

Land Division Ordinance

**Town of Milltown
Polk County, Wisconsin**

Adopted December 9, 2002

**Land Division Ordinance
Town of Milltown, Polk County, Wisconsin**

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Land Division Ordinance Town of Milltown, Polk County, Wisconsin

Article I General Provisions

1.1 Title

This ordinance shall be known, referred to, or cited as the LAND DIVISION ORDINANCE, TOWN OF MILLTOWN, POLK COUNTY, WISCONSIN.

1.2 Authority

These regulations are adopted under the authority granted by Secs. 60.22(3), 61.34(1) and 236.45 of the Wisconsin Statutes. The Board of Supervisors of the Town of Milltown, Polk County, Wisconsin, does ordain as follows.

1.3 Purpose and Intent

The purpose and intent of this ordinance is to:

1. Promote the public health, safety, and general welfare of the community;
2. Encourage the most appropriate use of land;
3. Provide the best possible living environment for people;
4. Conserve the value of buildings placed upon the land by furthering the orderly layout and use of land;
5. Insure proper legal description and proper monumenting of land;
6. Prevent overcrowding of land and avoid undue concentration of population;
7. Lessen congestion in the streets and highways;
8. Secure safety from fire, flooding, water pollution, and other hazards;
9. Provide adequate light and air;
10. Facilitate adequate provisions for transportation, water sewerage, schools, parks, playgrounds, open space, stormwater drainage, the conservation of land, natural resources, scenic and historic sites, energy, and other public requirements;
11. Facilitate further re-subdivision of larger parcels into smaller parcels of land; and
12. Implement the goals, objectives, policies, and recommendations set forth within the Town of Milltown Comprehensive Plan.

1.4 **Disclaimer**

1. *Multiple Jurisdictions.* All persons reviewing the provisions of this ordinance should be aware that the Town of Milltown is only one of a number of governmental bodies that may have jurisdiction over proposed land divisions or development. The Town of Milltown cannot make any representations on behalf of any other government body. This ordinance shall by reference include subsequent updates and amendments of any applicable ordinances. No land division may be made unless all required approvals have been given.
2. *Binding Acts.* No statements or actions by any official, employee, agent, or Plan Commission of the Town of Milltown should be construed or taken as a binding act of the town except a resolution, motion, or ordinance that has been adopted by the Town of Milltown Town Board at a lawfully conducted Town Board meeting. This includes, but is not limited to, interpretation of this ordinance.
3. *Compliance Assurance.* The Town of Milltown expressly states that it has no responsibility whatsoever for assuring that land and/or buildings sold in the town are in compliance with any ordinances, regulations, or rules. The town also assumes no responsibility for the suitability of any property whose land division has been approved by the Town Board. The Town Board asserts that there is no liability on the part of the Town, its commissions, or its employees for flooding problems, sanitation problems, or structural damages that may occur as a result of reliance upon, and conformance with, this ordinance.

1.5 **Applicability**

The provisions of this Ordinance shall apply to divisions of land in the Town of Milltown as follows:

1. The creation of at least one but not more than four parcels or building sites 40 acres or less in size shall comply with the requirements of ARTICLE II, Design Standards, Dedications, and Improvements and ARTICLE III, Minor Land Divisions, Chapter 18, Polk County Subdivision Regulations, and all other applicable terms of this ordinance.
2. The creation of five or more parcels or building sites which are **40 acres** or less in size, either through a single division or successive divisions from the same congressional forty, within a period of five years shall comply with the provisions of ARTICLE II, Design Standards, Dedications, and Improvements, and ARTICLE IV, Major Land Divisions, Chapter 18, Polk County Subdivision Regulations, and all other applicable terms of this ordinance.

3. Exemptions. The regulations of this ARTICLE shall not apply to:
- A. Transfers of interests in land by will or pursuant to court order.
 - B. Leases for a term not to exceed 10 years, mortgages, or easements.
 - C. Sale or exchange of parcels of land between owners of adjoining property, if additional lots are not thereby created, and the lots resulting are not reduced below the minimum lot sizes or density specified within the Town of Milltown Comprehensive Plan and this ordinance, or other applicable laws and ordinances.
 - D. Cemetery plats made under Wisconsin Statutes 157.07.
 - E. Assessor's Plats made under Wisconsin Statutes 70.27.

1.6 Abrogation and Greater Restrictions

This ordinance shall not repeal, abrogate, annul, impair, or interfere with existing easements, covenants, agreements, rules, regulations, or permits previously adopted or issued pursuant to laws. However, where this ordinance imposes greater restrictions, this ordinance shall govern.

1.7 Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the town and shall not be deemed a limitation or repeal of any other power granted by Wisconsin Statutes.

1.8 Severability

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

1.9 Compliance

No person, firm, or corporation shall divide any land located within the jurisdictional limits of this ordinance which results in a major land division, minor land division, or a replat as defined herein, and no such division or replat shall be entitled to record and no street shall be laid out or improvements made to land without compliance with all requirements of this ordinance.

1.10 Effective Date

This ordinance shall become effective upon adoption by the Town Board and publication in the town's official newspaper.

1.11 Development Agreements

In connection with any major land division approval, or with minor land divisions as deemed necessary, the Town Board shall be authorized to enter into a Development Agreement with the applicant/developer. Development Agreements may include provisions clarifying duties to construct specific improvements, the phasing of construction, the timing, location and financing of infrastructure, reimbursement for oversized infrastructure, vesting of property rights for periods of not more than 10 years, assurances that adequate public facilities (including roads, water, sewer, fire protection, and emergency medical services) will be available as they are needed to serve the development, and mitigation of anticipated impacts of the development on the general public or the environment.

Article II Design Standards, Dedications, and Improvements

2.1 Minimum Standards and Comprehensive Plan Conformance

1. Any division of land in the town which does not comply with the following regulations shall not be recognized by the town and no permits, including any building permits, shall be authorized by the town for any division not in compliance with this ordinance.
2. All lots and building sites created and applicable under terms specified in section 1.5 shall be in conformance with the recommendation set forth within the Town of Milltown Year 2025 Comprehensive Plan. Assuming the minimum lot size and density provisions are met as stated in Articles 2.2 and 2.3, then the area and dimensions of lots and building sites shall conform to the requirements of the Polk County Zoning Ordinance, where applicable.

2.2 Conventional Design Layout

1. **Minimum Lot Size.** In all instances where land located within the town is to be conventionally divided, the following provisions shall apply consistent with the Year 2025 Preferred Land Use (Map 8-11) of the Town of Milltown Year 2025 Comprehensive Plan.
 - a. *Lakeshore Residential.* The minimum lot size shall be consistent with the Polk County Lake Classification System and Polk County Shoreland Zoning Ordinance. Second tier development, or proposed lots that do not have lake frontage within areas identified for Lakeshore Residential, shall have a 1.5 acre minimum lot size and at least 150 feet of frontage along a public road, unless the Polk County Shoreland Zoning Ordinance is more restrictive.

