

THIS AGREEMENT, By and between Mariner Land Corporation 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 a 21-acre vacant site located generally east of North Granville Road and south of W. Bradley Road. This site is more particularly described by Exhibit "A"; and

WHEREAS, The City and the Developer wish to enter into an Out-of-Program Agreement providing for the installation of various public improvements required to serve a 57-lot single family home residential development on the property; and

WHEREAS, The public improvements for this development 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.

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. Public Improvements Design

The Developer and the Commissioner of Public Works have agreed that the Developer may let and administer design contracts for the water, and paving infrastructure required to serve this subdivision. All 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. All City costs associated with review of plans prepared by others shall be the Developer's responsibility. To expedite the City's review, Developer shall provide plans for the public improvements as follows:

- a. Paving plans shall be submitted first.
- b. Sewer plans shall be prepared by the City and shall be initiated only after the paving plans have been approved by the Commissioner.
- c. Water plans shall be submitted only after paving and sewer plans have been approved by the Commissioner. Copies of approved paving plans shall be submitted along with the water plans.

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 sewer, water, and paving improvements covered by this Agreement. In the event Developer manages one or more public improvement construction contract, 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 pre-grade the site 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 sub-grade 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. Vacation of Existing Rights-of-Way

The site was previously subdivided. Street rights-of-way were previously platted. These streets must be vacated prior to recording the final subdivision map. Developer shall work with the City's Department of City Development to accomplish the necessary street vacations.

7. Water Improvements

Water main will be installed in street rights-of-way and in easement, as may be necessary, to serve the development. Per paragraph 2, plans for water main improvements shall be prepared by the Developer. The estimated cost for the City's review is \$9,200. The estimated costs to construct and inspect the water improvements are as follows:

Construction	\$503,300
Inspection & related activities	\$ 63,300

The Developer shall provide all required water fittings. In addition, the Developer is responsible for obtaining the required State of Wisconsin Department of Natural Resources Water Main Installation permit. City will provide the flow test information required as part of the permit application.

A 16" water main is presently located in vacated N. Granville Road south of W. Lolita Avenue. This water main will be abandoned. Developer may leave the abandoned main in place or may remove it.

8. Sewer Improvements

Storm and sanitary sewers will be installed in street rights-of-way to serve the development. Per paragraph 2, plans for storm and sanitary sewers shall be prepared by the City. The estimated cost for the City's plan preparation is \$106,000. The estimated costs to construct and inspect the sewer improvements are as follows:

Construction	\$942,000
Inspection	\$ 26,000

Review and approval of the sewer plans by the Milwaukee Metropolitan Sewerage District and the Department of Natural Resources are required. Once approvals have been received from the Commissioner, the DNR, and MMSD; once all funding guarantees have been provided; and once the final plat has been recorded; construction of the sewer improvements may proceed. An existing sanitary sewer is located in a portion of W. Lolita Avenue that will be vacated. This sewer may be abandoned or left in service at the discretion of the Developer. If left in service, the Developer must provide a sewer easement to the City for each affected property. The cost to prepare the easement paperwork is \$600 per easement.

9. Paving Improvements

New two-stage asphalt streets shall be constructed to serve the subdivision. All streets within the subdivision will be improved to an urban cross-section design standard. Urban cross-section streets typically include asphalt pavement, concrete curb and gutter, and concrete sidewalks.

The preliminary subdivision plan shows a new street being constructed across a stream that runs east/west through the property. This stream crossing must be approved by the Department of Natural Resources and the Southeastern Wisconsin Regional Plan Commission. Permitting costs associated with obtaining such permission shall be the responsibility of the Developer.

Per paragraph 2, plans for paving improvements within the subdivision shall be prepared by the Developer. The estimated cost for the City's review is \$10,000. Estimated costs to construct and inspect the paving improvements are as follows:

Construction	\$396,000
Inspection	\$ 80,000

Sidewalks for the subdivision shall be installed upon the first occurrence of one of the following: (1) houses on 80% of the lots have been completed and occupied, (2) the second lift of asphalt pavement is laid on the streets, or (3) two years have passed since the streets' base course was laid.

10. 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.

11. Street Lights

Twenty five City-standard, aluminum pole street lights will be installed by City forces throughout the subdivision. The street lights will be illuminated with 100 watt high-pressure sodium luminaries. The estimated cost for these street lights is \$87,500. There will be no additional cost for design engineering and inspections.

12. Street Trees

Street trees will be planted by City forces along both sides of the subdivision's streets. An estimated 138 trees will be planted at an estimated cost of \$48,300. There will be no additional cost for design engineering or inspections.

13. Storm Water Management Plan

A Storm Water Management Plan for the project must be submitted for review and approval by the City Engineer. The preliminary subdivision plan includes 3 outlots for construction of storm water detention ponds and associated drainage facilities. Storm water management improvements identified in the approved Storm Water Management Plan shall be constructed by Developer. A bond must be submitted to the City in an amount established by the Storm Water Management Plan to ensure completion of the required improvements. Ownership and maintenance of these improvements shall be the responsibility of the Developer or of any subsequent Homeowner's Association.

14. 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.

15. 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.

16. 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. Deposit for Review of Plans

The total estimated cost for the City's review of design engineering plans for the water and paving improvements is \$19,200. This



figure does not include the cost of easement preparation, if necessary. The cost to prepare easements is \$600 per affected property. City will not begin plan review or easement preparation until the required deposit is provided.

Any public improvement design work started by the Developer prior to approval of the Storm Water Management Plan and approval of the final subdivision map is at the Developer's risk.

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 (\$1,841,300) 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. Deposits for City Force Work Costs

The estimated cost for designing the storm and sanitary sewer improvements is \$106,000. Developer shall deposit this amount in the form of a check made out to the City of

Milwaukee once the paving plans have been approved by the Commissioner.

The total estimated cost for (1) construction engineering (field inspections, contract management, materials inspections, clean water testing, etc.) plus (2) planting street trees plus (3) installing street lights is \$305,100. Developer shall deposit this amount in the form of a check made out to the City of Milwaukee 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 Design Review deposit to cover expenses incurred by the City for plan review 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 (i.e. the Engineering Design Review Deposit and the

City Force Work Deposit) 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 subdivision 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, (5) all easements required to construct and maintain underground improvements have been provided to the City and (6) any required permits for a road crossing of the on-site stream have been obtained from the appropriate agencies.

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 supersede such requirements.

25. Refunds

City shall refund 50% of the street light installation cost to the Developer in the year following completion of the street light work.

## **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.



**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 \_\_\_\_\_, 2005.

\_\_\_\_\_  
Tom Barrett, Mayor  
CITY OF MILWAUKEE

STATE OF WISCONSIN    )  
                                  ) SS.  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
Tom Barrett, 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.    adopted \_\_\_\_\_, 2005.



\_\_\_\_\_  
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 \_\_\_\_\_, 2005,  
\_\_\_\_\_, 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. adopted \_\_\_\_\_, 2005.

\_\_\_\_\_  
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 \_\_\_\_\_, 2005,  
\_\_\_\_\_, 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. adopted \_\_\_\_\_, 2005.

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

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