

DEVELOPMENT AGREEMENT
BETWEEN THE
VILLAGE OF ELM GROVE
AND
CAROLINE HEIGHTS APARTMENTS LLC

EFFECTIVE DATE:

_____, 202_

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1 **DEVELOPMENT AGREEMENT**

2 THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this TBD
3 day of TBD, 202_ (the “Effective Date”) [to be the date of recording] by and
4 between the VILLAGE OF ELM GROVE, a Wisconsin Municipality (“Village”) and
5 CAROLINE HEIGHTS APARTMENTS LLC, a Wisconsin limited liability company
6 (“Developer”), collectively referred to as the “Parties.”

7 **RECITALS**

8 WHEREAS, Developer represents and warrants that it and its affiliates (as hereinafter
9 defined) currently hold a contract to purchase (“Purchase Agreement”) from the School Sisters
10 of Notre Dame Central Pacific Province, Inc. (“SSND”) approximately TBD acres of
11 property in the Village located at 13105 Watertown Plank Road, Elm Grove, Wisconsin and
12 more fully identified in the attached Exhibit 1, which is hereby incorporated by reference (the
13 “Property”), which Property shall expressly exclude the remaining adjacent cemetery parcel to
14 be retained by SSND (the “Cemetery”); and

15 WHEREAS, the Purchase Agreement contemplates the division of the Property by a
16 recorded certified survey map (the “CSM”) to be recorded by SSND prior to any closings and
17 which CSM divides the Property into the following four (4) parcels: Lot 1 or the Red Barn Parcel
18 (as hereinafter defined), Lot 2 or the Apartment Property (as hereinafter defined), Lot 3 or the
19 Cemetery and Lot 4 or the Green Meadow Parcel (as hereinafter defined) and grants Developer
20 the right to buy the Apartment Property and an affiliate of Developer the right to buy the Red
21 Barn Parcel and the Green Meadow Parcel and further allows the closings on the Red Barn
22 Parcel and the Green Meadow Parcel to occur at different times and after the closing on the
23 Apartment Property; and

24 WHEREAS, Developer seeks to redevelop the Apartment Property by demolishing most
25 of the existing structures, performing major renovation to two historically significant buildings,
26 commonly referred to as Notre Dame and Maria Halls, and constructing three 3 - story buildings
27 and comprised of not more than two hundred thirty-seven (237) residential units (the “Apartment
28 Project”) to be located on Lot 2 of the CSM and legally described in Exhibit 2 attached hereto
29 (the “Apartment Property”) and Developer seeks to (i) obtain approval for ten single-family
30 residences homes on Lot 1 of the CSM and legally described in Exhibit 3 attached hereto (the
31 “Red Barn Parcel”) and (ii) obtain approval for eleven single-family residences homes on Lot 4
32 of the CSM and legally described in Exhibit 4 attached hereto (the “Green Meadow Parcel” and
33 together with the Red Barn Parcel, the “Single-Family Parcels”); and

34 WHEREAS, the Property is currently zoned as I-1 Institutional; and

35 WHEREAS, Developer has requested that the Property be rezoned as a Planned
36 Development Overlay with underlying zonings of RM-1 for the Apartment Property, RS-3 for
37 Red Barn Parcel, and RS-4 for the Green Meadow Parcel as outlined on the attached Exhibit 5
38 under Section 335 of the Village Code of Ordinances to permit the Apartment Project on the
39 Apartment Property and a total of twenty-one (21) single family residences on the Single-Family
40 Parcels and as part of the rezoning has requested approval of the CSM that creates the Apartment

41 Property, the Red Barn Parcel, the Green Meadow Parcel; the Cemetery will remain zoned as I-1
42 Institutional; and

43 WHEREAS, the Village conducted a public hearing concerning the work to be done with
44 respect to the Apartment Property and the Single-Family Parcels and the rezoning of the Property
45 on TBD, 202 TBD; and

46 WHEREAS, pursuant to Wis. Stat. § 66.1105 (the "Tax Increment Law"), the Village
47 adopted a plan for redevelopment and the elimination of blight (the "Project Plan") within the
48 Property and adjacent parcels. The Village formed Tax Incremental Financing District No. 3 (the
49 "TIF District") which included the Property and the adjacent parcels. The comprehensive legal
50 description for the TIF District is attached hereto as Exhibit 6 [this legal will include Cemetery];
51 and

52 WHEREAS, following a public hearing by the Village, the Village by resolution adopted
53 on TBD, 202_, found and determined the Property to be "blighted property" within the
54 meaning of Section 66.1333(2m)(bm) of the Wisconsin Statutes and in need of redevelopment.
55 The Village Board of the Village, by its resolution TBD adopted by the required
56 percentage vote of its members on TBD, 202 TBD, approved providing financial
57 assistance to Developer for the private acquisition, improvement, and development and
58 redevelopment of the Property by Developer as described herein, for the purpose of eliminating
59 Property's status as "blighted property," and found that a comprehensive or other redevelopment
60 plan is not necessary to determine the need for such assistance, the uses of the Property after
61 such assistance, or the relation of such assistance to other property redevelopment; and

62 WHEREAS, until the Village has been repaid the Village Obligations (as hereinafter
63 defined), Developer has agreed with the Village, upon completion of the Apartment Project, to
64 pay, as a special charge payment, in addition to the real property taxes payable that year for the
65 Property, but only if the actual assessed value is less than the Minimum Assessed Value (as
66 hereinafter defined), an amount equal to the property taxes that would have been paid on the
67 difference in value between the actual assessed value and the Minimum Assessed Value utilizing
68 standard practices for assessments; and

69 WHEREAS, the Village finds that the construction of the Apartment Project and
70 fulfillment, generally, of the terms and conditions of this Agreement, are in the best interests of
71 the Village and its residents, by eliminating and preventing blight, expanding the tax base and
72 creating jobs, thereby serving public purposes in accordance with State law and consistent with
73 the Village's Project Plan, dated TBD for the TIF District (as amended, the "TID
74 Plan"); and

75 WHEREAS, based upon the representations of Developer and input from the Village's
76 financial advisor, the Village finds and determines that but for the Village's provision of
77 financial assistance to Developer, including the extension of municipal water and associated
78 improvements, the Apartment Project would be infeasible, Developer would not construct the
79 Apartment Project, and the Village will not accomplish some of the objectives of the TID Plan;
80 and

81 WHEREAS, as an inducement to Developer to redevelop the Property, Developer has
82 requested financial assistance toward the Apartment Project on the terms and conditions more
83 fully described below; and

84 WHEREAS, Developer has provided plans and specifications for the Apartment Project
85 (attached hereto and incorporated by reference as Exhibit 7) and such plans and specifications as
86 approved by the Building Board and Plan Commission are hereafter referred to as the “Plans and
87 Specifications”; and

88 WHEREAS, the Building Board, at its meeting dated July 22, 2021, recommended
89 approval of Developer’s Plans and Specifications; and

90 WHEREAS, the Plan Commission, at its meetings dated TBD, 202 TBD,
91 recommended approval of Developer’s Plans and Specifications, the CSM, demolition and
92 rezoning of the Property; and

93 WHEREAS, the Plan Commission has further recommended approval of the Apartment
94 Project conditioned upon entry by the Village and Developer into a Development Agreement
95 pursuant to Section 335-30 of the Village Code of Ordinances; and

96 WHEREAS, the Village is requiring that, as conditions of redevelopment approval,
97 concurrently with redevelopment of the Property that Developer install certain improvements
98 listed in the attached Exhibit 8 (which illustrates and itemizes improvements and the Building
99 Board punch list items) that are to be dedicated by Developer to the public upon completion (the
100 “Public Improvements”);

101 WHEREAS, the Village has agreed to construct a public Water Main (as hereinafter
102 defined) which will service the Apartment Project and the Single-Family Parcels and potentially
103 other adjoining and adjacent parcels; and

104 WHEREAS, upon the sale of the Apartment Property to Developer, SSND will still own
105 the Single-Family Parcels and has therefor agreed, by executing a Consent to this Agreement: (i)
106 to consent to the recording of this Agreement and the SWM Agreement (as hereinafter defined)
107 against the Single-Family Parcels; (ii) to consent to the change in zoning of the Property as
108 described in Article IX.A.; (iii) to consent to Developer having access to the Single-Family
109 Parcels as necessary or desirable for Developer to comply with its obligations under this
110 Agreement, including, without limitation, the construction of the Public Improvements and the
111 construction and maintenance of the SWM System (as hereinafter defined); (iv) to enter into and
112 record easements against each Single-Family Parcel to provide for such access; and (v) to require
113 that any future owner of the Single-Family Parcels be bound by the terms of Article IX of this
114 Agreement, provided that so long as SSND does not attempt to develop the Single-Family
115 Parcels, SSND will have no obligations under Article IX of this Agreement other than as set
116 forth above as to its consents and its agreement to enter into the above described easements and
117 SSND’s agreement that this Agreement and the SWM Agreement will run with and bind the
118 Single-Family Parcels and any future owner thereof, including, without limitation, any
119 Developer affiliate; and

120 WHEREAS, A Developer affiliate will acquire the Single-Family Parcels and intend(s)
121 to then convey each of the Single-Family Parcels to a single family home developer and to then
122 be released from obligations relating thereto, provided that Developer will retain the obligation
123 to complete the Public Improvements and complete and maintain the SWM System and the
124 owners of the Single-Family Parcels will not have any obligation in connection therewith except
125 (i) as expressly set forth in the SWM Agreement and (ii) to not engage in or allow any activity in
126 conflict with the purpose or provisions of the SWM Agreement; and

127 WHEREAS, on _____TBD_____, 202_TBD_, the Village Board duly approved
128 Developer’s Plans and Specifications, the rezoning of the Property, the CSM, the declaration of
129 blight, the creation of the TIF District and the Project Plan for same, demolition on the
130 Apartment Property, grading and installation of permanent comprehensive storm water
131 improvements, the public road, and public water system and sanitary sewer system, all as more
132 particularly described in this Agreement, Developer and the Village entering into this Agreement
133 and further subject to the terms, conditions, and provisions of this Agreement, all subject to
134 Developer obtaining title to the Apartment Property in fee simple as an absolute precondition
135 before the Village will allow and shall record this Agreement against the Property, the original of
136 which shall be in the sole possession and control of the Village and held in trust by the Village to
137 be recorded immediately following the recording of the deed transferring the Apartment Property
138 to Developer and prior to the recording of any mortgage on the Property or any portion thereof.

139 **AGREEMENT**

140 NOW, THEREFORE, the Village and Developer acknowledge and agree that, in
141 consideration of the granting of approval of the Apartment Project by the Village Board, for One
142 Dollar (\$1), and the representations by Developer and the consents by SSND set forth herein, the
143 mutual promises set forth herein, and other good and valuable consideration, the receipt and
144 sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

145 **ARTICLE I**
146 **DEFINITIONS AND RECITALS**

147 A. Incorporation of Recitals. The recitals set forth above are hereby incorporated
148 and fully made part of this Agreement.

