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DEVELOPMENT AGREEMENT

BETWEEN THE

VILLAGE OF HARTLAND

AND

3LP HARTLAND LLC

EFFECTIVE DATE:

_____, 2024

INDEX

Effective Date and Recitals.....5-6

ARTICLE I DEFINITIONS AND RECITALS.....3

 A. Incorporation of Recitals.....3

 B. Definitions.....3

ARTICLE II REMOVAL OF EXISTING STRUCTURES/ERosion Control Apartments3

 A. Erosion Control.....3

 B. Demolition3

 C. Authorizations3

 D. Utility Readiness4

 E. Restoration4

ARTICLE III IMPROVEMENTS4

 A. Buildings.....4

 B. Sanitary Sewer.....4

 C. Water Service.....5

 D. Private Hydrant Maintenance Agreement.....6

 E. Letter of Credit; Completion Guaranty and Annual Report and Review for
 Landscaping and Slope Maintenance Agreement and Slope Management
 Plan7

 F. Roads and Parking8

 G. Permits9

 H. Pathways/Sidewalks.....9

ARTICLE IV DEDICATION AND TRANSFER OF OFF-SITE DEDICATED
IMPROVEMENTS9

 A. Transfer to Village9

 B. Notice and Acceptance10

 C. Construction Warranty for Dedicated Improvements10

 D. Dedicated Improvements Warranty Security.....10

 E. Obligation to Repair.....10

 F. Notice of Repair10

 G. Maintenance Prior to Acceptance.11

ARTICLE V MISCELLANEOUS REQUIREMENTS.....11

 A. Facilities to Be Placed Underground11

 B. Manner of Performance11

 C. Authorizations.....11

 D. Locations/Existing Public Utilities12

 E. Pre-Demolition, Pre-Construction and Construction Meetings12

ARTICLE VI TIME.....12

 A. Commencement and Completion.....12

 B. Improvements12

C.	Forfeiture.....	13
D.	Cause of Delay and Notice of Default	13
ARTICLE VII	PAYMENT OF VILLAGE FEES	13
A.	Reimbursement	13
B.	Upfront Fees	14
C.	Municipal Revenue Obligation.....	14
D.	Permit Fees	15
ARTICLE VIII	COMPLETION GUARANTEE AS SECURITY FOR PAYMENT AND PERFORMANCE OF DEVELOPER’S OBLIGATIONS	15
A.	Construction of the Apartment Project.	15
B.	Recoupment	15
C.	Completion Guarantee	15
ARTICLE IX	INDEMNIFICATION AND INSURANCE	15
A.	Indemnification	15
B.	Insurance	16
ARTICLE X	GENERAL CONDITIONS AND REGULATIONS	17
ARTICLE XI	TAX INCREMENT FINANCING	17
A.	Benefit to Village	17
B.	TID Installment Grant - Tax Increment.....	17
C.	TID Installment Grant	18
D.	Village and Developer Covenants	18
E.	TID Installment Grant: Village’s Responsibility Terminates.....	19
H.	Illustrative Increment and Grant Payment Schedule	19
ARTICLE XII	AMENDMENTS	20
ARTICLE XIII	NOTICE	20
ARTICLE XIV	DEFAULT BY DEVELOPER	20
ARTICLE XV	21
ARTICLE XVI	MISCELLANEOUS PROVISIONS.....	21
ARTICLE XVII	EXCULPATION OF VILLAGE ELECTED OFFICIALS IN PERSONAL CAPACITY	23
ARTICLE XVIII	TRANSFER RESTRICTION	23
ARTICLE XIX	RECORDATION AND TERMINATION	24
A.	Recordation	24
B.	Termination	24

EXHIBIT LIST

Exhibit 1	Property Legal Description
Exhibit 2	Certified Survey Map (CSM)
Exhibit 3	TIF District Legal Description
Exhibit 4	Architectural Plans & Specifications
Exhibit 5	Dedicated Improvements
Exhibit 6	Civil Plans & Specifications
Exhibit 7	Environmental Plans & Specifications / WDNR
Exhibit 8	Geotechnical Plans & Specifications
Exhibit 9	Private Hydrant Maintenance Agreement
Exhibit 10	Landscape Plans & Specifications
Exhibit 11	Capitol Drive Improvement Plans & Specifications
Exhibit 12	Lighting Plan
Exhibit 13	EASEMENT FOR PUBLIC ACCESS & Depiction of Public Access to Walking Pathways and Sidewalks
Exhibit 14	TID #7 – Ehlers Project Summary
Exhibit 15	Stormwater Management Plan
Exhibit 16	Stormwater Maintenance Agreement
Exhibit 17	Slope Management Plan
Exhibit 18	Slope Maintenance Agreement

Commented [A1]: TLP Note: need to finalize exhibits and have R/M confirm final/approved.

Commented [A2R1]: I AM RESERVING THE RIGHT TO (1) EXAMINE ALL THE EXHIBITS AFTER THEY ARE ALL COMPLETED AND APPROVED BY RYAN AMTMANN AND (2) PROOF THE ENTIRE DOCUMENT TO MAKE SURE THAT THE ARTICLE AND SECTIONS REFERENCES ARE ACCURATE.

1 **DEVELOPMENT AGREEMENT**

2 THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and effective pursuant to
3 Article XIX (the “Effective Date”) to be the date of recording as set forth in Article XIX(A) of
4 this Agreement, by and between the VILLAGE OF HARTLAND, a Wisconsin Municipality
5 (“Village”) and 3LP HARTLAND LLC, a Wisconsin limited liability company (“Developer”),
6 with the latter two collectively referred to as the “Parties.”

7 **RECITALS**

8 WHEREAS, Developer has acquired approximately 45.4777 acres of land in the Village
9 located at 700 and 705 West Capitol Drive, Hartland, Wisconsin and more fully identified in the
10 attached Exhibit 1, which is hereby incorporated by reference (the “Property”, which is sometimes
11 also referred to herein as the “Apartment Parcel” as defined below); and

12 WHEREAS, in order to proceed with the planned development described herein,
13 Developer has sought approval from the Village to combine four (4) parcels into the Property by
14 a recorded certified survey map (the “CSM” Exhibit 2) previously recorded by Developer and
15 which CSM will divide the Property to create the following parcel: Lot 1 or the “Apartment
16 Parcel”; and

17 WHEREAS, Developer seeks to develop the Apartment Parcel by constructing 13 two
18 story buildings, 1 clubhouse building, 10 detached garage buildings, comprised of not more than
19 267 Multi-Family Housing residential units and a club house (the “Apartment Project”) to be
20 located on the Apartment Parcel legally described in Exhibit 1 attached hereto; and

21 WHEREAS, Developer requested that the Property be rezoned as a Planned Development
22 Overlay with underlying zonings of RM-1 for the Apartment Parcel under of the Village Code of
23 Ordinances; and

24 WHEREAS, the Village conducted a public hearing concerning the work to be done with
25 respect to the Apartment Parcel, and the rezoning of the Property on September 25, 2023; and

26 WHEREAS, the Property was conditionally rezoned on October 30th, 2023 as follows: Lot
27 1 as RM-1 with PUD overlay; and

28 WHEREAS, pursuant to Wis. Stat. § 66.1105 (the "Tax Increment Law"), the Village
29 adopted on November 9, 2023 a plan for redevelopment and the elimination of blight (the "Project
30 Plan") within the Property. The Village formed Tax Incremental Financing District No. 7 (the “TIF
31 District”) which includes the Property. The comprehensive legal description for the TIF District is
32 attached hereto as Exhibit 3; and

33 WHEREAS, following a public hearing by the Village, the Village by resolution adopted
34 on November 9, 2023 found and determined the Property to be “property” within the meaning of
35 Section 66.1333(2m)(bm) of the Wisconsin Statutes and in need of redevelopment. The Village
36 Board of the Village, by its resolution November 9, 2023 adopted by the required percentage vote
37 of its members, approved providing financial assistance to Developer for the improvement, and

38 redevelopment of the Property by Developer as described herein, for the purpose of eliminating
39 Property’s status as a property in need of rehabilitation but found that a comprehensive or other
40 redevelopment plan is not necessary to determine the need for such assistance, the uses of the
41 Property after such assistance, or the relation of such assistance to other property redevelopment;
42 and

43 WHEREAS, the Village finds that the construction of the Apartment Project and the
44 fulfillment, generally, of the terms and conditions of this Agreement, are in the best interests of
45 the Village and its residents, by rehabilitating underutilized land, expanding the tax base and
46 creating jobs, thereby serving public purposes in accordance with State law and consistent with
47 the Village’s Project Plan, dated November 9, 2023 for the TIF District (the “TID Plan”); and

48 WHEREAS, based upon the representations of Developer and input from the Village’s
49 financial advisor, the Village finds and determines *that but for* the Village’s provision of financial
50 and other assistance to Developer, the Apartment Project would be infeasible, Developer would
51 not construct the Apartment Project, and the Village will not accomplish some of the objectives of
52 the TID Plan; and

53 WHEREAS, as an inducement to Developer to redevelop the Property, Developer has
54 requested financial and other assistance toward the Apartment Project on the terms and conditions
55 more fully described below; and

56 WHEREAS, Developer has provided plans and specifications for the Apartment Project
57 (attached hereto and incorporated by reference as Exhibit 4) and such plans and specifications as
58 approved by the Architectural Board and Plan Commission are hereafter generally referred to as
59 the “Plans and Specifications” but are more specifically listed and indexed on Exhibit 4; and

60 WHEREAS, the Architectural Board and Plan Commission, at its meetings dated
61 September 25, 2023, recommended approval of Developer’s Plans and Specifications, the CSM,
62 regrading and rezoning of the Property; and

63 WHEREAS, the Architectural Board and Plan Commission has further recommended
64 approval of the Apartment Project conditioned upon entry by the Village and Developer into a
65 Development Agreement and its approved recording as required by this contract as allowed by
66 Section 46-809(c) of the Village Code of Ordinances; and

67 WHEREAS, the Village is requiring that, as conditions of development approval, that
68 Developer install certain improvements listed in the attached Exhibit 5 (which identifies
69 improvements and the Architectural Board and Plan Commission punch list items and conditions)
70 that are to be provided/satisfied by Developer with some improvements to be dedicated to the
71 Village upon completion as listed on Exhibit 5 (the “Dedicated Improvements”); and

72 WHEREAS, on October 30th 2023, the Village Board conditionally approved Developer’s
73 Plans and Specifications, and on November 9, 2023 the declaration of substantial conditions in
74 need of rehabilitation, the creation of the TIF District and the Project Plan for same, demolition on
75 the Property, grading and installation of permanent comprehensive storm water improvements, the
76 private roads, internal private water and private sanitary sewer systems, and Storm/Surface Water
77 System all as more particularly described in Exhibit 6 to this Agreement contingent on Developer

78 and the Village entering into this Agreement and further subject to the terms, conditions, and
79 provisions of this Agreement, all subject to Developer obtaining title to the Property in fee simple
80 as an absolute contractual precondition before the recording of this Agreement against the Property
81 by the Title Company (as defined in Article XVIII), the original of which shall be in the sole
82 possession and control of the Title Company to be recorded.

83 **AGREEMENT**

84 NOW, THEREFORE, the Village and Developer acknowledge and agree that, in
85 consideration of the granting of approval of the Apartment Project by the Village Board, for One
86 Dollar (\$1), and the representations by Developer, the mutual promises set forth herein, and other
87 good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the
88 Parties hereby agree as follows:

89 **ARTICLE I**
90 **DEFINITIONS AND RECITALS**

91 A. Incorporation of Recitals. The recitals set forth above are hereby incorporated and
92 fully made part of this Agreement.

93 B. Definitions. As used herein, the following terms shall have the following
94 meanings:

95 1. "Tax Increment" shall mean the amount of tax increment generated by the
96 TIF District, as defined in Wis. Stat. § 66.1105(2)(i).

97 2. "Available Tax Increment" shall mean the Tax Increment actually received
98 by the Village from real estate taxes levied on the Property.

99 **ARTICLE II**
100 **REMOVAL OF EXISTING STRUCTURES/EROSION CONTROL**

101 A. Erosion Control. Developer shall install and maintain Wisconsin Department of
102 Natural Resources (WDNR) approved erosion control methods in accordance with its WDNR
103 Notice of Intent permit as well as Village issued erosion control permit during any ground
104 disturbing activities on the Property. Developer and all of its successors in interest or assigns shall
105 thereafter provide and maintain erosion control in accordance with the SWM Agreement in
106 perpetuity.

107 B. Demolition. Developer shall remove and dispose of those existing structures
108 located on the Property scheduled for removal in the Plans and Specifications. Unless construction
109 commences within sixty (60) days after completion of all demolition activity, weather permitting,
110 Developer will be required to restore the Property to an erosion-controlled and dust-free condition
111 in conformity with the SWM Agreement and, as applicable per the Plans and Specifications.

112 C. Authorizations. Developer shall acquire all necessary permits and authorizations,
113 including but not limited to Village demolition, and sewer and water lateral disturbance permits,

114 to accomplish demolition, removal, and disposal prior to commencement of any work requiring
115 such authorizations and permits, at Developer's sole cost and expense. Further, Developer shall
116 comply in all material respects with the approved Plans and Specifications, including, but not
117 limited to, those attached hereto at Exhibits 6, 7 and 8 which pertain to Civil Engineering,
118 Geotechnical, and Environmental for the Project.

