**DEVELOPMENT AGREEMENT**

**CITY OF NEKOOSA**

**&**

**S.C. SWIDERSKI, LLC.**

**THIS AGREEMENT TO UNDERTAKE DEVELOPMENT** made this ___ day of _________, 2025, by and between the CITY OF NEKOOSA, a municipal corporation of Wood County, Wisconsin, hereinafter referred to as "CITY" located at 951 Market Street, Nekoosa, WI 54457 and S.C. SWIDERSKI, LLC a Wisconsin Limitied Liability Company, with its principal place of business located at 401 Ranger Street, Mosinee, WI 54455, hereinafter referred to as "DEVELOPER;"

**WITNESSETH**:

**WHEREAS**, the CITY is interested in encouraging new development; and

**WHEREAS**, the CITY, pursuant to Wis. Stat. §66.1105, created Tax Incremental District No. 4, hereinafter "TID No. 4", on the 24th day of July, 2018 through the adoption of a Resolution and approved the Project Plan for TID No. 4, hereinafter the Project Plan, which Project Plan, is hereby incorporated by reference into this Agreement and which is on file at the CITY; and

**WHEREAS**, the CITY created TID No. 4 for the purpose of promoting mixed-use development, which includes the promotion of residential development; and

**WHEREAS**, the DEVELOPER is contemplating construction of a multi-family and single family residential development in TID No. 4 in the City of Nekoosa; and

**WHEREAS**, the ultimate decision to construct the residential development will be based on the financial feasibility of the project; and

**WHEREAS**, the CITY recognizes the importance of having an adequate supply of quality affordable housing units in the CITY; and

**WHEREAS**, the CITY recognizes the benefits created by the proposed project are good for the citizens of Nekoosa; and

**WHEREAS**, it has been concluded that it is in the CITY's best interest to have this project be implemented in Nekoosa; and

**WHEREAS,** the CITY recognizes that, but for the assistance to be provided to DEVELOPER under this Agreement, DEVELOPER'S redevelopment of the property either would not occur or would not occur in the manner, at the values, or within the timeframe desired by the parties;

**NOW, THEREFORE**, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## I. COMMITMENTS OF PARTIES

In consideration of the conditions set forth below, the CITY shall utilize funds from TID No. 4 in the amounts and for the purposes specified below to assist in the construction of the proposed improvements as well as those other specific activities set forth below.

### A. CITY OBLIGATIONS

In consideration of the obligations of DEVELOPER as set forth herein, the CITY shall:

1. The Development Site is real property conveyed to the DEVEOLOPER and is located in TID No. 4. The Development Site as depicted in Exhibit B is a parcel with a size of 23.4 acres.

2. Using TID No. 4 funds, design, bid and administer construction of the onsite and offsite infrastructure improvements including all of the street, multi-use trail, sanitary sewer, lift station, forcemain, water main, storm sewer and public storm water basins necessary to serve the Development Site as shown on Exhibit C. ~~This includes the off-site water main and sanitary sewer connections and a sanitary sewer lift station.~~ The estimated cost for engineering services is Three Hundred Ninety-nine Thousand Seven Hundred Twenty Six and 00/100 Dollars

($399,726.00).

3. Using TID No. 4 funds, pay for the construction of infrastructure improvements located outside of the Development Site. These improvements include the: sanitary sewer force main north of the property line; water main loops north of the property line; and street improvements, sanitary sewer and water main located in the Peckham Road right-of-way as shown on Exhibit C. The estimated cost including construction and 10% contingency for the off-site ~~Phase 1~~ infrastructure improvements is ~~Five Hundred Fifty Thousand~~Four Hundred Seventy-six Thousand Seven Hundred Six and 00/100 Dollars ($~~5050,000~~476,706.00) .

4. Using TID No. 4 funds, pay fifty percent (50%) of the cost to construct the regional storm water basin No. 1 located in the northwest corner of the development as depicted in Exhibit C. The estimated cost is included in the costs identified in Paragraph 3 above.

5. Using TID No. 4 funds, make monthly payments during the first two years of construction to the DEVELOPER to pay for interest charges on the DEVELOPER's infrastructure loan identified in Article I Section B Paragraph 7. The estimated capitalized interest is Three Hundred Ninety-two Thousand Eight Hundred and 00/100 Dollars ($392,800.00). Interest charges shall be based upon the accrued interest on the actual funds disbursed from the loan.

**Commented [AK1]:** After the two years, confirm SC Swiderski will be making payments. Are those payments supported by a Paygo? Default protections if SC doesn't make payments?

6. The estimated costs for the infrastructure improvements identified above in paragraphs 2, 3, 4 and 5 are based on current estimates. The actual costs may vary. For purposes of this agreement, the estimated TID No. 4 Phase 1 costs the CITY will incur for land acquisition, engineering, construction of off-site infrastructure, capitalized interest, legal and soft costs is estimated to be One Million Three Hundred Thousand~~Seventy Thousand~~ and 00/100 Dollars ($1,~~070~~300,000.00).

