

Public Works Development Agreement
Woodland Hills – Adler Drive Phase

Parcel ID Numbers: WAKC 0985 002

After recording return to:
City of Waukesha
Dept. of Public Works
201 Delafield St.
Waukesha WI 53188

This Development Agreement, referred to herein as the Agreement, is entered into by and between the **City of Waukesha**, a Wisconsin municipal corporation, referred to herein as the City; and **Woodland Hills Development by Belman, Inc.**, a Wisconsin domestic company, referred to herein as the Developer. The lands subject to this Agreement are legally described on attached Exhibit "A," and is referred to herein as the Real Property.

In consideration of the mutual covenants contained herein, the City and the Developer agree and contract as follows:

-
- 1. Developer.** The Developer is Woodland Hills Development by Belman, Inc.
 - 2. The Development.** The term Development, as used herein, refers to the Developer's construction of a 17-unit single family residential condominium development known as Woodland Hills – (Adler Drive Phase) which includes a privately owned street known as Adler Drive, and all associated improvements. The sanitary sewer and storm sewer will also be privately owned by the Condominium Association. The overall Development will continue to be completed in multiple phases with additional Development Agreements.
 - 3. Expenses of Development.** All expenses of the Development and compliance with the terms and conditions of this Agreement shall be paid solely by the Developer.
 - 4. Development Plans.** The Developer shall deliver to the City complete, accurate and sufficiently-detailed plans of the Development, which are referred to herein as the Development Plans. The Development Plans shall include the following:
 - a. Construction drawings of all improvements to the Real Property, showing the locations of all streets, sidewalks, utilities, storm water facilities, storm sewers, sanitary sewers, signs, pavement markings, elevations, grading, and all other plans and drawings for the Development;
 - b. Project specifications.
 - c. Landscape and turf restoration plans.
 - d. Master grading and erosion-control plans.
 - e. Street signage, and street lighting plans.
 - f. Condominium Plat showing the locations of all buildings.
 - 5. Compliance with Development Plans.** The Developer shall construct the Development in substantial compliance with the Development Plans as modified, conditioned and approved by the City Public Works Department, and any substantial deviation from them must be approved in writing by the City, in advance.
 - 6. Impact Fees and Other Charges.** Developer shall pay to the City the following Impact Fees and charges. Impact Fees shall be paid in full upon execution of this Agreement, unless payment is specifically deferred to the time of issuance of individual building permits. All Impact Fees and charges shall be paid in full before building permits are issued.
 - a. Sanitary Sewer Impact Fee: Deferred to building permit issuance for individual units or buildings.
 - b. Parks Impact Fee: Deferred to building permit issuance for individual units or buildings.
 - c. Library Impact Fee: Deferred to building permit issuance for individual units or buildings.
 - d. Police Impact Fee: Deferred to building permit issuance for individual units or buildings.
 - e. Deferred pump station assessment of \$0.00 per acre for a total of \$0.00.
 - f. Deferred sanitary sewer interceptor assessment of \$0.00 per acre for a total of \$0.00.

7. Construction Requirements. The following improvements as shown in the Development Plans are specifically required by the City, and the construction of them shall be secured by the performance bond or letter of credit required by section 10 of this Agreement:

- a. Landscape restoration.
- b. Street signage
- c. A digital as-built of all sanitary sewer, storm sewer, and storm water facilities such as regional swales in the Development. A televising video of all sanitary sewer main, sanitary sewer laterals, and storm sewer in the Development.

8. Time for Performance.

a. Developer shall complete the construction of all improvements listed in section 7 no later than 12 months from the execution of this document. Construction of improvements shall be deemed complete when the improvements are substantially constructed according to the terms of this Agreement, and City delivers a written acceptance of these improvements to Developer, which shall not be unreasonably withheld, conditioned or delayed by City.

