

## ANNEXATION, SUBDIVISION, AND DEVELOPMENT

### AGREEMENT FOR HAWKS POINTE PLANNED UNIT DEVELOPMENT

**THIS AGREEMENT** is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2015, and is by and between the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation ("**Village**"), and Therese R. Iverson, as Trustee, or her Successors in Trust, under the Therese R. Iverson Living Trust, dated February 11, 2010, as amended, and Therese R. Iverson, individually (collectively, "**Owner**") and Hawks Pointe, LLC, an Illinois limited liability company ("**Developer**").

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's powers and authority as set forth in the Constitution of the State of Illinois and the Illinois Compiled Statutes, the parties agree as follows:

#### **SECTION 1. RECITALS.**<sup>1</sup>

A. The Owner is, as of the Effective Date of this Agreement, the owner of record of the Property.

B. The Property is contiguous to the corporate limits of the Village and is not within the corporate limits of any municipality.

C. The Owner has filed with the Village Clerk the Annexation Petition, together with the Annexation Plat.

D. There are no electors residing within the Property.

E. The Owner desires and proposes to have the Property annexed to the Village pursuant to and in accordance with the provisions of Section 7-1-8 of the Illinois Municipal Code, 65 ILCS 5/7-1-8, and of this Agreement.

F. The Owner is, as of the Effective Date of this Agreement, also the owner of record of the Contiguous Property, which is presently within the corporate limits of the Village, and desires and proposes to develop the Property and Contiguous Property pursuant to the zoning classifications described in Section 4 below.

G. The Owner has filed with the Village, and the Plan Commission has recommended approval of, the Final Subdivision Plat for the Property and Contiguous Property.

H. The Village and the Owner desire that the Property be developed and used in substantial compliance with this Agreement.

I. Pursuant to the provisions of Section 11-15.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-15.1-1 *et seq.*, a proposed annexation agreement, in substance and

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<sup>1</sup> All capitalized words and phrases throughout this Agreement shall have the meanings set forth in the preamble above and in Section 2 of this Agreement.

form substantially the same as this Agreement, was submitted to the Corporate Authorities and, pursuant to notice published in the \_\_\_\_\_ on \_\_\_\_\_, as provided by statute, a public hearing was held thereon by the Corporate Authorities on \_\_\_\_\_.

J. Pursuant to notice published in the \_\_\_\_\_ on \_\_\_\_\_ and re-published on \_\_\_\_\_ as provided by statute and the Zoning Code, a public hearing was held by the Plan Commission on \_\_\_\_\_, and the Plan Commission recommended approval of the requested zoning and subdivision of the Property and Contiguous Property on \_\_\_\_\_.

K. The Corporate Authorities, after due and careful consideration, have concluded that the annexation, zoning, subdivision, development, and use of the Property pursuant to and in accordance with this Agreement would further enable the Village to control the development of the Property and would serve the best interests of the Village.

L. The Corporate Authorities have reviewed and considered the proposed development of the Property, and the various zoning and subdivision approvals being requested to allow for its implementation, and have found the proposed development and such zoning and subdivision approvals to be consistent with the character of, and existing development patterns in, the Village.

## **SECTION 2. DEFINITIONS.**

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

**"Annexation Notice"**: That certain notice, contemplated in Subsection 3.B of this Agreement, triggering, upon proper delivery thereof, the effectiveness of the Annexation Ordinance and the Zoning Map Amendment Ordinance.

**"Annexation Petition"**: That certain petition, executed by the Owner as the owner of the Property, and dated as of \_\_\_\_\_, seeking annexation of the Property to the Village, the original of which is on file with the Village Clerk.

**"Annexation Plat"**: That certain annexation plat prepared by IG Consulting, Inc., 300 East Marquardt Drive, Wheeling, Illinois 60090, consisting of \_\_\_\_\_ (\_\_\_\_) sheets, with latest revision date of \_\_\_\_\_, a copy of which is attached as **Exhibit C** to this Agreement.

**"Building Code"**: Title 4, entitled Building Regulations," of the Village Code, as the same has been and may, from time to time hereafter, be amended.

**"Village Code"**: The Village of Long Grove Code, as the same has been and may, from time to time hereafter, be amended.

**"Common Areas"**: The Common Areas are as depicted on the Site Plan for the Property.

**"Contiguous Property"**: That certain tract of land consisting of approximately 9 acres generally located on the west side of Old Hicks Road, across from Check Road, which is in the Village of Long Grove, Illinois, and legally described in **Exhibit A** to this Agreement.

**"Corporate Authorities"**: The President and Board of Trustees of the Village.

**"Effective Date"**: The date of execution of this Agreement by all parties hereto, which date shall be deemed to be the date set forth in the first paragraph of Page 1 of this Agreement.

**"Final Engineering Plan"**: The engineering plan that receives the approval of the Village Engineer pursuant to Section 5.B of this Agreement and in accordance with the Requirements of Law. Upon such approval, the Final Engineering Plan shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Agreement and shall, for all purposes in this Agreement, supersede the any engineering plans previously submitted for consideration or tentative approvals.

**"Final Landscaping Plan"**: The landscaping plan that receives the approval of the Village Forester pursuant to Section 5.B of this Agreement and in accordance with the Requirements of Law. Upon such approval, the Final Landscaping Plan shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Agreement and shall, for all purposes in this Agreement, supersede any landscaping plans previously submitted for consideration or tentative approvals.

**"Final Subdivision Plat"**: The subdivision plat that receives the approval of the Corporate Authorities pursuant to Section 5 of this Agreement and in accordance with the Requirements of Law. Upon such approval, the Final Subdivision Plat shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Agreement and shall, for all purposes in this Agreement, supersede any subdivision plat previously submitted for consideration or tentative approvals.

**"Force Majeure"**: Strikes, lockouts, acts of God, or other factors beyond a party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure shall not include delays caused by weather conditions, unless such weather conditions are unusually severe or abnormal considering the time of year and the particular location involved.

**"Plan Commission"**: The Plan Commission/Zoning Board of Appeals of the Village, established by the Municipal Code, as the same has been and May, from time to time hereafter, be amended.

**"Preliminary Engineering Plans"**: Such engineering plans as have been submitted to the Village in connection with the Preliminary Subdivision Plat and have been revised in accordance with such requests made in writing by the Village prior to the execution of this Agreement. The Preliminary Engineering Plans shall be deemed to be incorporated in, and made a part of, this Agreement.

**"Preliminary Subdivision Plat"**: The preliminary subdivision plat of the Property and the Contiguous Property that is attached as Exhibit I to this Agreement.

**"Property"**: That certain tract of land consisting of approximately 26 acres generally located on Old Hicks Road, south of Dorothy Lane, in unincorporated Lake County, which is contiguous to the Village of Long Grove, Illinois, not currently within the corporate limits of any municipality, and legally described in **Exhibit A** to this Agreement.

**"Project Improvements"**: The Private and Public Improvements of the Property Improvements, and any related facilities as provided in Section 8 of this Agreement.

**"Property Improvements"**: All of the improvements and facilities that are required or authorized to be made, constructed, or installed in connection with the subdivision and development of the Property, which improvements and facilities are set forth on the Final Plat, on

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the Final Engineering Plan, on the Final Landscaping Plan, listed on **Exhibit D** to this Agreement ("**Improvements List**"), or as provided in Section 8 of this Agreement. The Property Improvements shall be comprised of:

**"Public Improvements,"** being those Property Improvements that are to be dedicated to the Village or such other public agencies as the Village may approve, and which are identified as "Public Improvements" in **Exhibit D** or are depicted on the Final Plat, the Final Engineering Plan, or the Final Landscaping Plan as being dedicated to the public.

**"Private Improvements,"** being those Property Improvements (other than Public Improvements) that are required to be constructed, installed, or placed in service pursuant to the Final Engineering Plan, the Final Landscaping Plan, or Requirements of Law, and which are identified as "Private Improvements" in **Exhibit D**.

**"Structural Improvements,"** being those buildings and structures authorized to be constructed on the Property, and which are identified as "Structural Improvements" in **Exhibit D**.

**"Requirements of Law":** All applicable federal, state, and Village laws, statutes, codes, ordinances, resolutions, rules, and regulations.

**"Site Plan":** That certain site plan of the Property prepared by the aforesaid IG Consulting, Inc., consisting of one (1) sheet, with latest revision date of \_\_\_\_\_, a copy of which is attached as **Exhibit B** to this Agreement.

**"Subdivision Ordinance":** The Village of Long Grove Subdivision Ordinance, being Title 6 of the Village Code, as the same has been and may, from time to time hereafter, be amended.

**"Zoning Code":** The Village of Long Grove Zoning Code, being Title 5 of the Village Code, as the same has been and may, from time to time hereafter, be amended.

### **SECTION 3. ANNEXATION OF THE PROPERTY.**

A. **Adoption of Annexation Ordinance.** Immediately after the execution of this Agreement, the Corporate Authorities shall pass and approve an ordinance (the "**Annexation Ordinance**"), in substantially the form of **Exhibit E** attached to this Agreement, annexing the Property to the Village; provided, however, that the effective date of the Annexation Ordinance shall be as provided in Section B below.

B. **Effective Date of Annexation.** The annexation of the Property, and the effective date of the Annexation Ordinance, shall occur on, but not before, the date of recordation of the Annexation Ordinance.

C. **Valid Annexation.** This Agreement in its entirety, at the option of the Owner, shall be null and void unless the Property is validly annexed to the Village, zoned and classified in accordance with and as contemplated by this Agreement, and the approvals described herein are granted at the times specified herein.

