

Development Agreement
Residential
Howell Oaks Addition 3, Phase 4

Parcel ID Numbers: WAKC 1318 999 001
WAKC 1318 999 002

After recording return to:
City of Waukesha
Engineering Division
130 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 **Howell Oaks Development LLC**, a Wisconsin limited-liability company, referred to herein as the Developer. The real property subject to this Agreement is 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:

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1. **Developer.** The Developer is Howell Oaks Development LLC, c/o Thomson Companies, N28 W23000 Roundy Drive #204, Pewaukee, WI 53072.
 2. **The Development.** The term Development, as used herein, refers to the Developer's construction of a residential subdivision on the Real Property, which is known as Howell Oaks Addition No. 3, Phase 4, containing 29 lots and 1 outlots, and all associated improvements as shown in the Development Plans, defined below.
 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, unless expressly provided otherwise in this Agreement.
 4. **Development Plans.** The Developer shall furnish the City complete, accurate and sufficiently-detailed plans of the Development, which are referred to herein as the Development Plans. The Development Plans include the following:
 - a. Final Plat showing the locations of all lots, outlots, easements, public rights-of-way, and all other improvements to the Real Property.
 - b. 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.
 - c. Storm water management plan and storm water management practice maintenance agreement and all addendums.
 - d. Project specifications.
 - e. Landscape and turf restoration plans.
 - f. Master grading and erosion-control plans.
 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 Plan Commission, 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.
 - b. Parks Impact Fee: Deferred to building permit issuance.

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. The storm water maintenance agreement for the Development, with Exhibits A, B, C, D, E, F, and G and all addendums, have been reviewed and approved by the City and have been recorded by the Waukesha County Register of Deeds.

b. A digital as-built of all 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.

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 final plat of the Development is recorded.

f. All utilities have been accepted by the City and Water Utility.

g. Security in Section 11 is received by the City Engineering Division.

h. All impact fees, sewer assessments, and application review fees have been received by the City Engineering Division.

i. The City Storm Water Permit has been issued, and any permits for grading or wetland disturbance have 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 lot owner shall be responsible for grading his or her lot in substantial conformance with the master grading plan approved by the City to ensure positive drainage.

13. Landscaping Warranty. The warranty period for all topsoil, seed or sod and restoration work in this contract shall be 1 year from the final completion date.

14. City May Correct Deficiencies. If the Developer fails, after reasonable notice from the City, 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 expenses incurred by the City, and the City may charge such expenses against the Development as a special assessment.

15. Recorded Lighting 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 lot owner shall be responsible for providing a functioning lamp post on the driveway.

16. City Inspections. The City is granted access to the Development at all reasonable times for inspection of work.

17. Utility Easements. The Developer shall grant to the City easements for all municipal utility facilities in the Development, and deliver to the City an instrument in recordable form showing all such easements. The easement instrument shall be in a form approved by the City, and shall contain all usual terms and provisions required by the City.

18. 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. Such indemnification shall not extend to claims arising out of the negligent acts or omissions or the intentional acts of the City, its officers, agents, employees and independent contractors.

19. Insurance. Developer shall maintain, or require its general contractor 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. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Agreement, 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. Excess liability-umbrella, \$5,000,000.

20. 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.

21. 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.c, 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

29. 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.

30. 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.

Developer: Howell Oaks Development LLC,

Timothy J. Smits
Timothy J. Smits, Manager

State of Wisconsin }
Waukesha County } ss.

Timothy J. Smits, known to me to be the Manager, of Howell Oaks Development LLC, personally came before me the 20TH day of NOVEMBER, 2018, signed this Development Agreement in my presence, and acknowledged the same.

Dean A. Frederick
Name: DEAN A. FREDERICK
Notary Public, Waukesha County, Wisconsin
My commission (~~is permanent~~) (expires 3-5-2023)



City of Waukesha

By Shawn N. Reilly, Mayor

Attest: Gina L. Kozlik, City Clerk

State of Wisconsin }
Waukesha County } ss.

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 _____, 2018, 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.

