

DEVELOPMENT AGREEMENT—YORKVILLE MEADOWS SUBDIVISION

THIS AGREEMENT, effective as of the date last executed by any party below, made and entered into pursuant to the provisions of the Code of Ordinances of the Village of Yorkville, Racine County, Wisconsin, by and among **ALAN JASPERSON AND LYLE JASPERSON** (collectively, “Subdivider”), Community State Bank, a national banking corporation (“Mortgagee”), and the **VILLAGE OF YORKVILLE**, a municipal corporation located in Racine County, Wisconsin (“Village”);

RECITALS:

1. The Village Board of the Village has conditionally approved the preliminary and final plat of “Yorkville Meadows,” a subdivision located in the Northeast ¼ of the Northwest ¼ of Section 8, Township 3 North, Range 21 East, in the Village of Yorkville, County of Racine, State of Wisconsin (“Subdivision”), consisting of eleven residential lots (each, “Lot”), and the ordinances of the Village require that the Subdivider enters into a suitable contract with the Village relative to the construction of roads and other public improvements servicing the Subdivision (“Agreement”). A legal description of the Subdivision is attached hereto as Exhibit A.

2. Mortgagee holds a mortgage interest in the lands included within the plat of the Subdivision.

For good and valuable consideration, the adequacy and receipt of which the parties acknowledge, **IT IS MUTUALLY AGREED AS FOLLOWS:**

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

2. **Road Construction Standards, Guaranty Period and Land Division Fee.** Subdivider shall construct at its own expense the public road as shown on and dedicated by the

plat of said Subdivision in accordance with: all provisions of the Village ordinances; all Village approvals; applicable road construction standards in effect at the time of such road construction; and, the terms of this Agreement. Such work shall also be done in accord with road, site, and storm water management plans prepared by Lynch & Associates, with last revision date of November 21, 2018, which plans are incorporated herein by reference. Without limiting the foregoing, per the specific conditions of the Village's preliminary plat approval, Yorkville Meadows Court ("Road") shall be constructed to Village standards, utilizing a 10" stone base with a 4" asphalt binder/surface course, the Village Board having waived its 6" asphalt requirement. No drainage tiles shall be installed within the ditch on either side of the Road. The Subdivider shall be responsible for regrading and shaping the Road at its expense prior to the asphalt work being done. Subdivider warrants and guarantees the Road, and associated public improvements, against defects in workmanship and materials, and shall be liable for the cost of maintenance, repair and or reconstruction of the Road, shouldering facilities, and associated public improvements for a period of two (2) years after the Village's approval of the asphaltting and acceptance of the Road and public improvements, unless a longer guaranty period is required by the Village Board at the time of acceptance based on Road conditions then apparent, and in accord with any maintenance guarantees required by such Village ordinances as are in effect at the time of acceptance of the Road ("Guaranty Period"). This Guaranty Period, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Subdivision improvements. In the event the Guaranty Period shall extend beyond the term of the letter of credit or surety bond required as security under Paragraph Ten (10) below, the term of said security shall be extended accordingly.

Pursuant to Chapter 28 of the Village's Code of Ordinances, the Subdivider shall be responsible for a land division fee in the amount of \$1,100.00 (11 lots @ \$100 per lot) to be included as a cash payment to the Village upon execution of this Agreement.

3. **Drainage Facilities.**

A. Subdivider shall construct all open swales and retention/detention ponds as shown on the Subdivision plans ("Drainage Facilities") prior to the beginning of any residence construction in the Subdivision. Notwithstanding the preceding sentence, residential construction may commence on Lot 3 (only) once the Road's 10" stone base has been installed to the reasonable satisfaction of the Village Engineer. The Village shall be granted an easement over the Drainage Facilities, but the Drainage Facilities not be public but rather shall be owned by each Lot owner. Each Lot owner shall also be responsible for maintaining, at such Lot owner's cost, the Drainage Facilities on the Lot, and a provision specifically indicating this obligation shall be included on every deed by which Subdivider conveys any Lot. Notwithstanding the above, Subdivider shall be responsible for repairing any deficiency or damage done by construction to the Drainage Facilities that is discovered during the Guaranty Period. Subdivider shall also work with the Village for the installation, at Subdivider's cost, of a dry hydrant in the Subdivision's retention/detention pond, to the extent such a hydrant is feasible, as determined by the Union Grove – Yorkville Fire Department.

