DEVELOPMENT AGREEMENT

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

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Document Number

Document Name

THIS AMENDED AND **RESTATED DEVELOPMENT AGREEMENT** ("Agreement") is made this ____ day of _____, 2016, between the CITY OF LAKE GENEVA, Walworth County, Wisconsin ("City"), Southland Farms LLC, a Wisconsin limited liability Company (Owner), and Taylor Morrison of Illinois, Inc., an Illinois Corporation ("Developer").

Name and Return Address
GODFREY, LEIBSLE, BLACKBOURN & HOWARTH, S.C.
354 Seymour Court
Elkhorn, Wisconsin 53121

RECITALS

WHEREAS, the City is a Wisconsin municipal corporation, organized and existing pursuant to Wis. Stat. Ch. 62, with authority to enter into this Agreement under its zoning and annexation ordinances, as well as the general home rule authority vested in it under Wisconsin law; and

ZYUP00149C, ZYUP00174, ZYUP00173, ZYUP00149A, ZA 10270000, and ZYUP00149D
Parcel Identification Number (PI

WHEREAS, the Owner is the owner of certain real property located in the City, previously known as Geneva Raceway, and later Southland Farms, of approximately 170.63 acres, located between Townline Road to the north and Bloomfield Road to the south, and more particularly described in the attached Exhibit A incorporated herein ("Symphony Bay"); and

WHEREAS, the Developer is the contract purchaser of Symphony Bay; and

WHEREAS, Southland Farms was zoned PD, Planned Development, per Ordinance No. 05-24, and is the subject of a General Development Plan approved August 18, 2005, and an amendment thereto, approved August 14, 2006, and subsequently further amended on July 27, 2015 (as Symphony Bay) (collectively, "GDP") and is now known as Symphony Bay. A Preliminary Plat of Symphony Bay Subdivision has been approved by the City. Concurrently herewith, Owner is applying for approval of a Final Plat of Symphony Bay Subdivision, a copy of which is attached hereto as Exhibit B and incorporated herein ("Final Plat"). A Precise Implementation Plan ("PIP") for Symphony Bay has been approved by the City, on _____, 2015 and is attached as Exhibit C; and

WHEREAS, the Developer and Owner desire to develop Symphony Bay as a fully-integrated, phased residential development pursuant to the GPD and the PIP; and

WHEREAS, Symphony Bay conforms to the City's 1997 Comprehensive Master Plan, projecting Mixed Residential uses for Symphony Bay; and

WHEREAS, the City entered into that certain Development Agreement dated February 11, 2008 with Southland Farms, LLC as "Developer" (the "Original Agreement") and thereafter entered into that certain First Amendment to Development Agreement with Developer dated January 24, 2011 (the "First Amendment"); and

WHEREAS, Southland Farms, LLC has entered into a contract to sell Symphony Bay to Taylor Morrison of Illinois.

NOW, THEREFORE, the City, Southland Farms, LLC, as Owner, and Taylor Morrison of Illinois, Inc., as Developer, have deemed it necessary and convenient to amend and restate the Original Development Agreement and such Agreement is hereby amended and restated in its entirety as follows:

SECTION 1
RESTATEMENT OF RECITALS

SECTION 1.1 **Recitals Incorporated**. The Recitals set forth hereinabove are restated in the text of this Agreement by reference as if set forth in full herein, and as such constitute agreements by and between the parties made part and parcel of this Agreement.

SECTION 2
PUBLIC AND PRIVATE IMPROVEMENTS

SECTION 2.1 **Permitted Phasing**. The portions of Symphony Bay designated for single-family and duplex development under the PIP shall be developed in phases ("Phased Development"). It is estimated that it may take up to ten (10) years or more to fully develop, construct, and sell the Phased Development. As Symphony Bay proceeds, the Developer will install all necessary infrastructure, including streets, sanitary sewer and related facilities, public water mains and related facilities, and storm water management system facilities (collectively, "Improvements"), as may be necessary to serve each individual phase so undertaken. All Improvements shall comply with City and state standards, to be reviewed and approved by the City Engineer, as provided below. The sanitary sewer and related facilities, water mains and related facilities, and streets designated as public on the Final Plat, shall be dedicated and conveyed or transferred to the City pursuant to this Agreement. The sequence, order, and pace of the phasing/staging shall remain in the sole discretion of the Developer; provided, however, that each phase or portion thereof commenced by the Developer, including the initial phase, shall be a "stand alone" phase or "partial" phase. A "stand alone" phase or

"partial" phase means the completed Improvements shall service the subject phase or partial phase in such a manner that the residential dwellings, other structures, and utilities constructed therein are fully serviceable and functional without being dependent upon the timing of the construction or order of any other phase or the balance of the subject phase.