### **SECTION 4. ZONING OF THE PROPERTY.**

Immediately after the adoption of the Annexation Ordinance, the Village shall take all steps necessary to:

A. Adopt a valid and binding ordinance, substantially in the form of **Exhibit F** to this Agreement, ("**Zoning Map Amendment Ordinance**") amending the Village's zoning map to add the Property and to classify the Property into the R3 zoning district. The Zoning Map Amendment Ordinance shall not be effective unless and until the Annexation Ordinance is recorded in accordance with Subsection 3.A of this Agreement.

B. Adopt a valid and binding ordinance substantially in the form of **Exhibit G** to this Agreement, to grant a special use permit for a planned unit development for the Property ("**PUD Ordinance**"), allowing forty-two lots for single-family residential use on the Property and Contiguous Property, twenty-eight being for single-family attached residential units and fourteen being for single-family detached residential units. The PUD Ordinance, not in limitation of other variation of standards that may be included in it, shall allow front yard setbacks of twenty-five (25) feet, as opposed to fifty (50) feet which would otherwise be required in the R3 district, and shall allow side yard setbacks of ten (10) feet and fifteen (15) feet for a corner lot, as opposed to thirty (30) feet which would otherwise be required in the R3 district.

C. Adopt a valid and binding ordinance, substantially in the form of **Exhibit H** to this Agreement ("**Text Amendment Ordinance**"), to amend the Zoning Code of the Village to allow attached single-family residential units in the R3 zoning district when approved as part of a planned unit development, and to allow minimum lot areas below 33,000 square feet in a planned unit development for attached single-family homes and other residences.

The Owner and Developer agree that a shared use pathway ("**New Pathway**") shall be constructed, as part of the planned unit development improvements, that will benefit the public as well as residents of the Property and Contiguous Property. The pathway shall connect the Property and Contiguous Property with open space and recreational land of the Village to the south ("**Village Property**") on which an existing pathway presently exists. The Developer shall connect the New Pathway with the existing pathway on the Village Property. The New Pathway shall be restricted to pedestrian and bicycle use, but no motorized vehicle usage, and such reasonable regulations as may be adopted from time to time by the Developer or the association of homeowners on the Property and Contiguous Property. Such regulations may, but need not be submitted to the Village for approval. Violations of any restrictions on usage provided herein or subsequently approved in writing by the Village shall be enforced by the Village as ordinance violations. The Village shall provide such temporary easements or rights of use as may be reasonably necessary for such purpose. In exchange for the public benefit provided by the New Pathway, the Village shall include, in the calculations of density allowed for the Property and Contiguous Property, the 8.7 acres located within the Village Property.

The Village acknowledges that the Preliminary Subdivision Plat and the development of the Property and Contiguous Property in accordance with this Agreement complies with the Comprehensive Plat of the Village.

The Preliminary Subdivision Plat, Zoning Map Amendment Ordinance and PUD Ordinance shall create a permanent zoning classification for the Property and Contiguous Property (unless changed by the Village at the request of Developer or its assignee) which represents the highest and best use of the Property and Contiguous Property, and which shall remain in effect throughout the term of this Agreement and thereafter until amended at the request of Developer or its successors and assigns in the manner provided by law for the amendment of zoning classifications. Such zoning shall not expire at any time or upon the happening of any event or the failure of any event to occur.

In the event any Village law, code, ordinance, resolution, rule or regulation, existing at the time the Property is annexed to the Village, does not permit the development of the Property or Contiguous Property in accordance with the Preliminary Subdivision Plat and this Agreement, the Village shall promptly grant such variations as may be necessary to enable Developer's improvement of the Property and Contiguous Property in accordance with the Preliminary Subdivision Plat and this Agreement.

#### **SECTION 5. APPROVAL OF SUBDIVISION AND ENGINEERING PLANS AND PLATS.**

A. Approval of the Preliminary Plat. Immediately after the adoption of the Zoning Map Amendment Ordinance, the Village shall take such actions as necessary to grant approval of the Preliminary Subdivision Plat.

B. Preliminary Engineering Approval. Immediately after the adoption of the Zoning Map Amendment Ordinance, the Village shall take such actions as necessary to approve the Preliminary Engineering Plans.

C. Approval of Final Subdivision Plat. Within the time required by section 6-2-2(C)4 of the Village Code, the Developer shall submit a final plat of subdivision for the Property and Contiguous Property along with such engineering plans and other submittals as may be required by the Subdivision Ordinance. The Village shall, with reasonable promptness, review the submitted final plat of subdivision and, if it conforms to the Preliminary Subdivision Plat and otherwise meets the requirements for final plat approval in the Subdivision Ordinance and complies with other applicable Requirements of Law, shall adopt an ordinance, in the form attached as **Exhibit J** to this Agreement, approving such final plat of subdivision for the Property and Contiguous Property. After the effective date of the resolution approving the Final Plat of Subdivision, the Village shall promptly cause the Final Plat of Subdivision to be properly recorded in the office of the Lake County Recorder of Deeds.

D. Final Engineering Approval. The Owner agrees to cooperate with the Village Engineer to produce (i) a Final Engineering Plan and (ii) a Final Landscaping Plan for the Property, Provided that the Final Engineering Plan and Final Landscaping Plan substantially conform to the Preliminary Engineering Plans and otherwise meet applicable Requirements of Law, the Village shall adopt a valid and binding resolution, in the form attached as **Exhibit K** to this Agreement confirming approval of the Final Engineering Plan and Final Landscaping Plan..

#### **SECTION 6. DECLARATION OF COVENANTS.**

Concurrent with the recordation of the Final Subdivision Plat, a declaration of covenants, acceptable in form and substance to the Village Attorney, shall be recorded against the Property and Contiguous Property.

#### **SECTION 7. DEVELOPMENT OF THE PROPERTY.**

Notwithstanding any use or development right that may be applicable or available to the Property pursuant to the Zoning Code, the Property shall be used and developed, except for minor alterations due to final engineering and site work approved by the Village Engineer or the Director of Community Development, as appropriate, only pursuant to and in accordance with the following:

- a. this Agreement;
- b. the Final Subdivision Plat;
- c. the Final Engineering Plan;
- d. the Final Landscape Plan;

- e. the provisions applicable to the R3 Zoning Districts of the Zoning Code;
- f. The provisions of the PUD Ordinance;
- g. all other applicable provisions of the Zoning Code and Subdivision Ordinance;
- h. the Village Code, including without limitation the Village's Building Code;
- i. the applicable provisions of the Village's Watershed Development Ordinance;
- j. the applicable declaration of covenants for the Property as set forth herein; and
- k. the Requirements of Law.

All of the above plans and documents shall be interpreted so that the duties and requirements imposed by any one of them are cumulative among all of them, unless otherwise provided in this Agreement either specifically or in context.

## **SECTION 8. PROJECT IMPROVEMENTS.**

A. **Description of Improvements.** The Owner shall, at its sole cost and expense, design, construct, and install all of the Project Improvements on the Property, including without limitation the Public Improvements and Private Improvements identified in **Exhibit D** to this Agreement.

B. **Design and Construction of the Project Improvements.** All Project Improvements shall be designed and constructed pursuant to and in accordance with the Final Engineering Plan, the Final Landscape Plan, and to the satisfaction of the Village Engineer. All work performed on the Project Improvements shall be conducted in a good and workmanlike manner and with due dispatch in accordance with the schedule established in Section 8.C of this Agreement. All materials used for construction of the Project Improvements shall be new and of first quality.

C. **Completion of the Improvements.** All Project Improvements shall be completed and made ready for inspection, approval, and, where appropriate, acceptance by the Village pursuant to the construction schedule approved by the Village Engineer as part of the Final Engineering Plan. The Owner shall be allowed extensions of time beyond the completion dates set forth in such construction schedule only for unavoidable delay caused by Force Majeure.

D. **Engineering Services.** The Owner shall provide, at its sole cost and expense, all engineering services for the design and construction of the Project Improvements.

E. **Construction Traffic.** The Village reserves the right to designate certain prescribed routes of access to the Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that such designated routes shall not be unreasonably or unduly circuitous nor unreasonably or unduly hinder or obstruct direct and efficient access to the Property for construction traffic. Subject to the foregoing reservation of rights, the Village shall, upon application by the Owner, issue a permit for the use, upon designated streets of the Village and at designated times, of vehicles weighing in excess of the limits prescribed by Village ordinances in order to provide access for construction vehicles to the Property. The fee for the permit shall be in addition to all required financial guarantees required pursuant to this Agreement, and shall cover all construction vehicles, including the vehicles of contractors, subcontractors, suppliers, and agents of the Owner as well as to vehicles of the Owner. The construction vehicle permit shall be effective for a period of three months from the date of issuance and shall be renewable upon conditions approved by the Village Manager to ameliorate any unsatisfactory conditions or circumstances arising under the original permit. At all times during the construction of the Project Improvements, and until completion, approval, and, where appropriate, acceptance of the Project Improvements by the Village, the Owner shall keep all routes used for construction traffic to be free and clear of mud, dirt, debris, obstructions, and hazards and shall repair any damage caused by such construction traffic. The Village shall not be obligated to keep any streets within the Subdivision cleared, plowed or

otherwise maintained until such street has been completed, approved, and accepted by the Village in accordance with this Section 8 or until other arrangements satisfactory to the Village, in its sole discretion, shall have been made.

