

TRAIL VIEW SOUTH DEVELOPMENT AGREEMENT

THIS AGREEMENT, made by and between the **City of Appleton** by its City Council, a body politic and municipal corporation with a mailing address of 100 North Appleton Street, Appleton, WI 54911 (“City”), the **Village of Little Chute** by its Village Board, a body politic and municipal corporation with a mailing address of 108 W. Main Street, Little Chute, WI 54140 (“Village”) and **Emerald Valley Estates, LLC**, a corporation with a business address of 2100 N. Freedom Road #A, Little Chute, WI 54140, the owner and developer (“Developer”) of property lying within the City of Appleton:

WHEREAS, Section 17-3 of the Appleton Municipal Code and Section 42-6 of the Little Chute Municipal Code provide for the installation of required improvements in new subdivisions; and

WHEREAS, the Developer has proposed to develop the Trail View South residential subdivision on property within the corporate limits of the City (“Proposed Development”), described in *Exhibit 1* (Legal Description provided by Developer) attached hereto; and

WHEREAS, the Final Plat of the Trail View South Subdivision, shown in *Exhibit 2* (provided by Developer) attached hereto, has been conditionally approved by the City and Village; and

WHEREAS, a series of meetings and negotiations have taken place between the City, the Village and the Developer to determine various development and financial responsibilities as between the City, the Village and the Developer for on-site and off-site public improvements and fees in connection with the Proposed Development; and

WHEREAS, the City, the Village and the Developer, for their mutual benefit, have mutually agreed as to development and financial responsibilities for public improvements and fees in connection with the Proposed Development;

NOW THEREFORE, it is mutually agreed as follows:

1. The Developer shall be responsible for the installation of the following in the Proposed Development, to the standards set forth by the City and the Village, pursuant to paragraph 4 below:
 - a. Sanitary sewer mains, manholes and laterals
 - b. Water mains, valves, hydrants, hydrant leads, fittings, and services
 - c. Storm sewer mains, manholes, catch basins, inlet leads, overland flow paths, yard drains and associated piping and laterals
 - d. Street excavation and graveling, terrace seeding, lot filling, grading and seeding and all associated construction site erosion control measures, with fill to consist of clay fill in the streets. Once the streets are accepted by the City, no additional repairs are required by the Developer to such streets after a three-month period
 - e. Street Lights
 - f. All other infrastructure required for the developments not specifically set forth in this agreement

2. The Developer shall provide the City and Village an estimate for items 1a – 1f prior to the installation of the items for the development.
3. The Developer shall provide fully executed and signed *Waivers of Special Assessment Notices and Hearing* (shown in *Exhibit 3*) for the development, acknowledging consent to pay Special Assessments levied by the City for the following items to be furnished and/or installed by the City or Village:
 - a. Televising of sanitary and storm sewer lines
 - b. Street name Signs
 - c. Traffic Control Signs
 - d. Concrete Pavement abutting lots owned by the Developer at the time of concrete paving
 - e. Sidewalks installed on lots owned by the Developer at the time of concrete paving

Estimates of up-front City and Village costs and associated special assessments to be paid by the Developer for items 3a – 3e for the development are attached hereto as *Exhibit 4*. The actual final costs for items 3a-3e will be used as the basis for the special assessments billed to the Developer.

4. Any concrete street and sidewalk assessments for Cherryvale Drive on the east side of the street would be limited to the 335' as listed in Exhibit 6.
5. The Developer shall provide the City and Village with copies of all final costs, invoices, labor costs, the contract documents and specifications, design documentation, all contract administration supporting documentation, an itemized list of all expenses for the installation of sanitary sewer, storm sewer, water main, street excavation and graveling and street lights for the Proposed Development. Said information provided by Developer shall be provided within 60 days of installation and shall meet City's and Village's Infrastructure Adjustment Form requirements. The Developer's design engineer shall perform the construction staking and the City and Village shall inspect the same.
6. The Developer's contractor shall perform the testing of the water main, sanitary sewer, storm sewer and compaction of fill material placed in future roadway areas in the Proposed Development under the supervision of City and Village inspectors.
7. The Developer shall provide lien waivers to the City and Village from prime contractor, subcontractors, suppliers and consultants within 60 days of the installation of the items in paragraph 1.
8. The Developer agrees to convey by deed, dedication, or other appropriate means, to the City and/or Village all the streets, roads, courts, avenues, drives, public ways, sanitary sewer, storm sewer, water main, and storm water facilities in the Proposed Development. Developer further agrees to convey any public access ways by dedication or easement to the City. All public improvements contemplated in the final plat shall be constructed within areas to be dedicated to the City either by deed, dedication or easement as contemplated in the Proposed Development and this agreement.
9. The City and Village agree to accept the dedication of all the Public Improvements in the Proposed Development, whether by deed, dedication or easement subject to the City's and Village's Acceptance of the Public Improvements in accordance with and subject to the terms of the City's Subdivision Ordinance.

