

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into as of this ____ day of _____, 2023 by and between the City of Elkhorn, Wisconsin (the “City”) and Creekside Community Development, LLC, a Wisconsin limited liability (the “Developer”).

WHEREAS, the Developer has entered into a purchase agreement to acquire the real estate described on Exhibit A (the “Property” or “Proctor Farm”); and

WHEREAS, the City has established Tax Incremental District No. 4 (the “District”) as a mixed-use district, which District includes the Property, in order to finance project costs and development incentives within the District as permitted under Wis. Stats. Section 66.1105 (the “TID Law”); and

WHEREAS, the Developer plans to undertake a three phased (each a “Phase”) mixed-use development to be known as the “Creekside Community” on the Property, consisting of approximately eight hundred forty-seven (847) units within approximately eleven apartment buildings, amenities, commercial buildings, related grading, utility work and site improvements (collectively, the “Developer’s Improvements” or “Development”) in Material Conformance with the preliminary site plan attached hereto as Exhibit B-1 (the “Site Plan”) and the preliminary building plans attached hereto as Exhibit B-2 (the “Building Plans”) (the Site Plan and the Building Plans hereafter referred to, collectively, as the “Plans”); and

WHEREAS, the Developer would not undertake the Developer’s Improvements without the use of tax increment financing to fund a portion of the Developer’s Improvements, as provided for below.

NOW, THEREFORE, the City and the Developer, in consideration of the terms and conditions contained in this Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, agree as follows:

1. CONSTRUCTION OF DEVELOPER’S IMPROVEMENTS.

Section 1.1. The Developer’s Improvements and Phasing.

(a) Developer’s Improvements. The Developer’s Improvements will be constructed in Material Conformance with the Plans, subject to any material changes as may be approved thereto by the City in writing from time to time. “Material Conformance” means meeting the essential or significant aspects of the Plans, standards, or specifications. The Developer’s Improvements to be constructed upon the Property and their uses shall be in compliance with all applicable municipal ordinances of the City, including, but not limited to, any pertinent provisions of the District Project Plan. Developer shall not materially alter the Plans approved for each Phase without the prior written consent of the City, which consent may be withheld in the City’s reasonable discretion.

(b) Phasing. The Development will be undertaken in three Phases as shown on the Phasing Plan attached hereto as Exhibit B-3 (the “Phasing Plan”).

Section 1.2. Cooperation; Permits and Approvals. The City agrees to reasonably cooperate with the Developer to facilitate the approval of each Phase and the construction of the Developer’s Improvements. Without intending to limit the generality of the foregoing sentence, the City shall reasonably cooperate with the Developer in the Developer’s applications for all building and other

permits that may be necessary for the completion of the Developer’s Improvements; provided, however, that this Agreement shall not obligate the City to grant variances, exceptions or conditional use permits. The City shall promptly consider all applications by the Developer for all necessary zoning, building, or engineering permits and approvals from the City, all in accordance with all applicable City ordinances and procedures. Developer will conform and comply with, and will cause the Developer’s Improvements to be in conformance and compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including, without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, all environmental laws, rules, regulations and ordinances, and Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with the development, construction, management and operation of the Developer’s Improvements.

Section 1.3. Developer’s Obligations. The Developer intends to construct the Development in three Phases of the Development consistent with the schedule below; provided, however, the Developer does not guaranty the commencement or completion of the Development by those dates. Failure to begin construction of any of the Phases does not constitute a default under this Agreement; provided that if the Developer begins construction on any Phase, such Phase must be completed according to the Plans approved for such Phase. The commencement and completion of each Phase will depend on many factors such as market demand, construction costs, approvals, financing, and other items outside of the Developer’s control.

Phase	Commencement Date	Completion Date
1	1.1.2024	12.31.2026
2	1.1.2027	12.31.2029
3	1.1.2030	12.31.2032

The Developer acknowledges that this Agreement creates a “pay go” incentive and Developer’s payments under the Bond are based on the Available Tax Increment generated by the Development. If the Developer does not complete a Phase so that the Development does not generate enough Available Tax Increment to pay any outstanding and unpaid amounts on the Bond by October 1, 2038, then the remaining balance of principal of the Bond shall be deemed paid in full, it being understood that upon making the payment due on the final Bond Payment Date, the obligation of the City to make any further payments on the Bond shall terminate. The City shall have no obligation to pay any amount of principal on this Bond which remains unpaid after the final Bond Payment Date and the owner of this Bond shall have no right to receive payment of such amounts. The City makes no representation or covenant, express or implied, that Available Tax Increment will be generated or that it will be sufficient to pay the Bond, in whole or in part. The City’s obligation to make payments on the Bond is limited to Available Tax Increment.

