

DRAFT: ~~10-10-20~~ 10-15-20
von Briesen & Reper, s. c.

HB Edits 10-15-20

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PLANNED UNIT DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE VILLAGE OF HARTLAND
AND
LIGHTNING DEVELOPMENT LLC

[INSERT DATE]

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HB Edits

MULTIFAMILY
PLANNED UNIT DEVELOPMENT AGREEMENT

THIS PLANNED UNIT DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the ____ day of _____ 2020, by and between LIGHTNING DEVELOPMENT LLC, a Wisconsin limited liability company hereafter, (the "Developer") and the VILLAGE OF HARTLAND, a Wisconsin Municipality, (the "Village").

RECITALS

- A. Developer is the ~~owners~~[†]owner of approximately 16.9160²¹ acres of real property located in the Village of Hartland and legally described on Exhibit A attached hereto (the "Site") and desires to develop it for multifamily residential purposes (the "Project").
- B. Developer desires to develop 6 multifamily residential buildings, together with a club house and amenity spaces in [] phases as specifically depicted on Exhibit B (the "Site Plan") and specifically called out in highlighted notations on Exhibit E (the precise "Plans and Specifications") and requests zoning and development permission.
- C. Upon consideration of the final plans for the proposed development, it was determined by the Plan Commission and the Village Board that a total site density of not more than 150 multifamily residential units is consistent with the general density requirements of the land use as described in the Village of Hartland Comprehensive Development Plan: 2035.
- D. In order to preserve portions of an Isolated Natural Resources Area ("INRA") within the Site, the Village and the Developer have agreed to aggregate the improvements on the Site and that the Developer create or preserve certain trail areas within the Site and preserve same as amenities accessible to the general public and therefore, certain requirements of the Zoning Code have been adjusted via PUD Zoning.
- E. Upon Execution and recording of this Agreement, the Site shall be re-zoned to RM-1 District with both Planned Unit Development ("PUD") and Upland Conservancy Overlay Districts as shown in the attached Exhibit C to facilitate the proposed residential use.

~~† PLEASE PROVIDE PROOF OF THE OWNERSHIP BY LIGHTING OF THE SITE TO HDIM.~~

²¹ The Site consists of 16.9160 acres with 3.4939 acres consisting of Isolated Natural Resource Area ("INRA") resulting in 13.4221 net acres available for development.

- F. The Developer submitted a Certified Survey Map³² for development of the Project within the Village of Hartland, a copy of which is attached hereto as Exhibit D (the “Certified Survey Map” or “CSM”), which was considered by the Plan Commission and recommended for approval subject to the incorporation of : (1) representations made during the consideration process by the Developer; (2) final approval of the engineering by Village Staff; and (3) the execution and recording of this Planned Unit Development Agreement.

- G. The Village of Hartland is requiring that, as conditions of its approval of development on the Site through the issuance of Occupancy Permits , Developer must install limited public improvements associated with the development of the Site and that the acceptance of the dedication of those public improvements shall be contingent upon the construction of said improvements according to applicable State and municipal specifications and ordinances.⁴³

- H. The Village Board has duly approved Developer’s plans and specifications for the Project, conditioned upon Developer’s entry into this Agreement.

- I. Developer agrees to develop the Site as herein described in strict accordance with this Agreement.

FINDINGS

The Village of Hartland Plan Commission and Village Board of Trustees have made the following findings as they relate to the Project.

- A. The proposed site will be provided with adequate drainage facilities for surface water and storm water conditioned on the Developer implementing the approved designs in accordance with Village ordinances and subject to Village Engineer approval.

- B. The proposed site will be accessible from public roads Campus Drive and Scenic Road and through internal private roads intended to carry the traffic that is projected to be generated by the proposed development conditioned on development of private roads within the site and correct development-related limited improvements on the adjacent Village road: Campus Drive.

³² VILLAGE IS STILL AWAITING RECEIPT OF THE CSM.

⁴³ The limited public improvements consist of (a) water system shut off valve, (b) slight modification of campus drive paved area to facilitate entrance into the southern entrance of the Site.

- C. No undue constraint or burden has been identified that will be imposed on public services and facilities, such as fire and police protection, street maintenance, water, sanitary sewer and storm drainage, and maintenance of public areas by the proposed development.
- D. The private roadways on the site of the proposed development have been represented to be adequate to serve the residents of the proposed development although in certain respects they do not meet the minimum standards of all applicable ordinances or administrative regulations of the Village.
- E. Private water and sewer facilities connected to public facilities will be provided. Private water and sewer facilities shall be maintained, repaired and replaced by the owner of the Site in perpetuity.
- F. The entire Site to be included in this Planned Unit Development Overlay District shall be held under single ownership at all times.
- G. The locations of the two entrances/exits have been represented to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets, and the development has been represented to not create an unreasonable adverse effect upon the general traffic pattern of the surrounding neighborhood. The size, quality and design of all buildings, landscaping and other site development features in the Project have been represented to be compatible with the general character of the Village and specifically to the surrounding neighborhood, and the design of the development has been represented to be an attractive and harmonious development that is compatible with and one that will not adversely affect- the property values of the surrounding neighborhood.
- H. It has been represented that this Project will create an attractive residential environment of sustained desirability and economic stability, including structures in relation to terrain, consideration of safe pedestrian flow, ready access to recreation space, and compatible with overall plans for the community.
- I. The total net residential density within the Planned Unit Development Overlay District is compatible with the Village of Hartland Comprehensive Development Plan: 2035. The total net density is also consistent with and does not exceed the density of development permitted in the underlying basic use zoning district.⁵⁴
- J. Structure types will be compatible with other structural types permitted in the underlying basic use district.

