

ORDINANCE NO. 18-13

AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT
BY AND BETWEEN THE VILLAGE OF EAST DUNDEE, COOK AND KANE
COUNTIES, ILLINOIS AND 811 MAIN ST APTS LLC

BE IT ORDAINED, by the President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village of East Dundee ("Village") find as follows:

- A. The Village is a home rule unit of government in accordance with Article VII, Section 6 of the Constitution of the State of Illinois, 1970.
- B. The Village is the fee owner the real property legally described on EXHIBIT A attached hereto and made part hereof ("Property").
- C. 811 Main St Apts LLC ("Developer") desires to acquire ownership of the Property and develop the Property with two (2) multifamily rental apartment buildings with eighteen (18) units each, with thirty-six (36) units in total, with a unit mix of one (1) bedroom units and two (2) bedroom units amongst the two (2) buildings ("Project").
- D. That attached hereto as EXHIBIT B and made part hereof is a development agreement, between the Developer and the Village, which sets forth the terms and conditions pursuant to which the Developer will proceed with, develop, and operate, the Project on the Property ("Development Agreement").
- E. That notice of the Village's intent to enter into the Development Agreement, including the Village's intent to transfer title to the Property pursuant thereto, was published on June 22, 2018 ("Notice"); a copy of the publisher's certificate in relation to said Notice being attached hereto as EXHIBIT C and made part hereof.

SECTION 2: Based upon the foregoing, the Development Agreement, attached hereto as EXHIBIT B, is hereby approved, and the President and Clerk of the Village are hereby authorized and directed to execute and deliver such other instruments, including said Development Agreement attached hereto as EXHIBIT B, as may be

necessary or convenient to consummate said property transaction, and as may be necessary or convenient to carry out the terms of said Development Agreement.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

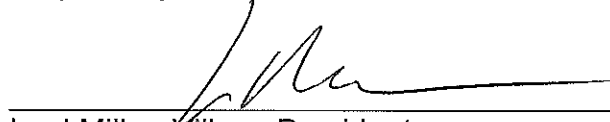
PASSED this 9th day of July, 2018 pursuant to a roll call vote as follows:

AYES: Trustees Selep, Wood, Hall and Andresen

NAYES: Trustee Lynam


ABSENT: Trustee Mahony

APPROVED by me this 9th day of July, 2018.



Lael Miller, Village President

ATTEST:



Katherine Holt, Village Clerk

Published in pamphlet form this 12th day of July, 2018, under the authority of the Village President and Board of Trustees.

Recorded in the Village records on July 12th, 2018.

EXHIBIT A

Legal Description of the "Property"

LEGAL DESCRIPTION:

PARCEL 2: THE PART OF THE SOUTHEAST ¼ QUARTER OF SECTION 23 AND THAT PART OF THE NORTHEAST 1/4 OF SECTION 26, ALL IN TOWNSHIP 42 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF FOX RIVER BLUFF'S UNIT NO. 1, BEING ALSO A POINT ON THE CENTERLINE OF STATE ROUTE NO. 72; THENCE NORTHERLY ALONG THE EAST LINE OF SAID FOX RIVER BLUFF'S UNIT NO. 1, A DISTANCE OF 372.27 FEET TO AN ANGLE IN SAID EAST LINE; THENCE CONTINUING NORTHERLY ALONG SAID EAST LINE, BEING ALSO THE EAST LINE OF NORTH GATE MANOR UNIT NO. 1, WHICH FORMS AN ANGLE OF 00 DEGREES, 45 MINUTES, 01 SECOND TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 320.31 FEET; THENCE EASTERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 158.65 FEET, THENCE SOUTHERLY, A DISTANCE OF 776.92 FEET TO A POINT ON THE CENTERLINE OF STATE ROUTE NO. 72, THAT IS 175.0 FEET SOUTHEASTERLY OF (MEASURED ALONG SAID CENTERLINE) THE PLACE OF BEGINNING, THENCE NORTHWESTERLY, ALONG THE CENTERLINE OF STATE ROUTE NO. 72, A DISTANCE OF 175.00 FEET TO THE PLACE OF BEGINNING IN KANE COUNTY, ILLINOIS.

P.I.N.: 03-23-479-003 and 03-26-227-011;

Common Address: 811 E. Main Street, East Dundee, Illinois 60118

EXHIBIT B

Development Agreement

(attached)

EXHIBIT C

**Publisher's Certificate of
Property Conveyance Notification**

(attached)

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS
AND 811 MAIN ST APTS LLC
(SUMMIT SCHOOL APARTMENTS)**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 9th day of July, 2018 ("Effective Date"), by and between the Village of East Dundee, Illinois, an Illinois municipal corporation ("Village"), and 811 Main St Apts LLC, an Illinois limited liability company ("Developer").

PREAMBLES

WHEREAS, the Village owns vacant property generally located on the north side of Route 72, west of Dundee Avenue and east of Howard Avenue, as legally described on **EXHIBIT A** attached hereto and made a part hereof ("Subject Property"); and

WHEREAS, the Village has been informed by the Developer that it desires to acquire the Subject Property from the Village, and that it desires to develop the Subject Property with two (2) multifamily apartment buildings, with eighteen (18) units each, as depicted and described in the site plan and project description in **EXHIBITS B-1 and B-2** attached hereto and made a part hereof, respectively ("Project"), with the two (2) multifamily apartment buildings being "Building 1" and "Building 2" as labeled in **EXHIBIT B-1**, which together shall be the "Buildings;" and

WHEREAS, the President and Board of Trustees of the Village ("Corporate Authorities") have determined that the development of the vacant Subject Property with the Project best serves the public's health, safety and welfare; and

WHEREAS, the Developer's proposal calls for the Developer to develop the Subject Property in accordance with all applicable Village ordinances, laws and regulations of the State of Illinois, and laws and regulations of the United States of

(b) Before the Effective Date, the Developer has submitted to the Village a plan for the development of the Subject Property with the Project, including:

- (1) An estimate of all costs to be incurred by the Developer in connection with acquisition and development of the Subject Property;
- (2) A concept plan, including site plan, elevations, floor plans, and other plans requested by the Village;
- (3) A financial *pro forma* for the Project, which shall be attached to this Agreement and made a part hereof, when available;
- (4) The Dundee Township Assessor's estimated increase in equalized assessed value of the Subject Property upon completion of the Project; and
- (5) An executed Trust and Agency form.

The Developer's submittals in Section 2(b)(1) through (5) are attached hereto as **Exhibit C** and made a part hereof, and are an integral part of the Project.

(c) On or before June 25, 2018, the Developer shall apply for all zoning relief needed for the construction, operation and maintenance of the Project.

(d) Within thirty (30) calendar days of the later of the Project (y) having received all zoning relief needed for the construction, operation and maintenance of the Project, or (z) the Developer receiving firm construction financing for the Project and the Village having received adequate proof of said financing, and so long as the Developer is not in breach of any of its obligations under this Agreement, the Developer shall take title to the Subject Property from the Village pursuant to the terms of the "Real Estate

Purchase And Sales Contract," attached hereto as **EXHIBIT D** and made a part hereof ("Conveyance Agreement"), with such changes to the Conveyance Agreement to make it consistent with the terms of this Agreement and with such additional changes as may be agreed upon by the Village and the Developer that are not inconsistent with this Agreement. In the event of a conflict between any term of this Agreement and the Conveyance Agreement, the terms of this Agreement shall control. The terms of the conveyance are:

- (1) Purchase Price: Ten and No/100 Dollars (\$10.00);
- (2) Form of deed: warranty deed;
- (3) Permitted exceptions on title: as agreed by the Village and the Developer;

- (4) Warranties: as-is, where-is, with no warranties or representations of any kind, including environmental; and

- (5) Closing costs: paid by the Village and the Developer as customarily charged.

- (e) On or before August 15, 2018, the Developer shall have applied for all permits as may be required to undertake and complete the construction for all aspects of the Project, other than Building 2.

- (f) On or before January 1, 2020, the Developer shall have applied for all permits as may be required to undertake and complete the construction for Building 2.

- (g) On or before June 30, 2019, the Developer shall have obtained a temporary certificate of occupancy for all aspects of the Project, other than Building 2, in accordance with the Legal Requirements, which shall be issued by the Village in

accordance with the Legal Requirements, and the Developer shall be actively engaged in the leasing of Building 1 and shall otherwise maintain, manage, and operate the Project.

