

CITY OF CEDARBURG
JOINT MEETING OF THE COMMON COUNCIL AND PLAN COMMISSION
MONDAY AUGUST 29, 2022 – 6:30 P.M.

A joint meeting of the Common Council and Plan Commission of the City of Cedarburg, Wisconsin, will be held on **Monday, August 29, 2022 at 6:30 p.m.** The meeting will be held online utilizing the zoom app and in-person at City Hall, W63 N645 Washington Avenue, Cedarburg, WI., in the second floor Council Chambers. The meeting may be accessed by clicking the following link: [Joint Common Council/Plan Commission Meeting](#)

AGENDA

1. CALL TO ORDER - Mayor Michael O'Keefe
2. MOMENT OF SILENCE
3. PLEDGE OF ALLEGIANCE
4. ROLL CALL: Present – Common Council – Mayor Michael O'Keefe, Council Members Sherry Bublitz, Jack Arnett, Rick Verhaalen, Robert Simpson, Kristen Burkart, Patricia Thome, and Angus Forbes

Plan Commission – Commissioners Adam Voltz, Tom Wiza, Sig Strautmanis, Patricia Thome, Kip Kinzel, Heather Cain, and Mayor Michael O'Keefe
5. STATEMENT OF PUBLIC NOTICE
6. COMMENTS AND SUGGESTIONS FROM CITIZENS** Comments from citizens on a listed agenda item will be taken when the item is addressed by the Council. At this time individuals can speak on any topic not on the agenda for up to 5 minutes, time extensions at the discretion of the Mayor. No action can be taken on items not listed except as a possible referral to committees, individuals, or a future Council agenda item.
7. NEW BUSINESS
 - A. Discussion and possible action on Developers Agreement and Condo Documents for P2 Development
8. ADJOURNMENT

Individual members of various boards, committees, or commissions may attend the above meeting. It is possible that such attendance may constitute a meeting of a City board, committee or commission pursuant to State ex. rel. Badke v. Greendale Village Board, 173 Wis. 2d 553, 494 NW 2d 408 (1993). This notice does not authorize attendance at either the above meeting or the Badke Meeting but is given solely to comply with the notice requirements of the open meeting law.

* *Information attached for Council; available through City Clerk's Office.*

** *Citizen comments should be primarily one-way, from citizen to the Council. Each citizen who wishes to speak shall be accorded one opportunity at the beginning of the meeting and one opportunity at the end of the meeting. Comments should be kept brief. If the comment expressed concerns a matter of public policy, response from the Council will be limited to seeking information or acknowledging that the citizen has been understood. It is out of order for anyone to debate with a citizen addressing the Council or for the Council to take action on a matter of public policy. The Council may direct that the concern be placed on a future agenda. Citizens will be asked to state their name and address for the record and to speak from the lectern for the purposes of recording their comments.*

*** *Information available through the Clerk's Office.*

City of Cedarburg is an affirmative action and equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, age, sexual orientation, gender identity, national origin, veteran status, or genetic information. City of Cedarburg is committed to providing access, equal opportunity and reasonable accommodation for individuals with disabilities in employment, its services, programs, and activities.

To request reasonable accommodation, contact the Clerk's Office,
(262) 375-7606, email: cityhall@ci.cedarburg.wi.us.

08/24/22 tas

CITY OF CEDARBURG

MEETING DATE: August 29, 2022

ITEM NO: 7.A.

TITLE: Discussion and possible action on Development Agreement and Condo documents for P2 Development

ISSUE SUMMARY: P2 Development Company is moving forward with the Fox Run Development which consists of 160 rental apartment units, 44 two- and three-bedroom rental townhomes and 26 for sale “pocket homes” for a total of 230 units in the entire development. The Development Agreement addresses the following items:

- Identifies completion dates for the development.
- Identifies that the City will construct all public improvements on Hanover Avenue including sanitary sewer, water, storm sewer, curb & gutter, sidewalks, street improvements, street lamps, signs, street trees and landscaping.
- Identifies that the Developer will construct all improvements outside the Hanover Avenue ROW including sanitary sewer, water, storm sewer, curb & gutter, sidewalks, street improvements, street lamps, signs, street trees and landscaping.
- Identifies that the Developer will be responsible for the install of underground gas mains, electric and communication cables within the property. The City will reimburse the Developer for the cost of these private utilities within the Hanover ROW.
- Identifies the work that must be completed to obtain building and occupancy permits.

STAFF RECOMMENDATION: Staff recommends approval.

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION: Will be in front of Plan Commission on August 29th prior to Common Council meeting.

BUDGETARY IMPACT: None.

ATTACHMENTS: Development Agreement

INITIATED/REQUESTED BY: Mike Wieser

FOR MORE INFORMATION CONTACT: Mike Wieser-(262)375-7610

DEVELOPMENT AGREEMENT/CONDO DOCUMENTS

FOX RUN DEVELOPMENT

To: City of Cedarburg Plan Commission

Prepared by: Jonathan P. Censky, City Planner

Agenda Item: **7.A.**

Date: August 29, 2022

General Information

Applicant:

P2 Development Company LLC/Robert Bach

Status of Applicant:

Owner/Developer

Location:

N49W6337 Western Road

Requested Action:

Development Agreement Recommendation and Condominium Documents approval.

Existing Zoning:

Rm-2, Rs-6 and PUD

Surrounding Zoning:

Rm-2, Rm-1, and Rs-5

Lot Size:

12.93-acres

Existing Land Use:

Former Mercury Marine site

Report:

During your July 5, 2022 meeting, the detailed architectural, exterior lighting, and landscaping/street tree plans for the Fox Run Development were approved. Mr. Bach is now seeking approval of the development agreement and the condominium documents.

Since the July meeting, City Attorney, Mike Herbrand and City Engineer Mike Wieser have been working on the development agreement, and the completed draft document is included herewith for your review and recommendation. As Commissioners know, the development agreement is the contract between the City and the Developer that establishes responsibilities regarding the provisions of public and private facilities, improvements, and any other agreed-upon terms. As you will recall, the public portion of this development will be the extension of Hanover Avenue from Western Road south to Jackson Street, and the development agreement attached hereto was drafted to reflect that. Attorney Herbrand and Engineer Wieser will be available to present this document at Monday's meeting.

The condominium documents were drafted in accordance with Wis. Stat. Ch. 703, *Condominiums*, and serve as the master deed or bylaws that affect and define the rights and obligations of co-owners of these condominium townhomes. Upon its approval and execution, this document will be recorded in the Ozaukee County Register of Deeds Office. *Land Division, Subdivision and Condominium Regulations* found in Sec. 14, Code of Ordinances, City of Cedarburg, requires Plan Commission review and recommendation, and Common Council approval of these documents.

Staff Comments:

City Staff review indicates that the documents are code compliant, and therefore recommends approval.

**CONDOMINIUM DECLARATIONS OF
CONDITIONS, COVENANTS,
RESTRICTIONS AND EASEMENTS FOR
FOX RUN CEDARBURG CONDOMINIUMS**

This Declaration is made pursuant to the Condominium Ownership Act of the State of Wisconsin, Chapter 703 of Wisconsin Statutes (2002) (hereinafter referred to as the "Act") on the latest date below by Fox Run Cedarburg Development, LLC, a Wisconsin limited liability company (hereinafter referred to as "Declarant").

**ARTICLE I
STATEMENT OF PURPOSE**

The purpose of this Declaration is to subject the property hereinafter described and the improvements thereon (hereinafter collectively "Condominium") to the condominium form of ownership in the manner provided by the Act. It is intended that all provisions contained herein shall be deemed to run with the land and shall constitute benefits and burdens to the Declarant and to its successors in interest.

**ARTICLE II
DESCRIPTION, NAME, RESTRICTIONS AND DEFINITIONS**

- 2.01. Legal Description. The real estate subject to this Declaration is subject to a long term lease held by Declarant together with all improvements owned by Declarant, with the real estate described on **Exhibit A** attached hereto (the "Property").
- 2.02. Location. The location of the Condominium shall be with the Property and as generally identified as Area 3 within the proposed concept plan, attached at **Exhibit B**, as well as to include access to other amenities located outside that area.
- 2.03. Name and Address. The name of the Condominium is "Fox Run Cedarburg Condominium" and has as its address N49W6337 Western Road, Cedarburg, Wisconsin 53012.
- 2.04. Covenants, Conditions, Restrictions and Easements. The Condominium shall be, on the date this Declaration is recorded, subject to:
 - A. General taxes not yet due and payable.
 - B. Easements and rights in favor of gas, electric, telephone, water and other utilities.
 - C. All other easements, covenants and restrictions of record.
 - D. All municipal, zoning and building ordinances .
 - E. All other governmental laws and regulations applicable to the Condominium, including those set forth in Article VI of this Agreement.
- 2.05. Definitions. Except as modified herein, the definitions contained in the Act shall govern in the interpretation of this Declaration.

ARTICLE III UNITS

- 3.01. Definition. "Unit" shall mean a part of the Condominium intended for any type of independent use, including one or more cubicles of air at one or more levels of space of one or more rooms of enclosed spaces located on one or more floors (or parts thereof) in a building.
- 3.02. Description. A Unit in FOX RUN CEDARBURG shall include: one or more contiguous or non-contiguous cubicles of air, including the perpetual right of ingress thereto and egress therefrom. The exterior boundaries of the cubicles shall be the vertical planes, the elevations of which coincide with the face of the studs supporting the drywall, and, should basement areas be built and included in the Pocket Units, shall be the inner face of the foundation walls of the building. The upper boundary of such cubicles shall be the horizontal plane of the lower face of the joists supporting the ceiling on the highest story of the cubicle. The lower boundary shall be the horizontal plane of the lower face of the concrete floor in the garage, basement area, crawl space or any slab upon which the Pocket Units are built. Such cubicles of air shall include any attached garage space, if any, as identified on the final construction and/or Bylaws adopted by the Association.
- 3.03 Limitations on Unit. A Unit shall also include:
- A. Any and all appliances and other fixtures contained in the Unit, which items may include, but not be limited to, refrigerator, dishwasher, disposal, laundry equipment, range, compactor, cabinets, carpeting and floor coverings.
- B. The following items serving the particular Unit, although they may be outside the defined cubicle of air:
- (1) All doors and windows, their interior casements, and all of their opening, closing and locking mechanisms and hardware.
 - (2) All wall and ceiling mounted electrical fixtures and recessed junction boxes serving them.
 - (3) All floor, wall, baseboard or ceiling electrical outlets and switches and the junction boxes serving them.
 - (4) All plumbing fixtures and the piping, valves and other connecting and controlling materials and devices lying between the fixtures and main water or sewage lines to the lowest story of the Unit.
 - (5) The cable television outlet, if any, to the Unit and the junction box serving it.
 - (6) The individual furnaces or ducting, the radiator and the piping providing heating to the Unit, and the controls for the heating system of the Unit.

