

Date: March 29, 2021

To: Town of Eagle Plan Commission and Town Board

From: Tim Schwecke, Town Planner

Subject: Review of development agreement for Royal Aire Estates subdivision; Camtec Inc, applicant (Diane Zakrzewski, agent)

Application: 2021-05; <https://s.zoninghub.com/Y433UELLDH>

Meeting: April 5, 2021 Plan Commission and Town Board meeting

The Town of Eagle approved the preliminary plat for Royal Aire Estates, subject to various conditions. One of the conditions requires the subdivider to submit a development agreement to the Town for review and obtain approval of the same.

The subdivider has submitted a draft for review. It is based on the Town's template agreement. The Town Attorney reviewed an earlier draft and offered recommended changes. They have been incorporated in the current draft.

Section XIV of the template limits the number of active building permits to four. This should be reviewed to determine if such restriction is appropriate in this instance. Staff is recommending the restriction be removed from the agreement.

Public notice Aside from being shown on a published meeting agenda, no other public notice is required.

Review procedure The Plan Commission makes a recommendation and the Town Board makes the final decision.

Motion for Plan Commission: Motion to recommend to the Town Board the approval of the development agreement, subject to the final review and approval of the Town Attorney and Town Engineer (and the removal of the provision in Section XIV limiting the number of active building permits).

Motion for Town Board: Motion to accept the Plan Commission's recommendation

Attachments:

1. Development agreement, dated March 29, 2021

**DEVELOPER'S AGREEMENT FOR
ROYAL AIRE ESTATES SUBDIVISION**

**TOWN OF EAGLE, WAUKESHA COUNTY,
WISCONSIN**

THIS AGREEMENT made as of the ____ day of _____, 2021, between Camtec, Inc. a Wisconsin Corporation, with its offices located at W309 S4860 Commercial Drive, North Prairie, Wisconsin 53153, hereinafter called "Developer", and the Town of Eagle, Waukesha County, State of Wisconsin hereinafter called "Town".

WITNESSETH:

WHEREAS, the developer owns approximately 81 acres of land in the Town, said land being described by the legal description set forth in Exhibit A (the "subject lands") and generally depicted by the map set forth in Exhibit B, both of which are attached hereto and incorporated herein by reference; and

WHEREAS, the developer desires to develop the subject lands as a residential subdivision by the creation of 18 single-family residential lots by use of the standard regulations as set forth in Chapter 236 of the Wisconsin Statutes and the municipal ordinance regulating land division and development; and

WHEREAS, Section 236.13 of the Wisconsin Statutes provides that as a condition of approval, the governing body of a municipality within which the subject lands lie may require that the developer make and install any public improvements reasonably necessary and/or that the developer provide financial security to ensure that the developer will make these improvements within reasonable time; and

WHEREAS, said subject lands are presently zoned Rural Residential (RR) and Upland Conservancy (UC), which allows the above-described development; and

WHEREAS, the developer and Town desire to enter into this agreement in order to ensure that the developer will make and install all public improvements which are reasonably necessary and further that the developer shall dedicate the public improvements to the Town, provided that said public improvements are constructed to municipal specifications, all applicable government regulations, this agreement and as required by the Town Engineer, without cost to the Town; and

WHEREAS, this agreement is necessary to implement the Town zoning and land division ordinances; and

WHEREAS, the developer agrees to develop subject lands as herein described in accordance with this agreement, conditions approved by the Town Plan Commission and Town Board, conditions of certain agencies and individuals in the County, all Town ordinances, and all laws and regulations governing said development; and

WHEREAS, the Town Board has given conditional preliminary plat approval to the development, as shown on the document marked "Preliminary Plat" on file in the Town Clerk's office, conditioned in part upon the developer and the Town entering into a developer's agreement, as well as other conditions as approved

- Draft March 29, 2021 -

Drafted by: Camtec, Inc as developer

Return to:

Tim Schwecke, Town Planner
Civi Tek Consulting
610 S Ferry Drive
Lake Mills, WI 53551

Parcel Number: EGLT1826998007

by the Town Board; and

WHEREAS, the developer is now seeking from the Town Board approval of the final plat for the development; and

WHEREAS, the developer has agreed to provide a financial guarantee in the form of a letter of credit to ensure the proper and timely completion of the development in accordance with this agreement to induce the Town to allow the final plat to be recorded prior to completion of the improvements.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the developer does hereby agree to develop subject lands as follows and as otherwise regulated by Town ordinances and all laws and regulations governing said development, the parties hereto agree as follows:

INCORPORATION OF RECITALS

The foregoing recitals are incorporated into and made part of this Agreement by reference.