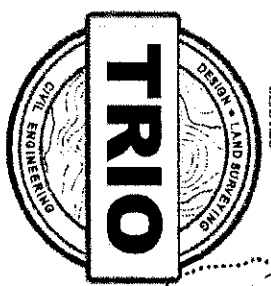
Exhibit A

P.O.C.
N.W. CORNER.
SEC. 6-6-19
50°38'29"W
472.76

EXHIBIT "A"

HOWELL OAKS ADDITION NO. 3²

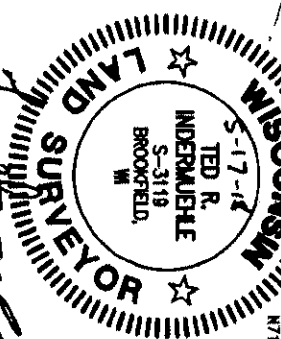
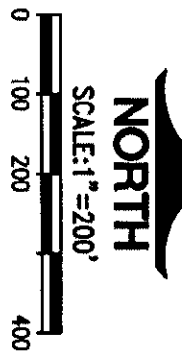
ALL THAT PART OF THE NORTHWEST 1/4 AND NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6, TOWN 6 NORTH, RANGE 19 EAST, IN THE CITY OF WALKESHA, WALKESHA COUNTY, WISCONSIN



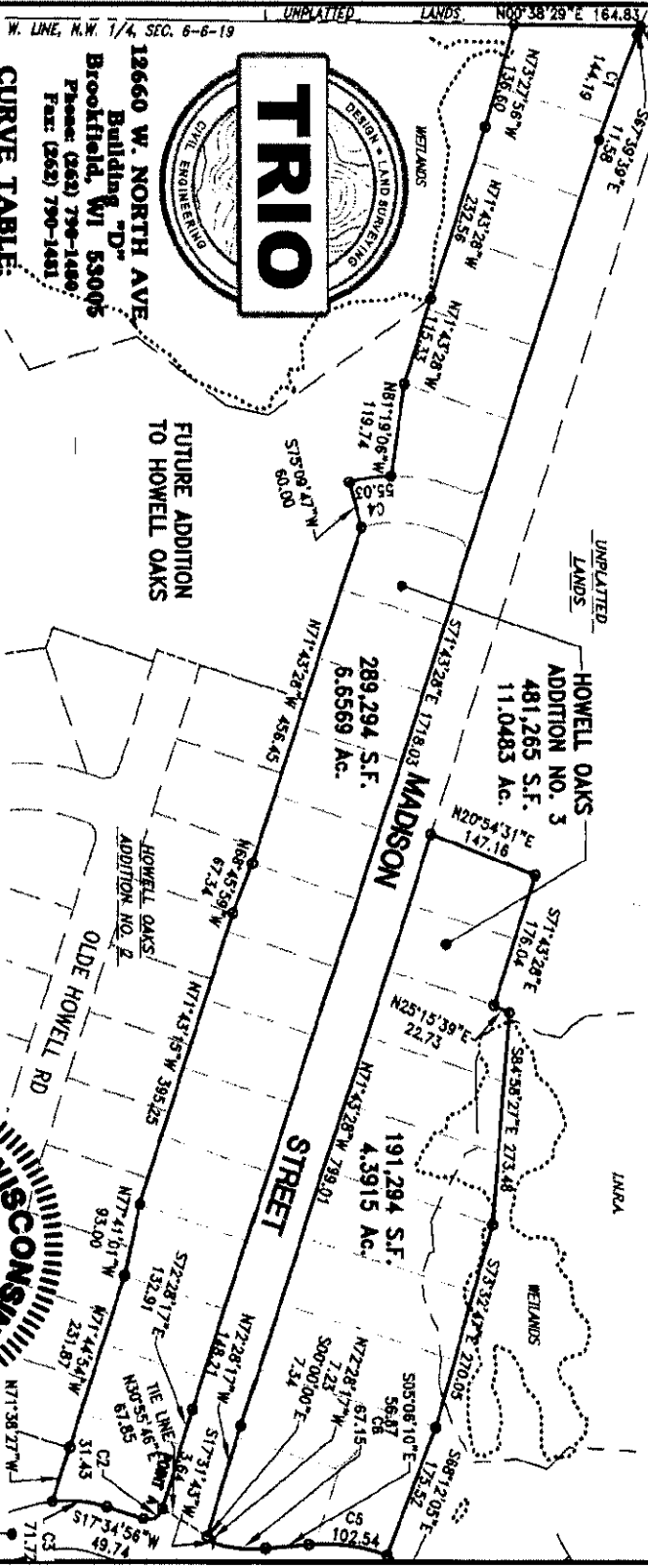
CURVE TABLE:

NO.	RADIUS	CENTRAL ANGLE	ARC	CHORD	CHORD BEARING
C1	2033.00	4°03'49"	144.19	144.15	S69°41'34"E
C2	20.00	90°03'13"	31.43	28.30	S27°26'41"E
C3	1771.00	2°31'25.5"	71.72	71.23	S05°58'28"W
C4	230.00	13°42'30"	55.03	54.90	N07°58'58"W
C5	230.00	25°32'42"	102.54	101.70	S07°40'11"W
C6	170.00	22°37'53"	67.15	66.71	S06°12'46"W

THIS EXHIBIT WAS PREPARED BY TED R. INDERMUEHLE, P.L.S. (S-3119)