119 D. Utility Readiness. All earthwork activities with respect to applicable underground
120 utilities in that area shall be completed to subgrade in a phased manner commensurate with
121 beginning any utility construction work, such that the earthwork will commence at the entry point
122 to the Project and must have installed control and hydrant valves sufficient for a particular phase
123 prior to Developer proceeding with additional phases of underground utilities and vertical
124 construction.

125 E. Restoration. All areas of the Property on which construction is not actively ongoing
126 that have been disturbed by Developer's construction activities shall be restored to a grade
127 compatible with the overall SWM Plan (as hereinafter defined) and vegetated within thirty (30)
128 days of the cessation of any grading on such parcel, weather permitting.

129 **ARTICLE III**
130 **IMPROVEMENTS**

131 Developer hereby agrees that, upon undertaking any land disturbing activities for the
132 Apartment Project on the Property, Developer shall construct the following improvements in
133 substantial accordance with the Plans and Specifications as follows:

134 A. Buildings. Developer shall construct 24 new buildings. Construction by Developer
135 shall be in substantial accordance with the Plans and Specifications set forth in Exhibit 4 to be
136 completed within thirty (30) months from the issuance of the first building permit for a new
137 building in the Apartment Project.

138 B. Sanitary Sewer.

139 1. Developer shall construct, install, and furnish a completed private sanitary
140 sewer system for the Apartment Project in substantial accordance with the Plans and
141 Specifications set forth in Exhibit 6. The Apartment Project sanitary sewer improvements
142 located on the Apartment Property shall be private improvements and may be connected to
143 the Village sanitary sewer system subject to testing/inspection and the dedication of
144 connecting components, if any to the Village's sewer system, at the sole expense of
145 Developer, as required by the Village.

146 2. As a condition of obtaining any plumbing permit(s) pertaining to the
147 Apartment Project, Developer shall acquire for the Project and submit to the Village
148 evidence of Wisconsin Department of Safety and Professional Services approval and submit
149 a copy of documents evidencing same to the Village Engineer prior to commencing the
150 installation of the private sanitary sewer system.

151 3. As a condition of obtaining any plumbing permit(s) pertaining to the
152 Apartment Project, Developer shall obtain prior approval for the Apartment Project from

153 the Del-Hart Sewerage District (“D-H SD”) and submit a copy of such documents
154 evidencing same to the Village Engineer.

155 4. All work on any private sanitary sewer/plumbing shall be in accordance
156 with “Standard Specifications for Sewer and Water Construction in Wisconsin” and
157 applicable specifications and standards required by D-H SD.

158 5. Developer shall be responsible for payment of the connection and permit
159 charges associated with said private sanitary sewer system for the Apartment Project, subject
160 to Article VII.

161 6. Developer shall, at its sole expense, furnish one set of “as-built” plans for
162 all installed private sanitary sewer system elements; including location and elevation of
163 laterals at the connection points together with an electronic file copy of said plans
164 compatible with the Village’s GIS software. Developer shall be responsible for any costs
165 of integrating said GIS data into the Village’s GIS database, not to exceed \$5,500 in the
166 aggregate for all GIS integration under this Agreement.

167 C. Water Service.

168 1. Developer shall be solely responsible to provide sufficient water service
169 from the Village of Hartland Water Utility to the Apartment Project in accordance with all
170 applicable provisions of law and the applicable Wisconsin Administrative Code provisions,
171 regulations and Hartland ordinances and Hartland Water Utility requirements. The Parties
172 acknowledge and agree that the above-described water service is subject to approval by the
173 Village of Hartland Water Utility. Developer shall be responsible for the installation of all
174 internal private water lines within the Apartment Project and for connecting to any main that
175 may proceed within any Village of Hartland right of way. The plans for all water mains
176 intended to provide water to any portion of the Property shall be approved by the Village of
177 Hartland and the proposed main locations are contemplated to be as shown on Exhibit 6
178 attached hereto. Developer shall dedicate connecting components, if any, to the Village, at
179 the sole expense of Developer.

180 2. There are two, primary connection points to the Village Water Utility water
181 mains, one along Palmer Drive and one along W. Capitol Drive. Each of these primary
182 connection points will have a master meter pit. The public water main shall extend to the
183 gate valves on the public side of the meter pits. The water main, meter pits, valves and
184 hydrants on the private side of said gate valves will all be privately owned. The meters in
185 the meter pits will be provided by the Village of Hartland.

186 3. Developer shall, at its sole expense, furnish one set of “as-built” plans of
187 the water system provided by Developer under this Agreement together with survey
188 coordinate locations for bend, valves, meter pits, fire hydrants, and other structures and
189 components provided by Developer under this Agreement, both on and off the Property,
190 together with an electronic data file for integration into the Village’s GIS database.
191 Developer shall be responsible for the actual costs of integration of said data into the

192 Village's GIS database, not to exceed \$5,500, in the aggregate for all GIS integration under
193 this Agreement.

194 4. As a condition of the issuance of each occupancy permit, Developer shall
195 construct, install, furnish, and provide fire suppression systems for the Apartment Project to
196 the extent required by and in accordance with plans and specifications approved by the State
197 of Wisconsin.

198 D. No occupancy permit shall be processed or issued unless a Private Hydrant
199 Maintenance Agreement has been executed and included as part of this Agreement as Exhibit 9,
200 and until the water distribution system servicing the entire building for which it is sought has been
201 satisfactorily connected to the Village system as determined by the Village Engineer.
202 Storm/Surface Water System.

203 1. Developer shall construct, install, furnish, and provide facilities for storm
204 and surface water drainage management for the Property (the "SWM System") in substantial
205 accordance with the Plans and Specifications set forth in Exhibit 6 or as may need to be
206 modified to be in accordance with all applicable State, Federal, and Village statutes,
207 regulations, ordinances, and D-H SD regulations and the Storm Water Management Plan
208 agreed to by Developer and the Village (the "SWM Plan") and incorporated into a Storm
209 Water Management, Facility Maintenance and Easement Agreement entered into by
210 Developer (the "SWM Agreement") and made a part of this Agreement contained in
211 attached Exhibit 16.

212 2. The SWM System on the Property shall be a private improvement and will
213 not be dedicated to the Village.

214 3. The Village shall have no obligation to issue any occupancy permits until
215 the SWM System has been inspected by the Village Engineer and deemed to have been
216 installed in substantial accordance with the Plans and Specifications or any needed
217 modifications/amendments of same in the opinion of the Village Engineer to address any
218 deficiency of the storm and surface drainage system to perform in accordance with the
219 design criteria in the SWM Agreement approved by the Village Engineer.

220 4. Developer shall, at its sole expense, furnish one set of "as-built" plans of
221 the SWM System provided by Developer under this Agreement together with survey
222 coordinate locations for manholes, inlets, and other structures and components provided by
223 Developer under this Agreement, both on and off the Property, together with an electronic
224 data file for integration into the Village's GIS database. Developer shall be responsible for
225 the actual costs of integration of said data into the Village's GIS database not to exceed
226 \$5,500, in the aggregate for all GIS integration under this Agreement.

227 5. Developer, together with its successors and assigns shall be responsible for
228 the inspection on not less than an annual basis, perpetual maintenance, operation, and
229 replacement of all storm/surface water facilities or components as required under the SWM
230 Agreement WHICH WILL BE ENFORCED BY THE VILLAGE ENGINEER, PUBLIC
231 WORKS DIRECTOR AND BUILDING INSPECTOR.

232 E. Letter of Credit; Completion Guaranty and Annual Report and Review for
233 Landscaping and Slope Maintenance Agreement and Slope Management Plan.

234 1. Developer shall seed and otherwise landscape the Property in substantial
235 accordance and pursuant to Developer's Plans and Specifications set forth in Exhibit 4.

236 2. In addition to paying the then applicable permit fee(s), Developer shall
237 provide a letter of credit or cash escrow to the Village in the amount of One Hundred
238 Thousand Dollars (\$100,000) (the "Financial Security") to guarantee the execution of the
239 approved erosion control plan and any erosion control permit conditions as set forth in the
240 Slope Maintenance Agreement and Slope Management Plan as referenced in Exhibit 14. If
241 a letter of credit and not a cash deposit, such letter of credit will be subject to reduction
242 following the procedures set forth in this Section. Developer shall provide a letter of credit
243 or cash escrow to the Village in the amount of (\$100,000) to guarantee the obligations under
244 the Slope Maintenance Agreement and Slope Management Plan and for the Dedicated
245 Improvements as it relates to the construction of the engineered slopes. Upon completion
246 and approval by the Village Engineer of the engineered slopes, the Financial Security will
247 remain in place with the Village for a period of thirty (30) months, to secure obligations
248 related to such slope maintenance and monitoring, and the Dedicated Improvements, after
249 which the Financial Security shall be released by the Village to Developer without further
250 action of the Developer. If the Developer posts a cash deposit in escrow with the Village,
251 then the deposit shall accrue interest at the amount earned by the Village for the Village's
252 cash on deposit. The Financial Security may be drawn upon by the Village only for the
253 reasons set forth in the Slope Maintenance Agreement and Slope Management Plan or for
254 the Dedicated Improvements following applicable notice from the Village to Developer and
255 applicable opportunity to cure set forth therein.

256 3. Developer shall provide and plant on the Property all trees/shrub plantings
257 of the size and species, and at the locations, identified in Developer's Plans and
258 Specifications set forth in Exhibit 4, provided, however, that Developer may substitute
259 larger size plantings of the same species. Following the planting of said trees and shrubs,
260 Developer shall water and maintain said trees and shrubs on the Property to ensure their
261 survival for not less than twelve (12) months from the date of substantial completion of each
262 phase of the Project. In the event any tree(s) or shrub(s) fails to survive twelve (12) months
263 following its planting, Developer shall replace said tree(s) or shrub(s) with substantially like
264 kind of species and size that said trees or shrubs should have been at the time of replacement
265 at its sole expense.

266 4. Developer shall provide as-built information of the overall site which as-
267 built shall be developed for the overall site that includes processed lidar contour and ortho
268 photo data of the constructed slopes to confirm that they were built to the proper elevations
269 and slopes, to occur either (i) upon reaching substantial completion of all slopes, retaining
270 walls, storm ponds and initial site subgrade or (ii) upon requesting the last occupancy permit.

271 5. Slope Management and Maintenance Plan. Developer shall construct the
272 engineered slopes in accordance with the Developer's Plans and Specifications. Developer
273 has created a Slope Management Plan and Slope Maintenance Agreement, see Exhibits 14.

274 The Slope Management Plan shall be updated to include the as-built mapping described in
275 the Paragraph above to show the new contour/ortho data blended with the existing
276 contour/ortho data at the perimeter match points of the entire project area. The purpose of
277 said plan is to compel the property owner in perpetuity to monitor and maintain the slopes
278 around the perimeter of the site to a level equal to or greater than the baseline condition as
279 is stated in the Slope Management and Slope Maintenance Plan. On an annual basis,
280 Developer will be responsible for maintaining the slopes in accordance with the Slope
281 Management Agreement and Slope Maintenance Plan. Developer (or any successor owner)
282 must submit a study/report from a qualified licensed professional in annual review of the
283 Slope Management Agreement and Slope Maintenance Plan annually by October 15 for
284 review by the Village Manager and Engineering Staff or consultants. If Developer fails to
285 submit a study/report by October 15 of each year, the Village may engage such study/report
286 and deduct the costs from the proceeds described in Article XI(B)(2). If the study/report
287 provided (whether by the Developer (or successor owner) or Village in lieu of the Developer
288 (or successor owner) identifies areas of concern to be remedied, the Developer (or successor
289 owner) will receive notice from the Village and have a period of fifteen (15) months from
290 such notice to remedy such conditions to the reasonable satisfaction of the Village Manager
291 and Engineering Staff or consultants. Failure to so remedy shall constitute a Default as set
292 forth herein. IN THE EVENT THAT THE VILLAGE NEEDS TO PROCURE A STUDY/
293 REPORT AS PROVIDED FOR ABOVE, THE VILLAGE MAY IMPOSE A SPECIAL
294 CHARGE AGAINST THE APARTMENT PROPERTY PURSUANT TO WIS. STAT. §
295 66.0627, AS SUBSEQUENTLY AMENDED FROM TIME TO TIME.

296 F. Roads and Parking.

297 1. Developer shall grade, construct, and surface private roads, driveways, and
298 parking areas for the Apartment Project as shown on, and in substantial accordance with the
299 Plans and Specifications set forth in Exhibit 6. The CSM shall depict the location of any
300 portion of a public road to be installed by or on behalf of Developer and indicate “To Be
301 Dedicated” or “Transferred” or similar language on the Plans and Specifications along with
302 their specific dimensions.

303 2. Direct vehicular access to the Apartment Property from public streets shall
304 be only via West Capitol Drive except that there shall be an Emergency Access that connects
305 to Palmer Drive.

306 3. Developer will, without any Village financial participation, cause to be
307 performed, by entering into a separate contract with Kwik Trip, Inc. (or other party
308 designated as the developing party for Kwik Trip, Inc.) for Developer’s proportionate
309 responsibility for the financing and coordinated implementation of Village approved
310 modifications to the curb, gutter and roadway, including but not limited to width changes,
311 on West Capitol Drive and the installation of sidewalk in accordance with Exhibit 11. All
312 work pertaining to this subsection III.F.3. will be allowed to be commenced and undertaken
313 by Kwik Trip, Inc. independent of and prior to the commencement of any other work
314 allowable under this Agreement so long as all required permits are obtained, and all
315 necessary security for the implementation and subsequent guarantee of the work performed
316 is posted by Kwik Trip, Inc.

