

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 28-17-18. A Resolution authorizing the appropriate City officials to execute the Pre-annexation and Development Agreement between the City of Sheboygan and Kohler Company.

REPORT PREPARED BY: Nancy Buss, Finance Director

REPORT DATE: July 6, 2017

MEETING DATE: July 10, 2017

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The Finance and Personnel Committee recommended Res. No. 28-17-18 for approval to the Common Council on June 12, 2017. The Common Council at the June 19, 2017 meeting moved to amend the agreement as follows:

- amend to eliminate the first sentence of Water of Sub sec 4c2 on page 7 and to amend the second sentence instead of Stahl Road to read Riverdale Drive fourth sentence instead of Stahl Road to read Riverdale Drive.
- amend the cap in Cost of Litigation and Reimbursement: Indemnification of Sub sec 5e on page 9 from 'up to a cap of \$125,000' to \$200,000.
- amend to direct City Attorney to draft language to allow public access to the beach to be placed in the pre-annexation agreement (ensuring that there are no structures in development to restrict the public right of access) under 5. Miscellaneous in the agreement.
- Document was referred back to the Finance and Personnel Committee.

STAFF COMMENTS:

The Finance and Personnel Committee directed the City Administrator and the City Attorney to negotiate changes to the Pre-Annexation and Development Agreement as discussed in closed session on July 3, 2017.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 28-17-18 authorizing the appreciate City officials to executive the Pre-Annexation and Development Agreement between the City of Sheboygan and Kohler Company.

ATTACHMENTS:

- I. Res. No. 28-17-18
- II. Pre-Annexation and Development Agreement

III

5.6

Res. No. 28 - 17 - 18. By Alderpersons Donohue and Bohren.
June 5, 2017.

A RESOLUTION authorizing the appropriate City officials to execute the Preannexation and Development Agreement.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Preannexation and Development Agreement between the City of Sheboygan and Kohler Company, in form substantially similar to the attached.

*Finance
Reviewed
approve w/
updated agmt.*

Theresa Donohue

James A Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

PREANNEXATION AND DEVELOPMENT AGREEMENT

THIS PREANNEXATION AND DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2017, by and between the CITY of SHEBOYGAN, WISCONSIN, a Wisconsin municipal corporation (the "City") and KOHLER CO., a Wisconsin corporation ("Developer").

RECITALS

The City and Developer acknowledge the following:

A. Developer owns approximately 247 acres of vacant land in the Town of Wilson, Sheboygan County, Wisconsin, bounded by Lake Michigan to the east and Kohler-Andrae State Park to the south and west, as more particularly described on Exhibit A attached hereto (the "Property"). Owner intends to develop, construct and operate an 18-hole championship golf course and related improvements and amenities on the Property, as generally depicted on the site plan attached hereto as Exhibit B (the "Site Plan").

B. The City is a municipal corporation with authority to enter into this Agreement, to adopt annexation ordinances under Wisconsin Statute section 66.0217 and to adopt zoning amendments and issue conditional use permits and site plan review and approvals under Wisconsin Statute section 62.23(7). The Property and adjacent lands are located contiguous to and may be annexed to the City of Sheboygan pursuant to the provisions of Wisconsin Statute section 66.0217.

C. Owner's planned use of the Property is consistent with the City's Comprehensive Plan adopted December 5, 2011 ("Comp Plan") and Zoning Map. The City acknowledges that annexation of the Property and adjacent lands will permit the extension of urban services, is consistent with the Comp Plan and provides lands for needed growth of the City.

D. The City specifically acknowledges that Developer's proposed development and use of the Property as described herein, is compatible with and will further the City's planning objectives, will be of substantial benefit to the City, will extend the corporate limits and jurisdiction of the City, will promote orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

E. The City desires to assist Developer in developing, constructing and operating improvements and amenities on the Property consistent with the Site

Plan. In this regard, the City intends to grant various governmental approvals benefiting Developer and the Property, subject to the provisions of applicable law, including applicable City ordinances. Necessary governmental approvals include annexation, rezoning, conditional use permits, site plan review and approvals, extension of utilities, and issuance of alcohol beverage licenses.