10. The Developer shall repair or replace, as directed by the City or Village and to the City's or Village's satisfaction, at its own cost, any damage caused to City or Village property by the installation of the improvements in the Proposed Development. Repairs shall be completed within six (6) months of notification from the City or Village to the Developer of the need to repair or replace such damage.

11. The Developer shall pay the cost of all items listed under Paragraph 1 above. Concrete Paving and sidewalks will be assessed to the abutting property owners and the Developer will be assessed for only the cost of those lots owned by the Developer. Concrete streets shall be installed only after 75% of the lots in the Proposed Development have been issued building permits or after a 7-year period from the date of official street opening, whichever comes first.

12. The schedule for the Proposed Development shall be as follows:
 - a. Infrastructure installation may commence after City and Village approval of the Final Plat, Drainage Plan, Established Grades, Storm Water Management Plan, Construction Plans, Construction Specifications and procurement of all necessary City and Regulatory Agency permits.
 - b. Building permits may be issued upon City and Village approval and acceptance of all infrastructure. Streets must be officially opened to the public by the City Engineer prior to the issuance of building permits.

13. The developer shall pay any required parkland fees pursuant to Chapter 17 of the Appleton Municipal Code, not to exceed \$300 per lot.

14. Individual lot owners will be responsible for payment of applicable assessments for existing City/Village regional stormwater facilities at the time of building permit issuance.

15. Individual lot owners will be responsible for payment of applicable Heart of The Valley Metropolitan Sewerage District utility connection fees to the Village in conjunction with the installation of water meters for each home.

16. The Developer shall provide on the Final Plat a 16-foot wide outlot between lots 91 and 110 connecting Golden Gate Drive and the existing Apple Creek Trail to accommodate pedestrian access to the public trail. The City will be responsible for all costs to construct and maintain this trail access corridor.

17. The 140,000 special assessment identified in Exhibit 5 has been fully met with no outstanding obligations for these connection fees.

18. The City agrees to waive all Administrative Fees and all costs related to the installation of Temporary Asphalt Pavement.

19. The City agrees to waive the \$48,000 paid to Little Chute for Lots 5 and 6 in the Crosswinds Plat in order to provide access to the Trail View South Development, and such land will be dedicated as street right-of-way within the Village of Little Chute at no cost to the Developer.

20. The City and Village represent that this Agreement and the terms and conditions contained herein are consistent with adopted ordinances and resolutions on the subject matter.

21. The Developer shall pay the entire cost associated with installation of underground gas, electric, telephone and cable TV utilities and streetlights in the Proposed Development. The City shall review the proposed locations and have approval authority over any utilities proposed within the public right-of-way, prior to installation. The City standard for streetlights is wooden poles. The street lighting plan shall be designed by We Energies and approved by the City. The City shall pay We Energies the monthly electrical charge for street lighting. If the Developer desires decorative streetlights, then the Developer shall be responsible for all costs associated with the decorative streetlights, above the standard wood pole equivalent costs. The Developer shall be responsible for requesting said decorative lights from WE Energies. The Developer must also sign a Waiver of Special Assessments document for the annual assessments associated with decorative lighting.

