

RESOLUTION 2017-001

**A RESOLUTION AUTHORIZING APPROVAL OF THE EXECUTION OF THE REDEVELOPMENT AGREEMENT BY AND AMONG THE VILLAGE OF VERNON HILLS, ILLINOIS, MELODY FARM LLC, AND MELODY FARM RESIDENTIAL PARTNERS LLC FOR THE DEVELOPMENT OF THE CUNEO INTERSECTION COMMERCIAL PROPERTY LOCATED AT THE NORTHEAST CORNER OF MILWAUKEE AVENUE (ROUTE 21) AND TOWNLINE ROAD (ROUTE 60)**

WHEREAS, the Village of Vernon Hills, Illinois ("Village") adopted Tax Increment Financing Ordinances to create a Tax Increment Financing District to facilitate development of the Cuneo Intersection Commercial Property ("Property");

WHEREAS, Melody Farm LLC and Melody Farm Residential Partners LLC ("Developers") submitted applications and plans for a mixed residential and commercial use of the Property;

WHEREAS, the Village approved Ordinance 2016-045 granting a Planned Unit Development for development of the mixed residential and commercial use of the Property;

WHEREAS, based on the approvals granted in Ordinance 2016-045, together with the Village creating the TIF District, Developers have proposed a redevelopment agreement for the development of the Property;

WHEREAS, the Village deems it to be in the best interest of the Village to approve the proposed Redevelopment Agreement by and between the Developers and the Village.

WHEREAS, the Village adopts this Resolution and approves the proposed Redevelopment Agreement pursuant to and in the exercise of the Village's Home Rule authority.

**NOW THEREFORE BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS:**

That subject to the Village Attorney's approval of the document and execution of the document by Developers, the Village President is authorized and directed to execute and the Village Clerk to attest to the Redevelopment Agreement by and among the Village, Melody Farm LLC and Melody Farm Residential Partners LLC ("Developers"), in substantially the form as attached hereto as Exhibit A.

Dated the 10th day of January, 2017

Adopted by roll call vote as follows:

AYES: 5 - Grieb, Schultz, Marquardt, Williams, Hebda

NAYS: 1 - Koch

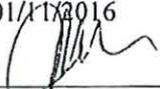
ABSENT AND NOT VOTING: 0 - None

  
\_\_\_\_\_  
Roger L. Byrne  
Village President

PASSED: 01/10/2017

APPROVED: 01/10/2016

ATTEST: 01/11/2016

  
\_\_\_\_\_  
John M. Kalmar  
Village Clerk

**Exhibit A**

Redevelopment Agreement

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (this "*Agreement*"), is made and entered into as of the 10<sup>th</sup> day of January, 2017 by and among the **VILLAGE OF VERNON HILLS, ILLINOIS**, an Illinois municipal home rule corporation, located in Lake County, Illinois (the "*Village*"), **MELLODY FARM LLC**, a Delaware limited liability company ("*Retail Developer*"), and **MELLODY FARM RESIDENTIAL PARTNERS LLC**, an Illinois limited liability company ("*Residential Developer*").

### RECITALS

**WHEREAS**, 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; and

**WHEREAS**, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purpose, and otherwise be in the best interests of the Village; and

**WHEREAS**, the Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the "*TIF Act*"), to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act; and

**WHEREAS**, the Village, on August 11, 2015, adopted an Inducement Resolution (the "*Inducement Resolution*") relating to the proposed development of the approximately 54 acre parcel of land located at the northeast corner of Milwaukee Avenue and Townline Road in the Village, and legally described on **Exhibit A** to this Agreement (the "*Property*"); and

**WHEREAS**, the Village, on November 17, 2015, entered into a non-binding Memorandum of Understanding with Retail Developer ("*Memorandum of Understanding*"), in which the Village agreed to enter into an agreement for the development of the Property in the event that the Property qualified for a Tax Increment Finance ("*TIF*") district; and

