

STATE OF WISCONSIN
VILLAGE OF BAYSIDE
MILWAUKEE AND OZAUKEE COUNTIES

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE OFFICIAL BAYSIDE ZONING MAP, TO CREATE PLANNED UNIT DEVELOPMENT DISTRICT NUMBER ONE, AND TO REZONE CERTAIN PROPERTIES ON THE NORTH SIDE OF THE 400-800 BLOCKS OF W. BROWN DEER ROAD AND ON THE WEST SIDE OF THE 8800-9000 BLOCKS OF N. PORT WASHINGTON ROAD TO PLANNED UNIT DEVELOPMENT DISTRICT NUMBER ONE

The Village Board of the Village of Bayside, Milwaukee, and Ozaukee Counties, Wisconsin Does Ordain As Follows:

Section One:

WHEREAS, a petition for zoning change having been filed to change the zoning on nine (9) properties from “D” Business District; Overlay Use “D” Business District; “F” Office District; Dwelling Overlay Use, “F” Office-Research Park District; and “PD/O-R” Planned Development Overlay/Office-Research Park District to Planned Unit Development District Number One, such parcels being located on the north side of the 400-800 blocks of W. Brown Deer Road and on the west side of the 8800-9000 blocks of N. Port Washington Avenue, and such lands being specifically located as listed in Table 1 below; and,

WHEREAS, the proposed Planned Unit Development District Number One (“PUDD1”) is an overlay district and a consolidation of two existing overlay districts, Planned Unit Commercial Development District and “PD/O-R” Planned Development Overlay/Office-Research Business Park District, and for purposes of clarity, the provisions of Section 125-109, more particularly set forth below, supersede and replace in their entirety the provisions of Sections 125-94, 125-95, 125-97, 125-98, 125-99 and 125-106 with respect to the future development of PUDD1 with regard to any specific references therein, and in the event of any contradiction, the terms of PUDD1 control;

WHEREAS, the Plan Commission having reviewed the PUDD1 petition and having found that the proposed PUDD1 conforms to the standards for adoption of a planned development district, and having recommended to the Board of Trustees that the creation of PUDD1 be approved; and,

WHEREAS, a Public Hearing having been held before the Board of Trustees on _____, 2021, and the Board of Trustees having considered the petition and having concurred with the recommendation of the Plan Commission and having determined that the proposed PUDD1 is consistent with the Comprehensive Master Plan of the Village of Bayside, Wisconsin, and contains more than two (2) acres; and,

WHEREAS, the Board of Trustees having reviewed the petition and recommendation following the Public Hearing and having determined that the adoption of an ordinance to create PUDD1 will promote the health, safety and welfare of the Community.

NOW, THEREFORE:

Section Two: Section 125.88 of the Municipal Code is hereby amended to revise the Official Zoning Map of the Village and to provide that the zoning district designation for the properties described below be changed from “D” Business District; Overlay Use “D” Business District; “F” Office District; Dwelling Overlay Use, “F” Office-Research Park District; and “PD/O-R” Planned Development Overlay/Office-Research Park District to PUDD1 as is created by this Ordinance:

Part of the Southeast ¼ of the Southwest ¼ and the Southwest ¼ of the Southeast ¼ of Section 5, Town 8 North, Range 22 East, in the Village of Bayside, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the southeast corner of said Southwest ¼; thence N00°23'27"W 60.00 feet to a point on the north line of West Brown Deer Road, being the point of beginning of lands to be described; thence S89°27'06"W along said north line and parallel with the south line of said ¼ Section 40.16 feet; thence N00°23'27"W 254.03 feet; thence S89°25'54"W 98.41 feet; thence S00°23'27"E 239.00 feet to a point on the easterly right of way line of Interstate “43”; thence N23°37'57"W along said easterly line 368.83 feet; thence N22°44'21"W 269.40 feet; thence S89°26'29"W 322.79 feet; thence N22°16'54"W 695.25 feet; thence N89°29'38"E 1308.95 feet to a point on the west line of North Port Washington Road; thence S09°03'36"E 108.08 feet; thence southeasterly 257.89 feet along the arc of a curve to the right whose center lies to the southwest, whose radius is 5573.03 feet and whose chord bears S07°44'15"E 257.86 feet; thence S06°24'36"E 253.20 feet; thence S89°26'04"W 32.37 feet; thence S00°33'56"E 60.00 feet; thence southeasterly 359.22 feet along the arc of a curve to the right whose center lies to the northeast, whose radius is 4824.38 feet and whose chord bears S11°20'55"E 359.14 feet; thence S13°28'54"E 83.30 feet; thence S89°25'54"W 186.93 feet; thence S00°34'00"E 140.00 feet to a point on the north line of said Brown Deer Road; thence S89°25'54"W along said north line and parallel with the south line of said Southeast ¼ 284.66 feet to the point of beginning.

Containing 1,155,594 square feet or 26.5288 acres

Table 1: Planned Unit Development District #1					
Tax Key Number	Address	Property Owner	Current Zoning	Proposed Zoning	Acreage
0229983002	8855 N. Port Washington Road	8855 N Port Washington LLC	"D" Business District	PDD #1	1.8000
0229970000	500 W. Brown Deer Road	Brenwood Park Senior Community II LLC and 11301 Northport LLC	"D" Business District	PDD #1	3.0000
0229984000	600 W. Brown Deer Road	11301 Northport LLC	"D" Business District	PDD #1	0.7421
0229985002	601 W. Glencoe Pl./8907 N. Port Washington Road	West Glencoe Place LLC	"D" Business District	PDD #1	1.2679
0239990002	707 W. Glencoe Pl.	La Macchia Real Estate V LLC	"F" Office District; Dwelling overlay, "F" office-research park	PDD #1	0.6137
0229990020	777 W. Glencoe Pl.	La Macchia Real Estate VI LLC	"F" Office District; Dwelling overlay, "F" office-research park	PDD #1	1.2396
0229990018	8909 N. Port Washington Road	Bayside and S-L Company	"F" Office District; Dwelling overlay, "F" office-research park; "PD/O-R" Planned Development Overlay/ Office-Research Park District	PDD #1	5.0024
0229990019	8969 N. Port Washington Road	La Macchia Real Estate LLC	"F" Office District; Dwelling overlay, "F" office-research park; "PD/O-R" Planned Development Overlay/ Office-Research Park District	PDD #1	8.5541

0229990007	8989 N. Port Washington Road	Mark Building	8989	"F" Office District; Dwelling overlay, "F" office-research park	PDD #1	3.9993
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Section Three: Section 125-109 of the Municipal Code is hereby created to read as follows:

Section 125-109 PLANNED UNIT DEVELOPMENT DISTRICT NUMBER ONE

A. In General.

1. This Planned Unit Development District Number One ("PUDD 1") shall be constructed, operated and maintained as a mixed-use development and shall be in conformance with the Public Improvement Agreement (Site Development) and the Public Improvement Agreement (Building Development) (together, the "Improvement Agreements"), which, when executed shall be substantially in the forms attached hereto as Exhibit A, subject to reasonably appropriate modifications as determined by the final master site plan for the development, and all applicable terms and provisions of the Municipal Code not enumerated herein and not contrary to the terms or provisions of this Ordinance, including, but not limited to such permits as are required under the Municipal Code for building permits, stormwater and erosion control. Conceptual development plans, and detailed site, landscaping and architectural plans (in addition to any Plan Commission, Community Development Authority or Architectural Review Committee approval pursuant to statute, regulation, or ordinance) shall receive separate approval of the Plan Commission.

The plans contained in the Improvement Agreements must be of sufficient detail as to satisfy Architectural Review Committee, the Plan Commission and the Board of Trustees as to the character, scope, and appearance of the District. All development within the District is subject to and conditioned upon the submittal and approval by the Architectural Review Committee of more specific and detailed plans as each stage of development progresses.

2. Intent. The regulations of this PUDD1 are intended to allow for greater flexibility, variety of use and design freedom than would be permitted by the standard application of the basic "D" and "F" district regulations in the case of tracts of land within the "D" and "F" districts of suitable size and appropriate location, where the unified and overlay use of such tract and the increased flexibility, variety of use and design freedom would achieve optimum utilization of the site and produce a more aesthetically satisfying and desirable development than would result from the application of the basic "D" and "F" district controls, and in such a way to not adversely affect property values and character of the neighborhood.