7. The implementation schedule for the infrastructure improvements will be completed in conjunction with the Developer's implementation schedule. The City shall complete the ~~its~~ infrastructure improvements with two construction contracts as follows:

a. The off-site and on-site infrastructure improvements are scheduled to be bid and contracts awarded by April 30, 2025. Both the public and private portions of the development shall be bid at the same time, with the construction starting as soon as practical following approval by the CITY of the infrastructure improvement bid~~s~~. Substantial completion of the on-site Phase 1 infrastructure improvements shall be scheduled within one year of contract award.

b. Final completion of off-site and on-site infrastructure improvements shall be completed by within 12 months of the start of construction.

8. Act diligently and in good faith to review all necessary approvals, licenses, and permits duly requested by the DEVELOPER. However, this Agreement shall not obligate the CITY to grant variances, exceptions, or approval of a Planned Unit Development application.

9. Any money expended exclusively by the CITY for this project will not be reimbursed by the DEVELOPER.

10. Representations by CITY. As a material inducement to the DEVELOPER to enter into this Agreement, to acquire the Development Site, and to construct the Project, the CITY represents to the DEVELOPER the following facts:

a. ~~The CITY owns the Development Site in fee simple and that the property shall be free and clear of any and all liens and encumbrances upon the transfer of the properties' respective titles.~~

**Commented [GB2]:** Hasn't Swiderski purchased the development site?

~~b.~~ The CITY is authorized to enter into this Agreement and to peform its terms.

b.

c. Subject to easements of record at the time of execution of this Agreement, the Development Site is not encumbered by any leases or other occupancy rights, by any contracts that would be binding on the DEVELOPER after Closing, except for the PERMITTED ENCUMBRANCES or by any options or rights of first refusal to the benefit of any third party.

d. The Development Site does not violate any applicable law, code, ordinance, rule, or regulation. There is no conflict, dispute, or litigation with respect to the Development Site that would prevent the CITY from fulfilling its obligations under this Agreement.

e. There is no material document, file, written information, book, or recording the CITY's possession or control and relating to the Development Site, and there is no condition affecting the Development Site, or the operation, use or maintenance of the Development Site, that has not been disclosed to the DEVELOPER.

f. The CITY has no knowledge of any Environmental problems with the Development Site; Toxic or hazardous wastes or hazardous substances or other pollutants or contaminants on the Development Site in violation of any state, federal, or local law; or Underground or above-ground storage tanks located on the Development Site.

g. The CITY has not dealt with any real estate broker, sales person, or finder for this transaction. To the best of the CITY's knowledge, there are no existing, contemplated, threatened, or proposed special assessments against the Development Site, and no utility service moratoriums or other moratoriums affecting the Development Site.

h. No elected official, member, officer, or employee of the CITY, during his/her tenure and for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement, the project thereby, or any proceeds thereof.

i. The Project contemplated by this Agreement falls within the authorized use of funds described in the Project Plan for economic development to take place within the Tax Increment Financing District.

**B. DEVELOPER OBLIGATIONS**

In consideration of the obligations of the CITY as set forth herein, the sufficiency and receipt of which is hereby acknowledged, DEVELOPER shall:

1. Implement the residential development consistent with the Concept Site Plan as shown on Exhibit B. The residential development shall hereinafter be referred to as the Development. Project and shall not be tax exempt.

2. Prepare a mass grading plan and storm water drainage plan for the overall Development Project.

3. Prepare a Preliminary Subdivision Plat and Final Subdivision Plat of the Development Project.

4. Submit final plat for approval and record with Wood County Register of Deeds no later then February 15, 2025.

5. Complete the mass grading of the Development Site as required to allow the CITY to construct the public infrastructure by June 30, 2025.

6. Complete the design and bidding of all private site improvements and utilities including: on-site grading, access drives and parking lots and storm water basins for the ~~multifamily buildings~~Development Site; dry utilities serving the Development Project including electrical, natural gas and communication utilities.

7. Bidding of mass grading and site infrastructure provided by DEVELOPER will be completed simultaneously with the CITY's public infrastructure bidding timeline identified in Article I Section A Paragraph ~~9~~7 Sub A.

8. Complete the construction of all private site improvements and utilities including on-site grading, access drives and parking lots and storm water basins for the multifamily buildings; dry utilities serving the Development Project including electrical, natural gas and communication utilities.