DATE: 5/17/18



"HOWELL OAKS ADDITION NO. 3"

LEGAL DESCRIPTION:

All that part of the Northeast 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 6, Town 6 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Northwest corner of the said Northwest 1/4; Thence South 00°38'29" West and along the West line of said Northwest 1/4, 472.76 feet to a point on the South Right-of-Way line of "Madison Street" and the place of beginning of lands hereinafter described;

Thence South 67°39'39" East along said South line, 11.58 feet to a point; Thence Southeasterly 144.19 feet along the arc of a curve whose center lies to the Northeast, whose radius is 2033.00 feet and whose chord bears South 69°41'34" East along said South line, 144.15 feet to a point; Thence South 71°43'28" East along said South line, 1718.03 feet to a point; Thence South 72°28'17" East along said South line, 132.91 feet to a point, said point being **Point "A"**; Thence Southeasterly 31.43 feet along the arc of a curve whose center lies to the Southwest, whose radius is 20.00 feet and whose chord bears South 27°26'41" East along said South line, 28.30 feet to a point on the West Right-of-Way line of "South Prairie Song Drive"; Thence South 17°34'56" West along said West line, 49.74 feet to a point; Thence Southerly 71.72 feet along the arc of a curve whose center lies to the East, whose radius is 177.00 feet and whose chord bears South 05°58'28" West along said West line, 71.23 feet to a point; Thence North 71°38'27" West 72.29 feet to a point; Thence North 71°44'54" West 231.87 feet to a point; Thence North 77°41'01" West 93.00 feet to a point; Thence North 71°43'15" West 395.25 feet to a point; Thence North 68°45'59" West 67.34 feet to a point; Thence North 71°43'28" West 456.45 feet to a point; Thence South 75°09'47" West 60.00 feet to a point; Thence Northwesterly 55.03 feet along the arc of a curve whose center lies to the Northeast, whose radius is 230.00 feet and whose chord bears North 07°58'58" West 54.90 feet to a point; Thence North 81°19'06" West 119.74 feet to a point; Thence North 71°43'28" West 115.33 feet to a point; Thence North 71°43'28" West 232.56 feet to a point; Thence North 73°27'56" West 136.60 feet to a point on the West line of said Northwest 1/4; Thence North 00°38'29" East along said West line, 164.83 feet to the point of beginning of this description.

Said Parcel contains 289,971 Square Feet (or 6.6569 Acres) of land, more or less.

ALSO WITH:

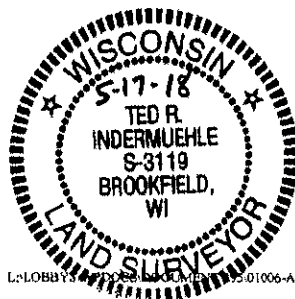
Commencing at **Point "A"**, Thence North 30°55'46" East along the Tie Line, 67.85 feet to a point on the North Right-of-Way line of "Madison Street" and the place of beginning of lands hereinafter described;

Thence North 72°28'17" West along said North line, 148.21 feet to a point; Thence North 71°43'28" West along said North line, 799.01 feet to a point; Thence North 20°54'31" East 147.16 feet to a point; Thence South 71°43'28" East 176.04 feet to a point; Thence North 25°15'39" East 22.73 feet to a point; Thence South 84°58'27" East 273.48 feet to a point; Thence South 73°32'47" East 270.05 feet to a point; Thence South 68°12'05" East 175.52 feet to a point on the West Right-of-Way line of "South Prairie Song Drive"; Thence Southerly 102.54 feet along the arc of a curve whose center lies to the East, whose radius is 230.00 feet and whose chord bears South 07°40'11" West along said West line, 101.70 feet to a point; Thence South 05°06'10" East along said West line, 56.87 feet to a point; Thence Southerly 67.15 feet along the arc of a curve whose center lies to the West, whose radius is 170.00 feet and whose chord bears South 06°12'46" West along said West line, 66.71 feet to a point; Thence South 17°31'43" West along said West line, 3.64 feet to a point; Thence North 72°28'17" West along said West line, 7.23 feet to a point; Thence Due South along said West line, 7.34 feet to the point of beginning of this description.

Said Parcel contains 191,294 Square Feet (or 4.3915 Acres) of land, more or less.

Both Parcels combined contain 481,265 Square Feet (or 11.0483 Acres) of land, more or less.

Date: May 17, 2018



Ted R. Indermuehle, P.L.S.
Professional Land Surveyor-3119
TRIO ENGINEERING, LLC
12660 W. North Avenue, Building "D"
Brookfield, WI 53005
Phone: (262)790-1480 Fax: (262)790-1481

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