In keeping with the general intent of planned unit development districts, the PUDD1 shall facilitate the development of a high-quality professional services, health/fitness, general commercial, retail, restaurant, medical office, multi-family housing, civic/recreational/public library, hospitality and office mixed-use area and:

i. All development within PUDD1 shall comply with all requirements of the Municipal Code except as otherwise specifically set forth in this Ordinance and the Improvement Agreements.

ii. Accommodate the clustering of buildings on parcels of land under individual or multiple ownership.

iii. Provide for an arrangement of professional services, health/fitness, general commercial, retail, restaurant, medical office, multi-family housing, civic/recreational/public library, hospitality and office uses that are compatible in function, form and operation.

iv. Apply high-quality, aesthetically pleasing architectural and site design whenever new principal and/or accessory structures are constructed.

v. Wherever practicable, provide a safe, interconnected and pedestrian-friendly network of public streets, private roads, sidewalks and trails throughout the District, and through this network, with the surrounding community.

vi. Provide sufficient off-street parking for all uses and properties which allows and encourages shared parking arrangements through the use of easements and other similar agreements in compliance with the standards set forth in the Municipal Code.

vii. Be served by adequate sanitary sewer and water supply facilities which connect to public sewer and water facilities.

viii. A Permitted Use lawfully existing and established with an existing principal building within the area of this PUDD 1 prior to, and upon the effective date of, this Ordinance shall remain as such Permitted Use; provided, however, that any future addition, expansion and/or enlargement to the use and/or amendment to any site plan for the use, may be permitted and/or granted only upon the consideration of all applicable standards for the review and approval of such permits and site plans, and the PUDD1 intent and standards in this Ordinance.

ix. A Conditional Use lawfully existing and established within the area of this PUDD 1 prior to and upon the effective date of this Ordinance shall remain as such Conditional Use; provided, however, that any future amendment to the

Conditional Use Permit, may be granted only upon the consideration of all applicable standards for the review and approval of Conditional Uses, and the intent and standards referenced in this Ordinance.

B. Prohibited Uses. In PUDD1, no building or premises shall be used nor shall any building or other structure be erected, altered or enlarged which is arranged, intended or designed to be used for any purpose, except as provided in this section, all other uses being hereby prohibited.

C. Application of Regulations.

1. Road design or other engineering standards may be modified in an overlay use consistent with good engineering practice.

D. Permitted Uses.

1. To the extent such individual uses and structures are part of a planned development use, Permitted Uses within Planned Unit Development District #1 shall be as shown below¹:

Permitted Uses	Limitations
General commercial retail/fitness (exclusive of firearms sales)	Up to 120,000 sq. ft., up to 40,000 sq. ft. per floor, up to two (2) stories in height
Professional services/general office	Up to 300,000 sq. ft., up to 50,000 sq. ft. per floor, up to five (5) stories in height
Medical office/general medical uses	Up to 300,000 sq. ft., up to 50,000 sq. ft. per floor, up to five (5) stories in height
Parks/public recreation	
Full-service restaurants	Up to 30,000 sq. ft., up to 10,000 sq. ft. per floor, up to two (2) stories in height

¹ The square footage and building height parameters set forth herein represent maximum sizes/units, floor areas and heights for each category of use. As a practical matter, due to parcel size constraints, parking requirements and height limitations, the ultimate development within PUDD1 would not accommodate the maximum limits of all uses, but would represent a balanced combination of several of such uses based on prudent planning and market demands.

In addition, because PUDD1 is intended to encourage and function as a mixed-use development, any of the Permitted Uses referenced herein may be combined, provided that the maximum number of floors for such combined uses shall not exceed the number of floors permitted for the use that allows the greatest number of floors. For example, a mixed-use building comprising first-floor civic or retail uses could include up to four floors of multi-family residential housing above the first floor, with the maximum combined number of floors not to exceed five.

Multi-family ² and senior ³ residential apartments/townhomes/condominiums ⁴	Up to 550 units, up to five (5) stories in height with subterranean parking
Townhome residential	Up to 100 units, up to three (3) stories in height with subterranean parking
Civic/public library	Up to 60,000 sq. ft., up to 30,000 sq. ft. per floor, up to three (3) stories in height
Parking at or below grade	

E. Conditional Uses:

1. To the extent such individual uses and structures are part of a planned development use, Conditional Uses within Planned Unit Development District #1 shall be as shown below:
 - a. Hotels/motels.
 - b. Nursing homes.
 - c. Community-based residential facilities.
 - d. In-patient medical facilities.
 - e. Schools or daycare facilities.
 - f. Financial institutions with drive-thru facilities.
 - g. Vehicle sales, rentals or concierge services where vehicles are kept indoors overnight.
 - h. Fast-food, quick-service or drive-thru restaurants.
 - i. Bakeries, breweries, coffee roasters and any other on-premises food manufacturing facilities.
 - j. Spas/beauty parlors/barber facilities.
 - k. Special event venues/banquet facilities.
 - l. Facilities possessing a liquor license (other than full-service restaurants).
 - m. Facilities with operations prior to 5:00 a.m. or after 10:00 p.m.
 - n. Indoor establishments in excess of 25,000 sq. ft.
 - o. Television, video or broadcasting facilities.
 - p. Wireless telecommunications facilities.
 - q. Secondhand stores/resale of goods.
 - r. Above ground parking structures (up to three (3) stories in height provided any such structure is set back at least three hundred (300) feet from the center line of North Port Washington Road).
 - s. Body piercing establishments.
 - t. Tattoo parlors.

² Residential uses shall be primarily market-rate housing.

³ Senior residential housing may include ancillary independent senior living housing, assisted living or similar types of uses.

⁴ Any use within 300 feet of the centerline of North Port Washington Road shall be limited in height to four (4) stories above grade.

F. Conditional Use Procedure.

1. The Conditional Uses set forth in subsection D.1 of this chapter may conditionally permitted when specifically approved by the Village Board after referral to and review by the Village Plan Commission pursuant to the procedures set forth in this subsection F.2 of this chapter:
2. *Purpose and applicability.* The development and execution of this chapter is based upon the division of the Village into zoning districts, within which districts the use of land and buildings, and bulk and location of buildings and structures in relation to the land, are mutually compatible and substantially uniform. However, there are certain uses which, because of their unique characteristics, cannot be properly classified as unrestricted permitted uses in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land or public facilities, and of the public need for the particular use at a particular location. Such uses, nevertheless, may be necessary or desirable to be allowed in a particular district provided that due consideration is given to their location, development, and operation. Such uses are classified as Conditional Uses and require a Conditional Use permit except as specified under subsection (15).
3. *Initiation of Conditional Use permit.* Any person, firm, corporation, or organization having a freehold interest or a possessory interest entitled to exclusive possession, or a contractual interest that may become a freehold interest or an exclusive possessory interest, and that is specifically enforceable on the land for which a Conditional Use is sought, may file an application to use such land for one or more of the Conditional Uses in PUDD1.
4. *Application for Conditional Use permit.* No application for a Conditional Use permit shall be placed on any agenda as an item to be acted upon unless the Village Manager or designee has certified acceptance of a complete application. Prior to publication of the required notice of public hearing, the applicant shall provide the Village Clerk with the complete application certified by the Village Manager or designee, including an easily reproducible electronic copy plus hard copies in a quantity directed by the Village Clerk. Said complete application shall be comprised of all of the following:
 - a. A completed Conditional Use permit application on a form furnished by the Village Manager or designee.
 - b. A scale map of the subject property showing all lands for which the Conditional Use permit is proposed, and all other lands within 300 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on

- the current records of the register of deeds. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided.
- c. A written description of the proposed Conditional Use describing the type, duration, and density of activities, buildings, and structures proposed for the subject property and their general locations, plus such additional information as may be required for the particular land use under the Municipal Code.
 - d. A site plan of the subject property, with any alterations as may be proposed to accommodate the Conditional Use. Said site plan shall conform to any applicable requirements of the Municipal Code, and any additional requirements as may be specified for the particular land use under the Municipal Code. If the Conditional Use will make use of existing site improvements only, a site plan need only be of sufficient detail to confirm the portion of the site used by the Conditional Use.
 - e. Written justification for the proposed Conditional Use consisting of the reasons why the applicant believes the proposed Conditional Use is appropriate, particularly as evidenced by compliance with the approval criteria set forth in this section and all applicable requirements of this chapter.
 - f. Any other plans and information deemed necessary by the Village Manager or designee or the Plan Commission to ensure that the requirements of this chapter are or will be fulfilled.
 - g. Any required fee per the fee schedule approved by the Village Board.
5. *Review and recommendation.*
- a. The Village Manager or designee shall determine whether the application is complete and fulfills the requirements of this chapter. Only a complete application in the determination of the Village Manager or designee shall be entitled to a public hearing under subsection (6). the Village Manager or designee shall inform the applicant if the application is incomplete in his or her determination.
 - b. Once the Village Manager or designee determines that the application is complete, the Village Manager or designee shall authorize the public hearing and prepare a written evaluation of the application based on the criteria for evaluating Conditional Use permits in subsection (9) below. The Village Manager or designee shall forward a copy of the evaluation to the Village Plan Commission.
6. *Public hearing.* The Village Clerk shall schedule a public hearing before the Plan Commission to be held within 30 days after acceptance of a complete application as determined by the Village Manager or designee. Notice of the time, place, and purpose of such hearing shall be given by publication as a Class 2 Notice in conformance with the requirements of Wis. Stats. § 62.23(7)(d) and (de). The Village Clerk shall also send said notice to the applicant, and owners of record of all lands within 100 feet of

the boundaries of the subject property, at least five days prior to the date of such public hearing. Failure to mail said notice or failure to meet the time requirements herein, provided it is unintentional, shall not invalidate proceedings under this section.

