

“ \_\_\_\_\_ ” DEVELOPMENT

**LIBRARY/APARTMENTS/SMALL SCALE RETAIL BUILDING DEVELOPMENT**

**PUBLIC IMPROVEMENT AGREEMENT**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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 Wisconsin limited liability company, with principal offices at \_\_\_\_\_, WI 532 \_\_, hereinafter called "DEVELOPER".

RECITALS

A. VILLAGE and Bayside Development Partners, LLC previously entered into a Public Improvement Agreement (Site Development), dated as of \_\_\_\_\_, 2022 ("Site Development Agreement") for the overall site development and public infrastructure work for the \_\_\_\_\_ Development currently zoned, per Ordinance 21-726 (September 29, 2021), as a Planned Unit Development District #1 (hereinafter, "PUDD1") the terms of the Site Development Agreement are incorporated in this Agreement by reference as though fully set forth.

B. DEVELOPER has proposed the development of a Library/Apartment/Small Scale Retail Building, 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 mixed-use building containing the relocated North Shore Library, other small scale retail, and approximately 99 apartments. 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, lighting and surveillance equipment, 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 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 (with the exception of that portion of Glencoe Place right-of-way that is located in PUDD1) 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.

## **SECTION 6. SPECIAL PROVISION FOR REQUIRED CONSTRUCTION / IMPROVEMENTS**

A. 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.

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

C. 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.

D. 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.

E. 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.

F. 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.

G. SURVEILLANCE SYSTEM. DEVELOPER agrees to install a surveillance system and to implement a Surveillance Plan acceptable to VILLAGE. The terms of such Plan are attached hereto and incorporated herein as Exhibit 11. The Plan shall be administered, and in VILLAGE's discretion, amended by DEVELOPER as necessary based on the nature of the DEVELOPMENT and current and future appropriate policies and technology.

## **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**

A. 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.

B. OCCUPANCY PERMITS.

1. 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.

2. 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
- Exhibit 11     Surveillance Plan

**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 DEVELOPER can demonstrate compliance with approved plans and specifications to the satisfaction of VILLAGE, VILLAGE shall rescind its order stopping construction.

#### **SECTION 15. NOTICES**

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

Bayside Development Partners, LLC  
c/o Cobalt Partners LLC  
400 North Broadway  
Suite 100  
Milwaukee, WI 53202.  
Attn: Scott J. Yauck

Bayside Development Partners, LLC  
c/o La Macchia Holdings  
8909 North Port Washington Road  
Bayside, WI 53217  
Attn: William La Macchia

#### **SECTION 16. 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 whensoever 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 DEVELOPER, if notice has been given to DEVELOPER of the pendency of suit within ten (10) 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 17. 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 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.

**SECTION 19. VILLAGE IMMUNITIES AND LIMITATIONS ON LIABILITY**

Nothing in this Agreement shall be construed to in any way act as a waiver or limitation on the VILLAGE's constitutional, statutory, or common law immunities or limitations on liability.

[signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

DEVELOPER

[BAYSIDE DEVELOPMENT PARTNERS, LLC]

By: Cobalt Partners LLC, Administrative Agent

By: \_\_\_\_\_  
Scott J. Yauck, Sole Member and Manager

STATE OF WISCONSIN            )  
  ) SS.  
COUNTY OF MILWAUKEE        )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2022, the above-named Scott J. Yauck, Sole Member and Manager of Cobalt Partners LLC, Administrative Agent for Bayside Development Partners, LLC, a Wisconsin Limited Liability Company, to me known to be the person who executed the foregoing instrument on behalf of Bayside Development Partners, LLC, 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: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Counsel for Developer



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 \_\_\_\_\_, 2022 \_\_\_\_\_, 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:

\_\_\_\_\_  
Christopher J. Jaekels  
Bayside Legal Counsel

This Instrument was drafted by Marvin Bynum II.