DEVELOPER'S COVENANTS

SECTION I. IMPROVEMENTS

A. **PUBLIC STREETS**. The developer hereby agrees that, at developer's sole cost and expense:

1. Prior to the start of commencement of any ground-disturbing activities, the developer shall provide to the Town written certification from the developer's engineer that all public street plans, are in conformance with all federal, state, county and Town specifications, regulations and ordinances, and written proof from the Town Engineer evidencing review and approval of said plans.
2. The developer shall grade and install all planned public streets in accordance with the preliminary plat (or final plat if it has then been approved), the approved development plan of said development or subdivision, and the approved plans and specifications on file in the Town Clerk's office.
3. Construction of the public streets providing access to and fronting a specific lot will be completed, presented and accepted by the Town Board through the first lift of asphalt before issuance of any building permit(s) for said lot.
4. The first lifts for all public streets shall be completed and presented to the Town Board no later than **June 1, 2022** or as extended by the Town Board.
5. The final lift of asphalt shall be placed on all public streets at least one winter season after completion of the first lift, but not later than **December 31, 2023**, unless extended by the Town Board.
6. The developer shall maintain public streets, including snow plowing, unless otherwise approved by the Town Board, until such street(s) have been accepted by resolution by the Town Board.
7. In the event the developer installs any culvert, including driveway culverts, that consists of two or more sections, the developer agrees to provide photographic evidence to the Town Engineer that the joints are properly banded pursuant to Town requirements. All such connections must be approved by the Town Engineer before fill is placed over the culvert.
8. The developer shall install accel and decel tapers on Sprague Road as required by, and in accordance with plans and specifications approved by, the Town Engineer.

9. The developer shall furnish "as built" plans showing changes from the construction plans, pursuant to specifications approved by the Town Engineer. Said "as built" shall be on reproducible mylar and digital file in a format acceptable to the Town Engineer, and shall include field locations and hydrant valves and curb stops, if any.
10. Contractors working on the subdivision roads are required to clean up all mud, dirt, stone, or debris on the streets no later than the end of each working week. The developer shall have ultimate responsibility for cleaning up any and all mud, dirt, stone, or debris on the streets until final acceptance has been granted by the Town Board. Contractors working on any individual owner's Lot are required to clean up all mud, dirt, stone, or debris on the lot no later than the end of each working week and shall be responsible for cleaning up any and all mud, dirt, stone or debris resulting from the contractor's work on the owner's Lot. The Town shall make a reasonable effort to require the contractor, who is responsible for placing the mud, dirt, stone, or debris on the street, to clean up the same or to hold the subject property owner who hired the contractor responsible. The developer and/or subject property owner shall clean up the streets within 24 hours after receiving a notice from the Town. If said mud, dirt, stone, or debris are not cleaned up after notification, the Town Board may do so at the developer's and/or subject property owner's expense, at the Town's sole option.

B. SURFACE AND STORM WATER DRAINAGE. The developer hereby agrees that, at developer's sole cost and expense:

1. Prior to the start of construction of improvements, the developer shall provide to the Town written certification from the developer's engineer that all surface and storm water drainage facilities and erosion control plans provided for in the plans and specifications are in conformance with all federal, state, county and Town regulations, guidelines, specifications, laws and ordinances, and written proof that the Town Engineer and the Waukesha County Department of Parks and Land Use, Land Resources Division, if applicable, have reviewed and approved said plans.
2. The developer shall construct, install, furnish and provide adequate facilities for surface and storm water drainage throughout the development with adequate capacity to transmit the anticipated flow from the development, in accordance with all approved plans and specifications on file in the Town Clerk's office, and all applicable federal, state, county and Town regulations, guidelines, specifications, laws and ordinances, and as reviewed and approved by the Town Engineer and the Waukesha County Department of Park and Land Use, Land Resources Division, if applicable, including where necessary as determined by the Town Engineer, curb, gutter, storm sewers, catch basins and infiltration/retention/detention basins.
3. The developer agrees that the site grading and construction of surface and storm water drainage facilities shall be completed and approved by the Town Engineer before any building permits are issued.
4. The developer shall maintain roads free from mud and dirt from construction of the development in accordance with Section A(10) of this agreement.
5. The developer agrees that the Town Board will not approve the surface and storm water drainage system until the entire system is installed and landscaped in accordance with plans and specifications to the satisfaction of the Town Engineer.
6. The Town shall have the right to require the developer to install additional surface and storm water drainage measures if it is determined by the Town Engineer that the original surface and storm water drainage plan as designed and/or constructed does not provide reasonable storm water drainage within the development and surrounding area.
7. The developer shall furnish "as built" plans of the entire surface and storm water drainage system,

pursuant to specifications approved by the Town Engineer prior to the issuance of any building permit.

C. GRADING, EROSION AND SILT CONTROL. The developer hereby agrees that, at developer's sole cost and expense:

1. Prior to commencing site grading and excavation, the developer shall provide to the Town written certification from the developer's engineer that said plan, once implemented, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including proof of notification of land disturbances to the State of Wisconsin Department of Natural Resources, if applicable, and written proof that the Town Engineer and the Waukesha County Department of Park and Land Use, Land Resources Division, and the Army Corps of Engineers, if applicable, have approved said plans.
2. The developer shall cause all grading, excavation, open cuts, side slopes, and other land surface disturbances to be so seeded and mulched, sodded or otherwise protected so that erosion, siltation, sedimentation, and washing are prevented in accordance with the plans and specifications reviewed and approved by the Town Engineer, the Waukesha County Department of Park and Land Use, Land Resources Division, and the Army Corps of Engineers, if applicable,
3. All disturbed areas shall be restored to the satisfaction of the Town Engineer within 60 days of disturbance or at a later date as determined by the Town Engineer in writing. Any cash or letter of credit posted with the Town will not be released until the Town Engineer is satisfied that no further erosion measures are required.