7. *Review and recommendation by the Plan Commission.* Within 15 days after the public hearing, or an extension of said period requested in writing or electronic format by the applicant and granted by the Plan Commission, the Plan Commission shall make final recommendation on the Conditional Use permit request. Prior to acting on a Conditional Use permit application, the Plan Commission may request further information or additional reports from the Village Manager or designee, the applicant, outside experts or any other source. The commission may recommend approval of the Conditional Use as originally proposed, approval of the proposed Conditional Use with conditions or modifications, or denial of the proposed Conditional Use and shall include reasons therefore. Any action on the proposed Conditional Use permit requires a majority vote of commission members in attendance.
8. *Decision by the Village Board.* Within 45 days of the recommendation of the Village Plan Commission or within 60 days of the adjournment of the public hearing, whichever is longer, the Village Board shall, by resolution, make a final decision to grant, with or without conditions, or to deny each application for a Conditional Use permit after receiving and reviewing the Plan Commission's findings and recommendation and making its own findings as to whether or not the proposed use will satisfy the criteria for approval set forth in subsection (9). An appeal of a decision may be taken to the circuit court pursuant to Wis. Stats. § 62.23(7)(de)5 by any person, firm or corporation; any officer, department, board, commission or agency of the Village, who is aggrieved by the decision. The Village Board's determination shall be final and subject to appeal to the federal or state court under any procedure authorized by statute.
9. *Review criteria for Conditional Use permit.*
 - a. If the applicant meets, or agrees to meet, all of the applicable requirements specified in this chapter and conditions imposed by the Village Board, the Village Board shall under Wis. Stats. § 62.23(7)(de)2.a. grant the Conditional Use permit. The Village may require written agreement from the applicant in a form prescribed by the Village attorney.
 - b. Any decision to grant or deny the Conditional Use permit must be supported by substantial evidence, as that term is defined in Wis. Stats. § 62.23(7)(de)1.b. Any condition or modification must be related to the purpose of this chapter, reasonable, measurable to the extent practicable, and based on substantial evidence.

- c. To the extent consistent with sub-subsections a. and b., no Conditional Use permit shall be granted unless the Village Board finds that the use authorized thereby meets the following criteria:
 - i. The proposed Conditional Use is consistent with the comprehensive plan, this chapter, and all other plans, programs, and ordinances adopted by the Village.
 - ii. The proposed Conditional Use, in its proposed location and as depicted on the required site plan, will not result in a substantial or undue adverse impact on nearby property, the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the provisions of this chapter, the comprehensive plan, or all other plans, programs, and ordinances adopted by the Village.
 - iii. The proposed Conditional Use will maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property.
 - iv. The proposed Conditional Use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies serving the subject property.
 - v. The potential public benefits of the proposed Conditional Use outweigh potential adverse impacts of the proposed Conditional Use, after taking into consideration the applicant's proposal and any requirements recommended by the applicant to ameliorate such impacts.
- 10. *Issuance, notice, and recording of Conditional Use permit or denial.* Within 30 days following the granting of a Conditional Use permit, the Village Manager or designee shall issue to the applicant the approved Conditional Use permit. Said permit shall enumerate the details of the Conditional Use permit, including an identifiable description of the use and subject property and any specific conditions or requirements of approval. The Village Manager or designee may record the Conditional Use permit against the property, assigning all costs thereof to the applicant, and shall make record of the Conditional Use permit on the official zoning map. In the case of a denial of a Conditional Use permit, the Village Manager or designee shall provide written notification to the applicant that the Conditional Use permit was denied, including the reasons for denial.
- 11. *Effect of denial.* No Conditional Use permit application that has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or

proof of change of factors relative to the review criteria in subsection (8) that are found valid by the Village Manager or designee.

12. *Penalties, revocation, or modification of an approved Conditional Use permit.*
 - a. Any violation of an approved Conditional Use permit shall be subject to section 1-13 as well as equitable relief in circuit court.
 - b. A Conditional Use permit shall be automatically revoked if:
 - i. All buildings and other improvements authorized by the Conditional Use permit have not been developed, and the Conditional Use has not commenced operation, within two years of final site plan approval, unless the commission has extended this period by request of the applicant, based on reasons beyond the reasonable control of the applicant.
 - ii. Once initially made operational, the operation of the Conditional Use has been discontinued for a period exceeding eighteen (18) months. The burden of proof shall be with the Conditional Use permit holder or operator to conclusively demonstrate that the Conditional Use was operational during this period.
 - c. A Conditional Use permit may be revoked or modified by the Plan Commission, where the commission determines that the use, its operation, or associated improvements are not in compliance with (i) the terms of this chapter including one or more criteria in subsection (9) or (ii) the approved Conditional Use permit including any associated plan or approval condition. The commission may commence proceedings to consider revocation or modification, with such proceedings following the process in subsections (6) and (7). An appeal of any such decision shall be allowed per subsection (8).
13. *Duration and transfer.* The Village Board may approve a Conditional Use permit with a limitation on the permit's start date, duration, or transfer if such limitation(s) relate to the purpose of this chapter and the Conditional Use permit review criteria in subsection (9). Unless the commission approved a Conditional Use permit with a transfer limitation, or Municipal Code prescribes a transfer limitation for the particular Conditional Use, all requirements of the approved Conditional Use permit shall be continued regardless of ownership or operation of the subject property or use and shall run with the land, except as otherwise limited by this chapter or by a specific condition attached to the Conditional Use permit.
14. *Amendments to approved Conditional Use.* Any expansion of or amendment to a previously approved Conditional Use permit or grandfathered Conditional Use, including any change in an associated plan or approval condition found to be material by the Village Manager or designee, shall be processed in accordance with subsections (3) through

(11), except where its initial approval allowed expansion or amendment by some other process.

15. *Expansion or modification of Conditional Use.* Any substantial expansion or modification of any Conditional Use or any previously approved condition of such use, in the determination of the Village Manager or designee, shall require application and Village consideration of a new or amended Conditional Use permit under this section.

G. Tax Exempt Properties and Uses. With the exception of the Civic/Public Library Use and structures referenced above, no tax exempt structures or uses are permitted in PUDD1.

H. Utilities. All utilities shall be underground, including power and telephone.

I. Exterior Lighting. Illumination of buildings, signs, grounds and parking areas shall be in accordance with any lighting plan submitted with the Improvement Agreements.

J. Road Construction. All road construction shall comply with standards and specifications determined by the Village Engineer and approved by the Village Board.

K. Notification of Conditional Use Requirements and Tenant Changes. All owners of buildings who rent or lease space to businesses located in such buildings shall, at least 25 days prior to any addition or change of tenants or lessees who are leasing or renting space in such buildings, both notify prospective tenants of Conditional Use permit requirements and procedures under this chapter, and notify the village of any change or addition of tenants or lessees.

L. General Restrictions.

1. Outdoor activities shall be allowed in connection with Permitted Uses or Conditional Uses under this Section 125-109, including but not limited to restaurant dining, special events or public recreation, provided that the storage of materials shall be conducted wholly inside a building or buildings.
2. No use permitted in this district shall emit odor or fumes, gas, dust, smoke, or noise to an extent greater than the following maximum allowable levels:
 - a. Noise shall be so muffled as not to become objectionable due to intermittence, beat frequency or shrillness and shall at no time exceed street traffic noise during a normal weekday or weeknight.
 - b. Odor and fumes as defined and controlled by Wis. Stats. § 144.30.
 - c. Operation shall not exceed a number 1 rating on the Ringelmann smoke chart for periods aggregating four minutes in any 30-minute period.
 - d. Dust, dirt and fly ash shall not exceed 0.3 of a grain per cubic foot of flue gas at 60 degrees Fahrenheit, 17.71 psi absolute, and ten percent CO₂, and shall in no manner be unclean, destructive or unhealthful, nor

shall visibility be impaired by opaqueness equivalent to number 1 of the Ringelmann chart.

- e. No vibration that is discernible to the human sense of feeling at any time at the property line shall be permitted.
 - f. Sewage waste shall conform to Village and Milwaukee Metropolitan Sewerage District standards.
3. No activities involving the storage, utilization or manufacture of materials or products that decompose by detonation shall be permitted.

M. Parking. There shall be no parking within 5 feet of any lot line.

N. Off-street parking and loading. Off-street parking and loading shall be in accordance with any master site plan submitted with the Improvement Agreements.

O. Signs. Signage shall be in accordance with any signage plan submitted with the Improvement Agreements.

P. Village Costs and Fees. Pursuant to Section 125-34, Petitioner shall be responsible for all Village professional fees and expenses as defined therein incurred in reviewing, negotiating, developing, drafting, processing the Petition, including enforcing this Ordinance, and PUDD1.

Table
 DEVELOPMENT STANDARDS

Type of Standard	Standard
Landscape Surface Ratio	
Minimum Landscape Surface Ratio (LSR) per lot	15% minimum
Lot Dimensional Requirements	
Minimum Building Lot Area (s.f.)	3,600 s.f.
Building Site Area (% of building site s.f.)	70% maximum
Minimum Lot Width at Setback Line	40 feet
Minimum Front Yard (feet from lot line) ⁵	0 feet
Minimum Side Yard (feet from lot line)	0 feet
Minimum Side Yard on Corner Lot (feet from lot line)	0 feet
Minimum Rear Yard (feet from lot line)	0 feet
<p>In connection with the approval of Site Plans and on recommendation of the Plan Commission, the Village Board may waive the above Landscape Surface Ratio or the Lot Dimensional Requirements or both within PUDD1. The Plan Commission may consider the applicable standards in making such recommendations.</p>	
Maximum Building Height	
Principal Structure (stories)	5.0
Accessory Structure (stories)	5.0
Minimum Parking Requirements	
Minimum Parking Spaces per square feet of floor area shall vary depending on Permitted Use ⁶	See below
<p>Upon approval of Site Plans, the Plan Commission may waive the minimum parking requirements based on, among other factors, demand for and time of usage of parking spaces.</p>	

⁵ Notwithstanding the foregoing, individual properties situated on North Port Washington Road and located north of West Glencoe Avenue shall have a minimum front yard setback of 100 feet from the lot line.

