

ANNEXATION, SUBDIVISION, AND DEVELOPMENT AGREEMENT FOR KAREN'S CORNER PLANNED UNIT DEVELOPMENT

THIS AGREEMENT is dated as of the ____ day of _____, 2016, 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, "**Title Holder**") and KC1, Inc., an Illinois corporation ("**Developer**") (collectively, the Title Holder and Developer shall hereinafter be referred to as the "**Owner**").

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.¹

A. The Title Holder is, as of the Effective Date of this Agreement, the owner of record of the Territory.

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

C. The Owner has caused to be filed with the Village Clerk the Annexation Petition, together with the Annexation Plat relating to the Territory.

D. There are no electors residing within the Territory.

E. The Owner desires and proposes to have the Territory 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 Title Holder 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 Territory and Contiguous Property (collectively, the "**Property**") pursuant to the zoning classifications described in Section 4 below. The Owner has filed with the Village an application for re-zoning and planned unit development approval.

G. The Owner has also filed with the Village a Preliminary Subdivision Plat for the Property.

H. Pursuant to notice published in the *Daily Herald* on December 17, 2015 as provided by statute and the Zoning Code, a public hearing was held by the Plan Commission on January 5, 2016, and the Plan Commission recommended preliminary approval of the

¹ 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.

requested zoning and subdivision of the Property on January 5, 2016.

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 was submitted to the Corporate Authorities and, pursuant to notice published in the *Daily Herald* on February 6, 2016, as provided by statute, a public hearing was held thereon by the Corporate Authorities on February 23, 2016.

J. 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.

K. 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.

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

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 Petition": That certain petition, executed by the Title Holder as the owner of the Territory, and dated as of _____, seeking annexation of the Territory 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.

"Common Areas": The Common Areas are as depicted on the Preliminary PUD Plans 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 Checker 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 Corporate Authorities pursuant to Section 5 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 Corporate Authorities pursuant to Section 5 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 shall, for all purposes in this Agreement, supersede any landscaping plans previously submitted for consideration or tentative approvals.

"Final PUD Plans": The final planned unit development plans that receive 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 PUD Plans shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Annexation Agreement and shall, for all purposes in this Annexation Agreement, supersede the Preliminary PUD Plans.

"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 of the Village (also known as the Plan Commission/Zoning Board of Appeals), established by the Village 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 PUD Plans": The preliminary plans for the proposed development of the Property to be approved pursuant to Section 4 of this Agreement, attached to this Agreement as **Exhibit B**, and listed below:

- a. That certain site plan of the Property prepared by the aforesaid IG Consulting, Inc., consisting of one (1) sheet, with latest revision date of _____.

b. ***[Identify all preliminary PUD plans]***

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

"Property": The Contiguous Property and the Territory.

"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 as provided in Section 8 of this Agreement. The Property Improvements shall be comprised of:

- a. **"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 PUD Plans or provided in the Final PUD Ordinance (as defined in Section 5 below) as being dedicated to the public;
- b. **"Private Improvements"**: being those Property Improvements (other than Public Improvements and Structural Improvements) that are required to be constructed, installed, or placed in service pursuant to the Final PUD Plans or Requirements of Law, and which are identified as "Private Improvements" in **Exhibit D**; and
- c. **"Structural Improvements"**: being those buildings and structures authorized to be constructed on the Property pursuant to the Final PUD Plans, and which are identified as "Structural Improvements" in **Exhibit D**.

"Requirements of Law": Applicable Village Codes and Ordinances and all applicable federal, state, and county laws, statutes, codes, ordinances, resolutions, rules, and regulations.

"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.

"Territory": 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.

"Village Code": The Long Grove 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 TERRITORY.

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 Territory 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 Territory, 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 Territory is validly annexed to the Village, and the Property is 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 Territory and to classify the Property into the R2 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 and approving the Preliminary PUD Plans and Preliminary Subdivision Plat for the Property ("**PUD Ordinance**"), which Preliminary PUD Plans provide for development of the Property with a total of not more than eighteen (18) single-family, detached residential units. The PUD Ordinance shall not be effective unless and until the Annexation Ordinance is recorded in accordance with Subsection 3.A of this Agreement.

The Owner agrees that a shared use pathway ("**New Pathway**") shall be constructed, as part of the Private Improvements that will benefit the public as well as residents of the Property. The pathway shall connect the Property with open space and recreational land of the Village to the south ("**Village Property**") on which an existing public pathway presently exists. The Owner shall connect the New Pathway with the existing pathway on the Village Property. If the Owner install sanitary sewer improvements within the Village-owned right of way along Old Hicks Road, then the Owner agrees to extend the New Pathway along Old Hicks Road if so requested by the Village as part of the restoration of the right of way area affected by the sanitary sewer installation. Any portion of the New Pathway located within the Village's right of way shall be constructed in a location and manner, and in accordance with plans, approved in advance by the Village. The New Pathway shall be restricted to pedestrian and bicycle use, but no motorized vehicle usage, and such other reasonable regulations as may be adopted from time

to time by the Owner or the association of homeowners on the Property, provided, however, that such regulations shall not restrict reasonable public access to and use of the New Pathway. Such regulations shall be subject to the review and approval of the Village, but such regulations shall not apply to any portion of the New Pathway constructed on the Village Property or within the Village right of way unless and until they have been approved by the Village. Violations of any restrictions on usage provided herein or subsequently approved in writing by the Village shall be enforced by the Village as Zoning Code violations. The Village shall provide such temporary easements or rights of use on Village-owned property as may be reasonably necessary for such purposes.

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

The Preliminary Subdivision Plat, Zoning Map Amendment Ordinance and PUD Ordinance shall create a permanent zoning classification for the 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 which shall remain in effect throughout the term of this Agreement and thereafter until amended 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.

SECTION 5. FINAL PUD, SUBDIVISION, LANDSCAPING, AND ENGINEERING PLANS AND PLATS.

