

**AMENDED ANNEXATION AND DEVELOPMENT  
AGREEMENT BETWEEN THE VILLAGE OF PRAIRIE GROVE AND  
PRAIRIE GROVE 1078 SPE, LLC  
(WILDFLOWERS)**

April 17, 2007

## TABLE OF CONTENTS

	<b><u>Page</u></b>
Zoning .....	2
Preliminary Subdivision .....	2
Special Use .....	3
Development Matters .....	5
Applicability of Code/Definition .....	5
Maximum Number of Residential Units .....	5
Age-Restricted Units .....	6
Limitation on Annual Building Permits Issued or Prepaid .....	6
Development Phases .....	7
Roadways .....	8
Route 31 Improvements .....	9
Easements .....	10
Underground Utilities .....	10
Residential Landscape Plans .....	11
Fencing .....	11
Neighborhood Homeowner Associations .....	11
Master Owners Association .....	12
NOA/MOA Relationship .....	12
Final Restoration Plan -- Design .....	13
Final Restoration Plan -- Construction .....	13
Final Restoration Plan -- Maintenance .....	14
Final Restoration Plan -- Back Up SSA .....	14
Stormwater Management .....	14
Sanitary Sewer and Water .....	14
Construction Traffic .....	15
Sales, Construction and Storage Trailers .....	16
Model Home Sites .....	16
Mass Grading .....	17
Schedule of Development .....	18
Architectural Regulations .....	18
Issuance of Permits .....	18
Water Well Protection .....	18
Landscaping Code .....	18
Utility Construction .....	19
Metra Parcel .....	19
Name of Development .....	19
Recapture of Costs .....	19
Benefited Property .....	19
Reimbursement .....	19
Collection .....	19
Payment Before Connection Permit .....	20
Village Not Liable .....	20
Recording .....	20

Indemnity .....	20
Assignment of Collection Rights .....	20
Fees Payable and Donations to the Village .....	20
Annexation Fees .....	20
Local Government and School Impact Fees.....	20
Village Impact Fee .....	23
Municipal Property .....	24
Recapture Fees Due from Owner.....	26
Other Fees.....	26
Retained Personnel/Architectural Committee Fees.....	26
Letters of Credit .....	26
Sales Tax Rebates.....	27
Sale of Property.....	28
Consent of Lender and Subordination .....	29
Owner's Agreement not to Disconnect the Property .....	29
Village Ordinances .....	29
Ordinance and Codes Amendments.....	29
Codes.....	30
Less Restrictive Ordinances or Code .....	30
More Restrictive Ordinances or Codes.....	30
Default.....	30
Miscellaneous .....	31
Agreement Applies to All Property .....	31
Time is of the Essence .....	31
Term .....	31
Covenants Running with the Land .....	31
Mutual Assistance .....	31
Enforcement.....	31
Indemnification.....	32
Notices .....	32
No Waiver.....	32
Recording .....	33
Severability.....	33
Conflicts .....	33
Amendment.....	33
Entire Agreement .....	33
Prior Agreements .....	33
Waiver of Liability .....	33
Authority to Execute Agreement .....	34

This Amended Annexation and Development Agreement, collectively with exhibits attached hereto ("2007 Agreement") is entered into this 17<sup>th</sup> day of April, 2007, by and between the Village of Prairie Grove, an Illinois Home Rule municipal corporation ("Village" or "Village Board") and Prairie Grove 1078 SPE, LLC, a Delaware limited liability company as Assignee of WS Land Partners - Prairie Grove II, LLC., an Illinois limited liability company ("Owner"):

Recitals

A. On December 12, 2005 the Village and Owner entered into an Annexation and Development Agreement ("2005 Agreement") relating to approximately 1,077 acres of land all currently within the corporate limits of the Village generally located on the east and west sides of Illinois Route 31 legally described on Exhibit A attached hereto ("Property"). On or about December 12, 2005, the Property was also annexed to the Village.

B. Owner currently holds title to all of the Property.

C. The 2005 Agreement is hereby amended and restated in its entirety, effective as of the date hereto. This 2007 Agreement shall relate back in time to the 2005 Agreement and have the same priority as the 2005 Agreement in every respect with respect to any deed, mortgage, trust deed or other instrument recorded against the Property or any portion thereof.

D. It is in the best interests of the Village and Owner, and in furtherance of the public health, safety, comfort, morals and welfare of the community, to execute and implement this 2007 Agreement and such implementation of this 2007 Agreement and development of the Property pursuant hereto will further the orderly growth, planning and development of the Village, increase the tax base of the Village and create housing, job and economic growth within the Village while preserving environmental values.

E. All notices required by law have been made in accordance with applicable law.

F. Prior to the date of this 2007 Agreement, all required public hearings were held upon proper notice and publications.

G. This 2007 Agreement is made pursuant to 65 ILCS 5/11-15.1-1, et seq. and Section 10 of Article VII of the Constitution of the State of Illinois, the home rule powers of the Village. The parties desire that the Property be zoned and developed within the corporate limits of the Village, subject to the terms and conditions as hereinafter set forth.

NOW THEREFORE, in consideration of their respective agreements made herein, the adequacy and sufficiency of which is acknowledged as being received by the parties hereto, the Village and Owner hereby agree as follows;

1. **Zoning.** Immediately following approval of the execution of this 2007 Agreement, the Village shall adopt an ordinance approving the zoning classifications of the Property in accordance with the zoning map and legal descriptions attached hereto as Exhibit B. Any future zoning reclassification of the Property shall require amendment of this 2007 Agreement.

2. **Preliminary Subdivision.** Except as specifically referenced in this 2007 Agreement, and subject to full compliance with the Village engineer's four (4) page letter to the Village administrator dated April 13, 2007 prior to final development plan and subdivision plat approvals, the Preliminary Plat of Subdivision requirements of the Village Subdivision Control Ordinance, relative to the Property, has been satisfied by the Village's approval of the Preliminary Development Plan referenced in Section 3a, below. In addition, any reference in this agreement to the Preliminary Development Plan shall be equivalent to the term Preliminary Subdivision Plat. However, Owner acknowledges that base flood elevation engineering studies of the Property ("BFE Studies") have not been completed and certain areas are subject to flood risk ("BFE Areas"). These BFE Areas being reviewed are outlined in yellow on the Preliminary Development Plan. Village Approval of the Preliminary Development Plan is subject to the final establishment of these BFE Areas prior to approval of the First Final Plat of Subdivision evidenced by letters indicating acceptance of such BFE Studies from the Village engineer, McHenry County and the IDNR/OWR, as applicable.

a. In the event that the limits of the BFE, based on the pending BFE studies, affect any lots within the Property, except as specifically stipulated below for BFE areas 1, 2 and 3, shown on the Preliminary Development Plan rendering part or all of the lots unbuildable, these lots shall be deemed unbuildable, without amendment of the Preliminary Development Plan.

b. With respect to BFE Areas 1,2 and 3 referenced on the Preliminary Development Plan, the Owner shall have the right, depending on the configuration of the limits of the BFE, to alter the limits of the BFE without amending the Preliminary Development Plan, in the event this can be done in compliance with applicable Village ordinances and this 2007 Agreement. Any necessary amendments to the Preliminary Development Plan shall occur prior to any First Final Subdivision Plat Approval. Variances will not be allowed in order to meet floodplain compensatory storage, detention storage or parking requirements.

c. With respect to the BFE Area on the Preliminary Development Plan referenced as BFE Area No. 2, Owner shall eliminate this BFE area by providing compensatory storage off site of that part of the property designated for ownership by the Village.

d. With respect to the BFE Area on the Preliminary Development Plan referenced as BFE Area No. 3, Owner shall eliminate the BFE area by providing compensatory storage so long as the net acreage outside the post mitigated BFE area is not less than 19 acres. The limits of the BFE may extend into the proposed Metra parking

lot area to a maximum flood depth of 9-inches, provided, however, the applicable recorded covenants shall prohibit resurfacing that would result in an increased elevation.

3. **Special Use.** Following execution of this 2007 Agreement, in conjunction with zoning approval, and subject to full compliance with the Village engineer's four (4) page letter to the Village Administrator dated April 13, 2007 prior to final planned development and final subdivision plat approval, the Village shall adopt an ordinance approving Owner's petition for a special use for planned development approval of the Property consisting solely of the following plans:

a. Preliminary Development Plan, referred to as "Planned Development Plan", consisting of 9 pages, prepared by Greengard, Inc. and dated April 6, 2007.

b. Preliminary Subdivision Plat, consisting of 9 pages, prepared by Greengard, Inc. and dated April 6, 2007. The parties agree that the final subdivision plat of neighborhood 2A shall be adjusted to provide and show the north lot line of lot number 24 parallel with the north lot line of the current lot number 25 while still meeting the Bulk Regulation requirements. This may result in the elimination of lot number 24.

c. Preliminary Development Plan Bulk Regulations Chart prepared by Greengard, Inc. and dated April 2, 2007. The parties agree that the final development plan of neighborhood 2A shall be adjusted to provide and show the north lot line of lot number 24 parallel with the north lot line of the current lot number 25 while still meeting the Bulk Regulation requirements. This may result in the elimination of lot number 24.

d. Neighborhood delineations and legal descriptions consisting of 1 page, prepared by Greengard, Inc. and dated August 14, 2006.

e. Master Sanitary Sewer Plan prepared by Greengard, Inc. and dated March 21, 2007.

f. Master Water Plan prepared by Greengard, Inc. and dated March 21, 2007.

g. Preliminary Sanitary and Water Plan, consisting of 4 pages, prepared by Greengard, Inc. and dated April 6, 2006, sic (should be April 6, 2007).

h. Overall Stormwater Management Plan, prepared by Greengard, Inc. and dated October 16, 2006.

i. Typical Road Cross Sections prepared by Greengard, Inc. and dated March 20, 2007.

j. Overhead Utility Plan prepared by Greengard, Inc. and dated March 20, 2007.

k. Preliminary Street Lighting Plan, consisting of 2 pages, prepared by Greengard, Inc. and dated March 21, 2006.

l. Residential and Commercial Architectural Guidelines prepared by Houseal and Lavigne and dated March 5, 2007.

m. Wildflowers Preliminary Restoration Plan, referred to as "Terra Cotta Preliminary Restoration Plan (including a 1 page drawing and 19 pages of text) prepared by Applied Ecological Services, Inc., dated March 28, 2007.

n. Typical Residential Landscape Specifications for 10,000 and 7,500 square foot Single-Family Lots and attached product prepared by Westminster Swanson and dated February 2007.

o. Playground equipment drawing dated 2007.

p. Trails exhibit last dated April 12, 2007.

