

**NOTE TO APPLICANT:**  
**YOU WILL BE EXPECTED TO EXECUTE THIS FORM OF AGREEMENT.**  
**THE VILLAGE WILL PREPARE EXECUTION COPIES.**  
**THIS FORM IS NOT NEGOTIABLE.**

**IMPROVEMENT AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the VILLAGE OF WOODRIDGE, a municipal corporation of the State of Illinois, having its principal offices at Five Plaza Drive, Woodridge, Illinois 60517 (hereinafter called "VILLAGE") and \_\_\_\_\_ (hereinafter called "DEVELOPER").

W I T N E S S E T H:

WHEREAS, on or about \_\_\_\_\_, 200\_\_, DEVELOPER, as applicant, filed an application for \_\_\_\_\_ plan and plat approval with respect to the property legally described on Exhibit "A", attached hereto which is, by this reference, incorporated herein ("SUBJECT REALTY") so as to permit the construction of \_\_\_\_\_; ("PROJECT")

and,

WHEREAS, the DEVELOPER desires to construct the PROJECT on the SUBJECT REALTY and has submitted to the VILLAGE an amended final PUD plan, a copy of which is attached hereto as Exhibit "B" which is, by this reference, incorporated herein, and which \_\_\_\_\_ has been approved by the Plan Commission of the VILLAGE; and,

WHEREAS, the VILLAGE is willing to approve the PROJECT provided that this

Agreement is executed to insure the completion of certain improvements in accordance with applicable VILLAGE ordinances and/or agreements between the VILLAGE and DEVELOPER.

The PROJECT shall not be approved until this Agreement is executed.

NOW, THEREFORE, it is mutually agreed as follows:

1. DEVELOPER shall furnish, or cause to be furnished, at its own cost and expense, all the necessary materials, labor and equipment to complete the following improvements on the SUBJECT REALTY (the "IMPROVEMENTS" or individually, the "IMPROVEMENT"):

- A. Storm Sewer Facilities (including any detention/retention facilities), wetlands improvements and related structures.
- B. Water Distribution and Sanitary Sewer Facilities (and all appurtenances thereto).
- C. Site Landscaping.
- D. Monuments.
- E. Erosion Control.
- F. Parkway landscaping.
- G. Parking Lot.
- H. Site Lighting.
- I. Site Grading and Earth Moving.
- J. Sidewalks.
- K. Any and all restoration work attendant to any of the above.

all in a good and workmanlike manner and in accordance with all pertinent ordinances and regulations of the VILLAGE and/or other agreements between the VILLAGE and DEVELOPER,

and the Plans and Specifications for such IMPROVEMENTS shown on Exhibit "C" attached hereto, which Plans and Specifications have been prepared by \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_, revised through \_\_\_\_\_, known as Job Number \_\_\_\_\_, consisting of \_\_\_\_\_ (\_\_\_\_\_) sheets, and identified as \_\_\_\_\_, which Plans and Specifications have heretofore been approved by the VILLAGE, together with any amendments thereto approved by the VILLAGE. Any utilities and services to be installed in or under the streets shall be installed prior to paving.

2. Attached hereto as Exhibit "D" is a complete cost estimate for the construction of the IMPROVEMENTS. The VILLAGE Code and/or any applicable ordinance or agreement provides that the DEVELOPER shall collateralize its obligation to construct all IMPROVEMENTS. The DEVELOPER shall submit a Letter of Credit issued by a sound financial institution authorized to transact business and maintaining an authorized agent for service in the State of Illinois. Such Letter of Credit shall be presentable at the counter of a financial institution in the State of Illinois. Such Letter of Credit shall contain such terms and provisions as may be acceptable to the Village Attorney of the VILLAGE and shall be deposited with the VILLAGE prior to the approval of the PROJECT by the VILLAGE.

Said Letter of Credit shall be in a principal amount of not less than one hundred twenty percent (120%) of the DEVELOPER'S engineer's estimate, as approved by the Village Engineer, of the costs of all IMPROVEMENTS to be constructed upon the SUBJECT REALTY.

