

“ _____ ” DEVELOPMENT

SITE DEVELOPMENT PHASE

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 BAYSIDE DEVELOPMENT PARTNERS II, LLC, a Wisconsin limited liability company, with principal offices at 8909 N. Port Washington Road, Suite 100, Bayside, WI 53217 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 21-726 (September 29, 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. This Agreement relates only to the “Initial Site Infrastructure” as defined in the Development Agreement by and between VILLAGE and DEVELOPER dated as of December 20, 2021 (the “Development Agreement”).

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.

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)

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, including all of PUDD1. 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. In addition, DEVELOPER agrees to accept ownership of that portion of the Glencoe Place right-of-way that is located within PUDD1 if and when VILLAGE initiates such transfer pursuant to Section 66.1003 Wis. Stats. In the event of such transfer, the sanitary sewer located under Glencoe Place shall remain VILLAGE sewer utility property and shall be granted an easement by DEVELOPER at no cost to the VILLAGE sewer utility.

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 August 4, 2022 (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 (COUNTY if North Port Washington, STATE if West Brown Deer), 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.

K. PERIMETER SURVEILLANCE SYSTEM. DEVELOPER agrees to install a perimeter surveillance system and to implement a Perimeter Surveillance Plan acceptable to VILLAGE. Such Plan is attached hereto as Exhibit 13. 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. 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, on or before December 31, 2023, but subject to a Force Majeure Event as defined in the Development 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
- Exhibit 13 Perimeter Surveillance 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:

If to the Developer:	Bayside Development Partners II, LLC c/o Cobalt Partners, LLC 400 N. Broadway Street Suite 100 Milwaukee, WI 53202 Attn: Scott J. Yauck
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With a copy to:	Godfrey & Kahn, S.C. 833 E. Michigan Street, Suite 1800 Milwaukee, WI 53202 Attn: Michael J. Dwyer
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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 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 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.

SECTION 24. 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 II, LLC

By: Cobalt Investment Holdings LLC, Manager

By: Cobalt Partners, LLC, Manager

By: _____
Scott J. Yauck, Sole Member and Manager

By: La Macchia Real Estate V LLC, Manager

By: _____
William E. La Macchia, Manager

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 2022, the above-named Scott J. Yauck, the Sole Member and Manager of Cobalt Partners, LLC, a manager of Cobalt Investment Holdings LLC, manager of Bayside Development Partners II, LLC, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority.

Name: _____
Notary Public, State of Wisconsin
My Commission expires: _____

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 2022, the above-named William E. La Macchia, the Manager of La Macchia Real Estate V LLC, a manager of Bayside Development Partners, LLC, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority.

Name: _____
Notary Public, State of 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.

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