

ANNEXATION AND DEVELOPMENT AGREEMENT

This Annexation Agreement ("Agreement") is made and entered into this ____ day of _____, 2017 by and between the Village of Romeoville, an Illinois municipal corporation ("Village"), Series N of IBT Holdings, LLC, an Illinois limited liability company ("Unincorporated Owner"), Series N. of IBT Holdings, LLC, an Illinois limited liability company ("Incorporated Owner") and Romeoville Properties, L.L.C., a Michigan limited liability company ("Developer").

RECITALS:

WHEREAS, Unincorporated Owner is the owner of record of the tract of land legally described on Exhibit "A", a copy of which is attached hereto and incorporated herein (the "Unincorporated Territory"), which is not within the corporate limits of any municipality; and

WHEREAS, Incorporated Owner is the owner of record of the tract of land legally described in Exhibit "A-1", a copy of which is attached hereto and incorporated herein (the "Incorporated Territory"), which is within the corporate limits of the Village of Romeoville; and

WHEREAS, Developer is the contract purchaser of the Unincorporated Territory and the Incorporated Territory; and

WHEREAS, Developer desires to have the Unincorporated Territory annexed to the Village in accordance with the provisions of Article 7 and Article 11, Division 15.1 of the Illinois Municipal Code (65 ILCS 5/7-1-1 et. seq., and 65 ILCS 5/11-15.1-1 et. seq.) and in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, Unincorporated Owner seeks to cooperate with Developer's efforts to annex the Unincorporated Territory to the Village; provided that Unincorporated Owner's consent to this Agreement is expressly conditional on this Agreement becoming null and void,

without any further actions of the parties, if Developer has not acquired the Unincorporated Territory within eighty (80) days from the date on which the corporate authorities of the Village adopt an ordinance approving this Agreement; and

WHEREAS, Unincorporated Owner has filed with the Village Clerk a petition to annex all of the Unincorporated Territory into the corporate limits of the Village (the “Petition”) signed by the Unincorporated Owner and all electors, if any, residing on the Unincorporated Territory; and

WHEREAS, the Unincorporated Territory is presently contiguous to the corporate limits of the Village and is presently vacant or unimproved; and

WHEREAS, the Incorporated Territory is presently vacant and unimproved, and zoned within the Village’s R-6 Zoning District; and

WHEREAS, Developer, in accordance with the Zoning Ordinance of the Village (Chapter 159 of the Village Code of Ordinances), the Development Regulations of the Village (Chapter 158 of the Village Code of Ordinances) the Flood Control Regulations of the Village (Chapter 160 of the Village Code of Ordinances) and the terms and conditions of this Agreement, proposes to develop the Unincorporated Territory and the Incorporated Territory (the Unincorporated Territory and the Incorporated Territory may sometimes hereinafter be collectively referred to as the “Territory”) with an apartment complex within the R-7 Zoning District established by the Village Zoning Ordinance, all as a planned unit development in accordance with Part VIII of the Zoning Ordinance, and in accordance with the terms and conditions of the special use permit for the development of the Territory as a planned unit development requested from the Village by the Developer (“Development Proposal”); and

WHEREAS, Incorporated Owner has consented to the Development Proposal; provided that Incorporated Owner’s consent to this Agreement is expressly conditional on this Agreement becoming null and void, without any further action of the parties, if Developer has not acquired the Incorporated Territory within eighty (80) days from the date on which the corporate authorities of the Village adopt an ordinance approving this Agreement; and

WHEREAS, the entirety of the Territory is legally described in Exhibit “A-2”, a copy of which is attached hereto and incorporated herein; and

WHEREAS, the Developer has submitted applications to the Village for annexation and

zoning approval, approval of a special use permit for planned unit development and site, landscape and engineering approval; and

WHEREAS, the aforesaid applications have been reviewed and reported on by the Village Development Review Committee and referred as necessary to the Planning and Zoning Commission of the Village; and

WHEREAS, upon due notice and advertisement as provided by law, the Planning and Zoning Commission has held such public hearings on the aforesaid applications as are required by law, and after due deliberation thereon and the receipt of public comment with respect thereto, has made determinations and findings of fact with respect to the aforesaid application to the extent required by applicable law and the ordinances of the Village; and

WHEREAS, the Corporate Authorities of the Village have received the report of the Development Review Committee and the recommendations of the Planning and Zoning Commission of the Village with respect to the aforesaid applications, and in connection therewith have received and reviewed a proposed annexation and development agreement in substance and form substantially the same as this Agreement, and have held a public hearing on said proposed annexation and development agreement as required by Article 11 Division 15.1 of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et. seq.) and

WHEREAS, due notice as required by Section 1 of Article 7, Division 1 of the Illinois Municipal Code (65 ILCS 5/7-1-1) has been sent to all the trustees of all fire protection and public library districts having jurisdiction over the Unincorporated Territory (with an affidavit attesting to such notice having been duly recorded with the Will County Recorder of Deeds), the Township Commissioner of Highways and Town Board of Trustees of all townships having jurisdiction over highways presently located within the Unincorporated Territory, the election authorities having jurisdiction over the Unincorporated Territory, and the branches of the United States Post Office serving the Territory; and

WHEREAS, the Unincorporated Owner, the Incorporated Owner and Developer are legally authorized to enter into this Agreement with the Village and to perform all undertakings and covenants set forth therein; and