DE. The City and Developer agree to perform their respective obligations in connection with the issuance of various necessary governmental approvals and the construction of certain facilities and related improvements on the Property, in accordance with the terms of this Agreement.

AGREEMENTS

Now, therefore, in consideration of the Recitals and the mutual promises set forth below, the City and Developer agree as follows:

1. Conditions.

(a) Governmental Approvals. The parties acknowledge that the City cannot contract away its governmental powers and that certain approvals may require issuance by or cooperation from government bodies external to the City. The parties also acknowledge that, to be able to develop, construct and operate the Property as intended, Developer must obtain all of the governmental approvals described in this Agreement, including but not limited to, annexation, rezoning, conditional use permits, site plan review and approvals, extension of utilities and issuance of alcohol beverage licenses. Subject to applicable City ordinances and other applicable laws, the City shall use its best good faith efforts to grant any necessary governmental approvals on a timely basis. The City also shall not oppose cooperate with Developer in seeking permits and approvals from and all other governmental authorities with jurisdiction over the Property in connection with Developer's pursuit of any necessary approvals, including, but not limited to approvals from the U.S. Army Corps of Engineers ("ACOE"), the U.S. Fish and Wildlife Service "USFWS"), the National Park Service ("NPS"), the Wisconsin Department of Natural Resources ("WDNR"), the Wisconsin State Historical Society ("WHS"), the Wisconsin Public Service Commission ("WPSC") and Sheboygan County.

(b) Acquisition of Property Rights. The parties acknowledge that Developer must acquire certain easement rights appurtenant to the Property in order to develop, construct and operate improvements on the Property consistent with the Site Plan. Accordingly, all rights and obligations under this Agreement are contingent upon Developer's acquisition of necessary easement rights on terms acceptable to Developer, including but not limited to, an access easement from WDNR.

(c) Time of the Essence. The City and Developer recognize that time is of the essence and agree to use commercially reasonable efforts to satisfy all of the conditions under this Agreement in a timely manner.

(d) General Outline. The parties intend that this Agreement will serve as a general outline governing the improvements described herein. Final plans for any public improvements shall be, subject to confirmation by Developer and the City's engineer of compliance with Developer's intended development plans, as generally noted on the Site Plan and applicable City standards. Any construction of the public improvements described herein shall commence only after Developer has given notification to the City in writing that Developer intends to commence construction and after satisfaction of all applicable conditions of this Agreement.

(e) No Covenant to Construct or Operate. Developer shall have no obligation to construct the improvements described herein. The parties acknowledge that the improvements are only necessary if Developer proceeds to develop the Property consistent with the Site Plan. The parties acknowledge that Developer has no obligation to construct, open or operate an 18-hole championship golf course and related improvements and amenities or any other improvements on the Property.

2. Representations and Warranties.

(a) Representations and Warranties of Developer. Developer makes the following representations and warranties which the City may rely upon in entering into this Agreement and upon which the City may rely in granting approvals, permits and licenses for the Property:

(i) Developer is a duly organized and existing corporation under the laws of the State of Wisconsin.

(ii) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer.

(iii) Developer has circulated and executed petitions to annex the Property and adjacent lands to the City voluntarily and of its own accord. Developer seeks annexation to obtain more reliable fire and emergency services to the Property as well as to make municipal water services available at the Property. The City has not required annexation of the Property or adjacent lands, and in no way has the City influenced or induced Developer to annex the Property and/or adjacent lands to the City.

(b) Representations and Warranties of the City. The City makes the following representations and warranties which Developer may rely upon in entering into this Agreement and in developing the Property:

(i) The City is a duly organized and existing municipal corporation under the laws of the State of Wisconsin.

(ii) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the City.

(iii) The City has a present and demonstrable need for annexation of the Property and adjacent lands to extend urban services, promote development consistent with the City's Comp Plan, make available lands for needed growth of the City and otherwise promote the general welfare.

(iv) SR-5 Suburban Residential District zoning, together with an outdoor institutional conditional use permit including site plan approval intended to be issued for the Property, will permit the development, construction and operation on the Property of an 18-hole championship golf course and the other improvements and amenities generally depicted on the Site Plan. Upon issuance of those governmental approvals described in Section 1(a) above, Developer will have vested rights to develop, construct and operate the 18-hole championship golf course and all ancillary uses and additional uses permitted in the SR-5 Suburban Residential District.

