

41/16

DEVELOPMENT AGREEMENT

Document No. \_\_\_\_\_ Document Title \_\_\_\_\_

**RESOLUTION**  
**Sponsor Mayor David**

WHEREAS, the City of Watertown has previously approved the Conditional Use Permit by the Plan Commission on June 12, 2006 for 7.7 acres known as Martin Custom Homes Condominium Development at 749 N. Church Street located in Dodge County, WI; and

WHEREAS, the owner of said property is desirous of continuing development; and

WHEREAS, this Development Agreement has been drafted, and pending approval by the Common Council, it shall be forwarded to the developer for signing.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Watertown, that the Mayor and City Clerk are hereby authorized to execute the attached Development Agreement with Martin Condominium Development, LLC.

CHRIS PLANASCH - Registrar  
 Fee Amount: \$41.00



Return to:

Mike Hoppenrath  
 106 Jones Street  
 Watertown, WI 53094-0477

Part of 14-291-0915-3332-055  
 Part of 14-291-0915-3332-056

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DATE: 11.21.06	YES	NO
ZINDARS		
SMITH		
BERG		
KRUEGER 1		
ZGONC 2		
MEYERS		
TIETZ		
WETZEL		
YENSER		
MAYOR DAVID		
TOTAL	6/11	

Adopted 21 NOVEMBER 2006

*Michael A. Hoppenrath*  
 City Clerk/Treasurer

Approved 22 NOVEMBER 2006

*John David*  
 Mayor

This is to certify that this is the original copy of this resolution and in witness thereof I affix my signature and the seal of the City of Watertown this 22<sup>nd</sup> day of NOVEMBER, 2006.

*Michael A. Hoppenrath*  
 Michael A. Hoppenrath, City Clerk



Eng

*Chris Planasch*

CHRIS PLANASCH - Registrar  
 Fee Amount: \$13.00

Document No.

Document Title

**CONDITIONAL USE PERMIT BY THE  
 CITY OF WATERTOWN PLANNING COMMISSION**

On June 12, 2006, the applicant hereinafter described, petitioned for, and was granted by the Watertown Planning Commission, a Conditional Use Permit as hereinafter described, that the said premises, which use is not a permitted principal or accessory use in the zoning district classification within which the premises are encompassed. This Conditional Use Permit is personal in nature with the present applicant below, is not binding on successors in interest, and does not run with the land. Upon any transfer, sale, gift, or other conveyance of the property, the Conditional Use Permit will terminate and expire, unless renewed and approved by the Watertown Planning Commission in writing at the time of subsequent transfer, sale, gift or other conveyance.

Return to:

Mike Hoppenrath  
 106 Jones Street  
 Watertown, WI 53094-0477

Part of 14-291-0915-3332-055  
 Part of 14-291-0915-3332-056

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- |    |                                  |   |
|----|----------------------------------|---|
| 1. | Applicant:                       | Michael L. Martin   |
| 2. | Owner(s) of premises:            | Michael L. Martin   |
| 3. | Address of owner(s) of premises: | W2656 Rock River Paradise Road, Watertown, WI 53094   |
| 4. | Address of premises:             | 741 & 749 N. Church Street, Watertown, WI 53098   |
| 5. | Legal description of premises    | <ol style="list-style-type: none"> <li>1. Part of Out Lot 12/5<sup>th</sup> Ward, and Spaulding and Prentice Add. Block 1, part of Lot 3. Lot 1 of CSM No.5804, Rec. in V.38 P.216, Doc. No.1054429. (749 N. Church Street) Located in the City of Watertown, Dodge County, Wisconsin.</li> <li>2. Part of Out Lot 12 &amp; 15/5<sup>th</sup> Ward. Also, Spaulding and Prentice Add., Block 1, Lots 2 and 3. Lot 2 of CSM No.5804, Rec. in V.38 P.216, Doc. No.1054429. (741 N. Church Street) Located in the City of Watertown, Dodge County, Wisconsin.</li> </ol> |
| 6. | Zoning district classification:  | TR-6, Two-Family Residential  |
| 7. | Description of conditional use:  | To establish a group development consisting of sixteen duplex condominium buildings on the premises.  |
| 8. | Conditions:                      | <ol style="list-style-type: none"> <li>1. Confirmation that all taxes and payments are current.</li> <li>2. That the driveway serving unit 1A be combined with the one serving unit 1B and moved as far from the corner as possible.</li> <li>3. The storm water management plan must be addressed so that additional water sheet flow from this project to the properties to the south does not increase the current volumes.</li> <li>4. No islands in the right of way.</li> <li>5. Approval of a detailed plant species list by the City Planner.</li> </ol>      |