The Letter of Credit may provide for its reduction from time to time, based upon the Village Engineer's recommendation to the Village Administrator of the value of any of the IMPROVEMENTS installed. The Village Engineer's recommendation shall not be subject to

question by the DEVELOPER. In no event shall the Letter of Credit be reduced to an amount less than one hundred twenty percent (120%) of the Village Engineer's estimate of the cost of completion of all remaining IMPROVEMENTS. Any language in the Letter of Credit with respect to its reduction shall be subject to the approval of the Village Attorney. In no event shall the Village Engineer's recommendation for a reduction to the Letter of Credit or the Village Administrator's authorization for such reduction constitute final acceptance of any of the IMPROVEMENTS.

3. All work related to the IMPROVEMENTS shall be subject to inspection by the Village Engineer, and his approval thereof shall be a condition precedent to the payout of funds to contractors or subcontractors. The approval provided for in this paragraph shall not constitute final acceptance of any or all of the IMPROVEMENTS.

4. DEVELOPER will pay to the VILLAGE, to cover engineering and inspection fees, an amount equal to the sum of the following:

- A. Three percent (3%) of the first \$500,000.00 of the estimated cost of the IMPROVEMENTS as set forth on Exhibit "D"; plus,
- B. Two and three-quarters percent (2-3/4%) of the portion of the estimated cost of the IMPROVEMENTS as set forth on Exhibit "D" which is greater than \$500,000.00 and less than or equal to \$1,000,000.00; plus,
- C. Two and one-half percent (2-1/2%) of the portion of the estimated cost of the IMPROVEMENTS as set forth on Exhibit "D" which is greater than \$1,000,000.00.

Said amount shall be deposited prior to approval of the PROJECT. Should the actual amount of engineering and inspection fees be greater than the amount deposited by the DEVELOPER, the DEVELOPER shall pay said difference to the VILLAGE, within thirty (30) days, after the presentation of an invoice to the DEVELOPER.

5. The DEVELOPER shall furnish to the VILLAGE at the same time the Letter of Credit is required to be submitted, evidence of liability insurance in the amount of at least \$1,000,000/\$5,000,000 covering the construction activities of the DEVELOPER contemplated by this Agreement. Such insurance shall be written by a company rated by Best Reporting Service A VI or better. Such certificate of insurance shall be deposited before the commencement of any work by the DEVELOPER. The policy shall provide a thirty (30) day "prior notice of termination" provision in favor of the VILLAGE. Should the DEVELOPER allow such liability insurance to terminate prior to the final acceptance of all of the IMPROVEMENTS, the VILLAGE may have recourse against the Letter of Credit for funds sufficient to cause the liability insurance to remain in effect until the final acceptance of all of the IMPROVEMENTS.

6. The DEVELOPER, by its execution of this Agreement, agrees to indemnify, hold harmless, defend, pay costs of defense, and pay any and all claims or judgments which may hereafter accrue against the VILLAGE, or its agents, servants and employees, arising out of any of the DEVELOPER'S construction activities contemplated by this Agreement.

7. DEVELOPER shall cause all IMPROVEMENTS identified in paragraph 1 of this Agreement to be completed prior to the issuance of any building permits.

Notwithstanding any provision contained herein to the contrary, all IMPROVEMENTS shall be completed no later than one year from and after the date of this Agreement.

If work relating to the IMPROVEMENTS is not completed within the time prescribed herein, the VILLAGE shall have the right, but not the obligation, to require completion by drawing on the Letter of Credit in addition to any other available remedies.