317 4. Exterior Lighting and Signage. Developer shall provide and install exterior
318 lighting and signage for the Apartment Property in substantial accordance with the Plans
319 and Specifications set forth in Exhibit 12, or which will be approved by Village staff
320 following execution of this Agreement. Developer, together with its successors and assigns
321 shall bear all electrical and operational expenses for all lighting on the Property.

322 G. Permits. The Village will grant Developer any and all permits and authorizations
323 required so that Developer can construct and install Dedicated Improvements and related
324 distribution systems and associated work in any public right of way or on other Village property
325 provided Developer complies with the requirements, if any, for the issuance of such permits and
326 authorizations.

327 H. Pathways/Sidewalks.

328 1. Developer shall install concrete sidewalks on the Property in substantial
329 accordance with the Plans and Specifications set forth in Exhibit 13 (the “Sidewalks”).

330 2. Developer acknowledges that the Village is requiring the installation and
331 maintenance of a five (5) foot asphalt walking path and sidewalk for the Apartment Project
332 in substantial accordance with the Plans and Specifications set forth in Exhibit 13 (the
333 “Walking Path”).

334 3. Developer shall grant an easement to the public and enforceable by the
335 Village on, over and across the Walking Path and those Sidewalks as set forth on Exhibit
336 13.

337 4. Developer may promulgate reasonable rules and regulations for the use of
338 the Walking Path and Sidewalks, including, without limitation, restricting or prohibiting
339 night time usage and prohibiting littering, blocking or obstructing the Walking Path and
340 Sidewalks.

341 5. The Village shall have no responsibility to enforce any promulgated rules
342 and regulations pertaining to the Sidewalks or Walking Paths within the Apartment Project,
343 but shall be required to enforce any trespassing or other behavior related Village
344 ordinance(s) that it would enforce or otherwise address on any other owner’s private
345 property in the Village. The Walking Path Easement shall be in substantially the form
346 attached hereto as Exhibit 13.

347 6. Developer, together with its successors and assigns shall maintain, repair
348 and replace the Sidewalks and Walking Paths, including snow and ice removal so they are
349 useable during all seasons.

350 **ARTICLE IV**
351 **DEDICATION AND TRANSFER OF OFF-SITE DEDICATED IMPROVEMENTS**

352 A. Transfer to Village. Subject to all of the other provisions of this Agreement and
353 the Exhibits attached, Developer shall, without charge to the Village, upon completion of any
354 Dedicated Improvements, which term expressly excludes any utility distribution components

355 situated on or off the Property, unconditionally give, grant, convey and fully dedicate the same to
356 the Village, its successors and assigns, forever, free and clear of all encumbrances whatsoever,
357 together with, including without limitation, all structures, mains, conduits, pipes, lines, machinery,
358 equipment and appurtenances which may in any way be a part of such Dedicated Improvements
359 and *together with any and all necessary easements for access thereto.*

360 At the time of recording of this Agreement, Developer shall provide the Village with a title
361 commitment and a deed as satisfactory evidence of the commitment to issue title insurance
362 reflecting Developer's full ownership of the Property. To the extent not paid by the seller from
363 whom Developer acquires the Property, Developer shall also pay, or cause to be paid when due,
364 any transfer taxes that arise as a result from said dedication(s).

365 B. Notice and Acceptance. Developer shall notify the Village in writing of the
366 completion of the Dedicated Improvements described on Exhibit 11. Within thirty (30) days of
367 the date of such notice, the Village shall inspect and/or re-inspect as necessary any Dedicated
368 Improvement described in Developer's notice and prepare and deliver to Developer a written
369 punch list of repairs necessary to bring such improvement into substantial conformance with the
370 Plans and Specifications. Upon Developer's written notice to the Village that all punch list repairs
371 for all such Dedicated Improvements are complete, and following satisfactory completion of any
372 applicable re-inspection, the Village shall within fifteen (15) days following the date of such notice
373 and subject to inspection and approval of the Village, by resolution, accept the dedication of all
374 completed Dedicated Improvements. Simultaneous with the acceptance by the Village of any
375 public sanitary sewer or public water improvement on the Property, Developer shall, at its sole
376 expense, furnish to the Village one set of "as built" plans for the applicable sanitary sewer
377 improvement in an electronic format acceptable to the Village.

378 C. Construction Warranty for Dedicated Improvements. Developer warrants that all
379 materials and workmanship furnished by Developer for the Dedicated Improvements shall remain
380 in good and sound condition for and during a period of twelve (12) months from the date after final
381 acceptance by the Village of each Dedicated Improvement.

382 D. Dedicated Improvements Warranty Security. Developer shall certify that
383 Developer has an executed agreement with Kwik Trip, Inc. for Kwik Trip, Inc. to deliver all of the
384 Dedicated Improvements to and for the benefit of the Village.

385 E. Obligation to Repair. Developer shall make or cause to be made, at its own
386 expense, any and all repairs which may become necessary under and by virtue of Developer's
387 warranty and leave the Dedicated Improvements in good and sound condition, except to the extent
388 intentionally or negligently caused by the Village, its agents, employees, or third-party contractors.

389 F. Notice of Repair. If during a warranty period, the Dedicated Improvements shall,
390 in the reasonable and professional opinion of the Village Engineer in his discretion, require any
391 repairs or replacements which in his/her reasonable judgment are necessitated by reason of
392 settlement of foundation, structure or backfill, or other defective workmanship and/or materials,
393 Developer shall, upon written notification by the Village Engineer of the necessity for such repairs,
394 make such repairs, at its own cost and expense. In the event Developer fails to make such repairs
395 within a reasonable time after written notice has been sent as provided herein, or fails to start work

396 within thirty (30) days, except in an emergency, after such written notice, weather permitting, the
397 Village may cause such work to be done, but has no obligation to do so, either by contract or
398 otherwise. If the cost or expense incurred by the Village in repairing or replacing any portion of
399 the Dedicated Improvements covered by this warranty exceeds the amount of the letters of credit,
400 then Developer shall, within thirty (30) days of being invoiced by the Village, pay any excess cost
401 or expense actually incurred in the correction process. If Developer fails to make payment within
402 said thirty (30) days, the Village may impose a special charge against the Apartment Property
403 pursuant to Wis. Stat. § 66.0627, as subsequently amended from time-to-time.

404 G. Maintenance Prior to Acceptance.

405 1. Developer shall maintain the Dedicated Improvements, except those
406 roadway improvements installed by Kwik Trip as part of its PUD Agreement for its facility
407 accessing West Capitol Drive Hartland, until such time as they are accepted by the Village.
408 This maintenance shall include routine maintenance, such as dust suppression, crack filling,
409 and the like.

Commented [A3]: Any concerns with obligation to maintain the
"Dedicated Improvements" when majority are in Capitol being
performed by Kwik Trip?

410 2. In cases where emergency maintenance is required, such as sewer blockages
411 within the boundaries of the Property or on Dedicated Improvements, the Village retains the
412 right, after first attempting to work directly with Developer and Developer's contractors and
413 agents, to complete the required emergency maintenance in a timely fashion and shall have
414 authority to impose a special charge against the Property pursuant to Wis. Stat. §66.0627 to
415 the extent that posted letters of credit are insufficient to pay for such work while maintaining
416 a required balance needed for the other items being secured for all actual associated costs.

417 3. All improvements to be dedicated to the Village under this Agreement shall
418 be maintained by Developer until they are accepted so they substantially conform to the
419 applicable plans and specifications attached as exhibits to this Agreement at the time of their
420 acceptance by the Village.

421 **ARTICLE V**
422 **MISCELLANEOUS REQUIREMENTS**

423 A. Facilities to Be Placed Underground. All newly installed facilities associated with
424 the transmission/delivery of electrical, telephone, gas, water and communications services shall be
425 underground. Normal and customary above-ground facility components such as transformers,
426 service pedestals, gas vents and the like approved in writing by the Village Engineer in his
427 reasonable discretion are permissible. Coordination of installation as shown on the Plans and
428 Specifications shall be the responsibility of Developer.

429 B. Manner of Performance. Developer shall cause all construction called for by this
430 Agreement to be carried out and performed in a good and workmanlike manner consistent with
431 current best practices in the construction of Class A multi-family apartment buildings in the
432 southeastern Wisconsin area.

433 C. Authorizations. Developer hereby agrees to obtain all necessary authorizations and
434 approvals from all governmental authorities, including but not limited to the Village and State of

435 Wisconsin, prior to the start of construction, demolition, and/or regulated abatement. Developer
436 shall be solely responsible for payment of all applicable authorization fees and costs.

437 D. Locations/Existing Public Utilities. Developer agrees that the locations of existing
438 Village sanitary sewer and storm water facilities as indicated on the approved Plans and
439 Specifications and any other Village records are approximate locations only. Each party is solely
440 responsible for definitively locating the other parties' existing facilities in the field, and no party
441 hereto shall bear any liability if any of said facilities are not located as may be contained in the
442 approved Plans and Specifications and any other Village records. The Parties hereto shall take
443 commercially reasonable steps so as to not interfere with the existing facilities of any other party.

444 E. Pre-Demolition, Pre-Construction and Construction Meetings. Developer and its
445 general contractor(s) shall attend pre-demolition and pre-construction meetings and construction
446 meetings not more than once weekly as requested by Village staff prior to conducting demolition
447 and construction and during construction of the Apartment Property.

448 **ARTICLE VI**
449 **TIME**

450 A. Commencement and Completion. Developer shall complete, or cause the
451 completion of, the following aspects of the improvements of the Property, all in compliance with
452 the requirements of this Agreement, and in accordance with the following Apartment Project
453 schedules:

454 1. Commencement of Apartment Project: Developer shall commence
455 demolition and construction of the Apartment Project no later than June 1, 2025.

456 2. Completion of SWM System: Except for punch list items relating to such
457 improvements which shall be diligently pursued to completion thereafter by Developer, not
458 later than substantial commencement of the Apartment Project improvements and prior to
459 any occupancy permit being issued for the Apartment Project.

460 3. Completion of Apartment Project landscaping: within four (4) months of
461 commencement of occupancy of each residential building of the Apartment Project and such
462 period will be extended if completion is delayed due to inadvisability of landscaping due to
463 the typical seasonal weather during any of such four (4) month period.

464 4. Completion of all Apartment Project buildings: Within thirty (30) months
465 of the first issuance of a building permit for the Apartment Project.

466 B. Improvements. Time is of the essence as to all timelines set forth in this Agreement.
467 Subject to the provisions of Section VI.D of this Agreement, upon failure of Developer to meet
468 one or more deadlines specified in this Agreement, in the event Developer has commenced the
469 Apartment Project, the Village may (but is not required to) complete such aspect of the Apartment
470 Project pertaining to the Dedicated Improvements for which construction has commenced but is
471 not completed (i.e., the portion, if any, necessary to allow completion of the Dedicated
472 Improvements). The Village may also (but is not required to) restore the Property to grade and
473 stabilize the Property to achieve a dust-free, erosion proof condition. This section shall be

474 construed to preclude the Village’s authority to remove any building constructed by Developer on
475 the Property solely due to Developer’s failure to meet one or more timelines specified in this
476 Agreement unless Developer has substantially ceased construction activity on a subject building
477 for more than twelve (12) calendar months (except as otherwise provided in Section (A)(1)
478 immediately above). In the event the Village performs work on the Property under this Section,
479 the Village may charge Developer one hundred and seven and one-half percent (107.5%) of the
480 actual costs incurred by Village in completing that aspect of the Apartment Project or restoring the
481 Property to grade and stabilizing the Property to a dust-free, erosion-proof condition. If Developer
482 or its successor in interest fails to pay such invoice, the Village shall have the right to assess a
483 special charge against the Apartment Property, or any portion thereof, under Wis. Stat. § 66.0627
484 as subsequently amended from time-to-time.

485 C. Solely at the discretion of the Village, Developer may be deemed to have forfeited
486 its rights under this Agreement to construct the improvements set forth in the Plans and
487 Specifications upon occurrence of any one or more of the following events:

488 1. Developer fails to commence construction within the times permitted under
489 of this Agreement, as applicable; or

490 2. Developer fails to apply for and diligently pursue building permit(s)
491 following the recording date of this Agreement with the Waukesha County Register of
492 Deeds Office (the “Recording Date”) on or before June 1, 2025.

493 D. Cause of Delay and Notice of Default.

494 1. If delay in completion of any improvements on the Property described in
495 this Agreement is caused or contributed to by labor disputes, casualties, acts of God or the
496 public enemy, governmental embargo restrictions, shortages of fuel, labor or materials,
497 pandemics, epidemics, public health related issues, riots, public insurrection, action or non-
498 action of public utilities or of local, state or federal governments, agencies or departments
499 affecting the work or other causes beyond Developer’s reasonable control, then the time of
500 completion of such improvement shall be extended for the additional time caused by such
501 delay.

502 2. Developer shall give written notice to the Village Engineer within thirty
503 (30) calendar days of the first occurrence of each delaying event together with substantiation
504 that the event qualifies for the granting of additional time under this section. Failure by
505 Developer to provide written notice within the time provided hereunder shall constitute a
506 waiver by Developer of any right or entitlement to any extension under the terms of this
507 section.