D. LANDSCAPING AND SITE WORK. The developer hereby agrees that, at developer's sole cost and expense:

1. The developer shall preserve to the maximum extent possible existing trees, shrubbery, vines, and grasses not actually lying on the public streets, drainage ways, building foundation sites, private driveways, soil absorption waste disposal areas, paths and trails by use of sound conservation practices.
2. Wetlands and the isolated natural resource areas that extend into a residential lot shall be designated on the Lot and the Town Engineer shall approve boundaries prior to the issuance of building permits.
3. The Town has the right to require developer and, upon its creation, the owners' association, to trim and remove any landscape features that would interfere with safe operation and maintenance of the Town right-of-ways and drainage ways. In the event the developer or owner's association fail to trim/remove any such landscape feature(s) within 30 days of the Town's request, or such other time reasonably set forth in the Town's request, the Town may proceed to trim/or remove the interfering landscape feature(s) and assess the cost of such trimming/removal as a special charge under Wis. Stat. § 66.0627, as amended or renumbered from time to time.

E. STREET SIGNS AND TRAFFIC CONTROL SIGNS. The developer hereby agrees that, at developer's sole cost and expense:

1. Street signs, traffic control signs, and culverts as required by the Town shall be installed by the developer with approval of the Town, and the cost thereof shall be paid by the developer.
2. All traffic control signs and street signs, as required by the Town shall be installed or caused to be installed by developer within 5 working days of the placement of the first lift of asphalt.

F. RESERVED (SITE AMENITIES)

- G. ADDITIONAL IMPROVEMENTS. The developer hereby agrees that if, at any time after plan approval and during construction, the Town Engineer determines that modifications to the plans including additional improvements such as, for example, additional drainage ways, erosion control measures, and/or surface and storm water management measures are necessary in the interest of public safety, are necessary in order to comply with current laws, or are necessary for implementation of the original intent of the improvement plans, the Town is authorized to order developer, at developer's expense, to implement the same. If developer fails to construct the additional improvement within a reasonable time under the circumstances, the Town may cause such work to be carried out and shall charge against the financial guarantee held by the Town pursuant to this agreement.

SECTION II. TIME OF COMPLETION OF IMPROVEMENTS

Except as otherwise expressly provided for in this agreement, the improvements set forth in Section I above shall be completed by the developer in total within 18 months of the date of this agreement being signed. In every case, regardless of circumstances, all work contemplated by this agreement must be completed no later than December 31, 2023, unless this ultimate deadline is extended in writing by the Town Board.

SECTION III. FINAL ACCEPTANCE

Throughout this agreement, various stages of the development will require approval by the Town. "Final Acceptance" as used herein, however, shall be the ultimate acceptance of all of the improvements in the completed development as a whole, and shall be granted specifically by separate resolution of the Town Board. The two-year guarantee period provided for in this agreement shall not commence to run until final acceptance. The issuance of building permits and approval of various items of development shall not commence the two-year guarantee period.

SECTION IV. DEDICATION OF PUBLIC IMPROVEMENTS

Subject to all of the other provisions of this agreement, the developer shall, without charge to the Town, upon completion of the above described improvements, unconditionally give, grant, convey and fully dedicate the public improvements to the Town, its successors and assigns, forever, free and clear of all encumbrances whatever, together with and including, without limitation because of enumeration, any and all land, buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and hereditaments which may in any way be a part of or pertain to such improvements and together with any and all necessary easements for access thereto. After such dedication, the Town shall have the right to connect or integrate other improvements as the Town decides, with no payment or award to, or consent required of, the developer.

Dedication shall not constitute acceptance of any improvement by the Town Board. Improvements to be dedicated will be accepted by the Town Board by separate resolution at such time as the Town determines that such improvements are in acceptable form and according to the Town specifications. Said resolution shall be recorded, if needed, with the Waukesha County Register of Deeds. Developer will furnish proof to the Town, prior to the dedication required, that the public land and improvements proposed for dedication are free of all liens, claims and encumbrances, including mortgages.

SECTION V. ACCEPTANCE OF WORK AND DEDICATION

When the developer shall have completed the improvements herein required and shall have dedicated the same to the Town as set forth herein, the same shall be accepted by the Town Board if said improvements have been completed as required by this agreement and as required by all federal, state, county or Town guidelines, specifications, regulations, laws and ordinances and approved by the Town Engineer.

