



**CITY OF CRYSTAL LAKE**  
**AGENDA**  
**CITY COUNCIL**  
**REGULAR MEETING**  
City of Crystal Lake  
100 West Woodstock Street, Crystal Lake, IL  
City Council Chambers  
August 15, 2023  
7:00 p.m.

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**
4. **Approval of Minutes – August 1, 2023 Regular City Council Meeting**
5. **Fire Rescue Swearing in Ceremony for New Firefighter/Paramedic, Lieutenants, Battalion/Bureau Chiefs, and Chief**
6. **Accounts Payable**
7. **Public Presentation**  
*The public is invited to make an issue oriented comment on any matter of public concern not otherwise on the agenda. The public comment may be no longer than 5 minutes in duration. Interrogation of the City staff, Mayor or City Council will not be allowed at this time, nor will any comment from the Council. Personal invectives against City staff or elected officials are not permitted.*
8. **Mayor's Report**
9. **City Council Reports**
10. **Consent Agenda**
11. **Intergovernmental Agreement between Community High School District 155 and the Crystal Lake Police Department for School Resource Officer Services**
12. **Intergovernmental Agreement between Community High School District 155 and the Crystal Lake Police Department for the sharing of information including access to digital surveillance cameras**
13. **Bid Award – Municipal Complex Interior Painting**
14. **Bid Award – 2023 Pavement Rejuvenation Program**
15. **Redevelopment Agreement for Water's Edge Mixed-Use Development**
16. **Water's Edge (former Crystal Court) - Preliminary Planned Unit Development Amendment, Final Planned Unit Development for the west side of Water's Edge Boulevard and Final Plat of Subdivision for a mixed-use development**
17. **Proposal Award – Depot Park Public Place Project Preliminary Engineering Services**
18. **Board and Commission Appointment – Library Board**

- 19. Council Inquiries and Requests**
- 20. Adjourn to Executive Session for the purpose of discussing matters of pending and probable litigation, the sale, purchase or lease of real property, collective bargaining and personnel**
- 21. Reconvene to Regular Session**
- 22. Adjourn**

*If special assistance is needed in order to participate in a City of Crystal Lake public meeting, please contact Melanie Nebel, Executive Assistant, at 815-459-2020, at least 24 hours prior to the meeting, if possible, to make arrangements.*



**Agenda Item No: 5**

**City Council  
Agenda Supplement**

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**Meeting Date:**

August 15, 2023

**Item:**

Fire Rescue Swearing in Ceremony for New Firefighter/Paramedic, Lieutenants, Battalion/Bureau Chiefs, and Chief

**Staff Contact:**

Craig Snyder, Fire Rescue Chief  
Julie Meyer, Director of Human Resources

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**Background:**

During 2023, a new Firefighter/Paramedic and those promoted to Lieutenant, Battalion/Bureau Chief, and Chief of Fire Rescue were officially sworn in by the City Manager at the time of hire or promotion.

At the August 15, 2023 City Council Meeting, Mayor Haleblan will formally swear in the following sworn Fire Rescue personnel, who were hired or promoted in 2023:

Probationary Firefighter/Paramedic Carley Nicolay; and,

Fire Lieutenants Ryan Muscavitch and Nick Borst; and,

Fire Battalion/Bureau Chief Christopher Bedore; and,

Fire Rescue Chief Craig Snyder.

We are so pleased to have these fine individuals serve in our Fire Rescue Department. Congratulations!



## Agenda Item No: 11

### City Council Agenda Supplement

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**Meeting Date:**

August 15, 2023

**Item:**

Intergovernmental Agreement between Community High School District 155 and the Crystal Lake Police Department for School Resource Officer Services

**Staff Recommendation:**

A motion to approve a Resolution authorizing the City Manager to execute an Intergovernmental Agreement with Community High School District 155 for School Resource Officer

**Staff Contact:**

James Black, Chief of Police

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**Background:**

The Crystal Lake Police Department and Community High School District 155 (District 155) have historically worked together to provide a safe environment for both students and staff at the three public High Schools located within the City of Crystal Lake (Crystal Lake Central, Crystal Lake South, Prairie Ridge). At the heart of these efforts is the Police Department's School Resource Officer Program (SRO). SRO's are specially trained Police Officers who are assigned to each High School throughout the year while classes are in session. School Resource Officers focus not just on safety at the locations, but also work to engage in positive interactions with juvenile members of our community.

Our School Resource Officer Program has been in place since 1995, with the last formal agreement between Crystal Lake Police and Community High School District 155 having been put in place in 2012. The School Resource Officer Services agreement defines each agency's responsibilities, including the shared cost associated with the program. The updated agreement presented today is essentially unchanged from the prior agreement from 2012. Both the Crystal Lake Police Department and the Community High School District 155 believe in the program and see the benefits of having an officer within the high schools and wish to continue the partnership.

City legal staff has reviewed the agreement

**Votes Required to Pass:**

A simple majority of the City Council is required for approval.



## RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE, of McHenry County, Illinois, that the City Manager is hereby authorized to execute an intergovernmental agreement allowing the City of Crystal Lake Police Department to provide School Resource Officers to Community High School District 155.

DATED this 15<sup>th</sup> Day of August, 2023

CITY OF CRYSTAL LAKE, an  
Illinois Municipal Corporation,

By: \_\_\_\_\_  
Haig Haleblian, MAYOR

SEAL

ATTEST

\_\_\_\_\_  
Nick Kachiroubas, CITY CLERK

PASSED: August 15, 2023

APPROVED: August 15, 2023

**INTERGOVERNMENTAL AGREEMENT FOR SCHOOL RESOURCE OFFICER SERVICES**

**BETWEEN**

**BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT NO. 155**

**AND**

**CITY OF CRYSTAL LAKE**

THIS INTERGOVERNMENTAL AGREEMENT DATED \_\_\_\_\_, 2023, by and between the CITY OF CRYSTAL LAKE, a Municipal Corporation (hereinafter referred to as the "City"), and the BOARD OF EDUCATION, COMMUNITY HIGH SCHOOL DISTRICT #155, McHenry and Lake Counties, Illinois (hereinafter referred to as "School District" or "District") (each a "Party" and together the "Parties"):

**WITNESSETH:**

**WHEREAS**, the City is a home rule unit of government by virtue of the provisions of the constitution of the State of Illinois of 1970; and,

**WHEREAS**, the School District is a community high school district organized and existing under the laws of the State of Illinois; and,

**WHEREAS**, the School District operates three high schools which are situated within the corporate limits of the City of Crystal Lake, Illinois, including Crystal Lake Central High School, Crystal Lake South High School and Prairie Ridge High School (hereinafter, such schools shall be individually referred to as "the High School" or collectively referred to as the "High Schools"); and,

**WHEREAS**, both the City and the School District are authorized and empowered to contract with one another pursuant to the provisions of the Constitution of the State of Illinois of 1970, Article VII, Section 10, and Section 3 of the *Intergovernmental Cooperation Act* (5 ILCS 220/3); and,

**WHEREAS**, pursuant to Section 10-20.14 of the *School Code* (105 ILCS 5/10-20.14), school districts are encouraged to create memoranda of understanding with local law enforcement agencies that clearly define law enforcement's role in schools; and

**WHEREAS**, as provided in Section 10-20.68 of the *School Code* (105 ILCS 5/10-20.68), a School Resource Officer is a law enforcement officer who has been primarily assigned to a school or school district under an agreement with a local law enforcement agency; and

**WHEREAS**, the School District wishes to have available the services of a police officer of the City to act as a high school resource officer at each of its schools located in the City; and

**WHEREAS**, the City is willing to supply police officers to the School District to serve in such capacity; and

**WHEREAS**, the City and the School District have determined through their respective governing bodies that it is in their respective best interests to enter into an Agreement to provide for a High School Resource Officer, pursuant to the terms and conditions contained herein.

**NOW THEREFORE** in consideration of the mutual promises, covenants, conditions, and other valuable consideration, the receipt and sufficiency whereof is herein acknowledged, the parties hereto agree as follows:

**1. INCORPORATION OF RECITALS:** The recitals set forth above are hereby incorporated into and made a part of this Agreement.

**2. PROGRAM:** The Chief of Police of the City (hereinafter, the “Chief”) or his/her designee, will assign, upon a joint review with the Superintendent of the School District or his/her designee (hereinafter, “the Superintendent”), a City Police Officer to each of the High Schools to act as a School Resource Officer (hereinafter “the SRO”) for the school year. Such assignment shall be made in the manner provided in Section 6 of this Agreement. The SRO assigned to a High School will at all times during his/her assignment retain his/her status as an employee of the City and its Police Department, and shall not be deemed an employee of the School District for any purposes. The City shall at all times be considered the SRO’s employer and shall retain direction and control of the work and conduct of the SRO and shall be solely responsible for payment of salary to the SRO and provision of any other benefits to which the SRO is entitled to as an officer of the City of Crystal Lake Police Department. The School District will reimburse a portion of the City’s costs as provided in Section 10 of this Agreement. The City shall also maintain payroll, attendance, and performance evaluation records of the SRO. The Principal of any High School to which the SRO is assigned or his/her designee (hereinafter, “the School Principal”) may provide secondary direction to the SRO while the SRO is on the High School Property during school hours or during extra-curricular and athletic events provided that such direction is consistent with the Duties and Responsibilities of the SRO as outlined in this Agreement, below, and is not inconsistent with the authority and direction of the Chief.

The SRO shall establish and operate such programs and activities as are consistent with the intent of this program and as determined jointly by the Chief and the School Principal. Duties and responsibilities, once established, may be changed, expanded or redefined by mutual written agreement of both the Chief and the Superintendent.

The SRO shall be responsible for the original investigation of all criminal offenses and alleged criminal activity on school property while the SRO is on duty. The SRO shall respond to all calls for police services on school property while on duty. The SRO shall be responsible for conducting these investigations in addition to and in conjunction with the SRO’s other defined duties and responsibilities defined in Section 3 of this Agreement.



When the SRO is not assigned to school duty at a High School, the SRO shall be subject to reassignment by the Chief to regular police duties.

In accordance with its general duties outside this Agreement under law, the City shall respond to calls for emergency police services requiring additional officers. Upon request by the School District and when officers are available, the City will provide one or more additional officers for scheduled, non-emergency school events (“Detail Work”) at a cost set forth in Section 10 of this Agreement. These additional officers may be requested for Detail Work either when officers in addition to the SRO are needed for such events or when the SRO is unavailable for such events or is otherwise needed to perform the SRO duties.

**3. DUTIES AND RESPONSIBILITIES:** The SRO shall perform the duties and responsibilities described on Exhibit C. The School Principal or a designated staff member shall coordinate the daily duties and activities of the SRO in consultation with the Chief or his/her designated staff member. The City, through the SRO or otherwise, shall not establish a booking station in the High Schools in violation of Section 10-20.60 of the School Code (105 ILCS 5/10-20.60).

**4. ACCESS TO RECORDS:** The School District and the SRO will have access to education records and law enforcement records relating to students under the terms set forth in Exhibit A, and as otherwise allowed or restricted by applicable law.

**5. CONFLICTS:** In the event of a conflict between any request, instruction, designation or order given by the SRO’s Police Supervisor and the School Principal or his/her designee related or pertaining to the investigation of criminal activity or alleged criminal activity, occurring during the regular school day on school property, the request, instruction, designation or order of the SRO’s Police Supervisor shall take precedence over any request, instruction, designation or order of the School Principal or his/her designee.

**6. STAFFING:**

- a. **SRO Selection and Assignment.** The Chief shall assign one full-time regularly constituted Police Officer to each High School to act as the SRO. Before making the assignment of the SRO, the Chief shall provide the School Principal with the names of all Officers qualified to act as the SRO, with all such Officers meeting the minimum qualifications set forth in Exhibit B. The School Principal or his/her designee, along with the Crystal Lake Chief of Police or his/her designee, shall interview the Officers selected by the Chief, and the assignment of the Police Officer to act as SRO shall be made upon the recommendation of the School Principal based on the interviews conducted, upon mutual consent of both parties. If the parties cannot reach a mutual decision regarding the assignment of an SRO, the Chief shall determine the assignment. In the event the Chief or School District is not satisfied with the performance of the assigned SRO, the Chief or School District may at any time request that the selection process be instituted to select a replacement SRO. If either the Chief or School District determines that the continued presence of the SRO in the School District during this process would

be detrimental to the School District or students, then at the School District's request the SRO will be removed immediately.

- b. SRO School Assignment Period. The SRO shall begin his/her assignment at a High School commencing on the first day of teacher attendance in each school year and continuing on a full time basis for each day of the school year that teachers are in attendance (hereinafter, "the SRO School Assignment Period"). The School District, in its discretion, may release the SRO from duties on one or more days of teacher attendance when students are not also in attendance, such as a teacher in-service day when there is no training appropriate for the SRO's participation. In the event of any emergency, the Chief may assign the SRO to regular department duties, on a short-term basis, notwithstanding the fact that such assignment may occur during normal school hours. The Chief shall give notice to the School District of such emergency reassignment as soon as possible.
- c. School Hours. The SRO shall be in attendance on school days during school hours (including bus arrival and departure periods) and during such hours of extracurricular activities or sporting events as may be agreed to between the SRO's Police Supervisor and the School Principal.
- d. SRO Absences. In the event of any absence of an SRO during regular school hours, over a period of more than two consecutive school days or as mutually agreed upon by both parties, the Department shall provide a substitute police officer to cover the absence unless a substitute officer is not available due to an emergency situation or staffing needs of the Department occur. Substitute police officers shall not be required to be officially trained as an SRO but shall be present in the building while the SRO is off campus for any reason. If a substitute officer is not provided on a day of absence of the SRO, the City will so notify the School District and will attempt to have a police officer check in with the Principal's Office, walk through the School building, and drive through the School parking lot call volume permitting. The Parties agree that, if the SRO is scheduled to be out for leave of greater than one week, then for purposes of consistency and safety the City will endeavor to have the substitute services provided by one substitute officer, or the fewest number of substitute officers possible, for the duration of the leave rather than rotating substitutes. Further, both Parties agree that, in such circumstances, the Parties will coordinate and discuss additional options for ensuring SRO services are provided, to the extent possible, until the assigned SRO can return from leave.
- e. Supervision. The SRO shall be subject to the supervision of the appropriate Police Supervisor, with secondary supervision by the School Principal.

**7. EQUIPMENT, WORK AREA AND STORAGE:**

- a. The school shall provide the SRO with a suitable workstation and necessary equipment to the SRO to efficiently perform duties.

- b. The SRO may carry weapons while on school property in compliance with law and Police Department protocol.
- c. Storage of firearms on school property will be made only upon consent of, and pursuant to protocols agreed between, the Chief of Police and the Superintendent of the School District.
- d. This paragraph shall apply if the SRO wears an officer-worn body camera during the performance of SRO duties. SRO use of a body camera shall be in accordance with the *Law Enforcement Officer-Worn Body Camera Act* (50 ILCS 701/10-1 et seq.) and other applicable federal and Illinois law, the City of Crystal Lake Police Department policies relating to officer-worn body cameras and in accordance with Exhibit D to this Agreement which is attached hereto and incorporated herein. The City shall provide to the School District a copy of the Police Department's written policy regarding the use of body cameras adopted in accordance with the foregoing Act prior to the SRO's commencement of body camera usage in the School and whenever such policy is updated. The City shall determine an appropriate process for flagging recordings related to incidents in the schools for retention as otherwise allowed by law. If the SRO is equipped with a body camera, he/she shall be trained in the operation of the equipment prior to its use.

**8. EFFECTIVE DATE:** This Agreement shall be effective upon its approval by the City Council of the City of Crystal Lake and execution by the Mayor and City Manager and approval of the Board of Education of Community High School District 155 and execution by its President and Secretary.

**9. TERM OF THE AGREEMENT:** This Agreement shall commence on the Effective Date and continue until terminated, which termination shall be either by thirty (30) days' written notice by one Party to the other Party or by written mutual consent and agreement. The Parties shall endeavor to review and discuss the terms of this Agreement on an annual basis in the Spring of each year ("Spring Review").

**10. COST:** The salary and benefits of each SRO assigned by the City to the School District shall be paid by the City. The School District agrees to reimburse the City for its cost of supplying each SRO to the School District at the rate of 50% of each assigned officers' regular salary during the SRO School Assignment Period, plus 50% of the cost of any overtime payment obligations of the City to such assigned officers which are related to such officers' duties as an SRO under this Agreement (hereinafter referred to as the "District's Financial Obligation"). On a monthly basis, the City of Crystal Lake will provide the School District with a detailed invoice reflecting the total regular salary and overtime paid to the SRO by the City for the preceding month as well as the amount due for the School District's Financial Obligation during such preceding month. In addition to the District's Financial Obligation, the District shall also be responsible to pay the full overtime salary paid by the City to police officers for providing Detail Work at scheduled non-emergency school events. The monthly invoice provided by the City to the School District shall

include all amounts paid by the City for Detail Work during the month prior to the date of each The School District shall pay the amounts due pursuant to such invoices in accordance with the *Local Government Prompt Payment Act* (50 ILCS 505/1 *et seq.*). Each year, by the time of the Spring Review if possible, the City will notify the District of both the District's anticipated Financial Obligation and the anticipated cost for additional officers for scheduled non-emergency Detail Work described in Section 2 of this Agreement for the ensuing year ("Anticipated Cost Estimate"). It is understood that the amounts set forth in the Anticipated Cost Estimate are estimates only and are subject to change based upon costs actually incurred by the City pursuant to this Agreement.

**11. INDEMNITY:** The City hereby agrees to indemnify, defend, and hold harmless the School District from any and all losses, costs, demands, damages, actions or causes of action, including attorneys' fees, arising out of, proximately caused by or incurred by reasons of any act or omission by the SRO occurring on School property or otherwise in the performance of SRO duties. To this end, the City shall maintain all applicable liability policies which provide coverage to the City and its employees in order to maintain coverage for the SRO. The City of Crystal Lake shall have all applicable liability policies amended or additional endorsements issued in order to extend coverage to the SRO under all applicable insurance policies and endorsements to reflect the Community High School District 155 and Board of Education and its employees and agents as additional insureds. The City shall maintain such insurance policies in effect at all times during the Term of this Agreement and the School District shall be provided with copies of said insurance policies or said additional endorsements as appropriate and upon request so as to verify the existence of the required extended coverage hereunder.

**12. NOTICES:** Any notices may be sent to the respective parties at the following respective addresses:

To the City:

Chief of Police  
Crystal Lake Police Department  
100 W. Woodstock Street  
Crystal Lake, Illinois 60014

To the District:

Superintendent of Schools  
Community High School District #155  
One South Virginia Road  
Crystal Lake, Illinois 60014

**13. COMPLETE UNDERSTANDING:** This Agreement sets forth all the terms and conditions, and agreements and understandings between the Parties relative to the subject matter hereof.

**14. AMENDMENTS:** No modifications, amendments, or waiver of any provision hereto shall be valid and binding unless in writing and signed by all Parties.

**15. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, apply and inure to the benefit of each Party and their respective legal representatives, successors and assigns.

**16. GOVERNING LAW:** This Agreement and the rights and responsibilities of the Parties hereto shall be interpreted and enforced in accordance with the laws of the State of Illinois.

17. **INCORPORATION OF EXHIBITS.** The Exhibits referenced in this Agreement are hereby incorporated into this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals all as of the day and year first written above.

BOARD OF EDUCATION  
COMMUNITY HIGH SCHOOL DISTRICT #155,  
McHENRY AND LAKE COUNTIES, ILLINOIS

BY: \_\_\_\_\_  
President

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

CITY OF CRYSTAL LAKE, a Municipal Corporation

BY: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

BY: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**TO THE**  
**INTERGOVERNMENTAL AGREEMENT FOR SCHOOL RESOURCE OFFICER SERVICES**  
**BETWEEN**  
**BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT NO. 155**  
**AND**  
**CITY OF CRYSTAL LAKE**

**ACCESS TO STUDENT RECORD INFORMATION**

- A. District Records.** The Parties acknowledge and agree that all student, personnel, medical, and District-related business records generated by District employees or students shall be the property of the District. The Parties agree to comply with all state and federal laws, including, but not limited to, the *Illinois School Student Records Act* (105 ILCS 10/1 *et seq.*), the *Illinois Mental Health and Developmental Disabilities Confidentiality Act* (740 ILCS 110/1 *et seq.*), the federal *Family Educational Rights and Privacy Act* (20 U.S.C. § 1232g; 34 C.F.R. Part 99), *Health Insurance Portability and Accountability Act of 1996* (45 C.F.R. Parts 160 and 164), the *Illinois Personnel Records Review Act* (820 ILCS 40/1 *et seq.*), and all rules and regulations governing the release of student, personnel, and medical records. The SRO may have access to personally identifiable information (“PII”) in student records without parental consent as follows:
1. The SRO may have access to “directory information” of students as needed to perform duties.
  2. The SRO may have access to live feed of security cameras in the District pursuant to authorization of the Superintendent or Principal. Recorded camera footage may constitute student record information if identifiable students are the focus of the footage. As such, recorded camera footage will be treated as student record information pursuant to Paragraph A.3 below.
  3. The SRO may have access to other (non-directory) student record information pursuant to the following legal guidelines, as interpreted and approved by the Superintendent or Principal:
    - a. The SRO may receive PII from the District as a “school official” performing SRO duties under this Agreement when the SRO has a direct and legitimate educational interest in the student. A “legitimate educational interest” shall include promoting school safety and physical security of the students. The PII must remain under the direct control of the District, and the SRO

may use information obtained as a school official only for the purposes for which it is obtained, and will not disclose such information to third parties, including other employees of the Police Department who are not acting as school officials, unless consent of the parent (or student age 18 or older) is obtained or an exception to the statutory consent rule applies.

- b. The SRO may receive from the District PII related to student criminal activity pursuant to an applicable reciprocal reporting agreement entered into between the District and the City (“Reciprocal Reporting Agreement”), when necessary for the discharge of his or her official duties to effectively serve, prior to adjudication, the student whose records are released. Such a record release is subject to the terms of the Reciprocal Reporting Agreement, and the SRO will not disclose that information to third parties outside the Police Department.
- c. The SRO may access District PII related to students in an emergency, as determined by the Superintendent or School Principal.

Notwithstanding the termination of this Agreement for any reason, the confidentiality provisions set forth in this Agreement shall continue in full force and effect following such termination.

- B. **Law Enforcement Records.** The Parties acknowledge and agree that all records generated by the SRO in connection with the performance of services under this Agreement may constitute law enforcement records. In accordance with law, all records generated and maintained solely by the SRO and the City shall not constitute student records. If the SRO utilizes a body camera, it shall be used in accordance with the *Law Enforcement Officer-Worn Body Camera Act* (50 ILCS 701/10-1 *et seq.*) and other applicable federal and Illinois law. The Parties shall follow the protocols for use of body worn cameras set forth in Exhibit D to this Agreement. Prior to SRO use of body worn cameras in the School District, the City will provide written information and training to appropriate school employees concerning the objectives and procedures for the use of body cameras in the School District. If the SRO is equipped with a body camera, he/she shall be trained in the operation of the equipment prior to its use.
- C. **Other Applicable Agreements.** This records and confidentiality provisions in this Agreement shall be interpreted in conjunction with other applicable agreements in effect between the District and the City, including, but not limited to, the Reciprocal Reporting Agreement.
- D. **SAFE-T Act Reports.** The City will provide to the District each month copies of the following reports required to be filed with the Department of State Police by the *Safety, Accountability, Fairness and Equity – Today Act* (SAFE-T Act) (50 ILCS 709/5-12):
  - a. data on offenses and incidents reported by District schools to local law enforcement. The data shall include offenses defined as an attack against school personnel,

intimidation offenses, drug incidents, and incidents involving weapons; and

- b. a report on any incident where a law enforcement officer was dispatched to deal with a person experiencing a mental health crisis or incident in District schools.

Draft



**EXHIBIT B**

**TO THE**

**INTERGOVERNMENTAL AGREEMENT FOR SCHOOL RESOURCE OFFICER SERVICES  
BETWEEN  
BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT NO. 155  
AND  
CITY OF CRYSTAL LAKE**

**QUALIFICATIONS OF THE SRO**

1. Be a certified police officer with the Police Department;
2. Have at least the minimum number of years of experience working as a police officer, sheriff's deputy, or other law enforcement position acceptable to the District as needed to be eligible for SRO certification as of the initial date of assignment as an SRO, and preferably no less than five (5) years;
3. Have experience working with youths;
4. Have completed and maintained the following certification regarding the duties and responsibilities of a school resource officer:
  - a. Certification through the school resource officer course provided by the Illinois Law Enforcement Training and Standards Board (ILETSB) under 50 ILCS 705/10.22 and 105 ILCS5/10-20.68, and required renewal training; or
  - b. If acceptable to the Superintendent of the School District, a waiver of such certification issued by the ILETBSB pursuant to the foregoing laws, based on the experience and training of the SRO, and required renewal training.
5. Attain Rifle Qualified Status;
6. Have strong verbal, written, and interpersonal skills, including public speaking;
7. Possess a sufficient knowledge of the applicable Federal and State laws, County ordinances, and Board policies and regulations;
8. Be able to function as a strong role model for students in the District; and
9. Possess an even temperament and set a good example for students.

**EXHIBIT C**  
**TO THE**  
**INTERGOVERNMENTAL AGREEMENT FOR SCHOOL RESOURCE OFFICER SERVICES**  
**BETWEEN**  
**BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT NO. 155**  
**AND**  
**CITY OF CRYSTAL LAKE**

**DUTIES AND RESPONSIBILITIES OF THE SRO**

The duties and responsibilities of the SRO include, but are not limited to the following:

**General Duties**

1. Report to his/her Police Department Supervisor as required by the Chief and report to the School Principal or designee; serve as liaison between the Police Department and the School District.
2. Promote a positive relationship and enhance communication between police, students and staff at the School.
3. Identify potential problems within the High School(s) which would fall within the scope of the duties of the SRO and work with the School Principal and the Chief to develop and implement solutions to such problems.
4. Investigate such cases as described in this Agreement and such other cases relating to the High School(s) as assigned by the Chief or the SRO's Police Supervisor.
5. Represent the Police Department in any court action arising from any criminal or unlawful activity investigated by the SRO.
6. Maintain a record of daily activities in a weekly activity log, which will be provided to the SRO's supervisor on a weekly basis. A copy of the weekly activity log will be made available to the School District upon request. On a yearly basis the individual school will evaluate the services provided by the police agency and make recommendations to the police department if necessary. These records shall be maintained for a minimum of three years.
7. Meet as necessary or required with the High School and Police Administrators to discuss and evaluate the program and program activities.

8. Perform such other duties, including but not limited to working at school-sponsored extra-curricular and athletic events, as may be assigned by the Chief and/or School Principal in accordance with past practice.
9. Abide by the School District's rules and regulations for the conduct of its employees with respect to compliance with law and personal and physical interaction with students (e.g. anti-grooming policies, physical restraint procedures for special education students).
10. The City and the School District acknowledge that the SRO must receive appropriate and current training in order to fulfill his/her duties as a school resource officer. As a result, the Parties shall work cooperatively to ensure the SRO receives appropriate in-service training, such as updates in the law, in-service firearm training, and training specific to the duties of a school resource officer and working with high school age students. The School District also may require the SRO to attend other relevant trainings, including but not limited to, trainings about appropriate use of restraint involving special needs students, use of opioid antagonists, crisis intervention and de-escalation techniques, implementation of Board policies, and the School District's regulations and procedures.

### **Safety and Security**

1. Assist High School staff in the event of any emergency.
2. When feasible, officers are encouraged to maintain a high level of visibility during school entrance and dismissal times as well as during passing periods;
3. Meet with building administrators to advise them of potentially dangerous situations and plan for the safe resolution of those situations;
4. Assist in securing the High School and surrounding property from the parking of unauthorized vehicles; secure the building and grounds from the entry of unauthorized person in the High School building or onto the High School grounds and to prevent loitering in the High School area;
5. Protect school property, students, school personnel and visitors from criminal activity by patrolling the school building and grounds and attending school functions during and outside the school day (athletic events, dance, parent-teacher conferences) as reasonably required;
6. Serve as a member of the District's district-level and school-level threat assessment teams in accordance with the *School Safety Drill Act*, 105, ILCS 128/45, and Board of Education Policy and procedure;
7. Observe and assist the District with annual law enforcement drills to address a school shooting incident as required by the *School Safety Drill Act*, 105 ILCS 128/20(c);

8. Participate, advise and consult in the annual review of the school's emergency and crisis response plan, protocols, and procedure, including procedures regarding the school district's threat assessment team pursuant to the *School Safety Drill Act*, 105 ILCS 128/25;
9. Assist the school administration in the development of plans and strategies which minimize dangerous situations including those related to student or community unrest which impact the schools;
10. Provide and encourage programs and presentations designed to promote student and faculty understanding of the law and other public safety issues with the intended goal of allowing young people to become better informed and effective citizens within and outside the academic environment, including conducting presentations and/or trainings on law, law enforcement issues, individual liberties and social responsibilities;
11. Work with parents, law enforcement, and social service agencies on matters that may affect the School; and
12. Work cooperatively with other law enforcement agencies, including neighboring law enforcement entities, to fulfill the duties described hereunder.

#### **Student Counseling, Discipline, and Criminal Referral**

1. Assist in the development of prevention programs as directed by the Chief and School Principal.
2. Maintain liaison with Police Department personnel and High School officials to promote a comprehensive knowledge of youth activity within the High School and the community.
3. Serve as advisor for students in the area of the officer's expertise and specifically for students with problems involving violations of the law. The SRO may, with the consent of the School Principal or designee and a student, participate in any counseling session conducted by school professional staff. The SRO shall have no other counseling responsibility or privileges.
4. Provide students and their families, administrators, staff and faculty with information concerning various community support agencies, including:
  - a. family counseling services;
  - b. drug and alcohol treatment facilities;
  - c. psychological services;
  - d. legal assistance; and
  - e. other agencies as may be appropriate under given circumstances.

5. Enforce State and Local criminal laws and ordinances and to take appropriate action in response to violations of the law, subject to the following deferral to School District disciplinary authority.
6. Follow building and district behavior policies, deferring to school administration for discipline and enforcement of student handbook and policies, referring students for further law enforcement processing when requested by the School District or required by law, and using law enforcement authority in necessary situations. The Parties acknowledge that the SRO is responsible for criminal law issues, not school discipline issues. Thus, absent a real and immediate threat to student, teacher, or public safety, incidents involving public order offenses (including, but not limited to, disorderly conduct; disturbance/disruption of the Schools or public assembly; trespass; loitering; profanity; and fighting that does not involve immediate physical injury or a weapon) shall be considered school discipline issues to be solely handled by School officials, rather than criminal law issues warranting formal law enforcement intervention (e.g., issuance of a criminal citation, ticket, or summons, filing of a delinquency petition, referral to a probation officer, or actual arrest). If the SRO becomes aware of a student discipline issue, he/she shall refer the issue to the School Principal. Neither the SRO nor the District shall be precluded from referring students or their parents to the State's Attorney's Office if the student or parents desire to press charges.
7. Provide information, records, and testimony when the SRO is directly involved in an incident and when requested by the School District administration for student expulsion proceedings.
8. Follow protocols for detention and questioning of students on school grounds in compliance with the *School Code (105 ILCS 5/22-85)* and Board Policy 7:150 *Agency and Police Interviews* and 7:150AP *Administrative Procedure—Agency and Police Interviews*. The SRO will notify parents/guardians of students under the age of 18 of any detainment and questioning on school grounds. Before detaining and questioning a student on school grounds who is under 18 years of age and who is suspected of committing a criminal act, the SRO must do all of the following:
  - a. Ensure that notification or attempted notification of the student's parent or guardian is made.
  - b. Document the time and manner in which the notification or attempted notification under paragraph (a.) occurred.
  - c. Make reasonable efforts to ensure that the student's parent or guardian is present during the questioning or, if the parent or guardian is not present, ensure that school personnel, including, but not limited to, a school social worker, a school psychologist, a school nurse, a school guidance counselor, or any other mental health professional, are present during the questioning.

**EXHIBIT D**

**TO THE**

**INTERGOVERNMENTAL AGREEMENT FOR SCHOOL RESOURCE OFFICER SERVICES  
BETWEEN  
BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT NO. 155  
AND  
CITY OF CRYSTAL LAKE**

**BODY WORN CAMERAS**

- A. The City of Crystal Lake Police Department may issue officer(s) assigned to the School District and acting in the capacity of a School Resource Officer (“SRO”) a body worn camera pursuant to the Illinois *Law Enforcement Officer Body Worn Camera Act* (“Act”), 50 ILCS 706/10 as part of a department-wide body worn camera policy. Prior to issuing a body worn camera to the SRO, the Police Department will ensure the SRO has completed the mandatory training for use of the camera. The Police Department shall provide to the School District a copy of the Department Policy on body worn cameras adopted in compliance with the Act and will promptly notify the School District of any changes to that Policy.
- B. The type of function the SRO is performing will determine whether the body worn camera is activated:
1. An SRO’s engagement in Community Caretaking Functions and routine school disciplinary functions is not subject to recording pursuant to the Act. A Community Caretaking Function is defined in the *Law Enforcement Officer Body Worn Camera Act* as “a task undertaken by a law enforcement officer in which the officer is performing an articulable act unrelated to the investigation of a crime.” Community Caretaking Functions comprise most school related responsibilities of the SRO including, but not limited to: meeting with teachers and staff, greeting and conversing with students and faculty in and around District facilities, and providing counseling, coaching, and direction to students for school related purposes. Therefore, the SRO’s body camera will not be activated during the performance of responsibilities unless recording is required under the Act.
  2. Under the Act, the SRO is required to activate the body worn camera when responding to a police call for service on campus or engaged in “law enforcement-related encounters or activities,” as defined by the *Law Enforcement Officer Body Worn Camera Act*, including responding to police calls for service for a law enforcement purpose and criminal investigations and interrogations.