508 **ARTICLE VII**
509 **PAYMENT OF VILLAGE FEES**

510 A. Reimbursement. Developer agrees to reimburse the Village for its planning,
511 engineering, and inspection of the Apartment Project and for its legal work negotiating and
512 enforcing this Agreement and the other agreements associated with this Agreement. Village shall

513 keep a detailed accounting of such costs and bill Developer at the rates contracted by the Village
514 for such services.

515 B. Upfront Fees. Developer shall, at the time of entry into this Agreement, pay the
516 Village for:

517 1. The Village's reasonable engineering and legal expenses incurred as of the
518 Effective Date, and for future expenses to be incurred, in the aggregate not to exceed Fifty
519 Thousand and No/100 Dollars) (\$50,000) ("CAP"), as a not to exceed amount with respect
520 to reimbursement of the Village's expenses related to entry into this Agreement. SUCH
521 CAP SHALL NOT BE APPLICABLE TO THE MONITORING OR ENFORCEMENT OF
522 THIS AGREEMENT.

Commented [A4]: TLP Note: awaiting response from R/M and Village concerning proposed fees based on TLP schedule.

Commented [A5R4]: Need to Discuss with RM PSI's expected duration for review.

523 2. Except as otherwise set forth herein, the Developer hereby acknowledges
524 and agrees that there are municipal sanitary sewer, water connection and other impact,
525 reserve capacity, or similar municipal impact fees due or owing as a result of the Project
526 (collectively "Fees").

527 3. Developer acknowledges that it shall be responsible for payment at the time
528 of application for building permit for only the applicable D-H SD fees.

529 C. Municipal Revenue Obligation. The policy decisions to not require Developer to
530 pay all Village impact fees pertaining to the Project and the undertaking of downstream village
531 sewer expansion and upgrading work without development contribution related to the
532 aforementioned work are predicated on the utilization of the Village's home rule authority and on
533 multiple Public Policy reasons including but not limited to the following:(a) the quarry site has
534 remained grossly underutilized for the size tract that it encompasses and as a result has not
535 benefited the interests of the Village since it ceased to be the site of sand extraction for at least a
536 quarter century; (b) the quarry site is in need of exceptionally expensive and challenging
537 engineering and rehabilitation work; (c) the quarry site has been investigated by multiple
538 developers prior to the present Developer, all of whom have abandoned the pursuit of
539 redevelopment at various junctures because of the financial, engineering and implementation
540 challenges inherent in the site; (d) the redevelopment of the site will enable the Village to meet a
541 critical public need for rental housing while ultimately increasing the tax base of its various
542 overlaying taxing jurisdictions; and (e) as provided in § XI B. 3.. hereafter, it is expected that to
543 the extent the Project generates sufficient Available Tax Increment to yield total payments in a
544 principle amount with zero interest not to exceed Fifteen Million Nine Hundred Eighty Nine
545 Thousand Five Hundred and Seventy-Eight Dollars (\$15,989,578) before the TID Closure Date of
546 October 1, 2052 all Available Tax Increment collected thereafter until October 1, 2052 shall be
547 paid to the Village to enable it to recoup the amount of the Hartland Impact Fees reductions
548 allowed under THIS SUBSECTION,§VII.C. Developer acknowledges and agrees that, in the
549 event Developer remains in default concerning payment of any fees including those under
550 subsection D. hereafter, FEES or the making of any deposits required under this Agreement for
551 thirty (30) days after written notice of such failure to pay, the Village shall have the right, in its
552 sole discretion, to enforce Developer's completion guaranty under this Agreement, post a Stop
553 Work order on the Apartment Project in its entirety, withhold inspections and/or the granting of

554 any permit(s), and/or pursue any other remedy available to the Village under this Agreement or
555 Wisconsin law in connection with such failure to pay.

556 D. Permit Fees. Developer shall be responsible for payment of all applicable
557 municipal permit or related fees set forth in the Village Code of Ordinances or any fee schedule
558 adopted and used by the Village and the costs of all inspections of the Apartment Project.

559 **ARTICLE VIII**
560 **COMPLETION GUARANTEE AS SECURITY FOR PAYMENT AND PERFORMANCE**
561 **OF DEVELOPER'S OBLIGATIONS**

562 A. Construction of the Apartment Project.

563 1. Concurrent with Developer closing on construction financing for the
564 Project, Developer will, through its WRITTEN submittals to Village Staff members,
565 demonstrate and represent that Developer has sufficient financial resources committed to
566 allow Developer to complete the Apartment Project as approved. The Parties acknowledge
567 and agree that the financing commitment(s) obtained by Developer for the Apartment
568 Project is/are subject to conditions.

Commented [A6]: NOTE TO RYAN BAILEY: ADD THIS TO THE LIST OF DELIVERABLES WHICH 3LP HARTLAND LLC NEEDS TO PROVIDE POST SIGNING OF PUD AGREEMENT.

569 2. Developer shall cause any conditions to such commitment(s) to be removed,
570 satisfied, or waived as a condition of obtaining building permits. In the event of Developer's
571 failure to remove, satisfy or obtain waivers of all conditions of its financing commitment(s)
572 within the time frame for application for building permits to commence the Apartment
573 Project, Developer's rights and obligations under this Agreement pertaining to the Project
574 shall terminate, except the reimbursement of any fees or FEES then due under Article VII
575 of this Agreement.

576 B. The Village reserves all rights under Wis. Stat. §66.0617.to recoup any amount of
577 reduced Village of Hartland Impact Fees through the means set forth in sections VII.C. and XI. F.

578 C. Completion Guarantee. As a condition of obtaining any building permit arising out of or
579 related to the Apartment Project, Developer shall deliver or cause to be delivered to the Village
580 Manager WRITTEN proof that Developer has issued a construction completion guaranty
581 satisfactory to Developer's construction lender(s) for development and construction of the Project.

Commented [A7]: NOTE TO RYAN BAILEY: ADD THIS TO THE LIST OF DELIVERABLES WHICH 3LP HARTLAND LLC NEEDS TO PROVIDE POST SIGNING OF PUD AGREEMENT.

582 **ARTICLE IX**
583 **INDEMNIFICATION AND INSURANCE**

584 A. Indemnification. In addition to, and not to the exclusion or prejudice of, any
585 provisions of this Agreement or documents incorporated herein by reference, Developer, or its
586 successors in interest, shall INDEMNIFY AND SAVE HARMLESS the Village, its officers,
587 agents and employees, and shall defend the same from and against any and all liability, claims,
588 loss damages, interest, actions, suits, judgments, costs, expenses, attorneys' fees, and the like,
589 which result from or arise in the course of, out of, or as a result of the performance, mis-
590 performance, or nonperformance of Developer's obligations under this Agreement or Developer's
591 negligent construction of improvements covered thereby until the granting of the last occupancy
592 permit pertaining to the Apartment Project. The language of this Article IX notwithstanding,

593 Developer shall have no obligation to indemnify, save harmless or defend the Village resulting
594 from negligent or intentional acts of the Village, its officers, agents, or employees. In every case
595 where Developer is obligated to indemnify and save harmless the Village, its officers, agents and
596 employees, if judgment is rendered against the Village, its officers, agents, or employees and
597 notice and opportunity to defend was given to Developer of the pendency of the suit within ten
598 (10) days after service of the summons and complaint on the Village, such judgment shall be
599 conclusive upon Developer not only as to the amount of damages, but also as to its liability to the
600 Village and/or its officers, agents, and employees.

601 B. Insurance. Developer shall maintain and cause its general contractor to maintain at
602 all times and naming the Village, its officers, employee and agents as additional insureds, until the
603 granting by the Village of the final occupancy permit for the Apartment Project, insurance with
604 minimum limits and coverage as shown below:

Commented [A8]: NOTE TO RYAN BAILEY: ADD THIS TO THE LIST OF DELIVERABLES WHICH 3LP HARTLAND LLC NEEDS TO PROVIDE POST SIGNING OF PUD AGREEMENT.

605 1. Worker's Compensation, including Occupational Disease, Insurance
606 meeting the statutory requirements of the State of Wisconsin, and Employer's Liability
607 insurance in an amount of at least One Million Dollars (\$1,000,000).

608 2. Comprehensive Liability Insurance providing limits for bodily injury and
609 personal injury of One Million Dollars (\$1,000,000) per occurrence with an aggregate of
610 Two Million Dollars (\$2,000,000). The policy must include the Village and its agents,
611 officers and employees as "additional insureds" and provide premises, operations, elevators,
612 damage, blanket contractual covering indemnities within contract documents, products and
613 completed operations coverage and be endorsed as "primary and non- contributory" to any
614 insurance of the additional insured, except from their negligence.

615 3. Comprehensive Automobile Liability Insurance, on occurrence basis,
616 covering all owned, non-owned, and hired vehicles with limits of liability equal to those set
617 forth in Subsection B.2 above.

618 4. Developer shall furnish the Village policy declarations and endorsements
619 evidencing additional insureds to policies covering the above-recited insurance
620 requirements. All policy endorsements must state that notice of any material change in
621 coverage, non-renewal, or cancellation will be provided to the Village thirty (30) days prior
622 to the effective date of any such change, non-renewal, or cancellation. The form of the
623 policy endorsements will be subject to the approval of the Village MANAGER. The policy
624 endorsements shall be delivered prior to the commencement of any demolition activities or
625 ground disturbing construction pursuant to this Agreement. PRESENTMENT OF PROOF
626 OF THE COMPLETE PROCUREMENT OF THE COVERAGE INDICATED IN THIS
627 ARTICLE IX. IN THE FORM OF DECLARATIONS AND ENDORSEMENTS SHALL
628 BE A PRECONDITION TO THE ISSUANCE OF ANY PERMITS. AN ACORD 25
629 SHALL NOT BE DEEMED ACCEPTABLE PROOF. PROOF OF THE RENEWAL OF
630 SUCH COVERAGE SHALL BE PRESENTED AS SOON AS AVAILABLE AND PRIOR
631 TO THE EXPIRATION OF ANY PERIOD OF COVERAGE FOR ANY TYPE OF
632 INSURANCE.

633 5. It is understood and agreed that the insurance coverage and limits required
634 above shall not limit the extent of Developer's responsibilities and liabilities pursuant to this
635 Agreement or imposed by law.

636 6. Simultaneously with the granting by the Village of the final occupancy
637 permit for the Apartment Project, Developer shall carry casualty insurance in an amount not
638 less than full replacement cost, and shall provide the Village evidence of such insurance
639 coverage at least once each calendar year.

Commented [A9]: NOTE TO RYAN BAILEY: ADD THIS TO THE LIST OF DELIVERABLES WHICH 3LP HARTLAND LLC NEEDS TO PROVIDE POST SIGNING OF PUD AGREEMENT.

640 **ARTICLE X**
641 **GENERAL CONDITIONS AND REGULATIONS**

642 All the provisions of the Village Code of Ordinances relating to use and development of
643 land, as amended from time-to-time are incorporated herein by reference to the extent then
644 applicable, and all such provisions shall bind the parties hereto and be a part of this Agreement as
645 fully as if set forth at length herein. This Agreement and all work and improvements required
646 hereunder shall be performed and carried out in accordance with the customary or better practices
647 in the construction industry for Class A apartments in southeastern Wisconsin subject to and in
648 accordance with said ordinances and this Agreement.

649 **ARTICLE XI**
650 **TAX INCREMENT FINANCING**

651 A. Benefit to Village. The Apartment Project will help accomplish the goals of the
652 Village's Comprehensive Plan and TID Plan. Redevelopment of the Property will provide a public
653 benefit to the citizens of the Village. Consequently, the Village has agreed to provide assistance to
654 allow the development of the Apartment Project.

655 B. TID Installment Grant - Tax Increment: To the extent Developer pays the subject
656 property taxes when due on an annual basis, the Village will provide reimbursement as set forth in
657 this agreement, where for all Available Tax Increment shall be reimbursed after application to the
658 Village for the following, in the indicated order of priority:

659 1. First: Pay up to \$32,000 per year to reimburse the Hartland Sewer Utility for
660 improvements funded with Sewer Utility cash on hand¹. The \$32,000 will be paid annually

¹ In order to assure that there is sufficient sewer carrying capacity for the conveyance of wastewater generated by the development of the Apartment Project, the Village has committed as part of this Agreement to make improvements to its existing sewer conduits ("Public Sewer Improvements") through which the Apartment Project's wastewater will be carried to the D-H SD treatment plant located in the City of Delafield. The Village will advance funds for this undertaking which at the time of the execution of this Agreement is generally estimated to cost not less than eight hundred sixty-four thousand dollars (\$864,000). This cost may increase depending on the bids received for the work to be performed during the completion of the Apartment Project. To recover its actual advancement of funding for the Public Sewer Improvements, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, the Village shall be reimbursed thirty-two thousand dollars (\$32,000 per year) until the total amount advanced by the Hartland Sewer Utility and the lost interest thereon is fully recovered by the Village.

661 until the actual cost of the improvements and the lost interest attributable to the total
662 amount of the funds advanced are reimbursed in full.

663 2. Second: To reimburse the Village for its actual out-of-pocket costs incurred in
664 connection with the audit and administration of the TIF District and the administration of
665 this Agreement provided the amount of such reimbursement shall not exceed \$5,000 per
666 year.