- (7) The air conditioning equipment and ducting providing air conditioning to the Unit and the controls for the air conditioning system of the Unit.
- (8) The lines bringing natural gas or similar fuel to the Unit, which lines extend from the utility meter to the boundary of the Unit.
- (9) While not anticipated to be included but, if so built, the fireplace, if any, serving the Unit.
- (10) The garage doors on the attached garage space, if any, included with the Unit.

However, specifically not included as part of the Unit are those structural components of the building and any portion of the mechanical systems of the building, not specifically included in the Unit under B above, which lie within the cubicle or cubicles of air comprising the Unit. For purposes of this subsection, partition walls shall not be considered structural components.

- 3.03. Identification. Units shall be identified by the building, street number or location, the determination of which alternative shall be as specified on any "Condominium Plat" of FOX RUN CEDARBURG CONDOMINIUM and/or Bylaws of the Association, incorporated into this Agreement, by reference.

ARTICLE IV COMMON ELEMENTS

- 4.01. Definition and Description. FOX RUN CEDARBURG CONDOMINIUM "Common Elements" shall mean all of the Condominium, except the Units, together with any additional amenities located outside the area of the Condominium and all tangible personal property used in the operation, maintenance and management of the Condominium.
- 4.03. Use. Except as otherwise provided herein and subject to any Bylaws of the "Association", and subject to any rules and regulations adopted by the Association, the Common Elements shall be available for the use and enjoyment of or service to owners of all Units.
- 4.04. Ownership. There shall be appurtenant to the Units an undivided interest in the Common Elements.
- 4.05. Sewer and Water Utility Lines. Declarant intends to and will construct and install the sewer and water utility lines to each building of the condominium to serve all units within the building. All such sewer and water utility lines shall constitute a common element and the maintenance, repair and replacement thereof shall be the responsibility of the Association.

ARTICLE V
LIMITED COMMON ELEMENTS

- 5.01. Definition. "Limited Common Elements" shall mean those Common Elements identified in this Declaration and on any Condominium Plat as reserved for the exclusive use of one or more, but less than all, of the owners of Units.
- 5.02. Description. FOX RUN CEDARBURG CONDOMINIUM Limited Common Elements and the Unit or Units to which their use is reserved are identified on the Condominium Plat and shall include any of the following: patio, balcony and deck.

ARTICLE VI
USES

- 6.01 Restricted Use. The Units, Limited Common Elements and Common Elements of the Condominium shall be used for residential purposes only and shall not be used for any trade or business. Notwithstanding anything to the contrary contained herein, the use of the Units, Limited Common Elements and Common Elements shall comply with the City of Cedarburg ordinances and any other restrictions as contained in the Association Bylaws and any rules and regulations adopted by the Association. No use may unreasonably interfere with the use and enjoyment of the Common Elements or other Units by other Unit Owners. There shall be no storage of material and there shall be no conduct of any activity which would increase the insurance rates on the Condominium. Any and all attorney fees and other expenses incurred by the Association in the enforcement of this provision shall be reimbursed by the Unit Owner in violation and may be assessed against such Owner's Unit.
- 6.02 Sale/Rental. The Condominium is included in a larger development that includes rental units and owner-occupied units in the form of apartments and pocket homes, with owner-occupied units restricted from sale to third party private equity, institutional investor (such as BlackRock or Vanguard Advisors). There is no specific timeline or deed restriction on any rental/sale; however, maintaining this distinction and avoiding a private equity bulk sale are material to development such that Declarant and the Association warrant: i) to use best efforts in maintaining this rental/owner-occupied distinction; ii) to prohibit institutional sale or the sale of ten percent (10%) or more of the pocket homes to a single buyer or entity, or an entity controlled by the same member, partner, or shareholder; and iii) if necessary to address with the City and seek approval for any substantial change that impacts this intent. Any such change shall be subject to Article XVI.

ARTICLE VII UNIT OWNER

A "Unit Owner" shall mean a person, combination of persons, partnership or corporation who holds legal title to a Unit; provided, however, that in the event equitable ownership has been conveyed in the Unit by means of a land contract or other similar document, "Unit Owner" shall mean the land contract purchaser. The Declarant shall be included in the definition of Unit Owner with regard to Units on which an occupancy permit has been issued by the City of Cedarburg.

ARTICLE VIII ASSOCIATION

- 8.01. Definition. "Association" shall mean a Wisconsin non-stock corporation, when established by the Declarant, with the name to be understood as THE FOX RUN CEDARBURG CONDOMINIUM ASSOCIATION, INC. or as so-designated by Declarant at the time of incorporation.
- 8.02. Duties and Obligations. All Unit Owners shall be entitled to become and shall be required to become members of the Association and subject to its Articles of Incorporation, Bylaws and rules and regulations adopted by it for the use and management of the Condominium. By becoming members of the Association, Unit Owners automatically assign the management and control of the Common Elements of the Condominium to the Association.
- 8.03. Voting. Each Unit shall be entitled to one (1) indivisible vote in the Association, subject, however, to suspension as provided herein. If a Unit is owned by more than one (1) person, the vote for the Unit shall be cast as agreed by the persons who have an ownership interest in the Unit and if only one (1) such person is present, it is presumed that person has the right to cast the Unit vote unless there is contrary evidence presented. In the event they cannot agree on the manner in which the vote is to be cast, no vote may be accepted from the Unit. As provided in ARTICLE VII hereof, one who holds a land contract purchaser's interest or any other such equitable interest in a Unit shall be considered the Unit Owner. However, for purposes of being eligible to vote as a member of the Association, the land contract or other document establishing the equitable interest, or an instrument providing constructive notice of such interest, must be recorded in the Ozaukee County Register of Deeds Office.
- 8.04. Restrictions on Association Action. The Association may not, without the consent of at least two-thirds (2/3) of the Unit Owners, abandon, subdivide, encumber, sell or otherwise transfer the Common Elements, provided that easements for public utilities serving the property shall not require such consent.

ARTICLE IX
REPAIRS AND MAINTENANCE

- 9.01. Units. Each Unit Owner shall be responsible for the decoration, furnishing, housekeeping; maintenance, repair and replacement of the Owner's Unit.
- 9.02. Limited Common Elements. Each Unit Owner shall be responsible for the decoration, furnishings, housekeeping, general cleanliness and presentability of the Limited Common Elements which use is reserved to the Unit.
- 9.03. Common Elements. Except as hereinabove provided, the Association shall be responsible for the decoration, furnishing, housekeeping, maintenance, repair and replacement of the Common Elements.
- 9.04. Entry By Association. The Association may enter any Unit and Limited Common Elements at reasonable times and under reasonable conditions when necessary in connection with any maintenance, construction or repair of public utilities and for any other matter for which the Association is responsible. Prior notice to the Unit Owner shall be attempted and the entry shall be made with as little inconvenience to the Unit Owner as possible under the circumstances. Any damage caused thereby shall be repaired by the Association and shall be treated as a "Common Expense", as hereinafter defined.

ARTICLE X
STRUCTURAL CHANGES

- 10.01. Limitations. A Unit Owner may make improvements or alterations within his/her Unit; provided, however, such improvements or alterations do not impair the structural soundness or integrity or lessen the support of any portion of the Condominium, do not reduce the value of the Condominium and do not impair any easement. A Unit Owner may not change the exterior appearance of a Unit or any portion of the Common Elements (including Limited Common Elements) without obtaining the written permission of the Association's governing body and/or as provided by the Association's Bylaws. Any improvement or alteration which changes the floor plan or room dimensions of a Unit must be evidenced by the recording of a modification to Condominium Plat before it shall be effective and must comply with the then legal requirements for such purpose. Furthermore, any approved improvements or alterations must be accomplished in accordance with applicable laws and regulations, must not unreasonably interfere with the use and enjoyment of other Units and Limited Common Elements or the Common Elements and must not be in violation of any underlying mortgage, land contract or similar security interest.
- 10.02. Expenses. All expenses involved in such improvements or alterations, including expenses to the Association which it may charge as a special assessment to the affected Units, shall be borne by the Unit Owners involved.

ARTICLE XI INSURANCE

- 11.01. Property Insurance. The Association shall obtain and maintain insurance for the Common Elements, including Limited Common Elements, covering the periods of fire, extended coverage, vandalism and malicious mischief on a repair and replacement cost basis for an amount not less than the full replacement value of the insured property. The Association shall be the named insured with Unit Owners and the Mortgagees of Units as additional insureds. For purposes of this provision and for the Declaration, "Mortgagee" shall mean the holder of any recorded mortgage encumbering one or more Unit or a land contract seller.
- 11.02. Liability Insurance. The Association shall maintain comprehensive general liability insurance against all claims commonly insured against and in such amounts as the Association shall deem suitable; provided, however, the minimum limits for bodily injury and property damage shall be Two Million Dollars (\$2,000,000.00). The policies shall include standard coverage for the errors and omissions of Association directors and officers. Such policies shall also contain "severability of interest" endorsements which shall preclude the insurer from denying the claim of a Unit Owner because of negligence on the part of the Association or other Unit Owners.
- 11.03. Fidelity Insurance. The Association shall maintain fidelity coverage against dishonest acts by any person responsible for handling the funds belonging to or administered by the Association. The Association shall be the named insured and the insurance shall be in an amount of not less than fifty percent (50%) of the Associations' annual operating expenses and reserves; provided, however, such amount shall not be less than one hundred fifty percent (150%) in the event the Condominium consists of more than thirty (30) Units.
- 11.04. Administration. Any and all premiums associated with the insurance purchased by the Association shall be Common Expenses. The Association shall act as the trustee for the purpose of obtaining insurance coverage and for the receipt, application and disbursement of proceeds. All insurance shall be obtained from generally acceptable insurance carriers, which carriers must meet the guidelines established by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
- 11.05. Unit Owners Insurance. Maintenance of insurance by the Association shall not relieve or prohibit Unit Owners from maintaining insurance with limits in excess of those maintained by the Association or with additional insured risks. Unit Owners are encouraged to submit copies of the disclosure materials to their insurance carriers in order to ensure adequate property and liability coverages on their personal property, Units and Limited Common Elements appurtenant to such Units.
- 11.06. Disbursement. Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged Common Elements and the Unit Owners and Mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the Association has determined not to rebuild, or a court has ordered partition of the

Condominium property, or there is a surplus of insurance proceeds after the Common Elements have been completely repaired or restored.

- 11.07. Commencement. All insurance required by this Declaration shall be purchased and maintained by the Association commencing on or before the date of the sale of the first Unit.

