

APPENDIX D – LAND IMPROVEMENT AGREEMENT

LAND IMPROVEMENT AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of St. Charles, Kane and DuPage Counties, Illinois, a municipal corporation of the State of Illinois, having its principal offices at 2 E. Main Street, St. Charles, Illinois (hereinafter called the “City”) and \_\_\_\_\_ (hereinafter called "Developer").

WITNESSETH:

WHEREAS, on or about \_\_\_\_\_, 20\_\_, Developer, as applicant, filed an application for \_\_\_\_\_ approval with respect to the property legally described on Exhibit "A", attached hereto which is, by this reference, incorporated herein ("Subject Realty") so as to permit the construction of \_\_\_\_\_; ("Project"); and,

WHEREAS, the City is willing to approve the Project provided that this Agreement is executed to insure the completion of certain improvements in accordance with applicable City ordinances and/or agreements between the City and Developer. The Project shall not be approved until this Agreement is executed.

NOW, THEREFORE, it is mutually agreed as follows:

1. Developer shall furnish, or cause to be furnished, at its own cost and expense, all the necessary materials, labor and equipment to complete the public and private onsite and offsite Land Improvements required by the St. Charles Municipal Code (the “City Code”), including but not limited to the following: Sanitary sewer, storm sewer and water systems, including all appurtenances thereto, retention and detention basins, grading and surface drainage ways and facilities, curbs, paving, streets street lighting, sidewalks, street signs, seeding, and tree plantings. All Land Improvements shall be constructed in accordance with the standards, specifications, and requirements of the City of St. Charles. Such Land Improvements are identified on the Final Engineering Plans (“Final Engineering Plans”) prepared by \_\_\_\_\_, entitled \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, and bearing the latest revision date of \_\_\_\_\_ 20\_\_, consisting of \_\_\_\_\_ sheets, together with any amendments thereto approved by the City, and shall be constructed in a good and workmanlike manner and in accordance with all pertinent ordinances and regulations of the City and/or other agreements between the City and Developer.

2. Attached hereto as Exhibit "B" is a complete cost estimate for the construction of the required Land Improvements. The City Code and/or any applicable ordinance or agreement provides that the Developer shall collateralize its obligation to construct all required Land Improvements. The Developer shall submit a Letter of Credit issued by a sound financial institution authorized to transact business and maintaining an authorized agent for service in the State of Illinois. Such Letter of Credit shall contain such terms and provisions as may be acceptable to the City Attorney of the City and shall be deposited with the City prior to the approval of the Final Plat of Subdivision by the City.

Said Letter of Credit shall be in a principal amount of not less than one hundred fifteen percent (115%) of the Developer's engineer's estimate (the “Engineer’s Estimate”), as approved by the Development Engineering Division Manager, of the costs of all required Land Improvements to be constructed.

The Letter of Credit may provide for its reduction from time to time, based upon the Development Engineering Division Manager's determination of the value of any of the Land Improvements installed. The

Development Engineering Division Manager's recommendation shall not be subject to question by the Developer. In no event shall the Letter of Credit be reduced to an amount less than one hundred fifteen percent (115%) of the Development Engineering Division Manager's estimate of the cost of completion of all remaining Land Improvements. So long as any portion of the Land Improvements remain uncompleted or unaccepted, the Developer shall not permit the Letter of Credit to expire, but shall, at least ninety (90) days prior to its expiration date, cause said Letter of Credit to be renewed. Failure of the Developer to renew said Letter of Credit shall be a breach of this Agreement. Any language in the Letter of Credit with respect to its reduction shall be subject to the approval of the City Attorney. In no event shall the Development Engineering Division Manager's authorization for a reduction to the Letter of Credit constitute final acceptance of any of the Land Improvements.

In the event that the Developer requests an extension of time to complete the Land Improvements, as described in Section 7 below, the Developer shall submit a new Letter of Credit in an amount equal to the original Letter of Credit (minus any reductions described in the preceding paragraph) plus an additional amount equal to the percentage increase in the ENR: Engineering News-Record 20 Cities Construction Cost Index, published weekly by McGraw Hill Information Systems Co., from the date of the original Letter of Credit to the date of the extension granted by the City. In the event said index is no longer published, then the Consumer Price Index of the U.S. Department of Labor—Transportation Group, Chicago-Gary-Kenosha shall be used to calculate the increased amount. In no event shall the amount of the Letter of Credit be lower than the original amount, other than to reflect reductions described in the preceding paragraph. It shall be the Developer's responsibility to provide the appropriate documentation to the City regarding the index statistics.