9. Pay for the construction of the CITY's onsite infrastructure improvements located within the Development Site including all of the street, multi-use trail, sanitary sewer, water main, storm sewer and public storm water basins as shown on Exhibit C. This includes the on-site water main loop and sanitary sewer force main and a sanitary sewer lift station located on the Development Site. The DEVELOPER's estimated cost for the ~~Phase 1~~onsite infrastructure improvements, including construction and 10% contingency, is ~~One Million Six Hundred Ninety Five Thousand~~Two Million One Hundred Eighty-eight Thousand and 00/100 Dollars ($~~1,695,000.00~~2,188,000). (Note: the off-site water main loop, force main and Peckham Road improvements shall be paid by the CITY. These costs are estimated to be ~~(Five Hundred Fifty Thousand~~Four Hundred Seventy-six Thousand Seven Hundred Six and 00/100 ($~~5500,000.00~~476,706.00)~~)~~.

Commented [RC3]: See note above regarding crushing and rock

10. Construct the multi-family portion of the development site as depicted in Exhibit B.

11. Begin construction of the multi-family buildings shall start on or about August 1, 2025. The multi-family buildings shall be completed by April 1, 2027, 1 year and 7 months following construction start. The total increase in assess value shall be Eight Million and 00/100 Dollars ($8,000,000).

Commented [AK4]: Update assessed valuation

12. Begin construction of the five single-family homes as depicted in Exhibit B on or about August 1, 2025. DEVELOPER shall make every effort to move through construction without delays. The total increase in assessed value shall be One Million Seven Hundred Fifty and 00/100 ($1,750,000).

Commented [AK5]: Update assessed value.

13. Begin construction of the nine twin homes as depicted in Exhibit B on or about August 1, 2025. Total increase in assessed value shall be Four Million One Hundred Forty Thousand and 00/100 ($4,140,000).

Commented [AK6]: Update Assessed Value

14. The DEVELOPER shall generate Tax Increment Revenue in an amount that is required to pay the debt service costs for the CITY's One Million Three Hundred~~Seventy~~ Thousand and 00/100 ($1,~~070~~300,000) General Obligation Bond for offsite and onsite infrastructure plus the annual TIF administration cost as shown on Exhibit D, plus the debt service costs for the DEVELOPER's Two ~~One~~ Million One~~Six~~ Hundred Eighty-eight~~Ninety-five~~ Thousand and 00/100 ($~~1,695,000~~2,188,000) infrastructure loan as shown on Exhibit D as the 2023 Municipal Revenue Obligation. The DEVELOPER's and CITY's loans are intended to cover all development costs incurred by the DEVELOPER and CITY for offsite and onsite infrastructure as provided for in Article I, Section B. Paragraph 7 and Paragraph 8. The Tax Increment Revenue required to repay the DEVELOPER's loan and CITY's loan for the offsite and onsite in frastructure costs is hereinafter referred to as Guaranteed Tax Increment Revenue. In the event the actual tax increment revenue is less than the Gauranteed Tax Increment Revenue shown on Exhibit D and Exhibit E, the DEVELOPER shall pay to the CITY annually a sum equal to the difference between the Guaranteed Tax Increment Revenue and the actual debt service payment. ~~Also see Article III, Section 2.~~

Commented [AK7]: This Exhibit will need to be updated.

Commented [AK8]: Have Ehlers re-run modeling to assure positive cash flow

15. In the event all of the single family and twin home buildings are not constructed within one year after the dates stipulated in Article I, Sections B Paragraphs 11 and 12 above, the DEVELOPER shall be obligated to sell to the , at the CITY's option, the vacant lots. The CITY shall pay the Developer One and 00/100 Dollars ($1.00) per lot. The CITY may, at its sole option, resell such lots to other developers or third parties without notice to DEVELOPER.

16. Submit a Planned Unit Development application (if applicable), site plan, storm water management plan, building plans and a landscaping plan for the CITY to review and approve.

Commented [RC9]: Has this been submitted and approved?

17. DEVELOPER shall be responsible to pay all permit fees and CITY connection fees.

~~18. DEVELOPER shall execute a Development Agreement between the CITY and DEVELOPER as stipulated in Section III.~~

~~19.~~18. DEVELOPER shall not seek a reduction of property tax assessment during the term of this agreement.

~~20.~~19. The DEVELOPER will not be allowed to sell the multi-family buildings and development lots to another developer during the term of the Development Agreement unless granted written approval from the CITY, which will not be unreasonably withheld. If approval to sell is granted, the terms of the Development Agreement between the DEVELOPER and the CITY will be assigned to the buyer. The property shall not be tax exempt.

~~21.~~20. Any costs expended by the DEVELOPER will be exclusive to the DEVELOPER and will not be a cost of the CITY.

~~22.~~21. On or before Closing, DEVELOPER shall provide to the CITY the documentation the CITY deems necessary evidencing that DEVELOPER has secured financing for the on-site infrastructure improvements, and the new multi family residential apartment buildings, the single family homes, and the twin homes depicted in Exhibit B.

~~23.~~22. DEVELOPER shall be responsible for self-performing seeking out and hiring contractors for the purpose of completing any and all work to be done on the properties pursuant to this Agreement. All contractors shall be appropriately licensed and bonded as necessary.

