



# Eagle Scout Project



## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this "*Agreement*") is made and entered into effective as of this \_\_\_\_ day of \_\_\_\_\_, 2018 (the "*Effective Date*"), by and between **SkogenHeim, LLC**, a Wisconsin limited liability company (hereinafter "*Owner*"), and the **City of Onalaska**, a Wisconsin municipal corporation (hereinafter "*City*").

### RECITALS:

A. Owner owns certain real property located at the southeast corner of the intersection of Main Street and Second Avenue in the City of Onalaska, Wisconsin, as more particularly described on Exhibit A attached hereto, on which Developer has developed and constructed a public park facility known as Dash-Park (hereinafter, the "*Park*");

B. Owner desires to dedicate the Park to the City to be maintained by the City for the use and enjoyment by the general public, and City intends to own, manage and maintain the Park following dedication of the Park to the City; and

C. The parties desire to enter into this Agreement to set forth the terms and conditions of their agreement.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Dedication of Park to City.** Owner hereby dedicates the Park to the City to be maintained as a public park for the use and enjoyment of the general public, conditioned upon City's acceptance of the following terms, conditions and restrictions:

a. Name; Signage. The Park shall at all times be named and described as "Dash-Park." The existing "Dash-Park" monument sign located at the southeast corner of the intersection of Main Street and Second Avenue (the "*Sign*") shall be maintained in its existing location to acknowledge and promote the name of the Park, and any signage, references, advertising or promotional materials made by the City in connection with the Park shall make reference to the Park being called "Dash-Park."

b. Use; Programming. The Park shall be maintained as a public park for the use and enjoyment by the general public, with emphasis on providing a community gathering place and natural open space for use and enjoyment by the citizens and visitors of the City. City shall make reasonable efforts to coordinate and maintain events and programming in the Park for the enjoyment and entertainment of the general public, including, but not limited to, musical or other entertainment performances, art fairs or exhibits, and other community events, to encourage the use and enjoyment of the Park by the general public. City may use funds from the Maintenance Fund (as defined herein) to offset any extraordinary costs incurred by the City to coordinate and maintain any events

or programming at the Park as required herein. City shall not allow the Park to be used other than as provided in this Agreement.

c. Maintenance Standards. City shall use its best reasonable efforts to maintain the Park in a first-class condition, consistent with similar marquee public parks in the City and the greater La Crosse, Wisconsin-metropolitan area. If certain elements of the Park require additional or extraordinary maintenance by City, City may use funds from the Maintenance Fund to perform such maintenance and upkeep.

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e. City shall also adhere to the following conditions in its maintenance and upkeep of the Park:

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i. City shall at all times keep and maintain, or cause to be kept and maintained, the Park and related improvements in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse and waste, and shall be responsible for the prompt removal of snow and ice from any walkways or sidewalks serving the Park;

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ii. City shall at all times keep and maintain the landscaping and natural elements of the Park in good condition and repair, including, but not limited to, mowing, trimming, pruning, watering, removing weeds or noxious plants, and replacing grass, shrubbery and trees in the Park. City shall use its best efforts to (A) promptly remove any deceased or decaying grass, shrubbery or trees from the Park; and (B) use native plant species and varieties when replacing any of the natural elements of the Park; and

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iii. City shall be responsible for the maintenance, repair and replacement of any physical improvements made to the Park by Owner, including, but not limited to, any lighting, benches, sculptures, inscriptions, signage, walkways, seating areas, sprinkler systems, the Sign, the Holiday Exhibit (as defined herein) and any other improvements associated with the Park.

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d. Display of Holiday Exhibit. Owner's dedication of the Park to the City shall include all of Owner's right, title and interest in and to a certain holiday display Owner had custom-built for the Park; consisting of an artificial, decorated holiday tree, being approximately 40-feet in height, together with any ornaments, replacement parts, stand, or other equipment related thereto (collectively, the "Holiday Exhibit"). City shall erect and display the Holiday Exhibit in the Park (at the location identified on the attached Exhibit B), beginning no later than December 1<sup>st</sup> each year, and continuing until not earlier than December 31<sup>st</sup> each year during the useful life of the Holiday Exhibit. City shall not be required to replace or conduct extraordinary repairs on the Holiday Exhibit. During those times when the Holiday Exhibit is not on display, City shall make reasonable efforts to store the Holiday Exhibit out of the elements to extend its useful life. City may use funds from the Maintenance Fund to offset any extraordinary costs incurred by the City in connection with the maintenance, display and storage of the Holiday Exhibit.

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e. Security. City shall use ~~its best~~reasonable efforts to keep and maintain the Park as a safe and secure environment for the general public, and shall take those measures reasonably necessary to secure and protect the Park from vandalism, theft or damage, ~~including, but not limited to, the installation and operation of security cameras and other measures deemed reasonably necessary by the City to deter vandalism or other illegal activities in the Park.~~

f. Encumbrances. ~~Except as provided herein, the Park shall not be conveyed, assigned or encumbered by any liens or indebtedness, whether voluntary or involuntary;~~

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g.f. Acceptance of Terms. The City shall, within sixty (60) days of the execution of this Agreement, acknowledge, in writing, (i) City's acceptance of the dedication provided herein, and (ii) City's agreement to be bound by the terms, conditions and restrictions contained herein. Upon City's written acceptance of the dedication, Owner shall convey the Park to City by quit claim deed and any other instrument(s) deemed reasonably necessary by City, and shall contribute the Maintenance Fund to City; and