- b. *Rural Residential*. The minimum lot size shall be 3 acres, except where conservation site design concepts are used and specified in Article 2.3.

Any land divisions within the Rural Residential Classification Areas A, C, D, and E as identified on the Year 2025 Preferred Land Use (Map 8-11) of the Town of Milltown Year 2025 Comprehensive Plan, shall require the plat/lot(s) be designed so property owners have the option to further subdivide their property to allow for the cost effective extension of sanitary sewers and other public utilities. The plat shall include future building footprints and lot lines to demonstrate the potential split. This provision shall be referred to as “shadow platting” and is intended to notify landowners and potential buyers of possible sanitary sewer connection.

- c. *Wooded Residential*. The minimum lot size shall be 10 acres, except where conservation site design concepts are used and specified in Article 2.3.

Given the likely occurrence that a forty acre parcel will not be exactly 40 acres, but rather a fractional forty consisting of 35 acres or more, the subdivider shall be allowed to create three 10-acre parcels and one 5-acre or larger parcel for residential development consistent with the recommendations of the Town of Milltown Year 2025 Comprehensive Plan. This variance shall only be allowed for parcels consisting of 35 acres or more.

- d. *Agriculture*. The minimum lot size shall be 35 acres.

The Town shall allow one land division between one and three acres (one acre minimum lot size, three acre maximum lot size) from a 35 acre parcel.

The town shall also allow the creation of lots less than 35 acres for the purposes of farm consolidation. For example, if a farmer purchases 10 or 20 acres at an auction, such lots shall be approved provided the following note is included on the face of the plat, “This land division is created for the purpose of farm consolidation only and is not intended for residential development. No building permits shall be issued without the expressed written consent of the Milltown Town Board.”

- e. *Commercial*. The minimum lot size shall be consistent with the requirements for Commercial Districts as set forth in the Polk County Zoning Ordinance.
- f. *Government/Institutional*. The minimum lot size shall be consistent with the requirements as set forth in the Polk County Zoning Ordinance.
- g. *Parks and Recreation*. The minimum lot size shall be consistent with the requirements as set forth in the Polk County Zoning Ordinance.

2.3 Conservation Design Layout

1. Intent. The Conservation Design Layout approach potentially allows subdividers a 25% density bonus and reduced minimum lot size as a further incentive to design land divisions in a way that best preserves or connects open space for recreation, rural character and aesthetics, water quality protection, groundwater recharge, wildlife habitat, and/or farmland conservation.
2. Eligibility. The parcel to be divided must consist of a:
 - a. Development Area
 - b. Open Space Preservation Area

Conservation Design Layouts will be considered within the Rural Residential or Wooded Residential classifications as identified on the Year 2025 Preferred Land Use (Map 8-11) of the Town of Milltown Year 2025 Comprehensive Plan. Subdividers will be eligible for a 25% density bonus based on a conventional subdivision layout for three acre minimum lot size within the Rural Residential classification and a 10-acre minimum lot size within the Wooded Residential classification.

Conservation Design Layouts shall not be eligible for consideration within the Agriculture, Lakeshore Residential, Commercial, Government/Institutional, Conservancy, or Parks and Recreation classifications as identified on the Year 2025 Preferred Land Use (Map 8-11) of the Town of Milltown Year 2025 Comprehensive Plan.

3. Development Area.
 - a. *Maximum Size of Development Area.* The development area shall be limited to no more than 50% of the land division and shall contain all future residential and related land uses (e.g., garages, outbuildings, decks, swimming pools, lawns, etc.), roads, driveways, and parking areas.
 - b. *Minimum Lot Size.* All lots within the development area shall be a minimum of 43,560 square feet (one acre) in size.
 - c. *Location of Development Area.* The physical development area shall be designed to minimize disturbance or encroachment upon environmentally sensitive areas such as wetlands, floodplains, or areas of steep slope.
 - d. *Utilities.* Utilities serving new development shall be placed underground.
4. Open Space Preservation Area.
 - a. *Minimum Percentage of Open Space.* A minimum of 50% of the land division shall be designated as permanent open space, not to be further subdivided. All undivided open space and any lot capable of further subdivision shall be restricted from further subdivision through a deed restriction recorded on the face of the plat.
 - b. *Location of Open Space.* The open space shall be located to maximize the protection of environmentally sensitive areas. Primary protection consideration shall be given to maximizing protection of:
 - 1) WDNR designated wetlands;

- 2) Floodplain areas of wetlands, lakes, rivers, streams, and creeks; and
- 3) Areas of steep slope;
- c. *Design of Open Space.*
 - 1) The open space should be designed as a large, single, contiguous, and interconnected block with logical, straightforward boundaries. Long, thin strips of conservation land should be avoided unless the conservation feature is linear (streams, tree lines) or unless such configuration is necessary to connect with other features, or to create open space corridors or trails that will link to other parcels.
 - 2) 25% of the designated open space shall consist of lands other than identified environmentally sensitive areas.
- d. *Dedication and Maintenance of Open Space.* Lands not used for lots and streets shall be dedicated in perpetuity to open space or recreation by [1] conveyance in common to each lot owner via a homeowner's association or similar donee, [2] by conveyance in fee simple of an equal, undivided interest in common to each lot owner, or [3] by a recognized land trust or conservancy organization. The maintenance and ownership of the open space area will require agreement that the Town Board shall, on an annual basis, be kept informed of the association's membership and maintenance obligations until such time all lots are sold. In all cases, the town, on advice of its municipal attorney, may levy an assessment for the cost of any maintenance not taken care of by an association to the satisfaction of the town. The manner of assuring maintenance and assessing such cost shall be determined prior to final plat approval and shall be included in the title of each property. **Consistent with the recommendations set forth within the Town of Milltown Comprehensive Plan, the Town may require the dedication of a trail accessible to the public for walking and bicycling.**

2.4 Fees

- 1. All minor and major land division applications shall be accompanied by an application review fee as follows:
 \$150 - Certified Survey Map
 \$250 - 5-lot Subdivision, plus \$20 for each additional lot
- 2. A parkland dedication fee will be levied for any new residential dwelling unit as defined in Article 2.5 (2). **The fee shall be paid at the issuance of the building permit, not at the approval of the land division.**
- 3. The subdivider shall pay a review and/or inspection fee equal to the actual costs incurred by the Town for subdivision review, road plan review, and inspections; and if required, stormwater management, erosion, and sedimentation control plan review and inspections; and any other plans and specifications deemed necessary to assure that the construction or installation of required improvements are in compliance with the requirements of this ordinance. The town may withhold final plat approval and/or building permits until the bill has been paid or a payment schedule has been arranged.