149 B. Definitions. As used herein, the following terms shall have the following
150 meanings:

151 1. “Tax Increment” shall mean the amount of tax increment generated by the
152 TIF District, as defined in Wis. Stat. § 66.1105(2)(i).

153 2. “affiliate(s)” shall mean a legal Wisconsin or Delaware entity that is
154 controlled directly or indirectly by Mandel Group, Inc. or Barry R. Mandel.

155 3. “Available Tax Increment” shall mean the Tax Increment actually
156 received by the Village from taxes levied on the Property, included any special charge

157 payments made in connection with the Property including pursuant to Sections XII.H.
158 and XVI.I.

159 4. “Eligible Project Costs” shall mean all eligible project costs as defined in
160 §66.1105(2)(f), Wis. Stats. in furtherance of the redevelopment of the TIF District. The
161 eligible project costs for the Apartment Project may include, but are not limited to, the
162 costs of major renovations to two historically significant buildings on the Apartment
163 Property, construction and installation of private utilities and private roads throughout the
164 Apartment Property, construction preparation of the Apartment Property, storm water
165 management throughout the Property as more particularly provided herein and in the
166 SWM Agreement, construction of underground parking for the Apartment Property
167 residents, construction of 3 new apartment buildings and related amenities and
168 installation of landscaping and lighting, but expressly excluding the costs of the Public
169 Improvements and the cost of developing the Single-Family Parcels as single-family
170 residences. Eligible Project Costs include the post installation/completion incentive
171 payment identified within Article XII below in accordance with §66.1105(2)(f)(2)(d),
172 Wis. Stats.

173 **ARTICLE II**
174 **REMOVAL OF EXISTING STRUCTURES/EROSION CONTROL APARTMENTS**

175 A. Erosion Control. Developer shall install and maintain Village-approved erosion
176 control methods required under the SWM Agreement prior to and until commencement of any
177 ground disturbing activities on the Property. Developer shall thereafter provide and maintain
178 erosion control in accordance with the SWM Agreement.

179 B. Demolition. Developer shall remove and dispose of those existing structures
180 located on the Apartment Property scheduled for removal in the Plans and Specifications. Unless
181 construction commences within thirty (30) days after completion of all demolition activity,
182 weather permitting, Developer will be required to restore the Property to an erosion-controlled
183 and dust-free condition in conformity with the SWM Agreement and, as applicable, the Plans
184 and Specifications.

185 C. Permits. Developer shall acquire all necessary permits, including but not limited
186 to Village demolition, and sewer lateral disturbance permits, to accomplish demolition, removal,
187 and disposal prior to commencement of any work on the Property, at Developer’s sole cost and
188 expense.

189 D. Restoration. All areas on those parcels of the Property on which construction is
190 not actively ongoing that have been disturbed by Developer’s construction activities shall be
191 restored to a grade compatible with the overall SWM Plan (as hereinafter defined) and re-
192 vegetated within thirty (30) days of the cessation of any grading on such parcel, weather
193 permitting.

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**ARTICLE III
IMPROVEMENTS**

Subject to the limitations set forth in Section XV.C, Developer hereby agrees that, upon undertaking any land disturbing activities for the Apartment Project on the Property, Developer shall construct the following public and private improvements in substantial accordance with the Plans and Specifications as follows:

A. Buildings. Developer shall construct three new buildings and renovate two existing buildings. Construction by Developer shall be in substantial accordance with the Plans and Specifications set forth in Exhibit 7.

B. Sanitary Sewer.

1. Developer shall remove existing sanitary sewer and construct, install, and furnish a completed sanitary sewer system for the Apartment Project in substantial accordance with the Plans and Specifications set forth in Exhibit 7 and, but only to the extent shown on the Plans and Specifications set forth in Exhibit 7, for the Single-Family Parcels. The Apartment Project sanitary sewer improvements shall be private improvements and may be connected to the Village sanitary sewer system subject to testing/inspection, at the expense of Developer, required by the Village. The Single-Family Parcels sanitary system to be constructed by Developer within public right of ways will be dedicated by Developer to the Village subject to their acceptance by the Village as provided herein. The developer of a Single-Family Parcel will be responsible for constructing the private laterals to the individual homes and the Village may include requirements in connection therewith in a separate development agreement with any such developer.

2. As a condition of obtaining any plumbing permit(s) pertaining to the Apartment Project, Developer shall acquire for the Apartment Project and submit to the Village evidence of Wisconsin Department of Safety and Professional Services approval and submit a copy to the Village prior to installing the sanitary sewer system.

3. As a condition of obtaining any plumbing permit(s) pertaining to the Apartment Project, if required, Developer shall obtain prior approval for the Apartment Project from the Milwaukee Metropolitan Sewerage District (“MMSD”) and submit a copy of such approval to the Village.

4. All work on the sanitary sewer/plumbing shall be in accordance with “Standard Specifications for Sewer and Water Construction in Wisconsin” and applicable specifications and standards provided by MMSD.

5. Developer shall be responsible for payment of all applicable connection and permit charges associated with said sanitary sewer system for the Apartment Project.

6. Developer shall, at its sole expense, furnish one set of “as-built” plans for the sanitary sewer system; including location and elevation of laterals at the lot lines together with an electronic file copy of said plans compatible with the Village’s GIS

233 software prior to the granting of an occupancy permit. Developer shall be responsible for
234 any costs of integrating said GIS data into the Village’s GIS database.

235 C. Public Water Main.

236 1. On or before the date TBD months after the issuance of the
237 Apartment Project’s construction permit, the Village shall construct and complete the
238 public Water Main sufficient to service the Apartment Project and all twenty-one (21) of
239 the single family residences permitted to be constructed on the Single-Family Parcels. As
240 required above as part of the Public Improvements to be constructed by Developer,
241 Developer shall install public water lines from the Water Main through the Single-Family
242 Parcels as shown on Exhibit 8 sufficient to serve all twenty-one (21) of the single family
243 residences permitted to be constructed on the Single-Family Parcels and easements for
244 these Public Improvements are included on the CSM. Notwithstanding the foregoing, the
245 parties acknowledge and agree that the Apartment Project’s water service is subject to
246 approval by the City of Wauwatosa. In the event the water service described above is not
247 approved by the City of Wauwatosa and an agreement entered into by the Village and the
248 City of Wauwatosa for the provision of such water service and any all contingencies to
249 the performance of such agreement by the City of Wauwatosa waived or satisfied, prior
250 to TBD, 202 TBD, which date may be extended by Developer at its sole
251 option, in writing, then either party may terminate this Agreement, without liability to the
252 other party, by written notice to the other party given prior to such agreement being fully
253 executed and delivered, in which event, the parties shall have no further rights or
254 remedies hereunder. Developer shall be responsible for the installation of all internal
255 water lines within the Apartment Property and for connecting to the Water Main in the
256 Watertown Plank Road right of way, all as listed on Exhibit 8 attached hereto. The plans
257 for the public Water Main will be designed by the City of Wauwatosa and the proposed
258 location is shown on Exhibit 9 attached hereto (the “Water Main”). The estimated cost of
259 the Water Main is Three Million Five Hundred Sixty-Six Thousand Dollars and 00/100
260 (\$3,566,000.00) and is more particularly detailed in the attached Exhibit 10 (the
261 “Estimated Water Main Costs”).

262 2. If applicable, the Village shall furnish all initial pump and water test
263 results, plans and details for the Water Main. The Water Main shall be a public
264 improvement.

265 3. As a condition of the issuance of an occupancy permit, Developer shall
266 construct, install, furnish, and provide fire suppression systems for the Apartment
267 Property to the extent required by, and in accordance with, plans and specifications
268 approved by the State of Wisconsin.

269 4. If a delay in completion of the public Water Main described in this
270 Agreement is caused or contributed to by, labor disputes, casualties, acts of God or the
271 public enemy, governmental embargo restrictions, shortages of fuel, labor or materials,
272 pandemics, epidemics, public health related issues, riots, public insurrection, action or
273 non-action of public utilities or of local, state or federal governments, agencies or
274 departments affecting the work or other causes beyond Village’s reasonable control, then

275 the time of completion of the Water Main shall be extended for the additional time
276 caused by such delay. Village shall give written notice to Developer within twenty (20)
277 calendar days of the first occurrence of any event understood to be within the scope of
278 this Section III.C.4., together with substantiation that the event qualifies for the granting
279 of additional time under this section. Failure by the Village to provide written notice
280 within the time provided hereunder shall constitute a waiver by the Village of any right to
281 an extension under the terms of this section.

282 D. Storm/Surface Water System.

283 1. Developer shall construct, install, furnish, and provide facilities for storm
284 and surface water drainage management for the Property (the "SWM System") in
285 substantial accordance with the Plans and Specifications set forth in Exhibit 7 or as may
286 need to be modified to be in accordance with all applicable State, Federal, and Village
287 statutes, regulations, ordinances, and MMSD Chapter 13 regulations and the Storm Water
288 Management Plan agreed to by Developer and the Village (the "SWM Plan") and
289 incorporated into a Storm Water Management, Facility Maintenance and Easement
290 Agreement entered into by Developer (the "SWM Agreement") and made a part of this
291 Agreement contained in attached Exhibit 11.

292 2. The SWM System on the Property shall be a private improvement and will
293 not be dedicated to the Village.

294 3. The Village shall have no obligation to issue any occupancy permits until
295 the SWM System has been inspected by the Village Engineer and deemed to have been
296 installed in substantial accordance with the Plans and Specifications or any needed
297 modifications/amendments of same in the opinion of the Village Engineer to address any
298 failure of the storm and surface drainage system to perform in accordance with the design
299 criteria in the SWM Agreement approved by the Village Engineer.

300 4. Developer shall, at its sole expense, furnish one set of "as-built" plans of
301 the SWM System provided by Developer under this Agreement together with survey
302 coordinate locations for manholes, inlets, and other structures and components provided
303 by Developer under this Agreement, both on and off the Property, together with an
304 electronic data file for integration into the Village's GIS database. Developer shall be
305 responsible for the reasonable costs of integration of said data into the Village's GIS
306 database.

307 5. Developer, together with its successors and assigns, but only while each
308 owns the Apartment Project, shall be responsible for the inspection on not less than an
309 annual basis, perpetual maintenance, operation, and replacement of all storm/surface
310 water facilities or components as required under the SWM Agreement.

311 E. Letter of Credit/Decorative Landscaping.

312 1. Developer shall seed and otherwise landscape the Apartment Property and,
313 if applicable, the Single-Family Parcels, in substantial accordance and pursuant to
314 Developer's Plans and Specifications set forth in Exhibit 7.

315 2. In addition to paying the then applicable permit fee(s), Developer shall
316 provide a letter of credit or cash escrow to the Village in the amount of (\$TBD) to
317 guarantee a good faith execution of the approved erosion control plan and any erosion
318 control permit conditions as set forth in the SWM Agreement. If a letter of credit and not
319 a cash deposit, said letter of credit may be combined with one or more of the other letters
320 of credit described in Section VIII.C of this Agreement, but such letter of credits will be
321 subject to reduction following the procedures set forth in Sections VIII.D through VIII.F
322 of this Agreement.