(h) The Developer shall commence construction on Building 2 on the earlier of: (y) Building 1 achieving an occupancy rate of Eight-Five Percent (85%), or (z) June 30, 2020. The Developer shall obtain a temporary certificate of occupancy for Building 2 within eight (8) months of the date construction of Building 2 commences.

(i) The Developer hereby covenants and agrees to pay all real estate taxes when due and to pay all sums due and owing to the Village including, but not limited to, fines, fees, taxes, licenses, assessments and invoices for all services, except as waived herein. The Developer further agrees not to violate any Legal Requirements.

(j) With respect to the Project, the Developer shall (u) create an owners' association for the Subject Property in the event the Subject Property is subdivided into separate ownership of Building 1 and Building 2 or the dwelling units therein; (v) grant easements in favor of the Village relative to maintenance of the Subject, in the form proposed by the Village; (w) create a dormant special service area for maintenance of the Subject Property ("SSA"); (x) not object to the SSA; (y) execute a waiver of right to file an objection petition opposed to the creation of the SSA, in the form proposed by the Village; and (z) not interfere with the creation of the SSA.

(k) The Developer shall maintain the Ingress / Egress Easement Area and detention on the Subject Property and the detention serving the Subject Property, by executing such documents as proposed by the Village in relation thereto.

(l) Within thirty (30) calendar days of the Effective Date, the Developer shall deposit with the Village the sum of Two Hundred Forty-Three Thousand and No/100 Dollars (\$243,000.00) ("Subject Property Security"), either in cash or an irrevocable letter of credit, in a form approved by the Village.

(m) For the Project, the Developer shall pay the first One Hundred Seventeen Thousand Two Hundred and No/100 Dollars (\$117,200.00) of (y) the water and sewer capital improvement charges, also known as connection fees, imposed by the Village pursuant to Sections 51.37 and 53.61 of the Village of East Dundee Village Code ("Village Code"), and (z) the water connection fees and sewer connection fees, imposed by the Village pursuant to Sections 51.17 and 53.12 of the Village Code, respectively (collectively the "Connection Fees Paid").

(n) The Developer's obligations under this Agreement are contingent upon the Developer obtaining, on or before to August 15, 2018, a firm construction loan commitment for the Project in an amount and under terms acceptable to the Developer and Developer's legal counsel. In the event the Developer is unable to procure such firm construction loan commitment within the stated time, and the Developer notifies the Village in writing of such failure on or before to August 15, 2018, as of the date of the Developer's written notice, this Agreement shall be null and void and of no further effect, and the Developer shall receive a full refund of (x) the Subject Property Security, (y) all Connection Fees Paid actually paid by the Developer, and (z) any amounts deposited by the Developer pursuant to the Trust and Agency policy not obligated to be paid to, used by, or owed to, the Village related thereto. If the Developer fails to notify the Village of its failure to obtain a firm construction loan commitment for the Project on or

before August 15, 2018, this Agreement shall remain valid and binding and this Section 2(n) shall be of no further force or effect.

Section 3. Developer Incentives

In consideration of the development by the Developer of the Subject Property in accordance with the terms of this Agreement, so long as no event described in Section 15 of this Agreement shall have occurred and be continuing, the Village shall:

(a) Convey the Subject Property to the Developer in accordance with the terms of Section 2(d) above and the Conveyance Agreement, with such changes to the Conveyance Agreement to make it consistent with the terms of this Agreement.

(b) For the Project, other than the Connection Fees Paid, (y) waive the water and sewer capital improvement charges, also known as connection fees, imposed by the Village pursuant to Sections 51.37 and 53.61 of the Village Code, and (z) waive the water connection fees and sewer connection fees, imposed by the Village pursuant to Sections 51.17 and 53.12 of the Village Code, respectively.

(c) Refund the Developer the Connection Fees Paid, and return or release to the Developer, as the case may be, Sixty Three Thousand and No/100 Dollars (\$63,000.00) of the Subject Property Security, within thirty (30) days of the Developer receiving a temporary certificate of occupancy for Building 1.

(d) Pursuant to Section 159.05(E) of the Village Code, waive the "Administrative Impact Fee," "Public Works Impact Fee" and "Police Impact Fee" imposed by the Village, pursuant to Chapter 159 of the Village Code, for the Project.

(e) Assist the Developer in obtaining the easement for ingress and egress for the Subject Property set forth in Section 2(a) above.

Section 4. Financial Responsibility and Clawbacks

(a) The Developer shall advance all funds and all costs necessary to construct and complete the Project.

(b) If the Developer fails to comply with Section 2(c), in lieu of the other remedies available to the Village in this Agreement, the Village may elect to declare this Agreement null and void and of no further force or effect.

(c) If the Developer has title to the Subject Property, and if the Developer fails to comply with Section 2(g), in addition to all other remedies available to the Village in this Agreement, the Developer shall have forfeited the Subject Property Security to the Village, and the Village shall be entitled to draw on and keep the Subject Property Security.

(d) If the Developer has title to the Subject Property, and if the Developer fails to comply with Section 2(h) and/or Section 2(i), the Developer shall have forfeited One Hundred Eighty Thousand and No/100 Dollars (\$180,000.00) of the Subject Property Security to the Village, and the Village shall be entitled to draw on and keep One Hundred Eighty Thousand and No/100 Dollars (\$180,000.00) of the Subject Property Security, with the remainder of the Subject Property Security being returned to the Developer or released to the Developer, as the case may be. If the Developer has title to the Subject Property, and if the Developer complies with Sections 2(h) and 2(i) through the term of the Agreement, the Subject Property Security shall be returned to the Developer or released to the Developer, as the case may be, upon the expiration of the term of the Agreement.

(e) The Developer hereby covenants and agrees to repay to the Village any and all sums waived and/or paid by the Village to the Developer pursuant to this Agreement in the event the Developer, or any approved successor, ceases to operate the Project at the Subject Property, with the apartments thereon being vacant, at any time during the term of this Agreement; provided, that the obligation to repay shall be reduced by twenty percent (20%) of the sums waived and/or paid by the Village on each anniversary of the Effective Date hereof.

(f) By this Agreement the Developer is not receiving, and in no case shall the Project shall receive, any "financial assistance through an agreement with the municipality" for housing units relative to the Project, and the Village is not incurring "the cost of necessary infrastructure improvements within the boundaries of the assisted housing sites," as set forth in Sections 11-74.4-3(q)(7.5) and (7.7) of the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-3(q)(7.5) and (7.7). If the Village has refunded the Developer the Connection Fees Paid, and if a court of competent jurisdiction finds that this Agreement has resulted in the Developer and/or the Project receiving "financial assistance through an agreement with the municipality" for housing units relative to the Project, or that the Village has incurred "the cost of necessary infrastructure improvements within the boundaries of the assisted housing sites," as set forth in Sections 11-74.4-3(q)(7.5) and (7.7) of the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-3(q)(7.5) and (7.7), the Developer shall repay to the Village, the Connection Fees Paid.

(g) The Developer's obligations in Section 4 shall survive, and be binding upon the Developer, regardless of the termination or expiration of this Agreement.

Section 5. Term

Unless earlier terminated pursuant to Section 15, the term of this Agreement shall commence on the Effective Date and end on the earlier of: (a) the date the Village has accepted all the public improvements constructed relative to the Project; or (b) December 31, 2023. The Village shall comply with the Legal Requirements in accepting the public improvements constructed relative to the Project.

Section 6. Verification of Real Estate Tax Payments

The Developer shall pay all real estate taxes on the Subject Property, and shall submit to the Village certified copies of all real estate tax bills payable in 2018, and for each subsequent year during the term of this Agreement.

Section 7. No Liability of Village to Others for Developer's Expenses

Except as set forth herein, the Village shall have no obligation to waive any cost relating to the development of the Subject Property or to make any payment to any person, nor shall the Village be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the Developer for the development of the Subject Property.

Section 8. Assignment

During the term of this Agreement, this Agreement may not be assigned by the Developer, without the written consent of the Village, nor may the Subject Property be conveyed without the prior written consent of the Village.

Section 9. Developer Indemnification

The Developer shall indemnify and hold harmless the Village, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities,

judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) which may arise directly or indirectly in connection with the Project, including, but not limited to, the failure of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer or materialman; from any default or breach of the terms of this Agreement by the Developer; or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer). The Developer shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. Notwithstanding any of the foregoing, if any judgment shall be rendered against the Village, its agents, officers, officials or employees in any such action, the Developer shall have no obligation whatsoever, with respect to any acts of negligence or reckless or willful misconduct on the part of the Village or any of its officers, agents, employees or contractors.