B. Subdivider grants to the Village a perpetual, non-exclusive storm drainage easement over all storm drainage easements shown on the Subdivision plat, including over all storm water swales and over the storm water detention/retention pond to be constructed on Lot 4. This grant includes the nonexclusive right (but not the obligation) to enter, upon reasonable notice to the lot owners affected, with all necessary and proper workers,

equipment, and materials with respect thereto and to construct, reconstruct, maintain, improve, repair, alter, or operate within, on, or under the storm drainage easement areas any necessary drainage facilities, including, without limitation, ditches, swales, storm sewers, and retention/detention ponds, for holding and/or conveying storm water through, over, across and under the storm drainage easement areas, including the right to dredge as necessary, together also with the right to excavate and/or refill ditches and/or trenches as necessary and to remove such trees, bushes, undergrowth and other obstructions as may interfere with the exercise of this easement. To the extent the Village exercises its rights under this paragraph, the Village shall restore the surface disturbed by any construction or maintenance work within the storm drainage easement area to its pre-disturbance condition, but the Village shall not be required to restore or replace any trees or bushes within such area that would interfere with the easement granted hereby.

C. The Village's easement rights shall run with the land and shall be binding upon all future Lot owners, and Lot owners shall not undertake any construction or any soil disturbance in the storm drainage easement areas that does or could interfere with storm drainage without the prior written approval of the Village. Non-use or limited use of the easement rights granted hereby shall not prevent the Village from later use of the easement rights to the fullest extent authorized in this Agreement. Notwithstanding the foregoing, nothing herein shall obligate the Village to construct or maintain any storm drainage facilities in the storm drainage easement areas. Responsibility for constructing and maintaining the Drainage Facilities in the drainage easement areas in accordance with approved plans shall belong jointly to Subdivider and Subdivider's successors in interest, including to each subsequent Lot owner, and Subdivider, for itself and its successors in interest, agrees and acknowledges that in the event the Village is required to undertake any

storm water drainage easement construction, maintenance, or repair work on any Lot, including any requisite dredging, then the cost of such Village work shall be assessed and collected by the Village as a special charge against each particular Lot.

4. **Sewer Service.** This Agreement and the approval of the plat of the Subdivision are conditioned upon each lot within the Subdivision being serviced with an adequate private on-site wastewater treatment system (POWTS), approved by Racine County, and consisting of a tank at each site, conveyance pipes, mound systems and appurtenances thereto. The Village shall have no ownership interest in any such POWTS, and shall not be responsible for any maintenance of the POWTS.

5. **Road and House Construction Timing.** Until the Road's 10" stone base has been installed to the reasonable satisfaction of the Village Engineer, no building permits shall issue as to any Lots in the Subdivision; provided, however, that building permits may issue as to Lots 9-11 once such Lots are serviced by a shared driveway that is, in the reasonable opinion of the Village Engineer, adequate to allow emergency vehicle ingress and egress to each Lot. Finished yard grades and grading plans for each lot must be approved by the Village Engineer before construction may commence. Subdivider shall install the Road's 4" binder/surface course of asphalt when occupancy permits have been issued for at least six Lots fronting on the Road, except that the Village Board, after consultation with the Village Engineer may require installation of the asphalt at any time prior to the Subdivision having received the six occupancy permits referenced above. Until the completed Road is accepted by the Village, Subdivider remains responsible for all Road maintenance, including the removal of snow or the remedying of any other condition that could impede emergency access to any approved building site. If at any time the Village determines that the Subdivision's unaccepted Road is impassable, any building permits that have been issued for

any Lots fronting on the Road shall immediately be suspended until such time as Subdivider remedies the Road condition.

6. **Mailboxes.** The Subdivider shall install United States Postal Service (“USPS”)-approved mailboxes throughout the Subdivision at locations designated by the USPS, the design of which must be approved by the Village.

7. **Survey Monuments.** The Subdivider shall exercise all reasonable efforts to assure that all survey or other monuments required by statute or ordinance will be properly placed and installed. Any monuments disturbed during construction of improvements shall be restored by Subdivider.

