

DEVELOPMENT AGREEMENT

BETWEEN THE

VILLAGE OF ELM GROVE

AND

_____ **APARTMENTS LLC**

EFFECTIVE DATE:

_____, 202_

INDEX

ARTICLE I	
DEFINITIONS AND RECITALS.....	8
A. Incorporation of Recitals.....	8
B. Definitions.....	8
ARTICLE II	
REMOVAL OF EXISTING STRUCTURES/EROSION CONTROL APARTMENTS.....	9
A. Erosion Control.....	9
B. Demolition.....	9
C. Permits.....	9
D. Restoration.....	9
ARTICLE III	
IMPROVEMENTS.....	9
A. Buildings.....	9
B. Sanitary Sewer.....	9
C. Public Water Main.....	10
D. Storm/Surface Water System.....	11
E. Letter of Credit/Decorative Landscaping.....	12
F. Roads and Parking.....	13
G. Exterior Lighting and Signage.....	13
H. Permits.....	13
I. Pathways/Sidewalks.....	13
ARTICLE IV	
DEDICATION OF PUBLIC IMPROVEMENTS.....	14
A. Transfer to Village.....	14
B. Notice and Acceptance.....	14
C. Construction Warranty for Dedicated Public Improvements.....	15
D. Public Improvement Warranty Security.....	15
E. Obligation to Repair.....	15
F. Notice of Repair.....	15
G. Maintenance Prior to Acceptance.....	16
ARTICLE V	
MISCELLANEOUS REQUIREMENTS.....	16
A. Underground Utilities.....	16
B. Manner of Performance.....	16
C. Permits.....	16
D. Locations/Existing Public Utilities.....	16
E. Pre-Demolition and Pre-Construction Meetings.....	17

ARTICLE VI		
TIME.....		17
A. Commencement and Completion.....		17
B. Improvements.....		17
D. Cause of Delay and Notice of Default.....		18
ARTICLE VII		
PAYMENT OF VILLAGE FEES.....		19
A. Reimbursement.....		19
B. Upfront Fees.....		19
C. Default.....		19
D. Permit Fees.....		19
ARTICLE VIII		
GUARANTEE AND SECURITY FOR PAYMENT AND PERFORMANCE OF DEVELOPER'S OBLIGATIONS.....		20
A. Construction of the Apartment Project.....		20
B. Impact Fee Waiver.....		20
C. Performance Guarantee.....		20
D. Reduction of Security Upon Partial Completion and Dedication.....		21
E. Release of Letter of Credit Upon Completion.....		22
F. Remittance of Excess Proceeds.....		22
ARTICLE IX		
LAND DIVISION: SINGLE-FAMILY PARCELS.....		22
A. CSM.....		22
B. SSND Consents.....		23
C. Outlots.....		23
D. Single-Family Parcel Restrictions.....		23
E. Single-Family Parcel Landscaping.....		24
F. Access.....		24
G. Dedication.....		24
H. Payment in Lieu of Taxes.....		24
I. Release.....		24
J. Single-Family Obligations.....		25
ARTICLE X		
INDEMNIFICATION AND INSURANCE.....		25
A. Indemnification.....		25
B. Insurance.....		25
ARTICLE XI		
GENERAL CONDITIONS AND REGULATIONS.....		26
ARTICLE XII		
TAX INCREMENT FINANCING.....		27
A. Benefit to Village.....		27

B.	TID Grant.....	27
C.	Tax Increment for Eligible Project Costs: Municipal Revenue Obligation.....	27
D.	Water Main.....	28
E.	MRO.....	28
F.	MRO Note.....	29
G.	Assessment Warranty.....	29
H.	Special Charge Payments.....	29
I.	Special Charge.....	29
J.	Release upon Sale.....	29
K.	Lender Provisions.....	30
L.	Increment Schedules.....	30
M.	Prohibition on use of TID Grant and MRO Funds.....	30
ARTICLE XIII		
	AMENDMENTS.....	30
ARTICLE XIV		
	NOTICE.....	31
ARTICLE XV		
	DEFAULT BY DEVELOPER.....	31
ARTICLE XVI		
	PAYMENT IN LIEU OF TAXES.....	31
ARTICLE XVII		
	MISCELLANEOUS PROVISIONS.....	32
ARTICLE XVIII		
	EXCULPATION OF VILLAGE ELECTED OFFICIALS IN PERSONAL CAPACITY.....	34

EXHIBIT LIST

Exhibit 1	Property Legal Description
Exhibit 2	Apartment Property Legal Description
Exhibit 3	Red Barn Parcel Legal Description
Exhibit 4	Green Meadow Parcel Legal Description
Exhibit 5	Property Rezoning Map
Exhibit 6	TIF District Legal Description
Exhibit 7	Plans & Specifications
Exhibit 8	Public Improvements
Exhibit 9	Proposed Water Main Layout
Exhibit 10	Estimated Water Main Costs
Exhibit 11	Storm Water Management Facility Maintenance and Easement Agreement
Exhibit 12	Guaranty through Completion of Minimum Assessed Value
Exhibit 13	Walking Path Easement
Exhibit 14	Form of Letter of Credit
Exhibit 15	Form of SSND Single-Family Parcel Easement
Exhibit 16	Single Family Preliminary Plats
Exhibit 17	Eligible Project Costs Schedules
Exhibit 18	MRO Note and Authorizing Resolution
Exhibit 19	Developer Authority

DRAFT

1 **DEVELOPMENT AGREEMENT**

2 THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this ___
3 day of _____, 202_ (the “Effective Date”) [to be the date of recording] by and between
4 the VILLAGE OF ELM GROVE, a Wisconsin Municipality (“Village”) and
5 _____ APARTMENTS LLC, a Wisconsin limited liability company
6 (“Developer”), collectively referred to as the “Parties.”

7 **RECITALS**

8 WHEREAS, Developer represents and warrants that it and its affiliate (“MSF LLC”)
9 currently hold a contract to purchase (“Purchase Agreement”) from the School Sisters of Notre
10 Dame Central Pacific Province, Inc. (“SSND”) approximately ___ acres of property in the
11 Village located at 13105 Watertown Plank Road, Elm Grove, Wisconsin and more fully
12 identified in the attached Exhibit 1, which is hereby incorporated by reference (the “Property”),
13 which Property shall expressly exclude the remaining adjacent cemetery parcel to be retained by
14 SSND (the “Cemetery”); and

15 WHEREAS, the Purchase Agreement contemplates the division of the Property by a
16 recorded certified survey map (the “CSM”) to be recorded by SSND prior to any closings and
17 which CSM divides the Property into the following four (4) parcels: Lot 1 or the Red Barn Parcel
18 (as hereinafter defined), Lot 2 or the Apartment Property (as hereinafter defined), Lot 3 or the
19 Cemetery and Lot 4 or the Green Meadow Parcel (as hereinafter defined) and grants Developer
20 the right to buy the Apartment Property and MSF LLC or an affiliate the right to buy the Red
21 Barn Parcel and the Green Meadow Parcel and further allows the closings on the Red Barn
22 Parcel and the Green Meadow Parcel to occur at different times and after the closing on the
23 Apartment Property; and

24 WHEREAS, Developer seeks to redevelop the Apartment Property by demolishing most
25 of the existing structures, performing major renovation to two historically significant buildings,
26 commonly referred to as Notre Dame and Maria Halls, and constructing three 3 - story buildings
27 and comprised of not more than two hundred thirty-seven (237) residential units (the “Apartment
28 Project”) to be located on Lot 2 of the CSM and legally described in Exhibit 2 attached hereto
29 (the “Apartment Property”) and Developer seeks to (i) obtain approval for ten single-family
30 residences homes on Lot 1 of the CSM and legally described in Exhibit 3 attached hereto (the
31 “Red Barn Parcel”) and (ii) obtain approval for eleven single-family residences homes on Lot 4
32 of the CSM and legally described in Exhibit 4 attached hereto (the “Green Meadow Parcel” and
33 together with the Red Barn Parcel, the “Single-Family Parcels”); and

34 WHEREAS, the Property is currently zoned as I-1 Institutional; and

35 WHEREAS, Developer has requested that the Property be rezoned as a Planned
36 Development Overlay with underlying zonings of RM-1 for the Apartment Property, RS-3 for
37 Red Barn Parcel, and RS-4 for the Green Meadow Parcel as outlined on the attached Exhibit 5
38 under Section 335 of the Village Code of Ordinances to permit the Apartment Project on the
39 Apartment Property and a total of twenty-one (21) single family residences on the Single-Family
40 Parcels and as part of the rezoning has requested approval of the CSM that creates the Apartment

41 Property, the Red Barn Parcel, the Green Meadow Parcel; the Cemetery will remain zoned as I-1
42 Institutional; and

43 WHEREAS, the Village conducted a public hearing concerning the work to be done with
44 respect to the Apartment Property and the Single-Family Parcels and the rezoning of the Property
45 on _____, 202_; and

46 WHEREAS, pursuant to Wis. Stat. § 66.1105 (the "Tax Increment Law"), the Village
47 adopted a plan for redevelopment and the elimination of blight (the "Project Plan") within the
48 Property and adjacent parcels. The Village formed Tax Incremental Financing District No. 3 (the
49 "TIF District") which included the Property and the adjacent parcels. The comprehensive legal
50 description for the TIF District is attached hereto as Exhibit 6 [this legal will include Cemetery];
51 and

52 WHEREAS, following a public hearing by the Village, the Village by resolution adopted
53 on _____, 202_, found and determined the Property to be "blighted property" within the
54 meaning of Section 66.1333(2m)(bm) of the Wisconsin Statutes and in need of redevelopment.
55 The Village Board of the Village, by its resolution _____ adopted by the required percentage
56 vote of its members on _____, 202_, approved providing financial assistance to
57 Developer for the private acquisition, improvement, and development and redevelopment of the
58 Property by Developer as described herein, for the purpose of eliminating Property's status as
59 "blighted property," and found that a comprehensive or other redevelopment plan is not
60 necessary to determine the need for such assistance, the uses of the Property after such
61 assistance, or the relation of such assistance to other property redevelopment; and

62 WHEREAS, until the Village has been repaid the Village Obligations (as hereinafter
63 defined), Developer has agreed with the Village, upon completion of the Apartment Project, to
64 pay, as a special charge payment, in addition to the real property taxes payable that year for the
65 Property, but only if the actual assessed value is less than the Minimum Assessed Value (as
66 hereinafter defined), an amount equal to the property taxes that would have been paid on the
67 difference in value between the actual assessed value and the Minimum Assessed Value utilizing
68 standard practices for assessments; and

69 WHEREAS, the Village finds that the construction of the Apartment Project and
70 fulfillment, generally, of the terms and conditions of this Agreement, are in the best interests of
71 the Village and its residents, by eliminating and preventing blight, expanding the tax base and
72 creating jobs, thereby serving public purposes in accordance with State law and consistent with
73 the Village's Project Plan, dated _____ for the TIF District (as amended, the "TID
74 Plan"); and

75 WHEREAS, based upon the representations of Developer and input from the Village's
76 financial advisor, the Village finds and determines that but for the Village's provision of
77 financial assistance to Developer, including the extension of municipal water and associated
78 improvements, the Apartment Project would be infeasible, Developer would not construct the
79 Apartment Project, and the Village will not accomplish some of the objectives of the TID Plan;
80 and