⁶ Parking ratios shall be as follows: 4 spaces for every 1,000 s.f. of professional services/general office and medical office/general medical space, 4 spaces for every 1,000 s.f. of general commercial retail/fitness space, 8 spaces for every 1,000 s.f. of restaurant space, and 1.4 spaces for each residential unit, but in any event, such parking ratios shall apply to the aggregate of off-street, on-street and structured parking.

Section Four: In the event of any inconsistency or conflicts, between this Ordinance, and any prior Village ordinance, this Ordinance shall control.

Section Five: The terms and provisions of this Ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

Section Six: Any ordinances or parts of ordinances contravening the provisions of this ordinance are hereby and to such extent repealed.

Section Seven: This ordinance shall take effect and be in force upon its passage and publication.

PASSED AND ADOPTED by the Board of Trustees of the Village of Bayside on this _____ day of _____, 2021.

APPROVED:

Eido Walny, President

Lynn Galyardt, Clerk

Exhibit A
Improvement Agreements

“ _____ ” DEVELOPMENT

SITE DEVELOPMENT PHASE

PUBLIC IMPROVEMENT AGREEMENT

This Agreement, made this _____ day of _____, 2021, by and between the VILLAGE OF BAYSIDE, a municipal corporation, with principal offices located at 9075 North Regent Road, Bayside, WI 53217, hereinafter called "VILLAGE" and [INSERT NAME OF OWNER/DEVELOPER OF PROPERTY IN SITE DEVELOPMENT], a _____ company, with principal offices at _____, _____, hereinafter called "DEVELOPER".

RECITALS

A. DEVELOPER has proposed the demolition of existing public and private improvements, the installation of new public and private infrastructure and site preparation for redevelopment of a mixed-use project containing professional services, health/fitness, general commercial, medical office, retail, restaurant, civic/recreational, public library, multi-family housing, hospitality and office components on approximately 26.5288 acres, located at the northwest corner of Brown Deer Road and Port Washington Road and bound by Interstate Highway 43 on the West and White Oak Lane on the North, hereinafter called "DEVELOPMENT".

B. DEVELOPMENT is currently zoned, per Ordinance ___ (_____, 2021), as a Planned Development District Number One ("PUDD1") (hereinafter, the "Ordinance") and meets the criteria of its zoning as established in Section 125-109 of the Bayside Municipal Code.

C. DEVELOPER plans to construct DEVELOPMENT and certain site work and Required Construction / Improvements must be installed.

D. VILLAGE and DEVELOPER are executing this Agreement to confirm the way construction of site work and Required Construction / Improvements for the DEVELOPMENT will be performed in compliance with the Ordinance.

NOW, THEREFORE and in consideration of the approval of DEVELOPMENT by VILLAGE, DEVELOPER promises, covenants and agrees as follows:

SECTION 1. PARTIES BOUND

This Agreement is supplementary to and in conjunction with the Ordinance and relating to DEVELOPMENT which is made a part hereof and incorporated herein as part of this Agreement. This Agreement shall be binding upon DEVELOPER, its successors and assigns.

A "Notice of Public Improvements Agreement" shall be recorded at the Register of Deeds Office, Milwaukee County, Wisconsin, which shall be legal notice of this Agreement.

SECTION 2. PROJECT PHASING

DEVELOPER has proposed a multi-phased approach for the overall construction of DEVELOPMENT. A copy of the approved Master Site Plan and Master Site Phasing Plan is attached hereto as Exhibit No. 1.

DEVELOPER acknowledges that this Agreement pertains to the site development phase of DEVELOPMENT and that certain public and private improvements (sanitary sewer, water main, storm sewer/stormwater management, roadways, traffic signals, street lighting, site grading, erosion control, gas, electric, landscaping, etc.) are required to be installed to provide the necessary infrastructure base and site measures for DEVELOPMENT to allow DEVELOPER to continue with the desired phased development approach.

DEVELOPER acknowledges that separate VILLAGE approvals, DEVELOPER Agreements, and Public Improvement Agreements for Building Development may be needed for the approval and construction of future Phases within DEVELOPMENT, as DEVELOPER proceeds with development.

SECTION 3. LAND DIVISION / RIGHT-OF-WAY VACATION / RIGHT-OF-WAY DEDICATION

DEVELOPER acknowledges that prior to VILLAGE 'Acceptance' of, or use of any new public infrastructure by the general public, the necessary public right-of-way and/or public utility easements containing said public infrastructure must be dedicated and/or legally conveyed at the VILLAGE'S sole discretion and at no cost to the VILLAGE. See Section 12 of this Agreement for VILLAGE approval and acceptance procedures for public improvements.

SECTION 4. PLAN REVIEW / APPROVALS

DEVELOPER acknowledges that DEVELOPMENT plans and specifications are subject to review and approval by the VILLAGE and other outside agencies. DEVELOPER agrees to obtain the necessary agency approvals for all plans and specifications that may be required as part of DEVELOPMENT.

DEVELOPER acknowledges that any material alterations to the approved Master Site Plan or any proposals to construct future phases of DEVELOPMENT (from that contained in this AGREEMENT) may require a separate review and approval by the VILLAGE. Said review and approval may include the execution of a separate DEVELOPER Agreement specific to the proposal to identify potential conflicts with, or alteration to prior approvals granted as part of this AGREEMENT, or other Agreements related to DEVELOPMENT.

SECTION 5. REQUIRED CONSTRUCTION / IMPROVEMENTS

In order to construct DEVELOPMENT, DEVELOPER acknowledges it must prepare the necessary civil construction plans and to obtain and comply with all required VILLAGE and non-VILLAGE approvals (plan review, specifications, permits, etc.) associated with said approvals. Unless otherwise specified in this Agreement or specified on the approved civil construction plans, all

improvements that are outside of the current limits of public right-of-way shall be considered private and all improvements that are within the current limits of public right-of-way shall be considered public.

NTD – All streets, sidewalks, lighting, utilities inside DEVELOPMENT are to be privately owned and maintained and the VILLAGE indemnified.

Required Construction / Improvements shall include, but are not limited to:

Demolition	Sidewalks
Erosion Control	TIA Alterations
Grading	Traffic Signals
Sanitary Sewer	Street Lighting System
Storm Sewer / Stormwater Management	Pavement Marking / Street Signage
Water Main	Forestry / VILLAGE Street Trees
Service Laterals	System Streetscaping
Roadway	Private Utilities (Gas, Electric, Telecommunication)

[SUCH LIST OF REQUIRED CONSTRUCTION/IMPROVEMENTS SHALL BE MODIFIED AS APPROPRIATE, DEPENDING ON FINAL MASTER SITE PLAN]

A list of approving agencies may include, but is not limited to:

Wisconsin Department of Natural Resources (WDNR)	Milwaukee Metropolitan Sewerage District
Wisconsin Department of Administration (WDOA)	Southeastern Wisconsin Regional Planning Commission
Wisconsin Department of Commerce (WDOC)	We Energies
Wisconsin Department of Transportation (WDOT)	Telecommunications (ATT, Spectrum, etc.)
Milwaukee County (Including Transit System)	Village of Bayside
Village of Bayside Sewer Utility	City of Mequon Water Utility
Village of Bayside Stormwater Utility	North Shore Fire Department
	North Shore Health Department

Required Construction / Improvements and required agency approvals and specifications are subject to change during DEVELOPMENT review, approval and construction processes. DEVELOPER acknowledges that all costs related to the creation of the required construction plans, review costs, agency approvals and permits shall be at DEVELOPER expense.

A list of the required civil construction plans and related Exhibit numbers has been provided below in Section 16, subject to change.

SECTION 6. SPECIAL PROVISIONS FOR REQUIRED CONSTRUCTION / IMPROVEMENTS

A. **DEMOLITION OF EXISTING BUILDINGS AND INFRASTRUCTURE.** Demolition of DEVELOPER owned buildings shall be subject to the issuance of a demolition permit by VILLAGE. Terms and conditions associated with said demolition shall be contained in the permit. This may include the need for erosion control measures/permits or inspection by VILLAGE staff depending on the nature,

size and scope of the requested demolition. Demolition activities may be permitted to take place with the installation of new roadway and utility infrastructure as these items have cause to be modified.

B. STORM SEWER / STORMWATER MANAGEMENT. DEVELOPER acknowledges its responsibility to provide stormwater management for DEVELOPMENT. The approved stormwater management plan shall be placed on file in the office of the VILLAGE Engineer and has not been attached. DEVELOPER hereby subjects DEVELOPMENT to, and agrees to the following stormwater management terms, conditions and obligations:

1. DEVELOPER agrees to install and maintain stormwater management system, basin(s) and practices in accordance with Section 107 of the VILLAGE Municipal Code, Milwaukee Metropolitan Sewerage District Chapter 13, the Wisconsin Administrative Code NR 151 and per the approved plans and permit(s) conditions on file in the VILLAGE Engineer.