**WHEREAS**, pursuant to the TIF Act and all other Illinois statutory requirements, the Village took all steps required by the TIF Act to create a TIF district for the Property including but not limited to authorizing the preparation of and approving an eligibility study and report entitled "Village of Vernon Hills TIF Redevelopment Plan Milwaukee Avenue/Townline Road Redevelopment Project Area" dated February 2016 (the "*Redevelopment Plan*") concerning the development of the Property, issuing all required legal notices and newspaper publications, holding a Joint Review Board meeting on March 9, 2016, and a public hearing by the Corporate Authorities on April 19, 2016, that was continued from time to time to November 1, 2016, adopting the required ordinances as set forth below, and thereby creating the Milwaukee Avenue/Townline Road TIF District (the "*TIF District*"), all pursuant to Illinois statutory requirements; and

**WHEREAS**, as part of the eligibility study of the development of the Property, the Village found that the Property suffers from the following factors: declining or lagging equalized assessed value, chronic flooding, is in need of environmental remediation, and consists of an unused or illegal disposal site; and

**WHEREAS**, to stimulate and induce development of the Property pursuant to the TIF Act, the Village, on January 10, 2017, adopted the following ordinances (collectively, the “**TIF Ordinances**”), after giving all notices required and after conducting the public hearings required by applicable law including the TIF Act:

1. Ordinance No. 2017-002, approving the Redevelopment Plan;
2. Ordinance No. 2017-003, designating the Redevelopment Project Area; and
3. Ordinance No. 2017-004, adopting Tax Increment Financing for the Redevelopment Project Area; and

**WHEREAS**, Retail Developer and Residential Developer have represented to Village that Retail Developer, Residential Developer, and their principals, are skilled in the development and operation of commercial and residential developments, respectively, and are able to provide the Project (as defined in Article Two) with the necessary skill, knowledge and expertise as well as input from other experts and consultants in the construction and operation of such a Project; and

**WHEREAS**, Retail Developer has entered into a Purchase and Sale Agreement with the current owner of the Property to purchase the Property; and

**WHEREAS**, Retail Developer desires to develop the Retail Parcel (as defined in Article Two) and to sell the Residential Parcel (as defined in Article Two) to Residential Developer; and

**WHEREAS**, Residential Developer desires to buy the Residential Parcel from Retail Developer, and to develop the Residential Parcel; and

**WHEREAS**, on August 1, 2016, Retail Developer, on behalf of itself and Residential Developer, filed an application for a special use for a planned unit development and other related relief to develop the Project on the Property; and

**WHEREAS**, to enable the authorization and approval of the Project, relief from certain preexisting documents governing the Property, and to which the Village and Lake County are parties, is necessary, and to facilitate such relief, the Village, on September 13, 2016, adopted the following ordinance and resolution in accordance with all applicable laws:

1. Resolution Number 2016-128, authorizing the Mayor and Village Clerk to execute the Intergovernmental Agreement by and between the County of Lake, Village of Vernon Hills, and Mellody Farm LLC together with other documents relating to the Cuneo Intersection Property (the “**Intergovernmental Agreement**”); and
2. Ordinance Number 2016-032, adopting an amendment to Ordinance 96-30 acknowledging Lake County approval of a Village Final Plan Approval for Cuneo

Intersection Commercial Property for a specific mixed use commercial and residential development; and

**WHEREAS**, among the documents approved by the Village in Resolution Number 2016-128 on September 13, 2016 is the Second Amendment to Agreement for Sanitary Sewer and Water Supply Services to the Cuneo Service Area of the Village of Vernon Hills by and between the County of Lake and the Village of Vernon Hills (the “*County Sewer and Water Second Amendment*”); and

**WHEREAS**, to authorize and approve the development of the Project, the Village, on November 15, 2016, after giving all notices required and after conducting all public hearings required by law, adopted “Ordinance Number O-2016-045, granting certain approvals for the Property commonly known as the Cuneo Intersection Commercial Property located at the northeast corner of Milwaukee Avenue and Townline Road, in the Village of Vernon Hills, Lake County, Illinois” (the “*2016 PUD Special Use Ordinance*”);

**WHEREAS**, it is necessary for the successful completion of the Project that the Village enter into this Agreement with Retail Developer and Residential Developer to provide for the development of the Property, thereby implementing and bringing to completion the Redevelopment Plan; and