2.5 Land Dedication and Fees-in-Lieu

1. Public Ways. Whenever a tract of land to be subdivided embraces all or any part of a street or other public way which has been designated in adopted state, regional, county or town plan or adopted plan components, such public way shall be a part of the plat and either dedicated or reserved by the subdivider in the locations and dimensions indicated on such plan.
2. Parks, Recreation, and Open Space - Fee Dedications.
 - a. A park and recreation fee shall be required for each new residential dwelling unit in the amount of \$100 per dwelling unit. The fee shall be paid at the issuance of the building permit. Non-residential parcels/commercial building applications are exempt. This provision shall apply to all applicable land divisions, including legal, existing lots of record created prior to this ordinance adoption.
 - b. All payments shall be placed in a separate non-lapsing fund with the town to be used exclusively for the acquisition and development of land for capital improvements for the town parks and recreation programs.

2.6 Design Standards

All land divisions shall meet the following design standards in compliance with this ordinance, and with Chapter 18, Section 18.16, Design Standards, Polk County Subdivision Ordinance, and with any terms and conditions **set forth in a Development Agreement** between the town and the applicant. The subdivider may also be required to construct storm water management and erosion control facilities which are adequate to serve the land division and/or development which do not adversely affect adjacent lands outside the major land division.

1. *General Standards.* Design shall be based on a site analysis. To the maximum extent practicable, the design shall: preserve the natural features of the site including mature trees, productive farmland, ravines and areas of steep slope, wetlands, marshes, floodplains, lakes, ponds, rivers, streams, and flowages; avoid adverse effects on groundwater and aquifer recharge; minimize effects of cut and fill; and prevent flooding.
2. *Lots.* All lots shall have frontage on a public road and conform to the area and dimension requirements of Articles 2.2 or 2.3 of this ordinance. All duplex and multi-family lots shall be identified on the face of the plat and approved by the Plan Commission and Town Board in order for a building permit to be issued for such use.
3. *Roads.* The arrangement, character, extent, width, grade, and location of all roads shall conform to all applicable road plans and standards officially adopted by the Town of Milltown and Polk County. Road construction shall be done in accordance with plans and standards specifications approved by the Town's engineer. Town of Milltown Minimum Road Standards are included as Attachment A.
4. *Private Onsite Wastewater Treatment Systems (POWTS).* All lots intended for building development shall be tested for suitability for private onsite wastewater treatment systems in order to be approved for subdividing.

5. *Private Water Supply.* All provisions of Chapter NR 112 Wisconsin Administrative Code as they presently exist or as they may be hereafter amended are hereby adopted by reference and made a part of this ordinance.

Applicants proposing land divisions may be required to provide evidence from a reputable laboratory that the water available to the proposed subdivision meets all applicable state and federal drinking water standards.

The Plan Commission and Town Board may deny a proposed Preliminary Plat or Final Plat if it determines the applicant has failed to demonstrate that underground aquifers are adequate to supply the projected future needs of the development for 50 years, or if well permits are not available.

6. *Utility Easements.* The subdivider shall provide the Town with correspondence from all relevant utility companies identifying their needs, if any, for easements. Easement areas shall be identified on the plat or certified survey map, unless the Town determines that the easement is not necessary or consolidates easement areas.
7. *Drainageway Easements.* Where a subdivision is traversed by a watercourse, drainageway, channel, or stream, a drainageway easement may be required. In most instances, the property covered by a drainageway easement shall be privately owned as a part of a lot(s). The location, width, alignment, and grading of such easements shall be designed to accommodate the anticipated discharge from the property being subdivided and also the anticipated runoff that will occur from property at a higher elevation in the drainage basin when that property is developed.
8. *Parks and Parkways.* The Town may require the subdivision to have parks or parkways. The Town shall designate the site, configuration, and shape of parks and parkways within the subdivision and determine whether such areas are to be shown as lots, outlots or dedication areas.
9. *Drainage and Erosion Control.* The Town shall **require the subdivider to provide storm water management, soil erosion,** and sedimentation control plans subject to approval by the Town's engineer. Such plans and calculations shall address a 100 year stormwater event. Installation of stormwater management, soil erosion, and sedimentations control measures shall be done in accordance with plans and standards specifications approved by the Town's engineer. The town may also request a review of such plans by the County Land Conservation Department.
10. *Covenants.* The town shall require submission of a draft of restrictive covenants whereby the subdivider intends to regulate land use in the proposed subdivision. Such covenants shall be attached to each property deed at the time of sale.

2.7 Commencement of Construction

No construction of any kind may commence until the preliminary plat has been approved by all agencies and plans and standards specifications for road construction have been approved by the Town's engineer. If required, no construction of any kind may commence until plans for roads, ditches, stormwater management, erosion and sediment control, and lot grading have been reviewed and approved by the Town Plan Commission and Town Board and a Development Agreement has been executed between the Town and Developer.

2.8 Improvements

Before final approval of any plat the subdivider may install required street and assessable improvements or if such improvements are not installed at the time the final plat is submitted for approval, the subdivider shall be required, before recording the plat, to enter into a contract with the Town agreeing to install the required improvements and shall file with said contract an escrow deposit, surety bond, or irrevocable letter of credit meeting the approval of the Town Board as a guarantee that such improvements will be completed by the subdivider or his sub-contractors not later than one year from the date of recording the plat, or later if specified. One week prior to the time each improvement is to be installed and upon its completion, the subdivider must notify the Town so that adequate inspections can be made.

Article III Minor Land Divisions

3.1 Certified Survey Map Required

Land divisions which create at least one but no more than four parcels or building sites 40 acres or less in size are considered minor land divisions requiring approval under this section. Approval of a Certified Survey Map (CSM) shall be required.

3.2 Procedure - Certified Survey Map

1. Submittal. A certified survey map prepared by a registered land surveyor shall be required for all minor land divisions. It shall comply in all respects with the requirements of Section 236.34 of the Wisconsin Statutes, the standards set forth in this ordinance, and provisions set forth in the Polk County Subdivision Ordinance, Chapter 18. Any improvements necessary for proper use of the subject parcels shall be required as specified by this ordinance.
2. The subdivider shall submit to the Town Clerk 10 copies of a CSM, accompanied with an application fee, **10 days prior to the date of a scheduled Plan Commission meeting (first Wednesday of the month) at which review of the minor land division is desired. The applicant shall also provide information** on the lot(s) wastewater disposal capability for lots not served by public sewer.

3. The Town Clerk shall, within two (2) days after filing, transmit copies of the CSM to the Plan Commission.
4. The CSM shall be reviewed by the Plan Commission for conformance with this ordinance and all ordinances, rules, regulations, and plans which affect it. The Plan Commission shall, within **45 days** from the date of filing of the CSM, recommend approval, conditional approval, or rejection, unless review time is extended by agreement with the applicant, and shall transmit the CSM along with its recommendations to the Town Board.
5. The Town Board shall approve, approve conditionally, or reject the CSM within **60 days** from the date of filing of the CSM unless the time is extended by agreement with the subdivider. If the CSM is rejected, the reason shall be stated in the minutes of the meeting and a written statement forwarded to the applicant. If the CSM is approved, the Town Board shall cause the Town Clerk to so certify on the face of the original CSM and return the CSM to the subdivider. Failure of the Board to act within **60 days** or extension thereof, shall constitute approval.
6. If the review time is not met due to failure of town administration, the chair of the Town Plan Commission and the chair of the Town Board may elect to grant approval and sign the certified survey map if the CSM submitted is substantially the same plan as given tentative approval, without the re-review and approval process of the Plan Commission.
7. The certified survey map shall be recorded with the County Register of Deeds after the certificates of the Town Board, Polk County, and the surveyor are placed on the face of the CSM. The subdivider shall record the CSM within thirty (30) days of its approval by the Town Board.