SECTION VI. APPROVAL BY TOWN NOT TO BE DEEMED A WAIVER

The ultimate responsibility for the proper installation of streets, stormwater facilities, drainage facilities, ditches, landscaping and all other improvements are upon the developer. The fact that the Town or its engineer, or its attorney, or its staff may approve a specific project shall not constitute a waiver, or relieve the developer from the ultimate responsibility for the design, performance and function of the development and related infrastructure.

SECTION VII. GUARANTEES OF IMPROVEMENTS

- A. **GUARANTEE.** The developer shall guarantee after Final Acceptance, the public improvements and all other improvements described in Section I above, against defects due to faulty materials or workmanship, provided that such defects appear within a period of two years from the date of Final Acceptance, by providing the Town with cash or a letter of credit in a form acceptable to the Town Attorney in an aggregate amount of 10 percent of the total cost of all improvements. The developer shall pay for any damages to Town property and/or improvements resulting from such faulty materials or workmanship. This guarantee shall not be a bar to any action the Town might have for negligent workmanship or materials. Wisconsin law on negligence shall govern such situations. If the developer fails to pay for any damages or defects to Town property and/or improvements, and the Town is required to draw against the cash or letter of credit on file with the Town, the developer is required to replenish said monies up to the aggregate amount of 10 percent of the total cost of all improvements.
- B. **OBLIGATION TO REPAIR.** The developer shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of the developer's guarantee and shall leave the improvements in good and sound condition, satisfactory to the Town Board at the expiration of the guarantee period.
- C. **NOTICE OF REPAIR.** If during said guarantee period, the improvements shall, in the reasonable opinion of the Town staff, require any repair or replacement which, in their judgment, is necessitated by reason of settlement of roadways, structure of backfill, or other defective materials or workmanship, the developer shall, upon notification by the Town the necessity for such repair or replacement, make such repair or replacement, at its own cost and expense. Should the developer fail to make such repair or replacement within the time specified by the Town in the aforementioned notification, after notice has been sent as provided herein, the Town Board may cause such work to be done, but has no obligation to do so, either by contract or otherwise, and the Town Board may draw upon such guarantee security to pay any costs or expenses incurred in connection with such repairs or replacements. Should the costs or expenses incurred by the Town Board in repairing or replacing any portion of the improvements covered by this guarantee exceed the amount of the guarantee security, then the developer shall immediately pay any excess cost or expense incurred in the correction process.
- D. **MAINTENANCE PRIOR TO ACCEPTANCE.**
 - 1. All improvements shall be maintained by the developer so they conform to the approved plans and specifications at the time of their Final Acceptance by the Town Board. This maintenance shall include maintenance as needed, such as crack filling, roadway patching and the like. In cases where emergency maintenance is required, the Town Board retains the right to complete the required emergency maintenance in a timely fashion and bill the developer for all such associated costs. Said bill shall be paid immediately by the developer. The developer's obligation to maintain all needed improvements shall expire at the expiration of the guarantee period.
 - 2. Street sweeping and dust suppression shall be done by the developer as needed to ensure a reasonably clean and safe roadway until Final Acceptance by the Town Board. Should the developer fail to meet this requirement, the Town Board may, at its option, cause the work to be done and bill the developer on a time and material basis. Said bill shall be paid immediately by the developer.
 - 3. In the event drainage problems arise within the subject lands or related activities on the subject

lands, the developer shall correct such problems to the satisfaction of Town staff. Such correction measures shall include, without limitation because of enumeration, cleaning of soil, loose aggregate and construction debris from culverts, drainage ditches and streets; dredging and reshaping of siltation or retention ponds; replacement of siltation fences; sodding and seeding; construction of diversion ditches, ponds, and siltation traps; and restoration of all disturbed areas. This responsibility shall continue until such time as the roads, ditches, and other disturbed areas have become adequately vegetated and the Town Board is satisfied that the developer has restored all areas which were disturbed because of this development.

SECTION VIII. TOWN RESPONSIBILITY FOR IMPROVEMENTS

The Town shall not be responsible to perform repair, maintenance, or snow plowing, unless otherwise approved by the Town Board, on any improvements until accepted by the Town Board.

SECTION IX. RISK OF PROCEEDING WITH IMPROVEMENTS PRIOR TO APPROVAL OF FINAL PLAT

If developer proceeds with the installation of public improvements or other work on the site prior to approval of the final plat, it proceeds at its own risk as to whether or not the final plat will receive all necessary approvals. The developer, prior to commencement of the installation of public improvements or other work on site, shall notify the Town of the developer's intention to proceed with the installation of public improvements or other work on site, prior to approval of the final plat. Additionally, developer shall make arrangements to have any public improvements and/or other work on site inspected by the Town Engineer.

SECTION X. FINANCIAL GUARANTEE

A. 1. Prior to the execution of this Agreement, Developer shall deliver or cause to be delivered to the Town cash or a letter of credit setting forth terms and conditions in a form approved by the Town Attorney in the amount as approved by the Town Engineer as a guarantee that developer will restore the subject property if the developer starts work on Improvements to the subject property but does not complete it. The restoration of the subject property for purposes of this Section X shall include restoration of any disturbed lands to grade and the installation of all necessary stabilization, erosion control and storm water management practices/facilities as determined to be reasonably necessary by the Town Engineer.