- C. Footage obtained on school grounds via the SRO's body camera shall not be utilized for law enforcement training purposes and shall not be disseminated by the Police Department or City for any non-law enforcement purpose other than to comply with court-issued orders, subpoenas, or all State and federal laws and this Agreement. Footage obtained on school grounds via the SRO's body camera shall also be released to the School District at the request of the School District and pursuant to the Reciprocal Reporting Agreement entered into by and between the School District and the Police Department pursuant to statutory authority including, but not limited to, the *School Code*, the *Criminal Code*, and the *Juvenile Court Act*. School District administrators also may request the SRO "flag" certain body worn camera footage to ensure a longer retention of such footage under the Act.

Draft



## Agenda Item No: 12

### City Council Agenda Supplement

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**Meeting Date:**

August 15, 2023

**Item:**

Intergovernmental Agreement between Community High School District 155 and the Crystal Lake Police Department for the sharing of information including access to digital surveillance cameras

**Staff Recommendation:**

A motion to approve a Resolution authorizing the City Manager to execute an Intergovernmental Agreement with Community High School District 155 for the sharing of information, including Amendment #1 to allow Police Department access to District 155 digital surveillance cameras

**Staff Contact:**

James Black, Chief of Police

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**Background:**

The Crystal Lake Police Department and Community High School District 155 (District 155) have historically worked together to provide a safe environment for both students and staff at the three public High Schools located within the City of Crystal Lake (Crystal Lake Central, Crystal Lake South, Prairie Ridge).

In addition, the Crystal Lake Police Department and Community High School District 155 regularly communicate and work together on matters that concern both agencies. Sharing information between the two organizations is essential to help ensure the safety of students and staff, both within the school and outside in the community. Several state statutes help direct and guide the information sharing including provisions of the Illinois School Code, the Juvenile Court Act and the Illinois School Student Records Act. The attached intergovernmental agreement establishes the terms of the information sharing process between the Police Department and District 155.

As a part of the proposed Reciprocal Reporting System, Community High School District 155 will also provide access to available surveillance cameras located at all three public high schools.



Access to the camera system will be limited to select police personnel and used only in the event of an emergency to assist first responders during life safety incidents. Amendment #1 to the intergovernmental agreement sets forth the terms under which the District 155 will allow Police Department access to the surveillance cameras.

In recent years, the Police Department has become increasingly involved in situations that do not always involve criminal activity. Nevertheless, our participation in these incidents is imperative as safety remains our main concern. This agreement is intended to assist the Police Department and Community High School District 155 in working within the legal framework present during increasingly challenging situations involving juveniles.

City legal staff has reviewed the agreement.

**Votes Required to Pass:**

A simple majority of the City Council is required for approval.



## RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE, of McHenry County, Illinois, that the City Manager is hereby authorized to execute an intergovernmental agreement allowing the City of Crystal Lake Police Department to participate in a formal information exchange program with Community High School District 155 and to further authorize the City Manager to execute Amendment #1 to the intergovernmental agreement to allow the City of Crystal Lake Police Department access to Community High School district 155 surveillance cameras.

DATED this 15<sup>th</sup> Day of August, 2023

CITY OF CRYSTAL LAKE, an  
Illinois Municipal Corporation,

By: \_\_\_\_\_  
Haig Haleblian, MAYOR

SEAL

ATTEST

\_\_\_\_\_  
Nick Kachiroubas, CITY CLERK

PASSED: August 15, 2023

APPROVED: August 15, 2023

**RECIPROCAL REPORTING SYSTEM AGREEMENT BETWEEN**

**THE BOARD OF EDUCATION OF COMMUNITY HIGH SCHOOL DISTRICT NO. 155**

**AND THE CRYSTAL LAKE POLICE DEPARTMENT**

**WHEREAS**, this Intergovernmental Agreement (“Agreement”) is entered into between the Community High School District No. 155, Lake and McHenry Counties, Illinois, (“School District”) and the Crystal Lake Police (“Department”) (each a “Party” and collectively the “Parties”); and

**WHEREAS**, the School District has the responsibility for the education of students within its boundaries and, to that end, operates one or more schools; and

**WHEREAS**, the Department has responsibility for law enforcement within the boundaries of the School District or a portion thereof; and

**WHEREAS**, the School District and Department have mutually determined that it would be in the best interest of the safety and welfare of students and employees of the School District to have a reciprocal reporting system between the School District and the Department regarding criminal offenses committed by students enrolled in the School District; and

**WHEREAS**, this Agreement is authorized by the Illinois Constitution of 1970 and the *Intergovernmental Cooperation Act*, 5 ILCS 220/1 *et seq.*, providing for the execution of agreements and implementation of cooperative ventures between public agencies of the State of Illinois; and

**WHEREAS**, Section 10-20.14 of the *School Code* mandates and authorizes that the School District's parent-teacher advisory committee develop and maintain, along with the School Board, a reciprocal reporting system between the School District and local law enforcement agencies regarding criminal offenses committed by students; and

**WHEREAS**, the *Family Educational Rights and Privacy Act* (20 USC 1232g(b)) provides that confidential student record information may be disclosed without parental consent to state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to a State statute if (1) the allowed reporting or disclosure concerns the juvenile justice system and such system’s ability to effectively serve, prior to adjudication, the student whose records are released; and (2) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student; and

**WHEREAS**, in furtherance of the foregoing, the *Illinois School Student Records Act* (105 ILCS 10/6(a)(6.5)) provides that confidential student record information may be disclosed without parental consent to juvenile authorities when necessary for the discharge of their official duties who request information prior to the adjudication of the student and who certify in writing that the

information will not be disclosed to any other party except as provided by law or order of court; and further defines juvenile authorities, which definition includes, but is not limited to, judges, probation officers, law enforcement officers and prosecutors, and individuals authorized by court.

**WHEREAS**, the Parties wish to memorialize the authority and parameters of their exchanges of information and the necessary written certification pursuant to the foregoing State and federal laws.

**NOW, THEREFORE**, in consideration of the foregoing, as well as the mutual covenants and agreements hereinafter set forth, the School District and the Department hereby agrees as follows:

**1. LIAISON**

The School District shall designate an administrative contact person to act as a liaison between the School District and the Department for the purpose of reciprocal reporting of criminal offenses committed by students. The Department shall likewise designate an administrative contact person to act as a liaison between the Department and the School District for the purpose of reciprocal reporting of criminal offenses committed by students.

**2. CRIMINAL OFFENSES/REPORTING AND RECORDS DISCLOSURE**

**A.** The School District will release information to the Department as follows:

- 1) The School District shall report to the Department specific conduct of students when required by law, including, but not limited to the following:
  - a. Battery of a Staff Member. Upon receipt of a written complaint from any school personnel, the School District shall report all incidents of battery committed against teachers, teacher personnel, administrative personnel, educational support personnel, or school employees to the Department or other local law enforcement officials, as appropriate. 105 ILCS 5/10-21.7.
  - b. Firearms on School Property. The School District (Principal or designee) will immediately report to the Department or other local law enforcement officials, as appropriate, any time a report is made that a person with a firearm has been observed, or there is a verified incident involving a firearm, on school grounds. 105 ILCS 5/10-27.1A.
  - c. Drugs on School Property. The School District (Superintendent or designee) will immediately report to the Department or other local law enforcement agency, as appropriate, any time a report is made of a verified incident involving drugs in the school or on school-owned or leased property, including any conveyance owned, leased,

or used by the school for the transport of students or school personnel. 105 ILCS 5/10-27.1B. For purposes of this Section, "drug" means "cannabis" as defined under subsection (a) of Section 3 of the *Cannabis Control Act*, "narcotic drug" as defined under subsection (aa) of Section 102 of the *Illinois Controlled Substances Act*, or "methamphetamine" as defined under Section 10 of the *Methamphetamine Control and Community Protection Act*.

In addition, the School District (Principal or designee) shall report to the Department or other local law enforcement agency, as appropriate, violations of section 5.2 of the *Cannabis Control Act*, violations of sections 401 and 407(b) of the *Illinois Controlled Substances Act*, and violations of the *Methamphetamine Control and Community Protection Act* occurring on school property or within 1,000 feet of a school, or in any conveyance owned, leased, or contracted by a school to transport a student to or from school or a school-related activity, within 48 hours of becoming aware of the incident. 105 ILCS 127/.

- d. Hazing. School officials will report personal observations of hazing. 720 ILCS 5/12C-50.

- 2) The School District may release student information to the Department as follows:

- a. Whenever the School District receives information that a student may have committed any other criminal offense on school grounds, at a school-sponsored activity, against school personnel students, or otherwise related to the School District or its educational program, the School District liaison may notify the Department liaison, subject to any limitations imposed by law.

- b. Whenever the School District determines that reporting any other information regarding a student is necessary or appropriate to prevent harm to the student or others or to ensure proper preadjudicatory treatment and processes for the student, upon request by the Department, the School District may report such information to the Department to the extent consistent with applicable confidentiality laws.

- 3) Information shared by the School District under 2.A.1 and 2.A.2 above may be communicated orally or in writing. The information may include the disclosure of student records in accordance with Section 10/6(a)(6.5) of the *Illinois School Student Records Act*.

- a. Section 10/6(a)(6.5) of the *Illinois School Student Records Act* provides that the District may release school student records or information to juvenile authorities when necessary for the discharge of their official duties upon a request for information prior to adjudication of the student and if certified in writing that the information will not be disclosed to any other party except as provided under law or order of the court. “Juvenile authorities” include probation officers, law enforcement officers and prosecutors, and others as defined in Section 10/6(a)(6.5) of the *Illinois School Records Act*. The Department is acting in the role of “juvenile authorities” pursuant to this Agreement.
- b. All information consisting of student record information that is disclosed by the School District under this Agreement is therefore to remain confidential and will not be disclosed to any other party, except as provided by law or court order.
- c. The School District also may release student record information to the Department in an emergency when necessary to protect the health or safety of the student or other individuals.
- d. To the extent information reported by the School District to the Department constitutes a student record or is derived from a school student record, the School District may provide prior written notice to the student’s parents, or the student if applicable, when and if required by law.

**B.** The Department will, when police officials deem appropriate, release information to the School District as follows:

- 1) The Department shall, report to and grant access by the School District to the following information:
  - a. Whenever the Department receives information that a student may have committed a criminal offense, and provided police officials deem appropriate, the Department liaison shall notify the School District liaison, as limited by Section 2.D and 2. E of this Agreement with respect to juvenile records of minors, if applicable. In addition, the Department shall notify the School District liaison whenever the Department or an officer believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds and when required under Section 2.G..
  - b. Upon request of the School District, the Department shall provide access to the criminal records of students of any age, subject to the

limitations in Section 2.D of this Agreement with respect to juvenile records of minors, if applicable, and any other limitations imposed by law.

- 2) The Department may share with the School District other information involving or related to students in the District to the extent allowable by law.
- C. Information reported pursuant to this Agreement shall include information pertaining to activity or suspected activity which would jeopardize the safe, orderly, and violence-free environment of a school, including, but not limited to, any criminal or gang-related activity. This Agreement shall not be construed to restrict either Party's authority provided under law to release information to the other Party, as such law may be amended from time to time.
- D. The Department's provision of and the School District's access to the Department's records relating to a minor who has been arrested before his or her 18th birthday, for purposes of inspection and copying of said records, shall be limited to situations in which the Department believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds, and the records shall pertain to minors enrolled in the School District who have been arrested or taken into custody for any of the following offenses:
- (i) any violation of Article 24 of the *Criminal Code of 1961* or the *Criminal Code of 2012* (i.e., weapons violations);
  - (ii) a violation of the *Illinois Controlled Substances Act*;
  - (iii) a violation of the *Cannabis Control Act*;
  - (iv) a forcible felony as defined in Section 2-8 of the *Criminal Code of 1961* or the *Criminal Code of 2012* (e.g., murder, criminal sexual assault, robbery, burglary, arson, kidnapping, aggravated battery, and any other felony that involves the use or threat of physical force or violence);
  - (v) a violation of the *Methamphetamine Control and Community Protection Act*;
  - (vi) a violation of Section 1-2 (harassment through electronic communications) of the *Harassing and Obscene Communications Act*;
  - (vii) a violation of the *Hazing Act* (recategorized and renumbered as Section 12C-50 of the *Criminal Code*); or
  - (viii) a violation of Section 12-1 (assault), 12-2 (aggravated assault), 12-3 (battery), 12-3.05 (aggravated battery), 12-3.1 (battery of an unborn child; aggravated battery of an unborn child), 12-3.2 (domestic battery), 12-3.4

(violation of an order of protection), 12-3.5 (interfering with the reporting of domestic violence), 12-5 (reckless conduct), 12-7.3 (stalking), 12-7.4 (aggravated stalking), 12-7.5 (cyber stalking), 25-1 (mob action), or 25-5 (unlawful contact with street gang members) of the *Criminal Code of 1961* or the *Criminal Code of 2012*.

The information received by the School District that is derived from the law enforcement records shall be kept separate from and shall not become a part of the official school record of that child and shall not be a public record. The information shall be used solely by the appropriate school official or officials whom the school has determined to have a legitimate educational or safety interest to aid in the proper rehabilitation of the child and to protect the safety of students and employees in the school. If the designated law enforcement and school officials deem it to be in the best interest of the minor, the student may be referred to in-school or community-based social services if those services are available. "Rehabilitation services" may include interventions by school support personnel, evaluation for eligibility for special education, referrals to community-based agencies such as youth services, behavioral healthcare service providers, drug and alcohol prevention or treatment programs, and other interventions as deemed appropriate for the student.

- E.** Except, as provided in 2.D. and 2. G, the Department's provision of and the School District's access to the Department's information relating to a minor who is the subject of a current police investigation that is directly related to school safety shall consist of oral information only, and not written law enforcement records, and shall be used solely by the appropriate school official or officials to protect the safety of students and employees in the school and aid in the proper rehabilitation of the child. The information derived orally from the local law enforcement officials shall be kept separate from and shall not become a part of the official school record of the child and shall not be a public record. For purposes of this paragraph, "investigation" means an official systematic inquiry by the Department or any other law enforcement agency into actual or suspected criminal activity.

The limitations of this paragraph and paragraph 2.D shall be expanded or further restricted in accordance with any subsequent amendments to the *Juvenile Court Act of 1987* (705 ILCS 405/1-7, 5-905) or other laws.

- F.** Pursuant to 705 ILCS 405/5-901(1)(b)(v), court files of juvenile delinquency proceedings, redacted to remove any information identifying the victim or alleged victim of any sex offense, will be disclosed to the School District if the School District provides educational, medical or mental health services to the juvenile and disclosure is necessary for the discharge of the School District's official duties.
- G.** Notwithstanding the restrictions in Section 2.D above on the provision of and access to the Department's records, in accordance with Section 22-20 of the *School Code* (105 ILCS 5/22-20), the Department shall report to the Principal, or School



District liaison if identified as designee for the School District's principals, whenever a child enrolled therein is detained for proceedings under the *Juvenile Court Act of 1987*, as heretofore and hereafter amended, or for any criminal offense or any violation of a municipal ordinance. The report shall include the basis for detaining the child, circumstances surrounding the events which led to the child's detention, and the status of proceedings. The report shall be updated as appropriate to notify the Principal School District liaison of developments and the disposition of the matter. The information transmitted to the School District pursuant to this paragraph shall be kept separate from and shall not become a part of the official school record of such child and shall not be a public record. Such information shall be used solely by the appropriate school official or officials whom the School District has determined to have a legitimate educational or safety interest to aid in the proper rehabilitation of the child and to protect the safety of the students and employees in the school.

- H. The Department's duty to disclose information and documents to the School District pursuant to the law and this Agreement shall be separate from and in addition to the duty of the State's Attorney to provide information to the School District pursuant to Section 5-901 of the *Juvenile Court Act of 1987* (705 ILCS 405/5-901) regarding adjudications of delinquency.
- I. Pursuant to the *Juvenile Court Act of 1987* (705 ILCS 405/5-901), following any adjudication of delinquency for a crime that would be a felony if committed by an adult, or following any adjudication of delinquency for a violation of Section 24-1, 24-3, 24-3.1, or 24-5 of the *Criminal Code of 1961* or the *Criminal Code of 2012*, the State's Attorney shall ascertain whether the minor respondent is enrolled in school in the School District and, if so, shall provide a copy of the sentencing order to the principal of the school. Access to such juvenile records shall be limited to the principal of the school and any school counselor designated by him or her.
- J. Nothing contained in this Agreement is intended to prevent the sharing or disclosure of information or records relating or pertaining to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action Program when that information is used to assist in the early identification and treatment of habitual juvenile offenders and such sharing is otherwise allowed by law.

### 3. **CONFIDENTIALITY**

Any and all information received by the School District as a result of this Agreement shall be kept confidential by the School District as and to the extent required by law. In accordance with the *Illinois School Student Records Act*, 105 ILCS 10/; 23 Ill.Admin.Code 375)("ISSRA") and the federal *Family Educational Rights and Privacy Act*, (20 U.S.C 1232g; 34 C.F.R. 99)("FERPA"), any and all information constituting student records or education records under those laws that are received by the Department as a result of this Agreement shall be kept confidential by the Department, shall be used only for their preadjudicatory duties related to students, and shall not be disclosed by the Department to another person or entity, except as provided under state and federal law, without the prior

written consent of the parent of the student (or consent of the student if he or she has assumed rights under the law). The Department hereby represents that its representatives will comply with this confidentiality requirement. This representation shall be deemed to constitute the written certification by the Department, as required by ISSRA and FERPA, to acknowledge and agree to the Department's ongoing compliance with the confidentiality requirements related to the receipt of student record information pursuant to this Agreement. The School District, at its discretion, may require separate written acknowledgment by the Department in conjunction with the receipt of specific student record information.

**4. TERM AND TERMINATION**

The parties to this Agreement understand and agree that this Agreement shall commence the day and year on which the Agreement is signed by all parties. This Agreement shall remain in effect from year to year thereafter, as may be modified pursuant to Section 6 of this Agreement until terminated by written notice of either party. The Parties shall endeavor to review and discuss the terms of this Agreement every two years, with the first such review to occur two years from the commencement of the term of this Agreement.

**5. NOTIFICATION**

Notice of termination pursuant to Section 4 of this Agreement shall be sent to the Parties at their respective addresses as follows:

Office of the Superintendent  
Community High School District No. 155  
One South Virginia Road  
Crystal Lake, Illinois 60014

Office of the Chief of Police  
Crystal Lake Police Department  
City of Crystal Lake  
100 W. Woodstock Street  
Crystal Lake, IL 60014

Service shall be made by the United States certified mail, postage prepaid, return receipt requested, or by personal delivery of any such notice delivered to an employee of the Department at its administration office during the regular business hours of said office.

**6. MODIFICATION**

The agreements, covenants, terms, and conditions herein contained may be modified only through written mutual consent of the parties hereto.

**7. ASSIGNMENT**

Neither party may assign, transfer or otherwise convey its rights or obligations under this Agreement without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year the Agreement is fully executed by both Parties.

**BOARD OF EDUCATION OF  
COMMUNITY HIGH SCHOOL  
DISTRICT NO. 155,  
LAKE AND MCHENRY COUNTIES**

**CRYSTAL LAKE POLICE DEPARTMENT,  
CITY OF CRYSTAL LAKE, ILLINOIS,  
MCHENRY COUNTY**

By: \_\_\_\_\_  
                    **Its President**

By: \_\_\_\_\_  
                    **Its Chief**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:  
\_\_\_\_\_  
                    **Secretary**

Attest:  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Draft

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**AMENDMENT NO. 1**  
**TO THE**

**RECIPROCAL REPORTING SYSTEM AGREEMENT BETWEEN**

**THE BOARD OF EDUCATION OF  
COMMUNITY HIGH SCHOOL DISTRICT NO. 155**

**AND THE CRYSTAL LAKE POLICE DEPARTMENT**

**LAW ENFORCEMENT ACCESS TO SCHOOL DISTRICT  
DIGITAL SECURITY CAMERAS**

**WHEREAS**, the Community High School District No. 155 (“School District”) and the Crystal Lake Police (“Department”) are parties to an Intergovernmental Agreement for the Reciprocal Reporting System Agreement, with a term commencing \_\_\_\_\_, 2023 (“Agreement”); and

**WHEREAS**, the School District and the Department wish to amend the Agreement to further provide for limited access by the Department to the School District security camera live feed and recorded footage for school safety and security purposes.

**NOW, THEREFORE**, for good and sufficient consideration provided each to the other, the Agreement is hereby amended by adding the following provisions:

**ACCESS TO SCHOOL DISTRICT DIGITAL SECURITY CAMERAS**

**A. Provision of Access to Digital Camera System.** Subject to any applicable licensing restrictions, the School District shall provide the Department with the necessary login information in order to enable the Department to view a real-time video created by School District digital security cameras. This Agreement applies to School District cameras inside and on the exterior of District 155 owned property building(s) and does not apply to any cameras on school buses.

**B. Limited Viewing**

1. **Authorized Viewers and Designated Devices.** Individuals authorized on behalf of the Department to view live video and recorded images created by the School District digital cameras shall be limited to (collectively, “*Authorized Viewers*”):

- a. The Police Chief;
- b. Police Department employees authorized by the Chief or, in the absence of the Chief, the Chief's designee;
- c. The Department's IT employees and IT contractors authorized by the Chief, or in the absence of the Chief, the Chief's designee; and
- d. Designees of Southeast Emergency Communications (SEECOM), through and under the supervision of one or more of the Authorized Viewers listed in B.1.a-B.1.c above, and only in the event of an emergency.

The Authorized Viewers may log in to the School District's camera software only from designated Department computers or other electronic devices meeting the School District's technical specifications and approved by the School District. The IP address of each Department device approved by the School District shall be registered in advance with the School District's Chief Technology Officer. The Department shall test the login from all designated devices on a quarterly basis. The Authorized Viewers may log in only under the conditions, and pursuant to the protocols, set forth in this Agreement.

2. **Access to Live Feed.** The Department shall not permit any individual, including Authorized Viewers, to view on a routine basis the real-time video (live feed) from the School District digital cameras. Authorized Viewers shall be permitted to view real-time images created by the School District digital cameras *only* when:
  - a. An emergency call (e.g. 911 or otherwise) is made from or regarding the School;
  - b. Necessary or prudent, as determined by the Department, for the Department to deter or protect against an imminent and substantial threat that is likely to result in significant bodily harm or damage to School District property;
  - c. Requested by the Superintendent of the School District or Principal of the School;
  - d. Necessary or prudent for purposes of training for response to emergencies in the School District buildings, with advance notice of the date, time, and purpose to the School Principal or designee and written consent from the School Principal or designee; or

- e. Consented to by the School District for investigative purposes.

Unless School District permission was given in advance for specific live feed access, the Department shall promptly notify the Superintendent when the Department (and/or SEECOM designees through the Department) has accessed live feed from School District cameras and which Authorized Viewers viewed the live feed access. The School District also may independently audits the digital camera system login history, as available in the software.

3. **Access to Recorded Video and Images.** The Department shall not permit any individual, including Authorized Viewers, to view on a routine basis any recorded footage or images created by the District digital cameras. Authorized Viewers shall be permitted to view recorded footage or images created by the District digital cameras *only* in the circumstances listed above in Section B.2 as applicable to access to live feeds. However, as distinguished from access to live feeds, the recorded video may, in some circumstances, constitute student records. Thus, except in the event of an emergency call or action to deter or protect against an imminent and substantial threat (see Section B.2.a,b above), the Department shall obtain advance permission from the Superintendent, Assistant Superintendent, or Chief Technology Officer in order to access recorded video footage or images.

Unless School District permission was given in advance for specific recorded video or image access, the Department shall promptly notify the Superintendent when the Department (and/or SEECOM designees through the Department) has accessed recorded video or images from School District cameras and which Authorized Viewers accessed the recorded video or images. The School District also may independently audits the digital camera system login history, as available in the software. **C. Limited Download and Retention.**

1. The Department (and SEECOM through the Department) will not download, record, scrape, screenshot, or otherwise preserve any live feed.
2. If the Department has authority under this Amendment to view recorded footage or images for viewing and has obtained any required advance approval for such viewing access under the above Section B.3, the Department may further request permission from the School District Chief Technology Officer to download such recorded footage or images. The Department will not download, record, scrape, screenshot, or otherwise preserve any recorded footage or images without such advance permission or production of a court order. If the permission to download or otherwise

preserve recorded footage or images is granted by the School District pursuant to the Reciprocal Reporting provisions of the Agreement, the Department's use of such records shall comply with the restrictions of those provisions.

3. Except as may be required by law, recorded footage downloaded or otherwise preserved by the Department shall not be released, displayed, or disseminated by the Department to any third parties, or to any employees or agents of the Department who do not have a law enforcement purpose for such access. The Department shall not retain any recordings or preserved recorded footage or images beyond the retention period for documents that are part of an actual or reasonably contemplated police investigation into actual or suspected criminal activity.

**D. *Freedom of Information Act.*** If the Department receives a *Freedom of Information Act* request for any images or video in its possession obtained from the School District or created or derived from School District digital security camera images or recordings, the Department shall immediately notify the School District and work in good faith with the School District before responding to the *Freedom of Information Act* request to ensure legal and personal privacy of individuals is preserved to the extent allowed by law.

**E. School Student Records**

1. The images created on the School District's digital cameras are created for security purposes and are therefore not routinely classified as school student records as defined by Section 2 of the *Illinois School Student Records Act*, 105 ILCS 10/2, and Section 375.10 of Title 23 of the Illinois Administrative Regulations, 23 ILADC 375.10, and as interpreted by the U.S. Department of Education under the *Family Educational Rights and Privacy Act*, 20 U.S.C. 1232g. Such images may, however, become school student records, such as if subsequently used by the School District in a student disciplinary matter or for other official purposes.
2. The School District shall notify the Police Chief of any recordings that become school student records or otherwise mark such recordings as student records prior to authorizing Department access. The Department shall, if requested by the School District and permitted by law, erase any images the Department has retained that have become school student records unless such images are part of an active or reasonably contemplated police investigation into actual or suspected criminal activity.

3. Any images the Department maintains that have become school student records must be kept strictly confidential and only disclosed:
  - a. With the prior written approval of the Superintendent of the School District or the Superintendent's designee;
  - b. In the case of an emergency as defined in Section 375.60 of Title 23 of the Illinois Administrative Regulations, 23 ILADC 375.60; or In good faith consultation with the Superintendent of the School District or the Superintendent's designee and in accordance with the *Illinois School Student Records Act*. 105 ILCS 10/6.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the day and year the Agreement is fully executed by both Parties.

**BOARD OF EDUCATION  
COMMUNITY HIGH SCHOOL  
DISTRICT NO. 155  
LAKE AND MCHENRY COUNTIES**

**CRYSTAL LAKE POLICE DEPARTMENT  
CITY OF CRYSTAL LAKE, ILLINOIS  
MCHENRY COUNTY**

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

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

**Its President Date:**

\_\_\_\_\_

**Date:** \_\_\_\_\_

**Attest:** \_\_\_\_\_

**Attest:** \_\_\_\_\_

**Secretary**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_





**Agenda Item No: 13**

**City Council  
Agenda Supplement**

**Meeting Date:** August 15, 2023

**Item:** Bid Award – Municipal Complex Interior Painting Project

**Staff Recommendation:** Motion to award the bid for the Municipal Complex Interior Painting Project to the lowest responsive and responsible bidder, Tiles in Style, LLC, of South Holland, Illinois and adopt a Resolution authorizing the City Manager to execute a contract with Tiles in Style, LLC in the amount of \$75,959.00, execute change orders for up to 10% of the contract amount, and approve warranted completion date change orders relating to the contract.

**Staff Contact:** Michael Magnuson, P.E., Director of Public Works and Engineering

**Background:**

Various areas throughout the Crystal Lake Municipal Complex need to be repainted. Normal wear and tear over the years has left the walls, door frames, and doors throughout the Municipal Complex with areas of mismatched colors, scuffs, and chipped paint. The last time any substantial repainting project was conducted was over ten years ago. Staff has identified the need to paint Administrative Offices this year followed by the Police Department and Fire Rescue Department in future years. The first areas to be repainted will include the Administrative Offices and an additional fifteen (15) doors and frames throughout the Municipal Complex. Plans and specifications for this work were completed and bids advertised in accordance with City policies. The City of Crystal Lake publically opened and read the bids on July 27, 2023. The bid results are summarized below:

Bidder	Base Bid (Admin Offices)	Paint Hollow Metal Door Frames (price per Frame)	Paint Hollow Metal Doors (price per Door)	Total Cost
*Tiles in Style, LLC South Holland, IL	\$73,199.00	\$85.00 x 15 = \$1,275.00	\$99.00 x 15 = \$1,485.00	<b>\$75,959.00</b>
Capital Painting & Decorating, Inc. Naperville, IL	\$81,375.00	\$190.00 x 15 = \$2,850.00	\$190.00 x 15 = \$2,850.00	<b>\$87,075.00</b>

\* Indicates Recommended Lowest Responsive and Responsible Bidder

**Recommendation:**

The contract award amount of \$75,959.00 includes the Administrative Offices (\$73,199.00) plus unit pricing for fifteen (15) doors and door frames, which is an additional \$2,760.00, for a total of \$75,959.00.

This contract is being presented pursuant to a competitive bidding process. Under such process, the contract is to be awarded to the “lowest responsive and responsible bidder.” The lowest responsive and responsible bidder is the contractor: (i) whose bid substantially conforms to the material provisions of the bid specifications, (ii) who demonstrates the financial capacity and ability to undertake and complete the project in question in accordance with bid specifications, and (iii) whose bid price is lowest among the responsive and responsible bidders. Selecting a contractor on bases not set forth in the bid specifications can lead to challenges to the City’s award.

Staff and the City’s consultant, Wold Architects and Engineers have reviewed the bids and checked the references for Tiles in Style, LLC, and they meet all of the City’s requirements. Funds are available in the FY2023/2024 budget for this work.

**Votes Required to Pass:**

Simple majority vote



## **RESOLUTION**

**WHEREAS** the areas throughout the Crystal Lake Municipal Complex including the Administrative Offices and various doors and door frames throughout the facility have been identified as needing to be repainted; and

**WHEREAS** the CITY received and publicly opened the bids for the Municipal Complex Interior Painting Project on July 27, 2023; and

**WHEREAS** the lowest responsive and responsible bidder is Tiles in Style, LLC.

**NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE** that the foregoing recitals are repeated and incorporated as though fully set forth herein; and

**BE IT FURTHER RESOLVED** that the City Manager is authorized to execute a contract between the CITY OF CRYSTAL LAKE and Tiles in Style, LLC for the Municipal Complex Interior Painting Project in the bid amount \$75,959.00; and

**BE IT FURTHER RESOLVED** that the City Manager is authorized to execute change orders for up to 10% of the contract amount and to approve warranted completion date change orders relating to the contract.

**DATED** this 15<sup>th</sup> day of August, 2023.

CITY OF CRYSTAL LAKE, an  
Illinois municipal corporation,

By: \_\_\_\_\_  
Haig Haleblian, MAYOR

SEAL

ATTEST

\_\_\_\_\_  
Nick Kachiroubas, CITY CLERK

PASSED: August 15, 2023  
APPROVED: August 15, 2023

Draft



## Agenda Item No: 14

### City Council Agenda Supplement

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**Meeting Date:**

August 15, 2023

**Item:**

Bid Award - 2023 Pavement Rejuvenation Program

**Staff Recommendation:**

Motion to award the 2023 Pavement Rejuvenation Program Bid to the lowest responsive and responsible bidder, Corrective Asphalt Materials, LLC and adopt a Resolution authorizing the City Manager to execute a contract with Corrective Asphalt Materials, LLC in the bid amount per square yard and to authorize the City Manager to review and approve necessary completion date change orders relating to the contract

**Staff Contact:**

Michael Magnuson, P.E., Director of Public Works and Engineering

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**Background:**

Various pavement preservation techniques such as crack sealing, patching, and application of pavement rejuvenators are used by the City to extend pavement life. These applications extend the life of asphalt by several years allowing the roadway a longer service life before a full resurfacing is needed.

The City of Crystal Lake participates in the McHenry County Municipal Partnership Initiative (McMPI) where regional communities collaborate by preparing and soliciting bids for various projects. McMPI allows members to combine purchasing power to leverage cost savings. This year the McMPI has been invited to participate in an extension of the Village of Winnetka's Lake County Municipal Partnering Initiative bid for pavement rejuvenation. In 2021 the Village of Winnetka, Illinois, as part of the Lake County MPI, secured competitive bids for its pavement rejuvenation program. The low bidder, Corrective Asphalt Materials, LLC, was awarded a multi-year contract which is currently in effect.

For the last two years, the City bid out its own program separate from any MPI bid where several different approved pavement rejuvenation products were allowed. Each product is proprietary and the expectation was that allowing alternatives would provide for more competitive pricing. Over

the past two years, the City has received bids from three contractors. The proposed products were Reclamite, Biorestor, and Rejuvinite A.

The low bidder on the City contract for the last two years used the product Biorestor. The smell of the Biorestor generated complaints from residents. The other product allowed under the bid specifications was Rejuvinite A. This product's cost was significantly more expensive than the other two products.

Participation in the MPI agreement with Corrective Asphalt Materials, LLC will allow the City to continue its pavement rejuvenation program using Reclamite, a material which the City has used in the past with successful results at the bid unit price of \$0.90 per square yard. This price is equal to last year's low bid pricing and is a lower price per square yard than what Corrective Asphalt Materials, LLC had previously bid for the City in 2022.

<i>Bidder</i>	<i>Product</i>	<i>Meets Specifications</i>	<i>Price Per Square Yard</i>
Corrective Asphalt Materials, LLC	Reclamite	Yes	\$0.90

**Recommendation:**

This contract is being presented pursuant to a competitive bidding process. Under such process, the contract is to be awarded to the "lowest responsive and responsible bidder." The lowest responsive and responsible bidder is the contractor: (i) whose bid substantially conforms to the material provisions of the bid specifications, (ii) who demonstrates the financial capacity and ability to undertake and complete the project in question in accordance with bid specifications, and (iii) whose bid price is lowest among the responsive and responsible bidders. Selecting a contractor on bases not set forth in the bid specifications can lead to challenges to the City's award.