The parties acknowledge that the documents referenced in paragraphs 3e through and including 3m, 3o and 3p collectively constitute preliminary engineering submittals in compliance with the Village Subdivision Control Ordinance. The playground equipment drawing is provided for illustration only and the design, layout and quality of the actual play equipment provided by the Owner shall be subject to Village Board approval. The typical residential landscape specifications shall be integrated with and consistent with the restoration planting provided in the open space, following consultation with the Owner and Village landscape architect.

The Property shall be developed in substantial compliance with the terms of this 2007 Agreement and with the plans hereby approved. All of the Neighborhood parcels of Property shall only be developed as final Planned Developments pursuant to the Planned Development provisions of the then existing Village Zoning and Village Subdivision Control Ordinances not in conflict herewith and pursuant to the terms of this 2007 Agreement. Neighborhood 5 and all of the commercially zoned parcels of the Property are subject to further preliminary and final Planned Development approval by the Village. Any variation from the Village Zoning Code evidenced by the plans, specifications and guidelines described in Sections 2 and 3 of this 2007 Agreement shall not require any additional approval by the Village.

Prior to issuance of any construction permits for Neighborhood 5, all such lots, streets and final engineering shall be completed in accordance with all applicable codes and this 2007 Agreement, all of the uses in Neighborhood 5 shall be age restricted residential, and adequate provisions shall be made for the connection of sewer and water utilities between the east and west boundaries, and adequate easements approved by the Village and for a lift station to serve other neighborhoods within the Property. Provided, however, it is anticipated that sewer and water mains shall be installed across Neighborhood 5, prior to platting of lots therein, to provide service to other neighborhoods. This shall be permitted subject to reasonable Village engineering approval.

4. **Development Matters.**

a. Applicability of Code/Definition. Except as specifically provided for in this 2007 Agreement, all provisions of the Village Code, as amended from time to time, shall apply to development of the Property.

b. Maximum Number of Residential Units. As part of the Village's approval of the Owner's Planned Development in Section 3, above, the parties agree that, notwithstanding permissible uses and regulations under Village ordinances, the permissible uses and maximum number of new residential dwelling units constructed on the Property (including single-family attached and multi-family dwellings) shall be permitted up to but not exceed a total of one thousand three hundred fifty-eight (1,358) and shall be specifically allocated per Neighborhood and regulated by the limitations depicted and specified on the Preliminary Development Plan Bulk Regulations Chart. This chart specifies the maximum number of lots for each Neighborhood.

Provided, however, the total number of permitted residential units of 1,358 may be increased as follows:

(i) In the area designated ("Town Center") on the Preliminary Development Plan, Owner may be permitted to construct additional multi-family residential units above first floor commercial or office uses within the Town Center. However, the number, layout and location of these additional residential units shall be subject to future Preliminary and Final Planned Development approval by the Village;

(ii) Not more than fifty-nine (59) row houses shall be permitted within the area of the Town Center designated on the Preliminary Development Plan as "42 row houses to be submitted with Town Center Plan" and within Neighborhood 4b designated "Lots 1-17 are subject to the approval of the Town Center Plan." These 59 row houses shall be permitted subject to Village Board approval of the Final Planned Development submittals for development of both these areas. In addition, these fifty-nine (59) row houses shall not be permitted until a point in time after the first building permit is issued for a commercial structure within the Town Center area designated on the Preliminary Development Plan; and

In addition, a maximum of 343 residential dwelling units shall be permitted within Neighborhood 5, in accordance with future Preliminary and Final Planned Development approval of this Neighborhood by the Village and up to 85 of these units (25%) may consist of attached residential product design. The remaining 258 units shall consist of single family detached housing designs.

The parties agree that any specification appearing on the Preliminary Development Plan shall control over any contrary provision of this 2007 Agreement or any Village Ordinance. Any modification of the Preliminary Development Plan shall require an amendment of this 2007 Agreement. Under no circumstances shall Owner

submit plats of subdivision or Planned Developments for approval by the Village outside the specifications of the Preliminary Development Plan and the additional units described in this subparagraph 4b or depicting more lots to be created for residential dwelling units within each parcel than the maximum numbers indicated on the Preliminary Development Plan Bulk Regulations Chart. For purposes of this paragraph, each residential dwelling unit within each multi-family structure shall be counted toward the maximum number of residential dwelling units allowed herein.

c. Age-Restricted Units. The age restricted units permitted for development in Neighborhood 5, shall be operated pursuant to the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.* and the Federal Fair Housing Law, 42 USC 3601, *et seq.* (and more particularly 42 USC 3604, 3607 (b)(1) and 3607 (b)(2)). Covenants and/or other legal documents as required by the Village Attorney, to insure that this housing occupancy is limited to persons over age 55, shall be provided to the Village, as part of the final subdivision plat approval and be recorded with the final plat of subdivision. Such documents must receive Village approval for recording to assure that the representations and agreements of the Owner are implemented and enforceable.

In addition, all relevant plats of subdivision and Planned Developments shall include language, which clearly indicates that the development is age-restricted to persons fifty-five (55) years of age or older. The age-restricted language shall also be included in all deeds conveying title to lots in the development, or by reference to recorded covenants containing such restrictions.

d. Limitation on Annual Building Permits Issued or Prepaid. Exclusive of units in Neighborhoods 4a, 4b, 5, 6a and 6b, as depicted on the Preliminary Development Plan ("Excluded Neighborhoods") the maximum number of new residential building permits issued by the Village or prepaid by the Owner each calendar year (commencing with January 1 in the calendar year the first building permit is issued) during the term of this 2007 Agreement within the Property shall not exceed a total of 150. Of the 150 building permits authorized, not more than 50 per year shall be issued within the corporate limits of School District 46. The Owner has the right to prepay building permits each year so long as the total number of building permits issued and prepaid each calendar year does not exceed one hundred fifty (150) (in addition to any permit issued for the Excluded Neighborhoods), which shall have the effect of fixing the building permit fee at the then current rate, without any liability for payment of any increases in such amounts during the year for which the permits are prepaid. The Village retains the right to otherwise increase its fees, including building permit fees reasonably related to the cost of such building reviews and so long as the Village uniformly enforces any such fee, subject to limitations provided in this 2007 Agreement.

#### Banked Permits

To the extent that building permits are not issued or prepaid, the balance of building permits available for that calendar year shall carry over to the following calendar year, provided that the number of units carried over shall not exceed 50. Notwithstanding the terms of the preceding sentence, a maximum of 50 lots during the term of this 2007

Agreement may be carried over from territory within the jurisdiction of School District 46. The maximum number of building permits allowed each calendar year as provided in this paragraph may be increased at the request of Owner with Village Board approval. Any additional or subsequent building permits issued in connection with a residential dwelling unit or building for which a building permit has already been issued (e.g., a subsequent building permit issued to build an addition to an existing home) shall not be counted toward the maximum numbers of permits above. Notwithstanding the provisions of the immediately preceding paragraph, for each permit issued after the 150<sup>th</sup> in any calendar year, for any type of unit within the Property, including the Excluded Neighborhoods (a) if the Village uses its own staff to review such permits, there shall be due from the Owner the additional building permit fee of \$350.00 per residential unit, and (b) in the event the Village retains third party inspection consultants in order to timely process the permits, the building permit fee shall be increased by the amount of reasonable third party costs to the Village upon presentation to the Owner of documented expenses.

e. Development Phases. The Neighborhoods of the Property depicted on the Preliminary Development Plan may be developed in final plats of subdivision known as "Phases" in accordance with planned development submittals and preliminary plats of subdivision approved for each Phase in accordance with applicable Village ordinances. All proposed street connections between Neighborhoods and Phases requires the reasonable approval of the Village Engineer. The first final plat of subdivision shall be submitted no later than twelve (12) months from the date of the preliminary subdivision plat approval. To the extent allowed by law, this twelve (12) month limitation shall be extended for one additional consecutive 12-month period of time, if such first final plat of subdivision has not been submitted to the Village. Subsequent Phases shall proceed as economic circumstances dictate. For each Phase being developed, the Owner shall construct and install as part of such Phase all necessary on-site and off-site infrastructure which is needed, as reasonably determined by the Village Engineer, to service such Phase, such as retention or detention ponds, streets or extension of utility lines, even if such improvements are not within the Phase being developed. Each Phase being developed need not be comprised of a single product area or zoning district and multiple zoning areas, and/or a portion of a single project or zoning area may be developed as a Phase.

Owner intends that each Phase may be owned and developed by permitted assignees or grantees of Owner (each of whom shall also be deemed an Owner for the purposes of this 2007 Agreement), but that each Owner will own and develop subject to the terms and conditions of this 2007 Agreement. Owner shall have the right to sell any Phase to another Purchaser subject to the "Sale of Property" provisions below, as long as a reasonable Phasing plan is approved by the Village Board providing for an orderly means to install all required infrastructure for each Phase, and which does not unduly burden other Phases as to make them unmarketable (for which reimbursement agreements may be necessary and to which the Village reasonably approves).

The Village shall permit deferral of submission of the following items from preliminary plan to the final plan and subdivision plat for each planned development: Ch 21, Article VI, Section 6.6 C (4) (b) subsections (v)(existing topography and proposed

grading -- proposed grading only), (ix)(proposed lotting and footprints of all non-residential structures), (x)(maximum lot coverage by buildings and other impervious surfaces, for all uses within the planned development), (xi) (off-street parking and loading areas, including number and dimensions of parking spaces, drive aisles, and loading zones -- residential only) and (xv) (proposed phasing); (c)(grading plan); (d)(landscape plan); (f)(development schedule); (g)(architectural drawings); and (h)(protective covenants). The Village shall allow the deferral of these same or similar items for any Neighborhood processed solely pursuant to the Subdivision Ordinance.

