

**DEVELOPER’S AGREEMENT
BETWEEN THE TOWN OF CLIFTON
AND**

THIS AGREEMENT, made and entered into this _____ day of _____, by and between the Town of Clifton, a municipal corporation organized under the laws of the State of Wisconsin (hereinafter called “Town”) and (hereinafter called “Developer”).

WITNESS:

WHEREAS, the Developer has made application to the Town for a Preliminary Plat approval and desires to enter into a Developer’s Agreement with the Town subject to certain terms and conditions: and

WHEREAS, the Town desires to enter into the Developer’s Agreement and provide for, among other things, the conditions for approval of the Final Plat, the installation of grading, stormwater drainage facilities, paved streets, park, bike path, landscaping and other utilities; and

WHEREAS, this Developer’s Agreement sets out the terms and conditions under which the Final Plat may be approved and public improvements as described above installed to the mutual benefit of both parties.

NOW THEREFORE, in consideration of the mutual premises and of the mutual promises and conditions hereinafter contained regarding the processes for approval and improvements to be installed, it is hereby agreed as follows:

**ARTICLE I.
DEFINITIONS**

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Agreement” means this contract for a Developer’s Agreement by and between the Town of Clifton, Wisconsin, and _____, . by as the same may from time to time be modified, amended, or supplemented.

“Articles and Sections” mentioned by number only are the respective articles and sections of the Agreement so numbered.

“Town” means the Town of Clifton, Wisconsin.

“Construction plans” means the plans, specifications, drawings and related documents on all conservation work to be performed by either the Town or the Developer on the development property and installed pursuant to this Agreement. Such plans shall, at a minimum include grading, stormwater drainage facilities, street base course, pathway, street paving design plans, and trees/bushes for landscaping.

“Board” means the Town Board of the Town of Clifton, Wisconsin.

“County” means the County of Pierce, Wisconsin.

“Developer’s Rights”

“Development Property” means the real property described in Exhibit 2, containing approximately _____ acres, which also serves as the preliminary plat.

“Ordinances” means the local ordinances of the Town of Clifton in effect as of the date of this Agreement unless otherwise agreed to.

“State” means the State of Wisconsin.

ARTICLE II.

REPRESENTATIONS, WARRANTIES AND OBLIGATIONS OF DEVELOPER

Section 2.1. Representations and Warranties by Developer. Developer represents and warrants that:

- (a) Developer has received no notice of communication from any local, state or federal officials that the activities of the Developer or the Town on the development property may be or will be in violation of any rules, laws, or regulations applicable to the Developer.
- (b) The Developer hereby warrants and represents to the Town as inducement to the Town entering into this Agreement, that the Developer will own, in fee title absolute, the property shown on Exhibit 2, attached, which represents the preliminary plat for the entire property to be under the terms and conditions of this Agreement.

Section 2.2. Obligations of Developer.

- (a) Developer shall comply with and faithfully perform the conditions of approval of the preliminary plat granted by the Town Planning Commission on _____ to which the developer acknowledges he/it is bound. No building permits will be issued until developer has complied with the following conditions as determined by the Town of

Clifton Plan Commission and Board. Additionally, should problems arise associated with landscaping, grading, water quality or other issues related to the development of this parcel, subsequent building permits may be held up until such problems are resolved to the satisfaction of the Town of Clifton Plan Commission and Board.

- (1) The final plat must conform to provisions of Chapter 236 of Wisconsin State Statutes.
- (2) Must conform to all applicable ordinances of the Town. 18.05(1)(b).
- (3) The final plat must meet County, ETZ, and City of River Falls approval.
- (4) The developer shall cooperate with assessor and county treasurer in making timely payment of any use-value penalties, prior to final plat approval.
- (5) Payment of all fees for engineering, legal, professional and other fees required by Chapter 18 of the Code of General Ordinances.
- (6) The developer must establish appurtenant covenants prior to final plat approval (Exhibit 6). Declaration establishing protective covenants for must have the following additions and deletions, and the Developer must obtain final approval of same from Town Board.
 - Section 2, at least 50% of garages must be oriented with doors away from street.
 - Section 3, delete minimum foundation area requirements.
 - Section 4, add wording about town building inspector requirements.
 - Section 5 should be consistent with Town's ordinance regarding home-based occupations.

- Need additional covenants indicating that there will be noise, dust, and sights involved with farming on adjacent property and that these are protected activities. The purchaser understands one of the uses of lands adjoining the development is an agricultural use. Agricultural uses often produce sights, sounds, and smells that are undesirable in residential neighborhoods. Field operations may take place between early morning and late at night. Dust may be blown about as a result of soils, weather, and/or harvest conditions. These are protected agricultural activities.
- Homeowner's Association and lot owners are responsible for maintaining all vegetative cover, trees, shrubs, etc. for screening.