Corrective Asphalt Materials, LLC meets all of the City's requirements and has previously performed this work for the City with satisfactory results. Therefore, it is the recommendation of City staff is to award the contract to Corrective Asphalt Materials, LLC, in the submitted bid amount of \$0.90 per square yard with a budget of \$100,000.00. Adequate funds are included in the FY2023/2024 Budget for this work.

**Votes Required to Pass:**

Simple majority vote



## RESOLUTION

**WHEREAS** the CITY OF CRYSTAL LAKE strives to maintain the City's pavements in a good condition through effective preventative maintenance measures such as crack sealing, pavement patching, and pavement rejuvenation; and

**WHEREAS** the CITY has been invited to participate in an extension of a competitively bid contract solicited by the Village of Winnetka, Illinois as part of the Lake County Municipal Partnership Initiative for the application of pavement rejuvenators; and

**WHEREAS** the lowest responsive and responsible bidder for the Municipal Partnership Initiative pavement rejuvenation contract was Corrective Asphalt Materials, LLC.

**NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE** that the foregoing recitals are repeated and incorporated as though fully set forth herein; and

**BE IT FURTHER RESOLVED** that the City Manager is authorized to execute a contract between the CITY OF CRYSTAL LAKE and Corrective Asphalt Materials, LLC for the 2023 Pavement Rejuvenation Program in the bid amount \$0.90 per square yard; and

**BE IT FURTHER RESOLVED** that the City Manager is authorized to approve warranted completion date change orders relating to the contract.

**DATED** this 15<sup>th</sup> day of August, 2023.

CITY OF CRYSTAL LAKE, an  
Illinois municipal corporation,

By: \_\_\_\_\_  
Haig Haleblian, MAYOR

SEAL

ATTEST

\_\_\_\_\_  
Nick Kachiroubas, CITY CLERK

PASSED: August 15, 2023  
APPROVED: August 15, 2023

Draft





**Agenda Item No: 15**

**City Council  
Agenda Supplement**

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<b><u>Meeting Date:</u></b>	August 15, 2023
<b><u>Item:</u></b>	Redevelopment Agreement for Water's Edge Mixed-Use Development
<b><u>Petitioner:</u></b>	Heartland Real Estate Partners, LLC, developer CL Urban, LLC, CL Seven LLC and CL Party City LLC, owners
<b><u>Staff Recommendation:</u></b>	Adopt a Resolution authorizing the City Manager to execute an agreement with Heartland Real Estate Partners, LLC for the Water's Edge Mixed-Use Development within the Water's Edge Redevelopment Project Area TIF District.
<b><u>Staff Contact:</u></b>	Kathryn Cowlin, Director of Community Development Jodie Hartman, Director of Finance

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**Background:**

The redevelopment of this shopping center has been hindered for years by segmented ownership. In December of 2020, the current ownership group acquired the final parcel in order to present a unified redevelopment plan. It is at this time City Staff requests the consideration of a redevelopment agreement in order to bring the proposed mixed-use development to fruition.

The following firms have reviewed the proposed request and redevelopment agreement. Their professional input has been incorporated into the draft redevelopment agreement.

- Filippini Law Firm, the City's special legal counsel, reviewed the Developer's request to ensure conformance with State law and City Code and provided the draft agreement language.
- Teska Associates, the City's professional planning and TIF consultant, provided a review of the Developer's plan and request for assistance and their comments from the review are incorporated into the agreement.
- Speer Financial, the City's special financial consultant, provided a financial review of the Developer's request and their analysis is provided for reference.

**Request:**

The City has received a formal request for Tax Increment Financing (TIF) assistance for a development in the new Water's Edge TIF District. The request was received from the developer, Heartland Real Estate Partners, LLC (Developer). The Developer is requesting TIF Funds to support a mixed-used development within the TIF District. The Developer has stated the proposed

development will not move forward without the requested TIF assistance. They have requested \$14 million in assistance for TIF eligible expenses.

### **KEY POINTS**

- The proposed Redevelopment Agreement (“RDA”) includes tools to ensure commercial development is a priority for the mixed-use development.
- Milestone dates are included for the overall project to ensure timeliness of development.
- Two of the three notes are tied to square footage of commercial occupancies, this shows the commitment by the Developer to complete and fill the commercial spaces.
- There are land use restrictions built into the RDA and the PUD approval to establish quality commercial tenants such as sit-down restaurants, casual restaurants, entertainment and/or retail users.
- The PUD approval will also provide safeguards to ensure the development is a high quality product. Such safeguards include land use restrictions, design standards, landscape plans, enhanced streetscaping and added public gathering spaces.
- A component of the RDA is the agreement to enact a Business District for the development project area within six months. The Business District would add a sales tax at a rate up to 1%. State Statute allows for Business District sales tax to be utilized as an economic incentive or for maintaining public areas. It is the intent that the Business District sales tax would be utilized to attract high quality restaurant or entertainment users to the commercial area.
- The RDA includes provisions for land transferring from the City to the Developer and vice versa. A strip of land along the east of the development area and a portion of the existing stormwater basin will be transferred to the Developer. The Developer will transfer the public park area to the City after the park has been constructed.

### **PROPOSED ASSISTANCE**

Through a RDA, the City will formalize the financial incentives to and requirements of the Developer. In negotiating the incentives to be provided under the RDA, the utmost focus has been to protect and advance the best interests of the City. Because the TIF District is suffering from blighted conditions, many of the interests of the City and the Developer align quite closely, which makes the offering of TIF financial incentives an appropriate vehicle to achieve the City’s goals. The RDA establishes:

- The right of the Developer to recover a portion of its redevelopment project costs from net TIF increment generated by the Developer’s project.
- The City’s obligation to pay developer notes only from net TIF increment generated by the Developer’s project (when available).

Section 12 of the RDA details the extent of TIF financing incentives being contemplated. The incentives all take the form of developer notes. These notes are a tool available within TIF Districts to encourage and facilitate successful growth within the district. Developer notes are a financing instrument, secured only by the tax increment generated by the associated parcels within the TIF District. They are NOT backed by the full faith and credit of the City; the City has no obligation to pay the notes should the project not generate sufficient increment. Many towns, including the City of

Chicago and Lombard, are using developer notes as their exclusive, or near-exclusive, TIF incentive for this reason.

In the RDA, the developer notes have been structured as interest bearing instruments, with a defined simple interest rate of 6% per annum. Given the current interest rate environment, and corroborating assurance from the City’s independent consultant at Speer Financial, the City is confident that a 6% interest rate is a reasonable request. It is similar to what the Developer would see with private financing. Without this component, the developer note would not be marketable for monetization, nor would the project be financially viable for the Developer. This interest rate component is a necessary element, negotiated to a reasonable level.

*Structure of Notes*

The proposed RDA has divided up the requested TIF assistance into three (3) potential developer notes totaling a maximum of \$14,000,000 in principal.

NOTE	PURPOSE	MAXIMUM PRINCIPAL AMOUNT	ANNUAL INTEREST RATE	TRIGGER	SOURCE	PRIORITY
Note 1	Residential Infrastructure	\$6,000,000	6% per annum	Certified TIF Eligible Expenses	Residential Increment Commercial Increment prior to Commercial Development Note	Primary (Residential)
Note 2*	Commercial Infrastructure	\$2,000,000	6% per annum	Commercial Development Milestones & Standards	Residential Increment	Secondary to Note 1 (Residential)
Note 3	Commercial Development	\$6,000,000	6% per annum	Certified TIF Eligible Expenses Relating to Commercial	Commercial Increment Residential Increment if #1 and #2 satisfied	Primary (Commercial) Secondary to Note 1 and Note 2 (Residential)

\*Note 2 has been broken up into four potential sub-notes, depending on satisfactory completion of commercial milestones. Sub-note one is for up to \$800,000 once the development milestones are reached for the restaurant parcel on Lot 3. Sub-note two is for up to \$400,000 once the development milestones are reached for the restaurant parcel on Lot 2. Sub-notes three and four are for up to \$400,000 each once the development milestones are reached for the remaining commercial parcels on lots 2 through 4 or a portion of phase II commercial. Combined, these equal the maximum \$2,000,000.

The maximum principal allowed for each note is subject to a dollar threshold, as identified in the above chart, and in some cases a percentage of TIF eligible costs. For example, Note 1 is the lesser of \$6 million OR 75% of TIF Certified Costs for infrastructure. In every case, should the Developer not provide evidence of the full amount authorized for any particular note, the principal of that note will be limited to the established TIF eligible expenses.

Notes 2 and 3 have been structured to require successful completion of commercial elements of the redevelopment to the City's standards. City Staff have reinforced the importance of the required commercial elements through these requirements.

### *Process*

The RDA will identify the categories of expenses for which reimbursements through the developer note will be available. The Developer will be responsible for submitting proof of TIF eligible expenses to the City to justify such reimbursements. The City will then review the documentation, per the requirements outlined in the RDA, to verify the eligibility of expenses. Once the City is satisfied the eligibility requirements are met, the corresponding note(s) will be issued to the Developer. The Developer then has three options. They can:

1. Hold the note(s) in their investment portfolio
2. Monetize the note(s) to a third-party
3. Pledge the note(s) as collateral.

These options provide the Developer with choices that best suit their financial needs. Their choice does not affect the City or the City's obligations.

Once the improvements to the TIF District are recognized by the McHenry County Assessor's Office, the City will begin to receive tax increment related to the development. By State Statute, this increment can only be spent within the TIF District or a contiguous TIF District. The RDA will further define the use of the increment, allocating the majority of funds to be used to pay down the notes, with interest. Once the notes have been satisfied, any remaining increment can be used for appropriate, eligible TIF expenditures by the City.

### *School District Increment Distribution*

Before any payments are made on Note 1 or Note 2, 40% of the residential increment will be set aside. Under the Illinois TIF Act, both Crystal Lake School District 47 and District 155 (School Districts) are entitled to a distribution of increment should any school children be generated by the residential development. Combined, the School Districts may receive up to 40% of residential TIF increment, but only to the extent the School Districts are able to certify their cost for educating students residing in the development in accordance with the TIF Act. District 47 would receive up to 27% and District 155, up to 13%. Each year, the School Districts would be required to submit a written request for distribution, along with documentation supporting the number of school children from the development and their certified cost to educate each child. The City will review and distribute the increment accordingly. If the entire 40% is not needed in any particular year, the remaining amount would be used for payment on the residential notes.

### *City Administration Increment*

In addition to setting aside the 40% possible distribution for the School Districts, the proposed RDA also sets aside 3% of all generated TIF increment for City Administration. The City may use these funds to pay for any eligible TIF expenses deemed appropriate (including certain expenses incurred before the TIF District was established). The City will also have discretion with any additional funds generated from other parcels not linked to the Developer's project as provided in the RDA, as well as any additional funds remaining after corresponding notes have been paid off.

### *Independent Financial Review*

The City engaged the services of Speer Financial, Inc, (“Speer”) to perform an independent review of the financial viability of the developer notes. Using the assumptions for timeline and values provided by the Developer, Speer ran multiple scenarios to analyze the possible generation of increment, the resulting principal and interest payments on the notes, and the remaining funds. Speer also reviewed the financial analysis prepared by the Developer.

Under the first scenario, Speer used estimated assessed taxable values from the Algonquin Township Assessor’s office. For residential rental properties in Illinois, assessed taxable values are a factor of rent rates and occupancy. The rental rates used by the Assessor are significantly lower than the rent rates anticipated by the Developer. This results in lower taxable assessed values and correspondingly, lower increment generation. Using these values, the residential infrastructure note is projected to be paid off, but the other two notes project to have principal unpaid at the end of the TIF’s life.

Under the second scenario, Speer used the Developer’s rental rate assumptions and resulting higher estimated assessed taxable values. Speer has prepared an illustration in their report to demonstrate the potential increment generation and note payments. With this model, the notes all projected to be paid in full, with some remaining increment available at the end of the TIF. The Developer has conveyed a confidence in their figures and assumes the full risk of the Notes not being paid off in their entirety before expiration. Should any of the notes not have sufficient increment generated for payments by the expiration of the TIF, the notes are retired without any obligation to the City.

As the projections for the payoff of the notes reach the levy year 2045 (payable 2046), all calculations are estimates with assumptions and not guarantees of the actual increment to be generated. It is typical for a spectrum of estimates to be generated when completing a financial analysis of a request that involves TIF increment since property valuation and market conditions are not realized until each year of the TIF district.

The RDA includes acknowledgements that the City is issuing the developer notes in reliance upon Developer’s calculation of anticipated incremental revenue. Moreover, the developer notes and the RDA make clear that only the pledged portion of the TIF District’s incremental revenue will be available to pay the notes, and any risk of shortfall is borne by the Developer without recourse against the City.

### **CONCLUSION**

After serious consideration, City Staff have confirmed that the development proposed by the Developer is desirable and beneficial to the City of Crystal Lake. The developer notes as drafted provide the project necessary reimbursement of eligible costs only through increment generated from the project itself. Should the project not meet the financial expectations necessary to pay off the notes completely, the City would have no obligation to allocate any City revenues; the Developer would hold all the financial risk. As such, staff is confident the developer notes as drafted are the most appropriate tool for providing TIF assistance for this project.

**Votes Required to Pass:** A simple majority.



## MEMORANDUM

**TO:** Eric Helm, City Manager  
Jodie Hartman, CPA, MPA, Director of Finance  
Katherine Cowlin, AICP, Director of Community Development

**FROM:** Lee M. Brown, FAICP, President  
Michael H. Blue, FAICP, Principal

**RE:** **Water's Edge Development Agreement**

**DATE:** August 8, 2023

The City of Crystal Lake adopted the Water's Edge Tax Increment District on July 19, 2022 to induce the redevelopment of the now shuttered Crystal Court Shopping Center. Along with the approval of the necessary ordinances and the Redevelopment Plan, the City Council also voted to approve the rezoning to B-4 Mixed-Use Business, the preliminary Planned Unit Development and Preliminary Plat of Subdivision for a mixed-use redevelopment of the site. After these approvals, the then designated developer, Fiduciary Real Estate Developers, withdrew from the project. The investors that assembled the several properties that comprised the Crystal Court Shopping Center have subsequently selected a new development team headed by Heartland Real Estate Partners, LLC and Core Acquisitions who are requesting Preliminary Planned Unit Development Amendments, plus approval of a Phase I Final Planned Unit Development and of the Final Plat of Subdivision. Consistent with these requests, the City Staff seeks City Council review and approval of the Redevelopment Agreement between the City and the Developer.

The Development Agreement, along with the referenced exhibits and documents, memorializes the commitment by the Developer to construct public infrastructure, public open space, private residential and commercial redevelopment on the site, as well as the commitment by the City of Crystal Lake to use available Tax Increment revenue for the reimbursement of eligible project expenses through Tax Increment Notes.

On behalf of the City, as its planning consultant, we have reviewed the documents submitted and evaluated the likelihood that the proposed redevelopment will achieve the goal of the TIF district. The proposed land uses and public improvements of the Water's Edge Redevelopment are consistent with the guidelines and development opportunities presented in the City of Crystal Lake 2030 Comprehensive Plan.

Fundamental to the success of the TIF district and the redevelopment proposed by Heartland/Core is the generation of Tax Increment Revenue from increased value of the site and assessable improvements. The TIF district collects the incremental revenue, which is able to be spent during the 23-year maximum life of the district, only within the district, and only for eligible expenses. The sooner the private investments occur, and the greater the assessed value of those improvements, the more funds will be able to reimburse the TIF Notes.

The developer has requested, through the Development Agreement, the issuance of three TIF notes: a \$6M Project Infrastructure Note, and \$2M Commercial Infrastructure Note, and a \$6M Commercial TIF note. The Developer has submitted a list of the project elements proposed to be reimbursed through the repayment of TIF Notes. There are some discrepancies between those TIF expenditures proposed by the Developer and our read of the list of eligible project expenses enumerated in the TIF Act, but there are more than enough eligible items to justify the issuance of the requested TIF Notes.

Based on our review of the proposed development, the submitted valuation and TIF revenue projections, the assessed values suggested in comparable developments, we find that there is a possibility that the proposed development will not completely reimburse all the principal and interest of the proposed TIF Notes within the 23-year TIF. Yet, the Developer has provided their analysis which illustrates full reimbursement of the principal and requested interest. We do not consider this a fatal discrepancy, but rather, using different set of assumptions, the developer's projections and our projections fall within a normal spectrum of results. We suggest that our projections represent the more conservative estimates while the developer's projections represent a more aggressive end of a spectrum of outcomes. If the values of new construction, the timeline for development, the rate of value appreciation, future tax levy rates, and other assumptions built into these models fall closer to our more conservative assumptions, then the TIF Notes may not be fully repaid. This is a risk to the Developer, but poses no risk to the City nor the taxpayers of Crystal Lake. The Redevelopment Agreement and all related documents and discussions make clear that the TIF Notes will only be repaid from incremental revenue of this TIF District, and that there is no recourse against the City or any other revenue source for the repayment of the TIF Notes or the developer's expenses.

In summary, we believe that the project and the proposed use of TIF funds presents a win-win for the developer and for the City of Crystal Lake. TIF revenues are likely available to substantially reduce or eliminate the extraordinary costs of razing, assembling, and preparing the site for substantial redevelopment, while placing no burden or financial risk to the City.

DANIEL FORBES  
*President*

RAPHALIATA McKENZIE  
*Senior Vice President*

MAGGIE BURGER  
*Senior Vice President*

ANTHONY MICELI  
*Senior Vice President*

MARK JERETINA  
*Senior Vice President*

AARON GOLD  
*Vice President*

August 9, 2023

Ms. Jodie Hartman  
Director of Finance  
City of Crystal Lake  
100 W. Woodstock St.  
Crystal Lake, Illinois 60014

Re: Water's Edge Redevelopment Project / TIF Analysis

Dear Jodie,

The City of Crystal Lake, Illinois (the "City") has engaged Speer Financial, Inc. ("Speer") as its municipal advisor to review the financial viability of the proposed Tax Increment Financing Notes (the "Notes") related to the Water's Edge Redevelopment Project (the "Development") and facilitate the issuance of the Notes to Heartland Real Estate Partners (the "Developer"). As municipal advisor, Speer has prepared the following analysis related to the financial viability of the Notes.

**TIF District**

Based on the information provided to Speer by the City, the Developer is requesting that the City utilize incremental revenues from the Water's Edge Tax Increment Financing District ("TIF District") for the Development. The TIF District encompasses an area occupied by the now shuttered Crystal Court Shopping Center. The Development is expected to include 240 residential apartments, 20 rental townhomes, a potential hotel and multiple retail outlots including sit-down and breakfast dining options. The estimated increment produced by the TIF District is calculated utilizing assumptions of the new property values provided by the Developer to the City as well as annualized growth assumptions. The table below lists the expected construction value of each portion of the Development based on the sources described above.

Residential New Construction Value		
Project	EAV	Completion (Calendar Year)
Apartments	\$9,200,000	2024
Townhouses	\$861,932	2025

Commerical TIF 1 New Construction Value		
Project	EAV	Completion (Calendar Year)
Sit Down Restaurant	\$763,000	2024
Fast Casual	\$189,735	2024
Breakfast	\$216,300	2024
In-Line Retail	\$72,100	2024
Retail	\$192,267	2024



Commerical TIF 2 New Construction Value		
Project	EAV	Completion (Calendar Year)
Generic Retail(8k sq ft)	\$396,069	2025
Generic Retail(8k sq ft)	\$396,069	2025
Anchor Retail	\$990,173	2025
Hotel	\$1,414,392	2025

The assumed equalized assessed value for the apartment development is based upon the rental rates for each unit. The City received an estimated EAV for the development from the Algonquin Township Assessor which was lower than the estimate provided by the Developer. The Developer has assumed that the rental rate for each unit will be higher than what was assumed by the Algonquin Township Assessor.

### Basis Assumptions

Certain basic assumptions were utilized in order to calculate the expected TIF District increment using the assumptions provided by the Developer and the City.

- Frozen value of \$607,451 for the Commercial 1 area, frozen value of \$652,349 for the Commercial 2 area and a frozen value of \$607,451 for the Residential area. These assumptions were taken from the report prepared by Johnson Research Group for the Developer on August 5, 2023.
- Tax rate of \$9.472265 per \$100 of equalized assessed value (“EAV”) based on the McHenry County tax code 19T12 for the 2022 tax year.
- The TIF District was established in tax year 2021, with the 2021 tax year establishing the frozen value.
- The 23-year life of the TIF District would run through 2045. The 2045 taxes are collected in the 2046 calendar year.
- Increment through tax year 2023 is based on current value of existing property within the TIF District.
- Existing property is torn down in 2024 and current EAV is replaced with the new construction estimates.
- Project completion and residential occupancy are provided by the Johnson Research Group Report.
- All available increment is net of a 3% administrative hold back.
- All available increment generated by residential developments is net of a 40% school district set aside.
- 3% Annual Growth in EAV is assumed to begin the year after completion of each portion of the Development.
- Assumes TIF Revenues accumulated prior to construction are available for repayment of the notes, as described in the Johnson Research Group Report.

### TIF District Notes

The TIF District Notes will be an obligation of the TIF District and issued to the Developer for the reimbursement of certain TIF eligible project costs. The TIF District Notes are to be repaid with available TIF District increment. Should increment not be generated, or not be generated in an amount sufficient to repay the TIF District Notes, the City is under no obligation to pay the TIF District Notes from any other available funds. The TIF District Notes are **not** a general obligation of the City and are not subject to the City’s full faith and credit.

This analysis assumes the issuance three series of TIF District Notes, as further detailed below.

#### Project Infrastructure Note

- Issued in an amount not to exceed \$6,000,000 for site infrastructure and site preparation costs.
- Secured by the net increment from the residential development and the net increment from the commercial developments until the Commercial TIF Note is issued.
- Interest rate of 6% on the outstanding principal balance. Accrued interest does not compound.
- Assumes an issuance date of January 1, 2025.
- Issued upon completion of site infrastructure and delivery of appropriate guaranteed security for the public improvements to be accepted by the City.

#### Commercial Infrastructure Note

- Issued in an amount not to exceed \$2,000,000 for site infrastructure and site preparation costs.
- Secured by the net increment from the residential development after the repayment of the Project Infrastructure Notes.
- Interest rate of 6% on the outstanding principal balance. Accrued interest does not compound.

- Assumes an issuance date of January 1, 2025.
- Issued upon completion of site infrastructure and delivery of appropriate guaranteed security for the public improvements to be accepted by the City.

The Project Infrastructure Note and Commercial Infrastructure Note are together referred to as the TIF Infrastructure Notes.

Commercial TIF Note

- Issued in an amount not to exceed \$6,000,000 for specified TIF-eligible expenses.
- Secured by the net increment from the commercial developments (Commercial 1 and Commercial 2).
- Interest rate of 6% on the outstanding principal balance. Accrued interest does not compound.
- Assumes an issuance date of November 1, 2027 for the purpose of this analysis.
- Issued at the time of issuance of a certificate of occupancy for each commercial building conforming to the approved site plans.
- Issuance amount is based upon the square footage of each commercial building.

**Interest Rate**

The TIF District Notes assume an annual interest rate of 6.0%. Based on a review of recent TIF Revenue Bond transactions and in light of current general market rates, Speer believes that this rate is fair and reasonable given the nature of the security and the risk involved.

**Equalized Assessed Value Growth**

TIF increment is dependent upon the growth of the EAV beyond the initial frozen value. Initial estimates for the value of the new construction are provided by the developer and the City. After construction, the analysis assumes that the EAV in the Development grows by an average rate of 3% per year. Should this growth rate not be achieved, the actual increment received will be less than shown in this analysis.

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**Estimated TIF Increment**

The table below presents the estimated gross TIF Increment produced by the Development using the assumptions detailed above.

**Projected TIF Increment - Residential**

TIF District Assumptions:	
Frozen Value (1)	\$607,451
Tax Rate (2)	9.472265
Frozen Tax Year	2022
Annual EAV Growth	3.00%

Year		Beginning EAV and Growth			Residential EAV and Projected Increment			
TIF Year	Tax Year	Calendar/ Collection Year	Beginning Residential TIF EAV (1)	Year Down	EAV Growth	New Residential Value (3)	Ending Residential TIF EAV	Residential Increment
0	2021	2022	607,451			0	607,451	
1	2022	2023	607,451		18,224	0	625,675	18,224
2	2023	2024	625,675		<b>298,203</b>	0	923,878	316,427
3	2024	2025	923,878	(951,594)	27,716	9,200,000	9,200,000	8,592,549
4	2025	2026	9,200,000		276,000	861,932	10,337,932	9,730,481
5	2026	2027	10,337,932		310,138	0	10,648,070	10,040,619
6	2027	2028	10,648,070		319,442	0	10,967,512	10,360,061
7	2028	2029	10,967,512		329,025	0	11,296,537	10,689,086
8	2029	2030	11,296,537		338,896	0	11,635,434	11,027,983
9	2030	2031	11,635,434		349,063	0	11,984,497	11,377,046
10	2031	2032	11,984,497		359,535	0	12,344,031	11,736,580
11	2032	2033	12,344,031		370,321	0	12,714,352	12,106,901
12	2033	2034	12,714,352		381,431	0	13,095,783	12,488,332
13	2034	2035	13,095,783		392,873	0	13,488,656	12,881,205
14	2035	2036	13,488,656		404,660	0	13,893,316	13,285,865
15	2036	2037	13,893,316		416,799	0	14,310,116	13,702,665
16	2037	2038	14,310,116		429,303	0	14,739,419	14,131,968
17	2038	2039	14,739,419		442,183	0	15,181,602	14,574,151
18	2039	2040	15,181,602		455,448	0	15,637,050	15,029,599
19	2040	2041	15,637,050		469,111	0	16,106,161	15,498,710
20	2041	2042	16,106,161		483,185	0	16,589,346	15,981,895
21	2042	2043	16,589,346		497,680	0	17,087,026	16,479,575
22	2043	2044	17,087,026		512,611	0	17,599,637	16,992,186
23	2044	2045	17,599,637		527,989	0	18,127,626	17,520,175
24	2045	2046	18,127,626		543,829	0	18,671,455	18,064,004

*plug number based on actual results*

**Notes:**

- (1) Frozen value as set at the time of TIF completion.
- (2) Tax rate based on McHenry County tax code 19T12 for the 2022 Tax Year.
- (3) Project completion and equalized assessed value estimates as provided in the Johnson Research Group Memorandum dated August 5, 2023. Assumes 100% assessment in calendar year 2024 for the apartments and 100% assessments in calendar year 2025 for the townhomes.

## Projected TIF Increment - Commercial TIF 1

TIF District Assumptions:	
Frozen Value (1)	\$607,451
Tax Rate (2)	9.472265
Frozen Tax Year	2022
Annual EAV Growth	3.00%

Year			Beginning EAV and Growth			Commercial EAV and Projected Increment		
TIF Year	Tax Year	Calendar/ Collection Year	Beginning Commercial TIF EAV (1)	Tear Down	EAV Growth	New Commercial Value (3)	Ending Commercial 1 TIF EAV	Commercial Increment
0	2021	2022	607,451			0	607,451	
1	2022	2023	607,451		18,224	0	625,675	18,224
2	2023	2024	625,675		<b>23,316</b>	0	648,991	41,540
3	2024	2025	648,991	(668,461)	19,470	1,433,402	1,433,402	825,951
4	2025	2026	1,433,402		43,002	0	1,476,404	868,953
5	2026	2027	1,476,404		44,292	0	1,520,696	913,245
6	2027	2028	1,520,696		45,621	0	1,566,317	958,866
7	2028	2029	1,566,317		46,989	0	1,613,306	1,005,855
8	2029	2030	1,613,306		48,399	0	1,661,705	1,054,254
9	2030	2031	1,661,705		49,851	0	1,711,556	1,104,105
10	2031	2032	1,711,556		51,347	0	1,762,903	1,155,452
11	2032	2033	1,762,903		52,887	0	1,815,790	1,208,339
12	2033	2034	1,815,790		54,474	0	1,870,264	1,262,813
13	2034	2035	1,870,264		56,108	0	1,926,372	1,318,921
14	2035	2036	1,926,372		57,791	0	1,984,163	1,376,712
15	2036	2037	1,984,163		59,525	0	2,043,688	1,436,237
16	2037	2038	2,043,688		61,311	0	2,104,998	1,497,547
17	2038	2039	2,104,998		63,150	0	2,168,148	1,560,697
18	2039	2040	2,168,148		65,044	0	2,233,193	1,625,742
19	2040	2041	2,233,193		66,996	0	2,300,189	1,692,738
20	2041	2042	2,300,189		69,006	0	2,369,194	1,761,743
21	2042	2043	2,369,194		71,076	0	2,440,270	1,832,819
22	2043	2044	2,440,270		73,208	0	2,513,478	1,906,027
23	2044	2045	2,513,478		75,404	0	2,588,883	1,981,432
24	2045	2046	2,588,883		77,666	0	2,666,549	2,059,098

*Plug number based on actual results*

**Notes:**

(1) Frozen value as set at the time of TIF completion.

(2) Tax rate based on McHenry County tax code 19T12 for the 2022 Tax Year.

(3) Assessed value of new property and project completion as provided in the Johnson Research Group Memorandum dated August 5, 2023. Assumes 100% assessment in calendar year 2024.

## Projected TIF Increment - Commercial TIF 2

TIF District Assumptions:	
Frozen Value (1)	\$652,349
Tax Rate (2)	9.472265
Frozen Tax Year	2022
Annual EAV Growth	3.00%

Year			Beginning EAV and Growth			Commercial EAV and Projected Increment		
TIF Year	Tax Year	Calendar/ Collection Year	Beginning Commercial TIF EAV (1)	Tear Down	EAV Growth	New Commercial Value (3)	Ending Commercial 2 TIF EAV	Commercial Increment
0	2021	2022	652,349			0	652,349	
1	2022	2023	652,349		19,570	0	671,919	19,570
2	2023	2024	671,919	(155,111)	20,158	0	536,966	0
3	2024	2025	536,966		16,109	0	553,075	0
4	2025	2026	553,075	(569,667)	16,592	3,196,703	3,196,703	2,544,354
5	2026	2027	3,196,703		95,901	0	3,292,604	2,640,255
6	2027	2028	3,292,604		98,778	0	3,391,382	2,739,033
7	2028	2029	3,391,382		101,741	0	3,493,124	2,840,775
8	2029	2030	3,493,124		104,794	0	3,597,917	2,945,568
9	2030	2031	3,597,917		107,938	0	3,705,855	3,053,506
10	2031	2032	3,705,855		111,176	0	3,817,031	3,164,682
11	2032	2033	3,817,031		114,511	0	3,931,541	3,279,192
12	2033	2034	3,931,541		117,946	0	4,049,488	3,397,139
13	2034	2035	4,049,488		121,485	0	4,170,972	3,518,623
14	2035	2036	4,170,972		125,129	0	4,296,102	3,643,753
15	2036	2037	4,296,102		128,883	0	4,424,985	3,772,636
16	2037	2038	4,424,985		132,750	0	4,557,734	3,905,385
17	2038	2039	4,557,734		136,732	0	4,694,466	4,042,117
18	2039	2040	4,694,466		140,834	0	4,835,300	4,182,951
19	2040	2041	4,835,300		145,059	0	4,980,359	4,328,010
20	2041	2042	4,980,359		149,411	0	5,129,770	4,477,421
21	2042	2043	5,129,770		153,893	0	5,283,663	4,631,314
22	2043	2044	5,283,663		158,510	0	5,442,173	4,789,824
23	2044	2045	5,442,173		163,265	0	5,605,438	4,953,089
24	2045	2046	5,605,438		168,163	0	5,773,601	5,121,252

**Notes:**

- (1) Frozen value as set at the time of TIF completion.
- (2) Tax rate based on McHenry County tax code 19T12 for the 2022 Tax Year.
- (3) Assessed value of new property and project completion as provided in the Johnson Research Group Memorandum dated August 5, 2023. Assumes 100% assessment in calendar year 2025.

**Estimated Net TIF Increment**

Utilizing the estimated increment calculated in the *Estimated TIF Increment* tables, the table below calculates the estimated Net TIF Revenues which can be applied to the TIF Notes. The Net TIF Revenues available are net of the projected School District set aside and Administrative Hold Back values.