2. DEVELOPER agrees to perform and provide information and/or test as may be required to meet VILLAGE, MMSD and WDNR regulations pertaining to DEVELOPMENT stormwater management plan, stormwater management system, basin(s) and practices.

3. Upon completion of construction, DEVELOPER agrees to provide VILLAGE with the certification of a Professional Engineer licensed in the State of Wisconsin verifying that the stormwater management system, basin(s) and practices have been constructed as designed. In addition, DEVELOPER agrees to promptly take all necessary, corrective actions to properly remedy and construct stormwater management system, basin(s) and practices as designed if deficiencies are found during the certification process. VILLAGE will provide certification requirements upon request.

4. DEVELOPER agrees to be solely responsible for the operation, maintenance, upkeep, and repair of the stormwater management system, basin(s) and practices for DEVELOPMENT and other responsibilities and liability as set forth in this Agreement (“Obligations”). Upon sale of DEVELOPMENT, or portions of DEVELOPMENT to another party, DEVELOPER shall ensure that the necessary documents are executed between parties to properly convey and transfer the applicable stormwater management Obligations as set forth in Section 6.C of this Agreement to ensure that the stormwater management Obligations are maintained in perpetuity. At no time shall VILLAGE be responsible for the operation, maintenance, upkeep and repair of the stormwater management system, basin(s) or practices, except for public storm sewer improvements once formally accepted by VILLAGE, or to the extent that any repair is necessitated as a result of the direct negligence or willful misconduct of the VILLAGE, its employees, agents or contractors. Neither the VILLAGE or its insurer shall be responsible or liable for any amount subject to statutory or common law immunity or any amount greater than the limits of liability for municipal claims against municipalities established by Wisconsin Law.

5. DEVELOPER grants and authorizes VILLAGE, in the event DEVELOPER does not comply with the VILLAGE-approved stormwater management plan for the DEVELOPMENT (within ten (10) business days of written notification) relating to said stormwater management system, basins(s) and practices, to access DEVELOPMENT stormwater management system, basin(s) and practices and proceed to do any work reasonably ordered and charge same to DEVELOPER. Said charges may be collected through a VILLAGE invoice or in the same manner

as special charge pursuant to Section 66.0627 Wis. Stats. on the property tax bill for all or part of the DEVELOPMENT (DEVELOPER HEREBY SPECIFICALLY CONSENTS TO SUCH SPECIAL CHARGE AND WAIVES ANY OBJECTIONS THERETO TO THE FULLEST EXTENT OF THE LAW).

6. By execution of this document, DEVELOPER grants the VILLAGE a permanent Stormwater Management Maintenance Easement, which includes a suitable ingress and egress route. The boundary of said Easement will be included on the certified survey map prepared by DEVELOPER and shall contain language clearly conveying said Easement interest to VILLAGE.

7. The term 'basin(s)' as used in this Section can refer to an above ground or below ground stormwater management basin, structure or facility.

C. WATER MAIN/SYSTEM. Subject to City of Mequon Water Utility standards.

D. PUBLIC ROADWAY / SIDEWALKS. DEVELOPER shall install, own, and maintain all roadways and sidewalks not located in the current public right-of-way and, at DEVELOPER'S option, may install all such roadways and sidewalks in the public right-of-way. For bituminous asphalt roadways, the concrete curb and gutter, crushed aggregate base course, asphalt binder and asphalt curb wedges must be installed as part of the initial construction. The installation of surface asphalt may be phased in conjunction with construction coordination, however the placement of any surface asphalt must be agreed to by VILLAGE and DEVELOPER before installation. Sufficient surface asphalt (i.e. first lift) must be installed before the issuance of the first occupancy permit with final lift applied within six (6) months of the issuance of such permit, subject to reasonable adjustment based on weather conditions.

E. ALTERATIONS TO EXISTING PUBLIC ROADWAYS / SIDEWALK / UTILITIES. Given DEVELOPMENT proximity to major public roadways, DEVELOPER has caused the creation of a Traffic Impact Analysis study, dated _____, 20__ (hereinafter 'TIA'), for DEVELOPMENT. DEVELOPER, as part of construction of DEVELOPMENT, agrees to comply with the requirements of the TIA and subsequent review comments by the VILLAGE, WDOT and Milwaukee County as part of the approval of the TIA. A copy of the approved TIA is on file in the office of the VILLAGE Engineer and has not been attached.

F. TRAFFIC SIGNALS. DEVELOPER acknowledges that the inclusion of new traffic signal facilities and adjustment to existing traffic signal facilities and related traffic inter-connect requirement are included in the approved TIA. Some of these facilities may physically lie outside of the limits of DEVELOPMENT.

DEVELOPER, as part of construction of DEVELOPMENT, agrees to comply with all traffic signal requirements of the TIA. Traffic signal facilities shall be maintained and operated by the VILLAGE, at its cost, on West Brown Deer Road and North Port Washington Road. DEVELOPER shall maintain all other traffic signals within the DEVELOPMENT.

G. STREET LIGHTING SYSTEM. Any street lighting systems installed by DEVELOPER along private streets must be approved and permitted by VILLAGE prior to installation. Street lights shall be maintained and operated by DEVELOPER, at its cost, on abutting portions of West Brown Deer Road, North Port Washington Road and all other streets within the DEVELOPMENT.

H. PAVEMENT MARKING & STREET SIGNAGE PLAN. Any DEVELOPMENT ‘wayfinding’ signage installed by DEVELOPER in public right-of-way must be approved and permitted by VILLAGE prior to installation. DEVELOPER is responsible for all costs associated with the installation, operation and maintenance of said ‘wayfinding’ signage installed by DEVELOPER for DEVELOPMENT and for all signage within the DEVELOPMENT.

I. STREETSCAPING. Streetscaping shall include but not be limited to roadway pavers, colored concrete / asphalt, decorative street lighting, banners, decorative signage/way finding signs, flower beds, shrubs and some types of trees. If questions arise on streetscaping, VILLAGE shall make the final determination on the approval of a given streetscaping feature. DEVELOPER shall install and maintain all streetscaping features.

J. PRIVATE UTILITIES (Electric, Water, Sewer, Gas, Telephone, CATV, etc.). DEVELOPER acknowledges its responsibility, as part of this Agreement and the approval of DEVELOPMENT, to provide a plan for private utilities that shows the proposed location of private utilities that are needed to facilitate DEVELOPMENT. DEVELOPER will install all such utilities in the DEVELOPMENT, which utilities shall be, and remain, privately owned and which shall be properly connected to public utilities located outside of the DEVELOPMENT.

DEVELOPER acknowledges that all new private utilities shall be installed as underground utilities, and once installed, shall conform to the proposed plans approved by the VILLAGE. DEVELOPER remains responsible to remedy any deficiencies if any private utilities are not installed consistent with the plans approved by the VILLAGE.

DEVELOPER agrees to be responsible for any and all liability and hold VILLAGE harmless from any and all claims arising out of the existence of those items not within the public right of way and, to the extent maintenance is the obligation of the DEVELOPER, maintenance of said stormwater system, water main and system roadways and sidewalks, traffic signals, private utilities, street lighting, pavement marking street signage, and streetscaping practices and appurtenances, except for such claims as may be the result of the direct negligence or willful misconduct of the VILLAGE, its employees, agents or contractors. Neither the VILLAGE nor its insurer shall be responsible or liable for any amount subject to statutory or Common Law immunity or any amount greater than the limits of liability for municipal claims established by Wisconsin Law.

SECTION 7. OTHER SITE CONSIDERATIONS

A. FENCING. DEVELOPER may propose for the VILLAGE’S approval the placement of a temporary construction fence around DEVELOPMENT during construction as a means to shield the site and to increase security in DEVELOPMENT. DEVELOPER agrees that said fencing shall not unreasonably impede VILLAGE ingress and egress to DEVELOPMENT.

SECTION 8. EASEMENTS

DEVELOPER acknowledges its responsibility to ensure that the necessary easements to facilitate public utilities, private utilities, and other DEVELOPMENT related needs are contained on the certified survey map and noted accordingly, or created through the use of other standalone documents.

Upon completion of DEVELOPMENT, DEVELOPER acknowledges that it shall cause the release or extinguishment of any un-needed public or private easements.

SECTION 9. CONSTRUCTION ACTIVITIES OF REQUIRED CONSTRUCTION / IMPROVEMENTS

A. TIME OF COMPLETION. DEVELOPER shall, entirely at its expense, within a period of [] () months commencing with the execution of this Agreement, construct, install, furnish and provide the ‘Required Construction / Improvements’.

B. VILLAGE INSPECTION.

1. For VILLAGE public improvements, utilities, utility connections, oversight of all construction and maintenance shall be performed under the direction of the VILLAGE, or its designee, at DEVELOPER expense. VILLAGE shall decide all questions which arise as to the amount, quality and acceptability of materials furnished, work performed, specifications and regulations and acceptable fulfillment of Required Construction / Improvements associated with the DEVELOPMENT.