2. Based upon the terms of the Town's subdivision code concerning final plat approval, the Town and Developer anticipate that certain private and/o public improvements required under Section I this agreement (e.g., the final lift required under Section 1(A)(5), punch list items, etc.) will not be fully completed by Developer before recording of the final plat. Accordingly, Developer's submission of the final plat to the Town for approval shall be accompanied by a certification from Developer's Engineer estimating the costs to complete all then-remaining improvements required under Section 1. Said certification shall be reviewed by the Town Engineer. At the time of approval of the final plat by the Town, Developer shall file with the Town cash or a letter of credit in a form approved by the Town Attorney in the amount as approved by the Town Engineer as a guarantee that such private and public improvements will be completed and in accordance with the terms of this Agreement. Following the Town Attorney's approval of any letter of credit provided under this Section X(A)(2) as to form, the Town shall authorize the release of any remaining cash or letter of credit then held by the Town pursuant to the terms of Section X(A)(1) of this Agreement.

B. If at any time:

1. The developer is in default of any aspect of this agreement, or
2. The developer does not complete the installation of the improvements **within one (1) year** from the signing of this agreement unless otherwise extended by this agreement or by action of the

Town Board, or

3. The letter of credit on file with the Town is dated to expire 60 days prior to the expiration of the same if the same has not been extended, renewed or replaced, or
4. The developer fails to maintain a cash deposit or letter of credit in an amount approved by Town Engineer, and in a form approved by the Town Attorney, to pay the costs of improvements in the development,

the developer shall be deemed in violation of this agreement and the Town Board shall have the authority to draw upon the letter of credit.

C. The amount of the letter of credit shall be reduced from time to time as and to the extent that the portion of work required under this agreement is completed in accordance with the approved plans and specifications and paid for, provided that the remaining letter of credit is sufficient to secure payment for any remaining improvements and also provided that no reduction shall occur until it is approved by the Town Board.

D. The developer hereby represents to the Town, and agrees, that it will extend this guarantee beyond 14 months after the date of substantial completion, which developer recognizes is longer than the Town could require under Section 236.13(2)(a)(1), Wisconsin Statutes, in order to induce the Town to enter this Agreement and to ensure that the improvements are duly completed and accepted by the Town; alternatively, at developer's option, the developer shall give notice to the Town 12 months after the date of substantial completion and a thorough inspection shall be conducted and the Town shall draw any remaining funds as necessary from the financial guarantee to correct any work that is not satisfactorily completed.

E. The lending institution providing the irrevocable letter of credit shall pay to the Town Board all sums available for payment under the irrevocable letter of credit upon demand, subject to the terms and conditions of the irrevocable letter of credit, and upon its failure to do so in whole or in part, the Town shall be empowered in addition to its other remedies, without notice or hearing, to impose a special charge for the amount of said completion costs, upon each and every lot in the development payable with the next succeeding tax roll.

SECTION XI. BUILDING AND OCCUPANCY PERMITS

It is expressly understood and agreed that no building or occupancy permits shall be issued for any homes, including model homes, until the Town Engineer has determined that:

1. The installation of the first lifts of asphalt of the public street(s) providing access to and fronting a specific lot for which a building permit is requested has been completed and accepted by the Town Board.
2. The site grading and construction of the surface and storm water drainage facilities required to serve such homes are completed, are connected with the operating system as required herein, are cleaned as needed, and are approved by the Town Board.
3. All landscaping has been certified as complete by the Town Engineer.
4. All required grading plans have been submitted to, reviewed by and approved by the Town Engineer.
5. The developer has paid in full all permit fees and reimbursement of administrative costs as required by this agreement.

6. The developer has prepared appropriate deed restrictions which are approved by the Town, filed with the Town Clerk, and recorded with the Waukesha County Register of Deeds.
7. All destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish are removed from the development and disposed of lawfully.
8. All required "as built" plans for the subject lands have been submitted and approved by the Town Engineer.
9. All public and private utilities have been installed in the subject lands according to the WE Energies approved layout.
10. The developer is not in default of any aspect of this agreement.
11. There is no default of any aspect of this agreement as determined by the Town Board in consultation with the Town Planner, Town Engineer, and/or Town Attorney.

SECTION XII. RESERVATION OF RIGHTS AS TO ISSUANCE OF BUILDING PERMITS

The Town reserves the right to withhold issuance of any and all building permits if developer is in violation of this agreement.