81 WHEREAS, as an inducement to Developer to redevelop the Property, Developer has
82 requested financial assistance toward the Apartment Project on the terms and conditions more
83 fully described below; and

84 WHEREAS, Developer has provided plans and specifications for the Apartment Project
85 (attached hereto and incorporated by reference as Exhibit 7) and such plans and specifications as
86 approved by the Building Board and Plan Commission are hereafter referred to as the “Plans and
87 Specifications”; and

88 WHEREAS, the Building Board, at its meeting dated July 22, 2021, recommended
89 approval of Developer’s Plans and Specifications; and

90 WHEREAS, the Plan Commission, at its meetings dated _____, 202_,
91 recommended approval of Developer’s Plans and Specifications, the CSM, demolition and
92 rezoning of the Property; and

93 WHEREAS, the Plan Commission has further recommended approval of the Apartment
94 Project conditioned upon entry by the Village and Developer into a Development Agreement
95 pursuant to Section 335-30 of the Village Code of Ordinances; and

96 WHEREAS, the Village is requiring that, as conditions of redevelopment approval,
97 concurrently with redevelopment of the Property that Developer install certain improvements
98 listed in the attached Exhibit 8 (which illustrates and itemizes improvements) that are to be
99 dedicated by Developer to the public upon completion (the “Public Improvements”);

100 WHEREAS, the Village has agreed to construct a public Water Main (as hereinafter
101 defined) which will service the Apartment Project and the Single-Family Parcels and potentially
102 other adjoining and adjacent parcels; and

103 WHEREAS, upon the sale of the Apartment Property to Developer, SSND will still own
104 the Single-Family Parcels and has therefor agreed, by executing a Consent to this Agreement: (i)
105 to consent to the recording of this Agreement and the SWM Agreement (as hereinafter defined)
106 against the Single-Family Parcels; (ii) to consent to the change in zoning of the Property as
107 described in Article IX.A.; (iii) to consent to Developer having access to the Single-Family
108 Parcels as necessary or desirable for Developer to comply with its obligations under this
109 Agreement, including, without limitation, the construction of the Public Improvements and the
110 construction and maintenance of the SWM System (as hereinafter defined); (iv) to enter into and
111 record easements against each Single-Family Parcel to provide for such access; and (v) to require
112 that any future owner of the Single-Family Parcels be bound by the terms of Article IX of this
113 Agreement, provided that so long as SSND does not attempt to develop the Single-Family
114 Parcels, SSND will have no obligations under Article IX of this Agreement other than as set
115 forth above as to its consents and its agreement to enter into the above described easements and
116 SSND’s agreement that this Agreement and the SWM Agreement will run with and bind the
117 Single-Family Parcels and any future owner thereof, including, without limitation, MSF LLC or
118 any Developer affiliate; and

119 WHEREAS, MSF LLC or another Developer affiliate will acquire the Single-Family
120 Parcels and intend(s) to then convey each of the Single-Family Parcels to a single family home
121

122 developer and to then be released from obligations relating thereto, provided that Developer will
123 retain the obligation to complete the Public Improvements and complete and maintain the SWM
124 System and the owners of the Single-Family Parcels will not have any obligation in connection
125 therewith except (i) as expressly set forth in the SWM Agreement and (ii) to not engage in or
126 allow any activity in conflict with the purpose or provisions of the SWM Agreement; and

127 WHEREAS, on _____, 202_, the Village Board duly approved Developer's
128 Plans and Specifications, the rezoning of the Property, the CSM, the declaration of blight, the
129 creation of the TIF District and the Project Plan for same, demolition on the Apartment Property,
130 grading and installation of permanent comprehensive storm water improvements, the public
131 road, and public water system and sanitary sewer system, all as more particularly described in
132 this Agreement, Developer and the Village entering into this Agreement and further subject to
133 the terms, conditions, and provisions of this Agreement, all subject to Developer obtaining title
134 to the Apartment Property in fee simple as an absolute precondition before the Village will allow
135 and shall record this Agreement against the Property, the original of which shall be in the sole
136 possession and control of the Village and held in trust by the Village to be recorded immediately
137 following the recording of the deed transferring the Apartment Property to Developer and prior
138 to the recording of any mortgage on the Property or any portion thereof.

139 **AGREEMENT**

140 NOW, THEREFORE, the Village and Developer acknowledge and agree that, in
141 consideration of the granting of approval of the Apartment Project by the Village Board, for One
142 Dollar (\$1), and the representations by Developer and the consents by SSND set forth herein, the
143 mutual promises set forth herein, and other good and valuable consideration, the receipt and
144 sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

145 **ARTICLE I**
146 **DEFINITIONS AND RECITALS**

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

149 B. Definitions. As used herein, the following terms shall have the following
150 meanings:

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

153 2. "Available Tax Increment" shall mean the Tax Increment actually
154 received by the Village from taxes levied on the Property, included any special charge
155 payments made in connection with the Property including pursuant to Sections XII.H.
156 and XVI.I.

157 3. "Eligible Project Costs" shall mean all eligible project costs as defined in
158 §66.1105(2)(f), Wis. Stats. in furtherance of the redevelopment of the TIF District. The
159 eligible project costs for the Apartment Project may include, but are not limited to, the

160 costs of major renovations to two historically significant buildings on the Apartment
161 Property, construction and installation of private utilities and private roads throughout the
162 Apartment Property, construction preparation of the Apartment Property, storm water
163 management throughout the Property as more particularly provided herein and in the
164 SWM Agreement, construction of underground parking for the Apartment Property
165 residents, construction of 3 new apartment buildings and related amenities and
166 installation of landscaping and lighting, but expressly excluding the costs of the Public
167 Improvements and the cost of developing the Single-Family Parcels as single-family
168 residences. Eligible Project Costs include the post installation/completion incentive
169 payment identified within Article XII below in accordance with §66.1105(2)(f)(2)(d),
170 Wis. Stats.

171 **ARTICLE II**

172 **REMOVAL OF EXISTING STRUCTURES/EROSION CONTROL APARTMENTS**

173 A. Erosion Control. Developer shall install and maintain Village-approved erosion
174 control methods required under the SWM Agreement prior to and until commencement of any
175 ground disturbing activities on the Property. Developer shall thereafter provide and maintain
176 erosion control in accordance with the SWM Agreement.

177 B. Demolition. Developer shall remove and dispose of those existing structures
178 located on the Apartment Property scheduled for removal in the Plans and Specifications. Unless
179 construction commences within thirty (30) days after completion of all demolition activity,
180 weather permitting, Developer will be required to restore the Property to an erosion-controlled
181 and dust-free condition in conformity with the SWM Agreement and, as applicable, the Plans
182 and Specifications.

183 C. Permits. Developer shall acquire all necessary permits, including but not limited
184 to Village demolition, and sewer lateral disturbance permits, to accomplish demolition, removal,
185 and disposal prior to commencement of any work on the Property, at Developer's sole cost and
186 expense.

187 D. Restoration. All areas on those parcels of the Property on which construction is
188 not actively ongoing that have been disturbed by Developer's construction activities shall be
189 restored to a grade compatible with the overall SWM Plan (as hereinafter defined) and re-
190 vegetated within thirty (30) days of the cessation of any grading on such parcel, weather
191 permitting.

192 **ARTICLE III**
193 **IMPROVEMENTS**

194 Subject to the limitations set forth in Section XV.C, Developer hereby agrees that, upon
195 undertaking any land disturbing activities for the Apartment Project on the Property, Developer
196 shall construct the following public and private improvements in substantial accordance with the
197 Plans and Specifications as follows:

198 A. Buildings. Developer shall construct three new buildings and renovate two
199 existing buildings. Construction by Developer shall be in substantial accordance with the Plans
200 and Specifications set forth in Exhibit 7.

201 B. Sanitary Sewer.

202 1. Developer shall remove existing sanitary sewer and construct, install, and
203 furnish a completed sanitary sewer system for the Apartment Project in substantial
204 accordance with the Plans and Specifications set forth in Exhibit 7 and, but only to the
205 extent shown on the Plans and Specifications set forth in Exhibit 7, for the Single-Family
206 Parcels. The Apartment Project sanitary sewer improvements shall be private
207 improvements and may be connected to the Village sanitary sewer system subject to
208 testing/inspection, at the expense of Developer, required by the Village. The Single-
209 Family Parcels sanitary system to be constructed by Developer within public right of
210 ways will be dedicated by Developer to the Village subject to their acceptance by the
211 Village as provided herein. The developer of a Single-Family Parcel will be responsible
212 for constructing the private laterals to the individual homes and the Village may include
213 requirements in connection therewith in a separate development agreement with any such
214 developer.

215 2. As a condition of obtaining any plumbing permit(s) pertaining to the
216 Apartment Project, Developer shall acquire for the Apartment Project and submit to the
217 Village evidence of Wisconsin Department of Safety and Professional Services approval
218 and submit a copy to the Village prior to installing the sanitary sewer system.

219 3. As a condition of obtaining any plumbing permit(s) pertaining to the
220 Apartment Project, if required, Developer shall obtain prior approval for the Apartment
221 Project from the Milwaukee Metropolitan Sewerage District ("MMSD") and submit a
222 copy of such approval to the Village.

223 4. All work on the sanitary sewer/plumbing shall be in accordance with
224 "Standard Specifications for Sewer and Water Construction in Wisconsin" and applicable
225 specifications and standards provided by MMSD.

226 5. Developer shall be responsible for payment of all applicable connection
227 and permit charges associated with said sanitary sewer system for the Apartment Project.

228 6. Developer shall, at its sole expense, furnish one set of "as-built" plans for
229 the sanitary sewer system; including location and elevation of laterals at the lot lines
230 together with an electronic file copy of said plans compatible with the Village's GIS
231 software prior to the granting of an occupancy permit. Developer shall be responsible for
232 any costs of integrating said GIS data into the Village's GIS database.

233 C. Public Water Main.

234 1. On or before the date TBD____ months after the issuance of the
235 Apartment Project's construction permit, the Village shall construct and complete the
236 public Water Main sufficient to service the Apartment Project and all twenty-one (21) of

237 the single family residences permitted to be constructed on the Single-Family Parcels. As
238 required above as part of the Public Improvements to be constructed by Developer,
239 Developer shall install public water lines from the Water Main through the Single-Family
240 Parcels as shown on Exhibit 8 sufficient to serve all twenty-one (21) of the single family
241 residences permitted to be constructed on the Single-Family Parcels and easements for
242 these Public Improvements are included on the CSM. Notwithstanding the foregoing, the
243 parties acknowledge and agree that the Apartment Project's water service is subject to
244 approval by the City of Wauwatosa. In the event the water service described above is not
245 approved by the City of Wauwatosa and an agreement entered into by the Village and the
246 City of Wauwatosa for the provision of such water service and any all contingencies to
247 the performance of such agreement by the City of Wauwatosa waived or satisfied, prior
248 to _____, 202_, which date may be extended by Developer at its sole option, in
249 writing, then either party may terminate this Agreement, without liability to the other
250 party, by written notice to the other party given prior to such agreement being fully
251 executed and delivered, in which event, the parties shall have no further rights or
252 remedies hereunder. Developer shall be responsible for the installation of all internal
253 water lines within the Apartment Property and for connecting to the Water Main in the
254 Watertown Plank Road right of way, all as listed on Exhibit 8 attached hereto. The plans
255 for the public Water Main will be designed by the City of Wauwatosa and the proposed
256 location is shown on Exhibit 9 attached hereto (the "Water Main"). The estimated cost of
257 the Water Main is Three Million Five Hundred Sixty-Six Thousand Dollars and 00/100
258 (\$3,566,000.00) and is more particularly detailed in the attached Exhibit 10 (the
259 "Estimated Water Main Costs").