Section 1.4. Public Improvements.

(a) The Developer will install the street improvements for the extension of Deere Road as shown on the GDP Site Plan, including the sanitary sewer and water mains, street lighting, street and traffic control signs, and any related facilities reasonably necessary to serve the Property as detailed

in the Building Plans (collectively, the “Public Improvements”). The Developer shall provide an easement for and install the sanitary sewer and water mains that will be located under or next to the private roads within the Property, which shall also be Public Improvements. For purposes of clarity, all the necessary internal roads, sanitary sewer and water laterals, storm sewers, stormwater maintenance facilities, and lighting on the Property itself shall be private. Developer shall be responsible for, at Developer’s sole cost, installing/constructing and maintaining/replacing all such private infrastructure in compliance with all City, State and Federal standards. Without limiting the generality of the foregoing, Developer shall be responsible for, at Developer’s sole cost, installing/constructing and maintaining/replacing all stormwater management facilities for the Development in compliance with all applicable laws and standards, it being understood that the stormwater management facilities serving the commercial portion(s) of the Development shall be separate from the stormwater management facilities serving the residential portion(s) of the Development. As the Building Plans are further developed for each Phase, the Developer and the City agree to cooperate in good faith to determine the exact improvements which constitute the Public Improvements and the budgeted cost for the same. All Public Improvements for each Phase shall be constructed/installed in a good and workmanlike manner, shall comply with all City, State and Federal standards, shall be inspected and approved by the City Engineer, which such approval shall not be unreasonably withheld, conditioned, or delayed, and shall be dedicated and conveyed to the City in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, the Public Improvements and, as applicable, related private improvements located within the Property, shall include, without limitation, a non-dead end water loop serving the Development to allow for such water service/supply as may be reasonably requested from the superintendent of the City’s water department and the chief of the City’s fire department.

(b) The Developer agrees to commence substantial construction of the Public Improvements for Phase I within two years of this Agreement; otherwise, this Agreement shall be deemed null and void thereafter. Once construction of said Public Improvements for each Phase has commenced, the Public Improvements for said Phase shall be completed within five years of such commencement.

(c) Upon prior written consent by the City, the Developer shall, without charge to the City, upon completion of the Public Improvements, unconditionally give, grant, convey and fully dedicate the same to the City, its successors and assigns forever, free and clear of all encumbrances whatsoever, including, without limitation because of enumeration, all mains, conduits, pipes, lines, machinery, equipment, appurtenances, and hereditaments which may in any way be a part of or pertain to such Public Improvements, and together with any and all necessary and required easements for access thereto. In connection with such dedication, the Developer shall provide the City with lien waivers and other documentation as the City may reasonably require. After such dedication, the City shall have the right to connect or integrate other improvements or public facilities as the City decides, with no payment or award to, or consent required of, the Developer.

(d) Inasmuch as the Developer will be requesting the City to commence payment of the Bond prior to completion of the Public Improvements, the Developer shall file with the City a bond, letter of credit, or deposit such funds with a mutually agreed-to bank subject to a third-party escrow agreement that shall be 120% of the agreed-upon budgeted cost of said Public Improvements (the “Surety”) for each Phase. The institution issuing the Surety shall be reasonably acceptable to the City, and the form and content of the Surety shall be in form and content

reasonably acceptable to the City. Dedication shall not constitute acceptance of any Public Improvements by the City. All Public Improvements shall be accepted by the City by resolution at such time as said Public Improvements are in acceptable form and completed according to City specifications. The Developer shall perform all reasonably necessary repairs and maintenance of the Public Improvements until such time as the same are accepted and approved by the City and dedicated to the City pursuant to subsection (c) above.

(e) It is further agreed that as construction and installation of certain segments of the Public Improvements are completed by the Developer and approved by the City Engineer and accepted by the City in accordance with the terms of this Agreement, the Surety shall be reduced to the estimated cost of the remaining uncompleted Public Improvements; provided, however, said Surety shall only be reduced upon the certification of the City Engineer, and approval by the City Administrator, which such certification and approval shall not be unreasonably delayed, conditioned, or withheld, setting forth the estimated cost of the Public Improvements so completed, and the reduction is approved by the Common Council, which such approval shall not be unreasonably withheld, and the delivery to the City of such documentation as the City may reasonably require to substantiate that the Surety will equal 120% of the budgeted costs of the remaining uncompleted Public Improvements.