Article IV Major Land Divisions

4.1 Subdivision Plat Required

Land divisions which create five or more parcels or building sites which are **40 acres** or less in size either through a single division or successive divisions, by either the same or subsequent owner(s), within a period of five years shall be considered a major land division. The applicant shall submit a preliminary plat of the major land division and shall follow the procedures established in this section.

4.2 Preliminary Consultation

Prior to filing a preliminary plat for approval, the applicant should consult with the Milltown Plan Commission and the Polk County Zoning and Land Conservation Departments for assistance and to become informed of the purpose and intent of these regulations.

4.3 Procedure - Preliminary Plat

1. Submittal. The subdivider of five or more lots shall prepare a preliminary plat and a letter of application describing the intent, timeline, and any other information that will assist the Plan Commission during review. The preliminary plat shall be prepared in accordance with this and any other applicable ordinance. The subdivider shall submit to the Town Clerk 10 copies of the preliminary plat, accompanied with an application fee, **10 days prior** to the date of a scheduled Plan Commission meeting (**first Wednesday of the month**), at which review of the major land division is desired. The applicant shall also provide information on the lot(s) wastewater disposal capability for lots not served by public sewer.
2. The preliminary plat shall be reviewed by the Plan Commission for conformance with this ordinance and all ordinances, rules, regulations, and plans which affect it. The Plan Commission shall, within **45 days** from the date of filing of the preliminary plat, recommend approval, conditional approval, or rejection, unless the time is extended by agreement with the subdivider, and shall transmit the preliminary plat along with its recommendations to the Town Board.
3. The Board, within **60 days** of the date of filing of preliminary plat with the Clerk, shall approve, approve conditionally, or reject the preliminary plat unless the time is extended by agreement with the subdivider. Approval shall constitute preliminary acceptance of any dedications of land to the Town of Milltown. One (1) copy of the plat shall thereupon be returned to the subdivider with the date and action endorsed thereon; if approved conditionally or rejected, a letter setting forth the conditions of approval or the reasons for rejection shall accompany the plat. One (1) copy of the plat and letter shall be permanently filed. Failure of the Board to act within **60 days** or extension thereof, shall constitute approval.
4. Approval or conditional approval of a preliminary plat shall constitute approval of the final plat, if the final plat is submitted within six months of preliminary plat approval and conforms substantially to the preliminary plat layout as indicated in Section 236.11(1) (b) of the Wisconsin Statutes. Preliminary plat approval or conditional approval of the layout submitted shall guide the preparation of the final plat. **Construction may not commence until approval has been granted by all appropriate agencies.**

4.4 Procedure - Final Plat

1. Submittal. The subdivider shall prepare a final plat in accordance with this and other applicable ordinances. If there are no changes to the preliminary plat as submitted and approved in section 4.3 of this ordinance, the final plat can be directly submitted to the Town Board for approval. If no changes have occurred, a letter of notification shall be submitted to the Town Clerk for distribution to the Plan Commission. If change(s) to the plat have occurred, the applicant shall proceed as directed in section 4.4 (2).
2. The subdivider shall submit to the Town Clerk 10 copies of the final plat, accompanied with an application fee, **10 days prior** to the date of a scheduled Plan Commission meeting (**first Wednesday of the month**), at which review of the major land division is desired. The Plan Commission shall examine the final plat as to its conformance with the approved preliminary plat, this ordinance, and all ordinances, rules, regulations, or plans which may affect the plat. The Plan Commission shall recommend approval, conditional approval, or rejection, within **45 days** of the date of submittal unless review time is extended by agreement with the applicant, and shall transmit the final plat along with its recommendation to the Town Board.
3. The final plat may, with Board permission, constitute only that portion of the approved preliminary plat which the subdivider proposes to record at the time. Approval of a final plat for a portion of the approved preliminary plat shall extend approval for the remaining portion of the preliminary plat for one (1) year from the date of final plat approval.
4. The final plat may be rejected if it is not submitted within 6 months of the date of preliminary plat approval. Approval cannot be granted until all formal objections of the objecting agencies are satisfied.
5. The Town Board shall, within **60 days** of the date of filing the final plat with the Clerk, approve or reject such plat unless the time is extended by agreement with the subdivider. Approval shall constitute acceptance of any dedications of land to the Town of Milltown. If the Plat is rejected, the reasons shall be stated in the minutes of the meeting and a written statement of the reasons forwarded to the subdivider. Failure of the Board to act within **60 days**, the time having not been extended and no unsatisfied objections having been filed, the plat shall be deemed approved.

4.5 Recordation

1. The final plat shall be recorded with the Polk County register of Deeds only after the certificates of the Town Board, Polk County, and the surveyor are placed on the face of the plat. Such recordation shall take place in accordance with Section 236.25(2)b of the Wisconsin Statutes.
2. Copies. The subdivider shall submit 2 copies of the final plat to the Town Clerk for filing with the Town Board and Plan Commission.

4.6 Replats

1. A replat is the process of changing, or the map or plat which changes, the exterior boundaries of a previously platted subdivision or part thereof.
2. When it is proposed to replat all or any part of a recorded subdivision, if it alters areas dedicated to the public, the subdivider or person wishing to replat shall vacate or alter the recorded plat as provided in Sections 236.36 through 236.445 of the Wisconsin Statutes. The subdivider or person wishing to replat, shall then proceed as specified in this ordinance.
3. The Town Clerk shall schedule a public hearing before the Plan Commission when a preliminary plat of a replat of land is filed, and shall mail notices of the proposed replat and public hearing to the owners of all properties within the limits of the exterior boundaries of the proposed replat and to the owners of all properties within two hundred (200) feet of the exterior boundaries of the proposed replat.

Article V Administration and Enforcement

5.1 Administration

The administration and enforcement of the provisions of this ordinance shall be the responsibility of the Milltown Town Board with advice and recommendation support from the Milltown Plan Commission and any other technical, legal, or policy advisor.

5.2 Variances

When the Town Board finds that "extraordinary hardship" or "practical difficulties" may result from strict compliance with the minimum lot size regulation and/or the purposes of this ordinance may be serviced to a greater extent by an alternative proposal, it may approve variances so that substantial justice may be done and the public interest secured, provided that such variances shall not have the effect of nullifying the intent and purpose of the regulations; and further provided that the Board shall not approve the variances unless it shall make findings based upon the evidence presented to it at a public hearing in each specific case that:

1. The creating of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other properties; and
2. The conditions upon which the request is based are unique to the property for which the variance is sought and are not applicable generally to other properties; and
3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as

distinguished from a mere inconvenience, if the strict letter of this minimum lot size ordinance is carried out.