ARTICLE XII REPAIR OR RECONSTRUCTION

In the event the Common Elements are totally destroyed or sustain more than Ten Thousand Dollars (\$10,000.00) in damage at any one time, the Association shall, within fifteen (15) days of the date of damage, determine whether the Condominium is damaged to an extent more than the available insurance proceeds. Once determined, the Association shall promptly notify the Unit Owners and first Mortgagees in writing of the adequacy or inadequacy of the insurance. Within ten (10) days of receipt of the notice, the Unit Owners and first Mortgagees shall have the opportunity to decide whether the Condominium should be partitioned. Partition shall only occur by the affirmative vote of Unit Owners representing at least seventy-five percent (75 %) of the votes available in the Association, other than votes available to the Declarant, and by the affirmative vote of at least fifty-one percent (51%) of the first Mortgagees, calculated on a per Unit basis. In case of such partition, the net proceeds of the sale, together with the net proceeds of insurance, shall be considered as one fund and shall be divided among all Unit Owners in proportion to their percentage interests in the Common Elements and shall be distributed in accordance with the priority of interests in each Unit. In the event the required seventy-five percent (75%) and fifty-one percent (51%) affirmative votes are not cast within the ten (10) day period, or in the event the damage sustained is less than or equal to Ten Thousand Dollars (\$10,000.00), the Association shall promptly undertake to repair or reconstruct the damaged property to a condition compatible with the remainder of the Condominium. Upon reconstruction, the Association may vary the design, plan and specifications of the Common Elements from that of the original; provided, however, that the number of square feet of any Unit may not vary by more than five percent (5%) from the number of square feet for such Unit as originally constructed and provided, further, that the location and floor plan of the damaged buildings shall be substantially the same as they were prior to the damage. In the event insurance proceeds are insufficient to pay the estimated or actual costs of reconstruction, the shortage shall be considered a Common Expense and the Association shall have the responsibility and the right to levy assessments against the Unit Owners as provided herein. Nothing in this article shall be construed as giving any Unit Owner or other party priority over the rights of the first mortgagee of that Unit pursuant to its mortgage, in the case of payment to the Unit Owner of insurance proceeds for losses to the Unit and/or Common Elements.

ARTICLE XIII EMINENT DOMAIN

In the event of taking of any of the Common Elements under the power of eminent domain, the provisions of Section 703.19, Wisconsin Statutes (2002), as amended, shall control; provided, however, the affirmative vote of at least two-thirds of the first Mortgagees, calculated on a per Unit basis, will also be required in order to partition the Condominium; and provided further, if Limited Common Elements are taken, the same shall be reconstructed by the Association if practical to do so.

ARTICLE XIV COMMON EXPENSES

- 14.01. Liability Of Unit Owner. Each Unit Owner shall be liable for the share of expenses of the Association assessed against such Owner's Unit. These expenses ("Common Expenses") shall be allocated among the Units on an equal basis.
- 14.02. Enforcement. The assessments of Common Expenses, together with such interest as the Association may impose in the Bylaws for delinquencies and with the costs of collection and actual attorney fees, constitute a lien on the Units against which they are assessed. Attachment, filing, effectiveness, priority and enforcement of the lien shall be as provided in Section 703.16, Wisconsin Statutes (2002), as amended.
- 14.03. Suspension Of Voting Rights. If any assessment of Common Expenses is delinquent and a "Statement of Condominium Lien" as described in Section 703.16(9), Wisconsin Statutes (2002), as amended, has been recorded against a Unit, the Association may suspend the voting rights of the delinquent Unit Owner. A delinquency resulting in the filing of a Statement of Condominium Lien against a Unit shall constitute an act of default under any mortgage secured by the Unit.
- 14.04. Unit Sale. Except as otherwise provided herein, unpaid Common Expenses assessed against a Unit shall be a Joint and several liability of the seller and purchaser in a voluntary transfer of the Unit if a statement of Condominium Lien covering the delinquency shall have been recorded prior to the transfer.
- 14.05. Lien For Non-Payment. The Association shall have a lien, from the date an assessment is made, upon any Unit for assessments made against that Unit, which assessments remain unpaid. The lien shall secure payment of the assessment, interest and costs of collection, including reasonable attorney fees. The lien may be recorded in the Ozaukee County Register of Deeds Office by an instrument executed by the Association and may be foreclosed. The Unit Owner shall be personally liable for all unpaid assessments, interest and costs of collection. This liability shall not terminate upon transfer of ownership or upon abandonment by the Unit Owner. When any lien is foreclosed, if the Unit Owner remains in possession of the Unit, he/she shall pay a reasonable rental value of the Unit. The Association shall be entitled to the appointment of a receiver of the Unit, as a matter of strict right. Assessments shall be paid without offset or deduction. No Unit Owner may

withhold payment of any assessment or any part thereof because of any dispute which may exist among a Unit Owner, the Association, the Declarant or any of them. Rather, the Unit Owner shall pay all assessments pending resolution of any dispute.

- 14.06. Foreclosure. In the event the Mortgagee of a first mortgage of record or any other purchaser of a Unit obtains title to the Unit as a result of foreclosure of a mortgage or as a result of a conveyance in lieu of foreclosure, such purchaser or his/her successors and assigns shall not be liable for the total share of Common Expenses or assessments by the Association pertaining to such Unit or chargeable to the former Unit Owner, which Common Expenses or assessments became due prior to the acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expense collectible proportionately from all of the Unit Owners.
- 14.07. Installment Payment. Except for items such as insurance premiums which must be prepaid, assessments shall be paid in advance, in the form of a monthly maintenance fee determined by a budget of Common Expenses prepared by the Association, which budget shall include a reserve for deferred maintenance and a reserve for replacement. Special assessments for items not provided for in the budget shall be paid at such time or times, in a lump sum, or in such installments as the Association may determine.
- 14.08. Assessments Against Declarant. Declarant shall pay the monthly assessments only on those of its Units as to which any occupancy permit has been issued by the City of Cedarburg; provided, however, that, during Declarant's control as specified in ARTICLE XV hereof, if the total estimated monthly assessments paid by Unit Owners and by the Declarant shall not cover the total Common Expenses, Declarant shall pay the deficit.
- 14.09. Reserve Fund. The Association shall establish and maintain a reserve fund for payment of nonrecurring operating contingencies. Each annual condominium budget shall include funding for the reserve fund at a level determined appropriate by the Association.
- 14.10. Garbage and Trash Pickup. Garbage and trash pickup for the Units, Limited Common Elements and Common Elements shall be the responsibility of the Association and shall constitute a Common Expense.
- 14.11. Other Expense. In addition to the above-expenses and subject to the restrictions and regulations of this Article XIV, the Declarant does adopt and otherwise states that the Unit Owners will be responsible for additional charges, expenses, and costs, the value of which are to be determined, related to the following:
 1. Insurance
 2. Electrical
 3. Snow Removal
 4. Lawn and Landscape
 5. Lighting Maintenance
 6. Storm Water Maintenance
 7. Street Repair and Maintenance

8. Sidewalks, Drive Way Repair and Maintenance
9. Swimming Pool
10. Sauna
11. Fire Pits
12. Patios
13. Common Area Furniture
14. Community Rooms and Equipment
15. Exercise Equipment
16. Meeting Rooms
17. Game Rooms
18. Lighting Maintenance
19. Special Assessments as approved by the Association
20. Reserves (as determined by the Association and/or other owners within the Property)

For purposes of such expenses, the Declarant has not assigned a value to such expenses or determined any equitable assignment amongst other owners within the Property, if any; however, it is the intent of Declarant to identify such expenses, to make best efforts to adopt by Bylaw or other document a calculation of expenses, and do so such that the identification and ultimate compensation, amended and updated over time, shall not be considered an amendment to the Condominium pursuant to Section 703.09(2), Wisconsin Statutes.

ARTICLE XV POWERS OF DECLARANT

- 15.01. Declarant Control. Except as provided in Section 703.15(2)(d), Wisconsin Statutes (2002), as amended, Declarant reserves the right to appoint and remove officers and directors of the Association and to exercise the powers and responsibilities of the Association, its members and its directors until thirty (30) days after conveyance of eighty-five percent (85%) of the Common Elements to purchasers of Units in the Condominium as originally constituted and as expanded under rights reserved herein. During this period, Declarant shall have the full and exclusive right to take all action on behalf of the Association, including, but not limited to, the right to: (a) enter into leases of Units, (b) make contracts and agreements on behalf of the Association for the maintenance, operation and management of the Condominium, (c) determine, levy and collect assessments, (d) grant easements, and (e) enact and enforce rules and regulations for the use of the Condominium. Any contracts or agreements entered into by Declarant on behalf of the Association with Declarant or an affiliate of Declarant shall not extend for a period exceeding one (1) year; provided, however, that such contracts or agreements may be automatically renewable if a reasonable period for giving notice of termination is provided at the end of each term. Furthermore, any such contracts or agreements shall provide for termination by either party without cause and without payment of a termination fee upon at least ninety (90) days prior written notice. Notwithstanding the foregoing, this provision shall not apply to any lease, the termination of which would terminate the Condominium.

- 15.02. Termination Of Control. Upon termination of the above specified period, or upon the earlier, voluntary relinquishment of control by Declarant, control of the Association shall be turned over to the Unit Owners; provided, however, Declarant reserves the right to name one (1) member, who may be a non-Unit Owner, of the Board of Directors until all Units have been conveyed to Unit Owners in fee simple. Notwithstanding any provision to the contrary, Declarant reserves the following rights: (a) to continue any unfinished development work on any unsold Unit and on the Limited Common Elements and Common Elements (including obtaining any necessary easements therefor); (b) to conduct promotional and sales activities using unsold Units and the Limited Common Elements and Common Elements, which activities shall include, but need not be limited to, maintaining sales and management offices, model Units, parking areas and advertising signs; and (c) to do all other acts Declarant shall deem reasonably necessary in connection with the development and sale of the remaining Units. However, any such acts shall not violate the rights of the Unit Owners or their Mortgagees or unreasonably interfere with the use and enjoyment of the Units, Limited Common Elements or Common Elements. Furthermore, Declarant shall be responsible for any damages resulting from the exercise of such rights, Declarant shall also have the right to grant easements over, through or under any part of the Condominium for the benefit of the Condominium as a whole or any part thereof.

ARTICLE XVI AMENDMENTS

- 16.01 General Amendment. Except as otherwise provided herein, this Declaration may only be amended with the written consent of at least two-thirds of the Unit Owners and each Owner's consent shall not be effective unless approved by the Mortgagee of the Unit; and provided, however, that no such amendment may substantially impair the security of any Unit Mortgagee. No amendment to the Declaration affecting the status or rights of the Declarant may be adopted without the written consent of Declarant. No amendment to this Declaration shall be effective until an instrument containing the amendment and stating that the required consents or votes were duly obtained, signed on behalf of the Association and duly acknowledged or authenticated is recorded with the Ozaukee County Register of Deeds. For purposes of this provision and Declaration, each Unit shall have one (1) vote.
- 16.02 Sale/Rental Amendment. As set forth in Article VI, the Declarant and Association have agreed to restrict sale of owner-occupied units to third party private equity, institutional investor (such as BlackRock or Vanguard Advisors) without the approval of the City. Accordingly, to the extent the Declarant, Association or Unit Owners desire to pursue such sale, it is agreed that: (i) the sale will require an Amendment of the Declaration; (ii) such Amendment cannot be agreed-to without the City's written approval; and (iii) the failure to obtain City-approval prior to or in advance of the sale will allow the City, upon a 30-day notice to the Declarant and/or Association, the right to seek legal or equitable relief to enforce Article VI, set aside an actual or potential sale, and/or obtain other relief, including reasonable legal fees and costs incurred by the City in obtaining such relief.