WHEREAS, the Corporate Authorities of the Village have considered the annexation of the Unincorporated Territory described in the Petition according to the terms of this Agreement; and

WHEREAS, the Village, after due and careful consideration, has concluded that the annexation of the Unincorporated Territory, and the zoning and development of the Territory pursuant to the terms and conditions hereinafter set forth would further the growth of the Village, enable to Village to control the development of the area, increase the taxable value of the property within the Village, extend the corporate limits and jurisdiction of the Village, permit the sound planning and development of the Village and otherwise enhance and promote the general welfare of the Village; and

WHEREAS, the Corporate Authorities of the Village, after due deliberation have, by ordinance duly passed, approved entering into this Annexation and Development Agreement and directed the President and Clerk of the Village to execute this Agreement.

NOW, THEREFORE, in consideration of the promises, undertakings and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged by the parties hereto, Unincorporated Owner, Incorporated Owner, Developer and Village agree as follows:

1. **Recitals:** The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.
2. **Annexation:** Upon the approval of this Agreement by ordinance adopted by the corporate authorities of the Village, the corporate authorities of the Village shall, within eighty days(80) thereafter, adopt an ordinance annexing (“Annexation Ordinance”) all of the Unincorporated Territory legally described in Exhibit “A” and depicted graphically on the plat of annexation attached hereto and incorporated herein as Exhibit “B” (“Annexation Plat”) into the corporate limits of the Village, and shall cause the same to be recorded and file copies of the Annexation Ordinance and Annexation Plat with the Will County Recorder and the Will County Clerk, subject to the Village’s receipt within such eighty (80) day period of a fully executed copy of this Agreement and satisfactory written documentation that the Developer has closed on the purchase of all of the Territory from the Unincorporated Owner and Incorporated Owner, together with petitions to annex the entirety of the Unincorporated Territory executed by Developer subsequent to its closing on the purchase of the entirety of the Unincorporated Territory. In the event that the Village does not receive a fully executed copy of this Agreement and satisfactory written documentation that the Developer has closed on the purchase of the entirety of the Territory together with a petition to annex the Unincorporated Territory executed

by Developer subsequent to its closing on the purchase of the entirety of the Territory within eighty (80) days from the date on which the corporate authorities of the Village adopt an ordinance approving this Agreement, this Agreement shall become null and void without any further actions of the parties, and the Village shall not adopt the Annexation Ordinance or any other ordinances contemplated hereby.

3. Zoning Approval:

- 3.1 Subject to Developer satisfying the conditions set forth in Section 2 hereof, and concurrent with the approval of the Annexation Ordinance, the corporate authorities of the Village shall adopt such ordinances as are necessary to cause the Territory to be classified into the R-7 Zoning District (“Rezoning Ordinance”), provided that the Developer has forwarded a copy of this Agreement executed by the Unincorporated and Incorporated Owners and Developer to the Village.
- 3.2 Subject to Developer satisfying the conditions set forth in Section 2 hereof, and concurrent with approval of the Annexation Ordinance and the Rezoning Ordinance, the corporate authorities of the Village shall adopt an ordinance granting a special use permit for planned unit development—General Development Plan (the “PUD Special Use Permit”), the terms and conditions of which shall include at least those terms and conditions set forth in Exhibit “C”, a copy of which is attached hereto and by reference incorporated herein, which terms and conditions shall govern and control the development of the Territory notwithstanding any contrary, conflicting or less restrictive provisions of the Village Zoning Ordinance. The PUD Special Use Permit approval granted herein shall specifically include approval of the following preliminary plans, provided, however, that such approval shall be subject to the Village staff comment letter dated January 17, 2017, a copy of which is attached hereto and incorporated herein as Exhibit “C-1”, a copy of which is attached hereto and incorporated herein by reference:

3.2.1 Preliminary Engineering Plans Village Place Apartments, prepared by Kimley Horn and Associates, Inc., and last dated December 15, 2016;

3.2.2 Plat of Annexation, prepared by Landmark

Engineering LLC, and last dated September 22, 2016;

3.2.3 GDP Floor Plans and Building Elevations, prepared by Alexander V. Bogaerts + Associates, P.C., and submitted on September 26, 2016;

3.2.4 Wetland and Waters of the U.S. Assessment for the S.R. Jacobson Property in Romeoville, Will County, Illinois, prepared by Christopher B. Burke Engineering, Ltd., and last dated August 15, 2016; and

3.2.5 Village Place Apartments Traffic Impact Study, prepared by Kimley Horn and Associates, Inc., and last dated November 2016.

The parties acknowledge that the PUD Special Use Permit approval granted herein contemplates the approval of a number of variances from the applicable provisions of the Village Zoning Code, the Village Development Regulations, and the Village Stormwater Management Ordinances, and that the specific provisions from which variances are being granted and the subject of such variances shall be as more fully set forth in Exhibit “C-2”, a copy of which is attached hereto and incorporated herein by this reference. In the event that the future approval of the required special use permit for planned unit development—Final Development Plan contemplates or requires the consideration and approval of other or further variances not expressly set forth herein, Developer acknowledges that it shall identify and apply for any such variances in accordance with the applicable ordinances of the Village.