**DEVELOPMENT AGREEMENT**

**AGREEMENT MADE** this 22<sup>nd</sup> day of November, 2006 by and between Martin Condominium Development, LLC, a Wisconsin limited liability company (hereinafter, "Martin") and the City of Watertown, a Wisconsin municipal corporation (hereinafter, the "City").

**RECITALS**

**WHEREAS**, Martin is the owner of record of certain real estate within the City located at 749 North Church Street, in the City of Watertown, Dodge County, Wisconsin, more particularly described on Exhibit "A", attached hereto and incorporated by reference herein (hereinafter, the "Subject Property"), which real estate contains approximately 7.746 acres of vacant land; and

**WHEREAS**, Martin desires to subject the Subject Property to a condominium form of ownership under Chapter 703 of the Wisconsin Statutes to create the Martin Estates Condominiums (the "Condominium") and to develop residential condominium units on the Subject Property (the "Project");

**WHEREAS**, the Group Development Plan of the Condominium was approved as a Conditional Use Permit by the City of Watertown Plan Commission (the "Plan Commission") on May 22, 2006, subject to Martin entering into an agreement with the City to install, at Martin's sole cost, certain public facilities to serve the Subject Property; and

**WHEREAS**, Martin desires to enter into this Agreement to fulfill the conditions of the Conditional Use Permit, and the City desires to enter into this Agreement to secure certain commitments from Martin regarding the installation of certain public facilities serving the Condominium on the Subject Property.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed:

**Development**

1. Martin shall develop the Project on the Subject Property in accordance with the terms and conditions of this Agreement and all other applicable local ordinances, laws of the State of Wisconsin and regulations of the federal government for the Project.

**Site Plan**

2. The parties agree that Martin shall cause the Subject Property to be improved in general conformity with the Group Development Plan submitted to the City on May 15, 2006 and approved by the Plan Commission on May 22, 2006 as prepared by Uriah P. Monday, P.E. (hereinafter, the "Site Plan"). The Site Plan and supporting documentation are deemed to currently be in compliance with the terms of this Agreement, applicable local, state and federal regulations, and may be modified in the future to solve certain engineering, layout and/or design problems that are not reasonably foreseeable at the time of the execution of this Agreement. Any engineering changes to the Site Plan under this Paragraph 2 shall be approved by the City Engineer for the City of Watertown (the "City Engineer").

3. All public utilities and public improvements to be installed by Martin and accepted by the City shall conform to construction plans and specifications prepared by Uriah P. Monday, P.E., of MSA Professional Services, dated August 30, 2006 and revised on October 4, 2006 (hereinafter, the "Plans").

4. Any contractor engaged by Martin for the construction of any public facilities improvements under this Agreement shall be approved by the City Engineer. A registered

professional engineer or land surveyor shall stake all public facilities installed by Martin under this Agreement.

#### **Site Grading**

5. Martin shall grade the Subject Property according to the specifications on Sheets 6 and 7 of the Grading and Erosion Control Plan for the Project. Erosion control facilities shall be in place prior to commencement of any work on the Subject Property for the Project. It shall be Martin's responsibility to set house foundation grades for each building on the Subject Property for the Project. Martin will prepare a written plan delineating the house foundation grades for each building within the Condominium development and submit such plan to the City Engineer at least thirty (30) days prior to commencement of construction of any building for the Project. Martin shall seed all areas on the Subject Property disturbed by grading, but not yet ready for immediate construction, to prevent erosion. Martin shall also take reasonable measures to protect all existing and proposed drainage facilities from erosion damage during its construction activities for the Project.