Section 10. Waiver

Any party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or remedy does so in writing. No such waiver shall obligate such party to waive any right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided said party pursuant to this Agreement.

Section 11. Severability

If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

Section 12. Notices

All notices, demands, requests, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To the Developer:

811 Main St. Apts. LLC
201 Penny Ave. Apt. 2d
East Dundee, IL 60018

With a copy to:

RothMelei
454 West Virginia Street
Crystal Lake, Illinois 60014
Attn: Samuel S. Melei

To the Village:

Village of East Dundee
Village Administrator
120 Barrington Avenue
East Dundee, Illinois 60118

With a copy to:

Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attn: Gregory T. Smith

Section 13. No Joint Venture, Agency or Partnership Created

Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

Section 14. No Discrimination and Prevailing Wage Act Compliance

(a) The Developer for itself and its successors and assigns agrees that in the construction of the improvements on the Subject Property provided for in this Agreement the Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Developer shall require that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising and solicitations or advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices, which may be provided by the Village, setting forth the provisions of this nondiscrimination clause. The Developer shall comply with all applicable laws regarding rate of pay or other forms of compensation.

(b) Prevailing Wage Act.

(1) The Developer, its contractors and subcontractors shall be responsible to determine if the Project is a "public work" within the meaning of the Illinois Prevailing Wage Act ("Act") (820 ILCS 130/0.01 et seq.) requiring it to pay workers performing services on this Project no less than the "prevailing rate of wages" in the county where the work is performed. For information regarding the applicability of the Act contact your attorney or the Illinois Department of Labor ("IDOL"). For the current prevailing wage rates, contact the Village or see the listing of rates or at illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx. The IDOL makes the final determination of whether this Project is subject to the Act.

(2) The Developer agrees to indemnify and hold harmless the municipality, its agents, officers and employees as provided for in this Agreement for any violation by the Developer or its contractors and subcontractors' failure to comply with any provision of the Act if applicable.

Section 15. Remedies – Liability

(a) If, in the Village's judgment, the Developer is in material default of this Agreement for any phase of the Project, the Village shall provide the Developer with a written statement indicating any failure on the Developer's part to fulfill its obligations under this Agreement. Except as required to protect against further damages, the Village may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice so that the Developer will have the opportunity to cure any claimed material default within such thirty (30) day period. If

such default cannot be cured within such thirty (30) day period, such thirty (30) days period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by the Village in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(b) If the Developer materially fails to fulfill its obligations under this Agreement after notice is given by the Village and any cure periods described in paragraph (a) above have expired, the Village may elect to terminate its obligations under this Agreement or exercise any right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the Developer's debts, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of any of the Developer's property, and the same is not dismissed or stayed within sixty (60) days, the Village may elect, to the extent such election is permitted by law and is not unenforceable under applicable federal bankruptcy laws, but is not required, with or without notice of such election and with or

without entry or other action by the Village, to forthwith terminate this Agreement. To effect the Village's termination of this Agreement under this Section, the Village's sole obligation shall be to record, in the Office of the Kane County Recorder, a Certificate of Default, executed by the President of the Village or such other person as shall be designated by the Village, stating that this Agreement is terminated pursuant to the provisions of this Section, in which event this Agreement, by virtue of the recording of such certificate, shall *ipso facto* automatically terminate and be of no further force and effect.

(c) If, in the Developer's judgment, the Village is in material default of this Agreement, the Developer shall provide the Village with a written statement indicating in adequate detail any failure on the Village's part to fulfill its obligations under this Agreement. The Developer may not exercise any remedies against the Village in connection with such failure until thirty (30) days after giving such notice so that the Village will have the opportunity to cure any claimed material default within such thirty (30) day period. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Village diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. Any failure or delay by the Developer in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(d) In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance; provided, however, no recourse under or upon any obligation contained herein or for any claim based thereon shall be had against the Village, its officers, agents, attorneys, representatives or employees in any amount or in excess of any specific sum agreed to be paid by the Village hereunder, and no liability, right or claim at law or in equity shall be attached to or incurred by the Village, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sums agreed by the Village to be paid hereunder and any such claim is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. Notwithstanding the foregoing, in the event either party shall institute legal action against the other party because of a breach of any agreement or obligation contained in this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action. Each party hereby waives any right to consequential, exemplary or punitive damages.

(e) The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Illinois. Any legal proceedings shall be commenced in the current Court of Kane County.

Section 16. No Warranty

The Village makes no warranties or representations regarding, nor does it indemnify Developer with respect to, the existence or nonexistence on or in the vicinity of the Subject Property of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Subject Property as well as any activity claimed to have been undertaken on or in the vicinity of the Subject Property, that would cause or contribute to causing (1) the Subject Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Subject Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901, et seq., or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Subject Property, within the meaning of, or otherwise bring the Subject Property within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control

Act, 33 U.S.C. § 1251, et seq., or any similar State law or local ordinance. Further, the Village makes no warranties or representations regarding, nor does the Village indemnify Developer with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Subject Property, of any substances or conditions in or on the Subject Property, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The Village makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Subject Property, or whether any above or underground tanks have been located under, in or about the Subject Property have subsequently been removed or filled.

Section 17. Time; Force Majeure

Time is of the essence of this Agreement, provided, however, a party shall not be deemed in material breach of this Agreement with respect to any of its obligations under this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, weather conditions, failure or interruptions of power, condemnations, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("Force Majeure"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to

whom such claim is made shall investigate same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

Section 18. Amendment

This Agreement, and any exhibits attached to this Agreement, may be amended only in a writing signed by all parties with the adoption of any ordinance or resolution of the Village approving said amendment, as provided by law, and by execution of said amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof.

Section 19. Counterparts

This Agreement may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

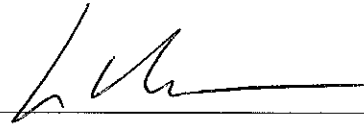
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at East Dundee, Illinois.

VILLAGE:

Village of East Dundee, an Illinois municipal corporation

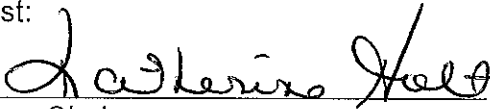
By:

President



Attest:

Village Clerk

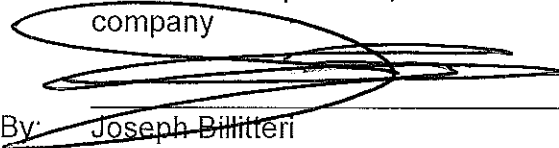


DEVELOPER:

811 Main St Apts LLC, an Illinois limited liability company

By:

Joseph Billitteri
Its Manager



Attest:

EXHIBIT A

Legal Description of Subject Property

(attached)

11/11/2011 11:11:11 AM

EXHIBIT A

Legal Description of the "Property"

LEGAL DESCRIPTION:

PARCEL 2: THE PART OF THE SOUTHEAST ¼ QUARTER OF SECTION 23 AND THAT PART OF THE NORTHEAST 1/4 OF SECTION 26, ALL IN TOWNSHIP 42 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF FOX RIVER BLUFF'S UNIT NO. 1, BEING ALSO A POINT ON THE CENTERLINE OF STATE ROUTE NO. 72; THENCE NORTHERLY ALONG THE EAST LINE OF SAID FOX RIVER BLUFF'S UNIT NO. 1, A DISTANCE OF 372.27 FEET TO AN ANGLE IN SAID EAST LINE; THENCE CONTINUING NORTHERLY ALONG SAID EAST LINE, BEING ALSO THE EAST LINE OF NORTH GATE MANOR UNIT NO. 1, WHICH FORMS AN ANGLE OF 00 DEGREES, 45 MINUTES, 01 SECOND TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 320.31 FEET; THENCE EASTERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 158.65 FEET, THENCE SOUTHERLY, A DISTANCE OF 776.92 FEET TO A POINT ON THE CENTERLINE OF STATE ROUTE NO. 72, THAT IS 175.0 FEET SOUTHEASTERLY OF (MEASURED ALONG SAID CENTERLINE) THE PLACE OF BEGINNING, THENCE NORTHWESTERLY, ALONG THE CENTERLINE OF STATE ROUTE NO. 72, A DISTANCE OF 175.00 FEET TO THE PLACE OF BEGINNING IN KANE COUNTY, ILLINOIS.