Section 1.5. Secondary Crossing / Railroad Crossing. The City and Developer agree that the best practice is to provide secondary access to and from the Development for residents and visitors (the “Secondary Access”). Such Secondary Access shall adhere to normal street standards for connection to the public right of way; provided, however, that, subject to such street connection standards and all other applicable laws and requirements, Developer may design such connection in such a way to reduce the likelihood that the general public will confuse the internal private roads of the Development as public streets. The preferred Secondary Access would be a public railroad crossing at Getzen Street, which will require approvals by the state of Wisconsin. The City and Developer agree to act in good faith to seek approval and installation of the public railroad crossing. If approved, the railroad crossing would likely be installed as part of Phase II or Phase III of the Development, as mutually agreed to by the parties. The approval of Phase II and III is not contingent upon the state of Wisconsin approving the public crossing at Getzen Street. If the state of Wisconsin or any other government authorities or owner of the Railroad right-of-way do not approve the public crossing at Getzen Street, the Developer agrees to plan for a Secondary Access point along S. Lincoln Street as shown on the GDP Site plan. Developer understands and agrees that, notwithstanding the timing of the railroad crossing contemplated above, a Secondary Access point will be required for the Phase I of the Development prior to occupancy of any completed improvements located thereon. Developer agrees to pay all costs associated with the railroad crossing/Secondary Access point, whether incurred by the City or the Developer. If any costs associated with the railroad crossing/Secondary Access point are incurred by the City, the Developer agrees to pay the City the amount due within 30 days of the City providing an invoice to the Developer for such costs. In the event Developer fails to timely pay, in addition to and without limiting the City’s other rights and remedies herein, the City shall have the payment remedies outlined in the second paragraph of Section 3 below.

Section 1.6. Deere Road Intersection. The Developer agrees that it shall pay all costs relating to all improvements of the intersection at Deere Road and South Lincoln Street (the “Deere/Lincoln Intersection”) necessitated by the Development, whether completed by the Developer as part of the Public Improvements or completed by the City, including, without

limitation, the costs to install an electronic traffic signal at the Deere/Lincoln Intersection. If any such costs associated with the Deere/Lincoln Intersection are incurred by the City, the Developer agrees to pay the City the amount due within 30 days of the City providing an invoice to the Developer for such costs. In the event Developer fails to timely pay, in addition to and without limiting the City's other rights and remedies herein, the City shall have the payment remedies outlined in the second paragraph of Section 3 below.

2. DEVELOPMENT INCENTIVE.

Section 2.1. Issuance of Revenue Bond to Developer. Subject to the conditions set forth herein, as an inducement for and in consideration of Developer's construction of the Developer's Improvements, the City shall issue a Taxable Tax Increment Revenue Bond (the "Bond") pursuant to Section 66.0621, Wisconsin Statutes, to the Developer or its assigns, in a principal amount up to \$12,500,000. The Bond shall be in substantially the form set forth on Exhibit C hereto. The Bond shall bear interest at the rate of 0.00% per annum. The Bond shall mature and the City's obligation to repay all or any portion of the Bond shall terminate with the final payment made on October 1, 2038; provided, however, that such installment payments shall terminate prior to October 1, 2038 at such time as the Developer has been paid the face amount of the Bond. Installments of principal of the Bond shall be due and payable on October 1 of each year during the term of the Bond, commencing on the October 1 next following its issuance through and including the maturity date (each, a "Bond Payment Date"). The amount of the annual payment of principal due on each Bond Payment Date shall be equal to the Available Tax Increment (defined below).

"Available Tax Increment" means an amount equal to 55% of the annual gross tax increment revenues generated by the Property which is paid by the owner thereof and received and retained by the City in accordance with the TID Law as of August 31 of the same year in which an installment of the Bond is due.

The payments on the Bond are to reimburse the Developer for the costs of constructing the Developer's Improvements on the Property and costs of the City's consultants in connection with amendment of the District and the preparation of this Agreement as further described herein. Developer understands that all of those costs must be paid for by Developer up front and that Developer will be reimbursed for those costs only if the development on the Property creates Available Tax Increment and such Available Tax Increment is appropriated by the Common Council to payment of the Bond. Subject to the conditions in Section 2.4 below, payments will be made each year by the City on the Bond from Available Tax Increment but only to the extent such Available Tax Increment exists and only if appropriated by the Common Council. If there is no Available Tax Increment, then no payment is due on the Bond.