ARTICLE XVII NOTICES

- 17.01. Notice to Association. The person to receive service of process of the Condominium Association shall be Robert Bach, 524 Technology Way, Saukville, Wisconsin 53080, or such other person as may be designated from time to time by the Association, which designation shall be filed with the Wisconsin Secretary of State's Office.
- 17.02. Notice To Mortgagees. Any first Mortgagee of a Unit, upon written request to the secretary of the Association, shall be entitled to notice of any default which is not cured within sixty (60) days in the performance by an individual Unit Owner of any obligation under the Condominium Declaration, Bylaws, rules and regulations and related documents.

ARTICLE XVIII REMEDIES

If any Unit Owner fails to comply with all provisions of the Act, this Declaration, Association Bylaws and Articles of Incorporation or any rules and regulations promulgated by the Association, the Unit Owner may be sued for damages caused by the failure or for injunctive relief, or both, by the Association or by any other Unit Owner. In the event no damages are capable of being accurately determined, liquidated damages or One Hundred Dollars (\$100.00) may be assessed for each violation. Each day of violation shall constitute a separate violation for purposes of this Article. Any and all attorney fees and other expenses incurred by the Association in enforcing this provision shall be reimbursed by the Unit Owner in violation and may be assessed against such Owner's Unit. Individual Unit Owners shall have similar rights of action, but not reimbursement, against the Association.

ARTICLE XIX EASEMENTS

Easements are reserved over, through and underneath the Common Elements for ingress and egress and for present and future utility services, including, but not limited to, easements for water pipes, sanitary sewer pipes, emergency sewer lines, storm drainage pipes, sprinkler pipes, electrical wires, television wires, security wires and street lights, whether or not shown on the exhibits attached hereto. Easements for such utility services are reserved to the Declarant and Unit Owners. Easements for ingress and egress are reserved to the Association in, over and under the Units and Limited Common Elements, their ceilings, floors and walls for the purpose of making any repairs which are the obligation of the Association. The Association shall be responsible for any damage resulting from such easements.

ARTICLE XX GENERAL

- 20.01. Utilities. Each Unit Owner shall pay for his/her telephone, electrical and other utility services which are separately metered or billed to each user by the respective utility

company. Utilities which are not separately metered or billed shall be treated as part of the Common Elements.

- 20.02. Encroachments. If any portion of a Unit, Limited Common Elements or Common Elements encroaches upon another, an easement for the encroachment -and its maintenance shall exit. In the event all or a portion of the Condominium is damaged and subsequently reconstructed, the Unit Owners shall allow encroachments on the Units, Limited Common Elements or on the Common Elements during construction and easements for such encroachments and their maintenance shall exist.
- 20.03. Invalidity Of A Provision. If any of the provisions of this Declaration, of the Association's Articles of Incorporation, if any, of the Association' s Bylaws or of any rules and regulations adopted by the Association, or any portion thereof, shall be determined to be invalid by a court of competent jurisdiction, the remaining provision and portions thereof shall not be affected thereby.
- 20.04. Conflict In Condominium Documents. In the event a conflict exists among any provision of this Declaration, the Articles of Incorporation, if any, the Bylaws or any administrative rules and regulations, or between any of them, this Declaration shall be considered the controlling document.
- 20.05. Warranties. The Declarant has made no warranty or representation in connection with the Condominium, except as specifically set forth in this Declaration. No person shall rely upon any warranty or representation unless contained in this Declaration. Any estimates of Common Expenses, taxes or other charges shall be considered estimates only and no warranty or guarantees of such amounts shall be made or relied upon.
- 20.06. No Right Of First Refusal. The right of a Unit Owner to sell, transfer or otherwise convey his/her Unit shall not be subject to any right of first refusal or similar restriction for the benefit of Declarant or the Association.
- 20.07. Additional Parking Spaces. Additional interior or exterior parking spaces, if available, may be leased from the Association on such terms and conditions as it shall deem appropriate. All such additional parking spaces shall remain part of the Common Elements.
- 20.08. Homestead, The Condominium or any portion thereof shall not be deemed to be homestead property of the Declarant.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

_____, 2022.

a Wisconsin limited liability company

Robert Bach, Manager

STATE OF WISCONSIN)
) SS
COUNTY OF OZAUKEE)

LLC, a Wisconsin limited liability company.

Name: _____
 Notary Public, Milwaukee County, Wisconsin
 My Commission (expires) (is) _____

EXHIBIT A:

DESCRIPTION OF PROPERTY

**(NOTE: to the extent a conflict exists between legal description
and property deed, the property deed controls)**

PARCEL A:

Lot 1, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL B:

Lot 2, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL C:

Lot 3, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL D:

Lot 4, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL E:

Lot 5, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL F:

Lot 6, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin and part of the Northeast 1 /4 of Section 34, Township 10 North, Range 21 East, City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at a point 1321 feet East of the Northwest corner of the Northeast 1/4, Section 34, Township 10 North, Range 21 East and 244.2 feet South, and on the East line of the T.M.E.R. & L. Co. right of way, which is the point of beginning; thence South 89 degrees East 75.46 feet; thence North 0 degrees 30' East, 112.3 feet; thence South 89 degrees 35' East, 222.2 feet; thence North 0 degrees 30' E 101.1 feet; to a point in the South line of Western Avenue; (which point is 33 feet South of the North line of said Section 34) thence East 47.5 feet, thence South 222 feet; thence South 89 degrees East 47 .5 feet; thence South 323.5 feet; thence South 74.5 degrees 51' West 428 feet to a point in the East line of the T.M.E.R. & L. Co. right of way; thence North 3 degrees 21' East along said right of way 397.8 feet; thence North 36.1 feet to the place of beginning.

PARCEL G:

That part of the Northeast 1 /4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg and that part of Lot 11, Block 19, in the Assessor's Plat of the City of Cedarburg, County of Ozaukee, State of Wisconsin bounded and described as follows:

Commencing at the Northwest corner of said Quarter Section; thence East along the North line of said Quarter Section 1713.88 feet to a point; thence South 0 degrees 30 minutes West 566.0 feet to a point in the North line of Lot 11 aforesaid; thence South 0 degrees 30 minutes West 107.02 feet to a point in the South line of Lot 11 aforesaid; thence South 75 degrees, 07 minutes West

along the South line of Lot 11 aforesaid 432.9 feet; thence North 3 degrees 21 minutes East 106.7 feet to a point in a line South 74 degrees, 51 minutes West from the Northwest corner of Lot 11 aforesaid; thence North 74 degrees, 51 minutes East to the Northwest corner of Lot 11 aforesaid and thence North 74 degrees 51 minutes East along the North line of Lot 11 a total of 428 feet to the place of beginning.

PARCEL H:

That part of the Northeast 1/4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg and that part of Lot 11, Block 19, in the Assessor's Plat of the City of Cedarburg, County of Ozaukee, State of Wisconsin bounded and described as follows:

Commencing at the Northwest corner of said 1/4 Section; thence East along the North line of said 1/4 section 1713.88 feet to a point; thence South 0 degrees 30 minutes West, 566.0 feet to a point in the North line of Lot 11 aforesaid; the place of beginning of the land to be described; thence South 0 degrees 30 minutes West 107.2 feet to a point in the South line of Lot 11 aforesaid; thence North 75 degrees 07 minutes East along the South line of Lot 11 aforesaid, 130 feet; thence North 0 degrees 30 minutes East, 107.82 feet to a point in a line North 74 degrees 51 minutes East from the Northwest corner of Lot 11 aforesaid; thence South 7 4 degrees 51 minutes West along the North line of said Lot 11, 130.18 feet, more or less, to the place of beginning.

PARCEL I:

That part of Lot 13, Block 19, Assessor's Plat of the City of Cedarburg, and that part of the Northeast 1/4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at a point 1766.42 feet North of the Southeast corner of the West 1/2 of said quarter section; thence North 74 degrees 58' East along the South line of Herman Jaehnert property 560.2 feet to a stone monument; thence North 14 degrees 53' West on line 93.46 feet to a stone monument in the South line of Immanuel Evangelical Lutheran Church Property; thence South 75 degrees 07' West along the South line of the Church property and the Kiekhaefer Corp. property 562.9 feet to a stone monument in the East line of the Railway and transmission Line Right of Way of the Wisconsin Electric Power Co.; thence South 3 degrees 21' West along the East line of said right of way 100.00 feet to a stone monument in the South line of Herman Jaehnert property; thence North 74 degrees 58' East on a line 34.00 feet to the place of beginning.

PARCELJ:

That part of the Lot 15, Block 19, Assessor's Plat of the City of Cedarburg, in the Northeast 1/4 of Section 34-10-21 East, in the City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of said Lot 15; thence South 88 degrees 23'29" East, along the South line of said Lot 15, being also the North line of Arnold Buch's Addition, 405.81 feet to its intersection with the centerline of S. 2nd Avenue, as laid out in Arnold Buch's Addition, said point being the point of beginning of the land to be described; thence North 1 degrees 36'31" East, along the Northerly extension of the centerline of S. 2nd Avenue, 155.00 feet to a point; thence North 88 degrees 23'29" West on a line parallel to the South line of said Lot 15, 70.00 feet to a

point; thence North 1 degrees 36' 31" East on a line parallel to the Northerly extension of the centerline of said South 2nd Avenue, 163.19 feet to a point in the Northerly line of said Lot 15; thence North 74 degrees 58' 01" East along the Northerly line of said Lot 15, 232.78 feet to a Northeast corner of said Lot 15; thence South 2 degrees 07' 47" West along the Easterly line of said Lot 15, 132.27 feet to a corner of said Lot 15; thence North 74 degrees 25' 11" East along a Northerly line of said Lot 15, 125.94 feet to a Northeast corner of said Lot 15; thence South 1 degrees 53' 01" West along the Easterly line of said Lot 15, 287.70 feet to the Southeast corner of said Lot 15; thence North 88 degrees 23' 29" West along the South line of said Lot 15, 271.40 feet to the point of beginning.