260 2. If applicable, the Village shall furnish all initial pump and water test
261 results, plans and details for the Water Main. The Water Main shall be a public
262 improvement.

263 3. As a condition of the issuance of an occupancy permit, Developer shall
264 construct, install, furnish, and provide fire suppression systems for the Apartment
265 Property to the extent required by, and in accordance with, plans and specifications
266 approved by the State of Wisconsin.

267 4. If a delay in completion of the public Water Main described in this
268 Agreement is caused or contributed to by, labor disputes, casualties, acts of God or the
269 public enemy, governmental embargo restrictions, shortages of fuel, labor or materials,
270 pandemics, epidemics, public health related issues, riots, public insurrection, action or
271 non-action of public utilities or of local, state or federal governments, agencies or
272 departments affecting the work or other causes beyond Village's reasonable control, then
273 the time of completion of the Water Main shall be extended for the additional time
274 caused by such delay. Village shall give written notice to Developer within twenty (20)
275 calendar days of the first occurrence of any event understood to be within the scope of
276 this Section III.C.4., together with substantiation that the event qualifies for the granting
277 of additional time under this section. Failure by the Village to provide written notice
278 within the time provided hereunder shall constitute a waiver by the Village of any right to
279 an extension under the terms of this section.

280 D. Storm/Surface Water System.

281 1. Developer shall construct, install, furnish, and provide facilities for storm
282 and surface water drainage management for the Property (the “SWM System”) in
283 substantial accordance with the Plans and Specifications set forth in Exhibit 7 or as may
284 need to be modified to be in accordance with all applicable State, Federal, and Village
285 statutes, regulations, ordinances, and MMSD Chapter 13 regulations and the Storm Water
286 Management Plan agreed to by Developer and the Village (the “SWM Plan”) and
287 incorporated into a Storm Water Management, Facility Maintenance and Easement
288 Agreement entered into by Developer (the “SWM Agreement”) and made a part of this
289 Agreement contained in attached Exhibit 11.

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

292 3. The Village shall have no obligation to issue any occupancy permits until
293 the SWM System has been inspected by the Village Engineer and deemed to have been
294 installed in substantial accordance with the Plans and Specifications or any needed
295 modifications/amendments of same in the opinion of the Village Engineer to address any
296 failure of the storm and surface drainage system to perform in accordance with the design
297 criteria in the SWM Agreement approved by the Village Engineer.

298 4. Developer shall, at its sole expense, furnish one set of “as-built” plans of
299 the SWM System provided by Developer under this Agreement together with survey
300 coordinate locations for manholes, inlets, and other structures and components provided
301 by Developer under this Agreement, both on and off the Property, together with an
302 electronic data file for integration into the Village’s GIS database. Developer shall be
303 responsible for the reasonable costs of integration of said data into the Village’s GIS
304 database.

305 5. Developer, together with its successors and assigns, but only while each
306 owns the Apartment Project, shall be responsible for the inspection on not less than an
307 annual basis, perpetual maintenance, operation, and replacement of all storm/surface
308 water facilities or components as required under the SWM Agreement.

309 E. Letter of Credit/Decorative Landscaping.

310 1. Developer shall seed and otherwise landscape the Apartment Property and,
311 if applicable, the Single-Family Parcels, in substantial accordance and pursuant to
312 Developer’s Plans and Specifications set forth in Exhibit 7.

313 2. In addition to paying the then applicable permit fee(s), Developer shall
314 provide a letter of credit or cash escrow to the Village in the amount of (\$TBD) to
315 guarantee a good faith execution of the approved erosion control plan and any erosion
316 control permit conditions as set forth in the SWM Agreement. If a letter of credit and not
317 a cash deposit, said letter of credit may be combined with one or more of the other letters
318 of credit described in Section VIII.C of this Agreement, but such letter of credits will be

319 subject to reduction following the procedures set forth in Sections VIII.D through VIII.F
320 of this Agreement.

321 3. Developer shall provide and plant on the Property all trees/shrub plantings
322 of the size and species, and at the locations, identified in Developer's Plans and
323 Specifications set forth in Exhibit 7; provided, however, that Developer may substitute
324 larger size plantings of the same species. Following the planting of said trees and shrubs
325 Developer shall water and maintain said trees and shrubs on the Property to ensure their
326 survival for not less than one (1) year. In the event any tree(s) or shrub(s) fails to survive
327 one (1) year following its planting, Developer shall replace said tree(s) or shrub(s) with
328 substantially like kind of species and size at its sole expense.

329 F. Roads and Parking.

330 1. Developer shall grade, construct, and surface private roads, driveways,
331 and parking areas for the Apartment Property as shown on, and in substantial accordance
332 with the Plans and Specifications set forth in Exhibit 7. Developer shall grade, construct,
333 and surface certain public roads for the Single-Family Parcels as shown on, and in
334 substantial accordance with the Plans and Specifications set forth in Exhibit 7. The CSM
335 shall depict the location of the public roads and indicate "To Be Dedicated" or similar
336 language.

337 2. Direct vehicular access to the Apartment Property from public streets shall
338 be only via Watertown Plank Road. Direct vehicular access to the Red Barn Parcel from
339 public streets shall be only via Stephen Place and Red Barn Lane. Direct vehicular access
340 to the Green Meadow Parcel from public streets shall be only via the extension of the
341 Green Meadow Place cul de sac.

342 3. Developer shall, at its expense, perform, or cause to be performed, the
343 modifications to the curb and gutter on Watertown Plank Road, Stephen Place, Red Barn
344 Lane, and Green Meadow Place in accordance with Exhibit 7.

345 G. Exterior Lighting and Signage. Developer shall provide and install exterior
346 lighting and signage for the Apartment Property in substantial accordance with the Plans and
347 Specifications set forth in Exhibit 7. Developer, together with its successors and assigns, but
348 only while each owns the Apartment Project, shall bear all electrical and operational expenses
349 for all private lighting on the Apartment Property.

350 H. Permits. The Village will grant Developer any and all permits required so that
351 Developer can construct and install the Public Improvements in any public right of way or on
352 other Village property provided Developer complies with the requirements, if any, for the
353 issuance of such permits.

354 I. Pathways/Sidewalks.

355 1. Developer shall install concrete sidewalks on and off of the Property in
356 substantial accordance with the Plans and Specifications set forth in Exhibit 7 (the
357 "Sidewalks").

358 2. Developer acknowledges that the Village is requiring the installation and
359 maintenance of a Walking Path (defined below) on the Apartment Parcel in substantial
360 accordance with the Plans and Specifications set forth in Exhibit 7. Developer shall grant
361 an easement to the public and enforceable by the Village on, over and across the Walking
362 Path and those Sidewalks as set forth on Exhibit 13 solely to allow the public to use the
363 Sidewalks for pedestrian travel to and from the Walking Path only and to allow the public
364 to use the Walking Path for pedestrian use only (the "Walking Path Easement").
365 Developer may promulgate reasonable rules and regulations for the use of the Walking
366 Path and Sidewalks, including, without limitation, restricting or prohibiting night time
367 usage and prohibiting littering, blocking or obstructing the Walking Path and Sidewalks,
368 skateboards, bicycles, and scooters. The Village shall have no responsibility to enforce
369 any promulgated rules and regulations pertaining to the Sidewalks or Walking Paths, but
370 shall be required to enforce any trespassing or other behavior that it would enforce or
371 otherwise address on any other owner's private property in the Village. The Walking
372 Path Easement shall be in substantially the form attached hereto as Exhibit 13.
373 Developer, together with its successors and assigns, but only while each owns the
374 Apartment Project shall maintain, repair and replace the Sidewalks and Walking Paths,
375 including snow and ice removal.
376

377 **ARTICLE IV**
DEDICATION OF PUBLIC IMPROVEMENTS

378 A. Transfer to Village. Subject to all of the other provisions of this Agreement and
379 the Exhibits attached, Developer shall, without charge to the Village, upon completion of any
380 Public Improvements situated on or off the Property, unconditionally give, grant, convey and
381 fully dedicate the same to the Village, its successors and assigns, forever, free and clear of all
382 encumbrances whatsoever, together with, including without limitation, all structures, mains,
383 conduits, pipes, lines, machinery, equipment and appurtenances which may in any way be a part
384 of such Public Improvements and together with any and all necessary easements for access
385 thereto and, prior to any conveyance of a Single-Family Parcel to an entity not affiliated with
386 Developer, Developer or its affiliate shall have either dedicated to the Village all of the Public
387 Improvements located on the Single-Family Parcel being conveyed or provided the Village with
388 satisfactory evidence that it has reserved all of the ownership rights in and to any Public
389 Improvements located on the Single-Family Parcel being conveyed and has retained the express
390 right to dedicate all such Public Improvements and to grant easements for access thereto to the
391 Village or required the owner of the applicable Single-Family Parcel or Parcels to so dedicate
392 and grant access easements to the Village. At the time of recording of this Agreement,
393 Developer shall provide the Village with a title commitment and a deed as satisfactory evidence
394 of the commitment to issue title insurance reflecting Developer's full ownership of the
395 Apartment Property. At the time of the acquisition by MSF LLC or another Developer affiliate of
396 a Single-Family Parcel, Developer shall provide the Village with a title commitment and a deed
397 as satisfactory evidence of the commitment to issue title insurance reflecting MSF LLC's or
398 other Developer affiliate's full ownership of the applicable Single-Family Parcel. Developer
399 shall also pay, or cause to be paid when due, any transfer taxes that arise as a result from said
400 dedication(s).

401 B. Notice and Acceptance. Developer shall notify the Village in writing of the
402 completion of all Public Improvements described on Exhibit 8. Within fourteen (14) days of the
403 date of such notice, the Village shall inspect and/or re-inspect as necessary any Public
404 Improvement described in Developer’s notice and prepare and deliver to Developer a written
405 punch list of repairs necessary to bring such Public Improvement into substantial conformance
406 with the Plans and Specifications. Upon Developer’s written notice to the Village that all punch
407 list repairs for all such Public Improvement are complete, and following satisfactory completion
408 of any applicable re-inspection, the Village shall within twenty (20) days following the date of
409 such notice and subject to inspection and approval of the Village, by resolution, accept the
410 dedication of all Public Improvements. Simultaneous with the acceptance by the Village of any
411 sanitary sewer improvement on the Property, Developer shall, at its sole expense, furnish to the
412 Village one set of “as built” plans in an electronic format acceptable to the Village.

413 C. Construction Warranty for Dedicated Public Improvements. Developer warrants
414 that all materials and workmanship furnished by Developer for the Public Improvements shall
415 remain in good and sound condition for and during a period of twelve (12) months from the date
416 that is thirty (30) days after final approval by the Village engineer of the applicable Public
417 Improvements.