If, after October 1, 2038, there remain amounts of the Bond unpaid, the Bond shall be deemed paid in full, the obligation of the City to make any further payment shall terminate, and the Developer shall have no right to receive any further payment. The City makes no representation or covenant, express or implied, that Available Tax Increment will be generated or that it will be sufficient to pay the Bond, in whole or in part. The City's obligation to make payments on the Bond is limited to Available Tax Increment and is further subject to annual appropriation by the Common Council. All Available Tax Increment received by the City after October 1, 2038 or after the Bond has been paid in full, whichever comes first, may be used by the City for any legally permitted purpose, in its sole discretion.

If for any reason the District terminates (other than by voluntary action of the Common Council) prior to the final payment date, and there remain amounts outstanding and unpaid on the Bond, then the remaining balance on the Bond shall be deemed paid in full, it being understood that upon such termination of the District, the obligation of the City to make any further payments on the Bond shall also terminate. The City shall have no obligation to pay any amount of the Bond which remains unpaid upon termination of the District, and the owner of the Bond shall have no right to receive payment of such amounts.

The Bond is subject to prepayment in whole or from time to time in part, at any time, at the option of the City.

Section 2.2. City Covenants. The City covenants that:

(a) it fully expects and anticipates that to the extent Available Tax Increment is generated and received by the City, it will appropriate such Available Tax Increment to the payment of the Bond.

(b) if its proposed annual budget does not in any year provide for appropriation of Available Tax Increment to payment of the Bond, it will notify in writing delivered by hand or courier delivery, or sent by registered or certified mail, the Developer of that fact at least ten (10) days prior to the date the budget is presented to the Common Council for final approval;

(c) it shall take no action to dissolve the District prior to the payment of all principal of the Bond or October 1, 2038, whichever comes first;

(d) provided the Developer is not in Default under this Agreement, if in any year the City does not appropriate the full installment of Available Tax Increment to the Bond, the City will not use any annual gross tax increment revenues generated by the Property to pay any debts or obligations of the City until the earlier of (a) the City pays the full annual installment on the Bond or (b) one year after receipt of the Available Tax Increment; and

(e) the City will not enter into any new contract to pay new project costs in the District unless its financial advisor delivers a cash flow model to the Common Council showing that the tax increment generated by the proposed project will be sufficient to pay the costs of the project.

Section 2.3. Conditions on Issuance of Bond. The Bond shall be issued to the Developer only when all of the following conditions have been met: (a) the State of Wisconsin Department of Revenue has certified the amendment of the District and (b) the Developer has initiated construction of the Developer's Improvements on the Property.

Section 2.4. Conditions on Payment. Each installment payment of the Bond shall be paid to the Developer only if, and when, all of the following conditions have been met:

- (i) Available Tax Increment exists;
- (ii) the Common Council has appropriated such Available Tax Increment to the payment of the Bond;
- (iii) the Developer shall not have violated any of its obligations under this Agreement;

- (iv) the Developer shall be in compliance with all City municipal ordinances; and
- (v) the Developer has paid all monetary obligations to the City in connection with the Property and this Agreement including, but not limited to, any reimbursement of costs associated with the railroad crossing/Secondary Access point and the Deere/Lincoln Intersection.

Section 2.5. Payment of Property Taxes; No Transfers to Tax-Exempt Entity.

(a) Developer shall timely pay all real or personal property taxes levied or imposed by the State of Wisconsin, Walworth County or the City against all or any portion of the Property, provided that the Developer shall have the right to contest the same in accordance with applicable law. The City agrees to uniformly apply tax assessment procedures and practices with respect to the Property in accordance with the City's historic practices consistently applied, and state law regarding property tax assessments.

(b) Developer acknowledges and agrees that neither the Property nor any part thereof or interest therein shall be sold, transferred, assigned, gifted, owned, or conveyed in any way to any person, partnership, organization, or entity that is all or partially exempt from federal or State of Wisconsin income taxes or real or personal property taxes, without the express prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion; provided, however, nothing hereunder shall prohibit the Developer from selling a portion of property to non-exempt person, partnership, organization, or entity and such portion shall continue to be included as part of the Property for determining the Available Tax Increment..