**WHEREAS**, Retail Developer and Residential Developer have been and continue to be unwilling to undertake the development of the Property but for certain TIF incentives from the Village, which the Village is willing to provide under the terms and conditions contained herein; and

**WHEREAS**, the Village has determined that it is desirable and in the Village’s best interests to assist Retail Developer through the deposit of Village Funds (as defined in Article Two), and in the manner set forth in this Agreement; and

**WHEREAS**, this Agreement has been submitted to the appropriate authority of each respective Party for consideration and review prior to the approval and execution of this Agreement by each respective Party, and any and all actions precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

#### **ARTICLE ONE INCORPORATION OF RECITALS**

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village, Residential Developer, and Retail Developer according to the tenor and import of the statements in such Recitals.

## ARTICLE TWO DEFINITIONS

For the purposes of this Agreement, capitalized words and terms used in this Agreement shall have the meaning provided in this Article Two, and from place to place in this Agreement, including in the above Recitals.

“**Bond Ordinance**” means the ordinance to be enacted by the Corporate Authorities authorizing the issuance of Bonds, in the form and manner described in Section 5.4 of this Agreement.

“**Bonds**” means any bonded indebtedness allowed or authorized under Illinois law including, without limitation, bonds issued pursuant to the TIF Act and/or General Obligation Bonds pledging the full faith and credit of the Village, which shall be issued in accordance with the Bond Ordinance to provide net proceeds in amounts sufficient to pay the costs to be incurred by the Village in fulfillment of its responsibilities in this Agreement, including specifically, the satisfaction of the Village’s obligation to deposit the Initial Village Funds pursuant to Section 5.3.A of this Agreement.

“**Certificate of Substantial Completion**” means the certificate, in the form of **Exhibit B** to this Agreement that is required to be issued by the Village Manager upon (a) “Substantial Completion–Retail,” as provided in Article Eight of this Agreement, (b) “Substantial Completion–Residential,” as provided in Article Eight of this Agreement, and (c) substantial completion of a Retail Outlot, as provided in Section 5.3.B of this Agreement.

“**Corporate Authorities**” means the Mayor and Village Board of Trustees of the Village of Vernon Hills, Illinois.

“**Day**” means a calendar day.

“**Developers**” means both Retail Developer and Residential Developer.

“**Effective Date**” means January 17, 2017, as further provided in Section 17.15 of this Agreement.

“**Final Engineering Plans**” means the final engineering plans for the Project to be approved by the Lake County Engineer and the Village Engineer, which include, but is not limited to, final engineering plans for the Retail Project, final engineering plans for the Residential Project, and final engineering plans for the Off-Site Improvements.

“**Final PUD Plan**” means, collectively, the final plans for the Planned Unit Development approved or to be approved by the Village. The Final PUD Plan includes (1) all plans, specifications, and cut sheets that are set forth and identified on Exhibit B to the 2016 PUD Special Use Ordinance, and (2) upon its completion and approval pursuant to Section 5.2.A of this Agreement, the Final Engineering Plans.

“**Final Subdivision Plat**” means the Final Plat of Melody Farm Subdivision, with the latest revision dated November 17, 2016, consisting of three pages, prepared by Manhard Consulting,

depicting a five-lot subdivision of the Property, which was approved by the Corporate Authorities as part of the 2016 PUD Special Use Ordinance, and recorded in the office of the Lake County Recorder as Document No. 7350694.

“**Funding Certification**” means the certification in the form of **Exhibit C** to this Agreement, to be delivered by Retail Developer upon satisfaction of each of the Funding Conditions.

“**Funding Conditions**” means the 19 specific conditions set forth in Article Six of this Agreement that must be satisfied before the Village is required to deposit the Village Funds into the TIF Funding Escrow.

“**Guaranty Date**” means the date that is four years after the date on which the Initial Village Funds are deposited into the TIF Funding Escrow, before which the Retail Construction Obligation and the Residential Construction Obligation must be satisfied as provided in Article Eight of this Agreement.

“**Incremental Property Taxes**” means the ad valorem taxes, if any, arising from the taxes levied upon the Property, which taxes are attributable to the increases in the then current equalized assessed value of each taxable lot, block, tract, or parcel in the Property over and above the total initial equalized assessed value of each such lot, block, tract, or parcel of real property, all as determined by the County Clerk of Lake County, Illinois, pursuant to and in accordance with the TIF Act, the TIF Ordinances and this Agreement.

