

THIS AGREEMENT, By and between the Tameister Development Company, LLC 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 or has options on the property located generally south of West Oklahoma Avenue, west of South 84th Street, east of Euclid Park and north of the current terminus of South 85th and South 86th Streets. This property 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 residential development on a portion of the property, said residential development to be known as Mayberry Park, Phase I. The Certified Survey Map consists of four (4) single family residential lots; and

WHEREAS, The requested public improvements 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 related City work necessitated by the project.

2. 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 DBE 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. It is further understood and agreed that in the event Developer lets any public improvements contract there shall be no Developer refunds provided by the City, paragraph 25 notwithstanding.

3. Site Grading

Developer agrees to pregrade the certified survey map 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.

4. Certified Survey Map

Developer agrees to submit a certified survey map in accord with Chapter 119 of the Milwaukee Code of Ordinances prior to the City's commencement of design engineering. Rights-of-way for all planned public streets shall be dedicated to the City at no cost.

5. Water Improvements

Water main will be installed in extended South 85th Street and connected to the terminus of existing water main in the street.

Plans for water main improvements shall be prepared by the City's Department of Public Works. The total estimated cost for water main design is \$_____.

6. Sanitary Sewer Improvements

Sanitary sewers will be installed in extended South 85th Street and connected to the terminus of existing sanitary sewer in the street.

Plans for sanitary sewer improvements shall be prepared by the City's Department of Public Works and will be subject to review and approval by the Milwaukee Metropolitan Sewerage District. The total estimated cost for sanitary sewer design engineering is

\$_____.

7. Paving Improvements

South 85th Street will be extended for a distance of approximately 50 feet. The street extension will be of an urban cross section design including asphalt pavement, concrete curb and gutter, and concrete sidewalk.

Plans for the paving improvements will be prepared by the City's Department of Public Works. The total estimated cost for paving design is \$_____.

8. Utility Laterals

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.

9. Street Lights

No street lights will be installed in the Phase I CSM area. If and when

subsequent phases of the development are undertaken, it will be determined whether public street lights will be included.

10. Street Trees

Street trees will be planted along both sides of the CSM's street extension. The estimated cost for these street trees is \$600. There is no cost for design engineering.

11. 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 the Phase I CSM 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 the Phase I CSM 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.

12. Public Storm Sewers

Public storm sewers will be constructed in extended South 85th Street. Plans for this storm sewer improvement will be prepared by the City's Department of Public Works and will be subject to review and approval by MMSD. The estimated total cost for design of the public storm sewer improvements is \$_____.

13. Other Improvements

Developer agrees that any utility and access improvements necessary to serve the site in addition to those listed in paragraphs five through ten and paragraph twelve 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 on its property and at no cost to the City, all easements and other property rights required by the City to construct, operate and maintain the public improvements described in paragraphs five through ten and twelve above. All 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

Developer shall deposit a total of \$_____ with the City to cover the estimated cost of design engineering, easement preparation and other City costs anticipated prior to actual construction. This figure may be reduced upon a determination that project data and preliminary public improvement plans provided by the Developer will reduce the City's expected design engineering effort. In addition, Developer may provide the required engineering deposit in up to three installments, said installment to be made in 30-day intervals.

Design work shall not begin until the deposit, the certified survey map, and the grading plan have been submitted.

17. Funding Guarantee

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 for the infrastructure improvements identified in paragraphs five through eight and twelve 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 \$_____.

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 paragraphs five through ten and twelve above 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 and (4) the Certified Survey Map for the project has been approved and recorded.

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 2. 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.

25. Developer Refunds

No refunds will be made in the event any of the improvement contracts are let and managed by the Developer. If the City lets the construction contracts for the public improvements described herein, Developer refunds will be made as follows:

In the year after completion of the work covered hereunder, the City shall refund the amount of anticipated assessments then known to be collectable from other property owners benefited by the public improvements, if any.

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.

IN WITNESS WHEREOF, the Developer has caused this document to be signed and sealed this _____ day of _____, 2002.

In Presence Of:

Developer

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 _____, 2002.

In Presence Of:

CITY OF MILWAUKEE

John O. Norquist, Mayor

City Clerk

COUNTERSIGNED:

Comptroller

STATE OF FLORIDA)
) SS.
PALM BEACH COUNTY)

Personally came before me this ____ day of _____, 2002, who executed the foregoing instrument, and acknowledged that they executed the same.

Notary
Public, State of Florida

My Commission expires:

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2002, 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. _____, adopted _____, 2002.

Notary Public, State of Wisconsin

My Commission expires:

STATE OF WISCONSIN)
) SS.