(c) Developer acknowledges that the City is relying upon the Developer's real property taxes to generate (i) the City's normal share of pre-development taxes and (ii) the City's full share of tax increment resulting from development, to fund other eligible projects in the District. As a result, the Developer agrees that neither the Developer nor any existing or future entity or partnership of the Developer (collectively, "Developer Affiliates") will pursue, assist, support, or be involved in any federal, state, or local, judicial, legislative, or regulatory action or process that seeks, directly or indirectly, to prohibit, set aside, or limit the taxability of all or any portion of the Property on any basis whatsoever, and the Developer for itself and on behalf of the Developer Affiliates if any, and each of their respective successors in interest, waives any and all rights thereto to the contrary.

Section 2.6. Payment of Consultant Fees. Developer agrees to pay the cost of the City's consultants, including financial advisory and legal fees (the "Consultant Fees"), incurred in connection with the amendment of the District that relate to this Development and creation of this Agreement. In order to facilitate the payment of the Consultant Fees, prior to or simultaneous with the execution of this Agreement, the Developer will deposit the sum of Fifty-Five Thousand Dollars (\$55,000.00) with the City (the "Initial Deposit"). The City shall hold the Initial Deposit in escrow and disburse said funds only to pay the Consultant Fees. Consultant Fees shall be paid within fifteen (15) days from the date of receipt of an invoice. The City shall ensure that its consultants, including financial and legal consultants, charge the same rates for the services that will be paid for hereunder

as the consultants customarily charge the City for similar services. The total Consultant Fees charged to the Developer shall not exceed \$75,000.

Developer's obligation to pay Consultant Fees is not limited to the amount of the Initial Deposit and in the event the Initial Deposit is insufficient to cover the Consultant Fees, the Developer will be invoiced directly for any additional costs and shall pay said costs within fifteen (15) days of the date of receipt of the invoice. In the event the Initial Deposit is greater than the amount of Consultant Fees, the City shall return any remaining funds to the Developer once all Consultant Fees have been paid in full. In the event Developer fails to timely pay, in addition to and without limiting the City's other rights and remedies herein, the City shall have the payment remedies set forth in the second paragraph of Section 3 below.

Payment of the Consultant's Fees is not contingent on Developer obtaining desired approvals for the Property.

3. DEFAULT.

In the event that either the City or the Developer defaults under any material terms or conditions of this Agreement, the defaulting party shall be responsible for all damages, reasonable costs, and expenses incurred by the nondefaulting party by reason of such default including, but not limited to, any reasonable legal expenses incurred by the nondefaulting party. The rights and remedies of the nondefaulting party shall not be limited to those, if any, specified in this Agreement, but the nondefaulting party shall have all rights and remedies to which it may be entitled, either at law or in equity.

In addition to and without limiting the City's other rights and remedies herein, in the event the Developer fails to timely make any required payment to or on behalf of the City as set forth therein (in each case, the "Missing Payment"), then the City shall have the right, but not the obligation, to provide a notice of failure to pay and right to cure to Developer. Upon said notice, Developer shall have sixty (60) days to make the Missing Payment. If Developer fails to make the Missing Payment after such 60-day notice period, Developer hereby consents to the entry of a judgment in favor of the City, and against Developer, in Walworth Circuit Court, for the amount of the Missing Payment (or such lesser amount if a partial payment was made). The City then shall have the express right to see execution of the judgment pursuant to Chapter 815 of the Wisconsin Statutes relating to execution against the property of Developer. In addition to the rights detailed in this paragraph, the City shall have the right, in the event of a Missing Payment, to attach a lien in the amount of such Missing Payment (or such lesser amount if a partial payment was made) to the Property, which lien shall run with the land, and the City may exercise any remedies available in law or in equity to enforce such lien, including, but not limited to, foreclosure.

4. ASSIGNMENT OF AGREEMENT.

This Agreement shall not be assignable by the Developer, without the prior written consent of the City, except that the Developer may make a collateral assignment of this Agreement to its lender as part of a mortgage on the Property, subject to all terms and conditions of this Agreement.