667 In addition, the Village shall have the right to apply the difference between its total actual
668 costs as described in the prior paragraph and the Five Thousand Dollars allowed by this
669 second priority toward the reimbursement of the Sewer Utility in excess of the thirty-two
670 thousand (\$32,000) per year amount provided in subsection XI B. 1.

671 3. Third: The Village shall provide a TID Installment Grant for TID #7 from property
672 taxes paid by Developer, to reimburse Developer for project costs incurred in the maximum
673 principal amount of \$15,989,578 (with zero interest)² which shall be paid to the Developer
674 for use in connection with the development of the Apartment Project. If all principal of
675 the TID Installment Grant has not been paid to Developer by the TID Closure Date
676 (October 1, 2052), the Village shall have no further obligations to make any additional
677 payments. However, to the extent the Project generates sufficient Available Tax Increment
678 to yield total payments in a principle amount, with zero interest, not to exceed Fifteen
679 Million Nine Hundred Eighty Nine Thousand Five Hundred and Seventy-Eight Dollars
680 (\$15,989,578) before the TID Closure Date of October 1, 2052, all Available Tax
681 Increment collected thereafter until October 1, 2052 shall be paid to the Village to enable
682 it to recoup the amount of the Hartland Impact Fees reductions allowed under §VII B. 3.
683 and 4.

684 C. TID Installment Grant. Subject to Developer providing verification that all due
685 property taxes have been paid in full, commencing the first year in which Available Tax Increment
686 is available after payments have been made to the Village as provided under Sections XI.B. 1 and
687 2., payments under Section XI.B.3. may be made by the Village to Developer.

688 Available installment payments of the TID Installment Grant shall be made no later than October
689 1 of each year (an "Installment Grant Payment Date") and shall be made by check drawn on the
690 Village's treasury.

691 The TID Installment Grant shall never be, or be considered a general obligation of the
692 Village and shall be subject to the terms of this Agreement and the terms of the authorizing grant
693 resolution attached hereto as Exhibit 14 (the "Grant Resolution").

694 D. The Village and Developer covenant and agree as follows:

695 (a) if the Village's proposed annual budget does not in any year anticipate the collection of
696 Available Tax Increment sufficient to make payment on the TID Installment Grant, the Village

² At no time shall any interest be earned by, or accrue for the benefit of, the Developer or any of its assign(s) of any aspect of the TID Installment Grant or collected Available Tax Increment.

697 will use its best efforts to notify Developer of that fact at least fifteen (15) days prior to the date
698 the Village budget is presented for final approval; and

699 (b) any funds in the special fund of the TIF District No. 7 attributable to the Available Tax
700 Increment generated solely from the Property shall not be used until the Village has first paid all
701 Village Obligations as provided under Sections XI.B. 1 and 2. of this Agreement³; and

702 (c) the Village shall take no action to voluntarily dissolve the TIF District prior to the
703 statutory maximum life. The Village will submit all information under (and will otherwise comply
704 with) the TIF Statute to the extent required for the annual collection and allocation of Available
705 Tax Increment, for each approved year of collection and allocation under said statute.

706 E. TID Installment Grant: Village's Responsibility Terminates. If, at the end of the
707 final year (i.e., October 1, 2052) in which tax increment revenue from the TIF District may be
708 allocated by the Village pursuant to the TIF District's No. 7 TID Plan, the amount of the Tax
709 Increment to be paid under this Agreement proves insufficient to pay the TID Installment Grant in
710 full, the Village shall nevertheless have no obligation or liability for any unpaid amount.

711 The Village and Developer acknowledge and agree that Developer may only collaterally
712 assign the TID Installment Grant as part of its financing for the Apartment Project after its approval
713 in accordance with the TIF statute and the recordation of the PUD Agreement as provided in
714 Article XIX hereafter. However, any such assignment shall be subject and limited by the terms of
715 this Agreement.

716 F. Foreclosure Impact. The Village shall not be obligated to continue to transfer,
717 encumber, or make payment of any Available Tax Increment for the benefit of any entity or person
718 holding a lien or mortgage on the Property, or any part thereof who seeks to foreclose on its
719 collateral or any party purchasing the Property at a foreclosure sale, or for the benefit of any other
720 third party to whom the TID No. 7 Installment Grant has been transferred to or assigned by
721 Developer or any successor thereof, until the total cumulative amounts due to the Village as
722 provided under Section XI. B 1. and 2. of this Agreement are first paid in full.

723 G. Prohibition on the use of TID No. 7 Installment Grant Funds. Developer shall not
724 use any portion of the TID Installment Grant Funds to pay for any real estate or other ad valorem
725 taxes.

726 H. Illustrative Increment and Grant Payment Schedule. The schedule attached as
727 Exhibit 14 only illustrates a possible estimated Available Tax Increment and a possible estimated
728 TID No. 7 Installment Grant Payment Schedule, with an estimated but uncertain Cash Flow
729 Projection appreciation rate that cannot be relied upon except for actual results on a year-by-year
730 basis, both subject to the diversion of payments in the event of foreclosure per ARTICLE XI.

731 Such schedule will need to be prepared annually by the Village to reflect the actual
732 Available Tax Increment generated by the Apartment Project taking into account the actual tax

³ Any interest earned with respect to any TID Installment Grant Funds while held by the Village shall be the sole property of the Village.

733 rate in effect each year the Increment Schedule is prepared. The schedule shall be delivered to
734 Developer by December 30th of the year prior to which the increment is expected to be collected.

735 **ARTICLE XII**
736 **AMENDMENTS**

737 The Village Board and Developer, by mutual consent, may amend this Agreement only
738 upon entry into a subsequent written agreement approved at a meeting of the Village Board of
739 Trustees for the Village of Hartland. The Village Board shall not, however, consent to an
740 amendment until after first having received a recommendation from the Village Plan Commission
741 in accordance with applicable Village ordinances.

742 **ARTICLE XIII**
743 **NOTICE**

744 Any notice given hereunder shall be in writing and personally delivered, mailed by
745 registered or certified mail, return receipt requested, or delivered via overnight courier: To the
746 Village: Village Clerk, Sandy Policello, Wisconsin 210 Cottonwood Avenue, Hartland, Wisconsin
747 53029, and to Developer: 3LP Hartland LLC, c/o Three Leaf Partners LLC, 504 W. Juneau
748 Avenue, Milwaukee, Wisconsin 53203, Attention: Matt Burow and John Ford, with a copy to
749 Derek Taylor at the same address. Any party may, by notice as provided above, designate a
750 different address from time to time. Any such notice shall be effective on the date of receipt.

751 **ARTICLE XIV**
752 **DEFAULT BY DEVELOPER**

753 A. The failure of the Village to insist in any one or more instances upon performance
754 of, or compliance with any term or condition of this Agreement shall not be construed as a waiver
755 of future performance. The obligations of Developer with respect to such term, covenant condition
756 shall continue in full force and effect.

757 B. In addition to any other remedies otherwise provided under this Agreement or the
758 Village Code of Ordinances, the Village shall have the right to withhold inspections and/or permits
759 for the Apartment Project and/or to bring an action in the Circuit Court for Waukesha County for
760 violation(s) of this Agreement and shall be entitled to recover reasonable attorneys' fees from the
761 defaulting Developer and any contractor in violation of any Village ordinance or this Agreement.

762 C. Notwithstanding anything to the contrary in this Agreement, if Developer fails to
763 commence construction of the Apartment Project after the issuance of a building permit for the
764 Apartment Project, the Village shall not have the right to seek or compel specific performance for
765 the construction of said Apartment Project under this Agreement as against the Developer, but may
766 seek any OTHER REMEDY AVAILABLE UNDER LAW OR THIS AGREEMENT against
767 Developer, or ALL REMEDIES AVAILABLE UNDER LAW OR THIS AGREEMENT,
768 including specific performance, against Developer's successors or assigns.

769 **ARTICLE XV**
770 **TRANSFER OF OWNERSHIP AND PAYMENT IN LIEU OF TAXES**

771 Under no circumstance may the real property become exempt from general property taxes,
772 including a change in the taxable status of the Developer, without the owner entity having first
773 entered into an agreement with the Village to make an annual payment in lieu of taxes (“PILOT
774 Agreement”) for an amount not less than the assessed tax value of the Apartment Property times
775 the annually approved Village mill rate for each year with the additional condition that no portion
776 of the Apartment Project may be conveyed to any other subsequent tax exempt owner at any time
777 without a similar PILOT agreement being executed. **The limitation of this Section XV shall be**
778 **a covenant running with the land and shall survive the termination of this Agreement.**

779 **ARTICLE XVI**
780 **MISCELLANEOUS PROVISIONS**

781 A. The Parties acknowledge and represent that this Agreement is the subject of
782 negotiation by all parties and that both parties together shall be construed to be the drafter hereof
783 and this Agreement shall not be construed against any party individually as drafter.

784 B. Nothing in this Agreement shall be construed to create an employer/employee
785 relationship, joint employer, a joint venture or partnership relationship, or a principal/agent
786 relationship between the Village and Developer.

787 C. This Agreement shall not be construed to abridge or waive the Village’s authority
788 under Wis. Stats. §§ 61.35 and 62.23.

789 D. Developer shall be solely financial responsible for all trash, garbage and waste
790 hauling from all of the units, buildings and grounds of the Apartment and shall contract directly
791 for such services. Developer warrants that all of its private streets and access areas to the
792 waste/garbage collection points within the Project have been designed to adequately support the
793 weight of heavy vehicles and equipment such as waste collection trucks.

794 E. The parties hereby acknowledge that this Agreement imposes on them, and their
795 respective officers, agents, and employees, and successors and assigns a duty of good faith and
796 fair dealing.

797 F. Except as otherwise expressly provided in this Agreement, all guarantees,
798 agreements, representations, and warranties made herein shall survive the execution of this
799 Agreement and as applicable, the completion of the Apartment Projects. This Agreement shall be
800 binding upon and inure to the benefit of the Parties their respective heirs, personal representatives,
801 executors, or successors and assigns.

802 G. Developer represents and warrants that it is a duly organized and validly existing
803 limited liability company under the laws of the State of Wisconsin and that the execution and
804 performance of this Agreement has been duly authorized by resolution or other required action.

805 H. This Agreement shall be recorded in accordance with Article XIX, hereafter, with
806 the Register of Deeds for Waukesha County.

807 I. All time periods referred to in this Agreement shall be calculated on the basis of
808 consecutive calendar days.

809 J. Subject to the requirement of Article XV. and the limitation in Article XI.F.
810 Developer and any successor owners of the Apartment Properties may ONLY collaterally assign
811 the rights, AND NOT OTHERWISE, to the TID No. 7 Installment Grant to Developer's OR
812 SUCCESSORS' OR ASSIGNEES' construction lender or to other lenders for the Apartment
813 Project provided such assignee agrees that if it enforces its rights under a collateral assignment of
814 this Agreement, then it will agree to assume full responsibility to satisfy all obligations under this
815 Agreement in the event of a foreclosure of the Apartment Project, following the passage of five
816 (5) days after informing the Village in writing fully about the terms and details of any such
817 assignment.

818 K. Notwithstanding the requirement of Article XVI and the limitation in Article XII
819 G, in the event that such construction lender or any other lender forecloses on its collateral and
820 succeeds to ownership of all of the Apartment Property, the Village shall have the option to fulfill
821 its obligations hereunder provided that such construction lender or other lender assumes in writing
822 all of the obligations of Developer. Any such lender shall have the right to cure any default by
823 Developer hereunder within forty-five (45) days of commencement of any assumption by such
824 lender of obligations under this Agreement if such default can reasonably be cured within that time
825 frame or such longer period as may be reasonably negotiated to accomplish such cure. During
826 the period of time from a default related to construction and completion of the Project but prior to
827 a cure by Developer or Developer's construction lender or assigns, the OUTSTANDING
828 OBLIGATIONS set forth in Article XI. B. 1. & 2. shall be SATISFIED AS MUCH AS POSSIBLE
829 FROM all of the remaining Available Tax Increment until a cure occurs.

830 L. The Village and Developer have used good faith efforts to promptly obtain approval
831 of the Project-related assistance provided for herein from the Joint Review Board for the TIF
832 District No. 7 on November 9th, 2023.

833 M. Within ten (10) days after request therefor, the Village agrees to provide an estoppel
834 certificate to Developer, its lenders, or any proposed purchaser of all or any part of the Property,
835 or its lenders, stating that Developer is not in default hereunder or if Developer is in default
836 hereunder setting forth any such defaults.

837 N. In the event that any term or provision of this Agreement is determined to be invalid
838 or unenforceable for any reason, then the other terms and provisions of this Agreement shall not
839 be affected thereby and said terms and provisions shall remain in full force and effect, unless to do
840 so would be inequitable to either party hereto.

841 O. EXCEPT AS EXPRESSLY OTHERWISE INDICATED IN THIS AGREEMENT,
842 THE TERMS AND CONDITIONS CONTAINED HEREIN ARE INTENDED BY THE
843 DEVELOPER AND THE VILLAGE TO CONSTITUTE A COVENANT RUNNING WITH
844 THE LAND AND SHALL BE ENFORCIBLE AGAINST THE DEVELOPER, OR AFTER THE
845 FULL TRANSFER OF OWNERSHIP TO DEVELOPER'S SUCCESSORS OR ASSIGNS, TO
846 THE EXTENT OF THEIR RESPECTIVE INTEREST IN THIS AGREEMENT, INCLUDING,
847 BUT NOT LIMITED TO, THE TID INSTALLMENT GRANT. IT IS NOT THE INTENT OF

Commented [A10]: NOTE TO RYAN BAILEY: ADD THIS TO THE LIST OF DELIVERABLES WHICH 3LP HARTLAND LLC NEEDS TO PROVIDE POST SIGNING OF PUD AGREEMENT.

