

Public Works Development Agreement
Springs at Meadowbrook Multi-Family Development

Parcel ID Number: WAKC 0991 999 004

After recording return to:
City of Waukesha
Department 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 **Continental 665 Fund LLC**, a Delaware limited liability company, referred to herein as the Developer. The lands subject to this Agreement are legally described on attached Exhibit A, and are 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 Continental 665 Fund LLC, a Delaware limited liability company

2. **The Development.** The term Development, as used herein, refers to the Developer's construction of utilities and public street construction adjacent to the Real Property, in preparation for the development of a 320-unit multi-family development composed of one lot and one Outlot. Outlot 1 shall not be conveyed separately from Lot 1, and both Outlot 1 and Lot 1 shall remain owned by the same entity. The development will include installation of the intersection of a main access private driveway with Summit Avenue leading to the apartment development, and the public street intersection of Winterberry Drive with Summit Avenue. This intersection should include an acceleration lane, and deceleration lane on the north side of Summit Avenue and a bypass lane on the south side of Summit Avenue. Sidewalk and ditching will be installed along the full lot frontage of approximately 2,000 feet along Summit Avenue. A temporary 2-inch thick asphalt pavement over 8-inch crushed stone fire and emergency access shall be installed from the intersection of Winterberry Drive and Summit Avenue, along Winterberry Drive, and Windsor extended to the secondary emergency access from the apartment development. The apartment development will also include two storm water ponds located on Lot 1. Public sanitary sewer will be extended from the south side of Summit Avenue to the north side of Summit Avenue at the drive access location to Oliver Youth Sports Complex. Public sanitary sewer will be installed heading easterly along the north right of way line of Summit Avenue to Winterberry Drive for approximately 1,230 feet to allow for development of the single-family subdivision phase. The design drawings for the apartment development shall include the sanitary sewer design to enable the pump station to be abandoned. Phase 1, which is the apartment

development, shall be completed in one phase. A second phase 54-lot, and 1 outlot single-family subdivision will be completed by a separate entity and separate Developer's Agreement at a later date. The layout of the single family subdivision will follow the approved Preliminary Plat for this subdivision. This phase will include the installation of public sanitary sewer to allow for the removal of the City sanitary pump station located approximately 220 feet south of the intersection of Winterberry Drive and Tallgrass Circle.

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. Certified Survey Map, Preliminary Plat and Final Plat showing the locations of all lots, out lots, 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, driveways, 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.
- g. Vehicle and pedestrian traffic-control plans.
- h. Street signage, and street lighting 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 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 Fees and charges. All other Fees and charges shall be paid in full before building permits are issued.

- a. Sanitary Sewer Impact Fee: \$271,328.00
- b. Parks Impact Fee: \$562,240.00
- c. Library Impact Fee: \$18,560.00
- d. Police Impact Fee: \$82,432.00
- 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.
- g. Sanitary Sewer connection Fee: Deferred to time of water and sewer connection.
- h. Public infrastructure Construction inspection fee of \$_____.

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. Site landscaping.
- b. Street construction and restoration.
- c. Concrete sidewalks and cross walks including handicap ramps.
- d. Permanent pavement markings and signage.
- e. Public sanitary sewer.
- f. A digital as-built of all sanitary sewer, storm sewer, and storm water facilities in the Development.
- g. A televising video of all sanitary sewer main, sanitary sewer laterals, and storm sewer in the Development.

h. Sanitary sewer Acceptance Form, as published by the City Department of Public Works, has been completed by the Developer, submitted to the City, and approved by the City.

i. Storm water management facilities constructed according to the City's specifications, and the subsequent execution and recording by the Waukesha County Register of Deeds of a Stormwater Management Practice Maintenance Agreement in the City's usual form with specific addenda for the particular needs of the Development, as approved by the City.

8. Time for Performance. Developer shall complete the construction of all improvements listed in section 7 no later than 26 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, as determined in the reasonable discretion of the City.

9. Construction Standards.

a. Contractor Qualification. For work in the public right of way, Developer shall identify all contractors that will provide materials or labor to the Development to the City Engineering Department, and all contractors shall be approved by the City Engineering Department. Developer shall obtain a 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 any required permits from the Wisconsin Department of Natural 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. The City shall issue a written acceptance of the public improvements upon satisfactory completion of all required repairs.

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 for \$1,423,359.60. 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. The initial amount of the bond or letter of credit shall be 120% of the estimated total cost to listed on the financial guarantee summary for the Development. Developer shall take whatever actions are necessary, at Developer's sole expense, to ensure that after any partial draws or City-approved reductions are made, there shall remain 120% of the remaining estimated costs of completion of the public improvements listed in section 7 available for the City to draw upon.

d. Reduction of Security Amount. Pursuant to Wis. Stats. §236.13(2)(am)1.c., upon substantial completion of the public improvements required by this Agreement, the amount of the security required by this section shall be reduced to an amount equal to the total cost to complete the remaining unfinished public improvements, plus an amount equal to 10% of the total cost of the completed public improvements. On the date 14 months after the substantial completion of the public improvements required by this Agreement, the obligation to provide security under this section expires.