~~24.~~23. The DEVELOPER shall permit inspections to occur on the properties and within any structure on the property to be conducted by the CITY and/or any other superseding government entity pursuant to any existing inspection requirement for like construction and work required under current law. Additionally, the CITY, at its sole option, inspect the properties at any reasonable time and upon reasonable notice prior to completion of the work to be performed by DEVELOPER pursuant to this Agreement for the purpose of verifying DEVELOPER's compliance with the terms of the Agreement.

~~25.~~24. The DEVELOPER shall be responsible for any additional construction expenses not directly related to any obligations of performance incurred by the CITY by this Agreement.

~~26.~~25. Representations by DEVELOPER.

a. The DEVELOPER represents and warrants that it is a duly organized limited liability company and in good standing under the laws of the State of Wisconsin, is not in violation of any provisions of its organizational documents or the laws of the State of Wisconsin, has power to enter into this Agreement and to perform its obligations hereunder and has duly authorized the execution, delivery and perfrormance of this agreement by proper corporate action.

b. The DEVELOPER will construct the multi-family apartment complex Project and will own, operate and maintain the Project (or will cause the operation and maintain the Project) in accordance with the terms of this Agreement.

c. The DEVELOPER will construct and sell single family and twin home housing units in accordance with the terms of this Agreement.

d. The DEVELOPER will use its best efforts to obtain in a timely manner, all required permits, licenses and approvals, and to meet, in a timely manner, all requirements of applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed. The DEVELOPER shall be responsible to pay all permit fees and CITY connection fees.

e. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor fulfillment of or compliance with the terms and conditions of this Agreement is prevented or limited by, or in conflict with or will result in a breach of, the terms, conditions or provisions of any restriction of the DEVELOPER, or any indebtedness, agreement or instrument of whatever nature to which the DEVELOPER, is now party or by which it is bound, or will constitute a default under any of the foregoing.

f. The DEVELOPER acknowledges that DEVELOPER has been made aware of any and all existing conditions for the properties.

## C. ACKNOWLEDGEMENTS & CONTINGENCIES

The parties to this Agreement acknowledge the following contingencies:

1. The DEVELOPER obtaining financing.

2. Approval of a Planned Unit Development application by the Nekoosa Common Council.

## II. GENERAL REQUIREMENTS

### A. CLOSING

1. The transactions described in this Agreement shall close (the "Closing") at the offices of the CITY, or at a location agreed upon by the parties on or before _______, 2025. The date on which the closing occurs is the "Closing Date."

### B. EFFECTIVE DATE

This Agreement shall be effective on the date and year first written above.

### C. SECURITY

1. Insurance. Following the Closing and prior to commencing any construction on the Development Site, DEVELOPER shall provide a copy of those insurances set forth herein. DEVELOPER shall maintain insurance on the improvements to the Development Site in an amount not less than the full replacement value of the improvements for fire, casualty, and extended damage coverage. DEVELOPER shall provide subsequent renewal insurance binders to the CITY on an annual basis for the term of this Agreement. In the event the Improvements are damaged or destroyed, the proceeds from the insurance shall be payable to DEVELOPER and shall be applied toward (a) the reconstruction of such improvements so damaged or destroyed, or (b) the then outstanding amount of upfront Development Costs that have not been recouped by the annual tax increment payments generated by the project. The parties agree that solely for the purposes of this agreement, the amount of the CITY's Upfront Development Cost is One Million Three Hundred Thousand~~Seventy Thousand~~ and 00/100 Dollars ($1,300,000.00~~1,070,000~~).

2. Guaranteed Annual Tax Increment Revenue. During the term of the Development Agreement, the DEVELOPER shall generate at least the annual amount of tax increment revenue as stipulated in Article I. Section B~~.~~ Paragraph 1~~1~~4 above. The CITY shall use the tax increment revenue to first pay for the debt service payments on the CITY's One Million Three Hundred Thousand and 00/100 Dollars ($1,~~070~~300,000) General Obligation Bond plus the City's TIF administration costs as shown on Exhibit D, and second pay for the debt servie payments on the DEVELOPER's Two Million One Hundred Eighty-eight Thousand and 00/100 Dollars ~~$1,695,000~~($2,188,000.00) loan, as shown on Exhibit D as the 2023 Municipal Revenue Obligation. In the event the actual Tax Increment Revenue payment is less than the Guaranteed Annual Tax Increment Revenue, the CITY shall reduce the payment towards the DEVELOPER's debt service payment in an amount that is equal to the shortfall between the actual tax increment revenue and the Guaranteed Tax Increment Revenue. In no event shall this paragraph be interpreted to allow the DEVELOPER to pay less than the legally established annual property tax levied against the property which may be in excess of the guaranteed minimum amount established above; nor shall the DEVELOPER be relieved of its responsibility to pay such taxes levied after termination of the Development Agreement.

