

Agenda
Stormwater Utility Committee Meeting
625 52nd Street, Room 202
Monday, March 11, 2024
5:30 PM

Chairperson Dominic Ruffalo
Vice Chairperson Anthony Kennedy
Aldersperson David F. Bogdala

Aldersperson David Mau
Aldersperson Jack Rose
Aldersperson Bill Siel

Call to Order
Roll Call
Citizens Comments

Approval of the minutes of the meeting held on February 12, 2024.

1. Disbursements for the month of February 2024. **Pgs. 1-3**
2. Development Agreement between the City of Kenosha, the Kenosha Water Utility, and 38th Street, LLC for Development Phases II, III, IV. (District 16) (referred to PW & BOW) (CP Approved Ayes 8, Noes 0) **Pgs. 4-78**

ALDERPERSONS' COMMENTS

IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4050 BY NOON BEFORE THIS MEETING TO MAKE ARRANGEMENTS FOR REASONABLE ON-SITE ACCOMMODATIONS.

STORMWATER UTILITY COMMITTEE
- MINUTES -

MONDAY, FEBRUARY 12, 2024
5:30 PM

Chairperson Dominic Ruffalo
Vice Chairperson Anthony Kennedy
Aldersperson David F. Bogdala

Aldersperson David Mau
Aldersperson Jack Rose
Aldersperson Bill Siel

The regular meeting of the Stormwater Utility Committee was held on Monday, February 12, 2024 in Room 202 of the Municipal Building. The following members were present: Chairperson Dominic Ruffalo, Vice Chairperson Anthony Kennedy, Alderspersons David F. Bogdala, David Mau and Jack Rose. Aldersperson Bill Siel was excused. The meeting was called to order at 7:10 PM. Staff members in attendance were Brian Cater, Director of Public Works and Greg Boldt, Deputy Director of Public Works/City Engineer.

Citizen's Comments - Edgar Perez, 2018 23rd Street, asked who is paying for this.

Approval of the minutes of the meeting held on January 22, 2024.

It was moved by Aldersperson Kennedy, seconded by Aldersperson Rose to approve. Motion passed 5-0.

1. Award of Contract for Project 24-1207 Sidewalk & Curb/Gutter Program North (Properties North of 60th Street) to A.W. Oakes & Son, Inc. (Racine, WI) in the amount of \$473,100. (Districts 4, 5, 6, 7 & 10) (referred to PW)
It was moved by Aldersperson Kennedy, seconded by Aldersperson Bogdala to approve. Motion passed 5-0.
2. Award of Contract for Project 24-1208 Sidewalk & Curb/Gutter Program South (Properties South of 60th Street) to A.W. Oakes & Son, Inc. (Racine, WI) in the amount of \$463,900. (Districts 8, 9, 12 & 13) (referred to PW)
It was moved by Aldersperson Kennedy, seconded by Aldersperson Bogdala to approve. Motion passed 5-0.
3. Disbursements for the month of January 2024.
It was moved by Aldersperson Kennedy, seconded by Aldersperson Bogdala to approve. Motion passed 5-0.

ALDERPERSONS' COMMENTS - None

ADJOURNMENT – There being no further business to come before the Stormwater Utility Committee, it was moved by Aldersperson Kennedy, seconded by Aldersperson Rose, and unanimously approved to adjourn the meeting at 7:12 PM.

BRIAN CATER, PE

Director of Public Works

bcater@kenosha.org

T: 262.653.4050

F: 262.653.4056



GREGORY J. BOLDT, PE

Deputy Director of Public

Works/City Engineer

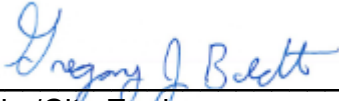
gboldt@kenosha.org

T: 262.653.4050

F: 262.653.4056

March 7, 2024

To: Dominic Ruffalo, Chairperson
Stormwater Utility Committee

From: Gregory J. Boldt, PE 
Deputy Director of Public Works/City Engineer

Subject: February 2024 Stormwater Utility Disbursements

BACKGROUND INFORMATION

The Finance Department has prepared the monthly stormwater utility disbursements for February 2024.

RECOMMENDATION

Staff recommends the committee receive and file.

GB/kjb

START DATE FOR SUMMARY: 2/01/24 END DATE FOR SUMMARY: 2/29/24

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
217334	2/09	KENOSHA WATER UTILITY	501-09-50105-259-000	1-6/24 DIGGERS	1,833.20
			501-09-50105-259-000	7-12/23 DIGGERS	457.32CR
				..... TOTAL	1,375.88
217345	2/09	RUEKERT & MIELKE, INC.	501-09-50102-219-000	11/4-12/1/2023 STORM	4,133.00
			501-09-50102-219-000	12/2-29/2023 STORM S	1,921.25
			501-09-50102-219-000	11/4-12/1 ILLICIT DI	121.00
				..... TOTAL	6,175.25
217347	2/09	INTERCLEAN EQUIPMENT INC	501-09-50105-387-000	TRUCK WASH CLEANER	4,000.00
217349	2/09	VERIZON WIRELESS	501-09-50101-226-000	12/24-1/23 CITY CELL	190.05
			501-09-50105-226-000	12/24-1/23 CITY CELL	152.04
			501-09-50103-226-000	12/24-1/23 CITY CELL	46.17
			501-09-50101-226-000	12/24-1/23 CITY CELL	46.17
			501-09-50103-226-000	12/24-1/23 CITY CELL	38.01
				..... TOTAL	472.44
217364	2/09	PRECISE MRM LLC.	501-09-50101-233-000	GPS CHARGES	195.96
217393	2/09	SPV3 LLC	501-00-13114-000-000	SW33426/SW33427	36.60
217421	2/14	LINCOLN CONTRACTORS SUPPLY	501-09-50105-389-000	TOOLS AND SUPPLIES	146.16
217546	2/16	LOWE'S	501-09-50105-389-000	MERCHANDISE	28.30
217547	2/16	TDS	501-09-50101-227-000	2/24 MAIN LINES	126.90
217548	2/16	PAT'S SERVICES, INC.	501-09-50107-282-000	12/23-1/19 PORTABLE	168.00
217550	2/16	JAMES IMAGING SYSTEMS, INC.	501-09-50105-232-000	1/24 PRINTER MAINT	21.12
			501-09-50101-232-000	1/24 PRINTER MAINT	21.12
				..... TOTAL	42.24
217606	2/21	T-MOBILE	501-09-50103-226-000	1/08-02/07 ENG CARD	42.00
217623	2/21	BELLE CITY FIRE & SAFETY	501-09-50105-319-000	EXTINGUISHER SERVICE	211.90
217635	2/21	BRUCE MUNICIPAL EQUIPMENT	501-09-52303-579-000	2023 FREIGHTLINER	317,888.00

START DATE FOR SUMMARY: 2/01/24 END DATE FOR SUMMARY: 2/29/24

CHECK #	CHECK DATE	VENDOR NAME	ACCOUNT	DESCRIPTION	AMOUNT
217715	2/22	FIRSTNET	501-09-50105-226-000	2/24 CITY CELL SVC	159.93
			501-09-50106-226-000	2/24 CITY CELL SVC	153.93
			501-09-50103-226-000	2/24 CITY CELL SVC	120.59
			501-09-50101-226-000	2/24 CITY CELL SVC	41.73
			501-09-50107-226-000	YARDWASTE	38.27
				..... TOTAL	514.45
217795	2/28	PAT'S SERVICES, INC.	501-09-50107-282-000	1/20-2/16 PORTABLE T	168.00
217797	2/28	LINCOLN CONTRACTORS SUPPLY	501-09-50105-235-000	TOOLS AND SUPPLIES	84.62
GRAND TOTAL FOR PERIOD *****					331,676.70



**CITY PLAN COMMISSION
Staff Report - Item #13**

**Thursday, March 7, 2024 at 5:00 pm
Municipal Building
625 52nd Street – Room 202 – Kenosha, WI 53140**

**Development Agreement between the City of Kenosha, the Kenosha Water Utility, and 38th Street, LLC
for Development Phases, II, III and IV. (District 16) PUBLIC HEARING**

NOTIFICATIONS AND APPROVAL REQUIREMENTS:

Aldersperson Dominic Ruffalo, District 16, has been notified. The Common Council and the Board of Water Commissioners are the final review authorities upon recommendation of the City Plan Commission, Public Works Committee and Storm Water Utility Committee.

LOCATION AND ANALYSIS:

Site: Uline Phase II, III and IV located west of 128th Avenue, north and south of 38th Street

1. This agreement would cover the next 3 phases of the Uline Development. The developer will be responsible for reconstructing 38th Street and install utilities from 128th Avenue to just west of CTH UE.
2. The City as part of a TID will reconstruct 128th Avenue from 38th Street to 60th Street. The Developer will also contribute \$2 million towards additional street improvements that may be required in the future.

RECOMMENDATION:

A recommendation is made to approve the agreement.

Rich Schroeder, Deputy Director

<p>Document Number</p>	<p>DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KENOSHA, THE KENOSHA WATER UTILITY AND 38TH STREET, LLC FOR DEVELOPMENT PHASES II, III AND IV</p> <p>Document Title</p>	<p>This space is reserved for recording data</p> <hr/> <p>Return to:</p> <p>Attorney Matthew A. Knight Office of the City Attorney 625 52nd Street, Room 201 Kenosha, WI 53140</p> <hr/> <p>Parcel Identification Numbers</p> <p>parcel # 08-221-25-252-041 08-221-25-351-200 08-221-25-351-101 08-221-25-351-400 08-221-25-351-105</p>

DEVELOPMENT AGREEMENT

Between

**THE CITY OF KENOSHA, WISCONSIN
A Municipal Corporation**

And

**THE KENOSHA WATER UTILITY
A Municipal Water Utility**

And

**38TH STREET, LLC
A Delaware Limited Liability Company**

This Development Agreement, ("Agreement") effective as of the last date of execution (the "Effective Date") is entered into between the City of Kenosha, Wisconsin, a municipal corporation duly organized and existing under the laws of the State of Wisconsin ("City"), the Kenosha Water Utility, a municipally owned public water utility duly organized and existing under the Code of General Ordinances for the City of Kenosha and Wisconsin Statute § 66.0805 ("Utility"), and 38th Street, LLC, a Delaware limited liability company, with principal offices located at 12575 Uline Drive, Pleasant Prairie, Wisconsin 53158 ("Developer"), collectively referred to as the Parties.

WITNESSETH:

Whereas, the Developer is the owner of approximately 334 acres of real estate, which is legally described on attached Exhibit A as the "Total Development Real Estate," which is now in the City of Kenosha.

Whereas, Developer intends to develop the Total Development Real Estate in four (4) separate Phases, which are approximately shown on Exhibit D (each, a "Phase"); and,

Whereas, Developer entered into an Agreement with the City entitled "Development Agreement Between the City of Kenosha and 38th Street, LLC," which was recorded in the Office of the Register of Deeds of Kenosha County, Wisconsin as Document No. 1948890 (the "Phase I Development Agreement"), to permit the development of Phase I, as defined therein, of the Total Development Real Estate, which is hereinafter referred to as the "Phase I Land," or "Phase I," on Exhibit A, and which also included some limited work on the Phase IV Land, as defined on Exhibit A, to support the Phase I Land, but not to allow construction of a building on the Phase IV Land; and,

Whereas, an area of the Total Development Real Estate shown on Exhibit D as Phase IV, and defined as “Phase IV” or the “Phase IV Land” on Exhibit A, was necessarily involved in the development of Phase I, either because it is currently part of the same tax parcel and was included in the First CSM defined below, or is needed for certain grading and stormwater work on the Phase IV Land to serve the Phase I Land although the Phase I Development Agreement does not permit the Developer to construct buildings or otherwise use the Phase IV Land other than for the approved work permitted pursuant to the Conditional Use Permit approval in the Phase I Development Agreement; and,

Whereas, the Phase I Development Agreement contemplated that Developer would be required to enter into a subsequent Development Agreements with the City to permit the development of the Phase II Land, the Phase III Land, and the Phase IV Land (except for the limited work on the Phase IV Land to support the Phase I Development, which included mass grading, the construction of detention basins, temporary drainage work, and stabilization of soil berms with a permanent cover including temporary or permanent berms defined by an approved Conditional Use Plan Review for the Phase I Land); and

Whereas, in connection with the Phase I Development Agreement, the Phase I Land and the Phase IV Land were combined into one parcel, becoming Lot 1 (“Lot 1”) of Certified Survey Map No. 3051, as shown on the certified survey map attached as Exhibit B (the “First CSM”) and as more particularly described on Exhibit A; and,

Whereas, in connection with the Phase I Development Agreement, and in order for the Developer to develop the Phase I Land for industrial purposes, the Developer secured, for Lot 1, a conditional use permit, which was recorded in the Office of the Register of Deeds for Kenosha County, Wisconsin as Document No. 1949101 (the “first conditional use permit” or “First CUP”); the First CUP for Lot 1 is attached hereto as Exhibit C; and, a condition of which is execution of the Phase I Development Agreement and the recording of the Restrictions related to the First CUP, which were recorded in the Office of the Register of Deeds of Kenosha County, Wisconsin as Document No. 1948889 (“First Restrictions”); and,

Whereas, the Developer wishes to develop the remainder of the Total Development Real Estate, in the Phases identified on Exhibit A, (each, a “Phase”), with this Agreement intending to control all of the remaining development, and requiring, for each Phase, a new or amended Certified Survey Map (unless that Phase has already been created as a separate parcel under a prior Certified Survey Map), a new or amended Conditional Use Permit, and new or amended permit applications, approvals and permits to be submitted, finalized and issued by the City and the Utility, as the case may be, only for an individual Phase as identified herein; and

Whereas, attachment has been completed from the Town of Paris so all of the Phases and the Total Development Real Estate are now in the City of Kenosha; and

Whereas, no erosion control or building permits will be issued for any of Phases II, III or IV until Developer has dedicated necessary right of way for the construction of 38th Street and 128th Avenue, the 38th Street public improvement plan design (street, sanitary sewer, water facilities) has been approved by the City and Utility, as the case may be, required assurances have been posted, final approval and execution of a CSM and CUP for that Phase, (unless that Phase was already created as a separate parcel in a prior CSM), and the Development for that Phase will be subject to the conditions in the CSM and the CUP for that Phase; and,

Whereas, each Phase of the Development will include the construction of an industrial building (the "Development") hereafter referred to as "New Construction;" and,

Whereas, the industrial development of each Phase by the Developer requires the design, construction and installation of certain utility improvements (the "Utility Improvements" defined on Exhibit H), certain Street Improvements to the Adjacent Streets, (as defined on Exhibit F), certain sanitary sewerage facilities, certain water supply and distribution facilities, certain stormwater drainage facilities constructed in that Phase as required in the CUP for that Phase, and other improvements defined in Section I of this Agreement, collectively referred to as the "Public Improvements," all of which are more fully described in this Agreement and are specifically listed on Exhibits E and H hereto; and

Whereas, the Parties acknowledge and agree that, except as otherwise provided in this Agreement, certain of the Public Improvements to be made by the Developer for that Phase pursuant to this Agreement (which are listed as the "Public Dedicated Improvements" on Exhibit E), are to be substantially completed, dedicated and Accepted by City and Utility, as the case may be, (in accordance with the Acceptance Procedure defined herein), prior to City issuance of any Certificate of Occupancy to the Developer for any New Construction within that Phase of the Development, provided however that the 38th Street Public Dedicated Improvements must be substantially completed, prior to any Certificate of Occupancy being issued for any Phase; and,

Whereas, the Phase I Land and Phase IV Land is zoned M-2 Heavy Manufacturing District, and AIR-4 Airport Overlay District Overflight at the time of execution of this Agreement; the Phase III Land is zoned A-2, Agricultural Land Holding, and Air-4 Airport Overlay Overflight, Phase II is zoned A-2, Agricultural Land Holding, Air-4 Airport Overlay District Overflight FFO Floodplain Fringe Overlay and SWO Shoreland Wetland Overlay, and the City's comprehensive plan has designated the Total Development Real Estate for Industrial development and

Whereas, although this Agreement is not intended to be a final approval of a Site Plan, certified survey map or conditional use permit, each time the Plan Commission of the City recommends to the Common Council and the Common Council approval of a certified survey map and conditional use permit for a Phase, such approval will be on the condition that the Developer has entered into this Agreement relative to the method and manner by which that Phase is to be developed subject to the requirements of this

Agreement, (including any grading, stormwater and utility work approved on adjacent Phases by the Site Plan Approval); and

Whereas, the Developer agrees to develop each Phase as provided in the certified survey map, and the conditional use permit for each such Phase, and this Agreement; and

Whereas, to the extent there are historical agreements affecting any such Phase, such agreements shall be revised in order to allow the development as identified herein; and

Whereas, to the extent the First CSM and First CUP, and their Restrictions, apply both to Phase I Land and Phase IV Land, the development of the Phase IV Land with buildings, shall require an amendment to those documents or a new CSM and CUP that apply only to the Phase IV Land buildings; and

Whereas the terms "certificate of occupancy" and "temporary certificate of occupancy" as used herein are intended to be interpreted and applied consistent with Section 8.04 of the City of Kenosha Zoning Code; and

Whereas, although this Agreement identifies that it applies to all "Phases" of the Total Development Real Estate, nothing contained in this Agreement shall apply to the development of Phase I, which shall be completely controlled by the Phase I Development Agreement.

Now, Therefore, in consideration of the mutual promises and undertakings of the Parties, the Parties agree that the Phase II Land, the Phase III Land and the Phase IV Land, will be developed as provided in the certified survey map and the conditional use permit for that Phase, and this Agreement. Whenever "for that Phase" or "for each Phase" is referenced herein, it shall mean the land for the Phase for which permits for construction of a building are being requested and the Site Plan Review Approval for that Phase.