(7) Any narrowing of roads to 20-foot width to be approved by Town Board.

- (b) In accordance with the policies and ordinances of the Town of Clifton, the State Statutes, and the Wisconsin Administrative Code, the Developer shall, at its own expense, construct all public or private improvements as are contained in the Preliminary Plans and specifications that have been reviewed and approved by the Town Board and attached hereto as Exhibit 3 to this Agreement. Final plans shall be reviewed and approved prior to construction and shall incorporate any review comments received from the Town.
- (c) Dedication and granting of easements. The Developer shall grant to the Town all public streets, and drainage easements, walkway between lots marked as Exhibit 2, as well as any other easements that are reasonably determined by the Town to be necessary. The recording of the final plat shall include these easements and, constitute an irrevocable dedication of said ways for Town utility and drainage purposes
- (d) Stormwater. In addition to all other ordinances, the Developer shall construct all public and private improvements in accordance with Section 16.24 of the Municipal Code. The land disturbing permit shall

be secured and attached hereto as Exhibit 4. The Developer shall also obtain a WPDES permit before beginning site grading.

- (e) Inspections. The Town shall have the right, at such times and upon such locations as it deems necessary, to inspect the construction of the public improvements to ensure compliance with plans and specifications, good engineering practice, and all the requirements of law and ordinance. Any inspection done by the Town of Clifton shall be done at the expense of the Town provided, however that if the Town reasonably requires independent testing in accordance with local ordinance, such costs of the independent testing shall be the cost of the Developer. The Developer shall provide an on-site inspector who shall be a representative of the Developer's engineering firm. Said person shall provide inspection services during construction of the facilities. Facilities include but are not limited to storm sewer systems, pavement and sub pavement, curb and gutter, and landscaping plan.
- (f) As Built Record Plans. After completion of the public improvements, Developer shall have its engineer or its successor, supply the Town Board with a complete set of as-built record plans, that are in reproducible form, and original plat on mylar plus an electronic file. See attached Exhibit 2.
- (g) Street Signage. All street signage shall be installed at locations as shown in the approved plans and specifications, Exhibit 3, at the Developer's costs, prior to the issuance of any occupancy permit.
- (h) Slopes Greater than 20%. The Developer understands and agrees that no construction of any building or structures, or cutting down trees (without approval of the Town Board or its representative) shall occur on any portion of the development property having a slope with a gradient of 20% or greater. Particular attention should be given to driveway location before building. The driveway slope cannot be over 12%.
- (i) Impact Fees. Nothing in this agreement shall preclude the imposition of impact fees by the Town in accordance with Town Ordinances.
- (j) Roads. It shall be the responsibility of the Developer under this agreement to build all public roads to Town specifications under Pierce County Road specs., Road Construction Standards, unless otherwise noted in this agreement, or unless otherwise agreed to by the Town Board, in consultation with the Town Engineer.

(k) The developer shall acknowledge that before a road will be accepted by the Town, there has to be 4 houses in one-half mile and an appropriate turn-around for emergency services.

(a) Complies with all town ordinances.

(b) That no occupancy be allowed until after occupancy permits are received.

**ARTICLE III.
OBLIGATIONS OF TOWN**

Section 3.1. Preliminary Plat Approval. Commensurate with the signing of this Agreement, the Town hereby grants preliminary plat approval, as contained in Exhibit 2, to Andrus Investments, Inc.

Section 3.2. Snow Removal. The Town accepts responsibility for snow removal of the public streets if the Developer has completed all improvements, existence of 4 houses per one-half mile of road, except the final blacktop. The Developer shall pay the Town an appropriate cost for laying final pavement. It shall be the responsibility of the Town for final asphalt pavement. The Developer remains liable for any damage to the roadway and castings from any source.

**ARTICLE IV.
INSURANCE AND LETTER OF CREDIT**

Section 4.1. Insurance.

(a) Developer shall provide and maintain or cause to be maintained at all times during the process of constructing, and, from time to time at the request of the Town furnish the Town with proof of payment of premiums on:

- (1) Comprehensive general liability insurance or its equivalent, including operations, contingent liability, operations of subcontractors, completed operations and contractual insurance, together with an owner's contractor's policy or its equivalent with limits against bodily injury and property damage of not less than one million dollars (\$1,000,000.00) for each occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and
- (2) Worker's compensation insurance, with statutory coverage according to the laws of the State of Wisconsin.
- (3) Should Developer or Developer's contractor choose blasting as a means of rock removal, standards imposed by the State of Wisconsin shall be met. All permits required for insurance shall be filed with the Town Clerk prior to actual work. Insurance shall be for a minimum of one million dollars per occurrence

The policies of insurance or their equivalent required pursuant to clauses (1), (2) and (3) above shall be in form and substance satisfactory to the Town Attorney and shall be placed with financially sound and reputable insurers licensed to transact business in the State.