**Commented [AK10]:** Ehlers will need to confirm TIF projections based on updated costs and assessed values. Update to Exhibit D needed.

## D. BUY BACK/SALE PROVISIONS

DEVELOPER shall promptly begin, diligently pursue, and ultimately complete the new residential buildings on the Development Site, all pursuant to plans which are to be approved by the CITY, and the State of Wisconsin Department of Safety and Professional Services, prior to construction, and in accordance with CITY Ordinances.

1. In the event that construction of the apartment buildings, single family homes, and twinhomes as depicted in Exhibit B pursuant to the requirements of this Agreement have not been started by August 30, 2025 (subject to DEVELOPER's opportunity to cure the failure as provided in Article II. E.) then the CITY shall have the option of repurchasing the multi-family ,single family, and twinhomevacant lot(s) in the Development Site from DEVELOPER. To exercise a repurchase option, the CITY shall provide written notice of exercise of the option to DEVELOPER, which notice shall include the date of repurchase closing. At the repurchase closing DEVELOPER shall tender a Warranty Deed free and clear of all liens and encumbrances, except the Permitted Encumbrances in exchange for the sum of an amount equal to the proportionate share of the upfront land and infrastructure cost based on area. The title insurance, any unpaid real estate taxes, and the proration of the then current year's real estate taxes, shall be paid by DEVELOPER at the time of the repurchase closing.

2. If, after commencing construction work on an apartment building and construction ceases for a period of ninety (90) consecutive days at any time before the completion of the apartment building, the CITY shall have the option of repurchasing the unfinished apartment building from DEVELOPER. To exercise this repurchase option the CITY shall provide DEVELOPER written notice of this repurchase option, which notice shall include the date of repurchase closing. At the repurchase closing DEVELOPER shall tender a Warranty Deed free and clear of all liens and encumbrances, except the Permitted Encumbrances in

exchange for the sum of One and No/100 Dollars ($1.00) and the fair market value (as determined by the average value determination of two independent property appraisal firms one each selected by the DEVELOPER and the CITY) of the partially completed apartment building. The title insurance, any unpaid real estate taxes, and the proration of the then current year's real estate taxes, shall be paid by DEVELOPER at the time of the repurchase closing.

3. In the event the DEVELOPER fails to complete construction of the apartment buildings, the single family homes, and twin homes by April 1, 2027, then the CITY shall have the option of repurchasing any of the the vacant lots in the Development Site from DEVELOPER. To exercise a repurchase option, the CITY shall provide written notice of exercise of the option to DEVELOPER, which notice shall include the date of repurchase closing. At the repurchase closing DEVELOPER shall tender a Warranty Deed free and clear of all liens and encumbrances, except the Permitted Encumbrances in exchange for the sum of an amount equal to the proportionate share of the upfront land and infrastructure cost based on area. The title insurance, any unpaid real estate taxes, and the proration of the then current year's real estate taxes, shall be paid by DEVELOPER at the time of the repurchase closing.

**Commented [AK11]:** Validate with Ehlers on increment projection and cashflow

4. In the event of repurchase as provided herein, DEVELOPER shall also be liable to the CITY for all reasonable costs and expenses incurred in retaking the Development Site. DEVELOPER shall be deemed to consent to enforcement of the options described herein on the above terms by specific performance.

5. In addition to any other limitation on assignment or sale of the Development Site or any portion thereof and prior to termination of this Agreement, DEVELOPER shall not be allowed to sell, transfer, or convey the Development Site to any person or entity in any manner or in any manner which would render the Development Site exempt from property taxation.

6. In the event that any revenue producing portion of the Property becomes exempt from ad valorem taxes without the consent of the City during the statutory life of the TID District plus ten years thereafter (the "PILOT Term"), the owner of such exempt portion of the Property shall make (or cause to be made) annual payments in lieu of taxes ("PILOT") in amounts equal to what the ad valorem property taxes would have been for such portion of the Property (as determined by the City assessor, subject to the owner's right to contest such determination) had it not been exempt. Such taxes shall include all taxes assessed by the City as well as by any other taxing jurisdiction receiving taxes calculated against the property on an valorem basis. The notice of such assessment shall be given in the same manner and time frame as if the exempt portion of the Property was not exempt. Such PILOT shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable for such year. If the then-owner fails to make a PILOT when due, the City may, in addition to all other remedies available to it, levy a special assessment against the exempt portion of the Property owned by such owner in the amount of the unpaid payments, provided any recoveries are limited to the PILOT amount then due. Notwithstanding the levying of such special assessment, this obligation shall be the personal obligation of the then-owner of the exempt portion of the Property. The covenant contained in this Article shall be deemed to be a covenant running with the land and shall be binding upon the then-owners of any portion of the Property for the duration of the PILOT Term. The City is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all of the then-owners of an exempt portion of the property. The covenants and obligations set forth in this Article may be embodied in a separate document and recorded against the Property with the Wood County Register of Deeds.