9. Construction Standards.

- a. **Contractor Qualification.** For work in the public right of way, Developer shall obtain a City Construction Permit from the City of Waukesha Engineering Department.
- b. **Work Standards.** Developer shall construct all public improvements in the Development in a good and workmanlike manner, according to accepted practices within the trades and in compliance with all applicable laws and codes. Developer shall obtain all required permits from the Wisconsin Department of Resources. All streets, curbs, sidewalks, sanitary and storm sewers constructed by Developer in connection with the Development shall be constructed according to the City Department of Public Work's published street, sidewalk and utility construction standards, City Standard Specifications and Development Handbook; the approved storm water management plan; and the Development Plans. City staff will mark any areas requiring repair and replacement, and Developer shall repair or replace, as indicated, all marked areas. All construction work shall be subject to inspection by City staff for compliance with the terms of this Agreement, and Developer shall perform all corrective work required by the City after inspection.

10. Security for Performance. The Developer shall, at Developer's sole expense, obtain and deliver to the City

either a surety bond or irrevocable letter of credit, naming the City as beneficiary, to secure full performance of Developer's obligations under sections 7, 8, and 9. The letter of credit or surety bond must be delivered to the City before any construction takes place, or at such other time as the City agrees in writing. If the letter of credit or bond is not delivered to the City on time, then all construction must cease until the letter of credit or bond is delivered and accepted by the City. The choice of surety bond or letter of credit is the Developer's option. The bond or letter of credit shall meet the following requirements:

a. **Surety Bond Requirements.** The bond shall be issued by a surety listed on the U.S. Department of the Treasury's Department Circular 570-Listing of Approved Sureties in a form satisfactory to the City Attorney.

b. **Letter of Credit Requirements.** The letter of credit shall be irrevocable, shall be issued by a commercial bank licensed to conduct business in Wisconsin in a form satisfactory to the City Attorney.

c. **Security Amount.** Subject to adjustment pursuant to subsection 10.d, the amount of the bond or letter of credit shall be \$84,600.00. Developer shall take whatever actions are necessary, at Developer's sole expense, to ensure that after any partial draws are made, there shall remain 120% of the remaining estimated costs of completion of the improvements listed in section 7 available for the City to draw upon.

d. **Reduction of Security Amount.** Pursuant to Wis. Stats. §236.13(2)(a)(1), on the date 14 months after the binder coat is installed on all roads to be dedicated to the City, or, if no roads are to be dedicated to the City, on the date 14 months after 90% by cost of the public improvements to be installed by Developer are completed, the security amount required by this section shall be reduced to the amount equal to the cost to complete any unfinished public improvements plus 10% of the total cost of the finished public improvements.

e. **Condition of Payment.** The condition of payment under the bond or letter of credit shall be the completion by Developer of the required improvements listed in section 7, in compliance with the standards in section 9, no later than the date stated in section 8. This shall be established by an affidavit by the City. Time is of the essence. Upon Developer's failure to do so, the City shall provide notice to Developer of such default and provide Developer with a reasonable opportunity to cure the same prior to making any demand for payment.

f. Remedy Not Exclusive. Application of the bond or letter of credit proceeds by the City shall not relieve the Developer of its obligations under this Agreement, and demand by the City on the bond or letter of credit shall not be a waiver by the City of any other rights or remedies.

11. Building Permits. Building permits will not be issued for any lots in the Development until:

- a.** A road is constructed for fire and emergency access to the proposed buildings in accordance with the requirements established by the City of Waukesha Fire Marshal prior to an early start permit being issued.
- b.** A digital record drawing of all sanitary sewer, storm sewer, and storm water facilities in the Development shall be performed by Developer and approved by the City. Any deficiencies found by the City shall be corrected to the City's satisfaction. Televising videos of all sewers shall be performed by Developer and approved by the City. The Sewer Acceptance forms shall be prepared by Developer and approved by City.
- c.** All lot grading declarations for the Development are recorded and provided to the City.
- d.** The lighting declarations for the Development are recorded and provided to the City.
- e.** The Condominium Plat of the Development is provided to City.
- f.** Security as required by section 10 is received by the City Engineering Division.
- g.** All impact fees, sewer assessments, and application review fees have been received by the City Engineering Division.
- h.** The City Storm Water Permit has been issued, and any permits for grading, has been issued by the Wisconsin Department of Natural Resources, with copies of the permits provided to City Engineering.