3. Developer shall furnish qualified field supervision for the installation of all Land Improvements in the person of a professional engineer licensed in the State of Illinois.

4. Developer will pay to the City all plan review, inspection and other fees as required by the City's form of Reimbursement of Fees Agreement executed by the Developer or otherwise required by the City Code.

5. The Developer shall furnish the City with evidence of liability insurance in the amount of at least \$1,000,000/\$5,000,000 covering the construction activities of the Developer contemplated by this Agreement. Such insurance shall be written by a company rated by Best Reporting Service A VI or better. Such certificate of insurance shall be deposited before the commencement of any work by the Developer. The policy shall provide a thirty (30) day "prior notice of termination" provision in favor of the City. Should the Developer allow such liability insurance to terminate prior to the final acceptance of all of the Land Improvements, the City may have recourse against the Letter of Credit for funds sufficient to cause the liability insurance to remain in effect until the final acceptance of all of the Land Improvements.

6. The Developer, by its execution of this Agreement, agrees to indemnify, hold harmless, defend, pay costs of defense, and pay any and all claims or judgments which may hereafter accrue against the City, or its agents, servants and employees, arising out of any of the Developer's construction activities contemplated by this Agreement.

7. Developer shall cause the Land Improvements to be completed, and as-built drawing tendered to the Development Engineering Division Manager, within two (2) years of the recording of the Final Plat of Subdivision for the Subject Realty, unless such time period is extended in writing by the City.

If work relating to the Land Improvements is not completed within the time prescribed herein, the City shall have the right, but not the obligation, to require completion by drawing on the Letter of Credit in addition to any other available remedies.

8. Upon completion of any Land Improvement and, further, upon the submission to the City of a certificate from the engineering firm employed by Developer stating that the said Land Improvement has been completed in conformance with this Agreement, the City Code, the final engineering Plans and Specifications relative thereto, any applicable agreements and all State and Federal laws and standards, the Development Engineering Division Manager shall, within twenty (20) days after the City receives the aforesaid certification from the Developer's engineer, either (i) recommend to the City's corporate authorities final acceptance of said Land Improvement, or (ii) designate in writing to Developer all corrections or alterations which shall be required to obtain a recommendation of final acceptance of said Land Improvement, specifically citing sections of the final engineering Plans and Specifications, the City Code or this Agreement, any applicable agreement or State or Federal law or standard, relied upon by said Development Engineering Division Manager. Should the Development Engineering Division Manager reject any Land Improvement, or any portion or segment thereof, for a recommendation of final acceptance, the Developer shall cause to be made to such Land Improvement such corrections or modifications as may be required by the Development Engineering Division Manager. The Developer shall cause the Land Improvement to be submitted and resubmitted as herein provided until the Development Engineering Division Manager shall recommend final acceptance of same to the corporate authorities of the City and the corporate authorities shall finally accept same. No Land Improvement shall be deemed to be finally accepted until the corporate authorities shall, by appropriate resolution, finally accept same.

Upon completion and as a condition of final acceptance by the City, Developer agrees to convey and transfer those Land Improvements which are deemed to be public improvements to the City by appropriate Bill(s) of Sale.

9. The Developer guarantees that the workmanship and materials furnished under the final Plans and Specifications and used in said Land Improvements will be furnished and performed in accordance with well-known established practices and standards recognized by engineers in the trade. All Land Improvements shall be new and of the best grade of their respective kinds for the purpose.

All materials and workmanship shall be guaranteed by the Developer for a period of twelve (12) months from the date of final acceptance by the City.

To partially secure the Developer's guarantee, at the time or times of final acceptance by the City of the installation of any Land Improvement in accordance with this Agreement, Developer shall deposit with the City a Maintenance Letter of Credit in the amount of fifteen percent (15%) of the Engineer's Estimate of the Land Improvement finally accepted by the City, as such amount was adjusted under Section 2, if applicable. This Letter of Credit shall be deposited with the City and shall be held by the City.

The Developer shall make or cause to be made at its own expense, any and all repairs which may become necessary under and by virtue of this contract guarantee and shall leave the Land Improvements in good and sound condition, satisfactory to the City and the Development Engineering Division Manager, at the expiration of the guarantee period. In said event and at the expiration of such period, said Maintenance Letter(s) of Credit shall be returned to the Developer.