I. IMPROVEMENTS BY DEVELOPER

A. Sanitary Sewerage Facilities

1. Developer, at Developer's cost and expense, shall design, construct and install sanitary sewerage facilities providing sanitary sewer service for each Phase, including the mains and appurtenances which are located in 38th Street between 128th Avenue and CTH UE for any public purpose, except as limited below in this section (the Developer "Sanitary Sewerage Facilities"), in accordance with Utility specifications, the conditional use permit, the certified survey map, the Sanitary Sewer Plans approved by Utility General Manager, all applicable Wisconsin Department of Natural Resources (WDNR) requirements, all applicable Federal and State environmental law, rules, and regulations, and this Agreement, collectively referred to as the "Sanitary Sewerage Requirements." Developer may

choose to perform the Sanitary Sewerage Requirements for Phases II, III and IV independent of one another or more than one Phase together at Developer's discretion. Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications for the Sanitary Sewerage Facilities for each Phase from Utility General Manager and the WDNR prior to construction or installation of the Sanitary Sewerage Facilities for that Phase. Developer shall provide copies of all WDNR approvals to Utility upon receipt. However, notwithstanding the language above, and as identified in Exhibit H, no Sanitary Sewerage Facilities will be required in, on, or to, the east side of 136th Avenue (CTH UE), for either the Phase III or Phase IV development, and no such facilities shall be included in the definition of Sanitary Sewerage Requirements, since all facilities for those Phases will come from 38th Street or 128th Avenue; and further, there shall be no requirement to install any Utility Improvements in Phase III or Phase IV for the benefit of other surrounding or adjacent land (the "Utility Exclusion"). All Sanitary Sewerage Facilities for Phases II, III or IV and included in the 38th Street Improvements, must be installed for the issuance of occupancy permits for buildings on any of these Phases.

2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency having jurisdiction over the construction and installation of the Sanitary Sewerage Facilities for each Phase, prior to the construction and installation of the Sanitary Sewerage Facilities for that Phase. City and Utility shall cooperate with Developer in obtaining all permits and approvals required by any governmental unit or regulatory agency for the construction and installation of the Sanitary Sewerage Facilities for each Phase.
3. Subject to Developer's compliance with the Sanitary Sewerage Requirements, Utility shall allow Developer to extend and connect the Sanitary Sewerage Facilities for each Phase to the sanitary sewerage facilities of Utility at Developer's cost and expense, including payment by Developer of all fees and charges required to be paid pursuant to any applicable federal, state, county, City or Utility laws, ordinances, resolutions, rules, regulations, the conditional use permit and this Agreement for the Sanitary Sewerage Facilities.
4. Developer, at Developer's cost and expense, shall complete the construction and installation of the fully functional Sanitary Sewerage Facilities for each Phase without defect, damage or non-conformance with the Sanitary Sewerage Requirements for each Phase.
5. Developer, at Developer's cost and expense, shall provide Utility with copies of the results of all tests and inspections of the Sanitary Sewerage Facilities for each Phase required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of

Wisconsin certifying proper compaction of Sanitary Sewerage Facilities trench backfill for each Phase in accordance with Utility specifications.

6. Developer, at Developer's cost and expense, shall provide Utility with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the Sanitary Sewerage Facilities for each Phase. Developer, at Developer's cost and expense, shall provide Utility with written certification by a professional engineer registered in the State of Wisconsin that the Sanitary Sewerage Facilities for each Phase were designed, constructed, installed, completed, and function as intended in accordance with the Sanitary Sewerage Requirements for that Phase. The "as-built" plans shall be provided to Utility in print and digital form acceptable to Utility General Manager. Developer shall obtain approval of the "as-built" plans from Utility General Manager prior to City issuance of any Certificate of Occupancy to Developer for any improvements for that Phase.
7. Utility shall accept the Sanitary Sewerage Facilities, according to the Acceptance Procedure, for each Phase required to be designed, constructed and installed by Developer in accordance with the Sanitary Sewerage Requirements which are located in the public rights-of-way within that Phase upon the following:
 - a. completion of the Sanitary Sewerage Facilities for that Phase in accordance with the Sanitary Sewerage Requirements, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional Sanitary Sewerage Facilities for that Phase without defect, damage or nonconformance with the Sanitary Sewerage Requirements.
 - c. receipt by Utility of copies of the results of all tests and inspections of the Sanitary Sewerage Facilities for that Phase required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of Sanitary Sewerage Facilities trench backfill in accordance with Utility specifications as required pursuant to Section I.A.5. of this Agreement.
 - d. approval by Utility General Manager of the stamped and certified "as-built" plans of the Sanitary Sewerage Facilities for that Phase as required pursuant to Section I.A.6. of this Agreement.
 - e. payment of all fees and charges required to be paid by Developer for the Developer Sanitary Sewerage Facilities for that Phase pursuant to the Code of General Ordinances and this Agreement.

- f. receipt of final lien waivers from all contractors, subcontractors and suppliers.
 - g. certification of items a - f above by Utility General Manager.
 - h. acceptance by Utility Board of Water Commissioners according to the Acceptance Procedure, upon recommendation of Utility General Manager of the Sanitary Sewerage Facilities for that Phase.
- 8. Developer, at Developer's cost and expense, shall be responsible for the maintenance and operation of the Sanitary Sewerage Facilities for each Phase, including locate requests, unless and until the Sanitary Sewerage Facilities are accepted by Utility for that Phase, according to the Acceptance Procedure. Upon acceptance of the Sanitary Sewerage Facilities for that Phase, Utility shall have full jurisdiction and ownership of the Sanitary Sewerage Facilities located in the public rights-of-way for that Phase and be responsible for their maintenance and operation subject to the guarantee of the Developer provided in this Agreement.
- 9. The Sanitary Sewerage Facilities for each Phase shall be installed, functional and accepted by Utility according to the Acceptance Procedure, prior to City issuance of any Certificate of Occupancy to Developer for any improvements for that Phase of the Development.

B. Water Supply and Distribution Facilities

- 1. Developer, at Developer's cost and expense, shall design, construct, and install, water supply and distribution facilities providing water service to each Phase, including the mains and appurtenances which are located in 38th Street between 128th Avenue and CTH UE for any public purpose, (the "Water Supply and Distribution Facilities"), in accordance with Utility specifications, the conditional use permit, the certified survey map, the Water Main Plans approved by Utility General Manager, all applicable WDNR requirements, all applicable Federal and State environmental laws, rules, and regulations, and this Agreement, collectively referred to as the "Water Supply and Distribution Requirements." If required Developer may choose to perform Phase specific Water Supply and Distribution Requirements for Phases II, III and IV independent of one another or more than one Phase together at Developer's discretion. Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications for the Water Supply and Distribution Facilities for each Phase from Utility General Manager and the WDNR prior to construction or installation of the Water Supply and Distribution Facilities for that Phase. Developer shall provide copies of all WDNR approvals to Utility upon receipt. However, notwithstanding the language above, and as identified in Exhibit H, no Water Supply and Distribution Facilities will be required in, on, or to, the east side of 136th Avenue (CTH UE), for either

the Phase III or Phase IV development, and no such utilities shall be included in the definition of Water Supply and Distribution Facilities, since all utilities for those Phases will come from 38th Street or 128th Avenue; and further, there shall be no requirement to install any Utility Improvements in Phase III or Phase IV for the benefit of other surrounding or adjacent land (the "Utility Exclusion"). All Water Supply and Distribution Facilities for either Phase II, III or IV, and included in the 38th Street Improvements, must be installed for the issuance of occupancy permits for buildings on any of these Phases.

2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency having jurisdiction over the construction and installation of the Water Supply and Distribution Facilities for each Phase prior to construction and installation of the Water Supply and Distribution Facilities for that Phase. City and Utility shall cooperate with Developer in obtaining all permits and approvals required by any governmental unit or regulatory agency for the construction and installation of the Water Supply and Distribution Facilities for each Phase.
3. Subject to Developer's compliance with the Water Supply and Distribution Requirements, Utility shall allow Developer to extend and connect the Water Supply and Distribution Facilities for each Phase to the water supply and distribution facilities of Utility at Developer's cost and expense, including payment by Developer of all fees and charges required to be paid pursuant to any applicable federal, state, county, City or Utility laws, ordinances, resolutions, rules, regulations, the conditional use permit and this Agreement for the Water Supply and Distribution Facilities, unless such requirement is otherwise limited in this Agreement.
4. Developer, at Developer's cost and expense, shall complete the construction and installation of the fully functional Water Supply and Distribution Facilities for each Phase without defect, damage or non-conformance with the Water Supply and Distribution Requirements for each Phase.
5. Developer, at Developer's cost and expense, shall provide Utility with copies of the results of all tests and inspections of the Water Supply and Distribution Facilities for each Phase required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of Water Supply and Distribution Facilities trench backfill for each Phase in accordance with Utility specifications.
6. Developer, at Developer's cost and expense, shall provide Utility with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the Water Supply and Distribution Facilities for each Phase.

Developer, at Developer's cost and expense, shall provide Utility with written certification by a professional engineer registered in the State of Wisconsin that the Water Supply and Distribution Facilities for each Phase were designed, constructed, installed, completed, and function as intended in accordance with the Water Supply and Distribution Requirements for each Phase. The "as-built" plans shall be provided to Utility in print and digital form acceptable to Utility General Manager. Developer shall obtain approval of the "as-built" plans from Utility General Manager prior to City issuance of any Certificate of Occupancy to Developer for any improvements for the Phase.

7. Utility shall accept the Water Supply and Distribution Facilities for each Phase (according to the Acceptance Procedure), required to be designed, constructed and installed by Developer in accordance with the Water Supply and Distribution Requirements which are located in the public rights-of-way within that Phase upon the following:
 - a. completion of the Water Supply and Distribution Facilities for that Phase in accordance with the Water Supply and Distribution Requirements, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional Water Supply and Distribution Facilities for that Phase without defect, damage or nonconformance with the Water Supply and Distribution Requirements.
 - c. receipt by Utility of copies of the results of all tests and inspections of the Water Supply and Distribution Facilities for that Phase required by Utility, including density tests, certified and stamped by a professional engineer registered in the State of Wisconsin certifying proper compaction of Water Supply and Distribution Facilities trench backfill in accordance with Utility specifications as required pursuant to Section I.B.5. of this Agreement.
 - d. approval by Utility General Manager of the stamped and certified "as-built" plans of the Water Supply and Distribution Facilities for that Phase as required pursuant to Section I.B.6. of this Agreement.
 - e. payment of all fees and charges required to be paid by Developer for the Water Supply and Distribution Facilities for that Phase pursuant to the Code of General Ordinances and this Agreement.
 - f. receipt of final lien waivers from all contractors, subcontractors and suppliers for that Phase.
 - g. certification of items a - f above by Utility General Manager for that Phase.

- h. acceptance by Utility Board of Water Commissioners (according to the Acceptance Procedure) upon recommendation of Utility General Manager of the Water Supply and Distribution Facilities for that Phase.
- 8. Developer, at Developer's cost and expense, shall be responsible for the maintenance and operation of the Water Supply and Distribution Facilities for each Phase, including locate requests, unless and until the Water Supply and Distribution Facilities are accepted by Utility for that Phase, according to the Acceptance Procedure. Upon acceptance of the Water Supply and Distribution Facilities for that Phase, Utility shall have full jurisdiction and ownership of the Water Supply and Distribution Facilities located in the public rights-of-way or in any easement located within that Phase and be responsible for their maintenance and operation subject to the guarantee of Developer provided in this Agreement.
- 9. The Water Supply and Distribution Facilities for each Phase shall be installed, functional and accepted by Utility prior to City issuance of any Certificate of Occupancy to Developer for any improvements for that Phase of the Development.

C. Stormwater Management Facilities

- 1. Developer, at Developer's cost and expense, shall design, construct and install the stormwater management facilities for each Phase, and the public rights-of-way adjoining that Phase, including storm and surface water management facilities, (the "Stormwater Management Facilities"), in accordance with City specifications, the certified survey map, conditional use permit, the Stormwater Management Plans approved by City Engineer, the Storm Sewer Plans approved by City Engineer, all applicable WDNR requirements, all applicable USACE requirements, all applicable Federal and State environmental laws, rules and regulations, and this Agreement, collectively referred to as the "Stormwater Management Requirements." Note Developer may choose to perform the Stormwater Management Requirements for more than one Phase together, and City agrees to receive and process all permits necessary to complete the work permitted by the Site Plan Review approval which includes mass grading, the construction of detention basins, temporary drainage work and stabilization of soil berms with a permanent cover for an adjacent Phase. Therefore, notwithstanding anything to the contrary contained herein, Developer, upon obtaining Site Plan Approval from the Department of City Development, and prior to full CUP approval, may apply for and obtain an erosion control permit from the City to undertake mass grading of that Phase, and any needed adjacent Phase needed for that Phase, including the construction of detention basins on the adjacent Phase, temporary drainage work and stabilization of any excess soil berms with a permanent cover, after public improvement plan design for

that Phase (sanitary sewer, and water facilities, and in the case of Phase II or III, the 38th Street public improvement plans) have been approved by the City and the Utility, required assurances have been posted, and in the case of Phase II, III and IV, the right of way for the construction of 38th Street has been dedicated to the City.

2. Developer, at Developer's cost and expense, shall apply for and obtain a Post Construction Runoff Permit from City and shall submit to City any required financial guarantee all in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha entitled Post-Construction Stormwater Management Ordinance, for each Phase of the Development. No land disturbing construction activity as defined in Chapter XXXVI of the Code of General Ordinances for the City of Kenosha shall be permitted by Developer on that Phase until the Post-Construction Runoff Permit for that Phase is issued to Developer by City, which is part of the Site Plan Review approval. All land disturbing construction activities and the design, construction, installation and maintenance of the Stormwater Management Facilities shall be done in compliance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, the Stormwater Management Requirements, the approved Stormwater Management Facilities Maintenance Agreement, and the Post-Construction Runoff Permit issued to Developer.
3. Developer, at Developer's cost and expense, shall prepare all plans, specifications, and calculations for all Stormwater Management Facilities for each Phase, and submit them to City Engineer for written approval which must be obtained prior to construction of the Stormwater Management Facilities for that Phase. The Stormwater Management Facilities shall comply with the performance standards set forth in Section 36.07 of the Code of General Ordinances for the City of Kenosha and the Stormwater Management Requirements.
4. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency having jurisdiction over the construction and installation of the Stormwater Management Facilities for that Phase, prior to the construction and installation of the Stormwater Management Facilities on that Phase. City shall cooperate with Developer in obtaining all permits and approvals required by any governmental unit or regulatory agency for the construction and installation of the Stormwater Management Facilities. Developer shall provide copies of all permits and approvals to City upon receipt.
5. Title to all Stormwater Management Facilities, (including retention/detention basins and outlet structures,) located within a Phase, or any easements located within a Phase as shown on the approved Stormwater Management Plans and the approved Storm Sewer Plans,

shall be retained by Developer or conveyed by Developer to an owners' association approved by City (if Developer, or a closely affiliated entity, will no longer be the owner of all of the Phases). Developer, or the owners' association as the case may be, shall be responsible for the inspection, maintenance and operation of all Stormwater Management Facilities located within that Phase, in any easement located within that Phase, as shown on the approved Stormwater Management Plans and the approved Storm Sewer Plans, and shall enter into a Stormwater Management Facilities Maintenance Agreement with City for that Phase in accordance with Section 36.10 of the Code of General Ordinances for the City of Kenosha to provide for their inspection, maintenance and operation. The Stormwater Management Facilities Maintenance Agreement for that Phase shall be substantially similar to the document for the Phase I Land, subject to City Staff approved changes. The Stormwater Management Facilities Maintenance Agreement shall be subject to approval by the Common Council for the City of Kenosha upon recommendation by City Engineer and the Stormwater Utility Committee. The Stormwater Management Facilities Maintenance Agreement for that Phase shall be recorded with the Kenosha County Register of Deeds at Developer's expense and shall be binding upon all current and subsequent owners of that Phase. The Stormwater Management Facilities Maintenance Agreement for each Phase shall include among its provisions the following:

- a. identification of the Stormwater Management Facilities and designation of the drainage area served by the Stormwater Management Facilities.
- b. a schedule for the regular inspection, maintenance, repair, replacement, and operation of the Stormwater Management Facilities consistent with the Stormwater Management Plan.
- c. identification of the landowner or the owners' association (if any) responsible for the inspection, maintenance, repair, replacement, and operation of the Stormwater Management Facilities.
- d. requirement that the landowner, or owners' association (if any) inspect, maintain, repair, replace, and operate the Stormwater Management Facilities in accordance with the schedule included in subparagraph b. above.
- e. authorization for City to access that Phase to conduct inspections of the Stormwater Management Facilities as necessary to determine whether they are being maintained, repaired, replaced, and operated in accordance with the Stormwater Management Facilities Maintenance Agreement.

- f. requirement that City maintain public records of the results of the inspections of the Stormwater Management Facilities, to inform the landowner or the owners' association of the inspection results, and to specifically indicate any corrective actions required to bring the Stormwater Management Facilities into proper working condition.
 - g. agreement that the landowner or the owners' association responsible for the inspection, maintenance, repair, replacement, and operation of the Stormwater Management Facilities be notified by City of any maintenance problems requiring correction and that any specified corrective actions be undertaken within a reasonable time as determined by City.
 - h. authorization for City to perform or have performed on City's behalf, inspection, maintenance, repairs, or replacements of the Stormwater Management Facilities for that Phase, upon the failure of the landowner or owners' association to do so as directed by City and to impose a special charge pursuant to Section 66.0627 of the Wisconsin Statutes against that Phase for the charges incurred by City in performing or having performed on City's behalf the inspection, maintenance, repairs or replacement to the Stormwater Management Facilities which are the subject of the Stormwater Management Facilities Maintenance Agreement.
- 6. Developer shall grant to City a Permanent Storm Sewer and Detention Pond Easement, substantially similar to the Easement for the Phase I Land, for the Stormwater Management Facilities located within that Phase authorizing City to inspect, maintain, repair, or replace the Stormwater Management Facilities in that Phase, in accordance with the Stormwater Management Facilities Maintenance Agreement for that Phase. The Permanent Storm Sewer and Detention Pond Easement shall be substantially similar to the one for the Phase I Land, subject to City Staff approved changes shall be subject to approval by the Common Council of the City of Kenosha upon recommendation by City Engineer, the City of Kenosha Board of Public Works, and the Stormwater Utility Committee. The Permanent Storm Sewer and Detention Pond Easement shall be recorded with the Kenosha County Register of Deeds at Developer's expense and shall be binding upon all current and subsequent owners of the land in that Phase.
- 7. Developer, at Developer's cost and expense, shall complete the construction and installation of the fully functional Stormwater Management Facilities in that Phase, without defect, damage or non-conformance with the Stormwater Management Requirements.
- 8. Developer, at Developer's cost and expense, shall provide City with copies of the results of all tests and inspections of the Stormwater

Management Facilities for that Phase, required by City. Developer, at Developer's cost and expense, shall provide City with copies of the results of all density tests required by City verifying proper compaction of Stormwater Management Facilities backfill in accordance with City specifications.