12. Recorded Grading Declaration. The Developer shall record with the Register of Deeds for Waukesha County a Declaration of Covenants and Restrictions which shall include a requirement that each building owner shall be responsible for grading the area around his or her building in substantial conformance with the master grading plan approved by the City to ensure positive drainage and not cause drainage issues with adjoining buildings.

13. Garbage and Recycling Pickup. Units within this development which are deemed eligible for city solid waste and recycle service may pursue such service. Units not eligible for city solid waste and recycle service must procure services at their own expense.

14. Landscaping Warranty. The warranty period for all topsoil, seed, sod, tree, bush or other landscape or restoration work installed in the public right-of-way shall be the earlier of 1 year from the final completion date or full stabilization.

15. City May Correct Deficiencies. If the Developer fails, after reasonable written notice from the City, with reasonable opportunity to cure any defaults of the terms of this Agreement, including all warranties, the City may cure the defaults. The Developer shall then reimburse the City for all reasonable expenses incurred by the City, and the City may charge such expenses against the Development as a special charge under Wis. Stats. §66.0627.

16. Inspection Access. Developer shall allow the City access to the Development as reasonably required to perform inspections of the Development. If Developer fails to give adequate access for inspections, the City may order that all building and construction permits be suspended and all work on the Development cease until adequate access has been given for inspections and the inspections reveal that the Development is in compliance with all codes, permits, and the terms of this Agreement. An on-site preconstruction meeting shall be held with Developer, Contractors, and City representatives prior to commencement of construction.

17. Indemnification. Developer shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, the Developer's construction of the Development, including court costs and actual attorney fees. Indemnification shall not extend to claims arising out of the negligent or intentional acts or omissions of the City, its officers, agents, employees or independent contractors.

18. Insurance. Developer shall maintain, or require its contractors to maintain, insurance of the following kinds and for not less than the following limits, at Developer's sole expense, at all times during the construction of the Development. Policies shall be occurrence, and not claims-made, policies. Developer shall obtain an endorsement making the City an additional insured, and such insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Prior to commencement of construction, Developer shall deliver a certificate of insurance to City showing that all requirements of this section are met.

a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.

b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.

- c. Builders risk, the value of the improvements required by section 7.
- d. Excess liability-Umbrella, \$5,000,000.
- e. Worker compensation, statutory requirements.

19. Recording. The City will record this Agreement with the Register of Deeds, and the cost of recording shall be reimbursed to the City by the Developer.

20. Agreement Runs with Land. The terms and conditions of this Agreement, specifically including but not limited to the Developer's obligations under the storm water management and maintenance plan referred to in section 4.d, are covenants running with the land; bind the Developer and its successors, assigns, and any other entities claiming legal, equitable or beneficial interests in the Real Property; and inure to the benefit of the City.

21. Governmental Immunities and Notice Requirements Preserved. Nothing in this Agreement shall be construed to be a waiver or modification of the immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

22. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

23. Corporate Authorization. The individuals executing this Agreement on behalf of the Developer represent that they are duly authorized to bind the Developer contractually. The Developer represents that the execution of this Agreement is not prohibited by its articles of incorporation, by-laws, operating agreement, partnership agreement, limited-partnership agreement, or other internal operating orders, or by any applicable law, regulation or court order.

24. Assistance of Counsel, Voluntary Contract. The Developer acknowledges that it has either had the assistance of legal counsel in the review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understands each of this Agreement's terms, conditions and provisions, and their effects; and that this Agreement is executed freely and not under conditions of duress.