3.3 Nonapplicability of Prior Greenhaven Approvals. The parties acknowledge that a title commitment (the “Title Commitment”) obtained by Developer for the Territory on or before the date of this Agreement indicated that all of some portion of the Territory was affected by or subject to (a) a “Development Agreement” approved by Village Resolution 05-0385 and recorded with the Will County Recorder as Document No. R2006-146811, and (b) Village Ordinance No. 05-0289 approving a Special Use Permit for Planned Unit Development,

collectively sometimes hereinafter referred to as the “Prior Greenhaven Approvals”. Village represents and warrants to Developer that notwithstanding any provision of the Title Commitment, the Prior Greenhaven Approvals do not apply to the development of the Territory and were never intended to apply to the development of the Territory, but only apply to and were only ever intended to apply to the development of certain adjacent property commonly known as the Greenhaven at Meadowdale Estates Subdivision. Notwithstanding the foregoing, to the extent that the Development Agreement may encumber a portion of the Territory, it is the intent of the parties hereto that this Agreement serves as an amendment and restatement of the rights and obligations set forth in the Development Agreement with respect to the Territory, and that the terms and conditions of this Agreement will solely and exclusively govern the Territory as of the date of this Agreement. Furthermore, the parties acknowledge that from and after the full execution of this Agreement by the parties, and the adoption by the Village of the PUD Special Use Permit as contemplated herein, the provisions of this Agreement and the PUD Special Use Permit shall apply to and govern the development of the Territory in all respects, and the provisions of the Prior Greenhaven Approvals shall be deemed to be null and void to the extent that they otherwise purport to govern the development of the Territory in any respect.

4. Plan Approval

Any development of the Territory described in Exhibit “A-2” shall conform to the requirements of the Village Zoning Ordinance and Development Regulations, subject to the approvals set forth in this Agreement, the Annexation Ordinance, the Rezoning Ordinance and the PUD Special Use Permit with appropriate site, engineering, planned development and landscape plan reviews and approvals by Planning and Zoning Commission and Board of Trustees and with final development plans and other required submittals reviewed and approved as required by the Village Zoning Ordinance and Development Regulations. Nothing herein shall relieve Developer from the obligations to have final engineering plans, final landscape plans, and final development plans and other required development submittals (including but not limited to any additional variances not otherwise enumerated or provided for herein required for

the approval of such final engineering plans, final landscape plans, and final development plans and other required development submittals) reviewed, considered and approved by the Village Staff, Planning and Zoning Commission and Board of Trustees with respect to each and every phase or portion of the Territory which the Developer seeks to develop from time to time, or from the obligation to make such submittals in such form as the Village shall from time to time require.

5. Utilities

5.1 To the best of the Village's knowledge and belief, there is no administrative, judicial, or any legislative action pending or being threatened that would result in a reduction of, or limitation upon, Developer's right to use the sanitary sewer and potable water supplies and systems serving the Village.

5.2 The Developer shall pay any recapture fees lawfully imposed upon the Territory by virtue of any recapture agreements or ordinances recorded against the Territory. Without otherwise limiting or modifying the generality of the preceding sentence, Developer shall specifically be required to pay all recapture fees and interest owed with respect to recapture obligations under the following identified agreements.

5.2.1 Inland Capital Fund, L.P. Recapture—Potable Water Facilities. Developer shall pay all recapture fees and interest due and owing to Inland Capital Fund, L.P. with respect to the Territory and the construction and installation of certain potable water facilities, all as more fully set forth in a recapture agreement recorded as Document No. R97-040390 with the Will County Recorder's Office. Developer shall further be required to present a release of the Village and Developer issued by Inland Capital Fund, L.P. or its successor, evidencing the full and complete satisfaction of the aforementioned recapture obligation as it pertains to the Territory prior to the issuance of the first building permit for a structure constructed within the Territory.

5.2.2 Ryan Companies US Inc. Recapture—Normantown Road. Developer shall pay all recapture fees and interest due and owing to Ryan Companies US Inc. with respect to the Territory and the construction and installation of certain public roadway improvements to Normantown Road, as all more fully set forth in

the annexation agreement between Ryan Companies US Inc. and the Village, recorded as Document No. R2003059173 with the Will County Recorder's Office. Developer shall further be required to present a release of the Village and Developer issued by Ryan Companies US Inc. or its successor, evidencing the full and complete satisfaction of the aforementioned recapture obligation as it pertains to the Territory prior to the issuance of the first building permit for a structure constructed within the Territory.

- 5.3 The Village shall cooperate with the Developer in obtaining, at Developer's expense, all permits, easements and approvals required from parties other than the Village in order to develop the Territory in accordance with this Agreement, which cooperation shall include but not be limited to the execution of complete and proper permit applications.
- 5.4 The Village warrants that as of the date of this Agreement, the Property is located within the Village's facility planning area (FPA) as determined by the Chicago Metropolitan Agency for Planning (CMAP) and the Illinois Environmental Protection Agency (IEPA).
- 5.5 Developer shall, at Developer's expense, extend and loop Village water and sewer mains within the Territory, as required by and sized as determined by the Village Engineer, for future extensions thereof.
- 5.6 As a condition of the Village's issuance of final occupancy permits for all buildings constructed within the Territory, Developer shall pay to Village sanitary sewer and water tap-on fees calculated in accordance with the then-current ordinances of the Village.
- 5.7 Installation of all utilities serving the Territory shall be underground and pursuant to the requirements of the utility companies providing the utility service or pursuant to the agreements of the Village with such entities.
- 5.8 Notwithstanding any contrary provision of this Agreement, the Village represents that the Village sanitary sewer treatment plant possesses capacity available for the development, use and occupancy of the Territory in an amount equal to a minimum of 514 P.E. or "population equivalents" (the "Allotted P.E."), as defined by applicable IEPA regulations. Nothing herein is intended to limit the P.E. usage