418 D. Public Improvement Warranty Security. Developer shall furnish to the Village,
419 prior to final approval of all Public Improvements by the Village engineer, warranty security for
420 the Public Improvements (the Public Improvement Warranty Security”) in the form of an
421 original, irrevocable letter of credit issued by a federally insured banking institution in a form
422 acceptable to the Village Attorney naming the Village as payee, equaling ten percent (10%) of
423 the total final cost of the Public Improvements, which letter of credit will be retained by the
424 Village for a period of twelve (12) months from the date that is thirty (30) days after final
425 approval by the Village engineer of the Public Improvements as security for Developer’s
426 guarantee that the workmanship and materials furnished meet all state, federal and local
427 requirements and specifications and that each Public Improvement is and will remain in good
428 and sound condition for and during the twelve-month period from the date that is thirty (30) days
429 after final approval by the Village engineer of the Public Improvements. Said letter of credit
430 may be combined with one or more of the other letter(s) of credit funds described in Section
431 VIII.C of this Agreement, but in all events, shall be subject to release and remittance following
432 the procedures set forth in Sections VIII.E and VIII.F of this Agreement.

433 E. Obligation to Repair. Developer shall make or cause to be made, at its own
434 expense, any and all repairs which may become necessary under and by virtue of Developer’s
435 warranty and leave the Public Improvements in good and sound condition; provided, however,
436 Developer’s obligation to repair shall not extend to repairs necessitated by or related to any
437 neglect or misconduct of the Village, its agents, employees or contractors (and the letter of credit
438 may not be drawn against in such instances).

439 F. Notice of Repair. If during a warranty period, the Public Improvements shall, in
440 the reasonable opinion of the Village Engineer in his or her reasonable discretion, require any
441 repairs or replacements which in his/her reasonable judgment are necessitated by reason of
442 settlement of foundation, structure or backfill, or other defective workmanship and/or materials,
443 Developer shall, upon written notification by the Village Engineer of the necessity for such

444 repairs, make such repairs, at its own cost and expense. In the event Developer fails to make
445 such repairs within a reasonable time after written notice has been sent as provided herein, or
446 fails to start work within one (1) month after such written notice, weather permitting, the Village
447 may cause such work to be done, but has no obligation to do so, either by contract or otherwise,
448 and the Village may draw upon any letter of credit then in the Village's possession to pay any
449 costs or expenses incurred in connection with such repairs or replacements. If the cost or
450 expense incurred by the Village in repairing or replacing any portion of the Public Improvements
451 covered by this warranty exceeds the amount of the letters of credit, then Developer shall, within
452 thirty (30) days of being invoiced by the Village, pay any excess cost or expense actually
453 incurred in the correction process. If Developer fails to make payment within said thirty (30)
454 days, the Village may assess a special charge against the Apartment Property pursuant to Wis.
455 Stat. § 66.0627 as subsequently amended from time-to-time.

456 G. Maintenance Prior to Acceptance.

457 1. Developer shall maintain the Public Improvements until such time as they
458 are accepted for dedicating by the Village. This maintenance shall include routine
459 maintenance, such as dust suppression, crack filling, and the like. In cases where
460 emergency maintenance is required, such as sewer blockages, the Village retains the right
461 to complete the required emergency maintenance in a timely fashion and bill Developer
462 for all actual associated costs.

463 2. All improvements to be dedicated to the Village under this Agreement
464 shall be maintained by Developer until they are accepted so they substantially conform to
465 the applicable plans and specifications attached as exhibits to this Agreement at the time
466 of their acceptance by the Village.

467 **ARTICLE V**
468 **MISCELLANEOUS REQUIREMENTS**

469 A. Underground Utilities. All newly installed electrical, telephone, gas and cable
470 utilities shall be underground. Normal and customary above-ground utility facilities such as
471 transformers, service pedestals, gas vents and the like approved in writing by the Village
472 Engineer in his/her reasonable discretion are permissible. Coordination of installation as shown
473 on the Plans and Specifications shall be the responsibility of Developer.

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

478 C. Permits. Developer hereby agrees to obtain all necessary permits and approvals
479 from all governmental authorities, including but not limited to the Village, the City of
480 Wauwatosa and State of Wisconsin, prior to the start of construction, demolition, and/or
481 hazardous waste abatement. Developer shall be solely responsible for payment of all applicable
482 permit fees and costs.

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

490 E. Pre-Demolition and Pre-Construction Meetings. Developer and its general
491 contractor(s) shall attend pre-demolition and pre-construction meetings with Village staff prior to
492 conducting demolition and construction on the Apartment Property.
493

494 **ARTICLE VI**
TIME

495 A. Commencement and Completion. Subject to the limitations of Section XV.C of
496 this Agreement, Developer shall complete, or cause the completion of, the following aspects of
497 the improvements of the Property, all in compliance with the requirements of this Agreement, in
498 accordance with Section 106-3(F) of the Village Code of Ordinances and in accordance with the
499 following Apartment Project schedules:

500 1. Commencement of Apartment Project: Within twelve (12) months of
501 Developer's acquisition of the Apartment Property, Developer shall commence
502 construction of the Apartment Project. In the event Developer does not commence
503 demolition within one month of the recordation of this Agreement any delays in time will
504 postpone deadlines identified in this Agreement by the length of the delay incurred
505 except the deadlines identified in this Section VI.A.1 for commencement of construction.

506 2. Completion of SWM System: Except for punchlist items relating to such
507 improvements which shall be diligently pursued to completion thereafter by Developer,
508 not later than substantial completion of the Apartment Project improvements and prior to
509 any occupancy permit being issued for the Apartment Project.

510 3. Completion of Apartment Project landscaping: within four (4) months of
511 occupancy of the Apartment Project and such period will be extended if completion is
512 delayed due to inadvisability of landscaping due to the typical seasonal weather during
513 any of such four (4) month period.

514 4. Completion of all Apartment Project improvements: Within thirty (30)
515 months of the issuance of any building permits for the Apartment Project.

516 B. Improvements. Time is of the essence as to all timelines set forth in this
517 Agreement. Subject to the provisions of Section VI.D of this Agreement, upon failure of
518 Developer to meet one or more deadlines specified in this Agreement, in the event Developer has
519 commenced the Apartment Project, the Village may (but is not required to) complete that aspect
520 of the Apartment Project pertaining to the Public Improvements for which construction has
521 commenced but is not completed (i.e., the portion, if any, necessary to allow completion of the
522 Public Improvements). The Village may also (but is not required to) restore the Property to

523 grade and stabilize the Property to achieve a dust-free, erosion proof condition provided,
524 however, that this section shall not be construed to grant the Village authority to remove any
525 building constructed by Developer on the Property solely due to Developer's failure to meet one
526 or more timelines specified in this Agreement unless both Developer and Guarantor have ceased
527 all construction activity on the Property for more than eighteen (18) consecutive months. In the
528 event the Village performs work on the Property under this Section, the Village may charge
529 Developer one hundred ten percent (110%) of the actual costs incurred by Village in completing
530 that aspect of the Apartment Project or restoring the Property to grade and stabilizing the
531 Property to a dust-free, erosion-proof condition. The Village may draw upon any security
532 provided in this Agreement for the payment of said charges against the defaulting Developer and
533 invoice said Developer for any costs in excess of any such security. If Developer fails to pay
534 such invoice, the Village shall have the right to assess a special charge against the Apartment
535 Property, or any portion thereof, under Wis. Stat. § 66.0627 as subsequently amended from time-
536 to-time. The Village shall also have all rights and remedies provided under the Guaranty, the
537 form of which is attached hereto as Exhibit 12.

538 C. Subject to the provisions of Section VI.D of this Agreement, and solely at the
539 discretion of the Village, Developer may be deemed to have forfeited its rights under this
540 Agreement to construct the improvements set forth in the Plans and Specifications upon
541 occurrence of any one or more of the following events:

- 542 1. Developer fails to commence construction within the times permitted
543 under Section VI.A.1 of this Agreement, as applicable,; or
- 544 2. Developer fails to apply for and diligently pursue building permit(s)
545 within twelve (12) months of the Effective Date of this Agreement.

546 D. Cause of Delay and Notice of Default.

547 1. If delay in completion of any improvements on the Property described in
548 this Agreement is caused or contributed to by, labor disputes, casualties, acts of God or
549 the public enemy, governmental embargo restrictions, shortages of fuel, labor or
550 materials, pandemics, epidemics, public health related issues, riots, public insurrection,
551 action or non-action of public utilities or of local, state or federal governments, agencies
552 or departments affecting the work or other causes beyond Developer's reasonable control,
553 then the time of completion of such improvement shall be extended for the additional
554 time caused by such delay. Developer shall give written notice to the Village within
555 twenty (20) calendar days of the first occurrence of any event together with substantiation
556 that the event qualifies for the granting of additional time under this section. Failure by
557 Developer to provide written notice within the time provided hereunder shall constitute a
558 waiver by Developer of any right to an extension under the terms of this section.

559 2. The Village shall give Developer written notice of default and an
560 opportunity to cure within thirty (30) days, prior to exercising its rights to cure any
561 defaults by Developer in its performance of completion of Public Improvements within
562 the timeline prescribed under Section VI.A of this Agreement, provided that if the default
563 is curable and Developer cannot reasonably cure such default within such thirty (30) day

564 period, then Developer shall have such time as is reasonably necessary to cure such
565 default provided Developer promptly commences such cure and diligently pursues such
566 cure to completion. Notwithstanding the foregoing, if the Village Manager in his or her
567 sole discretion determines that such delay would unreasonably endanger the health or
568 safety of any persons or property within the Village in which case the Village may
569 provide a shorter time for cure. Developer shall give Village written notice of default and
570 an opportunity to cure within thirty (30) days prior to exercising its rights to any defaults
571 by Village in its completion of Water Main within the timeline prescribed under Section
572 III.C of this Agreement.

573
574 **ARTICLE VII**
PAYMENT OF VILLAGE FEES

575 A. Reimbursement. Developer agrees to reimburse the Village for its planning,
576 engineering, inspection, and legal work associated with the Apartment Project. Village shall
577 keep a detailed accounting of such costs and bill Developer at the rates contracted by the Village
578 for such services.

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

581 1. The Village's reasonable engineering and legal expenses incurred as of,
582 and shall further deposit with the Village Ten Thousand and No/100 Dollars (\$10,000)
583 with respect to reimbursement of the Village's subsequent expenses arising out of or
584 related to entry into this Agreement. If Village's expenses exceed said posted \$10,000,
585 Developer shall pay the Village such additional sums within ten (10) days of the date of
586 Village's invoice to Developer together with such other planning, engineering,
587 inspection, and legal work. Any additional funds as necessary will be deposited to
588 maintain a balance of not less than \$5,000 at all times until the termination of all other
589 financial security provided to the Village under this Agreement. Said invoice shall
590 contain a summary of Village's costs for which payment is required under this section.

591 2. Notwithstanding anything contained herein to the contrary, the Village
592 hereby acknowledges and agrees that there are no municipal sanitary sewer impact,
593 reserve capacity, or similar municipal sewer impact fees due or owing as a result of the
594 Apartment Project. To the best of the Village's knowledge, there are no MMSD sewer
595 impacts, reserve capacity, or similar district impact fees due or owing as a result of the
596 Apartment Project. Developer acknowledges that it shall be responsible for payment at
597 the time of application for any sanitary sewer charges that may be established by the
598 Village and/or MMSD on a municipality- or district-wide basis. The Village agrees to
599 pay for any and all fees, assessments, and/or costs applicable to the Water Main.