#### **Sanitary Sewer Service**

6. Martin shall install all sanitary sewer facilities on the Subject Property for the Project, including, but not limited to, the sewer mains, manholes, castings and laterals shown on the Plans. Said installation shall be subject to a \$25.00/hour inspection fee for all time spent by personnel of the City of Watertown Engineering Department for inspecting such facilities prior to the Acceptance (as defined in Paragraph 27 below) of such facilities.

#### **Water Supply**

7. Martin shall install all water supply facilities on the Subject Property for the Project, including, but not limited to, the water supply mains, hydrants, valves and laterals shown on the Plans. Prior to Acceptance (as defined in Paragraph 27 below), the installation of these water

supply facilities shall be subject to full-time inspection by an approved water inspector and Martin shall pay the reasonable costs associated with such inspections. As necessary, City of Watertown Water Utility (the "Water Utility") personnel shall monitor the work on the Subject Property and Martin shall pay the reasonable costs of such monitoring at a rate of \$26.75 per hour and vehicle time at a rate of \$21.00 per hour.

8. Martin shall reimburse the Water Utility for the reasonable costs associated with the initial painting of all fire hydrants installed within the Subject Property for the Project. The Water Utility shall invoice Martin for the reasonable costs of completing the painting and Martin shall have 30 days to pay that invoice in full. Any unpaid balance shall be subject to 1.5% interest on the unpaid balance per month, accruing from the date of the invoice.

#### **Drainage Facilities**

9. Martin shall install all drainage and storm sewer facilities on the Subject Property for the Project as shown on the Plans.

#### **Road Improvements**

10. Martin shall install all road improvements on the Subject Property for the Project prior to the issuance of any building permit for the construction of a condominium unit on the Subject Property. All private streets as shown on the Plans shall be graded to a full width, including the area where sidewalks will be placed. Martin shall place gravel fill in the roadway to a depth of fourteen inches (14") and to a width of thirty-two feet (32') as shown on Sheet 5 of the Plans. A professional engineer shall insert a gravel roadway prior to placement of curb & gutter or asphalt.

11. Martin shall install curb and gutter on all streets within the Subject Property for the Project as shown on the typical cross-section as stated on Sheet 5 of the Plans.

12. Martin shall pave all private streets within the Subject Property for the Project with

a minimum two-inch (2-1/4") binder course of Type MV asphalt in the initial phase of construction. All structures such as curb inlets, manhole castings and water valves shall be set to binder course grade initially.

13. Martin shall pave all private streets within the Subject Property for the Project with a minimum one and three-quarters inches (1-3/4") surface course of Type MV asphalt in the second construction season to allow for settlement (minimum time lag is six (6) months and one (1) winter season).

14. Martin shall raise all structures on the Subject Property for the Project to finish grade by means of rings or adjustment prior to placement of second asphalt surface course.

15. Martin shall repair all property damage caused by its off-site construction activities, including damage to pavement and turf areas.

16. Prior to Acceptance (as defined in Paragraph 27 below), a professional engineer shall inspect the binder course for any failed areas and the installed curb and gutter for damage prior to placement of the surface course, and Martin shall repair any failures identified by the professional engineer.

#### **Sidewalk**

17. Martin shall install sidewalk in locations shown on the Plans. Sidewalks shall be five feet (5') wide and four inches (4") thick, and shall be six inches (6") thick through driveways. Handicap ramps shall be installed at all corners and shall be five inches (5") thick. Notwithstanding the foregoing, however, if an occupancy permit for a lot is issued by the City during the months of November through May, the sidewalk for such lots shall be installed prior to the following June 30. If Martin does not install the sidewalks by the following June 30, no further building permits shall be issued by the City for Martin unless and until the sidewalks are installed as required. It is the responsibility of Martin or other contractors building condominium units for the Project to protect

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all sidewalks from construction damage or replace same prior to occupancy.