8. **Drain Tile.** Any drain tile or other drainage structure or appurtenance damaged during construction shall be repaired and restored to its condition prior to such construction, or rerouted or replaced if necessary, in the reasonable opinion of the Village Engineer, and the Subdivider shall provide a permanent record of such work to the Village.

9. **Reimbursement of Fees and Expenses.** The Subdivider acknowledges and agrees that it is solely responsible for all costs of construction and installation of Subdivision improvements. Subdivider is liable for and shall pay to and reimburse the Village for any and all engineering, planning, legal and administrative fees and expenses incurred by the Village with respect to the (1) processing, reviewing, revising, and approving conceptual, preliminary or final development plans, including preliminary and final plats, (2) processing, reviewing, revising, drafting, and approving any agreements, easements, deed restrictions, or other documents associated with the proposed subdivision or development, and (3) construction, installation, inspection and approval of all improvements provided for in this Agreement, including, but not limited to, consultation reasonably required to address problems encountered during the course of the development of the Subdivision. At the time of execution of this Development Agreement,

the Subdivider shall pay to the Village the estimated fees and expenses due at that time, as communicated to the Subdivider by the Clerk-Treasurer. Any additional fees and expenses shall be paid to the Village within thirty (30) days of billing.

10. **Security.** As and for security for the performance of this Agreement, Subdivider shall furnish to the Village, at Subdivider's option, a surety bond or a letter of credit in the principal sum of \$631,443.60, equating to 120% of the estimated cost of the Road and the Drainage Facilities, as reasonably determined by the Village Engineer ("Security"). The form and issuer of the Security shall be acceptable to the Village. The Security shall be posted with the Village before any work commences on the Road or the Drainage Facilities. Security bonds or letters of credit shall not expire until the end of the Guaranty Period, though the amount of the Security shall be reduced as set forth herein. In the event the Road or Drainage Facilities are not installed on or before the dates required by this Agreement, or if Subdivider fails to timely fix any deficiencies arising during the Guaranty Period, the Village shall be entitled, without further notice to Subdivider, to install or repair said improvements using the Security, and Subdivider shall have no recourse against the Village in that event. Security shall be used to cover the cost of construction or repair of improvements, construction change orders, and any associated Village costs. If the Village's actual costs relating to Road or Drainage Facilities construction or repairs exceed the amount of the Security, Subdivider shall, upon five (5) days notice, make up the deficiencies by payment to the Village. That portion of the Security, less the cost to complete the road (including asphaltting) and/or drainage facilities, plus 10% of the original Security amount, shall be released by the Village when the Village approves construction of the stone base and drainage facilities. The balance of the retained Security shall be held until such time as the Road is completed, including all asphaltting and shouldering, and is accepted by the Village. At that time, that portion of the Security, less the cost to address punch-list items, plus 10% of the original security amount

shall be held during the two (2) year Guaranty Period. It is understood by the parties hereto that the taking of such Security by the Village shall not relieve the Subdivider from its primary liability under this Agreement, nor shall the Village waive any rights it may have with respect to installing of such improvements and assessing the properties in the Subdivision for the same or any other rights which it might have. Subdivider agrees that the Subdivision and all Lots are benefited by the Road and Drainage Facilities and that, in addition to any other rights which the Village may have hereunder, in the event Subdivider does not construct or cause to be constructed such improvements as herein provided, the Village may cause such improvements to be made and may specially assess the Lots therefor. Subdivider, for itself and its successors and assigns, including all future Lot owners, hereby consents to such assessments and waives any right to notice and a hearing with respect to the levying of such assessments, as may otherwise be required by sec. 66.0703 of the Wisconsin Statutes.

11. **Erosion and Drainage Control.** During the course of the development of the Subdivision, the Subdivider shall be responsible to ensure that reasonable steps are taken to prevent erosion from lands within the Subdivision and the siltation therefrom being carried into road rights-of-way, roadside ditches, drainage ditches, easements, culverts, drains, waterways, lakes and streams. To prevent such erosion and siltation the Subdivider shall comply with all Village ordinances and shall conform to the practices as set forth in the Wisconsin Construction Site Best Management Practice Handbook promulgated by the Department of Natural Resources, as modified from time to time. In the event of any such erosion or siltation, the Subdivider shall be responsible for removing all such siltation and restoring all such rights-of-way, ditches, easements, culverts, drains, waterways, lakes and streams. All such compliance and work hereunder shall be done without cost to the Village. The Subdivider shall be responsible for ensuring that its contractors utilize construction means and methods that minimize, to the extent possible, nuisance-

type impacts to the surrounding landowners. Prior to the start of construction, the Subdivider shall submit to the Village Engineer for approval, a written plan addressing such things as work hours, work days, dust control, construction debris on highways, etc. Developer is further responsible for repairing, replacing, and/or rerouting any drain tiles that are or would be impacted by the Development and any public roads that are damaged or impacted by the Subdivision's development.