in the Territory, if additional P.E. is available for development in the Territory, but neither shall anything herein be construed as any guarantee or obligation of the Village to provide more than the Allotted P.E. The parties acknowledge that the existing sanitary sewer transmission main infrastructure available to serve the Territory and to carry flows from the Territory to the Village sanitary sewer treatment plant was not designed or sized in contemplation of the development of the Territory with an apartment complex and within the R-7 Zoning District, and the Village makes no representations to Developer as to the adequacy of the existing and available sanitary sewer transmission main capacity and to carry flows from the Territory to the Village sanitary sewer treatment plant. All sanitary sewer infrastructure of the Village is provided and made available to Developer on an “as-is, where-is” basis, and the Village has no obligation under any circumstances to construct or cause to be constructed any sanitary sewer improvements of any nature or kind whether within or outside of the Territory. Developer acknowledges that it has been advised of the foregoing by Village prior to the approval and execution of this Agreement by the parties, and represents to the Village that by its execution of this Agreement and its closing on the purchase of the Territory, it has conducted such studies and investigations as it deemed appropriate relative to the adequacy of the existing and available sanitary sewer transmission main capacity and to carry flows from the Territory to the Village sanitary sewer treatment plant, and relied on such studies and investigations in connection with its execution of this Agreement and its acquisition of the Territory.

- 5.9 Each building constructed by Developer within the Territory shall be served by a single water meter, and no sub-metering within any building shall be permitted hereunder. All utility lines for sanitary sewer service constructed within the boundaries of the Territory shall be private improvements and shall be maintained by and at the expense of the Developer, and the foregoing obligation shall be memorialized in any final development plan or final plat approved with respect to the development of the Territory. All utility mains for potable water service constructed within the boundaries of the Territory shall be public improvements,

owned and maintained by the Village (except that any restoration resulting from Village excavation or other work on such mains shall be at the sole cost and responsibility of the Developer), provided however, that all water service lines extending from such water mains shall be private improvements owned and maintained by the Developer at its expense, and provided further, that the foregoing obligation shall be memorialized in any final development plan or final plat approved with respect to the development of the Territory. Additionally, and notwithstanding the two immediately preceding sentences, all such sanitary sewer lines and mains and potable water utility lines and mains shall be located within Village utility easements to grant the Village the right to perform maintenance or repairs to such lines in the event that it deems that the same to be necessary, but the existence and grant of such easements shall in no way obligate the Village to perform any such maintenance or repairs, excepting that the Village shall be responsible for the maintenance of potable water mains as hereinabove provided.

6. Roadway and Other Public Improvements

Any on or off-site roadway or other public improvements required by the development of the Territory as contemplated herein or which may be required by applicable Village Ordinances shall be constructed by Developer at no cost to the Village, in accordance with the standards therefor established by the applicable Village Ordinances, and the Village shall have no responsibility for the construction of any such roadway or public improvements, provided, however, that in lieu of requiring Developer to construct any such improvements (or if such improvements have already been constructed by the Village), the Village may elect to require Developer to contribute a sum of money in an amount approved by the Village Engineer equivalent to 125% of one half of the cost of constructing such improvements adjacent to the Territory otherwise to be required by the Village where the Territory lies only on one side of the proposed improvements, or equivalent to the entire cost of constructing such improvements adjacent to the Territory where the Territory lies on both sides of the proposed improvements. The completion of the construction of all such roadway or other public improvements shall be secured by a letter of credit or bond posted with the Village by the Developer in the amount of 125% of the Village-approved engineering estimate of the costs to construct such roadway or other public improvements (including but not limited to the Pipeline Cross Access Connection)

as hereinafter described and the performance of all other obligations for which security is required by the ordinances of the Village or the terms of this Agreement.

The Developer shall be responsible for providing the Village with copies of all engineering drawings and plans for any roadway or other public improvements required or contemplated hereunder prior to the commencement thereof, for review and approval by the Village, in such form as the Village may require from time to time. Upon completion of all on and off-site roadway or other public improvements necessitated by the development of the Territory, the Village, after its inspection and approval thereof, shall accept the dedication of such improvements (together with the necessary easements and rights-of-way therefor) from the Developer, free and clear of all liens and encumbrances, and shall thereafter be responsible for the operation, maintenance, repair and replacement thereof, subject, however, to all maintenance and repair obligations of Developer under the Village Development Regulations, and provided, further, that the Developer shall additionally be responsible to repair or replace any roadway or other public improvements damaged by the use of such improvements in conjunction with construction within the Territory. Notwithstanding any other term or provision of this Agreement, Developer's obligations under Section 9 hereof shall expressly extend to all construction of public improvements undertaken by Developer hereunder.