The Village hereby waives compliance with the following sections of the Village Subdivision Control Ordinance, 22.03C.10.s (proposed phasing of the development); 22.03C23 (school impact study); and 22.03C.24 (tax impact study).

f. Roadways. At a time reasonably determined by the Village Engineer, the Owner, at its cost, shall design and construct or reconstruct all streets and other public improvements within the Neighborhood or Phase being platted and off-site roadways required for access to the Neighborhood being platted. All roads within the Property, except those in Neighborhoods 6a and 6b, shall be classified and constructed (or reconstructed) to the cross sections shown on the Typical Road Cross Section referenced in paragraph 3, above, and applicable ordinances not in conflict herewith. The cross section of roads in Neighborhoods 6a and 6b shall be determined at the time of planned development. The cross section of local and minor streets shall be a 60-foot right of way and otherwise constructed in accordance with applicable subdivision control ordinances. All pavement design criteria shall conform to subdivision code standards at the time of construction. To secure construction and maintenance of said public roads, the Owner shall file with the Village, or other applicable governmental entity, prior to final subdivision plat approval for each Phase, a letter of credit pursuant to the requirements of Section 7 of this 2007 Agreement. This letter of credit shall apply for those public roadways and public improvements within the Phase being platted and those roadways and public improvements reasonably determined by the Village Engineer that are necessary to adequately service the proposed platted Phase.

The Owner shall provide access to each residential unit. Except for Neighborhoods 4, 5, 6a and 6b any street right-of-way within the Property not already dedicated at the time of this 2007 Agreement shall be dedicated to the Village as a public right of way in fee simple title to the width described in the preceding paragraph and as depicted on all final plats of subdivision or planned developments approved by the Village.

Recapture of costs incurred by the Owner for improvements made to Ames Road, Edgewood Road and Gracy Road shall be allowed as reasonably determined by the Village Engineer. The benefited properties are anticipated to include the Segalla and Teitjen parcels with current property index numbers of 14-15-400-003, 14-14-300-002, 14-23-101-002, and 14-23-101-003

The Owner shall not be obligated to pay any road improvement costs not specifically set forth in this 2007 Agreement.

In lieu of Owner's improvement of Barreville Road (north of its intersection with Nish Road), Owner shall pay to the Village at the time of the recordation of the first final subdivision plat the sum of \$175,000 in complete satisfaction of any impact or other expense for improvement or reconstruction of Barreville Road, including the burying of any utility facilities or structures thereon.

The Village shall coordinate with Owners the timing of any maintenance performed by the Village on that portion of Barreville Road south of Nish Road in which sanitary sewer or water construction work is needed to serve the proposed Tall Grass development.

g. Route 31 Improvements. Owner shall pursue, in good faith, at its cost, the design, permitting and construction of the permanent roadway and intersection (including traffic signal) improvements to Illinois Route 31 between and at the intersection of Route 31 and Gracy and the intersection of Route 31 and Edgewood, including any extensions needed to taper the roadway to the width of Route 31 north and south of these intersections, as required by the IDOT, to be implemented upon the first of the following conditions to occur, subject to IDOT approval:

- (i) Building permits are issued for a combined 300,000 square feet of development on the commercially zoned property;
- (ii) The Illinois Department of Transportation begins construction of an "add-lanes" project adjacent to and north and south of the commercially zoned portion of the Property;
- (iii) 75% of the total residential building permits for the Property are issued;
- (iv) Required traffic warrants being met at either of the above referenced intersections;
- (v) A building permit issued for the construction of METRA train station facility; or
- (vi) If none of the above events, i) through iv) occur prior to January 1, 2009, the good faith planning and construction of said permanent roadway improvements shall be commenced no later than January 1, 2010 .

Upon approval by IDOT, Owner shall construct a minimum of a five-lane improvement on Illinois Route 31, along with necessary stormwater detention, to IDOT standards and, as part of any final subdivision plat approval, dedicate the additional right of way, such that when added to existing right of way, results in a one hundred and twenty (120) foot right-of way on Illinois Route 31 to accommodate the expansion. In addition, any improvements, roadway or otherwise, shall be fully compatible with the McHenry County Division of Transportation's "Illinois Route 31 McHenry County Bypass Feasibility Study and Final Report" prepared by Mactec Engineering and Consulting, Inc., dated

April 1, 2004 and any subsequent updates which have an equivalent or lesser impact on developable land within the Property than the existing report. In addition, Owner shall provide the Village with a fifteen (15) foot grading and drainage easement contiguous to the east and west sides of said right of way.

To secure Owner's obligation to construct said permanent roadway improvements, Owner shall file with the Village, prior to January 1, 2010 or commencement of off-site roadway design, whichever occurs earlier, a letter of credit, pursuant to Section 7, below, in the amount of \$2,000,000. Upon IDOT issuing a permit for the Route 31 Improvements referenced herein, this letter of credit shall be reduced accordingly.

Provided, however, notwithstanding anything to the contrary herein, Ames Road, at its current Route 31 intersection shall not be closed at Edgewood until a traffic signal is installed and operating at the proposed four-way intersection of Edgewood and the newly constructed/rerouted Ames Road.

h. Easements. The Owner shall grant to the Village such easements requested by the Village from time to time in locations agreed upon by the Village and the Owner. Utility easements for public sewer or water facilities shall be located within public rights-of-way and/or open or common space areas within the Property only upon execution of Franchise Agreements, by utility owners, with the Village Board and in compliance with applicable regulations reasonably adopted by the Village from time to time.

The Village shall cooperate with Owner in obtaining all easements necessary to, and shall grant Owner reasonable access to all Village-owned rights of way to enable Owner's provision of sanitary sewer service to the Property, if needed. The Village agrees to exercise its powers of eminent domain, subject to applicable law, to acquire any easements reasonably needed between the Property and the sewer plant and/or water source(s) in order to construct, use, operate, repair, maintain, replace and/or remove sewer and water utility facilities, for the purpose of supplying utility service to the Property by third parties with whom the Village has executed franchise agreements. The locations for any easement routes subject to condemnation shall be approved by the Village provided they provide a continuous and substantially direct route to the Property and are cognizant of engineering considerations. The Owner shall reimburse the Village for all attorneys fees, expert fees and other costs related to any such condemnation.

i. Underground Utilities. Owner shall bury or leave in their current condition all existing public utilities, cable lines and conduits in accordance with the Overhead Utility Plan referenced in paragraph 3, above. All new public utilities, cable lines and conduits shall be buried underground. The term "bury" shall mean placement underground by open trench cutting and not auguring. The determination by the village as to whether to leave existing utilities in place or trench in utilities shall balance the need for underground placement against preserving the rural character of the roadway and the effect that trenching will have on tree canopies and understory. The Village shall use its best efforts and will cooperate with Owner, at no cost to the Village, (including the enforcement of franchise agreements to this effect and consultation with the Illinois

Department of Transportation officials) to cause utility companies to relocate their facilities at utility company expense upon any widening of Route 31.

j. Residential Landscape Plans. Prior to issuance of occupancy permits for each of the residences constructed within the 10,000 and 7,500 single family neighborhoods, each shall have installed the minimum landscape plantings specified in the Typical Landscape Plan. In addition, prior to each Final Subdivision Plat approval, for all other neighborhoods except the 30,000 square foot lots, Owner shall provide, for Village Board approval, a detailed site landscape design typical for each Neighborhood showing a balance mix of canopy trees, ornamental, evergreen trees, deciduous evergreen shrubs, ornamental grasses, perennials and ground covers. The balance of plant material shall provide both for variety, seasonal and visual interest throughout the year and plant materials shall consist of hardy, non-invasive indigenous species that historically thrive in the regional climate of the Village ("Minimum Landscape Specifications"). Prior to issuance of each building permit for residential structures within Neighborhood 1, the Owner shall provide, for Village Board approval, a landscaping plan.

k. Fencing. No above-ground fencing of any type shall be permitted any where on the Property, except in accordance with the Village Code or as otherwise specified in this 2007 Agreement. Fencing or other screening approved by the Village shall be constructed to screen residential and commercial garbage coral areas and loading docks.

l. Neighborhood Homeowner Associations. Prior to any final subdivision plat approval, Owner shall provide, for Village Board approval, a Declaration of Covenants and Restrictions ("Covenants") to be recorded against the Neighborhood being platted by the Owner at the Owner's cost. The Covenants of each neighborhood owners association ("NOA") shall be consistent with the covenants of the Master Owners Association (MOA") referenced below. If the Neighborhood is platted in Phases, the Covenants shall be recorded against each applicable Phase as each Phase is recorded (or by recording a supplement to the Covenants binding each additional platted area to its terms). If the Phases involve a different product type, different owners or a different form of ownership (such as a condominium) there may be more than one form of Covenants for the Neighborhood. In any case however, any Covenants shall provide for the creation of a common area association, assessment of properties to cover expenses of the association, the performance of maintenance for common areas within its association and payment of dues toward the maintenance of common areas within the MOA referenced below and provide that the Village shall have the right but not the obligation to construct and maintain the neighborhood common open space ("NCOS") of the respective neighborhoods in the event the NOA fails to do so. Each NOA shall be responsible for maintenance of all NOA common areas designated on the relevant Final Subdivision Plats and property to which it owns in fee title, property for which it has been granted a maintenance or landscape easement, property in rights-of-way for which the association has been given maintenance responsibility, and specifically without limitation, trails, miscellaneous swales and possibly some retention or detention ponds and sedimentation basins designated by the Village. All NCOS areas shall be conveyed to

the relevant NOA in fee simple title. All common areas shall be free of all liens and financial encumbrances (other than taxes) at the time of conveyance.

m. Master Owners Association. Prior to any Final Subdivision Plat approval, Owner shall, at its expense, establish a Master Owners Association ("MOA") approved by the Village Board including Declaration of Covenants and Restrictions ("Covenants") to be recorded against the Property. The MOA may consist of property owners within the Property or a public entity such as the McHenry County Conservation District. The purpose of the MOA is to hold title to and perpetually maintain the master common open space ("MCOS") designated on the relevant Final Subdivision Plats and all designated retention or detention ponds and sedimentation basins. The Covenants shall provide for the creation of a master common area association, assessment of each NOA to cover expenses of the MOA, the performance of maintenance of the MCOS referenced on the Preliminary Development Plan and Preliminary and Final Restoration Plans and further provide that the Village shall have the right but not the obligation to construct and maintain the MCOS in the event the MOA fails to do so. All MCOS areas shall be conveyed to the relevant MOA in fee simple title and shall be free of all liens and financial encumbrances (other than taxes) at the time of conveyance.

n. NOA/MOA Relationship. Prior to any Final Subdivision Plat approval, the Owner and Village shall (1) agree upon and designate on the Preliminary Subdivision Plat, or other drawing, the specific location of all NCOS areas and MCOS areas and (2) agree upon and record NOA and MOA declaration of covenants, conditions and restrictions ("CCR's"), in compliance with this 2007 Agreement. The CCR's shall fully address the following goals throughout the NCOS and MCOS areas:

- (i) Consideration of the NCOS and MCOS areas as a whole.
- (ii) Provide for science based stewardship of the NCOS and MCOS areas.
- (iii) Detail adequate funding for successful NCOS and MCOS management, including capital contributions and monthly assessments.
- (iv) Provide for the creation of management structure(s) to insure continual management involvement during owner buildout and transfer of the property, with minimal impact on the Village.
- (v) Provide procedures for acceptance and compliance with the CCR's by the NOA and MOA and their membership.