SECTION 2.2 **Phasing**. The Improvements will be constructed in up to four (4) phases. Attached hereto as Exhibit D is a diagram depicting each of the four (4) phases which shall be developed.

a. The Phase I Improvements shall include:

1. As identified on the Final Plat: (i) Outlot 2 and the storm water management system facilities located thereon, (ii) Demolition of the existing barn, and racetrack facilities (iii) the following public streets: _____ (iv) Primary entrance feature at Townline Road, and secondary entrance monuments at Bloomfield Road and, (v) Walking trails through the Outlot 1 and Outlot 2

2. The Improvements necessary to support the Phase I Improvements and the dwelling units to be located within such phase.

b. The Phase II Improvements shall include:

1. As identified on the Final Plat: (i) Outlot 3 and the initial Amenity center facilities. (the total amenity center buildout and other outdoor improvements will be constructed in phase throughout the life of the development, and (ii) the following public streets: _____ and

2. The Improvements necessary to support the Phase II Improvements and the dwelling units to be located within such phase.

c. Phase III Improvements shall include:

1. As identified on the Final Plat: (i) the following public streets: _____ and

2. The Improvements necessary to support the Phase III Improvements and the dwelling units to be located within such phase.

d. Phase IV Improvements shall include:

1. As identified on the Final Plat: (i) the following public streets: _____ and

2. The Improvements necessary to support the Phase IV Improvements and the dwelling units to be located within such phase

Developer may, at any time, seek to modify or amend Exhibit D and the corresponding phasing in Section 2.2 administratively, by written approval of _____, upon application to the City, which shall not be unreasonably withheld.

SECTION 2.3 **Contractors**. The Developer shall furnish, or cause to be furnished, all labor and services, material, and work for the construction and completion of the Improvements for the subject phase of Symphony Bay. The parties acknowledge and agree that the Developer may have any or all of the Improvements constructed and supplied by various contractors, and the City specifically agrees that this shall be permitted. The City declares that the Developer may employ any such general contractor or subcontractors, in its own discretion and of its own choosing. The contractors, however, shall appear on the City's pre-qualification list of contractors.

SECTION 2.4 **Improvements' Compliance with Plans**. The Developer will construct and complete, or cause to be constructed and completed, the Improvements for the subject phase of Symphony Bay in a thorough, workmanlike, and substantial manner in every respect, to the satisfaction and approval of both the City Engineer and the City Council, within the times specified herein and in strict accordance with the instructions and information contained in this Agreement, the performance bond, and the plans and specifications submitted as part of the PIP and reviewed and approved by the City Engineer (collectively, "Plans"), all of which documents are hereby made a part of this Agreement and form the Agreement documents as fully as if the same were set forth at length herein. The Developer, however, shall not be considered in default of any of the terms, covenants, and conditions of this Agreement if the Developer fails to perform any of its obligations hereunder and such failure is caused, in whole or in part, by any act of God, weather conditions, strikes, labor shortages, fires, casualties, shortages of materials, work stoppages, or other matters beyond the reasonable control of the Developer. In the event that any matters set forth in this section delay the Developer's ability to timely perform its obligations under this Agreement, the date upon which said obligations were to be completed shall be extended for a like number of days.

SECTION 2.5 **Required Improvements**. The following are the Improvements which will be required by the City for any phase of Symphony Bay which is commenced by the Developer. No improvements which are not specifically contained in the Plans shall be required to be installed by Developer or shall be required by the City to be installed

without the express consent of Developer, notwithstanding any new ordinances or any modifications to the ordinances or requirements of the City from time to time. Until and unless Developer files the surety bond for a phase, as provided in Section 8.4 hereof, and commences development of such phase, it shall have no obligation to install Improvements on the phase or otherwise develop such phase.

a. **Survey Monuments**. The Developer shall install survey monuments, placed in accordance with requirements of Wis. Stat. § 236.15.

b. **Roads, Streets**.

1. After the installation of temporary block corner monuments by the Developer, and establishment of street grades from the Plans, the Developer shall grade the right-of-way of all streets of the subject phase in accordance with the Plans.

2. All roads and streets depicted in the Plans and the Final Plat shall be dedicated to the City as public streets.

3. After the installation of all utility and storm water management system Improvements, the Developer shall surface all roadways in dedicated streets to the widths as shown on the Plans. Said surfacing shall be done in accordance with the Plans. Sonata Way shall have a street width of thirty-seven feet (37') from back of curb to back of curb. All other public streets of Symphony Bay shall have a street width of twenty-eight feet (28') from back of curb to back of curb. All streets of Symphony Bay shall have, at a minimum, a four inch (4") blacktop mat (bituminous concrete pavement).

4. No occupancy permit within any phase will be issued until all Improvements are completed within such phase, as well as placement of the first lift of asphalt ("Binder Course"); provided, however, the occupancy permits for residential dwellings shall be issued by the City prior to installation of the final layer of asphaltic pavement. *See* Section 8.02, below.

5. With the exception of the construction as specified in the Plans, no improvements to Townline Road or

Bloomfield Road shall be required of the Developer.

6. No traffic signal lights are anticipated for any intersection of a Symphony Bay street, road, or private way with Townline Road or Bloomfield Road, or within Symphony Bay.

c. **Curb and Gutter**. Symphony Bay is urban in nature and, therefore, curb and gutter installation shall be necessary.

d. **Sidewalks**. The Developer shall install sidewalks in accordance with the Plans. The sidewalks shall be generally located on one side of the street, as depicted on the Plans. The Developer may defer the construction of sidewalks on each lot until the construction of a dwelling unit on each of the lots is completed, thus avoiding unnecessary damage and destruction to the sidewalk, but the sidewalk for each lot shall be completed prior to the issuance of the final occupancy permit therefor. All sidewalks within any phase of development shall be installed prior to City acceptance of improvement for that phase.