Section 4.2. Letter of Credit.

- (a) After all roads are completed, an irrevocable letter of credit shall be submitted for all remaining public improvements that are required to be installed in accordance with the Plans and Specifications attached hereto as Exhibit 2. In lieu of a letter of credit, the Developer may submit a performance bond from a reputable bonding institution. The amount of the bond or letter of credit shall be in the amount of _____, which represents 125% of the value of the outstanding improvements and erosion control as determined upon the advice of the Town Board. The letter of credit or bond shall be submitted in a form acceptable to the Town Attorney prior to the commencement of any land disturbing activities.

**ARTICLE V.
FINAL PLAT**

Section 5.1. Submission of Final Plat. The final plat shall be submitted by the Developer in conformance with Wisconsin Statutes 236 and the Town of Clifton General Code. Upon approval and recording of the final plat, sale of lots shall be authorized. Final plat approval shall be subject to filing of a bond or letter of credit in the amount of 125% of the outstanding remaining costs of all improvements, or shall be subject to the actual completion and acceptance of all required improvements. Cost estimates shall be submitted to the Town Engineer for approval for bond purposes. Upon approval of the final plat, Developer shall be entitled to sell lots. Upon approval of the final plat and upon receiving confirmation of Town Board, tests on sewer and water infrastructure, buyer shall be entitled to apply for building permits

Section 5.2. Parkland Dedication. The Developer agrees to dedication fees in accordance with Section 18 of the General Code an amount of land as shown in Exhibit 2.

**ARTICLE VI.
MISCELLANEOUS**

Section 6.1. Faithful performance of construction contracts. The Developer hereby agrees that he will fully and faithfully comply with all terms of any and all contracts or subcontracts entered into by the Developer for the installation and construction of all improvements that are his responsibility, and hereby guarantees the workmanship and materials so used for a period of eighteen months (18) following the Town's final acceptance of the improvements that are the responsibility of the Developer, whether public or private, and agrees to repair or replace, as directed by the Town and at Developer's sole cost and expense, any workmanship or materials that become defective, in the sole opinion of the Town, within said eighteen month (18) period, even though notice thereof be given by the Town after said eighteen month (18) period.

Section 6.2. Transfer of Title. The Developer may not sell, transfer, or lease any of the property within the subdivision until all of his improvements have been fully and faithfully completed in accordance with the provisions of this Agreement, and final plat approval has been granted, unless the Town consents, in writing. Notwithstanding the above, the Developer may sell, transfer, or lease the property within the subdivision if final plat approval is secured by depositing the necessary surety bond or letter of credit with the Town to guarantee the installation of all improvements, all in accordance with the Ordinances of the Town of Clifton and Chapter 236 of the Wisconsin Statutes.

Section 6.3. Binding Agreement. The terms and conditions hereof shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto, and shall be binding upon all future owners of all or any part of the subdivision and shall be deemed covenants running with the land. This Agreement, or a short form thereof, to be executed by the Developer, at the option of the Town shall be placed on record so as to give notice hereof to subsequent purchasers and encumbrances of all or any part of the subdivision, and all recording fees, if any shall be paid by the Town.

Section 6.4. Notices. Whenever in this Agreement it shall be required or permitted that notice of demand be given or served by either party to this Agreement to or on the other party, such notice or demand shall be delivered personally or mailed (Return Receipt Requested) to the Developer and to the Town Clerk, N7401 1195th Street, River Falls, Wisconsin, 54022.

Section 6.5. Disclaimer by Town. It is understood and agreed that the Town, the Town Board, and the agents and employees of the Town shall not be personally liable or responsible in any manner to Developer, or Developer's contractors, subcontractors, material men, laborers, or any other person, firm or corporation, for any debt, claim, demand, damages, actions or causes of action of any kind or character arising out of or by reasons of the execution of the improvements. Provided, however, this paragraph does not absolve the Town of the tortuous acts that may be committed by the agents of the Town, subject to any municipal defenses that may be available.