⁵⁴ DATA IN THIS REGARD NEEDS TO BE PROVIDED BY DEVELOPER.

- K. No provision has been made for the installation of any new public facilities other than the re-routing of a segment of an existing natural trail over to a public right of way to accommodate the construction of Building No. 1 as there will not be any.
- L. Adequate, continuing fire and police protection is understood to exist.
- M. The population density of the development has been shown to not have an adverse effect upon the community's capacity to provide needed school or other municipal service facilities.⁶⁵
- N. Adequate guarantee is provided for permanent preservation of open space areas conditioned on the zoning of the Isolated Natural Resource Area under Upland Conservancy Overlay District and that no other development will occur except that which is approved herein.

The care and maintenance of open space will be provided by a management organization for the Project.

- O. Developer has committed to ~~disclosing full ownership and all relevant costs and related data with the Village Assessor to establish correct~~ payment of the appropriate property tax liability ~~of~~ for the Site. *Restore*
- P. Aggregation of residential development has been permitted to protect and preserve portions of an INRA.

NOW, THEREFORE, in consideration of the incorporation of all of the above Recitals and Findings, the covenants of the Village set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer does hereby agree to develop the Site as follows:

Section I. PUD Requirements

- A. Developer shall comply with this Agreement.
- B. The Project shall include not more than 150 single family residential units as detailed on the Site Plan (Exhibit E).

⁶⁵ DATA IN THIS REGARD NEEDS TO BE PROVIDED BY DEVELOPER.[]

- C. The Project shall at all times comply with the requirements of the RM-1 Residential District, except as defined below, and the requirements of the UCO - Upland Conservancy Overlay District as that district is mapped on the Site.
- D. The following requirements of the RM-1 Residential District are hereby modified as defined herein:

- a. ~~????????~~46-375 regarding lot area and width.⁷⁶
- b. ~~????????~~46-377 regarding yards.

Section II. Improvements.

Developer shall prepare the Site and construct the improvements on the Site and on Campus Drive as described below (all at Developer's sole expense) in accordance with the plans and specifications attached to this Agreement as Exhibits ("Project").

A. Streets.

- 1. Developer shall, at its sole expense, grade, construct and surface private roadways on the Site as shown on and in accordance with the plans and specifications set forth on Exhibit E.⁸⁷
- 2. At the commencement of the Project, Developer shall install tracking pads at all points where construction traffic enters or departs from the Site. Gravel drive areas shall be required for the respective staging areas of each building sought to be constructed in order to be eligible to apply for a Building Permit. No Occupancy Permit will be issued for any specific building until the binder lift has been installed which would reasonably permit residents of same and emergency vehicles to ingress and egress from the Site and to park without jeopardy of damage or blockage.
- 3. Developer shall construct and surface the private roadways called for under this Section in one continuous phase which commits, subject to documented weather delays, to full construction of all six (6) residential buildings, all stand alone garages and all amenity buildings and elements on or before JanuaryJune 1, 2022 as shown on Exhibits E. & K.

B. Sanitary Sewer.

- 1. Developers shall, at its sole expense, construct, install, and provide a complete private sanitary sewage collection system throughout the entire Site that performs in accordance with the plans and specifications set forth on Exhibit E and at no cost to the Village. The construction of the sanitary sewer system required hereunder shall be constructed so as to fully service the Project.
- 2. Subject to the provisions of Sections II. and Section IV. of this Agreement, and upon completion of the private sanitary sewage collection system serving the Site in

⁷⁶ ~~FURTHER INPUT FROM THE VILLAGE BUILDING INSPECTOR IS NEEDED HERE.~~

⁸⁷ AFTER THE BINDER LIFT HAS ~~BBEN~~BEEN PLACED ON SCENIC ROAD, IT MAY NOT BE USED BY CONSTRUCTION TRAFFIC SERVICING THE MULTIFAMILY PROJECT.

accordance with the plans and specifications set forth on Exhibit E, the Village may accept and allow such system to be connected to the existing Village sewage collection system subject to compliance with all testing requirements deemed reasonable by the Village Engineer.

3. The Village Board has no obligation to allow any private improvements to be connected to the existing Village sewage collection system until the applicable components of the sanitary sewer have been installed in accordance with plans and specifications approved by the Village as set out in Exhibit E. At its sole expense, Developer shall clean and televise the sewer system prior to its connection to the Village sanitary sewer system and shall provide a written report and DVD copy of the televised inspection thereof.
4. No Occupancy Permit shall be processed or issued until the portion of the sanitary sewer collection system servicing the entire building for which the Occupancy Permit is sought has been duly approved for connection to and actually is connected to the Village sewage collection system.
- ~~5. Developer hereby consents to the conveyance of wastewater and sewerage through its private wastewater system, on its behalf and on the part of its successors in interest and assigns, without cost except for payment directly to the Village or its successor for the wastewater/sewerage that is conveyed by any third parties including the Village, notwithstanding that the wastewater/sewerage is being transported through Developer's private system; provided, however, the Village agrees to cooperate with the Developer to cause the Village or future property owners connecting into the Developer's Property to reimburse or pay to Developer pro-rata for future third-party connections and impact fees incurred by Developer under this Agreement. This shall constitute a covenant running with the Site which also includes a general easement for the benefit of the Village on the Site acting through agents or contractors to accomplish any connection/installation that may be necessary.~~

C. Water.

1. Developer shall, at its sole expense construct, install, furnish, and provide a completed private system of water distribution throughout the entire Project, in accordance with the plans and specifications attached hereto as Exhibit E and including such provisions for connection to future development or expansion of the water system as deemed necessary by the Village. The construction of the municipal water system required hereunder shall be conducted so as to fully service the Project.
2. Upon completion of the water system serving the Site in accordance with the plans and specifications set forth in Exhibit E, Developer shall dedicate, and the Village shall accept, limited elements of the water system, it deems appropriate and, subject to the terms of this Agreement, allow connection to the Village water system.