In the event that Developer constructs and installs any on or off-site roadway or other public improvements contemplated by this Agreement or required by the Village Development Regulations, and Developer, upon the request of the Village, constructs and installs such roadway or other public improvements in a fashion designed and intended to benefit Developers, developers or users of property other than the Territory, then the Village and the Developer shall enter into a recapture agreement in accordance with 65 ILCS 5/9-5-1 et. seq., which recapture agreement shall provide, among other things, that the Developer shall be entitled to reimbursements from the owners, developers and users of property other than the Territory benefited by such roadway or other public improvements of that portion of the actual costs, together with reasonable interest thereon, to design, construct and install such additional improvements which the Village deems to have been incurred for, and to have inured to, the benefit of the owners, developers or users of property other than the Territory.

- 6.1 Pipeline Cross Access Connection. Without otherwise limiting the generality of this Section 6, Developer shall specifically be required to design, construct and

install certain cross access improvements hereinafter referred to as the "Pipeline Cross Access Connection", all in accordance with the applicable ordinances, requirements and standards of the Village, as contemplated and depicted in Exhibit "D", a copy of which is attached hereto and incorporated herein by reference, and having the cross section as depicted in said Exhibit "D". The costs of the Pipeline Cross Access Connection shall be included in the public improvements security required by this Section 6. Village and Developer acknowledge that the Pipeline Cross Access Connection is to be constructed on natural gas pipeline right of way owned by Natural Gas Pipeline Company of America, LLC (the "Gas Company"), and that the Village is working with the Gas Company to secure necessary rights to permit entry over and construction upon the natural gas pipeline right of way. Developer's obligation to design the Pipeline Cross Access Connection and to obtain all permits and all other approvals necessary from Gas Company for construction of the Pipeline Cross Access Connection is expressly contingent upon the Village securing the aforementioned rights. Developer shall complete the design of the Pipeline Cross Access Connection and obtain all permits and all other approvals necessary from the Gas Company within one year of the date the Village provides Developer notice that they have obtained necessary rights from the Gas Company. In the event that the Developer obtains the necessary permits and approvals and completes design within said one year period, the Developer shall provide notice of same to Village and Developer shall thereafter complete the construction of the Pipeline Cross Access Connection: i) within one year of date of said notice, or ii) as a condition to the issuance of a certificate of occupancy for the last apartment building to be constructed within the Territory, whichever occurs first. In the event that: i) the Village is unable to secure necessary rights from the Gas Company within one (1) year after the issuance of the first building permit for the Territory, or ii) In the event that the Developer fails to secure the necessary permits and approvals and complete design within said one year period, then the Village or the Developer may elect that Developer's obligations under this Section 6.1 may be satisfied by payment of a fee in-lieu of constructing the

Pipeline Cross Access Connection and granting the Village a temporary construction easement to facilitate future construction of the Pipeline Cross Access Connection. The fee in-lieu shall be in an amount equal to 125% of an engineer's opinion of probable construction costs (EOPC) for the Pipeline Cross Access Connection prepared by Developer's engineer and approved by the Village engineer.

- 6.2 Recreation Pathway Easement and Contribution. As a condition to the issuance of the first certificate of occupancy for an apartment building constructed within the Territory, Developer shall grant to the Village a temporary construction easement and a permanent easement in the location as depicted in Exhibit "D-1", a copy of which is attached hereto and incorporated herein by reference, to facilitate the relocation of the Village's existing recreational pathway along the Normantown Road frontage of the Territory. Developer and Village acknowledge that the easements contemplated by Exhibit "D-1" are necessary for the relocation of the existing pathway in connection with the Developer's construction of a vehicular access point to the Territory from Normantown Road. The parties further acknowledge that the Village intends to construct a paved recreational pathway within the natural gas pipeline as depicted on Exhibit "D", a copy of which is attached hereto and incorporated herein by reference, with a stubbed connection from the paved recreational pathway to the adjacent property line of the Territory in the location of the temporary construction easement to facilitate future access from the Territory to the paved recreational pathway. In connection therewith and upon request of the Village, the Developer shall grant to Village a temporary construction easement, to be used solely and exclusively for the purpose of the Village constructing said stubbed connection from the paved recreational pathway to the adjacent property line of the Territory. Nothing herein shall be deemed to create any permanent easement right in, over or across any portion of the Territory nor provide any public right of access upon the Territory. Developer shall, as a condition to the issuance of the first certificate of occupancy for an apartment building constructed within the Territory, contribute the sum of \$37,624.96 (an amount equal to 125% of the engineering cost estimate

thereof approved by the Village) to the Village toward the cost of constructing 546 linear feet of the paved recreational pathway upon the natural gas pipeline. The form and substance of the permanent and temporary construction easements contemplated herein shall be subject to the reasonable review and approval of the Parties.

- 6.3 Territory Entrance Feature/Monument Sign. Developer shall, as a condition to the issuance of the first certificate of occupancy for an apartment building constructed within the Territory, construct an entrance feature/monument sign at or near the entrance to the Territory from Normantown Road, generally conforming to the design concept attached hereto and incorporated by reference as Exhibit "E".

7. Signs

Prior to the commencement of the development of the Territory, Developer shall be entitled to place signs on the Territory advertising the development of the Territory in accordance with the standards set forth in Part VI of the Village Zoning Ordinance.