Prior to the development of the Property, the Owner shall prepare and submit to the Village a Final PUD Plat, Final Subdivision Plat, Final Landscaping Plans, and Final Engineering Plans (collectively, "**Final Plans**") all prepared in substantial conformity with the Preliminary PUD Plans. In accordance with the PUD Ordinance, the Owner shall submit to the Village for its review and approval the Final PUD Plat and Final Subdivision Plat within 30 months after the effective date of the PUD Ordinance, which time period may be extended by resolution of the Corporate Authorities and shall not require an amendment to the Annexation Agreement. The failure to submit an application for approval of a Final PUD Plat within the time period set forth in this Subsection shall render null and void the approvals granted in the PUD Ordinance for the Property. After the Final Plans have been submitted to the Village, the Village shall cause the same to be promptly reviewed and shall cause such meetings to be conducted as may be necessary for approval of the Final Plans. After the Final Plans have been reviewed and such meetings have been held, and provided the Final Plans are in substantial conformance with the Preliminary PUD Plans (provided further that the Final Plans may, upon the reasonable approval of the Village Engineer, be modified to accommodate changes required to obtain required permits for sanitary sewer conveyancing and treatment facilities, wetlands, water facilities, and stormwater detention and drainage improvements) the Village shall promptly adopt an ordinance approving the Final Plans and directing all required Village signatures and certifications to be affixed to the Final PUD Plat and Final Subdivision Plat (the "**Final PUD Ordinance**"); provided, however, that no such signatures and certifications shall be affixed by the Village until the Owner shall have (A) obtained all other approvals, sworn statements, signatures, and certifications required for the Final PUD Plat and Final Subdivision Plat; (B) presented the Village with adequate evidence of merchantable fee simple title to the Property; (C) paid the Village its legal, engineering, consulting, and administrative fees, costs, and expenses; and (D) deposited with the Village Clerk a sufficient sum, in current funds, to reimburse the Village for the actual cost of recording the Final PUD Plat and Final Subdivision

Plat. Such approval of the Final Plans shall require meetings before the Plan Commission and Board of Trustees, but shall not require a public hearing before the Plan Commission so long as the Final PUD Plat and Final Subdivision Plat substantially conform to the Preliminary PUD Plans. After final approval, execution, and certification of the Final PUD Plat and Final Subdivision Plat by the Village, the Village shall promptly cause the Final Subdivision Plat to be properly recorded with the Lake County Recorder of Deeds. The Village acknowledges and agrees that the Final PUD Plat and the Subdivision Plat may be incorporated into one and the same document.

SECTION 6. DECLARATION OF COVENANTS.

Prior to recordation of the Final PUD Plat and Final Subdivision Plat, the Owner shall record against the Property, in a form and substance reasonably acceptable to the Village Attorney, a declaration of covenants ("**Declaration of Covenants**") providing for the following:

- i. the protection and maintenance, by an owners' association formed for the entire Property ("**Association**"), in perpetuity, of the common facilities on the Property (exclusive of Public Improvements that are publicly dedicated and accepted), including without limitation wetland areas, water facilities, stormwater conveyance facilities, wastewater conveyance facilities, and stormwater detention areas;
- ii. the protection and maintenance, by the Association, in perpetuity, of all wetland areas, conservancy areas, stormwater conveyance facilities, and stormwater detention areas located on the individual residential lots on the Property, which areas and facilities shall be subject to easements granted to the Association for such purposes;
- iii. the protection and maintenance, by the property owners, in perpetuity, of all Private Improvements on the Property, including without limitation private roadways, sidewalks and pedestrian trails, entryway signage, fencing, landscaping, and decorative lighting on the Property; and
- iv. the right of the Village to take action to cure any failure of any property owners or the Association to properly maintain and repair the Property to otherwise fail to abide by the provisions of the declaration or declarations and the right of the Village to be reimbursed for all costs and expenses incurred by the Village related thereto, including without limitation the right of the Village to perfect a lien to recover such costs and expenses against any or all of the parcels of property within the Property, all subject to notice and cure periods reasonably acceptable to the parties.

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, only pursuant to and in accordance with the following, listed in order of priority and control:

- a. this Agreement;
- b. the Final PUD Ordinance;

- c. the Final Subdivision Plat and Final PUD Plat;
- d. the Final Engineering Plan;
- e. the Final Landscape Plan;
- f. the provisions of the PUD Ordinance;
- g. the provisions of the Zoning Code applicable to the R2 Zoning District;
- h. all other applicable provisions of the Zoning Code and Subdivision Ordinance;
- i. the Village Code, including without limitation the Village's Building Code;
- j. the applicable provisions of the Lake County Watershed Development Ordinance;
- k. the Declaration of Covenants, as they may be amended from time to time; and
- l. the Requirements of Law.

Unless otherwise provided in this Agreement, either specifically or in context, in the event of a conflict between or among any of the plans and documents set forth in this Section, the document that provides the greatest control and protection for the Village (as determined by the Village) shall control. 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 for 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 PUD Plat, Final Engineering Plan, and the Final Landscape Plan 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 (or other public body) pursuant to the construction schedule approved 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. Use of construction vehicles upon public streets shall be subject to compliance with the Requirements of Law, including any permit requirements therefor. At all times during the construction of the Project Improvements, and until completion, approval, and, where appropriate, acceptance of the Public 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.

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 (and any other applicable public body). 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, or in such other format as approved by the Village Engineer. 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 Subdivision Plat and Final PUD Plat shall constitute an acceptance by the Village of any public lands or facilities that are depicted as "dedicated" on the Final Subdivision Plat or Final PUD Plat, 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 and consistent with the recorded Declaration of Covenants. 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 I** 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 two years 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 two full years from the date of such repair or replacement.

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), 12.A(ii), and 12.B 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 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 might be connected. The Village agrees that it will approve any request to the County by the Owner to connect the residential units allowed under this Agreement to the County's sanitary sewerage system consistent with such agreement and subject to payment of the applicable recapture payments as set forth in Section 10 of this Agreement, and will otherwise reasonably cooperate with the Owner for such purpose.

L. Sales Trailer. Developer shall have the right, after approval of the Final PUD Ordinance to construct a temporary sales trailer on the Property adjacent to Old Hicks Road in accordance with the terms and conditions to be set forth in the Final PUD Ordinance.

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 consistent with the Final PUD Plans.

N. Sales Sign. Owner shall have the right after approval of the Preliminary Subdivision Plat, to seek and obtain a permit to construct upon the 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. The specific location of such sign shall be subject to the approval of the Village Manager in accordance with the Village Code.