Within ninety days of executing this 2007 Agreement, Owner shall provide to the Village a timeline reasonably acceptable to the Village, including significant milestones to implement completion of its obligations set forth in this subparagraph 4n, including, but not limited to, Owner's response to the Terra Cotta open space management strategy memorandum dated December 12, 2006, requiring open space ownership/maintenance scenarios workshop, third-party make-up/role/authority workshop and site tour with designated parties.

o. Final Restoration Plan -- Design. The Final Restoration Plan shall be in substantial compliance with the Preliminary Restoration Plan and shall be approved by the Village Board prior to any final subdivision plat approval of the Property. The final restoration plan shall include the following:

- (i) Detailed plans and specifications for construction and long-term maintenance of the NCOS and MCOS .
- (ii) Continuity of design construction and maintenance of the open space throughout all NCOS and MCOS areas.
- (iii) The same standards for all NCOS and MCOS areas.
- (iv) Cross access easements across the NCOS and MCOS areas.
- (v) Provide legal enforcement and implementation of covenants securing construction and maintenance of the NCOS and MCOS areas.

p. Final Restoration Plan -- Construction. Construction of designed and specified NCOS and MCOS areas shall be completed by Owner in accordance with a phasing plan prepared by Owner and approved by the Village. The phasing plan shall be completed prior to approval of the Final Restoration Plan. Owner shall provide to the Village, for Village Board approval, an estimate of construction of the NCOS and MCOS pursuant to the phasing plan and Final Restoration Plan. Prior to any Final Subdivision Plat and consistent with the approved phasing plan, Owner shall file with the Village Clerk a letter of credit, pursuant to paragraph 7, below, securing completion of construction of the NCOS and MCOS. The contractor(s) retained by Owner to construct the MCOS and NCOS shall possess the following minimum qualifications, proof of which shall be filed with the Village Administrator before construction takes place:

- (i) Minimum of ten years open space restoration experience.
- (ii) Successful history of open space restoration projects of 300 acres or greater.
- (iii) Successful history of providing open space restoration education to homeowner associations, reporting to development management companies, municipalities and other organizations during open space restoration projects.
- (iv) Possess a performance bonding capacity for the open space restoration project for the Property referenced in this 2007 Agreement.
- (v) Employment of a qualified ecologist possessing the required technical experience to oversee and insure that the open space restoration work is performed to the standards required in this 2007 Agreement.

q. Final Restoration Plan -- Maintenance. Prior to approval of any Subdivision Plat the Owner shall submit for Village Board approval, a maintenance plan relating to the NCOS and MCOS including sufficient scheduled assessment of property owners to cover the expenses associated therewith. This maintenance plan shall provide for an annual budget and pro forma of projected income. All maintenance of the NCOS and MCOS shall be performed by contractors possessing the following minimum qualifications, proof of which shall be filed with the Village Administrator before release of any retention funds or security to Owner and prior to maintenance being performed:

- (i) Minimum of ten years open space maintenance experience.
- (ii) Successful history of open space maintenance projects of 300 acres or greater.
- (iii) Successful history of providing open space restoration education to homeowner associations, reporting to development management companies, municipalities and other organizations during open space restoration projects.
- (iv) Employment of a qualified ecologist possessing the required technical experience to oversee and insure that the open space restoration maintenance work is performed to the standards required in this 2007 Agreement.

r. Final Restoration Plan -- Back Up SSA. Prior to any final subdivision plat approval, the Village shall establish a special service area district, pursuant to 35 ILCS 200/27-5, et seq., covering all of the Property as a back up to secure performance of the obligations and responsibilities of the MOA and NOA. The purpose of the SSA is to provide the Village with necessary funds in the event it provides construction or maintenance services to the MCOS or NCOS. The Village shall, in its sole discretion, exercise its right to maintain the MCOS and NCOS areas in the event the MOA or NOA fail to do so, following written notice from the Village to the relevant association, with a reasonable opportunity to cure any failure. The Owner shall not file an objection, pursuant to 35 ILCS 200/27-55, or otherwise to the creation of said special service area.

s. Stormwater Management. Owner shall comply with the standards set forth in the Village Stormwater Management Ordinance.

t. Sanitary Sewer and Water.

- (i) The Property shall be developed with sanitary sewer and water utilities operated by private companies serving members of the public. Septic Systems and individual private wells shall be prohibited on the Property. All sanitary sewers and potable water lines shall be installed in locations as approved by the private water and sewer company and upon the reasonable approval of the Village Engineer, which approval shall not be unreasonably withheld or delayed. Franchise agreements shall be entered into between the Village and the owner or operator of the water and

sewer facilities prior to submission of any proposed final plat of subdivision or planned development for Village Board approval wherein said facilities are proposed to be located within the public right-of-way. The Village and the Owner will work together in good faith to secure the franchise agreements. All such improvements constructed by the Owner shall be conveyed to the owner and operator of the sanitary sewer and water systems after testing, inspection and approval by the Village to insure that construction meets Village codes and prior to final acceptance of the development. Provided, however, the inspection by the Village shall be limited to observation duties during construction of the improvements to verify compliance with the approved plans, specifications, Standard Specifications for Sewer and Water Main Construction in Illinois and the Recommended Standards for Sewage Works in accordance with the applicable IEPA permits. Letters of credit pursuant to the provisions of Paragraph 7 herein and the Village's Subdivision Control Ordinance shall be required to secure completion of such private improvements. With regard to securing proper construction and installation of the water and sewer improvements servicing the Property, duplicate letters of credit shall not be required. The security may be issued in favor of the Village or the ultimate operator of the systems. The form, amount and institution upon which any letter of credit is drawn are subject to the reasonable approval by the Village attorney and consulting engineer.

(ii) Owner shall pay for its usage of the sewer and water system required to service development of the Property to the private owner and operator thereof. There shall be no Village tap on, user or other fees payable by Owner for connection to the sanitary sewer and potable water lines serving the Property or otherwise. The Owner hereby indemnifies the Village for all related costs imposed by the owner and operator of the wastewater treatment and potable water plants and collection systems. In the event the Village inspects utility connections, a Village fee may be charged under the franchise agreement.

(iii) All existing and future sanitary sewer and potable water mains shall be considered permitted uses on the Property, so long as the improvements are in locations and constructed in accordance with applicable Village Franchise Agreements, approved master utility plans and with the written approval of the Village's Engineer which approval shall not be unreasonably withheld. The Village will not object to the collection from bulk purchasers or individual lot owners a fee to reimburse Owner for any costs advanced for the construction of the sewer and water systems.

u. Construction Traffic. Prior to each final subdivision plat approval, the Owner and Village Board shall agree upon the location and duration of construction traffic routes on and off-site of the parcel being proposed for approval. Unless authorized by resolution of the Village Board, all construction traffic traveling to the Property shall utilize State Route 31 and not Barreville Road. Construction traffic on Barreville Road and

Edgewood Road, west of Route 31, to the limit of the Village corporate boundary shall be prohibited unless separately authorized by Resolution of the Village Board. Provided, however, in the event IDOT does not allow access to portions of the Property, access via Edgewood Road shall be permitted by the Village and any damage to the road caused by construction traffic shall be repaired by Owner,. The Village reserves all rights to adopt ordinances to enforce construction routes. The Owner shall file a road repair letter of credit with the Village to insure the Owner's repair of damage to streets within the Village caused by construction trucks. The duration of the letter of credit shall be for one-year intervals, but shall be renewed annually until such time that infrastructure associated with the development of the Property is completed and dedicated to the Village, including, but not limited to, utilities and roads. The form and amount of the letter of credit shall be determined by the Village Attorney and Engineer but shall be limited to 120% of the estimated cost of repair. This letter of credit shall apply for those roadways within the subdivision being platted and those roadways reasonably determined by the Village Engineer that are necessary to adequately service the proposed platted subdivision. A specific road repair letter of credit will not be required relative to roads scheduled to be reconstructed as part of the Property development and which are otherwise secured by a letter of credit.

v. Sales, Construction and Storage Trailers. The Owner shall have the right to locate sales, construction and storage trailers on the Property. Prior to final subdivision plat or planned development approval for each Phase of development of the Property, Owner shall submit to the Village Board for approval a plan showing the location of all proposed sales, construction, storage trailers, and outside storage areas, including parking area, fencing and landscaping. Access to such facilities shall be safe and adequate and shall consist of an asphalt binder course. The Owner shall have the right to use said temporary facilities for the purpose of start-up construction and sales activities. If needed, the Village shall issue conditional certificates of occupancy for sales and construction trailers prior to the availability of permanent sanitary sewer and/or water service, provided all applicable health and building code standards are met. Each of the trailers (excluding storage trailers) shall be served by temporary sanitary and potable water facilities to be provided by the Owner. Once the first model is constructed in each Phase, the sales trailers shall be removed no later than thirty (30) days after an occupancy permit is issued for the model home in such Phase. The Owner agrees to leave such areas in a presentable state. At no time shall construction or storage trailers be parked closer than 300 feet from the nearest occupied home. Upon the sale of seventy-five (75) percent of the lots in each Phase, all construction and storage trailers shall be removed from that Phase of development.