P.I.N.: 03-23-479-003 and 03-26-227-011;

Common Address: 811 E. Main Street, East Dundee, Illinois 60118

EXHIBIT B-1

Site Plan of the Project

(attached)

[Note: the site plan needs to have labels for "Building 1" and "Building 2," and "Ingress / Egress Easement Area," as these areas are addressed specifically in the Agreement]

611 main st. PIN # 03-26-226-011
Easement Request

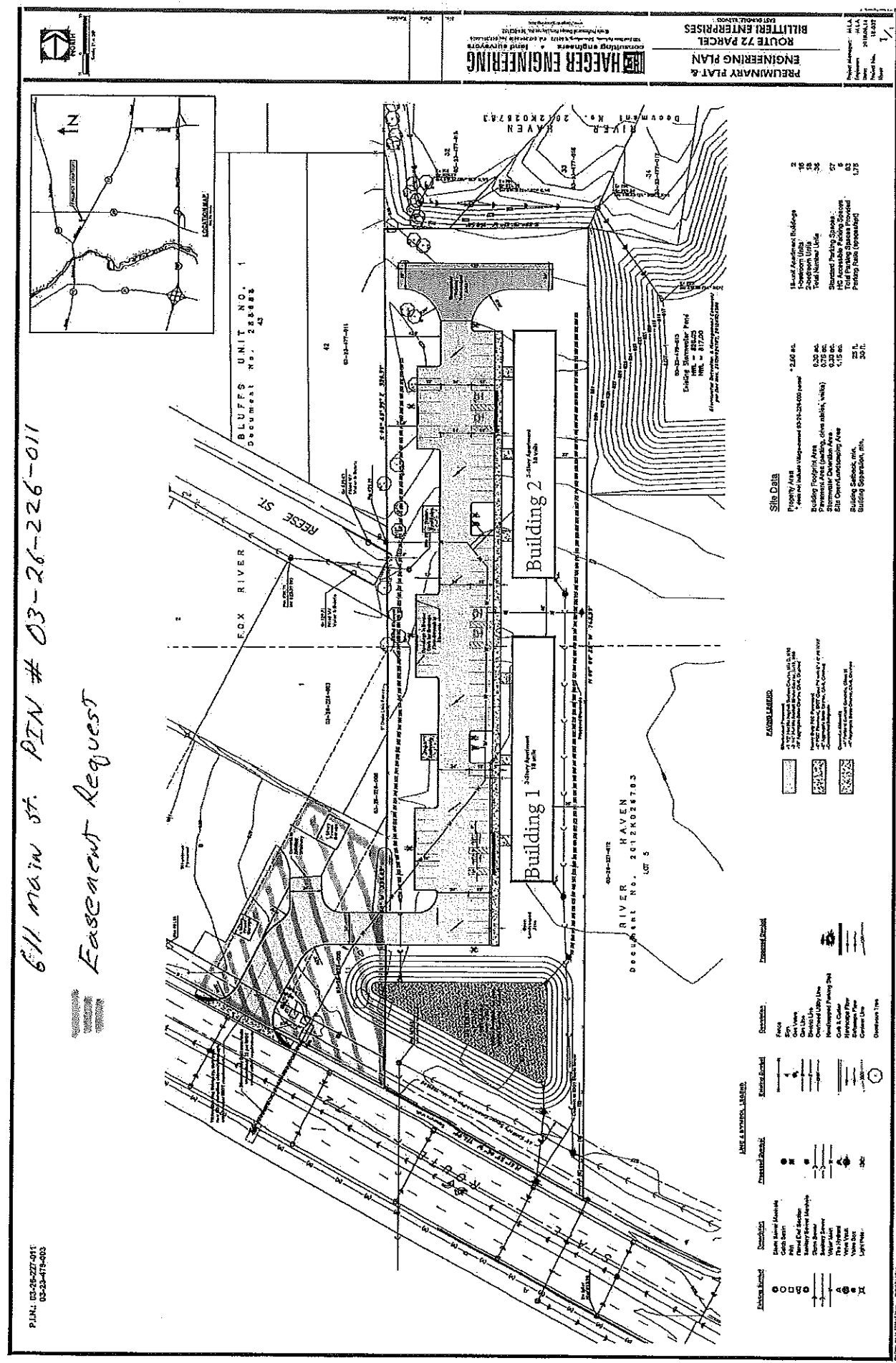
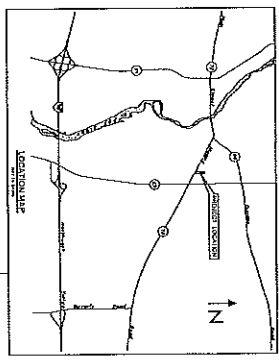


EXHIBIT B-2

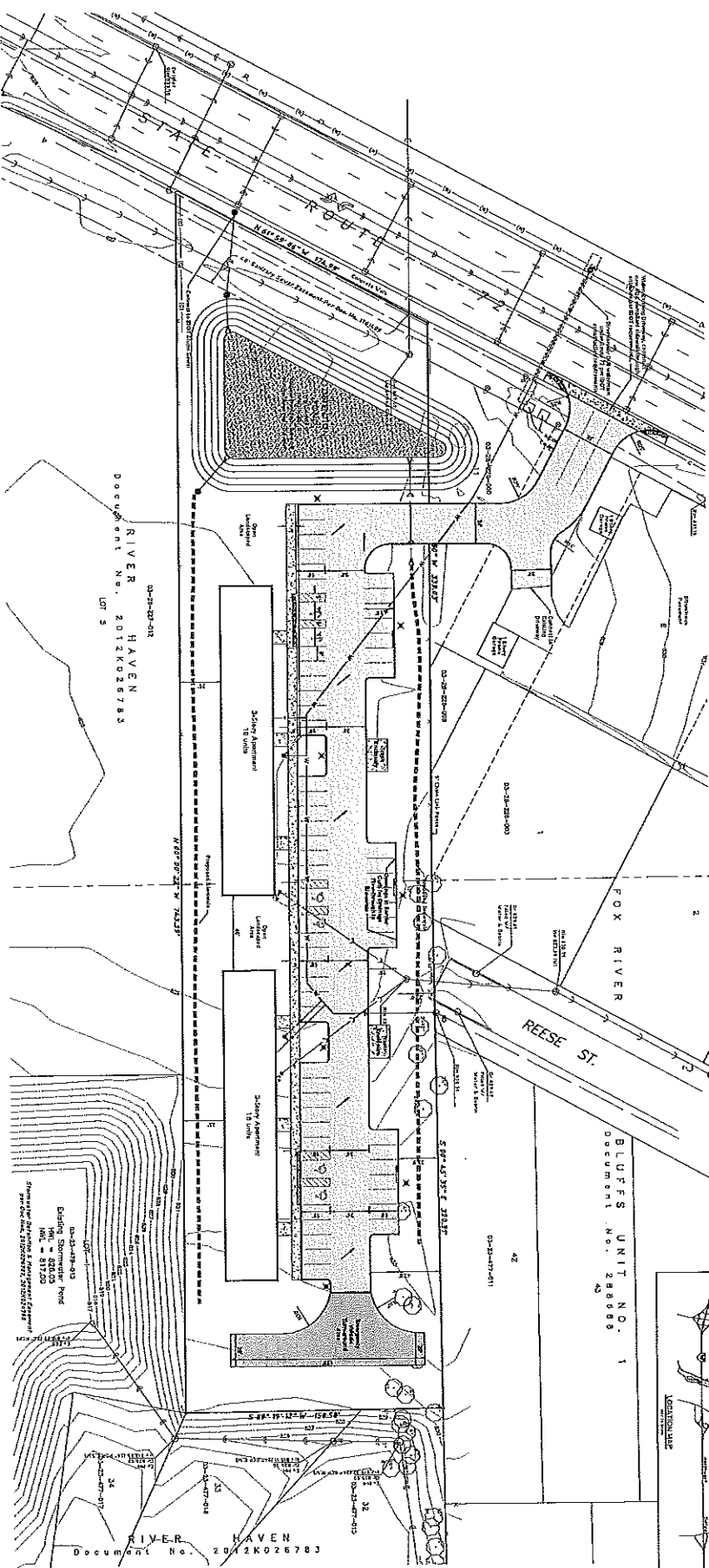
Description of the Project

The Project consists of two (2) multifamily rental apartment buildings with eighteen (18) units each, with thirty-six (36) units in total, with a unit mix of eighteen (18) one (1) bedroom units and eighteen (18) two (2) bedroom units amongst the two (2) buildings. There will be no less than sixty-two (62) surface parking spaces, with a parking ratio (spaces / units) of no less than 1.72. There will be a landscaped screening berm along the south of the Subject Property that will run the width of the Subject Property parallel to Route 72. There will be an expanded detention pond area at the north of the Subject Property. Ingress and egress to and from the Subject Property will be provided by way of a driveway located on an easement granted by the owner of the property to the west of the Subject Property.