9. Developer, at Developer's cost and expense, shall provide City with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the Stormwater Management Facilities for that Phase, including retention/detention basins and outlet structures. Developer, at Developer's cost and expense, shall provide City with written certification by a professional engineer registered in the State of Wisconsin that the Stormwater Management Facilities for that Phase, including retention/detention basins and outlet structures, were designed, constructed, installed, completed, and function as intended in accordance with Chapter XXXVI of the Code of General Ordinances for the City of Kenosha, the Stormwater Management Requirements, the approved Stormwater Management Facilities Maintenance Agreement, and the Post-Construction Runoff Permit issued to Developer. The "as-built" plans for that Phase shall be provided to City in print and digital form acceptable to City Engineer. Developer shall obtain approval of the "as-built" plans of the Stormwater Management Facilities from City Engineer prior to City issuance of any Certificate of Occupancy to Developer for any improvements within that Phase.
10. City shall accept the Stormwater Management Facilities (using the Acceptance Procedure) for that Phase required to be designed, constructed, and installed by Developer in accordance with the Stormwater Management Requirements which are located in City public rights-of-way upon the following:
 - a. completion of the Stormwater Management Facilities for that Phase in accordance with the Stormwater Management Requirements, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional Stormwater Management Facilities for that Phase without defect, damage or nonconformance with the Stormwater Management Requirements.
 - c. receipt by City of copies of the results of all tests and inspections of the Stormwater Management Facilities for that Phase required by City pursuant to Section I.C.9. of this Agreement.
 - d. receipt by City of copies of the results of all density tests required by City, verifying proper compaction of Stormwater Management

Facilities trench backfill for that Phase, in accordance with City specifications pursuant to Section I.C.9. of this Agreement.

- e. approval by City Engineer of the stamped and certified "as-built" plans of the Stormwater Management Facilities for that Phase, including retention/detention basins and outlet structures, required pursuant to Section I.C.10. of this Agreement.
 - f. receipt by City of the Stormwater Management Facilities Maintenance Agreement for that Phase, for the inspection, maintenance and operation of the Stormwater Management Facilities, including retention/detention basins and outlet structures, in form acceptable to City.
 - g. receipt by City of the Permanent Storm Sewer and Detention Pond Easement for the Stormwater Management Facilities for that Phase including retention/detention basins and outlet structures, located within that Phase, in form acceptable to City.
 - h. payment of all fees and charges, including all engineering, inspection and administrative services, required to be paid by the Developer, for the Stormwater Management Facilities for that Phase, pursuant to the Code of General Ordinances for the City of Kenosha and this Agreement.
 - i. receipt of final lien waivers from all contractors, subcontractors, and suppliers for any Improvements to be dedicated to the City, or other evidence that such public Improvements are not subject to construction liens.
 - j. certification of items a - i above by City Engineer.
 - k. acceptance by the Common Council of the City of Kenosha (using the Acceptance Procedure) upon recommendation by City Engineer, the City of Kenosha Board of Public Works, and the Stormwater Utility Committee of the Stormwater Management Facilities.
11. Developer, at Developer's cost and expense, shall be responsible for the inspection, maintenance and operation of the Stormwater Management Facilities for that Phase, located within City public rights-of-way unless and until the Stormwater Management Facilities located within the City public rights-of-way are accepted by City, (using the Acceptance Procedure). Upon acceptance of the Stormwater Management Facilities located within the City public rights-of-way for that Phase City shall have full jurisdiction and ownership of the Stormwater Management Facilities located within the City public rights-of-way and be responsible for their

maintenance and operation, subject to the guarantee of Developer provided in this Agreement.

12. Developer shall indemnify, defend and hold harmless City, their officers, employees and agents from and against any and all claims, liability, loss, charges, damages, costs, expenses, judgments, settlement expenses and attorney fees (the "Damages"), which any of them may hereafter sustain, incur or be required to pay arising out of, or in any way related to, the design, construction and installation of the Stormwater Management Facilities for each Phase required by the conditional use permit, certified survey map and this Agreement, which causes storm and surface water to flow in full or part upon any public or private property (a "Triggering Event"). Upon the filing with City of a claim for Damages arising out of a Triggering Event, the City shall notify Developer of such claim, and in the event that Developer does not settle or otherwise compromise such claim, Developer shall undertake the legal defense of such claim on behalf of Developer and City and their officers, employees and agents. It is specifically agreed that City, at City's cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against City or any of their officers, employees or agents for any cause for which Developer is liable herewith shall be conclusive against Developer as to liability and the amount of Damages. Any Damages sustained, incurred or paid by City, their officers, employees or agents arising out of a Triggering Event, shall be reimbursed through Developer's assurances required pursuant to this Agreement or through such other means as the City, in their sole discretion, deem appropriate. This paragraph shall survive installation of the Stormwater Management Facilities to effectuate its purpose.
13. The Stormwater Management Facilities for that Phase shall be installed and functional, prior to City issuance of a Certificate of Occupancy to Developer for any Improvements within that Phase of the Development.

D. Developer Streets, Curbs, and Gutters

1. As part of the development of the Phase II, III or IV Land, whichever occurs first, Developer, at Developer's cost and expense, shall design, construct, and install the 38th Street Improvements identified on Exhibit F, in accordance with City specifications, the Street Plans approved by City Engineer, all applicable Federal and State environmental laws, rules, and regulations, and this Agreement, and which are generally shown on the preliminary description shown on Exhibit F (the "Street Improvements"). Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications for the Street Improvements from City Engineer. Developer, at Developer's cost and expense shall obtain all required permits and approvals for the design, construction, and installation of all Street Improvements from the City Engineer prior to construction or

installation of the Street Improvements. The Parties recognize and agree that the Street Improvements described herein are the only street improvements required as part of the Phase II, III or IV Land Development. For the avoidance of doubt, the Parties agree that the City has received an approved TIA for the Phase I Land, and has received an updated TIA for the Phase II, III and IV Land, and that DOT has identified what additional improvements are required, and that no other Street Improvements are required for these Phases other than the Street Improvements described on Exhibit F. The "TIA for the Phase II, III and IV Land" shall be the Traffic Impact Study for Uline Expansion, Kenosha, Wisconsin, prepared by TADI, dated October 5, 2023. Out of an abundance of caution it is emphasized that the Street Improvements shall all be designed and created to WisDOT Facilities and Development Standards for Urban Roadway ("Urban Roadway Standards"), to the same configuration as the existing improvements in 38th Street east of 128th Avenue and that the City shall secure whatever consents from Kenosha County are needed to approve these Street Improvements. Whenever in this Agreement there is an obligation to dedicate such Street Improvements to the City, the Developer shall have met its obligation when it has submitted such dedication documents to the City, whether or not the City shall have accepted the dedication, and whether or not the County has a difference of opinion on whether the Street Improvements shall have been built to Urban Roadway Standards or WisDOT Facilities and Development Standards for Rural Roadways ("Rural Roadway Standards"). Developer is willing to escrow with the City a quitclaim deed for the road rights of way to either the City or County as the City directs. It is understood that the final design plans for the 38th Street Improvements must be approved, and assurances posted, before any permits, including erosion control permits, are issued for Phase II, III or IV, and that the 38th Street Improvements must be substantially completed prior to the issuance of any occupancy permit for Phase II, III or IV.

2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by the City or the Wisconsin Department of Transportation ("WisDOT") of the Street Improvements, prior to construction and installation of the Street Improvements. City shall cooperate with Developer in obtaining all permits and approvals required by any governmental unit or regulatory agency for the construction and installation of the Street Improvements, including specifically any approvals required from Kenosha County to build the Street Improvements to WisDOT Urban Roadway Standards. Developer shall provide copies of all permits and approvals to City upon receipt.
3. Developer, at Developer's cost and expense, shall dedicate to the City as public right-of-way all land required for the design, construction and installation of the Street Improvements on 128th Avenue and 38th Street, prior to City issuance of any Building permits to Developer for any building

improvements in Phase II, III or IV of the Development, but this shall not delay all work permitted on any Phase or adjacent Phases, pursuant to an approved Site Plan Review. The dedication of land from Developer for public right of way required pursuant to this Section I.D.3., for the Street Improvements, shall be delivered to the City, prior to the issuance of any Building permits for any New Construction for Phase II, III or IV. City shall accept the dedication of the land for the Street Improvements, (in accordance with the Acceptance Procedure defined below), and record with the Kenosha County Register of Deeds, at Developer's expense, the dedication documents, (which can be the CSM or a separate deed) prior to the issuance of any Building permits or approvals required for the construction or installation of the Street Improvements, or the commencement of any activities related to the construction or installation of the Street Improvements, as determined by City Engineer, whichever comes first. Note, acceptance of the "Street Improvements" means acceptance of the completed improvements (see Section I.D.7); the prior sentence refers to acceptance of the dedication of the land for the Street Improvements, which shall be accepted by the City notwithstanding any disagreement with the County on whether the Street Improvements should have been built to Urban Roadway Standards or Rural Roadway Standards. For the avoidance of doubt, Developer's failure to comply with the provisions of this Section I.D.3. shall result in the City Engineer issuing a Stop Work Order ordering all activities related to the construction or installation of all Improvements to immediately cease. Developer's failure to comply with the provisions of this Section I.D.3. shall also constitute a default under this Agreement.

4. Developer shall not perform any street paving or install any curbs and gutters after November 15th of any calendar year without the express written approval of City Engineer. No street paving or curb and gutter installation will be permitted after December 1st of any calendar year. Street paving and installation of curb and gutter may commence after April 15th of any calendar year with the approval of City Engineer.
5. Developer, at Developer's cost and expense, shall provide City with copies of the results of all tests and inspections of the Street Improvements required by City. Developer, at Developer's cost and expense, shall provide City with copies of the results of all density tests required by City verifying proper compaction of Street Improvements backfill in accordance with City specifications.
6. Developer, at Developer's cost and expense, shall provide City with "as-built" plans, stamped by a professional engineer registered in the State of Wisconsin, of the Street Improvements. Developer, at Developer's cost and expense, shall provide City with written certification by a professional engineer, registered in the State of Wisconsin, that the Street Improvements were designed, constructed, installed, completed, and

function as intended in accordance with the requirements for the Street Improvements contained herein. The “as-built” plans shall be provided to City in print and digital form acceptable to City Engineer.

7. City shall accept the Street Improvements (according to the Acceptance Procedures) required to be designed, constructed, and installed by Developer in accordance with the requirements for the Street Improvements contained herein, which are located in City public rights-of-way, or under the City’s jurisdiction, for any Street Improvements included in what is then County public rights-of-way, upon the following:
 - a. completion of the Street Improvements in accordance with the requirements for the Street Improvements contained herein, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional Street Improvements without defect, damage or nonconformance with the requirements for the Street Improvements contained herein.
 - c. receipt by City of copies of the results of all tests and inspections of the Street Improvements required by City pursuant to Section I.D.5. of this Agreement.
 - d. receipt by City of the results of all density tests required by City, verifying proper compaction of Street Improvements backfill in accordance with City specifications pursuant to Section I.D.5. of this Agreement.
 - e. approval by City Engineer of the stamped and certified “as-built” plans of the Street Improvements required pursuant to Section I.D.6. of this Agreement.
 - f. payment of all fees and charges, including all engineering, inspection and administrative services, required to be paid by Developer for the Street Improvements pursuant to the Code of General Ordinances for the City of Kenosha and this Agreement.
 - g. receipt of final lien waivers from all contractors, subcontractors, and suppliers who have lien rights against any portion of the Street Improvements which are in the public right of way, or other evidence of lack of lien rights thereto.
 - h. certification of items a - g above by City Engineer.
 - i. acceptance by the Common Council of the City of Kenosha (using the Acceptance Procedure) upon recommendation by City Engineer

and the City of Kenosha Board of Public Works of the Street Improvements.

Note: the approval and acceptance in this Section 7 is for the Street Improvements; the acceptance in paragraph 3 above is acceptance of the dedication of the land for the Street Improvements by the City, notwithstanding any disagreement with the County over the type of Street Improvements required, or whether the Street Improvements are in a then existing County public right of way.

8. The Street Improvements for that Phase, shall be Substantially Completed, and dedicated to the City between April 15 and December 1; and prior to City issuance of any Certificate of Occupancy to Developer for any New Construction within that Phase of the Development. The Street Improvements shall be completed and accepted by City (using the Acceptance Procedure) prior to issuance of any Certificate of Occupancy to Developer for any improvement within the Phase of the Development for which those Street Improvements are needed for primary access.
9. Developer, at Developer's cost and expense, shall design, construct, grade, gravel, pave, and maintain, including snow plowing, all private streets, curbs, gutters, driveways, and parking lots located within that Phase required by the certified survey map, conditional use permit and this Agreement.

E. Other Utilities and Utility Easements

1. Developer, at Developer's cost and expense, shall locate and install all other utilities in that Phase of the Development in accordance with utility specifications, the certified survey map, conditional use permit and the plans approved by City Engineer and Utility General Manager, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations. Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications for the location and installation of the utilities from City Engineer and Utility General Manager. Notwithstanding anything contained in this Agreement, Developer shall not have any responsibility to install utilities along its western boundary, unless Developer is tapping into and using such utilities for this Development, and shall have no obligation to install utilities which are part of the Utility Exclusion defined above.
2. Developer, at Developer's cost and expense shall provide easements for City water and stormwater utilities in that Phase, which shall be shown on the plans approved by City Engineer and Utility General Manager. Developer shall not have any obligation to provide easements off of the Total Development Real Estate for the development of any Phase. City and Utility shall be obligated to secure any utility easements off of the

Total Development Real Estate required by this Agreement, with the understanding that if Developer wishes to create a water loop to increase water pressure, that will be the subject of a future discussion and/or future agreements. The Utility agrees that the Total Development Real Estate shall be entitled to connect to municipal water and sanitary sewer from the existing mains which are in 128th Avenue and 38th Street, that these water and sanitary mains have been paid for in full and, notwithstanding anything to the contrary contained herein, there is no further charge, impact fee, assessment, or a Right of Recovery due for those water or sanitary mains, except for those Rights of Recovery detailed in Exhibit J, the Memo dated October 19, 2023 from Ian Bagley to Rich Schroeder (the "Rights of Recovery"), to the extent they are still valid. To the extent the Rights of Recovery are due to Route 142, LLC, a party related to Developer, the Utility will consider them terminated and paid upon the execution of a document between Developer and Route 142, LLC, similar to the one executed in the form of Exhibit A to the Phase I Development Agreement.

3. Easements for utilities may be modified or terminated only by City, Utility, or other utility which is a party thereto, and only in the event City, Utility or other utility determine that the easement, in full or in part, is no longer required to provide essential service.

F. Erosion Control

1. Developer, at Developer's cost and expense, shall prepare and submit to City an Erosion and Sediment Control Plan for the Improvements required to be made by Developer in that Phase (and on any adjacent Phase needed for that Phase), pursuant to the certified survey map, conditional use permit and this Agreement in accordance with Chapter XXXIII of the Code of General Ordinances for the City of Kenosha entitled Land-Disturbing Erosion and Sediment Control Ordinance. Developer, at Developer's cost and expense, shall apply for and obtain an Erosion Control Permit from City for the Improvements required to be made by Developer for each Phase, pursuant to the certified survey map, conditional use permit and this Agreement and shall submit to City the cash assurance (or Letter of Credit) for the completion of this work for each Phase, all in accordance with Chapter XXXIII of the Code of General Ordinances for the City of Kenosha. Developer, at Developer's cost and expense, shall apply for and obtain all WDNR and USACE permits and approvals in any way related to land disturbing activities or land disturbing construction activities within any wetlands located within that Phase or any public rights-of-way. Except for the work permitted pursuant to the approved Site Plan Review which includes mass grading, construction of detention basins, temporary drainage work and stabilization of soil berms with a permanent cover for that Phase, no land disturbing activities or no land disturbing construction activities as defined in Chapter XXXIII of the

Code of General Ordinances for the City of Kenosha shall be permitted by Developer until the Erosion and Sediment Control Plan for that Phase is approved by City, the cash assurance for that work is paid to City, all permits and approvals in any way related to land disturbing activities or land disturbing construction activities within any wetlands for that Phase, or any public rights-of-way are issued by WDNR and USACE, and the Erosion Control Permit for that Phase is issued by City. All land disturbing construction activities undertaken by Developer shall be done in compliance with Chapter XXXIII of the Code of General Ordinances, the approved Erosion and Sediment Control Plan, the Erosion Control Permit, all permits required by any governmental unit or regulatory agency, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations. The Erosion and Sediment Control Plan shall include the location and duration of "Soil Stockpiles" as defined in Chapter XXXIII of the Code of General Ordinances for that Phase, for the City of Kenosha. Developer, at Developer's cost and expense, shall remove all Soil Stockpiles for that Phase, in accordance with Chapter XXXIII of the Code of General Ordinances, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules and regulations, other than permitted soil berms, prior to City issuance of any Certificate of Occupancy to Developer for any New Construction within that Phase, except for vegetation that cannot be planted for seasonal growing reasons.

2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency in any way related to erosion and sediment control for the Improvements in that Phase required to be made by Developer pursuant to the certified survey map, conditional use permit and this Agreement prior to commencement by Developer of any land disturbing activities or land disturbing construction activities in that Phase, as defined in Chapter XXXIII of the Code of General Ordinances for the City of Kenosha. Developer shall provide copies of all permits and approvals to City upon receipt.

G. Grading

1. Developer, at Developer's cost and expense, shall grade each Phase, and shall grade any adjacent lands needed for the Public Improvements in that Phase, required to be made by Developer pursuant to the certified survey map, conditional use permit and this Agreement in accordance with City specifications, the Grading Plans approved by City Engineer, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules and regulations. Except as provided above in the Site Plan Approval, approval of the Grading Plans for each Phase shall be obtained from City Engineer prior to commencement by Developer of any land disturbing activities or land

disturbing construction activities for that Phase as defined in Chapter XXXIII of the Code of General Ordinances for the City of Kenosha.