w. Model Home Sites. After final subdivision plat, final plan and engineering approval for each Phase, the Owner may begin construction of model home(s) and other appurtenant facilities for said model homes, including temporary sanitary facilities, temporary parking areas, temporary trap fencing, temporary walkways, landscaping and lighting for each of the model areas for each product line. Said homes may not be occupied or used for any purpose until after completion of the installation of storm drainage systems and retention and detention areas and a binder course for roadway improvements for a Phase. The Village Building Inspector shall approve access

to the model homes for safety and adequacy. An asphalt binder course shall be installed on all roadways leading to the model and in all parking lots prior to the opening of any model home to the public. Access via stone or aggregate drive shall not be permitted to any model homes, unless installation of asphalt binder can not be installed because of weather conditions, as determined by Village Board. In such event, an asphalt binder must be placed within the time limitation imposed by Village Building Inspector. The Owner shall have the right to occupy and use said models, as well as their garages, for sales, sales promotions and offices for sales personnel, in connection with the sale of dwellings on the Property. No model homes shall be permitted to be occupied as a residence except when the model is closed for sales and offices purposes and converted strictly for residential use in accordance with applicable Village codes and ordinances. Models may be lit (interior and exterior) until 10:00 p.m. except for standard security lighting. No sales activity within such models for lots or dwelling units other than those in the subdivision where the model home is located shall be allowed. Owner shall have the right, at any time after the execution hereof, and upon issuance of all required permits, to undertake demolition or dismantling of temporary sales structures, provided they have been vacated, all rights of possession have been terminated, and all debris is disposed of off site.

x. Mass Grading. After execution of this 2007 Agreement and prior to final subdivision plat approval for any Phase, the Owner, at its option and sole risk, may commence extension of utilities and mass grading, pursuant to a final master utility and grading plan and approval (consistent with this 2007 Agreement) for the Property approved by the Village Board. Owner waives any and all claims it may have to assert a "vested rights" claim or Lawsuits against the Village as a result of expenditures made in the performance of grading or other improvements to the Property allowed hereunder prior to final engineering approval in the event final engineering requires revision to work already performed. Any such work and expenditures are done at the risk of Owner knowing that final subdivision plat approval may be delayed or change final grading and utility plans. Owner shall cause all topsoil stockpiles to be covered with vegetation (grass) to the satisfaction of the Village Consulting Engineer. In conjunction with the Village's approval of any mass grading plan, Owner shall file with the Village a letter of credit to secure seeding and restoration of the site in accordance with the mass grading plan. The form and amount of letter of credit shall be as outlined in paragraph 7.

Prior to any grading of the Property, the Owner shall submit for Village approval, a mass grading plan, storm water management plan and soil erosion control plan for the affected area. All Village ordinances, including stormwater control, relating to this work, as amended from time to time, shall apply. All plans submitted shall be reviewed and approved by the Village consultants. Grading conservation practices acceptable to Village consultants shall be utilized. Mass grading shall not be permitted within Neighborhoods 1, 2 or 3. The limits of grading that will occur under the mass-grading permit within these Neighborhoods will be limited to the roadways and stormwater management system. Grading activities, including cut and fill, will not occur on individual lots within these Neighborhoods until such time as individual lot permits are issued. If mass grading occurs, additional areas for stormwater detention will be required and must be reflected in final subdivision plats relating to these Neighborhoods.

y. Schedule of Development. As to each Phase of the Property that Owner will be seeking preliminary subdivision plat or preliminary plan approval, the Owner shall submit to the Village an estimated, non-binding schedule of development. The first schedule shall be submitted one hundred eighty (180) days after execution of this 2007 Agreement and shall include work to be completed during the following year. The schedule of development shall be amended and updated every three hundred sixty (360) days thereafter. It is acknowledged that said schedules are anticipatory in nature and will change from time to time as circumstances change and shall represent Owner's best estimate at the time of its intended schedule of development. The Owner understands that timely schedules are in the best interest of all parties to this 2007 Agreement.

z. Architectural Regulations. Relative to the development of the Property, Owner shall be required to comply with the Residential and Commercial Architectural Guidelines notwithstanding any similar Village ordinance provision. These Guidelines shall be implemented and enforced jointly and severally by the Owner or the Village (through its Architectural Review Commission and procedural ordinances relating thereto), as necessary, to regulate development within the Property and shall be incorporated into the covenants and restrictions placed on the Property prior to the Village's approval of the first final plat of subdivision or planned development. All final plats of subdivision or planned developments for any Phase or Neighborhood shall be required to receive site plan from the Village Board and architectural design approval from the Village Architectural Review Commission.

aa. Issuance of Permits. The Village shall use good faith in issuing permits required to develop the Property.

bb. Water Well Protection. The parties agree that the zone of influence of the wells proposed to be drilled on the Property for the draw down of wells on adjacent property, is 1000 feet. If an owner of a well drilled to a depth of more than 50 feet which is within this zone of influence but whose property is not within the Property, obtains a judgment declaring that the master wells on the property have adversely affected his well, then Owner shall pay the cost to repair the affected well to remove the adverse condition up to the sum of \$10,000 for each judgment obtained. This obligation shall continue for a period which is 3 years after 50% of the residences on the Property are occupied. This obligation shall be secured by a letter of credit to be delivered to the Village at the time the any new well begins providing potable water to residences within the Property, equal to the sum of 10,000 multiplied by  $\frac{1}{2}$  of the number of existing wells within the above described zone of influence (not including lots or residences within the Property) when the well location(s) is established. The Owner shall submit to the Village Board any such dispute. The Village Board or its designee shall mediate the dispute, on a non-binding basis, in an attempt to reach a resolution. Upon successful resolution of the dispute, any costs incurred by the Village, by way of consulting expenses for lawyers or engineers shall be shared equally by the Owner and affected property owner.

cc. Landscaping Code. The Village Landscaping Code, as amended from time to time shall apply to development of the Property. The Village agrees to

cooperate with the Owner in the formulation of any tree removal/replacement plan for development of the Property..

dd. Utility Construction. The Owner shall comply with all Village ordinances adopted from time to time relating to construction of improvements (including roads, water, sewer, telephone, cable, electric and gas) within the public right-of-way.

ee. Metra Parcel. Until January 1, 2015, the parcel of land referenced on the Preliminary Development Plan as "Metra Parcel" is restricted, by way of use, to a publicly owned train station, parking lot and other public transit uses. Any other use of this parcel of land shall only be approved by amendment of this 2007 Agreement.

ff. Name of Development. Prior to approval of any final Plats of Subdivision, the Owner and Village shall agree upon the name of the Property development and all required documents shall reflect this name. Although the Planned Development will be given a common name description for purposes of the Final Planned Development Plan, each phase or subdivision may have its own common name description.

5. **Recapture of Costs.** Upon development of any portion of the Property, the Village reserves the right to require the Owner to construct reasonable additional, expanded or oversized municipal public improvements onsite or offsite of the Property or any portion thereof including potable water and sanitary sewer systems owned and operated by a Village franchised public utility which benefit not only the Property, but also other properties being or to be developed in the relevant service areas for such improvements, provided however that such improvements are a material benefit to the Property and not primarily beneficial to adjacent properties. In such event, the following provisions shall apply and be included in a subsequent reimbursement agreement or recapture ordinance approved by the Village Board.

a. Benefited Property. The properties which may reasonably be expected to benefit directly or indirectly from the construction and installation of such additional onsite expanded or oversized improvements ("Benefited Property") will be reasonably determined by the Village Engineer.

b. Reimbursement. The Owner shall be allowed reimbursement for expanded or oversized improvements either on-site or off-site, based on proportionate use as reasonably determined by the Village Engineer. Calculation of the reimbursement shall commence following the Village Engineer's certification that the public improvement is substantially complete and available for public use.

c. Collection. The Village shall endeavor to collect a pro rata sum of money from the owners of the Benefited Property upon connection to the various municipal public improvements. The total sum subject to reimbursement to the Owner, as well as the pro rata sum to be collected from the Benefited Property owners shall be determined by the Village Engineer taking into account the following factors: construction and easement costs; professional fees; testing and analysis fees; and legal and

administrative expenses. In addition, interest shall be collected from the commencement date of the reimbursement agreement or recapture ordinance of the Village calculated annually at one percent (1%) over the last July 1, five-year Treasury bill rate. The sum collected shall be paid to the Owner after deduction of two percent (2%) for administrative charges due Village. In the event that any State statute shall determine an interest rate other than set forth above, the State requirement shall prevail.

d. Payment Before Connection Permit. Subject to a non-appealable final court order, directing the Village to act otherwise, the Village shall not issue any connection permits or building permits to the Benefited Property owner until the Benefited Property owner pays the reimbursement charge set forth in this paragraph in full.

e. Village Not Liable. The Village shall use its best effort to collect the cost provided herein from the Benefited Property owners but shall not be liable to the Owner if the Village is, for any reason, unable to collect said cost.

f. Recording. The Village and the Owner reserve the right to, at any time during the term of this 2007 Agreement, file the reimbursement agreement or recapture ordinance with the McHenry County Recorder of Deeds and notify the owners of the Benefited Property of its terms.

g. Indemnity. The Owner shall reimburse and indemnify the Village for all reasonable costs, engineering and attorney's fees and liability incurred by the Village at the request of the Owner in attempting to establish and collect the reimbursement amount subject to this reimbursement provision.

h. Assignment of Collection Rights. Following all reasonable efforts by the Village to collect any reimbursement fees due and unpaid hereunder, upon written request of the Owner to the Village, the Village shall assign (a) all of its rights and obligations of reimbursement collection to the requesting Owner and (b) all rights to collect other fees or donations due from third party assignees who become "Owners" hereunder, and for which a liability is asserted against Prairie Grove 1078 SPE, LLC. Thereafter, the Village shall be released of all such recapture obligations.

