings, etc.) plus the estimated cost of planting street trees is \$185,450. Developer shall deposit this amount with the City prior to the City advertising for public improvement construction bids or prior to Developer letting any contracts for public improvements.

19. Payments

In the event the City lets public improvement construction contracts, the contract costs for the public improvements will be billed to Developer upon determination that such costs have been incurred by City. Developer shall provide the City with funds to make contract payments. If such funds are not provided within 30 days of being requested, City may draw against the funding guarantee referenced in paragraph 17. It shall be further understood and agreed that where Developer funded work covered under the terms of this Agreement does not proceed to the bid or contract stage, the City shall still retain a sufficient amount of the Developer's engineering fund deposit to cover



expenses incurred by the City for engineering and plan preparation work commenced by the City at the Developer's request.

Upon completion of the public improvements and all associated City work, City shall return any unspent portions of the Developer's cash deposits (Design Engineering and Construction Engineering) to the Developer.

20. Inspections

Both parties agree that all materials furnished and all work performed hereunder shall conform to all regulations and specifications of the City of Milwaukee and its Commissioner of Public Works and shall be subject to inspection by and approval of inspectors and engineers furnished by the Department of Public Works. All engineering and inspection costs incidental to the installation of the public improvements covered by this Agreement shall be subject to the terms of this Agreement, the cost of such service when furnished by City being established as the wages of the person or persons engaged in such work plus all costs of overhead.

21. Ownership of Public Improvements

It is understood and agreed by both parties hereto that upon completion of the public improvements, title to all public facilities installed under the terms of this Agreement shall vest in the City of Milwaukee and that the City will accept the obligation of operation and maintenance in accordance with its standard practice.

22. Building Permits

It is understood and agreed by both parties hereto that building permits for any homes to be constructed in the project shall not be issued until (1) the Storm Water Management Plan has been approved, (2) the Developer has provided the City with both a funding guarantee and a deposit for City Force Work, (3) all required approvals for any sewer improvements have been granted by the appropriate agencies, (4) the subdivision for the project has been approved and recorded, and (5) all easements required to construct and maintain water main improvements have been provided to the City.

23. Occupancy Permits

It is understood and agreed by both parties hereto that occupancy permits for any structure shall not be issued until all planned public improvements have been sufficiently completed so essential public utility services and traffic access are provided to the structure.

24. City Ordinances and Regulations

City warrants that all work shall be undertaken in accord with City standard and customary public works contracting procedures unless such work is to be undertaken by City Forces or by Developer per paragraph 3. It is further understood and agreed that this Agreement is subject to all City ordinances and regulations and nothing herein shall be deemed to waive or supercede such requirements.

## **SIGNATURE PAGES**

THIS AGREEMENT, drafted by the City of Milwaukee, shall be binding upon the Developer, its lessees, successors and assigns, and upon the City its successors and assigns.

DEVELOPER SIGNATURES

IN WITNESS WHEREOF, the Developer has caused this document to be signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_ Developer

STATE OF WISCONSIN )  
 ) SS.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2003, who executed the foregoing instrument, and acknowledged that they executed the same.

\_\_\_\_\_. Notary  
Public, State of Wisconsin

My Commission expires:\_\_\_\_\_.

**CITY SIGNATURES**

IN WITNESS WHEREOF, the proper City Officers have caused this document to be signed and the City's seal to be affixed this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
John O. Norquist, Mayor  
CITY OF MILWAUKEE

STATE OF WISCONSIN )  
  ) SS.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2003,  
John O. Norquist, Mayor of the City of Milwaukee, a municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such Mayor of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. 001391 adopted \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
City Clerk  
CITY OF MILWAUKEE

STATE OF WISCONSIN )

) SS.

MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003,  
\_\_\_\_\_, City Clerk of the above-named municipal corporation, to me known to be the person who executed  
the foregoing instrument and to me known to be such City Clerk of said municipal corporation, and acknowledged that  
he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and  
pursuant to Resolution File No. 001391 adopted \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires \_\_\_\_\_.

\_\_\_\_\_  
Comptroller  
CITY OF MILWAUKEE

STATE OF WISCONSIN )  
 ) SS.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2003,  
\_\_\_\_\_, City Comptroller of the City of Milwaukee, a municipal corporation, to me known to be the  
person who executed the foregoing instrument and to me known to be such City Comptroller of said municipal  
corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said  
municipal corporation, its authority, and pursuant to Resolution File No. 001391 adopted \_\_\_\_\_,  
2003.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission expires:\_\_\_\_\_.