2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency in any way related to the grading for the Improvements in that Phase required to be made by Developer pursuant to this Agreement prior to commencement by Developer of any land disturbing activities or land disturbing construction activities for that Phase, as defined in Chapter XXXIII of the Code of General Ordinances for the City of Kenosha. Developer shall provide copies of all permits and approvals to City upon receipt.
3. Developer, at Developer's cost and expense, shall provide all permanent limited easements to be granted by Developer in favor of the City required for Developer to complete the grading for each Phase in connection with the construction and installation of the Adjacent Streets for that Phase, in accordance with the approved Grading Plans and the requirements for the Street Improvements for that Phase, including but not limited to the right to construct side slopes, operate the necessary equipment thereon, ingress and egress during the term of the easements, and install and maintain landscaping. The permanent limited easements required by this Section, I.E.3., shall be substantially similar to the documents for the Phase I Land, and approved by City Staff, with any material modification subject to approval by the Common Council for the City of Kenosha upon recommendation by City Engineer, the City of Kenosha Board of Public Works, and the Stormwater Utility Committee. The permanent limited easements shall be recorded with the Kenosha County Register of Deeds, at Developer's expense, prior to the issuance of any permits or approvals required for the construction or installation of the Street Improvements for that Phase, on Adjacent Streets, the commencement of any activities related to the construction or installation of the Street Improvements on Adjacent Streets, as determined by City Engineer, or the issuance of any Building permits for any New Construction within that Phase of the Development, whichever occurs first. For the avoidance of doubt, Developer's failure to comply with the provisions of this Section, I.E.3. shall result in the City Engineer issuing a Stop Work Order ordering all activities related to the construction or installation of all public Improvements for that Phase required by this Agreement to immediately cease. Developer's failure to comply with this provision of this Section I.F.3. shall also constitute a default under this Agreement. Any temporary limited easements required by this Section I.F.3. shall terminate one year following the expiration of the Guarantee Period provided in Section IV.B. of this Agreement. Notwithstanding anything contained herein, the Developer shall have met its obligation hereunder when it has created such easements in favor of the City, even if the adjacent right of way is still considered a County public right of way.

4. Developer, at Developer's cost and expense, shall provide City with "as-built" grading plans for the grading Improvements in each Phase required to be made by Developer pursuant to the certified survey map, conditional use permit and this Agreement, certified by a professional engineer registered in the State of Wisconsin. Developer, at Developer's cost and expense, shall provide City, with written certification by a professional engineer registered in the State of Wisconsin that the grading was designed, constructed, installed, completed, and functions as intended in accordance with the approved Grading Plans, the Code of General Ordinances for the City of Kenosha, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations. The "as-built" grading plans shall be provided to City in print and digital form acceptable to City Engineer. Developer shall obtain approval of the "as-built" grading plans for the Development of that Phase from City Engineer prior to City issuance of any Certificate of Occupancy to Developer for any improvements within that Phase of the Development.

H. LED Street Lighting

1. Developer, at Developer's cost and expense, shall design and install replacement LED street lighting on Adjacent Streets for that Phase for any of the existing lighting which Developer disturbs during its Development (the "Street Lighting"), in accordance with City specifications, the Lighting Plan approved by City Engineer, any applicable WE Energy requirements, and all applicable Federal and State environmental laws, rules, and regulations, the certified survey map, conditional use permit and this Agreement, collectively referred to as the "Street Lighting Requirements." Developer, at Developer's cost and expense, shall provide City with all shop drawings and cut sheets for the Street Lighting and shall obtain approval of the Street Lighting from City Engineer prior to construction and installation of the Street Lighting.
2. Developer, at Developer's cost and expense, shall obtain all permits and approvals required by any governmental unit or regulatory agency for the construction and installation of the Street Lighting prior to construction and installation of the Street Lighting. Developer shall provide copies of all permits and approvals to City upon receipt.
3. Developer, at Developer's cost and expense, shall provide City with "as-built" plans of the Street Lighting, including street light conduits and pull boxes, certified by a professional engineer registered in the State of Wisconsin. Developer, at Developer's cost and expense, shall provide City with written certification by a professional engineer registered in the State of Wisconsin that the Street Lighting, including street light conduits and pull boxes, were designed, constructed, installed, completed, and function as intended in accordance with the Street Lighting Requirements. The "as-

built” plans of the Street Lighting shall be provided to City in print and digital form acceptable to City Engineer. Developer shall obtain approval of the “as-built” plans of the Street Lighting for Adjacent Streets to that Phase, from City Engineer prior to City issuance of any Certificate of Occupancy to Developer for any improvements within the Phase adjacent to such Street Lighting.

4. The Street Lighting in the public rights-of-way shall be completed and presented to City for acceptance concurrent with Developer presenting the Street Improvements to the City for acceptance.
5. City shall accept the Street Lighting required to be designed and installed by Developer (in accordance with the Acceptance Procedure) in accordance with the Street Lighting Requirements located in the public rights-of-way upon the following:
 - a. completion of the Street Lighting in accordance with the Street Lighting Requirements, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. construction, installation and delivery of the fully functional Street Lighting without defect, damage or nonconformance with the Street Lighting Requirements.
 - c. receipt of final lien waivers from all contractors, subcontractors, and suppliers for the Street Lighting work in any public right of way, or other evidence of the freedom from construction liens.
 - d. approval by City Engineer of the stamped and certified “as-built” plans of the Street Lighting, including street light conduits and pull boxes, as required pursuant to Section I.H.3. of this Agreement.
 - e. certification of items a - d above by City Engineer.
 - f. acceptance by the Common Council of the City of Kenosha (using the Acceptance Procedure) upon recommendation by City Engineer and the City of Kenosha Board of Public Works of the Street Lighting in any public right of way.
6. Developer, at Developer’s cost and expense, shall be responsible for the maintenance and operation of the Street Lighting located within the public rights-of-way of an Adjacent Street for that Phase, unless and until the Street Lighting located within the public rights-of-way is accepted by City using the Acceptance Procedure). Upon acceptance of the Street Lighting, City shall have full jurisdiction and ownership of the Street Lighting located in the public rights-of-way and be responsible for its maintenance and cost of operation subject to the guarantee of Developer provided in this Agreement.

7. The Street Lighting for 38th Street shall be substantially completed prior to City issuance of any Certificate of Occupancy to Developer for any improvements of the Development. Street Lighting is considered to be substantially completed at the time that 90 percent of the Street Lighting by cost is completed. In the event the Parties cannot agree when construction has been substantially completed, the Street Lighting in the Adjacent Street for that Phase shall be completed and accepted by City (using the Acceptance Procedure) prior to issuance of any Certificate of Occupancy to Developer for any improvement within the Development.

I. Landscaping

1. Developer, at Developer's cost and expense, shall design and install landscaping throughout the public rights-of-way on Adjacent Streets to that Phase, to replace any landscaping or Street Trees it disturbs for its Development (the "Landscaping") in accordance with City specifications, the Landscaping Plans approved by City Engineer, and all applicable Federal and State environmental laws, rules, and regulations, the certified survey map, conditional use permit and this Agreement, collectively referred to as the "Landscaping Requirements." Developer, at Developer's cost and expense, shall obtain approval of the Landscaping Plans for that Phase, from City Engineer prior to installation of the Landscaping for that Phase.
2. Developer, at Developer's cost and expense, shall protect existing trees within the public rights-of-way on Adjacent Streets for that Phase, in accordance with Section 34.10 of the Code of General Ordinances for the City of Kenosha entitled Tree Protection and shall apply for and obtain a Tree Protection Permit from City, to the extent those trees are not in conflict with the approved Landscaping Plan.
3. Developer, at Developer's cost and expense, shall remove and lawfully dispose of all rubbish, dead trees, branches, brush, tree trunks, shrubs, and other natural growth inconsistent with the approved Landscaping Plans.
4. Developer, at Developer's cost and expense, shall finish and grade all lawn park areas in that Phase, as defined in Section 5.051 of the Code of General Ordinances for the City of Kenosha on Adjacent Streets to that Phase, with at least six (6) inches of topsoil.
5. The Landscaping for that Phase shall be completed and presented to the City, for acceptance (using the Acceptance Procedure) prior to or concurrent with Developer presenting the Street Improvements and Street Lighting for that Phase, to the City for acceptance, subject to weather.

6. City shall accept (according to the Acceptance Procedure) the Landscaping required to be designed and installed by Developer for that Phase in accordance with the Landscaping Requirements located in City public rights-of-way upon the following:
 - a. completion of the Landscaping in that Phase in accordance with the Landscaping Requirements, and compatibility with attached and adjacent systems, facilities and improvements.
 - b. installation and delivery of the Landscaping for that Phase without defect, damage or nonconformance with the Landscaping Requirements.
 - c. receipt of final lien waivers from all contractors, subcontractors, and suppliers or other evidence of no lien rights on such Landscaping, if located in a public right of way.
 - d. certification of items a - c above by City Engineer.
 - e. approval by the Common Council of the City of Kenosha upon recommendation by City Engineer and the City of Kenosha Board of Public Works of the Landscaping for that Phase.
7. Developer, at Developer's cost and expense, shall be responsible for the maintenance of the Landscaping located within the public rights-of-way unless and until the Landscaping located within the public rights-of-way is accepted by City, using the Acceptance Procedure.

J. Sidewalks

The Common Council of City approved the application for a sidewalk requirement exception along the east side of adjacent 128th Avenue, and along the west side of 128th Avenue, adjacent to the Total Development Real Estate, when and for so long as not deemed necessary in accordance with Section 5.05.C.7.b. of the Code of General Ordinances for the City of Kenosha. Developer will make an application for a similar sidewalk requirement exception for all other Adjacent Streets in consideration of all Adjacent Streets being designed with bike lanes.

K. Street and Regulatory Signs and Traffic Controls

1. Developer shall reimburse City for City's actual cost for materials, labor, and installation of replacement street name signs required by City on Adjacent Streets for each Phase within forty-five (45) days of being invoiced by City, if the existing signs are damaged in the development of the Improvements for that Phase.

2. Developer, at Developer's cost and expense, shall purchase and install all regulatory signs required by City for Adjacent Streets for each Phase, which shall only be building entrance and exit signage.

L. Survey Monuments

Developer, at Developer's cost and expense, shall install monuments placed in accordance with the requirements of Section 236.15 of the Wisconsin Statutes.

M. Acceptance Procedure

Whenever Public Dedicated Improvements have been substantially completed and dedicated to the City, Developer may request acceptance of Public Dedicated Improvements by the City and/or Utility. As long as the Public Dedicated Improvements have been constructed in the manner required herein, and comply with Sections I.A.7., I.B.7., I.C.10., I.D.7., I.H.5., and I.I.6., City agrees it shall complete the acceptance of Public Dedicated Improvements, within 45 days thereafter; unless the City notifies Developer, in good faith, that the Public Dedicated Improvements do not meet the requirements herein, within that 45 day period, the Public Dedicated Improvements shall be deemed accepted for purposes of issuance of Certificates of Occupancy. Notwithstanding this language, at the time of completion of the Street Improvements, those Street Improvements may be used, even before they have been accepted by the City, including to allow access to any adjacent parcel during construction of the remaining section of the Street Improvements. Formal acceptance by the City of the Street Improvements shall not delay issuance of a Certificate of Occupancy for any building on that Phase of the Total Development Real Estate. Further, sodding any area in the road right of way required to be landscaped shall be considered completion of the landscaping, without needing to wait for seeded grass to grow. This shall be the "Acceptance Procedure," and acceptance by the City under this Acceptance Procedure shall be deemed to be "Acceptance." Notwithstanding anything to the contrary contained herein, the City and County, as part of the Cooperative Agreement have an obligation to transfer certain County rights of way to the City, and for the City to accept such transfer of jurisdiction, which has not been completed, and as a result, several of the Adjacent Streets may still be in County jurisdiction. For purposes of this Agreement, dedicating to the City as required herein shall be deemed to be satisfaction of Developer's obligations even if the Adjacent Roadway is technically still in the County's jurisdiction, and all of Developer's obligations related thereto are subject to the City/County Agreement Obligation identified below.

II. PRE-CONSTRUCTION AND CONSTRUCTION ACTIVITIES

A. Pre-Construction Activities

1. Developer shall provide City Engineer and Utility General Manager with complete itemized cost estimates certified by Developer's civil engineer for the Public Improvements required to be made by Developer pursuant to this Agreement prior to the execution of this Agreement by City and Utility.
2. Any bidder on any of the City and Utility required Public Improvements to be made by Developer pursuant this Agreement shall be prequalified by City and/or Utility as the case may be. Developer shall not award any contract for any Public Improvements required to be made pursuant to this Agreement to any bidder who has not been pre-qualified by City and/or Utility as the case may be. There is no requirement for public bidding procedure.
3. Developer, at Developer's cost and expense, shall raze all structures for each Phase prior to the issuance of any permits by City to Developer in any way related to land disturbing activities or land disturbing construction activities for that Phase, as defined in Chapter XXXIII of the Code of General Ordinances for the City of Kenosha, or in any way related to the construction or installation of any of the Improvements for that Phase required to be made by Developer pursuant to this Agreement. Developer, at Developer's cost and expense, shall apply for and obtain a raze permit from City and any other permits required by any Federal and State environmental laws, rules, and regulations prior to razing, removing and disposing of any structures within that Phase. Developer, at Developer's cost and expense, shall raze, remove, and dispose of all structures within that Phase in accordance with the Code of General Ordinances for the City of Kenosha and all Federal and State environmental laws, rules, and regulations.
4. Except for the mass Grading Work, the construction of detention basins, temporary drainage work, stabilization of soil berms with a permanent cover, temporary or permanent berms, which have been permitted pursuant to a Site Plan Review and approval, no land disturbing activities or land disturbing construction activities as defined in Chapter XXXIII of the Code of General Ordinances for the City of Kenosha by Developer shall commence and no construction or installation of any of the Improvements required to be made by Developer pursuant to this Agreement shall commence, in any case, for that Phase, prior to the satisfaction of all of the following for that Phase:
 - a. all required assurances have been received and approved.
 - b. the certified survey map has been approved by the Common Council, signed by Developer, and recorded with the Kenosha County Register of Deeds.

- c. the conditional use permit or Site Plan for that Phase has been approved by the Common Council, signed by Developer, and recorded with the Kenosha County Register of Deeds.
 - d. the Stormwater Management Facilities Maintenance Agreement and the Permanent Storm Sewer and Detention Pond Easement for that Phase have been approved by the Common Council, signed by City and Developer, and recorded with the Kenosha County Register of Deeds.
 - e. this Agreement has been approved by the Common Council, the Kenosha Water Utility Board of Water Commissioners, signed by all Parties, and recorded with the Kenosha County Register of Deeds.
 - f. all Developer plans and construction specifications for land disturbing activities or land disturbing construction activities for that Phase, as defined in Chapter XXXIII of the Code of General Ordinances for the City of Kenosha have been reviewed and approved by City Engineer and Utility General Manager.
 - g. all plans and construction specifications for the construction or installation of any of the Improvements for that Phase, required to be made by Developer pursuant to this Agreement for the development of that Phase have been reviewed and approved by City Engineer and Utility General Manager.
 - h. all permit fees have been paid and all permits, including all Erosion Control Permits, have been issued.
 - i. a pre-construction meeting attended by Developer, City, Utility, contractors and any consultants' inspectors has been held.
 - j. written authorization to proceed has been given by the Director of City Development following certification of items a-i above by the Director of City Development.
5. Upon receiving written authorization to proceed from the Director of City Development, Developer shall notify City and Utility in writing no less than two (2) working days in advance of the date for the commencement of the construction of the Improvements for that Phase required to be made pursuant to this Agreement. This notification requirement shall also apply to the resumption of construction following a work interruption of over fifteen (15) consecutive working days.
- B. Construction Activities for Each Phase and for the Early Start Grading Work**

1. Construction access to that Phase for the Improvements required to be made by Developer pursuant to this Agreement shall be as shown on the Erosion and Sediment Control Plan approved by City Engineer. Construction staging areas shall be as shown on the Construction Plan approved by the Department of City Development and City Engineer. Developer, at Developer's cost and expense, shall design, construct and install the construction access and construction staging areas for each Phase, in accordance with City specifications, the approved Erosion and Sediment Control Plan, the approved Construction Plan, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations. Developer, at Developer's cost and expense, shall obtain approval of the plans and specifications and all required permits for the design, construction, and installation of the construction access and construction staging areas for that Phase, from the Department of City Development and City Engineer prior to construction and installation of the construction access and construction staging areas for each Phase.
2. Developer, at Developer's cost and expense, shall apply for and obtain all required permits from City for that Phase, prior to the closing of any public streets and shall comply with all applicable ordinances, laws, rules, and regulations regarding the closure of public streets.
3. Developer, at Developer's cost and expense, shall abandon any wells and septic systems on that Phase in accordance with the requirements of the Wisconsin Department of Natural Resources, Chapter NR 812 of the Wisconsin Administrative Code, and Section 32.09 of the Code of General Ordinances for the City of Kenosha. Developer shall provide copies of well abandonment reports to City and Utility.
4. City and Utility shall provide engineering and inspection services during construction of the Public Improvements required by this Agreement to ascertain Developer's compliance with all approved plans and specifications, the certified survey map, the conditional use permit, the Code of General Ordinances for the City of Kenosha, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations. The cost for the engineering and inspection services provided by City and Utility shall be based upon the hourly rate of the City and Utility employees performing the services plus indirect costs. City and Utility reserve the right to retain outside consultants to provide engineering and inspection services, the cost of which shall be the responsibility of Developer. Developer shall pay City and Utility for all engineering and inspection services provided by or on behalf of City within forty-five (45) days of being invoiced. The engineering and inspection services provided pursuant to this paragraph shall not relieve Developer, its employees, or their contractors from constructing and installing the Improvements required by this Agreement

in accordance with all approved plans and specifications, the certified survey map, the conditional use permit, the Code of General Ordinances for the City of Kenosha, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations, or from providing City and Utility all stamped "as-built" plans and all "as-built" plan certifications required by this Agreement.