e. **Sanitary Sewer System**. The Developer shall construct the public sanitary sewer Improvements to make adequate sanitary sewerage service available to each lot within the subject phase of Symphony Bay. The size, type, and installation of all sanitary sewers and laterals to street line (including such lift stations as may be necessary) shall be in accordance with the Plans. The Developer shall have the right to locate a lift station within a building to be constructed by the Developer in the public park identified as Outlot 2 on the Final Plat, in accordance with the Plans. Any oversizing costs for installation of facilities greater than that required to service Symphony Bay shall be borne by the City to the extent that the same is an incremental cost, which cost shall include such oversized facilities and their construction and installation. The City shall pay the cost of such oversizing within a reasonable time from its receipt of an invoice for the cost of such oversized facilities, not exceeding ninety (90) days. The Developer agrees that the City will not accept the public sanitary sewer Improvements for any phase until the same have been installed in accordance with the Plans.

f. **Storm Water Management System**. The Developer shall construct the storm water management system Improvements, which include catch basins and inlets, storm sewers, road ditches and open channels, detention/retention basins, and other water quality components as may be required for the subject phase of Symphony Bay. All such Improvements are to be of adequate size and grade to hydraulically

accommodate maximum potential volumes of flow. The type of Improvements required, the design criteria, and the sizes and grades shall be in accordance with the Plans. The storm water management system Improvements shall be designed to present no hazard to life or property. The size, type, and installation of all storm water drains and sewers proposed to be constructed shall be in accordance with the Plans. The City will not accept any storm water management system Improvements until the same have been installed in accordance with the Plans, and in no event will the City accept the storm water management system Improvements located on Outlot 2 of Symphony Bay, the maintenance of which shall be the responsibility of the Developer or the homeowners or condominium owners associations to be formed for the portions of Symphony Bay served by such Improvements. If such associations fail to perform such maintenance, the City, upon advance written notice to the associations, shall have the right of access to the storm water management system Improvements on Outlot 2 for inspection, public drainage conveyance, and repairs.

g. **Public Water Supply Facilities**. The Developer shall construct public water mains in such a manner as to make adequate water service available to each lot within the subject phase of Symphony Bay. The size, type, and installation of all public water mains proposed to be constructed shall be in accordance with the Plans. One (1) one inch (1") copper water service shall be installed for each lot to the street line. Any oversizing costs for installation of facilities greater than that required to service Symphony Bay shall be borne by the City to the extent that the same is an incremental cost, which cost shall include such oversized facilities and their construction and installation. The City shall pay the cost of such oversizing within a reasonable time from its receipt of an invoice for the cost of the construction and installation of such oversized facilities, not exceeding ninety (90) days. The Developer agrees that the City will not accept the public water supply Improvements for any phase until such Improvements have been installed in accordance with the Plans.

h. **Other Utilities**.

1. The Developer shall cause electrical power, gas, telephone facilities, and cable television service to be installed in such a manner as to make adequate service available to each lot in Symphony Bay. All electrical power, gas, telephone facilities, and cable television service shall be located, where practicable, in underground conduits.

2. Plans indicating proposed locations of all electrical power, gas, and telephone distribution and transmission lines required to service the subject phase of Symphony Bay shall be reviewed and approved by the City Engineer.

i. **Street Lights**. Street light and sign Improvements for the subject phase of Symphony Bay shall be installed at the Developer's cost and shall conform to City standards. Installation shall be approved by the City Engineer and the Utilities Director. Following installation and approval, such light and sign Improvements shall be the property of the City, and the City shall maintain same. Such Improvements shall be located within the right-of-way to be dedicated to the City.

j. **Landscaping**. The Developer shall:

1. Preserve, to the maximum extent possible, existing trees, shrubbery, vines, and grasses not actually lying in public roadways drainageways, building foundation sites, private driveways, paths, and trails by use of sound conservation practices.

2. Remove and lawfully dispose of all destroyed trees, brush, stumps, shrubs, and other natural growth and all rubbish.

k. **Park Area**. Designated on the Final Plat as public parks (collectively, "Parks"). The Parks shall be dedicated as park and recreation area for use by the general public. This park and open space requirement exceeds the requirement of City Code § 66.97, of five percent (5%) of the gross land within Symphony Bay for dedication of a park and open space requirement, and as such shall be in lieu of any and all park fees as required by City Code § 66.97(2). Included in such Conservation Area, the Developer shall construct, at its own expense, a walking path designed and located in accordance with the PIP.

l. **Barn**. The existing barn will be demolished during Phase 1 construction.

m. **Cell Tower.** Until the existing cellular telephone transmission tower located on Lot 154 of the Final Plat is permanently removed, No homes are permitted to be constructed on Lots 153, 154, 155. Upon removal of the cell tower, construction of one 2 unit duplex shall be permitted on each lot.

SECTION 3
DEDICATION

SECTION 3.1 **Dedication**. Subject to all of the other provisions of this Agreement, the Developer shall, without charge to the City, upon completion of all of the above-described Improvements for the subject phase of Symphony Bay, unconditionally give, grant, convey, and fully dedicate same to the City, its successors and assigns, forever, free and clear of all encumbrances, together with, including, without limitation, all buildings, structures, mains, conduits, pipes, lines, and appurtenances which may in any way be a part of or pertain to such Improvements, and together with all necessary easements for access and maintenance thereto.