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.

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. Dedication. All improvements required by this Agreement, including but not limited to the road and right of way, shall upon completion and acceptance by the City be dedicated and conveyed to the City in fee simple, free and clear of all liens and encumbrances, together with easements in favor of the City for necessary access to such improvements. No dedication shall be effective until all review and inspection fees relating to the improvements have been paid in full, all contractors who performed work on the improvements have been paid in full and have provided construction lien waivers, and the City accepts the dedications in writing.

12. Building Permits. Building permits will not be issued for the Development until:

a. The Storm Water Management Practices Maintenance Agreement for the Development, as described in section 7.ii has been reviewed and approved by the City and recorded by the Waukesha County Register of Deeds.

b. The security required in section 10 is received by the City Engineering Division.

c. The Certified Survey Map of the Development is recorded by the Waukesha County Register of Deeds.

d. All impact fees and application review fees have been received by the City Engineering Division.

e. 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.

f. Copies of applicable permits have been provided to the City for project work.

g. A digital as-built of all sanitary sewer, storm sewer, and storm water facilities in the Development has been reviewed and approved by the City. A televising video of all sanitary sewer main, sanitary sewer laterals, and storm sewer in the Development shall be performed by Developer and delivered to the City for review. Any deficiencies found by the City shall be corrected to the City's satisfaction.

h. The sewer acceptance form is approved by the City.

13. Pavement Warranty. All asphalt and concrete pavement that will be dedicated to the City pursuant to this Agreement and located in City right-of-way, shall be

warranted by the Developer for materials and workmanship for a period of 2 years from the date of delivery of written acceptance of street construction pursuant to section 9.b. Pavement deficiencies identified by the City within the 2-year warranty period shall be addressed at Developer's sole expense as follows:

- a. All paving joints (longitudinal and transverse) that open shall be routed and crack-sealed to the satisfaction of the City Engineer.
- b. All premature cracks shall be crack-sealed or routed and crack-sealed to the satisfaction of the City Engineer.
- c. Any other pavement irregularities shall be addressed in a method approved by the City Engineer.
- d. If deficiencies are discovered within the 2-year warranty period, the pavement warranty will be extended by one year from the latest date the deficiencies are corrected.

14. Garbage and Recycling Pickup. Not all parcels within the Development may be eligible for city solid waste and recyclable pickup service. Any parcels that are not eligible for such service must arrange for private services at their own expense.

15. Sewer Warranty. All sewer mains and laterals, and all associated equipment, that will be dedicated to the City pursuant to this Agreement shall be warranted by the Developer for materials and workmanship for a period of 1 year from the date of delivery of written acceptance of sewer construction pursuant to section 9.b. Sewer deficiencies identified by the City within the 1-year warranty period shall be corrected to the City Engineer's satisfaction, and any damage caused by deficient materials or workmanship restored, at Developer's sole expense.

16. 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

17. Construction Compliance Inspections, Deposit. The City of Waukesha contracts with private consultants to perform compliance inspections of construction projects, who are referred to as Construction Site Representatives, or CSRs. The cost of inspections by CSRs is borne by project developers, who are required to maintain a deposit with the City to cover that cost. Therefore, the Developer shall deposit with the City an amount equal to 120% of the estimated cost of providing a CSR for the Development, as determined by the City. The City shall draw upon this deposit to pay the costs of the CSR's inspections. If the deposit is drawn down to less than 25% of the original deposit amount, then Developer shall deposit additional amounts as necessary to maintain the deposit at no less

than 25% of the original amount at all times. If the deposit amount falls below 25% of the original estimated amount at any time, the City may order that all building and construction permits be suspended and all work on the Development cease until the deposit amount is restored to at least 25% of the original amount. Deposits shall be held by the City in its general funds but shall be accounted for separately. The City shall not pay interest on any deposits.

18. City May Correct Deficiencies. If the Developer fails, after reasonable written 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 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.

19. 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.

20. Indemnification. Developer shall indemnify and hold the City harmless from any and all damages, 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.

21. Insurance. Developer shall maintain, and 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, and shall be primary, not excess, and non-contributory. Developer shall obtain an endorsement making the City an additional insured and loss payee, 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. Umbrella, \$5,000,000.
- c. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
- d. Builders risk, the value of the improvements required by section 7.
- e. Worker compensation, statutory requirements.

22. 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.

23. Agreement Runs with Land. The terms and conditions of this Agreement 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

Developer: Continental 665 Fund LLC

By: Continental Properties Company, Inc., its manager

By: Daniel J. Minahan

Title: President

Date: _____

State of Wisconsin

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ss.

Waukesha County

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Daniel J. Minahan, known to me to be the President of Continental Properties Company, Inc., manager of Continental 665 Fund LLC, personally came before me the ____ day of _____, 2023, 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

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ss.

Waukesha County

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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 _____, 2023, 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 0999 991 004

Legal description and exhibit of Real Property:

DRAFT