5. Developer, at Developer's cost and expense, shall complete a televised inspection of the completed Sanitary Sewerage Facilities. The televised inspection shall be performed by an inspection service acceptable to Utility. Video recordings and written logs of all Sanitary Sewerage Facilities inspections shall be provided to Utility for review. Any repairs or cleaning identified by the televised inspection shall be promptly performed by Developer, and the affected area shall again be subject to televised inspection. Utility reserves the right to perform or have performed on behalf of the Utility the televised inspection of the completed Sanitary Sewerage Facilities at Developer's cost and expense. Developer shall reimburse Utility for the cost of the televised inspection of the Sanitary Sewerage Facilities within forty-five (45) days of being invoiced by Utility.
6. Utility, at Utility's sole discretion, reserves the right to retain independent testing services, including density testing services, in the event Utility determines proper testing is not being performed by Developer or the results of Developer's testing does not conclusively establish to Utility's satisfaction the proper completion of the improvements required by this Agreement. Prior to retaining independent testing services, Utility shall provide written notice to Developer of the corrective action required whereupon Developer shall have fourteen (14) days from the date of the notice to provide Utility with test results that are satisfactory to Utility. Developer shall reimburse Utility for the cost of the independent testing services within forty-five (45) days of being invoiced by Utility.
7. Developer, at Developer's cost and expense, shall complete a televised inspection of the completed Stormwater Management Facilities. The televised inspection shall be performed by an inspection service acceptable to City. Video recordings and written logs of all Stormwater Management Facilities inspections shall be provided to City for review. Any repairs or cleaning identified by the televised inspection shall be promptly performed by Developer, and the affected area shall again be subject to televised inspection. City reserves the right to perform or have performed on behalf of the City the televised inspection of the completed Stormwater Management Facilities at Developer's cost and expense. Developer shall reimburse City for the cost of the televised inspection of the Stormwater Management Facilities within forty-five (45) days of being invoiced by City.

8. City, at City's sole discretion, reserves the right to retain independent testing services, including density testing services, in the event City determines proper testing is not being performed by Developer or the results of Developer's testing does not conclusively establish to City's satisfaction the proper completion of the improvements required by this Agreement. Prior to retaining independent testing services, City shall provide written notice to Developer of the corrective action required whereupon Developer shall have fourteen (14) days from the date of the notice to provide City with test results that are satisfactory to City. Developer shall reimburse City for the cost of the independent testing services within forty-five (45) days of being invoiced by City.
9. Developer, at Developer's cost and expense, shall use granular trench backfill under all pavement and within twenty-four (24") inches thereof in accordance with City specifications and approved plans. Developer, at Developer's cost and expense, shall provide City and Utility copies of the results of all tests and inspections of the granular and excavated trench backfill certified by a professional engineer registered in the State of Wisconsin certifying proper compaction of the granular and excavated material trench backfill in accordance with City and/or Utility specifications.

III. ASSURANCE OF COMPLETION OF IMPROVEMENTS

A. Assurances Required

1. Except as otherwise provided in this Section III.A.1., prior to issuance of any permits for a Phase, Developer shall deposit with the Utility General Manager an assurance in the form of cash or an irrevocable letter of credit in an amount established by General Manager equal to one hundred twenty-five (125%) percent of the Utility's estimated cost of all Public Improvements for that Phase, including those located in 38th Street, the engineering and inspection services and the testing services related thereto, and the environmental conditions related thereto, required to be made and provided by Developer for each of the Phases, pursuant to approval and this Agreement. Developer shall deposit with the City Clerk/Treasurer an assurance in the form of cash or an irrevocable letter of credit in an amount established by City Engineer equal to one hundred twenty-five (125%) percent of the City's estimated cost of all Public Improvements for that Phase, including 38th Street, the engineering and inspection services and the testing services related thereto, and the environmental conditions related thereto, required to be made and provided by Developer for each of Phase II, III or IV, pursuant to approval and this Agreement. For the avoidance of doubt, Developer's failure to deposit with the City Clerk/Treasurer or Utility General Manager the assurance for the Public Improvements, pursuant to this Section III.A.1., shall result in the City Engineer issuing a Stop Work Order ordering all activities for that Phase, including grading permitted pursuant to the

approved Site Plan Review, related to the construction or installation of all Improvements required by this Agreement to immediately cease and shall constitute a default under this Agreement. The assurances required pursuant to this Section III.A.1. shall be in addition to any other assurances or monetary contributions which may be required pursuant to this Agreement and the Code of General Ordinances for the City of Kenosha for the development of that Phase of the Total Development Real Estate which is the subject of this Agreement, unless otherwise limited in this Agreement. The form of Letter of Credit shall be substantially the same as that for the Phase I Land.

2. The assurances required pursuant to Section III.A.1. of this Agreement shall be used, for that Phase, to secure Developer's costs of designing, constructing and installing the Public Improvements required to be made pursuant to this Agreement, and to compensate City and/or Utility for City's and/or Utility's cost of completing the Public Improvements, performing the engineering and inspection services and testing services related thereto, required to be made or performed pursuant to this Agreement, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations in the event Developer fails to do so in a timely manner. The assurances required pursuant to Section III.A.1. of this Agreement shall also be used to assure compliance with Developer's Guarantee provided in this Agreement for the Public Improvements.
3. In the event the assurances required pursuant to Section III.A.1. of this Agreement are insufficient to cover one hundred twenty-five (125%) percent of the actual cost of the Public Improvements in that Phase, the engineering and inspection services related thereto, the testing services related thereto, the environmental conditions related thereto, and the estimate for the Developer's Guarantee, required to be made or performed pursuant to this Agreement, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations, Developer upon written demand by City or Utility shall deposit with the City Clerk/Treasurer or Utility General Manager additional assurances in the form of cash or an irrevocable letter of credit in an amount established by City or Utility equal to one hundred twenty-five (125%) percent of the additional actual cost of the Public Improvements, the engineering and inspection services and testing services related thereto, the environmental conditions related thereto, and the estimate for the Developer's Guarantee, required to be made or performed pursuant to this Agreement for that Phase, all applicable WDNR requirements, all applicable USACE requirements, and all applicable Federal and State environmental laws, rules, and regulations, but only for that Phase.

4. Any irrevocable letter of credit to be used by Developer as an assurance pursuant to this Section III shall be issued by a financial institution authorized to do business in the State of Wisconsin having a financial standing acceptable to the City and Utility, and the form of any irrevocable letter of credit shall be in the form approved for Phase I, or as otherwise approved in advance by the City Attorney. Any irrevocable letter of credit approved for use by the City Attorney as an assurance pursuant to this Section III shall remain in effect until completely drawn upon or released by City or Utility for that Phase. If for any reason, any irrevocable letter of credit approved for use as an assurance pursuant to this Section III is about to expire and has not been renewed by Developer, City and Utility may draw upon the irrevocable letter of credit and retain the proceeds as a cash assurance pursuant to this Section III, unless Developer replaces such letter of credit with a new letter of credit that is not expiring.
5. If and to the extent Developer shall properly complete portions of the Public Improvements required to be made pursuant to this Agreement for which Developer shall have deposited an assurance pursuant to this Section III., then upon written request of Developer, and upon the written recommendation of City Engineer and Utility General Manager, as the case may be, the assurance may be reduced in the amount determined by City Engineer and Utility General Manager. In no event shall the assurance be reduced below one hundred twenty-five percent (125%) of the City Engineer's and the Utility's General Manager's reasonable estimate of the cost of the remaining Improvements in that Phase, and the Developer's Guarantee for the Improvements, required to be made pursuant to this Agreement. Prior to the reduction of any assurance, Developer shall submit to City and Utility a waiver of lien current to date from all contractors, subcontractors and suppliers for the work for which the reduction is sought, but only for any Public Improvements. The balance of the remaining assurance shall remain on deposit with the City Clerk/Treasurer and Utility General Manager, as the case may be, until expiration of the Guarantee Period provided in Section IV.B. of this Agreement. Subject to final inspection and approval of City Engineer and Utility General Manager of the Public Improvements for that Phase, within forty-five (45) days following expiration of the Guarantee Period provided in Section IV.B. of this Agreement, the balance of the remaining assurance shall be released.
6. In addition to all other remedies, occupancy permits for that Phase may be withheld by City until the City of Kenosha Department of City Development certifies that the requirements of Chapter XVII of the Code of General Ordinances for the City of Kenosha have been met for that Phase. In the event any work specified in this Agreement is not completed in accordance with this Agreement, City or Utility may do or cause the work to be done and charge the cost for the work against any assurance provided pursuant to this Agreement or impose a special charge and/or

special assessment against that Phase in the event there is no applicable assurance or the assurance is insufficient for that Phase. The remedies available to City and Utility pursuant to this paragraph shall not relieve Developer of Developer's guarantee provided in this Agreement.

IV. DEDICATION AND GUARANTEE OF IMPROVEMENTS

A. Dedication of Public Improvements

Subject to all other provisions of this Agreement, Developer shall, upon completion of all of the Dedicated Public Improvements for that Phase required in the certified survey map, conditional use permit and this Agreement, and without charge to City or Utility, unconditionally give, grant, convey and fully dedicate the Dedicated Public Improvements for that Phase to City or Utility, whether or not the Adjacent Roadway is then currently in City or County jurisdiction, free and clear of all liens and encumbrances together with all buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and habiliments which may in any way be a part of or pertain to the Dedicated Public Improvements together with any and all easements necessary for access to the Dedicated Public Improvements. Developer shall execute such documents deemed necessary by City or Utility to effectuate the dedication of the Dedicated Public Improvements pursuant to this paragraph. Upon dedication, City or Utility shall have the right to connect or integrate the Dedicated Public Improvements for that Phase unto the facilities of City or Utility without charge, award of damages or consent of Developer. Dedication shall not constitute acceptance of any Improvement by City or Utility; all acceptance shall be accomplished following the Acceptance Procedure. That Phase of the Total Development Real Estate shall also be entitled to connect to all such Public Improvements and to the public water and sanitary sewer systems of the Utility, and the storm sewer and roadway systems of the City.

B. Guarantee of Improvements

1. Developer shall guarantee all Public Improvements required to be made by Developer pursuant to this Agreement against all defects due to faulty design, materials or workmanship of which Developer is notified in writing within a period of one (1) year from the date of acceptance of the subject Public Improvement by the Common Council of the City of Kenosha or Kenosha Water Utility Board of Water Commissioners, using the Acceptance Procedure (the "Guarantee Period"). Developer, at Developer's cost and expense, shall make any required repairs. City and Utility reserve the right to perform any required repairs to the Improvements, which City and Utility deem necessary on a time and material basis.

2. Developer shall be responsible for any settlement of fill material which may occur in any utility trenches in any right-of-way or easement for a period of one (1) year from the date of the last acceptance by City or Utility of any utility Public Improvement located in that Phase, using the Acceptance Procedure. Developer, at Developer's cost and expense, shall make any required repairs during that one-year Guarantee Period. City and Utility reserve the right to perform any required repairs which City or Utility deem necessary on a time and material basis.
3. The assurances required to be provided by Developer pursuant to Section III of this Agreement shall be used to assure Developer's guarantee of the Public Improvements for Phase II, III and IV, pursuant to this Section IV and to compensate City or Utility for City's or Utility's cost of performing any repairs to the Public Improvements guaranteed by Developer pursuant to this Agreement. In the event there is no applicable assurance or in the event the assurance is insufficient, City or Utility may do or cause Developer's guarantee work to be done and impose a special charge and/or special assessment against that Phase for the cost of the work.

V. DEVELOPER INDEMNIFICATION

Developer shall indemnify, defend and hold harmless City and Utility, their officers, employees and agents ("Indemnitees") from and against all losses, proceedings, claims, liability, charges, damages, costs, and penalties, whether initiated or sought by governmental authorities or private parties, including, but not limited to, attorney and expert witness fees and expenses, engineering fees and expenses, environmental consultant fees and expenses, investigating fees and expenses, remediation costs, including without limitation any financial assurances required to be posted for completion of remedial work and costs associated with administrative oversight, settlement expenses, and judgments (collectively the "Damages"), which any of them may hereafter sustain, incur or be required to pay whether incurred in connection with any judicial or administrative process or otherwise, arising out of or in any way related to: the razing, removing or disposing of any structures within that Phase of the Total Development Real Estate; any environmental conditions affecting that Phase; the presence or alleged presence of hazardous material on or under that Phase whether as a result of activities on that Phase or on surrounding real estate; the actual or alleged violation of any Federal or State environmental law, rule or regulation; requirements imposed by the Code of General Ordinances for the City of Kenosha; requirements imposed by all Federal and State environmental laws, rules, and regulations; the design, construction and installation of any of the Improvements required by this Agreement; or any claim for labor, materials or supplies furnished in connection with any of the Improvements required by this Agreement. Upon the filing with City and/or Utility of a claim for Damages arising out of the acts which Developer herein agrees to indemnify, defend and hold Indemnitees harmless, the City and/or Utility shall notify Developer of such claim, and in the event that Developer does not settle or compromise such claim,

Developer shall undertake the legal defense of such claim both on behalf of itself and the Indemnitees. It is specifically agreed that City and/or Utility, at their own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against any Indemnatee for any cause for which Developer is liable herewith, shall be conclusive against Developer as to liability and the amount of Damages. Any Damages, incurred or paid by any Indemnatee arising out of the acts which Developer herein agrees to indemnify, shall be reimbursed to the respective Indemnatee through Developer's assurances required pursuant to this Agreement or through such other means as the City and/or Utility in their sole discretion deem appropriate. This paragraph shall survive installation of the Improvements to effectuate its purpose, and shall only apply to the Public Improvements on that Phase. Notwithstanding anything to the contrary contained herein, this indemnity shall not apply to the failure of the City to perform the City Responsibilities contained in paragraph VI below.

VI. CITY RESPONSIBILITIES

Upon application by Developer and upon payment by Developer of all required fees, City shall promptly process all permit applications and will issue all City permits required for the development of that Phase, provided Developer is in compliance with all City conditions of approval, all applicable WDNR requirements, all applicable USACE requirements, all applicable Federal and State environmental laws, rules, and regulations, this Agreement, and all standards for the issuance of the required City permits set forth in applicable federal, state, county, or City laws, ordinances, resolutions, rules and regulations in effect as of the date the permit is to be issued unless otherwise specified. In addition, the City shall be responsible to enforce all provisions of the Kenosha-Somers-Paris Cooperative Plan and Intergovernmental Agreement (2017) (the "Cooperative Plan"), including specifically the provision which requires the County to turn over to the City any of the Adjacent Streets, so that the Developer can carry out its obligations herein to construct the applicable Street Improvements and to dedicate them, and the applicable rights of way, to the City. Notwithstanding anything to the contrary contained in this Agreement: 1) City confirms that the Developer shall be responsible to construct all Street Improvements and related improvements, to City Standards, being the WisDOT Urban Roadway Standards, and not to the County's Rural Highway Standards; 2) all Street Improvements will be designed and constructed to be identical to the improvements in 38th Street east of 128th Avenue; 3) City shall approve all of the improvements and dedication of land in the right of way of Adjacent Streets, when such improvements and dedications meet the requirements herein, notwithstanding whether the Adjacent Street is a City of County right of way at that time, and such City approval shall be deemed to be approval of the County for all purposes; and 4) the City shall secure the approval of the County for any such approvals and to resolve any differences of opinion between the City and County over these improvements and dedications, at no additional expense of Developer, and the City will take over the jurisdiction of 38th Street from the

frontage road to the west edge of the Street Improvements for this Development (the "City/County Agreement Obligation").

VII. MISCELLANEOUS

A. Notice

Any notice required to be given in this Agreement by any of the Parties is to be sent by recognized commercial courier or by certified mail with return receipt or by personal service addressed to Developer, City or Utility set forth below. Any Party may designate a different address by delivering, sending, or serving written notice of such change of address upon the other Parties. Notice shall be effective as of the date of delivery, if by recognized commercial courier or by hand, or mailing if by certified mail.

If to Developer: 38th Street, LLC
12575 Uline Drive
Pleasant Prairie, Wisconsin 53158
Attention: Dmitry Dukhan, Sr. Vice President

with copies to: Uline, Inc.
12575 Uline Drive
Pleasant Prairie, Wisconsin 53158
Attn: General Counsel

Uline, Inc.
12575 Uline Drive
Pleasant Prairie, Wisconsin 53158
Attn: Marcia Kester-Sperber

Nancy Leary Haggerty
Michael, Best & Friedrich, LLP
790 N. Water Street, #2500
Milwaukee, WI 53202

If to City: City Clerk/Treasurer
Municipal Building, Room 105
625 52nd Street
Kenosha, Wisconsin 53140

with copies to: Director of Public Works
Municipal Building, Room 305
625 52nd Street
Kenosha, Wisconsin 53140

 Office of the City Attorney
Municipal Building, Room 201
625 52nd Street
Kenosha, Wisconsin 53140

If to Utility: General Manager
Kenosha Water Utility
4401 Green Bay Road
Kenosha, Wisconsin 53144

With a copy to: Office of the City Attorney
Municipal Building, Room 201
625 52nd Street
Kenosha, Wisconsin 53140

B. Land Dedications and Impact Fees

Developer, at Developer's cost and expense, shall provide for all land dedications required by Chapter XVII of the Code of General Ordinances of the City of Kenosha, which are only the following: a) the dedication of the right of way for the 38th Street Roadway Improvements as defined herein; and b) the dedication of the eastern section of the Phase II land, for the widening of 128th Avenue ("Street Dedications") to make the right of way fifty-five (55') feet from the section line. There will be no street dedication required for 136th Avenue. Developer shall pay all impact fees in accordance with Chapter XXXV of the Code of General Ordinances for the City of Kenosha, related to each Phase, (except if limited below) prior to the City issuance of a building permit for work on that Phase. However, the City hereby agrees that no Phase of the Total Development Real Estate will be charged any impact fees, special assessments or charges of any type, for the cost of off-site improvements installed prior to the Developer's ownership interest in that Phase, to the extent the prior owner of that Phase has paid any such fees, and City further agrees that Developer shall not be obligated to dedicate any land other than the Street Dedications stated above, and shall not be obligated to install or pay for any roadway, utility, or intersection improvements, in connection with the development of the Total Development Real Estate, either directly or through special assessments, impact fees or other arrangements, other than the Street Improvements required herein and shown on Exhibit F, the Utility Requirements shown on Exhibit H, the Rights of Recovery shown on Exhibit J, and the Traffic Improvement Fee defined herein. The Traffic Improvement Fee shall be a payment of \$2,000,000, as an Impact Fee in

lieu of all other charges and fees of whatever nature, for any roadway, utility or intersection improvements, or other off-site improvement, including specifically in lieu of any obligation for improvements at the intersections marked with a yellow dot on the map on Exhibit F, and including specifically any improvements required in the future for Hwy 158 and the I-41 West Frontage Road. The Development will include the construction of industrial buildings which were the basis for the use of ITE Land Use Code 154 (High-Cube Transload Warehouse and Short-Term Storage Warehouse) to assess the traffic impact in the TIA. In the event that the New Construction proposed is substantially different than was contemplated by the parties at the time this agreement was negotiated, such that the traffic produced by the new alternative proposed would create a traffic impact which would render the TIA obsolete, the new proposed development shall be required to resubmit traffic numbers in a TIA and may be subject to making additional Street Improvements for the purpose of handling any additional projected trip counts from the changed use.