323 3. Developer shall provide and plant on the Property all trees/shrub plantings
324 of the size and species, and at the locations, identified in Developer's Plans and
325 Specifications set forth in Exhibit 7; provided, however, that Developer may substitute
326 larger size plantings of the same species. Following the planting of said trees and shrubs
327 Developer shall water and maintain said trees and shrubs on the Property to ensure their
328 survival for not less than one (1) year. In the event any tree(s) or shrub(s) fails to survive
329 one (1) year following its planting, Developer shall replace said tree(s) or shrub(s) with
330 substantially like kind of species and size at its sole expense.

331 F. Roads and Parking.

332 1. Developer shall grade, construct, and surface private roads, driveways,
333 and parking areas for the Apartment Property as shown on, and in substantial accordance
334 with the Plans and Specifications set forth in Exhibit 7. Developer shall grade, construct,
335 and surface certain public roads for the Single-Family Parcels as shown on, and in
336 substantial accordance with the Plans and Specifications set forth in Exhibit 7. The CSM
337 shall depict the location of the public roads and indicate "To Be Dedicated" or similar
338 language.

339 2. Direct vehicular access to the Apartment Property from public streets shall
340 be only via Watertown Plank Road. Direct vehicular access to the Red Barn Parcel from
341 public streets shall be only via Stephen Place and Red Barn Lane. Direct vehicular access
342 to the Green Meadow Parcel from public streets shall be only via the extension of the
343 Green Meadow Place cul de sac.

344 3. Developer shall, at its expense, perform, or cause to be performed, the
345 modifications to the curb and gutter on Watertown Plank Road, Stephen Place, Red Barn
346 Lane, and Green Meadow Place in accordance with Exhibit 7.

347 G. Exterior Lighting and Signage. Developer shall provide and install exterior
348 lighting and signage for the Apartment Property in substantial accordance with the Plans and
349 Specifications set forth in Exhibit 7. Developer, together with its successors and assigns, but
350 only while each owns the Apartment Project, shall bear all electrical and operational expenses
351 for all private lighting on the Apartment Property.

352 H. Permits. The Village will grant Developer any and all permits required so that
353 Developer can construct and install the Public Improvements in any public right of way or on

354 other Village property provided Developer complies with the requirements, if any, for the
355 issuance of such permits.

356 I. Pathways/Sidewalks.

357 1. Developer shall install concrete sidewalks on and off of the Property in
358 substantial accordance with the Plans and Specifications set forth in Exhibit 7 (the
359 “Sidewalks”).

360 2. Developer acknowledges that the Village is requiring the installation and
361 maintenance of a Walking Path (defined below) on the Apartment Parcel in substantial
362 accordance with the Plans and Specifications set forth in Exhibit 7. Developer shall grant
363 an easement to the public and enforceable by the Village on, over and across the Walking
364 Path and those Sidewalks as set forth on Exhibit 13 solely to allow the public to use the
365 Sidewalks for pedestrian travel to and from the Walking Path only and to allow the public
366 to use the Walking Path for pedestrian use only (the “Walking Path Easement”).
367 Developer may promulgate reasonable rules and regulations for the use of the Walking
368 Path and Sidewalks, including, without limitation, restricting or prohibiting night time
369 usage and prohibiting littering, blocking or obstructing the Walking Path and Sidewalks,
370 skateboards, bicycles, and scooters. The Village shall have no responsibility to enforce
371 any promulgated rules and regulations pertaining to the Sidewalks or Walking Paths, but
372 shall be required to enforce any trespassing or other behavior that it would enforce or
373 otherwise address on any other owner’s private property in the Village. The Walking
374 Path Easement shall be in substantially the form attached hereto as Exhibit 13.
375 Developer, together with its successors and assigns, but only while each owns the
376 Apartment Project shall maintain, repair and replace the Sidewalks and Walking Paths,
377 including snow and ice removal.

378 **ARTICLE IV**
379 **DEDICATION OF PUBLIC IMPROVEMENTS**

380 A. Transfer to Village. Subject to all of the other provisions of this Agreement and
381 the Exhibits attached, Developer shall, without charge to the Village, upon completion of any
382 Public Improvements situated on or off the Property, unconditionally give, grant, convey and
383 fully dedicate the same to the Village, its successors and assigns, forever, free and clear of all
384 encumbrances whatsoever, together with, including without limitation, all structures, mains,
385 conduits, pipes, lines, machinery, equipment and appurtenances which may in any way be a part
386 of such Public Improvements and together with any and all necessary easements for access
387 thereto and, prior to any conveyance of a Single-Family Parcel to an entity not affiliated with
388 Developer, Developer or its affiliate shall have either dedicated to the Village all of the Public
389 Improvements located on the Single-Family Parcel being conveyed or provided the Village with
390 satisfactory evidence that it has reserved all of the ownership rights in and to any Public
391 Improvements located on the Single-Family Parcel being conveyed and has retained the express
392 right to dedicate all such Public Improvements and to grant easements for access thereto to the
393 Village or required the owner of the applicable Single-Family Parcel or Parcels to so dedicate
394 and grant access easements to the Village. At the time of recording of this Agreement,
395 Developer shall provide the Village with a title commitment and a deed as satisfactory evidence

396 of the commitment to issue title insurance reflecting Developer’s full ownership of the
397 Apartment Property. At the time of the acquisition by a Developer affiliate of a Single-Family
398 Parcel, Developer shall provide the Village with a title commitment and a deed as satisfactory
399 evidence of the commitment to issue title insurance reflecting the Developer affiliate’s full
400 ownership of the applicable Single-Family Parcel. Developer shall also pay, or cause to be paid
401 when due, any transfer taxes that arise as a result from said dedication(s).

402 B. Notice and Acceptance. Developer shall notify the Village in writing of the
403 completion of all Public Improvements described on Exhibit 8. Within fourteen (14) days of the
404 date of such notice, the Village shall inspect and/or re-inspect as necessary any Public
405 Improvement described in Developer’s notice and prepare and deliver to Developer a written
406 punch list of repairs necessary to bring such Public Improvement into substantial conformance
407 with the Plans and Specifications. Upon Developer’s written notice to the Village that all punch
408 list repairs for all such Public Improvement are complete, and following satisfactory completion
409 of any applicable re-inspection, the Village shall within twenty (20) days following the date of
410 such notice and subject to inspection and approval of the Village, by resolution, accept the
411 dedication of all Public Improvements. Simultaneous with the acceptance by the Village of any
412 sanitary sewer improvement on the Property, Developer shall, at its sole expense, furnish to the
413 Village one set of “as built” plans in an electronic format acceptable to the Village.

414 C. Construction Warranty for Dedicated Public Improvements. Developer warrants
415 that all materials and workmanship furnished by Developer for the Public Improvements shall
416 remain in good and sound condition for and during a period of twelve (12) months from the date
417 that is thirty (30) days after final approval by the Village engineer of the applicable Public
418 Improvements.

419 D. Public Improvement Warranty Security. Developer shall furnish to the Village,
420 prior to final approval of all Public Improvements by the Village engineer, warranty security for
421 the Public Improvements (the Public Improvement Warranty Security”) in the form of an
422 original, irrevocable letter of credit issued by a federally insured banking institution in a form
423 acceptable to the Village Attorney naming the Village as payee, equaling ten percent (10%) of
424 the total final cost of the Public Improvements, which letter of credit will be retained by the
425 Village for a period of twelve (12) months from the date that is thirty (30) days after final
426 approval by the Village engineer of the Public Improvements as security for Developer’s
427 guarantee that the workmanship and materials furnished meet all state, federal and local
428 requirements and specifications and that each Public Improvement is and will remain in good
429 and sound condition for and during the twelve-month period from the date that is thirty (30) days
430 after final approval by the Village engineer of the Public Improvements. Said letter of credit
431 may be combined with one or more of the other letter(s) of credit funds described in Section
432 VIII.C of this Agreement, but in all events, shall be subject to release and remittance following
433 the procedures set forth in Sections VIII.E and VIII.F of this Agreement.

434 E. Obligation to Repair. Developer shall make or cause to be made, at its own
435 expense, any and all repairs which may become necessary under and by virtue of Developer’s
436 warranty and leave the Public Improvements in good and sound condition; provided, however,
437 Developer’s obligation to repair shall not extend to repairs necessitated by or related to any

438 neglect or misconduct of the Village, its agents, employees or contractors (and the letter of credit
439 may not be drawn against in such instances).

440 F. Notice of Repair. If during a warranty period, the Public Improvements shall, in
441 the reasonable opinion of the Village Engineer in his or her reasonable discretion, require any
442 repairs or replacements which in his/her reasonable judgment are necessitated by reason of
443 settlement of foundation, structure or backfill, or other defective workmanship and/or materials,
444 Developer shall, upon written notification by the Village Engineer of the necessity for such
445 repairs, make such repairs, at its own cost and expense. In the event Developer fails to make
446 such repairs within a reasonable time after written notice has been sent as provided herein, or
447 fails to start work within one (1) month after such written notice, weather permitting, the Village
448 may cause such work to be done, but has no obligation to do so, either by contract or otherwise,
449 and the Village may draw upon any letter of credit then in the Village's possession to pay any
450 costs or expenses incurred in connection with such repairs or replacements. If the cost or
451 expense incurred by the Village in repairing or replacing any portion of the Public Improvements
452 covered by this warranty exceeds the amount of the letters of credit, then Developer shall, within
453 thirty (30) days of being invoiced by the Village, pay any excess cost or expense actually
454 incurred in the correction process. If Developer fails to make payment within said thirty (30)
455 days, the Village may assess a special charge against the Apartment Property pursuant to Wis.
456 Stat. § 66.0627 as subsequently amended from time-to-time.

457 G. Maintenance Prior to Acceptance.

458 1. Developer shall maintain the Public Improvements until such time as they
459 are accepted for dedicating by the Village. This maintenance shall include routine
460 maintenance, such as dust suppression, crack filling, and the like. In cases where
461 emergency maintenance is required, such as sewer blockages, the Village retains the right
462 to complete the required emergency maintenance in a timely fashion and bill Developer
463 for all actual associated costs.

464 2. All improvements to be dedicated to the Village under this Agreement
465 shall be maintained by Developer until they are accepted so they substantially conform to
466 the applicable plans and specifications attached as exhibits to this Agreement at the time
467 of their acceptance by the Village.

468 **ARTICLE V**
469 **MISCELLANEOUS REQUIREMENTS**

470 A. Underground Utilities. All newly installed electrical, telephone, gas and
471 communications utilities shall be underground. Normal and customary above-ground utility
472 facilities such as transformers, service pedestals, gas vents and the like approved in writing by
473 the Village Engineer in his/her reasonable discretion are permissible. Coordination of
474 installation as shown on the Plans and Specifications shall be the responsibility of Developer.

475 B. Manner of Performance. Developer shall cause all construction called for by this
476 Agreement to be carried out and performed in a good and workmanlike manner consistent with

477 current best practices in the construction of Class A multi-family apartment buildings in the
478 southeastern Wisconsin area.