12. **Street Light.** Subdivider shall be liable for the cost of purchasing and installing one streetlight at the intersection of the Road and State Highway 20. The street light must be approved by the Village and WE Energies and shall be accepted by the Village once properly installed. If ornamental property lights are desired by Subdivider, installation, maintenance, and repair costs for said ornamental lights shall be the sole, continuing responsibility of the Subdivider, or its successors and assigns.

13. **Pavement, Markings and Street Signs.** Subdivider shall be responsible for the cost of all pavement markings and street signage throughout the Subdivision. Pavement markings may include stop lines at intersections, striping for right turn lanes, and any other pavement markings required by the Village Engineer. Signage shall include all stop signs, street signs and other signs required by the Village Engineer. Subdivider authorizes Village or County personnel to have the necessary markings and signs installed and shall reimburse the Village or County on a time and material basis.

14. **Liability of Subdivider and Its Successors.** This Agreement shall be binding upon Subdivider and its successors in title or assigns, and the provisions hereof shall be covenants running with the land and shall be binding upon the present owners and all subsequent owners of the Subdivision or any portion thereof. The sale of any Lot within the Subdivision shall not relieve any owners of their continuing liability hereunder, except as otherwise set forth herein. The

Village may record a copy of this Agreement, at Subdivider's expense, with the Racine County Register of Deeds Office.

15. **Utilities.** Subdivider is responsible for all costs associated with any and all utilities servicing the Subdivision, including, without limitation, the cost of underground installation of cables, wires, pipes, or laterals, etc., for electric, gas, telephone, cable television, and/or Internet services. The Subdivider shall fully restore, at its expense, any Village right-of-way that has been disturbed due to its installation of utilities, lighting or landscaping.

16. **As-Built Plans.** Upon written acceptance of all improvements by the Village, the Subdivider, at its expense, shall furnish to the Village one complete set of "as-built" plans and profile sheets on reproducible mylar, one set of prints indicating actual constructed locations and elevations, and one set of electronic drawings and associated files compatible with a computer-aided design (CAD) system maintained by the Village or its engineer.

17. **Legal Action.** In addition to the provisions above set forth in this Agreement, the Village and its successors, may take any and all other appropriate action at law or equity to enforce compliance with the provisions of this or any other agreement it may have with Subdivider, and its successors in title or assigns, and in the event of a legal action in which the final determination is in favor of the Village, the Village shall be entitled to collect from the Subdivider, or its successors in title and assigns, against whom such action is brought, the usual costs and disbursements, plus a reasonable sum as attorneys' fees.

18. **Use-Value Conversion Charge.** The Subdivider agrees that upon the recording of the final plat, and commencement of construction, the use of agricultural land included within the Subdivision shall be deemed by the Subdivider, Village and Racine County to have changed, and the Subdivider and/or each Lot owner shall be responsible for payment of the use-value conversion charge. The Subdivider shall obtain an estimate of such charge from the Wisconsin Department

of Revenue which amount shall either be included in the amount of security posted by the Subdivider or collected pro-rata by the Subdivider from each Lot owner at the time of closing on the sale of a Lot.

19. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

20. **Indemnification/Hold Harmless Agreement.** Subdivider, for itself and its successors in interest in the Subdivision, hereby expressly agrees to indemnify and hold the Village and its agents harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at or for the development site pursuant to this Agreement. Subdivider further agrees to aid and defend the Village or its agents (at no cost to the Village or its agents) in the event they are named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Subdivider against the Village. Subdivider is not an agent or employee of the Village. All work or obligations to be performed by the Subdivider pursuant to the terms of this Agreement shall be done in accordance with all applicable state, federal and local laws, rules and regulations.