22. Annual Tax Guarantee

- a. The City agrees to uniformly apply tax assessment procedures and practices with respect to the property and the Development in accordance with state law regarding property tax assessments. Notwithstanding the foregoing, Developer shall pay to the City the minimum real estate tax payment for the years and in accordance with the formula as set forth below. It is the intent of this provision that the Developers Minimum Real Estate Tax Payment shall be in such an amount as will fully amortize the City's \$384,725 contribution to the project over a 12-year period commencing with tax payments made in 2028, for the tax year 2027, and ending with the year 2039, for tax year 2038. The guaranteed value, for the purposes of this Agreement, is to be \$4,030,000.
- b. The Minimum Real Estate Tax Payment shall be paid in the following manner: Commencing with the 2028 calendar year (for the tax year 2027) and for each calendar year thereafter to 2039, the Developer shall pay to the City the deficit, if any, between the amount of property taxes generated by the development and the amount of property taxes generated based on a \$4,030,000 assessed value (Minimum Real Estate Payment). If the amount of the actual real estate tax payments exceeds the Minimum Real Estate Tax Payment, no additional payment shall be due from Developer.
- c. By August 15, starting with calendar year 2028, the City shall provide Developer with: (1) an itemization of the actual real estate tax payments received from the Development, and (2) a calculation in the amount, if any, by which the Minimum Real Estate Tax payment for the Development for such calendar year exceeds the actual real estate tax payment allocable to the Development for the preceding calendar year. If for any given calendar year the Minimum Real Estate tax Payment exceeds the actual real estate tax payment, developer shall pay the amount of such excess to the City. If the amount of the actual real estate tax payment exceeds the Minimum Real Estate Tax Payment, no additional payment shall be due from Developer.

23. The City and Village represent and warrant to Developer that they have the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by the City and Village under this Agreement.

- a. The City and Village represent and warrant to Developer that they are empowered and authorized to execute and deliver this Agreement and other agreements and documents, if any, required hereunder to be executed and delivered by the City or Village. This Agreement has been, and each such document at the time it is executed and delivered, will be duly executed and delivered on behalf of the City and Village.
- b. When executed and delivered to Developer, all such agreements shall constitute a legal, valid and binding obligation of the City and Village, enforceable in accordance with their terms.

24. The Developer represents and warrants to the City and Village that Developer is a Limited Liability Company, duly organized and existing under the laws of the State of Wisconsin, and that all proceedings of Developer necessary to authorize the negotiation and execution of this Agreement and the consummation of the transaction contemplated by this Agreement have been taken in accordance with applicable law.

25. The Developer represents and warrants to the City and Village that the execution and delivery of this Agreement, the consummation of the transactions contemplated in this Agreement and the execution and delivery of the documents required to be executed, delivered or acknowledged by Developer at the closing will not violate any provision of Developer's operating agreement or any applicable statute, rule, regulation, judgment, order or decree of the State of Wisconsin or a court having jurisdiction over Developer or its property.

26. The Agreement shall be effective as of the date of execution thereof and remain in effect until the earliest of: (a) the Developer notifies the City and Village that the Proposed Development has been terminated, (b) upon the mutual agreement of the Parties to terminate the Agreement, or (c) if one (1) year after the date of execution the Developer not take any further action on the Proposed Development.

27. This Agreement, along with *Exhibits 1 through 4* sets forth the entire understanding of the parties relative to its subject matter and supersedes and merges any and all prior communications, negotiations and agreements, oral or written, except for the Land Dedication Agreement for Cherryvale Avenue (*Exhibit 5*) and Council approved incentive dated 4-1-2018 (*Exhibit 6*).

28. It is understood and agreed that the provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions contained herein.

29. This Agreement may not be modified or amended, except when placed in writing, with the written consent of the City, the Village and the Developer.

[SIGNATURE PAGE TO FOLLOW]

Emerald Valley Estates, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

STATE OF WISCONSIN)

: ss.

_____ COUNTY)

Personally came before me on this ____ day of _____, 2020, the above-named persons, _____ and _____, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Public, State of Wisconsin

My commission is/expires: _____

CITY OF APPLETON

By: _____
Jake Woodford, Mayor

By: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me on this _____ day of _____, 2020, the above-named Jake Woodford and Kami Lynch, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Public, State of Wisconsin
My commission is/expires: _____

Provision has been made to pay the liability
that will accrue under this contract.

