

Development Agreement
The Village at Fox River

Parcel ID Numbers: WAKC 1364 018

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 **Waukesha Parkway, LLC**, 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 Waukesha Parkway, LLC.
- 2. The Development.** The term Development, as used herein, refers to the Developer's construction of a residential development known as The Village at Fox River and public street known as River Valley Road and all associated improvements. The apartment building shall be completed in two phases and River Valley Road and all other improvements shall be completed in one phase.
- 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. Expenses invoiced from the Wisconsin DOT to City shall also be paid by the Developer directly to the Wisconsin DOT.
- 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 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, sidewalks, utilities, storm water facilities, storm sewers, sanitary sewers, signs, pavement markings, elevations, grading, and all other plans and drawings for the Development, including but not limited to street construction drawings for River Valley Road; construction and traffic signal drawings for intersection of River Valley Road and Les Paul Parkway; and public sanitary sewer extensions.
 - 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.
 - i. Planned Unit Development Agreement.
- 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: \$136,404.00.
 - b. Parks Impact Fee: \$173,868.00

- c. Library Impact Fee: \$30,126.00.
- d. Police Impact Fee: \$6,738.00
- e. Deferred sewer assessment-River Valley Road: \$102,038.72.
- f. Deferred pump station assessment of \$800 per acre for a total of \$17,064.00.
- g. Developer responsible for all costs and charges incurred by City of Waukesha from Wisconsin Department of Transportation (DOT), including those responsibilities listed in Engineering Services Request Form DT2195 dated 2-2-21 which lists a cost estimate of \$85,841.87, and the STAR Customer Setup and Change Information Form. Final amount to be determined. It is the responsibility of the Developer to coordinate with DOT and pay all material costs to DOT for the signal poles / arms, etc. and pay the DOT's processing fees. All invoices from DOT to City shall be paid directly from Developer to DOT.

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.
- c. Concrete sidewalks and cross walks including handicap ramps.
- d. Permanent pavement markings and signage.
- e. Public Sanitary sewer.
- f. Public Storm sewer.
- g. Storm water facilities.
- h. A digital as-built of all sanitary sewer, storm sewer, and storm water facilities 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 as listed below. Construction of improvements shall be deemed complete when the improvements are 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 by City.

- i. River Valley Rd and Hwy 59 work completed by Nov. 20th 2021 which includes:
 - (1) Street construction, Concrete sidewalks crosswalks including handicap ramps; Permanent pavement markings and signage; Public sanitary sewer; Public Storm sewer; West Storm water facility; Site landscaping
- ii. Elkhart Dr. work completed by Nov. 20th 2021 which includes:
 - (1) Street construction, (binder course asphalt); Public sanitary sewer; Public Storm sewer
- iii. Elkhart Dr. work completed by June 1, 2022
 - (1) Concrete sidewalks crosswalks including handicap ramps; Permanent pavement markings and signage; South Story water facility; Site landscaping

b. Developer shall complete the full restoration of landscaped areas no later than dates listed above. Construction shall be deemed complete when binder course asphalt replacements, utility structure adjustments, concrete curb and gutter and sidewalk removals and replacements, surface course asphalt pavement installation and all incidentals are complete, and City delivers a written acceptance of street construction to Developer.

c. All work in the Development shall be completed in one phase.

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 must be approved by the City Engineering Department or they shall not be allowed to perform any work.

b. **Work Standards.** Developer shall construct all 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 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 surface course and all necessary repairs must be completed within 2 years of the date of this Agreement. Work in DOT right of way according to latest WisDOT standards and plans.

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 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 \$1,919,220.84. 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.** The storm water maintenance agreement for the Development, with Exhibits A, B, and C has been reviewed and approved by the City and has been recorded by the Waukesha County Register of Deeds.
- b.** If applicable, the lighting and grading declarations for the Development are recorded and provided to the City.
- c.** The Certified Survey Map (CSM) of the Development is recorded and digital pdf copy provided to City. All easements need to be shown on CSM.
- d.** All easement documents needed by City for development shall be approved and recorded. Digital recorded copies of easements to be provided to City.
- e.** Security as required by section 10 is received by the City Engineering Division.
- f.** All impact fees, sewer assessments, and application review fees have been received by the City Engineering Division.
- g.** 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 (WDNR) and Army Corps, with copies of the permits provided to City Engineering.
- h.** All Waukesha County and Wisconsin Department of Transportation (WDOT) permit approvals have been received and fees paid by Developer to Waukesha County and WDOT and copies of permit approvals provided to City.
- i.** 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.