SECTION 4
RECAPTURE

SECTION 4.1 **Recapture**. The parties intend that the costs for the extension and looping by the Developer of public water main from S.T.H. 120 to the western boundary of Symphony Bay ("Water Main") shall be recaptured from the other properties benefitting from the extension of the Water Main (collectively, "Benefitted Properties"); provided, however, that if none of the Benefitted Properties connects to the Water Main to serve such property within thirty (30) years after the date of the acceptance by the City of the dedication thereof, no such costs shall be recaptured from the Benefitted Properties. The total of such costs and the Benefitted Properties shall be agreed upon by the City and the Developer upon the acceptance of the dedication of the Water Main by the City.

SECTION 4.2 **Allocation**. When a request is made to the City to connect to the Water Main to serve any of the Benefitted Properties, the City shall institute special assessment procedures in accordance with Wis. Stat. § 66.0703, or such other applicable provision relating thereto, subjecting such property to a special assessment or charge to pay its share of the costs for the connection to the Water Main, to be allocated among the Benefitted Properties on the basis of their proportionate lineal footage of Water Main. The City shall not permit any of the Benefitted Properties to connect to the Water Main until there has first been paid to the City such property's share of such costs as provided herein.

SECTION 4.3 **Collection**. The City shall collect the proportionate share of the cost from the Benefitted Properties as determined herein for the benefit of the Developer. Within a reasonable time after receiving such share, the City shall forward the full amount thereof to the Developer or the Developer's assignee. The City shall take all steps legally permissible to attempt to recapture assessments from the Benefitted Properties as provided herein, but disclaims any personal liability in the event such recapture cannot legally be accomplished by reason of lapse of time, illegality, or otherwise. The Developer waives any right of action against the City for any sums that the City is unable to recapture.

SECTION 5
PLANS

SECTION 5.1 **Plans On Site**. The Developer shall keep itself supplied with the latest issues of all the Plans for the subject phase of Symphony Bay, and shall keep one (1) copy thereof at the site of the work, in good order and available to the City Engineer, or his or her inspectors, representatives, or agents.

SECTION 5.2 **Filing Plans**. At least two (2) complete copies of the Plans shall be filed with the City Clerk, together with two (2) sets of the Plans, one (1) set each in Mylar and digital format, of the Plans to the City Engineer and the Public Works Director, and all such copies of the Plans shall remain the property of the City.

SECTION 5.3 **City Engineer Instruction**. The City Engineer shall promptly furnish the Developer with such additional instructions relating to the Plans, by means of drawings, plans, or otherwise, as is required to proceed with the public Improvements on the subject phase of Symphony Bay. All such drawings and additional instructions shall be consistent with this Agreement and reasonably inferable therefrom.

SECTION 5.4 **Conformity with Plans**. All Improvements shall be executed in conformity with the Plans, including additional instructions. The Developer shall cause no work to be performed without proper drawings, plans, and specifications.

SECTION 5.5 **Additional Plans**. If any additional plans or specifications are prepared by the Developer, the cost of same shall be paid for by the Developer. If any additional plans or specifications are prepared by the City Engineer, the Developer shall pay to the City all costs incurred by the City for the preparation of said plans and specifications, which costs shall include engineering, legal, administrative, and all other miscellaneous costs. The Developer shall pay to the City all costs incurred by the City Engineer when he or she reviews the Plans that are prepared by, or at the direction of, the Developer for the subject phase of Symphony Bay.

SECTION 5.6 **As Built Drawings**. The Developer shall file with the City Engineer a complete set of "AS BUILT DRAWINGS," one (1) set each in Mylar and digital format, for all of the Improvements under this Agreement upon the completion of the subject phase of Symphony Bay. The Developer, in its sole discretion, may commission the City Engineer to prepare such drawings, at the Developer's expense.

SECTION 6
CONSTRUCTION AND INSPECTION

SECTION 6.1 **Commencement**. No construction, installation, or Improvements shall commence for the subject phase of Symphony Bay until the Developer has made arrangements for inspection and construction staking, and the City Engineer has given written authorization.

SECTION 6.2 **Inspection**. The Developer, prior to any work within the subject phase of Symphony Bay, shall make arrangements with the City Engineer to provide for adequate inspection during construction. The City Engineer, and/or his or her inspector, shall inspect and approve all work to assure that the Plans comply with the laws, ordinances and regulations of the City (collectively, "Code") and any other applicable governmental authority, subject to the provisions of this Agreement. The City Engineer shall approve all work prior to release of the sureties.

SECTION 6.3 **Access**. The City Engineer, his or her inspectors, representatives, or agents, shall, at all times, have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the public Improvements are being carried on and conducted.

SECTION 6.4 **Assistance**. The Developer shall provide all facilities and assistance requested or required to carry out the work of supervision and inspection by the City Engineer, his or her inspectors, representatives, or agents, for the subject phase of Symphony Bay.

SECTION 6.5 **Responsibilities Not Relieved**. Inspection of the Improvements by these authorities or their representatives shall in no manner be presumed to relieve, in any degree, the responsibility or obligations of the Developer or to constitute the Developer as an agent of the City.

SECTION 6.6 **Materials Inspection**. No material of any kind shall be used in the public Improvements for the subject phase of Symphony Bay until it has been inspected and accepted by the City Engineer, or his or her inspector. All rejected materials shall be immediately removed from Symphony Bay. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once, regardless of previous inspection. Inspection of materials shall be promptly made and, where practicable, at the source of supply.

SECTION 6.7 **Request for Inspection**. Whenever the specifications, the instructions of the City Engineer, the Code, or the laws, ordinances, or regulations of any public authority require work to be specifically treated or approved, the Developer's contractor shall give the City Engineer timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for such inspection.