5.3 Appeals

Any person aggrieved by an objection to a plat or failure to approve a plat may appeal therefrom as provided in Wisconsin Statutes, Sections 236.13 (5) and 62.23 (7).

5.4 Violations

It shall be unlawful to build upon, divide, convey, record, or monument any land in violation of this ordinance or the Wisconsin Statutes; and no person, firm, or corporation shall be issued a building permit authorizing the building on, or improvement of, any major subdivision, minor land division, or replat within the jurisdiction of this ordinance not of record as of the effective date of this ordinance until the provisions and requirements of this ordinance have been fully met. The town may institute appropriate action or proceedings to enforce violations of this ordinance or the applicable Wisconsin Statutes.

5.5 Penalties

Any person, firm, or corporation who fails to comply with the provisions of this ordinance shall, upon conviction thereof, forfeit not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) and the costs of prosecution. Each day a violation exists or continues shall constitute a separate offense.

1. Recordation improperly made has penalties provided in Section 236.30 of the Wisconsin Statutes.
2. Conveyance of lots in unrecorded plats has penalties provided in Section 236.31 of the Wisconsin Statutes.
3. Monuments disturbed or not placed have penalties provided in Section 236.32 of the Wisconsin Statutes.
4. An Assessor's Plat made under Section 70.27 of the Wisconsin Statutes may be ordered by the Town at the expense of the subdivider when a subdivision is created by successive divisions.

5.6 Amendments

The Milltown Town Board may, upon recommendation of the Plan Commission, amend, supplement, or repeal any of these regulations after public notice and hearing and as may be required by Chapter 236 of the Wisconsin Statutes.

Article VI Definitions

Approval Authority. The Town of Milltown or County of Polk, jointly or severably.

Board. The Town of Milltown Board of Supervisors.

Buildable Area. The number of square feet needed to meet minimum development standards. The area must be free from ESA's, and can include setback areas.

Certified Survey Map (CSM). A map of a minor land division, prepared in accordance with Section 236.34, Wisconsin Statutes, and in full compliance with the applicable provisions of this ordinance.

Commission. The Town of Milltown Plan Commission.

Comprehensive Plan. The adopted *Town of Milltown Year 2025 Comprehensive Plan*, including any subsequent amendments.

Density. Number of dwelling units per acre allowed under the Comprehensive Plan, this ordinance, and/or the Polk County Zoning Ordinance and used to calculate the maximum number of residential lots permitted as part of a land division.

Environmentally Sensitive Area (ESA). A geographic area of the landscape that encompasses valuable and sensitive natural resource features such as lakes, rivers, streams, wetlands, and floodplains which should be protected from intensive development.

Final Plat. The map or plat which is prepared for recordation by the County Register of Deeds.

Floodplains. Those lands, including flood fringes, floodways, and channels, subject to inundation by the one hundred (100) year recurrence interval flood or, where such data are not available, the maximum flood of record.

Improvement, Public. Any sanitary sewer, storm sewer, open channel, water main, roadway, park, parkway, public access, sidewalk, pedestrian way, planting strip, or other facility for which the Town may ultimately assume the responsibility for maintenance and operation.

Land Division or Division of Land. The act or process of dividing land into two or more lots or building sites. See also definition for Major Land Division and Minor Land Division.

Lot. Designated parcel, tract, or area of land, 40 acres each or less in size, established by plat, land division, or as otherwise permitted by law to be conveyed, used, developed, or built upon as a unit.

Lot Area. The area contained within the exterior boundaries of a lot excluding streets, easements, areas dedicated to the public, and land under navigable bodies of water.

Major Land Division. The creation of five or more lots or buildings sites which are 40 acres or less in size by one or successive divisions, whether done by the original owner or a successor owner, within a period of five (5) years.

Minor Land Division. The creation of less than five lots or buildings sites which are 40 acres or less by one or successive divisions within a period of five (5) years.

Navigable Waters. All natural inland lakes and all streams, ponds, sloughs, flowages, and other waters which are navigable under the laws of this state. Under Section 144.26, Wisconsin Statutes, notwithstanding any other provision of law or administrative rule promulgated thereunder, Shoreland Ordinances required under Section 59.971, Wisconsin Statutes, and Chapter NR 115, Wisconsin Administrative Code, do not apply to lands adjacent to farm ditches if:

- a. Such lands are not adjacent to a natural navigable stream or river.
- b. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- c. Such lands are maintained in nonstructural agricultural use.¹

Open Space. A tract of land used for agricultural, natural habitat, conservancy, trails and pathways and/or recreational purposes; also includes the designated conservation area within a planned unit development or conservation subdivision.

Ordinary High Water Mark. The average annual high-water level of a pond, stream, river, lake, flowage, or wetland referred to an established datum plane or where such elevation is not available, the elevation of the line up to which the presence and action of surface water is so frequent as to leave a distinct mark by erosion, change in, or destruction of, vegetation or other easily recognized topographic, geological or vegetative characteristic.

Preliminary Plat. Preliminary drawings or map indicating the proposed manner and layout of streets, lots, blocks, and other salient features of a proposed land division submitted to an approving authority for purposes of preliminary consideration.

Parcel. See “lot” definition.

Replat. The changing of the boundaries of a recorded plat or part thereof.

¹Wisconsin’s Supreme Court has declared navigable bodies of water that have a bed differentiated from adjacent uplands and levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis [Muench v. Public Service Commission, 261 Wis. 492 (1952) and DeGaynor and Company, Inc., v. Wisconsin Department of Natural Resources, 70 Wis. 2d. 936 (1975)]. A stream that is navigable by skiff or canoe during normal spring highwater is navigable in fact under the laws of this state, though it may be dry during other seasons.

Shorelands. Those lands lying within one thousand (1000) feet from the high-water elevation of navigable lakes, ponds, and flowages or three hundred (300) feet from the high-water elevation of navigable streams or to the landward side of the floodplain, whichever is greater.

Subdivider. Any person, firm, or corporation applicant, or any agent thereof, dividing or proposing to divide land resulting in a major land division, minor land division, or replat.

Subdivision. A division of a lot, parcel or tract of land by the owner thereof, or the owner's agent, for the purpose of transfer of ownership or building development. See major land division.

Town. The Town of Milltown Town Board.

Town Consultant/Engineer. As designated from time-to-time by the Town Board. Responds to technical issues as warranted by this ordinance.

Wetlands. Those lands which are partially or wholly covered by marshland flora and generally covered with shallow standing water or lands which are wet and spongy due to high-water table.