12. Dedication. All improvements required by this agreement, including but not limited to the road and right of way, shall upon completion 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.

13. Recorded Lighting Declaration. Not applicable.

14. Recorded Grading Declaration. Not applicable.

15. Pavement Warranty. All asphalt and concrete pavement that will be dedicated to the City pursuant to this Agreement, or installed are part of the project 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 8.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.

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

17. 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 8.a. 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.

18. 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 charge under Wis. Stats. §66.0627.

19. 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.

20. Inspection Access. Developer shall allow the City and its CSRs 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.

21. 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.

22. Access to Saylesville Road. Upon approval of site development on Lot 4 of Certified Survey Map, the ultimate access is to be constructed by Owner of Lot 1 to Saylesville Road within 6 months in accordance with Waukesha County permit requirements.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

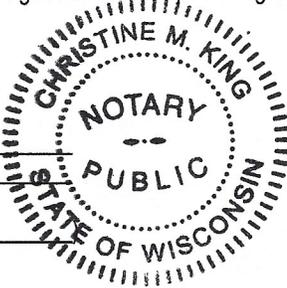
Developer: Waukesha Parkway, LLC

Robert Bach
(sign above)
Print name: Robert Bach
Title: Partner/Member
Date: 3/18/2021

State of Wisconsin }
 } ss.
Ozaukee County }

Robert Bach, known to me to be the Partner/Member of Waukesha Parkway, LLC, personally came before me the 18th day of March, 2021, signed this Development Agreement in my presence, and acknowledged the same.

Christine M. King
Name: Christine M. King
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires 1-22-25)



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 _____, 2021, 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 1364 018

Legal description of Real Property:

REPLACE WITH CSM BOUNDARY DESCRIPTION AFTER RECORDED

A division of Parcel 1 of Certified Survey Map No. 9033, part of the Northeast 1/4, Northwest 1/4, Southeast 1/4 and the Southwest 1/4 of the Southeast 1/4 of Section 17, Township 6 North, Range 19 East, in the City of Waukesha, County of Waukesha, State of Wisconsin. Commencing at the Northeast corner of said Southeast 1/4 Section; thence South 00°15'58" East along the East line of said 1/4 Section 1495.88 feet to the point of beginning of lands described hereinafter; thence West along the North line of Outlot 2 of Trillium Hill 760.00 feet to a point; thence South 79°37'06" West along the North line of Outlot 1 of Trillium Hill 689.07 feet to a point; thence West along said North line 683.93 feet to a point; thence North 54°28'33" West along said North line 422.82 feet to a point on the East line of SAYLESVILLE RD. C.T.H. "X"; thence North 57°57'58" East along said East line 486.11 feet to a point; thence Northwesterly 436.05 feet along said East line and arc of a curve, whose center lies to the West whose radius is 380.00 feet, and whose chord bears North 01°29'52" West 412.52 feet to a point; thence North 34°22'18" West along said East line 122.27 feet to a point on the South line of SAYLESVILLE RD., C.T.H. "X"; thence Northeasterly 349.59 feet along said South line and arc of a curve, whose center lies to the Northwest whose radius is 2805.00 feet, and whose chord bears North 49°29'12" East 349.36 feet to a point on the South line of S.T.H. "59", LES PAUL PARKWAY; thence North 77°37'56" East along said South line 89.65 feet to a point; thence South 58°39'13" East along said South line 338.22 feet to a point; thence South 46°25'04" East along said South line 202.81 feet to a point; thence South 73°06'03" East along said South line 436.61 feet to a point; thence South 49°28'17" East along said South line 508.83 feet to a point; thence Southeasterly 635.71 feet along said South line and arc of a curve, whose center lies to the North whose radius is 2009.86 feet, and whose chord bears South 58°31'57" East 633.06 feet to a point on said East Section line; thence South 00°15'58" East along said East line 35.00 feet to the point of beginning. Said lands as described contains 1,568,880 square feet or 36.0165 Acres.