“**Intersection Design Study**” means the study to be reviewed and approved by IDOT for the Intersection Improvements.

“**Intersection Improvements**” means the signalization and right-of-way improvements contemplated for the Milwaukee Avenue (Route 21) and Townline Road (Route 60) rights-of-way, as depicted on **Exhibit D** to this Agreement.

“**Milwaukee Avenue/Townline Road TIF District Special Tax Allocation Fund**” means the special fund for the Redevelopment Project Area created by the Corporate Authorities pursuant to the TIF Act and into which the Incremental Real Estate Taxes will be deposited.

“**Off-Site Improvements**” means all of those certain regional infrastructure improvements off and outside of the Property to be constructed by Retail Developer as part of the Project as depicted on the Final Engineering Plans. Said Off-Site Improvements are depicted on **Exhibit D** to this Agreement but are subject to modification and approval through the IDOT approval process. Off-Site Improvements include, without limitation, the road, traffic signals, sidewalk, sanitary sewer, water, storm sewer, and utility (including electricity, phone, fiber optics, and gas) improvements to serve the Retail Project and the Residential Project, and the Intersection Improvements.

“**On-Site Improvements**” means all of those certain improvements to be constructed on the Property as part of the Project, but specifically excluding the Retail Private Buildings and the Residential Private Building. On-Site Improvements include, without limitation, the internal roadways, sidewalks, sanitary sewer lines, water lines, storm sewer lines, utility (including

electricity, phone, fiber optics, and gas), surface parking lots, and landscaping that are part of the Retail Project and the Residential Project.

“*Open Space Parcels*” means that portion of the Property consisting of approximately 17.4 acres, and depicted as Lots 3 and 4 on the Final Subdivision Plat.

“*Party*” or “*Parties*” means the Village, Retail Developer, and Residential Developer, as the context requires.

“*Person*” means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“*Planned Unit Development*” or “*PUD*” means the special use, to allow development of the Retail Project and the Residential Project on the Property, granted by the Corporate Authorities in the 2016 PUD Special Use Ordinance.

“*Project*” means the development and construction of the Retail Project, the Residential Project, and the Off-Site Improvements.

“*Redevelopment Project Area*” means the area designated by the Corporate Authorities in the TIF Ordinances.

“*Redevelopment Project Costs*” means all qualifying costs that are authorized and defined by Section 74.4-3 (q) of the TIF Act.

“*Residential Completion Guaranty*” means the guaranty in substantially the form of **Exhibit E** to this Agreement to be executed by Tim Anderson and Richard Aaronson (the “*Residential Guarantors*”), and as further described in Article Nine of this Agreement.

“*Residential Construction Obligation*” means as defined in Section 8.2 of this Agreement.

“*Residential Lender*” means the financial institution selected by Residential Developer to provide the acquisition and construction financing necessary for the completion of the Residential Project, which financial institution shall be (1) insured by the Federal Depository Insurance Corporation, (2) chartered in the State of Illinois, or have a registered agent in the State of Illinois, and (3) have adequate capital, assets, earnings and liquidity to ensure the financial soundness of the institution. Specifically, “*Residential Lender*” shall include a commercial bank or trust company, savings bank, savings and loan association, a CMBS or other securitized loan provider, licensed insurance company but only if such lenders are qualified to do business in the State of Illinois, have assets of not less than \$100,000,000 and have experience in making construction loans comparable to that required for the Residential Project.

“*Residential Parcel*” means that portion of the Property that is approximately seven (7) acres in size and is depicted as Lot 2 on the Final Subdivision Plat.

“*Residential Private Building*” means the three-story building that is contemplated to be constructed as part of the Residential Project on the Residential Parcel.

**"Residential Project"** means that portion of the Project to be developed by Residential Developer on the Residential Parcel that contemplates the construction of approximately 260 executive apartments in the Residential Private Building, as depicted on the Site Plan, as well as the construction of those On-Site Improvements that are located on the Residential Parcel.