479 C. Permits. Developer hereby agrees to obtain all necessary permits and approvals
480 from all governmental authorities, including but not limited to the Village, the City of
481 Wauwatosa and State of Wisconsin, prior to the start of construction, demolition, and/or
482 hazardous waste abatement. Developer shall be solely responsible for payment of all applicable
483 permit fees and costs.

484 D. Locations/Existing Public Utilities. Developer agrees that the locations of
485 existing Village sanitary sewer and storm water facilities as indicated on the approved Plans and
486 Specifications and any other Village records are approximate locations only. Each party is solely
487 responsible for definitively locating the other parties' existing facilities in the field, and no party
488 hereto shall bear any liability if any of said facilities are not located as may be contained in the
489 approved Plans and Specifications and any other Village records. The parties hereto shall take
490 commercially reasonable steps so as to not interfere with the existing facilities of the other party.

491 E. Pre-Demolition and Pre-Construction Meetings. Developer and its general
492 contractor(s) shall attend pre-demolition and pre-construction meetings with Village staff prior to
493 conducting demolition and construction on the Apartment Property.

494 **ARTICLE VI**
495 **TIME**

496 A. Commencement and Completion. Subject to the limitations of Section XV.C of
497 this Agreement, Developer shall complete, or cause the completion of, the following aspects of
498 the improvements of the Property, all in compliance with the requirements of this Agreement, in
499 accordance with Section 106-3(F) of the Village Code of Ordinances and in accordance with the
500 following Apartment Project schedules:

501 1. Commencement of Apartment Project: Within twelve (12) months of
502 Developer's acquisition of the Apartment Property, Developer shall commence
503 construction of the Apartment Project. In the event Developer does not commence
504 demolition within one month of the recordation of this Agreement any delays in time will
505 postpone deadlines identified in this Agreement by the length of the delay incurred
506 except the deadlines identified in this Section VI.A.1 for commencement of construction.

507 2. Completion of SWM System: Except for punch list items relating to such
508 improvements which shall be diligently pursued to completion thereafter by Developer,
509 not later than substantial completion of the Apartment Project improvements and prior to
510 any occupancy permit being issued for the Apartment Project.

511 3. Completion of Apartment Project landscaping: within four (4) months of
512 occupancy of the Apartment Project and such period will be extended if completion is
513 delayed due to inadvisability of landscaping due to the typical seasonal weather during
514 any of such four (4) month period.

515 4. Completion of all Apartment Project improvements: Within thirty (30)
516 months of the issuance of any building permits for the Apartment Project.

517 B. Improvements. Time is of the essence as to all timelines set forth in this
518 Agreement. Subject to the provisions of Section VI.D of this Agreement, upon failure of
519 Developer to meet one or more deadlines specified in this Agreement, in the event Developer has
520 commenced the Apartment Project, the Village may (but is not required to) complete that aspect
521 of the Apartment Project pertaining to the Public Improvements for which construction has
522 commenced but is not completed (i.e., the portion, if any, necessary to allow completion of the
523 Public Improvements). The Village may also (but is not required to) restore the Property to
524 grade and stabilize the Property to achieve a dust-free, erosion proof condition provided,
525 however, that this section shall not be construed to grant the Village authority to remove any
526 building constructed by Developer on the Property solely due to Developer's failure to meet one
527 or more timelines specified in this Agreement unless both Developer and Guarantor have ceased
528 all construction activity on the Property for more than eighteen (18) consecutive months. In the
529 event the Village performs work on the Property under this Section, the Village may charge
530 Developer one hundred ten percent (110%) of the actual costs incurred by Village in completing
531 that aspect of the Apartment Project or restoring the Property to grade and stabilizing the
532 Property to a dust-free, erosion-proof condition. The Village may draw upon any security
533 provided in this Agreement for the payment of said charges against the defaulting Developer and
534 invoice said Developer for any costs in excess of any such security. If Developer fails to pay
535 such invoice, the Village shall have the right to assess a special charge against the Apartment
536 Property, or any portion thereof, under Wis. Stat. § 66.0627 as subsequently amended from time-
537 to-time. The Village shall also have all rights and remedies provided under the Guaranty, the
538 form of which is attached hereto as Exhibit 12.

539 C. Subject to the provisions of Section VI.D of this Agreement, and solely at the
540 discretion of the Village, Developer may be deemed to have forfeited its rights under this
541 Agreement to construct the improvements set forth in the Plans and Specifications upon
542 occurrence of any one or more of the following events:

543 1. Developer fails to commence construction within the times permitted
544 under Section VI.A.1 of this Agreement, as applicable; or

545 2. Developer fails to apply for and diligently pursue building permit(s)
546 within twelve (12) months of the Effective Date of this Agreement.

547 D. Cause of Delay and Notice of Default.

548 1. If delay in completion of any improvements on the Property described in
549 this Agreement is caused or contributed to by, labor disputes, casualties, acts of God or
550 the public enemy, governmental embargo restrictions, shortages of fuel, labor or
551 materials, pandemics, epidemics, public health related issues, riots, public insurrection,
552 action or non-action of public utilities or of local, state or federal governments, agencies
553 or departments affecting the work or other causes beyond Developer's reasonable control,
554 then the time of completion of such improvement shall be extended for the additional
555 time caused by such delay. Developer shall give written notice to the Village within

556 twenty (20) calendar days of the first occurrence of any event together with substantiation
557 that the event qualifies for the granting of additional time under this section. Failure by
558 Developer to provide written notice within the time provided hereunder shall constitute a
559 waiver by Developer of any right to an extension under the terms of this section.

560 2. The Village shall give Developer written notice of default and an
561 opportunity to cure within thirty (30) days, prior to exercising its rights to cure any
562 defaults by Developer in its performance of completion of Public Improvements within
563 the timeline prescribed under Section VI.A of this Agreement, provided that if the default
564 is curable and Developer cannot reasonably cure such default within such thirty (30) day
565 period, then Developer shall have such time as is reasonably necessary to cure such
566 default provided Developer promptly commences such cure and diligently pursues such
567 cure to completion. Notwithstanding the foregoing, if the Village Manager in his or her
568 sole discretion determines that such delay would unreasonably endanger the health or
569 safety of any persons or property within the Village in which case the Village may
570 provide a shorter time for cure. Developer shall give Village written notice of default and
571 an opportunity to cure within thirty (30) days prior to exercising its rights to any defaults
572 by Village in its completion of Water Main within the timeline prescribed under Section
573 III.C of this Agreement.

574 **ARTICLE VII**
575 **PAYMENT OF VILLAGE FEES**

576 A. Reimbursement. Developer agrees to reimburse the Village for its planning,
577 engineering, inspection, and legal work associated with the Apartment Project. Village shall
578 keep a detailed accounting of such costs and bill Developer at the rates contracted by the Village
579 for such services.

580 B. Upfront Fees. Developer shall, at the time of entry into this Agreement, pay the
581 Village for:

582 1. The Village's reasonable engineering and legal expenses incurred as of,
583 and shall further deposit with the Village Ten Thousand and No/100 Dollars (\$10,000)
584 with respect to reimbursement of the Village's subsequent expenses arising out of or
585 related to entry into this Agreement. If Village's expenses exceed said posted \$10,000,
586 Developer shall pay the Village such additional sums within ten (10) days of the date of
587 Village's invoice to Developer together with such other planning, engineering,
588 inspection, and legal work. Any additional funds as necessary will be deposited to
589 maintain a balance of not less than \$5,000 at all times until the termination of all other
590 financial security provided to the Village under this Agreement. Said invoice shall
591 contain a summary of Village's costs for which payment is required under this section.

592 2. Notwithstanding anything contained herein to the contrary, the Village
593 hereby acknowledges and agrees that there are no municipal sanitary sewer impact,
594 reserve capacity, or similar municipal sewer impact fees due or owing as a result of the
595 Apartment Project. To the best of the Village's knowledge, there are no MMSD sewer
596 impacts, reserve capacity, or similar district impact fees due or owing as a result of the

597 Apartment Project. Developer acknowledges that it shall be responsible for payment at
598 the time of application for any sanitary sewer charges that may be established by the
599 Village and/or MMSD on a municipality- or district-wide basis. The Village agrees to
600 pay for any and all fees, assessments, and/or costs applicable to the Water Main.

601 C. Default. Developer acknowledges and agrees that, in the event Developer
602 remains in default concerning payment of any fees and/or the making of any deposits required
603 under this Agreement for thirty (30) days after written notice of such failure to pay, the Village
604 shall have the right, in its sole discretion, to draw upon any security provided by Developer and
605 held by the Village under this Agreement, post a Stop Work order on the Apartment Project in its
606 entirety, withhold inspections and/or the granting of any permit(s), and/or pursue any other
607 remedy available to the Village under this Agreement or Wisconsin law in connection with such
608 failure to pay.

609 D. Permit Fees. Developer shall be responsible for payment of all applicable permit
610 fees set forth in the Village Code of Ordinances or any fee schedule used by the Village of Elm
611 Grove and the costs of all inspections of the Apartment Project.

612 **ARTICLE VIII**
613 **GUARANTEE AND SECURITY FOR PAYMENT AND PERFORMANCE OF**
614 **DEVELOPER’S OBLIGATIONS**

615 A. Construction of the Apartment Project.

616 1. As a material inducement for the Village to enter into this Agreement,
617 Developer covenants that after it acquires the Apartment Property and, subject to the
618 terms of this Agreement and the express limitations set forth in Section XV.C of this
619 Agreement, it shall construct the Apartment Project (including, but not limited to,
620 construction of buildings and structures, utilities, temporary and permanent landscaping,
621 soil erosion provisions, screening, seeding, amenities, and all other improvements
622 substantially as set forth on the Plans and Specifications) such that the improvements and
623 real property will have an equalized assessed value of not less than Forty One Million
624 Dollars (\$41,000,000.00) at completion of the Apartment Project (the “Minimum
625 Assessed Value”). A principal or affiliate of Developer (the “Guarantor”) will execute a
626 guaranty in the form attached hereto as Exhibit 12 (the “Guaranty”) guarantying the
627 obligation of Developer set forth in the immediately preceding sentence and such
628 Guaranty will require a confidential presentation to the Village’s consultant for the TIF
629 District that the Guarantor has sufficient assets to perform such guaranty.

630 2. Before the Effective Date, Developer will, through its submittals to
631 Village Staff members, represent that Developer has sufficient financial resources
632 committed to allow Developer to complete the Apartment Project as approved. The
633 Parties acknowledge and agree that the financing commitment(s) obtained by Developer
634 for the Apartment Project is/are subject to conditions. Prior to the Effective Date,
635 Developer shall provide the Village with a letter from its lender that states that the lender
636 has agreed to make a construction loan in a specified minimum amount for the Apartment
637 Project, subject to lender’s typical conditions and requirements.

638 3. Developer shall cause any conditions to such commitment(s) to be
639 removed, satisfied, or waived as a condition of obtaining building permits and, upon
640 Developer's failure to remove, satisfy or obtain waivers of all conditions of its financing
641 commitment(s) within the time frame for commencement of the Apartment Project,
642 Developer's rights and obligations under this Agreement pertaining to the Apartment
643 Project shall terminate, except the reimbursement of any fees then due under Article VII
644 of this Agreement.