3. The Village Board has no obligation to allow connection of any component of the private water distribution system until the applicable component of the water distribution system has been inspected by the Village Engineer and DPW representative and is determined to be installed in accordance with plans and specifications approved by the Village.
- ~~4. Developer hereby consents to the connection by any third parties including the Village, with and through its private water system in order to obtain municipal water or to establish availability of water on a loop basis, on its behalf and on the part of its successors in interest and assigns, without cost except for payment to the Village or its successor of the gallonage used notwithstanding that the water is being transported through Developer's private system. This shall constitute a covenant running with the Site which also includes a general easement for the benefit of the Village on the Site acting through agents or contractors to accomplish any connection/installation that may be necessary.~~
- 4.5. No occupancy permit shall be processed or issued unless a Private Hydrant Maintenance Agreement has been executed and included as part of this Agreement, and until the water distribution system servicing the entire building for which it is sought has been satisfactorily connected to the Village system as determined by the Village Engineer.

D. Storm/Surface Water System & Site Grading.

1. Developer shall, at its sole expense, construct, install, furnish, and provide facilities for storm and surface water drainage servicing the Site in accordance with the plans and specifications set forth on Exhibits -F, F-1, F-2 .
2. The Village Board shall have no obligation to approve the storm/surface water system until the system has been inspected by the Village Engineer and installed in accordance with plans and specifications approved by the Village as set out in Exhibit F, F-1, F-2 ..
3. Developer and each of its successors in interest of the Site shall be severally responsible for the maintenance of all detention and retention basins and private storm sewer as shown on Exhibits F, F-1, F-2 . both before and after completion of said facilities. This includes the responsibility for routinely conducting all dredging and cleaning of detention and retention basins and private storm sewer to assure that they perform adequately. This responsibility shall be recorded in a Storm Water Management Facility Maintenance Agreement with respect to the Site in the form attached hereto as Exhibits F F-1, F-2 . Developer shall, at its sole expense, grade the Site in accordance with the final Master Grading plans and specifications set forth on Exhibit E. Developer will be allowed to deviate up to six inches (6") from the final Master Grading plans upon completion of the Site grading. Developer shall be required to complete elements of the Master Grading plans related to surface water drainage for the entirety of the Site prior to issuance of any Occupancy Permit by the Village. A building grading plan in compliance with the final Master Grading plans and specifications shall be submitted by the Developer at the time

of permitting for each individual building to the Village Engineer or Building Inspector for approval.

E. Site Clearing/Restoration.

1. Developer shall, at its sole expense, remove and dispose of all destroyed trees, brush, tree trunks, and shrubs, and all rubbish currently located on the Site in accordance with all applicable State, Federal and municipal codes and ordinances.
2. Developer shall not destroy or remove any live vegetation nor conduct any grading, filling or other construction related activities, except as approved in Exhibit E, within the Isolated Natural Resource Area zoned UCO – Upland Conservancy Overlay District except as set forth in the finally approved plans and specifications and under any required issued DNR permit.
3. Developer shall be responsible for compliance with all applicable provisions of Chapter 90 of the Village Code of Ordinances pertaining to clearing, protection, and replacement of trees including, but not limited to submission of a tree protection plan and obtaining of a tree permit prior to start of work on the Site.
4. Developer shall not establish any private wells or septic systems on the Site.

F. Landscaping and Erosion Control.

1. Developer, and all its agents, contractors and subcontractors shall grade, seed and otherwise landscape the Site in strict compliance with the plans and specifications set forth on Exhibit E, and shall at all times remain in compliance with all applicable municipal and state erosion control restrictions and requirements. Developer shall complete required erosion control inspections and reports in accordance with the erosion control permit standards. Developer shall be responsible for costs of periodic compliance inspections of erosion control facilities that will be conducted by the Village Engineer or his designee.
2. If any erosion control facilities (including but not limited to bales, silt fence and berms) are washed out or otherwise rendered ineffective as determined by the Village Engineer or Building Inspector, Developer shall repair or replace said facilities within 48 hours of being so notified in writing by the Village Engineer or Building Inspector. If Developer fails to repair or replace said facilities within 48 hours of being so notified by the Village Engineer or Building Inspector, the Village may, but is not required to, repair or replace such facilities and charge 125% percent of all costs incurred by the Village in so reinstalling said facilities to Developer. The Village may collect this amount from any amounts payable to Developer that the Village is holding pursuant to this Agreement.
3. Developer shall, simultaneous with the execution of this Agreement, provide the Village a temporary general access easement to the Village in the form attached hereto and incorporated by reference as Exhibit G to permit repair or replacement of said facilities in the event of a default by Developer.

G. Street Signs, Pavement Markings and Street Lights.

1. Developer shall provide and install (subject to Village approval) all signs and pavement markings as specified in Exhibit E.
2. Developer shall also provide and ~~install private~~ install private streetlights for the Site as specified in Exhibit L at no cost to the Village.
3. Following installation ~~of private~~ of private streetlights by Developer , streetlight electricity shall always be paid for by the owner of the Project.