**"Retail Anchor"** means a tenant within the Retail Project occupying space that is at least seventeen thousand (17,000) gross square feet.

**"Retail Construction Obligation"** means as defined in Section 8.1 of this Agreement.

**"Retail Guaranty"** means the guaranty in the form of **Exhibit F** to this Agreement to be executed by and on behalf of Regency Centers, L.P., a Delaware limited partnership, and as further described in Article Nine of this Agreement.

**"Retail Outlots"** means Outlots **A, C, D1, D2, and M** within the Retail Project as depicted on the Site Plan.

**"Retail Parcel"** means those portions of the Property that are (a) the approximately 28.8 acre parcel depicted as Lot 1 on the Final Subdivision Plat, and (b) the approximately 7.9 acre parcel depicted as Lot 5 on the Final Subdivision Plat.

**"Retail Private Buildings"** means the buildings that are contemplated to be constructed as part of the Retail Project on the Retail Parcel.

**"Retail Project"** means that portion of the Project to be developed by Retail Developer on the Retail Parcel that contemplates a retail center of not more than 285,000 square feet anchored by a best-in-class organic grocer that is not less than 42,000 square feet, as depicted on the Site Plan, as well as the construction of those On-Site Improvements that are located on the Retail Parcel, the Open Space Parcels, and the Residential Parcel as agreed upon between the Residential Developer and Retail Developer.

**"Site Plan"** means the Site Plan for the Project prepared by Manhard Consulting, Ltd, with a revised date of November 15, 2016 and consisting of 1 page, which was approved by the Corporate Authorities as part of the 2016 PUD Special Use Ordinance and attached to this Agreement as **Exhibit G**.

**"State"** means the State of Illinois.

**"Substantial Completion - Residential"** means substantial completion of those portions of the Residential Project set forth in, and as determined by the process described in, Section 8.2 of this Agreement.

**"Substantial Completion - Retail"** means substantial completion of those portions of the Retail Project set forth in, and as determined by the process described in, Section 8.1 of this Agreement.

**"TIF Eligible Expenses"** means those expenses related to the Project incurred after August 11, 2015, the date of the Inducement Resolution, that are listed on **Exhibit H** to this Agreement

and that qualify as “redevelopment project costs” as defined in Section 74.4-3 (q) of the TIF Act, as restricted pursuant to Section 7.1 of this Agreement.

“**TIF Funding Escrow**” means the escrow account to be created at Chicago Title Insurance Company by the Village and Retail Developer, in substantially the form attached to this Agreement as **Exhibit I**, into which the Village Funds are to be deposited pursuant to Section 5.3 of this Agreement, and out of which TIF Eligible Expenses are to be paid, all as further provided in Section 7.2 of this Agreement.

“**Uncontrollable Circumstance**” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
  - (i) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
  - (ii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, flooding, other extraordinary weather conditions or other similar Act of God;

Uncontrollable Circumstance shall not include: (1) economic hardship or impracticability of performance, (2) commercial or economic frustration of purpose, or (3) a failure of performance by a contractor (except as caused by events (b)(i) or (b)(ii) above which are Uncontrollable Circumstances as to the contractor).

“**Village Funds**” means the amount of Twenty Million Dollars (\$20,000,000.00) to be deposited by the Village into the TIF Funding Escrow pursuant to Section 5.3 of this Agreement, which amount is net of any costs of issuance, underwriter’s fee or discount, debt service reserve or other similar requirements, deposits for payment of capitalized interest or other similar types of funding requirements generally applicable in connection with the issuance of bonds. As provided in Section 5.3 of this Agreement, the Village Funds shall consist of the Initial Village Funds in the amount of Eighteen Million Dollars (\$18,000,000.00), and the Final Village Funds in the amount of Two Million Dollars (\$2,000,000.00).

“**Village Manager**” means the duly appointed Village Manager of the Village.

### **ARTICLE THREE DOCUMENT CONSTRUCTION**

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

#### 3.1 Vocabulary.

- (a) Definitions include both singular and plural.