C. Assignment

Except for an entity that is either an affiliate of Developer, or an entity that has common ownership with Developer or Uline, Inc. (each a "Developer Affiliate"), Developer shall not assign or transfer this Agreement without the prior written consent of the City and/or Utility, before all the Public Improvements for that Phase have been completed, and accepted by the City and/or Utility, and in the case of Public Dedicated Improvements, dedicated and accepted by the City and/or Utility. Any unauthorized assignment or transfer shall be a breach of this Agreement thereby entitling the City and/or Utility to draw upon the assurances required to be provided pursuant to Section III of this Agreement. Any assignment or transfer shall be conditioned upon the assignee or transferee entering into a written Agreement with City and/or Utility through which the assignee or transferee agrees to be bound by all of the terms, conditions, and obligations of this Agreement. No assignment or transfer shall relieve Developer of any obligations under this Agreement in the event of breach or default by the assignee or transferee. No assignment or transfer shall be inconsistent with the terms of this Agreement. The assignee or transferee shall have all rights, privileges, and obligations as granted Developer under this Agreement. This paragraph shall not prohibit the leasing of any of the Total Development Land.

D. Integration

This Agreement and the other documents incorporated by reference herein embody the entire Agreement and understanding between the Parties and supersede all prior Agreements and understandings relating to

the subject matter hereof, and shall be binding on the Development regardless of any later changes in City ordinances or policies.

E. Defaults

No default shall arise under this Agreement unless the non-defaulting Party has provided the defaulting Party written notice of default and twenty (20) days to cure the default.

F. Severability

Any covenant, condition or provision of this Agreement held to be invalid or unenforceable by a court of competent jurisdiction shall be considered deleted from this Agreement, but such deletion shall in no way affect the application or validity of the remaining covenants, conditions or provisions of this Agreement which shall be given effect without the invalid or unenforceable covenant, condition or provision and to this extent, the covenants, conditions and provisions of this Agreement are declared to be severable.

G. Recording

This Agreement shall be recorded in the office of the Register of Deeds for Kenosha County, Wisconsin, against Phase II, Phase III and Phase IV, and all costs of recording shall be paid by Developer.

H. Exhibits, Plans, Agreements, and Easements Incorporated By Reference

The exhibits attached to this Agreement, which are listed on the page following the signature pages ("Exhibits"), and the plans, agreements and easements referred to in this Agreement are made a part of this Agreement and are incorporated herein by reference. The plans referred to in this Agreement will be on file with the City of Kenosha Department of City Development upon review and approval by City Engineer and Utility General Manager.

I. Choice of Law and Venue

This Agreement and the certified survey map, the conditional use permit shall be construed and enforced according to the laws of the State of Wisconsin. The Parties agree that any matter which may be brought or pursued in court shall be brought and maintained only in the Circuit Court for Kenosha County, Wisconsin, and each Party consents to said venue and the court's personal jurisdiction over each Party.

J. Waiver of Breach or Violation not Deemed Continuing

Any Party may, to the extent legally allowed, (a) extend the time for performance of any of the obligations or other acts of the other Parties, (b) waive any inaccuracies in the representations or warranties of the other Parties contained in this Agreement or in any document delivered pursuant to this Agreement and (c) waive any compliance by the other Parties with any of the agreements or conditions contained in this Agreement. The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any or other subsequent breach or violation of any provision of this Agreement. No breach or violation of any provision of this Agreement shall be waived except by an agreement in writing signed by the waiving Party.

K. Construction

The Parties agree that each Party has contributed substantially and materially to the preparation of this Agreement and that as a result, this Agreement shall not be construed more strictly against one Party or another merely by virtue of the fact that it may have been prepared primarily by counsel for City.

L. Time of the Essence

It is understood and agreed by the Parties that time is of the essence with respect to the provisions of this Agreement specifying dates and deadlines.

M. Binding Effect

This Agreement shall run with Phase II, Phase III and Phase IV Real Estate for which permits and approvals are given, and shall be binding upon Developer, Developer's successors and assigns, and Developer's successors in title to Phase II, Phase III and Phase IV Real Estate. The guarantee of Developer set forth in Section IV shall be for the period specified therein. Any recorded easements, agreements, covenants, and restrictions shall be binding for the time set forth therein, or if no time is specified, for the time provided under applicable Wisconsin law.

N. Amendment

This Agreement may only be amended by the mutual written consent of the Parties and subject to the approval of any such amendment by the Common Council for the City of Kenosha and the Kenosha Water Utility Board of Water Commissioners.

O. Cooperation.

The City agrees to cooperate with the Town of Paris for any requirements required by any agreement between them, including the Cooperative Plan, and any Attachment Petition for a part of the Total Development Real Estate. The City agrees to issue estoppel letters, if requested by Developer, to confirm the status of completion of any obligations hereunder. Further, the City agrees that no approval or permit issuance herein shall be delayed for failure of the City/County Agreement Obligation.

VIII. SPECIAL PROVISIONS

The following are special provisions for this Development and definitions that are used throughout this Agreement.

A. Towne Realty Intersection Agreement.

TI KCP I, LLC, and TI KCP II, LLC, both affiliates of Towne Realty, Inc. (together, "Towne Realty") own property immediately to the north of the Phase I Land and the Phase IV Land (the "Towne Realty Parcels," and which have Tax Key Numbers of 08-221-24-301-011 and 08-221-24-301-012, and an approximate legal description of Lots 1 and 2, CSM No. 2874). When the Towne Realty Parcels were developed, the City entered into an agreement with Towne Realty entitled "Future Street Improvements Agreement Between Towne Realty, Inc. and the City of Kenosha," dated July 2nd, 2018, and which was recorded in the Register of Deed's Office on August 14, 2018 as Document No. 1825616 (the "Towne Realty Intersection Agreement"). Although the Towne Realty Intersection Agreement was not recorded against the Phase I Land or the Phase IV Land, it identified as the "Adjacent Parcel," a parcel of land then known as Tax Parcel 45-4-221-252-0113, which is now known as 08-221-25-252-014, and is part of the Phase I Land. The City has agreed in the Phase I Development Agreement, that all obligations of the Towne Realty Intersection Agreement, as they relate to any part of the Phase II, III or Phase IV Land, are satisfied by the provisions of the Phase I Development Agreement and therefore, no further obligation remains herein.

B. Uline East Development Interconnections.

Route 142, LLC, which is a Developer Affiliate because its owners include some of the owners of Developer ("Uline East Owner"), has developed land in the City which is immediately east of the Phase I Land and Phase II Land, and which was described on Exhibit G to the Phase I Development Agreement as the "Uline East Development." Any obligations to dedicate part of the Uline East Development for roadway work, was accomplished in the Phase I Development Agreement, and therefore the City confirms no further dedication of Uline East Development land is needed for this Agreement.

C. Right of Recovery.

When the Uline East Owner developed the Uline East Development, it paid for certain water main and sewer main improvements, which resulted in a Right of Recovery Assessment levied upon future development and on parts of the Total Development Real Estate in the amount of \$79,349.20 for the Water Main, and \$2,796.50 for the Sewer Main (together, the "First Right of Recovery Assessment"). This First Right of Recovery Assessment was owed by Developer as owner of the Total Development Real Estate, to the Uline East Owner as owner of the Uline East Development. Since these parties are both Developer Affiliates, Developer secured an agreement by which the Uline East Owner agreed to execute a Waiver and Termination of reimbursement of the First Right of Recovery Assessment, and the Developer signed that Termination, and the City agreed to officially terminate this First Right of Recovery Assessment on the Total Development Real Estate. Similarly, the Total Development Real Estate was encumbered by a second Right of Recovery, in the amount of \$57,826.00 for a water main on 38th Street and 128th Avenue, and \$16,088.50 for a Sanitary Sewer Main on 38th Street ("Second Right of Recovery"), which was waived by an agreement between the Developer and the Uline East Owner, and which the City agreed to terminate. City agrees that no part of the Total Development Real Estate is subject to any remaining Rights of Recovery, except as defined on Exhibit J as being due to LPC Kenosha I, LLC and referenced above.

D. Phasing.

Developer intends to develop all of the Total Development Real Estate in one coordinated development, but to do so in Phases. The four Phases are shown on Exhibit D. This Agreement is intended to create an agreement for each of Phases II, III and IV, but with applications for, and permits for work to be completed for only one specific Phase, as contained in those applications. No construction of any building or use of any buildings, on Phases II, III or IV may be commenced without application for and approval of, all permits required therefor as identified herein. Developer has not requested TIF Funds or financial assistance from the City for this Development, and there is no required timetable to complete any of the Phases.

IX. AUTHORIZATION

- A.** Developer represents to City and Utility that Developer is a Delaware limited liability company, is in good standing in Delaware, that all acts which are a condition precedent to entering into this Agreement have thereby taken place, and that the individual executing this Agreement on

behalf of Developer has the authority to do so and to bind Developer to the terms and conditions of this Agreement.

- B.** Utility enters into this Agreement by authority of action taken by the Board of Water Commissioners on the _____ day of _____, 2024.
- C.** City enters into this Agreement by authority of action taken by its Common Council on the _____ day of _____, 2024.

X. JURISDICTION.

The parties acknowledge that some of the intersections and roadways involved in the Street Improvements, are currently owned by the County, or by the Town of Paris, and that the City has jurisdictional control over some but not all of them. Further, the Phase II Land and the Phase III Land were in the Town of Paris, but subject to the Cooperative Plan which allows them to be attached to the City upon application by Developer, and those parcels have now been attached to the City, and are subject to this Agreement. City agrees to cooperate with the Town of Paris and County to carry out the plans contained herein for the Street Improvements. Further, City agrees to build, or cause the Town or County to build, any improvements to intersections studied in the Traffic Impact Analysis, other than the Street Improvements required herein, at no cost to Developer or to the Total Development Real Estate.

XI. UTILITY COMMITMENT.

As part of this Agreement, the City agrees to execute an underground easement or other permanent agreement, allowing the Developer to connect all buildings on the Total Development Real Estate to the "dark fiber" wire serving the Uline East Development, and to hydrogen gas service from the Uline East Development electric primary power plant.

IN WITNESS WHEREOF, the Parties hereto have hereunto executed this Agreement on the dates below given.

38TH STREET, LLC
A Delaware Limited Liability Company

BY: PHILLIP D. HUNT, its Authorized
Person

Date: _____

STATE OF WISCONSIN)
COUNTY OF KENOSHA) : ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Phillip D. Hunt, Authorized Person of 38th Street, LLC, who is personally known to me.

BY: _____
 Print Name: _____
 Notary Public, _____ County, WI
 My Commission expires/is: _____

Exhibit List for Second City of Kenosha/38th Street, LLC Development Agreement
[3/7/24 version]

The “Exhibits” are the following:

Exhibit A	Legal Description of Total Development Real Estate, and the Phase I, II, III and Phase IV Land Before Recording of First CSM and Tax ID numbers
Exhibit B	Recorded First Certified Survey Map or First CSM of the Phase I and IV Land
Exhibit C	Recorded First Conditional Use Permit or First CUP for the Phase I and IV Land
Exhibit D	Map of Phases on the Total Development Real Estate
Exhibit E	List of Public Improvements and Public Dedicated Improvements
Exhibit F	Street Improvements and definition of Adjacent Streets
Exhibit G	[intentionally deleted]
Exhibit H	Utility Improvements and Utility Requirements
Exhibit I	[intentionally deleted]
Exhibit J	Right of Recovery Memo from City dated October 19, 2023

Exhibit A

Legal Description of Total Development Real Estate Before Recording of First CSM, the Phases, and the First CSM

The "**Total Development Real Estate,**" before recording of the First CSM shall be defined as:

The Former LPC Land defined as follows and being Tax Key No. 08-221-25-252-014

Part of the Southwest Quarter of Section 24, Town 2 North, Range 21 East of the Fourth Principal Meridian, and being more particularly described as: Beginning at the Southeast corner of said Quarter Section; thence West along the South line of said Quarter Section 1996 feet to a point 660 feet East from the Southwest corner of said Quarter Section; thence North and parallel to the West line of said Quarter Section 660.05 feet; thence East and parallel to the South line of said Quarter Section 1997.8 feet to the East line of said Quarter Section; thence South and along the East line of said Quarter Section 660 feet to the point of beginning, lying and being in the City of Kenosha, County of Kenosha and State of Wisconsin.

AND

The North Half of the Northwest Quarter of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; EXCEPTING THEREFROM that part of the Northwest Quarter of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian described as follows: Beginning at the Northwest corner of said Quarter Section; thence North 89° 31' 48" East along the North line of said Quarter Section 660.01 feet; thence South 01° 54' 28" East parallel to the West line of said Quarter Section 350.00 feet; thence South 89° 31' 48" West parallel to the North line of said Quarter Section 660.01 feet to the West line of said Quarter Section; thence North 01° 54' 28" West along said West line 350.00 feet to the point of beginning.

Tax Key Number: 08-221-25-252-014

Parcel 4 of the former Kolnik Land, being Tax Key No. 45-5-221-252-0330;

PARCEL 4: Lands being in part of the Northwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; lying and being in the Town of Paris, Kenosha County, Wisconsin and being more particularly described as: Beginning at the Southwest corner of said 1/4 Section; thence North 01°54'28" West along the West line of said 1/4 Section 915.86 feet, thence North 89°25'57" East parallel to the North line of the South 1/2 of said 1/4 Section 440.00 feet; thence North 01°54'28" West parallel to aforesaid West line 412.50 feet to said North line of South 1/2 of said 1/4 Section; thence North 89°25'57" East along said North line 884.05 feet to the East line of the West 1/2 of said 1/4 Section, thence South 01°44'09" East along said East line 1326.02 feet to the South line of said 1/4 Section; thence South 89°20'04" West along said South line 1320.02 feet to the Southwest corner of said 1/4 Section and the point of beginning; subject to public roads over and across the Westerly and Southerly portions.

Parcel 5 of the former Kolnik Land, being Tax Key No. 08-221-25-252-035:

PARCEL 5: Lands being in part of the Northwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; lying and being in the City of Kenosha, Kenosha County, Wisconsin and being more particularly described as: Beginning at the Southeast corner of said 1/4 Section; thence North 01°33'48" West along the East line of said 1/4 Section 1323.68 feet to the North line of the South 1/2 of said 1/4 Section; thence South 89°25'57" West along said North line 1324.05 feet to the West line of the East 1/2 of said 1/4 Section; thence South 01°44'09" East along said West line 1326.02 feet to the South line of said 1/4 Section; thence North 89°20'04" East along said South line 1320.02 feet to the Southeast

corner thereof and the point of beginning, subject to a public road over and across the Southerly portion thereof;

EXCEPTING THEREFROM lands used for road purposes; ALSO EXCEPTING THEREFROM the following two parcels conveyed in Warranty Deed recorded April 12, 2016 as Document No. 1769682 and described as follows:

Being a part of the Southeast 1/4 of the Northwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian, more particularly described as follows: Beginning at the Southeast corner of the Northwest 1/4 of said Section 25; thence South 89° 20' 04" West along the South line of said Northwest 1/4, 323.27 feet; thence North 00° 39' 56" West, 33.00 feet to the North right of way line of 38th Street – County Trunk Highway "N"; thence North 85° 37' 46" East 154.97 feet; thence North 71° 46' 16" East, 92.02 feet; thence North 01° 27' 29" West, 33.50 feet; thence North 88° 50' 32" East, 30.72 feet; thence North 01° 22' 31" West, 207.70 feet; thence North 13° 07' 37" East, 190.52 feet to the East line of said Northwest 1/4; thence South 01° 33' 48" East along said East line, 497.31 feet to the point of beginning and lying and being in the Town of Paris, County of Kenosha and State of Kenosha.

AND

Being a part of the Southeast 1/4 of the Northwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian, more particularly described as follows: Commencing at the Southeast corner of the Northwest 1/4 of said Section 25; thence North 01° 33' 48" West along the East line of said Northwest 1/4, 1058.77 feet to the point of beginning; thence South 88° 26' 12" West, 10.00 feet; thence North 01° 33' 48" West, 85.00 feet; thence North 88° 26' 12" East, 10.00 feet to the aforesaid East line of said Northwest 1/4; thence South 01° 33' 48" East along said East line, 85.00 feet to the point of beginning, and lying and being in the Town of Paris, County of Kenosha and State of Wisconsin.

Parcel 6 of the former Kolnik Land, being Tax Key No. 45-4-221-253-0200

PARCEL 6: The West 1/2 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; lying and being in the Town of Paris, Kenosha County, Wisconsin.

Parcel 7 of the former Kolnik Land, being Tax Key No. 45-4-221-253-0101:

PARCEL 7: The North 1/2 of the East 1/2 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; in the Town of Paris, Kenosha County, Wisconsin; EXCEPTING THEREFROM lands used for road purposes; ALSO EXCEPTING THEREFROM the lands conveyed in Warranty Deed recorded April 12, 2016 as Document No. 1769682 and described as follows:

Lands being a part of the Northeast 1/4 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian, more particularly described as follows: Beginning at the Northeast corner of the Southwest 1/4 of said Section 25; thence South 01° 59' 40" East along the East line of said Southwest 1/4, 107.24 feet; thence South 88° 00' 20" West, 33.00 feet to the West right of way line of 128th Avenue; thence North 46° 19' 48" West 107.29 feet to the South right of way line of 38th Street – County Trunk Highway "N"; thence North 00° 39' 56" West 33.00 feet to the North line of said Southwest 1/4; thence North 89° 20' 04" East along said North line 107.24 feet to the point of beginning, and lying and being in the Town of Paris, County of Kenosha, State of Wisconsin; and

Parcel 8 of the former Kolnik Land, being Tax Key No. 45-4-221-253-0400:

PARCEL 8: The South 1/2 of the East 1/2 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; and lying and being in the Town of Paris, Kenosha County, Wisconsin.

