



VILLAGE OF FOX POINT

MILWAUKEE COUNTY
WISCONSIN

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT 53217-3505
414-351-8900
FAX 414-351-8909

To: Village Board
From: Scott Botcher *SMB*
cc: Kelly Meyer
Date: November 7, 2017
Re: Dunwood Developer's agreement

Included in your packet is a final draft of the developer's agreement for the former Dunwood school property. I asked Mr. Larson to include a cover letter which is also attached.

As he accurately indicates, this agreement is a product of lengthy negotiations over much of the summer. At this point Mr. Larson approves the form of this agreement and given the incredible amount of review put in by staff, we would recommend approval of the same.

I would like to draw your attention to one item: not all of the exhibits referenced in the developer's agreement have yet received staff approval. Those which have not yet received staff approval appear to be fairly close to receiving this approval. These are primarily listed on pages 9 and 10. Mr. Larson has suggested and I concur that the motion language should allow for staff approval of the final exhibits which is consistent with other reviews we perform. (Obviously most of the reviews performed and memorialized as indicated in the proposed attachments are done absent a necessity for developers agreement, so staff approval is what these items normally receive.)

If you are inclined to approve the developer's agreement and delegate final approval of the attachments, the motion could be worded as follows:

I move to approve the Developer's Agreement for the Former Dunwood School Property as presented, and further to authorize the Village Manager to approve and attach the final form of all the Exhibits and Schedules referenced therein, and to authorize the Village President and Village Clerk to execute the same on behalf of the Village.

This is a lengthy document and I would recommend that you spend some time with it prior to the meeting as always please feel free to contact me with any questions prior to the meeting on Tuesday.

Thank you.

LAW OFFICES OF
**ARENZ, MOLTER,
MACY, RIFFLE & LARSON, S.C.**

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TIMOTHY A. SUHA

October 31, 2017

Scott Botcher, Village Manager
Village of Fox Point
7200 N. Santa Monica Blvd.
Fox Point, WI 53217

**Re: Developer's Agreement for the Former Dunwood School Property
Final Draft Dated October 28, 2017**

Dear Mr. Botcher:

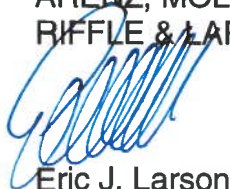
I received a revised copy of the above-noted Developer's Agreement from the Developer's legal counsel on October 30, 2017. Enclosed please find a mark-up draft that shows the final changes that were made in this latest version, and also enclosed please find a clean version for your use. I have had an opportunity to review this matter at some length in prior drafts with counsel for the Developer and with Village staff, and prior to that time meetings were held between Village staff and the Developer regarding these matters, as you know. The enclosed is the product of this lengthy process of negotiation.

Based upon my review, I hereby approve of the form of the same. I understand that this will be placed on an upcoming Village Board agenda for the Village Board's consideration and possible action.

If you should have any questions or concerns regarding this matter, please do not hesitate to contact me.

Yours very truly,

ARENZ, MOLTER, MACY,
RIFFLE & LARSON, S.C.



Eric J. Larson

EJL/egm

cc: Kelly Meyer, Village Clerk/Treasurer
Scott Brandmeier, Village Director of Public Works

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**DEVELOPER'S AGREEMENT
FOR
THE FORMER DUNWOOD SCHOOL PROPERTY**

VILLAGE OF FOX POINT, MILWAUKEE COUNTY, WISCONSIN

THIS AGREEMENT made this ____ day of October, 2017 (this "**Agreement**"), between Chiswick Apartments LLC, a Wisconsin limited liability company, 301 E. Erie Street, Milwaukee, Wisconsin 53202, hereinafter called the "**DEVELOPER**", and the VILLAGE of Fox Point in the County of Milwaukee and the State of Wisconsin, hereinafter called the "**VILLAGE**".

WITNESSETH:

WHEREAS, the DEVELOPER intends to acquire land in the VILLAGE, said land being described on **EXHIBIT A** attached hereto and incorporated herein, hereinafter called the "**Property**"; and

WHEREAS, Fox Point - Bayside School District is the owner of the Property and has agreed to sell the Property to DEVELOPER to develop the Property as described herein, and this Agreement shall not be effective until completion of such sale, and Developer hereby intends to subject the Property to all terms and conditions of this Agreement as a restriction on the Property to bind all successors and assigns in accordance with the terms of this Agreement; and

WHEREAS, the Property is comprised of two parcels and DEVELOPER desires to shift the boundary line between the two parcels as shown on and pursuant to the attached certified survey map attached hereto as **EXHIBIT B** (the "**CSM**") which CSM was approved by the VILLAGE Board on August 8, 2017; and

WHEREAS, one of the two parcels is identified as Lot 1 on the CSM and is intended to be developed as multifamily residential apartments (the "**Apartment Parcel**" or "**Lot 1**") and the second of the two parcels is identified as Lot 2 on the CSM and is intended to be developed as an assisted living facility (the "**Seniors Parcel**" or "**Lot 2**"); and

WHEREAS, the DEVELOPER intends to develop approximately 105 multifamily residential units on the Apartment Parcel (the "**Apartment Project**"); and to enter into agreement(s) to cause not more than 100 assisted living units to be developed on the Seniors Parcel (the "**Seniors Project**" and together with the Proposed Apartment Project, the "**Projects**"); and

WHEREAS, the VILLAGE has rezoned the Apartment Parcel as a "**PDO**," a Planned Development Overlay District designation onto the existing F-Institutional District Designation, and the Zoning Map of the VILLAGE was thereby conditionally amended to add the PDO Planned Development Overlay District onto the Apartment Parcel to overlay the existing F-Institutional District designation, conditioned upon the compliance of the Property with the terms of the applicable ordinance, Ordinance no. 2017-02 (the "**Ordinance**"); and

WHEREAS, the DEVELOPER may be required to grant certain easements over a part of the Property to the extent required under the Ordinance; and

WHEREAS, the DEVELOPER and the VILLAGE desire to enter into this Agreement in order to ensure that if the DEVELOPER develops the foregoing described Projects, the DEVELOPER will do so in a manner consistent with the terms of the Ordinance, including installing a public water main which is reasonably necessary for the proposed development on the Property (the “**Public Water Main**”) and a storm water drainage inflow pipe (the “**Public Stormwater Facilities**,” and together with the Public Water Main, the “**Public Facilities**”) and dedicating the Public Facilities to the VILLAGE, provided that said Public Facilities are constructed to municipal specifications, all applicable government regulations, and this Agreement; and

WHEREAS, if the DEVELOPER develops the foregoing described Projects on the Property, the DEVELOPER will do so in accordance with this Agreement, which reflects the conditions approved by the VILLAGE Plan Commission and VILLAGE Board, all applicable VILLAGE ordinances and all applicable laws and regulations governing said development; and

WHEREAS, if the DEVELOPER develops the foregoing described Projects on the Property, the DEVELOPER has agreed to provide financial security in the form of a letter of credit and/or cash escrow in order to comply with certain of the conditions set forth in the Ordinance.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the DEVELOPER does hereby agree that if the DEVELOPER pursues the foregoing described Projects, the DEVELOPER will develop the Property as follows and as otherwise regulated by VILLAGE ordinances and all laws and regulations governing said development, and in connection therewith, the parties hereto agree as follows:

DEVELOPER’S COVENANTS

SECTION I. PUBLIC IMPROVEMENTS:

- A. **PUBLIC WATER MAIN:** As a condition of the PDO zoning, the DEVELOPER hereby agrees:
1. The DEVELOPER shall construct the Public Water Main in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule I.A.1. (as approved, the “**Public Water Main Facilities Plans**”). The DEVELOPER shall dedicate or convey the Public Water Main Facilities to the VILLAGE once they are fully installed in conformance with the Public Water Main Facilities Plans as may be modified during construction at the written request of VILLAGE Staff based on encountered site conditions or with the consent of VILLAGE Staff. The form of dedication, e.g. by bill of sale and/or quit claim deed, is subject to the written approval of the VILLAGE Attorney in accordance with ordinary and typical dedications.