If during said guarantee period, any Land Improvement shall require any repairs or renewals, in the opinion of the Development Engineering Division Manager, necessitated by reason of settlement of foundation, structure or backfill, or other defective workmanship or materials, the Developer shall, upon notification by the Development Engineering Division Manager of necessity for such repairs or renewals, make such repairs or renewals, at its own cost and expense. Should the Developer fail to make such repairs or renewals within thirty (30) days of such notification, the City may cause such work to be done, either by contract or otherwise, and the City may draw upon said Maintenance Letter(s) of Credit to pay the entire cost or expense thereof, including attorneys' fees and consultants' costs. Should such cost or expense exceed the

amount set forth in said Maintenance Letter(s) of Credit, the Developer will remain liable for any additional cost or expense incurred in the correction process.

10. The Developer shall furnish the City with copies of lien waivers showing that all persons who have done work, or have furnished materials under this Agreement and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid or are no longer entitled to such lien.

11. The Developer shall be responsible for the maintenance of the Land Improvements until such time as they are finally accepted by the City. This maintenance shall include routine maintenance, as well as emergency maintenance such as sewer blockages and water main breaks. Such maintenance shall be sufficient to render the Land Improvements compliant with the Plans and Specifications at the time of their final acceptance by the City.

The City at its sole discretion may accept partially constructed streets (where the surface course has not been placed). The Developer shall be responsible for all maintenance of partially constructed streets, including street sweeping and snow removal, until the streets are fully completed and accepted by the City. At all times, the Developer shall be responsible for removal of construction debris and waste related to the property being developed by the Developer.

12. Developer shall be responsible for any and all damage to the Land Improvements which may occur during the construction of the Project irrespective of whether the Land Improvements damaged have or have not been finally accepted hereunder. Developer shall replace and repair damage to the Land Improvements installed within, under or upon the Subject Realty resulting from construction activities by Developer, its successors or assigns and its employees, agents, contractors or subcontractors during the term of this Agreement, but shall not be deemed hereby to have released any other party from liability or obligation in this regard.

13. The rights and remedies of the City as provided herein, in the ordinances of the City and/or in any agreements between the City and Developer regarding the Project, shall be cumulative and concurrent, and may be pursued singularly, successively, or together, at the sole discretion of the City, and may be exercised as often as occasion therefor shall arise. Failure of the City, for any period of time or on more than one occasion, to exercise such rights and remedies shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default. No act of omission or commission of the City, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release to be effected only through a written document executed by the City and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of the City's rights or remedies hereunder. Except as otherwise specifically required, notice of the exercise of any right or remedy granted to the City is not required to be given.

14. From and after the date on which the Development Engineering Division Manager notifies the Developer, in writing, that the Developer is in default of any of its obligations under this Agreement, the Developer shall pay to the City, upon demand, all of the City's fees, costs and expenses incurred in enforcing the provisions of this Agreement against Developer, including, without limitation, engineers' and attorneys' fees, costs and expenses, and, if any litigation is filed as part of such enforcement, any court costs and filing fees.

15. This Agreement shall be binding upon and inure to the successors and assigns of the parties to this Agreement. Notwithstanding the foregoing, this Agreement shall not be assigned by either party hereto without the prior written consent of the other party to this Agreement.

16. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and this Agreement may be enforced with that provision severed or as modified by the court.

17. This Agreement sets forth an agreement of the parties insofar as it specifically contradicts, modifies or amplifies any provision of the City Code. To the extent that this Agreement does not address an applicable provision of the City Code, the City Code shall continue to control the parties' activities contemplated by this Agreement regardless of the fact that the City Code has not been addressed within the specific terms of this Agreement.

18. This Agreement shall be in full force and effect from the date set forth above until the maintenance and guarantee period for each any every Land Improvement terminates.

19. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

20. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. City at:

City St. Charles  
2 E. Main Street  
St. Charles, Illinois 60174

B. Developer at:

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

21. This Agreement is executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

CITY OF ST. CHARLES

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

ATTEST:

\_\_\_\_\_  
City Clerk

DEVELOPER

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

ATTEST:

\_\_\_\_\_  
Its \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, and \_\_\_\_\_, \_\_\_\_\_ of said company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said \_\_\_\_\_ then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF KANE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, Mayor of the City of St. Charles, and \_\_\_\_\_, City Clerk of said City, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that she, as custodian of the corporate seal of said City, did affix the corporate seal of said City to said instrument, as her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public \_\_\_\_\_

(Ord. 2012-M-45 § 2.)