Net TIF Revenue																			
Year			Residential Increment						Commercial 1 Increment					Commercial 2 Increment					Total
TIF Year	Tax Year	Collection Year	Projected Residential Increment	Tax Rate (2022 Rate)	Gross Residential TIF Revenue	School District Set Aside (40%)	Administrative Hold Back (3%)	Net TIF Revenue Available for TIF Note	Projected Commercial 1 Increment	Tax Rate (2022 Rate)	Gross Commercial TIF Revenue	Administrative Hold Back (3%)	Net TIF Revenue Available for TIF Note	Projected Commercial 2 Increment	Tax Rate (2022 Rate)	Gross Commercial TIF Revenue	Administrative Hold Back (3%)	Net TIF Revenue Available for TIF Note	Total Net TIF Revenue Available
0	2021	2022																	
1	2022	2023	18,224	9.472265	1,726	(690)	(52)	984	18,224	9.472265	1,726	(52)	1,674	19,570	9.472265	1,854	(56)	1,798	4,456
2	2023	2024	316,427	9.472265	29,973	(11,989)	(899)	17,084	41,540	9.472265	3,935	(118)	3,817	0	9.472265	0	0	0	20,901
3	2024	2025	8,592,549	9.472265	813,909	(325,564)	(24,417)	463,928	825,951	9.472265	78,236	(2,347)	75,889	0	9.472265	0	0	0	539,817
4	2025	2026	9,730,481	9.472265	921,697	(368,679)	(27,651)	525,367	868,953	9.472265	82,309	(2,469)	79,840	2,544,354	9.472265	241,008	(7,230)	233,778	838,985
5	2026	2027	10,040,619	9.472265	951,074	(380,430)	(28,532)	542,112	913,245	9.472265	86,505	(2,595)	83,910	2,640,255	9.472265	250,092	(7,503)	242,589	868,611
6	2027	2028	10,360,061	9.472265	981,332	(392,533)	(29,440)	559,359	958,866	9.472265	90,826	(2,725)	88,101	2,739,033	9.472265	259,448	(7,783)	251,665	899,126
7	2028	2029	10,689,086	9.472265	1,012,499	(404,999)	(30,375)	577,124	1,005,855	9.472265	95,277	(2,858)	92,419	2,840,775	9.472265	269,086	(8,073)	261,013	930,556
8	2029	2030	11,027,983	9.472265	1,044,600	(417,840)	(31,338)	595,422	1,054,254	9.472265	99,862	(2,996)	96,866	2,945,568	9.472265	279,012	(8,370)	270,642	962,929
9	2030	2031	11,377,046	9.472265	1,077,664	(431,066)	(32,330)	614,268	1,104,105	9.472265	104,584	(3,138)	101,446	3,053,506	9.472265	289,236	(8,677)	280,559	996,274
10	2031	2032	11,736,580	9.472265	1,111,720	(444,688)	(33,352)	633,680	1,155,452	9.472265	109,447	(3,283)	106,164	3,164,682	9.472265	299,767	(8,993)	290,774	1,030,618
11	2032	2033	12,106,901	9.472265	1,146,798	(458,719)	(34,404)	653,675	1,208,339	9.472265	114,457	(3,434)	111,023	3,279,192	9.472265	310,614	(9,318)	301,295	1,065,993
12	2033	2034	12,488,332	9.472265	1,182,928	(473,171)	(35,488)	674,269	1,262,813	9.472265	119,617	(3,589)	116,028	3,397,139	9.472265	321,786	(9,654)	312,132	1,102,430
13	2034	2035	12,881,205	9.472265	1,220,142	(488,057)	(36,604)	695,481	1,318,921	9.472265	124,932	(3,748)	121,184	3,518,623	9.472265	333,293	(9,999)	323,295	1,139,959
14	2035	2036	13,285,865	9.472265	1,258,472	(503,389)	(37,754)	717,329	1,376,712	9.472265	130,406	(3,912)	126,494	3,643,753	9.472265	345,146	(10,354)	334,792	1,178,614
15	2036	2037	13,702,665	9.472265	1,297,953	(519,181)	(38,939)	739,833	1,436,237	9.472265	136,044	(4,081)	131,963	3,772,636	9.472265	357,354	(10,721)	346,633	1,218,429
16	2037	2038	14,131,968	9.472265	1,338,617	(535,447)	(40,159)	763,012	1,497,547	9.472265	141,852	(4,256)	137,596	3,905,385	9.472265	369,928	(11,098)	358,831	1,259,439
17	2038	2039	14,574,151	9.472265	1,380,502	(552,201)	(41,415)	786,886	1,560,697	9.472265	147,833	(4,435)	143,398	4,042,117	9.472265	382,880	(11,486)	371,394	1,301,678
18	2039	2040	15,029,599	9.472265	1,423,643	(569,457)	(42,709)	811,477	1,625,742	9.472265	153,995	(4,620)	149,375	4,182,951	9.472265	396,220	(11,887)	384,334	1,345,185
19	2040	2041	15,498,710	9.472265	1,468,079	(587,232)	(44,042)	836,805	1,692,738	9.472265	160,341	(4,810)	155,530	4,328,010	9.472265	409,961	(12,299)	397,662	1,389,997
20	2041	2042	15,981,895	9.472265	1,513,847	(605,539)	(45,415)	862,893	1,761,743	9.472265	166,877	(5,006)	161,871	4,477,421	9.472265	424,113	(12,723)	411,390	1,436,154
21	2042	2043	16,479,575	9.472265	1,560,989	(624,396)	(46,830)	889,764	1,832,819	9.472265	173,609	(5,208)	168,401	4,631,314	9.472265	438,690	(13,161)	425,530	1,483,695
22	2043	2044	16,992,186	9.472265	1,609,545	(643,818)	(48,286)	917,441	1,906,027	9.472265	180,544	(5,416)	175,128	4,789,824	9.472265	453,705	(13,611)	440,094	1,532,662
23	2044	2045	17,520,175	9.472265	1,659,557	(663,823)	(49,787)	945,948	1,981,432	9.472265	187,686	(5,631)	182,056	4,953,089	9.472265	469,170	(14,075)	455,095	1,583,098
24	2045	2046	18,064,004	9.472265	1,711,070	(684,428)	(51,332)	975,310	2,059,098	9.472265	195,043	(5,851)	189,192	5,121,252	9.472265	485,099	(14,553)	470,546	1,635,048

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**Estimated TIF Note Amortization**

The table below applies the amortization of the TIF District Notes against the estimated Net TIF Revenue Available. The Estimated Unobligated Increment column describes the amount of TIF Increment not utilized for the repayment of the TIF District Notes and available to the City for other TIF eligible projects.

**City of Crystal Lake**  
Water's Edge Development - TIF District Analysis <sup>5</sup>  
Note Amortization <sup>5</sup>

Year			TIF Infrastructure Notes <sup>2</sup>						Commercial TIF Note <sup>3</sup>						Estimated Unobligated Increment <sup>1</sup>		
TIF Year	Payment		Estimated Available Increment <sup>1</sup>	Payment to Accrued			Ending Balance	Estimated Available Increment <sup>1,4</sup>	Payment to Accrued			Ending Balance	Unobligated Increment	Administrative Holdback (3%)		Total	
	Tax Year	Year		Interest	Interest	Total Payment			Principal	Interest	Interest			Total Payment	Principal		Interest
0	2021	2022	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
1	2022	2023	0	0	0	0	0	0	0	0	0	0	0	0	104	104	
2	2023	2024	20,901	0	0	0	0	0	0	0	0	0	0	0	1,017	1,017	
3	2024	2025	539,817	217,486	457,644	0	560,718	7,782,514	0	0	0	0	0	0	26,764	26,764	
4	2025	2026	838,985	492,034	466,951	0	838,985	7,290,480	0	0	0	0	0	0	30,120	30,120	
5	2026	2027	542,112	224,683	437,429	0	542,112	7,065,797	326,499	283,102	43,397	0	326,499	5,716,898	31,127	31,127	
6	2027	2028	559,359	255,412	423,948	0	559,359	6,810,385	339,767	0	343,014	0	339,767	5,716,898	32,165	32,165	
7	2028	2029	577,124	288,501	408,623	0	577,124	6,521,884	353,432	7,171	343,014	3,247	353,432	5,709,727	33,233	33,233	
8	2029	2030	595,422	324,109	391,313	0	595,422	6,197,775	367,508	24,924	342,584	0	367,508	5,684,804	34,334	34,334	
9	2030	2031	614,268	362,402	371,867	0	614,268	5,835,373	382,005	40,917	341,088	0	382,005	5,643,886	35,467	35,467	
10	2031	2032	633,680	403,558	350,122	0	633,680	5,431,815	396,938	58,305	338,633	0	396,938	5,585,581	36,635	36,635	
11	2032	2033	653,675	447,766	325,909	0	653,675	4,984,049	412,319	77,184	335,135	0	412,319	5,508,398	37,838	37,838	
12	2033	2034	674,269	495,226	299,043	0	674,269	4,488,823	428,161	97,657	330,504	0	428,161	5,410,741	39,076	39,076	
13	2034	2035	695,481	546,151	269,329	0	695,481	3,942,672	444,478	119,834	324,644	0	444,478	5,290,907	40,352	40,352	
14	2035	2036	717,329	600,769	236,560	0	717,329	3,341,903	461,285	143,831	317,454	0	461,285	5,147,076	41,666	41,666	
15	2036	2037	739,833	659,319	200,514	0	739,833	2,682,584	478,596	169,772	308,825	0	478,596	4,977,304	43,020	43,020	
16	2037	2038	763,012	682,584	160,955	0	763,012	2,000,000	496,427	197,788	298,638	0	496,427	4,779,516	44,414	44,414	
17	2038	2039	786,886	(0)	120,000	666,886	786,886	2,000,000	514,792	228,021	286,771	0	514,792	4,551,495	45,850	45,850	
18	2039	2040	811,477	(0)	120,000	691,477	811,477	2,000,000	533,708	260,619	273,090	0	533,708	4,290,876	47,329	47,329	
19	2040	2041	836,805	440,230	120,000	276,575	836,805	1,559,770	553,192	295,740	257,453	0	553,192	3,995,137	48,853	48,853	
20	2041	2042	862,893	769,307	93,586	0	862,893	790,463	573,260	333,552	239,708	0	573,260	3,661,584	50,422	50,422	
21	2042	2043	889,764	790,463	47,428	0	837,891	0	645,804	426,109	219,695	0	645,804	3,235,476	52,038	52,038	
22	2043	2044	917,441	(0)	0	0	0	0	1,532,662	1,338,533	194,129	0	1,532,662	1,896,942	53,703	53,703	
23	2044	2045	945,948	(0)	0	0	0	0	1,583,098	1,469,282	113,817	0	1,583,098	427,661	55,417	55,417	
24	2045	2046	975,310	(0)	0	0	0	0	1,635,048	427,660	25,660	0	453,320	0	1,181,728	57,183	1,238,911
Total			\$16,191,792	\$8,000,000	\$5,301,221	\$1,634,938	\$13,301,221		\$12,458,979	\$6,000,000	\$5,277,252	\$3,247	\$11,277,251	\$1,181,728	\$918,128	\$2,099,856	

**Notes:**

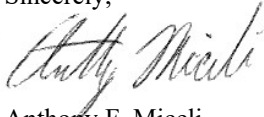
- Increment projections based on equalized assessed value assumptions provided by the Johnson Research Group Report. Assumes construction completion as provided in the Johnson Research Group Report. Assumes the tax rate for the 2022 tax year. Value assumes 3.00% annual equalized assessed value growth. Frozen value for each portion of the development is based on the Johnson Research Group Report. Net available residential increment calculations are net of 40% set aside for the School Districts and a 3% administrative hold back. Net available commercial increment calculations are net of a 3% administrative hold back.
- TIF Infrastructure Notes include the \$6,000,000 Project Infrastructure Note at 6.00% and \$2,000,000 Commercial Infrastructure Note at 6.00%. Assumes payments are made in December of each year following tax collection. Available increment is derived from the residential development and the commercial developments until the Commercial TIF Note is issued. Accrued interest does not compound.
- The \$6,000,000 Commercial TIF Note at 6.00% is assumed to be issued on November 1, 2027. Assumes payments are made in December of each year following tax collection. Available increment is derived from the commercial developments (Commercial TIF 1 and Commercial TIF 2) and any remaining Residential Development after the payment of the TIF Infrastructure Notes. Accrued Interest does not compound.
- Estimated available increment for the Commercial TIF Note includes unobligated increment from the residential portion of the TIF after payment of the TIF Infrastructure Notes, if any.
- Tax increment revenue projections are based upon assumptions provided the City. All revenue projections are subject to change. Speer Financial, Inc. is not a TIF Advisor and does not guarantee the accuracy of the assumptions provided by the Report or the City which were used in this analysis. This summary page provides an overview of the revenue and projected payoff projections of the TIF Notes. Detail on the calculations behind the revenue projections and Note payoff amortization can be found in the full TIF analysis prepared by Speer Financial, Inc.

**Summary**

Based on the assumptions detailed above, it is Speer Financial's conclusion that both TIF Infrastructure Notes and Commercial TIF Notes would be repaid to the Developer during the life of the TIF, with \$1,181,728 of unobligated TIF Increment available after repayment of the notes. As stated, this conclusion is based solely upon the provided assumptions. Given that increment is created through the growth of property value over the frozen value of the TIF District, several factors may contribute to the outcome of the TIF Note Repayment being better or worse than what is assumed in this analysis. The actual value of new construction, future tax rates, construction completion and annual EAV growth can greatly affect the outcome of the TIF District's repayment of the TIF Notes. Should the TIF Notes not be repaid, there is no recourse to the City, as this is a risk borne by the Developer.

Speer has relied on information provided by the City and the Developer to prepare this analysis. This analysis is intended to aid the City in its due diligence related to the Development. Speer is not a TIF/Development Consultant and does not make any representation in this analysis related to the viability of the Development to achieve these results, nor has Speer made any representations regarding the ability of the Developer to complete its obligations under the development agreement with the City.

Sincerely,



Anthony F. Miceli  
Senior Vice President

afm





## **RESOLUTION**

**WHEREAS**, the CITY OF CRYSTAL LAKE enacted the Water's Edge Redevelopment Project Area TIF on July 19, 2022; and

**WHEREAS**, the CITY OF CRYSTAL LAKE seeks to enter into a redevelopment agreement in order to ensure the Water's Edge Project Area is constructed to the City's vision for a mixed-use development; and

**WHEREAS**, it is in the best interest of the CITY OF CRYSTAL LAKE to enter into an agreement with Heartland Real Estate Partners, LLC as hereinafter set forth;

**NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE** that the foregoing recitals are repeated and incorporated as though fully set forth herein; and

**BE IT FURTHER RESOLVED** that the City Council hereby approves the "Controlling Redevelopment Agreement by and between the City of Crystal Lake and Heartland Real Estate Partners, LLC (Water's Edge Redevelopment Project)" in substantially the form attached hereto as Exhibit 1 (the "**RDA**"), and the City Council further authorizes the City Manager to execute the RDA.

**DATED** this 15<sup>th</sup> day of August, 2023.

CITY OF CRYSTAL LAKE, an  
Illinois municipal corporation,

By: \_\_\_\_\_  
Haig Haleblian, MAYOR

SEAL

ATTEST

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Nick Kachiroubas, CITY CLERK

PASSED: August 15, 2023

APPROVED: August 15, 2023

Draft

**CONTROLLING REDEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF CRYSTAL LAKE AND  
HEARTLAND REAL ESTATE PARTNERS, LLC  
(WATER'S EDGE REDEVELOPMENT PROJECT)**

This **REDEVELOPMENT AGREEMENT** ("**Agreement**") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and among the **CITY OF CRYSTAL LAKE**, an Illinois home rule municipal corporation ("**City**"), **HEARTLAND REAL ESTATE PARTNERS, LLC**, an Illinois limited liability company ("**Developer**"). The City and Developer are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**" as the context may require.

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

**SECTION 1. RECITALS.**

A. CL Seven LLC, an Illinois limited liability company, CL Party City LLC, an Illinois limited liability company, and CL Urban LLC, an Illinois limited liability company (collectively, CL Seven LLC, CL Party City LLC, and CL Urban LLC shall hereinafter be referred to as "**Owner**") are the record owners of an approximately 31.6-acre parcel legally described in Exhibit A attached hereto and made a part hereof (the "**Property**"). The Property is generally located on the south side of Northwest Highway between Liberty Road and Three Oaks Recreation Area Drive in Crystal Lake, Illinois.

B. The Property is the former site of the so-called Crystal Court Shopping Center, but such shopping center has been substantially vacated and is commercially obsolete.

C. The City has undertaken an assessment of the Property and certain adjoining parcels and determined that such properties are blighted and in need of redevelopment assistance to reduce the financial barriers to achieving appropriate redevelopment goals for such properties, and therefore the City has established a tax increment financing district (the "**TIF District**") in accordance with the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4.1 *et seq.*, as amended (the "**TIF Act**"). The TIF District is depicted on Exhibit B attached hereto. In conjunction with its establishment of the TIF District, the City has approved a tax increment redevelopment plan and redevelopment project ("**Redevelopment Plan**") for the TIF District, which includes the Property.

D. The City has determined that the redevelopment goals of the TIF District include enhancing the City's tax base, establishing open space and infrastructure improvements that will benefit residents and property owners within and near the TIF District, providing a convenient mix of housing options to residents seeking proximity to walkable commercial areas, and improving land use patterns by providing residential and commercial opportunities that will capitalize on the adjacent City-owned Three Oaks Recreation Area.

E. The Redevelopment Plan for the TIF District includes the redevelopment of the Property for mixed uses, including commercial retail and entertainment uses, as well as complementary residential uses.

- F. Developer is the contract purchaser of the Property.
- G. Developer intends to redevelop the Property in the manner depicted in the “**Site Plan**” attached hereto as Exhibit C, pursuant to which
  - i. approximately 19 acres of the Property will be redeveloped for residential purposes (the “**Residential Parcel**”), of which: (a) approximately 17 acres will be developed with 240 multi-family units in 12 apartment buildings as described on Exhibit C-1 attached hereto (the “**Residential Apartment Area**”), and (b) approximately two (2) acres will be developed with 20 townhome units in four (4) townhome buildings as described on Exhibit C-2 attached hereto (the “**Residential Townhome Area**”); and
  - ii. approximately 12 acres of the Property will be redeveloped for commercial purposes (the “**Commercial Parcel**”), of which: (a) approximately 4.1 acres are intended to be developed in the initial phase of the redevelopment (the “**Phase One Commercial Area**”) as described on Exhibit C-3 attached hereto, and (b) approximately 7.8 acres are intended to be developed in second phase of the redevelopment (the “**Phase Two Commercial Area**”) as described on Exhibit C-4 attached hereto

The Residential Parcel and the Commercial Parcel shall be more specifically identified as specific lots as part of the City’s approval of the Final Subdivision Plat.

- H. At the time of the Closing, Owner shall convey the Property to Developer, at which time Developer and the entire Property shall be subject to the terms and conditions of this Agreement.
- I. As part of the overall redevelopment of the Property, the Developer shall undertake all site work, install all utilities, establish pad-ready lots within the Commercial Parcel, and construct a primary boulevard running generally northwesterly-by-southeasterly from Northwest Highway to its future intersection with Three Oaks Recreation Area Drive (the “**New Boulevard**”) (collectively, the “**Infrastructure Work**”), which are depicted on the “**Infrastructure Plan**,” attached hereto as Exhibit D.
- J. On April 6, 2022, pursuant to notice duly published, the City’s Planning and Zoning Commission (“**PZC**”) conducted a public hearing on requests for rezoning and preliminary PUD approval for the redevelopment of the Property.
- K. Based on such hearings, the PZC recommended: (i) approval of the rezoning on the Property to the B-4 Mixed Use Business District (the “**Rezoning**”), and (ii) approval of a special use permit for a planned unit development (“**PUD**”) and approval of preliminary PUD site plan as presented by Owner and a prior prospective developer of the Property.
- L. On July 19, 2022, the City Council did consider the PZC’s recommendation and approved an ordinance granting the Rezoning, approving the PUD, and approving the Preliminary Site Plan (the “**Original Preliminary PUD Ordinance**”).
- M. Following the approval of the Original Preliminary PUD Ordinance, the prior

prospective developer elected not to proceed with the redevelopment of the Property pursuant to the Original Preliminary PUD Ordinance.

N. Developer has presented a revised preliminary PUD plan (the “**Revised Preliminary PUD Plans**”) for the redevelopment of the Property, as well as a set of final PUD plans for the first phase of the redevelopment of the Property (the “**Phase I Final PUD Plans**”), all in accordance with the Site Plan, and in connection therewith has sought (i) amendments to the Original Preliminary PUD Ordinance, (ii) approval of the Phase I Final PUD Plans, and (iii) approval of the Final Subdivision Plat (the “**Final PUD Phase I Ordinance**”), as more particularly described *infra*.

O. In connection with the Infrastructure Work, the Developer will be required to construct certain Public and Private Improvements (both as defined below), which improvements are necessary and desirable for the redevelopment of the Property and the public interest.

P. In addition, the completion of certain of the Public and Private Improvements in accordance with the Site Plan will require the City to transfer a portion of land currently owned by the City to the Developer.

Q. The Parties seek to enter into this Agreement to provide for (i) the redevelopment and use of the Property in compliance with this Agreement; (ii) the undertaking and completion of the Infrastructure Work to serve the Property, the buildings to be constructed thereon, and surrounding properties, subject to the terms set forth in this Agreement; and (iii) the elimination of certain factors and characteristics found in the Property that have caused the Property to be included in the TIF District and designated as blighted in accordance with the TIF Act.

R. The Corporate Authorities have determined, after due and careful consideration, that the zoning, subdivision, development, and use of the Property pursuant to and in accordance with this Agreement would (i) eliminate blight within the City; (ii) strengthen the tax base of the City; (iii) further enable the City to control the development of the Property in a manner consistent with the development patterns, economic development goals, and character of the City; and (iv) serve the best interests of the City and its residents.

S. In light of the foregoing and other substantial community benefits that would result from the development of the Property, the Corporate Authorities of the City have determined that the incentives and requirements set forth in this Agreement are necessary and desirable.

T. All notices, publications, procedures, public hearings, and other matters required for the consideration and approval of this Agreement have been made, given, held, and performed by the City as required by applicable statutes, codes, and ordinances.

U. The Parties now seek to enter into this Agreement pursuant to, among other things, the TIF Act and the City’s home rule authority.

V. The Parties, consistent with Illinois law, have agreed to the terms and conditions set forth in this Agreement as evidenced by the signatures affixed hereto.

## **SECTION 2. DEFINITIONS.**

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

**“Applicable City Codes and Ordinances”**: The Crystal Lake City Code, Unified Development Ordinance, and all other codes and ordinances adopted by the City.

**“Building Plans”**: The “Building Plans” to be approved in accordance with the Final PUD Ordinance.

**“Business Day”**: A Day other than a Saturday, Sunday, or a holiday observed officially in the State of Illinois.

**“City Approvals”**: All legislative, administrative, and other approvals issued by the City and required for the development and construction of the Project including, but not limited to, architectural and site design review approvals, the Final PUD Ordinance, approval of the Final Subdivision Plat, the Final Engineering Plan, and the Final Landscaping Plan.

**“City Attorney”**: Any attorney duly authorized to represent the City in connection with this Agreement, the Property, or the TIF District.

**“City Code”**: The City Code of Crystal Lake, 1993, as the same has been and may, from time to time hereafter, be amended.

**“Closing”**: The acquisition by the Developer of the entirety of the Property from Owner.

**“Corporate Authorities”**: The Mayor and City Council of the City.

**“Day”**: A calendar day.

**“Declaration of Covenants”**: The Declaration or Declarations of Covenants, Restrictions and Easements to be recorded by the Developer against the Property (or portions thereof) pursuant to Section 6 of this Agreement. The Parties acknowledge that more than one Declaration of Covenants may be recorded against the Property or portions thereof.

**“Developer Affiliate”** means an entity controlling, controlled by, or under common control with Developer, such that such entity has the same manager(s), members, partners or shareholders who shall own in aggregate more than fifty percent (50%) of the ownership interests in Developer (or any combination thereof) and also own more than fifty percent (50%) of the ownership interests in said Affiliate. As used herein, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise.

**“Development Milestones”**: The development milestones set forth in Exhibit E attached to this Agreement; the “Completion Dates” set forth therein may be modified in accordance with the terms and provisions in Section 5.B.4 and/or Section 5.D.3 of this Agreement.

**“Effective Date”**: The date of execution of this Agreement by all the Parties, which date shall be deemed to be the date set forth in the first paragraph of page one of this

Agreement.

**"Final Engineering Plan"**: The "Final Engineering Plans" to be identified in, and to be approved in accordance with, the Final PUD Ordinance.

**"Final Landscaping Plan"**: The "Landscaping Plans" to be identified in, and to be approved in accordance with, the Final PUD Ordinance.

**"Final Plans"**: The Building Plans, Final Engineering Plan, Final Landscaping Plan, Final PUD Plans, and Final Subdivision Plat.

**"Final PUD Ordinance"**: The ordinance or ordinances to be adopted by the Corporate Authorities granting final approval of redevelopment plans for the Property (or portions thereof) in accordance with the Requirements of Law, including without limitation the Final PUD Phase I Ordinance.

**"Final PUD Plans"**: The "Final PUD Plans" to be identified in, and to be approved in accordance with, the Final PUD Ordinance.

**"Final Subdivision Plat"**: The "Final Subdivision Plat" to be identified in, and to be approved in accordance with, the Final PUD Phase I Ordinance.

**"Force Majeure"**: Strikes, lockouts, acts of God, third-party litigation not initiated by Developer, epidemics, pandemics, governmental shut-downs, widespread regional supply-chain disruptions, or other factors beyond a Party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure shall not include delays caused by weather conditions, unless such weather conditions are unusually severe or abnormal considering the time of year and the particular location involved.

**"Lot"**: A lot of record including a portion of the Property, as depicted on the Final Subdivision Plat.

**"Net Residential TIF Increment"**: The TIF Increment allocable to the Residential Parcel less (a) TIF School Payments, (b) any costs incurred by the City for issuing any Developer Note supported by the Net Residential TIF Increment, and (c) three percent (3%) of the TIF Increment allocable to the Residential Parcel, which amount shall be deposited directly into the Special Tax Allocation Fund of the TIF District for payment of Redevelopment Project Costs unrelated to this Agreement.

**"Net TIF Increment"**: The TIF Increment relating to the Property (exclusive of the Residential Parcel) less (a) any costs incurred by the City for issuing any Developer Note supported by the Net TIF Increment, and (b) three percent (3%) of the TIF Increment allocable to all portions of the Property except the Residential Parcel, which amount shall be deposited directly into the Special Tax Allocation Fund of the TIF District for payment of Redevelopment Project Costs unrelated to this Agreement.

**"Planning and Zoning Commission" or "PZC"**: The Planning and Zoning Commission of the City, established by the City Code, as the same has been and may, from time to time hereafter, be amended.

**“Project”**: The development of the Property as to be depicted and/or described in the Final Plans, including all Property Improvements and Development Work (as defined in Section 5.A, *infra*) necessary or convenient to implement and complete such development in accordance with this Agreement.

**“Property Improvements”**: All of the improvements and facilities that are required or authorized to be made, constructed, or installed in connection with the development of the Property, including without limitation: landscaping; all perimeter buffering; streetscaping; storm water detention and drainage facilities; water and sanitary sewer mains and service lines; parking structures; residential and commercial buildings; streets, pathways, and sidewalks; parks; soil erosion and tree protection measures; fencing and retaining walls; lighting of streets and other public spaces; and traffic-related improvements. Such improvements and facilities need not be physically located on the Property, and they may be set forth or identified in any of the following: the Final Plans, the Final PUD Ordinance, or as elsewhere provided in this Agreement. The Property Improvements shall be comprised of:

**“Private Improvements,”** being those Property Improvements (other than Public Improvements and Structural Improvements) that are required to be constructed, installed, or placed in service pursuant to this Agreement, Requirements of Law, or the Final PUD Ordinance, or are depicted on the Final Plans.

**“Project Improvements,”** being the Private Improvements and Public Improvements.

**“Public Improvements,”** being those Property Improvements that have been or are to be dedicated to the City or such other public agencies as the City may approve, including without limitation (i) the New Boulevard and other right-of-way improvements as depicted on the Final Plans, and (ii) the water main and sanitary sewer extensions located on the Property (exclusive of service lines and other private water service facilities as set forth in the Applicable City Codes and Ordinances).

**“Structural Improvements,”** being those buildings and structures authorized to be constructed on the Property pursuant to this Agreement or the Final PUD Ordinance.

**“Redevelopment Expense”** shall have the meaning defined in Section 12.E hereof.

**“Redevelopment Project Costs”**: Any qualifying redevelopment project costs as authorized and defined by the TIF Act incurred in connection with the development of the Property in accordance with the Final PUD Ordinance and this Agreement.

**“Residential Unit”**: An individual single family home, condominium unit, or apartment unit that meets the definition of a “dwelling unit” under the Unified Development Ordinance.

**“Requirements of Law”**: Applicable City Codes and Ordinances and all applicable federal, state, and county laws, statutes, codes, ordinances, resolutions, rules, and regulations.



**"Subdivision Ordinance"**: Article V, of the City's Unified Development Ordinance, as the same has been and may, from time to time hereafter, be amended.

**"Substantial Completion"**: Completion evidenced by (i) for a building or any Residential Unit, issuance of a final certificate of occupancy or a temporary occupancy permit, provided that adequate security has been put in place to ensure full and final completion of such building or Residential Unit; or (ii) for other Public or Private Improvements, functional and legally authorized use of the improvement and all of its facilities, as reasonably determined by the City Engineer, and acceptance or approval by the City or other public agency having jurisdiction, subject to any punch-list items identified by the City Engineer, provided that adequate security remains in place to ensure full and final completion of such Public or Private Improvement.

**"TIF Increment"**: Incremental real estate tax revenues derived from the tax rates of various taxing districts having taxing authority over the TIF District that are allocated to the TIF District for purposes of paying Redevelopment Project Costs pursuant to the TIF Act.

**"TIF School Payments"**: The minimum portion of the TIF Increment required to be paid to elementary, secondary, or unit school district pursuant to 65 ILCS 5/11-74.4-3(q)(7.5) (or any comparable provisions set forth in any amendment to the TIF Act).

**"Unified Development Ordinance"**: Chapter 650 of the City Code, as the same has been and may, from time to time hereafter, be amended.

**SECTION 3. APPLICABILITY OF ORIGINAL PRELIMINARY PUD ORDINANCE.** The Developer shall comply with the terms and conditions of the Original Preliminary PUD Ordinance, except as otherwise expressly modified in the Final PUD Phase I Ordinance or any other Final PUD Ordinance, or to the extent that the Final PUD Plans are inconsistent with any provisions in the Original Preliminary PUD Ordinance.

**SECTION 4. CONVEYANCE OF CITY PROPERTY.** Prior to the Closing, Developer shall deliver to the City detailed plats of survey of the real property that it seeks to acquire from the City in order to complete the required Public and Private Improvements for the redevelopment of the Property (the "**Survey**"). Subject to (a) final review and approval of the Survey by the City Manager and the City Engineer, and (b) the Final PUD Phase I Ordinance taking full force and effect, the City shall thereafter convey the real property depicted and described on the Survey (the "**City Land**") to the Developer immediately following the Closing for the amount of ten dollars (\$10.00) pursuant to a mutually acceptable quitclaim deed that includes: (i) Developer's agreement to indemnify the City from and against any claims relating to or arising from the City Land arising on or after the date of conveyance, including any claims of environmental contamination; and (ii) a reverter clause to reconvey the City Land to the City in the event that:

- A. the Developer does not complete the Public Improvements on the Property within five (5) years after the Effective Date, and
- B. a determination by the City that the Performance Security (as may be supplemented by the Developer) is inadequate to allow the City to cause the Public Improvements to be completed, provided that

- C. the City shall have delivered written notice to the Developer of the conditions set forth in Sections 4(ii)A and 4(ii)B (the “**Reverter Notice**”), and
- D. Developer has failed either to complete the Public Improvements on the Property or to supplement the Performance Security in an amount sufficient to allow the City to cause the Public Improvements to be completed within 30 days after delivery of the Reverter Notice.

Developer shall pay (or reimburse the City for) any and all costs related to the conveyance of the City Land.

**SECTION 5. FINAL PUD PLANS, PLAT OF SUBDIVISION, AND OTHER DEVELOPMENT APPROVALS.**

**A. In General.** The Parties acknowledge and agree that the Property may be developed in phases, subject to approval of a Final PUD Ordinance for each phase. Prior to (i) the Effective Date of this Agreement and (ii) the Closing and the conveyance of the City Land pursuant to Section 4 of this Agreement, the Developer has delivered all required submittals for consideration of approval of a Final PUD Phase I Ordinance for the Property or a portion thereof, in accordance with the Applicable City Codes and Ordinances. In addition:

1. The Final PUD Phase I Ordinance relating to the Property or any portion thereof shall include as part of the Final Engineering Plan all Public Improvements to serve the entire Property (including without limitation the New Boulevard and all other roadway, sanitary sewer, storm sewer, and water improvements, including portions of the Property that are not receiving approval of Final PUD Plans therefor) as well as any other utility service improvements that will be needed to serve the Property. The required submittals for the Final PUD Phase I Ordinance approval shall also include a Final Subdivision Plat for the entire Property, as well as a detailed timetable for the undertaking and completion of all the various activities needed to complete (i) all the Public Improvements needed to serve the entire Property, and (ii) the other Property Improvements on the portion(s) of Property included in such Final PUD Phase I Ordinance, including commencement and completion of Structural Improvements to the point of being ready for occupancy (the “**Development Work**”). Such detailed timetable shall ensure that the Developer achieves in a timely fashion the Development Milestones related to (iii) the Public Improvements and (iv) any portions of the Property that are subject of the Final PUD Phase I Ordinance.
2. Any submittals for any Final PUD Ordinance approval after the Final PUD Phase I Ordinance shall include a detailed timetable for the undertaking and completion of all Development Work relating to the portion of the Property that is the subject of such requested Final PUD Ordinance, including the achievement of any Development Milestones related to the portion of the Property in question.
3. All Development Work shall be undertaken and completed in accordance with the Requirements of Law (including the Prevailing Wage Act, 820 ILCS 130, with respect to all Public Improvements).

**B. Final PUD Plans and Final Subdivision Plat Submissions.** Upon the filing of all required submittals as described in this Agreement and in conformity with all Applicable City Codes and Ordinances for the Property or any portion thereof, the Corporate Authorities of the City will approve a Final PUD Ordinance approving the Final Plans for the portion(s) of the Property included in the Final PUD Ordinance submittals. The Corporate Authorities are expected to approve the Final PUD Phase I Ordinance for a portion of the Property contemporaneously with the approval of this Agreement.

1. The Final PUD Phase I Ordinance will provide for three distinct approvals:
  - a. The approval of the Revised Preliminary PUD Plans for the entire Property. This approval shall be effective immediately upon the enactment of the Final PUD Phase I Ordinance.
  - b. The approval of the Phase I Final PUD Plans for the first phase of development of the Property. This approval shall become effective following (i) the enactment of the Final PUD Phase I Ordinance, (ii) the Closing, and (iii) the conveyance of the City Land to the Developer.
  - c. The approval of the Final Subdivision Plat for the entire Property. This approval shall become effective following (i) the enactment of the Final PUD Phase I Ordinance, (ii) the Closing, and (iii) the conveyance of the City Land to the Developer.