Section 6.6. Hold Harmless and Indemnification. The Developer shall indemnify and hold harmless the Town, the Town Board, and the agents and employees of the Town from any and all claims, damages, losses or expenses, including attorneys fees, which the Town, Town Board, and agents and employees of the Town suffer or for which it may be held liable, arising out of or resulting from the assertion against them of any claims, debts, or obligations in consequence of the performance of this Agreement by the Developer, its employees, agents or subcontractors, which are the result of the negligence, error, or omission of the Developer, its agents, employees or subcontractors.

Section 6.7. Remedy for Default. Default by the Developer of any of the terms of this Agreement shall automatically result in the suspension or withholding of all permits, licenses, occupancy certificates or other authorizations issued by the Town in connection with the property included in this subdivision. The remedies afforded to the

Town under this section shall be in addition to any other remedies to which the Town may be entitled by law or other agreement.

Section 6.8. No Additional Waiver Implied by One Waiver. In the event any provisions contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 6.9. Law Governing. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

Section 6.10. Release of All Oral or Written Agreements. Upon the signing of this Agreement, all prior oral and written Agreements between the Town and Developer, except as are incorporated herein, are terminated and released, as this document contains the complete Agreement between the parties with respect to the development property and construction of the minimum improvements.

ARTICLE VII. GRIEVANCE PROCEDURE

In the event Developer disagrees with the Town's requested changes or additions in the minimum improvements then each party shall, within five days of written notice of disagreement of either, select a competent and disinterested arbitrator. The two arbitrators so named shall select a third arbitrator, or if unable to agree within 10 days, then upon the request of the Town or Developer such third arbitrator shall be selected by a judge of a court of record in the county and state in which such arbitration is pending. The arbitrators shall then hear and determine the question or questions so in dispute, and the decision in writing of any two arbitrators shall then be binding upon Developer and the Town, each of whom shall pay his or its chosen arbitrator and shall bear equally the expense of the third arbitrator and all other expenses of the arbitration. Unless the parties otherwise agree, the arbitration shall be conducted in Pierce County, Wisconsin, and in accordance with the usual rules governing procedure and admission of evidence in courts of law.

IN WITNESS THEREOF, the Town and Clifton has caused this Agreement to be duly executed in its name and behalf and on the date first above written.

TOWN OF CLIFTON

By _____
LeRoy Peterson, Town Chairman

By _____

Attest:

Judy Clement-Lee, Town Clerk/Treasurer

EXHIBIT LIST

1. Preliminary Plat
2. Developer's Agreement
3. Plans and Specifications (to be attached)
 - a. Site Plan
 - b. Erosion Control Plan
 - c. Landscaping Plan
4. Covenants

EXHIBIT 5

**AGREEMENT BETWEEN DEVELOPER'S ENGINEER
AND THE TOWN OF CLIFTON
AND**

COMES NOW, the Developer's Engineer, _____ Engineering, the Town of Clifton and in consideration of signing of a Developer's Agreement between _____ the Town of Clifton, the parties hereto agree as follows:

_____ Engineering agrees to supply the Town of River Falls a complete set of as-built record plans, in reproducible form, and original plat on mylar plus electron file at the completion of the construction of the public improvements on the _____ to the Town of Clifton. This is in conformity with Section 2.2, Paragraph (g) between the Town of Clifton and _____. All costs associated with providing said as-built record plans and the Town shall be borne by the Developer upon such terms and conditions as may be agreed to privately between the Developer and Developer's Engineer.

Dated this ____ day of _____, 200 .

Developer's Engineer

TOWN OF CLIFTON

By _____

EXHIBIT 1

CERTIFICATE OF COMPLETION

WHEREAS, the Town of Clifton and Developer have executed a contract for private development with respect to _____ Subdivision setting forth mutual covenants and obligations of the Town and Developer with respect to the development property; and

WHEREAS, the Developer has covenanted to construct certain improvements to the subdivision property, in conformance with the provision of the Developer's Agreement, and the Developer's Agreement places upon Developer certain additional obligations and restrictions prior to the completion of the minimum improvements in conformance with the provisions of the Developer's Agreement;

WHEREAS, Developer has to the present date performed all covenants and conditions contained in the Developer's Agreement with respect to construction of the improvements in a manner deemed sufficient by the Town to permit the execution of this certification;

NOW THEREFORE, this is to certify that the improvements which were the responsibility of the Developer upon the development property have been fully and duly performed by the Developer, and in accordance with the Developer's Agreement and in substantial compliance with the construction plans.

This certification shall be a conclusive determination of satisfaction and termination of the Agreements and covenants in the Developer's Agreement with respect to the obligation of Developer, and its successors and assigns, to construct the improvements.

Dated this _____ day of _____, 2003.

TOWN OF CLIFTON

Town Engineer

LeRoy Peterson, Town Chairman