- (b) Pronouns include both singular and plural and cover all genders.
- (c) The word “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

3.2 Section Headings. Headings of sections and subsections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

3.3 Exhibits. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the exhibit shall control.

3.4 Certificates and Opinions. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.

3.5 Authority of the Village Manager. The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions described in this Agreement for and on behalf of the Village and with the effect of binding the Village. Retail Developer and Residential Developer are entitled to rely on the full power and authority of the persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village. As provided in Section 3.8 of this Agreement, the Village Manager shall not be personally liable under this Agreement, and shall not be subject to any personal liability or accountability by reason of or in connection with or arising out of his or her performance under this Agreement.

3.6 Retail Developer Authorized Representative. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Retail Developer in a different manner, Retail Developer hereby designates Matthew Hendy as its authorized representative, who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Retail Developer and with the effect of binding Retail Developer in that connection (such individual being an “**Authorized Retail Developer Representative**”). Retail Developer shall have the right to change its Authorized Retail Developer Representative by providing the Village with written notice of such change. As provided in Section 3.8 of this Agreement, the individual designated as the Authorized Retail Developer Representative shall not be personally liable under this Agreement, and shall not be subject to any personal liability or accountability by reason of or in connection with or arising out of his or her performance under this Agreement.

3.7 Residential Developer Authorized Representative. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Residential Developer in a different manner, Residential Developer hereby designates Tim Anderson as its authorized representative, who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Residential Developer and with the effect of binding Residential Developer in that connection (such individual being an “*Authorized Residential Developer Representative*”). Residential Developer shall have the right to change its Authorized Residential Developer Representative by providing the Village with written notice of such change. As provided in Section 3.8 of this Agreement, the individual designated as the Authorized Residential Developer Representative shall not be personally liable under this Agreement, and shall not be subject to any personal liability or accountability by reason of or in connection with or arising out of his or her performance under this Agreement.

3.8 No Personal Liability of Officials of the Village, Residential Developer, and Retail Developer. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Mayor, a Village Board of Trustee member, the Village Manager, or any official, officer, partner, member, director, agent, employee or attorney of either (a) the Village, (b) Residential Developer, or (c) Retail Developer, in his or her individual capacity. No official, officer, partner, member, director, agent, employee or attorney of either (a) the Village, (b) Residential Developer, or (c) Retail Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

#### **ARTICLE FOUR IMPLEMENTATION OF PROJECT**

The Parties acknowledge and agree that notwithstanding anything in this Agreement to the contrary, this Agreement is subject to and conditioned upon the execution of this Agreement by and among the Village and the Developers. The Parties acknowledge and agree that neither the Retail Project nor the Residential Project can move forward or commence any construction, including earth work, and the Village shall not deposit the Village Funds, unless both the Retail Project and the Residential Project are approved by the Village as part of a single planned development.

#### **ARTICLE FIVE VILLAGE COVENANTS AND AGREEMENTS**

5.1 Village’s Obligations. The Village shall have the specific obligations set forth in this Article Five in connection with the Project, as well as such other obligations as set forth elsewhere in this Agreement or as otherwise required by law.

5.2 Final Engineering Plans Approval and Building Permit Issuance.

A. Upon submittal by Developers of the Final Engineering Plans, the Village shall cause its Village Engineer to promptly and expeditiously review such plans and cooperate and

coordinate with the Lake County Public Works Department during such review. Provided that the Final Engineering Plans prepared and submitted to the Village by the Developers conform substantially to the 2016 PUD Special Use Ordinance and Village Codes as varied or modified by the 2016 PUD Special Use Ordinance, the Village shall cause its Village Engineer to promptly, but in no event later than 30 days after the date of submission by the Developers, review and, if the Final Engineering Plans comply with Village Codes as the same have been varied or modified by the Final PUD Plan, approve the Final Engineering Plans. If the Village Engineer believes that the Final Engineering Plans do not conform substantially in the manner required in this Section 5.2.A, he shall promptly notify the Developers of any deficiency, and the Developers shall have the opportunity to resubmit the Final Engineering Plans. The Village Engineer shall then have the approval requirement set forth in this Section 5.2.A. The Parties acknowledge and agree that the Village Engineer's approval of sewer and water engineering issues will occur after the review and approval thereof by the Lake County Public Works Department.