2. If any work is covered up without approval or consent of VILLAGE, it will, if required by VILLAGE, be uncovered for examination at DEVELOPER expense. Re-examination of questioned work may be ordered by VILLAGE and if so ordered, the work will be uncovered by DEVELOPER at DEVELOPER expense. If such work is found not in accordance with the approved plans, specification and regulations, DEVELOPER shall replace or repair work as required by VILLAGE at DEVELOPER expense.

C. RESTORATION. DEVELOPER acknowledges responsibility to (at VILLAGE’s reasonable discretion) restore the areas affected by any construction associated with DEVELOPMENT to the condition it was prior to construction, including but not limited to, grading to blend with existing topography to ensure proper drainage, sodding disturbed area, replacement of all disrupted driveways, restoration of any damaged street pavement/shoulders, and replacement of any private trees/bushes/plantings which were removed/damaged in right-of-way and/or on a 3rd party’s private property.

D. NOISE. DEVELOPER agrees to make every reasonable effort to minimize noise, dust and similar disturbances. In accordance with Section 35-176 of the VILLAGE Municipal Code, construction activities, including idling of trucks in the VILLAGE, shall not begin before 7:00 am or continue after 7:00 pm during weekdays and Saturdays. Construction activities are not allowed on Sundays and Holidays. All other noise criteria shall be in conformance with VILLAGE codes. DEVELOPER reserves the right to request adjusted work hours for times other than as stated above if construction factors, and other circumstances warrant said request. Said request will be made to the office of the VILLAGE Engineer. DEVELOPER acknowledges that VILLAGE must first approve said request prior to DEVELOPER commencing work during adjusted work hours.

E. PRE-CONSTRUCTION MEETING. DEVELOPER acknowledges that a pre-construction meeting shall be held prior to the commencement of construction activities in DEVELOPMENT. Due to demolition and other phased construction activity, there may be a need for one, or several pre-construction meeting(s). VILLAGE shall decide whether pre-construction meetings are warranted.

F. CONSTRUCTION TRAFFIC. Specific details regarding construction traffic and routing will be discussed during pre-construction meetings.

G. PLAN MODIFICATION / PLAN REVIEW STATUS. DEVELOPER requests for material modifications of the approved plans during construction are to be submitted by DEVELOPER in a manner similar to the application for Plan Commission review. DEVELOPER shall provide such detailed drawings and/or other information as VILLAGE requires and reimburse VILLAGE for the review related expenses incurred by VILLAGE and any retained consultants. VILLAGE shall decide the extent of review required and determine if VILLAGE action is warranted.

SECTION 10. INTENTIONALLY OMITTED

SECTION 11. PAYMENT OF VILLAGE COSTS AND FEES

DEVELOPER, pursuant to Section 125-34 of the Municipal Code, shall pay and reimburse the VILLAGE promptly upon billing for all fees, expenses, costs and disbursements which shall be incurred by the VILLAGE in connection with the development, amendment, administration and enforcement of this Agreement, relative to the construction, installation, inspection, dedication (as applicable), and acceptance (as applicable) of all aspects of the DEVELOPMENT, including without limitation planning, design, engineering, review, accounting, supervision, inspection and legal fees, administrative, and financial consulting. Any such charge not paid by DEVELOPER within thirty (30) days of being invoiced may be assessed against the Property and each Lot as a special charge pursuant to Section 66.0627 of the Wisconsin Statutes (DEVELOPER HEREBY SPECIFICALLY CONSENTS TO SUCH SPECIAL CHARGE AND WAIVES ANY OBJECTIONS THERETO TO THE FULLEST EXTENT OF THE LAW).

SECTION 12. APPROVAL AND ACCEPTANCE OF PUBLIC IMPROVEMENTS

DEVELOPER shall comply with the following language related to VILLAGE approval and acceptance of public improvements prior to any public improvement dedication taking place:

All Required Construction / Improvements shall be and remain the property of DEVELOPER until final acceptance by VILLAGE of those items to be dedicated in accordance with the Master Site Plan and thereupon shall be turned over to and delivered to VILLAGE without cost and shall become VILLAGE property.

Upon completion of the Required Construction / Improvements in DEVELOPMENT as covered by this Agreement and in accordance with the terms, conditions, plans and specifications incorporated herein, DEVELOPER shall request final VILLAGE acceptance of said Required Construction / Improvements. At time of request, DEVELOPER may certify to VILLAGE that it has followed all designs, plans and specifications, materials and any alterations and modifications, as approved by VILLAGE and also as contained in this Agreement. Said certification shall enumerate, in written form, any changes, alterations or modifications from previous VILLAGE approvals and/or the terms of this Agreement. Upon certification by DEVELOPER, VILLAGE shall make an inspection of the work. VILLAGE will provide DEVELOPER, within thirty (30) days of completed VILLAGE inspection, either:

- a. A notice of rejection from VILLAGE indicating that the Required Construction / Improvements are not in sufficient condition for inspection by VILLAGE,
- b. A notice of specific requirements that VILLAGE requires prior to issuance of a certificate of acceptance of installation for Required Construction / Improvements, or
- c. A certificate of acceptance of installation for Required Construction / Improvements.

In the event that no certificate of acceptance, specific requirements, or denial of acceptance are provided to DEVELOPER within said thirty (30) days, then acceptance shall be deemed to have occurred. Said 30-day time period will start upon VILLAGE receipt of the notification with certification from DEVELOPER. Final acceptance by VILLAGE shall effectuate transfer of title. Due to the nature of construction, in the event that any VILLAGE accepted Required Construction / Improvements are damaged by DEVELOPER after VILLAGE acceptance due to, but not limited to additional utility and pavement installations or other work by DEVELOPER, VILLAGE reserves the right to order DEVELOPER to remedy said defect at DEVELOPER's expense. Failure by DEVELOPER to remedy said defect will result in the denial of a notice of compliance, Occupancy Permit, or other action by VILLAGE until said defect is repaired.

SECTION 13. BUILDING AND OCCUPANCY PERMITS

A. **BUILDING PERMITS.** VILLAGE may withhold or suspend building permits for individual buildings constructed within the DEVELOPMENT in case of any default pertaining to this Agreement on the part of DEVELOPER.

B. **OCCUPANCY PERMITS.**

1. VILLAGE may withhold occupancy permits for individual buildings constructed within the DEVELOPMENT in case of any default pertaining to this Agreement on the part of DEVELOPER.

2. DEVELOPER agrees that said land division identified in Section 3 of this Agreement must be approved by VILLAGE and recorded prior to the issuance of an occupancy permit for any building constructed within the DEVELOPMENT.

SECTION 14. PLAN REPRODUCTION / RECORD DRAWINGS

DEVELOPER agrees to provide VILLAGE with a) a full sized, paper set of the Civil Site Construction Plans, b) electronic PDF images of the Civil Site Construction Plans and c) electronic CAD files of the Civil Site Construction Plans Microstation V8i, or VILLAGE acceptable compatible software format. DEVELOPER hereby grants the VILLAGE the right to utilize these materials as needed for VILLAGE mapping and record keeping needs.

Upon completion of construction activities, VILLAGE will complete the necessary as-built construction records for Public Improvements installed, or modified as a result of DEVELOPMENT, at DEVELOPER expense.

Upon completion of construction activities, DEVELOPER will complete the necessary as-built construction records for Private Improvements installed, or modified as a result of DEVELOPMENT.

SECTION 15. PRIOR VILLAGE CONDITIONS

It is mutually agreed that all terms and conditions pertaining to DEVELOPER as imposed by VILLAGE Plan Commission and VILLAGE Board as set forth in their official minutes, are made a part hereof by reference as though fully set forth herein.

SECTION 16. EXHIBITS

It is mutually agreed that all exhibits referred to and/or attached hereto are made a part of this Agreement. Any conditions contained in any approvals as called for therein are also incorporated within this Agreement and made a part hereof. Exhibits incorporated into this Agreement include the following, as applicable:

- Exhibit 1 Master Site / Phasing Plan
- Exhibit 2 Grading Plans
- Exhibit 3 Sanitary Sewer Plans
- Exhibit 4 Storm Sewer Plans
- Exhibit 5 Water Main Plans
- Exhibit 6 Street / Sidewalk Plans
- Exhibit 7 Brown Deer Road and Port Washington Road Alteration Plans (T.I.A. plans)
- Exhibit 8 Traffic Signal Plans
- Exhibit 9 Street Lighting Plans
- Exhibit 10 Pavement Marking / Street Signage Plans
- Exhibit 11 Street Tree / Landscaping Plan
- Exhibit 12 Private Streetscaping Plan

SECTION 17. EMERGENCY ACCESS

DEVELOPER shall allow VILLAGE right of entry in all areas of DEVELOPMENT for the purposes of fire, police and other emergency response situations.

SECTION 18. DEVELOPER CONTROLS

The work shall be under the full charge and care of DEVELOPER until accepted by VILLAGE. DEVELOPER shall be responsible for the work of its contractors and every part thereof, for all materials, tools, appliances and property of every description used in connection therewith. DEVELOPER shall specifically and distinctly assume and does so assume all risks of damage or injury to property or persons used or employed on or in connection with the work, and of all damage or injury to any persons or property wherever located, resulting from any action or operation under this Agreement or in connection with the work, and undertakes and promises to protect and defend VILLAGE against all claims on account of any such damage or injury.