- F. Dedication and Maintenance of the Improvements.
- i. Final Inspection and Approval of the Project Improvements. The Owner shall notify the Village Engineer when it believes that any or all of the Project Improvements have been fully and properly completed and shall request final inspection, approval, and, where appropriate, acceptance of the Project Improvement or Improvements by the Village. The notice and request shall include any of the "as-built" or "record" drawings required by Section 8.F.ii, and to the extent not previously submitted, contractors' sworn statements, final lien waivers, and all other appropriate documentation necessary to demonstrate that all contractors, subcontractors, and material suppliers, as well as all engineering and inspection fees, have been paid in full. The notice and request shall be given far enough in advance to allow the Village Engineer time to inspect the Project Improvements and to prepare a punch list of items requiring repair or correction and to allow the Owner time to make all required repairs and corrections prior to the scheduled completion date. The Owner shall promptly make all necessary repairs and corrections as specified on the punch list. The Village shall not be required to approve or accept any portion of the Project Improvements until all of the Project Improvements, including all punch list items, have been fully and properly completed.
- ii. "As-Built" or "Record" Drawings and Specifications of the Public Improvements. The Owner shall, not later than the time it gives the notice of completion and request for approval, provide to the Village three sets of "as-built" or "record" drawings for all of the Public Improvements, including one set on a reproducible mylar. As-built drawings shall also be provided in digital format and submitted to the Village Engineer on Intergraph Microstation format (or DXF Format if not available on Intergraph) using 3 1/2" MS-DOS diskettes. The "as-built" or "record" drawings and specifications shall depict every Public Improvement as built and shall include all final dimensions, elevations, and calculations necessary to fully describe the Public Improvements and to establish their compliance with this Agreement and all Requirements of Law.
- iii. Dedication and Acceptance of Specified Public Improvements. Neither the execution of this Agreement nor the approval or recordation of the Final Plat shall constitute an acceptance by the Village of any public lands or facilities that are depicted as "dedicated" on the Final Plat or Final Engineering Plan, if any, or of any Public Improvements. The acceptance of all Public Improvements shall be made only in compliance with the requirements of the Subdivision Ordinance and this Agreement. The Village shall not formally accept the Public Improvements for a period of time that shall run from the date of completion of each of the Public Improvements until such time as (i) the Owner has transferred title to 75% of the lots and units from itself to individuals or corporations; (ii) the transferred lots are built upon and certificates of occupancy have been issued for such units; and (iii) the Owner agrees to maintain the Property in a good, serviceable, and acceptable condition, as determined by the Village. The Owner shall provide the Village Engineer with a copy of all payouts and/or Contractor's Affidavits accompanied by all appropriate sworn statements, affidavits, and supporting waivers of lien in full compliance with the Illinois Mechanics Lien Law and all other requests for payment for any service performed or rendered relating to the Public Improvements on the

Property. From time to time, upon certification to the Village Engineer by the engineer representing the Owner that a portion of the Public Improvements have been completed, paid for, and approved, the Village Engineer, in their sole discretion, may reduce the amount of the Letter of Credit by the amount of the completed Public Improvements. Upon (i) certification to the Corporate Authorities by the Village Engineer that all of the Improvements have been completed and have been approved, which certification shall not be unreasonably withheld or delayed; (ii) payment by the Owner of all engineering and construction costs for the Public Improvements, plus payment of all the Village's engineering and other permit and inspection fees for the Property Improvements, and (iii) issuance of Certificates of Occupancy as set forth in this Section 8.F.iii, the Village Board shall accept the Public Improvements.

G. Transfer of Ownership of the Public Improvements to the Village. Upon the approval of, and prior to acceptance of, the Public Improvements to be accepted by the Village pursuant to Subsection 8.F of this Agreement, the Owner shall execute, or cause to be executed, such documents as the Village shall request to transfer ownership of the Public Improvements to, and to evidence ownership of the Public Improvements by, the Village, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Village in writing. The Owner shall, at the same time, grant, or cause to be granted, to the Village all such easements or other property rights as the Village may reasonably require to install, operate, maintain, service, repair, and replace the Public Improvements that have not previously been granted to the Village, free and clear of all liens, claims, encumbrances, and restrictions other than those listed on Exhibit L attached to this Agreement or which are otherwise approved by the Village in writing.

H. Guaranty of the Project Improvements. The Owner hereby guarantees the prompt and satisfactory correction of all defects and deficiencies in the Project Improvements, including without limitation landscaping installed by the Owner on public lands or within public rights-of-way or easements, that occur or become evident within one year after approval and, where appropriate, acceptance of the Project Improvements by the Village pursuant to this Agreement. If any defect or deficiency occurs or becomes evident during that period, then the Owner shall, after 30 days' prior written notice from the Village (subject to Force Majeure), correct it or cause it to be corrected. In the event any Project Improvement is repaired or replaced pursuant to any demand, the Guaranty provided by this Subsection 8.H shall be extended, as to such repair or replacement, for one full year from the date of such repair or replacement. Notwithstanding the one-year guarantee required by this Subsection H, all landscaping and tree Public Improvements shall be guaranteed for a period of two years from the date of final acceptance by the Village.

I. Issuance of Permits and Certificates.

- i. Security Required. The Village shall not be required to issue any permits in connection with any Property Improvements or other development activities relating to the Property until the Owner shall have delivered to the Village the performance securities required in Sections 12.A(i), and 12.A(ii), and 12B of this Agreement.
- ii. Right to Withhold Permits and Certificates. The Village shall have the absolute right to withhold any building permit or certificate of occupancy at any time the Owner is in violation of, or is not in full compliance with, the terms of this Agreement.
- iii. Completion of Improvements. The Village shall issue no certificates of occupancy for any Structural Improvements located on the Property until the

Project Improvements are completed by the Owner in accordance with the schedule established pursuant to Subsection 8.C of this Agreement or until other arrangements satisfactory to the Village Engineer, in his sole and absolute discretion, shall have been made. The issuance of any building permit or certificate of occupancy by the Village at any time prior to completion of all the Project Improvements and approval and, where appropriate, acceptance thereof by the Village shall not confer on the Owner any right or entitlement to any other building permit or certificate of occupancy.

J. Completion of Construction. If the Owner fails to diligently pursue all construction as required in, or permitted by, this Agreement to completion within the time period prescribed in the building permit or permits issued by the Village for such construction, and if the building permit or permits are not renewed within three months after the expiration thereof, the Owner shall, within 60 days after notice from the Village, remove any partially constructed or partially completed buildings, structures, or Property Improvements from the relevant lot. In the event the Owner fails or refuses to remove said buildings, structures, and Property Improvements, as required, the Village shall have, and is hereby granted, in addition to all other rights afforded to the Village in this Agreement and by law, the right, at its option, to demolish and/or remove any of said buildings, structures, and Property Improvements, and the Village shall have the right to apply any applicable security or otherwise charge the Owner for an amount sufficient to defray the entire cost of the work, including legal and administrative costs. If the amount charged is not paid by the Owner within 30 days following a demand in writing by the Village for payment, the charge, together with interest and costs of collection (including attorneys' fees), shall become a lien against the Lot on which the work was performed, and the Village shall have the right to collect the charge, with interest and costs, and to enforce the lien in the same manner as mortgage and other liens on real property.

K. Sanitary Sewer Service. The Village represents and warrants that it presently has an agreement with Lake County, Illinois in which it has the right to approve all connections to the sanitary sewerage system of the County to which the Property and Contiguous Property might be connected. The Village agrees that it will approve any request to the County by the Owner or Developer to connect the residential units allowed under this Agreement to the County's sanitary sewerage system and otherwise reasonably cooperate with the Owner and Developer for such purpose.

L. Sales Trailer. Developer shall have the right, after approval of the Preliminary Subdivision Plat to construct a temporary sales trailer within the Property or Contiguous Property adjacent to Old Hicks Road from it will be able to have access.

M. Models. Upon satisfaction of the conditions for obtaining a building permit, Developer, and/or its successors and assigns, shall have the right to construct such model homes as it may determine.

N. Sales Sign. Developer or its assigns shall have the right after approval of the Preliminary Subdivision Plat, to construct within the Property or Contiguous Property, a double faced eight (8) foot by sixteen (16) foot sales sign along Old Hicks Road, for as long as development and sales continue on the Property.

P. Roadway. The Village acknowledges and represents that it has control over Old Hicks Road and has the authority to permit ingress and egress from such roadway.

Q. Removal of Hardscape. The Preliminary Subdivision Plat shows designates a certain area for a potential highway taking. While certain portions of this area are presently covered by sidewalks, concrete or other hard surfaces ("**Hardscape Surfaces**"), neither the Developer nor

the Owner shall be required to remove or modify the Hardscape Surfaces except to the extent necessary for stormwater management conduits or the installation of other Property Improvements.

**SECTION 9. DAMAGE TO PUBLIC PROPERTY.**

The Owner shall maintain the Property in a good and clean condition at all times during development of the Property and construction of the Improvements. Further, the Owner shall promptly clean all debris deposited on any street, sidewalk or other public property in or adjacent to the Property by the Owner or any agent of or contractor hired by, or on behalf of, the Owner; and shall repair any damage that may be caused by the activities of the Owner or any agent of or contractor hired by, or on behalf of, the Owner.

**SECTION 10. DEDICATIONS, DONATIONS, AND CONTRIBUTIONS.**

A. Dedications. The Owner shall dedicate easements, and rights-of-way as required by this Agreement.

B. School and Park Dedications, Donations, and Contributions. The Owner shall comply with the school and park development impact fee requirements as contained in Chapter 9 of the Subdivision Ordinance.

C. Dedication Regarding Wetlands. The Owner shall dedicate land or a payment in anticipation of the future acquisition of and dedication of land as a part of the Owner's plan of wetland mitigation as required by Lake County Stormwater Management Commission.

D. No Other Dedications, Donations or Contributions. Except as required by this Section, the Owner shall not be required to make any dedication, donation or contribution to the Village in relation to the development of the Property and Contiguous Property, and, not in limitation of the foregoing, no donation of land from the Property or Contiguous Property shall be required by the Village.