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

Q. Removal of Hardscape. The Preliminary Subdivision Plat 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 Owner shall not be required to remove or modify the Hardscape Surfaces except to the extent required by the Final Plans.

R. Donation of Easements and Conservation Rights. Upon request of the Village, the Owner shall donate to the Village (or another public body as designated by the Village) easements, conservation rights, or other property rights (but not fee simple title) over any wetland areas, woodlands, conservancy areas, stormwater conveyance facilities, trails or pathways, and/or stormwater detention areas located on the Property for the purposes of protecting, preserving, and maintaining such areas.

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 or Lake County Watershed Development Ordinance.

D. No Other Dedications. Donations or Contributions. Except as required by this

Agreement, the Owner shall not be required to make any dedication, donation, or contribution to the Village in relation to the development of the Property [*but Owner shall be required to pay the Village an annexation fee in the amount of XXXXX Dollars (\$XXXXXXX) in consideration of the Village's annexation of the Territory*].

E. Certain Recapture Payments. The Owner acknowledges 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 ("**Menard's Recapture Agreement**"). Owner shall pay the applicable, proportionate share of the Recapture Fees and interest provided for in the Menard's Recapture Agreement to the extent that they elect to connect the Property to the Improvements, as defined in the Menard's Recapture Agreement. Owner hereby waives their right to contest the legality or enforceability of: (i) the Menard's Recapture of Agreement, and (ii) their obligation to pay the applicable Recapture Fees (as defined in the Menard's Recapture Agreement) and interest in the event of such connection. Other than the Menard's Recapture Agreement, the Village represents and warrants to Owner that the Village has not entered into any agreement or adopted any ordinance that will require Owner to pay any recapture fees for off-site sanitary sewer, water, stormwater management or other improvements as a result of the annexation of the Territory to the Village, as a result of the development of any portion of the Property, or as a result of the connection of improvements constructed on any portion of the Property to off-site sanitary sewer, water, stormwater management or other improvements.

F. Recapture Agreement for Benefit of Developer. If requested by the Developer, the Village agrees to enter into an agreement or agreements in substantially the form attached hereto as **Exhibit J ("Sewer Recapture Agreement")** to permit Developer to recapture a portion of their costs in constructing and oversizing sanitary sewer facilities that may be used for the benefit of properties other than the Property from fees charged to the owners of such properties, pursuant to Section 9-5-1 of the Illinois Municipal Code. Such fees shall be calculated based upon an allocation of capacity of the completed facilities to the properties that benefit from the facilities. If Developer is entitled to recapture any of its costs pursuant to this paragraph, the Village's engineer and Developer's engineer shall, where necessary, allocate the respective capacities serving the Property and the other benefited properties in the area subject to recapture. In the event the Village's engineer and the Developer's engineer cannot agree on the allocation formula for, or the areas subject to, the recapture, the Village's engineer shall make the final determination of the amount which may be recaptured and the areas from which the recapture shall be paid, provided such determination is consistent with good and customary municipal engineering principles. The Village shall cooperate with the Developer to grant any easements or access rights over Village property needed to construct the sanitary sewer improvements depicted on the Preliminary PUD Plans.

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 10% 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 Village's issuance of any building permit for any Project Improvements on the Property or the Contiguous Property. 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 their 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 two-year guaranty period set forth in Section 8H of this Agreement or until two years after the proper correction of any defect of deficiency in the Project Improvements pursuant to Section 8H and payment thereof, whichever occurs later. 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 10 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 K-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 K-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 by resolution of the Village Board 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.

B. 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 10 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.

C. 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.

D. 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.

E. 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 and Developer acknowledge and agree 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.

Furthermore, neither the Village, the Owner, nor the Developer shall assert the invalidity or unenforceability of this Agreement, or any provision of this Agreement, nor shall either contest the validity or enforceability of this Agreement, or any provision in this Agreement, or the annexation of the Territory to the Village or the zoning of the Property pursuant to this Agreement. In the event that the annexation of the Territory or the zoning of the Property is challenged by any person by an action at law or in equity, the Village shall, upon request of the Owner (i) vigorously defend such action with the Village counsel or such other counsel as is mutually acceptable to the Village and the Owner and cooperate with the Owner in the defense of such action, and the Owner shall reimburse the Village for all costs and fees, including reasonable attorneys' fees, that the Village may incur in defending such action and in rendering such cooperation, and provided further that the Owner shall have the right, upon prior notice to the Village, to elect to terminate its future reimbursement obligations but in the event that the Owner exercise such right, the Village shall be relieved from any obligation to defend such action or render such cooperation and (ii) take such other actions pursuant to the Illinois Municipal Code as are necessary to reconsider and reauthorize the execution of this Agreement by the Village President and Clerk, to annex the Property to the Village, and to zone the Property and the Contiguous Property in the manner contemplated by this Agreement in a legally sustainable manner.

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 do 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 OBLIGATION.

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 L 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,

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). In the event that the Village determines that a breach of this Agreement has resulted in an imminent threat to the public health or safety, the Village may take immediate action to correct the dangerous condition and thereafter seek any remedy provided by this Agreement.

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:

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:

KC1, Inc.
Attn: Michael Demar
201 Robert Parker Coffin Road
Long Grove, IL 60047
Email: mike@fidelitywes.com

With a copy to:

Deborah Haddad
O'Donnell & Haddad, LLC
14044 W. Petronella Drive, Suite 1
Libertyville, IL 60048
Email: dhaddad@haddadlawllc.com

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 Owner is required or provided for herein, such reference shall mean the consent of the Owner, its successors, or its assignees of multiple residential lots when such lots

represent all the remaining lots of the Owner ("**Assignees**"), and after the Owner and their successors and Assignees no longer own any of the Property, it shall mean the association of homeowners within the 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.

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 L attached to this agreement 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. If applicable provisions of the Village Code or other Village ordinances are amended during the term of this Agreement so as to impose more stringent requirements on the development of the Property than provided in this Agreement, the amended regulations shall apply to the development of the Property so long as (1) the Village has provided the Owner with 90 days prior written notice of such amendment and (2) the regulations (i) apply to all zoning districts in the Village (except for

developments in the Village subject to annexation agreements providing otherwise); (ii) are not in direct conflict with the terms of this Agreement; and (iii) do not substantially and adversely affect the Owner's ability to develop the Property in substantial conformity with this Agreement.