EXHIBIT C
PROJECT SUBMITTALS
(attached)



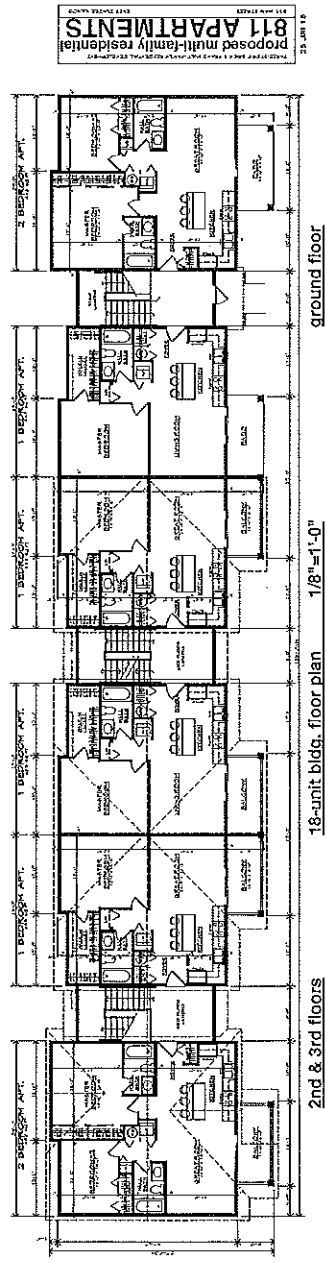
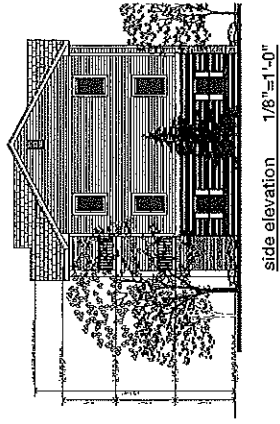
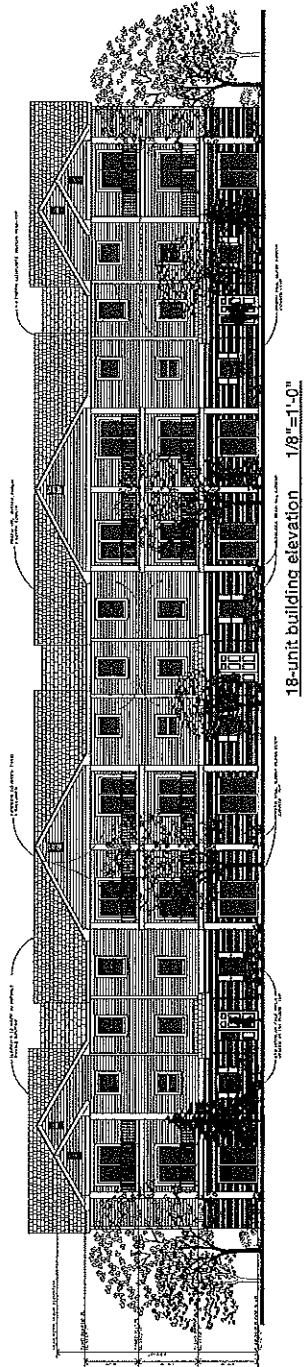
02-25-223-012
RIVER HAVEN
Document No. 2012K026783

[illegible][illegible]

**PRELIMINARY PLAT &
ENGINEERING PLAN**

**ROUTE 72 PARCEL
BILLITTERI ENTERPRISES**
EAST DOWDIE, ILLINOIS

HAEGER ENGINEERING
consulting engineers • land surveyors
120 East State Parkway, Schaumburg, IL 60193 • Tel: 815/374-6220 Fax: 815/374-6574
Mobile: 815/681-Design Anywhere, Inc. 184-000-122
www.haegerengineering.com



811 Main St EAST DUNDEE Apartment Project

06.14.18

Building Square footage 33,671

| Costs | |
|-------------------|------------------------|
| Construction cost | \$ 3,262,083.84 |
| Land | \$ 360,000.00 |
| Soft cost | \$ 815,442.00 |
| Site cost | \$800,814.00 |
| Demo | \$ - |
| Development fee | \$ - |
| Total Cost | \$ 5,238,338.84 |

36 Unit Scenario

| TIF funds | | 0% | \$ |
|-------------------|-----|----|-----------------|
| Project cost | | | \$ 5,238,338.84 |
| Equity in project | 20% | | \$ 1,047,667.77 |
| Amount Financed | | | \$ 4,190,671.08 |

Land Contributions reducing owners actual cash in equity requirements are factored into the Cash on Cash, IRR, and Build CAP calculations.

360,000

| Income Assumptions at stabilization | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|-------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|---------------------|----------------------|----------------------|----------------------|
| Rent per Sq. foot | | | | | | | | | | |
| Rental Income assumption | \$ 503,604.40 | \$ 518,776.49 | \$ 529,152.02 | \$ 539,735.06 | \$ 550,529.76 | \$ 561,546.35 | \$572,777.28 | \$ 584,232.83 | \$ 595,917.48 | \$ 607,833.83 |
| TIF Contributions | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| RE Tax | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Total | \$ 503,604.40 | \$ 518,776.49 | \$ 529,152.02 | \$ 539,735.06 | \$ 550,529.76 | \$ 561,546.35 | \$572,777.28 | \$ 584,232.83 | \$ 595,917.48 | \$ 607,833.83 |
| Monthly Rent, CAM, Taxes | \$ 42,333.70 | \$ 43,231.37 | \$ 44,095.00 | \$ 44,877.92 | \$ 45,877.48 | \$ 46,793.53 | \$47,721.44 | \$ 48,666.07 | \$ 49,659.79 | \$ 50,692.99 |

| Expense assumptions NNN rent | |
|--|------|
| 5.00% Debt service | Y 30 |
| CAM, Retail only, Apt. CAM deducted on rent roll | |
| RE Tax | |
| TIF Contribution | |
| Total | |

| Cash flow distributions | |
|--|--------------|
| Cash flow | \$ 73,652.86 |
| Equity partners | 100% |
| Development partners | 0% |
| Cash on Cash return to Equity partners | 11.0% |
| IRR | 20.6% |

| Profit Distributions | |
|---|----------------------|
| Cash flow | \$ 73,652.86 |
| Principle pay down | \$ 61,827.21 |
| Total | \$ 135,480.07 |
| Equity partners | 100% |
| Development partners | 0% |
| BUILD CAP RATE considers village contribution | 7.68% |

| Building value / Equity | |
|--|-----------------|
| Value at Cap rate of | 6.50% |
| Loan balance end of year | \$ 4,134,114.32 |
| Equity in project at year end | \$ 1,182,963.47 |
| Loan to value | 77.8% |
| Total Profit at sale after return of original Equity | \$ 1,047,667.77 |
| Equity partners profit including cash flow | 50% |
| Return on equity | 20% |
| Development partners profit including cash flow | 50% |
| DCH available at 80% loan to value | 80% |



RE: *Confidential: Summit School Apartments

Michael Bielak

to:

Jennifer Johnsen

01/10/2018 10:51 AM

Hide Details

From: Michael Bielak <MBielak@dundeeassessor.com>

To: Jennifer Johnsen <JJohnsen@eastdundee.net>

History: This message has been replied to.

Hi Jennifer,

The developer's estimate of \$3.1 million or \$86k a unit is about right considering past Kane County Board of Review decisions. However, the apartment market is showing an uptick once again. The true market value should come in around \$100,000 to \$120,000 a unit. That isn't necessarily what they are being assessed for though. Keeping uniformity in mind and the need for development, \$3.1M to \$3.4M is a good range to project with.

I hope this helps and not hinders.

Thanks

Mike

From: Jennifer Johnsen [<mailto:JJohnsen@eastdundee.net>]

Sent: Tuesday, January 09, 2018 1:52 PM

To: Michael Bielak <MBielak@dundeeassessor.com>

Subject: *Confidential: Summit School Apartments

Mike,

Please keep this email confidential.