PARCEL K:

That part of Lot 15, Block 19, Assessor's Plat of the City of Cedarburg, and part of the Northwest 1/4 of the Northeast 1/4 of Section 34, all in the Northeast 1/4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of said Lot 15; thence South 88 degrees 23' 29" East along the South line of said Lot 15, being also the North line of Arnold Buch's Addition; 405.81 feet to its intersection with the center line of South 2nd Avenue, as laid out in said Arnold Buch's Addition; thence North 1 degrees 36' 31" East along the Northerly extension of the centerline of said South 2nd Avenue, 155.00 feet to a point; thence North 88 degrees 23' 29" West on a line parallel to the South line of said Lot 15, 70.00 feet to a point; thence North 1 degree 36' 31" East on a line parallel to the Northerly extension of the centerline of said South 2nd Avenue 163.19 feet to a point in the Northerly line of said Lot 15; thence South 74 degrees 58' 01" West along the Northerly line of said Lot 15 and its Westerly extension 386.91 feet to a point in the Easterly line of the Wisconsin Electric Power Co. right of way; thence South 3 degrees 21' 01" West, along the Easterly line of said right of way 207.44 feet to a point in the North line of said Arnold Buch's Addition; thence South 88 degrees 23' 29" East along the North line of said Arnold Buch's Addition 41.20 feet to the point of beginning.

For informational purposes only:

Property Address:

N49 W6337 Western Road and N43 W6300 Jackson Street, Cedarburg, WI 53012

Tax Key Number: 13-050-19-01-001

EXHIBIT B

CONDOMINIUM SITE AREA PLAN

(incorporated into this Agreement)

**PLANNED UNIT DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF CEDARBURG AND FOX RUN DEVELOPMENT CEDARBURG LLC
P2 DEVELOPMENT COMPANY LLC AND JB PROPERTIES 8 LLC**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made as of this _____ day of August, 2022, by and between the City of Cedarburg, Wisconsin, a Wisconsin Municipal Corporation (hereinafter the “City”) and Fox Run Development Cedarburg LLC, a Wisconsin Limited Liability Company (hereinafter the “Developer”), P2 Development Company LLC, a Wisconsin Limited Liability Company (“P2 Development”), and JB Properties 8 LLC (“Landowner”), with City, Developer, P2 Development and Landowner individually referred to herein as a Party or collectively referred to as the Parties.

RECITALS

WHEREAS, Developer has a leasehold interest in certain real property in the City of Cedarburg, Wisconsin, located at N49W6337 Western Road, Cedarburg, Wisconsin 53012 and more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (hereinafter the “Property”); and

WHEREAS, Developer intends to demolish and remove all of the existing improvements currently located on the Property and develop 160 rental apartment units, 44 two- and three-bedroom rental townhomes and 26 for sale “pocket homes”, to be known as Fox Run Development or “Fox Run” (with the apartments, townhomes and pocket homes collectively referred to herein as the “Development or “Project”); and

WHEREAS, based on the environmental concerns, and in conjunction with the Developer, the Property was purchased by Landowner and leased to the Developer pursuant to written lease dated July 28, 2022; and

WHEREAS, to accomplish the development, Developer separately negotiated a construction agreement for development of the Property with P2 Development; and

WHEREAS, the Property is zoned as a Planned Unit Development (PUD) Overlay District and City Ordinance §13-1-69(n)(2) requires that the Plan Commission recommend, and the City Council approve a Developer’s Agreement which shall include, without limitation:

- (a) Timetables for performance/completion of improvements;
- (b) Performance requirements and standards and assurances for all improvements and/or modifications pertaining to the PUD;
- (c) Inspection requirements;

- (d) Prohibition on any division/combination of real estate lots included within the PUD District except as otherwise provided;
- (e) Provisions for lapsing of specific plan approval and automatic reversion of the zoning status of the Property to non-PUD District status upon specific changes of circumstances or failure of the project to materialize as agreed to in the Development Agreement;
- (f) Agreements, bylaws, provisions and/or covenants or additional deed restrictions to be recorded against the lot(s) within the PUD District that will perpetually govern the organizational structure, use, maintenance, and continued preservation and protection of the project and any of its common services, common open areas and/or other facilities;
- (g) Exhibits, drawings or other attachments that depict improvements, including but not limited to structures, fixtures and landscaping and their relative locations in the Development area as well as design and engineering details as necessary to document to a reasonable degree of specificity the type, character and nature of improvements to be made within the Development area; and

WHEREAS, the Developer, in connection with the Development and the Property, has participated in the municipal approval process required by the City for this Development, and has obtained approval of a PUD allowing for the construction and use of the Development; and

WHEREAS, the Parties have entered into a separate Tax Incremental Financing Agreement with regard to the Development and Property, which is dated August 12, 2022; and

WHEREAS, the City and Developer enter into this Planned Unit Development Agreement for the purpose of setting forth certain rights, duties and obligations of the Parties with respect to the Property and Development.

NOW, THEREFORE, in consideration of the recitals and mutual agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION I PROJECT OVERVIEW

Developer has committed to the construction of the Project pursuant to the terms and conditions set forth herein.

SECTION II DEVELOPER WARRANTIES

A. Sale/Rental. Developer warrants and represents that the Project is to include rental units and owner-occupied units in the form of apartments and pocket homes, respectively, with owner-occupied units restricted from sale to third party private equity, institutional investor (such as BlackRock or Vanguard Advisors). The Parties have not placed a specific timeline or deed restriction on any rental/sale; however, maintaining this distinction and avoiding a private equity bulk sale are material to development such that Developer warrants: i) to use best efforts in maintaining this rental/owner-occupied distinction; ii) to prohibit institutional sale or the sale of ten percent (10%) or more of the pocket homes to a single buyer or entity, or an entity controlled by the same member, partner, or shareholder; and iii) if necessary to address with the City and seek approval for any substantial change that impacts this intent.

B. Timetable for performance/completion. Developer shall commence construction on the Project no later than the “Start Date” and Substantially Complete (as defined below) the Project no later than the “Completion Date” as described herein. The Start Date, as that term is used in this Agreement, shall mean the point in the construction process at or which: (i) the City has issued any and all permits required to start construction on the multi-family apartment units within the Project and (ii) Developer has paid the impact fees for the multi-family apartments and townhomes comprising a portion of the Project. The Start Date will not be later than December 31, 2022. The Completion Date, as that term is used in this Agreement, shall be on or before December 31, 2027 and is understood as the date at which all phases of construction are “Substantially Complete”. “Substantially Complete” shall mean all phases of construction are eligible for issuance of an occupancy permit by the City and have been constructed in conformance to all approved plans, Developer Agreement(s), and specifications. Developer anticipates a multi-phase construction process, completed at different times, but no later than the Completion Date. For purposes of evaluating progress, Developer has identified the phases, estimated start and completion dates for each phase, and the estimated real estate tax fair market values, as follows:

- (i) Phase I – 61 Unit Apartments and Start of Town House Units
Start (10/22) – Completion (12/23)
Valuation: \$15,200,000
- (ii) Phase II – 99 Unit Apartment and Amenity Area in center of building,
Town House Units and Pocket Homes
Start (3/23) – Completion (6/25)
Valuation: \$16,900,000
- (iii) Phase III – Balance of Town House Units and Balance of Pocket Homes
Start (7/25) – Completion (12/26)
Valuation: \$17,200,000

Pursuant to City Ordinance §13-1-69(o)(4), if a building permit is not issued within one (1) year of receiving the PUD zoning, as may be extended, the PUD District zoning for the Property shall be automatically discontinued and replaced with the zoning designation that existed prior to the PUD rezoning.

SECTION III PUBLIC IMPROVEMENTS

A. City Improvements. After the Developer has completed the master grading plan, City will be responsible for engineering work and shall construct all public improvements within the Hanover Avenue right-of way, including grading and concrete, tree, or parking lot removal, sanitary sewer, water, storm water, curb, gutter, sidewalks, intersection and lane improvements, street improvements, street lamps, street signs, street trees and landscaping, and related erosion control ("City Improvements"). Developer shall remove all existing structures and demolition debris from the razing of structures located in the Hanover Avenue right-of-way and the Parties shall negotiate and enter into a mutually agreeable environmental indemnification agreement prior to installation of the City Improvements. City Improvements shall not include private utilities, including, but not limited to natural gas, electricity, and cable.

B. Developer Improvements. Developer shall design and construct the following remaining public improvements ("Developer Improvements") within Developer's private property, at Developer's sole expense, pursuant to and compliant with the plans and specifications approved by the City (Performance Requirements and Standards"):

1. Sanitary Sewerage Systems. Developer shall be responsible for abandoning the current sanitary sewer located on the Property and installing all onsite sanitary sewerage facilities outside of the Hanover Avenue right-of-way, including all sewer mains and service laterals necessary to serve the Development as depicted in the Developer Improvement plans, including technical revisions as may be required by the City Engineer. Upon completion of the installation of the sanitary sewerage facilities outside of the Hanover Avenue right-of-way, the Developer shall be required to enter into a recordable perpetual maintenance easement agreement for Sanitary Sewer System facilities described herein.
2. Water Supply Facilities. Developer shall be responsible for abandoning the current water supply facilities located on the Property and installing all onsite water supply facilities outside of the Hanover Avenue right-of-way, including all water mains, service laterals and appurtenances necessary to serve the Development as depicted in the Developer Improvement plans, and including technical revisions as may be required by the City Engineer, pursuant to City Ordinance section 14-1-68. Upon completion of the installation of the water supply facilities outside of the Hanover Avenue right-of-way, the Developer shall be required to enter into a recordable perpetual maintenance easement agreement for the Water Supply Facilities described herein.

3. Storm Water Drainage Facilities. Developer shall be responsible for abandoning the current storm sewer located on the Property and installing all onsite sewer and storm water quality facilities outside of the Hanover Avenue right-of-way pursuant to City Ordinance section 14-2 necessary to serve the Development as depicted on the Developer Improvement plans, including technical revisions as may be required by the City Engineer. Upon completion of the installation of the storm water facilities outside of the Hanover Avenue right-of-way, the Developer shall be required to enter into a recordable perpetual maintenance easement agreement for storm sewer and storm water facilities described herein in a form substantially similar to **Exhibit D**, attached hereto and incorporated herein by reference.
4. Private Utilities. Developer shall file preliminary plans and Developer shall be responsible for and install underground gas mains, electric and communication cables within the Property. All private utilities to be completed prior to binder course of pavement roadwork.
5. Master Grading. Developer shall grade the site pursuant to a Master Grading Plan approved by the City. All costs of drafting the Master Grading Plan shall be paid by the Developer.
6. Erosion Control. Developer shall be responsible for, install and maintain, erosion control using best management practices and pursuant to City Ordinance sections 14-1-63, 14-2, and 15-2. Developer must comply with all applicable DNR permits, the City's Erosion Control Permit and the Storm Water Management Permit.
7. Warranty. Developer or its general contractor ("Contractor") shall be required to repair, at their own expense, any faulty material used or workmanship performed during the initial construction of the Developer Improvements and any damage therefrom related to the Developer Improvements that may develop within a period of one (1) year after the date Developer dedicates the Developer Improvements to the public and the City accepts the completed Developer Improvements. Developer or Contractor shall make such repairs to the reasonable satisfaction of the Director of Engineering and Public Works.

SECTION IV PRIVATE PROPERTY IMPROVEMENTS

Developer shall develop the Property and Development pursuant to the approved plans, attached hereto, marked **Exhibit C**, and incorporated herein by reference.