2. After commencement of construction of improvements on either of Lot 1 or Lot 2 and prior to completion thereof, to construct, furnish, and install the Water Main, all in accordance with the Public Water Main Facilities Plans and all applicable Federal, State and VILLAGE ordinances, laws, and regulations for the construction of water systems in the VILLAGE and with any modifications requested by Developer and approved by the VILLAGE Staff.
3. Upon completion of the Public Water Main, to furnish “as built” plans for the Public Water Main showing any changes from the Public Water Main Facilities Plans. Subject to intellectual property rights, said “as built” plans shall be on reproducible mylar and digital file (AutoCADD or equivalent and ArcGIS format), and shall include field locations and hydrant valves and curb stops, if any.
4. Upon completion and acceptance of the Public Water Main by the VILLAGE, to dedicate the Public Water Main to the VILLAGE.

B. OFFSITE TRAFFIC IMPROVEMENTS: If any offsite traffic improvements are required to accommodate this development as result of the requirements set forth in the traffic study being prepared by Ayres & Associates (collectively, the “**Required Traffic Improvements**”), then the DEVELOPER agrees:

1. The DEVELOPER shall construct the Required Traffic Improvements, if any, in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule I.B.1. (as approved, the “**Required Traffic Improvement Plans**”).
2. After commencement of construction of improvements on either of Lot 1 or Lot 2 and prior to completion thereof, to construct, furnish, and install the Required Traffic Improvements, if any (including offsite street signs, traffic control signs, culverts, posts and guard rails, if any), all in accordance with the Required Traffic Improvement Plans and all applicable Federal, State and VILLAGE ordinances, laws and regulations for the construction of the Required Traffic Improvements in the VILLAGE and as may be modified during construction at the written request of VILLAGE Staff based on encountered site conditions or with the written consent of VILLAGE Staff.
3. After commencement of construction of improvements on either of Lot 1 or Lot 2 and prior to completion thereof, the Required Traffic Improvements, if any, shall be obtained and placed by the DEVELOPER with approval of the VILLAGE Staff and the cost thereof shall be paid by the DEVELOPER.
4. After completion of construction of the Required Traffic Improvements, furnish “as built” plans for any Required Traffic Improvements showing changes from the construction plans. Subject to intellectual property rights, said “as built” plans shall be on reproducible mylar and digital file (AutoCADD or equivalent and ArcGIS format).

5. Any traffic control signs and street signs that are part of the Required Traffic Improvements, as required by the VILLAGE will be installed within a commercially reasonable time using prudent means and methods and taking into account public safety and practical construction sequencing. All traffic control signs and street signs installed within the development shall be considered private signs and shall be maintained by Developer. Subject to intellectual property rights, said "as built" plans shall be on reproducible mylar and digital file (AutoCADD or equivalent and ArcGIS format).
6. If any of the Required Traffic Improvements are in Port Washington Road, which is a County highway, then Developer shall work with the County with the cooperation of VILLAGE Staff, to implement those Required Traffic Improvements in accordance with County requirements, which override any VILLAGE requirements as to any such Required Traffic Improvements.

Upon completion and acceptance by the VILLAGE, the DEVELOPER shall dedicate the Required Traffic Improvements to the VILLAGE or the County as applicable.

C. PUBLIC STORM WATER FACILITIES: As to the storm water facilities that will be conveyed or dedicated to the Village, the DEVELOPER hereby agrees that:

1. The DEVELOPER shall construct the public stormwater facilities in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule I.C.1. (as approved, the "**Public Stormwater Facilities Plans**"). The DEVELOPER shall dedicate or convey the Public Stormwater Facilities to the VILLAGE once they are fully installed in conformance with the Public Water Main Facilities Plans as may be modified during construction at the written request of VILLAGE Staff based on encountered site conditions or with the written consent of VILLAGE Staff. The form of dedication, e.g., by bill of sale and/or quit claim deed, is subject to the approval of the VILLAGE Attorney in accordance with ordinary and typical dedications.
2. The DEVELOPER agrees that the final site grading and construction of facilities in accordance with the Public Stormwater Facilities Plan shall be completed and accepted by VILLAGE Staff before any occupancy permits can be issued; provided however that any vegetation or planting included as part of Public Stormwater Facilities Plan and not completed due to weather conditions will not delay issuance of the occupancy certificate and any such matters shall be completed as soon as conditions allow, which shall be no later than one year thereafter.
3. The DEVELOPER shall clean all Public Storm Water Facilities, if any, if and to the extent VILLAGE Staff reasonably finds to be necessary prior to issuance of occupancy permits.
4. Upon completion of the Public Storm Water Facilities, to furnish "as built" plans of the Public Stormwater Facilities prior to the issuance of occupancy permits, if

required by the VILLAGE Engineer. Subject to intellectual property rights, said “as built” plans shall be on reproducible mylar and digital file (AutoCADD or equivalent and ArcGIS format).

SECTION II. PRIVATE IMPROVEMENTS:

- A. SURFACE AND STORM WATER DRAINAGE: The DEVELOPER hereby agrees that:
1. The DEVELOPER shall construct the surface and stormwater drainage facilities in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule II.A.1. (as approved, the “**Surface and Stormwater Drainage Facility Plans**”). The Surface and Stormwater Drainage Facility Plans shall contain adequate capacity for Lot 1 and an additional 2.33 acre feet of offsite regional flood storage capacity. If Lot 1 is intended to handle offsite drainage from Lot 2, or Lot 2 from Lot 1, then the 2.33 acre feet shall be in addition to the capacity designated for both Lot 1 and Lot 2, and the Surface and Stormwater Drainage Facility Plans shall include both Lot 1 and Lot 2.
 2. Prior to commencement of construction of improvements on either of Lot 1 or Lot 2, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER’s engineer or contractor that the surface and storm water drainage facilities and erosion control plans are in conformance with federal, state, county and VILLAGE regulations, laws and ordinances.
 3. Prior to commencement of construction of improvements on either of Lot 1 or Lot 2, the DEVELOPER and the VILLAGE shall have entered into a storm sewer plan maintenance agreement (the “**Storm Sewer Maintenance Agreement**”), pursuant to which Developer will agree to install and maintain surface and storm water drainage facilities on the Property as more particularly set forth in the Storm Sewer Maintenance Agreement.
 4. The DEVELOPER agrees that the final site grading and construction of surface and storm water drainage facilities in accordance with the Surface and Stormwater Drainage Facilities Plans shall be completed in a manner acceptable to VILLAGE Staff before any occupancy permits can be issued; provided however that any vegetation or planting included as part of the Surface and Stormwater Drainage Facilities Plans and not completed due to weather conditions will not delay issuance of the occupancy certificate and any such matters shall be completed as soon as conditions allow, which shall be no later than within one year thereafter.
 5. The DEVELOPER shall clean all storm sewers, if any, and if and to the extent VILLAGE Staff reasonably find to be necessary prior to issuance of occupancy permits.

6. DEVELOPER shall comply with the applicable terms of the Storm Sewer Maintenance Agreement, including any requirement to correct any work that was not properly completed or is not in compliance with the Surface and Stormwater Drainage Facilities Plans and/or the Storm Sewer Maintenance Agreement.
7. Upon completion of the surface and storm water drainage facilities on the Property, to furnish "as built" plans of the entire drainage system in digital file (AutoCADD or equivalent and ArcGIS format) prior to the issuance of building permits, if required by the VILLAGE Engineer.