Attachment 1

**Town of Milltown
Minimum Road Standards**

Town of Milltown Minimum Road Standards

All roads hereafter constructed in the Town of Milltown shall be constructed in accordance with terms and conditions of a development agreement and meet all of the requirements as provided in this ordinance. Failure to do so shall prohibit the Town Board from accepting any portion of such road and shall prohibit the Town from expending any funds on said road for maintenance purposes.

Section 1 - Right-of-Way Width

The minimum width of a right-of-way in a residential area shall be 66 feet (four rods). The minimum width of right-of-way in areas zoned for commercial or industrial development shall be 80 feet.

No roads shall terminate without provisions for a cul-de-sac (turn around) with a minimum right-of-way radius of 80 feet. The traveled way within the cul-de-sac shall provide a minimum radius of 50 feet. A dead-end road or cul-de-sac shall not exceed 1,320 feet in length unless it is part of a phased development, under the same ownership, that will eventually have an outlet.

Section 2 - Specifications

All trees, stumps, brush, boulders, and buildings shall be removed from the entire width and length of the right-of-way. None of the same is to be buried in the right-of-way.

The side slopes in cut and fill areas shall conform to those shown in Figure 1, Town of Milltown Typical Finished Section.

The centerline grade shall not exceed plus or minus 7%.

All side slopes shall be covered with topsoil and seeded with grass and/or clover capable of being within the right-of-way.

If sand lift is required a minimum of 8 inches must be used.

The intersection angle of a driveway to a road, and a road to a road, shall not be less than 75 degrees.

The Town Board shall require intersection vision clearance triangles.

The Town Board may require joint driveways in order to maintain safety and avoid dangerous intersections to town Roads.

Section 3 - Roadway Width

Residential. The driving width of residential roads shall be 11 feet with a shoulder of two feet per lane. The total driving width shall be 22 feet.

Commercial or Industrial. The driving width of commercial or industrial roads shall be 13 feet with a shoulder of two feet per lane. The total driving width shall be 26 feet.

Section 4 - Roadway Material Specifications

The driving portion of the roadway shall be surfaced with 8" of crushed rock over a 4" bed of 1½" rock.

The gradation of the roadway gravel shall conform to Wisconsin Department of Transportation, Division of Highways, Specification 304, Gradation 3.

After gradation, said roadway shall have an asphaltic concrete pavement 2" thick minimum in residential subdivisions, and 22 feet wide.

The Developer shall include a bid, letter of credit, and an improvement list and cost estimate as established through execution of a Development Agreement between the Town and Developer. The Town may require additional asphalt or base material depending on road function and average daily traffic. Any modification to the asphalt or base requirement will be determined prior to execution of a Development Agreement.

Section 5 - Roadway Drainage

A road shall not impede the general flow of surface water or stream water in any unreasonable manner so as to cause either an unnecessary accumulation of waters flooding or water soaking uplands, or an unreasonable accumulation and discharge of surface waters flooding or water soaking lowlands (from Section 88.87 Wisconsin Statutes).

All roads intersecting other roads shall have a minimum of a 24" culvert. Larger culverts may be required by the Town Board. Culverts shall be galvanized, corrugated steel pipe, pipe arch, plate, or reinforced concrete pipe in conformance with American Association of State Highway Transportation Officials (AASHTO) specifications.

Section 6 - Road Names

The name of a town road shall be submitted for approval to the Plan Commission and Town Board.

Section 7 - Road Signs

All stop signs, traffic control signs, and road name signs shall be erected and maintained by the Town Board. Any of the above signs required for a recorded subdivision or similar development shall be paid for by the Developer and not the Town.

Section 8 - Abandonment of Cul-de-Sacs

At such time as a private party seeks to extend a Town road from a cul-de-sac on an existing Town road, that party shall comply with all other provisions of this ordinance and in addition thereto shall work with the Town to abandon the existing cul-de-sac. The private party shall pay all costs of abandonment including but not limited to the following: surveying, site preparation, landscaping, and legal costs. Legal title to any abandoned cul-de-sac shall revert to the adjoining landowners.

Section 9 - Roads in Subdivisions

The Developer shall enter into a Development Agreement with the Town to assure Town Road standards and specifications are met.

The Town Board shall not approve any subdivision unless and until the Subdivider shall post an escrow deposit, surety bond, or irrevocable letter of credit meeting the approval of the Town Board as a guaranty that all road improvements will be made in accordance with the Development Agreement.

All subbase improvements shall be completed within one year after the effective date of the Development Agreement. Final surface application/paving shall occur within two years of the effective date of the Development Agreement. If the Developer is unable to complete the road improvements within the allotted time period, the Town, at its sole discretion, may allow the Developer an additional period of time to complete the improvements. At a minimum, the financial guaranty (escrow deposit, surety bond or irrevocable letter of credit) shall be in an amount of 120% of the estimated costs of said improvements.

Attachment 2

**Town of Milltown
Development Agreement**

Development Agreement for Plat of

[Insert Name of Plat]

Town of Milltown Polk County, Wisconsin

THIS Agreement is made and entered into this _____ day of _____, 2002, by and between _____ [insert name of developer] ("DEVELOPER") and the Town of Milltown, Polk County, Wisconsin ("TOWN").

WHEREAS, DEVELOPER has obtained conditional approval of the preliminary plat of _____ [insert name of plat] in the Town; and

PREMISE OF AGREEMENT

WHEREAS, the Town's land division ordinance authorizes the Town Board to enter into a development Agreement that may address the construction of improvements, the phasing of construction, the timing, location and financing of infrastructure, reimbursement for oversize infrastructure, vesting of property rights for periods of not more than 10 years, assurances that adequate public facilities (including roads, water, sewer, fire protection, and emergency medical services) will be available as needed to serve the development, and the mitigation of anticipated impacts of the development on the general public or the environment; and

WHEREAS, this Agreement is made for the mutual benefit of DEVELOPER and the TOWN in order that land division requirements will be complied with; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the town's land division ordinance; and

WHEREAS, for the purpose of this Agreement, any reference to the term "plat" shall mean collectively the preliminary and final plats.

NOW, THEREFORE, DEVELOPER and the TOWN agree as follows:

Agreement

In consideration of the mutual covenants herein contained, the parties hereby agree as follows:

DEVELOPER OBLIGATIONS

1. Improvements: DEVELOPER will construct and install, at its own expense, those on-site and off-site Subdivision improvements listed on Addendum 1 and attached hereto and incorporated herein by this reference (the "Improvements"). DEVELOPER's obligations to complete the Improvements will arise upon final plat approval by TOWN, will be independent of any obligations of TOWN contained herein, and will not be conditioned on the commencement of construction in the development or sale of any lots or the Improvements within the development.