SECTION V IMPACT FEES AND DEVELOPER PAYMENTS

A. Impact and Connection Fees. Prior to the issuance of any building permit and payable at the time of building permit issuance, the Developer shall pay the impact, connection

and other fees identified in **Exhibit B**, attached hereto and incorporated herein related to the Development.

The fees Exhibit attached hereto are based on the City's rates for 2022. All of the impact and connection fees shown on the attached Exhibit are subject to annual adjustments pursuant to City Ordinance §3-6-9.

B. Developer Payments. In addition to the fees identified above but not to include those associated with the City Improvements, the Developer shall pay the following fees:

1. Fee In Lieu of Parkland Dedication. Developer has dedicated a sufficient amount of parkland; therefore, no fee in lieu of parkland is due to the City.
2. Other Improvement Costs. Pay for all engineering, administrative and legal fees associated with the new Development and installation of public utilities, including the cost of construction inspection, materials testing, preparation of as-built drawings, and other fees associated therewith.
3. Account Statements. Review and approve all Contractor, engineer and attorney draw requests received by the City and pertaining to the Improvements. The City shall provide copies of each such requests with supporting documentation to the Developer.
4. Recording Fees. Pay to the Register of Deeds for Ozaukee County all recording fees due for the recording of the final plat, any separate dedication instruments and grants of easements.

SECTION VI CITY RESPONSIBILITIES

A. The City will timely review and approve plans for the construction of Improvements and the Project and conduct inspections of the Project as required by City Ordinances.

B. With the exception of storm water and sanitary sewer laterals, the City will own the City Improvements constructed in the Hanover Avenue public right-of-way and easements and shall be responsible for all future improvements (capital or otherwise), maintenance, repair and replacement associated with the Improvements, subject to all assessment rights granted under Wisconsin law. Storm and sanitary service laterals shall be private and maintained by the Developer, and subsequent owners of the Property.

C. No building permits shall be issued until all of the following have occurred:

1. All roadway, sanitary sewer, watermain, storm sewer, and grading plans for the Development have been approved by the City Engineer.

2. Developer has paid all impact fees for the building where permit is requested.
- D. No occupancy permits will be issued until all of the following have occurred:
1. Natural gas, electrical, communications cable have been completely installed serving the building for which Developer is seeking occupancy.
 2. Sanitary sewer, watermain, storm sewer, and all laterals in the right-of-way have been completely installed and approved serving the building for which Developer is seeking occupancy.
 3. Paved parking is constructed and completed serving the building for which Developer is seeking occupancy.
 4. Developer or Landowner has granted all access and maintenance easements to the City, as required in Section III, herein.
 5. Hanover Avenue extension has been completed, including all curb, sidewalk, two (2) layers of asphalt and restoration.

SECTION VII REPRESENTATIONS, WARRANTIES

A. Landowner, Developer and P2 Development hereby represent and warrant to the City that:

1. Landowner, Developer and P2 Development are limited liability companies duly formed and validly existing and qualified to do business in and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on their business or financial condition;
2. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary limited liability company action of Developer and P2 Development, and constitute the valid and binding obligations of both enforceable in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity and other similar laws of general application affecting the enforceability of creditors' rights generally; and
3. The execution, delivery and performance of obligations of Developer or P2 Development pursuant to this Agreement will not violate or conflict with

either entities' articles of organization or operating agreement or any indenture, instrument or agreement by which they are bound, including but not limited to the lease between Landowner and Developer, nor, to the knowledge of Developer or P2 Development, does it violate or conflict with any law applicable to Developer, P2 Development or the Project.

B. The City hereby warrants and represents to the Developer that:

1. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the City, and no other or further acts or proceedings of the City or its officials are necessary to authorize and approve the execution, delivery and performance of this Agreement, and the matters contemplated hereby, except the actions of the City Attorney and Staff as described herein;
2. This Agreement, the exhibits, documents and instruments associated herewith and made a part hereof, have, if applicable, been duly executed and delivered by the City and constitute the legal, valid and binding agreement and obligation of the City, enforceable against the City in accordance with their respective terms.

SECTION VIII MAINTENANCE OF PROPERTY

The Project shall be maintained in accordance with the City's Code of Municipal Ordinances. Trash and refuse shall be deposited in sealed containers dedicated to trash collection and shall be collected at a commercially reasonable frequency. Developer shall eliminate, or cause to be eliminated, significant, prominent damage to the Project and any health hazards or nuisances within thirty (30) days (or such period of time as reasonably necessary or determined to be appropriate by the City's Building Inspector or Health Officer) from delivery of written notice by the City to the Developer explaining such hazards or nuisances. In the event that the City determines that the Project is not in compliance with the terms of this Section, following written notice from the City to the Developer and an adequate opportunity to cure as described in the notice, the City may take corrective action and assess the costs of such action as a special charge against the Project. This remedy shall not be exclusive, and nothing herein shall be deemed in any way to limit enforcement action otherwise available to the City under the Cedarburg Municipal Code or other applicable law. Notwithstanding anything to the contrary, a default of this section by the Developer shall not constitute a default under any other agreement(s) between the City and the Developer.

SECTION IX NOTICES

All communications or notices required or permitted under this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to the person or entity entitled to such notice, if hand delivered or (ii) two business days following deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, air bill prepaid (iii) upon transmission if by fax with confirmation of accepted transmission, or (iv) by email or other such means of electronic communication as is agreed and acceptable to both parties, and each such communication or notice shall be addressed to the following individuals or their successors, unless and until any of such parties notifies the other in accordance with this paragraph of a change in contact name or address:

CITY:

City of Cedarburg
Attn: City Administrator
PO Box 49, W63N645 Washington Avenue
Cedarburg WI 53012

DEVELOPER:

P2 Development Company LLC
Attention: Robert Bach
524 Technology Way
Saukville WI 53080

With a copy sent to:

Attorney Michael P Herbrand
City Attorney
1650 9th Avenue
Grafton WI 53024

With a copy to:

Attorney Jacques C. Condon
Condon Law Firm, LLC
118 N. Green Bay Road, Suite 3
Thiensville, WI 53092

SECTION X WAIVER

No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by written amendments to this Agreement.

SECTION XI INDEMNIFICATION

A. Indemnification Agreement. In addition to, and not to the exclusion or prejudice of, any other provision of this Agreement, the Developer and P2 Development shall indemnify and hold harmless the City, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, action, suits, judgments, costs, expenses, attorneys' fees, and the like, to whomsoever owed and by whomsoever and whenever brought or obtained, unless caused by the City, its employees, officers, agents, or contractors, that may in any manner result from this Agreement or the work performed or the responsibilities of the Developer or P2 Development under this Agreement, expressly including, though not limited to, negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of the Developer, P2 Development or its officers, employees, agents or independent contractors, in carrying out the work and in supervising

and safeguarding the same in any respect whatever, and including claims arising under any federal, state or local law, including Worker's Compensation laws and including negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of the Developer, P2 Development or its officers, employees, agents or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect.

B. If a claim is made against the City by anyone other than Developer, P2 Development or its Members or its Manager, related to work performed by the Developer or P2 Development or the responsibilities of the Developer or P2 Development under this Agreement, the City agrees that it shall, within ten (10) business days of its notice thereof, notify the Developer and P2 Development and any liability insurance carrier, which has been designated by the Developer or P2 Development. The Developer and P2 Development shall thereafter provide full cooperation in defense of the claim. The Developer and P2 Development shall, at the option of the City, defend any claim on behalf of the City in which case the Developer, P2 Development or its insurer is authorized to act on behalf of the City in responding to any claim to the extent of this indemnity. Such authorization includes the right to investigate, negotiate, settle, and litigate any such claim and control of the defense thereof subject to the approval of the City.

C. Extent of Damages. In every case, but not as a limitation on the liability of the Developer and P2 Development to the City, where judgment is recovered against the City on any such claim as provided in this Section, if notice has been given to Developer and P2 Development as set forth above, any judgment thereon shall be conclusive upon the Developer and P2 Development as to the amount of damages and as to its liability therein; provided, however, notwithstanding anything to the contrary contained herein, the City shall reserve and maintain all of its rights and remedies to pursue recovery of all legal and equitable remedies.

SECTION XII MISCELLANEOUS

A. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto, including any successor owners of the real property comprising the Development, or any portion thereof.

B. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the Parties, and then only to the extent specifically set forth in writing.

C. All agreements, representations, warranties, covenants, liabilities and obligations made in this Agreement and in any document delivered pursuant to this Agreement shall survive the execution and delivery of this Agreement.

D. This Agreement and the documents executed pursuant to this Agreement and the agreements referenced herein 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, the agreements referenced herein, and the documents executed in connection with this Agreement. This Agreement, the agreements referenced herein, and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the Parties with respect to the subject matter hereof.

E. This Agreement is intended solely for the benefit of Parties and no third party (other than successors and assigns) shall have any rights or interest in any provisions of this Agreement, or as a result of any action or inaction of the City. Without limiting the foregoing, no approvals given pursuant to this Agreement by the Parties 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 Development.

F. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Wisconsin applicable to contracts made and wholly performed within such state.

G. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. Facsimile or electronic signatures shall be deemed original signatures for all purposes of this Agreement.

H. Any provision of this Agreement that is prohibited or unenforceable shall, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

I. Time is of the essence of each and every obligation or agreement contained in this Agreement.

J. If any of the Parties is delayed or prevented from timely performing any act required under this Agreement, by reason of fire, earthquake, war, terrorist act, flood, riot, strikes, labor disputes or shortages, governmental restrictions, judicial order, public emergency, acts of God, or other causes beyond the reasonable control of the party obligated to perform, then performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

K. The headings in this Agreement are for reference only and are not intended to modify any of the terms and conditions for this Agreement.

L. Nothing contained in this Agreement is intended to or has the effect of releasing Developer or P2 Development from compliance with all applicable laws, rules, regulations, and

ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

M. This Agreement is the product of negotiation among all of the Parties hereto and no term, covenant or provision herein or the failure to include a term, covenant or provision shall be construed against any party hereto solely on the basis that one party or the other drafted this Agreement or any term, covenant or condition contained herein.

N. Upon execution, a memorandum of this Agreement shall be recorded against the Property with the Ozaukee County Register of Deed's Office by the City.

O. Nothing contained in this Agreement is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained in Wisconsin Statutes 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, neither the City nor its insurer shall be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

P. Subject to the applicable provisions of the City Ordinances, as amended, upon the final approvals of the Common Council, the lands therein dedicated for public use by the Developer, including the Hanover Avenue right-of-way in which City Improvements are constructed, may be accepted by the City. Additionally, the Developer shall, without charge to the City, upon completion of all of the Developer Improvements for the Development, unconditionally give, grant, convey, and fully dedicate the same to the City, and its successors and assigns forever, free and clear of all encumbrances whatsoever, including, without limitation, any and all structures, mains, conduits, pipes, lines, equipment, and appurtenances pertaining to such public Improvements together with any and all necessary and required easements for access and repairs thereto. After such Dedication, the City shall have the right to connect or integrate other public improvements or public facilities to the public improvements hereunder as the City decides, without payment or award to, or consent required of, the Developer.