645 B. Impact Fee Waiver. Wisconsin Statute § 66.0617 restricts the ability of the
646 Village to collect impact fees. Developer agrees that any payments to the Village under this
647 Agreement are not intended to constitute impact fees and are not intended to be restricted or
648 controlled by Wis. Stat. § 66.0617. Developer, on behalf of itself and its successors and assigns,
649 waives the right to claim application of Wis. Stat. § 66.0617 to the payments made in accordance
650 with this Agreement.

651 C. Performance Guarantee. As a condition of obtaining any building permit arising
652 out of or related to the Apartment Project or the commencement of land disturbing activities
653 (whichever shall occur first), Developer shall deliver or cause to be delivered to the Village
654 Manager one or more original irrevocable letters of credit issued by one or more federally
655 insured banking institutions, the financial condition of which is/are acceptable to the Village,
656 naming Village as payee and being in a form acceptable to the Village Attorney. Said letter(s) of
657 credit shall collectively guarantee (i) 125% of the construction of landscaping, access/egress
658 improvements including all private roadways, sidewalks, curbing, exterior lighting, private storm
659 water system facilities, private and public water and sanitary sewer system but only if and to the
660 extent to be installed by Developer, and site restoration required under this Agreement for the
661 Apartment Project together with the Village's engineering, administrative, and inspection fees
662 projected by the Village to arise out of this Agreement, (ii) if a letter of credit and not a cash
663 deposit, the amount provided for in Section III.E.2 of this Agreement, and (iii) the amount
664 provided for the Public Improvement Warranty Security in Section IV.D of this Agreement.
665 Upon receipt, the letter(s) of credit provided hereunder shall be in substantial compliance with
666 that form attached hereto as Exhibit 14, which form is satisfactory to the Village Attorney.
667 Except for such amounts that may otherwise be released under the provisions of Article VIII.D.,
668 said letter(s) of credit shall be renewed annually and evidence of renewal presented to the
669 Village within sixty (60) days prior to its/their expiration. Failure to renew the letter(s) of credit
670 forty-five (45) days prior to its expiration shall entitle the Village, after five (5) days prior notice
671 to Developer, to withdraw all funds remaining from said letter(s) of credit.

672 D. Reduction of Security Upon Partial Completion and Dedication. The amount of
673 the security will be reduced as each improvement described in Section VIII.C.(i) is completed,
674 and, if applicable, approved by the Village Engineer for dedication, acting reasonably, in
675 accordance with the following procedure:

676 1. From time-to-time during the course of construction Developer may
677 request the Village Engineer to inspect the construction work, including but not limited to
678 landscaping, completed by Developer to that date for purposes of seeking partial release,
679 and the Village Engineer, as agent of the Village, shall use its best efforts to make such
680 inspection within seven (7) days after the request.

681 2. The request to inspect shall be accompanied by a certification prepared by
682 Developer’s architect and stating the work completed, an estimate of the dollar value of
683 the work completed to the date of the request and since Developer’s architect’s last
684 certification and that the work has been completed in a good and workmanlike manner
685 and in substantial compliance with the Plans and Specifications and the applicable
686 Village ordinances. Developer’s architect’s certification shall also include an estimate of
687 the cost to complete the remaining balance of the improvements, on a form and presented
688 in a manner reasonably acceptable to the Village Engineer.

689 3. The request for inspection shall further be accompanied by a sworn
690 contractor’s statement and appropriate photocopies or originals of lien waivers showing
691 that all work in place and for which a reduction in the security is requested has been fully
692 paid for or that all liens have been waived. Upon receipt of the required documentation,
693 the Village Engineer shall conduct its inspection and certify to the Village and to the
694 financial institution issuing any letter(s) of credit the dollar value of the work completed
695 to the date of the request for inspection and since the last certification by the Village
696 Engineer, provided the Village Engineer finds that the work has been completed in a
697 good and workmanlike manner and in substantial compliance with the approved Plans
698 and Specifications and the applicable Village ordinances, that no mechanic’s or other
699 liens will attach to the Property or to any property of the Village as a result of the
700 installation of the applicable improvements and that Developer’s architect’s estimate of
701 the dollar value of the work completed and the cost to complete the remaining
702 improvements are reasonable. Based upon those findings, the Village Engineer shall
703 approve a reduction in the Letter of Credit so long as the aggregate balance remaining in
704 the Letter(s) of Credit is at least equal to the sum of (i) one hundred and ten percent
705 (110%) of the cost to complete all the remaining improvements depending on the
706 projected time of completion of same, plus (ii) the Public Improvement Warranty
707 Security.

708 E. Release of Letter of Credit Upon Completion. Upon final completion of all of the
709 improvements required under Section VIII.C, the approval of the Village engineer of the Public
710 Improvements, and posting of any required warranty or maintenance bond security, the then
711 remaining Letter(s) of Credit shall be released and returned, after first drawing upon the security
712 (if required) for any fees and costs due and owing to the Village pursuant to all applicable
713 ordinances upon thirty (30) days’ prior written notice to Developer. The foregoing
714 notwithstanding, the Village shall continue to hold a letter of credit substantially in the form of
715 Exhibit 14 (or at Developer’s option, such other security as may be reasonably acceptable to the
716 Village Manager, the Village Engineer, and the Village Attorney), in an amount equal to the
717 Public Improvement Warranty Security, upon and subject to the terms and provisions of Sections
718 IV.D and IV.F of this Agreement; subject to said terms and provisions, said letter of credit (or
719 other security) shall be released and returned to Developer not more than twelve (12) months
720 after final approval of the Public Improvements by the Village engineer.

721 F. Remittance of Excess Proceeds. In the event of default by Developer, if any of
722 the Letter of Credit funds remain in the possession of the Village after all of the private and
723 Public Improvements required under Section VIII.C have been completed in a good and
724 workmanlike manner and in substantial accordance with the Plans and Specifications and the

725 applicable Village ordinances, all warranty or maintenance obligations (if any) are satisfied and
726 all fees, costs and expenses of the Village, including reasonable attorney’s fees, engineering fees,
727 consultant fees or other out-of-pocket expenses incurred in completing the improvements, in
728 releasing liens thereon, in paying for work completed prior to default are paid, or other costs
729 incurred as a result of the default of Developer; then any remaining balance shall be paid to
730 Developer, subject to any claim to said funds exerted by any financial institution(s) issuing any
731 letter(s) of credit given as security.

732 **ARTICLE IX**
733 **LAND DIVISION: SINGLE-FAMILY PARCELS.**

734 A. CSM. Developer has submitted for approval, the Village has approved and SSND
735 has executed the CSM. Subject to the recording of this Agreement, the rezoning for the parcels
736 created by the CSM from I-1 Institutional to Planned Development Overlay with the following
737 underlying zoning: RM-1 for the Apartment Property, RS-3 for the Red Barn Parcel, and RS-4
738 for the Green Meadow Parcel as allowed and modified by the Planned Development Overlay
739 shall be effective and the I-1 Institutional shall be continued for the Cemetery.

740 B. SSND Consents. Developer has represented that it does not intend to acquire or
741 develop either of the Single-Family Parcels. SSND has agreed to sell the Apartment Property to
742 Developer and, then at later date(s), to sell the Single-Family Parcels to an affiliate of
743 Developer, which affiliates, shortly after such acquisition, intend to sell the Single-Family
744 Parcels to a single-family developer or developers. SSND has entered into the Consent attached
745 to this Agreement and by doing so hereby consents to the recording of this Agreement and the
746 SWM Agreement against the Single-Family Parcels; consents to the change in zoning of the
747 Property as described in subsection A. above; consents to Developer having access to the Single-
748 Family Parcels as necessary or desirable for Developer to comply with its obligations under this
749 Agreement, including, without limitation, the construction of the Public Improvements and the
750 construction and maintenance of the SWM System; agrees to simultaneously with closing on the
751 sale to Developer of the Apartment Property to enter into and authorize the recording of
752 easements against each Single-Family Parcel to provide for such access in substantially the form
753 attached hereto as Exhibit 15; and acknowledges and agrees that this Agreement, including the
754 obligations of certain future owners, other than SSND, to enter into a PILOT Agreement (as
755 hereinafter defined and described below), the SWM Agreement, the aforementioned easements
756 and Exhibits 3, 4, 5 11, 15 and 16 run with and bind the Single-Family Parcels, and any future
757 owner thereof, including, without limitation, any Developer affiliate¹. Upon conveyance by
758 SSND of the Single-Family Parcels, SSND is fully released from any obligation or liability,
759 express or implied, that it may have associated with this Article IX or the SWM Agreement.

¹ SSND was only willing to sign this agreement and encumber the Single-Family Parcels if it was very clear what both SSND was agreeing to and what restrictions would be binding on the Single-Family Parcels going forward, In addition, for purposes of being able to transfer the Single Family Parcels to a single family home developer, the single family home developer needs to have assurance that it does not have the Developer obligations for Public Improvements, SWM System maintenance, etc. The Village and Developer carefully went through this agreement and believe this Article IX, together with the listed exhibits which include the SWM Agreement and the Single Family Plats, incorporates the necessary provisions for the Single-Family Parcels.

760 C. Outlots. As noted in Section B above, an affiliate of the Developer intends to
761 purchase the Single Family Parcels and to convey the Single Family Parcels to a developer of
762 single family residences. As noted in Section D below, in order to develop the Single Family
763 Parcels as individual residential lots the single family developer will be required to record a plat
764 as to each Single Family Parcel. The plat for the Green Meadow Parcel, *i.e.*, Lot 4 of the CSM,
765 will create outlots upon which the portions of the SWM System will have been constructed. The
766 Developer or its affiliate acquiring the Green Meadow Parcel shall require the single family
767 developer acquiring the Green Meadow Parcel to convey the outlots to the owner of the
768 Apartment Property once the plat for the Green Meadow Parcel has been recorded so that the
769 owner of the Apartment Property will own those areas integral to the SWM System.

770 D. Single-Family Parcel Restrictions. Any development of the Single-Family
771 Parcels for residential purposes shall comply with the preliminary plats attached hereto as
772 Exhibit 16 and the applicable Single-Family Parcel's obligations under the SWM Agreement and
773 shall not interfere with or disrupt the intent or purpose of the SWM Agreement. As shown on
774 Exhibit 16, the Green Meadow Parcel shall contain 11 single-family lots and the Red Barn Parcel
775 shall contain 10 single-family lots, and the development of each Single-Family Parcel shall
776 comply with the setbacks and other restrictions set forth on the applicable plat attached as
777 Exhibit 16, unless otherwise approved by the Village. In addition to all other ordinances, the
778 individual residences built on these Single-Family Parcels shall be distinct from one another in
779 their exterior architectural designs as determined through the standard Village Building Board
780 process. These restrictions are a covenant running with the Single-Family Parcels and shall be
781 binding upon all of the owners thereof as to the parcel/lot owned by such owner, other than
782 SSND as set forth in subsection B. above. Any developer of the Single-Family Parcels shall
783 obtain approval of the Village for its final subdivision plat and shall comply with all applicable
784 laws and Village ordinances. All work and improvements on a Single-Family Parcel shall be
785 performed and carried out in accordance with and subject to the provisions of said ordinances.
786 Any owner of a Single-Family Parcel or a lot within a Single-Family Parcel, or its successor in
787 interest other than SSND as set forth in subsection B. above, shall comply with its obligations
788 under the SWM Agreement.