6. **Fees Payable and Donations to the Village.** The following fees shall be payable and donations made to the Village by the Owner.

a. Annexation Fees. Owner has previously paid the Village the sum of \$410,000 as an annexation fee and reimbursement for various costs. The Tall Grass annexation fee due to the Village pursuant to ordinance no. 399 dated July 27, 2006 shall be paid prior to any final subdivision plat approval relating to the Tall Grass Property with annual simple interest at 8% payable from July 27, 2006 on a 360/365 day year basis applied to the actual number of days elapsed.

b. Local Government and School Impact Fees.

(i) Owner acknowledges that the development of the Property will impact on schools, parks, library and fire protection districts and other

public services (sometimes referred to collectively as “Local Governments”) servicing the Village. To reduce the effects of this impact and as a condition of this 2007 Agreement, Owner shall be obligated to pay to the Village certain cash donations, per single family dwelling unit developed on the Property. These cash donations shall be paid at the time application is made to the Village for the issuance of each residential building permit and calculated herein.

(ii) The cash donations payable by the Owner to the Village shall be calculated as follows:

Type of Residential Dwelling Unit	School Impact Fee (other than Neighborhood 5)	School Transition Fee	School Impact/ Transition Fee – Neighborhood 5	Park Fee	Impact	Fire Protection District
Single Family Detached Dwellings:						
3 Bedrooms (or less)	\$8,134.20	\$2,450.21	\$1,595		N/A	\$541.00
4 Bedrooms	\$16,619.47	\$5,265.49	\$1,595		N/A	\$541.00
5 Bedrooms	\$9,715.77	\$2,713.65	\$1,595		N/A	\$541.00
Single Family Attached Dwellings						
2 Bedrooms	\$1,255.84	\$337.69	\$1,595		N/A	\$541.00
3 Bedrooms	\$4,209.11	\$1,389.09	\$1,595		N/A	\$541.00
4 Bedrooms	\$10,203.41	\$3,337.93	\$1,595		N/A	\$541.00

Beginning on January 1, 2009, and annually thereafter, the cash donations due, in accordance with the above chart, shall be increased by the same percentage, which the Chicago Area Consumer Price Index has increased from the prior January index.. For purposes of this paragraph, the price index to be used for comparison shall be that index published for the annual average Chicago Area CPI-U, as published by the United States Department of Labor, Bureau of Labor Statistics (“Minimum Cash Contribution Amount”).

(iii) Subsequent to January 1, 2015, in the event the Minimum Cash Contribution Amount, as calculated above, is less than the cash contribution amounts set forth in the Village’s cash contribution ordinance for schools, and fire districts, as amended from time to time, an amount equal to the amounts specified in the Village’s cash contribution ordinance

shall be paid, rather than the Minimum Cash Contribution Amount. Each Local Government (including school districts) ultimately receiving these funds following distribution by the Village Board shall each have the sole authority to determine the use of such fees, including operation and maintenance of their respective facilities and property. Prior to distributing any funds to any other Local Government, the Village must be in receipt of an executed Intergovernmental Indemnification Agreement in favor of the Village. The Village Board shall approve the form of any such agreement. At the time of distribution of the fees to any other Local Government, the Village shall deduct an administrative fee of three percent of the funds to be distributed. In the event the Village fails to distribute any or all impact or transition fees collected to the Local Government intended to benefit from such donation, the Village shall indemnify the Owner for any and all liability to such Local Government resulting therefrom.

(iv) In the event an indemnification agreement, in a form approved by the Village, is not executed by the receiving Local Government prior to distribution of said funds to the Local Government, the Village may retain the entire amount paid pursuant to this paragraph for Village use. Nothing herein is intended to create third party beneficiary rights in any other Local Government.

(v) Owner hereby releases the Village from any liability or damage to Owner and waives any right to challenge, by Lawsuits or otherwise, the legality or validity of the fees chargeable to or donations required of Owner or purposes for which the money is spent. Owner further agrees not to pay any fees under protest.

(vi) In the event the Village's cash contribution ordinance, or any other ordinance of the Village relating to developer cash contributions for schools, parks, libraries and fire districts, is repealed or declared by a court of law to be found unenforceable, and all appeals have been exhausted, Owner agrees to pay, subsequent to such final court action, the Minimum Cash Contribution Amount set forth in this section. In the event such a final court order requires the Village, school districts or other Local Government to return or refund monies paid by the Owner pursuant to the Village's ordinances, Owner expressly agrees that it will allow the Village, school districts or other Local Government to retain the Minimum Cash Contribution Amount previously paid by Owner. It is the express intent of the Owner to release the Village, school districts or other Local Governments from any liability or obligation to refund the Minimum Cash Contribution Amount paid pursuant to this section under any circumstances.

(vii) With regard to park land donations and park impact fees, the Owner has dedicated approximately 65 acres of land for park purposes within the Property in addition to other land dedicated to the Village within the

Property. These dedications are beyond any requirement for park land donations for the Property development and in consideration of this dedication, the parties hereto agree that no further park land dedication or monetary payments shall be made by Owner to the Village relative to development of the Property. All of said obligations are satisfied. In addition, all of the park land dedication obligations in a related project known as Tall Grass, pursuant to an Annexation Agreement with the Village dated July 27, 2006 are also deemed satisfied.

(viii) Owner acknowledges that there may be a special district created to fund, in whole or in part, a new library or the expansion of an existing library for the use of the residents of the Village. In the event that such a district is established and the funding for construction of the facility is approved and assessed against all residents on an equal basis, then the occupied residential units within the Property may be assessed accordingly. However, with regard to residential units for which occupancy permits have not been issued within the Property at the time such funding is approved, Owner shall pay the annual funding liability accrued since its inception for such units as assessed on a per unit basis upon the issuance of each residential building permit.

c. Village Impact Fee. The following Village municipal impact fee for the additional municipal services, including parks as a result of development of the Property shall be paid.

(i) Residential:

\$3,000.00 per each proposed residential dwelling unit paid as follows: upon approval of each final subdivision plat or planned development, 10% of the fee for each unit and 90% of the fee upon issuance of each building permit; and

\$150.00 per bedroom, payable at the time of issuance of a building permit. For purposes of this subsection, a "bedroom" shall mean a room with a doorway intended to close access to the remainder of the residence, and a closet but excluding pantries or other small enclosures intended primarily for storage of items not typical of a clothes closet.

(ii) Commercial:

\$1.00 per square foot of building space, payable at the time of issuance of building permit.

For purposes of this paragraph, each residential dwelling unit within each multi-family structure shall be obligated.

d. So long as the Village does not own and operate the public sewer system and potable water system serving the Property, the Village shall not adopt any increase in the fees referenced in Paragraphs 8b or 8c (other than by rates associated with annual CPI increases) until January 1, 2015. However, the Village reserves the right to adopt ordinances increasing any other fee associated with the Property, including without limitation, building permit fees subsequent to January 1, 2012. Thereafter, the all such fees payable by Owner shall be in accordance with the applicable fee ordinances which are in effect at the time the fee is due pursuant to applicable provisions of the Village Municipal Code, as amended from time to time.

e. Municipal Property. At no cost to the Village, and no later than Village approval of the first final subdivision plat of the Property, Owner shall convey and dedicate to the Village and Nunda Fire Protection District, respectively, fee simple title to those parcels of land and all buildings and structures currently existing thereon, depicted on the Preliminary Development Plan as "Village Property", "Park" or "Nunda Fire". Contemporaneously, Nunda Fire Protection District shall convey title to the Owner to the District's existing property along Ames Road, currently identified with a Property Index Number of 14-23-176-001.

With regard to the Nunda Fire Parcel, the Owner acknowledges that based on the BFE studies, this parcel is subject to a flood risk, the scope of which is not yet known. In the event that the BFE results in less than two contiguous buildable acres net of onsite stormwater retention, alternative land must be donated within the Property, acceptable to Nunda Fire Protection District. Provided, however, Owner may eliminate the BFE area by providing compensatory storage offsite of the Nunda Fire Parcel.

Owner shall cause title to these lands to be conveyed free and clear of all liens and financial encumbrances (other than real estate property taxes) and any easements, covenants or restrictions except those approved pursuant to the development process pursuant to or envisioned by this 2007 Agreement. Evidence as to the condition of title shall be provided in the form of a title commitment letter acceptable to the Village or Nunda Fire Protection District in an amount equal to the fair market value of the parcels at the time of the conveyance. Owner shall clear this land of all construction debris and complete the grading and seeding of the land. Any soil removal from the land shall be under the supervision and approval of the Village. Prior to conveyance, Owner shall provide to the Village and Nunda Fire Protection District, at Owner's cost, a Phase I Environmental Assessment relating to the land being conveyed. The results and conclusions of this assessment must be reasonably acceptable to the Village's consulting engineer. In the event the results are not acceptable, the Village and Nunda Fire Protection District shall designate an alternate number of the same acreage of contiguous property within the Property to be dedicated, in compliance with this section. A minimum of four inches of topsoil must exist on the land, prior to the Village's acceptance of title thereto and no later than June 1, 2009, sanitary sewer and potable water shall be constructed to the boundary of all land being conveyed by Owner for connection. Provided, however, notwithstanding anything in this Agreement or the Tall Grass Annexation Agreement entered into pursuant to Village ordinance no. 399 dated July 27,

2006 Owner shall have no obligation to provide sewer and water availability at its cost to the current Village Hall on Barreville road.

Subsequent to the first to occur, January 1, 2016 or occupancy permits issued to 100% of the commercial property within the Property, the Village shall be free to sell any part of this land, for any private purpose. Provided, however, the Village is free to sell any of the Village or Park Property to the Owner or its designee at any time during the term of this 2007 Agreement.

With regard to the parcel of land previously owned by SBC and currently leased by the Village from Owner, this lease agreement shall remain in full force and effect at the option of the Village until title to the parcel is conveyed to the Village pursuant to the terms of this 2007 Agreement. The exact parcel to be dedicated consists of approximately 2.5 acres and is generally depicted on the Preliminary Subdivision Plat as the parcel "to be dedicated to the Village of Prairie Grove."