B. GRADING, EROSION AND SILT CONTROL: The DEVELOPER hereby agrees that:

1. The DEVELOPER shall construct the grading, erosion and silt control facilities in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule II.B.1. (as approved, the “**Grading, Erosion and Silt Control Plans**”).
2. Prior to commencing site grading and excavation on either of Lot 1 or Lot 2, the DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER’s engineer or contractor that the grading and erosion control plan for the Property, once implemented, shall meet all Federal, state, county and local regulations, laws and ordinances, including proof of notification of land disturbances to the State of Wisconsin Department of Natural Resources and any other entity, if required.
3. All disturbed areas shall be restored to the satisfaction of the VILLAGE Staff within a reasonable time which shall not exceed the time required by applicable laws.

C. LANDSCAPING AND SITE WORK/DEMOLITION: The DEVELOPER hereby agrees that:

1. The DEVELOPER shall perform the landscaping and site work including demolition in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule II.C.1. (as approved, the “**Landscaping and Berm Plan**” and the “**Demolition Plans**”).
2. The DEVELOPER shall preserve to the extent possible those existing trees selected for preservation and not actually lying within the footprint of the improvements to be constructed by the DEVELOPER, the private roads, drainageways, building foundation sites, private driveways, private pathways, paths and trails by use of sound conservation practices in substantial accordance with the Tree Preservation Plan (as hereinafter defined).
3. The DEVELOPER, as required by the VILLAGE, prior to commencing construction of any above ground/vertical improvements, whether public or private, shall remove and lawfully dispose of the existing building, destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish.

4. Once commenced, removal of the building existing on the Property as of the date hereof will be completed. Once completed, the DEVELOPER's engineer or contractor will certify to such completion. The certificate provided by the DEVELOPER shall be subject to the review and approval of VILLAGE Staff. No building permit shall be issued prior to such certificate being submitted by DEVELOPER and approved by VILLAGE Staff.
5. If the DEVELOPER commences the construction of the foundation on Lot 1, then the landscaping depicted in the Landscaping and Berm Plan and the Demolition Plans will be completed prior to the issuance of occupancy permits; provided, however, that any landscaping included as part of the Landscaping and Berm Plan and the Demolition Plans and not completed due to weather conditions will not delay issuance of the occupancy certificate and any such matters shall be completed as soon as conditions allow, which shall be no later than within one year thereafter.

D. PRIVATE ROADS: The DEVELOPER hereby agrees that:

1. The DEVELOPER shall construct the private roads in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule II.D.1. (as approved, the "**Private Road Plans**").
2. Prior to the start of the construction of the foundation on Lot 1 or Lot 2, the DEVELOPER shall provide to the VILLAGE, written certification from the DEVELOPER's engineer or contractor that the private road to be located on the Property (the "**Private Road**") is in the same general location as shown on the Private Road Plans.
3. Prior to completion of construction on Lot 1 or Lot 2 and prior to the issuance of any occupancy permits, the DEVELOPER shall grade and install the Private Road as shown on the Private Road Plan, excluding the final lift of asphalt. DEVELOPER shall install the final lift of asphalt and otherwise complete construction of the Private Road within ninety (90) days following issuance of the certificate of occupancy for the final building on Lot 1; provided, however, that any final lift work not completed due to weather conditions will not violate the ninety (90) day limitation, and any such work shall be completed as soon as weather conditions allow, which shall be no later than within one year following the issuance of the final occupancy permit; provided further that the Village Engineer, in his discretion, at DEVELOPER's request, may agree to extend the completion of the final lift on that part of the Private Road that would also serve Lot 2 if it appears that construction on Lot 2 is imminent.
4. Once commenced, construction of the Private Road through the first lift of asphalt shall be completed before any occupancy permits are issued for a building located on that portion of the Private Road, subject to the following. The VILLAGE reserves the right to require construction of more of the Private Road than otherwise would be necessary to serve an individual building prior to issuing an

occupancy permit, if the VILLAGE reasonably concludes that doing so is necessary for health and safety, including emergency vehicle access and the ability to turn around emergency vehicles provided that the Village exercises such right within thirty (30) days after substantial completion of the initial portion of the Private Road through the first lift of asphalt.

5. Once constructed, the DEVELOPER shall maintain or cause to be maintained the Private Road, including snowplowing. If the VILLAGE Engineer determines that the Private Road is not maintained sufficiently to allow ingress and egress for emergency services without risk of damage to emergency vehicles or injury to emergency personnel, then upon sixty (60) days prior written notice, the VILLAGE may, but shall have no obligation to, undertake any necessary maintenance and charge the benefitted parcels of the Property for the cost thereof through a special charge on the tax bill for the applicable parcel per Wisconsin Statutes Section 66.0627, provided that the VILLAGE cannot require DEVELOPER to maintain the road in better condition than the public roads located within the VILLAGE . This obligation shall be stated within the Restrictive Covenants for Lot 1 and Lot 2. The Restrictive Covenants shall also give notice that the DEVELOPER has chosen to develop the Property with a Private Road, rather than a public road, and neither ownership of nor responsibility for maintenance of the Private Road shall be assumed by or transferred to the VILLAGE or Milwaukee County or their successors or assigns.

E. SANITARY SEWER: The DEVELOPER hereby agrees:

1. The DEVELOPER shall construct the sanitary sewer facilities in accordance with the approved plans that are attached hereto and incorporated herein by reference as Schedule I.I.E.1. (as approved, the “**Sanitary Sewer Facilities Plans**”).
2. The DEVELOPER shall provide to the VILLAGE written certification from the DEVELOPER’s engineer or contractor that the sanitary sewer plans are in conformance with all Federal, State and VILLAGE laws, regulations, and ordinances prior to commencing construction of any improvement, whether public or private, or site development, whichever is earlier.
3. During construction of improvements on either of Lot 1 or Lot 2 and prior to completion thereof, DEVELOPER shall construct, furnish, install and provide a complete sewerage system for the Property (the “**Sanitary Sewer System**”), all in substantial accordance with the Sanitary Sewer Facilities Plan and any applicable federal, state, and the Milwaukee Metropolitan Sewage District (“**MMSD**”) and VILLAGE ordinance specifications, regulations and guidelines for the construction of sanitary sewerage systems in the VILLAGE.
4. Developer shall not contribute any sanitary flow from Lot 1 or Lot 2 unless either (i) MMSD has adopted the MMSD 2050 facility plan and such plan allows the VILLAGE to approve the flows necessary to serve the Projects and the DEVELOPER, at its expense, makes its connections accordingly or (ii) the

DEVELOPER pays the VILLAGE an amount equal to \$5,500 per living unit (expressly excluding any clubhouse or other non-living space). In the event the DEVELOPER exercises option (ii), such funds once paid by the Developer are a non-refundable contribution to the VILLAGE, in light of the VILLAGE's obligation to make good faith efforts to reduce infiltration and inflow in the sewerage basin.

5. DEVELOPER has submitted the sanitary sewer capacity calculations attached hereto as Schedule II.E.5. (the "**Sanitary Sewer Capacity Calculations**") to the VILLAGE which demonstrate that the existing sanitary sewer in Dunwood Road has adequate capacity to handle the additional flows from the Projects. Based on the Sanitary Sewer Capacity Calculations, the DEVELOPER shall have the right to connect the Sewer System directly to the sanitary sewer system located in Dunwood Road, subject to all terms and conditions of this Agreement.