SECTION 6.8 **Compliance with Laws**. The Developer and every contractor or person doing or contracting to do any work contemplated by this Agreement shall keep itself fully informed of all national and state laws and the Code in any manner affecting the Improvements for the subject phase of Symphony Bay, and shall at all times observe and comply with such national and state laws and the Code regardless of whether such national and state laws and the Code are mentioned herein, and shall indemnify the City,

its officers, agents, and employees, against any claim or liability arising from or based on the violation of any national and state laws and the Code.

SECTION 6.9 **Permits**. The Developer shall secure, at its own expense, all necessary certificates and permits from municipal or other public authorities required in connection with the Improvements for the subject phase of Symphony Bay, and shall give all notices required by law, ordinance, or regulation and the Code. The Developer shall pay all fees and charges incident to be due for the lawful prosecution of the work contemplated by this Agreement and any extra work performed by the Developer.

SECTION 6.10 **Engineering Fees**. The City shall require that the City Engineer provide the Developer with a written, detailed estimate of the anticipated cost of all engineering inspection of construction, construction staking, and all inspections by the City Engineer, or his or her inspector for the subject phase of Symphony Bay, before the commencement of such phase. The Developer shall pay to the City the actual cost billed by the City Engineer for such phase.

SECTION 7
PROTECTION OF WORK, PROPERTY, AND PERSONS

SECTION 7.1 **Safety Precautions**. The Developer shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work on the subject phase of Symphony Bay. The Developer will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury, or loss to, all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off Symphony Bay, and other property at Symphony Bay, or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction on the subject phase of Symphony Bay.

SECTION 7.2 **No Nuisance**. The Developer shall provide all necessary privy accommodations for the use of its contractors, and shall maintain the same in a clean and sanitary condition. The Developer shall not create or permit any nuisance to the public or to residents in the vicinity of the work on the subject phase of Symphony Bay.

SECTION 7.3 **Safety Regulation Compliance**. The Developer will comply with all applicable safety laws, ordinances, rules, regulations, orders of any public body having jurisdiction, and the Code. The Developer will erect and maintain, as required by the conditions and progress of the work on the subject phase of Symphony Bay, all necessary safeguards for safety and protection. The Developer will notify owners of adjacent properties when prosecution of the work may affect them. The Developer will remedy all damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by the Developer's contractors or any subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them be liable.

SECTION 7.4 **Preventing Damage**. In emergencies affecting the safety of persons or the work or property at Symphony Bay, or adjacent thereto, the Developer shall immediately act to prevent threatened damage, injury, or loss.

SECTION 8
TIME FOR COMPLETION OF WORK; PERFORMANCE BOND

SECTION 8.1 **Commencement**. It is anticipated that construction of the Improvements for the initial phase of Symphony Bay will commence no later than May 2016. The term of this Agreement shall expire on the tenth (10th) anniversary date of such commencement of construction; provided, however, that the Developer may seek extension as reasonably necessary to complete Symphony Bay.

SECTION 8.2 **Final Lift**. The City acknowledges and agrees that during the construction of each phase, the Developer will not have to lay the final layer of asphaltic pavement to avoid damage and account for settling; provided, however, that said final layer shall be constructed within the later of (i) twenty-four (24) months of the time the Developer commences the construction of the segment of road within the subject phase, or (ii) the issuance of certificates of occupancy for seventy-five (75) percent of the dwelling units within the subject phase. Prior to the installation of the final layer of asphalt pavement, the Developer shall repair all damaged road base and replace binder course as required by the City Engineer. Developer may start construction of production homes within a phase after the binder course within the phase has been installed. As the road construction continues, each segment shall be dedicated to the City by the Developer upon its acceptance pursuant to this Agreement.

SECTION 8.3 **Model Homes**. No building permit will be issued to any lot within the subject phase of Symphony Bay until the installation of sanitary sewer, water, electrical power, gas, telephone facilities, cable television service, and a Binder Course of asphalt base on the roadway adjacent to the parcel has been completed. However, the Developer may construct up to four (4) single-family model homes and one (1) duplex model home within Symphony Bay before the forgoing Improvements are constructed. The City shall issue building permits to the Developer for such model homes upon the approval of the engineering drawings, the acceptance by the City of a surety bond, and the Developer's filing of appropriate applications therefor, although the roadway and other Improvements located therein have not been constructed or installed. Occupancy, however, will not be granted to the Developer for such model homes until installation of binder course. None of the forgoing shall limit the Developer's right to construct additional model homes in a phase for which the Improvements have been constructed.

SECTION 8.4 **Security**. A surety bond will be filed with the City prior to construction of the subject phase of Symphony Bay. The procedure for the filing of the surety bond shall be as follows: A surety bond equal in amount to one hundred twenty percent (120%) of the public Improvements for the subject phase of Symphony Bay shall be

issued by a financial institution acceptable to the City. Said surety bond may be reduced from time to time by the value of Improvements for the subject phase of Symphony Bay previously completed and fully paid. The security will be reduced proportionately as each aspect of the construction for the subject phase of Symphony Bay has been completed and paid for. Should additional Improvements for the subject phase of Symphony Bay be added or the cost of the intended Improvements for the subject phase of Symphony Bay prove to be larger than originally anticipated, the surety bond shall be immediately supplemented to include any additional amounts or other estimated costs with respect to said Improvements. To secure the Developer's warranty of the public Improvements for the subject phase under subsection 11.01(c), below, the Developer shall maintain maintenance bond in the amount of twenty percent (20%) of the cost of such Improvements for twelve (12) months.