848 THE VILLAGE OR DEVELOPER THAT THERE BE A “TERMINATION” OF THIS
849 CONTRACT BECAUSE ONCE THE OBLIGATIONS TO CONSTRUCT THE APARTMENT
850 PROJECT, IN STRICT CONFORMITY WITH THE APPROVED PLANS AND
851 SPECIFICATIONS AS CONTAINED IN THIS AGREEMENT, HAVE BEEN ACHIEVED, NEW
852 OBLIGATIONS ON THE PART OF THE DEVELOPER OR ITS SUCCESSOR(S) OR
853 ASSIGN(S) ARISE, FIRST WITH RESPECT TO DEDICATIONS AND THEN WARRANTY
854 OBLIGATIONS AND THEN FOLLOWED BY ONGOING MAINTENANCE OBLIGATIONS
855 REQUIRING REGULAR PERFORMANCE OF OBLIGATIONS WITH RESPECT TO
856 INSPECTION AND MAINTENANCE TASKS WHICH NEED TO BE PERFORMED SO
857 LONG AS THE APARTMENT PROJECT EXISTS. BY WAY OF EXAMPLE, BUT NOT BY
858 WAY OF LIMITATION, THERE WILL ALWAYS BE ONGOING OBLIGATIONS TO
859 INSPECT AND MAINTAIN THE STORM WATER SYSTEM, THE PEDESTRIAN
860 SIDEWALK AND PATHWAY SYSTEM, THE MAINTENANCE AND RESTORATION OF
861 SAFE CONDITION OF THE SLOPES WHICH BORDER THE APARTMENT PROJECT, THE
862 EMERGENCY ACCESS ROADWAY INTO THE APARTMENT PROJECT TO PROVIDE
863 PUBLIC SAFETY SERVICES AS THE APARTMENT PROJECT HAS ONLY ONE AVAILABLE
864 INGRESS AND EGRESS POINT OF ACCESS AND THE LANDSCAPE SYSTEM WHICH
865 BESIDES BEING INSTRUMENTAL IN CREATING A SENSE OF A PLANNED
866 COMMUNITY OVERCOMING THE IMPRESSION OF A GROUP OF BUILDINGS
867 EMERGING FROM THE BASE OF A FORMER SAND GRAVEL PIT AND WHICH SERVE,
868 IN SOME RESPECTS AS STABILIZING ROOT SYSTEM ANCHORS FOR THE SLOPES
869 WHICH GREATLY SURROUND THE APARTMENT PROJECT AS WELL AS CARRYING
870 CASUALTY INSURANCE THROUGHOUT THE EXISTENCE OF THE APARTMENT
871 PROJECT.

872 **ARTICLE XVII**
873 **EXCULPATION OF VILLAGE ELECTED OFFICIALS IN PERSONAL CAPACITY**

874 The parties mutually agree that the President and Village Clerk of the Village of Hartland,
875 entered into and are signatory to this Agreement solely in their official capacity and not
876 individually, and shall have no personal liability or responsibility hereunder; and personal liability
877 as may otherwise exist, being expressly released and/or waived.

878 **ARTICLE XVIII**
879 **TRANSFER RESTRICTION**

880 Transfer Restriction. Until the occurrence of Substantial Completion of the Apartment
881 Project (defined as issuance of certificates of occupancy for buildings representing at least one
882 hundred thirty-four (134) units of the Apartment Project), Developer will not sell, transfer, or
883 assign the Apartment Project asset or the membership interests in Developer for the Apartment
884 Project asset unless (a) to another owner, investor, developer, real estate investment trust, real
885 estate manager, general contractor, or similar real estate operator or company which owns or has
886 owned, developed or constructed multifamily apartment properties aggregating to at least two
887 hundred sixty-seven (267) units or owns, is a primary investor in, or manages multifamily
888 apartment properties aggregating to at least one thousand (1000) units, as to be certified in writing
889 by Developer to the Village or (b) as required by federal, state, bankruptcy, or other law applicable
890 to Developer or as otherwise required by Developer’s construction lender’s or other lender(s)’ loan

891 documents for the Apartment Project or membership interests in Developer serving as collateral
892 for loan(s) made to finance the Apartment Project. For the avoidance of doubt, Developer will not
893 be required to disclose the identity of the potential acquirer of the Apartment Project asset or the
894 membership interests in Developer for the Apartment Project asset as part of Developer's written
895 certification to the Village. Following either Substantial Completion or written certification from
896 Developer to the Village described in this Section XVIII(A), at such time, this restriction shall
897 automatically terminate without any further action required of the Village or Developer.

898
899

**ARTICLE XIX
RECORDATION AND TERMINATION**

900 A. Recordation. This Agreement shall only be effective as of the Effective Date upon
901 the execution of this Agreement **and its full Recordation** with the Register of Deeds for Waukesha
902 County by the Parties by and between the VILLAGE OF HARTLAND and 3LP HARTLAND
903 LLC. Upon such execution, an original of this Agreement and all of its Exhibits shall be placed
904 of record against the Property.

905 B. Termination. This Agreement shall automatically terminate and the parties shall
906 have no rights or obligations hereunder, except Developer's obligation to reimburse any fees then
907 owed to the Village under Article VII, which obligation shall survive any such termination, if
908 Developer has not acquired title to the Lot 1 by December 1, 2024.

909
910

[Signatures on Following Pages]

IN WITNESS WHEREOF, Developer and Village have caused this Agreement to be signed by their appropriate officers to be hereunto affixed in either one original or by original counterparts the day and year first above written.

VILLAGE:

VILLAGE OF HARTLAND

By: _____
Jeff Pfannerstill, Village President

ATTEST:

Santee Policello, Village Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, 2024, the above-named Jeff Pfannerstill, Village President, to me known to be the person and officer who executed the foregoing instrument and acknowledged that he executed the same as such officer by the Village of Hartland.

NOTARY PUBLIC, State of Wisconsin
Print Name: _____
My Commission: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

Personally came before me this _____ day of _____, 2024, the above-named Santee Policello, Village Clerk, to me known to be the person and officer who executed the foregoing instrument and acknowledged that she executed the same as such officer by the Village of Hartland.

NOTARY PUBLIC, State of Wisconsin
Print Name: _____
My Commission: _____

DEVELOPER:

3LP HARTLAND LLC

By: _____
Matthew M. Burow, Manager

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 2024, the above-named Matthew M. Burow, as Manager of 3LP Hartland LLC, to me known to be the person who executed the foregoing.

NOTARY PUBLIC, State of Wisconsin
Print Name: _____
My Commission: _____

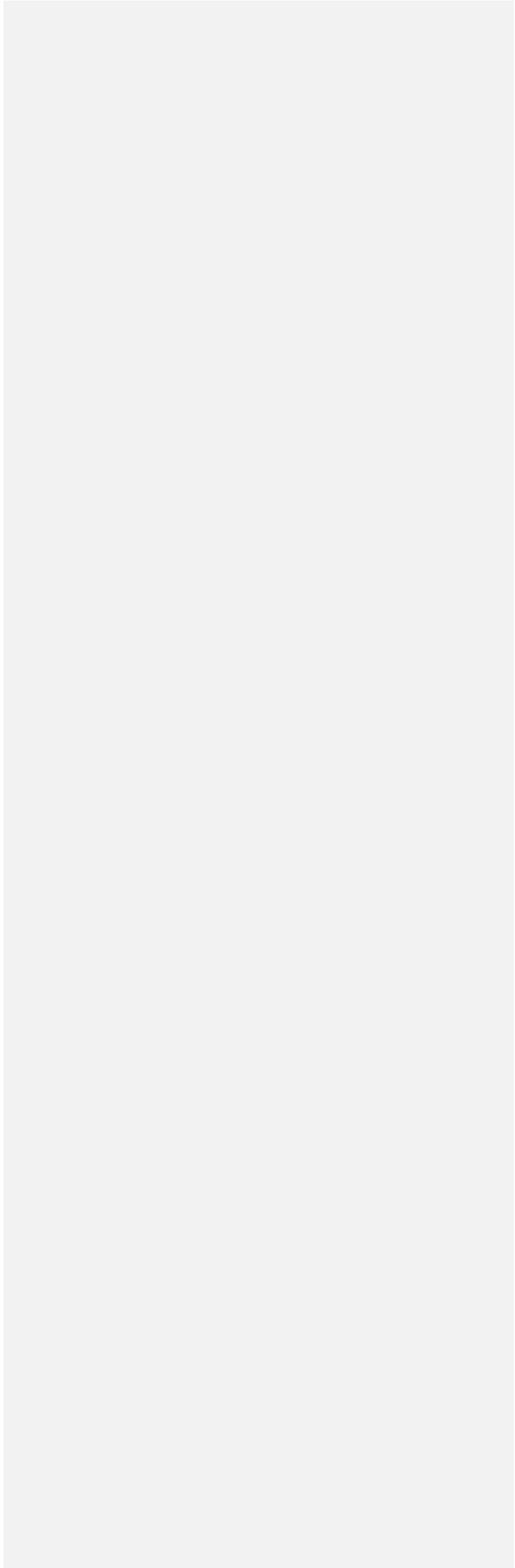


EXHIBIT 1
PROPERTY LEGAL DESCRIPTION
(APARTMENT PARCEL LEGAL DESCRIPTION)

LOT ONE (1) OF CERTIFIED SURVEY MAP NO. 12509, BEING A PART OF THE NORTHEAST ONE-QUARTER (1/4), SOUTHEAST ONE-QUARTER (1/4), SOUTHWEST ONE-QUARTER (1/4) AND NORTHWEST ONE-QUARTER (1/4) OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION THREE (3), IN TOWNSHIP SEVEN (7) NORTH, RANGE EIGHTEEN (18) EAST, IN THE VILLAGE OF HARTLAND, WAUKESHA COUNTY, WISCONSIN, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR WAUKESHA COUNTY ON NOVEMBER 29, 2023 IN BOOK 130, PAGES 73 TO 79 INCLUSIVE, AS DOCUMENT NO. 4746842.

TAX KEY NO: HAV0730981; HAV0730985; HAV0730986 AND HAV0730987

ADDRESS: 644, 700 & 701 WEST CAPITOL DRIVE, HARTLAND, WI 53029

**EXHIBIT 2
CERTIFIED SURVEY MAP (CSM)**

[See attached]

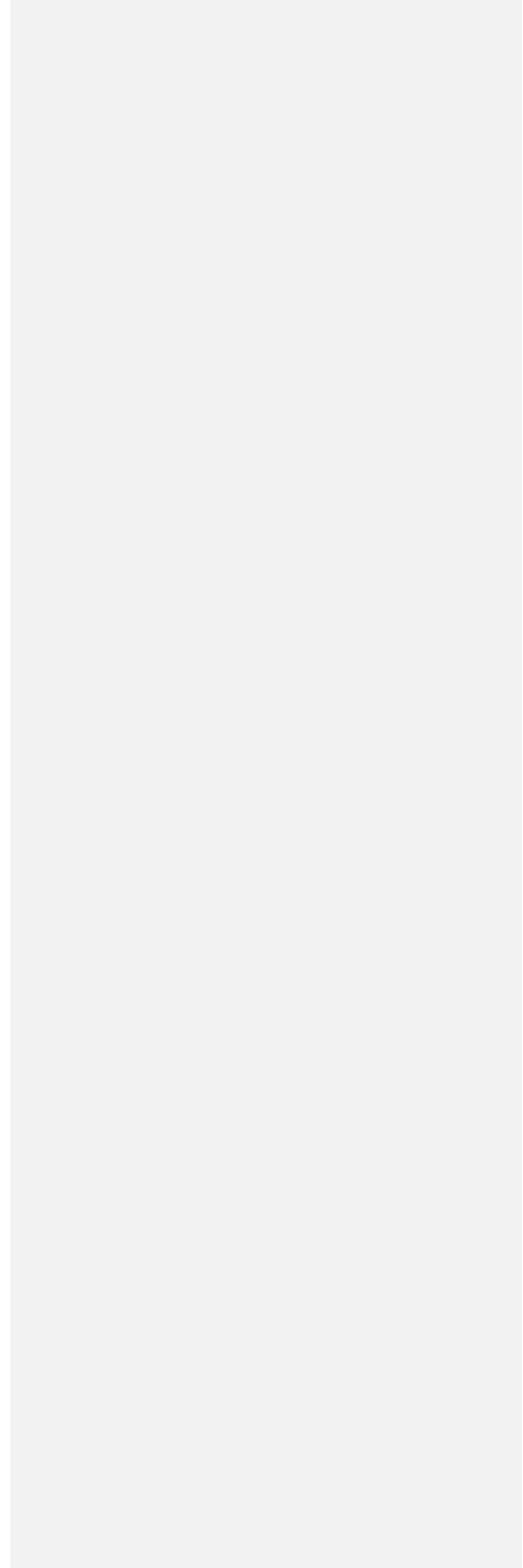


EXHIBIT 3
TIF DISTRICT LEGAL DESCRIPTION

[See attached]