SECTION XIII. VACANT LOT MAINTENANCE EASEMENT

Developer shall grant a vacant lot maintenance easement to the Town, in a form that is subject to the approval of the Town Attorney, and which shall be recorded with the Waukesha County Register of Deeds. The easement shall grant the Town the right (but not the obligation) to enter upon any vacant lot in the subject lands in order to inspect, repair, or restore the property so that it is in compliance with all applicable provisions of the Town's municipal code. A vacant lot shall include any lot that does not have an occupied principal structure that is used for single family purposes at the time of inspection, repair or restoration. All costs incurred by the Town in exercising its right to inspect, repair or restore the lot shall be borne by the owner of the lot necessitating such inspection, repair or restoration and if not paid for by such lot owner within 45 days of receipt of any invoice therefore, may be placed against the tax roll for the lot and collected as a special charge by the Town.

Developer shall provide a letter of credit in an amount approved by the Town Engineer, and in a form approved by the Town Attorney, to guarantee that all vacant lots in the subject lands shall, at all times, be properly maintained to the minimum standards described in the Town's municipal code. Said letter of credit shall be in full force and effect until such time as all lots in the development are rough graded and stabilized with an established growth of grass.

SECTION XIV. RESTRICTION AGAINST UNFINISHED OR UNOCCUPIED HOMES

The parties intend that all homes in the subject land shall be owned, occupied and used for single family purposes. The parties also intend and agree that homes on the lots will not be left unfinished or unoccupied for an extended period of time. Therefore, no more than 4 lots owned by the developer and/or by any person or entity for the benefit of the developer, shall be subject to a current building permit at any one time. Following the sale and residential occupancy of one such lot, the developer is entitled to receive one additional building permit for an additional lot, and so forth, provided that at no time shall the number of unfinished or unoccupied homes on lots owned, or beneficially owned, by the developer exceed said number. [Discuss with PC and TB]

SECTION XV. MISCELLANEOUS REQUIREMENTS

- A. EASEMENTS. The developer shall provide any easements including vision easements on subject lands deemed necessary by Town Engineer before the final plat is signed or on the final plat and such easements shall be along lot lines if at all possible.
- B. MANNER OF PERFORMANCE. The developer shall cause all construction called for by this agreement to be carried out and performed in a good and workmanlike manner.
- C. SURVEY MONUMENTS. The developer shall properly place and install any lot, block or other monuments required by State Statute, Town ordinance or the Town Engineer.
- D. DEED RESTRICTIONS. The developer shall execute and record deed restrictions in a form that is subject to the prior approval of the Town Board and Town Attorney, and provide proof of recording prior to sale of any lot(s) for the subject lands. The deed restrictions shall be recorded at the time of the recording of the final plat and shall contain language to require the lot owners and/or homeowner's association within the subdivision to maintain all stormwater management facilities and other common areas in accordance with the specifications on file with the Town including such amendments as may be made thereto from time to time by the Town Engineer. The deed restrictions shall also contain the following language:

"No owner of any lot shall or will at any time alter the grade of any lot from that which is naturally occurring on that lot at the time the site development improvements have been completed by the developer unless and until the lot owner shall first obtain the written approval of the Town Engineer for such grade alteration. In order to obtain this approval, it shall first be necessary for the lot owner, at the lot owner's expense, to have prepared a grading plan which shows in detail the area to be re-graded, the existing and proposed topography, analyzes the effects on site drainage, states that the effects on site drainage will not be in violation of law as to alteration of natural drainage courses, and is a plan which does not unreasonably affect an adjacent property owner as regards drainage or their viewing of unreasonable slope treatment. The Town Engineer's approval, if granted, shall not relieve the lot owner from the ultimate responsibility for the design, performance, and function of the grade alteration and/or drainage condition, and the lot owner by requesting the alteration, and/or by altering the grade, thereby agrees to indemnify and hold harmless the Town and its agents, employees and independent contractors and the developer regarding the same. The developer and/or the Town and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection, maintenance, correction of any drainage condition, and the property owner is responsible for cost of the same."

- E. GRADES. Prior to the issuance of a zoning permit for a specific lot, the developer and/or lot owner and/or their agent shall furnish to the zoning administrator of the Town a copy of the stake out survey showing the street grade in front of the lot, the finished yard grade, the grade of all four corners of the lot, and the lot corner grades of the buildings on adjoining lots where applicable, as existing and as proposed.
- F. UNDERGROUND UTILITIES. The developer's contractor(s) shall install all electrical, telephone, cable and gas utilities underground. Coordination of installation and all costs shall be the responsibility of the developer.
- G. PERMITS. The developer shall provide and submit to the Town requesting the same, valid copies of all governmental agency permits.
- H. REMOVAL OF TOPSOIL. The developer agrees that no topsoil shall be removed from the subject lands without approval from the Town Engineer.