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 Territory 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 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 Owner, shall be null and void, and of no force and effect unless within thirty (30) days from the execution of this Agreement the Territory is annexed in its entirety, the Property is zoned in accordance herewith, the PUD Ordinance is adopted and the Preliminary Subdivision Plat is approved.

[Signature pages to follow.]

ATTEST:

VILLAGE OF LONG GROVE

Village Clerk

By: _____
President

DRAFT

THERESE R. IVERSON, individually, and as
Trustee under the Therese R. Iverson Living Trust,
dated February 11, 2010, as amended

DRAFT

KC1, Inc.

By: _____

Its: _____

DRAFT

Table of Exhibits

Exhibit	Title or Description	Section Cross Reference
A.	Legal Description	2
B.	Preliminary PUD Plans	2
C.	Annexation Plat	2
D.	Property Improvements	2, 8.A
E.	Annexation Ordinance	3.A
F.	Zoning Map Amendment	4.A
G.	Preliminary PUD Ordinance	4.B
H.	Preliminary Subdivision Plat	2
I.	Title Exceptions	8.G
J.	Form of Sewer Recapture Agreement	10.F
K-1.	Form of Payment Bond and Performance Bond	12.D.i
K-2.	Form of Irrevocable Letter of Credit	12.D.ii
L.	Transferee Assumption Agreement	14

EXHIBIT A

LEGAL DESCRIPTION

Legal Description of the 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 AND EXCEPTING THEREFROM THE SOUTH 300 FEET OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36), IN LAKE COUNTY, ILLINOIS.

PINs: 14-36-300-038 and 14-36-300-039

Legal Description of the Contiguous Property

THE SOUTH 300 FEET OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 43 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS.

PINs: 14-36-300-003

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
PRELIMINARY PUD PLANS**

DRAFT

EXHIBIT C
ANNEXATION PLAT

DRAFT

EXHIBIT D

PROPERTY IMPROVEMENTS

1. Sanitary Sewer Improvements

[Needs to be completed by Owner]

DRAFT

EXHIBIT E

ANNEXATION ORDINANCE

(to be supplied by Village)

DRAFT

EXHIBIT F

ZONING MAP AMENDMENT ORDINANCE

(to be supplied by Village)

DRAFT

EXHIBIT G

PRELIMINARY PUD ORDINANCE

(to be supplied by Village)

DRAFT

EXHIBIT H

PRELIMINARY SUBDIVISION PLAT

DRAFT

EXHIBIT I

TITLE ENCUMBRANCES

Real estate taxes on the Property not yet due and payable.

Easement for public utilities along and adjoining the north and east lines of the Property and the Contiguous Property as disclosed by the location of poles and wires existing thereon.

Possible unrecorded easements, if any, of public and quasi-public utilities in the Property and the Contiguous Property.

Rights of way for drainage tiles, ditches, feeders, laterals and underground pipes, if any, on the Property and the Contiguous Property.

Rights of the public, the State of Illinois and Ela Township in and to that part of the Property and the Contiguous Property, if any, taken or used for road purposes.

Rights of the public, the State of Illinois and Ela Township in and to that part of the Property and the Contiguous Property taken for purposes for Federal Aid Route #61, as disclosed by the Plat of Survey recorded as Document 1508620.

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.

EXHIBIT J

FORM OF SEWER RECAPTURE AGREEMENT

**THIS DOCUMENT
PREPARED BY AND
AFTER RECORDING
RETURN TO:**

Above Space For Recorder's Use Only

FORM RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT (“Agreement”) is made as of the ____ day of _____, _____, between the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation (“**Village**”), and _____ (“**Owner**”).

In consideration of the recitals and mutual covenants and agreements set forth below, the parties hereby agree as follows:

SECTION 1. RECITALS.

A. Owner is the owner of the real property located generally at the northwest corner of Old Hicks Road and Checker Road, Long Grove, Illinois, and legally described in **Exhibit 1** attached to this Agreement (“**Property**”).

B. Owner has constructed certain public improvements as described in an “Annexation, Subdivision, and Development Agreement for Karen’s Corner Planned Unit Development,” by and between the Village of Long Grove; Therese R. Iverson, as Trustee, or her Successors in Trust, under the Therese R. Iverson Living Trust, dated February 11, 2010, as amended; Therese Iverson; and KC1, Inc., dated _____, 2016, which agreement sets forth the terms for developing the Property as a planned unit development, including the construction and installation of sanitary sewer improvements on the Property (“**Improvements**”), as depicted on the plan for the Improvements attached to this Agreement as **Exhibit 2 (“Plan”)**.

C. The Improvements are intended to be designed and constructed not only to serve the Property, but also to serve other properties in the area of the Property, which properties are legally described in **Exhibit 3** attached to this Agreement. (“**Benefited Properties**”).

D. Section 8-3-2 of the Long Grove Village Code, Resolution No. 84-R-11, and the Long Grove Comprehensive Plan all provide that individual on-site sanitary systems (septic field systems) are preferred for all residential uses and that sanitary sewers shall only be utilized when they are necessary from a health and welfare standpoint, subject to meeting certain standards contained in these documents. Accordingly, this Agreement does not and shall not obligate the Village to approve any request for connection to the Improvements.

E. Pursuant to applicable Illinois law and the terms of this Agreement, the Village desires to (i) assess a fee upon the Benefited Properties that fairly and equitably apportions the cost of the Improvements among the owners of the Benefited Properties, including the Property, and (ii) remit those fees to the Owner as reimbursement for the funds expended in connection with the construction of the Improvements.

F. Based on the review and approval of the Village Engineer, the Owner has expended [\$ _____] in connection with the construction of the Improvements, as detailed on **Exhibit 4** attached to this Agreement, which costs will benefit the Property and the Benefited Properties.

SECTION 2. DEDICATION OF IMPROVEMENTS AND RECORDATION.