The approval of the Phase I Final PUD Plans in the Final PUD Phase I Ordinance shall serve as authorization of and direction for all required City signatures and certifications to be affixed to the Final Subdivision Plat and any other relevant documents; provided, however, that no such signatures and certifications shall be affixed by the City until the Developer shall have (i) obtained all other approvals, sworn statements, signatures, and certifications required for any Final Plans; (ii) paid the City its legal, engineering, consulting, recording, and administrative fees, costs, and expenses; and (iii) delivered all required security in accordance with Section 11 of this Agreement. After final approval, execution, and certification of the Final Plans by the City, the City shall promptly cause the Final Subdivision Plat to be properly recorded with the McHenry County Recorder of Deeds contemporaneously with the recordation of the Final PUD Phase I Ordinance.

2. For any subsequent Final PUD Ordinance, such approval of the Final Plans for the portion of the Property identified in such Final PUD Ordinance shall serve as authorization of and direction for all required City signatures and certifications to be affixed to any relevant documents; provided, however, that no such signatures and certifications shall be affixed by the City until the Developer shall have (i) obtained all other approvals, sworn statements, signatures, and certifications required for any Final Plans; (ii) paid the City its legal, engineering, consulting, recording, and administrative fees, costs, and expenses relating to the review, consideration, approval, and implementation of such Final PUD Ordinance; and (iii) delivered any other documents required pursuant to the Final PUD Ordinance in question. After final approval, execution, and certification of the Final Plans by

the City, the City shall promptly cause the recordation of such Final PUD Ordinance.

3. With respect to any Final PUD Ordinance, and except as provided below in this Section 5.B.3, no building permits shall be authorized for the portion of the Property subject to such Final PUD Ordinance unless the Public Improvements are substantially completed and available to serve the portion of the Property that is the subject of the Final PUD Ordinance in question.
  - a. A Final PUD Ordinance may define further the extent that the Public Improvements for the Property must be completed in order to secure building permits for a specified portion of the Property.
  - b. Notwithstanding the foregoing:
    - i. Any Final PUD Ordinance approved within two years after the Effective Date shall provide that the City shall issue building permits to begin construction upon the Property prior to the availability of streets, storm sewers, sanitary sewers and water facilities to serve the structures to be constructed upon the Property; provided, however, that such permits shall be issued at the risk of the applicant with respect to prerequisites for occupancy; provided further that, before any building shall proceed, a stone haul road shall be available to each building site, adequate for use by emergency vehicles at all times, and life safety measures and facilities are available to the reasonable satisfaction of the City. No connection shall be made to the City sewer or water systems until all permits, including the Illinois Environmental Protection Agency and City permits for sewer and water have been obtained. Foundation permits for any portion of the Property subject to a Final PUD Ordinance will be issued notwithstanding any absence of curbs or asphalt binder course on the adjacent roadway. No certificate of occupancy or temporary occupancy permit shall be issued until Public Improvements are substantially completed and available to serve the portion of the Property that is the subject of the Final PUD Ordinance.
    - ii. Certificates of occupancy and temporary occupancy permits may be issued prior to the installation of the final lift on any street included among the Public Improvements, but only if the City Engineer determines that adequate security remains in place to ensure completion of all such streets, including the final surface lift thereon; and provided that the City Engineer may determine that the final surface lift on any street shall be deferred until at least 90% of the number of residential units authorized by this Agreement have received certificates of occupancy or temporary occupancy permits.
4. Any request for a Final PUD Ordinance (or an amendment to a previously

approved Final PUD Ordinance) may request an amendment to the Development Milestones set forth in this Agreement, which amended Development Milestones may be approved upon a two-thirds vote of the Corporate Authorities. Notwithstanding the foregoing sentence, the Development Milestones may be amended by resolution approved by a concurrence of a majority of the Corporate Authorities upon demonstration that the Development Milestones are not (or could not have been) achievable due to Force Majeure events, which resolution may be considered and approved without public notice or hearing and without any other amendment to this Agreement or, to the extent applicable, a Final PUD Ordinance.

**C. No Further Zoning Approvals.** Subject to the terms of approval of a Final PUD Ordinance (including City staff determination of compliance with all design standards for the Property Improvements as set forth in the Applicable City Codes and Ordinances), and subject to the terms and conditions of this Agreement, no further zoning approvals shall be required of the Developer as a prerequisite to the receipt of the building permits necessary to develop the Property (or portion thereof) as depicted on, and in substantially conformity with, the applicable Final Plans and this Agreement.

**D. Diligent Pursuit of Building Permits and Construction.** Following the approval of the Final PUD Ordinance, all required Development Work relating to the portion(s) of the Property identified in such Final PUD Ordinance shall be pursued to completion pursuant to the terms of this Agreement, the Final PUD Ordinance, the Final Plans, and all other Applicable City Codes and Ordinances with due diligence, in good faith and without delay, subject only to Force Majeure leading to unavoidable delay.

1. Prior to commencing Development Work relating to any Final PUD Ordinance, the Developer shall prepare and submit to the City for review and approval any plans, specifications, or other materials required in connection with any necessary permit or approval as provided in the Applicable City Codes and Ordinances ("**Permit Submittals**"), which Permit Submittals shall be in substantial conformity with the Final Plans and Final PUD Ordinance.
2. No certificates of occupancy relating to any Final PUD Ordinance shall be issued for any Structural Improvements or Residential Units on the portion of the Property identified in such Final PUD Ordinance until the City Manager determines, based upon inspection performed by the City Engineer and Director of Community Development, that such improvements and units are completed (or Substantially Completed and sufficient and appropriate security has been delivered to the City to ensure full and final completion) and substantially conform to the Agreement, the applicable Final PUD Ordinance and Final Plans, and all other Applicable City Codes and Ordinances.
3. The Parties hereto recognize and agree that the Development Milestones are estimates based upon current knowledge of market conditions, and changes to market conditions and other reasons may affect the dates of compliance with the Development Milestones. Therefore, the Development Milestones are subject to change and/or modification with the written approval of the City (without the need for public notice or hearing or further amendment to this Agreement), which shall not be unreasonably conditioned, delayed, or withheld. A change to the

Development Milestones shall be deemed reasonable where the Developer has acted diligently and continues to pursue the Development Milestones as well as the Project in good faith and with all due diligence. In the event the Developer fails to meet a Development Milestone (as may be amended), then the City may require the Developer to appear before the City to show cause why Developer failed to comply with the Development Milestones. If the Developer cannot show cause for the delay which is reasonably satisfactory to the City, the City may immediately declare such failure an Event of Default (notwithstanding any provisions in Section 21 of this Agreement), and the City may enforce this Agreement by exercising any remedy authorized by this Agreement.

**E. Final PUD Ordinance Amendments.** Nothing in this Agreement shall preclude Developer from seeking an amendment or amendments to a Final PUD Ordinance for any portion of the Property in accordance with the provisions of the Unified Development Ordinance (a “**PUD Amendment**”).

1. If Developer seeks a PUD Amendment prior to the issuance of any Developer Note as provided in Section 12 of this Agreement, Developer’s right to receive a Developer Note associated with or relating to the portion of the Property for which a PUD Amendment is sought shall terminate, unless either:
  - a. The City Council approves a resolution expressly acknowledging that the PUD Amendment is acceptable to the City under the terms of this Agreement (or any mutually acceptable amendment to this Agreement) and that such PUD Amendment will not affect Developer’s entitlement to any Developer Note (a “**City Amendment Resolution**”); or
  - b. In the absence of a City Amendment Resolution, the Developer withdraws in writing its request for the PUD Amendment prior to the effective date of any such PUD Amendment.
2. Following the issuance of a Developer Note pursuant to this Agreement, no PUD Amendment shall be authorized unless approved by the City Council in its unfettered legislative discretion as part of an amendment to this Agreement.

## **SECTION 6. DECLARATIONS OF COVENANTS.**

A. A Final PUD Ordinance shall identify for any portion(s) of the Property identified in such Final PUD Ordinance the scope of the declaration(s) of covenants to be recorded against such portions of the Property. Such declarations of covenants shall conform to the requirements of the Final PUD Ordinance and include, without limitation:

1. For all portions of the Property:

- a. A requirement for all Private Improvements and Structural Improvements to be subject to design review and approval by the City, including pursuant to Section 4-900 of the Unified Development Ordinance.
  - b. Provisions authorizing the City, in consultation with the Developer, to seek allocation of the “initial equalized assessed valuation” (as defined in the TIF Act) among the resulting tax parcels within the Property and agreeing not to object to any such allocation.
  - c. Provisions establishing the City's right to enforce the declarations (or specified provisions therein) and to recover all of its costs, including attorneys' fees and administrative expenses, relating to such enforcement.
  - d. Provisions setting forth that no amendment to such declarations relating to the provisions affecting the City (as may be more specifically identified in a declaration) shall be made or recorded without the approval thereof by a resolution of the Corporate Authorities.
  - e. Provisions establishing (i) appropriate cross-easements and rights of use and access throughout the Property, and (ii) responsibility for maintenance, repair, replacement, and insurance of the private streets, sidewalks, and common use spaces within the Property.
2. For certain portions of the Property, as applicable:
- a. Provisions acceptable to the City regarding the accessibility to the public of open spaces depicted on the Final Plans, the obligation to be financially responsible for the maintenance of such open spaces, and the conveyance by special warranty deed of certain open spaces intended for park uses.
  - b. Provisions acceptable to the City regarding the obligation to maintain any non-public common areas depicted on the Final Plans and Private Improvements, including, without limitation, any private parks and open space, storm water facilities, sidewalks and paths, vegetation and landscaping, streets and private roadways, parkways, and off-street parking facilities in perpetuity. Nothing in this provision shall preclude Developer from subsequently recording additional declarations of covenants further allocating responsibility for such common areas and Private Improvements to other persons or associations, provided that any such additional declarations shall be subject to the approval by resolution of the Corporate Authorities.
  - c. For any Structural Improvements in the Residential Townhome Area for which individual units shall be made available for sale, provisions for a financially self-supporting homeowners' association that is capable of meeting all the obligations under this Agreement applicable to such townhomes and establishing lien rights against the individual owners and residential units within such Structural Improvements with respect to those obligations.

- d. Provisions requiring Developer (including the owner of any rental building on the Residential Parcel with residential units, but not any other successor owner of individual residential units or non-residential building for which a certificate of occupancy has been issued) to deliver to the City on an annual basis copies of all documentation provided by Developer to the County Assessor or Township Assessor indicating improvement values upon the Residential Parcel (including income/expense documentation) for so long as the TIF District remains in effect.
- e. To the extent requested by the City, provisions for the vacation of existing easements following the completion and acceptance of new Public Improvements.

The foregoing covenants (or any of them) may be set forth directly on the Final Subdivision Plat in lieu of being included in a separately recorded declaration of covenants.

B. For each portion of the Property, the required declaration(s) of covenants for such portion of the Property: (i) shall be subject to approval, in form and substance, to the City Attorney, which approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) shall be recorded against such portion of the Property prior to the issuance of any certificate of occupancy or temporary occupancy permit for any building or Residential Unit. Such recordation shall be subject to the Developer obtaining the consent of each and every mortgage or lien holder of the affected portion of the Property.

C. One or more declarations may also serve as the declarations of condominium for any condominium units established on the Residential Parcel, provided that any such condominium units and plat of condominium shall be subject to an amendment to the Final PUD Ordinance as well as approval under the City's Subdivision Ordinance. In the event that a particular declaration is to serve as the declaration of condominium for an area of the Residential Parcel, then such declaration shall be delivered to the City, but, upon request of the Developer, the City agrees not to record such declaration until the Developer notifies the City that the plat of condominium for such lot is ready for recording, in which case the City shall record the affected declaration within 14 days after notice from the Developer; provided, however, that, until such declaration is recorded, no certificates of occupancy shall be issued by the City for any Residential Unit affected by such declaration; provided further that, prior to recording, the Developer may replace the submitted declaration with a revised declaration, provided that the revised declaration is fully acceptable to the City.

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

**A. General Restrictions.** Notwithstanding any use or development right that may be applicable or available to the Property (or any portion thereof) pursuant to the Unified Development Ordinance, the Property shall be used and developed, except for minor alterations due to final engineering and site work approved by the City Engineer, only pursuant to and in accordance with the following:

- i. this Agreement;
- ii. the Final PUD Plans;
- iii. the Final Subdivision Plat;



- iv. the Final Engineering Plans;
- v. the Final Landscape Plans;
- vi. the provisions of the Final PUD Ordinance;
- vii. all other applicable provisions of the Unified Development Ordinance and Subdivision Ordinance;
- viii. the City Code, including without limitation the Building Code;
- ix. the Declaration of Covenants, as they may be amended from time-to-time; and
- x. the Requirements of Law.

**B. Conflicts.** Unless otherwise provided in this Agreement, either specifically or in context, in the event of a conflict between or among any of the plans and documents set forth in Subsection 7.A, above, items with a lower number in Section 7.A will control over items with a higher number, but as among items 7.A.i - 7.A.vi, the document that provides the greatest control and protection for the City (as determined by the City) shall control. All of the plans and documents set forth in Section 7.A shall be interpreted so that the duties and requirements imposed by any one of them are cumulative among them, unless otherwise provided in this Agreement either specifically or in context. Notwithstanding the foregoing, except as otherwise expressly provided, requirements relating to only a portion of the Property shall not affect the rights of other portions of the Property.

**C. Marketing Signs and Trailers.** Subject to Applicable City Codes and Ordinances, Developer shall have the right to locate and maintain sales and construction trailers on portions of the Property in connection with its marketing activities and shall have the right to install temporary sewer and water facilities which have been approved by the City (e.g., holding tanks) to serve such sales trailers, but only until public utilities are available for use; provided, however, that such rights shall only apply to such portions of the Property for which a Final PUD Ordinance has been approved. Unless otherwise approved in a Final PUD Ordinance, the City Manager shall authorize Developer to erect one marketing sign for each lot, which shall have a height no greater than six (6) feet above grade, an area no greater than thirty-two (32) square feet; provided that such marketing signage shall not be permitted for more than 42 months after the Final PUD Ordinance for the lot in question is approved without further approval by resolution of the City Council. The Developer may request additional time in 12-month increments for maintaining such marketing signs if delays are caused by market conditions or any other matters outside the control of the Developer. During the initial leasing of Residential Units on the Residential Parcel, the Developer will be permitted to install a temporary 12'x8' billboard along U.S. Route 14 and three 4'x6' marketing directional signs along the New Boulevard subject to reasonable approval by the City. The signs permitted pursuant to the preceding sentence may be maintained until the earlier of (i) lease stabilization (95% occupancy) of the buildings within the Residential Parcel or (ii) 30 months after the certificate of occupancy is issued for the building serving as the leasing center for the Residential Parcel. Any sales trailers and marketing signs, including associated temporary sewer and water facilities, shall promptly be removed at such time as marketing activities cease

on the portion of the Property in question, unless otherwise required by Applicable City Codes and Ordinances.

## **SECTION 8. IMPROVEMENTS.**

**A. Design and Construction of the Improvements.** In connection with the development of the Property, the Developer shall, at its sole cost and expense, design, construct, and install all of the Property Improvements required in connection with a Final PUD Ordinance. All Property Improvements shall be designed and constructed pursuant to and in accordance with the Final Plans, and, where applicable, subject to the review and approval of the authorized persons as provided by the Requirements of Law. Where field determinations are required, they must be made to the reasonable satisfaction of the City Engineer or other duly authorized official of the City. All work performed on the Property Improvements shall be conducted in a good and workmanlike manner and with due dispatch once commenced. Property Improvements must proceed in accordance with any applicable Development Milestones and the construction schedule approved as part of the Final PUD Ordinance for the portion of the Property in question. All materials used for construction of the Property Improvements shall be new and of first quality, unless expressly provided otherwise in a Final PUD Ordinance.

**B. Completion of the Improvements.** All Property Improvements shall be completed and made ready for inspection and final approval by the City pursuant to the Development Milestones (to the extent applicable and subject to any modifications as provided for in this Agreement) and the construction schedule to be approved by the City as part of a Final PUD Ordinance. The Developer shall be allowed extensions of time beyond the completion dates set forth in such construction schedule only for unavoidable delay caused by Force Majeure or as otherwise provided in this Agreement.

**C. Engineering Services.** The Developer shall provide, at its sole cost and expense, all engineering services for the design and construction of the Public Improvements that it is to construct, subject to any Redevelopment Project Costs to be reimbursed by the City under the terms of this Agreement. For other Property Improvements, the Developer shall provide, at its sole cost and expense, all engineering services for the design and construction thereof.

**D. Construction Traffic.** The City reserves the right to designate certain prescribed routes of access to the Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that such designated routes shall be established in consultation with Developer and shall not be unreasonably or unduly circuitous nor unreasonably or unduly hinder or obstruct direct and efficient access to the Property for construction traffic. The City and Developer understand these routes may be required to change during the course of construction of the Project. At all times during the construction of the Property Improvements, and until completion, approval, and, where appropriate, acceptance of the Property Improvements by the City or other governmental agency, the Developer shall keep all routes used for construction traffic free and clear of mud, dirt, debris, obstructions, and hazards and shall repair any damage caused by such construction traffic. The City shall not be obligated to keep any streets within the Property cleared, plowed, or otherwise maintained unless and until such streets are accepted by the City pursuant to a resolution approved by the Corporate Authorities.

**E. Inspection and Approval of the Improvements.**

1. Final Inspection and Approval of the Property Improvements. Developer shall notify the City Engineer when it believes that any or all of the Property Improvements (other than Structural Improvements) have been fully and properly completed, and Developer shall request final inspection and approval of such Property Improvements by the City. The notice and request shall include any of the "as-built" or "record" drawings required by this Agreement or the Applicable City Codes and Ordinances, and, with respect to the Public Improvements to be dedicated to the City, to the extent not previously submitted, contractors' sworn statements, final lien waivers, and all other appropriate documentation necessary to demonstrate that all contractors, subcontractors, and material suppliers, as well as all engineering and inspection fees, have been paid in full. The notice and request shall be given not less than 30 days in advance to allow the City Engineer time to inspect such Property Improvements and to prepare a punch list of items requiring repair or correction and to allow the Developer time to make all required repairs and corrections prior to the scheduled completion date. The Developer shall promptly make all necessary repairs and corrections as specified on the punch list and in accordance with the Final Plans.
2. "As-Built" or "Record" Drawings and Specifications of the Public Improvements. The Developer shall, not later than the time it gives the notice of completion and request for approval, provide to the City three sets of "as-built" or "record" drawings for all of the Public Improvements to be dedicated to the City, including one set on a reproducible mylar (or in such format as may otherwise be directed by the City Engineer). The "as-built" or "record" drawings and specifications shall depict every Public Improvement as built and shall include all final dimensions, elevations, and calculations necessary to fully describe the Public Improvements and to establish their compliance with this Agreement and all Requirements of Law, including the requirement that such Public Improvements are located within a properly established easement or right-of-way granting the City all necessary rights (as reasonably determined by the City) to utilize, maintain, repair, replace, and otherwise own and operate such Public Improvements.

**F. Guaranty of the Improvements.** Subject to Force Majeure, the Developer hereby guarantees the prompt and satisfactory correction of all construction-related defects and deficiencies in the Public Improvements (including, without limitation, landscaping installed by the Developer on public lands or within public rights-of-way or easements). Such guarantee will include financial security as provided in Section 11 to address defects or deficiencies that occur or become evident within two years after approval and acceptance of the Public Improvements by the City pursuant to this Agreement. If any such defect or deficiency occurs or becomes evident, then the Developer shall, after 30 days' prior written notice from the City, correct it or cause it to be corrected; provided, however, that if such defect or deficiency is not reasonably capable of being corrected within such 30-day period then the Developer will be granted one 90-day extension of the correction period. In the event any Public Improvement is repaired or replaced pursuant to such a demand, the guaranty provided by this Section and Section 11 shall

be extended, only as to such repair or replacement, for the later of one year after the completion of the corrective work or two full years after approval and acceptance of the Public Improvements by the City pursuant to this Agreement. If the City Engineer determines, in his or her sole and absolute discretion, that the Developer is not adequately maintaining, or has not adequately maintained, any Public Improvement as provided in this Section, the City after 10 days' prior written notice to the Developer may, but shall not be obligated to, enter upon any or all of the Property for the purpose of performing maintenance work on and to any such Public Improvement. In the event that the City shall cause to be performed any work pursuant to this Subsection, the City shall have the right to draw from the performance security described in Section 11 of this Agreement. In the event that the performance security is unavailable or insufficient to finance the work performed by the City pursuant to this Subsection, then the City shall have the right to place a lien on the Property (or such portion of the Property to which Developer maintains any interest) for all costs and expenses incurred by the City, including legal and administrative costs. The rights and remedies provided in this Section shall be in addition to, and not in limitation of, any other rights and remedies otherwise available under this Agreement.

**G. Issuance of Permits and Certificates.**

1. Performance Security. The City shall not be required to issue any permits in connection with any Property Improvements or other Development Work relating to the Property until the Developer shall have delivered to the City the security for the Public Improvements required under Section 11 of this Agreement.
2. Right to Withhold Permits and Certificates. The City shall have the right to withhold any building permit, temporary occupancy permit, or certificate of occupancy at any time with respect to a portion of the Property for which Developer is in material breach of the terms of this Agreement, subject to the City providing written notice of such violation and providing the Developer with an opportunity to cure such violation within 30 days of such notice.
3. Completion of Improvements. The City shall issue no certificates of occupancy or temporary occupancy permit for any portion of Structural Improvements on any portion of the Property until the Public and Private Improvements necessary to serve such Structural Improvements (as reasonably determined by the City Manager) are Substantially Completed. The issuance of any building permit, temporary occupancy permit, or certificate of occupancy by the City at any time prior to final completion of all the Public and Private Improvements and approval and, where appropriate, acceptance thereof by the City shall not confer any right or entitlement to any other building permit or any certificate of occupancy.

**H. Completion of Construction.** Subject to Force Majeure, if Developer fails to diligently pursue construction of any Structural Improvement as required in, or permitted by, this Agreement to completion within the time period prescribed in the building permit or permits issued by the City for such construction, and if a perfected application to renew the building permit or permits is not filed within three months after the expiration thereof, Developer shall, within 60 days after notice from the City, remove any partially constructed or partially completed Structural

Improvements from the Property. In the event Developer fails or refuses to remove any such Structural Improvements as required by this Section, the City shall have, and is hereby granted, in addition to all other rights afforded to the City in this Agreement and by law, the right, at its option, to demolish and/or remove any of such Structural Improvements, and the City shall have the right to apply any applicable security or otherwise charge the Developer for an amount sufficient to defray the entire cost of the work, including reasonable legal and administrative costs. If the amount charged is not paid by Developer within 30 days following a demand in writing by the City for payment, the charge, together with interest and costs of collection (including reasonable attorneys' fees), shall become a lien against the Lot (as depicted on the Final Subdivision Plat) on which the work was performed, and the City shall have the right to collect the charge, with interest and costs, and to enforce the lien in the same manner as mortgage foreclosure proceedings.

**I. Damage to Property.** The Developer shall maintain the Property and all streets and sidewalks in and adjacent to the Property in a safe condition at all times during development of the Property and construction of the Property Improvements. Further, the Developer shall promptly clean all debris deposited on any street, sidewalk, or other public property in or adjacent to the Property by Developer or any agent of or contractor hired by, or on behalf of, Developer; and shall repair any damage to such property that may be caused by the activities of Developer, or any agent of or contractor hired by, or on behalf of, Developer. Prior to the development of any portion of the Property, the Developer shall maintain the undeveloped portion of the Property free from debris and noxious or invasive vegetation.

**J. Issuance of Certificates of Completion.** Upon completion of all Development Work for a portion of the Property, and upon request of Developer, the City shall issue a written certification confirming that all obligations relating to such Development Work have been fulfilled in compliance with the terms and conditions of this Agreement.

## **SECTION 9. DEDICATIONS, DONATIONS, AND CONTRIBUTIONS; BUSINESS DISTRICT.**

**A. Dedications.** The Developer shall dedicate or cause to be dedicated sites, easements, and rights-of-way as required by this Agreement or as depicted on or otherwise provided in any Final PUD Ordinance, Final Subdivision Plat, or Final Plans, as well as Public Improvements. Upon full and final completion of Public Improvements in accordance with this Agreement (including the delivery of required guaranty securities pursuant to Section 11 of this Agreement), the City agrees to accept such dedications by an express resolution of the City Council.

**B. Impact and Building Permit Fees.** For each portion of the Property receiving approval of a Final PUD Ordinance, the Developer shall pay to the City all applicable park, open space, and other impact fees; utility connection, tap-on, and development fees and costs; and building permit fees and costs for the initial construction of buildings on such portion of the Property as required by the Applicable City Codes and Ordinances, provided, however, that Developer shall pay all impact fees relating to the Residential Parcel prior to the recordation of a Final Subdivision Plat. All such fees shall be confirmed at the time of a Final PUD Ordinance pursuant to which residential units are being authorized, and such fees shall be attached as an exhibit to such Final PUD Ordinance. Any dedication of park or open space within the Property shall not offset the park impact fees otherwise required under the Applicable City Codes and Ordinances.

**C. Business District.** The Developer (i) acknowledges that the City will, within six months after the Effective Date of this Agreement take appropriate steps to establish a “business district” that includes the Property (or any portions thereof) in accordance with 65 ILCS 5/11-74.3-1 *et seq.*, (ii) agrees not to object to the establishment of such business district in the event that the taxes (or a portion of the taxes) therefrom are used for maintaining public areas serving the Property or are made available for an economic incentive benefiting the Property (or a portion thereof), and (ii) waives any and all claims relating to any such business district and taxes established thereunder, except to the extent set forth in an economic incentive agreement approved by the City and Developer (or an assignee of Developer approved by the City); provided, however, that such business district may not include any business district tax as authorized under 65 ILCS 5/11-74.3-3(10) at a rate in excess of one percent (1%).

## **SECTION 10. CITY AGREEMENTS.**

**A. Future Cooperation.** The City agrees to provide to the Developer the following cooperation, support, and assistance as may be reasonably necessary to implement the provisions of this Agreement:

1. The City will assist the Developer in obtaining any and all permits and approvals from other governmental entities with jurisdiction required to allow the Developer to develop the Property in accordance with this Agreement, including but not limited to permits and approvals for the Public and Private Improvements.
2. The City will assist the Developer in obtaining approvals and easements from private parties as may be required for the construction of the Property Improvements. The City is not required, however, to exercise any powers of eminent domain in furtherance of this Subsection.
3. The City will grant easements, licenses, or other appropriate approvals in City rights-of-way as necessary for the construction, maintenance, repair, and replacement of the Property Improvements to serve the Property.
4. The City will timely review all requests and submissions made by Developer that require City approval and provide written responses within the time periods required by Applicable City Codes and Ordinances. In addition, to the extent that the consent and/or approval of the City (including the City Engineer, the City Attorney, or other City consultant) is needed as to any matter contained in this Agreement, the City agrees that it will timely respond to such request.

**B. Condition on City Cooperation.** In cooperating with the Developer pursuant to Section 10.A, the City shall not be required to incur any out-of-pocket expenses. The extent of the City’s cooperation under this Agreement shall be limited by the preceding sentence (except to the extent the Developer executes a separate undertaking to reimburse the City for any costs so incurred).

## **SECTION 11. PERFORMANCE SECURITY.**

**A. Performance and Payment Letter of Credit.** As security to the City for the performance by Developer of Developer's obligations to construct and complete the Public Improvements pursuant to and in accordance with this Agreement, the Developer hereby irrevocably elects and agrees, on behalf of itself and its successors, to provide performance and payment security for the Public Improvements in the form of one or more letters of credit ("**Performance and Payment Letter of Credit**"). The amount of the Performance and Payment Letter of Credit shall be equal to 120% of the estimate of the costs of construction and completion of the Public Improvements as determined by the City Engineer ("**Approved Cost Estimate**"). The Developer shall not be required to post a Payment and Performance Letter of Credit with the City to secure the performance of any obligations related to Public Improvements for which the Developer has secured such obligations with another governmental entity.

**B. Maintenance of Security.** The deposit of the Performance and Payment Letter of Credit shall be a condition precedent to the issuance of any permit or authorization for work on the Public Improvements. The Performance and Payment Letter of Credit shall be maintained and renewed by the Developer, and shall be held in escrow by the City, until approval and acceptance, where appropriate, of all the Public Improvements by the City pursuant to Section 9.A of this Agreement and until the posting of the Guaranty Letter of Credit required by Section 11.C below. After the acceptance and posting of the Guaranty Letter of Credit, the City shall release the Performance and Payment Letter of Credit.

**C. Guaranty Letter of Credit.** As a condition of the City's approval of any or all of the Public Improvements pursuant to Section 9.A of this Agreement, the Developer on behalf of itself and its successors, shall post, and hereby irrevocably elects and agrees to post, a letter of credit in the amount of 5% of the actual total construction-related cost of the Public Improvements (as certified by the Developer's engineer and approved by the City Engineer) as security for the performance of the Developer's obligations with respect to the Public Improvements under this Agreement ("**Guaranty Letter of Credit**"). The Guaranty Letter of Credit shall be held by the City in escrow until the end of the two-year guaranty period set forth in Section 8.F of this Agreement or until one years after the proper correction of any defect of deficiency in the Public Improvements pursuant to Section 8 and payment thereof, whichever occurs later. If the City is required to draw on the Guaranty Letter of Credit by reason of the Developer's failure to fulfill its obligations after all rights to notice and cure have been exhausted under this Agreement, then the Developer, within 10 days thereafter, shall cause the Guaranty Letter of Credit to be increased to its full original amount. The Developer shall not be required to post a Guaranty Letter of Credit with the City to secure the performance of any obligations related to Public Improvements for which the Developer has secured such obligations with another governmental entity.

**D. Costs.** The Developer shall bear the full cost of securing and maintaining the Performance and Payment Letter of Credit and the Guaranty Letter of Credit.

**E. Form of Letters of Credit.** The Performance and Payment Security and the Guaranty Letter of Credit each shall be in a form reasonably satisfactory to the City Attorney in accordance with this Section 11.E. Each letter of credit, whether the Performance and Payment Letter of Credit or the Guaranty Letter of Credit, shall be in substantially the form attached to this Agreement as Exhibit F and Exhibit F-1, respectively, and shall be issued by a bank reasonably acceptable to the City and having capital resources of at least \$50,000,000, with an office in the Chicago Metropolitan Area and insured by the Federal Deposit Insurance Corporation. Each letter of credit shall, at a minimum, provide that (a) it shall expire no earlier than the later of one

year following the date of its issuance or 35 days after delivery to the City, in the manner provided in Section 22.A of this Agreement, of written notice that the letter of credit will expire, (b) it may be drawn on based upon the City Manager's certification that the Developer has failed to fulfill any of the obligations for which the letter of credit is security, as stated in this Section 11, (c) it shall not require the consent of the Developer prior to any draw on it by the City, (d) it shall not be canceled without the prior written consent of the City, and (e) if at any time it will expire within 35 or any lesser number of days, and if it has not been renewed, and if any obligation of the Developer for which it is security remains uncompleted or unsatisfactory, then the City may, without notice and without being required to take any further action of any nature whatsoever, call and draw down the letter of credit and thereafter either hold all proceeds as security for the satisfactory completion of all obligations or employ the proceeds to complete all obligations and to reimburse the City for any and all costs and expenses, including legal fees and administrative costs, incurred by the City, as the City shall determine. Upon completion of the Developer's obligations to construct and complete the Public Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the City for all costs and expenses, including legal fees and administrative costs, incurred by the City, then the City shall release to the Developer any proceeds remaining on deposit with the City drawn from the letter of credit. The Performance and Payment Letter of Credit may provide that the aggregate amount of the letter of credit may be reduced from time to time by resolution of the City Council to reimburse the Developer for payment of Public Improvement work satisfactorily completed. No reduction for Public Improvement work satisfactorily completed shall be allowed except upon presentation by the Developer of proper contractors' sworn statements, partial or final waivers of lien, as may be appropriate, and all additional documentation as the City may reasonably request to demonstrate satisfactory completion of the Public Improvements in question and full payment of all contractors, subcontractors, and material suppliers. The letters of credit shall not be reduced by reason of any cost incurred by the Developer to satisfy its obligations under Sections 8 or 9 of this Agreement. The City agrees to accept, in lieu of the Performance and Payment Letter of Credit, a "**Performance and Payment Agreement**" in substantially the form attached hereto as Exhibit F-2, in which case the Performance and Payment Agreement will be regarded as the Performance and Payment Letter of Credit for purposes of this Agreement.

**F. Replenishment of Security.** If at any time the City reasonably determines that the funds remaining in the Performance and Payment Letter of Credit are not sufficient to pay in full (i) the remaining unpaid cost of all Public Improvements, (ii) the costs of demolition or making safe of any Public Improvements that are in violation of the Requirements of Law or that are incomplete or abandoned so as to create any hazard to the public health, safety, or welfare, and (iii) all unpaid or reasonably anticipated City fees, costs, and expenses (including attorneys' fees), or that the funds remaining in the Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the Public Improvements and all unpaid or reasonably anticipated City fees, costs, and expenses (including attorneys' fees) relating to the Public Improvements, then, within 10 days after a demand by the City, the Developer shall increase the amount of the letter of credit to an amount determined by the City to be sufficient to pay any such unpaid fees, costs, and expenses. Failure to so increase the amount of the security shall be grounds for the City to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the letter of credit. Upon completion of the Developer's obligations to construct and complete the Public Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the City for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the City, then the City shall release to the Developer any proceeds remaining on deposit with the City from any letter of credit.



**G. Replacement Letters of Credit.** If at any time the City determines that the bank issuing either the Performance and Payment Letter of Credit or the Guaranty Letter of Credit is without capital resources of at least \$50,000,000, or if at any time the City determines that the bank is unable to meet any federal or state requirement for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable or unwilling to honor the letter of credit at any time during its term, or if the City otherwise reasonably deems itself to be insecure, then the City shall have the right to demand that the Developer provide a replacement letter of credit from a bank meeting the requirements set forth in this Agreement. The replacement letter of credit shall be deposited with the City not later than 30 days after written demand. Upon deposit, the City shall surrender the original letter of credit to the Developer. Failure to provide a replacement letter of credit shall be grounds for the City to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the letter of credit.