## E. DEFAULT

A default is defined herein as either party's breach of, or failure to comply with, the terms of this Agreement.

1. Remedies on Default. In the event of any default in or breach of this Agreement by any party hereto, or any successor in interest to such party, such party or successors shall cure or remedy such default or breach within thirty (30) days after receipt of written notice of default from the other, (or provided the defaulting party is diligently pursuing a cure, such longer time as is necessary to complete the cure). This opportunity to cure applies to default by DEVELOPER starting construction as stated in Section B (DEVELOPER OBLIGATIONS), Subsections 8-10, or completing construction all of the residential buildings as stipulated herein, provided DEVELOPER is diligently pursuing completion of construction. In case such action is not taken or the defaulted breach cannot be cured or remedied within the aforesaid time, the non-defaulting party may institute such proceedings that may be necessary or desirable in its opinion to cure the default or breach. If such a proceeding is commenced, the prevailing party in such proceeding shall be entitled to recover from the other party its reasonable costs incurred in such proceeding, including reasonable attorney fees. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement.

2. Rights and Remedies. The rights and remedies of the parties under this Agreement, whether by law or provided by this Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same or different time of any such other remedies for the same event of default or breach or any of its remedies for any other default or breach by any other party. No waiver made by either party with respect to performance or manner or time thereof, or any obligation of any other party

or any condition to its own obligations under this Agreement shall be considered a waiver of any rights of any party making the waiver or any other obligations of any other party.

## F. TERM

The term of this Agreement commences on the date hereof, and shall terminate on December 31, 2039, which is the last year of tax increment revenue for TID No. 4.

## G. NOTICE

Delivery of documents and written notices to a party shall be effective only when accomplished in any of the following ways:

1. By sending the document or written notice, postage or fees prepaid, by U.S. Mail registered or certified mail, return receipt requested at:

DEVELOPER: S.C. SWIDERSKI, LLC<br>951 Market Street<br>Nekoosa, WI 54457

WITH COPY TO: ______________________<br>______________________<br>______________________<br>______________________

CITY: CITY OF NEKOOSA<br>~~Joseph Rusch II~~Kallee Dhein<br>City Clerk<br>951 Market Street<br>Nekoosa, WI 54457

WITH COPY TO: Nicholas R. Abts, City Attorny<br>321 Market Street<br>Wisconsin Rapids, WI 54495

By giving the document or written notice personally to the party.

## H. MISCELLANEOUS PROVISIONS

1. Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement nor shall it be deemed a waiver of any subsequent default or defaults of the same type. Failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act.

2. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the CITY and DEVELOPER.

3. Entire Agreement. This written Agreement and written amendments, and any referenced attachments hereto, shall constitute the entire Agreement between DEVELOPER and the CITY.

4. Time. Time is of the essence as to Closing Date and all other dates and deadlines contained in this Agreement. Provided, however, in any instance where the performance of an act is required within a specified time or by a specified date, strict compliance within the specified time shall be extended if the delay or inability to perform is caused by or results from civil disasters or acts of God. It being the intent of this provision that in the event of the occurrence of any such delay, the time or times of performance of any of the obligations of the party shall be extended for the period of the delay as determined by the other party, provided that the party seeking the extension due to the delay shall have first notified the other party thereof and requested an extension of the period of the delay.

5. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

6. THE CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY (OTHER THAN TITLE) OF ANY KIND OR NATURE WITH RESPECT TO THE PROPERTY, THE PROJECTS OR THE WORK PERFORMED OR TO BE PERFORMED WITH RESPECT THERETO, THE SUITABILITY OF THE PROPERTY FOR THE DEVELOPER IMPROVEMENTS OR FOR ANY OTHER PURPOSE OR USE OR ANY OTHER ASPECT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES AS TO THE CONDITION OF THE PROPERTY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WHATSOEVER SHALL THE CITY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SIMILAR DAMAGES, WHETHER FOR LOST PROFITS, LOST REVENUES, OR OTHERWISE, REGARDLESS OF WHETHER THE PARTIES MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF THE SAME. ANY OBLIGATION OR LIABILITY WHATSOEVER OF CITY WHICH MAY ARISE AT ANY TIME UNDER THIS AGREEMENT OR ANY OBLIGATION OR LIABILITY WHICH MAY BE INCURRED BY CITY PURSUANT TO ANY OTHER INSTRUMENT, TRANSACTION, OR UNDERTAKING CONTEMPLATED HEREBY SHALL NOT BE PERSONALLY BINDING UPON, NOR SHALL RESORT FOR THE ENFORCEMENT THEREOF BE HAD AS TO THE ASSETS OR PROPERTY OF, CITY'S ELECTED OR NONELECTED OFFICIALS, BOARD MEMBERS, EMPLOYEES, OR AGENTS, REGARDLESS OF WHETHER SUCH OBLIGATION OR LIABILITY IS IN THE NATURE OF CONTRACT, TORT, OR OTHERWISE.