A. **DEDICATION OF PUBLIC IMPROVEMENTS.** Upon completion of the Improvements to the satisfaction of the Village, the Owner agrees to dedicate to [_____] the Improvements. The Owner's satisfaction of the obligations in this Section 2 shall be prerequisites to the Village's performance under this Agreement.

B. **RECORDATION.** After the acceptance of the Improvements, the Village shall record this Agreement with the Office of the Lake County Recorder.

SECTION 3. CALCULATION AND PAYMENT OF RECAPTURE.

A. **Approved Costs.** The Village Engineer hereby approves the actual costs of constructing the Improvements described on **Exhibit 4**, which costs shall be deemed the "***Approved Total Cost.***"

B. **Allocation of Costs.** The cost of the Improvements shall be allocated between the Property and the Benefited Properties, with the allocation being equal to [\$ _____] for each residential equivalent that is developed within the Benefited Property ("***Recapture Amount***").

C. **Recapture Fee.** The owner or the developer of the Benefited Property, or any portion thereof, seeking to connect to the Improvements shall be required to pay a recapture fee equal to (i) the Recapture Amount, plus (ii) simple interest on the Recapture Amount at a rate of five percent per annum computed from the date of recordation of this Agreement; (iii) all administrative, engineering, and legal expenses incurred by the Village in connection with the review, drafting, and processing of documents related to this Agreement, and (iv) a collection charge of three percent of items (i) and (ii) above (collectively, the "***Recapture Fee***"). The Recapture Fee shall be paid by the owner or the developer of the Benefited Property upon the earlier of either: (x) the connection of that Benefited Property to the Improvements; or (y) the recordation of a final plat of subdivision for a Benefited Property; or (z) the issuance of any building permit for a Benefited Property. The Recapture Fee shall be accompanied by a payment of simple interest calculated at the rate of five percent per annum and computed from the date of recordation of this Agreement until the date of payment of the Recapture Fee.

D. Payment to the Owner. Subject to the provisions of Section 5 of this Agreement, within 45 days after receipt of the Recapture Fee from the owner or the developer of the Benefited Property, the Village shall pay to the Owner an amount equal to the Recapture Amount. The Owner shall also be entitled to receive from the Benefited Properties simple interest on the Recapture Amount calculated at the rate of five percent per annum computed from the date of recordation of this Agreement.

E. Personal Right to Reimbursement. The right to receive reimbursement of the Recapture Amount, plus any interest thereon or other amounts authorized under this Agreement, as well as all other rights, responsibilities, and remedies under this Agreement, are the personal rights, responsibilities, and remedies of the Owner and shall not run with the ownership of the Property.

SECTION 4. RIGHT TO CONNECT. The Benefited Properties shall only be allowed to connect to the Improvements in accordance with the Village Code and all applicable ordinances, rules, and regulations of the Village relating to that connection, including without limitation the payment of any costs and charges ordinarily imposed by the Village and the payment of the Recapture Fee in accordance with this Agreement. The Village agrees that none of the Benefited Properties shall be entitled to connect to the sanitary sewer system except through the Improvements. Each of the Benefited Properties shall be entitled to no more than one point of connection to each of the Improvements, unless otherwise approved by the Village Engineer.

SECTION 5. VILLAGE'S COLLECTION OF RECAPTURE FEES; LIMITATIONS OF VILLAGE OBLIGATIONS.

A. Village as Collection Agent. The Village shall act as a collection agent for the Owner under the terms of this Agreement, and the Village shall have no obligation to deliver any Recapture Amount to the Owner except to the extent that the owner or the developer of the Benefited Property pays the Recapture Fee and any applicable interest (or portion thereof) to the Village. The Village shall have the right to retain from the amounts collected the difference between the Recapture Fee and the Recapture Amount plus interest ("***Village Administrative and Collection Amount***"). In the event that the owner or the developer of the Benefited Property pays less than the full Recapture Fee, then such Recapture Fee shall be deemed to have been a payment in equal proportion of the Recapture Amount and the Village Administrative and Collection Amount.

B. Reimbursements to the Owner. Any Recapture Amounts (and interest thereon) collected by the Village shall be reimbursed to the Owner within 45 days after receipt thereof.

C. Collection Actions. In the event that the owner or developer of the Benefited Property fails to pay the Recapture Fee and applicable interest when due pursuant to Subsection 3.C of this Agreement, the Village shall notify the Owner of such failure ("***Non-Payment Notice***"). Thereupon, the Village may, but is not in any way obligated to, undertake such actions as it deems appropriate to seek collection of the unpaid Recapture Fee unless the Owner notifies the Village within 35 days after the Non-Payment Notice that it shall pursue collection efforts directly ("***Enforcement Notice***"). If the Village or the Owner pursues collection actions under this Section, the Village or the Owner shall be entitled to recover from the owner or the developer of the Benefited Property reasonable expenses incurred (including attorneys' fees) in collecting the Recapture Fee ("***Collection Expenses***"). To the extent the recovery from any collection action is less than the total of the Recapture Fee, interest, and Collection Expenses, then such recovery shall be deemed to have been a payment in equal proportion of the Collection

Expenses and the Recapture Fee.

D. Limitation on Village Enforcement Responsibility. The Village's failure either to collect or to pursue a collection action for recovery of Recapture Fees shall not be a breach of the Village's obligations under this Agreement. The Owner shall have no cause of action in either law or equity to compel the Village to enforce the terms of this Agreement against any Benefited Property in the event the owner or the developer of the Benefited Property fails to pay the Recapture Fee, or any portion of the Recapture Fee, for any reason whatsoever; provided, however, that, subject to the delivery of an Enforcement Notice pursuant to Subsection 5.C, the Owner shall have the right, but not the obligation, to seek enforcement of this Agreement in either law or equity against any owner or the developer of the Benefited Property on behalf of itself and the Village.

SECTION 6. LIMITATION ON VILLAGE'S OBLIGATION REGARDING FEES.

The Village's obligation to deliver to the Owner the Recapture Amount collected pursuant to this Agreement constitutes a limited obligation of the Village. This obligation does not, and will never, constitute a general indebtedness of the Village within the meaning of the Illinois constitutional or statutory provisions and shall not give rise to any pecuniary liability of the Village or a charge against its general credit or taxing power.