2. Standards: DEVELOPER will construct the Improvements according to the standards and specifications approved by TOWN as set forth on Attachment 1 and attached hereto and incorporated herein by this reference. The following standards shall apply to the following improvements:

- A. **Roads.** Roads shall be constructed to adopted town standards and specifications as indicated in Attachment 1.
- B. **Erosion Control.** During all construction phases and until all disturbed areas have been stabilized, DEVELOPER shall install and maintain on-site erosion control devices as required by the plans and specifications approved by the Town as specified by Wisconsin Construction Site Best Management Practices and any applicable TOWN or county ordinances.
- C. **Street Signs.** DEVELOPER shall be responsible for the cost of all necessary street signs. The TOWN shall approve the configuration, size, and location of the regulatory and street name signs prior to their installation. DEVELOPER agrees to indemnify the TOWN for damages caused within the right-of-way prior to final completion of all street improvements.
- D. **Stormwater Drainage.** DEVELOPER shall provide all drainage easements as shown on the plat, grading plan, and/or as required outside plat boundaries.
- E. **Utilities.** Adequate electric, telephone, and if available, cable facilities, gas service, and sewer service shall be made available to each lot pursuant to plans and specifications approved by the TOWN, TOWN Engineer, and TOWN Sanitary District as required by TOWN ordinance(s). DEVELOPER shall be responsible for making all arrangements for utility services and, if necessary, with the Wisconsin Public Service Commission. All utilities installed to service a land division or associated with road development shall be underground unless otherwise approved by the TOWN. Easements shall be provided as necessary.

3. Security: DEVELOPER shall make an escrow deposit or provide a surety bond or an irrevocable letter of credit issued by a financial institution in a form acceptable to the TOWN (similar to Attachment 2) in the amount of \$_____ **[insert amount of security]** to secure performance of this Agreement (the "Security"). The amount of such Security shall be determined by multiplying the anticipated cost of the Improvements as determined by the TOWN engineer by 120%. If DEVELOPER enters into one or more contracts for construction of the Improvements, and the actual costs of construction for a particular

Improvement under any of such accepted contracts are less than the anticipated cost of that Improvement as set forth in Addendum 1, then DEVELOPER shall be allowed to reduce the financial guarantee by an amount equal to the difference between the anticipated and actual costs for that Improvement.

- A. The Security shall guarantee that the construction and installation of the Improvements will be completed in accordance with the plans and specifications on file with the TOWN. Construction or materials determined by the TOWN to be defective will be corrected or replaced by DEVELOPER.
 - B. The Security shall be held until all of the Improvements are completed or installed and accepted by the TOWN engineer, unless subsection C. below otherwise applies.
 - C. If DEVELOPER completes part of the Improvements covered by this Agreement prior to the TOWN'S acceptance of the final plat as permitted by this Agreement, the Security shall be reduced by a sum equal to the estimated cost, as determined by the TOWN engineer, of the Improvements completed and accepted by the TOWN engineer prior to such approval of the final plat. After the TOWN's approval of the final plat, DEVELOPER also may periodically apply to the TOWN to further reduce the security to reflect additionally completed and accepted Improvements, provided the remaining security is never less than an amount equal to 120% of the estimated cost of the Improvements yet to be completed.
 - D. The letter of credit will be payable to TOWN at any time upon presentation of an affidavit executed and authorized by a TOWN official stating that DEVELOPER is in default under this Agreement; and stating the reasons for such action. The letter of credit will be substantially similar to Attachment Exhibit 2 attached hereto and incorporated herein by this reference.
- 4. Developer's Costs:** DEVELOPER shall be responsible for all of the following costs or charges:
- (a) The cost for the design, purchase, and installation of the Improvements.
 - (b) The plat review fees assessed by the TOWN as required by the TOWN land division ordinance. DEVELOPER will make all payments for the Improvement fees as they become due in accordance with the TOWN Fee Schedule, but no less than 30 days after the date of invoice.
 - (c) The DEVELOPER shall pay a set fee for (i) Improvement Review and coordination and for (ii) inspection of the Improvement. It is anticipated each road improvement will require a minimum three (3) inspections and have one (1) Improvement Review fee. The DEVELOPER will be obligated to pay the an Administrative Fee for actual fees and costs incurred by the TOWN for legal, administrative, or fiscal work undertaken by the TOWN, *if any*, in connection with the terms of this Agreement. If applicable, fees will be determined and discussed with DEVELOPER prior to assessment.
 - (d) Inspection Fee also discussed in # 11, Inspection and Certification.

5. Warranty: DEVELOPER warrants that the Improvements will comply with the requirements of the Paragraph 2 standards and will be free from defects as to materials and workmanship for a period of one (1) year from the date that TOWN accepts the dedication of the last Improvement subject to this Agreement completed by DEVELOPER. If DEVELOPER wishes to apply the final surface (i.e. blacktop) within the same calendar year of the roadbed construction, the DEVELOPER shall be subject to the warranty provisions for the asphalt surface. If DEVELOPER delays final surface application to the following calendar year/construction season, the warranty provisions for the asphalt surface shall not apply.

6. Commencement and Completion Periods: All subbase and roadbed Improvements shall be completed within one year after the effective date of this Agreement. Final surface application/paving shall occur within two years of the effective date of this Agreement. If DEVELOPER is unable, for reasons beyond its reasonable control, to complete the Improvements within the allotted time period, the TOWN, at its sole discretion, may allow DEVELOPER an additional period of time to complete the Improvements.

7. Compliance with Law: DEVELOPER will comply with all relevant laws, ordinances, and regulations in effect at the time of constructing the Improvements when fulfilling its obligations under this Agreement.

8. Dedication: DEVELOPER will dedicate to the TOWN the Improvements listed on Addendum 1 attached hereto and incorporated herein by this reference pursuant to the procedure described in Paragraph 13 below.

9. Developer's Representations: The DEVELOPER has obtained any and all easements, rights-of-way, or approaches necessary to gain access to the property or to provide drainage or utility easements from the property, unless this Agreement otherwise imposes that responsibility on the TOWN.

TOWN OBLIGATIONS

10. Plat Approval: TOWN will grant final plat approval to the Subdivision under the terms and conditions previously agreed to by the parties, if those terms and conditions are consistent with all relevant state laws and local ordinances in effect at the time of the requested plat approval.

11. Inspection and Certification: The TOWN shall have the option to inspect any Improvement, either fully or partially completed, and if acceptable to the TOWN engineer, shall certify that such Improvement is in compliance with the TOWN's standards and the approved plans and specifications. The TOWN shall have a minimum of two (2) inspections for subbase and base construction, with a third inspection subsequent to paving. The TOWN reserves the right to inspect the Improvement, at cost to the DEVELOPER, as needed to certify compliance with TOWN specifications. Such inspection and certification, if appropriate, will occur within five (5) work days of notice by DEVELOPER that DEVELOPER desires to have TOWN inspect an Improvement. Certification by TOWN does not constitute a waiver by TOWN of the right to draw funds under the letter of credit on account of defects in or failure of any Improvement that is detected or which occurs following such certification.

12. Notice of Defect: TOWN will provide timely notice to DEVELOPER whenever inspection reveals that an Improvement does not conform to the standards and specifications shown on Attachment 1 or is otherwise defective. DEVELOPER will have thirty (30) days from the issuance of such notice to cure or substantially cure the defect. TOWN may not declare a default under this Agreement during the 30 day cure period on account of any such defect.