789 E. Single-Family Parcel Landscaping. Except to the extent of Developer's
790 obligation under the SWM Agreement as the owner of the Apartment Property, upon conveyance
791 of the Single-Family Parcels to a third party that is not affiliated with Developer, any obligation
792 to grade, seed, and otherwise landscape the Single-Family Parcels shall be the responsibility of
793 the owner thereof, initially the developer of single family residences on a Single-Family Parcel
794 and thereafter the then owner(s) of any lot or lots within a Single-Family Parcel. In particular,
795 but without limitation, the applicable single-family home developer shall be responsible, during
796 its ownership of such lot or lots, for landscaping its respective lot or lots in accordance with the
797 plans and specifications for each such lot as may be approved by the Village from time to time.

798 F. Access. Direct vehicular access to the Red Barn Parcel from public streets shall
799 be only via Stephen Place and Red Barn Lane. Direct vehicular access to the Green Meadow
800 Parcel from public streets shall be only via the extension of the Green Meadow Place cul de sac.

801 G. Dedication. Prior to any conveyance of a Single-Family Parcel by any Developer
802 affiliate to an entity not affiliated with Developer, Developer or its affiliate shall have either

803 dedicated to the Village all of the Public Improvements located on the Single-Family Parcel
804 being conveyed and granted any necessary easements in connection therewith or provided the
805 Village with satisfactory evidence that it has reserved all of the ownership rights in and to any
806 Public Improvements located on the Single-Family Parcel being conveyed and has retained the
807 express right to dedicate all such Public Improvements and to grant easements for access thereto
808 to the Village or required the owner of the applicable Single-Family Parcel or Parcels to so
809 dedicate and grant access easements to the Village.

810 H. Payment in Lieu of Taxes. At no time after the Effective Date, shall either of the
811 Single-Family Parcels, or any part thereof, be sold, transferred or conveyed to an entity whose
812 real property is exempt from general property taxes, including a change in status for Developer
813 or any successor owner of a Single-Family Parcel, or any part thereof, without that entity having
814 first signed an agreement with the Village to make an annual payment in lieu of taxes (“PILOT
815 Agreement”) for an amount not less than the then fair market value of the applicable Single-
816 Family Parcel and any improvements thereon times the annually approved Village mill rate for
817 each year with the additional condition that said Single-Family Parcel and any improvements
818 thereon may not be conveyed to any other subsequent tax exempt owner at any time without a
819 similar PILOT agreement being executed. The limitation of this subsection G. shall be a
820 covenant running with the land and shall survive the termination of this Agreement. It being
821 understood and agreed that this section does not apply to SSND’s ownership of the Single-
822 Family Parcels.

823 I. Release. Provided neither Developer nor any affiliate of Developer has breached
824 the restrictions contained in this Article IX as to the Single-Family Parcels prior to any
825 conveyance by any Developer affiliate to a third party and conveys the Single-Family Parcels
826 subject to this Agreement, the SWM Agreement, and any then recorded easements, Developer
827 and its affiliates shall be released from any liability for a breach of these covenants or any other
828 liability hereunder with respect to the Single-Family Parcels. Nothing contained herein is
829 intended to and nor does it release Developer or its successors, as owners of the Apartment
830 Project, from liability for the Public Improvements or the SWM System or under the SWM
831 Agreement. In addition, provided SSND has not breached the restrictions contained in this
832 Article IX as to the Single-Family Parcels prior to any conveyance by SSND to a third party and
833 conveys the Single-Family Parcels subject to this Agreement, the SWM Agreement, and any
834 then recorded easements, SSND shall be released from any liability for a breach of these
835 covenants or any other liability hereunder with respect to the Single-Family Parcels.

836 J. Single-Family Obligations. This Article IX contains all of the obligations of an
837 owner of any of the Single-Family Parcels under this Agreement that is not an affiliate of
838 Developer.

839 **ARTICLE X**
840 **INDEMNIFICATION AND INSURANCE.**

841 A. Indemnification. In addition to, and not to the exclusion or prejudice of, any
842 provisions of this Agreement or documents incorporated herein by reference, Developer, or its
843 successors in interest, shall INDEMNIFY AND SAVE HARMLESS the Village, its officers,
844 agents and employees, and shall defend the same from and against any and all liability, claims,

845 loss damages, interest, actions, suits, judgments, costs, expenses, attorneys' fees, and the like,
846 which result from or arise in the course of, out of, or as a result of the performance, mis-
847 performance, or nonperformance of Developer's obligations under this Agreement or
848 Developer's negligent construction of improvements covered thereby until the granting of the
849 last occupancy permit pertaining to the Apartment Project and thereafter only if the occurrence
850 giving rise to the claim predates the granting of the last occupancy permit. The language of this
851 Article X notwithstanding, Developer shall have no obligation to indemnify, save harmless or
852 defend the Village resulting from negligent or intentional acts of the Village, its officers, agents,
853 or employees. In every case where Developer is obligated to indemnify and save harmless the
854 Village, its officers, agents and employees, if judgment is rendered against the Village, its
855 officers, agents, or employees and notice and opportunity to defend was given to Developer of
856 the pendency of the suit within ten (10) days after service of the summons and complaint on the
857 Village, such judgment shall be conclusive upon Developer not only as to the amount of
858 damages, but also as to its liability to the Village and/or its officers, agents, and employees.

859 B. Insurance. Developer shall maintain or cause its general contractor to maintain at
860 all times, until the granting by the Village of the final occupancy permit for the Apartment
861 Project, insurance with minimum limits and coverage as shown below:

862 1. Worker's Compensation, including Occupational Disease, Insurance
863 meeting the statutory requirements of the State of Wisconsin, and Employer's Liability
864 insurance in an amount of at least One Million Dollars (\$1,000,000).

865 2. Comprehensive Liability Insurance providing limits for bodily injury and
866 personal injury of One Million Dollars (\$1,000,000) per occurrence with an aggregate of
867 Two Million Dollars (\$2,000,000). The policy must include the Village and its agents,
868 officers and employees as "additional insureds" and provide premises, operations,
869 elevators, damage, blanket contractual covering indemnities within contract documents,
870 products and completed operations coverage and be endorsed as "primary and non
871 contributory" to any insurance of the additional insured, except from their negligence.

872 3. Comprehensive Automobile Liability Insurance, on occurrence basis,
873 covering all owned, non-owned, and hired vehicles with limits of liability equal to those
874 set forth in Subsection B.2 above.

875 4. Developer shall furnish the Village policy declarations and endorsements
876 evidencing additional insureds to policies covering the above-recited insurance
877 requirements. All policy endorsements must state that notice of any material change in
878 coverage, non-renewal, or cancellation will be provided to the Village thirty (30) days
879 prior to the Effective Date of any such change, non renewal, or cancellation. The form of
880 the policy endorsements will be subject to the approval of the Village Attorney, that shall
881 not be unreasonably withheld. The policy endorsements shall be delivered prior to the
882 commencement of any demolition activities, ground disturbing construction pursuant to
883 this Agreement.

884 5. It is understood and agreed that the insurance coverage and limits required
885 above shall not limit the extent of Developer’s responsibilities and liabilities pursuant to
886 this Agreement or imposed by law.

887 6. Simultaneously with the granting by the Village of the final occupancy
888 permit for the Apartment Project, Developer shall carry casualty insurance in an amount
889 not less than than full replacement cost, and shall provide the Village evidence of such
890 insurance coverage at least once each calendar year. An ACCORD 25 Form will not
891 suffice for purposes of providing evidence of Developer’s insurance coverage under this
892 Article X because of the disclaimers contained therein.

893 **ARTICLE XI**
894 **GENERAL CONDITIONS AND REGULATIONS**

895 All the provisions of the Village Code of Ordinances relating to use and development of
896 land, as amended from time-to-time are incorporated herein by reference to the extent then
897 applicable, and all such provisions shall bind the parties hereto and be a part of this Agreement
898 as fully as if set forth at length herein. This Agreement and all work and improvements required
899 hereunder shall be performed and carried out in accordance with the customary or better
900 practices in the construction industry for Class A apartments in southeastern Wisconsin subject
901 to and in accordance with said ordinances and this Agreement.

902 **ARTICLE XII**
903 **TAX INCREMENT FINANCING**

904 A. Benefit to Village. The Apartment Project will help accomplish the goals of the
905 Village’s Comprehensive Plan and TID Plan. Redevelopment of the Property will have a public
906 benefit to the citizens of the Village, will help eliminate blight, and has the potential to be a
907 catalyst for further redevelopment in the Village. Consequently, the Village has agreed to
908 provide assistance to allow the development of the Apartment Project.

909 B. TID Grant. Within sixty (60) days after the issuance of the occupancy permit,
910 whether temporary or permanent, for the last building to be completed as part of the Apartment
911 Project, the Village shall provide Developer with a cash grant in the amount of
912 \$ TBD (the “TID Grant”).

913 C. Tax Increment for Eligible Project Costs: Municipal Revenue Obligation. In
914 addition, each year, but subject to appropriation from time to time by the Village Board, all the
915 Available Tax Increment shall be applied to the following, in the following order of priority:

916 1. First: to reimburse the Village regularly scheduled installment payments
917 for the actual Eligible Project Costs incurred by the Village in connection with the Water
918 Main’s construction and the TID Grant, including capitalized interest for a 2-year period
919 at a rate equal to the Village’s actual cost of borrowing for the Water Main and TID
920 Grant, plus interest at the Village’s actual cost of borrowing over the period of the
921 scheduled amortization but not to exceed the remaining term of the TIF District
922 (collectively, the “Village Obligations”), in accordance with the column on Exhibit 17
923 labeled [“Proposed 202 TBD”] (as adjusted pursuant to this Article XII, the

924 “Village Obligations Amortization”); provided, if the actual Village Obligations exceed
925 TBD No/100 Dollars (\$ TBD), any additional amount shall not be subject
926 to the same protections or priority of payment as provide herein.

927 2. Second: to reimburse the Village for its actual out-of-pocket costs
928 incurred in connection with the audit and administration of the TIF District (but only to
929 the extent reasonably allocable to the Property) and the administration of this Agreement
930 provided the amount of such reimbursement shall not exceed the lesser of (i) the actual
931 out-of-pocket costs and (ii) TBD and No/100 Dollars (\$ TBD)
932 per year.