B. Upon submittal by Developers of the required application and information necessary for issuance of a building permit for construction of the Project, the Village shall issue the building permit in the manner required by applicable Village Code or ordinances.

### 5.3 Village Funding.

A. Initial Funding. Within 75 days after the date on which Retail Developer delivers to the Village Manager a final Funding Certification, certifying that all of the Funding Conditions have been satisfied, the Village Manager shall cause Eighteen Million Dollars (\$18,000,000.00) of the Village Funds (the "*Initial Village Funds*") to be deposited into the TIF Funding Escrow for the purpose of paying or reimbursing Retail Developer for TIF Eligible Expenses, as set forth in Article Seven of this Agreement. The following procedures shall govern the delivery of Funding Certifications:

1. Retail Developer may deliver a Funding Certification for one or more of the Funding Conditions at the time each such Funding Condition is satisfied.

2. For purposes of this Section 5.3, and notwithstanding anything in Section 17.1 of this Agreement that may provide or require otherwise, a Funding Certification shall be deemed to have been delivered by Retail Developer and received by the Village Manager on the day that any person, on behalf of the Village, signs a receipt of delivery after the Funding Certificate is either (a) deposited by Retail Developer with an overnight courier addressed to the Village Manager at the Village Hall address set forth in Section 17.1 of this Agreement, or (b) personally delivered by Retail Developer, or on behalf of Retail Developer, to the office of the Village Manager at the Village Hall address set forth in Section 17.1 of this Agreement. Delivery of a Funding Certification shall not require the delivery of a copy to any person or firm as otherwise required in Section 17.1 of this Agreement.

3. Unless the Village Manager provides Retail Developer with notice, delivered within eight days after the Village Manager is deemed to have received a Funding Certification, of a specific deficiency with the Funding Condition that is the subject of the

Funding Certification, such Funding Condition will be deemed to have been satisfied, and the Funding Certification will be deemed to be true and correct.

4. If the Village Manager does notify Retail Developer of a specific deficiency with the Funding Condition within said eight day period, and Retail Developer corrects that deficiency, Retail Developer shall deliver a new Funding Certification and the provisions of this Section 5.3.A will again be applicable.

The Parties acknowledge and agree that the deposit of the Initial Village Funds into the TIF Funding Escrow in accordance with this Section 5.3 is a ministerial obligation and that the Village Manager does not have and will not have any discretion to withhold the deposit of the Village Funds into the TIF Funding Escrow. Unless the Village and Retail Developer agree to an extension in writing, in the event that Retail Developer does not deliver Funding Certifications covering all of the Funding Conditions on or before December 31, 2017, the Village shall have no obligation to deposit any of the Village Funds and this Agreement shall be deemed void without further action of the Parties.

B. Final Funding. The remaining Two Million Dollars (\$2,000,000.00) (the “*Final Village Funds*”) of the Village Funds shall be deposited into the TIF Funding Escrow only as follows, and upon the occurrence of the following: (1) the Village shall cause 50% of the Final Village Funds to be deposited into the TIF Funding Escrow within 30 days after the date on which the Village Manager issues a Certificate of Substantial Completion confirming that the construction of the exterior core and shell (as defined in Section 8.1 of this Agreement ) of the Private Building on one of the Retail Outlots is substantially complete; and (2) the Village shall cause the remaining 50% of the Final Village Funds to be deposited into the TIF Funding Escrow within 30 days after the date on which the Village Manager issues the Certificate of Substantial Completion confirming that the construction of the exterior core and shell of the Private Building on a second of the Retail Outlots is substantially complete. In the event of a dispute as to whether the construction of the exterior core and shell of either of said Private Buildings on the Retail Outlot is substantially complete, the Village and Retail Developer agree to follow the process set forth in Section 8.1.E to resolve such dispute.

5.4 Issuance of Bonds as a Source of Village Funds. The Village shall satisfy all or at least the Eighteen Million Dollars (\$18,000,000.00) portion of its funding obligation in Section 5.3 of this Agreement through the adoption of the Bond Ordinance and issuance of the Bonds. The Village may satisfy the Final Village Funds either by Bonds or from other Village monies. The Village in its sole discretion shall decide whether to issue taxable or tax exempt bonds to fund the Initial Village Funds and Final Village Funds, in the event the sale of bonds is to be the source for the Final Village Funds. The Village shall take all procedural steps necessary to ensure that the Bond Ordinance is adopted, and that proceeds from the Bonds are available for deposit into the TIF Funding Escrow, within the time period required in Section 5.3.A of this Agreement.