8. Development Fees.

The Village agrees that no new types or classifications of land development, subdivision, impact or building permit fees, donations, requirements, costs or impositions not in existence as of the date first above named will be imposed upon the Territory or the Developer in connection with its development thereof during the term of this Agreement unless the same shall be imposed by a Village ordinance of general applicability, and the Developer agrees to pay the Village all such types and classifications of fees, donations, costs and impositions in the manner and to the extent required by the ordinances of the Village. However, the Village may waive, modify or reduce such fees, donations, costs or impositions for other developers or owners of similarly situated land developments in the future without having to waive or reduce such fee, donation, cost or imposition for the Developer with respect to the Territory.

9. Indemnification.

Developer shall indemnify and hold the Village of Romeoville, an Illinois municipal corporation, its President, Trustees, officers, agents and employees, their heirs, executors, representatives and assigns (collectively sometimes hereinafter referred to as "Village") harmless from any and all third-party actions, causes of action, claims, suits, demands, and any judicial,

governmental or regulatory proceedings or any other actions which may arise or are claimed to arise out of or due to this Agreement or any of the activities or uses proposed or contemplated upon the Territory being annexed, including but expressly not limited to any and all construction activities conducted by Developer upon the Territory or upon any public rights of way or property; except to the extent that any said liability is due to the negligent act or omission of the Village. In the event the Village is made a party to any such event or proceeding identified herein, Developer shall indemnify, defend and hold harmless the Village, individually and collectively, from any such event or proceeding, and such indemnification obligation shall include, but not be limited to, the obligations to pay all judgments, comply or bear the cost of the Village's compliance with all orders, injunctions, decrees or other like enforcement provisions directed against the Village and to pay all costs and expenses of every nature and kind arising therefrom. The obligations of Developer hereunder shall specifically include but not be limited to the payment of reasonable attorneys' fees for the representation of the Village in such proceedings together with all expert witness fees and expenses, court costs and fees. It is expressly understood that the Village shall have the right to employ all such attorneys to represent the Village. The Village shall have the right to appeal to the courts of appellate jurisdiction any judgment taken against the Village in this respect. The parties agree this indemnification provision shall be liberally construed in favor of the Village and this Section and the indemnification and hold harmless agreements contained herein shall survive any determination by a court of competent jurisdiction of the invalidity of the Agreement or any party thereof. Notwithstanding anything contained herein, the indemnification in this Section shall not apply to an action or a claim brought by Developer against the Village or by the Village against the Developer nor with respect to any action by owner of a subdivided lot or a tenant within a building on the Territory for negligent action or inaction by the Village outside the scope of this Agreement which affects such a party.

10. Ingress and Egress.

The Developer shall be responsible for submitting to the Village all proposed public right-of-way connections from the Territory to any public right-of-way. Upon Village approval, the proposed right-of-way connections shall be submitted to the relevant jurisdictional authorities for their review and approval.

11. Building and Other Permits After Approval of Final Development Plan

- 11.1 Following Village approval for the Final Development Plan for the Territory or any particular phase thereof, the Village acknowledges that Developer, or its duly authorized representatives, may apply for, and that the Village shall issue, without undue delay, building permits to begin construction upon the Territory or such phase of the Territory, provided that the application complies with all requirements of the Village Ordinances and this Agreement. If the application is disapproved, the Village shall provide the applicant with a statement in writing without undue delay specifying the reasons for denial of the application.
- 11.2 Installation of hard surfaced streets (i.e., binder course) passable for emergency vehicles, along with storm sewers, sanitary sewers, water and storm water management facilities shall be completed in conformance with Village Ordinances before the issuance of building permits for the structures to be constructed.

12. Miscellaneous.

- 12.1 The parties acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.
- 12.2 (a) This Agreement shall be valid and binding for a term of twenty (20) years after the date first above named, upon the Village and upon the Unincorporated Owner, the Incorporated Owner, and the Developer, together with their respective successors and assigns, and is further intended to be binding upon each successive lot owner of any lots of record created by the approval and recording of Final Plats hereunder, and shall constitute a covenant running with the land. This Agreement shall be recorded with the Will County Recorder's Office.
- (b) Developer may assign this Agreement without Village approval, but only in connection with its conveyance of all or any part of the Territory, and upon said assignment and acceptance by an assignee, the Developer shall have no further obligations hereunder as to that portion of the Territory so conveyed, but shall continue to be bound by this Agreement and shall

retain the obligations created thereby with respect to any portion of the Territory retained and not conveyed. If Developer or its successors sell a portion of the Territory, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations it may have under this Agreement (excluding rights of recapture) which affect the portion of the Territory sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Territory so conveyed, but any such seller shall retain any rights and obligations it may have under this Agreement with respect to any part of the Territory retained and not conveyed by such seller. Notwithstanding any such assignment of this Agreement or any such sale or conveyance, unless the successor to or assignee of the Developer of all or a portion of the Territory shall have deposited and substituted its letter of credit or bond as security for the construction, repair and maintenance of roadway or other public improvements with the Village, the Developer or other seller though otherwise released from all obligations hereunder, shall keep its letter of credit or bond on deposit with the Village until such time as the Developer or the successor to or assignee of the Developer has provided a substitute letter of credit or bond. Without otherwise limiting the generality of the foregoing, Unincorporated Owner, Incorporated Owner and Developer represent to Village that they intend to close Developer's purchase of the Territory within eighty (80) days of the approval of this Agreement by the Corporate Authorities, and acknowledge that upon such a closing, Unincorporated Owner and Incorporated Owner shall be released from all obligations under this Agreement, and Developer shall thereafter be responsible for the performance of and bound by the terms of this Agreement, and specifically shall thereafter be deemed to be the Unincorporated Owner and the Incorporated Owner for all relevant purposes under this Agreement.