Q. The City shall issue occupancy permits on a per building basis, subject to the joint determination by the City's Building Inspector and Fire Inspector, in their reasonable discretion, that the applicable building's fire and life safety systems have been completed, and that safe exterior access is available to and from the building to be occupied.

SECTION XIII TRANSFER OF PROPERTY AND ASSIGNMENT

Prior to the Completion Date of the Project, as defined in this Agreement, Developer shall not allow or permit the sale, conveyance, or otherwise transfer the Property or any portion or interest therein or assign all or any portion of its rights under this Agreement or MRO; **provided, however** Developer may at any time, with or without the City's consent: (i) enter into leases for all or portions of the multi-family apartments located within the Project; (ii) sell or otherwise

transfer the pocket homes that are a part of the Project, subject to the terms herein; and (iii) grant a security interest or interests in the Property (for example, a mortgage interest). After Substantial Completion of the Project, Developer shall be allowed to assign this Agreement, the Tax Incremental Financing Agreement referenced herein, or MRO associated therewith, with the prior consent of the City, which consent shall not be unreasonably withheld.

SECTION XIV FEDERAL STATE & LOCAL LAWS

Developer and P2 Development shall construct and operate the Project in compliance with all applicable Federal, State and local laws, rules, regulations and ordinances.

SECTION XV PROHIBITION ON DIVISION OF REAL ESTATE

The Landowner and Developer are prohibited from any division or combination of the real estate lots included within the Property except upon prior approval of the City.

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IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth above.

**DEVELOPER: FOX RUN DEVELOPMENT
CEDARBURG, LLC
by and through its managing member**

Robert Bach

STATE OF WISCONSIN)
) ss.
COUNTY OF OZAUCKEE)

Personally came before me this ____ day of _____, 2022, the above named Robert Bach, to me known to be the person who executed the foregoing instrument and acknowledged the same.

My commission _____

**P2 DEVELOPMENT COMPANY LLC
by and through its authorized member**

James Bach

STATE OF WISCONSIN)
) ss.
COUNTY OF OZAUCKEE)

Personally came before me this ____ day of _____, 2022, the above named Robert Bach, to me known to be the person who executed the foregoing instrument and acknowledged the same.

My commission _____

LANDOWNER: JB PROPERTIES 8, LLC
by and through its managing member

Robert Bach

STATE OF WISCONSIN)
) ss.
COUNTY OF OZAUKEE)

Personally came before me this ____ day of _____, 2022, the above
named Robert Bach, to me known to be the person who executed the foregoing instrument and
acknowledged the same.

My commission _____

City: CITY OF CEDARBURG

By: _____
Michael J. O' Keefe/Mayor

Countersigned: _____
Tracie Sette/City Clerk

STATE OF WISCONSIN }
COUNTY OF OZAUKEE) ss

Personally came before me this _____ day of _____, 2022, the above-named Michael J. O' Keefe, Mayor, and Tracie Sette, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin

My Commission: _____

EXHIBIT A
to the Development Agreement for Fox Run Development

--

LEGAL DESCRIPTION OF PROPERTY
(NOTE: to the extent a conflict exists between legal description
and property deed, the property deed controls)

PARCEL A:

Lot 1, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL B:

Lot 2, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL C:

Lot 3, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL D:

Lot 4, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL E:

Lot 5, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin.

PARCEL F:

Lot 6, Block 19, Assessor's Plat, City of Cedarburg, County of Ozaukee, State of Wisconsin and part of the Northeast 1 /4 of Section 34, Township 10 North, Range 21 East, City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at a point 1321 feet East of the Northwest corner of the Northeast 1/4, Section 34, Township 10 North, Range 21 East and 244.2 feet South, and on the East line of the T.M.E.R. & L. Co. right of way, which is the point of beginning; thence South 89 degrees East 75.46 feet; thence North 0 degrees 30' East, 112.3 feet; thence South 89 degrees 35' East, 222.2 feet; thence North 0 degrees 30' E 101.1 feet; to a point in the South line of Western Avenue; (which point is 33 feet South of the North line of said Section 34) thence East 47.5 feet, thence South 222 feet; thence South 89 degrees East 47 .5 feet; thence South 323.5 feet; thence South 74.5 degrees 51' West 428 feet to a point in the East line of the T.M.E.R. & L. Co. right of way; thence North 3 degrees 21' East along said right of way 397.8 feet; thence North 36.1 feet to the place of beginning.

PARCEL G:

That part of the Northeast 1 /4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg and that part of Lot 11, Block 19, in the Assessor's Plat of the City of Cedarburg, County of Ozaukee, State of Wisconsin bounded and described as follows:

Commencing at the Northwest corner of said Quarter Section; thence East along the North line of said Quarter Section 1713.88 feet to a point; thence South 0 degrees 30 minutes West 566.0 feet to a point in the North line of Lot 11 aforesaid; thence South 0 degrees 30 minutes West 107.02 feet to a point in the South line of Lot 11 aforesaid; thence South 75 degrees, 07 minutes West along the South line of Lot 11 aforesaid 432.9 feet; thence North 3 degrees 21 minutes East 106.7 feet to a point in a line South 74 degrees, 51 minutes West from the Northwest corner of Lot 11 aforesaid; thence North 74 degrees, 51 minutes East to the Northwest corner of Lot 11 aforesaid and thence North 74 degrees 51 minutes East along the North line of Lot 11 a total of 428 feet to the place of beginning.

PARCEL H:

That part of the Northeast 1/4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg and that part of Lot 11, Block 19, in the Assessor's Plat of the City of Cedarburg, County of Ozaukee, State of Wisconsin bounded and described as follows:

Commencing at the Northwest corner of said 1/4 Section; thence East along the North line of said 1/4 section 1713.88 feet to a point; thence South 0 degrees 30 minutes West, 566.0 feet to a point in the North line of Lot 11 aforesaid; the place of beginning of the land to be described; thence South 0 degrees 30 minutes West 107.2 feet to a point in the South line of Lot 11 aforesaid; thence North 75 degrees 07 minutes East along the South line of Lot 11 aforesaid, 130 feet; thence North 0 degrees 30 minutes East, 107.82 feet to a point in a line North 74 degrees 51 minutes East from the Northwest corner of Lot 11 aforesaid; thence South 7 4 degrees 51 minutes West along the North line of said Lot 11, 130.18 feet, more or less, to the place of beginning.

PARCEL I:

That part of Lot 13, Block 19, Assessor's Plat of the City of Cedarburg, and that part of the Northeast 1/4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at a point 1766.42 feet North of the Southeast corner of the West 1/2 of said quarter section; thence North 74 degrees 58' East along the South line of Herman Jaehnert property 560.2 feet to a stone monument; thence North 14 degrees 53' West on line 93.46 feet to a stone monument in the South line of Immanuel Evangelical Lutheran Church Property; thence South 75 degrees 07' West along the South line of the Church property and the Kiekhaefer Corp. property 562.9 feet to a stone monument in the East line of the Railway and transmission Line Right of Way of the Wisconsin Electric Power Co.; thence South 3 degrees 21' West along the East line of said right of way 100.00 feet to a stone monument in the South line of Herman Jaehnert property; thence North 74 degrees 58' East on a line 34.00 feet to the place of beginning.

PARCEL J:

That part of the Lot 15, Block 19, Assessor's Plat of the City of Cedarburg, in the Northeast 1/4 of Section 34-10-21 East, in the City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of said Lot 15; thence South 88 degrees 23'29" East, along the South line of said Lot 15, being also the North line of Arnold Buch's Addition, 405.81 feet to its intersection with the centerline of S. 2nd Avenue, as laid out in Arnold Buch's Addition, said point being the point of beginning of the land to be described; thence North 1 degrees 36'31" East, along the Northerly extension of the centerline of S. 2nd Avenue, 155.00 feet to a point; thence North 88 degrees 23'29" West on a line parallel to the South line of said Lot 15, 70.00 feet to a point; thence North 1 degrees 36' 31" East on a line parallel to the Northerly extension of the centerline of said South 2nd Avenue, 163.19 feet to a point in the Northerly line of said Lot 15; thence North 74 degrees 58' 01" East along the Northerly line of said Lot 15, 232.78 feet to a Northeast corner of said Lot 15; thence South 2 degrees 07' 4 7" West along the Easterly line of said Lot 15, 132.27 feet to a corner of said Lot 15; thence North 74 degrees 25'11" East along a Northerly line of said Lot 15, 125.94 feet to a Northeast corner of said Lot 15; thence South 1 degrees 53'01" West along the Easterly line of said Lot 15, 287.70 feet to the Southeast corner of said Lot 15; thence North 88 degrees 23'29" West along the South line of said Lot 15, 271 .40 feet to the point of beginning.

PARCEL K:

That part of Lot 15, Block 19, Assessor's Plat of the City of Cedarburg, and part of the Northwest 1/4 of the Northeast 1/4 of Section 34, all in the Northeast 1/4 of Section 34, Township 10 North, Range 21 East, in the City of Cedarburg, County of Ozaukee, State of Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of said Lot 15; thence South 88 degrees 23'29" East along the South line of said Lot 15, being also the North line of Arnold Buch's Addition; 405.81 feet to its intersection with the center line of South 2nd Avenue, as laid out in said Arnold Buch's Addition; thence North 1 degrees 36'31" East along the Northerly extension of the centerline of said South 2nd Avenue, 155.00 feet to a point; thence North 88 degrees 23'29" West on a line parallel to the South line of said Lot 15, 70.00 feet to a point; thence North 1 degree 36'31" East on a line parallel to the Northerly extension of the centerline of said South 2nd Avenue 163.19 feet to a point in the Northerly line of said Lot 15; thence South 74 degrees 58'01" West along the Northerly line of said Lot 15 and its Westerly extension 386.91 feet to a point in the Easterly line of the Wisconsin Electric Power Co. right of way; thence South 3 degrees 21 '01" West, along the Easterly line of said right of way 207.44 feet to a point in the North line of said Arnold Buch's Addition; thence South 88 degrees 23'29" East along the North line of said Arnold Buch's Addition 41.20 feet to the point of beginning.