- I. PARK AND PUBLIC SITE DEDICATION FEES. The developer has opted to pay a park and opens space fee in lieu of dedication as set forth in § 480.131 of the municipal code. Such amount will be paid by the lot owner prior to issuance of a building permit for a single-family home.
- J. CONVERSION TAX. The developer shall pay any conversion tax from agricultural use to residential use as may be required by state law, including Wis. Stat §74.485. (verify)
- K. PREVAILING WAGE RATES AND HOURS OF LABOR. If any aspect of the development involves a project of public works that is subject to the payment of prevailing wages and hours of labor pursuant to applicable state or federal laws, all such requirements must be satisfied.
- L. NOISE. The developer shall make every effort to minimize noise, dust and similar disturbances, recognizing that the subject lands are located near existing residences. Construction of improvements shall not begin before 7:00 a.m. during weekdays and Saturdays, and 9:00 a.m. on Sundays. Construction of improvements shall not continue beyond 7:00 p.m. during weekdays and Saturdays, and 5:00 p.m. on Sundays.
- M. DEBRIS. The developer shall have ultimate responsibility for cleaning up debris that has blown from buildings under construction within the subject lands until such time as all improvements have been installed and accepted by the Town Board. The Town shall make a reasonable effort to require the contractor, who is responsible for the debris, to clean up the same or to hold the subject property owner who hired the contractor responsible. The developer and/or subject property owner shall clean up the debris within 24 hours after receiving a notice from the Town Engineer. If said debris is not cleaned up after notification, the Town may do so at the property owner's expense.
- N. PUBLIC CONSTRUCTION PROJECTS. If any aspect of the development involves a public construction project subject to the State law, all requirements of the State Public Construction Bidding Law must be satisfied, including but not limited to, providing a performance bond.
- O. IMPACT FEES. The lot owner agrees to pay all applicable impact fees or any other fees as may be required by Town ordinance.
- P. ZONING CODE. The developer acknowledges that the lands to be developed are subject to the Town's zoning regulations and/or Waukesha County's zoning regulations.
- Q. TOWN REVIEW. The Town, its officials, employees, and agents agree that they will act in good faith and will not obstruct or unreasonably delay Developer's efforts with respect to the development, including with respect to the timing, level, or issuance, as applicable, of inspections, approvals, permits, plat approval, and other similar matters, and will treat Developer in a manner consistent with their treatment of other similarly-situated developers and will not arbitrarily impose construction or other requirements on Developer that could cause undue burdens with respect to costs relating to the development. Nothing in this Agreement, however, shall be considered as limiting the right of the Town to enforce the terms of its ordinances including, but not limited to, its building, land division, and zoning codes. This Agreement shall also not be deemed to constitute a building permit, occupancy permit or any other permit or approval required by applicable federal, state or Town statute, ordinance, code, rule, regulation, order or any other law, or to constitute a waiver of, exemption from, or exception to the need for any such permit or approval.

SECTION XVI. PAYMENT OF COSTS, INSPECTION & ADMINISTRATIVE FEES

The developer shall pay and reimburse the Town promptly upon billing for all verifiable fees, expenses, costs and disbursements that are incurred by the Town in connection with this development or relative to the construction, installation, dedication, and acceptance of the development improvements covered by this agreement, including without limitation by reason of enumeration, design, engineering, review, supervision, inspection and legal, administrative and fiscal work. Town employee costs shall be based on regular Town

pay rates (or engineering and administrative overtime, if applicable) plus 40 percent on the hourly rate for overhead and fringe benefits for any time actually spent on the project. Any costs for outside consultants shall be charged at the rate the consultant charges the Town. Any such charge not paid by developer within 30 days of being invoiced may be charged against the financial guarantee held by the Town pursuant to this agreement, or assessed against the development land as a special charge pursuant to §66.0627, Wis. Stats.

SECTION XVII. GENERAL INDEMNITY

In addition to, and not to the exclusion or prejudice of, any provisions of this agreement or documents incorporated herein by reference, the developer shall indemnify and save harmless and agrees to accept tender of defense and to defend and pay any and all legal, accounting, consulting, engineering and other expenses relating to the defense of any claim asserted or imposed upon the Town, its officers, agents, employees and independent contractors growing out of this agreement by any party or parties. The developer shall also name as additional insureds on its general liability insurance the Town, its officers, agents, employees and any independent contractors hired by the Town to perform services as to this development and give the Town evidence of the same upon request by the Town.

SECTION XVIII. INSURANCE

The developer, its contractors, suppliers and any other individual working on the subject property shall maintain at all times until the expiration of the guarantee period, insurance coverage in the forms and in the amounts as required by the Town.

SECTION XIX. EXCULPATION OF TOWN CORPORATE AUTHORITIES

The parties mutually agree that the Town Chair and the Town Board, and/or the Town Clerk, entered into and are signatory to this agreement solely in their official capacity and not individually, and shall have no personal liability or responsibility hereunder; and personal liability as may otherwise exist, being expressly released and/or waived.

SECTION XX. GENERAL CONDITIONS AND REGULATIONS

All provisions of the Town ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be a part of this agreement as fully as if set forth at length herein. This agreement and all work and improvements required hereunder shall be performed and carried out in strict accordance with and subject to the provisions of said ordinances.

SECTION XXI. ZONING

The Town does not guarantee or warrant that the subject lands will not at some later date be rezoned, nor does the Town herewith agree to rezone the lands into a different zoning district. It is further understood that any rezoning that may take place shall not void this agreement.