8. Upon completion of any IMPROVEMENT and, further, upon the submission to the VILLAGE of a certificate from the engineering firm employed by DEVELOPER stating that the said IMPROVEMENT has been completed in conformance with this Agreement, the VILLAGE Code, the final engineering Plans and Specifications relative thereto, any applicable agreements and all State and Federal laws and standards, the Village Engineer shall, within thirty (30) days after the VILLAGE receives the aforesaid certification from the DEVELOPER'S engineer, either (i) recommend to the VILLAGE'S corporate authorities final acceptance of said IMPROVEMENT, or (ii) designate in writing to DEVELOPER all corrections or alterations which shall be required to obtain a recommendation of final acceptance of said IMPROVEMENT, specifically citing sections of the final engineering Plans and Specifications, the VILLAGE Code or this Agreement, any applicable agreement or State or Federal law or standard, relied upon by said Village Engineer. Should the Village Engineer reject any IMPROVEMENT, or any portion or segment thereof, for a recommendation of final acceptance, the DEVELOPER shall cause to be made to such IMPROVEMENT such corrections or modifications as may be required by the Village Engineer. The DEVELOPER shall cause the IMPROVEMENTS to be submitted and resubmitted as herein provided until the Village Engineer shall recommend final acceptance of same to the corporate authorities of the VILLAGE and the corporate authorities shall finally accept same. No IMPROVEMENT shall be deemed to be finally accepted until the corporate authorities shall, by appropriate resolution, finally accept same.

Upon completion and as a condition of final acceptance by the VILLAGE, DEVELOPER agrees to convey and transfer those IMPROVEMENTS which are deemed to be public improvements to the VILLAGE by appropriate Bill(s) of Sale.

9. The DEVELOPER guarantees that the workmanship and materials furnished under the final Plans and Specifications and used in said IMPROVEMENTS will be furnished and performed in accordance with well-known established practices and standards recognized by engineers in the trade. All IMPROVEMENTS shall be new and of the best grade of their respective kinds for the purpose.

All materials and workmanship shall be guaranteed by the DEVELOPER for a period of two (2) years from the date of final acceptance.

To partially secure the DEVELOPER'S guarantee, at the time or times of final acceptance by the VILLAGE of the installation of any IMPROVEMENT in accordance with this Agreement, DEVELOPER shall deposit with the VILLAGE a Maintenance Letter of Credit in the amount of twenty percent (20%) of the actual cost of the IMPROVEMENT finally accepted by the VILLAGE. This Letter of Credit shall be deposited with the VILLAGE and shall be held by the VILLAGE for a period of two (2) years after the IMPROVEMENT is finally accepted.

The DEVELOPER shall make or cause to be made at its own expense, any and all repairs which may become necessary under and by virtue of this contract guarantee and shall leave the IMPROVEMENT in good and sound condition, satisfactory to the VILLAGE and the Village Engineer, at the expiration of the guarantee period. In said event and at the expiration of such period, said Maintenance Letter of Credit shall be returned to the DEVELOPER.

If during said guarantee period, any IMPROVEMENT shall require any repairs or renewals, in the opinion of the Village Engineer, necessitated by reason of settlement of foundation, structure or backfill, or other defective workmanship or materials, the DEVELOPER shall, upon notification by the Village Engineer of necessity for such repairs or renewals, make such repairs or

renewals, at its own cost and expense. Should the DEVELOPER fail to make such repairs or renewals within the time specified in such notification, the VILLAGE may cause such work to be done, either by contract or otherwise, and the VILLAGE may draw upon said Maintenance Letter of Credit to pay the entire cost or expense thereof, including attorneys' fees and consultants' costs. Should such cost or expense exceed the amount set forth in said Maintenance Letter of Credit, the DEVELOPER will remain liable for any additional cost or expense incurred in the correction process.

10. The DEVELOPER shall furnish the VILLAGE with copies of lien waivers showing that all persons who have done work, or have furnished materials under this Agreement and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid or are no longer entitled to such lien.

11. The DEVELOPER shall be responsible for the maintenance of the IMPROVEMENTS until such time as they are finally accepted by the VILLAGE. This maintenance shall include routine maintenance, as well as emergency maintenance such as sewer blockages and water main breaks. Such maintenance shall be sufficient to render the IMPROVEMENTS required by paragraph 1 of this Agreement, compliant with the Plans and Specifications identified by said paragraph at the time of their final acceptance by the VILLAGE.