21. **Personal Liability.** Subdivider agrees that in the event it does not proceed with the actual installation of the improvements contemplated herein, and conclude the same, the principals of the Subdivider shall personally pay the Village, in addition to all other costs incurred, the costs of all engineering work performed for the purposes of discharging the work contemplated by this Agreement and for all other necessary and incidental expenses, including attorneys' fees

and costs, which the Village has incurred in the process of carrying out the terms and provisions hereof.

22. **Indemnification for Environmental Contamination.** The Subdivider shall indemnify, defend, and hold the Village and its officers, employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including reasonable fees for attorneys and consultants) that arise as a result of the presence in or on property owned by the Village (“Village Parcels”) of any toxic or hazardous substances in excess of the minimum levels allowed by applicable law (collectively, the “Substance”) arising from any activity conducted by the Subdivider or the Subdivider’s employees, agents or contractors upon the Village Parcels and occurring prior to the Village’s acceptance of the dedication of the Village Parcels in accordance with this Agreement. Without limiting the generality of the foregoing, this indemnification shall include costs incurred by the Village in connection with any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence of the Substances on or in the Village Parcels, whether in the soil, groundwater or air.

The Village agrees that it will immediately deliver written notice to the Subdivider of the Village’s discovery of the Substances in or on the Village Parcels. Following delivery to the Subdivider of written notice of the Village’s claim as required under this paragraph, the Village shall make all reasonable accommodations to allow the Subdivider to examine the Village Parcels and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws.

In the event the Subdivider is obligated to indemnify the Village against claims arising under this paragraph, the Parties hereby agree that the Subdivider shall have no further liability or obligations pursuant to the terms and provisions of this paragraph upon the Village’s receipt of written confirmation from the appropriate governmental authority of the satisfactory completion

of the required remediation, removal or restoration work including, without limitation, a no further action letter, final case closure letter or confirmation that the presence of such toxic or hazardous substances affecting the Village Parcels migrated from an offsite source (the “Closure Documents”). The Closure Documents may be predicated upon any contingency or restriction approved by the appropriate governmental authority for groundwater or any use or as a deed restriction or registration in any registry including, without limitation, the GIS Registry.

23. **Insurance Requirements.**

(a) **General:** The Subdivider shall obtain and require its contractors to obtain insurance reasonably acceptable to the Village as required under this section which shall name the Village as an additional insured or loss payee as the Village shall direct. The Subdivider and contractors shall maintain all required insurance under this section until the Village has accepted dedication of the public improvements required to be installed by the Subdivider under this Agreement, and during any subsequent period in which the Subdivider guarantees or warranties work under this Agreement.

(b) **Certificates of Insurance:** Where the Village does not specify other limits for liability insurance, the minimum limits of liability shall be as follows:

Employer’s Liability	\$100,000.00 per occurrence
Comprehensive Motor Vehicle Liability,	\$1,500,000.00 per Bodily Injury Accident & Property Damage Combined
Comprehensive General Liability Bodily Injury	\$1,500,000.00 per accident
Property Damage Combined	\$1,000,000.00 aggregate

The Subdivider and contractors may furnish coverage for bodily injury and property damage for Comprehensive Motor Vehicle Liability and Comprehensive General Liability through

27. **Subordination.** The Mortgagee joins in this Agreement for the sole purpose of agreeing that in the event of the foreclosure of its mortgage interest in the Subdivision, this Agreement shall survive such foreclosure and shall remain an encumbrance against the Subdivision.

28. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

Dated this ____ day of _____, 2018.

ALAN JASPERSON and LYLE JASPERSON

By: _____
Alan Jasperson

By: _____
Lyle Jasperson

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

Personally came before me this ____ day of _____, 2018, Alan Jasperson and Lyle Jasperson, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My commission expires: _____

By: _____
Sherry Gruhn
Village President

Attest: _____
Michael McKinney
Village Clerk/Treasurer

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

Personally came before me this _____ day of _____, 2018, Sherry Gruhn and Michael McKinney, respectively, Village President and Village Clerk/Treasurer of the Village of Yorkville, to me known to be the persons who executed the foregoing instrument, and acknowledged the same.

Notary Public, State of Wisconsin
My commission expires: _____

This instrument was drafted by:
Timothy J. Pruitt
Christopher A. Geary
Pruitt, Ekes, and Geary S.C.