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h.g. Failure to Comply. If for any reason City, at any time, fails to comply with the restrictions, terms or conditions provided herein, ~~any interested party may bring the issue to the City Parks Commission which will determine the severity of any issue, how to remedy any received issue~~ and if the City Parks Commission finds that the City ~~cannot properly maintain the Park, the City will to turn ownership of the Park over to a City's interest in the Park shall terminate and the ownership of the Park shall then be vested in a~~ not-for-profit entity whose primary purpose is to protect and preserve open space and, in this instance, provide for the continued use of the Park in the manner and subject to the restrictions contained herein. Such not-for-profit entity shall be such an entity as selected by ~~a court of competent jurisdiction in La Crosse County, Wisconsin.~~ Such ~~entity shall accept the Park subject to the restrictions contained herein and shall acknowledge, in writing, its agreement to be bound by the court within sixty (60) days after its selection by such court. Any resident of the City of Onalaska shall have standing to petition such court for a determination as to the City's, or any of its successor's or subsequent holders' of the Park, failure to comply with the restrictions provided herein and to request such court to determine the successor to the City of the Park~~the Onalaska Community Development Association.

i.h. Warranties, Repairs and Lien Waiver. Upon dedication of the Park ~~to the City, Owner shall transfer all warranties for workmanship and materials to the City such that any issues that arise at the Park due to original construction or material defects will be covered by Owner's contractor or subcontractor for a period of one (1) year following dedication of the Park. Owner shall have received lien waivers from all contractors and subcontractors for the construction of the Park.~~

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2. **Contribution of Park Maintenance Fund.** Upon City's written acceptance of the dedication of the Park, Owner has agreed to make a contribution of no less than Twenty-Five

Thousand Dollars (\$25,000) to City's Special Projects Fund for the restricted purpose of funding the maintenance, repair and programing at the Park, as provided herein, during the City's ownership of the Park (the "Maintenance Fund"). City agrees that the Maintenance Fund shall be (i) held in an interest-bearing investment account, segregated from City's general funds; and (ii) used exclusively for the long-term maintenance, repair and programming of the Park, consistent with the standards provided in Section 1 above. If at any time the Park is transferred by the City to a non-for-profit entity as contemplated in Section 1(h) above, City shall also transfer to such entity any portion of the Maintenance Fund still held by City at the time of such transfer.

3. **Binding Terms; Covenants Running with Land.** All the terms, conditions, restrictions and covenants herein contained or implied by law are covenants running with the Park in perpetuity and shall be binding upon, attach to, inure to the benefit of and be enforceable by City and Owner and their respective successors and assigns, and any other beneficiaries identified herein.

4. **Authority.** Each of the parties represents and warrants that it has the full capacity, right, power and authority to execute, deliver and perform this Agreement, and all required actions, consents and approvals therefor have been duly taken and obtained.

5. **Recording of Agreement.** Either party may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for La Crosse County, Wisconsin. Upon request of either party, the other party shall execute and deliver to the requesting party any such Memorandum or any other document in connection with such recording.

6. **Governing Law.** The laws of the State of Wisconsin shall govern this Agreement.

7. **Severability.** If any provision of this Agreement is determined by a court of law to be invalid or unenforceable, the court may modify that provision to be within the limits of enforceability or validity, if feasible; however, if the offending provision cannot be so modified, it may be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

8. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have entered into this Development Agreement as of the Effective Date.

**CITY:**

**City of Onalaska,**  
a Wisconsin municipal corporation

\_\_\_\_\_  
Joe Chilsen, Mayor

\_\_\_\_\_  
Cari Burmaster, Clerk

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN        )  
  )ss.  
COUNTY OF LA CROSSE     )

Personally came before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, the above-named Joe Chilsen and Cari Burmaster, being the Mayor and Clerk, respectively, of the City of Onalaska, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_, Notary Public  
State of Wisconsin

My commission expires: \_\_\_\_\_

**OWNER:**

**SkogenHeim, LLC,**  
a Wisconsin limited liability company

\_\_\_\_\_  
David Skogen, Member

\_\_\_\_\_  
Barbara Skogen, Member

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN            )  
  )ss.  
COUNTY OF LA CROSSE        )

Personally came before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, the above-named David Skogen and Barbara Skogen, Members of SkogenHeim, LLC, 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 document was drafted by:

Dustin F. Von Ruden  
Weld Riley, S.C.  
3624 Oakwood Hills Parkway  
Eau Claire, Wisconsin 54701

**EXHIBIT A**

**LEGAL DESCRIPTION OF PARK**

**Legal Description:**

Lots 1 and 3 of La Crosse County Certified Survey Map, recorded on April 24, 2017, as Document No. 1692276, in Volume 17 of Certified Survey Maps, on Pages 46-46A, being part of the Northeast ¼ of the Northeast ¼ of Section 8, Township 16 North, Range 7 West, City of Onalaska, La Crosse County, Wisconsin.

AND

The East 30 feet of Lots 9 and 10 in Block 14 of the Original Plat of the Village (now City) of Onalaska, La Crosse County, Wisconsin.

**Tax Parcel ID No.:**

18-96-1  
18-98-1  
18-100-0

**EXHIBIT B**

**MAP DEPICTING LOCATION OF HOLIDAY EXHIBIT**

*[See attached.]*