3. City Obligations. Subject to the contingencies set forth in Section 1 above, the City shall be obligated as follows:

(a) Annexation. The City shall consider adoption of an ordinance annexing the Property and adjacent lands as presented by Developer. The City hereby acknowledges and agrees that the City's Comp Plan and the Economic Impact Study prepared by S.B. Friedman and Company dated May, 2017 and submitted by Developer support findings that annexation of the Property to the City serves the public interest and promotes and enhances the general welfare of the City and its citizens.

(b) Rezoning, Conditional Use Permit including Site Plan Review and Approval. The City shall consider rezoning the Property to SR-5 Suburban Residential District. Upon submittal of detailed plans by Developer, the City also shall consider issuing a conditional use permit for an 18-hole championship golf course, all related improvements and all ancillary uses as an "outdoor institutional" use including the site plan for such use and all related improvements and amenities.

(c) Licenses. The City shall consider granting and issuing to Developer at least two "Class B" liquor licenses to permit sales of alcoholic beverages for on-premises consumption on the Property, subject to Developer's qualification. If Developer is unable to transfer a license from another municipality, the City shall reserve licenses for Developer (which may be Reserve "Class B" licenses), such that licenses remain available for Developer within the City's municipal quota regardless of the date on which Developer completes development of the Property and opens for business to the general public.

(d) Cooperation with No Opposition Before Other Government Bodies. The City shall ~~not oppose~~ ~~cooperate with~~ ~~and assist~~ Developer in obtaining any necessary governmental approvals from other governmental bodies with jurisdiction over the Property, including but not limited to the ACOE, USFWS, NPS, WDNR, WHS, WPSC, and Sheboygan County.

(e) Reasonable Reviews. All reviews and inspections to be conducted and approvals to be granted by the City's engineers and/or building inspectors shall be prompt and shall extend only to reasonable confirmation of compliance with applicable City regulations and approved plans.

(f) Sanitary Sewer Service. The City represents and warrants to Developer that the Town of Wilson (the "Town") has installed and maintains 12 inch sanitary sewer mains in River Trails private drive and in Timberlake Road and that either or both of such mains may be extended to serve the Property, consistent with the 1975 Joint Sewage Treatment Agreement for the Sheboygan Region (the "JST Agreement"), as the same may be amended from time to time. Upon the written request of Developer, the City shall cause the Town to permit the Property to be connected to Town sanitary sewer lines, the City shall obtain all necessary governmental permits to authorize such extensions, and the City shall treat all sewerage therefrom as contemplated in the JST Agreement. Notwithstanding anything herein to the contrary, the City expressly acknowledges, consistent with City Code section 122-336, that municipal sanitary sewer will become available to the Property upon completion of boring for Developer's laterals under the Black River and extension of said laterals in a manner and at a time determined to be feasible on an engineering basis by Developer and the City, but that temporary private septic is authorized to serve buildings including rest stations on the Property (and the City shall issue necessary permits therefor) until determined feasible by Developer and the City.

(g) Water Service. The City represents and warrants to Developer that the City has installed and maintains a 12 inch water line at the intersection of CTH KK and Riverdale Drive and that a water line may be extended from CTH KK and Riverdale Drive south within the right of way of CTH KK to Beach Park Road. The City shall process and issue any and all

permits and governmental approvals necessary to authorize the Property and adjacent lands being annexed to be connected to such extended water lines, subject to provisions of applicable law and as requested by Developer and other end users. In the event additional water pressure is needed on the Property, the Developer is responsible for all equipment or other installations to provide the additional water pressure to the Property. Notwithstanding anything herein to the contrary, the City expressly acknowledges, consistent with City Code sections 122-14, 122-15, 122-98 and 26-1005, that municipal water service will become available to the Property as extended within CTH KK and as determined feasible by Developer and the City, but that private wells are authorized to serve the Property (and the City shall issue necessary permits therefor), subject to the provisions of City ordinances and as otherwise authorized by the City.