12.3 Any conveyance, dedication or donation of real estate to the Village or other

governmental authorities required of Developer (hereinafter referred to as “Grantor” in this Section) under this Agreement shall be made in conformance with the following requirements and any other applicable provisions of this Agreement.

- (a) Fee Simple Title. The conveyance, dedication or donation shall be of a fee simple title.
- (b) Marketable Title. Title to the real estate shall be good and marketable.
- (c) Form and Contents of Deed. The conveyance, dedication or donation shall be by delivery of a good, sufficient and recordable deed, plat of dedication, or appropriate dedication on a recorded plat of subdivision. The deed, conveyance or dedication may be subject only to:
 - (i) Covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;
 - (ii) Terms of this Agreement;
 - (iii) General taxes for the year in which the deed, conveyance or dedication is delivered or made and for the prior year if the amount of prior year’s taxes is not determinable at the time of delivery, conveyance or dedication; and
 - (iv) Such other exceptions as may be agreed to in writing by the Village.
- (d) Title Insurance. Grantor shall provide to the Village, not less than ten (10) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from the Chicago Title Insurance Company or such other title insurance company as may be acceptable to the Village. The commitment for title insurance shall be in usual and customary form subject only to:
 - (i) The usual and customary standard exceptions contained therein;
 - (ii) Taxes for the year in which the deed is delivered and for the prior year if the amount of such prior year’s taxes is not determinable at the time of delivery of the deed, conveyance or dedication;

- (iii) Covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;
- (iv) Terms of this Agreement; and
- (v) Such other exceptions as may be agreed to in writing by the Village.

The commitment for title insurance shall be in the amount of the estimated fair market value of the portion of the Territory conveyed as determined by the Grantor, which estimate shall be dated not less than twenty (20) days prior to the time for delivery of the deed, conveyance or dedication. Grantor shall further cause to be issued within thirty (30) days after delivery of the deed, conveyance or dedication a title insurance policy in such amount from the company issuing the commitment for title insurance, subject only to the exceptions stated hereinabove. All title insurance charges herein provided shall be borne by Grantor.

- (e) Taxes, Liens, Assessments, Etc. General taxes and all other taxes, assessments, liens and charges of whatever nature affecting that portion of the Territory conveyed shall be paid and released prior to delivery of the deed, conveyance or dedication. To the extent that any such item cannot be removed prior to delivery of the deed, conveyance or dedication because the amount of the same cannot then be determined, Grantor hereby covenants that it will promptly pay the same upon determination of such amount and that it will indemnify, hold harmless and defend the Village against any loss or expense arising as a result of a breach of the foregoing covenant.
- (f) Delivery of Deed, Conveyance or Dedication. To the extent not provided in this Agreement, the delivery of any deed, conveyance or dedication required by this Section shall occur at a date, time and place mutually agreeable to Grantor and Village, otherwise at a date, time and place set by Village not more than thirty (30) days after notice thereof is given by Village to Grantor.
- (g) Environmental Assessment. Not less than thirty (30) days prior to any conveyance, dedication or donation of any portion of the Territory required under

this Agreement, any Village ordinance or other requirement, the Grantor shall deliver to the Village a written report of a site assessment and environmental audit (the “Environmental Audit”) prepared by an independent, competent and qualified environmental engineer (“Engineer”). The Environmental Audit shall assure that the Engineer made all appropriate inquiry into the previous ownership and uses of the Territory consistent with good commercial and customary environmental engineering practice and procedure, which takes into account and satisfies the “innocent landowner” provision set forth at 42 U.S.C. 9601 (35) and any applicable governmental rules, guidelines or regulations. The Environmental Audit shall assure that no evidence came to light which would suggest there was a release of substances on the Territory which could necessitate an environmental response action, and which further evidences that the property, based upon the Environmental Audit, does not deviate from, all applicable federal, state, county, regional and local environmental statutes, laws, ordinances, rules and regulations (“Environmental Laws”), including the provisions of any licenses, permits or certificates required thereunder. If the Grantor obtains any such Environmental Audit for its lender, such Audit shall be deemed satisfactory to the Village.

The Grantor agrees that, in the event that an Environmental Audit or any other source of information known to the Village discloses a material, health, safety or environmental hazard, with respect to any Territory contemplated to be conveyed under this Section, then the Village shall not be obligated to take title to any land if, in its sole and exclusive judgment (including, without limitation, information revealed by the Environmental Audit), the use or condition of the Territory, or any part thereof, poses a material health, safety or environmental hazard. If such part of the Territory does pose a material health, safety or environmental hazard, then the Grantor must convey suitable substitute land at a location(s) subject to the approval by the Village which approval shall not be unreasonably withheld.

- (h) Ordinance Compliance. Property to be conveyed hereunder to the Village shall also comply with any and all other standards, ordinances, resolutions or regulations adopted by the Village. For purposes of determining such

compliance, Village may examine Grantor's use of any property to be conveyed to the Village hereunder as if Village owned the same as of the time of such use, and without regard to the actual date on which such property was or was to be conveyed to the Village.