25. Adequacy of Consideration. The Parties acknowledge that the consideration expressed in this Agreement is adequate and sufficient to make the

obligations contained in this Agreement binding upon the Parties.

26. Integration. This Agreement and any documents which are executed pursuant to express provisions in this Agreement embody the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.

27. Amendments. No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing and signed by all the Parties to this Agreement.

28. Severability. If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.

29. Governing Law and Jurisdiction. This Agreement shall be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Agreement, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin and waive all jurisdictional defenses.

35. Force Majeure. Neither Party shall be deemed to be in default of this Agreement if the failure to perform is the result of unforeseeable causes beyond the Party's control, including but not limited to civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials, acts of God, Governmental restrictions, and pandemics, provided the Party has used reasonable diligence in attempting to anticipate and avoid such causes and resumes performance in good faith as soon as reasonably possible. Time for performance shall be extended by the period of delayed performance.

30. Title Evidence. Title evidence satisfactory to the City showing that Developer is the fee titleholder of the Development shall be provided to City prior to any construction taking place on the Development.

31. Private Cluster Mailboxes. Developer shall furnish private cluster mailboxes located on private property at locations and with specifications if required and as approved by City and US Mail Postmaster.

Developer: Woodland Hills Development by Belman, Inc

By its registered agent, Richard R. Kobriger
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

Richard R. Kobriger, known to me to be the registered agent of Woodland Hills Development by Belman, Inc., personally came before me the ____ day of March, 2022, signed this Development Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires _____)

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attest: Gina L. Kozlik, City Clerk-Treasurer
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the Mayor and City Clerk, respectively, of the City of Waukesha, personally came before me the ____ day of _____, 2022, signed this Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires _____)

This instrument was drafted by City of Waukesha Department of Public Works.

Exhibit A

Parcel ID Number: WAKC 0985 002 Legal description of Real

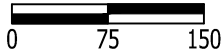
Property:

(See next page for boundary description and Exhibit)