SECTION 8.5 **Acceptance of Work**. No act of the City, of the City Engineer, or of any representative of either, in inspecting the public Improvements of the subject phase of Symphony Bay, or any extension of time for the completion of such Improvements, shall be regarded as an acceptance of such Improvements or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of the City Engineer. No waiver of any breach of this Agreement by the City of anyone acting on its behalf shall be held as a waiver of any other subsequent breach thereof. Any remedy provided herein shall be taken and construed as cumulative.

SECTION 8.6 **Breach, Completion**. In the event the Developer fails to complete the public Improvements within the specified time for the subject phase of Symphony Bay, commits a breach of any of the other covenants hereunder, or if the Developer becomes insolvent, or is declared bankrupt, or commits any act of bankruptcy or insolvency, or makes an assignment for the benefit of creditors, or from any other cause whatsoever, does not carry on the public Improvements in an acceptable manner, the City shall give notice in writing to the Developer and its surety of such delay, neglect, or default, specifying the same, and if the Developer, within a period of ten (10) days after such notice, does not proceed in accordance therewith, but subject to the provisions of Section 2.4 hereof, then the City shall, upon written certificate from the City Engineer of the fact of such delay, neglect, or default, and the Developer's failure to comply with such notice, have full power and authority to call upon the surety or complete the work in accordance with the terms of this Agreement; or the City may take over the public Improvements for the subject phase of Symphony Bay, including any or all materials and equipment on the ground as may be suitable and acceptable, and may complete the public Improvements for the subject phase of Symphony Bay by or on its own account, or may enter into a new agreement with another party for the completion of the public Improvements of the subject phase of Symphony Bay, according to the terms and provisions hereof, or use such other methods as, in its opinion, shall be required for such completion of in an acceptable manner. All costs and charges incurred by the City, together with the cost of completing the public Improvements for the subject phase of Symphony Bay under this Agreement, shall be charged to the Developer, and the Developer and its surety shall be liable therefor.

SECTION 9
RISK OF LOSS

SECTION 9.1 **Risk of Loss**. The risk of loss or damage of any kind whatsoever to materials stored on Symphony Bay which are to be incorporated into any phase of Symphony Bay, and the risk of damage or destruction to Symphony Bay or any part thereof, at any time prior to the completion and acceptance of the public Improvements to be performed under this Agreement, is assumed by the Developer.

SECTION 10
DEVELOPER'S INSURANCE

SECTION 10.1 **Insurance**. The Developer shall not commence, or cause to be commenced, work on the subject phase of Symphony Bay under this Agreement until it has obtained all insurance required under this subsection, and such insurance has been approved by the City; nor shall the Developer allow any contractor or subcontractor to commence such Improvements on such phase until all such insurance required of the Developer has been so obtained and approved.

SECTION 10.2 **Workmen Compensation Insurance**. The Developer shall take out and maintain during the life of this Agreement, Workmen Compensation Insurance for all of its employees employed at Symphony Bay, and in case any work is sublet, the Developer shall require all contractors and subcontractors to similarly provide Workmen Compensation Insurance for all of their employees, unless such employees are covered by the protection afforded by the Developer. In case any class of employees at Symphony Bay for the subject phase of Symphony Bay are engaged in hazardous work under this Agreement, but are not protected under the Workmen Compensation Statute, the Developer shall provide, and shall cause such contractor and subcontractor to provide, Employer's Liability Insurance for the protection of any employees not otherwise protected.

SECTION 10.3 **Public Liability and Property Damage Insurance**. The Developer shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect the Developer and any contractor or subcontractor performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this Agreement, whether such operations be by itself or by any contractor or subcontractor, or by anyone directly or indirectly employed by any of them, and the amount of such insurance shall be as follows: Public liability insurance in an amount not less than One Million Dollars ($1,000,000.00) for injuries, including accidental death, to any one (1) person, and subject to the same limit for each person in an amount not less than Two Million Dollars ($2,000,000.00) on account of one (1) accident, and property damage insurance in an amount of not less than Five Hundred Thousand Dollars ($500,000.00).

SECTION 10.4 **Contractor Insurance**. The Developer shall require each and every contractor and subcontractor to obtain and maintain similar policies with the same limits stipulated above, including contractor's contingent or protective insurance, if necessary to protect the Developer from damage claims arising from operations under this Agreement.

SECTION 10.5 **Insurance Covering Special Hazards**. The following special hazards shall be covered by rider or riders to the public liability and/or property damage insurance policy or policies herein before required to be furnished by the Developer, or by separate policies of insurance, in amounts not less than Three Hundred Thousand Dollars ($300,000.00) to cover injury to underground structures such as wires, conduits, pipes and sewers, and explosions of any kind, including blasting, and public liability insurance of Two Hundred Fifty Thousand Dollars ($250,000.00)/Five Hundred Thousand Dollars ($500,000.00), with property damage not less than One Hundred Thousand Dollars ($100,000.00) for each and every truck or other motor vehicle used in hauling materials to or from Symphony Bay.