SECTION 7. INDEMNIFICATION.

The Owner shall, and does hereby agree to, hold harmless and indemnify the Village, its corporate authorities, and all of the Village's 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 these parties in connection with this Agreement or the construction of the Improvements. 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 indemnified under this Section 7.

SECTION 8. BOOKS AND RECORDS.

The Village shall maintain complete books and records showing all Recapture Fees (including interest) collected by it pursuant to this Agreement, as well as books and records regarding reimbursement payments, administrative and collection amounts, and Collection Expenses as provided for in this Agreement. The Owner shall maintain complete books and records showing all Approved Total Costs, as well as Recapture Fees (including interest) and Collection Expenses relating to any enforcement action brought by the Owner pursuant to Section 5 of this Agreement.

SECTION 9. DEFAULT; REMEDIES.

A. Default. In the event of any default by any party under this Agreement, the non-defaulting party, or parties, shall promptly notify the defaulting party of the default, and the defaulting party shall thereafter have 30 days within which to cure the default. The 30-day period shall be extended if the defaulting party has promptly initiated the cure of the default and is diligently pursuing the cure to completion. If the defaulting party has not effected a cure within the 30-day period (as it may be extended pursuant to this paragraph), the non-defaulting party, or parties, may seek any remedies in accordance with this Agreement.

B. Remedies. The parties to this Agreement may in law or in equity enforce or

compel the performance of this Agreement, and shall otherwise have all remedies provided by applicable laws, except that the Owner shall not seek or recover monetary damages against the Village or any of its officers, officials, agents, representatives, attorneys, or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement, other than recovery of Recapture Amounts and applicable interest collected by the Village under this Agreement. Notwithstanding this limitation on money damages, the prevailing party in any judicial or administrative proceeding brought for enforcement or breach of any provision of this Agreement shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial or administrative proceeding.

C. Defense. The Village and the Owner shall each have the right, but not the obligation, to defend the validity of this Agreement against any challenge.

SECTION 10. GENERAL PROVISIONS.

A. Notice. All notices 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, or (iv) by facsimile. 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. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three 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 the other party, but no notice of a change of addressee or address shall be effective until actually received.

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

Village of Long Grove
3110 RFD
Long Grove, Illinois 60047
Attn: Village Manager

With a copy to:

Filippini Law Firm
990 Grove Street, Suite 220
Evanston, Illinois 60201
Attn: Victor P. Filippini

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

B. Time of the Essence. Time is of the essence in the performance 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 rights, remedies, and benefits allowed by law.

D. Waiver. The Village shall be under no obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Village's right to enforce such rights or any other rights.

E. 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.

F. Provisions Severable. It is hereby expressed to be the intent of the parties to this Agreement 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 the 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.

G. 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.

H. 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.

I. Calendar Days and Time. Unless otherwise expressly provided to the contrary, 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 that notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or Federal holiday.

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. Exhibits. Exhibits 1 through 4 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.

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

M. Changes in Laws. Unless otherwise provided in this Agreement, any reference to the Village Code, State Law, or Federal Law shall be deemed to include any modifications of, or amendments to, such laws that may occur in the future.

N. 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 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 this Agreement, (ii) that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (iii) 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 (b) violate any statute, law, restriction, court order, or agreement to which the Owner is subject.

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

P. Term. This Agreement shall remain in full force and effect until the earlier of: (i) such time as the Recapture Fee (plus interest and other charges as provided in this Agreement) have been paid and delivered in accordance with the terms of this Agreement; or (ii) twenty years after the date of this Agreement. Notwithstanding the foregoing, the agreements, representations, and responsibilities set forth in Sections 2, 7, and 9 of this Agreement shall survive the termination periods set forth in this Section 10.P.

Q. Recording. Upon the execution of this Agreement by the parties, the Village shall cause this Agreement to be duly recorded in the office of the Lake County Recorder. Upon the request of any owner or developer of a Benefited Property at any time after full payment has been made of the Recapture Fee and any interest or other charges due pursuant to this Agreement, the Village and the Owner agree to execute and deliver for recording a release of this Agreement.

R. Counterparts. This Agreement may be executed in counterparts, each of which, when executed, shall constitute an original document, which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives and officers to execute this Agreement.

ATTEST:

VILLAGE OF LONG GROVE, an Illinois municipal corporation

Village Clerk

By _____
Village President

ATTEST:

OWNER

By _____

Its: _____

DRAFT

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

This instrument was acknowledged before me on _____, _____, by _____, the Village President of **THE VILLAGE OF LONG GROVE**, an Illinois home rule municipality, and by _____, the Village Clerk of said municipal corporation.

Given under my hand and official seal this ____ day of _____, _____.

Notary Public

My Commission expires: _____

SEAL

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on _____, _____, by _____ of _____, which individual is known to me to be the identical person who signed the foregoing instrument and that he/she executed the same as his/her free and voluntary act and deed, and as the free and voluntary act and deed of the entity, for the uses and purposes therein mentioned.

Given under my hand and official seal this ____ day of _____, _____.

Notary Public

My Commission expires: _____

SEAL

EXHIBIT 1

Legal Description of the 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.

DRAFT

EXHIBIT 2

Plan

DRAFT

EXHIBIT 3

Legal Description of the Benefited Properties

DRAFT

EXHIBIT 4

Approved Total Cost

DRAFT

EXHIBIT K-1

FORM OF PAYMENT BOND AND PERFORMANCE BOND

VILLAGE OF LONG GROVE

PERFORMANCE BOND

Bond # _____

KNOW ALL MEN BY THESE PRESENTS: that [DEVELOPER], [ADDRESS] ("**Developer**"), and [OWNER], [ADDRESS] ("**Owner**") (collectively, Developer and Owner shall be referred to as "**Principal**"), and [SURETY], [ADDRESS], a [ENTITY] organized and existing under the laws of [STATE] ("**Surety**"), are held and firmly bound unto the **Village of Long Grove**, 3110 Old McHenry Road, Long Grove, Illinois 60047, as Obligee (hereinafter called the "**Village**"), in the full and just sum of _____ (\$_____), for the payment of which sum of money well and truly to be made, Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents, said amount to include: (1) payment of actual costs, direct 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 [as well as judgment interest at the higher of the then-current statutory amount or six percent (6%) per annum ("**Interest**")] resulting from or incurred by the Village by reason of Principal's failure to promptly and faithfully perform its obligations to construct the improvements required in connection with the Project (as hereinafter defined); and (2) direct damages, attorneys' fees, court costs, and administrative and other expenses necessarily paid or incurred by the Village in successfully enforcing performance of the obligation of the Principal and Surety under this performance bond ("**Bond**"), as well as Interest. The obligations of the Principal and Surety under this Bond are limited to the amount budgeted for the completion of the improvements identified on Exhibit "A" attached hereto and made a part hereof (the "**Project Improvements**").