EXHIBIT

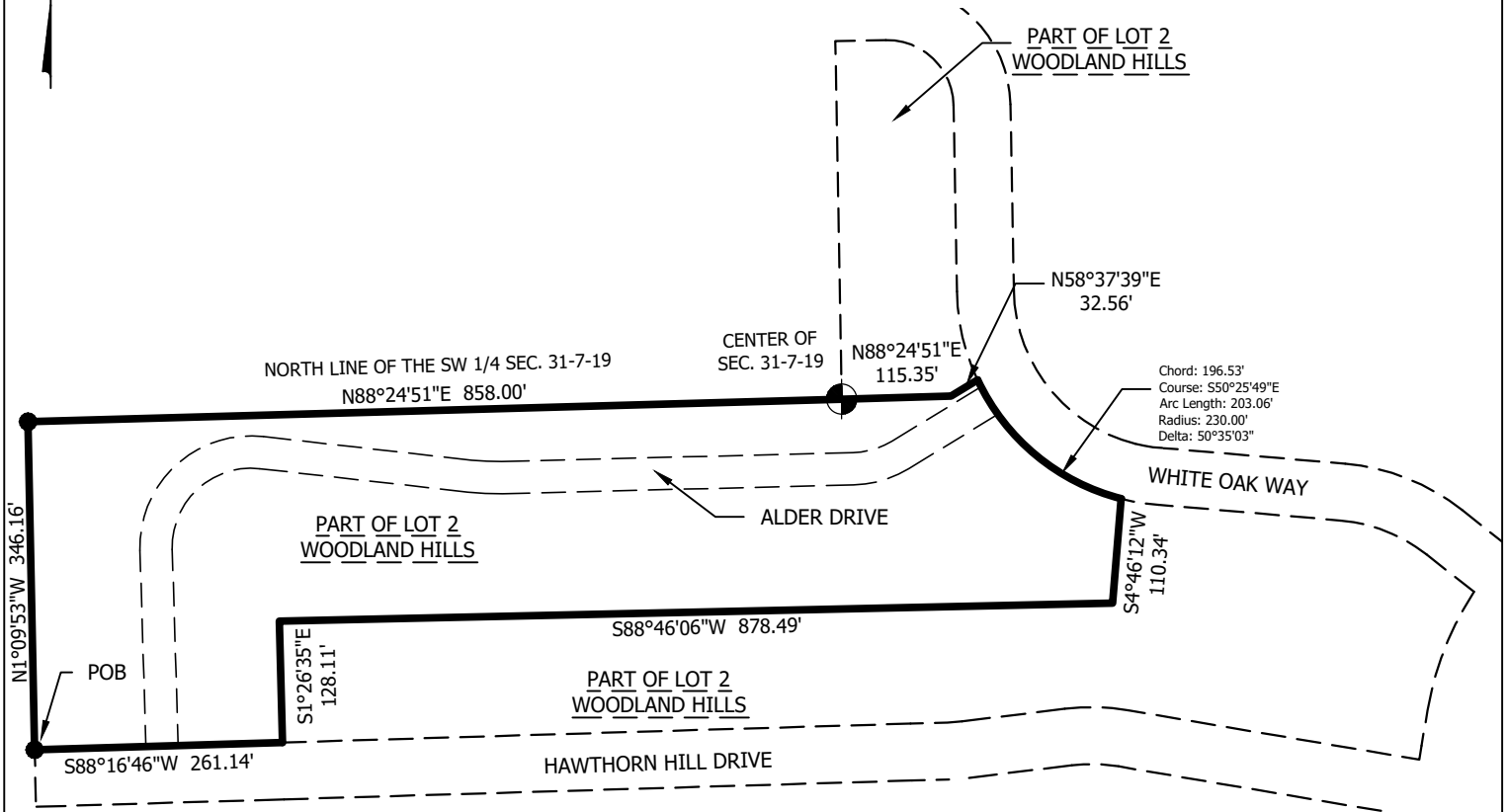
BEING A PART OF LOT 2 OF WOODLAND HILLS
 LOCATED IN THE NE. 1/4 OF THE SW. 1/4 OF SECTION 31, T.7N., R.19E.,
 CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN

SCALE IN FEET



LEGEND

- - 1" IRON PIPE FOUND
(UNLESS OTHERWISE STATED)



LEGAL DESCRIPTION:

BEING A PART OF LOT 2 OF WOODLAND HILLS, LOCATED IN THE SW 1/4 AND SE 1/4 OF SECTION 31, T.7N., R.19E., CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN MORE FULLY DESCRIBED AS;

BEGINNING AT SOUTHWEST CORNER OF LOT 2 OF WOODLAND HILLS SUBDIVISION; THENCE N01°09'35"W., ALONG THE WEST PROPERTY LINE OF THE SAID LOT 2, A DISTANCE OF 346.16 FEET; THENCE N88°24'51"E., ALONG THE NORTH PROPERTY LINE OF SAID LOT 2, A DISTANCE OF 858.00 FEET, TO THE CENTER OF SECTION 31-07-19; THENCE CONTINUEING N88°24'51"E., 115.35 FEET; THENCE N58°37'39"E., ALONG THE NORTH 50' WIDE EASEMENT OF ALDER DRIVE, 32.56 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY OF WHITE OAK WAY; THENCE 203.06 FEET ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 230.00 FEET, AND THE SOUTHWEST RIGHT-OF-WAY OF WHITE OAK WAY, WHOSE CHORD BEARS S50°25'49"E, 196.53 FEET; THENCE S04°46'12"W., 110.34; THENCE S88°46'06"W., 878.49 FEET; THENCE S01°26'35"E., 128.11 TO A POINT ON THE NORTH RIGHT-OF-WAY OF HAWTHORN HILL DRIVE; THENCE S88°16'46"W., ALONG SAID RIGHT-OF-WAY, 261.14 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAIN 275,528 SQ FT (6.32 AC)



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