(h) Police, Fire and Emergency Services. Immediately upon adoption of an ordinance to annex the Property to the City, the City shall provide police, fire and other emergency services to the Property.

(i) Town Property Taxes. The Developer shall be financially responsible for reimbursement to the City for any property tax differential for all properties owned by Developer and its affiliates as of the date of this Agreement that must be paid to the Town per the Wisconsin Statutes as a result of the annexation of the Property. The reimbursement shall be paid by the Developer no later than thirty (30) days after the Developer has received an invoice for such taxes from the City. In addition, Developer agrees to reimburse any owners who were included within but who did not execute the annexation petition described in Section 2 (a) (iii) for increased property taxes levied against their properties arising from the City's mill rate (as opposed to the Town's mill rate) for a period of five years from the date when annexation is final.

4. Developer's Obligations. If Developer determines that all conditions under Section 1 above are satisfied and Developer decides to construct the improvements generally depicted on the Site Plan, Developer shall undertake the following obligations, at Developer's sole cost and expense:

(a) Stormwater Management. In connection with developing the improvements generally depicted on the Site Plan, Developer shall design and construct related stormwater facilities on the Property as reasonably necessary to drain and manage the stormwater to be generated on the Property. Developer and the City shall cooperate to obtain any necessary government approvals relating to the management of stormwater generated on the Property and to cause all stormwater management facilities to comply with applicable government regulations.

(b) Sanitary Sewer. In connection with developing the improvements generally depicted on the Site Plan, Developer shall cooperate with the City to design extensions of the existing sanitary sewer lines (i) east from River Trail private drive and/or (ii) west and then south from Timberlake Road as deemed necessary by Developer to service the Property, provided, however, that Developer shall have the option of servicing improvements to be developed on the Property (including buildings and rest stations) with Developer's temporary private septic system until such time as municipal sanitary sewer will become available to the Property, as set forth in paragraph (3)(f) of this Agreement, and consistent with the provisions of Article VI, Division 4 of Chapter 122 of the Sheboygan Municipal Code. Developer shall, at its sole expense, install all laterals necessary to connect any buildings developed on the Property to appropriate sanitary sewer lines. Developer agrees to pay a fee of \$1,000 for each new connection to municipal sanitary sewers from the Property, provided that the \$1,000 per connection fee per structure shall be the only fee or charge for connection of the Property to municipal sewer lines and no other fee (inclusive of tap and lateral connection fees) shall be due under City Code section 122-196 or otherwise.

(c) Water.

(i) In connection with developing the improvements generally depicted on the Site Plan, Developer shall cooperate with the City and the Sheboygan Water Utility ("Utility") to design and extend a new water main south from the intersection of CTH KK and Riverdale Drive south within the right of way of CTH KK to Beach Park Road as deemed necessary by Developer to service the Property; provided, however, that Developer shall have the option of servicing the Property with Developer's private well system, pursuant to the provisions of applicable City ordinances and as otherwise agreed by the City. However, Developer agrees to connect its proposed improvements on the Property, including the clubhouse, irrigation system, maintenance building and cart building to municipal water service within three years of development, and the terms of such connection shall be a condition to any conditional use permit for an 18-hole championship golf course on the Property.

(ii) City agrees that it shall not directly charge Developer for the costs to design and extend that portion of the new water main from its current terminus at Riverdale Drive to Stahl Road. Developer agrees that it shall reimburse the equivalent third party costs of extending an 8-inch water main south from Stahl Road Riverdale Drive to Beach Park Road. The Utility reserves the right to determine the actual pipe size of the water main and pay any differential cost between the 8-inch and actual water main pipe size. Once water mains have been constructed, the Utility may charge additional connection charges as set forth in City Ordinance for new connections. City shall, for a period of 20 years after

installation of that portion of the water main extension from ~~Stahl Road~~Riverdale Drive to Beach Park Road, reimburse the Developer for any connection fees paid by benefitting Town property owners, less the actual cost on a per-foot basis incurred by the City and not paid by the Developer of installing any portion of the extension past the parcel owned by the benefitting Town property owner in either the area to be annexed and in areas that are annexed in the future.