**Other Required Improvements**

18. Martin shall pay to the City the costs for installing streetlights on the Subject Property for the Project prior to the issuance of any building permits for condominium units on the Subject Property. The City shall request a street lighting plan from the electric utility and said plan shall be approved by the City of Watertown Public Works Commission. Martin, or any successor Condominium Association, shall be responsible for maintaining, replacing and repairing the street lights after installation so as to keep all installed street lights in proper working order. The street lighting system shall be required to maintain a schedule of burning identical to the City's lighting schedule throughout the remainder of the City. Martin, or any successor Condominium Association shall be liable for the payment of all electricity costs for the installed streetlights.

19. Martin shall pay to the City the reasonable costs of installing all required street signs on the Subject Property for the Project. The following signs are required: two (2) street name sign combinations at \$140/each and two stop signs at \$100/each. Martin shall pay the City a total of **\$480.00** for these signs. Martin, or any successor Condominium Association, shall be responsible for maintaining, replacing and repairing the street signs installed under this Paragraph.

20. Martin, or any successor Condominium Association, shall maintain, use and repair all sidewalks, curbs, gutters, and interior streets on the Subject Property for the Project, as shown on the Site Plan, in accordance with the ordinances of the City and at the direction of the City of Watertown Street Department Superintendent ("Street Department Superintendent"). Martin, or any successor Condominium Association, shall keep all streets and sidewalks in reasonably good condition and repair, safe for public travel, and reasonably free from snow, ice, and dirt to the satisfaction of the Street Department Superintendent.

21. The City shall provide, at its sole expense, regularly-scheduled garbage and refuse

collection and regularly-scheduled recycling collection for the Condominium within the Subject Property using City vehicles and recycling receptacles.

**As-Built Plans and Costs**

22. Upon completion of the construction of all public facilities required under this Agreement, Martin shall supply the City with an “as-built” copy (electronic and paper) of all water, sanitary sewer and storm sewer facilities completed by a professional engineer. Also, to comply with the City's auditing requirements, Martin shall supply the City with the approximate cost of the entire sanitary sewer, storm sewer and water main installation, which cost shall include labor and materials for the installation of such facilities.

**Park Dedication Requirements**

23. The Watertown Park, Recreation and Forestry Director decided to accept fees-in-lieu of a land dedication. The Plan Commission has determined that (1) there is no land suitable for parkland development within the proposed planned unit development on the Subject Property; (2) the dedication of land within the Condominium development is neither feasible nor in conformity with the City's Master Plan or Park and Open Space Plan; and (3) that a cash contribution in lieu of land dedication will more properly serve the public interest. Martin acknowledges that his payment of these fees is voluntary and the subject of negotiations between the City and Martin. Recent changes to Section 66.0617 of the Wisconsin Statutes, contained in 2005 Wisconsin Act 477, are about to be adopted and implemented by the City following a public hearing on November 21, 2006. Instead of Martin waiting until these changes are codified in the City's Ordinances, Martin agrees to waive any objections he may have to the current Parkland Improvement fees and Recreational Facilities Improvement fees imposed as impact fees by the City. Martin expressly agrees to the payment of the impact fees assessed below and further agrees to waive any error, invalidity or irregularity in the determination or assessment in the following impact fees.

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Martin has a strict timeline and construction schedule. Thus, the City will not require him to await full implementation of the amendments to Section 20.11(23) of the Watertown General Ordinances, in return for his waiver and agreement contained herein. Martin has consulted with his legal counsel prior to making this voluntary waiver and Martin knowingly and freely, with full understanding of his legal rights in this situation, agrees to tender the following impact fees to the City:

The Parkland Improvement Fee for the Project on the Subject Property is as follows:

$$32 \text{ dwelling units} \times \$200.00/\text{dwelling unit} = \mathbf{\$6,400.00.}$$

The Recreational Facility Improvement Fee for Project on the Subject Property is as follows:

$$32 \text{ dwelling units} \times \$1,066.00/\text{dwelling unit} = \mathbf{\$34,112.00.}$$

Said fees shall be paid at the time that the first building permit is issued for a condominium unit on the Subject Property. Except as otherwise required by this Agreement, Martin shall not be required to pay the City any additional impact fees (including, without limitation, additional Parkland Improvement Fees and/or Recreational Facility Improvement Fees) for the Project.