With regard to financing construction of publicly owned structures on the "Village Property," and providing other forms of service by the Village, the parties agree that the Village shall have the right to adopt two (2) Special Service Areas (SSA). The first SSA shall be for the purpose of financing construction of or improvements to publicly owned structures on Village Property and shall include all residentially zoned parcels of the Property so long as the cost proposed through the SSA does not exceed \$185 per single-family residence per year over a 20-year period. The second SSA shall be for the purpose of providing other forms of service by the Village and consist of all residentially zoned parcels of the Property. The tax imposed relative to the second SSA shall produce a net sum to the Village of not more than \$540,000, allocated as determined by the Village Board over a twenty (20) year period and assessed against each residential dwelling unit. Relative to both SSAs, Owners shall not file an objection petition pursuant to 35 ILCS 200/27-55, as amended. The Village shall not be restricted from other forms of generating revenue. The Village reserves the right to consolidate the two SSAs into a single district.

Owner shall be obligated to construct, at its own cost, the following park improvements:

(i) Upon request of the Village, Owner shall grade and seed the proposed municipal property consisting of approximately 21 acres designated on the Preliminary Development Plan and located in the northwest corner of the Property north of the proposed Metra parcel.

(ii) With regard to the Village park sites depicted on the Preliminary Development Plan, the Owner shall, upon request by the Village grade and seed those parks designated by the Village and in two of the parks designated by the Village, the Owner shall (a) install playground equipment, similar in design to the playground equipment exhibit dated 2007; (b) install non-competitive baseball diamonds; (c) install asphalt parking lots in park locations designated by the Village (30 total parking stalls for all park

locations) designed with eight inches of grade 9 aggregate, two inches of binder asphalt and one and one-half inches of surface coarse asphalt including paint striping of stalls, or, at the Village option, pay to the Village cash in lieu of this cost; (d) purchase and install two park benches in each park; and (e) the Owner is not obligated to provide any bathrooms or other facilities that would require the installation of any underground utilities. To secure these public improvements, prior to the Village approval of the first final plat of subdivision for the Property, Owner shall file with the Village a letter of credit pursuant to the provisions of Paragraph 7, below.

f. Recapture Fees Due from Owner. The Village represents and warrants that there are no recapture fees due the Village or any third party for the development, use and occupancy of the Property.

g. Other Fees. Other than the fees and cash donations specified in the foregoing paragraphs, during the term of this 2007 Agreement, and notwithstanding any existing, new or revised donation ordinances of the Village, Owner shall not be required to donate any land, pay any amounts, and/or perform any additional donation or impact fee obligation. However, building permit fees, capital development fees, and other similar fees, which are charged for specific services provided by the Village, shall be payable in accordance with the Village ordinances in existence and as amended from time to time. Provided, however, any increase in an existing fee or any new fee is (a) made generally applicable to all owners, users and developers of property within the Village, and (b) such increase or new fee is reasonably related to costs incurred or expected to be incurred by the Village in providing a necessary service for which such a fee is assessed.

h. Retained Personnel/Architectural Committee Fees. At all times during the term of this 2007 Agreement, Owner shall be obligated to comply with the terms of the Reimbursement of Fees section of the Prairie Grove Municipal Code (Section 19.03), as amended from time to time. It is specifically acknowledged that, with regard to the Village architectural review committee, the Village will reconstitute this committee to include a licensed planner and architect upon consultation with the Owner. The planner and architect are anticipated to be paid consultants of the Village, whose expenses will be reimbursed during the architectural design review process for each planned development.

7. Letters of Credit. Only letters of credit, not surety bonds, shall be used as security for construction and maintenance of public improvements. It is understood that prior to and as a condition precedent to the construction of any streets or other public improvements, the Owner shall submit the required letter of credit plans, final plat, specifications and an engineer's estimate of probable cost for approval by the Village's Engineer. With regard to sanitary sewer and potable water public improvements, duplicate security shall not be required at any time, however, prior to any such construction the Village shall be provided with evidence that a letter of credit is in place securing construction of said improvements.

The Owner shall make all public improvements in accordance with the applicable ordinances of the Village, amended from time to time not in conflict herewith, final engineering plans prepared by the Owner and approved by the Village and pursuant to the terms of this 2007 Agreement. The Owner shall deposit with the Village a clean irrevocable letter of credit for each applicable Phase naming the Village as the sole beneficiary, issued by a financial institution having assets in excess of \$100,000,000.00. Each letter of credit shall be in an amount equal to one hundred and twenty (120) percent of the estimated construction cost of the public improvements for such Phase as approved by the Village Engineer and shall be filed with the Village Clerk. Each letter of credit shall be enforceable for a period of not less than one (1) year from the date of the Village's approval of the final subdivision plat to secure the completion of streets and all other public improvements, including, but not limited to, landscaping, utilities, roads and improvements offsite of the Property. Each letter of credit shall be in a form approved by the Village Attorney and in an amount required by the Village subdivision control ordinance and the Village Engineer, for that portion of the Property encompassed by each final plat of subdivision or planned development, as well as off site improvements for which a letter of credit has not previously been deposited with the Village necessary for the development of such area. The Village shall have the right to draw up to the full amount of the letter of credit in the Village's sole discretion in order to complete and have formal acceptance of all improvements secured by the letter of credit. Provided, however, prior to drawing on any letter of credit, written notice of the alleged default shall be provided from the Village to the Owners. In addition, the Owners shall be provided therein at least fourteen (14) days to cure the list of defaults. In the event of a threat to the public health, safety or welfare of the Village and its residents, as determined exclusively by the Village Board, the Village may immediately draw on the letter of credit without prior notice. Any action taken by the Village staff to draw on filed letters of credit shall be authorized by the Village Board.

The Village shall reduce the letter of credit in an amount corresponding to work completed after the Owner's request upon approval by the Village's Engineer. The Owner agrees not to request a reduction to the letter of credit more than once every six months.

A maintenance letter of credit equal to fifteen (15) percent of the approved estimated cost of such improvement shall be provided for an interval of twenty-four (24) months immediately following the Village's acceptance of such public improvement for the purpose of insuring proper maintenance of the public improvement and remedying any defects associated with such improvements.

8. **Sales Tax Rebates.** The Village shall establish a business district pursuant to its home rule powers and 65 ILCS 5/11-74.3, et seq. (the "Act"), with all retained personnel expenses incurred by the Village, paid for by the Owner, pursuant to the terms of this 2007 Agreement. The business district shall pledge a portion of the Village sales tax receipts generated from development within the Property for the purpose of reimbursing Owner for a portion of the cost incurred by the Owner for installing permanent traffic signals, and right of way improvements within Route 31, pursuant to

the terms of this 2007 Agreement. The pledge of sales tax by the Village shall be as follows:

- a. From January 1, 2007 through January 1, 2014, 50% of the Village's portion of the gross sales tax revenue;
- b. From January 1, 2014 through January 1, 2024, 25% of the Village's portion of the first \$1,000,000 of the gross sales tax revenue;
- c. From January 1, 2014 through January 1, 2024, in the event the gross sales tax revenues with the Property exceed \$1,000,000, 50% of the Village's portion of the gross sales tax revenue in excess of said \$1,000,000.

It is anticipated that the Village shall account for the sales tax proceeds separate from other Village funds until the Owner has been paid its share, pursuant to the terms of this 2007 Agreement. In the event of a dispute between the Owner and any purchaser or developer of the Property relating to the distribution of the sales tax rebate, the Village shall hold the proceeds until a joint letter of direction is received from the Owner and such purchaser or developer or until otherwise directed by court order.

In addition, in order to attract high quality retail shops to the Village agrees to impose an additional sales tax up to one percent (1%) pursuant to the Act, pledging the proceeds for public improvements within the established district.

All of the foregoing commitments of the Village are subject to good faith negotiation and approval of a development agreement, in a form and substance approved by the Village Board. The development agreement may include the issuance and offer for sale, non-recourse to the Village, on a limited liability basis business district bonds, notes and pledges of certain business district generated taxes to finance public projects and improvements therein.

9. **Sale of Property.** The Parties acknowledge that prior to the commencement of any development activities; the Owner will most likely transfer ownership to portions of the Property to one or more land developers or builders (sometimes "Purchaser"). Upon each sale or conveyance, the Purchaser shall become the "Owner" for purposes of this 2007 Agreement and shall be bound by and entitled to the benefits and subject to the obligations of this 2007 Agreement with respect to the part of the Property sold or conveyed. The obligations of each successor owner or Purchaser of any portion of the Property, including monetary obligations under this 2007 Agreement, shall constitute separate covenants running with the portion of the Property owned by such successor owner or Purchaser. The selling Owner shall notify the Village of such purchase or agreement or assumption of responsibilities. Upon sale or transfer of the Property or any portion thereof, the selling Owner may only be released from the obligations of this 2007 Agreement relating to the Property sold or transferred where:

- a. Provision has been made that all such public improvements required by this 2007 Agreement or Village ordinance for the development of the portion of the

Property being sold or transferred will be installed and guaranteed in accordance with this 2007 Agreement and the ordinances of the Village; and

b. The Village has remaining in place acceptable assurances of performance that any development responsibilities not yet satisfactorily completed by the Owner anywhere on or offsite of the Property will be completed; and

c. Any outstanding monetary obligations of the selling Owner due and payable to the Village as of the time of conveyance have been satisfied in full; and

d. There is no violation of the Village's ordinances or this 2007 Agreement.

10. **Consent of Lender and Subordination.** As a condition precedent of the Village executing and recording this 2007 Agreement or any ordinances relating thereto, Owner shall provide the Village with a signed, written subordination agreement of any mortgage, lien holder or holder of any security interest affecting title to the Subject Property or any part thereof, such that this 2007 Agreement shall be deemed superior to any such mortgage, lien or other security interest. The form of such subordination agreement shall be subject to approval by the Village attorney and filed with the office of the McHenry County Recorder of Deeds. As to any final subdivision plat approval application, the Owner shall provide the Village with written documentation satisfactory to the Village of any mortgagee, lien holder or holder of any security interest, affecting title to the Property or any part thereof such that the rights of Village granted to it in said final subdivision plat shall be superior to any such mortgage, lien or other security interest, and Owner shall provide same to the Village prior to execution and recording of each final subdivision plat.