H. Hazardous Substances.

Developer hereby represents and warrants to the Village that Developers and ~~{[????????]}~~ have conducted a Phase I environmental assessment of the Site, the resulting report for which is attached as Exhibit H, and that Developer and ~~[????????]~~ have no knowledge of, nor reason to believe that, any “hazardous substances” as defined in U.S.C. § 9601 or listed in Chapter 40 of the Code of Federal Regulations nor any petroleum, crude oil, natural gas or other petroleum product are currently present on the Site. If, during the course of carrying out its obligations under this Agreement, Developer acquires information indicating the possible existence of a hazardous substance or petroleum product on the Site, Developer shall immediately notify the Village Engineer/Village Manager of this information and be responsible for appropriate removal and cleanup.

I. Pathways/Sidewalks.

1. ~~{????????}~~ Developer shall provide, install and pave with concrete or other specified materials those portions of onsite pathways as specified in Exhibit E.
2. Developer shall grant a permanent access easement within the CSM, Exhibits D and J, to the general public for unrestricted passage and enjoyment of a continuous natural path located within the Project except as modified in Exhibit E.
3. Paved pathways accessible to the residents and invitees of the Project, including paved pathways used for emergency access to the Project, shall be maintained year-round including winter maintenance performed in compliance with the Village Code requirements for snow and ice removal and control on public sidewalks. Unpaved pathways or trails intended for use by the general public may be maintained during winter at the discretion of the Project owner. Notwithstanding anything herein to the contrary, the pathways located in the right-of-way along Campus Drive shall be maintained by the Village
4. At the time of entry into this Agreement, Developer shall grant the Village and its agents or subcontractors a permanent easement to access public access pathways and repair/maintain them at the Village’s sole option in the event of default by the owner of the Site in the maintenance thereof in the form attached hereto as Exhibit J. Any repair or

maintenance performed by the Village hereunder shall be assessed against equally against all building owners as a *special charge* pursuant to the Wisconsin Statutes.

J. As Built Drawings

Developer shall, at its sole expense, furnish one set of reproducible “as built” plans for the Project improvements described in this Section II including the final location and elevation of the various improvements as required by the Village Engineer including, but not limited to private roadways, private sanitary sewer facilities and connection to the Village system, private water facilities and connection to the Village system, all storm water facilities, private sidewalks/paths, all signs, all roadway lights. Reproducible plans shall be provided on Mylar or another similar media acceptable to the Village Engineer together with an electronic file copy of said plans compatible with the Village’s GIS software on or before the issuance of the first occupancy permit for the Project. Electronic plans provided hereunder shall include GPS locations for private manholes, private inlets, private valves and all private other structures. Electronic plans required hereunder shall be submitted before the issuance of the final Occupancy Permit for the Project.

Section III. Dedication.

A. Subject to all of the other provisions of this Agreement and the exhibits attached, Developer shall, without charge to the Village, upon completion of all public improvements on the Site described as such in plans and specifications attached hereto as exhibits, unconditionally give, grant, convey and fully dedicate the same to the Village, their successors and assigns, forever, free and clear of all encumbrances whatever together with any and all necessary easements for access thereto.

B. Developer shall notify the Village, in writing when any public improvement described as such in the previous paragraph have been completed. Within fourteen (14) days of the date of such notice, the Village Engineer and DPW representative shall inspect and/or re-inspect as necessary any public improvements described in Developer’s notice and prepare and deliver to Developer a written punch list of repairs necessary to bring such public improvement into conformance with the applicable plans and specifications. Upon Developer’s written notice to the Village Engineer and DPW representative that all punch list repairs for any such public improvement are complete, and following satisfactory completion of any applicable re-inspection, the Village shall, subject to the re-inspection and approval of the Village Engineer by separate resolution, accept the dedication of such public improvement.

Section IV. Building/Occupancy Permits.

A. _____

- Subject to the Construction Progression Exhibit for Building #1,*
- A. ~~B.~~ The Village will have no obligation to process or to issue Occupancy Permits for any building until all utilities required for fire and safety for that building have been completed and the first lift of asphalt for any roadways required to provide access for fire and safety have been installed in accordance with Exhibit K.

Section V. Miscellaneous Requirements and Provisions.

- A. Survey Monuments. Developer agrees to properly place all survey or other monuments required by applicable state statute or municipal ordinance, and further agrees to permanently monument the boundaries of the environmental corridor (constituting either wetlands or other environmental corridor) by placing monuments that comply with the specifications set out in Chapter 236, Wis. Stats., at every point where a lot boundary line intersects the environmental corridor and at the mid-point of the environmental corridor boundary within each lot and at any change in direction of the boundary lines.
- B. Outside Irrigation. Developer shall not use water for purposes of outside irrigation beyond the hours of 10:00 pm through 2:00am only, or as otherwise directed by the Village of Hartland from time to time.
- C. Grade. Exhibit E sets out maximum yard grade elevations that shall be required on the Site, subject to section II.D.3. .
- D. Underground Utilities. All new electrical, telephone, gas and cable television utilities and services on the Site shall be buried underground in accordance with Chapter 50 of the Municipal Code of the Village of Hartland. Coordination of installation of such utilities and services shall be the responsibility of Developer.
- E. Manner of Performance. Developer shall cause all construction called for by this Agreement to be carried out and performed in a good and workmanlike manner.
- F. Permits. Developer hereby agrees to obtain, at its sole expense, all necessary permits and approvals from all governmental authorities with jurisdiction over the Site, including, but not limited to, the Village, Waukesha County, Delafield Hartland Water Pollution Control Commission, and Department of Natural Resources, when required prior to the start of construction, demolition or hazardous waste abatement with respect to the applicable portion of the Site work. Developer shall be solely responsible for paying, at the time of building permit application, all applicable sewer or water connection fees pertaining to connection of such utilities servicing the Project which are customarily and uniformly assessed.