DEVELOPER shall, in the performance of this Agreement, comply with and give all stipulations and representations required by applicable federal, state and local laws, ordinances and regulations. DEVELOPER shall also require such compliance, stipulations and representations with respect to any contract entered into by DEVELOPER with others (pertaining to the work covered by this Agreement) as may be required by all applicable federal, state and local laws, ordinances and regulations. Should DEVELOPER fail with respect to any of these provisions, it shall indemnify and hold harmless, VILLAGE and all of its officers, agents, and employees from any liability or damage on account of such failure.

SECTION 19. GUARANTY PERIOD

DEVELOPER shall remedy or cause to be remedied any defects in materials or workmanship which shall appear within a period of one year from the date of VILLAGE'S acceptance of any Required Construction / Improvements.

SECTION 20. UNAUTHORIZED COMMENCEMENT OF WORK

In the event DEVELOPER proceeds to make improvements without first having received the approval of VILLAGE or, in the event that DEVELOPER proceeds in a manner which does not comply with the plans and specifications as approved by VILLAGE, VILLAGE may take action to stop construction of the improvements. Action by VILLAGE shall consist of a notice to DEVELOPER who is proceeding in violation of, or without approval, which notice shall be in writing, addressed to the last known post office address of DEVELOPER and which notice shall be sent by postage prepaid United States certified mail or by hand delivery or confirmed email. The notice shall advise DEVELOPER of the nature of the violation and shall order immediate cessation of work on the improvements, which order DEVELOPER must comply with. DEVELOPER may request a meeting with VILLAGE which shall be granted within two (2) workdays of the request. If DEVELOPER can demonstrate compliance with approved plans and specifications to the satisfaction of VILLAGE, VILLAGE shall rescind its order stopping construction.

SECTION 21. DEVELOPER DEFAULT; VILLAGE REMEDIES

If DEVELOPER is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if it or its contractors disregard statutes, ordinances, regulations, orders, or the instruction of VILLAGE, or if it fails to perform any provisions of this Agreement, then VILLAGE, upon determination

that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy of VILLAGE, including the right to damages, and after giving DEVELOPER and its surety ten (10) days' written notice and opportunity to cure the alleged deficiency or failure to perform, take possession for the sole purpose of completing said work of the premises and of all materials, tools, equipment and plant thereon and finish the work by whatever method it may deem expedient; provided that, if it will reasonably take more than ten (10) days to cure such default, Developer shall be afforded additional time reasonably required to cure such default, provided, further, that Developer commences to cure such default within ten (10) days after receipt of notice of default and thereafter diligently pursues curing such default. DEVELOPER in the event of its default shall pay VILLAGE the cost of so administering and completing the work.

In addition, in the event that performance has not been commenced within ten (10) days from the date of notice to DEVELOPER of suspension of the work, then VILLAGE has the right to continue in possession of and utilize, for the completion of the work, any and all materials, tools, and equipment which DEVELOPER or its contractors have had delivered upon the site of the work and to prosecute the work to completion as it may deem expedient and at the expense of DEVELOPER.

Whether or not VILLAGE elects to take charge of the work, DEVELOPER shall be liable to VILLAGE for its damages sustained by failure to complete the work on time, in addition to the cost of completion of the work.

Written Notice shall be deemed given if delivered by certified or registered mail to DEVELOPER at:

SECTION 22. DEVELOPERS INDEMNITY

In addition to, and not to the exclusion or prejudice of, any other provisions of this Agreement, DEVELOPER shall indemnify and hold VILLAGE, its officers, agents and employees harmless, and shall defend the same, from and against any and all liability, claims, loss damages, interest, actions, suits, judgments, costs, expenses, attorneys' fees and the like, to whomsoever owned and whomsoever and

whenever brought or obtained, which may in any manner result from or arise in the course of or out of the performance of the work and this Agreement, expressly including, though not limited to: negligence and the breach of any duty whether imposed by statute, ordinance, regulation, order, decree of law, or by contract, on the part of DEVELOPER or its officers, employees, agents, workmen, or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect whatever, the infringement of any patent, trademark, trade name, or copyrights claims arising under any law including Workmen's Compensation Law.

In every such case where judgment is recovered against VILLAGE, if notice has been given to DEVELOPER of the pendency of suit within thirty (30) days after its commencement, the judgment shall be conclusive upon DEVELOPER, not only as to the amount of damages, but also as to its liability to VILLAGE.

SECTION 23. VILLAGE APPROVALS

Throughout this Agreement, whenever the approval of the VILLAGE is required, the approval of the VILLAGE Board (or designee), confirmed by the VILLAGE Clerk, shall constitute VILLAGE approval; and whenever the approval of VILLAGE staff shall be required, the approval by the VILLAGE Manager shall constitute VILLAGE staff approval.

[signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____, 2021.

DEVELOPER

By: _____

By: _____

STATE OF WISCONSIN)

) SS.

COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 2021, the above-named _____, to me known to be the person who executed the foregoing instrument on behalf of _____, and acknowledged that he executed the foregoing instrument on behalf of said limited liability company by its authority.

Signature

Print Name
Notary Public, Milwaukee County, Wisconsin
My Commission Expires: _____

“ _____ ” DEVELOPMENT

_____ BUILDING DEVELOPMENT

PUBLIC IMPROVEMENT AGREEMENT

This Agreement, made this _____ day of _____, 202_, by and between the VILLAGE OF BAYSIDE, a municipal corporation, with principal offices located at 9075 North Regent Road, Bayside, WI 53217, hereinafter called "VILLAGE" and **[INSERT NAME OF OWNER/DEVELOPER OF INDIVIDUAL BUILDING]**, a _____ company, with principal offices at _____, _____, hereinafter called “DEVELOPER”.

RECITALS

A. VILLAGE and Bayside Development Partners, LLC previously entered into a Public Improvement Agreement (Site Development), dated as of _____, 2021 (“Site Development Agreement”) for the overall site development and public infrastructure work for the _____ Development currently zoned, per Ordinance ____ (_____, 2021), as a Planned Unit Development District #1 (hereinafter, “PUDD1”).

B. DEVELOPER has proposed the development of a **describe individual building and location**, hereinafter called “DEVELOPMENT”.

C. DEVELOPMENT is located within the _____ Development and meets the criteria of its zoning as established in PUDD1 and the Site Development Phase Public Improvement Agreement.

D. DEVELOPER plans to construct DEVELOPMENT and certain site work and required improvements must be installed.

E. VILLAGE and DEVELOPER are executing this Agreement to confirm that the DEVELOPMENT constructed in accordance with this Agreement will comply with PUDD1 and to confirm the way construction of site work and required improvements for the DEVELOPMENT will be performed.

NOW, THEREFORE and in consideration of the approval of DEVELOPMENT by VILLAGE, DEVELOPER promises, covenants and agrees as follows:

SECTION 1. PARTIES BOUND

This Agreement is supplementary to and in conjunction with PUDD1 and the Site Development Phase Public Improvement Agreement, relating to DEVELOPMENT which is made a part hereof and incorporated herein as part of this Agreement. This Agreement shall be binding upon DEVELOPER, its successors and assigns.

A "Notice of Public Improvements Agreement" shall be recorded at the Register of Deeds Office, Milwaukee County, Wisconsin, which shall be legal notice of this Agreement.

SECTION 2. BUILDING DEVELOPMENT

DEVELOPER has proposed development of a **[describe individual building]**. A copy of the approved Site Plan for the DEVELOPMENT is attached hereto as Exhibit No. 1.

DEVELOPER acknowledges that this Agreement pertains to the construction of the DEVELOPMENT and that connections to certain public and private improvements (sanitary sewer, water main, gas and electric utilities, and storm sewer/stormwater management), as well as site grading, erosion control, and landscaping) are required to be installed to complete the DEVELOPMENT.

VILLAGE acknowledges and confirms that the DEVELOPMENT as depicted on the Exhibit 1 Site Plan complies with PUDD1, subject to DEVELOPER complying with the provisions of this Agreement.

SECTION 3. LAND DIVISION

The DEVELOPMENT will be constructed on Lot __ of CSM __, as more particularly described on Exhibit 2 attached hereto.

SECTION 4. PLAN REVIEW / APPROVALS

DEVELOPER acknowledges that DEVELOPMENT plans and specifications are subject to review and approval by the VILLAGE and other outside agencies. DEVELOPER agrees to obtain the necessary agency approvals for all plans and specifications that may be required as part of DEVELOPMENT.

SECTION 5. REQUIRED CONSTRUCTION / IMPROVEMENTS

In order to construct DEVELOPMENT, DEVELOPER acknowledges it must prepare the necessary civil construction plans and to obtain and comply with all required VILLAGE and non-VILLAGE approvals (plan review, specifications, permits, etc.) associated with said approvals. Unless otherwise specified in this Agreement or specified on the approved civil construction plans, all improvements that are outside of the current limits of public right-of-way shall be considered private and all improvements that are within the current limits of public right-of-way shall be considered public.

Required construction / improvements and required agency approvals and specifications are subject to change during DEVELOPMENT review, approval and construction processes. DEVELOPER acknowledges that all costs related to the creation of the required construction plans, review costs, agency approvals and permits shall be at DEVELOPER expense.