SECTION 10.6 **Proof of Carriage of Insurance**. Prior to commencement of work hereunder, the Developer shall furnish to, and obtain approval from the City Administrator, of certificates of insurance relating to all coverages required hereby and herein.

SECTION 10.7 **Cancellation of Insurance**. Each policy shall provide that it is noncancellable for a period of thirty (30) days following written notice of intention to cancel given by the insurance carrier via certified mail.

SECTION 10.8 **Endorsements**. The Developer will secure a contractual endorsement covering the hold harmless and indemnity agreements contained in Section 11 hereof.

SECTION 11
HOLD HARMLESS AND INDEMNITY AGREEMENT

SECTION 11.1 **Indemnity**. The Developer agrees to indemnify and hold harmless the City, its agents and employees, from any and all claims of all persons, entities, or the like for damages of any kind relating to injury, death, or property damage arising directly or indirectly out of the work performed or to be performed under this Agreement, including extra work, by reason of negligent or wrongful conduct in whole or in part on the part of:

a. The Developer, or any of its servants, employees, personnel, agents, representatives, contractors, or subcontractors, or the agents of said respective parties, or persons performing any work under this Agreement or in connection with any work performed under this Agreement.

b. The City, or any of its officers, supervisors, officials, agents, servants, employees or personnel, or independent

contractors (collectively, Agents) for which the City is responsible for any liability, except this provision shall not apply to negligent acts or omissions or wrongful conduct by the City or its Agents with respect to the design or inspection of the work performed by the City or any of its Agents, as provided in this Agreement.

c. The Developer hereby warrants that all Improvements required herein will utilize good quality materials and workmanship. The Developer further agrees to warrant all Improvements of the subject phase against any and all defects in material or workmanship for a period of one (1) year from the date of the acceptance of the public dedication thereof.

SECTION 11.2 **Defense**. The Developer agrees to assume the defense of any action filed to which this hold harmless agreement applies, and to pay all costs and attorney fees incurred in connection therewith, and to pay any final judgments entered in an action to which this hold harmless agreement and indemnification agreement applies.
SECTION 11.3 **Immunity Not Affect**. This indemnity and hold harmless agreement shall be applicable regardless of any provision of immunity provided for by law.

SECTION 11.4 **Certificate of Insurance**. The Developer further agrees that prior to commencement of the public or private Improvements under this Agreement, it will deposit with the City Administrator certificates of insurance relating to the foregoing, together with a contractual indemnity endorsement relating to this hold harmless agreement.

SECTION 12
MISCELLANEOUS

SECTION 12.1 **Complete Agreement, Amendment**. There are no representations, covenants, warranties, promises, agreements, conditions, or undertakings, oral or written, between the City and the Developer, other than as set forth herein, which is to be read and interpreted in conjunction with this Agreement as to the subject matter hereof. Except as otherwise expressly provided herein, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon either party unless made in writing by the City Council and the Developer, and signed by them.

SECTION 12.2 **Cooperation with Permits, Easements**. The City shall cooperate with the Developer in the Developer's endeavors to obtain required permits and approvals from all other governmental or quasi-governmental agencies or boards, whether federal, state, or local, with jurisdiction over any aspect or part of Symphony Bay, which support and assistance shall also extend to any public and private utility companies. The City shall also cooperate with the Developer in obtaining all necessary easements and shall

grant the Developer access to all City owned rights-of-way to enable the Developer's provision of sanitary sewer, water service, and electrical service to Symphony Bay, in accordance with the Plans. City shall process any applications and shall issue such permits within the following time periods after application of such permits are made: Building Permits – 10 days; Occupancy Permits – 10 days; Subdivision – at time of PIP approval.

SECTION 12.3 **Assessment Pending Development**. If allowed by law, Symphony Bay shall be assessed as improved property in only those phases that have been actually improved and developed by the Developer. The remainder of Symphony Bay not so improved or developed shall be assessed as it is actually used. If the provisions of this subsection should conflict with any future change in present state law relating to appropriate methods of assessment, then the provisions of said changed state law shall prevail.

SECTION 12.4 **Impact Fees**. It is understood that the Developer, and the Developer's successors and assigns, shall be required to pay all impact fees in accordance with the Code at such time as each future building connection is made. Impact fees for building connections within the City shall be in accordance with the schedule attached as Exhibit E. For a period of five (5) years after the date of this Agreement, no new impact fees or increases in existing impact fees shall be charged or sought by the City with respect to any lot within Symphony Bay. Developer shall be permitted to prepay any impact fees at the rate applicable to the date any fees are paid.

SECTION 12.5 **Codes and Fees**. City agrees that for a period of five (5) years after the date of the execution of this Agreement:

a. no new fees or any modification of existing fees that are enacted by the City shall be applicable to Symphony Bay.

b. no new codes or any modifications of existing codes enacted by the City shall be applicable to Symphony Bay;

c. there shall be no requirements made by the City that the residential buildings within Symphony Bay be sprinklered.

SECTION 12.6 **Monotony Code**. Any exiting ordinance or ordinance hereinafter enacted or modified which limits, governs or controls architectural style, colors, building materials or placement of homes on lots which may be in conflict with the "Monotony Code Lot Restrictions Symphony Bay Development" (the "Monotony Code") attached hereto as Exhibit F shall not be applicable to houses built on Symphony Bay, and the Monotony Code shall apply to all such homes.

SECTION 12.7 **Temporary Certificates of Occupancy**. Temporary certificates of occupancy shall be issued during periods of winter weather for homes when construction has not been completed.