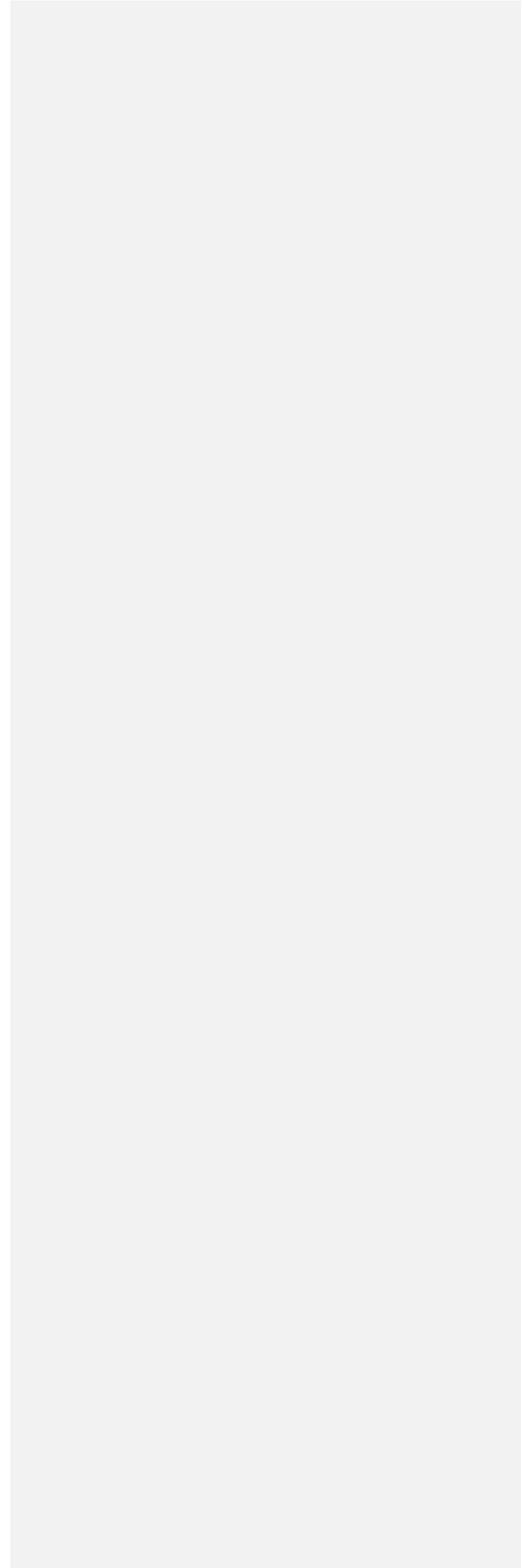


EXHIBIT 4
ARCHITECTURAL PLANS & SPECIFICATIONS

[See attached]

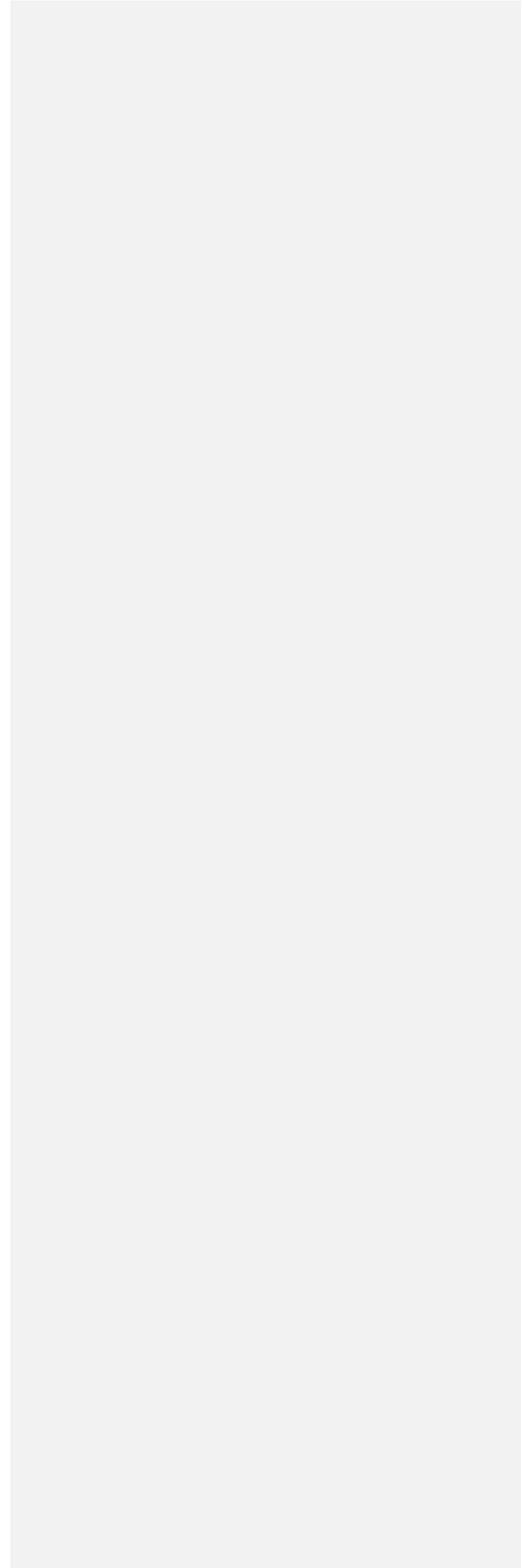


EXHIBIT 5
DEDICATED IMPROVEMENTS

-Each Gate Valve on the Village side of the meter pits (typical to each connection at W. Capitol and Palmer).

-New connection sanitary manhole in W. Capitol.

-New storm sewer from connection point in W. Capitol to each of 2 inlets in the radii of entrance.

-Curb/gutter, curb ramp, asphalt pavement at intersection within W. Capitol Drive that is within the Village right-of-way.

-Portion of W. Capitol Drive roadway/utility improvements from Vettleson to Palmer which are part of the Property and being constructed in coordination with Kwik Trip.

**EXHIBIT 6
CIVIL DESIGN DOCUMENTS**

[See attached]

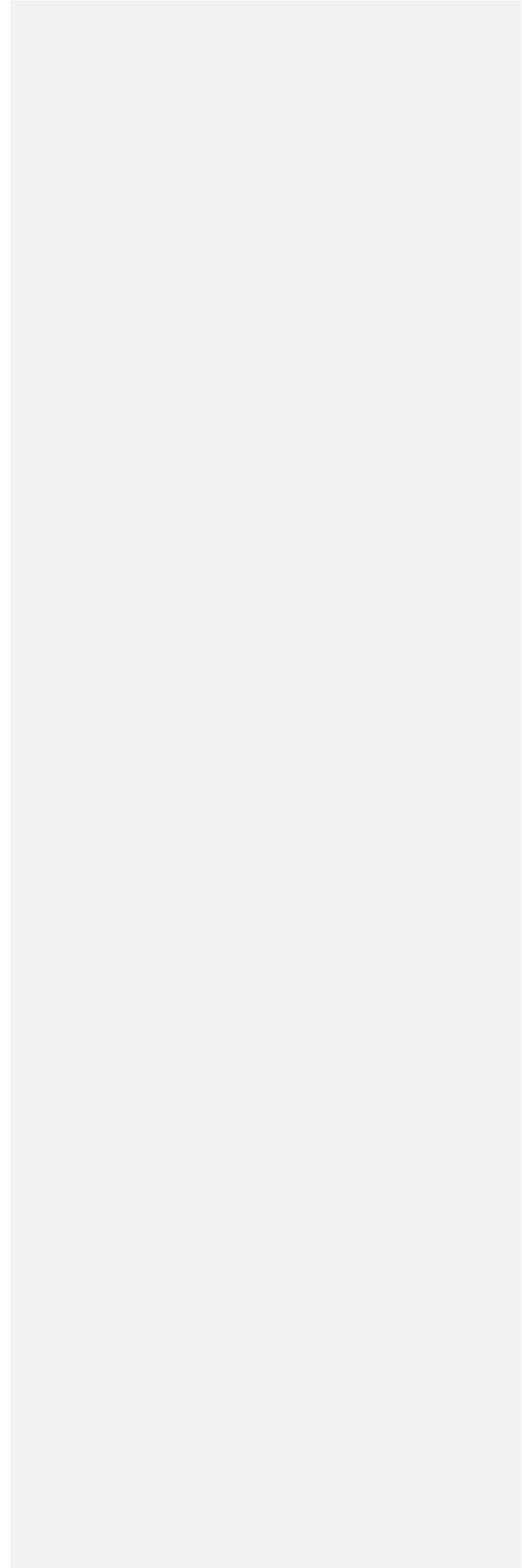
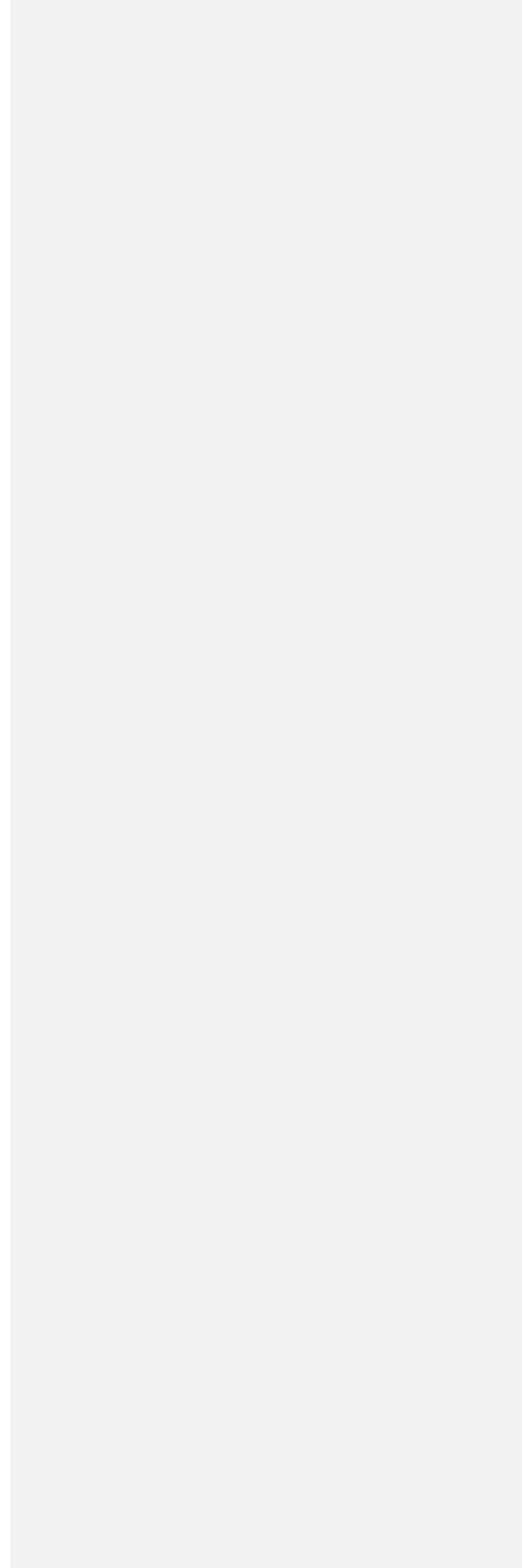


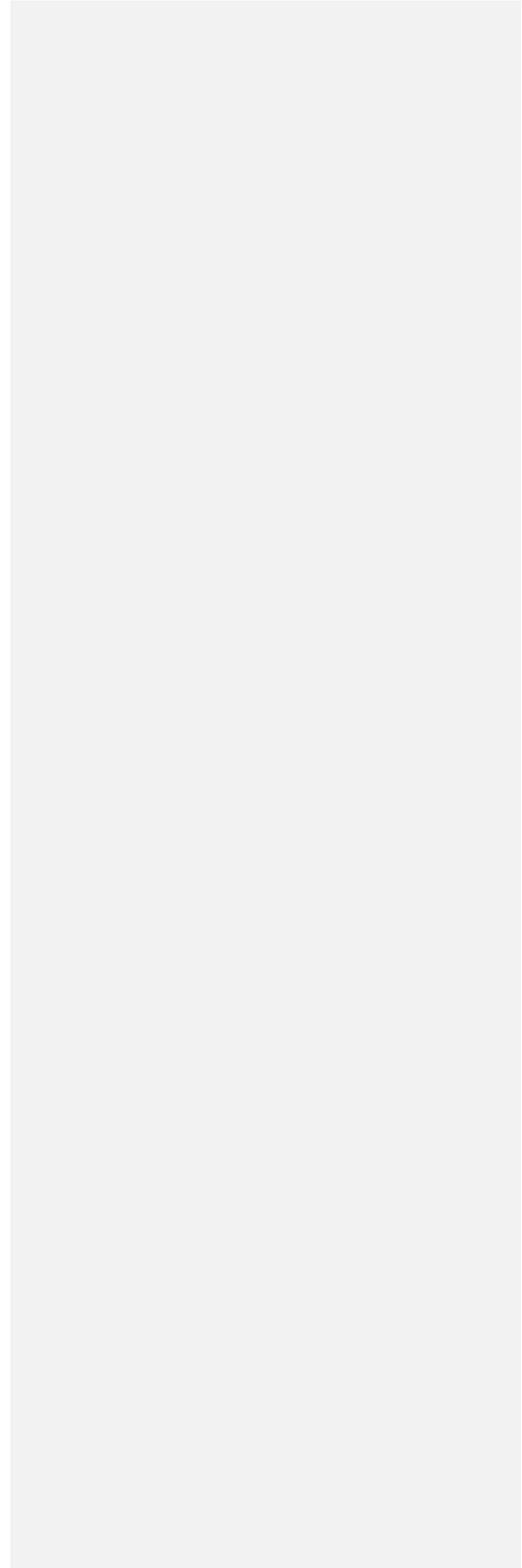
EXHIBIT 7
ENVIRONMENTAL DESIGN DOCUMENTS / WDNR

[See attached]



**EXHIBIT 8
GEOTECHNICAL DOCUMENTS**

[See attached]



**EXHIBIT 9
PRIVATE HYDRANT MAINTENANCE AGREEMENT**

[See attached]

Commented [A11]: TLP Note: TLP to provide.