600 C. Default. Developer acknowledges and agrees that, in the event Developer
601 remains in default concerning payment of any fees and/or the making of any deposits required
602 under this Agreement for thirty (30) days after written notice of such failure to pay, the Village
603 shall have the right, in its sole discretion, to draw upon any security provided by Developer and
604 held by the Village under this Agreement, post a Stop Work order on the Apartment Project in its

605 entirety, withhold inspections and/or the granting of any permit(s), and/or pursue any other
606 remedy available to the Village under this Agreement or Wisconsin law in connection with such
607 failure to pay.

608 D. Permit Fees. Developer shall be responsible for payment of all applicable permit
609 fees set forth in the Village Code of Ordinances or any fee schedule used by the Village of Elm
610 Grove and the costs of all inspections of the Apartment Project.

611

ARTICLE VIII
GUARANTEE AND SECURITY FOR PAYMENT AND PERFORMANCE OF
DEVELOPER'S OBLIGATIONS

612

613

614 A. Construction of the Apartment Project.

615 1. As a material inducement for the Village to enter into this Agreement,
616 Developer covenants that after it acquires the Apartment Property and, subject to the
617 terms of this Agreement and the express limitations set forth in Section XV.C of this
618 Agreement, it shall construct the Apartment Project (including, but not limited to,
619 construction of buildings and structures, utilities, temporary and permanent landscaping,
620 soil erosion provisions, screening, seeding, amenities, and all other improvements
621 substantially as set forth on the Plans and Specifications) such that the improvements and
622 real property will have an equalized assessed value of not less than Forty One Million
623 Dollars (\$41,000,000.00) at completion of the Apartment Project (the "Minimum
624 Assessed Value"). A principal or affiliate of Developer (the "Guarantor") will execute a
625 guaranty in the form attached hereto as Exhibit 12 (the "Guaranty") guarantying the
626 obligation of Developer set forth in the immediately preceding sentence and such
627 Guaranty will require a confidential presentation to the Village's consultant for the TIF
628 District that the Guarantor has sufficient assets to perform such guaranty.

629 2. Before the Effective Date, Developer will, through its submittals to
630 Village Staff members, represent that Developer has sufficient financial resources
631 committed to allow Developer to complete the Apartment Project as approved. The
632 Parties acknowledge and agree that the financing commitment(s) obtained by Developer
633 for the Apartment Project is/are subject to conditions. Prior to the Effective Date,
634 Developer shall provide the Village with a letter from its lender that states that the lender
635 has agreed to make a construction loan in a specified minimum amount for the Apartment
636 Project, subject to lender's typical conditions and requirements.

637 3. Developer shall cause any conditions to such commitment(s) to be
638 removed, satisfied, or waived as a condition of obtaining building permits and, upon
639 Developer's failure to remove, satisfy or obtain waivers of all conditions of its financing
640 commitment(s) within the time frame for commencement of the Apartment Project,
641 Developer's rights and obligations under this Agreement pertaining to the Apartment
642 Project shall terminate, except the reimbursement of any fees then due under Article VII
643 of this Agreement.

644 B. Impact Fee Waiver. Wisconsin Statute § 66.0617 restricts the ability of the
645 Village to collect impact fees. Developer agrees that any payments to the Village under this
646 Agreement are not intended to constitute impact fees and are not intended to be restricted or
647 controlled by Wis. Stat. § 66.0617. Developer, on behalf of itself and its successors and assigns,
648 waives the right to claim application of Wis. Stat. § 66.0617 to the payments made in accordance
649 with this Agreement.

650 C. Performance Guarantee. As a condition of obtaining any building permit arising
651 out of or related to the Apartment Project or the commencement of land disturbing activities
652 (whichever shall occur first), Developer shall deliver or cause to be delivered to the Village
653 Manager one or more original irrevocable letters of credit issued by one or more federally
654 insured banking institutions, the financial condition of which is/are acceptable to the Village,
655 naming Village as payee and being in a form acceptable to the Village Attorney. Said letter(s) of
656 credit shall collectively guarantee (i) 125% of the construction of landscaping, access/egress
657 improvements including all private roadways, sidewalks, curbing, exterior lighting, private storm
658 water system facilities, private and public water and sanitary sewer system but only if and to the
659 extent to be installed by Developer, and site restoration required under this Agreement for the
660 Apartment Project together with the Village's engineering, administrative, and inspection fees
661 projected by the Village to arise out of this Agreement, (ii) if a letter of credit and not a cash
662 deposit, the amount provided for in Section III.E.2 of this Agreement, and (iii) the amount
663 provided for the Public Improvement Warranty Security in Section IV.D of this Agreement.
664 Upon receipt, the letter(s) of credit provided hereunder shall be in substantial compliance with
665 that form attached hereto as Exhibit 14, which form is satisfactory to the Village Attorney.
666 Except for such amounts that may otherwise be released under the provisions of Article VIII.D.,
667 said letter(s) of credit shall be renewed annually and evidence of renewal presented to the
668 Village within sixty (60) days prior to its/their expiration. Failure to renew the letter(s) of credit
669 forty-five (45) days prior to its expiration shall entitle the Village, after five (5) days prior notice
670 to Developer, to withdraw all funds remaining from said letter(s) of credit.

671 D. Reduction of Security Upon Partial Completion and Dedication. The amount of
672 the security will be reduced as each improvement described in Section VIII.C.(i) is completed,
673 and, if applicable, approved by the Village Engineer for dedication, acting reasonably, in
674 accordance with the following procedure:

675 1. From time-to-time during the course of construction Developer may
676 request the Village Engineer to inspect the construction work, including but not limited to
677 landscaping, completed by Developer to that date for purposes of seeking partial release,
678 and the Village Engineer, as agent of the Village, shall use its best efforts to make such
679 inspection within seven (7) days after the request.

680 2. The request to inspect shall be accompanied by a certification prepared by
681 Developer's architect and stating the work completed, an estimate of the dollar value of
682 the work completed to the date of the request and since Developer's architect's last
683 certification and that the work has been completed in a good and workmanlike manner
684 and in substantial compliance with the Plans and Specifications and the applicable
685 Village ordinances. Developer's architect's certification shall also include an estimate of

686 the cost to complete the remaining balance of the improvements, on a form and presented
687 in a manner reasonably acceptable to the Village Engineer.

688 3. The request for inspection shall further be accompanied by a sworn
689 contractor's statement and appropriate photocopies or originals of lien waivers showing
690 that all work in place and for which a reduction in the security is requested has been fully
691 paid for or that all liens have been waived. Upon receipt of the required documentation,
692 the Village Engineer shall conduct its inspection and certify to the Village and to the
693 financial institution issuing any letter(s) of credit the dollar value of the work completed
694 to the date of the request for inspection and since the last certification by the Village
695 Engineer, provided the Village Engineer finds that the work has been completed in a
696 good and workmanlike manner and in substantial compliance with the approved Plans
697 and Specifications and the applicable Village ordinances, that no mechanic's or other
698 liens will attach to the Property or to any property of the Village as a result of the
699 installation of the applicable improvements and that Developer's architect's estimate of
700 the dollar value of the work completed and the cost to complete the remaining
701 improvements are reasonable. Based upon those findings, the Village Engineer shall
702 approve a reduction in the Letter of Credit so long as the aggregate balance remaining in
703 the Letter(s) of Credit is at least equal to the sum of (i) one hundred and ten percent
704 (110%) of the cost to complete all the remaining improvements depending on the
705 projected time of completion of same, plus (ii) the Public Improvement Warranty
706 Security.

707 E. Release of Letter of Credit Upon Completion. Upon final completion of all of the
708 improvements required under Section VIII.C, the approval of the Village engineer of the Public
709 Improvements, and posting of any required warranty or maintenance bond security, the then
710 remaining Letter(s) of Credit shall be released and returned, after first drawing upon the security
711 (if required) for any fees and costs due and owing to the Village pursuant to all applicable
712 ordinances upon thirty (30) days' prior written notice to Developer. The foregoing
713 notwithstanding, the Village shall continue to hold a letter of credit substantially in the form of
714 Exhibit 14 (or at Developer's option, such other security as may be reasonably acceptable to the
715 Village Manager, the Village Engineer, and the Village Attorney), in an amount equal to the
716 Public Improvement Warranty Security, upon and subject to the terms and provisions of Sections
717 IV.D and IV.F of this Agreement; subject to said terms and provisions, said letter of credit (or
718 other security) shall be released and returned to Developer not more than twelve (12) months
719 after final approval of the Public Improvements by the Village engineer.

720 F. Remittance of Excess Proceeds. In the event of default by Developer, if any of
721 the Letter of Credit funds remain in the possession of the Village after all of the private and
722 Public Improvements required under Section VIII.C have been completed in a good and
723 workmanlike manner and in substantial accordance with the Plans and Specifications and the
724 applicable Village ordinances, all warranty or maintenance obligations (if any) are satisfied and
725 all fees, costs and expenses of the Village, including reasonable attorney's fees, engineering fees,
726 consultant fees or other out-of-pocket expenses incurred in completing the improvements, in
727 releasing liens thereon, in paying for work completed prior to default are paid, or other costs
728 incurred as a result of the default of Developer; then any remaining balance shall be paid to

729 Developer, subject to any claim to said funds exerted by any financial institution(s) issuing any
730 letter(s) of credit given as security.

731

ARTICLE IX

732

LAND DIVISION: SINGLE-FAMILY PARCELS.

733 A. CSM. Developer has submitted for approval, the Village has approved and SSND
734 has executed the CSM. Subject to the recording of this Agreement, the rezoning for the parcels
735 created by the CSM from I-1 Institutional to Planned Development Overlay with the following
736 underlying zoning: RM-1 for the Apartment Property, RS-3 for the Red Barn Parcel, and RS-4
737 for the Green Meadow Parcel as allowed and modified by the Planned Development Overlay
738 shall be effective and the I-1 Institutional shall be continued for the Cemetery.

739 B. SSND Consents. Developer has represented that it does not intend to acquire or
740 develop either of the Single-Family Parcels. SSND has agreed to sell the Apartment Property to
741 Developer and, then at later date(s), to sell the Single-Family Parcels to MSF LLC or another
742 affiliate of Developer, which affiliates, shortly after such acquisition, intend to sell the Single-
743 Family Parcels to a single-family developer or developers. SSND has entered into the Consent
744 attached to this Agreement and by doing so hereby (i) consents to the recording of this
745 Agreement and the SWM Agreement against the Single-Family Parcels; (ii) consents to the
746 change in zoning of the Property as described in subsection A. above; (iii) consents to Developer
747 having access to the Single-Family Parcels as necessary or desirable for Developer to comply
748 with its obligations under this Agreement, including, without limitation, the construction of the
749 Public Improvements and the construction and maintenance of the SWM System; (iv) agrees to
750 simultaneously with closing on the sale to Developer of the Apartment Property to enter into and
751 authorize the recording of easements against each Single-Family Parcel to provide for such
752 access in substantially the form attached hereto as Exhibit 15; and (v) acknowledges and agrees
753 that this Agreement, including the obligations of certain future owners, other than SSND, to
754 enter into a PILOT Agreement (as hereinafter defined and described below), the SWM
755 Agreement and the aforementioned easements run with and bind the Single-Family Parcels, and
756 any future owner thereof, including, without limitation, MSF LLC or any Developer affiliate.
757 Upon conveyance by SSND of the Single-Family Parcels, SSND is fully released from any
758 obligation or liability, express or implied, that it may have associated with this Article IX or the
759 SWM Agreement.