#### **Plat Review Fees**

24. Martin shall pay to the City fees, as required herein, according to the schedule called for in Chapter 20, Subdivision Regulations. The fees are as follows:

$$\text{Final plat review fee: } \$100 + (\$50.00/\text{dwelling unit} \times 32 \text{ dwelling units}) = \mathbf{\$1,700.00.}$$

#### **Financial Capabilities of Developer**

25. Martin agrees to abide by the requirements of Section 20.11 (24) of the City's Subdivision Regulations pertaining to fiscal guarantees for completion of all public utility work associated with the Subject Property. Martin shall tender to the City an irrevocable letter of credit (the "Letter of Credit") in an amount equal to the estimate of the cost of the work to be performed

by Martin under this Agreement as determined by the City Engineer (the "Estimated Costs") within ten (10) days of the execution of this Agreement to fulfill its obligations under Section 20.11 (24) of the City's Subdivision Regulations.

26. The Letter of Credit may be reduced as work progresses on the Project by the value of the work completed upon the written approval of the City Engineer. Upon Acceptance of the public utility facilities, the Letter of Credit shall be reduced to an amount equal to 10% of the Estimated Costs to secure Martin's obligations under Paragraph 28 of this Agreement. The Letter of Credit shall automatically terminate on the 365<sup>th</sup> day after the date of Acceptance.

#### **Acceptance**

27. The City Engineer shall inspect all public facilities installed by Martin under this Agreement upon completion and, if deemed acceptable, shall issue a written approval of same to Martin ("Acceptance"). The City Engineer's Acceptance of all public facilities under this Paragraph 27 shall not be unreasonably conditioned, withheld or delayed. The public facilities required to be installed by Martin under this Agreement shall not be fully utilized for the Condominium prior to the Acceptance. Except as provided in Paragraphs 18, 19, 20, 28, and 29, upon Acceptance, Martin shall have no further obligation to perform any work under this Agreement.

#### **Warranties**

28. Martin shall warrant all public facilities designed or constructed by Martin under this Agreement against any and all defects in workmanship and materials for a period of 365 days after the date of Acceptance. In addition to the warranties for workmanship and materials, Martin shall remedy the negligent installation of any public facilities designed or constructed by Martin under this Agreement for a period of 365 days after the date of Acceptance. All warranties by Martin with respect to the public facilities constructed under the Agreement shall automatically

expire the 365<sup>th</sup> day following the date of Acceptance.

### **Easements and Monuments**

29. Martin, or any successor Condominium Association, agrees to convey or dedicate all necessary easements on, over and under all roadways within the Condominium development on the Subject Property to the City for the extension of sanitary sewer, water supply, access to storm sewer, and other public improvements, which may serve the Subject Property. Martin, or any successor Condominium Association, agrees to convey or dedicate all necessary easements on, over and under a strip of land, twenty (20) feet in width, running along the southerly boundary of the Condominium development containing storm sewer pipe to the detention pond on the development. These easements shall be located so as to cause a minimum of inconvenience in the development of the Subject Property. These easements shall be granted to the City prior to issuance of any building permits for condominium units on the Subject Property. All electricity, telephone, cable television and natural gas lines shall be installed underground, the location of which shall be at either the option of Martin or the respective utility installing same.

30. Martin shall place, or cause to be placed and installed, all survey or other monuments required by Wisconsin law or local ordinances prior to issuance of any building permits for condominium units on the Subject Property. Interior piping or placement of monuments upon the Subject Property for the Project shall be installed after the improvements are completed.