933 3. Third: to the extent of any remaining Available Tax Increment in any
934 such year, to pay Developer for eligible project costs (as described in §66.1105(2)(f),
935 Wis. Stats.) up to an aggregate amount equal to TBD and No/100 Dollars
936 (\$ TBD) as a municipal revenue obligation (the “MRO”), which payments are
937 estimated to be made annually in the amounts set forth on the column labeled
938 TBD on the Schedule attached as Exhibit 17 (the “Estimated MRO Payment
939 Schedule”);

940 4. Fourth after (and only after) both the Village Obligations and the MRO
941 have been reimbursed and paid in full, to any other party or for any other purpose as the
942 Village may determine, as may then be permitted under Wis. Stats. Section 66.1105 (as
943 amended and/or renumbered from time to time, the “TIF Statute”).

944 D. Water Main. In the event the Village levies or assesses and collect connection
945 fees or other similar assessments or reserve capacity assessment fees against third parties for
946 their connection to or use of the Water Main, said collected fees shall reduce the amount of
947 Available Increment applied to reimburse the Village for the Village Obligations and the Village
948 Obligations Amortization schedule shall be adjusted accordingly.

949 E. MRO. Payments on the MRO shall be due or payable to Developer as soon as
950 there is Available Tax Increment (currently projected to be 2024). Commencing the first year in
951 which Available Tax Increment is available after payments have been made to the Village as
952 provided under Sections XII.C. 1 and C. 2., payments under Section XII.C.3. will be made by the
953 Village to Developer. MRO Payments shall be made no later than October 1 of each year (a
954 “MRO Payment Date”) and shall be made by check drawn on the Village’s treasury. The
955 Village’s obligation to pay the MRO to Developer shall be evidenced by a note issued by the
956 Village to Developer pursuant to Wis. Stats. Section 66.0621 (the “MRO Note”). The MRO
957 Note and its authorizing resolution shall be in the form set forth on Exhibit 18 attached hereto
958 and incorporated herein, subject to any changes that may be acceptable to both the Village and
959 Developer. The MRO Note shall never be considered a general obligation of the Village and
960 shall be subject to the terms of this Agreement and said resolution. It is a special Municipal
961 Revenue Obligation which shall be payable solely to the extent of Available Tax Increment and
962 then only to the extent Available Tax Increment revenues remain after payment of the debt
963 service related to the Village Obligations in accordance with the Village Obligations
964 Amortization schedule and after reimbursement of the audit and administration costs described in
965 subsection A.2 above.

966 The Village covenants and agrees as follows: (a) if the Village’s proposed annual budget does
967 not in any year anticipate the collection of Available Tax Increment sufficient to make at least
968 the payments on the MRO Note as shown on the Estimated MRO Payment Schedule in that year,
969 the Village will use its best efforts to notify Developer of that fact at least thirty (30) days prior
970 to the date the Village budget is presented for final approval; (b) any funds in the special fund of
971 the TIF District attributable to the Available Tax Increment generated solely from the Property
972 shall not be used to pay any other Eligible Project Costs of the TIF District until the Village has
973 paid all Village Obligations and paid the MRO Note in full; and (c) the Village shall take no
974 action to voluntarily dissolve the TIF District prior to the statutorily required dates as extended,
975 and the payment of all amounts owed under the MRO Note, subject to the provisions of this
976 Agreement. In addition, until the Village Obligations and the MRO have been reimbursed and
977 paid in full within the life of the TIF District as extended, the Village will submit all information
978 under (and will otherwise comply with) the TIF Statute to the full extent required for the annual
979 allocation and collection of Available Tax Increment, for each possible year of allocation and
980 collection under said statute, and upon request by Developer, the Village will request an
981 extension of the TIF District’s life (together with the removal and addition of any non-Project
982 territory from the TIF District as the Village may then desire) that may then be available under
983 said statute.

984 F. MRO Note. The MRO Note shall be issued and dated January 1 of the first year
985 after Developer acquires the Apartment Property. If, at the end of the final year in which tax
986 increment revenue from the TIF District, as extended, may be allocated to the Village pursuant to
987 the TIF District’s TID Plan, the amount of the Tax Increment to be paid under this Agreement
988 proved insufficient to pay the MRO Note in full, then the Village shall have no obligation or
989 liability therefore. The MRO Note may be prepaid in whole or in part, on any date or dates,
990 without premium or penalty. The Village acknowledges and agrees that Developer may
991 collaterally assign the MRO Note as part of its financing for the Apartment Project after its
992 issuance.

993 G. Assessment Warranty. Commencing as of the first January 1 after completion of
994 the Apartment Project, Developer warrants to the Village that the Apartment Project shall have a
995 real estate tax assessed value of not less than the Minimum Assessed Value, and as of each
996 successive January 1 until the earlier of (i) January 1 of the year after the TID closes or (ii)
997 January 1 of the year that the Village Obligations have been reimbursed in full to the Village
998 (“Warranty Period”). It shall not be a breach of this subsection if the failure to meet the
999 warranted value is due to taking by eminent domain or casualty loss but as to casualty loss only
1000 if and to the extent the special charge is not fully and timely reimbursed by insurance proceeds.

1001 H. Special Charge Payments. In each year during the Warranty Period in which the
1002 assessed value of the Apartment Project is less than the Minimum Assessed Value, Developer
1003 shall make a special charge payment, in addition to the real property taxes payable that year,
1004 equal to the property taxes that would have been paid on the difference in value between the
1005 actual assessed value and the Minimum Assessed Value. No special charge payment shall be
1006 required to the extent that the failure to meet the warranted value is due to taking by eminent
1007 domain or casualty loss but as to casualty loss only if and to the extent the special charge is not
1008 fully and timely reimbursed by insurance proceeds.

1009 I. Special Charge. Developer acknowledges the special benefit to the Property of
1010 the Village’s financial contributions to the Apartment Project pursuant to this Agreement. If
1011 Developer fails to make any special charge payment owed by Developer under subsection H.
1012 within thirty (30) days after written notice from the Village of such failure, then as the Village’s
1013 sole remedy for a breach of subsections G. and H., Developer consents to the Village levying a
1014 special charge against the Apartment Property in the amount of such unpaid shortfall. Developer
1015 waives all rights to notice and hearing related to the special charge and waive all rights to object
1016 to procedural or other irregularities in the levy of the special charge.

1017 J. Release upon Sale. The warranty of assessed value and the obligation to make
1018 special charge payments described in subsections G., H. and I. runs with the land and binds the
1019 then owner of the Apartment Project, but binds only the then-current title holder of the
1020 Apartment Project, and upon conveyance of the Apartment Project to a bona-fide third-party
1021 successor, the obligations of the conveying party to make the special charge payments cease and,
1022 except as set forth in subsection K., are assumed by the third party to which the Apartment
1023 Project is conveyed, except for payment obligations that have already arisen as of the time of the
1024 conveyance and are paid by the transferring owner on or before any such conveyance.

1025 K. Lender Provisions. Notwithstanding anything to the contrary set forth in this
1026 Agreement, if a lender holding a mortgage on the Apartment Property forecloses on its collateral
1027 and succeeds to ownership of the Apartment Property, such lender, or the party purchasing the
1028 Apartment Property at a foreclosure sale, shall not be required to, and shall be automatically
1029 released from any obligation to, warrant the assessed value pursuant to subsection G. make
1030 special charge payments under subsection H. or be subject to the levying against the Apartment
1031 Property of a special charge under subsection I. The Village agrees not to assign or encumber
1032 the Available Tax Increment to any party or purpose, until the amounts due under this
1033 Agreement are paid in full, or upon an earlier termination of the obligation by the Village to
1034 make the payments on the MRO Note. Notwithstanding the foregoing, nothing contained in this
1035 Section K in any way changes the order in which Available Tax Increment is to be paid under
1036 Section C above.

1037 L. Increment Schedules. The schedule attached to and incorporated herein as
1038 Exhibit 17 sets forth the anticipated Available Tax Increment and the anticipated Village
1039 Obligations Amortization and Estimated MRO Payment Schedule. Until the MRO Note is paid
1040 in full, or the TIF District closes and is terminated, whichever first occurs, the Village shall
1041 prepare an annual, adjusted schedule in substantially the form of Exhibit 17, showing the amount
1042 due under the Village Obligations Amortization and the MRO Note and the Available Tax
1043 Increment generated by the Property (the “Increment Schedule”). Each Increment Schedule shall
1044 be prepared using the same methodology and basic assumptions, except for such changes as may
1045 result from changing the number shown for: (a) the Available Tax Increment determined in the
1046 year the Increment Schedule is prepared; (b) appreciation factor to the actual annualized
1047 percentage change in the equalized value of the Property, not caused by new construction, since
1048 the preceding Increment Schedule was prepared; (c) tax rate, to equal the actual tax rate in effect
1049 in the year the Increment Schedule is prepared and updated; and (d) such other items as may be
1050 acceptable to the Village and Developer. The Village shall be responsible for preparing and
1051 updating each Increment Schedule and delivering it to Developer by December 30th of the year
1052 prior to which the increment is expected to be collected. Developer shall have thirty (30) days

1053 after receipt of the annually prepared and updated Increment Schedule to object to its contents.
1054 Each TIF Schedule shall also reflect, to the extent then known: the actual Village Obligations;
1055 the actual rates of interest on the Village Obligations; the actual amounts of the Village
1056 Obligations reimbursed, paid, and prepaid from time to time.

1057 M. Prohibition on use of TID Grant and MRO Funds. Developer shall not use any
1058 portion of the TID Grant or the payments made under the MRO Note to pay for: (i) any real
1059 estate or other ad valorem taxes, (i) the cost of any Public Improvements or (iii) the acquisition
1060 of or the costs of improvements on the Single-Family Parcels.

1061 **ARTICLE XIII**
1062 **AMENDMENTS**

1063 The Village Board and Developer, by mutual consent, may amend this Agreement only
1064 upon entry into a subsequent written agreement approved at a meeting of the Village Board of
1065 Trustees for the Village of Elm Grove. The Village Board shall not, however, consent to an
1066 amendment until after first having received a recommendation from the Village Plan
1067 Commission in accordance with applicable Village ordinances.

1068 **ARTICLE XIV**
1069 **NOTICE**

1070 Any notice given hereunder shall be in writing and personally delivered, mailed by
1071 registered or certified mail, return receipt requested, or delivered via overnight courier: To the
1072 Village: Village Clerk, 13600 Juneau Blvd., Elm Grove, WI 53122 and to Developer: c/o
1073 Mandel/Caroline Heights Apartments LLC, 330 East Kilbourn St., Suite 600 South, Milwaukee,
1074 WI 53202, Attention: Phil Aiello, with a copy to Foley & Lardner LLP, 777 East Wisconsin
1075 Ave., Milwaukee, WI 53202, Attention: Candace Flatley. Any party may, by notice as provided
1076 above, designate a different address from time to time. Any such notice shall be effective on the
1077 date of receipt.

1078 **ARTICLE XV**
1079 **DEFAULT BY DEVELOPER**

1080 A. The failure of the Village to insist in any one or more instances upon performance
1081 of, or compliance with any term or condition of this Agreement shall not be construed as a
1082 waiver of future performance. The obligations of Developer with respect to such term, covenant
1083 condition shall continue in full force and effect.