**H. Use of Funds in the Event of Breach of Agreement.** If the Developer:

1. fails or refuses to complete the Public Improvements in accordance with this Agreement, or
2. fails or refuses to correct any defect or deficiency in the Public Improvements as required by this Agreement, or
3. fails or refuses to pay any amount relating to the construction or maintenance of the Public Improvements demanded by the City as and when required pursuant to this Agreement, or
4. in any other manner fails or refuses to meet fully any of its obligations under this Agreement relating to the construction or maintenance of the Public Improvements, or
5. if there is a failure or refusal to repair or restore property relating to the construction or maintenance of the Public Improvements in accordance with a demand made pursuant to Section 8.1 of this Agreement,

then, after a 30-day written notice from the City, and Developer's failure or refusal to cure during said 30 day period, the City in its reasonable discretion may draw on and retain all or any of the funds remaining in the appropriate letter of credit. The City thereafter shall have the right to exercise its rights under this Agreement, to take any other action it deems reasonable and appropriate to mitigate the effects of any failure or refusal, and to reimburse itself from the proceeds of the letter of credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of such failure or refusal to fully meet its obligations under this Section 11 of the Agreement. If the funds remaining in the letter of credit are insufficient to repay fully the City for all costs and expenses, then the Developer shall upon demand of the City therefor deposit with the City any additional funds as the City determines are necessary, within 14 days of a request therefor, to fully repay such costs and expenses.

**I. City Lien Rights.** If any money, property, or other consideration due from the Developer to the City pursuant to this Agreement is either 1) not recovered from the letter of credit required in this Section, or 2) not paid or conveyed to the City by the Developer within 30 days

after a written demand for payment or conveyance, then the money, or the City's reasonable estimate of the value of the property or other consideration, together with interest and costs of collection, including legal fees and administrative expenses (collectively, the "**Outstanding Amount**") shall become a lien upon the that Property (or any other portions of the Property giving rise to the lien for the Outstanding Amount) in which the Developer retains any legal, equitable, or contractual interest, and the City shall have the right (a) to record such lien in the manner provided by law, (b) to collect the Outstanding Amount, and (c) to enforce the lien in the same manner as in statutory mortgage foreclosure proceedings to the extent permitted by law. In the event, but only in the event, of a sale or transfer of any such portions of the Property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure, such lien shall be subordinate to any first mortgage whether now or hereafter placed upon the Property. Any other sale or transfer shall not relieve the affected portions of the Property from liability for any charges hereafter becoming due, nor from the lien of any charge, except as otherwise provided by law.

## **SECTION 12. TIF FINANCING INCENTIVES.**

**A. In General.** The Parties acknowledge that Developer will pay, or has paid, extraordinary costs relating to the assembly and development of the Property that qualify as Redevelopment Project Costs. Subject to (and as more fully set forth in the terms of) this Section, the City agrees to deliver one or more notes (the "**Developer Notes**") generally in the form attached hereto as Exhibit I that establish:

- (i) the right of Developer to recover a portion of such Redevelopment Project Costs from certain Net Residential TIF Increment or Net TIF Increment; and
- (ii) the City's obligation to pay the Net Residential TIF Increment or Net TIF Increment as designated in any such Developer Note as and when such net increments become available.

The delivery of any Developer Notes under this Section 12 is dependent on Developer satisfying the prerequisites herein established for the issuance of any such Developer Notes.

**B. Redevelopment Project Costs for Infrastructure.** The Parties acknowledge that a substantial portion of the Project Improvements are intended to establish the essential infrastructure needed for the development of the Property, which infrastructure will be more specifically identified and approved as part of the Final PUD Ordinance and Final Engineering Plan (the "**Infrastructure**"). Upon completion of all work relating to the Infrastructure, the City will issue Developer two separate sets of Developer Notes, in a total amount not to exceed eight million dollars (\$8,000,000.00), to reimburse Developer Redevelopment Project Costs for the Infrastructure. Such notes shall be issued after completion of the Infrastructure and a determination of TIF Certified Costs (as defined in Section 12.G *infra*) relating to the Infrastructure, as follows:

1. Residential Infrastructure Developer Note. Within 90 days after a final determination of the TIF Certified Costs for the Infrastructure, the City shall issue the Developer a Developer Note relating to the reimbursement of seventy-five percent (75%) of the TIF Certified Costs for the Infrastructure (the "**Residential Infrastructure Note**"), which shall contain the following terms and provisions:

- a. The principal of the Residential Infrastructure Note shall be the lesser of seventy-five percent (75%) of the TIF Certified Costs for the Infrastructure or \$6,000,000.00.
- b. The Residential Infrastructure Note shall be payable solely from: (i) the Net Residential TIF Increment; and (ii) any Net TIF Increment that is available on a Note Payment Date (as defined in Section 12.B.1.c of this Agreement) prior to the issuance of any Commercial Development Note (as defined in Section 12.C of this Agreement) or after the full payment of all principal and interest of all Commercial Development Notes that may be issued pursuant to this Agreement (the "**Pledged Infrastructure Note Increment**").
- c. Payments of the Pledged Infrastructure Note Increment shall be made on or about December 15 of each calendar year (the "**Note Payment Date**"), subject to and limited by the Pledged Infrastructure Note Increment actually received by the City.
- d. Payments of the Pledged Infrastructure Note Increment shall be made first to pay any accrued but unpaid interest on the Residential Infrastructure Note, and thereafter to pay any principal of the Residential Infrastructure Note; such payments shall be made prior to any payments of Pledged Infrastructure Note Increment for principal or interest related to the Commercial Infrastructure Note (defined below).
- e. Interest on the Residential Infrastructure Note will be six percent (6%) simple interest per annum commencing upon issuance of the Residential Infrastructure Note.
- f. The Residential Infrastructure Note shall be fully assignable.
- g. The Residential Infrastructure Note shall expire (i) upon the expiration of the TIF District or (ii) upon full payment of the principal of the Residential Infrastructure Note and all accrued interest thereon, whichever first occurs. If the principal and all interest on the Residential Infrastructure Notes have not been fully paid upon the expiration of the TIF District, then the holder(s) of the Residential Infrastructure Note shall be entitled to no further payment [except to the extent that there remains Pledged Infrastructure Note Increment that had not been previously paid (including any Pledged Infrastructure Note Increment that may be received after the expiration of the TIF District)]. In no event shall the holder of the Residential Infrastructure Note have any recourse for payment against the City, except with respect to the Pledged Infrastructure Note Increment.
- h. Notwithstanding the requirement for completing all work relating to the Infrastructure before the City issues any Developer Note, to the extent that the final surface lift on any street within the Public Improvements has not been installed but adequate security (as determined in the reasonable discretion of the City Engineer) has been provided to the City for the future installation of such final surface lift as provided in Section 5.B.3.b.ii of this Agreement, the City shall, upon written request of the Developer, issue the Residential Infrastructure Note within 90 days after the later of (a) such Developer request and (b) a final determination of the TIF Certified

Costs for the Infrastructure (inclusive of the City Engineer's estimated cost of the uncompleted final surface lift).

- i. Notwithstanding any provision of this Agreement to the contrary, once the Residential Infrastructure Note had been issued, the Residential Infrastructure Note cannot be terminated, revoked, or cancelled as a result of any Events of Default under this Agreement, including without limitation, the failure of the Developer to satisfy the Development Milestones related to the Property.
2. Commercial Infrastructure Developer Note. Within 90 days after a final determination of the TIF Certified Costs for the Infrastructure and satisfaction of all Development Milestones relating to the Residential Parcel, and the satisfaction of other Development Milestones as set forth in Section 12.B.2.a below, the City shall issue the Developer one or more additional Developer Notes relating to the reimbursement of a total of twenty-five percent (25%) of the TIF Certified Costs for the Infrastructure (each being a "**Commercial Infrastructure Note**"), which shall contain the following terms and provisions:
- a. The combined principal of the Commercial Infrastructure Notes shall be the lesser of twenty-five percent (25%) of the TIF Certified Costs for the Infrastructure (subject to any adjustment necessitated by estimates utilized in connection with Section 12.B.1.i) or \$2,000,000.00. One or more Commercial Infrastructure Notes shall be issued as follows:
    - i. A Commercial Infrastructure Note in the principal amount of ten percent (10%) of the TIF Certified Costs for the Infrastructure upon satisfaction of the Development Milestones relating to a restaurant use upon Lot 3 on the Final Subdivision Plat in the Phase One Commercial Area, consisting of not less than 5,000 square feet, and satisfying the "Commercial Building Standards" as defined in Section 12.B.4 of this Agreement;
    - ii. A Commercial Infrastructure Note in the principal amount of five percent (5%) of the TIF Certified Costs for the Infrastructure upon satisfaction of the Development Milestones relating to one or more restaurant uses upon Lot 2 on the Final Subdivision Plat in the Phase One Commercial Area, consisting of not less than 6,400 square feet, and satisfying the "Commercial Building Standards" as defined in Section 12.B.4 of this Agreement;
    - iii. A Commercial Infrastructure Note in the principal amount of five percent (5%) of the TIF Certified Costs for the Infrastructure upon satisfaction of the Development Milestones relating to restaurant and retail uses on Lot 4 of the Phase One Commercial Area, consisting of not less than 4,000 square feet, and satisfying the "Commercial Building Standards" as defined in Section 12.B.4 of this Agreement; and
    - iv. A Commercial Infrastructure Note in the principal amount of five percent (5%) of the TIF Certified Costs for the Infrastructure upon

satisfaction of the Development Milestones relating to restaurant and commercial uses upon the Commercial Parcel, consisting of not less than 20,000 square feet, and satisfying the “Commercial Building Standards” as defined in Section 12.B.4 of this Agreement.

Notwithstanding the foregoing terms in Sections 12.B.2.a.i-iv, the specified square footage for uses may be modified by an affirmative vote of a majority of the Corporate Authorities.

- b. The Commercial Infrastructure Notes shall be subordinate to payments of principal and interest on the Residential Infrastructure Note and shall be payable solely from the Pledged Infrastructure Note Increment.
- c. Payments of the Pledged Infrastructure Note Increment shall be made on or about December 15 of each calendar year, subject to and limited by the Pledged Infrastructure Note Increment actually received by the City and available for making such payments in accordance with this Section 12.B.2.
- d. Except as otherwise provided in Section 12.B.1.d, payments of the Pledged Infrastructure Note Increment shall be made first to pay any accrued but unpaid interest on the Commercial Infrastructure Notes, and thereafter to pay any principal of the Commercial Infrastructure Notes.
- e. Interest on the Commercial Infrastructure Notes will be six percent (6%) simple interest per annum commencing upon the issuance of each Commercial Infrastructure Note.
- f. Each Commercial Infrastructure Note shall be fully assignable.
- g. The Commercial Infrastructure Notes shall expire (i) upon the expiration of the TIF District or (ii) upon full payment of the principal of the Commercial Infrastructure Note or Notes and all accrued interest thereon, whichever first occurs. If the principal and all interest on the Commercial Infrastructure Notes have not been fully paid upon the expiration of the TIF District, then the holder(s) of the Commercial Infrastructure Notes shall be entitled to no further payment [except to the extent that there remains Pledged Infrastructure Note Increment that had not been previously paid (including any Pledged Infrastructure Note Increment that may be received after the expiration of the TIF District), and subject to any unpaid accrued interest and principal due on the Residential Infrastructure Note]. In no event shall the holder(s) of the Commercial Infrastructure Note(s) have any recourse for payment against the City, except with respect to the Pledged Infrastructure Note Increment.
- h. Following the payment in full of principal and accrued interest on the Residential Infrastructure Note, the Pledged Infrastructure Note Increment shall be available equally to the Commercial Infrastructure Notes, and to the extent that the Pledged Infrastructure Note Increment available on a Note Payment Date is insufficient to pay in full any amounts due under the Commercial Infrastructure Notes, then on each such Note Payment Date the available Pledged Infrastructure Note Increment

shall be made available ratably, based upon the outstanding principal of the Commercial Infrastructure Notes. [By way of example only, if, on a Note Payment Date, (i) the Residential Infrastructure Note has been fully paid, (ii) four separate Commercial Infrastructure Notes have been issued, and (iii) the available Pledged Infrastructure Note Increment is \$2.0 million, then \$800,000 would be available for payments of the Commercial Infrastructure Note issued pursuant to Section 12.B.2.a.i, and \$400,000 would be available for payments of each of the Commercial Infrastructure Note issued pursuant to Section 12.B.2.a.ii-iv.]

- i. Notwithstanding any provision of this Agreement to the contrary, once a Commercial Infrastructure Note had been issued, such Commercial Infrastructure Note cannot be terminated, revoked, or cancelled as a result of any Events of Default under this Agreement, including without limitation, the failure of the Developer to satisfy the Development Milestones related to the Property.
3. Sufficiency of Pledged Infrastructure Note Increment. The Developer has analyzed the anticipated Pledged Infrastructure Note Increment to be generated from its proposed development of the Property, and Developer has determined that the Pledged Infrastructure Note Increment will be sufficient to pay the maximum principal amount of \$8,000,000 plus simple interest at a rate of six percent (6%) per annum. The City has relied on Developer's analysis in agreeing to authorize the Developer Notes for the Infrastructure in the maximum principal amount of \$8,000,000.00 plus simple interest at a rate of six percent (6%) per annum.
  4. Commercial Building Design Standards. The buildings to be constructed within the Phase One Commercial Area must comply with the following standards (the "**Commercial Building Standards**"):
    - a. The architecture of the buildings must comply with the design standards as established in the Final PUD Phase I Ordinance or any subsequent Final PUD Ordinance, including without limitation that all facades must be consistent with the designs illustrated in the concept renderings that will be attached as an exhibit to the Final PUD Phase I Ordinance;
    - b. The building to be developed on Lot 3 of the Final Subdivision Plat within the Phase One Commercial Area as depicted on the Site Plan shall be for restaurant use and consist of at least 5,000 square feet, unless otherwise approved by a resolution of the Corporate Authorities;
    - c. The multi-tenant building located on Lot 2 of the Final Subdivision Plat within the Phase One Commercial Area as depicted on the Site Plan shall consist of at least 6,400 square feet of restaurant use, unless otherwise approved by a resolution of the Corporate Authorities;
    - d. The building to be developed on Lot 4 of the Final Subdivision Plat within the Phase One Commercial Area as depicted on the Site Plan shall be for restaurant and/or commercial uses and consist of at least 4,000 square feet, unless otherwise approved by a resolution of the Corporate Authorities;

- e. The first tenant of any of the buildings to be located within the Phase One Commercial Area as depicted on the Site Plan must have as its principal use one of the following:
- i. Full-service sit-down and limited service restaurants, including outdoor seating;
  - ii. Restaurant users with an entertainment component;
  - iii. Retail uses of clothing, footwear or merchandise;
  - iv. Specialty brewery or distillery, wine, coffee, tea, bakery establishments;
  - v. A combination of the uses described in (i) – (iv) above; or
  - vi. Such other use approved by resolution of the Corporate Authorities.

**C. Additional Redevelopment Project Costs for Phase One Commercial Area.** In addition to the notes set forth in Section 12.B of this Agreement, the City will issue Developer a Developer Note, in a total amount not to exceed six million dollars (\$6,000,000.00), to reimburse Developer for non-Infrastructure TIF Certified Costs relating to the development of commercial buildings located within the Commercial Parcel as set forth in this Section 12.C (the “**Commercial Development Note**”). The City will issue the Commercial Development Note within 90 days after a final determination of the TIF Certified Costs for determining the principal amount of the Commercial Development Note as set forth in Section 12.C.2 below, but in no event until after (i) all work relating to the Infrastructure necessary to serve the Phase One Commercial Area has been completed, and (ii) a final certificate of occupancy has been issued for a not less than 15,000 square feet within the Phase One Commercial Area comporting to the requirements of the Final PUD Phase I Ordinance and the Commercial Building Design Standards; provided that no Commercial Development Note shall be available unless all submittals required under Section 12.G of this Agreement relating to the Commercial Development Note have been delivered to the City within five (5) years after the Effective Date.

1. Maximum Principal Amount. The maximum amount of the Commercial Development Note to be issued by the City shall be Six Million Dollars (\$6,000,000.00).
2. Principal. The principal amount of the Commercial Development Note shall be limited to TIF Certified Costs relating to: (a) land assembly costs allocable to the Commercial Parcel in accordance with the limitations of this Section 12.D of this Agreement; (b) site preparation costs incurred exclusively for the Phase One Commercial Area (exclusive of any costs for Infrastructure); and (c) all other eligible costs defined in 65 ILCS 5/11-74.4-3(q)(1).
3. Interest Rate. The Commercial Development Note shall bear interest at a rate of six percent (6%) simple interest per annum commencing upon the issuance of any Commercial Development Note.
4. Pledged Revenue. The only revenue pledged to pay the Commercial Development Note shall be the Net TIF Increment derived from and allocable to the Commercial Area and

received after the issuance of the Commercial Development Note; provided, however, that, to the extent that there is excess Pledged Infrastructure Note Increment after fully retiring the Residential Infrastructure Note and the Commercial Infrastructure Note, such excess Pledged Infrastructure Note Increment shall be pledged to the payment of the Commercial Development Note (collectively, the "***Pledged Commercial Development Note Increment***").

5. Payments. Payments of the available Pledged Commercial Development Note Increment shall be made on or about the Note Payment Date of each calendar year, subject to and limited by the Pledged Commercial Development Note Increment actually received by the City and available for payment of the Commercial Development Note. Payments of the Pledged Commercial Development Note Increment shall be made first to pay any accrued but unpaid interest on the Commercial Development Note, and thereafter to pay the remaining principal balance of the Commercial Development Note, subject to the availability of Pledged Commercial Development Note Increment.
6. Assignability. The Commercial Development Note shall be fully assignable.
7. Term. The Commercial Development Note shall expire upon the expiration of the TIF District or upon full payment of the principal and all accrued interest on such Commercial Development Note, whichever first occurs. If the principal and all related interest on the Commercial Development Note have not been fully paid upon the expiration of the TIF District, then the holder of Commercial Development Note shall be entitled to no further payment [except to the extent that there remains Pledged Commercial Development Note Increment that had not been previously paid (including any Pledged Commercial Development Note Increment that may be received after the expiration of the TIF District)]. In no event shall the holder of the Commercial Development Note have any recourse for payment against the City, except with respect to the Pledged Commercial Development Note Increment.
8. Irrevocability. Notwithstanding any provision of this Agreement to the contrary, once the Commercial Development Note had been issued, the Commercial Development Note cannot be terminated, revoked, or cancelled as a result of any Events of Default under this Agreement, including without limitation, the failure of the Developer to satisfy the Development Milestones related to the Property.
9. Sufficiency of Net TIF Increment. The Developer has analyzed the anticipated Net TIF Increment to be generated from its proposed development of the Commercial Parcel and has determined that the Pledged Commercial Development Note Increment will be sufficient to pay the maximum principal amount of \$6,000,000.00 plus simple interest at a rate of six percent (6%) per annum. The City has relied on Developer's analysis in agreeing to authorize the Commercial Development Note in the maximum principal amount of \$6,000,000.00 plus simple interest at a rate of six percent (6%) per annum.

**D. Limits on Redevelopment Project Costs**. For purposes of determining TIF Certified Costs relating to any Developer Note, the Owner acknowledges and agrees that:

1. In connection with the Residential Infrastructure Note and Commercial Infrastructure Note, the TIF Certified Costs associated with land assembly or real property acquisition shall be



limited to:

- a. 100% of the Proportionate Land Cost (as hereinafter defined) for any Infrastructure located upon land to be dedicated to the City;
- b. 20% of the Proportionate Land Cost for any Infrastructure to be conveyed to the City within an easement (the extent, terms, and sufficiency of which shall be subject to approval of the City).

The term “**Proportionate Land Cost**” shall be: (i) the purchase cost of the Property at Closing, as such cost is reflected on the transfer stamps associated with Developer’s purchase of the Property the “**Total Land Cost**”), (ii) multiplied by a fraction, the numerator of which is the area of the land being conveyed to the City (whether in fee simple or as an easement), and the denominator of which is the total area of the Property.

2. The TIF Certified Costs for determining the principal amount of the Commercial Development Note may not include more than Six Million Dollars (\$6,000,000.00) relating to Developer’s purchase price of the Property as limited by the following calculation:
  - a. The Total Land Cost, minus
  - b. the amount of TIF Certified Costs claimed pursuant to Section 12.D.1, times
  - c. A fraction, the numerator of which is the area of the Commercial Parcel and the denominator of which is the area of the Property.
3. No more than 15% of the total TIF Certified Costs associated with any Developer Note shall relate to architectural, engineering, legal, financial, planning, surveying or other services; provided, however, that, the foregoing services relating exclusively to the design and inspection of the Infrastructure to be dedicated or conveyed to the City shall not be subject to the limitation in the first clause of this Section 12.D.3.

**E. Requirements for Certification Requests.** Any request for a note under Sections 12.B-12.C of this Agreement shall be contingent upon the submission of a Certification Request that shall be accompanied by: (i) a description of the expense for which certification is sought and of the manner in which it qualifies as a Redevelopment Project Cost; (ii) copies of all bills, contracts, or invoices relative to claimed Redevelopment Project Cost for which the Certification Request is made; and (iii) other documents or information that the City shall reasonably require to evidence claimed Redevelopment Project Cost for which the Certification Request is made (a “**Redevelopment Expense**”). In addition, the Developer shall cause executed contracts or leases (subject to redaction of confidential or proprietary terms) for the sale, lease, or development of any portion of the Phase One Commercial Area to be delivered to the City prior to or contemporaneously with the submission of a Certification Request. Unless the documentation set forth in the preceding sentences is provided with respect to Redevelopment Expenses associated with any of the notes described in Sections 12.B through 12.C above, and after the delivery of a 30-day notice to Developer during which time the Developer fails to submit the required documentation, the City shall have no obligation to certify (or issue a note for) the Redevelopment Expenses related to such note. To the extent that such documentation for the Developer Redevelopment Project Costs for the Infrastructure supports the expenses set forth in

Exhibit G attached hereto (the “**Authorized Infrastructure Expenses**”), the City agrees that such expenses will be approved as “TIF Certified Costs” pursuant to Section 12.G of this Agreement.

**F. Eligibility for Payment.** Notwithstanding any other provision of this Agreement, reimbursement of Redevelopment Expenses shall be provided only if:

1. The Redevelopment Expenses are actually incurred;
2. Such Redevelopment Expenses are also Redevelopment Project Costs, as defined in the TIF Act;
3. Such Redevelopment Expenses are also TIF Certified Costs (as defined in Section 12.G);
4. To the extent applicable, such Redevelopment Expenses satisfy the requirements and limitations set forth in Section 12.D of this Agreement;
5. The City Engineer and Community Development Director have determined that all requirements set forth in this Agreement have been satisfied (which determination shall not be unreasonably withheld, conditioned, or delayed);
6. Reimbursement is permitted pursuant to this Agreement, the Redevelopment Plan, the City’s home rule powers, and the TIF Act;
7. The reimbursement of Redevelopment Expenses qualifies for reimbursement through a note authorized pursuant to Sections 12.B through 12.C of this Agreement; and
8. The Developer is not in material default or breach of any obligation under this Agreement (subject to applicable cure provisions) at the time the Certification Request is submitted.

**G. City Review of Certification Requests.** The City Manager, in consultation with the City Engineer and Community Development Director, shall approve or disapprove a completed Certification Request relating to Redevelopment Expenses within 30 days after its submission. In order to make any such determination, the City reserves the right to review the books and records of Developer relating to the Redevelopment Expenses that are the subject of the Certification Request. To the extent that a Certification Request is approved, the City Manager shall notify the Developer which Redevelopment Expenses identified in the Certification Request have been approved as “**TIF Certified Costs**,” as well as the manner of reimbursement for such TIF Certified Costs. If the City disapproves any Certification Request (in whole or in part), the City shall specify the basis for such disapproval in reasonable detail within 30 days after the date the City receives the Certification Request, and the Developer shall have an opportunity to submit corrections to any such Certification Request on a continuing basis until the City either approves the request or gives final denial of the Certification Request.

**H. Other Redevelopment Incentives.** Except as provided in this Section 12, the City shall have no obligation to provide any reimbursement or incentive in connection with the redevelopment of the Property.

## SECTION 13. INSURANCE.

**A. Insurance Policies.** From the date construction begins under this Agreement and continuously thereafter until such time as the City accepts the Public Improvements, the Developer shall provide and maintain, or cause to be provided and maintained, the following insurance in the following amounts insuring the Developer as well as the City and all elected and appointed officers, officials, employees, agents, attorneys, and representatives of the City:

1. **General Liability.** Commercial General Liability insurance (including contractual liability arising from this Agreement) in the minimum amounts of: (a) Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury or death to each person; (b) Three Million Dollars (\$3,000,000.00) per occurrence for property damage; and (c) Three Million Dollars (\$3,000,000.00) per occurrence for all other types of liability. Developer's insurance shall cover premises operations, products/completed operations, explosions and collapse hazard, underground hazard and products, and completed hazard, in the minimum amount of Three Million Dollars (\$3,000,000.00). All with a general aggregate of not less than \$6,000,000.00. The City, and all elected and appointed officers, officials, employees, agents, attorneys, and representatives of the City shall be included as additional insured on a primary and non-contributor basis evidenced by original policy endorsements CG 20 10 or CG 20 26 and CG 20 37 and CG 20 01 or their equivalent.
2. **Worker's Compensation.** Worker's Compensation Insurance within the statutory limits and Employer's Liability Insurance with not less than One Million Dollars (\$1,000,000.00) coverage.
3. **Business Auto Liability.** Business Auto Liability coverage in the amount of \$1,000,000.00 combined single limit bodily injury and property damage with a \$2,000,000.00 aggregate. Coverage should include any auto, including owned, non-owned, hired or rented vehicles.

The foregoing coverage requirements may be satisfied with a combination of primary and umbrella policies, subject to the reasonable approval of the City Manager.

**B. Evidence of Insurance Policies.** Before commencing construction of any Property Improvements, Developer shall furnish proof to the City Manager that the foregoing insurance policies have been obtained, along with reasonably satisfactory evidence that the required premiums have been paid. Until the Public Improvements are accepted by the City pursuant to Section 9.A of this Agreement, the Developer shall renew such insurance in a timely manner so as to avoid any penalty or lapse in coverage. The Developer shall deliver proof of such renewal, including proof that any insurance premium has been paid, within ten days of such renewal. Upon request of the City, the Developer shall deliver to the City complete copies of the policies.

**C. Notice to the City.** Each insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled or

otherwise terminated not less than 20 days after receipt by the City by registered mail, of a written notice addressed to the City Manager of such intent to cancel or impending termination."

Within 20 days after receipt by the City of this notice and prior to said cancellation or termination, the Developer shall obtain and furnish to the City replacement insurance policies in form and substance acceptable to the City Attorney.

**D. Insurance Requirements under a Final PUD Ordinance.** In addition to the insurance set forth in this Section 13, the City may require the securing and maintenance of insurance consistent with the requirements set forth in this Section 13 for specified activities identified in any Final PUD Ordinance.

#### **SECTION 14. LIABILITY AND INDEMNITY OF CITY.**

**A. City Review.** The Developer (on behalf of itself and any Developer Affiliate) acknowledges and agrees that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Property (or any portion thereof), the Project, or the Property Improvements, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Property, the Project, or the Property Improvements, and that the City's review and approval of any such plans and the Property Improvements and issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure any Developer or any Developer Affiliate, or any of their respective successors, assigns, tenants, and licensees, or any third party, against damage or injury of any kind at any time, except as may be caused by the City's gross negligence or willful misconduct and not otherwise protected by the City's statutory immunities.

**B. City Procedure; Cooperation in Undertaking Corrective Action.** The Parties acknowledge and agree that, to the best of their knowledge and understandings, all notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Agreement, and Parties agree not to challenge such approval on the grounds of any procedural infirmity or of any denial of any procedural right. In addition, Developer, on behalf of itself, any and all Developer Affiliate, and their successors and assigns, waives and releases any and all claims it may have regarding (i) the City's review and approval of this Agreement or any plans for the Property (or any portion thereof), the Project, the Property Improvements, or the TIF District, or (ii) the issuance of any approval, permit, certificate, or acceptance for the Property (or any portion thereof), the Project, or the Property Improvements. In the event any third-party challenge is asserted with respect to any procedural or substantive infirmity or of any denial of any procedural right with respect to any review, approval, permit, certificate, or acceptance for the Property, the Project, or the Property Improvements, the Parties agree to cooperate with each other in any manner reasonably necessary or appropriate to take corrective action to address any asserted infirmity or denial or procedural right.

**C. Indemnity.** Except with respect to any challenges regarding the establishment of the TIF District by the City, the Developer (on behalf of itself and each and every Developer Affiliate) agrees to, and does hereby, hold harmless and indemnify the City, the Corporate Authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any

time against any of such parties in connection with (i) the development, construction, maintenance, or use of any portion of the Property, the Project, or the Property Improvements; (ii) any City procedures relating to the matters identified in Section 14.C(i); and (iii) the performance by the Developer (and each and every Developer Affiliate) of the obligations under this Agreement, except as may be caused by the City's sole negligence, gross negligence, or willful misconduct.

**D. Developer Defense Expense.** The Developer (on behalf of itself and each and every Developer Affiliate) shall, and does hereby agree to, pay all expenses, including reasonable legal fees and administrative expenses, incurred by the City in defending itself with regard to any and all of the claims referenced in Subsection 14.C of this Agreement.

**E. Other Defense Expense.**

1. Subject to any corrective action as described in Section 14.B of this Agreement, the City, at its sole cost and expense, will defend any challenges regarding the establishment of the TIF District and any challenges solely related to the City's obligations under this Agreement.
2. The City will not oppose any intervention petition by the Developer (or any Developer Affiliate) in any suit or action in which the establishment of the TIF District or the procedural sufficiency of the City's approvals relating to the Project or this Agreement is at issue.
3. The City will cooperate with the Developer (and any Developer Affiliate) in defending any challenges in which the procedural sufficiency of the City's approvals relating to the Project or this Agreement is at issue, provided that the Developer (and any Developer Affiliate) shall be jointly and severally liable to reimburse the City for all of its costs and expenses, including reasonable attorneys' fees.
4. With respect to any substantive challenges to the approvals relating to the Project, the City will cooperate with the Developer (and any Developer Affiliate) in defending such substantive challenges, but the City will have no obligation to incur out-of-pocket expenses in connection with such cooperation; provided that the City may elect to participate directly in the defense of such substantive challenges, subject to reimbursement by the Developer (and each and every Developer Affiliate) as herein provided.
5. The City acknowledges that any reimbursements and reasonable defense costs incurred by Developer under this Section shall qualify as a Redevelopment expense under this Agreement.

**SECTION 15. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.**

**A.** Developer agrees not sell or transfer its legal or beneficial interest in all or any portion of the Property, other than the sale of individual Residential Units or a transfer to a

Developer Affiliate, prior to completion of all Infrastructure; except that the Developer may sell or transfer a portion of the Property to an end-user of such portion of the Property, subject to approval of such sale by resolution approved by the City Council. If the Developer transacts any sale or transfer in violation of this Section 15.A, the Developer shall forfeit its right to receive any reimbursement for Redevelopment Expenses pursuant to Section 12 of this Agreement. Nothing in this provision shall prevent the Developer from conveying a financial interest in either the Commercial Parcel or the Residential Parcel to an institutional investor, joint venturer, or lender that is providing financing and/or capital for or on behalf of Developer or a Developer Affiliate, so long as the Developer (or a Developer Affiliate) retains control of the Development Work for the Infrastructure and the Residential Parcel.

**B.** All obligations assumed by any Developer under this Agreement shall be binding upon the Developer, Developer Affiliates, and their successors, and assigns, and upon any and all of the respective successor legal or beneficial owners of all or any portion of the Property, provided, however, that no such successors, assigns, or successor owners shall be entitled to receive any reimbursement for Redevelopment Expenses unless the Developer gives notice to the City that a Developer Note, or the right to receive a Developer Note in accordance with the terms of this Agreement, has been assigned. To assure that all such successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Developer shall:

1. Deposit with the City Clerk, contemporaneously with the City's approval of this Agreement, any consents or other documents necessary to authorize the City to record this Agreement (or a memorandum of agreement in a form mutually acceptable to the City and Developer) with the McHenry County Recorder of Deeds; and
2. Notify the City in writing when the Developer transfers a legal or beneficial interest in any portion of the Property, other than the sale of an individual Residential Unit, to any other party (including a Developer Affiliate); and
3. Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into for the sale of all or any portion of the Property, other than an individual Residential Unit, to any other party (including a Developer Affiliate); and
4. Require, prior to the transfer of all or any portion of the Property other than an individual Residential Unit, or any legal or equitable interest therein to any other party (including a Developer Affiliate), the transferee of said portion of the Property to execute an enforceable written agreement, in substantially the form attached as Exhibit H to this Agreement, agreeing to be bound by the provisions of this Agreement ("**Transferee Assumption Agreement**"), and to provide the City, upon request, with such reasonable assurance of the financial ability of such transferee to meet those obligations as the City may require.

The City agrees that upon a successor or assignee becoming bound to the obligations created in the manner provided in this Agreement and providing the financial assurances required herein, the liability of the Developer shall be released to the extent of the transferee's assumption of such liability. The failure to provide the City with a fully executed copy of a Transferee Assumption Agreement and, if requested by the City, with the transferee's proposed assurances of financial capability before completing any such transfer shall result in the Developer remaining fully liable

for all applicable obligations under this Agreement until such items are provided to the reasonable satisfaction of the City, but shall not relieve the transferee of its liability for all such obligations as a successor to the Developer.

**C. Limitation of Owner Obligations and Rights.** Except as otherwise expressly set forth in this Agreement, the rights and obligations of all owners of portions of the Property under this Agreement shall be limited to those rights and obligations directly related to or arising out of the portion of the Property owned by such owners.