E. Certain Recapture Payments. The Owner and Developer acknowledge a certain Recapture Agreement by and between the Village and Menard's, Inc., recorded with the Lake County Recorder of Deeds on June 22, 2007 as Document No. 6201441. The Village City represents and warrants to Owner and Developer that the Village has not entered into any agreement or adopted any ordinance that will require Owner or Developer to pay any recapture fees for off-site sanitary sewer, water, stormwater management or other improvements as a result of the annexation of the Property to the City, as a result of the development of any portion of the Property or Contiguous Property or as a result of the connection of improvements constructed on any portion of the Property or Contiguous Property to off-site sanitary sewer, water, stormwater management or other improvements.

F. Recapture Agreement for Benefit of Developer. If requested by Developer the City shall promptly approve, execute and enforce a recapture agreement that substantially conforms to the recapture agreement attached hereto as **Exhibit M ("Sewer Recapture Agreement")** so as to further Developer's recapture of a proportionate amount of the costs of constructing and oversizing sanitary sewer improvements from owners and developers of other properties that may benefit from the construction of such improvements. The Village shall use its best efforts (including, at Developer's request and expense, the exercise of the Village's powers of eminent domain) to obtain all easements needed to construct the sanitary sewer improvements depicted on the Preliminary Engineering Plans.

G. Special Assessments And Taxation. Without the prior written consent of Developer, the Village shall not: (i) levy against any real or personal property within the Property or Contiguous Property, any special assessment or special tax for the cost of any improvements in or for the benefit of the Property or Contiguous Property; (ii) undertake any local improvements in, on or for the benefit of the Property or Contiguous Property pursuant to the imposition of a special assessment or special tax against the Property or Contiguous Property, or any portion thereof; or (iii) levy or impose additional taxes on the Property or Contiguous Property, in the manner provided by law for the provision of special services to the Property or to an area in which the Property or Contiguous Property is located or for the payment of debt incurred in order to provide such special service. Nothing in this Article XXII shall prevent the Village from levying or imposing additional taxes upon the Property in the manner provided by law, which are applicable to and apply equally to all other properties within the Village.

H. Condemnation. The Village agrees that, without the written consent of the Developer, it shall not take any condemnation actions against the Property or Contiguous Property, or any portion thereof, nor consent to or otherwise approve any condemnation claims or proceedings which affect the Property or Contiguous Property, or any portion thereof, by any state, county, township or any other governmental entity having condemnation authority and jurisdiction over the Property, or any private association.

#### **SECTION 11 . PAYMENT OF VILLAGE FEES AND COSTS.**

A. General Requirements. In addition to any other costs, payments, fees, charges, contributions or dedications required by this Agreement, the Owner, as applicable, with respect to each of the Owner's respective parcels, shall pay to the Village, as and when due, all application, inspection and permit fees, all water and sewer general and special connection fees, tap-on fees, charges and contributions, and all other fees, charges and contributions required by applicable Village codes, ordinances, resolutions, rules or regulations as such are in existence as of the date of this Agreement or are promulgated as required by this Agreement.

B. Special Requirements. In addition to any other costs, payments, fees, charges, contributions or dedications required by this Agreement or by applicable Village codes, ordinances, resolutions, rules or regulations, the Owner shall pay to the Village, immediately upon presentation of a written demand or demands therefor, all reasonable legal, engineering and other consulting fees, costs and expenses incurred or accrued in connection with the review and processing of plans for the development of the Property and in connection with the negotiation, preparation, consideration and review of this Agreement. Payment of all such fees, costs and expenses for which demand has been made, but payment has not been received, by the Village prior to execution of this Agreement shall be made by a certified or cashier's check immediately upon execution of this Agreement by the Village.

#### **SECTION 12. PERFORMANCE SECURITY.**

A. Performance and Payment Security; Cash Bond.

i. Performance and Payment Letter of Credit or Bonds. As security to the Village for the performance by the Owner of the Owner's obligations to construct and complete the Property Improvements pursuant to and in accordance with this Agreement, the Owner shall deposit with the Village one of the following:

- a. a performance and payment letter of credit ("**Performance and Payment Letter of Credit**") in a total amount equal to 110% of the estimate of the costs of construction and completion of the Project Improvements as determined by the Village Engineer ("**Approved Cost Estimate**"), plus 15% of the estimated costs of constructing and completing the Structural Improvements. Owner may deliver separate Performance and Payment Letters of Credit for each of the Public Improvements, the Private Improvements, and the Structural Improvements; or
- b. a performance bond and a payment bond ("**Performance Bond**" and "**Payment Bond**," respectively), each in an amount equal to 110% of the total amount of the bid or bids accepted by the Owner and confirmed by the Village Engineer for the construction and completion of the Project Improvements ("**Approved Bid Amount**"), plus 110% of the estimated costs of constructing and completing the Structural Improvements. Owner may deliver separate Performance Bond and Payment Bonds for each of the Public Improvements, the Private Improvements, and the Structural Improvements. (The letter of credit or bonds referenced in this Subsection 12.A.i shall be referred to from time-to-time as the "**Performance and Payment Security**").

ii. Cash Deposit. In addition to the Performance and Payment Security, and as security to the Village for the performance by the Owner of the Owner's obligations (1) to pay all Village fees, costs, and expenses due from the Owner pursuant to this Agreement, (2) to maintain and repair streets, sidewalks, and other public property pursuant to this Agreement, (3) to restore property pursuant to Section 8J of this Agreement, and (4) to otherwise faithfully perform its undertakings pursuant to this Agreement except for the construction and completion of the Property Improvements, the Owner shall deposit with the Village Manager cash ("**Cash Deposit**") in the amount of 20% of the Approved Cost Estimate or the Approved Bid Amount, whichever is applicable; provided, however, that if the Owner deposits a Performance and Payment Letter of Credit pursuant to Section 12Ai of this Agreement, the Owner may satisfy 50% of the required Cash Deposit with an additional letter of credit and the remaining 50% of the required Cash Deposit with a Cash Deposit.

iii. Maintenance of Security. The deposit of the Performance and Payment Security and the Cash Deposit shall be a condition precedent to the effectiveness of the Village approval of the Final Plat. At any time after satisfactory completion of 50 percent of the Project Improvements, as determined by the Village Engineer, the President and Village Board of the Village may reduce the amount of the required Cash Deposit in their sole and absolute discretion; provided, however, that the Cash Deposit shall not be reduced to an amount less than 10% of the Approved Cost Estimate or the Approved Bid Amount, whichever is applicable. The Performance and Payment Security and the Cash Deposit shall be maintained and renewed by the Owner, and shall be held in escrow by the Village, until approval and acceptance, where appropriate, of all the Project Improvements by the Village pursuant to Section 8 of this Agreement and until the posting of the Guaranty Letter of Credit required by Section 12B below. After the acceptance and posting of the Guaranty Letter of Credit, the Village shall release the Performance and Payment Security and any amounts remaining in the Cash Deposit.

B. Guaranty Letter of Credit. As a condition of the Village's approval and acceptance, where appropriate, of any or all of the Project Improvements pursuant to Section 8 of this Agreement, the Owner shall post a letter of credit in the amount of 20% of the actual total cost of the Project Improvements (as certified by the Owner's engineer and approved by the Village Engineer) as security for the performance of the Owner's obligations under this Agreement

("Guaranty Letter of Credit"). The Guaranty Letter of Credit shall be held by the Village in escrow until the end of the one-year guaranty period set forth in Section 8H of this Agreement or until one year after the proper correction of any defect of deficiency in the Project Improvements pursuant to Section 8H and payment thereof, whichever occurs later; provided, however, that the Guaranty Letter of Credit shall be maintained for a period of two years for all landscaping and tree Public Improvements, beginning from the date of final acceptance by the Village. If the Village is required to draw on the Guaranty Letter of Credit by reason of the Owner's failure to fulfill its obligations under this Agreement, then the Owner, within 30 days thereafter, shall cause the Guaranty Letter of Credit to be increased to its full original amount.

C. Interests and Costs. The Owner shall not be entitled to interest on the Cash Deposit. The Owner shall bear the full cost of securing and manufacturing the Performance and Payment Security and the Guaranty Letter of Credit.

D. Form of Bond, Letters of Credit. The Performance and Payment Security and the Guaranty Letter of Credit each shall be in a form satisfactory to the Village Attorney.

- i. Performance Bond and Payment Bond. The Performance Bond and the Payment Bond each shall be in substantially the form attached to this Agreement as **Exhibit N-1** and shall be from a surety company acceptable to the Village and licensed to do business in the State of Illinois. The penal sum of the Performance Bond and the Payment Bond shall not be reduced by reason of any Property Improvement work satisfactorily completed and shall include attorney's fees, court costs, and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of the surety under the Performance Bond and the Payment Bond. No changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of either the Village or the Owner to the other in or to the terms of this Agreement; in or to the schedules, plans, drawings, or specifications for the Property Improvements; in or to the method or manner of performance of the Property Improvement work; or in or to the mode or manner of payment therefor, shall operate in any way to release the Owner or the surety or affect the obligation of either of them under the Performance Bond and the Payment Bond and all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances, and all notice of any and all defaults by the Owner, shall be waived by the surety under the Performance Bond and the Payment Bond.
- ii. Letter of Credit. Each letter of credit, whether the Performance and Payment Letter of Credit, the letter of credit permitted pursuant to Section 12Aii, or the Guaranty Letter of Credit, shall be in substantially the form attached to this Agreement as **Exhibit N-2** and shall be from a bank acceptable to the Village and having capital resources of at least \$50,000,000, with an office in the Chicago Metropolitan Area and insured by the Federal Deposit Insurance Corporation. Each letter of credit shall, at a minimum, provide that (a) it shall expire no earlier than the later of one year following the date of its issuance or 75 days after delivery to the Village, in the manner provided in Section 17 of this Agreement, of written notice that the letter of credit will expire, (b) it may be drawn on based upon the Village Manager's certification that the Owner has failed to fulfill any of the obligations for which the letter of credit is security, as stated in Sections 12A and 12B above as well as for the reasons stated in the final sentence of Section 12E below, (c) it shall not require the

consent of the Owner prior to any draw on it by the Village, (d) it shall not be canceled without the prior written consent of the Village, and (e) if at any time it will expire within 75 or any lesser number of days, and if it has not been renewed, and if any obligation of the Owner for which it is security remains uncompleted or unsatisfactory, then the Village may, without notice and without being required to take any further action of any nature whatsoever, call and draw down the letter of credit and thereafter either hold all proceeds as security for the satisfactory completion of all obligations or employ the proceeds to complete all obligations and to reimburse the Village for any and all costs and expenses, including legal fees and administrative costs, incurred by the Village, as the Village shall determine. Upon completion of the Owner's obligations to construct and complete the Property Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Owner any proceeds remaining on deposit with the Village drawn from the letter of credit.