WHEREAS, Owner and Developer have entered into a written agreement dated _____ with the Village entitled "Annexation, Subdivision, and Development Agreement for Karen's Corner Planned Unit Development," ("**Annexation Agreement**") and have executed their acceptance of a special use permit for a planned unit development from the Village known as Village of Long Grove Ordinance No. _____ (the "**PUD Ordinance**") for the development of certain real property consisting of approximately 35 acres generally located at the northwest corner of Old Hicks Road and Checker Road, in Long Grove, Illinois ("**Property**"), which acceptance is dated _____ by and pursuant to which Owner has the obligation to construct and install certain improvements as required by the Annexation Agreement and PUD Ordinance for the development of the an 18-lot single-family residential subdivision ("**Project**"), the terms and conditions of which Annexation Agreement and PUD Ordinance are by this reference incorporated herein as though fully set forth herein; and

WHEREAS, the Owner has caused this Bond to be delivered to the Village in the amount of \$_____ to secure the Owner's performance under the Annexation Agreement and PUD Ordinance with respect to the Project Improvements; and

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Principal shall well, truly, and promptly perform all the undertakings, covenants, terms, conditions and agreements of the Principal for the completion of the Project Improvements required under the Annexation Agreement, PUD Ordinance, and this Bond, including, but not limited to: (1) to provide, perform and complete at the Property and in the manner specified in conformity with the requirements of the Annexation Agreement and PUD Ordinance 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 Project Improvements; (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 Principal for the construction of the Project Improvements; and (5) to provide, perform, and complete all of the foregoing with respect to the Project Improvements in a proper and workmanlike manner and in full compliance with, and as required by and pursuant to, the Annexation Agreement and PUD Ordinance; all of which is herein referred to as the "**Work**," then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Principal and Surety, for value received, hereby stipulate and agree that no changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of either Village or Owner or Contractor to the other in or to the terms of said Annexation Agreement and PUD Ordinance; in or to the schedules, 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 Principal and Surety or either or any of them, or any of their heirs, executors, administrators, successors, or assigns or affect the obligations of Developer and 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 Owner or Contractor being hereby waived by Surety.

Notwithstanding anything to the contrary in the foregoing paragraph, in no event shall the obligations of Developer and Surety under this Bond be greater than the obligations of and amounts set forth in this Bond in the event of Owner's default under the Annexation Agreement or PUD Ordinance.

In the event of a default or defaults by the Owner under the Annexation Agreement or PUD Ordinance, Village shall have the right to retain the Developer, with the consent of the Surety to take over, perform and complete the Project Improvements upon 30 calendar days' written notice to Surety and Developer, in which event Surety shall pay Village all costs incurred by Village in taking over and completing the Project Improvements under the Annexation Agreement and PUD Ordinance.

At its option, Village may instead request that Surety take over and complete the Project Improvements, through its agents or independent contractors in which event Surety shall take reasonable steps to proceed reasonably 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 Project Improvements.

In either event, Owner grants Developer, Surety, and the Village the right to access the Property to complete the Project Improvements consistent with the terms of this Bond.

Village shall have no obligation to actually incur any expense or correct any deficient performance of Owner or Developer. After investigation by the Surety, the Surety shall determine the amount which it may owe the Village for the completion of the Project Improvements 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 successors of Village.

Signed and sealed this ____ day of _____, 2016.

Attest/Witness:

DEVELOPER

By: _____

By: _____

Title: _____

Title:

Attest/Witness:

OWNER

By: _____

By: _____

Title: _____

Title:

Witness:

SURETY:

By: _____

By: _____

Title: _____

Title:

Telephone: _____

DRAFT

EXHIBIT A

Project Improvements

DRAFT

VILLAGE OF LONG GROVE

SUBDIVISION LABOR AND MATERIAL PAYMENT BOND

Bond # _____

KNOW ALL MEN BY THESE PRESENTS: that [DEVELOPER], [ADDRESS] (“**Developer**”), and [OWNER], [ADDRESS] (“**Owner**”)(collectively, Developer and Owner shall be referred to as “**Principal**”), and [SURETY], [ADDRESS], a [ENTITY] organized and existing under the laws of [STATE] (“**Surety**”), are held and firmly bound unto the **Village of Long Grove**, 3110 Old McHenry Road, Long Grove, Illinois 60047, as Obligee (hereinafter called the “**Village**”), in the full and just sum of _____ (\$_____), for the payment of which sum of money well and truly to be made, Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents, said amount to include: (1) payment of actual costs, direct 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 [as well as judgment interest at the higher of the then-current statutory amount or six percent (6%) per annum (“**Interest**”) resulting from or incurred by the Village by reason of Principal's failure to promptly and faithfully perform its obligations to construct the improvements required in connection with the Project (as hereinafter defined); and (2) direct damages, attorneys' fees, court costs, and administrative and other expenses necessarily paid or incurred by the Village in successfully enforcing performance of the obligation of the Principal and Surety under this performance bond (“**Bond**”), as well as Interest. The obligations of the Principal and Surety under this Bond are limited to the amount budgeted for the completion of the improvements identified on Exhibit “A” attached hereto and made a part hereof (the “**Project Improvements**”).