DEVELOPER acknowledges that construction inspection and oversight including but not limited to VILLAGE inspection and oversight will be required to complete the installation of the required construction / improvements connecting to or affecting any public improvements. DEVELOPER acknowledges that all costs related to the construction inspection and oversight of the required construction / improvements shall be at DEVELOPER expense.

[SUCH LIST OF REQUIRED CONSTRUCTION / IMPROVEMENTS SHALL BE MODIFIED AS APPROPRIATE, DEPENDING ON FINAL MASTER SITE PLAN.]

SECTION 6. SPECIAL PROVISION FOR REQUIRED CONSTRUCTION / IMPROVEMENTS

K. DEMOLITION OF EXISTING BUILDING AND INFRASTRUCTURE. Demolition of any existing improvements on the site shall be subject to the issuance of a demolition permit by VILLAGE. Terms and conditions associated with said demolition shall be contained on the respective permit.

L. SANITARY SEWER. DEVELOPER shall, at DEVELOPER'S sole cost, connect the DEVELOPMENT to the public sanitary sewer serving the DEVELOPMENT.

M. STORM SEWER / STORMWATER MANAGEMENT. DEVELOPER acknowledges its responsibility to provide stormwater management for DEVELOPMENT, consistent with the terms and provisions of the Site Development Agreement, Section 107 of the Municipal Code, and the Stormwater Management Plan. The approved Stormwater Management Plan shall be placed on file in the office of the VILLAGE Engineer and has not been attached.

N. WATER MAIN. DEVELOPER, at DEVELOPER'S sole cost, shall cause the Development to be connected to the existing water main serving the DEVELOPMENT in accordance with Mequon Water Utility standards.

O. SIDEWALKS. DEVELOPER shall, at DEVELOPER'S sole cost, install sidewalks as shown on the Site Plan attached as Exhibit 1, in accordance with all VILLAGE standards. DEVELOPER shall be responsible for all maintenance (including but not limited to snow and ice removal) of sidewalks.

P. PRIVATE UTILITIES (Electric, Gas, Telephone, CATV, etc.). DEVELOPER, at Developer's sole cost, shall connect to all private utilities servicing the DEVELOPMENT. DEVELOPER acknowledges that all new private utilities shall be installed as underground utilities, and once installed, shall conform to the proposed plans approved by the VILLAGE. DEVELOPER remains responsible for ownership and maintenance of all such utilities and to remedy any deficiencies if any private utilities are not installed consistent with the plans approved by the VILLAGE.

SECTION 7. EASEMENTS

DEVELOPER acknowledges its responsibility to ensure that the necessary easements to facilitate public utilities, private utilities, and other DEVELOPMENT related needs are contained on the certified survey map and noted accordingly, or created through the use of other standalone documents.

Upon completion of DEVELOPMENT, DEVELOPER acknowledges that it shall cause the release or extinguishment of any un-needed public or private easements.

SECTION 8. BUILDING AND OCCUPANCY PERMITS

C. BUILDING PERMITS. VILLAGE may withhold or suspend building permits for the DEVELOPMENT in case of any default pertaining to this Agreement or violation of VILLAGE Ordinance on the part of DEVELOPER.

D. OCCUPANCY PERMITS.

3. VILLAGE may withhold occupancy permits for the DEVELOPMENT in case of any default pertaining to this Agreement or violation of VILLAGE Ordinance on the part of DEVELOPER.

4. DEVELOPER agrees that said land division identified in Section 3 of this Agreement must be approved and recorded with the County Register of Deeds prior to the issuance of any occupancy permit for the DEVELOPMENT.

SECTION 9. PLAN REPRODUCTION / RECORD DRAWINGS

DEVELOPER agrees to provide VILLAGE with a) a full sized, paper set of the Civil Site Construction Plans, b) electronic PDF images of the Civil Site Construction Plans and c) electronic CAD files of the Civil Site Construction Plans Microstation V8i, or VILLAGE acceptable compatible software format. DEVELOPER hereby grants the VILLAGE the right to utilize these materials as needed for VILLAGE mapping and record keeping needs.

Upon completion of construction activities, VILLAGE will complete the necessary as-built construction records for Public Improvements installed, or modified as a result of DEVELOPMENT, at DEVELOPER expense.

Upon completion of construction activities, DEVELOPER will complete the necessary as-built construction records for Private Improvements installed, or modified as a result of DEVELOPMENT and will provide VILLAGE with a complete set of such records.

SECTION 10. PRIOR VILLAGE CONDITIONS

It is mutually agreed that all terms and conditions pertaining to DEVELOPER as imposed by VILLAGE Planning Commission and VILLAGE Board as set forth in their official minutes, are made a part hereof by reference as though fully set forth herein.

SECTION 11. EXHIBITS

It is mutually agreed that all exhibits referred to and/or attached hereto are made a part of this Agreement. Any conditions contained in any approvals as called for therein are also incorporated within this Agreement and made a part hereof. Exhibits incorporated into this Agreement include the following (as applicable):

- Exhibit 1 Master Site / Phasing Plan
- Exhibit 2 Certified Survey Map for DEVELOPMENT
- Exhibit 3 Grading Plans
- Exhibit 4 Sanitary Sewer Lateral Plans
- Exhibit 5 Storm Sewer Lateral Plans

- Exhibit 6 Water Main Lateral Plans
- Exhibit 7 Sidewalk Plans
- Exhibit 8 Landscaping Plan
- Exhibit 9 Traffic Signal Plans
- Exhibit 10 Traffic Impact Analysis Plans

SECTION 12. EMERGENCY ACCESS

DEVELOPER shall allow VILLAGE right of entry in all areas of DEVELOPMENT for the purposes of fire, police and other emergency response situations.

SECTION 13. DEVELOPER CONTROLS

The work shall be under the full charge and care of DEVELOPER. DEVELOPER shall be responsible for the work of its contractors and every part thereof, for all materials, tools, appliances and property of every description used in connection therewith. DEVELOPER shall specifically and distinctly assume and does so assume all risks of damage or injury to property or persons used or employed on or in connection with the work, and of all damage or injury to any persons or property wherever located, resulting from any action or operation under this Agreement or in connection with the work, and undertakes and promises to protect and defend VILLAGE against all claims on account of any such damage or injury.

DEVELOPER shall, in the performance of this Agreement, comply with and give all stipulations and representations required by applicable federal, state and local laws, ordinances and regulations. DEVELOPER shall also require such compliance, stipulations and representations with respect to any contract entered into by DEVELOPER with others (pertaining to the work covered by this Agreement) as may be required by all applicable federal, state and local laws, ordinances and regulations. Should DEVELOPER fail with respect to any of these provisions, it shall indemnify and hold harmless, VILLAGE and all of its officers, agents, and employees from any liability or damage on account of such failure.

SECTION 14. UNAUTHORIZED COMMENCEMENT OF WORK

In the event DEVELOPER proceeds in a manner which does not comply with the plans and specifications as approved by VILLAGE, VILLAGE may take action to stop construction of the improvements. Action by VILLAGE shall consist of a notice to DEVELOPER who is proceeding in violation of, or without approval, which notice shall be in writing, addressed to the last known post office address of DEVELOPER and which notice shall be sent by postage prepaid United States certified mail. The notice shall advise DEVELOPER of the nature of the violation and shall order immediate cessation of work on the improvements, which order DEVELOPER must comply with. DEVELOPER may request a meeting with VILLAGE which shall be granted within two (2) workdays of the request. If

by the VILLAGE in connection with the development, amendment, administration and enforcement of this Agreement, relative to the construction, installation, inspection, dedication (as applicable), and acceptance (as applicable) of all aspects of the DEVELOPMENT, including without limitation planning, design, engineering, review, accounting, supervision, inspection and legal fees, administrative, and financial consulting. Any such charge not paid by DEVELOPER within thirty (30) days of being invoiced may be assessed against the Property and each Lot as a special charge pursuant to Section 66.0627 of the Wisconsin Statutes (DEVELOPER HEREBY SPECIFICALLY CONSENTS TO SUCH SPECIAL CHARGE AND WAIVES ANY OBJECTIONS THERETO TO THE FULLEST EXTENT OF THE LAW).

SECTION 18. VILLAGE APPROVALS

Throughout this Agreement, whenever the approval of the VILLAGE is required, the approval of the VILLAGE Board (or designee), confirmed by the VILLAGE Clerk, shall constitute VILLAGE approval; and whenever the approval of VILLAGE staff shall be required, the approval by the VILLAGE Manager shall constitute VILLAGE staff approval.

[signatures on following pages]

The Above Agreement is Accepted:

VILLAGE OF BAYSIDE

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

STATE OF WISCONSIN)
) SS
MILWAUKEE COUNTY)

Personally came before me, this _____ day of _____, 2021 _____, Village President and _____, VILLAGE Clerk, of the above named VILLAGE of Bayside, a municipal corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such VILLAGE President and VILLAGE Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority.

Signature

Print Name
Notary Public, Milwaukee County, Wisconsin

My Commission Expires: _____

Approved as to Form: _____
Bayside Legal Counsel

This Instrument was drafted by Marvin Bynum II.