### **Issuance and Approval of Permits**

31. Martin, and/or its successors and assigns, agrees to secure the necessary permits required for the construction of the Project on the Subject Property and to pay all appropriate fees regarding same. No building permits for the construction of condominium units for the Project on the Subject Property shall be issued until all required public facilities (including, without limitation, curbs and gutters) are installed, tested and accepted, in writing, by the City, and private roadway

binder course is placed.

### **Severability**

32. If any provision of this Agreement is held invalid by a court of a competent jurisdiction, or in the event a court shall determine that the City and/or Martin do not have the power to perform a disputed provision, the provision shall be deemed severed from this Agreement, and any such invalidity shall not effect any of the other provisions contained herein, and the judgment or decree shall relieve the City and Martin from performance under the invalid provision of this Agreement.

### **Modification of Plans**

33. It is understood that because of external considerations and planning progress, it may, from time to time, be necessary to change the survey, layout, plans, drawings, technical information or other terms and conditions of this Agreement. Any minor changes or adjustments can be made between Martin and the appropriate administrative staff of the City. Any substantial changes can be made only with the approval of the City Plan Commission. All modifications to this Agreement shall be in writing in order to be binding upon the parties.

### **Binding Effect**

34. This Agreement shall be binding upon and inure to the benefit of the parties, successor, owners of record of the Subject Property, assignees, lessees, and upon successors in office or municipal authorities of the City, and be enforceable by order of a court pursuant to the provisions of Wisconsin law. Nothing herein shall in any way prevent alienation or sale of the Subject Property or a portion thereof except that said sale shall be subject to the provisions of this Agreement, the Watertown Subdivision Regulations and of the Watertown Zoning Code, as amended, from time to time, and in effect at the time of such sale or further development. Notwithstanding any provision of this Agreement, the parties shall be obliged to conform to any

amendments to the Watertown Zoning Ordinance hereinafter adopted relating to the uses, parking, setbacks, loading, or other regulations that are adopted subsequent to the date of this Agreement (other than the fee provisions in Paragraph 23 of this Agreement). This Agreement shall be binding upon the parties or their successors in interest and shall run with the land. This Agreement and the ongoing maintenance provisions contained herein shall be binding upon Martin or any successor Condominium Association or like entity, or binding upon the individual property owners within the Condominium development in the absence of any Condominium Association.

#### **Authorization to Execute**

35. The principals of Martin, in executing this Agreement, confirm that they have been lawfully authorized to execute this Agreement and the Common Council of the City has authorized the Mayor and City Clerk/Treasurer to execute the Agreement on behalf of the City.

#### **Dispute Resolution**

36. In the event either party believes that the other party has failed to comply with any requirements of this Agreement, it must evoke the following procedures. The party asserting the noncompliance must serve written notice on the other party, namely, the Mayor and Martin. The notice will identify the specific statutory, regulatory, or Agreement provision alleged to have been violated and will specify the factual basis for the alleged noncompliance. The City and Martin will thereafter meet within fifteen (15) days in an effort to resolve the dispute. In the event the dispute is not resolved to the satisfaction of the parties within thirty (30) days after the service of the notice, the dispute will be referred to a panel of arbitrators whose arbitration will be governed by Chapter 788 of the Wisconsin Statutes. The arbitration panel will consist of one person selected by Martin and one person selected by the City, these two arbitrators to select a third. The decision of any two arbitrators of this panel will be final and binding on both parties hereto. Each party hereto will pay one half of the expense of such arbitration. The City and Martin consent to suit in Dodge County



STATE OF WISCONSIN)  
  )SS  
Jefferson COUNTY )

Personally came before me this 28<sup>th</sup> day of Nov. 2006, the above named John P. David and Michael H. Hoppenrath, in their official capacities as officers of the City of Watertown, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Cynthia D. Ruppel  
Notary Public

My Commission Expires Dec. 23, 2007



THIS INSTRUMENT DRAFTED BY:

Attorney Thomas J. Levi, City Attorney and  
William T. Stuart, Attorney for Martin Condominium Development, LLC