760 C. Outlots. As noted in Section B above, an affiliate of the Developer intends to
761 purchase the Single Family Parcels and to convey the Single Family Parcels to a developer of
762 single family residences. As noted in Section D below, in order to develop the Single Family
763 Parcels as individual residential lots the single family developer will be required to record a plat
764 as to each Single Family Parcel. The plat for the Green Meadow Parcel, *i.e.*, Lot 4 of the CSM,
765 will create outlots upon which the portions of the SWM System will have been constructed. The
766 Developer intends to require the single family developer acquiring the Green Meadow Parcel to
767 convey the outlots to the owner of the Apartment Property once the plat for the Green Meadow
768 Parcel has been recorded so that the owner of the Apartment Property will own those portions of
769 the SWM System.

770 D. Single-Family Parcel Restrictions. Any development of the Single-Family
771 Parcels for residential purposes shall comply with the preliminary plats attached hereto as
772 Exhibit 16 and the applicable Single-Family Parcel’s obligations under the SWM Agreement and
773 shall not interfere with or disrupt the intent or purpose of the SWM Agreement. As shown on
774 Exhibit 16, the Green Meadow Parcel shall contain 11 single-family lots and the Red Barn Parcel
775 shall contain 10 single-family lots, and the development of each Single-Family Parcel shall
776 comply with the setbacks and other restrictions set forth on the applicable plat attached as
777 Exhibit 16, unless otherwise approved by the Village. The residences built on the single-family
778 lots so created shall be of distinct exterior architectural designs. These restrictions are a covenant
779 running with the Single-Family Parcels and shall be binding upon all of the owners thereof as to
780 the parcel/lot owned by such owner, other than SSND as set forth in subsection B. above. Any
781 developer of the Single-Family Parcels shall obtain approval of the Village for its final
782 subdivision plat and shall comply with all applicable laws and Village ordinances. All work and
783 improvements on a Single-Family Parcel shall be performed and carried out in accordance with
784 and subject to the provisions of said ordinances. Any owner of a Single-Family Parcel or a lot
785 within a Single-Family Parcel, or its successor in interest other than SSND as set forth in
786 subsection B. above, shall comply with its obligations under the SWM Agreement.

787 E. Single-Family Parcel Landscaping. Except to the extent of Developer’s
788 obligation under the SWM Agreement as the owner of the Apartment Property, upon conveyance
789 of the Single-Family Parcels to a third party that is not affiliated with Developer, any obligation
790 to grade, seed, and otherwise landscape the Single-Family Parcels shall be the responsibility of
791 the owner thereof, initially the developer of single family residences on a Single-Family Parcel
792 and thereafter the then owner(s) of any lot or lots within a Single-Family Parcel. In particular,
793 but without limitation, the applicable single-family home developer shall be responsible, during
794 its ownership of such lot or lots, for landscaping its respective lot or lots in accordance with the
795 plans and specifications for each such lot as may be approved by the Village from time to time.

796 F. Access. Direct vehicular access to the Red Barn Parcel from public streets shall
797 be only via Stephen Place and Red Barn Lane. Direct vehicular access to the Green Meadow
798 Parcel from public streets shall be only via the extension of the Green Meadow Place cul de sac.

799 G. Dedication. Prior to any conveyance of a Single-Family Parcel by MSF LLC or
800 any Developer affiliate to an entity not affiliated with Developer, Developer or its affiliate shall
801 have either dedicated to the Village all of the Public Improvements located on the Single-Family
802 Parcel being conveyed and granted any necessary easements in connection therewith or provided
803 the Village with satisfactory evidence that it has reserved all of the ownership rights in and to
804 any Public Improvements located on the Single-Family Parcel being conveyed and has retained
805 the express right to dedicate all such Public Improvements and to grant easements for access
806 thereto to the Village or required the owner of the applicable Single-Family Parcel or Parcels to
807 so dedicate and grant access easements to the Village.

808 H. Payment in Lieu of Taxes. At no time after the Effective Date, shall either of the
809 Single-Family Parcels, or any part thereof, be sold, transferred or conveyed to an entity whose
810 real property is exempt from general property taxes, including a change in status for Developer
811 or any successor owner of a Single-Family Parcel, or any part thereof, without that entity having
812 first signed an agreement with the Village to make an annual payment in lieu of taxes (“PILOT

813 Agreement”) for an amount not less than the then fair market value of the applicable Single-
814 Family Parcel and any improvements thereon times the annually approved Village mill rate for
815 each year with the additional condition that said Single-Family Parcel and any improvements
816 thereon may not be conveyed to any other subsequent tax exempt owner at any time without a
817 similar PILOT agreement being executed. The limitation of this subsection G. shall be a
818 covenant running with the land and shall survive the termination of this Agreement. It being
819 understood and agreed that this section does not apply to SSND’s ownership of the Single-
820 Family Parcels.

821 I. Release. Provided neither Developer nor any affiliate of Developer has breached
822 the restrictions contained in this Article IX as to the Single-Family Parcels prior to any
823 conveyance by MSF LLC or any Developer affiliate to a third party and conveys the Single-
824 Family Parcels subject to this Agreement, the SWM Agreement, and any then recorded
825 easements, Developer and its affiliates shall be released from any liability for a breach of these
826 covenants or any other liability hereunder with respect to the Single-Family Parcels. Nothing
827 contained herein is intended to and nor does it release Developer or its successors, as owners of
828 the Apartment Project, from liability for the Public Improvements or the SWM System or under
829 the SWM Agreement. In addition, provided SSND has not breached the restrictions contained in
830 this Article IX as to the Single-Family Parcels prior to any conveyance by SSND to a third party
831 and conveys the Single-Family Parcels subject to this Agreement, the SWM Agreement, and any
832 then recorded easements, SSND shall be released from any liability for a breach of these
833 covenants or any other liability hereunder with respect to the Single-Family Parcels.

834 J. Single-Family Obligations. This Article IX contains all of the obligations of an
835 owner of any of the Single-Family Parcels under this Agreement that is not an affiliate of
836 Developer.

837

**ARTICLE X
INDEMNIFICATION AND INSURANCE.**

838

839 A. Indemnification. In addition to, and not to the exclusion or prejudice of, any
840 provisions of this Agreement or documents incorporated herein by reference, Developer, or its
841 successors in interest, shall INDEMNIFY AND SAVE HARMLESS the Village, its officers,
842 agents and employees, and shall defend the same from and against any and all liability, claims,
843 loss damages, interest, actions, suits, judgments, costs, expenses, attorneys’ fees, and the like,
844 which result from or arise in the course of, out of, or as a result of the performance, mis-
845 performance, or nonperformance of Developer’s obligations under this Agreement or
846 Developer’s negligent construction of improvements covered thereby until the granting of the
847 last occupancy permit pertaining to the Apartment Project and thereafter only if the occurrence
848 giving rise to the claim predates the granting of the last occupancy permit. The language of this
849 Article X notwithstanding, Developer shall have no obligation to indemnify, save harmless or
850 defend the Village resulting from negligent or intentional acts of the Village, its officers, agents,
851 or employees. In every case where Developer is obligated to indemnify and save harmless the
852 Village, its officers, agents and employees, if judgment is rendered against the Village, its
853 officers, agents, or employees and notice and opportunity to defend was given to Developer of
854 the pendency of the suit within ten (10) days after service of the summons and complaint on the

855 Village, such judgment shall be conclusive upon Developer not only as to the amount of
856 damages, but also as to its liability to the Village and/or its officers, agents, and employees.

857 B. Insurance. Developer shall maintain or cause its general contractor to maintain at
858 all times, until the granting by the Village of the final occupancy permit for the Apartment
859 Project, insurance with minimum limits and coverage as shown below:

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

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

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

873 4. Developer shall furnish the Village policy declarations and endorsements
874 evidencing additional insureds to policies covering the above-recited insurance
875 requirements. All policy endorsements must state that notice of any material change in
876 coverage, non-renewal, or cancellation will be provided to the Village thirty (30) days
877 prior to the Effective Date of any such change, non renewal, or cancellation. The form of
878 the policy endorsements will be subject to the approval of the Village Attorney, that shall
879 not be unreasonably withheld. The policy endorsements shall be delivered prior to the
880 commencement of any demolition activities, ground disturbing construction pursuant to
881 this Agreement.

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

885 6. Simultaneously with the granting by the Village of the final occupancy
886 permit for the Apartment Project, Developer shall carry casualty insurance in an amount
887 not less than than full replacement cost, and shall provide the Village evidence of such
888 insurance coverage at least once each calendar year. An ACCORD 25 Form will not
889 suffice for purposes of providing evidence of Developer's insurance coverage under this
890 Article X because of the disclaimers contained therein.

891

ARTICLE XI

892

GENERAL CONDITIONS AND REGULATIONS

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

900

ARTICLE XII

901

TAX INCREMENT FINANCING

902 A. Benefit to Village. The Apartment Project will help accomplish the goals of the
903 Village’s Comprehensive Plan and TID Plan. Redevelopment of the Property will have a public
904 benefit to the citizens of the Village, will help eliminate blight, and has the potential to be a
905 catalyst for further redevelopment in the Village. Consequently, the Village has agreed to
906 provide assistance to allow the development of the Apartment Project.

907 B. TID Grant. Within sixty (60) days after the issuance of the certificate of
908 occupancy, whether temporary or permanent, for the last building to be completed as part of the
909 Apartment Project, the Village shall provide Developer with a cash grant in the amount of
910 \$_____ (the “TID Grant”).

911 C. Tax Increment for Eligible Project Costs: Municipal Revenue Obligation. In
912 addition, each year, but subject to appropriation from time to time by the Village Board, all the
913 Available Tax Increment shall be applied to the following, in the following order of priority:

914 1. First: to reimburse the Village regularly scheduled installment payments
915 for the actual Eligible Project Costs incurred by the Village in connection with the Water
916 Main’s construction and the TID Grant, including capitalized interest for a 2-year period
917 at a rate equal to the Village’s actual cost of borrowing for the Water Main and TID
918 Grant, plus interest at the Village’s actual cost of borrowing over the period of the
919 scheduled amortization but not to exceed the remaining term of the TIF District
920 (collectively, the “Village Obligations”), in accordance with the column on Exhibit 17
921 labeled [“Proposed 202_____”] (as adjusted pursuant to this Article XII, the
922 “Village Obligations Amortization”); provided, if the actual Village Obligations exceed
923 Four Million and No/100 Dollars (\$4,000,000.00), any additional amount shall not be
924 subject to the same protections or priority of payment as provide herein.

925 2. Second: to reimburse the Village for its actual out-of-pocket costs
926 incurred in connection with the audit and administration of the TIF District (but only to
927 the extent reasonably allocable to the Property) and the administration of this Agreement
928 provided the amount of such reimbursement shall not exceed the lesser of (i) the actual
929 out-of-pocket costs and (ii) _____ and No/100 Dollars (\$_____) per year.