The Performance and Payment Letter of Credit may provide that the aggregate amount of the letter of credit may be reduced upon joint written direction by the Owner and the Village to reimburse the Owner for payment of Project Improvement work satisfactorily completed. No reduction to reimburse the Owner for payment of Project Improvement work satisfactorily completed shall be allowed except upon presentation by the Owner of proper contractors' sworn statements, partial or final waivers of lien, as may be appropriate, and all additional documentation as the Village may reasonably request to demonstrate satisfactory completion of the Project Improvement in question and full payment of all contractors, subcontractors, and material suppliers.

The Guaranty Letter of Credit shall not be reduced by reason of any cost incurred by the Owner to satisfy its obligations under Sections 10 or 11 of this Agreement.

E. Replenishment of Security. If at any time the Village determines that the funds remaining in the Cash Deposit and the Performance and Payment Security are not sufficient to pay in full (i) the remaining unpaid cost of all Project Improvements, (ii) the costs of demolition or making safe of any Structural Improvements that are in violation of the Requirements of Law or that are incomplete or abandoned so as to create any hazard to the public health, safety, or welfare, and (iii) all unpaid or reasonably anticipated Village fees, costs, and expenses, or that the funds remaining in the Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the Project Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, then, within 30 days after a demand by the Village, the Owner shall increase the amount of the Cash Deposit or the appropriate bond or letter of credit to an amount determined by the Village to be sufficient to pay unpaid fees, costs, and expenses. Failure to so increase the amount of the security shall be grounds for the Village to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the appropriate bond or letter of credit. Upon completion of the Owner's obligations to construct and complete the Project Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Owner any remaining Cash Deposit and any proceeds remaining on deposit with the Village from any bond or letter of credit.

F. Replacement Bond, Letters of Credit. If at any time the Village determines that the surety company issuing the Performance and Payment Bonds is not licensed to do business in the State of Illinois, or the bank issuing either the Performance and Payment Letter of Credit or the Guaranty Letter of Credit is without capital resources of at least \$50,000,000, or if at any time the Village determines that the surety company or bank is unable to meet any federal or state requirement for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable or unwilling to honor the bond or letter of credit at any time during its term, or if the Village otherwise reasonably deems itself to be insecure, then the Village shall have the right to demand that the Owner provide a replacement bond or letter of credit, as the case may be, from a surety company or bank meeting the requirements set forth in this Agreement.

The replacement bond or letter of credit shall be deposited with the Village not later than 30 days after a demand. Upon deposit, the Village shall surrender the original bond or letter of credit to the Owner. Failure to provide a replacement bond or letter of credit shall be grounds for the Village to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the appropriate bond or letter of credit.

The proceeds received or drawn down by the Village from any bond or letter of credit pursuant to this Subsection 12F shall be held by the Village as part of, and subject to the provisions of this Agreement relating to, the Cash Deposit. The Owner: (1) agrees that the proceeds received or drawn down by the Village from any bond or letter of credit are received as additional security for the performance by the Owner of each and every obligation of the Owner pursuant to this Agreement, including without limitation the construction and completion of the Improvements; (2) waives the benefit of, and all right to assert any claims pursuant to or under, Section 3 of the Public Construction Bond Act, 30 ILCS 550/3; and (3) releases the Village from, agrees that the Village shall not be liable for, and agrees to indemnify and hold the Village harmless from, any claims, litigation, and liability asserted by or behalf of the Owner or Developer that are occasioned by, connected with, or in any way attributable to any failure to comply with the requirements of Section 3 of the Public Construction Bond Act, 30 ILCS 550/3. Within ten days of the receipt of written request from the Village, the Owner shall file with the Village an enforceable written agreement, in form and substance satisfactory to the Village Attorney, reaffirming the above.

G. Use of Funds in the Event of Breach of Agreement. If the Owner fails or refuses to complete the Project Improvements in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Project Improvements as required by Section 8H of this Agreement, or fails or refuses to restore property in accordance with a demand made pursuant to Section 8J of this Agreement, or fails or refuses to pay immediately any amount demanded by the Village pursuant to Section 11 of this Agreement, or in any other manner fails or refuses to meet fully any of its obligations under this Agreement, then the Village in its discretion, may retain all or any part of the Cash Deposit and/or initiate a claim against, or draw on, as the case may be, and retain all or any of the funds remaining in the appropriate bond or letter of credit. The Village thereafter shall have the right to exercise its rights under Subsections 8H and 8J of this Agreement, to take any other action it deems reasonable and appropriate to mitigate the effects of any failure or refusal, and to reimburse itself from the proceeds of the Cash Deposit and/or the appropriate bond or letter of credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Owner's failure or refusal to fully meet its obligations under this Agreement. If the funds remaining in the Cash Deposit and/or the appropriate bond or letter of credit are insufficient to repay fully the Village for all costs and expenses, and to maintain a cash reserve equal to the required Guaranty Letter of Credit during the entire time such Guaranty Letter of Credit should have been maintained by the Owner, then the Owner shall upon demand of the Village therefor immediately deposit with the Village any additional funds as the Village determines are necessary to fully repay such costs and expenses

and to establish such cash reserve. In the event that any surplus funds remain after the Village has reimbursed itself from the proceeds of the Cash Deposit and/or the appropriate bond or letter of credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Owner's failure or refusal to fully meet its obligations under this Agreement, then the Village shall pay such surplus to the Owner.

H. Village Lien Rights. If any money, property, or other consideration due from the Owner to the Village pursuant to this Agreement is not either recovered from the performance security deposits required in this Section 12 or paid or conveyed to the Village by the Owner within 30 days after a demand for payment or conveyance, then the money, or the Village's reasonable estimate of the value of the property or other consideration, together with interest and costs of collection, including legal fees and administrative expenses, shall become a lien upon all portions of the Property in which the Owner retains any legal, equitable, or contractual interest, and the Village shall have the right to collect the amount or value, with interest and costs, including legal fees and administrative expenses, and the right to enforce the lien in the same manner as in statutory mortgage foreclosure proceedings. In the event, but only in the event, of a sale or transfer of the Property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, such lien shall be subordinate to any first mortgage whether now or hereafter placed upon the Property. Any other sale or transfer shall not relieve the Property from liability for any charges hereafter becoming due, nor from the lien of any charge, except as otherwise provided by law.

### **SECTION 13. LIABILITY AND INDEMNITY OF VILLAGE.**

A. Village Review. The Owner acknowledges and agrees that the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Property or the Property Improvements, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Property or the Property Improvements, and that the Village's review and approval of any such plans and the Property Improvements and issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Owner, or any of its heirs, successors, assigns, tenants, and licensees, or any third party, against damage or injury of any kind at any time.

B. Village Procedure. The Owner acknowledges and agrees that all notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agrees not to challenge such approval on the grounds of any procedural infirmity or of any denial of any procedural right.

C. Indemnity. The Owner agrees to, and does hereby, hold harmless and indemnify the Village, the Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with (i) the Village's review and approval of any plans for the Property or the Property Improvements; (ii) the issuance of any approval, permit, certificate, or acceptance for the Property or the Property Improvements; (iii) the development, construction, maintenance, or use of any portion of the Property or the Property Improvements by the Owner; (iv) the collection and distribution of amounts paid by the Owner pursuant to Section 10 of this Agreement; and (v) the performance by Owner of its obligations under this Agreement.

D. Defense Expense. The Owner shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced in Subsection 13.C of this Agreement.

#### **SECTION 14. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.**

All obligations assumed by the Owner under this Agreement shall be binding upon the Owner personally, upon any and all of the Owner's heirs, successors and assigns, and upon any and all of the respective successor legal or beneficial owners of all or any portion of the Property. To assure that all such heirs, successors, assigns and successor owners have notice of this Agreement and the obligations created by it, the Owner shall:

- i. Deposit with the Village Clerk, contemporaneously with the Village's approval of this Agreement, any consents or other documents necessary to authorize the Village to record this Agreement with the Lake County Recorder of Deeds; and
- ii. Notify the Village in writing when the Owner transfers a legal or beneficial interest in any portion of the Property to any party not a party to this Agreement; and
- iii. Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into for the sale of all or any portion of the Property to any party not a party to this Agreement; and
- iv. Require, prior to the transfer of all or any portion of the Property, or any legal or equitable interest therein to any party not a party to this Agreement, the transferee of said portion of the Property to execute an enforceable written agreement, in substantially the form attached as **Exhibit O** to this Agreement, agreeing to be bound by the provisions of this Agreement ("**Transferee Assumption Agreement**"), and to provide the Village, upon request, with such reasonable assurance of the financial ability of such transferee to meet those obligations as the Village may require;

provided, however, that the requirements stated in the three preceding clauses shall not apply to any contract for, or transfer of, an individual lot, unit, or building or group of lots, units, or buildings for which all Improvements have been completed and approved and, where appropriate, accepted pursuant to this Agreement. The Village agrees that upon a successor becoming bound to the personal obligation created in the manner provided in this Agreement and providing the financial assurances required herein, the personal liability of the applicable Owner shall be released to the extent of the transferee's assumption of such liability. The failure of the Owner to provide the Village with a fully executed copy of a Transferee Assumption Agreement and, if requested by the Village, with the transferee's proposed assurances of financial capability before completing any such transfer shall result in the Owner remaining fully liable for all of the Owner's obligations under this Agreement but shall not relieve the transferee of its liability for all such obligations as a successor to the Owner.