G. Locations. The parties agree that the locations of existing Village water, sanitary sewer and storm sewer facilities as indicated on Exhibit E are approximate locations only. It is Developer's sole responsibility to definitively locate all such Village facilities in the field, and the Village bears no liability if any of said facilities are not located where indicated in the documents described in this subsection.

Section VI. Time.

- A. Following the execution and recording of this Agreement and its exhibits, Developer shall complete the following aspects of said improvements on the Site for the Project, all in compliance with the requirements of this Agreement, on or before the following dates:
1. Completion of installation of the first lift of asphalt on the private roadways serving the entire Project and connection to Scenic Drive pursuant to Exhibit K unless extended by the Village Board upon recommendation of the DPW Director and Village Engineer.
 2. Full installation of sanitary sewage collection and water distribution systems servicing the Site pursuant to Exhibit K.
 3. Completion of storm/surface water drainage facilities servicing the Site as specified in Exhibit K.
- B. Except as set forth in subsection C below, time is of the essence as to all deadlines set forth in this section. Upon failure of Developer to meet one or more deadlines specified in this section, Village may (but is not required to) complete that aspect of the project and charge Developer one hundred twenty-five percent (125%) of the actual costs incurred by Village in so completing that aspect of the Project. Village may draw upon the security provided in this Agreement for the payment of said charges against Developer.
- C. If delay in completion of any public improvements or the Project on the Site described in this Agreement is caused or contributed to by act, omission, misconduct or neglect of the Village or those acting for or under the Village, labor disputes, casualties, acts of God or the public enemy, governmental embargo restrictions, pandemics, shortages of fuel, labor or materials, action or non-action of public utilities or of local, state or federal governments (including, but not limited to, government shut downs) affecting the work or other causes beyond Developer's reasonable control, then the time of completion of such public improvements shall be extended for the additional time caused by such delay provided Developer notifies the Village Administrator of the occurrence of the delay in writing within 48 hours of its occurrence or inception along with a good faith estimate of the anticipated time of the commencement or resumption of delayed work. Failure to do so will otherwise give rise to a presumption that no excusable delay has occurred.

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Section VII. Payment of Village Fees.

Developer agrees to provide to the Village the following:

1. Developer and Village acknowledge that the Village has caused a needs assessment study to be performed pursuant to Wis. Stat. § 66.55 and that the Village has enacted an ordinance (§ 50-232) that imposes impact fees pertaining to the Village's services and facilities. The Parties acknowledge that the ultimate occupants of the Site will likely utilize these Village services and facilities and that the impact fees imposed by Village Ordinances are necessary to pay for the capital costs of the facilities in order to accommodate land development. Accordingly, Developer represents and warrants that it will pay to the Village impact fees in the then current amount in accordance with the Village Code upon application for each building's permits.
2. An inspection fee deposit, for inclusion in the Developer escrow maintained by the Village in the amount of \$30,000 at the time of execution of this Agreement. Developer shall be responsible for actual inspection costs and fees incurred by the Village to inspect public improvements which shall first be deducted from such deposit.
3. Developer shall continue to maintain an escrow balance with the Village through which the Village will reimburse itself for legal, administrative, engineering and fiscal expenses paid by the Village on behalf of the Project. Developer shall at all times maintain a minimum deposit of \$15,000. In the event that Developer fails to maintain the minimum deposit required for a period of ten (10) consecutive days following written notification, the Village may withhold the issuance of any Building or Occupancy Permits until the minimum deposit is restored.
4. Developer acknowledges that it is obligated to pay the sanitary sewer service fees applicable to the Site which include payment of both Connection Charges under Section 86-276 of the Village Code and Regional Sewer Availability Charges ("RSAC") under Section 86-277 of the Village Code of Ordinances and that those sections and fees will be adjusted from time to time. Developer represents and warrants that it will pay to the Village the then current Connection Charge and RSAC fee for each building on the Site upon application for respective building permits including connection to the sanitary sewer system.

Section VIII. Security for Payment and Performance of Developer's Obligations

- A. Security Required. Prior to commencement of construction activities related to the Development, Developer shall deliver or cause to be delivered to the Village acceptable security equal to one hundred twenty percent (120%) of the Village Engineer's cost estimate (which is anticipated to be \$400,000) of all public improvements, all private site utilities and primary roadway drive to Scenic Road for the Site shown on the plans and specifications pertaining thereto .
- B. Form of Security. Notwithstanding §236.13 (2) (1m.) (c.) of the Wisconsin Statutes, it is the preference of the Village that security be provided in the form of an irrevocable Letter of Credit ("LoC") issued by a federally insured banking institution, the financial condition of

which is acceptable to the Village, naming the Village as payee and expiring no sooner than twelve months, and being in a form acceptable to the Village Attorney. The letter of credit shall be subject only to Wisconsin law and no other regulation or publication issued by any governmental or non-governmental organization and shall be subject to be drawn upon a bank having a location within Wisconsin where the LoC can be drawn upon. The amount of such security shall be reduced subject to the provisions of Section VIII.D. hereafter and when work secured hereby is completed and/or, if applicable, dedicated to the Village.

- C. Maintenance of Security. The LoC as described in this Section VIII shall be renewed in a form acceptable to the Village Attorney no later than 30 days prior to its expiration and shall be maintained with respect to public improvements as described below for a period of time expiring 14 months after the improvements for which the security is provided are substantially complete in accordance with §236.13 (2) (am) 2. of the Wisconsin Statutes which provides:

For purposes of subd. 1., public improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder coat is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90 percent of the public improvements by cost are completed.