930 3. Third: to the extent of any remaining Available Tax Increment in any
931 such year, to pay Developer for eligible project costs (as described in §66.1105(2)(f),
932 Wis. Stats.) up to an aggregate amount equal to Ten Million Seven Hundred Thousand
933 and No/100 Dollars (\$10,700,000.00) as a municipal revenue obligation (the “MRO”),
934 which payments are estimated to be made annually in the amounts set forth on the
935 column labeled _____ on the Schedule attached as Exhibit 17 (the “Estimated MRO
936 Payment Schedule”);

937 4. Fourth after (and only after) both the Village Obligations and the MRO
938 have been reimbursed and paid in full, to any other party or for any other purpose as the
939 Village may determine, as may then be permitted under Wis. Stats. Section 66.1105 (as
940 amended and/or renumbered from time to time, the “TIF Statute”).

941 D. Water Main. In the event the Village levies or assesses and collect connection
942 fees or other similar assessments or reserve capacity assessment fees against third parties for
943 their connection to or use of the Water Main, said collected fees shall reduce the amount of
944 Available Increment applied to reimburse the Village for the Village Obligations and the Village
945 Obligations Amortization schedule shall be adjusted accordingly.

946 E. MRO. Payments on the MRO shall be due or payable to Developer as soon as
947 there is Available Tax Increment (currently projected to be 2024). Commencing the first year in
948 which Available Tax Increment is available after payments have been made to the Village as
949 provided under Sections XII.C. 1 and C. 2., payments under Section XII.C.3. will be made by the
950 Village to Developer. MRO Payments shall be made no later than October 1 of each year (a
951 “MRO Payment Date”) and shall be made by check drawn on the Village’s treasury. The
952 Village’s obligation to pay the MRO to Developer shall be evidenced by a note issued by the
953 Village to Developer pursuant to Wis. Stats. Section 66.0621 (the “MRO Note”). The MRO
954 Note and its authorizing resolution shall be in the form set forth on Exhibit 18 attached hereto
955 and incorporated herein, subject to any changes that may be acceptable to both the Village and
956 Developer. The MRO Note shall never be considered a general obligation of the Village and
957 shall be subject to the terms of this Agreement and said resolution. It is a special Municipal
958 Revenue Obligation which shall be payable solely to the extent of Available Tax Increment and
959 then only to the extent Available Tax Increment revenues remain after payment of the debt
960 service related to the Village Obligations in accordance with the Village Obligations
961 Amortization schedule and after reimbursement of the audit and administration costs described in
962 subsection A.2 above.

963 The Village covenants and agrees as follows: (a) if the Village’s proposed annual budget does
964 not in any year anticipate the collection of Available Tax Increment sufficient to make at least
965 the payments on the MRO Note as shown on the Estimated MRO Payment Schedule in that year,
966 the Village will use its best efforts to notify Developer of that fact at least thirty (30) days prior
967 to the date the Village budget is presented for final approval; (b) any funds in the special fund of
968 the TIF District attributable to the Available Tax Increment generated solely from the Property
969 shall not be used to pay any other Eligible Project Costs of the TIF District until the Village has
970 paid all Village Obligations and paid the MRO Note in full; and (c) the Village shall take no
971 action to voluntarily dissolve the TIF District prior to the statutorily required dates as extended,
972 and the payment of all amounts owed under the MRO Note, subject to the provisions of this

973 Agreement. In addition, until the Village Obligations and the MRO have been reimbursed and
974 paid in full within the life of the TIF District as extended, the Village will submit all information
975 under (and will otherwise comply with) the TIF Statute to the full extent required for the annual
976 allocation and collection of Available Tax Increment, for each possible year of allocation and
977 collection under said statute, and upon request by Developer, the Village will request an
978 extension of the TIF District's life (together with the removal and addition of any non-Project
979 territory from the TIF District as the Village may then desire) that may then be available under
980 said statute.

981 F. MRO Note. The MRO Note shall be issued and dated January 1 of the first year
982 after Developer acquires the Apartment Property. If, at the end of the final year in which tax
983 increment revenue from the TIF District, as extended, may be allocated to the Village pursuant to
984 the TIF District's TID Plan, the amount of the Tax Increment to be paid under this Agreement
985 proved insufficient to pay the MRO Note in full, then the Village shall have no obligation or
986 liability therefore. The MRO Note may be prepaid in whole or in part, on any date or dates,
987 without premium or penalty. The Village acknowledges and agrees that Developer may
988 collaterally assign the MRO Note as part of its financing for the Apartment Project after its
989 issuance.

990 G. Assessment Warranty. Commencing as of the first January 1 after completion of
991 the Apartment Project, Developer warrants to the Village that the Apartment Project shall have a
992 real estate tax assessed value of not less than the Minimum Assessed Value, and as of each
993 successive January 1 until the earlier of (i) January 1 of the year after the TID closes or (ii)
994 January 1 of the year that the Village Obligations have been reimbursed in full to the Village
995 ("Warranty Period"). It shall not be a breach of this subsection if the failure to meet the
996 warranted value is due to taking by eminent domain or casualty loss but as to casualty loss only
997 if and to the extent the special charge is not fully and timely reimbursed by insurance proceeds.

998 H. Special Charge Payments. In each year during the Warranty Period in which the
999 assessed value of the Apartment Project is less than the Minimum Assessed Value, Developer
1000 shall make a special charge payment, in addition to the real property taxes payable that year,
1001 equal to the property taxes that would have been paid on the difference in value between the
1002 actual assessed value and the Minimum Assessed Value. No special charge payment shall be
1003 required to the extent that the failure to meet the warranted value is due to taking by eminent
1004 domain or casualty loss but as to casualty loss only if and to the extent the special charge is not
1005 fully and timely reimbursed by insurance proceeds.

1006 I. Special Charge. Developer acknowledges the special benefit to the Property of
1007 the Village's financial contributions to the Apartment Project pursuant to this Agreement. If
1008 Developer fails to make any special charge payment owed by Developer under subsection H.
1009 within thirty (30) days after written notice from the Village of such failure, then as the Village's
1010 sole remedy for a breach of subsections G. and H., Developer consents to the Village levying a
1011 special charge against the Apartment Property in the amount of such unpaid shortfall. Developer
1012 waives all rights to notice and hearing related to the special charge and waive all rights to object
1013 to procedural or other irregularities in the levy of the special charge.

1014 J. Release upon Sale. The warranty of assessed value and the obligation to make
1015 special charge payments described in subsections G., H. and I. runs with the land and binds the
1016 then owner of the Apartment Project, but binds only the then-current title holder of the
1017 Apartment Project, and upon conveyance of the Apartment Project to a bona-fide third-party
1018 successor, the obligations of the conveying party to make the special charge payments cease and,
1019 except as set forth in subsection K., are assumed by the third party to which the Apartment
1020 Project is conveyed, except for payment obligations that have already arisen as of the time of the
1021 conveyance and are paid by the transferring owner on or before any such conveyance.

1022 K. Lender Provisions. Notwithstanding anything to the contrary set forth in this
1023 Agreement, if a lender holding a mortgage on the Apartment Property forecloses on its collateral
1024 and succeeds to ownership of the Apartment Property, such lender, or the party purchasing the
1025 Apartment Property at a foreclosure sale, shall not be required to, and shall be automatically
1026 released from any obligation to, warrant the assessed value pursuant to subsection G. make
1027 special charge payments under subsection H. or be subject to the levying against the Apartment
1028 Property of a special charge under subsection I. The Village agrees not to assign or encumber
1029 the Available Tax Increment to any party or purpose, until the amounts due under this
1030 Agreement are paid in full, or upon an earlier termination of the obligation by the Village to
1031 make the payments on the MRO Note. Notwithstanding the foregoing, nothing contained in this
1032 Section K in any way changes the order in which Available Tax Increment is to be paid under
1033 Section C above.

1034 L. Increment Schedules. The schedule attached to and incorporated herein as
1035 Exhibit 17 sets forth the anticipated Available Tax Increment and the anticipated Village
1036 Obligations Amortization and Estimated MRO Payment Schedule. Until the MRO Note is paid
1037 in full, or the TIF District closes and is terminated, whichever first occurs, the Village shall
1038 prepare an annual, adjusted schedule in substantially the form of Exhibit 17, showing the amount
1039 due under the Village Obligations Amortization and the MRO Note and the Available Tax
1040 Increment generated by the Property (the "Increment Schedule"). Each Increment Schedule shall
1041 be prepared using the same methodology and basic assumptions, except for such changes as may
1042 result from changing the number shown for: (a) the Available Tax Increment determined in the
1043 year the Increment Schedule is prepared; (b) appreciation factor to the actual annualized
1044 percentage change in the equalized value of the Property, not caused by new construction, since
1045 the preceding Increment Schedule was prepared; (c) tax rate, to equal the actual tax rate in effect
1046 in the year the Increment Schedule is prepared and updated; and (d) such other items as may be
1047 acceptable to the Village and Developer. The Village shall be responsible for preparing and
1048 updating each Increment Schedule and delivering it to Developer by December 30th of the year
1049 prior to which the increment is expected to be collected. Developer shall have thirty (30) days
1050 after receipt of the annually prepared and updated Increment Schedule to object to its contents.
1051 Each TIF Schedule shall also reflect, to the extent then known: the actual Village Obligations;
1052 the actual rates of interest on the Village Obligations; the actual amounts of the Village
1053 Obligations reimbursed, paid, and prepaid from time to time.

1054 M. Prohibition on use of TID Grant and MRO Funds. Developer shall not use any
1055 portion of the TID Grant or the payments made under the MRO Note to pay for: (i) any real
1056 estate or other ad valorem taxes, (ii) the cost of any Public Improvements or (iii) the acquisition
1057 of or the costs of improvements on the Single-Family Parcels.

1058

**ARTICLE XIII
AMENDMENTS**

1059

1060 The Village Board and Developer, by mutual consent, may amend this Agreement only
1061 upon entry into a subsequent written agreement approved at a meeting of the Village Board of
1062 Trustees for the Village of Elm Grove. The Village Board shall not, however, consent to an
1063 amendment until after first having received a recommendation from the Village Plan
1064 Commission in accordance with applicable Village ordinances.

1065

**ARTICLE XIV
NOTICE**

1066

1067 Any notice given hereunder shall be in writing and personally delivered, mailed by
1068 registered or certified mail, return receipt requested, or delivered via overnight courier: To the
1069 Village: Village Clerk, 13600 Juneau Blvd., Elm Grove, WI 53122 and to Developer: c/o
1070 Mandel/_____ Apartments LLC, 330 East Kilbourn St., Suite 600 South, Milwaukee, WI
1071 53202, Attention: Phil Aiello, with a copy to Foley & Lardner LLP, 777 East Wisconsin Ave.,
1072 Milwaukee, WI 53202, Attention: Candace Flatley. Any party may, by notice as provided
1073 above, designate a different address from time to time. Any such notice shall be effective on the
1074 date of receipt.

1075

**ARTICLE XV
DEFAULT BY DEVELOPER**

1076

1077 A. The failure of the Village to insist in any one or more instances upon performance
1078 of, or compliance with any term or condition of this Agreement shall not be construed as a
1079 waiver of future performance. The obligations of Developer with respect to such term, covenant
1080 condition shall continue in full force and effect.