Per our discussion, see the attached concept plan and front elevation for the apartments proposed for PINS 03-26-227-001 and 03-23-479-003. Below, please find some additional details:

- 36 units - 12 units per building
- One bedroom units - 18
- Two bedroom units - 18
- Rent: \$850/1 bedroom. \$1050/2 bedroom

- Developer has estimated the assessed value at \$3.1 million

Additional information from the developer:

The initial site development costs are approximately \$380,000.00, and the construction cost of the first building is estimated at \$1,285,000, for a total phase one value of the improvements at \$1,665,000. For pro-forma purposes you can use the \$1,285,000 for each additional building and use \$275,000 for additional site improvements for each building.

The Village would sincerely appreciate an estimate on the assessed value of the property if this concept were to proceed. Should you require any further information, do not hesitate to contact me. Thank you for your time.

Regards,

Jennifer Johnsen
Village Administrator
Village of East Dundee
120 Barrington Avenue
East Dundee, IL 60118
(847) 426-2822 x6120
jjohnsen@eastdundee.net

To: Village of East Dundee

The undersigned, having filed or expecting to file, a development petition with the Village of East Dundee, certify that I have received a copy of Village of East Dundee's Code TITLE XV; Chapter 160 and have read and understand the same and agree to make the deposits as provided in said Code Chapter, including the initial deposit of \$ 3,000-.

Check # 0751

Dated 6-21-18

Type of Project: 36 Unit Apartments

Project Name: 811 MAIN ST APTS.

Project Address: 811 E main E. Dundee

PIN(s): 03-26227-011

Owners Name: Village of East Dundee
Joe Bill Heri Phone: [REDACTED]

Owners Address: 201 Penny Ave Apt 20 East Dundee, IL

Owners Email: [REDACTED]

Owners Signature: [Signature]

Petitioners Name: Joe Bill Heri Phone: 847.823-5001

Petitioners Address: 201 Penny Ave Apt 20 East Dundee

Petitioners Email: [REDACTED]

Petitioners Signature: [Signature]

Received By: [Signature]

Date: 6-21-18

3 K3ROW # 85-01-2388
Cash Receipt Code = 208480

EXHIBIT D
CONVEYANCE AGREEMENT
(attached)

REAL ESTATE PURCHASE AND SALES CONTRACT

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "**Contract**") is made as of the Effective Date (as defined in Section 24 below) between _____, a _____ (the "**Seller**") and the _____, a _____ (the "**Buyer**").

A G R E E M E N T:

1. **THE SELLER IS A MUNICIPAL ENTITY AND THIS CONTRACT IS SUBJECT TO THE APPROVAL OF, AND IS NOT ENFORCEABLE UNLESS APPROVED AT AN OPEN MEETING BY, THE BOARD OF TRUSTEES OF SELLER.**

2. **SALE.** The Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to the parcel of land commonly known as _____, East Dundee, Illinois, PINs _____, located in the County of Kane (the "**Property**"), which Property is legally described in **Exhibit A** attached hereto and made a part hereof, and which legal description shall be adjusted, if necessary, to conform to the legal description from the "Survey," as defined in Section 9 below.

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **TEN AND NO/100 DOLLARS (\$10.00)** (the "**Purchase Price**"). At closing, Buyer shall pay to Seller, in good and available funds by wire transfer or cashier's check, the Purchase Price, plus or minus prorations as provided herein.

4. **EARNEST MONEY DEPOSIT.** [Intentionally omitted].

5. **CLOSING DATE.** The closing (the "**Closing**") of the contemplated purchase and sale of the Property shall take place through a deed and money escrow ("**Escrow**") on _____, 2018 (the "**Closing Date**") at the office of Chicago Title Insurance Company, 10 South LaSalle St. Suite 3100 Chicago, Illinois 60603 (the "**Title Company**"), or at such other time and place as mutually agreed to by the parties. The parties shall equally share all Closing costs, including but not limited to the costs of recording, the title policy, the Survey and the Escrow.

6. **ENVIRONMENTAL INSPECTION.** The Buyer shall have the right, any time prior to the closing Date to conduct the "Environmental Assessment" on the Property, as defined and set forth in Section 15(K) below.

7. **BUYER'S OPTION TO TERMINATE CONTRACT.** The Buyer shall not be obligated to take title to the Property if, in the Buyer's sole and exclusive judgment,

for any reason whatsoever, Buyer determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a material health, safety or environmental hazard, or if the Environmental Assessment reveals the existence of any environmental condition which may be dangerous and/or unacceptable to the Buyer, or in violation of any environmental law or regulation including, but not limited to, the presence of any hazardous material (the foregoing collectively, an "**Environmental Defect**"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is an Environmental Defect, Buyer shall have the right to revoke its acceptance of the Contract, if any, and to declare the Contract null and void. Buyer's option to terminate due to Environmental Defect may be exercised no later than the Closing.

8. **TITLE INSURANCE.** Prior to _____, 2018, Seller shall obtain a title commitment issued by the Title Company, in the amount of the Purchase Price, with extended coverage over the standard exceptions 1 through 5 (the "**Title Commitment**"), together with copies of all underlying title documents listed in the Title Commitment (the "**Underlying Title Documents**"), subject only to those matters described in **Exhibit B**, attached hereto and made a part hereof (the "**Permitted Exceptions**"). If the Title Commitment, Underlying Title Documents or the Survey (as hereinafter defined) disclose exceptions to title, which are not acceptable to Buyer (the "**Unpermitted Exceptions**"), Buyer shall have fourteen (14) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter (the "**Buyer's Objection Letter**") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have five (5) business days from the date of receipt of the Buyer's Objection Letter ("**Seller's Cure Period**") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, and the Closing shall be extended such additional time, but not beyond _____, 2018 (the "**Extended Title Closing Date**") after Buyer's receipt of a proforma title policy (the "**Proforma Title Policy**") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or, in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract and this Contract shall become null and void without further action of the parties, or (ii) upon notice to Seller within ten (10) days after Buyer's receipt of Seller's intention not to cure the Unpermitted Exceptions, take title as it then is with the right to deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount which are listed in the Title Commitment. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. The Buyer shall pay the cost for any later date title commitments, and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

9. **SURVEY.** Prior to _____, 2018, Seller shall obtain and deliver to Buyer a Plat of Survey (the "**Survey**") that conforms to the Minimum Standards of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Survey shall include the following statement, placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey."

10. **DEED.** Seller shall convey fee simple title to the Property to Buyer, by a recordable Warranty Deed (the "**Deed**"), subject only to the Permitted Exceptions. Seller shall also execute and deliver, at Closing, any and all documents, in addition to the Deed, including an Affidavit of Title, Covenant and Warranty, Title Company documentation including, but not limited to, an ALTA Statement, GAP Undertaking, Bill of Sale and such other documents reasonably requested either by the Buyer or the Title Company to consummate the transaction contemplated herein and to vest fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the issuance of the Buyer's Title Company owners title insurance policy. Buyer shall be responsible for the recording fee of the Deed.

11. **CLOSING DOCUMENTS.** On the Closing Date, the obligations of the Buyer and Seller shall be as follows:

- A. Seller shall deliver or cause to be delivered to the Title Company:
 - i. the original executed and properly notarized Deed;
 - ii. the original executed and property notarized Affidavit of Title, Warranty and Covenant;
 - iii. the original executed and property notarized Non-Foreign Affidavit;
 - iv. the original executed Bill of Sale;
 - v. counterpart originals of Seller's Closing Statement; and
 - vi. such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated hereby, including, without limitation, ALTA statements and GAP Undertaking, such other documentation as is reasonably required by the Title Company to issue Buyer its owners title

insurance policy in accordance with the Proforma Title Policy and in the amount of the Purchase Price insuring the fee simple title to the Property in the Buyer as of the Closing Date, subject only to the Permitted Exceptions.

B. Buyer shall deliver or cause to be delivered to the Title Company:

- i. the balance of the Purchase Price, plus or minus prorations;
- ii. counterpart originals of Seller's Closing Statement;
- iii. ALTA Statement and such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated herein.

C. The parties shall jointly deposit fully executed State of Illinois Transfer Declarations and County Transfer Declarations.

12. **POSSESSION.** [Intentionally omitted].

13. **PRORATIONS.** At Closing, the following adjustments and prorations shall be computed as of the Closing Date and the balance of the Purchase Price shall be adjusted to reflect such prorations. All prorations shall be based on a 366-day year, with the Seller having the day prior to the Closing Day.