Approved as to Form:

Tony Saucerman, Director of Finance

Christopher Behrens, City Attorney

VILLAGE OF LITTLE CHUTE

By: _____
James Fenlon, Village Administrator

By: _____
Laurie Decker, Village Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me on this _____ day of _____, 2020, the above-named James Fenlon and Laurie Decker, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Public, State of Wisconsin
My commission is/expires: _____

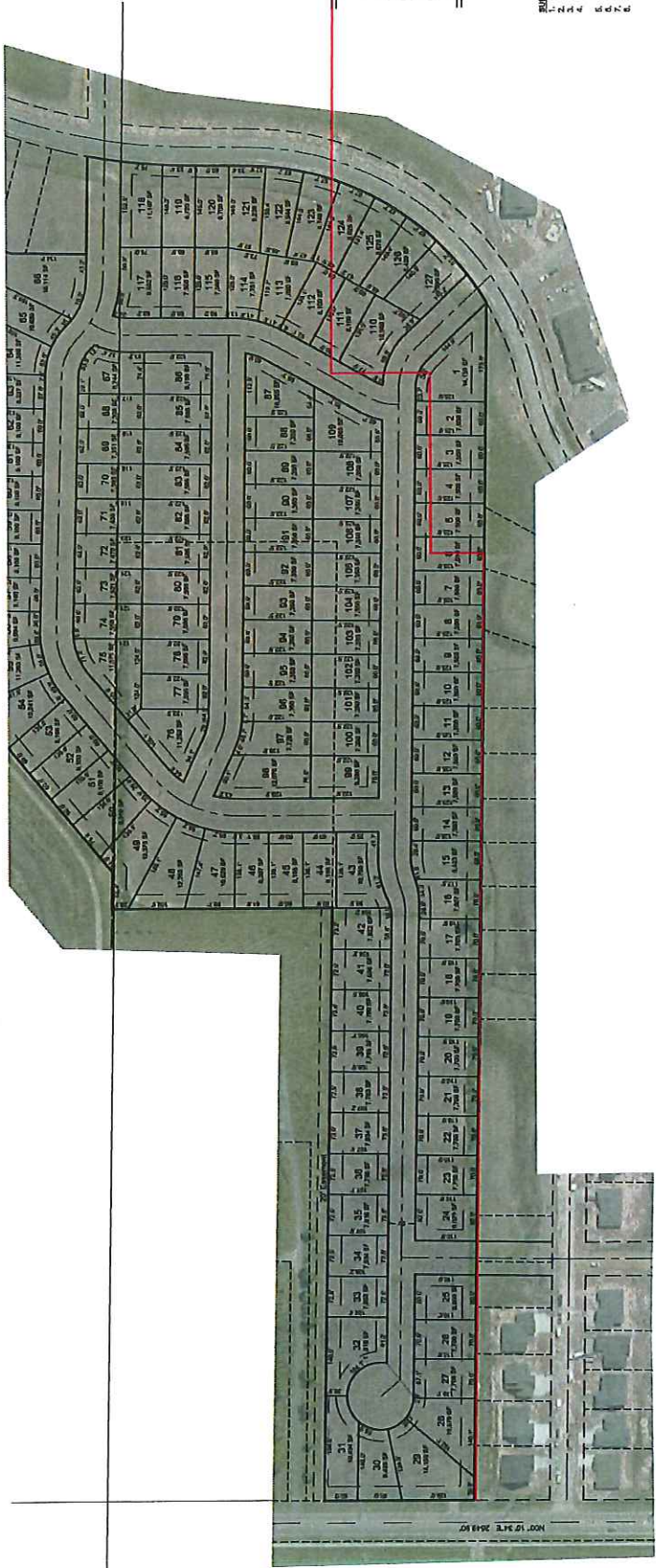
Provision has been made to pay the liability that will accrue under this contract.