(iii) Developer shall, at its sole expense, install all laterals necessary to connect any buildings developed on the Property to appropriate water lines. Developer shall also pay all related fees for connecting the Property to the existing municipal water system. Additionally, Developer agrees that any connections to the water main from the Property shall be at Developer's expense. Developer agrees to comply with NR 812.26, Wisconsin Administrative Code, and all provisions of the City Municipal Code regarding private well abandonment on the Property. The Developer shall fill and seal any existing private well not specifically and solely used for an irrigation system within 12 months from the date of annexation or 90 days after connecting to the public water supply, whichever is later. Developer shall, in the design and construction of said laterals, cooperate fully with the requirements of the Fire Department related to the provision of fire hydrants along the lateral for fire suppression purposes.

(d) Traffic. Developer shall provide the City a traffic impact analysis by a consultant approved by the City confirming that no roadway upgrades are required in connection with developing the improvements generally depicted on the Site Plan. The City agrees that Excel Engineering is a consultant acceptable to the City.

(e) Manner of Construction. Any public improvement work shall be subject to review of plans and specifications and periodic inspections by the City's engineers and/or building inspectors to confirm compliance with applicable City regulations and approved plans. The City shall not accept final dedication of any public improvements until the public improvement work described above is complete.

(f) Detailed Plans. Prior to commencement of any vertical improvements on the Property, Developer shall obtain approval of detailed plans from the City's engineer and/or building inspectors, which shall be consistent with the attached Site Plan. The City shall not unreasonably withhold, delay or condition the issuance of any approvals outlined in this section. Contingent upon Developer's discretionary decision to develop the Property, Developer shall construct an 18-hole championship golf course and related improvements consistent with the approved plans described in this subsection.

5. Miscellaneous.

(a) Nondiscrimination. Each party agrees that neither the Property nor any portion thereof shall be sold to, leased or used by any party in a manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin, and that the development of and construction and operations on the Property shall be in compliance with all applicable laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

(b) Recording Fees. The Developer shall pay to the Sheboygan County Register of Deeds all recording fees due to the recording of this Agreement and any separate dedication instruments and/or grants for easement required hereunder, except as otherwise provided in this Agreement.

(c) Approximations. It is understood and agreed by the parties that all locations, dimensions and quantities of square feet set forth herein or in the exhibits attached hereto are preliminary and tentative. Before the plans for the development of the Property are finalized, each party reserves the right to make minor changes in dimensions, quantities and locations to best accommodate and facilitate the design, construction and operation of the Property, upon written notice to, but without the need for consent from, the other party.

(d) No Personal Liability. Under no circumstances shall any City Common Council member, officer, official, director, member, partner or employee of the City or Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

(e) Cost of Litigation and Reimbursement; Indemnification. Developer agrees to reimburse the City's actual costs incurred in connection with the annexation of the Property and adjacent lands, reviewing and approving Developer's plans to develop the Property, the zoning of the Property and adjacent lands, the issuance of permits and licenses (including but not limited to a conditional use permit) related to the Property, or the terms of this Agreement, up to a cap of ~~\$200~~25,000.00. Said cost shall include the costs of litigation, including expert witnesses, attorney fees charged by outside counsel on behalf of the City (which shall be chosen at the City's sole discretion) and all other costs related to preparing for or defending such a challenge. Additionally, Developer agrees to indemnify and hold harmless the City and all its officers, employees, agents, and affiliates from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation attorneys' fees and costs) which arise out of, relate to, or result from the annexation of the Property and adjacent lands, Developer's use and operation of the Property, the zoning of the Property and

adjacent lands, the issuance of permits and licenses (including but not limited to a conditional use permit) related to the Property, or the terms of this Agreement.

(f) Force Majeure. No party shall be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, acts of terrorists, strikes, fires, floods, acts of God, inclement weather, or by any other cause not within the control of the party whose performance was interfered with, and which by the exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

(g) Parties and Interests; Survival of Agreements. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any party.