#### **SECTION 15. TERM.**

This Agreement shall be effective from its effective date for 20 years, or for the longest term allowed under Section 11-15.1-5 of the Illinois Municipal Code, 65 ILCS 11-15.1-5, or its successor statute. During the term of this Agreement, Owner shall not seek disconnection of the Property except upon the written consent of the Village's corporate authorities.

#### **SECTION 16. ENFORCEMENT.**

The parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce, or compel the performance of this Agreement; provided, however, that the Owner agrees that he will not seek,

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and does not have the right to seek, to recover a judgment for monetary damages against the Village or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation or execution of any of the terms and conditions of this Agreement. Notwithstanding the preceding sentence, in the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any and all buildings, structures, or other Structural Improvements within the Property at any time when the Owner has failed or refused to meet fully any of its obligations under this Agreement.

In the event of a material breach of this Agreement, and so long as public health and safety are not jeopardized, the parties to this Agreement agree that any party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching Party's seeking any remedy (provided, however, that said thirty (30) day period shall be extended up to a total of sixty (60) days if the default cannot be cured within said thirty (30) day period and the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same).

#### **SECTION 17. GENERAL PROVISIONS.**

A. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to Village shall be addressed to, and delivered at, the following address:

David A. Lothspeich  
Village Manager  
Village of Long Grove  
3110 RFD  
Long Grove, Illinois 60047  
Email: dlothspeich@longgrove.net

With a copy to:

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Victor P. Filippini, Jr.  
Filippini Law Firm, LLP  
990 Grove Street, Suite 220  
Evanston, Illinois 60201  
Email: victor.filippini@filippinilawfirm.com

Notices and communications to the Owner shall be addressed to, and delivered at, the following address:

Hawks Pointe, LLC  
Attn: Michael Demar

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

Deborah Haddad  
O'Donnell & Haddad, LLC  
14044 W. Petronella Drive, Suite 1  
Libertyville, IL 60048  
Email: \_\_\_\_\_

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. Non-Waiver. No party to this Agreement shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure by any party to this Agreement to exercise at any time any such right shall not be deemed or construed to be a waiver thereof, nor shall such failure void or affect such party's right to enforce such right or any other right. No action taken by any party hereto to enforce this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or in equity.

E. Consents. Whenever the consent or approval of any party hereto is required in this Agreement such consent or approval shall be in writing and shall not be unreasonably withheld or delayed, and, in all matters contained herein, all parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise. When any consent by the Developer is required or provided for herein, such reference shall mean the consent of the Developer, its successors, or its assignees of multiple residential lots when such lots represent all the remaining lots of the Developer ("**Developer Assignee**"), and after the Developer, its successors and Developer Assignees no longer own any of the Property or Contiguous Property, it shall mean the association of homeowners within the Property or Contiguous Property.

F. Governing Law. This Agreement shall be governed by, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

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G. Severability. It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

I. Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

J. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

K. Headings. The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

L. Exhibits. Exhibits A through O attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

M. Amendments and Modifications. No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

N. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law shall be deemed to include any modifications of, or amendments to federal and state laws, statutes, codes, rules and regulations. All laws, codes, ordinances, resolutions, rules and regulations of the Village in effect as of the date hereof shall continue in effect, insofar as they relate to the development of the Property, during the entire term of this Agreement, except as otherwise expressly provided herein and except to the extent of amendments mandated by State or Federal requirements. Notwithstanding the foregoing, the Developer may waive, in writing, the application of the preceding sentence to a specific amendment of a Village law, code, ordinance, resolution, rule or regulation, without waiving any rights as to any other or subsequent amendments. To the extent of any conflict, ambiguity, or inconsistency between the terms, provisions or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, contained in the Zoning Code, Subdivision Ordinance or any other Village law, code, ordinance, resolution, rule or regulation, the terms, provisions and standards of this Agreement shall govern and control.

O. Authority to Execute. The Village hereby warrants and represents to the Owner that the persons executing this Agreement on its behalf have been properly authorized to do so by the

Corporate Authorities. The Owner hereby warrants and represents to the Village (i) that it is or will, concurrent with the annexation of the Property to the Village, become the record and beneficial owner of fee simple title to the Property, (ii) that no other person or entity has any legal, beneficial, contractual or security interest in the Property except for the holder of a first mortgage thereon; (iii) that it has the full and complete right, power and authority to enter into this Agreement and to agree to the terms, provisions and conditions set forth in and to bind the Property as set forth in this Agreement, (iv) that all legal actions needed to authorize the execution, delivery and performance of this Agreement have been taken, and (v) that neither the execution of this Agreement nor the performance of the obligations assumed by the Owner will (a) result in a breach or default under any agreement to which the Owner is a party or to which it or the Property is bound or (b) violate any statute, law, restriction, court order or agreement to which the Owner or the Property are subject.

P. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

Q. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against the Village or the Owner.

R. Covenant Of Cooperation. The parties to this Agreement shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the Village of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement and the intentions of the parties as reflected by said terms.

S. Nullification of Agreement. This Agreement, in its entirety, together with the related petitions for annexation, rezoning and planned unit development, and any approvals granted to date, in the discretion of the Developer, shall be null and void, and of no force and effect unless within thirty (30) days from the execution of this Agreement the Property is annexed in its entirety, the Property and Contiguous Property are zoned in accordance herewith, the PUD Ordinance is adopted and the Preliminary Subdivision Plat is approved.

***[Signature page to follow.]***





## Table of Exhibits

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EXHIBIT A  
LEGAL DESCRIPTION

Legal Description of the Property

Legal Description of the Contiguous Property

Legal Description of Development Property

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING THEREFROM THE SOUTH 591.07 FEET OF THE NORTH 901.30 FEET OF THE EAST 368.48 FEET THEREOF), IN LAKE COUNTY, ILLINOIS.

PINs: 14-36-300-003, 14-36-300-038 and 14-36-300-039.

**EXHIBIT B**  
**PROPOSED SITE PLAN**

{LG\_Annexation Agreement template}

EXHIBIT C  
ANNEXATION PLAT

{LG\_Annexation Agreement template}

EXHIBIT D

PROPERTY IMPROVEMENTS

*[SEPARATE INTO VARIOUS TYPES OF IMPROVEMENTS]*

EXHIBIT E  
ANNEXATION ORDINANCE

{LG\_Annexation Agreement template}

EXHIBIT F  
ZONING MAP AMENDMENT ORDINANCE

{LG\_Annexation Agreement template}

EXHIBIT G  
PUD ORDINANCE

{LG\_Annexation Agreement template}

**EXHIBIT H**  
**TEXT AMENDMENT ORDINANCE**

{LG\_Annexation Agreement template}

EXHIBIT I  
PRELIMINARY SUBDIVISION PLAT

{LG\_Annexation Agreement template}

EXHIBIT J

SUBDIVISION ORDINANCE

EXHIBIT K  
RESOLUTION APPROVING PLAT

{LG\_Annexation Agreement template}

EXHIBIT L  
TITLE ENCUMBRANCES

EXHIBIT M  
SEWER RECAPTURE AGREEMENT

{LG\_Annexation Agreement template}

EXHIBIT N-1

FORM OF PAYMENT BOND AND PERFORMANCE BOND  
THE VILLAGE OF LONG GROVE

**SUBDIVISION PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** that [Owner], [Address], as Principal, hereinafter called Contractor, and **[FULL NAME AND ADDRESS OF SURETY]**, as Surety, a corporation organized and existing under the laws of the State of **[INCORPORATION]**, hereinafter called Surety, are held and firmly bound unto The Village of Long Grove, [Address], Long Grove, Illinois 60045, as Obligee, hereinafter called the Village, in the full and just sum of **[REQUIRED AMOUNT]** Dollars (**[\$REQUIRED AMOUNT]**), for the payment of which sum of money well and truly to be made, Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents, said amount to include payment of actual costs and damages and for attorneys' fees, architectural fees, design fees, engineering fees, accounting fees, testing fees, consulting fees, administrative costs, court costs, interest, and any other fees and expenses resulting from or incurred by reason of Contractor's failure to promptly and faithfully perform its contract with Village, said contract being more fully described below, and to include attorneys' fees, court costs, and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

**WHEREAS**, Contractor has entered into a written agreement dated **[DATE OF AGREEMENT]**, with Village entitled "Annexation, Subdivision, and Development Agreement for [Name of Development] ("**Contract**")", by and pursuant to which Contractor has the obligation to construct and install certain improvements for the development of the [Name of Development] Subdivision ("**Property**"), the terms and conditions of which Contract are by this reference incorporated herein as though fully set forth herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT** if Contractor shall well, truly, and promptly perform all the undertakings, covenants, terms, conditions and agreements of said Contractor under the Contract relating to the construction of the **[Property Improvements][Structural Improvements]** described therein, including, but not limited to, Contractor's obligations under the Contract: (1) to provide, perform and complete at the Property and in the manner specified in the Contract all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data, and other means and items necessary for the construction, installation, and completion of the **[Property Improvements][Structural Improvements]** required in the Contract; (2) to procure and furnish all permits, licenses, and other governmental approvals and authorizations necessary in connection therewith; (3) to pay all applicable federal, state, and local taxes; (4) to do all other things required of Contractor by the Contract; and (5) to provide, perform, and complete all of the foregoing in a proper and workmanlike manner and in full compliance with, and as required by and pursuant to, the Contract; all of which is herein referred to as the "**Work**," whether or not any of said Work enter into and become component parts of the improvement contemplated, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of either Village or Contractor to the other in or to the terms of said Contract; in or to the schedules,

{LG\_Annexation Agreement template}

plans, drawings, or specifications; in or to the method or manner of performance of the Work; in or to the mode or manner of payment therefor; or in or to Village-furnished facilities, equipment, material, service, or sites; shall in any way release Contractor and Surety or either or any of them, or any of their heirs, executors, administrators, successors, or assigns or affect the obligations of Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances, and notice of any and all defaults by Contractor being hereby waived by Surety.