In the event it is not renewed at least 30 days prior to its expiration, the Village may draw upon such security for purposes of completion of Improvements provided for in this Agreement.

- D. Reduction of Security Upon Partial Completion. The amount of the LoC may be reduced as the improvements described in the plans and specifications set forth on the attached exhibits are completed and approved by the Village Engineer and in accordance with the following procedure.
1. From time-to-time during the course of construction, Developer may request the Village Engineer to inspect the construction work completed to that date, and the Village Engineer, as agent of the Village, shall use his best efforts to make such inspection within seven (7) days after the request.
 2. The request to inspect shall be accompanied by a certification prepared by Developer's engineer and stating the work completed, an estimate of the dollar value of the work completed to date of the request and since Developer's engineer's last certification and that the work has been completed in a good and workmanlike manner and in compliance with applicable plans and specifications.

3. The request for inspection shall also be accompanied by a certification from Developer's engineer estimating the cost to complete the remaining balance of the public improvements, with the estimated dollar value of the improvements completed and the estimated cost to complete the remaining public improvements being on a form and presented in a manner reasonably acceptable to the Village Engineer and Village Administrator.
 4. Prior to reduction of the security amount, Developer shall deliver to the Village a sworn contractor's statement and appropriate photocopies or originals of lien waivers showing that all work in place and for which a reduction in the security is requested has been fully paid for or that all mechanic's or other liens have been waived.
 5. The Village Engineer and Village Administrator shall approve a reduction in the Security provided the following are met:
 - i. Receipt of the required documentation from the Developer
 - ii. Inspection by the Village Engineer
 - iii. Certification by the Village Engineer to the Village and to the financial institution issuing any letter of credit:
 1. The dollar value of the work completed to the date of the request for inspection and since the last certification by the Village Engineer
 2. That the work has been completed in a good and workmanlike manner and in compliance with the Plat and the applicable plans and specifications
 3. That no mechanic's or other liens will attach to the Site or to any property of the Village as a result of the installation of the improvements
 4. That Developer's engineer's or Village Engineer's estimate of the dollar value of the work completed and the cost to complete the remaining improvements are reasonable.
 - iv. The balance remaining in the security is at least equal to one hundred twenty percent (120%) of the cost to complete all the remaining public and private improvements plus fifteen percent (15%) of the total cost of any completed improvements.
- E. Release of Security Upon Completion. Upon final completion of all of the improvements, the acceptance by the Village of the public ~~improvements~~and improvements and posting of any required warranty or maintenance bond security, the then remaining balance of the security shall be released and returned, after first drawing upon the security for any fees and costs due and owing to the Village pursuant to all applicable ordinances and this Agreement.

- F. Return of Excess Proceeds After Default. In the event of default by Developer under this Agreement, if any of the security funds remain in the possession of the Village after all of the public and private improvements have been completed in a good and workmanlike manner and in accordance with the applicable plans and specifications, all warranty or maintenance obligations satisfied and all fees, costs and expenses of the Village, including reasonable attorney's fees, engineering fees, consultant fees, or other out-of-pocket expenses incurred in completing the improvements, in releasing liens thereon in paying for work completed prior to default are paid, or other costs incurred as a result of the default of Developer; then any remaining balance shall be paid to Developer, subject to any claim to said funds exerted by any financial institution issuing any letter of credit given as security.

Section IX. Guarantee of Improvements.

- A. ~~???????~~ Guarantee. Developer's guarantee that all materials and workmanship furnished by Developer pursuant to this Agreement shall meet or exceed all state, federal and local requirements and specifications and that the public improvements are and will remain in good and sound condition for and during a period of twelve (12) months from the date of the issuance of the final occupancy permit for the Project. .
- B. Guarantee Security. Notwithstanding the following in this section, it is the preference of the Village that security be provided in the form of a letter of credit. Developer shall furnish to the Village, prior to final acceptance of dedication of the public improvements by the Village, guarantee security pursuant to §236.13 of the Wisconsin Statutes consisting, as determined by Developer, of an original, irrevocable letter of credit issued by a federally insured banking institution with an office in Wisconsin where the letter of credit can be presented for collection and subject solely to Wisconsin law and no Chamber of Commerce provisions, which is acceptable to the Village, naming the Village as payee, expiring no sooner than fourteen months from the date of substantial completion of the covered improvements and equaling in the aggregate to ten percent (10%) of the total final cost of the improvements, which guarantee security will be retained by the Village for a period of fourteen (14) months after the substantial completion of the improvements as initial security for Developer's guarantee that the workmanship and materials furnished meet or exceed all state, federal and local requirements and specifications, and that the improvements are and will remain in good and sound condition for and during the fourteen-~~(14)~~ month period from and after their acceptance. Separate letters of credit may be utilized because the time frame for the acceptance of each type of improvement may be different.
- C. Obligation to Repair. 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 Developer's' guarantee and shall leave the improvements in good and sound condition, satisfactory to the Village and Village Engineer at the expiration of the guarantee period; provided, however, Developer's

obligation to repair shall not extend to repairs necessitated by or related to any act, omission, neglect or misconduct of the Village, its agents, employees or contractors (and the guarantee security may not be drawn against in such instances).