5. FORCE MAJEURE.

For the purposes of any provisions of the Agreement, a party shall not be considered in breach or default of its obligations in the event of delay in the performance of such obligations to

the extent due to a Force Majeure event. As used herein, "Force Majeure" means any event that (i) renders it impossible for the affected party to perform its obligations under this Agreement, (ii) is beyond the reasonable control of the affected party, (iii) is not caused by the intentional misconduct or recklessness of the affected party, and (iv) cannot be avoided by the exercise of due diligence by the affected party, including the expenditure of a commercially reasonable sum of money. Subject to the satisfaction of the conditions set forth in clauses (i) through (iv) of the foregoing definition, Force Majeure shall include, without limitation: (A) strikes or other labor conflicts that are not motivated by the breach of any other contract on the part of the affected party, strikes or other labor disputes that cause the delay of any major equipment supplied by a third party, a lockout, industrial dispute or disturbance; (B) civil disturbance, an act of a public enemy, war (whether or not declared), a riot, blockage, insurrections, terrorism, uprisings, sabotage and commercial embargoes against the United States of America (or against any other country if it impacts the delivery of any major equipment supplied by a third party); (C) an epidemic or pandemic; (D) natural phenomena such as hurricane, tornado, landslide, lightning, windstorm, earthquake, explosion, storm, flood; (E) fires; (F) inability to obtain or a delay in obtaining easements, rights-of-way or permits (provided such delay or inability was not caused by the party claiming Force Majeure); (G) acts, failures to act or orders of any kind of any governmental authority acting in its regulatory or judicial capacity (provided that the party claiming Force Majeure did not create or contribute to such act, failure or act or order); (H) the inability of any of the parties hereto, despite having exercised its commercially reasonable efforts, to obtain in a diligent and proper manner any permits necessary for such party's compliance with its obligations under this Agreement; (I) transport accidents, whether they be maritime, rail, land or air; (J) equipment failure or equipment damage (provided such failure or damage was not caused by the intentional misconduct or recklessness of the party claiming Force Majeure); and (K) a material change in law or any other cause, whether enumerated herein or otherwise, not within the control of the party claiming Force Majeure, which precludes that party from carrying out, in whole or in part, its obligations under this Agreement. Force Majeure with respect to a party shall not include any of the following events: (1) financial difficulties of such party; (2) changes in market conditions affecting such party; or (3) delay in the compliance by any contractor or subcontractor of such party, except where such delay under (1), (2) or (3) is caused by circumstances which would otherwise constitute Force Majeure under this Agreement if such party were the affected person.

6. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon the successors and assigns of the Developer and shall run with the land; however, this provision shall not constitute an authorization for the Developer to assign or transfer its rights and obligations under this Agreement.

7. MISCELLANEOUS

Section 7.1 Recording. The Developer shall cause this Agreement (or, at the option of the City, a short form memorandum of this Agreement), executed by both the Developer and the City, to be recorded with the Register of Deeds of Walworth County, Wisconsin. If applicable, such memorandum shall be in form and substance reasonably acceptable to the City and the Developer, and shall contain a description of the Property, the existence of this Agreement, a statement that assignee or purchaser or transferee of any portion of the Property shall be bound by the terms and conditions of this Agreement, the City's lien rights with respect to Missing Payments as set forth

in the second paragraph of Section 3 above, and any other information that the City reasonably requests. This Agreement (or memorandum as the case may be) shall either be recorded prior to any mortgages or liens on the Property or Developer shall provide the City with subordination agreements in form and substance reasonably acceptable to the City which have been executed by the holder(s) of any mortgages or liens affecting the Property as of the date or recording of this Agreement (or memorandum as the case may be) which subordinates such mortgage(s) and lien(s) to this Agreement

Section 7.2 Notices. All notices hereunder must be in writing and must be sent by either (i) United States registered or certified mail (postage prepaid), or (ii) by an independent overnight courier service, addressed to the addresses specified below:

Notices to Developer:

Thomas Larson
President
N7152 Bowers Road
Elkhorn, WI 53121

with a copy to:

Robert Procter
Axley Brynelson, LLP
2 E Mifflin St., Ste 200
Madison, WI 53703

Notices to the City:

Adam G. Swann
City Administrator
311 Seymour Ct.
Elkhorn, WI 53121

with a copy to:

Lacey Reynolds
City Clerk
311 Seymour Ct.
Elkhorn, WI 53121

Notices given by mail are deemed delivered within (3) three business days after the party sending the notice deposits the notice in the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the party delivering the notice timely deposits the Notice with the courier for overnight (next day) delivery.

Section 7.3 No Personal Liability. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

Section 7.4 Waiver; Amendment. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing. Nothing contained in this Agreement is intended to or

has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

Section 7.5 Entire Agreement. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

Section 7.6 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of Developer and the City, and no third party (other than successors and permitted assigns) shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the City in connection therewith. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to construction of the Developer's Improvements.