SECTION XXII. COMPLIANCE WITH CODES AND STATUTES

The developer shall comply with all current and future applicable codes of the Town, County, State and federal government and, further, developer shall follow all current and future lawful orders of any and all duly authorized employees and/or representatives of the Town, County, State or federal government.

SECTION XXIII. PRELIMINARY PLAT AND FINAL PLAT CONDITIONS

The developer acknowledges that the subject land is subject to a conditional preliminary plat approval and a conditional final plat approval by the Town. The developer further agrees that it is bound by these conditions. A copy of the conditional preliminary plat approval for the subject property is attached hereto and incorporated herein as Exhibit B, and the conditional final plat approval for the subject property is

incorporated herein as Exhibit C. If there is a conflict between the conditions in said conditional approvals and the developer's agreement, the more restrictive shall apply.

SECTION XXIV. AGREEMENT FOR BENEFIT OF PURCHASERS

The developer agrees that in addition to the Town's rights herein, the provisions of this agreement shall be for the benefit of the purchaser of any lot or any interest in any lot or parcel of land in the subject lands.

SECTION XXV. ASSIGNMENT

The developer shall not assign this agreement without the prior written consent of the Town. If required by the Town, the assignee must agree to all terms and conditions of this document in writing.

SECTION XXVI. PARTIES BOUND

The developer or its assignees shall be bound by the terms of this agreement or any part herein as it applies to any phase of the development of the subdivision.

SECTION XXVII. HEIRS & ASSIGNS

This agreement is binding upon the developer, owners, their successors and assigns, and any and all future owners of the subject lands (the "successors"). This section allows for Town enforcement of the terms and conditions of this agreement against all such successors, as the subdivider. This section does not, however, grant rights to such successors absent Town written consent, as described in Section XXVI, titled "Assignment." [If missing section isn't restored, the section number needs to be corrected]

SECTION XXVIII. PHASING OF DEVELOPMENT

The subdivision will be developed in a single phase.

SECTION XXIX. SALES OF LOTS

No lots in the subject lands may be sold until the approved final plat, vacant lot maintenance easement, and deed restrictions have been recorded by the Waukesha County register of deeds office.

SECTION XXX. MORTGAGEE CONSENT

The undersigned mortgagee of the property by signature below consents to this developer's agreement, and agrees that its lien of mortgage shall be subordinate to the rights of the Town granted by this developer's agreement.

SECTION XXXI: RECORDING

This agreement, or a memorandum of this agreement, shall be recorded by the Waukesha County register of deeds office against the subject lands and shall run with the land.

SECTION XXXII. STORMWATER AGREEMENT

Prior to the sale of any lot in the subdivision, in addition to the requirements of Section XXXI of this agreement, the property owner and/or developer, as applicable, shall enter a stormwater maintenance agreement in a form approved by the Town Attorney and the Town Engineer to ensure the proper maintenance of all stormwater facilities within the subject lands, and such stormwater agreement shall be recorded against the subject lands.

SECTION XXXIII. AMENDMENTS

The Town and developer, by mutual consent, may amend this agreement at any meeting of the Town Board. The Town shall not, however, consent to an amendment until after first having received a recommendation from the Town's Plan Commission.

SECTION XXXIV. MISCELLANEOUS

Camtec, Inc. shall be registered with the Wisconsin Department of Financial Institutions for the duration of this agreement and all guarantee periods provided for hereunder.

IN WITNESS WHEREOF, the developer, mortgagee, and the Town have caused this agreement to be signed by their appropriate officers and their corporate seals (if any) to be hereunto affixed in three original counterparts the day and year first above written.

The remainder of this page left intentionally blank

DEVELOPER: CAMTEC, INC.

By: _____
Diane T Zakrzewski, President

By: _____
Sandy D Campbell, Secretary

STATE OF WISCONSIN)
) ss
COUNTY OF _____)

Personally came before me this ____ day of _____, 2021, the above-named persons, Diane T Zakrzewski and Sandy D Campbell, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

TOWN OF EAGLE

Donald Malek, Town Chair

ATTEST:

Lynn Pepper, Town Clerk

STATE OF WISCONSIN)
) ss
COUNTY OF WAUKESHA)

Personally came before me this ____ day of _____, 2021, the above-named Donald Malek, Town Chair, and Lynn Pepper, Town Clerk, of the above-named municipal corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such individual and Town Chair and Town Clerk of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers of said municipal corporation by its authority and pursuant to the authorization by the Town Board from their meeting on the ____th day of _____, 2021.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

By: Citizens Bank

Name: _____

Title: _____

STATE OF _____)
) ss
COUNTY OF _____)

Personally came before me this _____ day of _____, 2021, the above named-person
_____, authorized Signatory of _____, to me
known to be the person who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF _____
My commission expires: _____

APPROVED AS TO FORM:

Attorney Paul E. Alexy, Municipal Law & Litigation Group, S.C., Town Attorney

EXHIBIT A – Description of the Subject Land

To be supplied by developer's surveyor.

EXHIBIT B – Preliminary Plat

EXHIBIT C – Final Plat