- 12.4 From and after the effective date of this Agreement, and upon demand by Village made by and through its President, Developer from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by Village in the negotiation and administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, the negotiation and preparation of letters of credit or bonds as security for the completion of required roadway or other public improvements and the enforcement of this Agreement or any applicable ordinances of the Village by any administrative proceedings under the ordinances of the Village, or under any state statute or by any court action, including but not limited to prosecutions for violation of this Agreement or any such ordinances.
- 12.5 The failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect. No action taken by any party to this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or equity.
- 12.6 This Agreement may only be amended by the Village's adoption of an ordinance authorizing the execution of such amendment, after a public hearing in accordance with Article 11, Division 15.1 of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et. seq.) and the subsequent execution of such amendment by all of the other parties hereto.

12.7 In the event that any pertinent existing regulations, resolutions or ordinances of the Village are inconsistent with or conflict with the terms or provisions of this Agreement, the terms or provisions of this Agreement shall supersede the regulations, resolutions or ordinances in question to the extent of such inconsistency or conflict. Absent any such conflict or inconsistency, the pertinent existing regulations, resolutions and ordinances of the Village, as the same may be amended from time to time, shall apply to Developer's development of the Territory.

- 12.8 (a) Upon a breach of this Agreement, any of the parties may secure the specific performance of the covenants and agreements herein contained as its sole and exclusive remedy for such breach, the sole venue for which shall be in the Circuit Court for the Twelfth Judicial Circuit, Will County, Illinois.
- (b) In the event of a material breach of this Agreement, the parties agree that the party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching party seeking a judicial remedy as provided for herein (provided, however, that said thirty (30) day period shall be extended if the defaulting party has commenced to cure said default and is diligently proceeding to cure the same).
- (c) If the performance of any covenant to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (including, without limitation, acts of God, war, terrorist acts, strikes, inclement weather conditions, inability to secure governmental permits, or similar acts), the time for such performance shall be extended by the length of such delay provided, however that the party that seeks the benefit of this provision shall give the other(s) written notice of both its intent to rely upon this provision and the specific reason which permits the party to avail itself of the benefit of this provision.

12.9 This Agreement sets forth all agreements, understandings, and covenants between

and among the parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the parties.

- 12.10 If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word, or designation contained herein. Furthermore, if any provision of this Agreement is held invalid, the invalidity thereof shall not affect any zoning classification which has been approved by the Village pursuant to the provisions of the Village's ordinances and the valid provisions of this Agreement, and such zoning classifications shall not otherwise be changed during the term of this Agreement without Developer's approval and shall survive this Agreement and continue to be the zoning classification of the Territory unless changed in accordance with law.
- 12.11 The Corporate Authorities agree to aid Developer and to cooperate reasonably with Developer in dealing with any and all applicable governmental bodies and agencies in obtaining utility and other governmental services for the Territory. Furthermore, it is understood and agreed by the parties hereto that the successful consummation of this Agreement requires their continued cooperation. The Village and Developer hereby evidence their intent to always cooperate in the resolution of mutual problems and their willingness to facilitate the uses of the Territory, as contemplated by the provisions of this Agreement. Without otherwise limiting the generality of the foregoing, Developer specifically acknowledges and agrees that it shall cooperate with Village by entering into the Village's standard form private property traffic ordinance enforcement agreement or private property common area enforcement agreement upon request therefor from the Village, and that it shall take all such steps as may be necessary (including but not limited to the recordation of appropriate restrictive covenants against the property) to ensure that all sales and use taxes imposed by the State of Illinois with respect to the conduct of any business that is now or may hereinafter be lawfully developed within or conducted from the Territory shall be deemed to

have resulted from and to have been generated within the corporate limits of the Village, so as to facilitate the Village's receipt of such distributive share thereof from the State of Illinois as it may be entitled to from time to time.

12.12 This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

12.13 The headings of the Sections of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

12.14 This Agreement may be reproduced by means of carbons, xerox process or otherwise. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

12.15 Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

12.16 Notices, including Notices to effect a change as to the persons hereinafter designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village, or the corporate authorities:

VILLAGE OF ROMEOVILLE
1050 W. Romeo Road
Romeoville, Illinois 60446
Attention: Village Manager

with a copy to the Village Attorney:

RAYMOND E. MEADER
Village Attorney
Tracy, Johnson & Wilson
2801 Black Road, 2d Floor
Joliet, Illinois 60435

If to the Owner:

with a copy to:

If to the Developer:

Paul Mott
Edward Rose & Sons
38525 Woodward Avenue
Bloomfield Hills, MI 48303

And

Scott Jacobson
S.R. Jacobson Companies
32400 Telegraph Road, Suite 100
Bingham Farms, MI 48025

with a copy to:

Russell G. Whitaker, III
Rosanova & Whitaker
30 W. Jefferson Ave, Suite 200
Naperville, IL 60540

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

Village:

VILLAGE OF ROMEOVILLE,
A municipal corporation,

By: _____
Village President

ATTEST:

By: _____
Village Clerk

Unincorporated Owner:

By: _____

Incorporated Owner

By: _____

Developer:

By: _____
Its

ATTEST:

By: _____
Its