EXHIBIT 10
LANDSCAPE DESIGN DOCUMENTS

[See attached]

Commented [A12]: TLP Note: TLP to provide.

EXHIBIT 11
CAPITOL DRIVE IMPROVEMENT DESIGN DOCUMENTS

[See attached]

Commented [A13]: TLP Note: TLP to provide.

**EXHIBIT 12
LIGHTING PLAN**

[See attached]

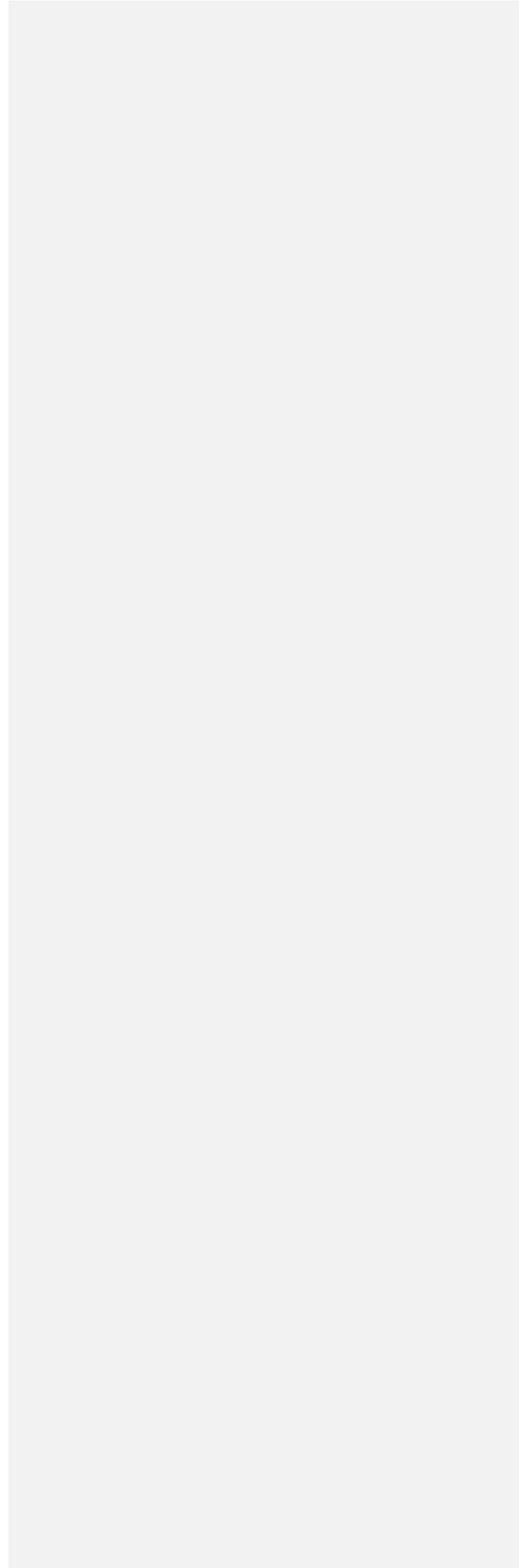
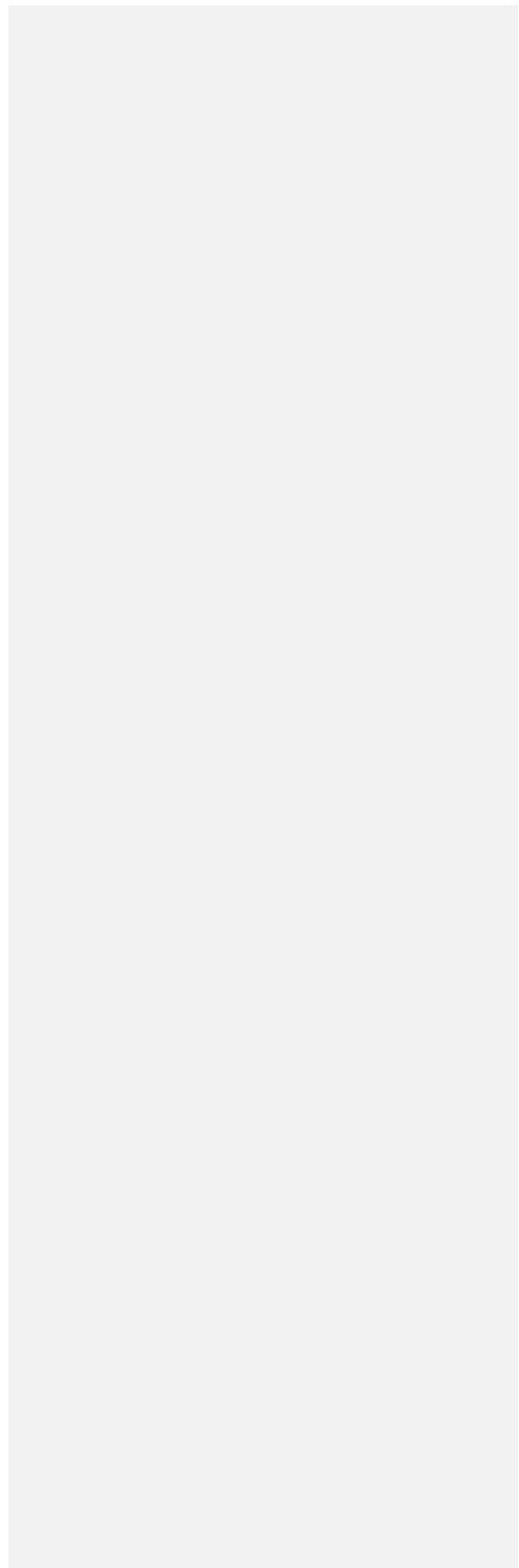


EXHIBIT 13
EASEMENT AGREEMENT – PATHWAYS AND SIDEWALKS
[See attached]

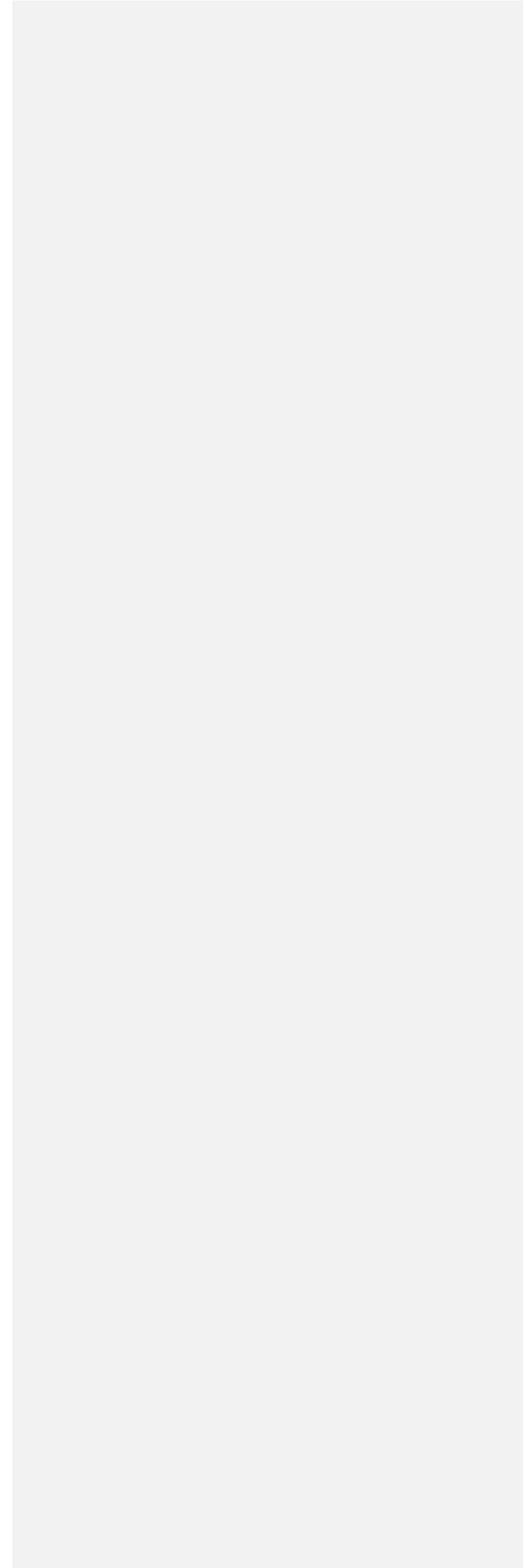


**EXHIBIT 14
TID #7 EHLERS PROJECT SUMMARY**

**TO BE SEPARATELY RECORDED WITH THE REGISTER OF DEEDS OF
WAUKESHA COUNTY, WISCONSIN AND CONCURRENTLY RECORDED WITHIN
THIS AGREEMENT AS THIS EXHIBIT IS INCORPORATED AND MADE A PART
OF THIS PUD AGREEMENT.**

EXHIBIT 15
STORMWATER MANAGEMENT PLAN

[See attached]



**EXHIBIT 16
STORMWATER MAINTENANCE AGREEMENT**

TO BE SEPARATELY RECORDED WITH THE REGISTER OF DEEDS OF WAUKESHA COUNTY, WISCONSIN AND CONCURRENTLY RECORDED WITHIN THIS AGREEMENT AS THIS EXHIBIT IS INCORPORATED AND A PART OF THIS PUD AGREEMENT.

EXHIBIT 17
SLOPE MANAGEMENT PLAN

[See attached]

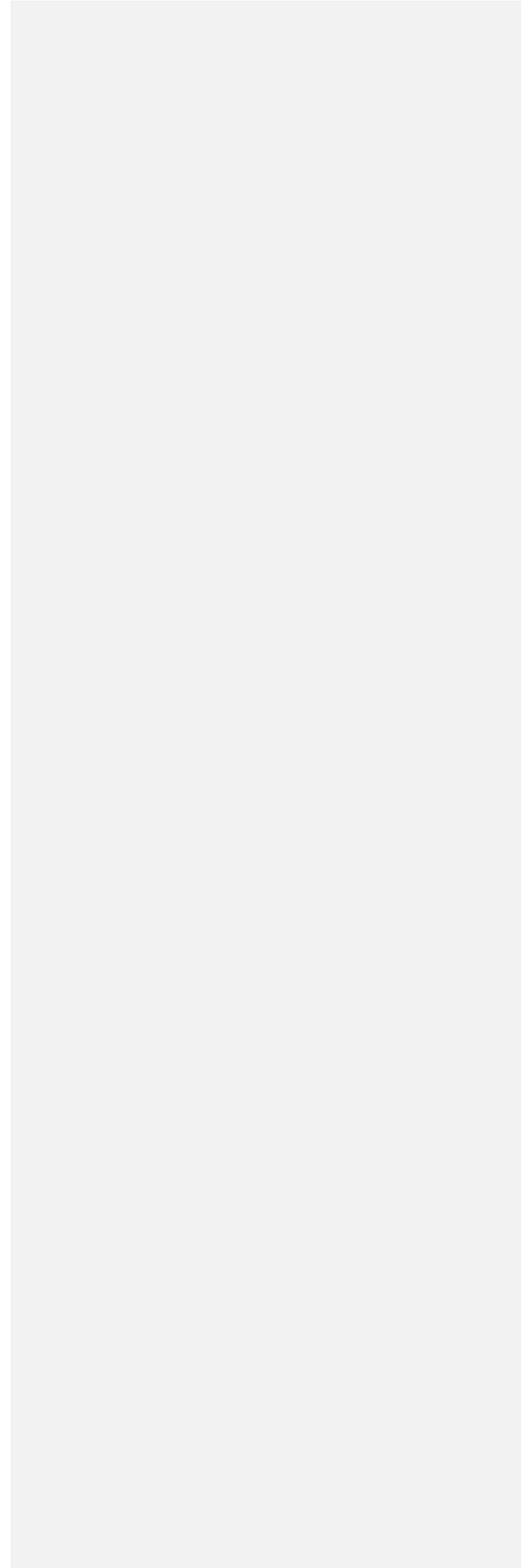


EXHIBIT 18
SLOPE MAINTENANCE AGREEMENT

TO BE SEPARATELY RECORDED WITH THE REGISTER OF DEEDS OF WAUKESHA COUNTY, WISCONSIN AND CONCURRENTLY RECORDED WITHIN THIS AGREEMENT AS THIS EXHIBIT IS INCORPORATED AND A PART OF THIS PUD AGREEMENT.