SECTION 12.8 **Snowplowing of Streets**. The City shall, at its cost, snowplow all streets within a phase after the binder course has been installed within the phase.

SECTION 12.9 **Sale Trailers**. Developer shall be allowed to place and maintain on any phase trailers for use as a temporary sales office for homes to be constructed within Symphony Bay. Such trailers may be used until permanent sale facilities are built by Developer.

SECTION 12.10 **Marketing Improvements**. Developer shall be permitted to install the following improvements to be used for the marketing of homes on Symphony Bay at such locations as may be approved by the City:

a. 10' by 30' sales signs at each of Bloomfield Road, Townline Road within Symphony Bay and an offsite location on Highway 120;

b. Temporary guest parking areas for potential customers who may come to Symphony Bay; and

c. Temporary promotional areas for sales events conducted by Developer within Symphony Bay.

SECTION 12.11 **New Elevations**. Developer may at any time introduce new elevations to be constructed within Symphony Bay, which may be approved administratively by ____ _____ without the need for Developer to obtain any additional approvals.

SECTION 12.12 **Severability**. In the event that any provision of this Agreement conflicts with applicable state or federal law, such conflict shall not affect the other provisions of this Agreement which can be given effect without the conflicting provision, and, to this end, the provisions of this Agreement are declared to be severable and the invalidity or partial invalidity or unenforceability of any one (1) provision or portion hereof shall not affect the validity or enforceability of the remaining portions of said provision or any other provisions of this Agreement.

SECTION 12.13 **City Not Partner**. The City does not, in any way or for any purpose, become a partner, employer, principal, agent, or joint venturer of or with the Developer.

SECTION 12.14 **Captions**. This Agreement shall be construed without reference to titles of any sections or subsections hereof, which are inserted only for convenience.

SECTION 12.15 **Binding Agreement, Assignment**. This Agreement, and all of the terms, covenants, and conditions hereof and of the various instruments executed and delivered pursuant hereto, shall be binding upon and inure to the benefit of the parties and

their respective successors and assigns. The Developer shall be permitted to assign any and all of its rights hereunder; provided, however, the City shall be notified, in writing, of any such assignment within thirty (30) days before the effective date of such assignment, and such written notice shall include the name, address, and telephone number of the assignee; and, provided further, that such assignment shall not be effective unless and until the assignee satisfies the City that it may succeed to the surety bond as provided under this Agreement, in such manner and form acceptable to the City Attorney, or assignee provides a new surety bond acceptable to the City.

SECTION 12.16 **Governing Law**. This Agreement shall be construed under the laws of the State of Wisconsin.

SECTION 12.17 **Counterpart Execution**. This Agreement, and all other documents or instruments that may be required by this Agreement, may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) and the same instrument. In addition, this Agreement may contain more than one (1) counterpart of the signature page, and this Agreement may be executed by the affixing of the signatures of each of the signers to one (1) of such counterpart signature pages; all of such counterpart signature pages shall be read as though one (1), and shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY:

CITY OF LAKE GENEVA, a Wisconsin municipal corporation

By:_____
Jim Conners, Mayor

Attest:_____
Sabrina Waswo, City Clerk

APPROVAL OF COMMON COUNCIL

This Agreement was approved by the Common Council of the City of Lake Geneva by Resolution dated the ____ day of _____, 2015.

Property Owner:

Southland Farms, LLC, a Wisconsin limited liability company

By:_____
Brian C. Pollard
Its: Managing Member

Developer:

Taylor Morrison of Illinois, Inc. an Illinois corporation,

By:_____
Steve Atchison
Its: President

By:_____
_____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION

All of Symphony Bay subdivision, being a redivision of all of vacated Southland Farms Subdivision, except Lots 74, 85, 231 and 232 and portions of Townline Road and Bloomfield Road dedicated to the public, located in the Northwest 1/4 of the Northeast 1/4, the Northeast 1/4 of the Northeast 1/4, the Southeast 1/4 of the Northeast 1/4 and the Southwest 1/4 of the Northeast 1/4 of Section 6 and the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Northwest 1/4 of Section 5 all in Township 1 North, Range 18 East, City of Lake Geneva, Walworth County, State of Wisconsin.

Containing or 6,331,744 Square Feet or 145.357 acres, more or less.

EXHIBIT B

FINAL PLAT

See attached.

EXHIBIT C

PRECISE IMPLEMENTATION PLAN

EXHIBIT D

IMPROVEMENTS

EXHIBIT E

IMPACT FEES SCHEDULE

EXHIBIT F

MONOTONY CODE

MONOTONY CODE LOT RESTRICTIONS

SYMPHONY BAY DEVELOPMENT

Restriction:

a) The following shall apply to all homes within the Symphony Bay Development

No house shall have the same Configuration that is within two (2) house on either side **or** on any of the three houses most directly across the street from the subject house. Additionally, the house directly behind a corner subject house is included in these criteria

No house shall have the same Color Package that is within two (2) house on either side **or** on any of the three houses most directly across the street from the subject house. Additionally, the house directly behind a corner subject house is included in these criteria

Definitions:

a) Configuration – a combination of product type. Elevation, exterior fenestration (siding, stucco, brick or stone), and color package.

b) Color Package – a combination of siding, stucco, brick, stone, trim/gutter, accent, and roof colors incorporated into the exterior color fenestration of a single home.