**D. Excluded Assignments.** This Section does not prohibit, nor require the City's consent to, the collateral assignment of this Agreement to a construction lender or a permanent lender of a Developer, if required thereby. If any mortgagee or institutional investor shall succeed to the Developer's interest in the Property pursuant to the exercise of remedies under a mortgage or joint venture agreement, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest in this Agreement, the City hereby agrees to attorn to and recognize such party as the successor in interest to such Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of such Developer hereunder and under the Final PUD Ordinance. If any mortgagee does not expressly accept an assignment of a Developer's interest hereunder, then such party shall be entitled to no rights and benefits under this Agreement. If any such mortgagee or institutional investor requests the City to acknowledge and or consent to such collateral assignment or pledge in a written collateral assignment, pledge, or similar agreement, the Corporate Authorities will authorize the execution of same after review and approval by the City Attorney, which review, approval, and execution will not be unreasonably withheld, conditioned, or delayed.

## **SECTION 16. TERM.**

This Agreement shall remain in full force and effect from the Effective Date until the TIF District expires in accordance with the TIF Act; provided, however, that the Developer's construction obligations hereunder shall terminate pursuant to certificates of completion issued by the City. In addition, if the Closing does not occur within six (6) months after the Effective Date, the City shall have the right, in its sole discretion, to terminate this Agreement. This Agreement may also be terminated as expressly provided elsewhere in this Agreement. Nothing in this Agreement shall preclude Developer from seeking modifications to the terms hereof to comport with changes in the TIF Act.

## **SECTION 17. DEVELOPER REPRESENTATIONS, COVENANTS, AND WARRANTIES.**

The Developer represents, warrants, and covenants, as of the date of this Agreement, that:

- i. It is an Illinois limited liability company, duly organized, validly existing, qualified to do business in Illinois;
- ii. the Developer has the right, power, and authority to enter into, execute, deliver and perform this Agreement, and the Developer is in compliance with all Requirements of Law, the failure to comply with which could affect the ability of Developer to perform its obligations under this Agreement;

- iii. the execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary corporate action, and do not and will not violate its organizational documents or articles of incorporation, as amended and supplemented, any of the applicable Requirements of Law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which the Developer is now a party or by which Developer is now or may become bound, and the person(s) executing this Agreement on behalf of the Developer is fully authorized to do so;
- v. there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, affecting Developer or, to its knowledge, threatened which would materially impair its ability to perform under this Agreement;
- vi. Developer shall apply for and shall maintain all government permits, certificates, and consents necessary to conduct its business and to construct and complete the Project as required by this Agreement; and
- vii. Developer and/or Developer Affiliates have sufficient access to financial and economic resources to implement and complete its obligations under this Agreement, and the financial information and other written data that Developer has provided to the City (including confidential proprietary information and data) are true and correct in all material respects as of the dates of such information and data. There have been no material adverse changes in the business, operations, ownership, or condition (financial or legal) of Developer as disclosed in such information and data, and Developer has no knowledge of any liabilities, contingent or otherwise, of which Developer might have a material adverse effect upon its ability to perform its obligations under this Agreement. The financial projections provided to the City are the same in all material respects as the financial projections provided by Developer to the provider(s) of the Project financing.

**SECTION 18. [RESERVED].**

**SECTION 19. CITY REPRESENTATIONS, COVENANTS, AND WARRANTIES.**

The City represents, warrants and agrees as the basis for the undertakings on its part contained in this Agreement that:

- i. The City is a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- ii. The execution, delivery and the performance of this Agreement and the consummation by the City of the transactions provided for herein, and the compliance with the provisions of this Agreement: (a) have been duly



authorized by all necessary corporate action on the part of the City, (b) require no other consents, approvals or authorizations on the part of the City in connection with the City's execution and delivery of this Agreement, and (c) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition, or provision of any indenture, agreement, or other instrument to which the City is subject.

- iii. The persons executing or attesting this Agreement on behalf of the City are fully authorized to do so.
- iv. The notices, hearings, other proceedings, actions, and approvals undertaken by or on behalf of the City in connection with this Agreement and the matters described in this Agreement have been completed in the manner required by law, and that there are no proceedings pending or threatened against or affecting the City or the Property in any court or before any governmental authority that involves the possibility of materially or adversely affecting the ability of the City to perform its obligations under this Agreement or the matters described in this Agreement.
- v. The City has taken or is obligated to take all such actions as may be required to appropriate funds pursuant to Illinois law to satisfy its obligations to the Developer under this Agreement.

## **SECTION 20. ENFORCEMENT.**

The Parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce, or compel the performance of this Agreement; provided, however, that Developer (on behalf of itself and any Developer Affiliate) agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement; provided further that this limitation does not extend to claims for reimbursement of Redevelopment Expenses pursuant to Section 12 of this Agreement. Notwithstanding the preceding sentence, in the event of a judicial proceeding brought by one Party to this Agreement against the other Party to this Agreement, the prevailing Party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the City shall be entitled to withhold the issuance of building permits or certificates of occupancy for any Property Improvements requested by Developer for a portion of the Property at any time that Developer has failed or refused to meet any of its obligations under this Agreement in a material way.

## **SECTION 21. DEFAULT.**

**A. Events of Default by the Developer.** Each of the following shall be an "**Event of Default**" with respect to this Agreement:

- i. If any material representation made by Developer in this Agreement, or in

any certificate, notice, demand, or request made by a representative of Developer in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within 30 days after written notice from the City specifying the nature and extent of such default.

- ii. Default by Developer for a period of 30 days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the existence, structure, or financial condition of the Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said 30 days and the Developer, within said 30 days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.
- iii. Default by Developer for a period of 30 days after written notice thereof in the performance or breach of any covenant, warranty, or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said 30 days and the Developer, within said 30 days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.
- iv. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect to Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days.
- v. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within 60 days after such filing.
- vi. Failure to have adequate funds to satisfy the obligations under this Agreement; provided, however, that such default shall constitute an Event of Default only if the default is not remedied within 90 days after written notice from the City.

- vii. Sale, assignment, or transfer of all or any portion of the Property except in accordance with this Agreement.
- viii. Material change in the organizational status of Developer except in accordance with Section 15 of this Agreement.
- ix. Developer abandons the Project on the Property or any portion thereof. Abandonment shall be deemed to have occurred when work stops for more than 90 consecutive days for any reason other than Force Majeure.
- x. Developer fails to comply with the Requirements of Law in relation to the construction and maintenance of the buildings contemplated by this Agreement; provided, however, that such default shall constitute an Event of Default only if the Developer does not remedy the default within 30 days after written notice from the City; provided, however, that such default shall not constitute an Event of Default if such default cannot be cured within said 30 days and the Developer, within said 30 days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 90 days after such notice.
- xi. A representation or warranty of Developer is not true for a period of 30 days after written notice from the City.

**B. Events of Default by the City.** The following shall be Events of Default with respect to this Agreement:

- i. If any material representation made by the City in this Agreement, or in any certificate, notice, demand, or request made by a representative of the City in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the City does not remedy the default, within 30 days after written notice from Developer.
- ii. Default by the City in the performance or breach of any covenant contained in this Agreement in a material way concerning the existence, structure or financial condition of the City; provided, however, that such default or breach shall constitute an Event of Default if the City does not, within 30 days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default.
- iii. Default by the City in the performance or breach of any material covenant, warranty, or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the City, commences cure within 30 days after written notice from Developer and in any event cures such default within 60 days after such notice, subject to Force Majeure.

**C. Remedies for Default.** In the case of an Event of Default under this Agreement:

- i. The defaulting party shall, upon written notice from the non-defaulting party as provided in this Section 21, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, within the time period provided, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement or termination of this Agreement.
- ii. In case the City shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Developer and the City shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the City shall continue as though no such proceedings had been taken.

## **SECTION 22. GENERAL PROVISIONS.**

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

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

City of Crystal Lake  
100 West Woodstock Street  
Crystal Lake, Illinois 60014  
Attention: Eric Helm, City Manager  
Email: ehelm@crystallake.org

With copies to:

Kathryn Cowlin  
Director of Community Development  
City of Crystal Lake  
100 West Woodstock Street  
Crystal Lake, Illinois 60014  
Email: [kcowlin@crystallake.org](mailto:kcowlin@crystallake.org)

and

Victor P. Filippini, Jr.  
Filippini Law Firm  
One Rotary Center  
1560 Sherman Avenue, Suite 220  
Evanston, Illinois 60201  
Email: [victor.filippini@filippinilawfirm.com](mailto:victor.filippini@filippinilawfirm.com)

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

Peter Wall  
Petaque & Wall  
1535 N Elston Ave  
Chicago, IL 60642  
[pwall@hrep.com](mailto:pwall@hrep.com)

With a copy to:

Timothy Grogan  
Heartland Real Estate Partners, LLC  
1535 N Elston Ave  
Chicago, IL, 60642  
[tgrogan@hrep.com](mailto:tgrogan@hrep.com)

and a copy to:

Mr. John Green  
c/o Lynwood Development Corporation  
8120 Gage Lane  
Cary, IL 60013  
[john@johngreenldc.com](mailto:john@johngreenldc.com)

and a copy to:

Firsel Ross & Weis  
10 Parkway North Blvd., Suite 110  
Deerfield, IL 60015  
Attn: Michael D. Firsel, Esq.  
[mfirsel@firselross.com](mailto:mfirsel@firselross.com)

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

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

**D. Non-Waiver.** None of the Parties shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of any Party to exercise such right at any time shall not be deemed or construed to be a waiver thereof, nor shall such failure void or affect that Party's right to enforce such right or any other right.

**E. Consents.** Whenever the consent or approval of any Party hereto is required in this Agreement such consent or approval shall be in writing and shall not be unreasonably withheld, conditioned, or delayed.

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

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

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

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

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

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

**L. Exhibits.** Exhibits A through I attached to this Agreement are, by this reference,

incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

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

**N. Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law shall be deemed to include any modifications of, or amendments to such Requirements of Law as may, from time to time, hereinafter occur.

**O. Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar day unless a business day is specified. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or State holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or State holiday.

**P. No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against the City or the Developer. Any right or responsibility of the Developer under this Agreement may be assigned to any Developer Affiliate upon notice to (but without a requirement of approval by) the City, unless otherwise expressly provided elsewhere in this Agreement,

**Q. Estoppel Certificates.** Each of the Parties hereto agrees to provide (and the City and Developer each authorize its attorney to provide) the other, upon not less than ten (10) business days prior request, a certificate ("**Estoppel Certificate**") certifying that this Agreement is in full force and effect (unless such is not the case in which such Party shall specify the basis for such claim), that the requesting Party is not in default of any term, provision, or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party.

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE TO REDEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed to be effective as of the day and year first above written.

THE CITY OF CRYSTAL LAKE,  
an Illinois municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF                )

I, the undersigned, a Notary Public in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that \_\_\_\_\_, as \_\_\_\_\_ of **THE CITY OF CRYSTAL LAKE**, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said municipal corporation for the uses and purposes therein set forth.

**GIVEN** under my hand and Notarial Seal this \_\_\_\_\_, 202\_\_.

**SEAL**

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

My Commission expires:

Date: \_\_\_\_\_, 202\_\_



SIGNATURE PAGE TO REDEVELOPMENT AGREEMENT

**IN WITNESS WHEREOF**, each party hereto has caused this Agreement to be duly executed to be effective as of the day and year first above written.

**HEARTLAND REAL ESTATE PARTNERS, LLC**  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ILLINOIS        )  
  ) **SS.**  
COUNTY OF                )

I, the undersigned, a Notary Public in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that \_\_\_\_\_, as \_\_\_\_\_ of **HEARTLAND REAL ESTATE PARTNERS, LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said municipal corporation for the uses and purposes therein set forth.

**GIVEN** under my hand and Notarial Seal this \_\_\_\_\_, 202\_\_.

**SEAL**

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

My Commission expires:

Date: \_\_\_\_\_, 202\_\_

**LIST OF EXHIBITS**

- Exhibit A:** Legal Description of the Property
- Exhibit B:** TIF District Depiction
- Exhibit C:** Site Plan for Property
- Exhibit C-1:** Description of Residential Apartment Area
- Exhibit C-2:** Description of Residential Townhome Area
- Exhibit C-3:** Description of Phase One Commercial Area
- Exhibit C-4:** Description of Phase Two Commercial Area
- Exhibit D:** Infrastructure Plan
- Exhibit E:** Development Milestones
- Exhibit F:** Form of Performance and Payment Bond
- Exhibit F-1:** Form of Performance and Payment Guaranty Bond
- Exhibit F-2:** Form of Performance and Payment Agreement
- Exhibit G:** Authorized Infrastructure Expenses
- Exhibit H:** Transferee Assumption Agreement
- Exhibit I:** Form of Developer Note

**Exhibit A**

**Legal Description of the Property**

PARCEL 1:

LOT 2 IN CRYSTAL COURT SUBDIVISION, BEING A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 43 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 25, 1989 AS DOCUMENT NO. 89R16170 AND RE-RECORDED AUGUST 23, 1989 AS DOCUMENT NO. 89R24953, IN MCHENRY COUNTY, ILLINOIS

P.I.Ns.: 19-09-126-010 & -011

PARCEL 2:

LOT 3 IN CRYSTAL COURT SUBDIVISION, BEING A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 43 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 25, 1989 AS DOCUMENT NO. 89R16170 AND RE-RECORDED AUGUST 3, 1989 AS DOCUMENT NO. 89R24953, IN MCHENRY COUNTY, ILLINOIS.

P.I.N.: 19-09-126-018

PARCEL 3:

LOT 4 IN CRYSTAL COURT SUBDIVISION, BEING A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 43 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 25, 1989 AS DOCUMENT NO. 89R16170 AND RE-RECORDED AUGUST 3, 1989 AS DOCUMENT NO. 89R24953, IN MCHENRY COUNTY, ILLINOIS.

P.I.N.: 19-09-126-006

PARCEL 4:

LOT 5 IN CRYSTAL COURT SUBDIVISION, BEING A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 43 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 25, 1989 AS DOCUMENT NO. 89R16170 AND RE-RECORDED AUGUST 23, 1989 AS DOCUMENT NO. 89R24953, IN MCHENRY COUNTY, ILLINOIS.

P.I.N.: 19-09-126-014

PARCEL 5:

LOT 6 IN CRYSTAL COURT SUBDIVISION, BEING A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 43 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 25, 1989 AS DOCUMENT NO. 89R16170 AND RE-RECORDED AUGUST 23, 1989 AS DOCUMENT NO. 89R24953, IN MCHENRY COUNTY, ILLINOIS.

P.I.N.: 19-09-126-012 & 013

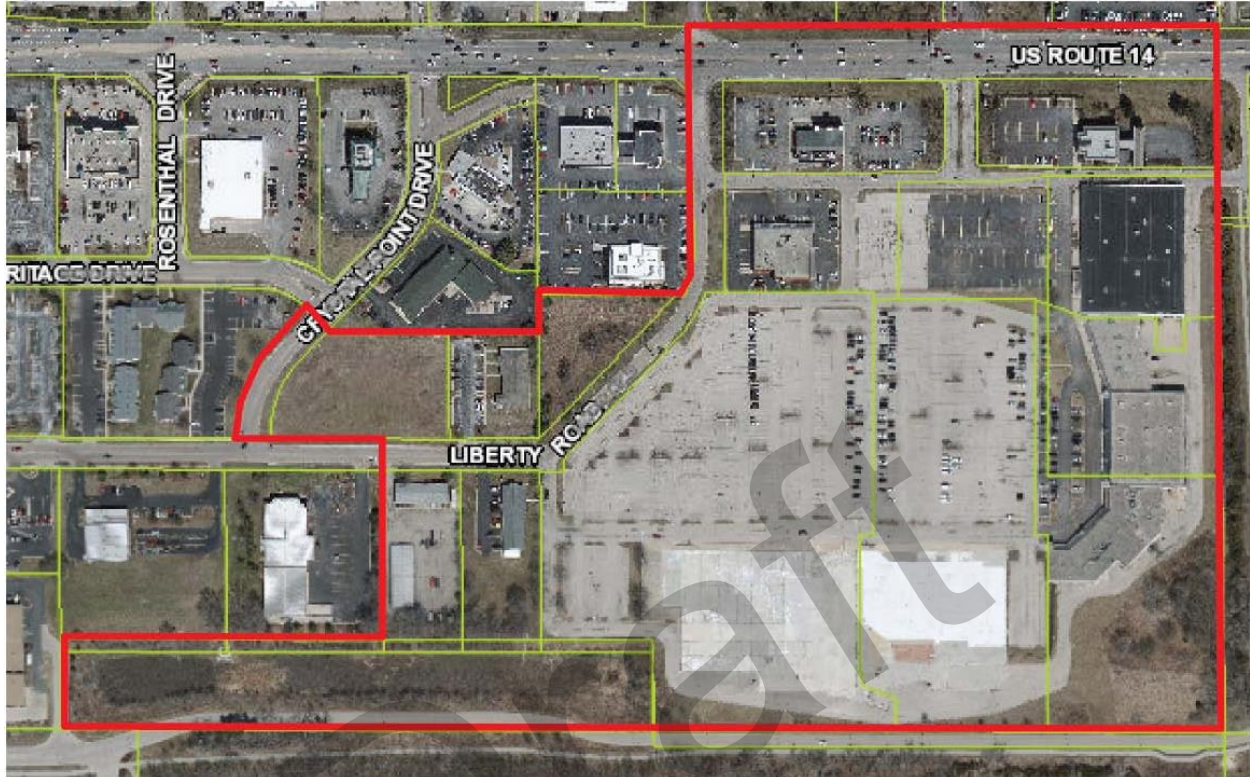
PARCEL 6:

LOT 1 IN THE FINAL PLAT OF RESUBDIVISION OF LOT ONE IN CRYSTAL COURT SUBDIVISION, BEING A RESUBDIVISION OF LOT 1 IN CRYSTAL COURT SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 43 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 15, 2011 AS DOCUMENT NUMBER 2011R0024670, IN MCHENRY COUNTY, ILLINOIS.

P.I.N.: 19-09-126-019

Draft

**Exhibit B**  
**Depiction of the Water's Edge TIF District**

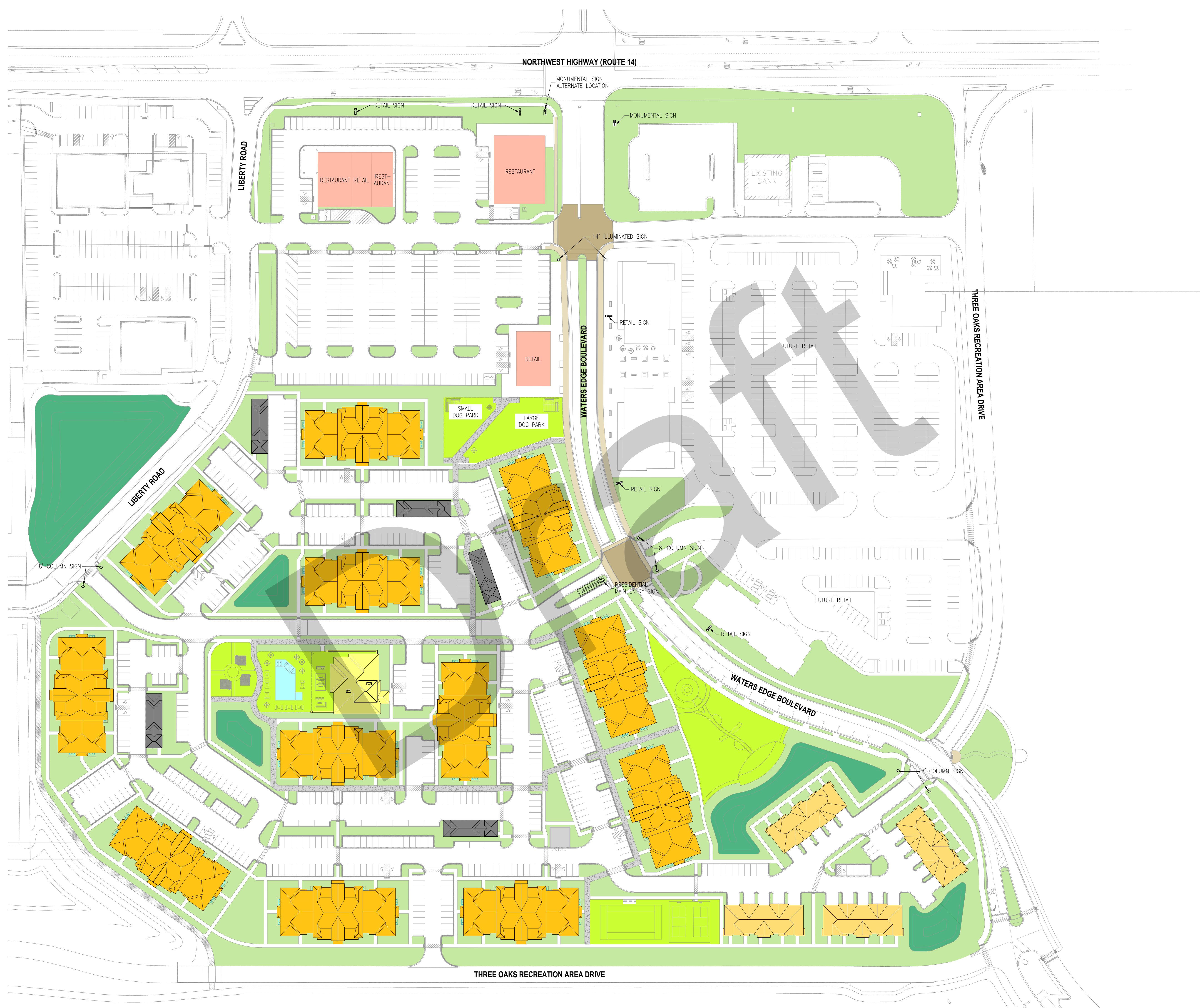


**Exhibit C**  
**Site Plan**

Draft

**LEGEND**

- RETAIL
- APARTMENT
- TOWNHOUSE
- CLUBHOUSE
- GARAGE
- TRASH
- LANDSCAPE
- ACTIVITY PARK
- POOL
- BASIN
- SIDEWALK PAVEMENT
- INTERSECTION PAVEMENT



**SCOPE OF DOCUMENT**

1. THIS DOCUMENT WITH THE ACCOMPANYING DRAWINGS AND SPECIFICATIONS, DESCRIBES THE GENERAL SCOPE OF THE PROJECT AND DESIGN CONCEPT IN TERMS OF THE ARCHITECTURAL, STRUCTURAL, MECHANICAL AND ELECTRICAL SYSTEMS. THESE DOCUMENTS DO NOT NECESSARILY INDICATE OR DESCRIBE ALL OF THE WORK REQUIRED FOR THE FULL PERFORMANCE AND COMPLETION OF THE REQUIREMENTS OF THE CONTRACT.
2. ON THE BASIS OF THE SCOPE INDICATED OR DESCRIBED, THE CONTRACTOR SHALL DETERMINE AND INCLUDE IN HIS PROPOSALS ALL ITEMS NECESSARY TO PROVIDE THE PROPER EXECUTION AND COMPLETION OF THE WORK.

**GENERAL NOTES**



*Arden D. Freeman*

**NOT FOR CONSTRUCTION**

NUMBER	ISSUED FOR	DATE
3	ISSUED FOR PRELIMINARY PRICING	07.14.2023
2	ISSUED FOR PRELIMINARY PRICING	06.30.2023
1	PRELIMINARY SCHEMATIC DESIGN	06.02.2023

**BUILT FORM ARCHITECTURE**  
935W CHESTNUT ST, #520  
Chicago, IL 60642

**Client:**  
Heartland Real Estate Partners (HREP)  
1535 North Elston Avenue, Chicago, IL 60642

**CIVIL ENGINEER AND LANDSCAPE ARCHITECT:**  
Manhard Consulting  
One Overlook Point, Suite 290, Lincolnshire, IL 60069

**STRUCTURAL ENGINEER:**  
PEC Structural Engineering  
3004 L & N Drive/ Suite #3, Huntville, AL 35801

**MECHANICAL / ELECTRICAL / PLUMBING ENGINEER:**  
Advance Consulting Group International  
300 W. Adams Street, Suite 420, Chicago, IL 60606

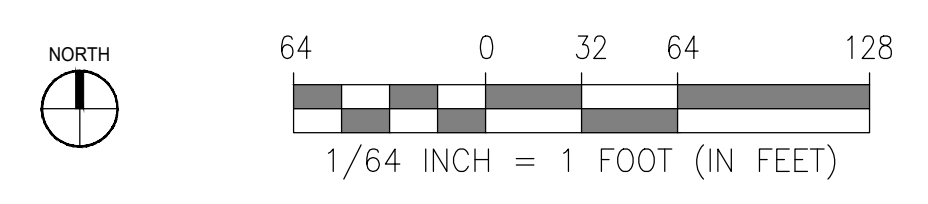
**PROJECT:**  
WATER'S EDGE  
5561-5657 NORTH WEST HIGHWAY, CRYSTAL LAKE, IL

**SHEET TITLE:**  
Site Plan

**PROJECT NO.:** 23-427  
**DATE:** 03-27-2023

**A-100A**

**G8 SITE PLAN**  
SCALE: 1/64" = 1'-0"



**Exhibit C-1**

**Description of the Residential Apartment Area**

Lot 1 and Outlots A-C, and Outlots E-F as depicted on the Final Subdivision Plat approved as part of the Final PUD Phase I Ordinance.

Draft



**Exhibit C-2**

**Description of the Residential Townhome Area**

Lot 6 and Outlots G-H as depicted on the Final Subdivision Plat approved as part of the Final PUD Phase I Ordinance.

Draft

**Exhibit C-3**

**Description of the Phase One Commercial Area**

Lots 2-4 and Outlot D as depicted on the Final Subdivision Plat approved as part of the Final PUD Phase I Ordinance.

Draft

**Exhibit C-4**

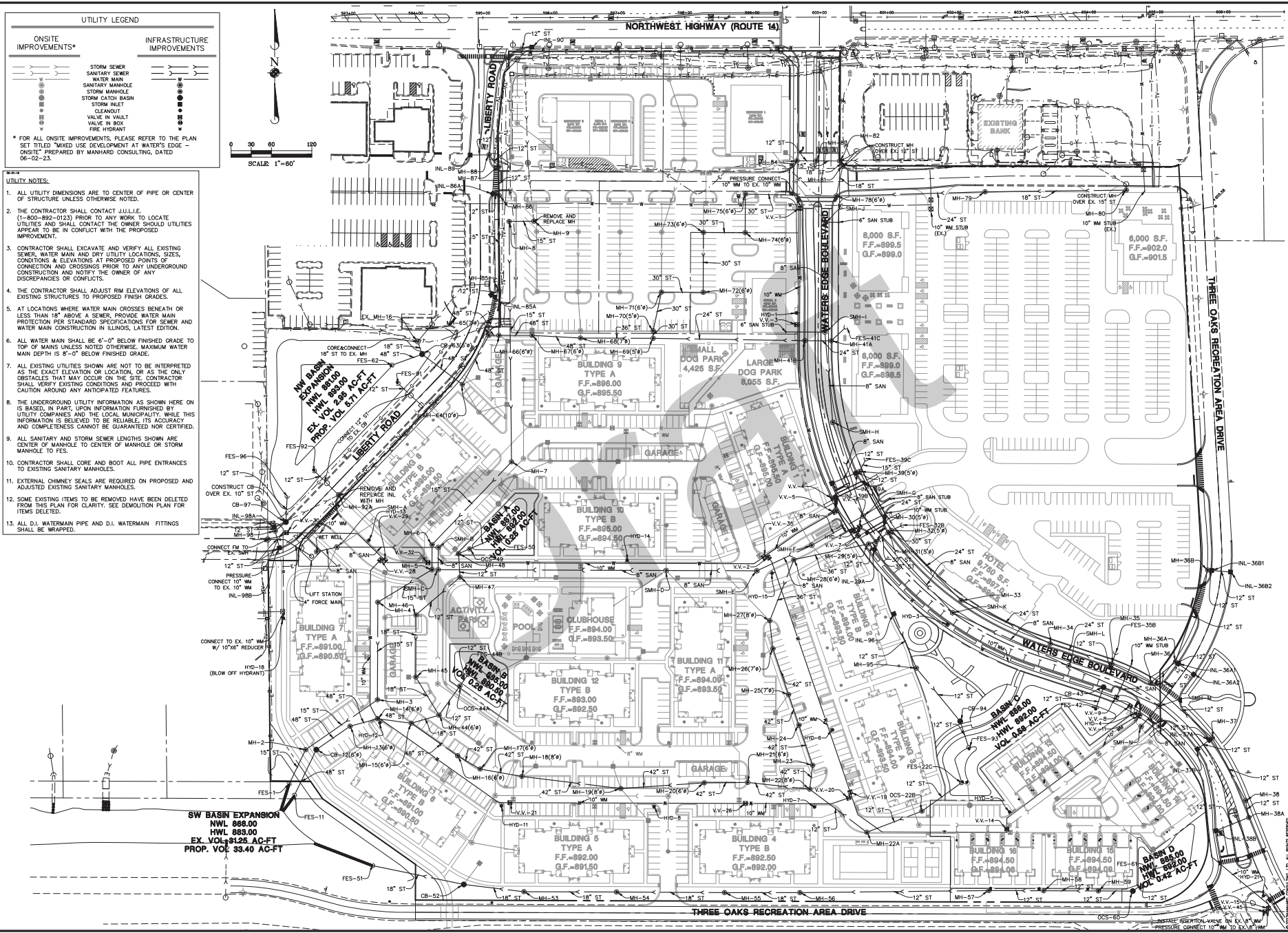
**Description of the Phase Two Commercial Area**

Lot 5 as depicted on the Final Subdivision Plat approved as part of the Final PUD Phase I Ordinance.

Draft

**Exhibit D**  
**Infrastructure Plan**

Draft



**UTILITY LEGEND**

ONSITE IMPROVEMENTS*	INFRASTRUCTURE IMPROVEMENTS
STORM SEWER	STORM SEWER
SANITARY SEWER	SANITARY SEWER
WATER MAIN	WATER MAIN
SANITARY MANHOLE	SANITARY MANHOLE
STORM MANHOLE	STORM MANHOLE
STORM CATCH BASIN	STORM CATCH BASIN
STORM INLET	STORM INLET
CLEANOUT	CLEANOUT
VALVE IN VAULT	VALVE IN VAULT
VALVE IN BOX	VALVE IN BOX
FIRE HYDRANT	FIRE HYDRANT

\* FOR ALL ONSITE IMPROVEMENTS, PLEASE REFER TO THE PLAN SET TITLED "MIXED USE DEVELOPMENT AT WATERS EDGE - ONSITE" PREPARED BY MANHARD CONSULTING, DATED 06-02-23.

SCALE: 1"=60'

- UTILITY NOTES:**
- ALL UTILITY DIMENSIONS ARE TO CENTER OF PIPE OR CENTER OF STRUCTURE UNLESS OTHERWISE NOTED.
  - THE CONTRACTOR SHALL CONTACT J.U.L.I.E. (1-800-892-0123) PRIOR TO ANY WORK TO LOCATE UTILITIES AND SHALL CONTACT THE OWNER SHOULD UTILITIES APPEAR TO BE IN CONFLICT WITH THE PROPOSED IMPROVEMENT.
  - CONTRACTOR SHALL EXCAVATE AND VERIFY ALL EXISTING SEWER, WATER MAIN AND DRY UTILITY LOCATIONS, SIZES, CONDITIONS & ELEVATIONS AT PROPOSED POINTS OF CONNECTION AND CROSSINGS PRIOR TO ANY UNDERGROUND CONSTRUCTION AND NOTIFY THE OWNER OF ANY DISCREPANCIES OR CONFLICTS.
  - THE CONTRACTOR SHALL ADJUST RIM ELEVATIONS OF ALL EXISTING STRUCTURES TO PROPOSED FINISH GRADES.
  - AT LOCATIONS WHERE WATER MAIN CROSSES BENEATH OR LESS THAN 18" ABOVE A SEWER, PROVIDE WATER MAIN PROTECTION PER STANDARD SPECIFICATIONS FOR SEWER AND WATER MAIN CONSTRUCTION IN ILLINOIS, LATEST EDITION.
  - ALL WATER MAIN SHALL BE 6"-0" BELOW FINISHED GRADE TO TOP OF MAINS UNLESS NOTED OTHERWISE. MAXIMUM WATER MAIN DEPTH IS 8'-0" BELOW FINISHED GRADE.
  - ALL EXISTING UTILITIES SHOWN ARE NOT TO BE INTERPRETED AS THE EXACT ELEVATION OR LOCATION, OR AS THE ONLY OBSTACLES THAT MAY OCCUR ON THE SITE. CONTRACTOR SHALL VERIFY EXISTING CONDITIONS AND PROCEED WITH CAUTION AROUND ANY ANTICIPATED FEATURES.
  - THE UNDERGROUND UTILITY INFORMATION AS SHOWN HERE ON IS BASED, IN PART, UPON INFORMATION FURNISHED BY UTILITY COMPANIES AND THE LOCAL MUNICIPALITY. WHILE THIS INFORMATION IS BELIEVED TO BE RELIABLE, ITS ACCURACY AND COMPLETENESS CANNOT BE GUARANTEED NOR CERTIFIED.
  - ALL SANITARY AND STORM SEWER LENGTHS SHOWN ARE CENTER OF MANHOLE TO CENTER OF MANHOLE OR STORM MANHOLE TO FES.
  - CONTRACTOR SHALL CORE AND BOOT ALL PIPE ENTRANCES TO EXISTING SANITARY MANHOLES.
  - EXTERNAL CHIMNEY SEALS ARE REQUIRED ON PROPOSED AND ADJUSTED EXISTING SANITARY MANHOLES.
  - SOME EXISTING ITEMS TO BE REMOVED HAVE BEEN DELETED FROM THIS PLAN FOR CLARITY. SEE DEMOLITION PLAN FOR ITEMS DELETED.
  - ALL D.I. WATERMAIN PIPE AND D.I. WATERMAIN FITTINGS SHALL BE WRAPPED.