11. **Owner's Agreement not to Disconnect the Property.** Notwithstanding any rights that the Owner may have to disconnect the Property from the Village pursuant to the Illinois Municipal Code 65 ILCS 5/1-1-1, et seq. (the "Code"), including, but not limited to, Section 7-3-6 of the Code, the Owner hereby waives any and all rights to disconnect the Property or any portion thereof from the Village in exchange for the benefits conferred upon the Property by this 2006 Agreement, unless the Village is in material default hereunder and such default continues after notice thereof has been given to the Village and the applicable cure period has expired.

12. **Village Ordinances.**

a. **Ordinance and Codes Amendments.** Except as otherwise expressly stated in this 2007 Agreement, nothing in this 2007 Agreement shall be construed to prevent the Village from amending its existing ordinances or adopting new ordinances which apply generally throughout the Village including the Property and its development. Owner acknowledges the development of the Property is subject to all of the ordinances adopted by the Village.

b. Codes. Except as specifically and expressly set forth herein, the Village codes, ordinances and regulations, as amended from time to time, shall apply to the development of the Property.

c. Less Restrictive Ordinances or Code. If, during the term of this 2007 Agreement, except as otherwise specifically agreed upon in this 2007 Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of improvements, buildings or appurtenances, or any other development of any kind or character upon the Property are amended or modified in a manner to impose less restrictive requirements on development of, or construction upon, properties in similarly zoned and developed parcels within the Village, then the benefit of such less restrictive requirements shall inure to the benefit of the Owner, its successors and assigns. Anything to the contrary contained herein notwithstanding, the Owner may elect to proceed with respect to the development of, or construction upon, the Property with the less restrictive amendment or modification applicable generally to all properties within the Village except for those other properties subject to existing annexation agreements.

d. More Restrictive Ordinances or Codes. Except as otherwise provided in this 2007 Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of improvements, buildings or appurtenances, or any other development of any kind or character upon the Property are amended or modified in a manner to impose more restrictive requirements on zoning, subdivision, development of, or construction of improvements, buildings or appurtenance upon, properties in similarly zoned and developed parcels within the Village, then the more restrictive requirements shall be binding upon the Property and the Owner, its successors and assigns, as long as such new or amended ordinances, codes or regulations are reasonably necessary and for purposes of directly furthering the health and safety of residents of the Village or to the extent needed to comply with State or Federal mandates.

e. Village shall not adopt any ordinances which reduces the residential density of the Property; changes the bulk requirements of any of the zoning classifications of the Property; changes the zoning classification of the Property; prevents the Property from being serviced by sewer, water; changes the requirements of surface water management; or would negate any approval granted herein or in furtherance of this 2007 Agreement.

13. Default. In the event that either party shall fail to fulfill its obligations hereunder and such failure continues for thirty (30) days after written notice thereof is given by the non-defaulting party to the defaulting party, the non-defaulting party shall have the right to pursue any and all legal or equitable remedies available against the defaulting party under applicable law including, without limitation, specific performance, damages, mandamus, injunction and collection on letters of credit.

14. **Miscellaneous.**

a. Agreement Applies to All Property. It is the express intent of the Parties that the terms of this 2007 Agreement apply to all of the Property.

b. Time is of the Essence. It is understood and agreed by the parties hereto that time is of the essence in this 2007 Agreement.

c. Term. The term of this 2007 Agreement shall be for twenty (20) years commencing as of the date in 2005 first appearing above, and shall be extended for the period of any litigation concerning performance of this 2007 Agreement.

d. Covenants Running with the Land. The terms and conditions of this 2007 Agreement shall constitute real estate covenants which shall run with the land and the Property and be binding upon the successors, assigns, purchasers and grantees of the Owner during the term of this 2007 Agreement. The Owner hereby consents to the filing of a lien on the Property for which the obligations are owed when any obligations are more than ninety (90) days overdue.

e. Mutual Assistance. The parties shall do all things reasonably necessary or appropriate to carry out the provisions of this 2007 Agreement and to aid and assist each other in carrying out the terms and objectives of this 2007 Agreement.

f. Enforcement. The Village may withhold building and occupancy permits from being issued upon its reasonable determination of breach of this 2007 Agreement or ordinance violations by Owner in the development of the Property. A stop work order issued by the Village, upon twenty-four (24) hours prior notice to Owner, directing work stoppage on any building or other improvement shall be in writing and specify the section of the ordinance, code or regulation, or this 2007 Agreement, allegedly violated. The nature of the violation shall be provided and the order shall give Owner not more than thirty (30) days in which to cure such violation. The party in default shall forthwith proceed to correct any such violation as does in fact exist. Stop orders shall affect only the work, which is the subject of the order, and shall not delay or prohibit any construction activity in any other Phase. Notwithstanding the foregoing, if a violation poses an imminent threat to public health or safety, as reasonably determined by the Village Building Inspector or Engineer, the stop work order shall be effective when given. A stop work order issued for any reason, shall be deemed an order that all work of any kind on the improvement, which is subject to the order cease until such time as the cited violation is corrected. Upon correction of any such violation to the satisfaction of the Village, work on any building or improvement subject to the stop work order may recommence. If legal action is brought for enforcement of this 2007 Agreement or with respect to an alleged default, the unsuccessful or non-prevailing party shall pay to the successful or prevailing party its reasonable attorneys' fees, court costs and expenses incurred in connection therewith promptly after all rights of appeal have expired or been exhausted.

g. Indemnification. In the event any legal action is commenced against the Village, the Village Board of Trustees, the President of the Village (individually, or in his or her official capacity), the Village Zoning Board of Appeals, the Chairman of the Zoning Board (individually, or in his or her official capacity), the Village Economic Development Commission, the Village Planning Commission or the Chairman of the Planning Commission (not individually, but in his or her official capacity) (collectively, the "Village Parties") relating to this 2007 Agreement and the Village is not in default hereunder then at the written request of the Village Party which has been sued, the Owner shall, at its sole expense, indemnify such Village Party in such legal action, for all reasonable legal fees, consulting fees and damages incurred. Provided, however, such indemnity shall not apply to any judgment rendered for exemplary or punitive damages.

The Owner shall indemnify (for attorney defense costs only), any individual Village Party sued in their individual capacity, as opposed to their official capacity as an elected or appointed official or employee of the Village with respect to this 2007 Agreement.

h. Notices. Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified mail, postage prepaid and return receipt requested, as follows:

For the Village: Village of Prairie Grove  
Attn: President  
3125 Barreville Road  
Prairie Grove, Illinois 60012

For the Owner: Richard Swanson  
Prairie Grove 1078 SPE, LLC  
Private Bank Building, 2<sup>nd</sup> Floor  
920 S. Waukegan Road  
Lake Forest, Illinois 60045

with a copy to: Mark Eiden  
Eiden & O'Donnell, Ltd.  
230 Center Dr. Suite 102  
Vernon Hills, IL 60061

or such other addresses that any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

i. No Waiver. Failure of any party to this 2007 Agreement to insist upon the strict and prompt performance of any of the covenants, agreements, terms and conditions herein contained shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

j. Recording. The Village at the expense of the Owner thereto shall record a copy of this 2007 Agreement and any amendment.

k. Severability. If any provision, clause or any part thereof of this 2007 Agreement is held to be invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, clause or part thereof, such provision, clause or part thereof shall only be deemed to be excised and the invalidity thereof shall not affect any of the other provisions contained herein, and the Village shall take such actions (including the giving of such notices, the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the intentions of the parties as reflected by its original terms.

l. Conflicts. If there are any conflicts or inconsistencies between the provisions contained in this 2007 Agreement or the ordinances required to be enacted herein and the provisions contained in any codes, ordinances, agreements, plans, rules or regulations of the Village, then the provisions contained in this 2007 Agreement shall govern, prevail and supersede them in all respects.

m. Amendment. The parties hereto acknowledge that certain future amendments to this 2007 Agreement may affect only a portion of the Property. In such event, this 2007 Agreement may be amended by written agreement between the Village and the legal owners of fee title to that portion of the Property which is subject to and affected by such amendment as provided by law; provided, that such amendment, if not executed by the then owners of other portions of the Property, shall in no manner alter, amend, or modify any of the rights, duties or obligations as set forth in this 2007 Agreement as they pertain to such other portions of the Property.

n. Entire Agreement. This 2007 Agreement sets forth all agreements, understandings and covenants between the parties hereto. This 2007 Agreement supersedes, and the parties hereto shall not rely upon, any prior promises, understandings or agreements between them relative to the subject matter of this 2007 Agreement.

o. Prior Agreements. This 2007 Agreement shall completely supersede and render void any Prior Annexation Agreements regarding the Property, including those dated February 10, 1977 and October 1, 1987 (First Amendment). All claims of vested rights under any Prior Annexation Agreements relating to the Property are hereby waived.

p. Waiver of Liability. With regard to the zoning procedures followed by the Village and its Boards and Commissions relative to the ordinance adopting zoning of the Property, Owner hereby waives any right to assert any claims or lawsuits based upon "contract" zoning or "conditional" zoning. The Village and its officials are hereby fully released from any such claims of liability.

q. Authority to Execute Agreement. The undersigned hereby represent that they have been duly authorized to sign this 2007 Agreement on behalf of the entities indicated.

IN WITNESS WHEREOF, the Village and the Owner have caused this 2007 Agreement to be executed as of the date first written above.

VILLAGE OF PRAIRIE GROVE

By \_\_\_\_\_  
Mike Breseman,  
President

PRAIRIE GROVE 1078 SPE, LLC  
By: Prairie Grove 1078 Holdings, LLC  
By: WS Land Partners-Prairie Grove II, LLC  
By: Westminster-PG2, LLC  
By: Westminster Partners II, LLC  
By: Westminster Management, Inc.

By: \_\_\_\_\_  
Erik Moskowitz, President  
By: SWANSON-PG 2, LLC

By: \_\_\_\_\_  
Richard M. Swanson, Manager