Approved as to Form:

Lisa Remiker-Dewall, Finance Director

Village Attorney

This instrument was drafted by:
Christopher Behrens, Appleton City Attorney



- NOTES:**
1. Proposed zoning =
 2. Existing zoning =
 3. Average lot size =
 4. Number of lots =
 5. Area of land to be
 6. Total Area =
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Development Agreement-Trail View South Subdivision	Exhibit 4						TOTALS	NOTES / COMMENTS
	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	TOTALS		
Number of Lots :	25	25	27	22	28	127		
Total Lot Area (SF) :	234,697	192,819	228,308	189,827	233,357	1,079,008		
Total C/L Footage (LF) :	1,173	1,011	1,048	774	1,230	5,236		
Total Pavement Area (SF) :	37,615	32,815	36,886	25,655	39,502	172,473		
Storm Sewer Televising	\$821.10	\$707.70	\$733.60	\$541.80	\$861.00	\$3,665.20	\$0.70 per foot	
Street Name / Traffic Control Signs	\$1,759.50	\$1,516.50	\$1,572.00	\$1,161.00	\$1,845.00	\$7,854.00	\$1.50 per c/l foot	
Concrete Pavement	\$28,152.00	\$24,264.00	\$25,152.00	\$18,576.00	\$29,520.00	\$125,664.00	\$60.00 per front ft. (for 20% of lots)	
Sidewalks - at time of Concrete Pavement	\$14,076.00	\$12,132.00	\$12,576.00	\$9,288.00	\$14,760.00	\$62,832.00	\$30.00 per front ft. (for 20% of lots)	
TOTALS	\$44,808.60	\$38,620.20	\$40,033.60	\$29,566.80	\$46,986.00	\$200,015.20		
Administrative Fees (Engineering, Inspection, Survey)	\$8,797.50	\$7,582.50	\$7,860.00	\$5,805.00	\$9,225.00	\$39,270.00	\$7.50 per c/l foot	
Temporary Asphalt Pavement	\$62,691.67	\$54,691.67	\$61,476.67	\$42,758.33	\$65,836.67	\$287,455.00	\$15.00 per square yard	
Trail connection between Golden Gate Drive and existing Apple Creek Trail	\$0.00	\$0.00	\$0.00	\$10,000.00	\$0.00	\$10,000.00		
City Payment to Little Chute for Lots 5/6 of Crosswinds Plat for roadway connection	\$0.00	\$0.00	\$48,000.00	\$0.00	\$0.00	\$48,000.00		
TOTALS	\$71,489.17	\$62,274.17	\$117,336.67	\$58,563.33	\$75,061.67	\$384,725.00		
Sanitary Sewer	\$58,186.00	\$38,736.00	\$30,152.00	\$25,982.00	\$39,634.00	\$192,690.00		
Storm Sewer	\$176,235.50	\$112,411.50	\$94,406.50	\$25,684.00	\$81,304.50	\$490,042.00		
Water Main	\$68,258.80	\$51,369.80	\$46,851.80	\$38,107.70	\$49,659.10	\$254,247.20		
Sanitary Laterals	\$25,422.00	\$26,444.00	\$21,362.00	\$18,740.00	\$24,880.00	\$116,848.00		
Storm Laterals	\$23,426.00	\$21,398.00	\$21,522.00	\$4,350.00	\$22,872.00	\$93,568.00		
Water Services	\$25,856.00	\$26,832.00	\$27,536.00	\$22,688.00	\$32,800.00	\$135,712.00		
Grading & Graveling	\$87,867.37	\$83,641.67	\$78,827.18	\$51,673.94	\$101,988.85	\$403,999.00		
Street Lights	\$18,000.00	\$12,000.00	\$15,000.00	\$12,000.00	\$15,000.00	\$72,000.00		
Private Electric	\$18,943.65	\$14,981.40	\$15,781.50	\$11,325.90	\$18,135.75	\$79,168.20		
Private Gas	\$12,629.10	\$9,987.60	\$10,521.00	\$7,550.60	\$12,090.50	\$52,778.80		
TOTALS	\$514,824.42	\$397,801.97	\$361,959.98	\$218,102.14	\$398,364.70	\$1,891,053.20		
PROJECT TOTALS	\$631,122.18	\$498,696.33	\$519,330.24	\$306,232.27	\$520,412.37	\$2,475,793.40		