Notwithstanding anything to the contrary in the foregoing paragraph, in no event shall the obligations of Surety under this bond in the event of Contractor's default be greater than the obligations of Contractor under the Contract in the absence of such Contractor default.

In the event of a default or defaults by Contractor, Village shall have the right to take over and complete the Contract upon 30 calendar days' written notice to Surety, in which event Surety shall pay Village all costs incurred by Village in taking over and completing the Contract.

At its option, Village may instead request that Surety take over and complete the Contract, in which event Surety shall take reasonable steps to proceed promptly with completion no later than 30 calendar days from the date on which Village notifies Surety that Village wants Surety to take over and complete the Contract.

Village shall have no obligation to actually incur any expense or correct any deficient performance of Contractor in order to be entitled to receive the proceeds of this bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Village or the heirs, executors, administrators, or successors of Village.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest/Witness:

PRINCIPAL: [Owner]

By: \_\_\_\_\_  
[NAME OF CONTRACTOR'S  
EXECUTING OFFICER]

By: \_\_\_\_\_

Title: \_\_\_\_\_  
EXECUTING OFFICER]

Title: [TITLE OF CONTRACTOR'S

Attest/Witness:

SURETY: [NAME OF SURETY]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

**THE VILLAGE OF LONG GROVE**  
**SUBDIVISION LABOR AND MATERIAL PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** that [Owner], [Address], as Principal, hereinafter called Contractor, and [FULL NAME AND ADDRESS OF SURETY], as Surety, a corporation organized and existing under the laws of the State of [INCORPORATION], hereinafter called Surety, are held and firmly bound unto The Village of Long Grove, [Address], Long Grove, Illinois 60045, as Obligee, hereinafter called the Village, for the use and benefit of itself and of claimants as hereinafter defined, in the full and just sum of [REQUIRED AMOUNT] Dollars (\$[REQUIRED AMOUNT]), to be paid to it or the said claimants or its or their assigns, to which payment well and truly to be made Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents, said amount to include attorney's fees, court costs and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

**WHEREAS,** Contractor has entered into a written agreement dated [DATE OF AGREEMENT], with Village entitled "Annexation, Subdivision, and Development Agreement for [Name of Development] ("**Contract**")", by and pursuant to which Contractor has the obligation to construct and install certain improvements for the development of [Name of Development] Subdivision ("**Property**"), the terms and conditions of which Contract are by this reference incorporated herein as though fully set forth herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT** if Contractor shall promptly pay or cause to be paid all sums of money that may be due to any claimant with respect to Contractor's obligations under the Contract: (1) to provide, perform and complete at the Property and in the manner specified in the Contract all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data, and other means and items necessary for the construction, installation, and completion of the [Property Improvements][Structural Improvements] required in the Contract; (2) to procure and furnish all permits, licenses, and other governmental approvals, and authorizations necessary in connection therewith; (3) to pay all applicable federal, state, and local taxes; (4) to do all other things required of Contractor by the Contract; and (5) to provide, perform, and complete all of the foregoing in a proper and workmanlike manner and in full compliance with, and as required by and pursuant to, the Contract; all of which is herein referred to as the "**Work**," whether or not any of said Work enter into and become component parts of the improvement contemplated, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

For purpose of this bond, a claimant is defined as one having a direct contract with Contractor or with a subcontractor of Contractor to provide, perform, or complete any part of the Work.

Contractor and Surety hereby jointly and severally agree that every claimant who has not had all just claims for the furnishing of any part of the Work paid in full, including, without limitation, all claims for amounts due for materials, lubricants, oil, gasoline, rentals of or service or repairs on machinery, equipment, and tools consumed or used in connection with the furnishing of any part of the Work, may sue on this bond for the use of such claimant, may prosecute the suit to final judgment for such sum or sums as may be justly due such claimant, and may have execution therein; provided, however, that Village shall not be liable for the payment of any costs or

expenses of any such suit. To the extent applicable, the provisions of 30 ILCS 550/1 and 30 ILCS 550/2 shall be deemed inserted herein, including the time limits within which notices of claim must be filed and actions brought under this bond.

Contractor and Surety hereby jointly agree that Village may sue on this bond if Village is held liable to, or voluntarily agrees to pay, any claimant directly, but nothing in this bond shall create any duty on the part of Village to pay any claimant.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of Village or Contractor to the other in or to the terms of said Contract; in or to the schedules, plans, drawings, or specifications; in or to the method or manner of performance of the Work; in or to Village-furnished facilities, equipment, material, service, or site; or in or to the mode or manner of payment therefor shall in any way release Contractor and Surety or either or any of them, or any of their heirs, executors, administrators, successors, or assigns, or affect the obligations of said Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances and notice of any and all defaults by Contractor or of Village's termination of Contractor being hereby waived by Surety.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest/Witness:

PRINCIPAL: [Owner]

By: \_\_\_\_\_  
**[NAME OF CONTRACTOR'S  
EXECUTING OFFICER]**

By: \_\_\_\_\_

Title: \_\_\_\_\_  
**EXECUTING OFFICER]**

Title: **[TITLE OF CONTRACTOR'S**

Attest/Witness:

SURETY: **[NAME OF SURETY]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

EXHIBIT N-2

FORM OF IRREVOCABLE LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ AMOUNT: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_ DATE OF ISSUE: \_\_\_\_\_

\_\_\_\_\_  
[Name of Bank]

\_\_\_\_\_  
[Address]

TO: The Village of Long Grove

[Address]

Long Grove, Illinois 60045

Attention: Village Manager

WE HEREBY AUTHORIZE YOU TO DRAW AT SIGHT on the \_\_\_\_\_

AMOUNT OF \_\_\_\_\_ UP TO AN AGGREGATE  
(\$ \_\_\_\_\_) for \_\_\_\_\_ United States Dollars  
account of

\_\_\_\_\_  
("Customer").

Drafts under this Letter of Credit shall bear upon their face the words:

Drawn under

Credit No. \_\_\_\_\_ Dated: \_\_\_\_\_

and shall be in the form attached hereto as Exhibit "A" and shall be accompanied by one of the following documents executed by the Village Manager, an individual designated as acting Village Manager, or the Assistant Village Manager:

(a) A written statement on the form attached hereto as Exhibit "B" stating that, conditioned upon proper notice to the Long Grove Village Manager, Letter of Credit No. \_\_\_\_\_ will expire within 75 days or less and that the Customer has failed to deliver to the Long Grove Village Manager evidence of a renewal of Letter of Credit No. \_\_\_\_\_; or

(b) A written statement on the form attached hereto as Exhibit "C" stating that all or any part of the Property Improvements required to be constructed pursuant to Section 8 of the Annexation, Subdivision, and Development Agreement for [Name of Development], dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner] ("**Subdivision Agreement**") have not been constructed in accordance with the Subdivision Agreement; or

(c) A written statement on the form attached hereto as Exhibit "D" stating that all or any part of the costs, payments, permit fees or other fees required to be paid to the Village pursuant to the Subdivision Agreement have not been paid in accordance with the Subdivision Agreement; or

(d) A written statement on the form attached hereto as Exhibit "E" stating that all or any portion of the maintenance, repair, or restoration required to be performed pursuant to Section 8 of the Subdivision Agreement has not been performed in accordance with the Subdivision Agreement; or

(e) A written statement on the form attached hereto as Exhibit "F" stating that the funds remaining in this Letter of Credit are insufficient to pay in full (i) the remaining unpaid

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cost of all improvements required to be performed pursuant to Section 8 of the Subdivision Agreement, (ii) the costs of demolition or making safe of any buildings and structures identified in Exhibit C of the Subdivision Agreement that are in violation of any applicable federal, state, county, local governmental, or Village law, statute, code, ordinance, resolution, rule, or regulation, or that are incomplete or abandoned so as to create any hazard to the public health, safety, or welfare, and (iii) all unpaid Village fees, costs, and expenses incurred or to be incurred, and that, within thirty days of demand by the Village, the Customer has failed to increase the amount of this Letter of Credit to an amount reasonably determined by the Village to be sufficient to pay such unpaid fees, costs and expenses; or

(f) A written statement on the form attached hereto as Exhibit "G" stating that the funds remaining in the Guaranty Letter of Credit which the Customer is required to deposit with the Village pursuant to Section 12B of the Subdivision Agreement are not reasonably sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the improvements required to be performed pursuant to Section 8 of the Subdivision Agreement and all related unpaid Village fees, costs, and expenses incurred or to be incurred, and that, within thirty days of demand by the Village, the Customer has failed to increase the amount of the Guaranty Letter of Credit to an amount reasonably determined by the Village to be sufficient to pay such unpaid fees, costs and expenses; or

(g) A written statement on the form attached hereto as Exhibit "H" stating that the Village has demanded, and the Customer has failed to provide, a replacement to this Letter of Credit as required pursuant to Section 12F of the Subdivision Agreement; or

(h) A written statement on the form attached hereto as Exhibit "I" stating that all or any portion of the Customer's undertakings pursuant to the Subdivision Agreement have not been performed in accordance with the Subdivision Agreement.