7. Indemnification. DEVELOPER shall indemnify, defend and hold harmless the CITY, its Board, and the agents, employees, elected or non-elected officials, and contractors from any claim, damages, liabilities, losses, or expenses, of any kind or nature, including attorneys' fees, which one or more of the same may suffer or be held liable, arising out of or resulting from the negligent or intentional acts or omissions of the DEVELOPER, its employees, agents, contractors, or others for whom DEVELOPER may be responsible. At all times during this Agreement, the DEVELOPER shall maintain sufficient assets to indemnify the CITY.

8. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court for Wood County, Wisconsin. DEVELOPER expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

9. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the CITY and DEVELOPER and their respective successors and assigns.

10. Further Assurances and Corrective Instruments. The CITY and DEVELOPER agree that they will, from time to time, execute, acknowledge, deliver, cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the land hereby conveyed or intended so to be, and for carrying out the express intentions of this Agreement.

11. Authority. Each party warrants and represents to each other that the execution of this Agreement by their respective officers or agents has been duly authorized and that this Agreement, when fully executed, constitutes a valid, binding and legally enforceable obligation of itself.

12. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

13. Recordation. The CITY may record a memorandum of this Agreement in the Register of Deeds Office for Wood County, Wisconsin. All costs of recording shall be paid by the CITY.

14. Effective Date. This Agreement shall be effective as of the date and year first written above.

[DOCUMENT CONTINUES ON NEXT PAGE]

**WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the year and date set forth above, and by so signing this Agreement, certify that they have been duly and properly authorized by their respective entities to make the commitments contained herein, intending them to be binding upon their respective entities and to execute this Agreement on their behalf.

**S.C. SWIDERSKI, LLC**

By: ______________________________ ____________________
________________, Member Date

By: ______________________________ ____________________
________________, Member Date

**CITY OF NEKOOSA**

By:______________________________ ____________________
Daniel J. Carlson, Mayor Date

Attest: ___________________________ ____________________
______Kallee Dhein, City Clerk Date

STATE OF WISCONSIN )
) ss.
WOOD COUNTY )

Personally came before me this ______ day of __________________, 20__, the above named, Daniel J. Carlson, Mayor, and Kallee Dhein, City Clerk, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the City of Nekoosa's authority.

_______________________________
Notary Public, State of Wisconsin
My Commission: _________

STATE OF WISCONSIN )
) ss.
WOOD COUNTY )

Personally came before me this _______ day of _______________, 20__, the above named _____________ to me known be the person who executed the foregoing instrument personally and as the Managing Member of S.C. Swiderski, LLC.

___________________________________
Notary Public, State of Wisconsin
My Commission_________________________

**EXHIBIT B**

**DEVELOPMENT CONCEPT PLAN**

**EXHIBIT C**

**INFRASTRUCTURE IMPROVEMENTS MAP ~~MAP~~**

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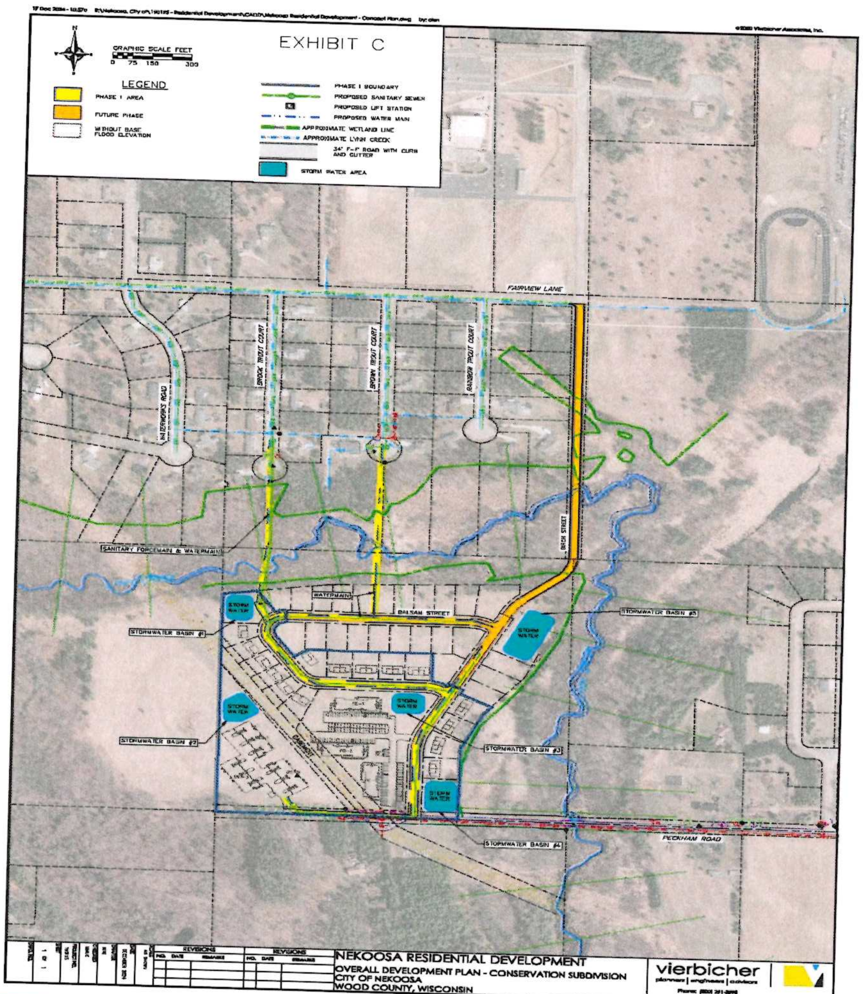