- F. ADDITIONAL PERFORMANCE: The DEVELOPER hereby agrees that if, at any time after plan approval and during construction, the VILLAGE Engineer, acting reasonably and in good faith, determines that any of the material improvements to be installed by the DEVELOPER pursuant to Section I or Section II hereof were negligently installed, were not constructed in substantial accordance with applicable plans or, despite being built in substantial accordance with the applicable plans, fail, in material respects, to perform the intended function as determined by the VILLAGE and DEVELOPER or if the VILLAGE and DEVELOPER cannot agree, then based on subsequent engineering studies performed by licensed and reputable engineers with at least five (5) years' experience in the area of the alleged failure concluding that such a failure exists, then DEVELOPER, at DEVELOPER's expense shall implement the necessary corrections required by such subsequent engineering study(ies). If DEVELOPER fails to so implement such corrections within a reasonable time under the circumstances, the VILLAGE may, upon ten (10) days' prior written notice, except in an emergency, and without obligation to do so, cause such work to be carried out and may charge all costs incurred, including Fees per Section XIV of this Agreement, against the financial guaranty held by the VILLAGE pursuant to this Agreement.

SECTION III. ADDITIONAL PLANS:

In addition to the Plans incorporated by reference in Section I and Section II, above, the Developer shall comply with all of the following development plans that are approved, attached hereto, and incorporated herein by reference. These plans concern Lot 1 only except as noted otherwise.

- A. SITE PLAN: Attached hereto as Schedule III. A.
- B. ELEVATION PLAN: Attached hereto as Schedule III.B.
- C. PARKING PLAN: Attached hereto as Schedule III.C.
- D. LIGHTING PLAN: Attached hereto as Schedule III.D.

- E. SIGNAGE PLAN: Attached hereto as Schedule III.E.
- F. DETAILED BUILDING CONSTRUCTION AND ENGINEERING PLAN: Attached hereto as Schedule III.F.
- G. LANDSCAPING AND BERM PLAN: Attached hereto as Schedule III.G. This plan includes a berm along Dunwood Road for Lot 2.
- H. TREE PRESERVATION PLAN: Attached hereto as Schedule III.H.
- I. COMMON OPEN SPACE PLAN: Attached hereto as Schedule III.I. In conjunction with this plan, the DEVELOPER shall record the Restriction Covenants in a form approved by the Village Attorney ensuring maintenance of the common open space.
- J. PEDESTRIAN PLAN: Attached hereto as Schedule III.J. This plan includes Lot 2.
- K. PLAN OF OPERATION: Attached hereto as Schedule III.K.
- L. TRAFFIC PLAN. Attached hereto as Schedule III.L.
- M. LOT 2 PLANS. Except as noted otherwise herein, this Agreement concerns Lot 1, not Lot 2. The Seniors Project that is contemplated on Lot 2 is subject to the approval process described in the F-Institutional District of the VILLAGE Zoning Code, is subject to compliance with the applicable Restrictive Covenants and the installation of the landscaping, berm and pedestrian pathway depicted on the Landscaping and Berm Plan and the creation of any open space areas shown on the Open Space Plan. No applications have been received for the development of Lot 2 as of the date of this Agreement.

SECTION IV. COMPLETION OF IMPROVEMENTS:

The conditions set forth in Section I and II above shall be substantially satisfied by the DEVELOPER as to Lot 1, and also as to Lot 2 to the extent Lot 2 work is required by this Agreement, within thirty six (36) months of the date of this Agreement being signed except as otherwise provided for in this Agreement, unless this deadline is extended in writing by the VILLAGE Board, which extension shall not be unreasonably withheld.

SECTION V. FINAL ACCEPTANCE OF PUBLIC IMPROVEMENTS:

“Final Acceptance” as used herein, shall be the ultimate acceptance of the Public Improvements described in Section I, excluding only those improvements, if any, that are to be dedicated to Milwaukee County (the “Public Improvements”) and shall be granted specifically by separate resolution of the VILLAGE Board. The two-year guaranty period for the Public Improvements provided for in this Agreement shall not commence to run until Final Acceptance.

SECTION VI. DEDICATION OF PUBLIC IMPROVEMENTS:

The DEVELOPER shall, without charge to the VILLAGE, upon completion of the Public Improvements unconditionally give, grant, convey and fully dedicate the Public Improvements to

the VILLAGE, its successors and assigns, forever, free and clear of all encumbrances whatever, together with and including, without limitation because of enumeration, any and all mains, conduits, pipes, lines, and equipment, which may in any way be necessary for the operation of the Public Improvements and the DEVELOPER will grant a 20 foot wide nonexclusive perpetual easement to the VILLAGE for the inspection, maintenance, repair and replacements of the Public Improvements in form acceptable to the VILLAGE and the DEVELOPER. After such dedication, the VILLAGE shall have the right to connect or integrate other improvements as the VILLAGE decides, with no payment or award to, or consent required of, the DEVELOPER

Dedication shall not constitute acceptance of the Public Improvements by the VILLAGE Board. The Public Improvements shall be accepted by the VILLAGE Board by separate resolution at such time as the Public Improvements is substantially complete according to the VILLAGE approved plans and specifications. Said resolution shall be recorded, if needed, with the Milwaukee County Register of Deeds. The DEVELOPER will furnish proof to the VILLAGE, prior to the dedication required, that the improvements proposed for dedication are free of all liens, claims and encumbrances, including mortgages.

SECTION VII. APPROVAL BY THE VILLAGE NOT TO BE DEEMED A WAIVER:

The ultimate responsibility for the proper design and installation of the Projects, including the Public Improvements and private improvements described in Section II, are upon the DEVELOPER. The fact that the VILLAGE or its engineer, or its attorney, or its staff may approve a specific project shall not constitute a waiver, or relieve the DEVELOPER from the ultimate responsibility for the design, performance and function of the development and related infrastructure.

SECTION VIII. GUARANTY OF PUBLIC IMPROVEMENTS:

- A. PUBLIC IMPROVEMENT GUARANTY: The DEVELOPER shall guaranty after Final Acceptance, the Public Improvements against defects due to faulty materials or workmanship (the “**Public Improvement Guaranty**”), provided that such defects appear within a period of two years from the date of Final Acceptance (the “**Guaranty Period**”), by providing the VILLAGE with cash or a letter of credit or a bond in a form acceptable to the VILLAGE Attorney (“**Public Improvement Guaranty Security**”) in an aggregate amount of ten percent (10%) of the total cost of the Public Improvements to be placed in escrow with the VILLAGE. The DEVELOPER shall pay for any damages to the VILLAGE property and/or improvements resulting from such faulty materials or workmanship during such the Guaranty Period. If the DEVELOPER fails to pay for any such damages or defects to the VILLAGE property and/or improvements, and the VILLAGE is required to draw against the Public Improvements Guaranty Security on file with the VILLAGE, the DEVELOPER is required to replenish said monies up to the aggregate amount of ten percent (10%) of the total cost of all Public Improvements for the Guaranty Period.
- B. OBLIGATION TO REPAIR: During the Guaranty Period, the DEVELOPER shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of the DEVELOPER’s Public Improvement Guaranty and the Public

Improvements shall be in good and sound condition, satisfactory to VILLAGE Staff at the expiration of the Guaranty Period.