WHEREAS, Owner and Developer have entered into a written agreement dated _____ with the Village entitled “Annexation, Subdivision, and Development Agreement for Karen's Corner Planned Unit Development,” (“**Annexation Agreement**”) and have executed their acceptance of a special use permit for a planned unit development from the Village known as Village of Long Grove Ordinance No. _____ (the “**PUD Ordinance**”) for the development of certain real property consisting of approximately 35 acres generally located at the northwest corner of Old Hicks Road and Checker Road, in Long Grove, Illinois (“**Property**”), which acceptance is dated _____ by and pursuant to which Owner has the obligation to construct and install certain improvements as required by the Annexation Agreement and PUD Ordinance for the development of the an 18-lot single-family residential subdivision (“**Project**”), the terms and conditions of which Annexation Agreement and PUD Ordinance are by this reference incorporated herein as though fully set forth herein; and

WHEREAS, the Owner has caused this Bond to be delivered to the Village in the amount of \$_____ to secure the Owner's performance under the Annexation Agreement and PUD Ordinance with respect to the Project Improvements; and

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the Principal shall promptly pay or cause to be paid all sums of money that may be due to any claimant with respect to Principal's obligations under the Annexation Agreement, PUD Ordinance, and this Bond, including, but not limited to: (1) to provide, perform and complete at the Property and in the manner specified in conformity with the requirements of the Annexation Agreement and PUD Ordinance 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 Project Improvements; (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 Principal for the construction of the Project Improvements; and (5) to provide, perform, and complete all of the foregoing with respect to the Project Improvements in a proper and workmanlike manner and in full compliance with, and as required by and pursuant to, the Annexation Agreement and PUD Ordinance; all of which is herein referred to as the “**Work**,” 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 Principal or with a subcontractor of Principal to provide, perform, or complete any part of the Work.

Principal 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.

Principal 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.

Principal and Surety, for value received, hereby stipulate and agree that no changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of either Village or Owner or Contractor to the other in or to the terms of said Annexation Agreement and PUD Ordinance; in or to the schedules, 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 Principal and Surety or either or any of them, or any of their heirs, executors, administrators, successors, or assigns or affect the obligations of Developer and 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 Owner or Contractor being hereby waived by Surety.

Notwithstanding anything to the contrary in the foregoing paragraph, in no event shall the obligations of Developer and Surety under this Bond be greater than the obligations of and amounts set forth in this Bond in the event of Owner’s default under the Annexation Agreement or PUD Ordinance.

Signed and sealed this ____ day of _____, 2016.

Attest/Witness:

DEVELOPER

By: _____

By: _____

Title: _____

Title:

Attest/Witness:

By: _____

Title: _____

Witness:

By: _____

Title: _____

OWNER

By: _____

Title:

SURETY:

By: _____

Title:

Telephone: _____

DRAFT

EXHIBIT K-2

FORM 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 _____ UP TO AN AGGREGATE
AMOUNT OF _____ United States Dollars
(\$_____) for _____ 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 to be constructed pursuant to Section 8 of the Annexation, Subdivision, and Development Agreement for Karen's Corner Planned Unit Development, dated _____, 2016, by and between the Village of Long Grove, Lake Cook, L.L.C., and [OWNER] ("**Annexation Agreement**") have not been constructed in accordance with the Annexation 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 Annexation Agreement have not been paid in accordance with the Annexation 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 Annexation Agreement has not been performed in accordance with the Annexation 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 cost of all improvements to be performed pursuant to Section 8 of the Annexation Agreement, (ii) the costs of demolition or making safe of any buildings and structures identified in the Annexation 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 ten 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 Annexation Agreement are not reasonably sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the improvements to be performed pursuant to Section 8 of the Annexation Agreement and all related unpaid Village fees, costs, and expenses incurred or to be incurred, and that, within ten 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 Annexation 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 Annexation Agreement have not been performed in accordance with the Annexation 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 business 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 _____, _____, as stated hereinabove; provided, however, that we shall notify the Long Grove Village Manager by 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 Annexation 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]

DRAFT

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 to be constructed pursuant to Section 8 of the Annexation, Subdivision, and Development Agreement for Karen's Corner Planned Unit Development by and between the Village of Long Grove and [OWNER], dated _____, 2016, 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 Karen's Corner Planned Unit Development by and between the Village of Long Grove and [OWNER], dated _____, 2016, 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 Karen's Corner Planned Unit Development by and between the Village of Long Grove and [OWNER], dated _____, 2016, 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 to be performed pursuant to Section 8 of the Annexation, Subdivision, and Development Agreement for Karen's Corner Planned Unit Development by and between the Village of Long Grove and [OWNER], dated _____, 2016, (ii) the costs of demolition or making safe of any buildings and structures identified in the Annexation 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 ten 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 Karen's Corner Planned Unit Development by and between the Village of Long Grove and [OWNER], dated _____, 2016, 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 Annexation Agreement and all related unpaid Village fees, costs, and expenses incurred or to be incurred, and that, within ten 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 Annexation, Subdivision, and Development Agreement for Karen's Corner Planned Unit Development by and between the Village of Long Grove and [**OWNER**], dated _____, 2016.

Very truly yours,

Long Grove Village Manager

DRAFT

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 Karen's Corner Planned Unit Development by and between the Village of Long Grove and [OWNER], dated _____, 2016, have not been performed in accordance with said agreement.

Very truly yours,

Long Grove Village Manager

EXHIBIT L

TRANSFEE ASSUMPTION AGREEMENT

THIS AGREEMENT, made as of this _____ day of _____, 20___, by, between and among [OWNER] (“*Owner*”), [TRANSFEE] (“*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 Lake 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 for Karen’s Corner Planned Unit Development, dated _____, 2016, and recorded in the Office of the Lake County Recorder on _____, ____, as Document No. _____, by and between the Village and [*Owner*], as amended from time to time (“*Annexation 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 the Annexation Agreement, including all exhibits and attachments thereto.

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 Annexation Agreement. Upon execution of this Agreement by the Village and deposit with the Village Manager 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 Annexation 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 Annexation Agreement.

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

ATTEST:

THE VILLAGE OF LONG GROVE

Village Clerk

By: _____
Village President

ATTEST:

[OWNER]

By: _____
Its: _____

ATTEST:

[TRANSFEREE]

By: _____
Its: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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 LAKE)

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 LAKE)

This instrument was acknowledged before me on _____, 20____, by
_____, President of **[OWNER]** and _____, Secretary of said _____.

Signature of Notary

SEAL

My Commission expires:

DRAFT