D. Notice of Repair. If during a respective guarantee period, the improvements shall, in the professional opinion of the Village Engineer, require any repairs or replacements which in his judgment are necessitated by reason of settlement of foundation, structure or backfill, or other defective workmanship or materials, Developer shall, upon written notification by the Village Engineer of the necessity for such repairs, make such repairs, at their own cost and expense. Should Developer fail to make such repairs within a reasonable time after written notice has been sent as provided herein, or fail to start work within fourteen (14) calendar days after such written notice, weather permitting, the Village may cause such work to be done, but has no obligation to do so, either by contract or otherwise, and the Village may draw upon said guarantee security to pay any costs or expenses incurred in connection with such repairs or replacements. Should the cost or expense incurred by the Village in repairing or replacing any portion of the improvements covered by this guarantee exceed the amount of the guarantee security, the Developer shall, within thirty (30) days of being invoiced by the Village, pay 125 percent of any excess cost or expense actually incurred in the correction process.

E. Maintenance Prior to Acceptance. ~~????????????~~ Developer shall maintain the public improvements until such time as they are accepted by the Village in dedication. This maintenance shall include routine maintenance. In cases where emergency maintenance is required, such as sewer blockages, the Village retains the right to complete the required emergency maintenance in a timely fashion and bill Developer for all actual associated costs. All improvements shall be maintained so they conform at the time of their acceptance by the Village to the applicable plans and specifications attached as exhibits to this Agreement.

Section X. Method of Improvement.

Developer hereby agrees to engage contractors for all work included in this Agreement who are qualified to perform the work. Developer further agrees to use materials and make the various installations in accordance with the applicable plans and specifications made a part of this Agreement by exhibit reference including those standard specifications as the Village Board or its Commissions may have adopted and published prior to this date.

Section XI. Zoning.

The Village does not guarantee or warrant that the subject lands of this agreement will not at some later date be rezoned, nor does the Village herewith agree to rezone the lands into a different zoning district. Should this occur Developer ~~may~~will be entitled to legal non-conforming zoning rights as provided under Wisconsin law and municipal ordinances.

Section XII. Indemnification and Insurance.

A. Indemnification.

1. In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement or documents incorporated herein by reference, Developer shall INDEMNIFY AND SAVE HARMLESS the Village, its officers, agents and employees, and shall DEFEND the same from and against any and all liability, claims, loss damages, interest, actions, suits, judgments, costs, expenses, attorneys' fees, and the like, which result from or arise in the course of out of, or as a result of the performance, mis-performance, or nonperformance of Developer's obligations under this agreement or the negligent construction or operation of public improvements covered thereby until the dedication of said public improvements is accepted by the Village and after the dedication of said improvements only if the occurrence giving rise to the claim predates the dedication.
2. In every case where judgment is recovered against the Village if notice and opportunity to defend has been given to the Developer of the pendency of the suit within ten (10) days after service of the summons and complaint on the Village, the judgment shall be conclusive upon the Developer not only as to the amount of damages, but also as to its liability to the Village.

B. Insurance. Developer and/or Developer's contractors shall maintain at all times, until the acceptance by the Village of all public improvements' insurance with minimum limits and coverage as shown below:

1. For Developer's contractors and others working on the Site, Worker's Compensation, including Occupational Disease, Insurance meeting the statutory requirements of the State of Wisconsin, and Employer's Liability insurance in an amount of at least Five Hundred Thousand Dollars (\$500,000.00).
2. For Developer and Developer's contractors, Comprehensive Liability Insurance providing limits for bodily injury and personal injury of One Million Dollars (\$1,000,000.00) combined single limit. The policy must include the Village and its agents, officers and employees as "additional insured" and provide premises, operations, elevators, damage, blanket contractual covering indemnities within contract documents, products and completed operations coverage and be endorsed as "primary and non - contributory" to any insurance of the additional insured, except from their sole negligence.
3. For Developer's contractors and others working on the Site, Comprehensive Automobile Liability Insurance, on occurrence basis, covering all owned, non-owned and hired vehicles with limits of liability equal to those set forth in paragraph B (2) above.

C. Proof of Insurance Coverage for Village. Developer shall furnish to the Village, prior to commencement of construction or Site preparation activities, evidence of the issuance of policies covering the above recited insurance requirements in the form of a Declaration referencing all applicable policies along with endorsements referencing the policy numbers of

the applicable policies and signed by an authorized person. **An ACORD 25 certificate shall not be acceptable.** All endorsements to those policies must state that notice of any material change in coverage or nonrenewal or cancellation will be provided to the Village not less than thirty (30) days prior to the effective date of any such change, nonrenewal or cancellation. All endorsements shall name the Village of Hartland, its officers, employees and agents as an additional insured. The form of the endorsement of insurance will be subject to the approval of the Village's attorney, prior to commencement of construction or Site preparation activities, which shall not be unreasonably withheld.

- D. No Limit on Liability. It is understood and agreed that the insurance coverage and limits required above shall not limit the extent of Developer's responsibilities and liabilities pursuant to this Agreement or imposed by law.

Section XIII. Amendment Parties.

Notwithstanding the foregoing, or any other provision of this Agreement, it is expressly understood and agreed that any or all of the provisions of this Agreement may be amended, modified, waived, and/or annulled by written agreement by and between the Developer and the Village alone.

Section XIV. General Conditions and Regulations.

All the provisions of the Village ordinances relating to the development of land shall bind the parties hereto and be a part of this Agreement as fully as if set forth at length herein. This Agreement and all work and improvements required hereunder shall be performed and carried out in strict accordance with and subject to the provisions of said ordinances and this Agreement. This Agreement shall not be deemed to modify or suspend any provisions of the Village Ordinances (now existing or as subsequently amended) relating to the development or use of land. All such provisions shall apply to the Project in accordance with applicable law.

Section XV. Assignment.

Developer shall not assign this Agreement without the prior written consent of the Village.

Section XVI. Amendments.