Section 7.7 Severability. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms, and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent by law.

Section 7.8 Governing Law. This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Walworth County, Wisconsin.

Section 7.9 Time is of the Essence. Time is of the essence with respect to this performance of every provision of this Agreement in which time of performance is a factor.

Section 7.10 Relationship of Parties. This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Developer.

Section 7.11 Captions and Interpretation. The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

Section 7.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties.

Section 7.13 Joint and Several Obligations. If Developer consists of more than one entity, each such entity shall be jointly and severally liable for the payment and performance of all obligations of Developer under this Agreement and the City may bring suit against each such entity, jointly or severally, or against any one or more of them.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date stated in the first paragraph of this Agreement.

CITY OF ELKHORN

By: _____
Mayor

By: _____
City Clerk

CREEKSIDE COMMUNITY DEVELOPMENT, LLC

(Developer)

(SEAL)

By: _____
Title: _____

By: _____
Title: _____

STATE OF WISCONSIN)
)ss
_____ COUNTY)

Personally came before me this ____ day of _____, 2023 the above named _____, Mayor, and _____, City Clerk to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin

My Commission expires

STATE OF WISCONSIN)
)ss
_____ COUNTY)

Personally came before me this ____ day of _____, 2023, the above named _____ and _____ to me known to be the persons who executed foregoing instrument and acknowledged the same.

Notary Public, Wisconsin

My Commission expires

EXHIBIT A
TO
DEVELOPMENT AGREEMENT

Description of Property

Part of Section 6, Township 6 North, Range 17 East: Commencing at the point of intersection of East line of South Lincoln Street and the Southerly Right-of-Way of the Railroad; Thence S 53° 45' west to Section Line and the Point of Beginning; Thence South to 1/8 Section line; Thence East along said 1/8 line to the 1/4 Section Line; Thence North to the Southerly Right-of-Way line of the Railroad; thence Northerly to a point that is 523.33 Southeasterly of the Intersection of the Southerly line and the easterly Right-of Way line of South Lincoln Stret; Thence South, 666.18'; Thence West 522' to the Point of Beginning

Excluding Right-of-way as described in Vol 101, Page 916, and Excluding Land described in Volume 235, page 249, in the Walworth County Courthouse, City of Elkhorn, Wisconsin.

COPY

EXHIBIT B-1
TO
DEVELOPMENT AGREEMENT

Developer's Improvements - Site Plan

[ATTACHED]

COPY

EXHIBIT B-2
TO
DEVELOPMENT AGREEMENT

Developer's Improvements - Building Plans

[ATTACHED]

COPY

EXHIBIT B-3
TO
DEVELOPMENT AGREEMENT

Developer's Improvements - Phasing Plan

[ATTACHED]

COPY

EXHIBIT C
TO
DEVELOPMENT AGREEMENT

(Form of Tax Increment Revenue Bond)

UNITED STATES OF AMERICA
STATE OF WISCONSIN
COUNTY OF WALWORTH
CITY OF ELKHORN

TAXABLE TAX INCREMENT REVENUE BOND
(TERONOMY BUILDERS, INC. PROJECT)

<u>Number</u>	<u>Interest Rate</u>	<u>Date of Original Issue</u>	<u>Principal Amount</u>
R-1	0.00%	_____, 20__	[_____]

FOR VALUE RECEIVED, the City of Elkhorn, Walworth County, Wisconsin (the “City”), promises to pay to Creekside Community Development, LLC, or registered assigns, but only in the manner, at the times, from the source of revenue and to the extent hereinafter provided, the Principal Amount stated above.

This Bond is issued to finance projects which are a part of the City’s mixed-use development utility, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Section 66.0621, Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the “Special Redemption Fund.” This Bond is issued pursuant to a resolution adopted on _____, 2023 by the Common Council of the City (the “Resolution”) and the Development Agreement dated _____, 2023 between the City and Creekside Community Development, LLC (the “Development Agreement”). This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. This Bond shall be payable solely from Available Tax Increment (as defined below) received by the City with respect to its Tax Incremental District No. 4 (the “TID”) which is appropriated by the Common Council to the payment of this Bond (the “Revenues”). Reference is hereby made to said Development Agreement and Resolution for a more complete statement of the revenues from which and conditions under which this Bond is payable, and the general covenants and provisions pursuant to which this Bond has been issued.