13. Acceptance of Improvement: The Town of Milltown will accept the dedication of any validly certified Improvement within thirty (30) days of DEVELOPER's offer to dedicate the Improvement, at the next available Town Board meeting. Upon completion of the Improvements, the TOWN engineer shall provide DEVELOPER with a certificate stating that DEVELOPER has complied with the terms of this Agreement and that the TOWN accepts the Improvements as constructed per provisions stated in paragraph 5. The Improvements must be offered to TOWN in no more than three (3) dedications.

14. Reduction of Security (No Reduction in Security): After the acceptance of any Improvement, the amount which TOWN is entitled to draw on the letter of credit will be reduced by an amount equal to the total estimated cost of the accepted Improvements as shown on Addendum 1. At the request of DEVELOPER, TOWN will execute a certificate verifying acceptance of the Improvement (and waiving its right to draw on the letter of credit to the extent of such amount). A DEVELOPER in default under this Agreement will have no right to such a certificate. Upon the acceptance of all Improvements, the balance that may be drawn on the letter of credit will be available to TOWN for thirty (30) days after the expiration of the Warranty Period.

15. Use of Proceeds: TOWN will use funds drawn under the letter of credit only for the purposes of completing the Improvements or correcting defects in failures of the Improvements.

16. Events of Default: The following conditions, occurrences, or actions will constitute a default by DEVELOPER during the completion period:

- A. DEVELOPER's failure to timely commence construction of the Improvements;
- B. DEVELOPER's failure to timely complete construction of the Improvements;
- C. DEVELOPER's failure to timely cure the defective construction of any Improvement;
- D. DEVELOPER's insolvency, the appointment of a receiver for DEVELOPER, or the filing of a voluntary or involuntary petition for bankruptcy respecting DEVELOPER;
- E. Foreclosure of any lien against the property or assignment or conveyance of the property in lieu of foreclosure;
- F. Timeliness shall be determined by the provisions of this Agreement.

TOWN may not declare a default until written notice has been given to DEVELOPER and it has had the specified time to cure such default.

17. Measure of Damages: The measure of damages for breach of this Agreement will be the reasonable cost of completing the Improvements. For Improvements upon which construction has not begun, the estimated cost of the Improvements as shown on Addendum 1 will be prima facie evidence of the minimum cost of completion; however, neither that amount

nor the amount of the letter of credit establishes the maximum amount of DEVELOPER's liability. DEVELOPER hereby grants to TOWN, its agents or employees, the unconditional right to complete all unfinished Improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced.

18. TOWN's Rights Upon Default: When any event of default occurs, TOWN may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost (as shown on Exhibit 3) of all Improvements theretofore accepted by TOWN. TOWN will have the right to complete the Improvements itself or contract with a third party for completion, and DEVELOPER hereby grants to TOWN, its successors, assigned agents, contractors, and employees a nonexclusive right and easement to enter the property for the purposes of constructing, maintaining, and repairing such Improvements. Alternatively, TOWN may assign the proceeds of the letter of credit to a subsequent DEVELOPER (or a lender) who has acquired the Subdivision by purchase, foreclosure, or otherwise who will then have the same rights of completion as the TOWN, if and only if, the subsequent DEVELOPER (or lender) agrees in writing to complete the unfinished Improvements. In addition, TOWN also may suspend final plat approval during which time DEVELOPER will have no right to sell, transfer, or otherwise convey lots or homes within the Subdivision without the express written approval of TOWN or until the Improvements are completed and accepted by TOWN. These remedies are cumulative in nature.

19. Indemnification: DEVELOPER hereby expressly agrees to indemnify and hold TOWN harmless from and against all claims, costs, and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to this Agreement. DEVELOPER further agrees to aid and defend TOWN in the event that TOWN is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by DEVELOPER. DEVELOPER is not an agent or employee of TOWN.

20. No Waiver: No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both TOWN and DEVELOPER; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. TOWN's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by DEVELOPER or the acceptance of any Improvement.

21. Amendment or Modification: The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of TOWN and the TOWN Corporation Counsel, or its authorized designee, and by DEVELOPER, or its authorized officer.

22. Attorney's Fees: Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorneys' fees, and expert witness fees, from the

opposing party. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs in their entirety.

23. Third Party Rights: No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

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

25. Notice: Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified and return receipt requested, and addressed as follows:

[Insert Developer Address]

26. Recordation: Either DEVELOPER or TOWN may record a copy of this Agreement in the Register of Deeds Office of Polk County, Wisconsin.

27. Effective Date: The effective date of this Agreement is signed by the TOWN and DEVELOPER or their duly appointed agents.

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

CREDIT AMOUNT: _____

DATE: _____

TOWN:

TOWN OF MILLTOWN

By _____
TOWN Chair

ATTEST:

TOWN Clerk

Developer:

[Name]

By _____

By _____

Town of Milltown
2272 155th St.
Milltown, WI 54858
(715) 825-2494
(715) 825-4416 (fax)

DEVELOPER

Name: _____
Address: _____
Phone: _____
Fax: _____

Exhibit 1

Town of Milltown Minimum Road Standards

Exhibit 2

Standard Letter of Credit

_____, 2003

Letter of Credit No. _____

Beneficiary

Applicant

Town Clerk
Town of Milltown
2272 155th St.
Milltown, WI 54858

We hereby issue in your favor this Irrevocable Standard Letter of Credit for an amount up to but not exceeding _____ dollars (\$ _____) effective _____, 2003 and expiring _____, 2003.

Funds are available under this Letter of Credit against Beneficiary's draft at sight drawn on ourselves and presented together with the original of this letter and Beneficiary's letter indicating that written request for the payment sought under this Letter of Credit has been previously requested but remains unpaid.

Except as insofar otherwise expressly stated, this Standard Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (I 983 Revision), International Chamber of Commerce Publication No. 400.

Bank will not be called upon to determine disputed questions of fact or law.

Very truly yours,

_____ Bank

By: _____
Authorized Officer

\$ _____ U.S. Maximum

Expiration Date:

DEVELOPER(S)

TOWN

By: _____ By: _____
Administrator Town Clerk

Exhibit 3

Project Cost Estimate

Strip Topsoil	\$ _____
Sub Grading	\$ _____
Storm Sewer (if applicable)	\$ _____
Culverts	\$ _____
Graveling and Grading	\$ _____
Erosion Control	\$ _____
Landscaping	\$ _____
Curb and Gutter (if applicable)	\$ _____
2" Blacktop Surface	\$ _____
Sanitary Sewer and Water Main (if applicable)	\$ _____
Total Estimated Project Costs	\$ _____

NOTE: The above figures are preconstruction estimates only. Actual costs to be billed to the DEVELOPER will be determined by using final in-place expenses.

ATTACH MATERIALS LIST FOR QUANTITY INFORMATION.