The Village Board and Developer, by mutual consent, may amend this Agreement at any meeting of the Village Board of the Village of Hartland. The Village Board shall not, however, be obligated to consider consenting to an amendment until after first having received a recommendation from the Village Plan Commission.

Section XVII. Exculpation of Village Elected Officials in Personal Capacity.

The parties agree that the President, Village Clerk, Board of Trustees and Plan Commission members of the Village of Hartland, may have entered into or may be signatory to this Agreement solely in their official capacity and not individually, and shall have no personal liability or responsibility hereunder; and personal liability as may otherwise exist, being expressly released and/or waived.

Section XVIII. Miscellaneous Provisions

- A. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- B. This Agreement is the complete and entire agreement of the parties with respect to the matters covered by this Agreement, and it shall supersede all prior agreements to the contrary. No agreements, promises, or representations made during or in connection with the negotiations for or approval of this Agreement shall be binding or effective unless they are included herein. This Agreement may be introduced into evidence by any party without objection in any action to enforce the terms of this Agreement. No modification of this Agreement shall be binding unless in writing and signed by Developer and Village.
- C. The Parties acknowledge and represent that this Agreement is the subject of negotiation by all parties and that all parties together shall be construed to be the drafter hereof and this Agreement shall not be construed against any party individually as drafter.
- D. Legal Relationship. Nothing in this Agreement shall be construed to create an employer/employee relationship, joint employer, a joint venture or partnership relationship, or a principal/agent relationship.
- E. Survival. All agreements, representations, or warranties made herein shall survive the execution of this Agreement and the making of the grants hereunder. This Agreement shall be binding upon the Parties, their respective successors and assigns.
- F. Recording of Agreement. This Agreement shall be recorded with the Register of Deeds for Waukesha County.
- G. Easements. Developer shall provide documentation satisfactory to the Village that it has legal power and authority to grant all easements required under or contained in this Agreement.

H. PILOT

- i. Developer will pay (or cause to be paid) all ad valorem property taxes properly assessed against any portion of the Property owned by the Developer before such taxes become delinquent. The foregoing shall not prohibit the Developer from contesting, in good faith, the assessed value of any portion of the Project Site.
- ii. In the event that any portion of the Property becomes exempt from ad valorem taxes, then the owner of such exempt portion(s) of the Property shall make (or cause to be made) annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such portion of the Property for county and municipal assessed taxes only (as determined by the Village assessor, subject to the then owner's right to contest such determination) had it not been exempt. The notice of such assessment shall be given in the same manner and timeframe as if the exempt portion of the Property was not exempt. Such payment in lieu of taxes shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable for such year for county and municipal assessed taxes only. If the then owner fails to make a payment in lieu of taxes when due, the Village may, in addition to all other remedies available to it, levy a special assessment against the exempt portion of the Property owned by such then owner in the amount of the unpaid payments provided any recoveries are limited to the amount then due. Notwithstanding the levying of such special assessment, the payment obligation under this Article XVIII(H) shall be the personal obligation of the then owner of the exempt portion of the Property (where prior owners, including Developer, would not be liable if not the then owner of the exempt portion(s) of the Property). The covenant contained in this Article XVIII(H) shall be deemed to be a covenant running with the land and shall be binding upon the then owners of any portion of the Property. The Village is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all of the then owners of an exempt portion of the Property. The covenants and obligations set forth in this Article may be embodied in a separate document and recorded against the Property as provided herein.

school and technical college

Under Negotiation, will also require recording AS part of CSM for the site.

IN WITNESS WHEREOF, Developer and the Village have caused this Agreement to be signed by their appropriate officers in three (3) original counter-parts the day and year first above written.

LIGHTNING DEVELOPMENT LLC

By: _____

Name: Matthew Burow
Title: Manager

VILLAGE OF HARTLAND

By: _____
Jeffrey Pfannerstill, Village President

Attest: _____
Darlene Igl
Village Clerk

[NOTARY STATEMENTS FOLLOW]

DRAFT: ~~10-10-20~~ 10-15-20
~~von Briesen & Roper, s. c.~~
HB Edits

Commission expires: _____

SCHEDULE OF EXHIBITS

Exhibit A Legal Description

Exhibit B Site Plan (1 page site plan)

Exhibit C Zoning Exhibit

Exhibit D Certified Survey Map

Exhibit E Plans and Specifications (include: Civil/Site Plans, Architectural plans/renderings, Landscape Plan, Lighting/photometric plan) – INCLUDE AN UPDATED PARKING PLAN THAT STATES NUMBER/LOCATION/SIZE OF ALL PARKING STALLS EITHER WITHIN THE CIVIL/SITE PLANS OR THE ARCHITECTURAL PLANS)E CIVIL/SITE PLANS OR THE ARCHITECTURAL PLANS)

Exhibit F, F-1, F-2 Storm Water Management Facility Maintenance Agreement s (F= storm water management plan; F-1 = joint stormwater maintenance agreement with Paradise Trails; F-2 = Multi-family stormwater maintenance agreement)

Exhibit G Temporary Access Easement

Exhibit H Phase I Evaluation

Exhibit I Public Access Easement

Exhibit J Permanent Access/Maintenance Easement

Exhibit K Construction Sequencing and Completion Timeline (include colored phasing exhibit and a gant chart)

Exhibit L Lighting Plan and Photometric Analysis (include within Exhibit E)

Exhibit M- Private Hydrant Maintenance Agreement (use example from Paradise Trails)

Exhibit N- Updated Traffic Study with date of September 3, 2020 along with a Supplemental Technical Memorandum with date of September 21, 2020)

Exhibit O- Tree Survey

HdM Changes ↑↑