C. NOTICE OF REPAIR: If during the Guaranty Period, the Public Improvements shall, in the reasonable opinion of the VILLAGE Staff, require any repair or replacement which, in their judgment, is necessitated by reason of settlement of foundation, structure of backfill, or other defective materials or workmanship, the DEVELOPER shall, upon notification by the VILLAGE of the necessity for such repair or replacement, make such repair or replacement, at its cost and expense. Should the DEVELOPER fail to make such repair or replacement within the time specified by the VILLAGE in the aforementioned notification, which time period shall be reasonable and not less than 30 days after notice has been sent as provided herein, or such longer period as may be reasonably necessary to undertake and complete such repair or replacement, unless the VILLAGE determines that a shorter notice period or no notice is required due to emergency conditions, the VILLAGE may cause such work to be done, but has no obligation to do so, either by contract or otherwise, and the VILLAGE may draw upon the Public Improvement Guaranty Security to pay any reasonable costs or expenses incurred in connection with such repairs or replacements. Should the costs or expenses incurred by the VILLAGE in repairing or replacing any portion of the Public Improvements covered by the Public Improvement Guaranty exceed the amount of the Public Improvements Guaranty Security, then the DEVELOPER shall pay any excess cost or expense incurred in the correction process within 30 days after receipt of reasonable evidence of such costs and expenses. After the expiration of the Guaranty Period and upon DEVELOPER's request, the Public Improvement Guaranty Security shall be promptly returned to Developer.

D. MAINTENANCE PRIOR TO ACCEPTANCE:

1. The Public Improvements shall be maintained by the DEVELOPER so that they conforms to the approved plans and specifications at the time of Final Acceptance by the VILLAGE Board. This maintenance shall include routine maintenance, if any. In cases where emergency maintenance is required, VILLAGE Board retains the right, to complete the required emergency maintenance in a timely fashion and bill the DEVELOPER for all such reasonable associated costs. Said bill shall be paid by the DEVELOPER within 30 days after receipt of reasonable evidence of such costs. The DEVELOPER's obligation to maintain the Public Improvements shall expire at the expiration of the Guaranty Period, except that notwithstanding anything to the contrary contained herein, the VILLAGE, and not the DEVELOPER shall maintain the Public Water Main beginning on the date that it is put into service or at the expiration of the Guaranty Period, whichever occurs first.
2. During construction, street sweeping and dust suppression along public roads if and to the extent needed as a result of the initial development of the Property by the DEVELOPER to ensure a reasonably clean and safe roadway until substantial completion of the initial development of the Property. Should the DEVELOPER fail to meet this requirement within 24 hours' after notice of such failure from

VILLAGE Staff, the VILLAGE Board may cause the work to be done and the DEVELOPER shall pay the reasonable associated costs thereof on a time and material basis. Said costs shall be paid by the DEVELOPER within 30 days after receipt of reasonable evidence of such costs.

3. In the event drainage problems arise within the Property or related activities on the Property, the DEVELOPER shall correct such problems in accordance with the applicable requirements as of the Storm Sewer Maintenance Agreement. Such correction measures may include, without limitation because of enumeration, cleaning of soil, loose aggregate and construction debris from culverts, drainage ditches and streets; dredging and reshaping of siltation or retention ponds; replacing of siltation fences; sodding and seeding; construction of diversion ditches, ponds and siltation traps; and restoration of all disturbed areas. This responsibility shall continue as provided pursuant to the Storm Sewer Maintenance Agreement.

SECTION IX. VILLAGE RESPONSIBILITY FOR IMPROVEMENTS:

The VILLAGE shall not be responsible to perform repair, maintenance, or snow plowing, unless otherwise approved by the VILLAGE Manager, on any improvements described herein, except those Public Improvements dedicated to the VILLAGE upon acceptance by the VILLAGE Board upon expiration of the Guaranty Period; except that the VILLAGE shall maintain the Public Water Main beginning on the date that it is first put in service or at the expiration of the Guaranty Period, whichever occurs first.

SECTION X. FINANCIAL GUARANTY:

Prior to issuance of the building permit, the DEVELOPER shall file with the VILLAGE cash or a letter of credit or bond (“**Financial Security**”) setting forth terms and conditions in a form approved by the VILLAGE Attorney in the amount as approved by the VILLAGE Engineer, not to exceed the Required Amounts (as hereinafter defined), as a guaranty that DEVELOPER will perform the following: (i) the Public Improvements, (ii) demolition of the existing building on the Property, (iii) the “private improvements” described in Section II, as follows: (a) the surface and stormwater drainage in substantial accordance with the Surface and Stormwater Drainage Facilities Plans, (b) the grading and erosion and silt control in substantial accordance with the Grading and Erosion and Silt Control Plans, (c) the demolition of the existing building on the Property in substantial accordance with the applicable sections of the Landscaping and Berm Plans and the Demolition Plans, (d) the landscaping, berm and pedestrian pathways along the exterior of the Property in substantial accordance with the Landscaping and Berm Plan, (iii) the Private Roads in substantial accordance with the Private Road Plan, excluding the second lift of asphalt, and (e) private sanitary sewer and connection in substantial accordance with the Sanitary Sewer Facilities Plan (collectively the “Guaranty Improvements”). For purposes hereof, the term “Required Amounts” shall mean the aggregate of the amounts set forth on Schedule X, which sets forth 110% of the estimated hard costs to complete each of the above items.

The DEVELOPER will perform all terms of this agreement no later than 36 months from the effective date of this Agreement except as otherwise set forth in this Agreement. If at any time:

A. The DEVELOPER is in default of any aspect of this Agreement, or

B. The DEVELOPER does not complete the installation of the Public Improvements and the private improvements described in Section II within thirty six (36) months from the effective date of this Agreement unless otherwise extended by this Agreement or by action of the VILLAGE Board, or

C. The Financial Security on file with the VILLAGE is dated to expire sixty (60) days prior to the expiration of the same if the same has not been extended, renewed or replaced, or

D. The DEVELOPER fails to maintain a cash deposit or letter of credit or bond in the Required Amounts as to each of the Guaranty Improvements not yet completed, and in a form approved by the VILLAGE Attorney, to pay the costs of the Guaranty Improvements as required under the terms of this Agreement,

then the DEVELOPER shall be deemed in violation of this Agreement and the VILLAGE shall have the authority to draw upon the Financial Security as needed to complete the Guaranty Improvements.

At the request of DEVELOPER, the amount of the Financial Security will be promptly reduced from time to time as and to the extent that the portion of work required under this Agreement is completed and paid for, provided that the remaining Financial Security is sufficient to secure payment for any remaining Guaranty Improvements and also provided that no reduction shall occur until it is approved in writing by the VILLAGE Manager.

The institution, if any, providing the Financial Security shall pay to the VILLAGE the amount due the Village under this Agreement up to the full amount of the Financial Security upon demand, subject to the terms and conditions of the Financial Security and this Agreement, and upon its failure to do so, in whole or in part, the VILLAGE shall be empowered in addition to its other remedies, without notice or hearing, to impose a special charge for the amount of said completion costs and other costs the VILLAGE may impose by this Agreement, upon the applicable Lot in the development payable with the next succeeding tax roll.

Nothing in this Section shall be interpreted to waive the DEVELOPER's right to cure as described in Section XXVII of this Agreement, unless the VILLAGE concludes the time required by the right to cure would cause the Financial Security to expire, terminate or otherwise suffer a risk of lapse or unavailability, in which case the VILLAGE may make the draw contemporaneously with giving notice of the right to cure and shall return the drawn funds to the DEVELOPER if the default is timely and completely cured.

SECTION XI. BUILDING AND OCCUPANCY PERMITS:

It is expressly understood and agreed that no building or occupancy permits, as specified below, shall be issued for any buildings on the applicable Lot until the VILLAGE Staff has determined that the DEVELOPER is in compliance with the following. This section is meant to state and summarize key permit requirements, but does not waive such other requirements of applicable laws and this Agreement as may apply.