1084 B. In addition to any other remedies otherwise provided under this Agreement or the
1085 Village Code of Ordinances, the Village shall have the right to withhold inspections and/or
1086 permits for the Apartment Project and when owned by the Developer or any affiliate of
1087 Developer, or if work is being performed thereon by Developer or an affiliate of Developer, then
1088 for the Single-Family Parcels, if such work or the applicable parcel on which the work is being
1089 performed is in default hereunder, and/or to bring an action in the Circuit Court for Waukesha
1090 County for violation(s) of this Agreement and shall be entitled to recover reasonable attorneys'
1091 fees from the defaulting Developer and any contractor in violation of any Village ordinance.
1092 However, at no time shall the owner of the Apartment Property or of any of the Single Family

1093 Parcels be responsible or liable for any act or omission occurring or omitted on non-owned real
1094 property.

1095 C. Notwithstanding anything to the contrary in this Agreement, if Developer fails to
1096 commence construction of the Apartment Project, the Village shall not have the right to seek or
1097 compel specific performance for the construction of said Apartment Project under this
1098 Agreement or to seek any costs or damages not set forth in this Agreement. For the avoidance of
1099 doubt and notwithstanding the foregoing, the Village shall have all of its rights and remedies
1100 under the Guaranty, the form of which is attached hereto as Exhibit 12.

1101 **ARTICLE XVI**
1102 **PAYMENT IN LIEU OF TAXES**

1103 At no time after the Effective Date, during the life of the TIF District and for ___ years
1104 thereafter may the Apartment Project be sold, transferred or conveyed to an entity whose real
1105 property is exempt from general property taxes, including a change in status for Developer,
1106 without that entity having first entered into an agreement with the Village to make an annual
1107 payment in lieu of taxes (“PILOT Agreement”) for an amount not less than the then fair market
1108 value of the Apartment Property times the annually approved Village mill rate for each year with
1109 the additional condition that no portion of the Apartment Project may be conveyed to any other
1110 subsequent tax exempt owner at any time without a similar pilot agreement being executed. The
1111 limitation of this Section XVI shall be a covenant running with the land and shall survive the
1112 termination of this Agreement.

1113 **ARTICLE XVII**
1114 **MISCELLANEOUS PROVISIONS**

1115 A. The Parties acknowledge and represent that this Agreement is the subject of
1116 negotiation by all parties and that all parties together shall be construed to be the drafter hereof
1117 and this Agreement shall not be construed against any party individually as drafter.

1118 B. Nothing in this Agreement shall be construed to create an employer/employee
1119 relationship, joint employer, a joint venture or partnership relationship, or a principal/agent
1120 relationship between the Village and Developer.

1121 C. This Agreement shall not be construed to abridge or waive the Village’s authority
1122 under Wis. Stat. §§ 61.35 and 62.23.

1123 D. The parties hereby acknowledge that this Agreement imposes on them, and their
1124 respective officers, agents, and employees, and successors and assigns a duty of good faith and
1125 fair dealing.

1126 E. Except as otherwise expressly provided in this Agreement, all guarantees,
1127 agreements, representations, and warranties made herein shall survive the execution of this
1128 Agreement and, as applicable, the completion of the Apartment Project. This Agreement shall
1129 be binding upon and inure to the benefit of the Parties their respective heirs, personal
1130 representatives, executors, or successors and assigns.

1131 F. Developer represents and warrants that it is a duly organized and validly existing
1132 limited liability company under the laws of the State of Wisconsin and that the execution and
1133 performance of this Agreement has been duly authorized by resolution or other required action as
1134 evidenced in Exhibit 19.

1135 G. This Agreement shall be recorded with the Register of Deeds for Waukesha
1136 County immediately following the recording of the deed for the Apartment Property from SSND
1137 to Developer and before the recording of any mortgage on the Property.

1138 H. All time periods referred to in this Agreement shall be calculated on the basis of
1139 consecutive calendar days.

1140 I. Upon the issuance of all required final occupancy permits for the Apartment
1141 Project, Developer shall be free to convey the Apartment Project, as a single undivided
1142 Apartment Property to a third party subject to the terms of this Agreement. In addition,
1143 Developer or a Developer affiliate may at any time convey either or both of the Single-Family
1144 Parcels as provided in Article IX. Notwithstanding the foregoing, Developer and any successor
1145 owners of the Apartment Property may collaterally assign this Agreement and Developer's rights
1146 to the TID Grant, MRO and MRO Note to Developer's construction lender or to other lenders for
1147 the Apartment Project following the passage of five (5) business days after informing the
1148 Village in writing fully about the terms and details of any such assignment but without obtaining
1149 the consent of the Village. In the event that such construction lender or any other lender
1150 forecloses on its collateral and succeeds to ownership of all or a portion of the Apartment
1151 Property, the Village shall fulfill its obligations hereunder provided that such construction lender
1152 or other lender assumes in writing all of the obligations of Developer hereunder, except as
1153 otherwise provided in Section XII.K. Any such lender shall have the right to cure any default by
1154 Developer hereunder within 60 days of commencement of any assumption by such lender of
1155 obligations under this Agreement if such default can reasonably be cured within that time frame
1156 or such longer period as may be reasonably necessary to accomplish such cure. Upon the sale or
1157 other conveyance of the Property or any part thereof, to any entity not affiliated with or
1158 controlled by the Mandel Group, Inc. or Barry R. Mandel, Developer, and any other transferee,
1159 shall be released from its obligations hereunder with respect to such portion of the Property
1160 provided the Apartment Project has been issued a certificate of occupancy and provided the
1161 transferee assumes any ongoing obligations of Developer as to the parcel conveyed.

1162 J. The Village and Developer shall use good faith efforts to obtain approval of the
1163 Apartment Project-related assistance provided for herein from the Joint Review Board for the
1164 TIF District; but if such approval is not obtained by TBD 202_ then this Agreement
1165 shall terminate, in which event the parties shall have no further obligations hereunder.

1166 K. If this Agreement has not been terminated, then subject to the survival of those
1167 specific terms and provisions, if any, expressly stated to survive termination in this Agreement,
1168 including in particular Section IX.G. and Article XVI, this Agreement, except as to those
1169 surviving provisions, shall automatically terminate and be of no further force or effect upon the
1170 closing of the District. Upon termination as aforesaid, the Village agrees to execute and record
1171 in the Office of the Register of Deeds for Waukesha County a memorandum of termination of
1172 this Agreement, expressly setting forth the surviving provisions.

1173 L. Within ten (10) days after request therefor, the Village agrees to provide an
1174 estoppel certificate to Developer, its lenders, or any proposed purchaser of all or any part of the
1175 Property, or its lenders, stating that Developer is not in default hereunder or if Developer is in
1176 default hereunder setting forth any such defaults.

1177 M. In the event that any term or provision of this Agreement is determined to be
1178 invalid or unenforceable for any reason, then the other terms and provisions of this Agreement
1179 shall not be affected thereby and said terms and provisions shall remain in full force and effect,
1180 unless to do so would be inequitable to either party hereto.

1181 N. Village and Developer agree and acknowledge that certain of the Exhibits
1182 attached hereto are not yet final, specifically the Plans and Specifications, Proposed Water Main
1183 Layout and Estimated Water Main Costs, and that the legal descriptions will be based on a
1184 certified survey map before this Agreement will be recorded. The parties agree and the Village
1185 authorizes the Village President and Village Clerk to execute amendments to this Agreement to
1186 reflect the updated and final Exhibits when such final Exhibits are available.

1187 **ARTICLE XVIII**
1188 **EXCULPATION OF VILLAGE ELECTED OFFICIALS IN PERSONAL CAPACITY**

1189 The parties mutually agree that the President and Village Clerk of the Village of Elm
1190 Grove, entered into and are signatory to this Agreement solely in their official capacity and not
1191 individually, and shall have no personal liability or responsibility hereunder; and personal
1192 liability as may otherwise exist, being expressly released and/or waived.

1193
1194 *[Signatures on Following Pages]*

IN WITNESS WHEREOF, Developer and Village have caused this Agreement to be signed by their appropriate officers and their corporate seals to be hereunto affixed in either one original or by original counterparts the day and year first above written.

VILLAGE:

VILLAGE OF ELM GROVE

By: _____
Neil H. Palmer, Village President

ATTEST:

Michele Luedtke, Village Clerk

CONSENT

The undersigned, School Sisters of Notre Dame Central Pacific Province, Inc., hereby represents that it is the owner of the Single-Family Parcels (as defined in and legally described in the Development Agreement between the Village of Elm Grove and Caroline Heights Apartments LLC to which this Consent is attached [the “Agreement”]), and, as such owner, and subject to and in accordance with Section IX of the Agreement, hereby consents to the recording of the Agreement against the Single-Family Parcels as a covenant running with the land and a deed restriction and the applicable provisions of the Agreement to be binding on future owners of the Single-Family Parcels, and agrees during its ownership of the Single-Family Parcels to comply with and be bound by Section IX.B. of the Agreement.

School Sisters of Notre Dame Central Pacific Province, Inc.,
a Missouri nonprofit corporation

By: _____
Debra M. Sciano, SSND
President

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 202_, the above-named Debra M. Sciano, the President of School Sisters of Notre Dame Central Pacific Province, Inc., to me known to be the person who executed the foregoing acknowledged that she executed the same on behalf of School Sisters of Notre Dame Central Pacific Province, Inc.

Subscribed and sworn to before me
this _____ day of _____, 202_.

NOTARY PUBLIC, State of Wisconsin
Print Name: _____
My Commission: _____

EXHIBIT 1
PROPERTY LEGAL DESCRIPTION

EXHIBIT 2
APARTMENT PROPERTY LEGAL DESCRIPTION

EXHIBIT 3
RED BARN PARCEL LEGAL DESCRIPTION

EXHIBIT 4
GREEN MEADOW PARCEL LEGAL DESCRIPTION

EXHIBIT 5
PROPERTY REZONING MAP

EXHIBIT 6
TIF DISTRICT LEGAL DESCRIPTION

EXHIBIT 7
PLANS AND SPECIFICATIONS

**EXHIBIT 8
PUBLIC IMPROVEMENTS**

EXHIBIT 9
PROPOSED WATER MAIN LAYOUT

EXHIBIT 10
ESTIMATED WATER MAIN COSTS

EXHIBIT 11
STORM WATER MANAGEMENT, FACILITY MAINTENANCE
AND EASEMENT AGREEMENT

EXHIBIT 12
GUARANTY THROUGH COMPLETION OF MINIMUM ASSESSED VALUE

EXHIBIT 13
WALKING PATH EASEMENT

EXHIBIT 14
FORM OF LETTER OF CREDIT

EXHIBIT 15
FORM OF SSND SINGLE-FAMILY PARCEL EASEMENT

EXHIBIT 16
SINGLE FAMILY PRELIMINARY PLATS

EXHIBIT 17
ELIGIBLE PROJECT COSTS SCHEDULES

EXHIBIT 18
MRO NOTE AND AUTHORIZING RESOLUTION

EXHIBIT 19
DEVELOPER AUTHORITY