**EXHIBIT D**

**PHASE 1 TID No. 4 CASH FLOW PROJECTION**

ASCENT CONSTRUCTION

**P. O. Box 114**
**Rudolph, WI 54475**
**Phone: 715-572-0024; FAX 715-544-1044**

## CHANGE ORDER

| | | | |
|---|---|---|---|
| **To:** | City of Nekoosa<br>951 Market St.<br>Nekoosa, WI 54457 | Date:<br>Project:<br>Job #: | December 23, 2024<br>Kautzer Park Conscession Building<br>24-0077 |
| **Trade:** | Excavation | Change Order No. | COR - 1 |

**DESCRIPTION: Remove unsuitable soils and replace with clean fill**

| | | | |
|---|---|---|---|
| ADD | Additional work associated with unsuitable soils found under buidling site per attached PGU change order breakdown. | $ | 31,378.00 |
| | Ascent on-site coordination (NO CHARGE) | $ | - |
| | Ascent 10% mark-up | $ | 3,137.80 |
| | | $ | 34,515.80 |

**TOTAL CHANGE: ADD $ 34,515.80**

| | | |
|---|---|---|
| Original Contract Sum | $ | 511,644.00 |
| Change by Previous Change Order | $ | - |
| Contract Sum Prior to this ChangE Order | $ | 511,644.00 |
| Contract Sum Increased/Decreased by this Change Order | $ | 34,515.80 |
| New Contract Sum | $ | 546,159.80 |

THIS CHANGE IS ISSUED AS A SUPPLEMENT TO THE ABOVE CONTRACT/PURCHASE ORDER AND AS SUCH IS SUBJECT TO THE SAME TERMS, CONDITIONS AND STIPULATIONS OF SAID CONTRACT/PURCHASE ORDER, EXCEPT AS SPECIFICALLY NOTED NOTED HEREIN.

THIS CHANGE, IF NOT EXECUTED AND DELIVERED TO OUR OFFICE WITHIN TEN (10) CALENDAR DAYS OF THE DATE ABOVE, SHALL BE DEEMED TO HAVE BEEN ACCEPTED.

| **City of Nekoosa** | | **Ascent Construction** | |
|---|---|---|---|
| **ACCEPTED BY;** | | **BY:** | Ronald J. Adamski |
| **TITLE:** | | **TITLE:** | Ronald J. Adamski, PM |
| **DATE:** | | **DATE:** | December 23, 2024 |

**PRECISION GRADING & UTILITIES, INC.**
P.O. BOX 79
PORT EDWARDS, WISCONSIN 54469

Phone 715.887.2172 Fax 715.887.2062

# CHANGE ORDER

CHANGE ORDER #001

PGU PROJECT #24-117
DATE: NOV. 14, 2024

TO:
ASCENT CONSTRUCTION

FOR:
KAUTZER PARK PAVILION

- ADDITIONAL WORK ASSOCIATED WITH UNSUITABLE SOILS

| DESCRIPTION | QUANTITY | RATE | AMOUNT |
|---|---|---|---|
| MOBILIZATION | 2 HRS | $190.00 / HR | $380.00 |
| CAT 315 EXCAVATOR | 33 HRS | $240.00 / HR | $7,920.00 |
| CAT D3LGP DOZER | 8 HRS | $195.00 / HR | $1,560.00 |
| CAT CS563 COMPACTOR | 8 HRS | $235.00 / HR | $1,880.00 |
| CAT 289 TRACK LOADER | 19 HRS | $210.00 / HR | $3,990.00 |
| QUAD AXLE TRUCKS | 71 HRS | $130.00 / HR | $9,230.00 |
| FOREMAN | 4 HRS | $100.00 / HR | $400.00 |
| LABOR | 25 HRS | $88.00 / HR | $2,200.00 |
| 500X GEOTEXTILE | 670 SY | $1.40 / SY | $938.00 |
| GRANULAR FILL | 720 CY | $4.00 / CY | $2,880.00 |
| | | TOTAL | $31,378.00 |

Thank you for your business!