Note Part of the Total Development Real Estate, was redefined as Parcel 1 of the First CSM, being CSM 3051, by the recording of the First CSM as Document No. 1948555.

The Phase I Land shall be: That part of Parcel 1 CSM 3051 lying east of the centerline of the 150' Wisconsin Electric Power Company Easement, as shown on CSM 3051.

The Phase IV Land shall be: That part of Parcel 1 of CSM 3051 lying west of the centerline of the 150' Wisconsin Electric Power Company Easement as shown on CSM 3051.

Tax Identification Numbers for 2023:

08-221-25-252-014 (North part of Phase I and Phase IV)

08-221-25-252-035 (South part of Phase I)

45-4-221-252-0330 (South part of Phase IV)

The Phase II Land shall be:

PARCEL 7: The North 1/2 of the East 1/2 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; in the Town of Paris, Kenosha County, Wisconsin; EXCEPTING THEREFROM lands used for road purposes; ALSO EXCEPTING THEREFROM the lands conveyed in Warranty Deed recorded April 12, 2016 as Document No. 1769682 and described as follows:

Lands being a part of the Northeast 1/4 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian, more particularly described as follows: Beginning at the Northeast corner of the Southwest 1/4 of said Section 25; thence South 01° 59' 40" East along the East line of said Southwest 1/4, 107.24 feet; thence South 88° 00' 20" West, 33.00 feet to the West right of way line of 128th Avenue; thence North 46° 19' 48" West 107.29 feet to the South right of way line of 38th Street – County Trunk Highway "N"; thence North 00° 39' 56" West 33.00 feet to the North line of said Southwest 1/4; thence North 89° 20' 04" East along said North line 107.24 feet to the point of beginning, and lying and being in the Town of Paris, County of Kenosha, State of Wisconsin; and

PARCEL 8: The South 1/2 of the East 1/2 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; and lying and being in the Town of Paris, Kenosha County, Wisconsin

The Phase III Land shall be:

PARCEL 6: The West 1/2 of the Southwest 1/4 of Section 25, Town 2 North, Range 21 East of the Fourth Principal Meridian; lying and being in the Town of Paris, Kenosha County, Wisconsin, less any land taken or dedicated road purposes.

The Definition of each of the Phases of land shall be less and excepting any land deeded to or dedicated to the City of Kenosha for roadway purposes.

Note all of the Parcels are now in the City of Kenosha

Exhibit B

First Certified Survey Map or CSM

Document #: 1948555
Date: 2023-06-21 Time: 3:11 PM Page: 6
Fee: \$30.00 County: KENOSHA State: WI
REGISTER OF DEEDS: JOELLYN H. STORZ

CERTIFIED SURVEY MAP NO. 3051

Being a part of the Southeast 1/4 and Southwest 1/4 of the
Southwest 1/4 of Section 24 and a part of the Northeast 1/4,
Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the
Northwest 1/4 of Section 25, all in Township 2 North, Range 21
East, City of Kenosha, Kenosha County, Wisconsin.

VICINITY SKETCH
SCALE 1"=1000'

BURLINGTON ROAD
STATE TRUNK HIGHWAY "142"

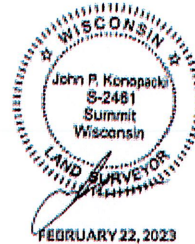
SW 1/4 SEC. 24
T2N, R21E

136TH AVENUE
COUNTY TRUNK HIGHWAY "UE"

128TH AVENUE

NW 1/4
SEC. 25
T2N, R21E

COUNTY TRUNK HIGHWAY "N"
38TH STREET



NOTES:

- All measurements have been made to the nearest one-hundredth of a foot.
- All angular measurements have been made to the nearest one second.
- All existing buildings to be removed.
- Bearings referenced to the Wisconsin State Plane Coordinate System, South Zone (N.A.D. 1927). The east line of the Northwest 1/4 of Section 25, Township 2 North, Range 21 East has a bearing of 50°13'30"E.
- All corners of the Dedicated Public Road shall be monumented by Set 1/4" x 18" Iron Rebar, 15.00 L.P.F.
- Wisconsin Gas and Electric Company Statement per Document No. 227027 & Document No. 227028 to be amended by separate document.
- Tax Key No. 45-4-221-252-0328 - Unplatted Lands owned by John S. Reistenbach. Tax Key No. 45-4-221-252-0310 - Unplatted Lands owned by Robert F. Bonche. Tax Key No. 45-4-221-252-0315 - Unplatted Lands owned by Joseph M. Rosche.

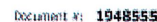
Prepared for:
38TH STREET LLC
12575 Uline Drive
Pleasant Prairie, WI 53158

Prepared By:
PINNACLE ENGINEERING GROUP
20125 WATERTOWN ROAD | SUITE 100
BROOKFIELD, WI 53186
OFFICE: (262) 754-8888

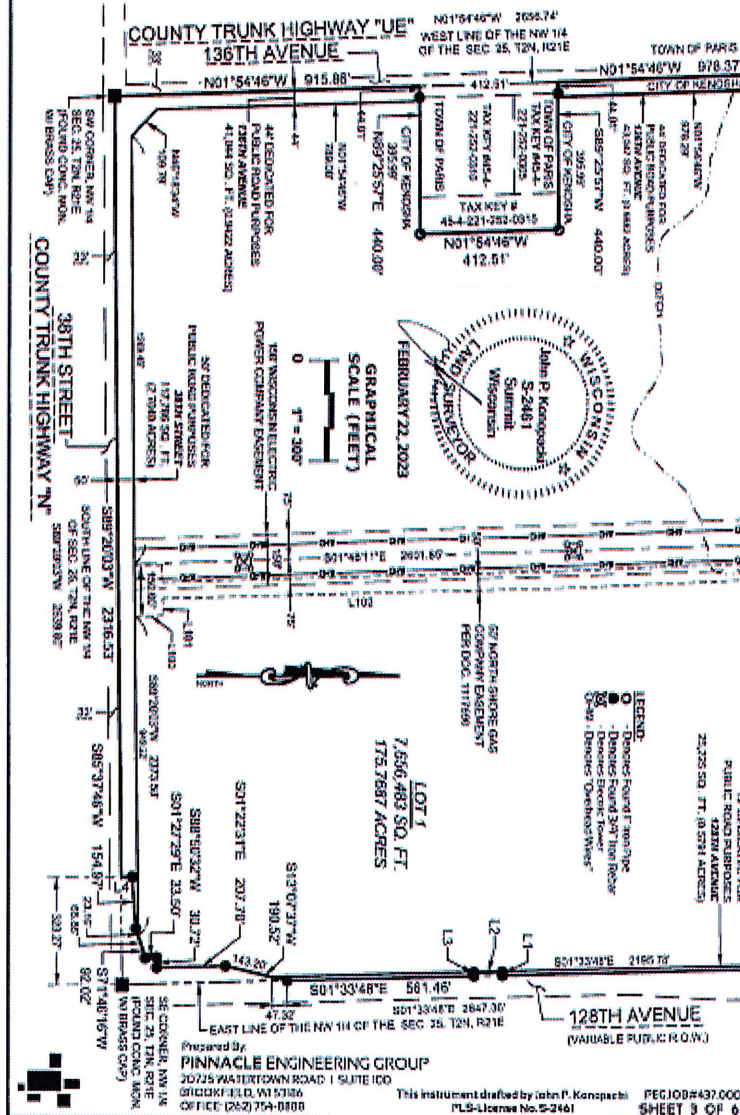
This instrument drafted by John P. Kenopach, PLS License No. S-2461

DRAFTED BY: ST
PEC/DG#437,000
SHEET 1 OF 6

Being a part of the Southeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 24 and a part of the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 25, all in Township 2 North, Range 21 East, City of Kenosha, Kenosha County, Wisconsin.



Being a part of the Southeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 24 and a part of the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 25, all in Township 2 North, Range 21 East, City of Kenosha, Kenosha County, Wisconsin.



CERTIFIED SURVEY MAP NO. 3051

Being a part of the Southeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 24 and a part of the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 25, all in Township 2 North, Range 21 East, City of Kenosha, Kenosha County, Wisconsin.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN
WAUKESHA COUNTY 55

I, John P. Konopacki, Professional Land Surveyor, do hereby certify:

That I have surveyed, mapped and divided that part of the Southeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 24 and a part of the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 25, all in Township 2 North, Range 21 East, City of Kenosha, Kenosha County, Wisconsin, which is bounded and described as follows:

Beginning at the northeast corner of the Northwest 1/4 of said Section 25;
Thence South 01°29'48" East along the east line of said Northwest 1/4, 1503.50 feet;
Thence South 88°28'12" West along the west right of way line of 128th Avenue, 10.00 feet;
Thence South 01°29'48" East along said west right of way line, 85.00 feet;
Thence North 88°28'12" East along said west right of way line, 10.00 feet to the aforesaid east line of the Northwest 1/4;
Thence South 01°29'48" East along said east line, 361.46 feet;
Thence South 13°07'37" West along the west right of way line of 128th Avenue, 190.82 feet;
Thence South 01°22'31" East along said west right of way line, 207.70 feet;
Thence South 88°50'32" West along said west right of way line, 30.72 feet;
Thence South 01°27'20" East along said west right of way line, 33.50 feet to the north right of way line of 26th Street - County Trunk Highway "N";
Thence South 71°48'10" West along said north right of way line, 62.02 feet;
Thence South 82°37'40" West along said north right of way line, 154.97 feet;
Thence South 00°39'09" East, 33.00 feet to the south line of the Northwest 1/4 of said Section 25;
Thence South 89°20'03" West along said south line, 2318.53 feet to the west line of said Northwest 1/4;
Thence North 01°54'48" West along said west line, 915.86 feet;
Thence North 89°25'57" East, 440.00 feet;
Thence North 01°54'48" West, 412.51 feet;
Thence South 89°25'57" West, 440.00 feet to the aforesaid west line of the Northwest 1/4;
Thence North 01°54'48" West along said west line, 878.37 feet;
Thence North 89°31'43" East, 600.00 feet;
Thence North 01°54'48" West, 350.00 feet;
Thence North 01°58'42" West, 690.00 feet to the south line of Certified Survey Map No. 2674;
Thence North 89°31'43" East along said south line, 1937.39 feet to the east line of the Southwest 1/4 of said Section 25;
Thence South 01°52'22" East along said east line, 660.00 feet to the Point of Beginning.

Designating that portion of subject property as graphically shown for public right of way purposes.


Containing 7,091,506 square feet (161.1640 acres) of land Gross and 7,658,463 square feet (175.7687 acres) of land Net more or less.

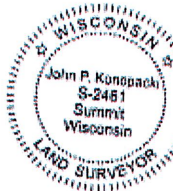
That I have made such survey, land division and map by the direction of 38TH STREET LLC, owner of said land.

That such map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

That I have fully complied with the requirements of Chapter 234 of the Wisconsin State Statutes and the City of Kenosha Land Division Ordinance in surveying, mapping and dividing the land within the certified survey map.

Date: FEBRUARY 22, 2023


John P. Konopacki
Professional Land Surveyor S-2461



LINE TABLE

LINE NO.	BEARING	DISTANCE
L1	S80°28'12"W	10.00'
L2	S01°33'48"E	85.00'
L3	N88°28'12"E	10.00'
L4	S00°39'50"E	33.00'

Prepared By:
PINNACLE ENGINEERING GROUP
20725 WATERTOWN ROAD 1 SUITE 100
BROOKFIELD, WISCONSIN
OFFICE: (262) 754-8888

This instrument drafted by John P. Konopacki, PLS License No. S-2461

PTGJ004-437.000
SHEET 4 OF 6

Document #: 1948555

CERTIFIED SURVEY MAP NO. 3051

Being a part of the Southeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 24 and a part of the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 25, all in Township 2 North, Range 21 East, City of Kenosha, Kenosha County, Wisconsin.

OWNER'S CERTIFICATE OF DEDICATION

38TH STREET LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, does hereby certify that said limited liability company caused the land described on this certified survey map to be surveyed, divided, mapped and dedicated as represented on this certified survey map.

38TH STREET LLC, as owner, does further certify that this certified survey map is required by Chapter 236 of the Wisconsin State Statutes to be submitted to the following for approval:

1. City of Kenosha

IN WITNESS WHEREOF, the said 38TH STREET LLC has caused these presents to be signed by its (name - print) BRAD FOLKERT (title) DIRECTOR OF CONSTRUCTION (city) PLEASANT PRairie KENOSHA County, Wisconsin, on this 8th day of MAY, 2023.

In the presence of: 38TH STREET LLC

Brad Folkert
Name (signature) - Title DIRECTOR OF CONSTRUCTION

STATE OF WISCONSIN
Kenosha COUNTY | SS

Personally came before me this 8th day of May, 2023, (name) Brad Folkert (title) Director of Construction of the above named 38TH STREET LLC, to me known to be the persons who executed the foregoing instrument, and to me known to be such Director of Construction (title) of said limited liability company, and acknowledged that they executed the foregoing instrument as such officer as the deed of said limited liability, by its authority.

C. Franceschina
Notary Public
Name: C. Franceschina
State of Wisconsin
My Commission Expires 6/19/26

C. Franceschina
Notary Public
State of Wisconsin

CONSENT OF CORPORATE MORTGAGEE

_____, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, mortgagee of the above described land, does hereby consent to the surveying, dividing, mapping and dedication of the land described in the foregoing affidavit of John P. Koropacki, surveyor, and does hereby consent to the above dedication of owners.

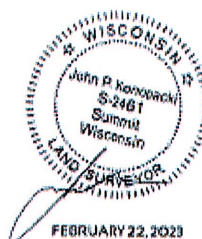
IN WITNESS WHEREOF, the said _____, has caused these presents to be signed by _____, its _____, and the corporate seal to be hereunto affixed this _____ day of _____, 2023.

Date _____ Name - Title _____

STATE OF WISCONSIN
COUNTY | SS

Personally came before me this _____ day of _____, 2023.
_____, to me known to be the person who executed the foregoing instrument and to me known to be such officer of said corporation and acknowledged the same.

Notary Public
Name: _____
State of Wisconsin
My Commission Expires _____



Prepared By:
PINNACLE ENGINEERING GROUP
20725 WATERTOWN ROAD 1 SUITE 300
BROOKFIELD, WI 53185
OFFICE: (262) 794-8888

This instrument drafted by John P. Koropacki, PLS-License No. 5-2461

REC-00 #437,000
SHEET 5 OF 6

Document #: 1948555

CERTIFIED SURVEY MAP NO. 3051

Being a part of the Southeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 24 and a part of the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 25, all in Township 2 North, Range 21 East, City of Kenosha, Kenosha County, Wisconsin.

COMMON COUNCIL APPROVAL

RESOLVED that this Certified Survey Map in the City of Kenosha, which has been filed for approval, be and hereby is approved as required by Chapter 236 of the Wisconsin Statutes.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Common Council of the City of Kenosha on the 15 day of May, 2023, which action becomes effective upon receipt of approval of all other reviewing agencies and all conditions of the City of Kenosha's approval were satisfied as of the 15 day of June, 2023.

6/15/23
Date


John M. Antaramian, Mayor

6/15/23
Date

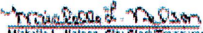

Michelle L. Nelson, City Clerk/Treasurer

TREASURER'S CERTIFICATE

STATE OF WISCONSIN
KENOSHA COUNTY) SS

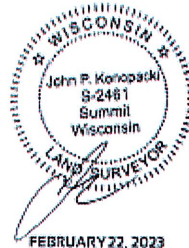
I, Michelle Nelson, being duly appointed Clerk/Treasurer of the City of Kenosha, do hereby certify in accordance with the records in my office, there are no unpaid taxes or special assessments as of 15 day of June, 2023 on any of the lands in the Certified Survey Map.

6/15/23
Date


Michelle L. Nelson, City Clerk/Treasurer

EASEMENT LINE TABLE

LINE NO.	BEARING	DISTANCE
L100	N01°33'43"W	83.01'
L101	S89°20'03"W	60.01'
L102	N01°33'43"W	1103.23'
L103	N02°29'30"W	1262.84'
L104	N09°58'57"W	49.21'
L105	N18°13'03"W	112.47'
L106	N01°53'03"W	132.82'
L107	N14°27'57"E	160.00'
L108	N01°53'03"W	250.48'
L109	S58°18'00"W	23.60'
L110	S51°42'00"E	20.00'



FEBRUARY 22, 2023

Prepared By:
■ Pinnacle Engineering Group
20725 WATERTOWN ROAD 1 SUITE 100
BROOKFIELD, WI 53186
OFFICE (262) 754-8888

This instrument drafted by John P. Koropacki, PLS License No. S-2461

PEGJ03#437.DCD
SHEET 6 OF 6

Exhibit C

Conditional Use Permit or CUP for Phase I

This shall be the recorded CUP, which is incorporated herein by reference, the first page of which is inserted below:

**CONDITIONAL USE PERMIT
STATE OF WISCONSIN**

Document Number

The Common Council of the City of Kenosha, Wisconsin, hereby grants to 38th Street, LLC, owner of the parcel, described with more particularity in the legal description attached hereto as "Exhibit A" and incorporated herein by reference a Conditional Use Permit for a distribution facility, as approved by the Common Council on May 1, 2023. This Conditional Use Permit is binding upon all future successors, assigns, owners, lessees, and/or tenants and shall be considered a covenant that runs with the land.

The following Exhibits are attached hereto:

- Exhibit A - Legal Description
- Exhibit B - Site Plan

The full approved plan set is on file with the Department of City Development at the Municipal Building, 625 52nd Street, Room 308, Kenosha, WI 53140.