This Bond shall mature and the City’s obligation to repay all or any portion of this Bond shall terminate with the final payment made on October 1, 2038 (the “Maturity Date”). Installments of principal on this Bond shall be due and payable on October 1 of each year, commencing October 1, 20__ through and including the Maturity Date (each, a “Bond Payment Date”). The amount of the annual payment of principal due on each Bond Payment Date shall equal Available Tax Increment (as defined below).

“Available Tax Increment” means an amount equal to 55% of the annual gross tax increment revenues generated by the Property (as defined in the Development Agreement) which is paid by the owner thereof and received and retained by the City in accordance with the TID Law (as defined in the Development Agreement) as of August 31 of the same year in which an installment of the Bond is due.

If on any Bond Payment Date there shall be insufficient Revenues to pay the principal due on this Bond, the amount due but not paid shall accumulate and be payable on the next Bond Payment Date until the final Bond Payment Date.

If after making the payment due on the final Bond Payment Date, there remain amounts outstanding and unpaid on the Bond, then the remaining balance of principal of the Bond shall be deemed paid in full, it being understood that upon making the payment due on the final Bond Payment Date, the obligation of the City to make any further payments on the Bond shall terminate. The City shall have no obligation to pay any amount of principal on this Bond which remains unpaid after the final Bond Payment Date and the owner of this Bond shall have no right to receive payment of such amounts.

If (other than because of voluntary resolution of the Common Council) the TID terminates prior to the Maturity Date, and there remain amounts outstanding and unpaid on the Bond, then the remaining balance of principal of the Bond shall be deemed paid in full, it being understood that upon such termination of the TID, the obligation of the City to make any further payments on the Bond shall also terminate; provided, however, that any amounts on deposit in the Special Redemption Fund on the effective date of such termination shall be applied to pay principal on the Bond. Thereafter, the City shall have no obligation to pay any amount of principal on the Bond which remains unpaid upon termination of the TID and the owner of the Bond shall have no right to receive payment of such amounts.

This Bond is subject to prepayment in whole or from time to time in part at any time, at the option of the City.

THE CITY MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, THAT THE AVAILABLE TAX INCREMENT OR REVENUES WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE HEREUNDER.

THE CITY'S PAYMENT OBLIGATIONS HEREUNDER ARE SUBJECT TO FUTURE ANNUAL APPROPRIATION BY THE COMMON COUNCIL OF AVAILABLE TAX INCREMENT OR OTHER AMOUNTS TO MAKE PAYMENTS DUE ON THIS BOND.

THIS BOND IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF THE CITY, AND IS PAYABLE BY THE CITY ONLY FROM THE SOURCES, TO THE EXTENT, AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS BOND IS NOT A GENERAL OBLIGATION OF THE CITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF THE CITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS BOND, AND NO PROPERTY OR OTHER ASSET OF THE CITY, EXCEPT THE ABOVE-REFERENCED REVENUES, IS OR SHALL BE A SOURCE OF PAYMENT OF THE CITY'S OBLIGATIONS HEREUNDER.

This Bond is issued by the City pursuant to and in full conformity with the Constitution and laws of the State of Wisconsin.

This Bond may be transferred or assigned only as provided in the Development Agreement. In order to transfer or assign the Bond, the transferee or assignee shall surrender the same to the City either in exchange for a new fully registered bond or for transfer of this Bond on the registration records for the Bond maintained by the City. Each permitted transferee or assignee shall take this Bond subject to the foregoing conditions and subject to all provisions stated or referenced herein.

It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this Bond have been done, have existed and have been performed in due form and time.

IN WITNESS WHEREOF, the Common Council of the City of Elkhorn, Walworth County, Wisconsin, has caused this Bond to be signed on behalf of said City by its duly qualified and acting Mayor and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

CITY OF ELKHORN,
WALWORTH COUNTY, WISCONSIN

(SEAL)

By _____
Mayor

By _____
City Clerk

REGISTRATION PROVISIONS

This Bond shall be registered in registration records kept by the City Clerk of the City of Elkhorn, Walworth County, Wisconsin, such registration to be noted in the registration blank below and upon said registration records, and this Bond may thereafter be transferred only upon presentation of this Bond together with a written instrument of transfer approved by the City and duly executed by the Registered Owner or his attorney, such transfer to be made on such records and endorsed hereon.

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of City Clerk</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

COPY