**Manhard CONSULTING**

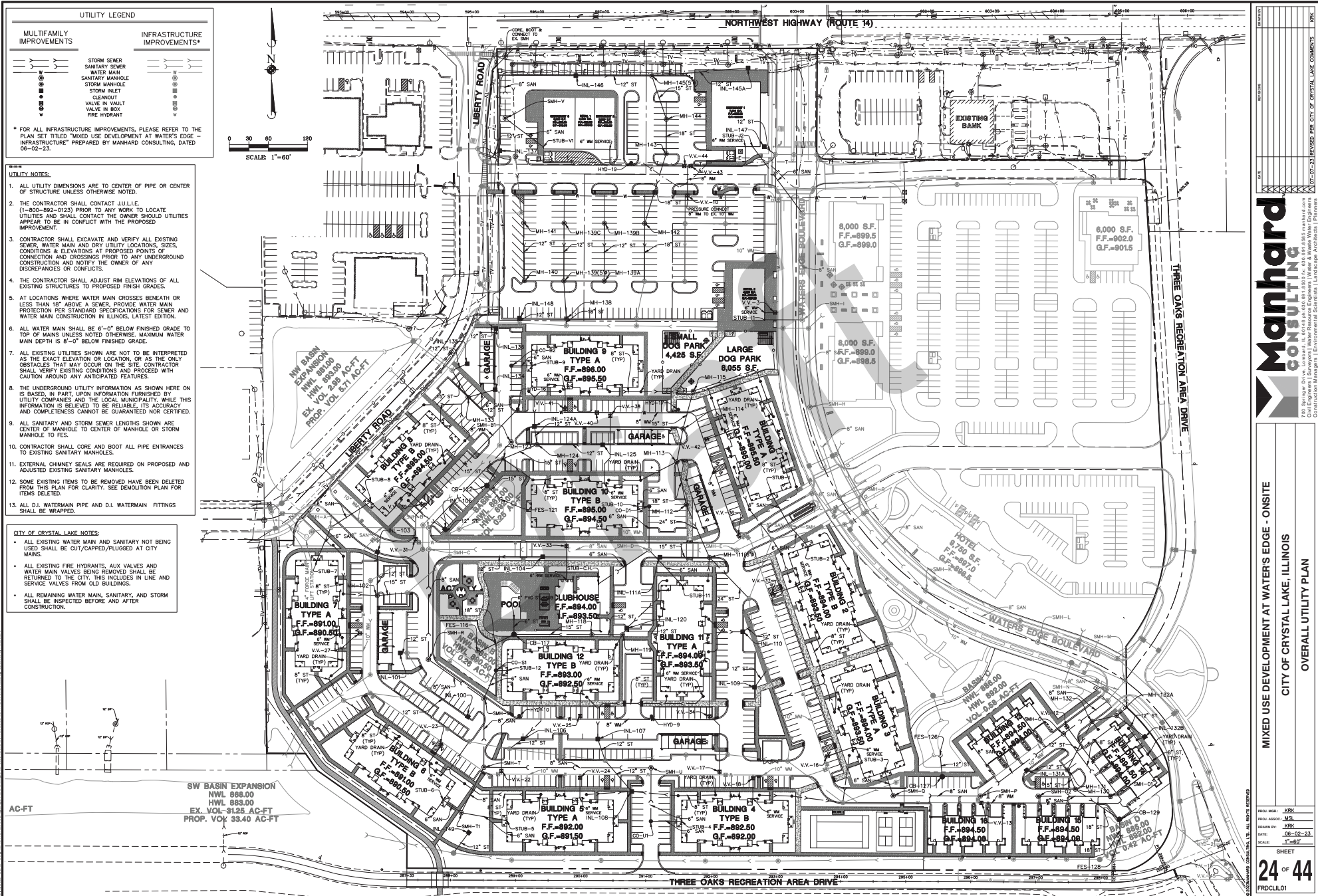
100 Riverside Plaza, Suite 1000, Crystal Lake, IL 60014  
 Civil Engineers | Surveyors | Water Resource Engineers | Water & Wastewater Engineers  
 Construction Managers | Environmental Scientists | Landscape Architects | Planners

**MIXED USE DEVELOPMENT AT WATERS EDGE - INFRASTRUCTURE**  
 CITY OF CRYSTAL LAKE, ILLINOIS  
 OVERALL UTILITY PLAN

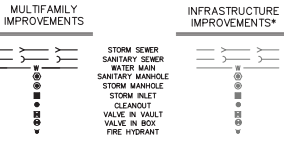
DATE: 06-02-23  
 SHEET: 14 OF 25  
 PROJECT: 2021-001

DRW: JHR  
 PLOT: MS  
 DATE: 06-02-23  
 SCALE: 1"=60'

PROJ: 2021-001



**UTILITY LEGEND**



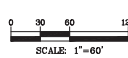
\* FOR ALL INFRASTRUCTURE IMPROVEMENTS, PLEASE REFER TO THE PLAN SET TITLED "MIXED USE DEVELOPMENT AT WATERS' EDGE - INFRASTRUCTURE" PREPARED BY MANHARD CONSULTING, DATED 06-10-23.

**UTILITY NOTES:**

1. ALL UTILITY DIMENSIONS ARE TO CENTER OF PIPE OR CENTER OF STRUCTURE UNLESS OTHERWISE NOTED.
2. THE CONTRACTOR SHALL CONTACT JULLIE (1-800-892-0123) PRIOR TO ANY WORK TO LOCATE UTILITIES AND SHALL CONTACT THE OWNER SHOULD UTILITIES APPEAR TO BE IN CONFLICT WITH THE PROPOSED IMPROVEMENT.
3. CONTRACTOR SHALL EXCAVATE AND VERIFY ALL EXISTING SEWER, WATER MAIN AND DRY UTILITY LOCATIONS, SIZES, CONDITIONS & ELEVATIONS AT PROPOSED POINTS OF CONNECTION AND CROSSINGS PRIOR TO ANY UNDERGROUND CONSTRUCTION AND NOTIFY THE OWNER OF ANY DISCREPANCIES OR CONCERNS.
4. THE CONTRACTOR SHALL ADJUST RIM ELEVATIONS OF ALL EXISTING STRUCTURES TO PROPOSED FINISH GRADES.
5. AT LOCATIONS WHERE WATER MAIN CROSSES BENEATH OR LESS THAN 18" ABOVE A SEWER, PROVIDE WATER MAIN PROTECTION PER STANDARD SPECIFICATIONS FOR SEWER AND WATER MAIN CONSTRUCTION IN ILLINOIS, LATEST EDITION.
6. ALL WATER MAIN SHALL BE 6"-0" BELOW FINISHED GRADE TO TOP OF MAINS UNLESS NOTED OTHERWISE. MAXIMUM WATER MAIN DEPTH IS 8'-0" BELOW FINISHED GRADE.
7. ALL EXISTING UTILITIES SHOWN ARE NOT TO BE INTERPRETTED AS THE EXACT ELEVATION OR LOCATION, OR AS THE ONLY OBSTACLES THAT MAY OCCUR ON THE SITE. CONTRACTOR SHALL VERIFY EXISTING CONDITIONS AND PROCEED WITH CAUTION AROUND ANY ANTICIPATED FEATURES.
8. THE UNDERGROUND UTILITY INFORMATION AS SHOWN HERE ON IS BASED, IN PART, UPON INFORMATION FURNISHED BY UTILITY COMPANIES AND THE LOCAL MUNICIPALITY. WHILE THIS INFORMATION IS BELIEVED TO BE RELIABLE, ITS ACCURACY AND COMPLETENESS CANNOT BE GUARANTEED NOR CERTIFIED.
9. ALL SANITARY AND STORM SEWER LENGTHS SHOWN ARE CENTER OF MANHOLE TO CENTER OF MANHOLE OR STORM MANHOLE TO FEES.
10. CONTRACTOR SHALL CORE AND BOOT ALL PIPE ENTRANCES TO EXISTING SANITARY MANHOLES.
11. EXTERNAL CHIMNEY SEALS ARE REQUIRED ON PROPOSED AND ADJUSTED EXISTING SANITARY MANHOLES.
12. SOME EXISTING ITEMS TO BE REMOVED HAVE BEEN DELETED FROM THIS PLAN FOR CLARITY. SEE DEMOLITION PLAN FOR ITEMS DELETED.
13. ALL D.I. WATERMAIN PIPE AND D.I. WATERMAIN FITTINGS SHALL BE MARKED.

**CITY OF CRYSTAL LAKE NOTES:**

- ALL EXISTING WATER MAIN AND SANITARY NOT BEING USED SHALL BE CUT/CAPPED/PLUGGED AT CITY MAINS.
- ALL EXISTING FIRE HYDRANTS, AUX VALVES AND WATER MAIN VALVES BEING REMOVED SHALL BE RETURNED TO THE CITY. THIS INCLUDES IN LINE AND SERVICE VALVES FROM OLD BUILDINGS.
- ALL REMAINING WATER MAIN, SANITARY, AND STORM SHALL BE INSPECTED BEFORE AND AFTER CONSTRUCTION.



SW BASIN EXPANSION  
 NWL 888.00  
 EX VOL- 9122 AC-FT  
 PROP. VOL 33.40 AC-FT

DATE:	
REVISION:	
NO.	

**Manhard CONSULTING**

100 S. Riverside Blvd.  
 Suite 100  
 Crystal Lake, IL 60014  
 Phone: 815.444.4444  
 Fax: 815.444.4444  
 Email: info@manhard.com  
 Website: www.manhard.com

Civil Engineers | Surveyors | Water Resource Engineers | Water & Wastewater Engineers  
 Construction Managers | Environmental Scientists | Landscape Architects | Planners

**MIXED USE DEVELOPMENT AT WATERS' EDGE - ONSITE**

**CITY OF CRYSTAL LAKE, ILLINOIS**

**OVERALL UTILITY PLAN**

DRAWN BY: JKR

CHECKED BY: MSJ

DATE: 06-10-23

SCALE: 1"=60'

SHEET

24 OF 44

PROJ: 101

**EXHIBIT E**  
**Development Milestones**

Category	<u>Contract Date/Comments</u>  Executed Contract/ Lease to Be Provided to City by...  (Projected)	<u>Start Date</u>  Construction Start Date  (Projected)	<u>Completion Date</u>  Construction Completion/Certificate of Occupancy  (Required, unless extended per the Agreement)
Developer submits final engineering plans for Infrastructure-related work and residential final engineering plans		9.1.23	
Public infrastructure, specifically water mains are installed along Water's Edge Boulevard and functional. Abandonment of existing water main feeding Three Oaks Recreation Area then permitted.	Existing water main feeding Three Oaks Recreation Area cannot be removed until new main is functional.	4.30.24	12.31.24
Final PUD Approval and permit issuance	60 days following submittal of final engineering documents to the City		11.1.23
Developer acquires all of the Water's Edge Property (residential and commercial)		12.31.23	12.31.23
Transfer of City owned property to Developer	Subsequent to or simultaneous with Developer closing on properties	12.31.23	12.31.23
Infrastructure construction commencement		12.31.23	
Developer commences residential building construction		5.1.24	5.1.26
Developer commences bi-weekly meetings with City staff for status of commercial leasing		10.1.23	

Developer delivers executed letter of intent, sale contract or lease to City for restaurant on Lot 3.	4.1.24* Subject to demo of existing building		
Developer or Lot 3 Purchaser commences restaurant building construction		12.31.24*	12.31.25*
Developer completes Commercial "pad ready" on Lots 2, 3 & 4		5.1.24*	5.31.25*
Developer or Lot 2 Purchaser delivers executed letter of intent, sale or lease agreement for first restaurant in building on Lot 2.	12.31.23* Subject to demo of existing building		
Developer or Lot 2 Purchaser commences commercial building construction		6.30.24*	5.31.25*
Developer or Lot 4 Purchaser delivers executed letter of intent, sale or lease agreement for building on Lot 4.	12.31.23* Subject to demo of existing building		
Developer or Lot 4 Purchaser commences commercial building construction		6.30.25	5.31.26
Developer or Lot 5 Purchaser delivers executed letter(s) of intent, sale or lease agreement for buildings on Lot 5.	1.1.25		
Developer or Lot 5 Purchaser commences commercial building construction		12.1.25	12.1.26
Outlot D ("Art Park") is completed and turned over to the City for acceptance		8.1.24	8.1.25
Overlook area is constructed		8.1.24	8.1.25

\*Subject to Developer's resolution of issue with existing lease on a portion of the Phase One Commercial Area.



**Exhibit F**

**Form of Performance and Payment Bond**

Draft

(SAMPLE)  
IRREVOCABLE LETTER OF CREDIT

DATE:

ISSUED TO: City of Crystal Lake  
100 West Woodstock Street  
Crystal Lake, IL 60014

Letter of Credit  
# \_\_\_\_\_

ISSUED BY: (BANK NAME)  
(ADDRESS)

Ladies and Gentlemen:

We hereby issue our Irrevocable Letter of Credit in your favor for the account of (DEVELOPER-CONTRACTOR) for an amount or amounts not to exceed the aggregate amount of \$\_\_\_\_ available by your draft or drafts at sight on the (BANK NAME - ADDRESS) effective on the date hereof and expiring at our office at the close of business on \_\_\_\_\_, 20\_. This letter is issued for: Items listed on the attached Schedule "A", all to be constructed in accordance with the City Ordinances and Plans and Specifications approved by the City of Crystal Lake.

In the event the Developer/Contractor fails to complete these improvements, we hereby authorize the City of Crystal Lake to draw drafts at sight on the (BANK NAME) up to the aggregate amount of \$\_\_\_\_. The City of Crystal Lake will furnish on Notice in writing (BANK NAME) of any non-performance or default on the part of the Contractor-Developer. In the event the work is not completed or progress initiated towards completion of the work within 10 days following the date of the Notice is received by the (BANK NAME), the City of Crystal Lake shall proceed to have the work completed.

A dated statement signed by an authorized officer/representative of the beneficiary must accompany drafts on beneficiary's letterhead stating:

"The Developer/Contractor has failed to repair or correct any defects associated with the improvements, and the work has not been completed or progress initiated towards completion of the corrective work within 10 days following the date of the notice to the developer/contractor. We therefore demand payment in the amount of \$\_\_\_\_\_."

Partial drawings are permitted, and the amount of this letter of credit will automatically be reduced by any amount paid.

The amount of this letter may be reduced upon receipt by the undersigned of a written statement executed by the City Engineer of the City of Crystal Lake, or such other person as may be authorized by the City Manager of the City of Crystal Lake, and signed as such, stating that a particular improvement or portion thereof has been completed and accepted or approved by the City of Crystal Lake. The amount of the reduction shall be specified in said statement. Upon our receipt of such statement, we shall issue an amendment reducing the amount of this letter by the amount set forth in said statement.

Drafts drawn under and in conformity with the terms of this credit will be duly honored upon presentation between the date of this letter and the expiration date set forth above.

This letter of credit expires on \_\_\_\_\_, 20\_\_ provided the City of Crystal Lake has received from the issuing bank 60 days prior written notice, certified mail of the pending expiration. This letter of credit may expire sooner only upon written release by the City of Crystal Lake.

Any suit, action or other proceeding arising out of or relating to this letter of credit and the transactions contemplated hereby shall be submitted to the jurisdiction of the Circuit Court of McHenry County, Illinois.

\_\_\_\_\_  
(Bank Name)

Accepted by the City of  
Crystal Lake

\_\_\_\_\_  
(Address)

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

(DATE)

TITLE: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
(DATE)

Draft

# ESCROW AGREEMENT

Date: \_\_\_\_\_

## Owner/Developer/Contractor Information

Company: \_\_\_\_\_

Name/Primary Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_ **[Name of Developer]** agrees to deposit funds in the amount of \$\_\_\_\_\_ in an interest-bearing account. The City of Crystal Lake shall establish said account at a bank of the City's choosing. The funds shall be used as a guarantee that I will **[construct or maintain]** the items listed on the attached Schedule "A." (the "Improvements") in a first rate condition and in accordance with City Ordinances, as well as the plans and specifications approved by the City of Crystal Lake [Only use for maintenance: **for a period of two year following the acceptance of the items by the City (the "Guaranty Period")**]. I agree that any interest earned on these funds while on deposit with the City of Crystal Lake shall remain the property of the City. The City shall have the complete sole authority to disburse any of the funds deposited hereunder without prior notice to \_\_\_\_\_ **[Name of Developer]**.

In the event that the Improvements are not **[constructed or maintained]** as provided herein, the City shall furnish notice, in writing, of any non-performance or default. If the work is not completed, or progress initiated towards completion of the work, within 10 days following the date of the notice is received by the developer, the City of Crystal Lake shall proceed to have the work completed.

The City shall have the sole and exclusive right to determine when any such corrective, remedial, or repair work is necessary, and shall have the complete and sole authority to utilize the escrow funds for said purpose. If the cost of the corrective, remedial, or repair work exceeds the principal amount in the account, \_\_\_\_\_ **[Name of Developer]** shall immediately indemnify the City for the excess cost. If the City is required to make any reductions for corrective or remedial work, \_\_\_\_\_ **[Name of Developer]** shall, within seven (7) days of being notified, deposit sufficient funds in the escrow account to return the principal balance to \$\_\_\_\_\_.

The City will refund any unapplied portion of the deposit [Construction: **upon completion and acceptance of the Improvements by the City**; or maintenance: **at the termination of the Guaranty Period.**]

\_\_\_\_\_ **[Name of Developer]** shall pay all costs incurred by the City, including reasonable attorney fees, in enforcing the terms of this Agreement. \_\_\_\_\_ **[Name of Developer]** shall indemnify and hold harmless the City for any damages arising out of any work of \_\_\_\_\_ **[Name of Developer]**, its agents, employees, and subcontractors. If \_\_\_\_\_ **[Name of Developer]** engages in any conduct which interferes with the City's right to withdraw proceeds from the escrow agreement, thereby causing damage to the City.

Any suit, action or other proceeding arising out of or relating to this escrow agreement and the transactions contemplated hereby shall be submitted to the jurisdiction of the Circuit Court of McHenry County, Illinois.

Submitted by:

Accepted by the City of Crystal Lake:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

Attachments:

- Check Number \_\_\_\_\_
- Schedule "A"

Draft

**Exhibit F-1**

**Form of Performance and Payment Guaranty Bond**

Draft

SECURITY GUARANTEEING PUBLIC IMPROVEMENTS

DATE:

ISSUED TO: City of Crystal Lake  
100 W. Municipal Complex  
Crystal Lake, IL 60014

Bond  
# \_\_\_\_\_

Issued by:

To Whom It May Concern:

We hereby issue our Bond in your favor for the account of  
\_\_\_\_\_ for an amount or amounts not to exceed the  
(Developer/Contractor)  
aggregate amount of \$ \_\_\_\_\_ available by your draft or drafts at  
sight on the \_\_\_\_\_ effective on the date  
(Surety Company Name/Address)  
hereof and expiring at our office at the close of business on \_\_\_\_\_, 20\_\_\_\_\_.

This letter is issued as guarantee covering workmanship and materials for improvements listed on Schedule "A", all purported to be constructed in accordance with the City Ordinances and Plans and Specifications approved by the City of Crystal Lake.

In the event the Developer/Contractor fails to repair or correct any defects associated with these improvements, we hereby authorize the City of Crystal Lake to draw drafts at sight on the \_\_\_\_\_ up to the aggregate amount  
(Surety Company Name/Address)  
of \$ \_\_\_\_\_. The City of Crystal Lake will furnish on Notice in writing  
\_\_\_\_\_ of any non-performance or default on the part of the  
(Surety Company Name /Address)

Contractor/Developer. In the event the work is not completed or progress initiated towards completion of the corrective work within 10 days following the date of the Notice is received by the \_\_\_\_\_,  
(Surety Company Name/Address)

the City of Crystal Lake shall proceed to have the work completed. Upon completion of the work, the City will present a Statement of Costs, accompanied by Waivers of Lien to support Contractor's Sworn Statement relative to said improvements or items to the \_\_\_\_\_ . We hereby agree to provide payment in  
(Surety Company Name/Address)

full of the total amount contained in the Statement of Costs from the City of Crystal Lake within three (3) working days of receipt of said Statement of Costs.

Draft drawn under and in conformity with the terms of this bond will be duly honored upon presentation between the date of this bond and the expiration date set forth above. Each such draft shall bear upon its face the clause: "Drawn under Bond No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_".

This bond expires on \_\_\_\_\_, 20\_\_\_\_, provided the City of Crystal Lake has received from the issuing Surety Company 60 days prior written notice, certified mail, of the pending expiration. This bond may expire sooner only upon written release by the City of Crystal Lake.

IN WITNESS WHEREOF, this Bond is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Date)  
(Month)

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

CITY OF CRYSTAL LAKE

By: \_\_\_\_\_  
City Engineer



**Exhibit F-2**

**Form of Performance and Payment Agreement**

Draft

**Exhibit G**  
**Authorized Infrastructure Expenses**

Draft

**Exhibit 7 - TIF Eligible Costs**

Development Costs	Total Cost	Eligible Costs Allocated to Notes	
		Project and Commercial Infrastructure Notes (\$6M+\$2M)	Commercial TIF Note (\$6M)
<b>Acquisition of Site</b>	11,000,000	5,000,000	6,000,000
Landscape - Site	500,000	500,000	
Landscape - Walls	50,000	50,000	
Landscape - Wetland/ 5 Year	35,000	35,000	
Mass Earth	800,000	800,000	
- Sanitary	306,000	306,000	438,202 *
- Storm	875,000	875,000	1,253,027 *
- Water	610,000	610,000	873,539 *
- Lift Station	375,000	375,000	537,012 *
Demolition	1,600,000	1,600,000	-
Roads Onsite	300,000	300,000	429,609 *
Offsite Roads	350,000	350,000	501,211 *
Curb	135,000	135,000	193,324 *
Sidewalks	150,000	150,000	214,805 *
Street Lighting	350,000	350,000	501,211 *
Irrigation	75,000	75,000	107,402 *
Monuments/Signage	100,000	100,000	
Lime	25,000	25,000	
Benches/Trash	25,000	25,000	
Utility Sleeves	50,000	50,000	
Permits	10,000	10,000	
SWPPP	20,000	20,000	
Temp Roads	40,000	40,000	
Misc. Grading	40,000	40,000	
Temp Fencing	40,000	40,000	
Fencing/Structures	100,000	100,000	
<b>Subtotal</b>	<b>17,961,000</b>	<b>11,961,000</b>	<b>11,049,342</b>
<b>Other Costs</b>			
Public Park	500,000	500,000	
Public Trails	150,000	150,000	
GC's / Fee / Insurance	550,000	550,000	
Site Engineering Design	319,325	319,325	
Municipal Inspections	175,000	175,000	
Dry Utilities (relocation / new service)	500,000	500,000	
Other Street Scape Improvements	150,000	150,000	
Environmental (pre-demo inspections)	50,000	50,000	
Legal	50,000	50,000	
Marketing	50,000	50,000	
Financing Expense	-	-	
<b>Subtotal</b>	<b>2,494,325</b>	<b>2,494,325</b>	<b>-</b>
<b>Total</b>	<b>20,455,325</b>	<b>14,455,325</b>	<b>11,049,342</b>

\* - Estimated Cost subject to final plan for each retail building

**Exhibit H****Transferee Assumption Agreement**

THIS AGREEMENT, made as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by, between, and among \_\_\_\_\_ (the "Owner"), \_\_\_\_\_ (the "Transferee"), and CITY OF CRYSTAL LAKE, an Illinois municipal corporation (the "City"),

**WITNESETH:**

WHEREAS, Owner is the fee title holder of that certain property situated in McHenry County, Illinois described on **Exhibit 1** attached hereto (the "Subject Property"); and

WHEREAS, Owner intends to transfer its interest in that portion of the Subject Property that is legally described on **Exhibit 2** (the "\_\_\_\_\_ Property") to Transferee; and

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

WHEREAS, the Subject Property was granted approvals of planned development special uses, final subdivision plat and development plan approval by the City, pursuant to that certain Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and the Owner has entered into a Redevelopment Agreement with the City and its predecessor in ownership dated \_\_\_\_\_ (collectively, the "City Approval"); and

WHEREAS, as a condition of the City Approval, no transfer or assignment to Transferee of Owner's obligations under the City Approval shall be valid unless approved by the City, and the City has determined that no such approval shall be granted unless the Transferee expressly agrees to comply with all the terms, requirements and obligations set forth in the City Approval; and

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

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

2. **Assumption of Obligations.** The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors, and administrators, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of the Owner with respect to the Subject Property, as set forth in the City Approval, including all exhibits and attachments thereto, regardless of whether such terms, requirements, and obligations are to be performed and provided by, or are imposed upon, the Transferee; provided, however, that Transferee shall not be responsible for the construction of any habitable buildings on the Subject Property except for those on the \_\_\_\_\_ Property.

3. **Acknowledgment and Release of Transferor.** The City hereby acknowledges its

agreement to the assignment by the Owner of its rights under and pursuant to the City Approval, including all exhibits and attachments thereto to the Transferee, and to the Transferee's assumption of the obligation to comply with the terms, requirements, and obligations of Owner in the City Approval, including all exhibits and attachments thereto, and the City hereby releases the Owner from any liability for failure to comply with the terms, requirements, and obligations of the City Approval at any time after the date of this Agreement.

[SIGNATURE PAGES FOLLOW]

Draft

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

THE CITY OF CRYSTAL LAKE

ATTEST:

By: \_\_\_\_\_  
City Manager

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

**OWNER:**

\_\_\_\_\_

ATTEST:

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

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

**TRANSFeree:**

\_\_\_\_\_

ATTEST:

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

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

[Acknowledgments appear on following pages.]

**EXHIBIT 1**  
*To Exhibit H*

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

Draft

**EXHIBIT 2**  
*To Exhibit H*

\_\_\_\_\_ **LEGAL DESCRIPTION**

Draft



**Exhibit I**

**Form of Developer Note**

Draft

UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
COUNTY OF McHENRY

CITY OF CRYSTAL LAKE TAX INCREMENT REVENUE NOTE  
WATER'S EDGE TAX INCREMENT FINANCING DISTRICT

PRINCIPAL AMOUNT: US\$ \_\_\_\_\_

INTEREST RATE: Six percent (6%) per annum, simple interest

DATED: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

ANNUAL NOTE PAYMENT DATE: December 15

NOTEHOLDER: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS that the City of Crystal Lake, McHenry County, Illinois, a municipality, home rule unit and political subdivision of the State of Illinois (the "City"), hereby undertakes to pay to the Noteholder identified above, or approved assignees as hereinafter provided, upon each Annual Note Payment Date identified above, but solely from the "Revenue Sources" hereinafter defined, the outstanding Principal Amount of this Note and interest on such outstanding Principal Amount at the Interest Rate set forth above (computed on the basis of a 360-day year of twelve 30-day months)(the "Interest"), all in accordance with Section 12.\_\_\_\_.\_\_\_\_ of that Controlling Redevelopment Agreement dated \_\_\_\_\_, 2023, (the "Redevelopment Agreement"), by, between and among the City and Heartland Real Estate Partners, LLC, an Illinois limited liability company (the "Developer").

The outstanding Principal Amount and interest shall be paid solely from the following "Revenue Sources":

***[Identify the pledged revenue per Section 12 of the Redevelopment Agreement, including any "Superior Claims" among the various Developer Notes as identified in the Redevelopment Agreement]***

On each Annual Note Payment Date, the City shall pay all available funds from the Revenue Sources to Noteholder, subject to any Superior Claims described above (a "Payment"). Amounts paid on each Annual Note Payment Date shall be allocated first to any accrued but unpaid Interest, and thereafter to the outstanding Principal Amount. To the extent that any Interest or outstanding Principal Amount is unpaid on any Annual Note Payment Date, further payment of such amounts shall be deferred until the next Annual Note Payment Date.

Each Payment made under this Note shall be payable by check or draft in lawful money of the United States of America to the order of the Noteholder dated as of the Annual Note Payment Date, upon presentation at the City Hall on or after the Annual Note Payment Date of Noteholder (or the Noteholder's authorized representative). Upon presentation, the Noteholder shall acknowledge the payment on the ledger attached hereto as Exhibit A (the "Payment Record") the amount of Interest and outstanding Principal Amount paid on such Annual Note Payment Date, which acknowledgement shall be countersigned by the City Treasurer or the Treasurer's designee. [In the event of any inconsistency between such Payment Record and the records of the City, the records of the City shall control, absent manifest error.] Following Noteholder's presentation and acknowledgement of the payment Record, the City shall cause the Payment to be mailed to the address of such Noteholder as it appears in the records of the City or at such other address furnished to the City in writing or as directed by such Noteholder; nothing shall prevent the Noteholder and City from mutually agreeing to effect delivery of a Payment by another mutually acceptable manner.

This Note is issued pursuant to Division 74.4 of Article 11 of the Illinois Municipal Code (the "TIF Act"), and all laws amendatory thereof and supplemental thereto, the Redevelopment Agreement, and by the home rule powers of the City under Section 6 of Article VII of the 1970 Constitution of Illinois. The outstanding Principal Amount and Interest are payable solely and only from the Revenue Sources held by the City in accordance with the Redevelopment Agreement.

This Note is being issued for the purposes of paying or reimbursing the Developer for certain TIF Eligible Expenses as described in the Redevelopment Agreement and as authorized by the TIF Act that Developer has incurred in pursuit of the activities described in the Redevelopment Agreement.

This Note, together with the interest thereon, is a limited obligation of the City, payable solely from the Revenue Sources on hand as of an Annual Note Payment Date in accordance with the Redevelopment Agreement. For the prompt payment of this Note, both principal and interest, as aforesaid, such Revenue Sources are hereby irrevocably pledged.

THIS NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION. NO HOLDER OF THIS NOTE SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF ANY TAXING POWER OF THE CITY FOR PAYMENT OF PRINCIPAL HEREOF OR INTEREST HEREON. FAILURE TO PAY WHEN DUE ANY INSTALLMENT OF INTEREST OR ANY AMOUNT OF OUTSTANDING PRINCIPAL AMOUNT DUE TO INSUFFICIENCY OF THE REVENUE SOURCES ON DEPOSIT, WHETHER ON AN ANNUAL NOTE PAYMENT DATE OR UPON THE EXPIRATION DATE OF THIS NOTE OR OTHERWISE, SHALL IN NO EVENT BE DEEMED TO BE AN EVENT OF DEFAULT ON THIS NOTE UNLESS CAUSED BY A DEFAULT BY THE CITY UNDER THE REDEVELOPMENT AGREEMENT. IN ADDITION, IN THE EVENT THAT THERE IS AN INSUFFICIENCY OF THE REVENUE SOURCES TO PAY ANY INTEREST OR PRINCIPAL DUE ON THIS NOTE UPON THE EXPIRATION DATE, ANY SUCH AMOUNT OF INTEREST OR PRINCIPAL SHALL BE EXTINGUISHED, UNLESS SUCH INSUFFICIENCY

IS CAUSED BY A DEFAULT BY THE CITY OF ITS PAYMENT OBLIGATIONS UNDER THE REDEVELOPMENT AGREEMENT.

This Note may only be offered, sold, pledged, assigned or otherwise transferred (an "Assignment") upon written notice to the City Treasurer and written acknowledgement by the City Treasurer of such Assignment (which acknowledgement shall not be unreasonably delayed, conditioned, or withheld); provided, however, that no Assignment of this Note shall be effective for less than the full outstanding Principal Amount and accrued but unpaid Interest. The City Treasurer shall make a register (the "Register") identifying the Noteholder, as well as any subsequent Noteholder based upon an Assignment acknowledged by the City Treasurer. The person in whose name this Note is registered on the Register shall be deemed and regarded as the absolute owner hereof for all purposes, and payment of the outstanding Principal Amount or Interest pursuant to this Note shall be made only to or upon the order of the Noteholder or the Noteholder's legal representative as identified in the Register. All such payments shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid to the Noteholder identified in the Register.

It is hereby certified and recited that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this Note did exist, have happened, been done and performed in regular and due form and time as required by law, that the City hereby covenants and agrees that it has made provision for the segregation of the Revenue Sources and that it will properly account for said Revenue Sources and will comply with all the covenants of and maintain the Revenue Sources for the uses set forth in the Redevelopment Agreement.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the City Treasurer.

IN WITNESS WHEREOF the City of Crystal Lake, McHenry County, Illinois, has caused this Note to be signed by the manual or duly authorized facsimile signature of its Mayor, as authenticated by the City Treasurer, all as of the date of delivery hereof.

**CITY OF CRYSTAL LAKE,**  
McHenry County, Illinois

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk  
City of Crystal Lake  
McHenry County, Illinois

(SEAL)

CERTIFICATE OF AUTHENTICATION  
dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City Treasurer

Draft

ASSIGNMENT FOR VALUE RECEIVED, the undersigned sells, assigns and transfers  
unto \_\_\_\_\_

\_\_\_\_ (Name and Address of Assignee) this Note and does hereby irrevocably constitute and appoint  
\_\_\_\_\_ as attorney to transfer the said Note on the books kept for registration  
thereof by the City Treasurer with full power of substitution in the premises.

Dated: \_\_\_\_\_

Name of Noteholder: \_\_\_\_\_

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

SUBSCRIBED AND SWORN TO  
BEFORE ME THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_\_\_.

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

**ACKNOWLEDGEMENT OF ASSIGNMENT**

The undersigned City Treasurer of the City of Crystal Lake, McHenry County, Illinois, hereby acknowledges the Assignment (as defined in this Note) and agrees to replace the above-named assignee for the Noteholder in the Register for the Note that I maintain on behalf of the City in accordance with the terms of this Note.

CITY TREASURER

\_\_\_\_\_  
Name: \_\_\_\_\_

NOTICE: The signature to this transfer and assignment must correspond with the name of the Noteholder as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.