(h) Remedies. In the event of a party's default under this Agreement which is not cured within thirty (30) days after written notice thereof to the other party (or such longer time as may be reasonably required so long as a cure is being diligently pursued), the nondefaulting party shall have all rights and remedies available under law or equity with respect to said default, including but not limited to, the right to obtain specific performance.

All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies. Failure of a party to enforce any provision contained herein shall not be deemed a waiver of such party's rights to enforce such provision or any other provision in the event of a subsequent default.

(i) Notices. All notices, demands, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when hand delivered or when mailed by first-class mail, postage prepaid, with proper address as indicated below or such other address as may be designated by the party by written notice:

To the City: Susan Richards, City Clerk
City of Sheboygan
828 Center Avenue, Suite 100
Sheboygan, WI 53081

With a copy to: Charles C. Adams, City Attorney
City of Sheboygan
828 Center Avenue, Suite 304
Sheboygan, WI 53081

To Developer: James Robinson IV
Senior Vice President - General Counsel
Kohler Co.
444 Highland Drive
Kohler, WI 53044

With a copy to: Deborah C. Tomczyk
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
P.O. Box 2965
Milwaukee, WI 53201-2965

(j) Assignment of Rights. Neither party shall assign its rights or responsibilities under this Agreement without the prior written consent of the other party. The City hereby consents to Developer's assignment of its rights and obligations under this Agreement to an affiliated entity owned in whole or in part by Developer or any party having an ownership interest in Developer or controlled by or under common control with Developer.

(k) Amendment. No modification, alteration, or amendment to this Agreement shall be binding upon any party hereto until such modification, alteration or amendment is reduced to writing and executed by both parties hereto.

(l) Governing Law. The laws of the State of Wisconsin shall govern this Agreement.

(m) Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

(n) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

(o) Severability. If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. Specifically, this Agreement remains in full effect even if the Developer chooses not to build an 18-hole championship golf course on the Property, or significantly changes its plans for the Property.

(p) Recording of Agreement. This Agreement must be recorded with the Sheboygan County Register of Deeds upon annexation of the Property.

(q) Non-waiver of Statutory Protections by City. Nothing herein shall be interpreted or construed as a waiver by the City of any statutory protections granted to the City, including but not limited to damage limitations, statutory immunities, or other protections of any kind. Developer acknowledges the City is entitled to a notice of claim prior to commencement of any litigation proceeding.

(r) Address. The Property will have a City address assigned at the time a building permit is issued. Developer shall include the City address of the Property in all marketing materials relating to the Property.

(s) Complete Agreement. This Agreement, including all definitions and all attached exhibits, which are hereby incorporated by reference, reflects the entire agreement of the parties. All prior understandings and negotiations are merged herein.

(t) Developer Guarantee to City. The parties agree that in no event shall Developer have any limitations on its rights to contest, challenge, or protest real estate taxes or other taxes assessed or imposed against the Property or any part thereof; provided, however, that as long as Developer continues to seek reimbursements under Section 4(c)-(ii), Developer shall not take any action at Open Book, Board of Review, or in Circuit Court to reduce the assessed valuation of the Property to an aggregate assessed value lower than \$9,200,000. This provision shall automatically terminate when Developer ceases to seek reimbursements under Section 4(c)(ii).

(u) Public Access. Subject to applicable regulations and permits and/or agreements with governmental entities and/or other sovereign bodies with jurisdiction over the Property, including the State, ACOE, WDNR, and tribal

governments, the Developer intends to provide appropriate levels of public access to unique ecosystems and to burial mounds on the Property during daylight hours. Such access, if approved by said governmental entities, may include walking trails and interpretive signs.

(s)(v) Public Trust Compliance. Developer agrees that it shall not construct any barriers on the Property to prohibit access to Lake Michigan in violation of Wisconsin's public trust doctrine, such that it shall be possible for walkers to traverse adjacent to the shoreline on dry land.

IN WITNESS, WHEREOF, the parties have executed this Agreement as of _____, 2017.

CITY OF SHEBOYGAN

BY _____
Michael J. Vandersteen, Mayor

BY _____
Susan Richards, City Clerk

DEVELOPER:

KOHLER CO.

BY _____
Its _____

EXHIBIT A

Description of the Property

EXHIBIT B

Site Plan