12. DEVELOPER shall be responsible for any and all damage to the IMPROVEMENTS which may occur during the construction of the PROJECT irrespective of whether the IMPROVEMENTS damaged have or have not been finally accepted hereunder. DEVELOPER shall replace and repair damage to the IMPROVEMENTS installed within, under or upon the SUBJECT REALTY resulting from construction activities by DEVELOPER, its successors or

assigns and its employees, agents, contractors or subcontractors during the term of this Agreement, but shall not be deemed hereby to have released any other party from liability or obligation in this regard. DEVELOPER shall have no obligation with respect to damage resulting from ordinary use, wear and tear occurring after final acceptance with respect to IMPROVEMENTS deemed to be public improvements.

13. The rights and remedies of the VILLAGE as provided herein, in the ordinances of the VILLAGE and/or in any agreements between the VILLAGE and DEVELOPER regarding the PROJECT, shall be cumulative and concurrent, and may be pursued singularly, successively, or together, at the sole discretion of the VILLAGE, and may be exercised as often as occasion therefor shall arise. Failure of the VILLAGE, for any period of time or on more than one occasion, to exercise such rights and remedies shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default. No act of omission or commission of the VILLAGE, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release to be effected only through a written document executed by the VILLAGE and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of the VILLAGE'S rights or remedies hereunder. Except as otherwise specifically required, notice of the exercise of any right or remedy granted to the VILLAGE is not required to be given.

14. From and after the date on which the Village Director of Public Works notifies the DEVELOPER, in writing, that the DEVELOPER is in default of any of its obligations under this Agreement, the DEVELOPER shall pay to the VILLAGE, upon demand, all of the VILLAGE'S

fees, costs and expenses incurred in enforcing the provisions of this Agreement against DEVELOPER, including, without limitation, engineers' and attorneys' fees, costs and expenses, and, if any litigation is filed as part of such enforcement, any court costs and filing fees.

15. This Agreement shall be binding upon and inure to the successors and assigns of the parties to this Agreement. Notwithstanding the foregoing, this Agreement shall not be assigned by either party hereto without the prior written consent of the other party to this Agreement.

16. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and this Agreement may be enforced with that provision severed or as modified by the court.

17. This Agreement sets forth an agreement of the parties insofar as it specifically contradicts, modifies or amplifies any provision of the VILLAGE Code. To the extent that this Agreement does not address an applicable provision of the VILLAGE Code, the VILLAGE Code shall continue to control the parties' activities contemplated by this Agreement regardless of the fact that the VILLAGE Code has not been addressed within the specific terms of this Agreement.

18. This Agreement shall be in full force and effect from the date set forth above until two (2) years from and after the date on which the last of the IMPROVEMENTS has been finally accepted.

19. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois.

20. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. VILLAGE at:

VILLAGE OF WOODRIDGE  
Five Plaza Drive  
Woodridge, Illinois 60517

B. DEVELOPER at:

21. This Agreement is executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

VILLAGE OF WOODRIDGE, an Illinois  
municipal corporation,

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

ATTEST:

\_\_\_\_\_  
Village Clerk

DEVELOPER

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

ATTEST:

\_\_\_\_\_



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DU PAGE )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_, \_\_\_\_\_ of  
\_\_\_\_\_, and \_\_\_\_\_, \_\_\_\_\_ of said  
corporation, personally known to me to be the same persons whose names are subscribed to the  
foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively appeared  
before me this day in person and acknowledged that they signed and delivered the said instrument as  
their own free and voluntary act and as the free and voluntary act of said corporation, for the uses  
and purposes therein set forth; and the said \_\_\_\_\_ then and there acknowledged  
that \_\_\_he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said  
corporation to said instrument, as h\_\_\_ own free and voluntary act and as the free and voluntary act  
of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

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