- A. No occupancy permit shall be issued until the installation of the first lifts of asphalt of that portion of the Private Road providing access to and fronting a specific lot for which a building permit is requested has been completed; and further subject to Section II D. (3) of this Agreement.
- B. No occupancy permit shall be issued until the site grading and construction of surface and storm water drainage facilities required to serve the applicable Lot is completed in substantial accordance with the Surface and Stormwater Drainage and Facilities Plan.
- C. No building permit for above ground/vertical construction shall be issued until all removal of existing buildings has been certified as complete by the VILLAGE Staff.
- D. No building permit shall be issued until the DEVELOPER has paid in full all permit fees and reimbursement of administrative costs as required by this Agreement then due for the applicable Lot; and such payments shall again be current prior to the issuance of any occupancy permit.
- E. No building permit shall be issued until the DEVELOPER has prepared the appropriate Restrictive Covenants on the Apartment Parcel and the Seniors Parcel in substantially the form attached hereto as Schedules XIII. B. and C. and the Restrictive Covenants have been filed with the VILLAGE Clerk and recorded with the Register of Deeds.
- F. No occupancy permit shall be issued until all destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish are removed from the Property and disposed of lawfully.
- G. No occupancy permit shall be issued until all required “as built” plans for the Public Improvements have been submitted to the VILLAGE Staff and are in substantial accordance with the plans approved by the VILLAGE Staff.
- H. No occupancy permit shall be issued until all public and private utilities have been installed to the applicable building on the applicable Lot, including the sanitary sewer system, and the water system.
- I. No building or occupancy permit shall be issued if the DEVELOPER (either directly or through DEVELOPER’s agents or contractors) is in material default of any aspect of this Agreement with respect to the applicable Lot.

SECTION XII. RESERVATION OF RIGHTS AS TO ISSUANCE OF PERMITS:

The VILLAGE reserves the right to withhold issuance of any and all building and occupancy permits as to a Lot if the DEVELOPER is in material violation of this Agreement. The VILLAGE shall not withhold the issuance of any occupancy permit as to Lot 1 because Lot 2 is not in compliance, unless the non-compliance on Lot 2 arises from DEVELOPER’s obligations to perform work as to Lot 2 per this Agreement. The VILLAGE shall not withhold the issuance of any occupancy permit as to Lot 2 because Lot 1 is not in compliance, unless the non-compliance on Lot 1 arises from DEVELOPER’s obligations to perform work as to Lot 1 per this Agreement.

SECTION XIII. MISCELLANEOUS REQUIREMENTS:

The DEVELOPER shall:

A. MANNER OF PERFORMANCE:

Cause all construction called for by this Agreement to be carried out and performed in a good and workmanlike manner.

B. RESTRICTIVE COVENANTS LOT 2:

Execute and record a Declaration of Restrictive Covenants in connection with Lot 2 in substantially the form attached hereto as Schedule XIII.B (the “Restrictive Covenants Lot 2”). The Restrictive Covenant Lot 2 includes but is not necessarily be limited to, each of the following issues:

- Language to require that there be no more than 100 units on Lot 2;
- Any building constructed on Lot 2 will not exceed 35 feet in height as set forth in the applicable then current zoning code;
- No cell tower will be allowed on Lot 2;
- Except for the right to use existing above ground utility service, all other utilities servicing Lot 2 shall be underground;
- The required setbacks along Dunwood Road will be maintained;
- The berm, pedestrian pathway and landscaping along Dunwood Road will be maintained;
- The Private Road will be maintained;
- The storm water facilities will be maintained in accordance with the Storm Water Maintenance Agreement;
- Fire inspection access will be provided upon reasonable notice and at reasonable times, but no more than once per quarter;
- A parking plan shall be implemented and any material changes (decreases or increases of 6 spaces shall not be material, provided code requirements are met) shall be subject to approval by VILLAGE Staff;
- If Lot 2 is not developed, then Lot 2 shall be razed, graded, seeded and then so maintained until commencement of construction;
- Any construction traffic from the Property shall be directed not to use Dunwood Road;

- Garbage pick-up shall be limited to the garbage pick-up area shown on the Landscaping and Berm Plan, unless otherwise approved by VILLAGE Staff and shall be limited to the following hours: 7:00 am to 5:00 pm;
- The common open space to be located on Lot 2 shall be maintained in substantial accordance with the Open Space Plan and reasonable public access provided; and
- Any senior assisted living operations will be for profit, and the operator will agree that it is the operator's intent that the initial residents will initially be primarily private pay.
- If not for profit, in whole or in part, or otherwise not on the tax rolls, then the Lot owner will be subject to payment in lieu of taxes which will obligate the property owner to pay to the VILLAGE the same amount in taxes by contract that would have been paid had the property been taxable (as further described in Section XIII H.);

C. RESTRICTIVE COVENANTS LOT 1:

Execute and record a Declaration of Restrictive Covenants in connection with Lot 1 in substantially the form attached hereto as Schedule XIII.C (the "Restrictive Covenants Lot 1"). The Restrictive Covenant Lot 1 includes, but is not necessarily be limited to, each of the following issues:

- Shall contain language to require that no cell towers will be allowed on Lot 1;
- Except for the right to use existing above ground utility service, all other utilities servicing Lot 1 shall be underground;
- If not for profit, in whole or in part, or otherwise not on the tax rolls, then will be subject to payment in lieu of taxes which will obligate the property owner to pay to the VILLAGE the same amount in taxes by contract that would have been paid had the property been taxable (as further described in Section XIII H.);
- The required setbacks along Dunwood will be maintained;
- The berm, pedestrian pathway and landscaping along Dunwood Road will be maintained;
- The Private Road will be maintained;
- The stormwater facilities will be maintained in accordance with the Storm Water Maintenance Agreement;
- Fire inspection access will be provided upon reasonable notice and at reasonable times, but no more than once per quarter;

- A parking plan shall be implemented and any material changes (decreases or increases of 6 spaces shall not be material, provided code requirements are met) shall be subject to approval by Village Staff;
- Any construction traffic from the Property shall be directed not to use Dunwood Road;
- Garbage pick-up shall be limited to a location approved by VILLAGE Staff and limited to the following hours: 7:00 am to 5:00 pm; and
- The common open space area to be located on Lot 1 will be maintained in substantial accordance with the Open Space Plan and reasonable public access provided.
- A process to allow limited Community Room usage by VILLAGE entities shall be described.

D. UNDERGROUND UTILITIES:

Existing above ground utility lines may remain and be utilized to service the Property, except that any new laterals within the Property itself shall be underground. Install all other new electrical, telephone, cable and gas utilities services underground. Coordination of installation and all costs shall be the responsibility of the DEVELOPER

E. PERMITS:

Provide and submit to the VILLAGE requesting the same, valid copies of any and all third party governmental agency permits.

F. NOISE:

Make every effort to minimize noise, dust and similar disturbances, recognizing that the Property is located near existing residences. Construction of improvements shall not begin before 7:00 a.m. or continue beyond 7:00 p.m. during weekdays. Construction shall not begin before 9:00 a.m. or continue beyond 5:00 p.m. on Saturdays. No construction work is permitted on Sundays. Notwithstanding the foregoing, the Village Manager may agree in writing to extend construction hours as allowed by Section 670-2 B. (2) of the Village Code.

G. DEBRIS:

Have ultimate responsibility for cleaning up debris that has blown from buildings under construction within the Property until such time as the improvements have been completed. The VILLAGE shall make a reasonable effort to require the contractor, who is responsible for the debris, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER and/or subject property owner shall clean up the debris within forty-eight (48) hours after receiving a notice from the VILLAGE Staff or such longer period as may be reasonably necessary to undertake and

complete such clean up. If said debris is not cleaned up after notification and the passage of the foregoing cure period, the VILLAGE may do so at the DEVELOPER's and/or subject property owner's reasonable expense.