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS LETTER OF CREDIT, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 500" (THE "UNIFORM RULES"). IN THE EVENT OF A CONFLICT BETWEEN THIS LETTER OF CREDIT AND THE UNIFORM RULES, THIS LETTER OF CREDIT SHALL CONTROL.

WE HEREBY AGREE with the drawers of drafts drawn under and in compliance with the terms of this Letter of Credit, that:

1. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored immediately upon presentation to the drawees if presented on or before the above-stated Expiration Date or presented at our office together with the original of this Letter of Credit on or before that date.

2. The amount of any draft drawn under this Letter of Credit must be endorsed on the reverse hereof by our bank.

3. If, within three days after any draft drawn under this Letter of Credit is presented to us in conformance with the terms of this Letter of Credit, we fail to honor same, we agree to pay all attorneys' fees, court costs and other expenses incurred by the Village of Long Grove in enforcing the terms hereof.

4. This Letter of Credit shall expire on \_\_\_\_\_, 20\_\_\_\_, as stated hereinabove; provided, however, that we shall notify the Long Grove Village Manager by

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certified mail, return receipt requested, at least 75 days, but not more than 90 days, prior to said expiration date, that this Letter of Credit is about to expire.

5. In no event shall this Letter of Credit or the obligations contained herein expire except upon the prior written notice required herein, it being expressly agreed that the above expiration date shall be extended as shall be required to comply with the prior written notice required herein.

6. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or required prior to honoring any draft presented in conformance with the terms of this Letter of Credit.

7. The aggregate amount of this Letter of Credit may be reduced only upon receipt by us of a document executed by the Long Grove Village Manager stating that such aggregate amount shall be reduced in an amount permitted by the Long Grove Subdivision Ordinance because of the satisfactory completion of all or part of the Property Improvements required to be constructed pursuant to Section 8 of the Subdivision Agreement.

8. This Letter of Credit shall not be canceled without the prior written consent of the Village.

9. If at any time this Letter of Credit will expire within 75 days or less, and if it has not been renewed, and if any obligation of the Customer for which it is security remains uncompleted or unsatisfactory, then the Village may, without notice and without being required to take any further action of any nature whatsoever, call and draw down this Letter of Credit and thereafter either hold all proceeds as security for the satisfactory completion of all obligations or employ the proceeds to complete all obligations and to reimburse the Village for any and all costs and expenses, including reasonable legal fees and administrative costs, incurred by the Village, as the Village shall determine.

10. This Letter of Credit is irrevocable.

\_\_\_\_\_  
[Signature of Bank Officer]

\_\_\_\_\_  
[Signature of Bank Officer]

\_\_\_\_\_  
[Officer's Title]

\_\_\_\_\_  
[Officer's Title]

EXHIBIT "A" TO FORM OF IRREVOCABLE LETTER OF CREDIT  
FORM OF DRAFT

[To Be Supplied By Issuing Bank]

{LG\_Annexation Agreement template}

EXHIBIT "B" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that Letter of Credit No. \_\_\_\_\_ dated \_\_\_\_\_ in the amount of \$\_\_\_\_\_ will expire within 75 days or less and that \_\_\_\_\_ has failed to deliver to the Long Grove Village Manager evidence of a renewal of Letter of Credit No. \_\_\_\_\_.

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT "C" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that all or any part of the Improvements required to be constructed pursuant to Section 8 of the Annexation, Subdivision, and Development Agreement for [Name of Development] dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner] have not been constructed in accordance with said agreement.

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT "D" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that all or any part of the costs, payments, permit fees, or other fees required to be paid pursuant to the Annexation, Subdivision, and Development Agreement for [Name of Development] dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner] have not been paid in accordance with said agreement.

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT "E" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that all or any part of the maintenance, repair, or restoration required to be performed pursuant to the Annexation, Subdivision, and Development Agreement for [Name of Development] dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner] have not been performed in accordance with said agreement.

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT "F" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that the funds remaining in this Letter of Credit are insufficient to pay in full (i) the remaining unpaid cost of all improvements required to be performed pursuant to Section 8 of the Annexation, Subdivision, and Development Agreement for [Name of Development] dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner], (ii) the costs of demolition or making safe of any buildings and structures identified in Exhibit C of the Subdivision Agreement that are in violation of any applicable federal, state, county, local governmental, or Village law, statute, code, ordinance, resolution, rule, or regulation, or that are incomplete or abandoned so as to create any hazard to the public health, safety, or welfare, and (iii) all unpaid Village fees, costs, and expenses incurred or to be incurred, and that, within thirty days of demand by the Village, the Customer (as that term is defined in the above-referenced Letter of Credit) has failed to increase the amount of this Letter of Credit to an amount reasonably determined by the Village to be sufficient to pay such unpaid fees, costs and expenses.

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT "G" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that the funds remaining in the Guaranty Letter of Credit which the Customer (as that term is defined in the above-referenced Letter of Credit) is required to deposit with the Village pursuant to Section 12B of the Annexation, Subdivision, and Development Agreement for [Name of Development] dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner], are not reasonably sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the improvements required to be performed pursuant to Section 8 of the Subdivision Agreement and all related unpaid Village fees, costs, and expenses incurred or to be incurred, and that, within thirty days of demand by the Village, the Customer has failed to increase the amount of the Guaranty Letter of Credit to an amount reasonably determined by the Village to be sufficient to pay such unpaid fees, costs and expenses.

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT "H" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that the Village has demanded, and the Customer (as that term is defined in the above-referenced Letter of Credit) has failed to provide, a replacement to this Letter of Credit as required pursuant to Section 12F of the Annexation, Subdivision, and Development Agreement for [Name of Development] dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner]

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT "I" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:

Attn:

Re: Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

This is to advise you that all or any part of the undertakings of the Customer (as that term is defined in the above-referenced Letter of Credit) pursuant to the Annexation, Subdivision, and Development Agreement for [Name of Development] dated \_\_\_\_\_, 20\_\_ by and between The Village of Long Grove and [Owner] have not been performed in accordance with said agreement.

Very truly yours,

\_\_\_\_\_  
Long Grove Village Manager

EXHIBIT O

TRANSFEREE ASSUMPTION AGREEMENT

THIS AGREEMENT, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by, between and among [OWNER] ("Owner"), [TRANSFEREE] ("Transferee") and the Village of Long Grove, Illinois, an Illinois municipal corporation ("Village"),

**WITNESSETH:**

**WHEREAS**, pursuant to that certain real estate sale contract dated \_\_\_\_\_, 20\_\_, the Transferee agreed to purchase from the Owner certain real property situated in Cook County, Illinois and legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof ("**Property**"); and

**WHEREAS**, following the conveyance of the Property by the Owner, the Transferee will be the legal owner of the Property; and

**WHEREAS**, as a condition to the conveyance of the Property by the Owner, the Owner and the Village require that the Transferee agree to comply with all the terms, requirements, and obligations set forth in that certain Annexation, Subdivision, and Development Agreement, dated as of \_\_\_\_\_, 20\_\_, and recorded in the Office of the Lake County Recorder on \_\_\_\_\_, 20\_\_, as Document No. \_\_\_\_\_, by and between the Village and [Owner], as amended from time to time ("**Agreement**");

**NOW, THEREFORE**, in consideration of the agreement of the Owner to convey the Property to the Transferee and of the Village to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between, and among the Village, the Owner, and the Transferee as follows:

1. **Recitals.** The foregoing recitals are by this reference incorporated herein and made a part hereof as substantive provisions of this Agreement.

2. **Assumption of Obligations.** The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors and Managers, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of Agreement for [Name of Development], including all exhibits and attachments thereto, regardless of whether such terms, requirements and obligations are to be performed and provided by, or are imposed upon, the Owner or the developer of the Property.

3. **Assurances of Financial Ability.** Contemporaneously with the Transferee's execution of this Agreement, the Transferee shall deposit with the Village Manager the performance security required by the Agreement. Upon execution of this Agreement by the Village and deposit with the Village Manager of the required performance security, the Village shall surrender the original performance security to the Owner. In addition, and not in limitation of the foregoing, the Transferee shall, upon the request of the Village, provide the Village with such reasonable assurances of financial ability to meet the obligations assumed hereunder as the Village may, from time to time, require.

4. **Payment of Village Fees and Costs.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Agreement or by applicable Village codes, ordinances, resolutions, rules, or regulations, the Transferee shall pay to the Village, immediately upon presentation of a written demand or demands therefor, all legal, engineering, and other consulting or administrative fees, costs and expenses incurred in connection with the negotiation, preparation, consideration, and review of this Agreement.

5. **Acknowledgment and Release of Transferor.** The Village hereby acknowledges its agreement to the Transferee's assumption of the obligation to comply with the terms, requirements and obligations of the Agreement, including all exhibits and attachments thereto, and the Village hereby releases the Owner from any personal liability for failure to comply with the terms, requirements, and obligations of the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

ATTEST: \_\_\_\_\_ By: VILLAGE OF LONG GROVE  
Village Clerk \_\_\_\_\_ Village President  
ATTEST: [OWNER]  
By: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST: [TRANSFEREE]  
By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
) SS.  
COUNTY OF COOK )

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, the Village President of **THE VILLAGE OF LONG GROVE**, an Illinois  
municipal corporation, and by \_\_\_\_\_, the Village Clerk of said municipal corporation.

\_\_\_\_\_  
Signature of Notary  
SEAL  
My Commission expires:  
\_\_\_\_\_

STATE OF ILLINOIS )  
) SS.  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me on \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_, President of [TRANSFEREE] and \_\_\_\_\_, Secretary of said \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary  
SEAL  
My Commission expires:

\_\_\_\_\_

STATE OF ILLINOIS       )  
) SS.  
COUNTY OF COOK       )

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, President of [OWNER] and \_\_\_\_\_, Secretary of said  
\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary  
SEAL  
My Commission expires:

\_\_\_\_\_