A. **Real Estate Taxes.** General real estate taxes for 2018 and subsequent years, special assessments and all other public or governmental charges against the Property, if any, which are or may be payable on an annual basis (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Closing Date) shall be adjusted and apportioned as of the Closing Date. If the exact amount of general real estate taxes is not known at Closing, the proration will be based on 105% of the most recent full year tax bill, and shall be conclusive, with no subsequent adjustment.

B. **Miscellaneous.** All other charges and fees customarily prorated and adjusted in similar transactions shall be prorated as of Closing Date. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable (as, for example, all water, sewer, gas and utility bills), the parties shall prorate on the best available information. Final readings and final billings for utilities shall be taken as of the date of Closing.

14. **CONVEYANCE TAXES.** The parties acknowledge that, as Buyer is a governmental entity, this transaction is exempt from any State, County or local real

estate transfer tax pursuant to 35 ILCS 200/31-45(b). Seller shall furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.

15. **COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER.**

The covenants, representations and warranties contained in this Section shall be deemed remade as of the Closing Date and shall survive the Closing, and shall be deemed to have been relied upon by the Buyer in consummating this transaction, notwithstanding any investigation the Buyer may have made with respect thereto, or any information developed by or made available to the Buyer prior to the Closing and consummation of this transaction. Seller covenants, represents and warrants to the Buyer as to the following matters, each of which is so warranted to be true and correct as of the Effective Date and also on the Closing Date:

A. Title Matters. Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.

B. Violations of Zoning and Other Laws. Seller has received no notice, written or otherwise, from any governmental agency alleging any violations of any statute, ordinance, regulation or code. The Property as conveyed to Buyer shall include all rights of the Seller to the use of any off-site facilities, including, but not limited to, storm water detention facilities, necessary to ensure compliance with all zoning, building, health, fire, water use or similar statutes, laws, regulations and orders and any instrument in the nature of a declaration running with the Property.

C. Pending and Threatened Litigation. To the best knowledge and belief of Seller, there are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Property.

D. Eminent Domain, etc. To the best knowledge and belief of Seller, there is no pending or contemplated eminent domain, condemnation or other governmental taking of the Property or any part thereof.

E. Access to Property Utilities. No fact or condition exists which would result in the termination or impairment of access to the Property or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.

F. Assessments. To the best knowledge and belief of Seller, there are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed, and there are no special or general assessments pending against or affecting the Property.

G. Authority of Signatories; No Breach of Other Agreements; etc. The execution, delivery of and performance under this Contract by Seller is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Contract do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which Seller or the Property are bound; and will not and does not, to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court, domestic or foreign, to which Seller or the Property are subject or bound.

H. Executory Agreements. Seller is not a party to, and the Property is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Property, other than this Contract. Buyer shall not, by reason of entering into or closing under this Contract, become subject to or bound by any agreement, contract, lease, license, invoice, bill, undertaking or understanding which Buyer shall not have expressly and specifically previously acknowledged and agreed in writing to accept. Seller warrants and represents that no written leases, licenses or occupancies exist in regard to the Property and, further, that no person, corporation, entity, tenant, licensee or occupant has an option or right of first refusal to purchase, lease or use the Property, or any portion thereof.

I. Mechanic's Liens. All bills and invoices for labor and material of any kind relating to the Property have been paid in full, and there are no mechanic's liens or other claims outstanding or available to any party in connection with the Property.

J. Governmental Obligations. To the best knowledge of Seller, there are no unperformed obligations relative to the Property outstanding to any governmental or quasi-governmental body or authority.

K. Environmental.

- i. Environmental Inspection and Contingency Period. Notwithstanding any term to the contrary in this Contract, prior to the _____, 2018, the Buyer shall have the right to select and retain environmental and other consultants to examine and inspect the physical condition of the Property (including the groundwater thereunder), to conduct a site assessment and environmental audit, and to perform any environmental and engineering investigation or testing it deems necessary and appropriate ("**Environmental Assessment**").

The Seller grants to the Buyer and its consultants, their employees, agents, subcontractors and representatives, an irrevocable license and authorization to enter upon and have full access to the Property for the purposes of conducting a complete inspection of the Property and to perform such tests, including without limitation subsurface testing, soil and groundwater testing, and other tests which may physically invade the Property or improvements thereon or to conduct other environmental and engineering investigations, as the Buyer, in its sole discretion, determines is necessary to protect its interests and will do nothing to interfere with the investigation of the Property (including the groundwater thereunder). This period shall be known as the **"Environmental Contingency Period"** (or the **"Contingency Period"**), and shall commence one (1) day after the effective date of this Agreement. The Seller shall provide to the Buyer and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder). If requested, the Seller will make available to the Buyer's consultants those key people having knowledge about the environmental practices and procedures of the Seller and prior occupants of the Property, and, if necessary, will make available all documents and information in the Seller's possession, custody or control which relate to adjacent property. The term "Environmental Assessment" as referred to in this section shall include, but not be limited to, Phase I and Phase II environmental audits.

During the Environmental Contingency Period, the Buyer shall not be obligated to take title to the Property if, in addition to the terms of the Contract, in the Buyer's sole and exclusive judgment, for any reason whatsoever (including, without limitation, information revealed by the Environmental Assessment), it determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a health, safety or environmental hazard, or if the Environmental Assessment reveals or if at any time prior to Closing the Buyer otherwise becomes aware of the existence of any environmental condition which may be dangerous and/or unacceptable to the Buyer, or in violation of any environmental law or regulation including, but not limited to, the presence of any Hazardous Material, as said term is defined below. Pursuant to this Section, the Buyer shall have the right, in its sole and

exclusive judgment, to revoke its acceptance of this Contract prior to taking title to the Property, and to declare this Contract, null and void.

L. Easements. Seller represents that the Property has no private easements or agreements that would hinder Seller from its intended use of the Property.

M. Section 1445 Withholding. Seller represents that he/she/it/they is/are not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is/are, therefore, exempt from the withholding requirements of said Section. At Closing, Seller shall furnish Buyer with a Non-Foreign Affidavit as set forth in said Section 1445.

Seller hereby indemnifies and holds Buyer harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees) and charges which Buyer may incur or to which Buyer may become subject as a direct or indirect consequence of such breach of any of Seller's representations or warranties made hereunder, including all incidental and consequential damages, except that with regard to Seller's representations and warranties in Section 15(k), which shall be governed by the terms therein. These representations, warranties and Seller's indemnification shall survive the Closing.

When used in this Section, the expression "to the best knowledge and belief of Seller," or words to that effect, is deemed to mean that Seller, after reasonable examination, investigation and inquiry, is not aware of any thing, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes.

16. DEFAULT AND CONDITIONS PRECEDENT TO CLOSING.

A. It is a condition precedent to Closing that:

- i. fee simple title to the Property is shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and is accepted by Buyer;
- ii. the covenants, representations and warranties of Seller contained in Section 15 hereof and elsewhere in this Contract are true and accurate on the Closing Date or waived by Buyer in writing on the Closing Date; and
- iii. Seller has performed under the Contract and otherwise has performed all of its covenants and obligations and fulfilled all of the conditions required of it under the Contract in order to Close on the Closing Date.

B. If, before the Closing Date, Buyer becomes aware of a breach of any of Seller's representations and warranties or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to Close on the Closing Date, Buyer may, at its option:

i. elect to enforce the terms hereof by action for specific performance; or

ii. attempt to cure such breach or failure by Seller for a period of up to thirty (30) days following the Closing Date, charging Seller for all costs and expenses incurred in doing so and, following such attempt, to either:

(a) terminate this Contract; or

(b) proceed to Close notwithstanding such breach or nonperformance.

In all events, Buyer's rights and remedies under this Contract shall always be non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other, including all rights and remedies available to it at law or in equity.

C. In the event of a default by Buyer, Seller's sole and exclusive right and remedy shall be to terminate this Contract. Notwithstanding the foregoing, the parties agree that no default of or by either party shall be deemed to have occurred unless and until notice of any failure by the non-defaulting party has been sent to the defaulting party and the defaulting party has been given a period of ten (10) days from receipt of the notice to cure the default.

17. **BINDING EFFECT.** This Contract shall inure to the benefit of and shall be binding upon the heirs, legatees, transferees, assigns, personal representatives, owners, agents, administrators, executors and/or successors in interest of any kind whatsoever of the parties hereto.