1081 B. In addition to any other remedies otherwise provided under this Agreement or the
1082 Village Code of Ordinances, the Village shall have the right to withhold inspections and/or
1083 permits for the Apartment Project and when owned by the Developer or any affiliate of
1084 Developer, or if work is being performed thereon by Developer or an affiliate of Developer, then
1085 for the Single-Family Parcels, if such work or the applicable parcel on which the work is being
1086 performed is in default hereunder, and/or to bring an action in the Circuit Court for Waukesha
1087 County for violation(s) of this Agreement and shall be entitled to recover reasonable attorneys'
1088 fees from the defaulting Developer and any contractor in violation of any Village ordinance.
1089 However, at no time shall the owner of the Apartment Property or of any of the Single Family
1090 Parcels be responsible or liable for any act or omission occurring or omitted on non-owned real
1091 property.

1092 C. Notwithstanding anything to the contrary in this Agreement, if Developer fails to
1093 commence construction of the Apartment Project, the Village shall not have the right to seek or
1094 compel specific performance for the construction of said Apartment Project under this
1095 Agreement or to seek any costs or damages not set forth in this Agreement. For the avoidance of
1096 doubt and notwithstanding the foregoing, the Village shall have all of its rights and remedies
1097 under the Guaranty, the form of which is attached hereto as Exhibit 12.

1098

**ARTICLE XVI
PAYMENT IN LIEU OF TAXES**

1099

1100 At no time after the Effective Date, during the life of the TIF District and for ___ years
1101 thereafter may the Apartment Project be sold, transferred or conveyed to an entity whose real
1102 property is exempt from general property taxes, including a change in status for Developer,
1103 without that entity having first entered into an agreement with the Village to make an annual
1104 payment in lieu of taxes (“PILOT Agreement”) for an amount not less than the then fair market
1105 value of the Apartment Property times the annually approved Village mill rate for each year with
1106 the additional condition that no portion of the Apartment Project may be conveyed to any other
1107 subsequent tax exempt owner at any time without a similar pilot agreement being executed. The
1108 limitation of this Section XVI shall be a covenant running with the land and shall survive the
1109 termination of this Agreement.

1110

**ARTICLE XVII
MISCELLANEOUS PROVISIONS**

1111

1112 A. The Parties acknowledge and represent that this Agreement is the subject of
1113 negotiation by all parties and that all parties together shall be construed to be the drafter hereof
1114 and this Agreement shall not be construed against any party individually as drafter.

1115 B. Nothing in this Agreement shall be construed to create an employer/employee
1116 relationship, joint employer, a joint venture or partnership relationship, or a principal/agent
1117 relationship between the Village and Developer.

1118 C. This Agreement shall not be construed to abridge or waive the Village’s authority
1119 under Wis. Stat. §§ 61.35 and 62.23.

1120 D. The parties hereby acknowledge that this Agreement imposes on them, and their
1121 respective officers, agents, and employees, and successors and assigns a duty of good faith and
1122 fair dealing.

1123 E. Except as otherwise expressly provided in this Agreement, all guarantees,
1124 agreements, representations, and warranties made herein shall survive the execution of this
1125 Agreement and, as applicable, the completion of the Apartment Project. This Agreement shall
1126 be binding upon and inure to the benefit of the Parties their respective heirs, personal
1127 representatives, executors, or successors and assigns.

1128 F. Developer represents and warrants that it is a duly organized and validly existing
1129 limited liability company under the laws of the State of Wisconsin and that the execution and
1130 performance of this Agreement has been duly authorized by resolution or other required action as
1131 evidenced in Exhibit 19.

1132 G. This Agreement shall be recorded with the Register of Deeds for Waukesha
1133 County immediately following the recording of the deed for the Apartment Property from SSND
1134 to Developer and before the recording of any mortgage on the Property.

1135 H. All time periods referred to in this Agreement shall be calculated on the basis of
1136 consecutive calendar days.

1137 I. Upon the issuance of all required final occupancy permits for the Apartment
1138 Project, Developer shall be free to convey the Apartment Project, as a single undivided
1139 Apartment Property to a third party subject to the terms of this Agreement. In addition,
1140 Developer or a Developer affiliate may at any time convey either or both of the Single-Family
1141 Parcels as provided in Article IX. Notwithstanding the foregoing, Developer and any successor
1142 owners of the Apartment Property may collaterally assign this Agreement and Developer's rights
1143 to the TID Grant, MRO and MRO Note to Developer's construction lender or to other lenders for
1144 the Apartment Project following the passage of five (5) business days after informing the
1145 Village in writing fully about the terms and details of any such assignment but without obtaining
1146 the consent of the Village. In the event that such construction lender or any other lender
1147 forecloses on its collateral and succeeds to ownership of all or a portion of the Apartment
1148 Property, the Village shall fulfill its obligations hereunder provided that such construction lender
1149 or other lender assumes in writing all of the obligations of Developer hereunder, except as
1150 otherwise provided in Section XII.K. Any such lender shall have the right to cure any default by
1151 Developer hereunder within 60 days of commencement of any assumption by such lender of
1152 obligations under this Agreement if such default can reasonably be cured within that time frame
1153 or such longer period as may be reasonably necessary to accomplish such cure. Upon the sale or
1154 other conveyance of the Property or any part thereof, to any entity not affiliated with or
1155 controlled by the Mandel Group, Inc., Developer, and any other transferee, shall be released
1156 from its obligations hereunder with respect to such portion of the Property provided the
1157 Apartment Project has been issued a certificate of occupancy and provided the transferee
1158 assumes any ongoing obligations of Developer as to the parcel conveyed.

1159 J. The Village and Developer shall use good faith efforts to obtain approval of the
1160 Apartment Project-related assistance provided for herein from the Joint Review Board for the
1161 TIF District; but if such approval is not obtained by _____ 202_ then this Agreement shall
1162 terminate, in which event the parties shall have no further obligations hereunder.

1163 K. If this Agreement has not been terminated, then subject to the survival of those
1164 specific terms and provisions, if any, expressly stated to survive termination in this Agreement,
1165 including in particular Section IX.G. and Article XVI, this Agreement, except as to those
1166 surviving provisions, shall automatically terminate and be of no further force or effect upon the
1167 closing of the District. Upon termination as aforesaid, the Village agrees to execute and record
1168 in the Office of the Register of Deeds for Waukesha County a memorandum of termination of
1169 this Agreement, expressly setting forth the surviving provisions.

1170 L. Within ten (10) days after request therefor, the Village agrees to provide an
1171 estoppel certificate to Developer, its lenders, or any proposed purchaser of all or any part of the
1172 Property, or its lenders, stating that Developer is not in default hereunder or if Developer is in
1173 default hereunder setting forth any such defaults.

1174 M. In the event that any term or provision of this Agreement is determined to be
1175 invalid or unenforceable for any reason, then the other terms and provisions of this Agreement

1176 shall not be affected thereby and said terms and provisions shall remain in full force and effect,
1177 unless to do so would be inequitable to either party hereto.

1178 N. Village and Developer agree and acknowledge that certain of the Exhibits
1179 attached hereto are not yet final, specifically the Plans and Specifications, Proposed Water Main
1180 Layout and Estimated Water Main Costs, and that the legal descriptions will be based on a
1181 certified survey map before this Agreement will be recorded. The parties agree and the Village
1182 authorizes the Village President and Village Clerk to execute amendments to this Agreement to
1183 reflect the updated and final Exhibits when such final Exhibits are available.

1184

ARTICLE XVIII

1185 EXCULPATION OF VILLAGE ELECTED OFFICIALS IN PERSONAL CAPACITY

1186 The parties mutually agree that the President and Village Clerk of the Village of Elm
1187 Grove, entered into and are signatory to this Agreement solely in their official capacity and not
1188 individually, and shall have no personal liability or responsibility hereunder; and personal
1189 liability as may otherwise exist, being expressly released and/or waived.

1190

1191

[Signatures on Following Pages]

DRAFT

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

VILLAGE:

VILLAGE OF ELM GROVE

By: _____
Neil H. Palmer, Village President

ATTEST:

Michele Luedtke, Village Clerk

DRAFT

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 202_, the above-named Neil H. Palmer, 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 Elm Grove.

Subscribed and sworn to before me
this _____ day of _____, 202_.

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

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 202_, the above-named Michele Luedtke, 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 Elm Grove.

Subscribed and sworn to before me
this _____ day of _____, 202_.

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

[Signatures Continued on Next Page]

CONSENT

The undersigned, School Sisters of Notre Dame Central Pacific Province, Inc., hereby represents that it is the owner of the Single-Family Parcels (as defined in and legally described in the Development Agreement between the Village of Elm Grove and _____ Apartments LLC to which this Consent is attached [the “Agreement”]), and, as such owner, and subject to and in accordance with Section IX of the Agreement, hereby consents to the recording of the Agreement against the Single-Family Parcels as a covenant running with the land and a deed restriction and the applicable provisions of the Agreement to be binding on future owners of the Single-Family Parcels, and agrees during its ownership of the Single-Family Parcels to comply with and be bound by Section IX.B. of the Agreement.

School Sisters of Notre Dame Central Pacific Province, Inc.,
a Missouri nonprofit corporation

By: _____
Debra M. Sciano, SSND
President

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 202_, the above-named Debra M. Sciano, the President of School Sisters of Notre Dame Central Pacific Province, Inc., to me known to be the person who executed the foregoing acknowledged that she executed the same on behalf of School Sisters of Notre Dame Central Pacific Province, Inc.

Subscribed and sworn to before me
this _____ day of _____, 202_.

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

EXHIBIT 1
PROPERTY LEGAL DESCRIPTION

DRAFT

EXHIBIT 2
APARTMENT PROPERTY LEGAL DESCRIPTION

DRAFT

**EXHIBIT 3
RED BARN PARCEL LEGAL DESCRIPTION**

DRAFT

EXHIBIT 4
GREEN MEADOW PARCEL LEGAL DESCRIPTION

DRAFT

**EXHIBIT 5
PROPERTY REZONING MAP**

DRAFT

**EXHIBIT 6
TIF DISTRICT LEGAL DESCRIPTION**

DRAFT

**EXHIBIT 7
PLANS AND SPECIFICATIONS**

DRAFT

**EXHIBIT 8
PUBLIC IMPROVEMENTS**

DRAFT

**EXHIBIT 9
PROPOSED WATER MAIN LAYOUT**

DRAFT

EXHIBIT 10
ESTIMATED WATER MAIN COSTS

DRAFT

EXHIBIT 11
STORM WATER MANAGEMENT, FACILITY MAINTENANCE
AND EASEMENT AGREEMENT

DRAFT

EXHIBIT 12
GUARANTY THROUGH COMPLETION OF MINIMUM ASSESSED VALUE

DRAFT

**EXHIBIT 13
WALKING PATH EASEMENT**

DRAFT

EXHIBIT 14
FORM OF LETTER OF CREDIT

DRAFT

EXHIBIT 15
FORM OF SSND SINGLE-FAMILY PARCEL EASEMENT

DRAFT

EXHIBIT 16
SINGLE FAMILY PRELIMINARY PLATS

DRAFT

EXHIBIT 17
ELIGIBLE PROJECT COSTS SCHEDULES

DRAFT

EXHIBIT 18
MRO NOTE AND AUTHORIZING RESOLUTION

DRAFT

**EXHIBIT 19
DEVELOPER AUTHORITY**

DRAFT