For informational purposes only:

Property Address:

N49 W6337 Western Road and N43 W6300 Jackson Street, Cedarburg, WI 53012

Tax Key Number: 13-050-19-01-001

EXHIBIT B
to the Development Agreement for Fox Run Development

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IMPACT FEES

(attached as confirmed and approved)

CITY OF CEDARBURG CURRENT DEVELOPMENT FEES

Effective March 21, 2022

LAND USE	SANITARY SEWER CONNECTION (2)(3)	LIBRARY BUILDING (2)	POLICE STATION (1)	WATER SUPPLY FACILITIES (1)	PARK FACILITIES (1)	SUBTOTAL (Building Inspection)	FEE IN LIEU OF PARK LAND DEDICATION (2)(3)	TOTAL FEE/ UNIT
RESIDENTIAL:								
Single Family/ Condominium	\$ 2,567.00	\$ 1,464.36	\$ 1,421.87	\$ 1,945.00	\$ 1,362.29	\$ 8,760.52	\$ 802.33	\$ 9,562.85
Multi-Family & CBRF	1 bed = \$1,925.25 2+ beds = \$2,567.00	\$ 972.60	\$ 944.38	Per meter size (5)	\$ 904.80	Per meter size (5)	\$ 532.89	Per meter size (5)
NON-RESIDENTIAL:								
Commercial	Per REC (4)		\$0.72/sq ft	Per meter size (5)				
Industrial/ Manufacturing	Per REC (4)		\$0.43/sq ft	Per meter size (5)				
Institutional	Per REC (4)		\$0.43/sq ft	Per meter size (5)				
City Code	Sec 9-2-6, 3-6-7	Sec 3-6-3	Sec 3-6-4	Sec 3-6-5	Sec 3-6-6		Sec 14-1-84	
Ordinance	2022-03	2022-01	2022-01	2021-18	2022-01		2022-02	

(1) Impact Fee per State Statute 66.0617 to be charged upon building permit acquisition.

(2) Fee per State Statutes 66.0821 and 236.45 to be charged at the time of recordation of new lot(s). *Note: not an impact fee*

(3) Charge applied to lots upon annexation or creation by land division, subdivision, or condominium plats to be paid prior to recordation.

(4) Based on Resident Equivalent Connections (REC)

(5) Fee Based on Installed Meter Size:

Meter Size	Meter Factor	Fee per Meter
5/8"	1.0	\$ 1,945
3/4"	1.0	\$ 1,945
1"	2.5	\$ 4,863
1.5"	5.0	\$ 9,725
2"	8.0	\$ 15,560
2.5"	12.5	\$ 24,313
3"	15.0	\$ 29,175
4"	25.0	\$ 48,625
6"	50.0	\$ 97,250
8"	80.0	\$ 155,600
10"	120.0	\$ 233,400
12"	160.0	\$ 311,200

NEW IMPACT FEES

	Sewer Conn	Library	Police Sta	Water Facilities	Parks	Fee in Lieu of Park	Total
Single Family	\$ 2,567.00	\$ 1,464.36	\$ 1,421.87	\$ 1,945.00	\$ 1,362.29	\$ 802.33	\$ 9,562.85
Apt (1 bedroom)	\$ 1,925.25	\$ 972.60	\$ 944.38	\$ * 667.40	\$ 904.80	\$ 532.89	\$ 5,947.32
Apt (2+ Bedrooms)	\$ 2,567.00	\$ 972.60	\$ 944.38	\$ * 667.40	\$ 904.80	\$ 532.89	\$ 6,589.07

# of Units	Impact Fee
26	\$ 248,634.10
74	\$ 440,101.68
130	\$ 856,579.10

* Based on the assumption that there would be 26 - 3/4" meters, 11 - 1/2" meters and 1 - 3" meter. This number could change based on how the buildings are plumbed.

Total = \$ 1,545,314.88

EXHIBIT C
to the Development Agreement for Fox Run Development

--

APPROVED PLANS
(attached as confirmed and approved)

EXHIBIT D
to the Development Agreement for Fox Run Development

--

STORM WATER MAINTENANCE AGREEMENT

(attached as confirmed and approved)

**STORM WATER
MAINTENANCE AGREEMENT****EXHIBITS**

Exhibit A: Legal Description of real estate to which this agreement applies (“Property”).

Exhibit B: Location Map(s) - shows an accurate location of each storm water management practice this agreement applies.

Exhibit C: Details – shows details of catch basin structure(s) and other storm water management practices affected by this agreement.

Exhibit D: Maintenance Plan – prescribes those activities that must be carried out to maintain compliance with this agreement.

Name and Return Address

City of Cedarburg
Attention: Ms. Tracie Sette
City Clerk
P.O. Box 49
W63 N645 Washington Avenue
Cedarburg, WI 53012

Parcel Identification Number (PIN)
130501901001

**STORM WATER MANAGEMENT MEASURES
AND
MAINTENANCE AGREEMENT**

This Agreement is made and executed this _____ day of _____, 2022 by **Fox Run Development Cedarburg, LLC**, and **JB Properties 8, LLC**, Wisconsin limited liability companies (hereinafter collectively the “Owner” or “Developer”), and the City of Cedarburg (hereinafter the “City”).

WHEREAS, Owner/Developer is the owner of that certain parcel of land located in the City of Cedarburg, Wisconsin and legally described in **Exhibit A** attached hereto (hereinafter referred to as the “Property”) and intends to develop the Property as a residential subdivision; and

WHEREAS, Owner/Developer and City wish to set forth certain maintenance obligations as a separate recorded document, documenting the obligations of Owner/Developer, any successors and assignees, and other impacted parties; and

WHEREAS, the Owner/Developer, on behalf of itself and its successors and assigns, agrees that the health, safety and welfare of the residents of the City require storm water management and maintenance measures on the Property; and

WHEREAS, the City requires that storm water management measures and management plans be implemented by the Owner/Developer, its successors and assigns.

NOW, THEREFORE, the parties agree as follows:

1. **Exhibit B** and **Exhibit C**, attached hereto and made a part hereof, identify certain areas of the Storm Water System, including, but not limited to, storm water ponds, catch basins, associated piping, curb and pavement, all of which serve as and shall be deemed a part of the Storm water System (hereinafter “Storm Water System”) for the Property and shall be fully incorporated herein as an integral part of this Agreement.

2. The Owner/Developer shall be jointly and severally responsible, on an annual or more often as needed basis as may be reasonably determined by the City or its representatives, and as set forth in the Maintenance Plan attached hereto, marked **Exhibit D**, and incorporated herein by reference, for the maintenance, upkeep, and repair of each component of the Storm Water System and serving the Property, including but not limited to removal of debris, maintenance of vegetative areas, maintenance of the ponds and structures of the Storm water System, and sediment removal.

3. The City is authorized to access the Property to conduct annual, or more frequent as needed, inspections of the Storm water System features and practices as may be determined by

the City or its representatives, that are reasonably necessary to ascertain that the Storm water System is being maintained and operated in accordance with acceptable standards designated by the City.

4. Upon written notification of the Owner/Developer, or its successors and assigns, by the City of storm water management or maintenance problems which require correction due to non-compliance with the terms and requirements of this Agreement, the City storm water quality permit, the construction site storm water runoff WPDES general permit issued by the State of Wisconsin Department of Natural Resources, or a material adverse effect on property owners, public safety, or public health, the specified corrective actions set forth in the notification shall be taken within a reasonable time frame as set by the City.

5. In the event that maintenance of the Storm Water System is not undertaken by the Owner/Developer pursuant to the foregoing notice or as otherwise required by this Agreement, the City is authorized, but not required, to perform maintenance work on the Storm water System if Owner/Developer's failure to maintain (a) may result in non-compliance with the terms and requirements of the City storm water quality permit or the construction site storm water runoff WPDES general permit issued by the State of Wisconsin Department of Natural Resources, (b) has a material adverse effect on property other than the Property; (c) has a material adverse effect on the Property; or (d) endangers the public health or safety. Notwithstanding anything set forth herein to the contrary, before the City shall have the right to perform any such maintenance pursuant to this Paragraph 5 (except in the case of an emergency situation, as determined by the City, in the City's sole discretion), the City shall provide the Owner/Developer with written notice stating with specificity the maintenance activities the City reasonably deems to be required with respect to the Storm water System. The Owner/Developer shall then have thirty (30) days after

receipt of such written notice to perform such maintenance, provided that said thirty (30) day period shall be extended if the Owner/Developer or duly authorized designee has commenced such maintenance work within said thirty (30) day period and is diligently proceeding to complete the same. In the case of an emergency situation as determined in the sole discretion of the City, no notice will be required prior to the City performing emergency maintenance; provided, however, City shall provide written notice thereof to Owner/Developer no more than three (3) days after performing such emergency maintenance.

6. The Owner/Developer shall be liable for all reasonable actual costs and expenses incurred by the City for the failure of Owner/Developer to undertake any repairs or maintenance of any kind to the Storm Water System. If Owner/Developer fails to pay for said costs of corrective action within the time granted by the City, then City shall be entitled, in addition to all other remedies available under the law, to place the cost of the corrective action, prorated by the number of lots or housing units comprising the Property, including, but not limited to, the apartments, pocket homes, and single family townhomes on Washington Avenue, on the tax roll of each taxable parcel/unit comprising the Property, as a special charge pursuant to Wis. Stats. § 66.0627.

7. Except for in the event of the negligence or intentional misconduct of the City, this Agreement imposes no liability of any kind whatsoever on the City. Owner/Developer, its successors and assigns, agrees and promises to hold the City, its officers, employees and agents, harmless and indemnify said entity and persons from any and all liability, of whatever kind or nature, and any damages, of whatever kind or nature, in the event the Storm water System fails to function or operate properly due to (i) the negligence or intentional misconduct of Owner/Developer, its agents or contractors or (ii) the breach of this Agreement by Owner/Developer, its agents or contractors. Nothing contained in this Agreement is intended to be a waiver or estoppel of the City or its insurer to rely upon the defenses and immunities contained

within Wisconsin Law, including, but not limited to, those contained in Wisconsin Statutes section 893.0, 895.52, and 345.05, as amended. Neither the City nor its insurer shall be liable for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

8. This Agreement shall be recorded with the Ozaukee County Register of Deeds Office and shall constitute a covenant running with the land and shall be bindings on the Owner/Developer, its administrators, executors, assigns, heirs, and any other successors in interests and title.

9. The validity, meaning and effect of this Agreement shall be construed in accordance with the laws of the State of Wisconsin. This Agreement constitutes the entire agreement of the parties with respect to the subject matter thereof.

10. Each provision of this Agreement shall be considered separable, and if for any reason any provision or provisions are determined to be invalid and contrary to any existing or future law, the invalidity shall not impair the operation of those portions of this Agreement that are valid.

11. Venue for any disputes arising out of or under this Agreement shall be in the Circuit Court for Ozaukee County, Wisconsin.

Dated this _____ day of _____, 2022.

DEVELOPER:
Fox Run Development Cedarburg, LLC

by: _____
Robert Bach, Owner

STATE OF _____)
) ss.
COUNTY OF _____)

Notary Public, _____ County, WI
My commission _____

Notary Public, _____ County, WI
My commission _____

by: _____
Michael O'Keefe, Mayor

by: _____
Tracie Sette, City Clerk

Personally came before me this ____ day of _____, 2022, the above named Michael O’Keefe and Tracie Sette, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

APPROVED AS TO FORM:

This document drafted by:

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EXHIBIT A
PROPERTY

EXHIBIT B
LOCATION MAP(S)

EXHIBIT C
DETAILS

EXHIBIT D
MAINTENANCE PLAN