Document #: **1949101**

Date: **2023-07-03** Time: **2:35 PM** Pages: **5**

Fee: **\$30.00** County: **KENOSHA** State: **WI**
REGISTER OF DEEDS: **JOELLYN M. STORZ**

Recording Area

Name and Return Address
City of Kenosha
City Development
625 52nd Street - Room 308
Kenosha, WI 53140

5-

Effective Date: May 3, 2023

The following Conditions of Approval shall apply to the property described in "Exhibit A":

Parcel Identification Number
08:221:25:252-014 / 08:221:25:252-033
08:221:25:252-035

Uline WQ at 128th Avenue and 38th Street
CONDITIONS OF APPROVAL

1. The following Conditions of Approval will run with the land and shall be included in a document recorded with the Kenosha County Register of Deeds:
 - a. The applicant shall obtain all required construction permits from the Department of City Inspections. This includes, but is not limited to Erosion Control, Building, Plumbing, Electrical and Occupancy permits.
 - b. The applicant shall obtain Driveway Approach, Paved Lawn Park, Public Right-of-Way Excavation, Stormwater Management and Parking Lot permits from the Department of Public Works.
 - c. All signs shall comply with Chapter 15 of the Code of General Ordinances and the applicant shall obtain sign permits for all new signs. A separate submission and permits are required for all signs. Sign information provided under the Conditional Use Permit is for reference only and does not constitute sign permit approval.
 - d. The development shall be constructed per the approved plans on file with the Department of City Development, Room 308, 625 52nd Street, Kenosha, WI 53140. Any changes to the approved plans shall require an amendment to the Conditional Use Permit. All changes shall be submitted to the Department of City Development for review and approval. Minor changes may be approved by the City Plan Division.
 - e. Prior to the issuance of any Occupancy permits, all parking areas, drives and designated paved areas shall have the initial lift of asphalt installed. The building exterior shall be completed per the approved plans, the exterior lighting shall be installed. All improvements indicated on the plans, including landscaping, shall be installed prior to the issuance of a final Occupancy permit.
 - f. Compliance with City and State and/or Federal Codes and Ordinances and the recorded Developer's Agreement. The buildings shall comply with the current Code standards in effect upon application for a building permit.

Exhibit D

Drawing of Phases of the Total Development Real Estate

[Note the Phases will not necessarily be developed in numerical order]

[Phase IV will only be built to the extent of the blue outline below unless otherwise approved in the eventual Site Plan for Phase IV. Note areas in light green are not owned by Developer]

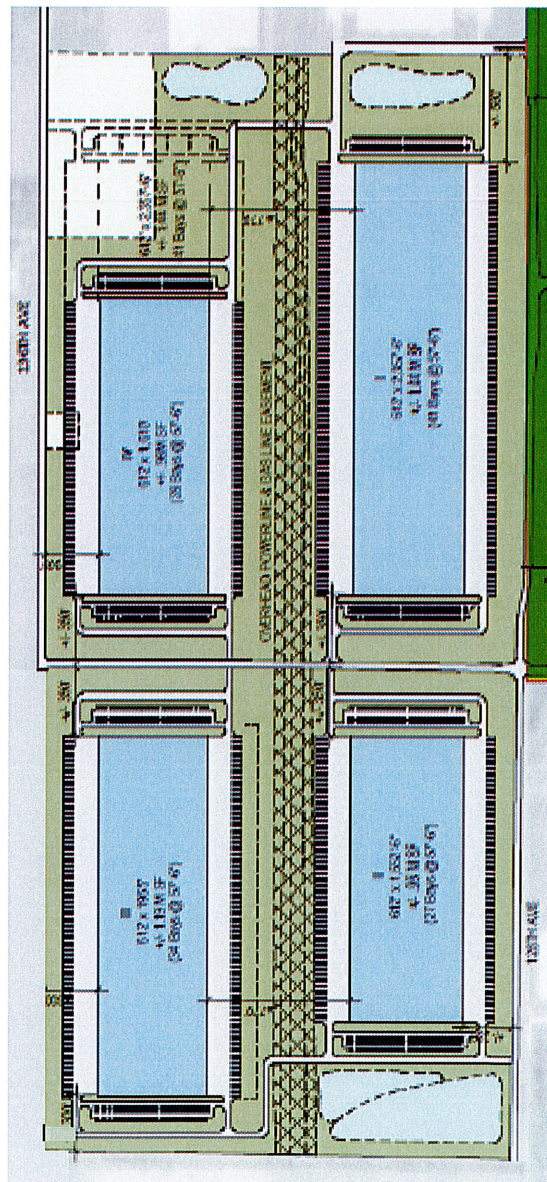


Exhibit E

Definitions of Various Improvements

The “Improvements” means all improvements Developer is making on the Total Development Real Estate, or on an individual Phase.

The “Public Improvements” are all of the following Improvements for each Phase, which are required by the City for public purposes, and will be the subject of the Letter of Credit:

- Street Improvements associated with that Phase, located on an adjacent public right of way, including land required to be dedicated herein for public right of way, and identified on Exhibit F.

- Utility Improvements required for that Phase, as identified in Exhibit H.

The “Public Dedicated Improvements” will be those Public Improvements for each Phase that will be dedicated to the City or Utility and become owned by the City or Utility, as required in the attached Development Agreement.

Exhibit F
Requirements for Street Improvements

The map below shows the “Total Development Real Estate” with markings to show the only Street Improvements required for any Phase of the Project.

The term “**Adjacent Streets**” shall mean the following:

- for the Phase I Development, 128th Avenue from the northern edge of the Phase I Land south to the centerline of 38th Street. [Note these improvements have been completed or are required in the Phase I Development Agreement not this Agreement]
- for the Phase II Development, 128th Avenue from the centerline of 38th Street south to the southern line of the Phase II Land, plus 38th Street, from the western right of way line of 128th Avenue to the western edge of the Phase II Land.
- for the Phase III Development, 38th Street, from the eastern edge of the Phase III Land to the western edge of the 38th Street Improvements defined below.
- for the Phase IV Development, 136th Avenue (C.T.H. UE) from the southwest corner of the Phase IV Land north to the northwest corner of the Phase IV Land.

Note the definition of Adjacent Streets is intended to identify which Streets are adjacent to a Phase but not to show the Developer’s requirements to build or install those improvements.

The “**Street Improvements**” shall be defined as follows, but only to the extent shown on the roadway improvement plans (“Roadway Plans”) defined in this exhibit:

The “**Phase I Street Improvements**” involve the improvements on 128th Avenue, immediately east of Phase I, south to the north line of the 38th Street Intersection, including the Towne Realty Improvements and roadway dedication from the Uline East Owner, all as defined in the Phase I Development Agreement. All of the Phase I Street Improvements are contained in the Phase I Development Agreement and nothing more is required in this Agreement for the Phase I Street Improvements, in connection with the development of the Project on the Phase II, III or IV Land.

There are no “**Phase II Street Improvements**” other than the 38th Street Improvements referenced below, plus any required Developer driveway connection improvements from the Phase II Land to the City paid improvements to 128th Avenue. The City has agreed to pay for any improvements needed to 128th Avenue other than those required in the Phase I Development Agreement.

The “**38th Street Improvements**” are only the improvements on the north and south sides of 38th Street, from the west side of 128th Avenue, to a point 1,100 feet west of 136th Avenue (C.T.H. UE), including driveways to 38th Street from the adjacent land, and

including the utilities located inside that right of way, consistent with the Roadway Plans defined below. Note the 38th Street Improvement plans must be approved prior to the issuance of any permits on any of the Phase II, III or IV Land, and such improvements must be completed before any occupancy permits are issued for the Phase II, III or IV Land. Note the Developer may construct “emergency only” access points to 38th Street, in advance of such access points being required for general driveway use. Any “emergency only” access points may be controlled by Developer with gates or other improvements to limit general access.

There are no “**Phase III Street Improvements**” other than the 38th Street Improvements.

There no “**Phase IV Street Improvements**” other than the 38th Street Improvements. The Phase IV Land will not have general access from 136th Avenue (C.T.H. UE) (only emergency access). The Phase IV Land will have its access from 128th Avenue, and, when the entrances to 38th Street are built as part of the 38th Street Improvements, from 38th Street. Note the Developer may construct “emergency only” access points to 136th Avenue. Any “emergency only” access points may be controlled by Developer with gates or other improvements to limit general access

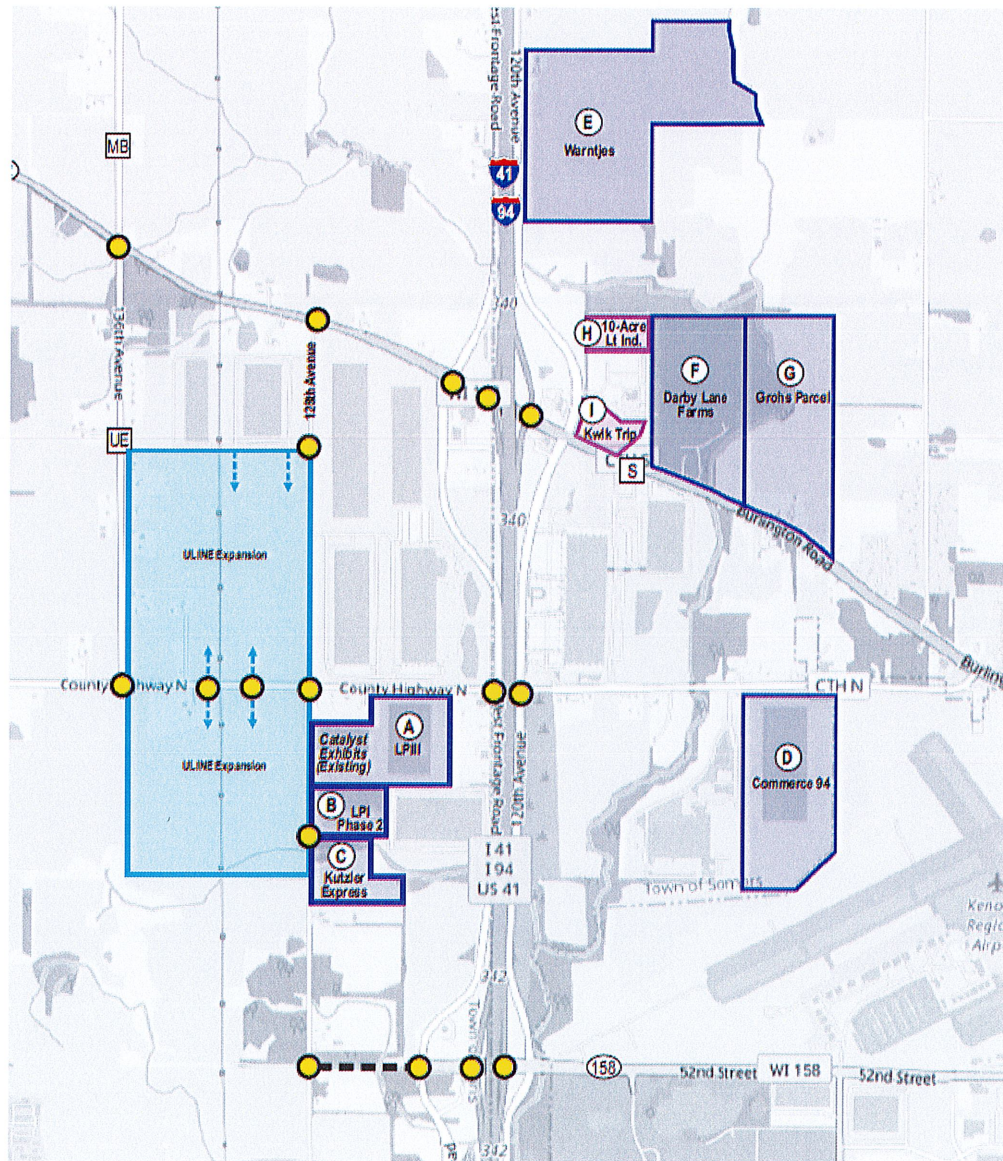
The 38th Street Improvements must be completed before a final occupancy permit can be issued for the Phase II, III or IV Land.

Out of an abundance of caution, the parties make the clarification that the Developer was requested to study, in the TIA for the Phase II, III and IV Land, a number of nearby intersections shown as yellow dots on the map below (the “Studied Intersections”), but that the Developer will not be required by the City or the State DOT to make improvements or in any way pay for intersection improvements at the Studied Intersections, other than for the Street Improvements stated in this Exhibit F, and the payment of the \$2,000,000 Traffic Improvement Fee, an Impact Fee. Any improvements for the 136th Avenue and Route 142 intersection, or other Frontage Road improvements, will be paid for by the City out of TIF or other funds. This is a material consideration for this Agreement.

Further, City confirms that the Street Improvements do not require the condemnation, donation or taking of any land from the Total Development Real Estate, other than for the 38th Street Improvements, as shown in the attached Roadway Plans, and the dedication of land on the east side of the Phase II Land, sufficient to make a 55 foot right of way from the section line abutting 128th Avenue. There shall be no dedication of land required on the west side of the Phase III or Phase IV Land for road right of way.

The City agrees to use all moneys it collected from the development impact fee or traffic impact fee for any such offsite traffic improvements. All obligations for the Street Improvements are subject to the provisions of the attached Agreement, including specifically the City/County Agreement Obligation regarding County road right of ways.

Map of the “Studied Intersections”



The “Roadway Plans” shall be the

Roadway plans drawn by Pinnacle Engineering Group dated May 22, 2023, for the Uline WQ Distribution Facility, pages C-1 to C-8 (the “blue line drawings”)

As detailed in the preliminary geometry plans drawn by Pinnacle Engineering Group dated March 5, 2024, as refined and subject to discussion and final approval by the City and Developer, which are on file with the City and incorporated herein by reference.

Exhibit G

Site Plan Review of Phases

[Intentionally Deleted]

Exhibit H

Utility Improvements and Utility Requirements

[this is intended to include all technical definitions of Public Improvements required for each Phase of Development]

Sanitary Sewerage Facilities to be installed, referred to in Section I.A.1. of this Agreement as the "Sanitary Sewerage Requirements" consists of the following:

- Extension of the existing 18 inch sanitary sewer main in 38th Street (CTH N) which is currently installed to a point approximately 300 feet west of the west right of way of 128th Avenue. The 18 inch sanitary sewer main shall be installed at minimum slope and extended to the west limits of any required improvements to the 136th Avenue (CTH UE) intersection.
- Installation of a 12 inch sanitary sewer main, at minimum slope, north to the limits of any required improvements to the 136th Avenue (CTH UE) intersection.
- Installation of any sanitary sewer laterals required for Phases II, III, and IV.
- All sanitary sewer facilities to be installed in accordance with Kenosha Water Utility specifications.

Water Supply and Distribution Facilities to be installed, referred to in Section I.B.1. as the "Water Supply and Distribution Requirements" consists of the following:

- Extension of the existing 16 inch water main in 38th Street (CTH N) which is currently installed to a point approximately 300 feet west of the west right of way of 128th Avenue. The 16 inch water main shall be extended to the west limits of any required improvements to the 136th Avenue (CTH UE) intersection.
- Installation of a 16 inch water main north to the limits of any required improvements to the 136th Avenue (CTH UE) intersection.
- Installation of any water services required for Phases II, III, and IV.
- All water main facilities to be installed in accordance with Kenosha Water Utility specifications.

Note, as provided in Section I A.1 of the Agreement related to Sanitary Sewerage Facilities, and in Section I.B.1 of the Agreement, related to Water Supply and Distribution Facilities, there is no requirement for any such facilities in, or to, the east side of 136th Avenue (CTH UE), except as provided above, for either the Phase III or Phase IV development, and further, there shall be no requirement to install such facilities for the benefit of any surrounding or adjacent land.

Exhibit I

[Intentionally Deleted]

Exhibit J
Right of Recovery Letter from City

[attach memo from Ian Bagley to Rich Schroeder dated October 19, 2023]

Engineering Services
4401 Green Bay Road
Kenosha WI 53144

Phone (262) 653-4315
Fax (262) 653-4303



"Providing and Protecting Kenosha's Greatest Natural Resource"

MEMO

To: Rich Schroeder, Deputy Director of Community Development and Inspections

From: Ian C. Bagley, P.E., Director of Engineering Services

Date: October 19, 2023

Subject: Attachment of 4 Parcels Located at the Southwest Corner of 38th Street and 128th Avenue

The Kenosha Water Utility (KWU) has reviewed the submittal for the above referenced attachment request. Please note the following comments as they relate to the parcel to be attached:

1. There is water main which extends across the 38th Street as well as the 128th Avenue frontages of this parcel which were installed by the Route 142 Uline development and extended by the Logistics Property Company development. These carry with them a deferred charge for right of recovery. This deferred charges will be due in full upon connection to the utilities. The deferred water main right of recovery for each parcel is detailed in the table below:

Parcel	Right of Recovery Due to Route 142 LLC	Right of Recovery Due to LPC Kenosha I, LLC
45-4-221-253-0105	\$2,918.40	\$0.00
45-4-221-253-0101	\$10,560.00	\$42,618.80
45-4-221-253-0420	\$0.00	\$53,024.00
45-4-221-253-0200	\$0.00	\$0.00
Total	\$13,478.40	\$95,642.80

It should be noted that the above parcels are currently owned by 38th Street LLC which is related to the ownership group of Route 142 LLC. The right of recovery owed to Route 142 LLC may be waived pending review by the City Attorney's office.

2. There is sanitary sewer main which extends across the 38th Street as well as the 128th Avenue frontages of this parcel which were installed by the Route 142 Uline development and extended by the Logistics Property Company development. These carry with them a deferred charge for right of recovery. This deferred charges will be due in full upon connection to the utilities. The deferred sanitary sewer main right of recovery for each parcel is detailed in the table below:



Parcel	Right of Recovery Due to Route 142 LLC	Right of Recovery Due to LPC Kenosha I, LLC
45-4-221-253-0105	\$3,648.00	\$0.00
45-4-221-253-0101	\$13,338.00	\$53,273.50
45-4-221-253-0400	\$0.00	\$66,280.00
45-4-221-253-0200	\$0.00	\$0.00
Total	\$16,986.00	\$119,553.50

It should be noted that the parcels are currently owned by 38th Street LLC which is related to the ownership group of Route 142 LLC. The right of recovery owed to Route 142 LLC may be waived pending review by the City Attorney's office.

3. There is an existing residence on parcel 45-4-221-253-0200 (13215 38th Street) . Please note that sanitary sewer and water service is not available to this parcel. If the residence is to remain the existing well must have a Private Well Permit on file in accordance with Rule 09-03 of the Kenosha Water Utility Rules and Regulations. If the well is to be abandoned KWU must be provided with the well abandonment certification.

CC: Curtis Czarniecki, P.E., General Manager
Adam Dow, P.E., Facility Plan Engineer