H. PILOT:

In the event the DEVELOPER or a successor owner uses a Lot in a manner that causes the Lot or any portion thereof to be assessed in a manner that results in it not being fully subject to real estate taxes, including, without limitation, for agricultural uses, then, the owner of the applicable Lot shall make or cause to be made an additional payment in lieu of taxes ("PILOT") so that the total tax payment, if any, plus the PILOT, equals the amount of real estate taxes that would be paid if the entire Lot were fully taxable.

I. NO AGRICULTURAL USE:

The DEVELOPER shall not permit any open space or undeveloped lands within the Lot 1 or Lot 2 to be used for any agricultural uses as defined in Chapter Tax 18 of the Wisconsin Administrative Code.

SECTION XIV. PAYMENT OF COSTS, INSPECTION & ADMINISTRATIVE FEES:

The DEVELOPER shall pay and reimburse the VILLAGE promptly upon billing for all reasonable fees, expenses, costs and disbursements which shall be incurred by the VILLAGE in connection with this development or relative to the construction, installation, dedication and acceptance of the development improvements covered by this Agreement, including without limitation by reason of enumeration, design, engineering, review, supervision, inspection and legal, administrative and fiscal work; provided that VILLAGE employee costs shall be based on regular VILLAGE pay rates (or Engineering and administrative overtime, if applicable) plus 40% on the hourly rate for overhead and fringe benefits for any time actually spent on the project. Any costs for outside consultants shall be charged at the rate the consultant charges the VILLAGE. Any such charge not paid by the DEVELOPER within thirty (30) days of being invoiced may be charged against the Financial Security held by the VILLAGE pursuant to this Agreement, or assessed against the applicable Lot as a special charge pursuant to §66.0627, Wis. Stats.

SECTION XV. GENERAL INDEMNITY:

In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement or documents incorporated herein by reference, the DEVELOPER shall indemnify and save harmless and agrees to accept tender of defense and to defend and pay any and all reasonable legal, accounting, consulting, engineering and other expenses relating to the defense of any claim asserted or imposed upon the VILLAGE, its officers, agents, employees and independent contractors growing out of this Agreement by any other party or parties.

SECTION XVI. VILLAGE RESPONSIBILITY:

A. The VILLAGE agrees to allow the DEVELOPER to connect to the VILLAGE's municipal water system and sewerage system at the location shown in the approved plans

at such time as the water system and sanitary sewer system on either Lot has been completed by the DEVELOPER in substantial accordance with the applicable plans therefor, subject to the following. The sanitary sewer connection is subject to the conditions described in Section II.E. of this Agreement.

- B. The VILLAGE agrees that all VILLAGE officials and staff , including without limitation, the VILLAGE Staff, the VILLAGE Manager, and VILLAGE attorney acting reasonably, in good faith and with due diligence, shall promptly and with appropriate detail respond to requests from the DEVELOPER, including without limitation, for acceptances, consents and/or approvals, including without limitation, approval of plans and revisions to plans, for permits, including without limitation, demolition, grading, foundation, building and occupancy permits, for inspections, including to certify completion of any improvements and if applicable acceptance thereof, to reduce the amount of any financial security, for completion certificates, for reductions in any Financial Security, for dedication and Final Acceptance of the Water Main. The parties recognize that certain permit work may be deemed approved if not acted upon within the time required by applicable laws, per the terms of applicable laws.

SECTION XVII. INSURANCE:

The DEVELOPER in the performance of this Agreement and while working on the Property shall maintain at all times until the expiration of the two year Guaranty period, insurance coverage in such types and amounts as the DEVELOPER may determine necessary including the following:

- (i) during construction of the Project, builder's risk insurance;
- (ii) following completion of construction of the Project, "all risks" property insurance insuring against such risks as are generally insured against by owners of similar projects in similar locations;
- (iii) commercial general liability insurance covered under a comprehensive general liability policy in amounts generally maintained by owners of similar projects in similar locations, and insuring against bodily injury, including personal injury, death and property damage; and
- (iv) such other insurance as DEVELOPER may reasonably determine necessary.

Each insurance policy shall require the insurer to provide at least thirty (30) days prior written notice to the Village of any material change or cancellation of such policy. The VILLAGE, its officers, agents, employees and any independent contractors hired by the VILLAGE to perform services as to this development shall be named as an additional insured with respect to the commercial general liability policy pursuant to this Section XVII. The DEVELOPER shall provide proof of insurance demonstrating compliance with this section to the satisfaction of the VILLAGE upon the VILLAGE's request.

SECTION XVIII. EXCULPATION OF VILLAGE CORPORATE AUTHORITIES:

The parties mutually agree that the VILLAGE President of the VILLAGE Board, and/or the VILLAGE Clerk, entered into and are signatory to this Agreement solely in their official capacity and not individually, and shall have no personal liability or responsibility hereunder; and personal liability as may otherwise exist, being expressly released and/or waived.

SECTION XIX. GENERAL CONDITIONS AND REGULATIONS:

All provisions of the VILLAGE Ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be a part of this Agreement as fully as if set forth at length herein. This Agreement and all work and improvements required hereunder shall be performed and carried out in accordance with and subject to the provisions of said Ordinances except as expressly modified by the Ordinance. All permits required by VILLAGE Ordinances must be obtained by the DEVELOPER and the DEVELOPER hereby agrees to obtain a fill permit under Chapter 272 of the VILLAGE Code.

SECTION XX. ZONING:

The VILLAGE does not guaranty or warrant that the Property will not at some later date be rezoned, nor does the VILLAGE herewith agree to rezone the lands into a different zoning district. It is further understood that any rezoning that may take place shall not void this Agreement.

SECTION XXI. CSM AND REZONING CONDITIONS:

The DEVELOPER acknowledges that the Property is subject to a certified survey map (the “CSM”) approval and a rezoning approval by the VILLAGE. The DEVELOPER further agrees that it is bound by the condition set forth therein. A copy of the letter containing the CSM conditions is attached hereto as Schedule XXI-1 (the “CSM Conditions”) and incorporated herein by reference. The Ordinance, which contains the conditions of approval of the rezoning, is attached hereto as Schedule XXI-2 and incorporated herein by reference. In the event of any conflict, this Agreement will control to the extent it interprets or provides more detail or clarification than the CSM Conditions and Ordinance, otherwise the more restrictive shall control as reasonably determined by the VILLAGE.

SECTION XXII. ASSIGNMENT:

Prior to substantial completion of construction on Lot 1 and except as set forth below, the DEVELOPER shall not assign this Agreement without the written consent of the VILLAGE. After substantial completion of Lot 1, Developer may assign this Agreement to any owner of any part of the Property. Except as set forth below if required by the VILLAGE, the assignee must agree to all the applicable terms and conditions of this Agreement in writing as those terms and conditions relate to the rights being so assigned, e.g. if an assignee is being assigned the rights to Lot 2, then such assignee would only be required to agree to the terms and conditions as such terms and conditions relate to Lot 2. Notwithstanding anything to the contrary contained herein, the DEVELOPER, without the consent of the VILLAGE, may at any time and from time to time (i) collaterally assign this Agreement or any part or parts thereof to any lender holding a

mortgage on a Lot, (ii) assign this Agreement or any part or parts thereof to any entity that is an affiliate of the DEVELOPER, and/or (iii) assign this Agreement as to Lot 2 to any owner of Lot 2. Upon any assignment under subsections (ii) and (iii), the DEVELOPER shall be released from all of its obligations under this Agreement to the extent so assigned and assumed by such affiliate or owner of Lot 2.