18. **BROKERAGE.** The Buyer represents that it has not retained a broker regarding the proposed transaction. The Seller represents that, in connection with the proposed sale of the Property to Buyer, other than the broker fee due Hilco Real Estate, which shall be paid solely and directly by Seller, no third-party broker or finder has been engaged or consulted by it, or its subsidiaries or agents or employees, or, through Purchaser's actions (or claiming through such party), is entitled to compensation as a

consequence of this transaction. Each party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Contract. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorneys' fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder. This provision shall survive the Closing.

19. **NOTICES.** Any and all notices, demands, consents and approvals required under this Contract shall be sent and deemed received: (A) on the third business day after mailed by certified or registered mail, postage prepaid, return receipt requested, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne) for guaranteed next business day delivery, or (C) by e-mail transmission on the day of transmission, with the original notice mailed by certified or registered mail, postage prepared, return receipt requested, or (D) by personal delivery, if addressed to the parties as follows:

To the Buyer:

With a copy to:

To the Seller:

Village of East Dundee
Village Administrator
120 Barrington Avenue
East Dundee, Illinois 60118

With a copy to:

Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Attn: Gregory T. Smith

Any party hereto may change the name(s), address(es) and e-mail address(es) of the designee to whom notice shall be sent by giving written notice of such change to the

other parties hereto in the same manner, as all other notices are required to be delivered hereunder.

20. **RIGHT OF WAIVER.** Each and every condition of the Closing, other than the Buyer's duties at Closing, is intended for and is for the sole and exclusive benefit of Buyer. Accordingly, Buyer may at any time and from time to time waive each and any condition of the Closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by Buyer shall, unless otherwise herein provided, be in a writing signed by Buyer and delivered to Seller.

21. **DISCLOSURE OF INTERESTS.** In accordance with Illinois law, 50 ILCS 105/3.1, prior to execution of this Contract by the Buyer, an owner, authorized trustee, corporate official or managing agent must submit a sworn affidavit to the Buyer disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Property, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation having any real interest, real or personal, in the Property, or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the corporation or its managing agent that there is no readily known individual having a greater than 7½% percent interest, real or personal, in the Property. The sworn affidavit shall be substantially similar to the one in **Exhibit C** attached hereto and made a part hereof.

22. **ASSIGNMENT.** Buyer shall have the right to assign or transfer Buyer's interest in this Contract without the prior written consent of Seller. Buyer shall deliver to Seller a copy of the fully executed assignment and assumption by Buyer, as assignor and the assignee.

23. **MISCELLANEOUS.**

A. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

B. This Contract provides for the purchase and sale of property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that, for the purpose of any litigation relative to this Contract and its enforcement,

venue shall be in the Circuit Court in the county where the Property is located and the parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.

C. The terms, provisions, warranties and covenants of Section 15 shall survive the Closing and delivery of the Deed and other instruments of conveyance. The provisions of Section 15 of this Contract shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

D. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.

E. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Property Settlement Procedures Act of 1974. In the event that either party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said party.

F. The parties warrant and represent that the execution, delivery of and performance under this Contract is pursuant to authority, validly and duly conferred upon the parties and the signatories hereto.

G. The Section headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

H. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

I. [Intentionally omitted].

J. In the event either party elects to file any action in order to enforce the terms of this Contract, or for a declaration of rights hereunder, the prevailing party, as determined by the court in such action, shall be entitled to recover all of its court costs and reasonable attorneys' fees as a result thereof from the losing party.

K. Buyer may record this Contract or any memorandum or short form of this Contract against the Property, provided that if the transaction contemplated herein does not occur and the Contract is terminated as provided herein, Buyer shall record a termination of the Contract. The recording fees for either shall be borne by the Buyer.

L. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

M. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

24. **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the authorized signatories of Buyer shall sign the Contract, which date shall be the date stated below the Buyer's signature.

25. **CONTRACT MODIFICATION.** This Contract and the Exhibits attached hereto and made a part hereof, or required hereby, embody the entire Contract between the parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.

26. **EXHIBITS.** The following Exhibits are attached hereto and made a part hereof by reference:

| | |
|------------------|-----------------------------------|
| <u>Exhibit A</u> | Legal Description of the Property |
| <u>Exhibit B</u> | Permitted Exceptions |
| <u>Exhibit C</u> | Disclosure Affidavit |

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date below their respective signatures.

SELLER:

VILLAGE OF EAST DUNDEE, an Illinois
municipal corporation

By: _____
Name: Lael Miller
Title: President

ATTEST:

By: _____

Name: Katherine Holt
Title: Village Clerk

Date Seller executed: _____

BUYER:

_____,
a _____

By: _____
Name: _____
Title: _____

ATTEST:

By: _____

Name: _____
Title: _____

Date Buyer executed: _____

Exhibit A

Legal Description of the Property

LEGAL DESCRIPTION:

PARCEL 2: THE PART OF THE SOUTHEAST $\frac{1}{4}$ QUARTER OF SECTION 23 AND THAT PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 26, ALL IN TOWNSHIP 42 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF FOX RIVER BLUFF'S UNIT NO. 1, BEING ALSO A POINT ON THE CENTERLINE OF STATE ROUTE NO. 72; THENCE NORTHERLY ALONG THE EAST LINE OF SAID FOX RIVER BLUFF'S UNIT NO. 1, A DISTANCE OF 372.27 FEET TO AN ANGLE IN SAID EAST LINE; THENCE CONTINUING NORTHERLY ALONG SAID EAST LINE, BEING ALSO THE EAST LINE OF NORTH GATE MANOR UNIT NO. 1, WHICH FORMS AN ANGLE OF 00 DEGREES, 45 MINUTES, 01 SECOND TO THE LEFT WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE, A DISTANCE OF 320.31 FEET; THENCE EASTERLY, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 158.65 FEET, THENCE SOUTHERLY, A DISTANCE OF 776.92 FEET TO A POINT ON THE CENTERLINE OF STATE ROUTE NO. 72, THAT IS 175.0 FEET SOUTHEASTERLY OF (MEASURED ALONG SAID CENTERLINE) THE PLACE OF BEGINNING, THENCE NORTHWESTERLY, ALONG THE CENTERLINE OF STATE ROUTE NO. 72, A DISTANCE OF 175.00 FEET TO THE PLACE OF BEGINNING IN KANE COUNTY, ILLINOIS.

P.I.N.: 03-23-479-003 and 03-26-227-011;

Common Address: 811 E. Main Street, East Dundee, Illinois 60118

Exhibit B

Permitted Exceptions

1. 2018 real estate taxes and subsequent years, not due and payable for the Property.
2. Other title exceptions not objected to by Buyer as Unpermitted Exceptions.

Exhibit C**ALL BUYERS MUST SIGN AN AFFIDAVIT THAT IS
SUBSTANTIALLY SIMILAR TO THE ONE BELOW**

State of Illinois)
)ss.
County of Kane)

DISCLOSURE AFFIDAVIT

I, _____, (hereinafter referred to as "Affiant") reside at _____
_____, in _____ County, _____ State of
_____, being first duly sworn and having personal knowledge of the
matters contained in this Affiant, swear to the following:

1. That I am over the age of eighteen and the (choose one)
 - ☐ owner or
 - ☐ authorized trustee or
 - ☐ corporate official or
 - ☐ managing agent or
 - ☐ _____ of the Real Estate (as defined herein).
2. That the Real Estate (as defined herein) being sold to the Buyer is commonly known as a part of _____ and is located in the County of Kane, Village of East Dundee, State of Illinois (herein referred to as the "Real Estate"). The Real Estate has an Assessor's Permanent Index Number of _____.
3. That I understand that, pursuant to 50 ILCS 105/3.1, prior to execution of a real estate purchase agreement between the record fee owner of the Real Estate and Seller, Illinois State Law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Seller disclosing the identity of every owner and beneficiary having *any* interest, real or personal, in the Real Estate, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation having any interest, real or personal, in the Real Estate.
4. As the ☐ owner or
 ☐ authorized trustee or
 ☐ corporate official or
 ☐ managing agent or
 ☐ _____ of the Real Estate, I declare under oath that (choose one):
 - ☐ The owners or beneficiaries of the trust are: _____
 _____ or
 - ☐ The shareholders with more than 7 1/2% interest are: _____
 _____ or

☐ The corporation is publicly traded and there is no readily known individual having greater than a 7½% interest in the corporation.

This Disclosure Affidavit is made to induce the Seller to convey title to the Real Estate in accordance with 50 ILCS 105/3.1.

AFFIANT

SUBSCRIBED AND SWORN to before me
this _____ day of _____, 2018.