SECTION XXIII. SUCCESSORS & ASSIGNS:

This Agreement is binding upon the DEVELOPER, its successors and assigns, and any and all future owners of the Property (the “**successors**”). This Section allows for the VILLAGE enforcement of the applicable terms and conditions of this Agreement against all such successors, as the DEVELOPER. This Section does not, however, grant rights to such successors absent the VILLAGE’s written consent if the VILLAGE’s consent is expressly required under Section XXII.

SECTION XXIV. ESTOPPEL CERTIFICATE.

The VILLAGE agrees that it will from time to time, upon request by DEVELOPER, or its successors or assigns, execute and deliver to DEVELOPER within forty-five (45) days after demand therefor an estoppel certificate certifying, among other items, that this Agreement is unmodified and in full force and effect (or if there have been modification, that the same is in full force and effect as so modified), that there are no defaults under this Agreement, that Developer has paid all amounts due under this Agreement or otherwise due the VILLAGE in connection with the Property or the applicable Project or Lot, that the Project constructed on the applicable Lot is in compliance with this Agreement, the Restrictive Covenants, and the Ordinance, and such other matters as the DEVELOPER or its mortgagee or transferee may reasonably request. It is intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser, tenant or mortgagee and their respective successors and assigns. If the VILLAGE fails to deliver the same within such forty-five (45) day period, then such certificate as delivered by DEVELOPER to the VILLAGE shall be fully binding upon the VILLAGE as if fully signed by the VILLAGE.

SECTION XXV. TERMINATION BY DEVELOPER.

At any time prior to commencement of construction of any improvement, whether public or private, other than grading and site work, of any part of the Projects, the DEVELOPER may terminate this Agreement by written notice to the VILLAGE whereupon, and provided that if Developer commenced grading and site work, Developer has re-seeded or placed sod or otherwise returning the Property to a grassy or green-scaped condition, this Agreement shall terminate, the Developer shall have no further rights or obligations hereunder and the parties shall record terminations of the memorandum of this Agreement and of the Restrictive Covenants if recorded against the Property, or any part thereof, at DEVELOPER’s cost. If this Agreement is so terminated by DEVELOPER, DEVELOPER shall reimburse the VILLAGE, within thirty (30) days after written request, for all costs reasonably incurred by the VILLAGE up to and including the date of termination, and through completion of the termination process, in furtherance of this Agreement that are DEVELOPER’s responsibility pursuant to Section XIV

and not already reimbursed by DEVELOPER. Section XV of this Agreement shall survive any such termination, and shall remain binding on the parties.

SECTION XXVI. ACQUISITION.

This Agreement shall not take effect until the DEVELOPER acquires the Property, and it shall only take effect if the DEVELOPER does so on or before January 31, 2018, subject to the additional conditions on the Agreement taking effect as described in Section XXXIII, below.

SECTION XXVII. RIGHT TO CURE.

The parties shall be allowed a limited right to cure, subject to the exceptions noted below. If a party defaults under any of this Agreement's terms, the non-defaulting party will give to the defaulting party a written notice of the default. The defaulting party has thirty (30) days after receipt of this notice to cure the default. Only if the defaulting party fails to cure the default within this time period, may the non-defaulting party exercise those remedies granted under this Agreement or by applicable law. This right to cure does not apply to the repair and maintenance obligations of Section VIII C. and D., or the miscellaneous operation limitations of Section XIII F. and G. of this Agreement. This right to cure does not constitute a waiver of violations of law, or an assumption of risk or liability by the non-defaulting party. This right to cure does not apply so as to require an additional notice, where notice is already required by the terms of this Agreement.

SECTION XXVIII. COMPLETION CERTIFICATE:

Upon completion of the Guaranty Improvements and the passage of the applicable Guaranty Period, the DEVELOPER and any successors shall be relieved of the obligations of the Public Improvement Guaranty.

SECTION XXIX. SEPARATION BY LOT:

The VILLAGE shall not withhold the issuance of any building permit, occupancy permit, or other approval that solely affects Lot 1 due to a non-compliance occurring on Lot 2, unless the non-compliance on Lot 2 arises from DEVELOPER's failure to perform DEVELOPER'S obligations per this Agreement to install the Public Improvements and private improvements described in Section II as to Lot 2. Similarly, the VILLAGE shall not withhold the issuance of any approval the DEVELOPER may require that solely affects Lot 2 due to a non-compliance occurring on Lot 1, unless the non-compliance on Lot 1 arises from DEVELOPER's failure to perform DEVELOPER'S obligations per this Agreement to install the Public Improvements and private improvements described in Section II as to Lot 1.

SECTION XXX. MORTGAGEE CONSENT:

The undersigned mortgagee of the Property, if any, consents to this Agreement, and agrees that its lien of mortgage shall be subordinate to the rights of the VILLAGE granted by this Agreement.

SECTION XXXI. RECORDING:

This Agreement shall not be recorded, however a Memorandum of Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, in substantially the form attached hereto as Schedule XXXI, it being understood by the parties that this Agreement will run with the land until it is terminated as herein provided.

SECTION XXXII. AMENDMENTS:

The VILLAGE and the DEVELOPER, by mutual consent, may amend this Agreement at any meeting of the VILLAGE Board.

SECTION XXXIII. EFFECTIVE DATE:

This Agreement shall be effective on the date of the last to occur of the following events: (1) the full execution of this Agreement by the VILLAGE and the DEVELOPER; (2) the recording of a fully executed deed with the Milwaukee County Register of Deeds which transfers the Property from Fox Point - Bayside School District to Chiswick Apartments LLC and/or Chiswick Land LLC or to Mandel Group Properties, LLC or its affiliates; (3) the full execution of any then existing Mortgagees of the Property as required by Section XXX above; (4) the Village receipt of all financial guaranties required by this Agreement in a form approved by the Village as herein provided; and (5) the Village approval of all plans required by Sections I, II, and III of this Agreement as indicated by the attachment to this Agreement of all of the required Schedules.

IN WITNESS WHEREOF, the DEVELOPER and the VILLAGE have caused this Agreement to be signed by their appropriate managers or officers and their corporate seals (if any) to be hereunto affixed in three original counterparts the day and year first above written.

Chiswick Apartments LLC

By: Mandel/Chiswick Apartments LLC,
Its: Manager

By: _____

Its: _____

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, _____, the above named _____, Authorized Signatory of Mandel/Chiswick Apartments LLC, Manager of Chiswick Apartments LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

VILLAGE OF _____
_____ COUNTY, WISCONSIN

Douglas H. Frazer, VILLAGE President

Kelly A. Meyer, VILLAGE Clerk

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

Personally came before me this _____ day of _____, _____, the above-named Douglas H. Frazer, VILLAGE President, and Kelly A. Meyer, VILLAGE Clerk, of the above-named municipal corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such VILLAGE President and VILLAGE Clerk of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority and pursuant to the authorization by the VILLAGE Board from their meeting on the _____ day of _____, _____.

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

Dated this ____ day of _____, 20_____.

MORTGAGEE:

By: _____
Name: _____
Title: _____

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

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

NOTARY PUBLIC, STATE OF WI
My commission expires: _____

VILLAGE OF _____
_____ COUNTY, WISCONSIN

Dated this ____ day of _____, 20_____. The undersigned Owner of the Property hereby authorizes the DEVELOPER to undertake the Projects on the Property and imposes this Agreement as a restriction on the Property to be binding upon the DEVELOPER and all owners of the Property and their successors and assigns.

OWNER:

By: _____
Name: _____
Title: _____

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

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

NOTARY PUBLIC, STATE OF WI
My commission expires:_____

VILLAGE OF _____
_____ COUNTY, WISCONSIN

APPROVED AS TO FORM:

Eric J. Larson, VILLAGE Attorney