5.5 Village Reimbursement. In accordance with the TIF Act, the Village shall be entitled to use the Incremental Real Estate Taxes that are from time to time deposited into the Milwaukee Avenue/Townline Road TIF District Special Tax Allocation Fund for reimbursement of the Village Funds that the Village is required to deposit pursuant to this Agreement, as well as for reimbursement of any Redevelopment Project Costs incurred by the Village in issuing Bonds

or otherwise securing the financing necessary for the deposit of the Village Funds. Any funds contained in the Milwaukee Avenue/Townline Road TIF District Special Tax Allocation Fund after reimbursement to the Village of the Village Funds and of all Redevelopment Project Costs related to the Project that it incurred, including Village costs of administration of the TIF District, may be used by the Village for any lawful purpose permitted under the TIF Act.

5.6 Connections. To the extent that the Village owns or controls any storm sewers that are contemplated to be connected to the Property, the Village hereby agrees to permit the connection to the Village system of all storm sewer lines existing or constructed in the Property or near the perimeter of the Property as set forth on the Final Engineering Plans, provided that Retail Developer and Residential Developer comply with all requirements of general applicability promulgated by the Village and/or Lake County for such connections. The Village shall grant, and shall use its best efforts to assist the Developers in obtaining from other entities or jurisdictions, utility easements as may be necessary or appropriate to accommodate the utilities shown on the Final Engineering Plans and the construction of the Project.

5.7 Cooperation with Other Governments and Authorities. The Village agrees to cooperate with Developers in Developers' attempts to obtain all necessary approvals for the Project from any governmental or quasi- governmental entity other than the Village, including but not limited to the Illinois Department of Transportation (“*IDOT*”) and Lake County, Illinois. The Village shall process and consider to the extent allowable under applicable law, any reasonable request of Developers for future zoning and planned unit development approvals and for future relief or variances authorized by the Village's Zoning Ordinance or the Village's Subdivision Ordinance necessary for the Project.

## **ARTICLE SIX VILLAGE FUNDING CONDITIONS**

### 6.1 General.

A. Condition Precedent to Village Funding. The Village's obligation to deposit the Initial Village Funds as set forth in Section 5.3 of this Agreement is expressly contingent upon and subject to the satisfaction of each and all of the Funding Conditions set forth in this Article Six of this Agreement. Retail Developer shall not deliver to the Village Manager the final Funding Certification unless and until Retail Developer can certify that all Funding Conditions have been satisfied through the delivery to the Village of all Funding Certifications.

### B. Interpretation.

1. Funding Conditions Requiring Written Confirmation. For purposes of this Article Six, “written confirmation” shall be deemed to have been provided to the Village only upon delivery of the same to the office of the Village Manager in the manner set forth for the delivery of notices in Section 17.1 of this Agreement.

### 2. Funding Conditions Requiring Opportunity to Review.

a. Retail Developer. For purposes of this Article Six, the “opportunity to review” a document in the possession of Retail Developer shall require Retail Developer

making the document available for inspection, at the office of Retail Developer at its Oak Brook, IL address set forth in Section 17.1 of this Agreement, by the Village Manager or his designee, during the regular business hours of Retail Developer occurring within the 14 day period following the delivery of notice to the Village Manager.

b. Residential Developer. For purposes of this Article Six, the “opportunity to review” a document that is in the possession of Residential Developer shall require making the document available for inspection, at the office of Residential Developer at its Northfield, IL address set forth in Section 17.1 of this Agreement, by the Village Manager or his designee, during the regular business hours of Residential Developer occurring within the 14 day period following the delivery of notice to the Village Manager.

3. Limitation of Notice. For purposes of this Article Six, the delivery of notices or written confirmations to the Village shall not require the delivery of a copy as otherwise required in Section 17.1 of this Agreement.

4. Time Period for Satisfaction of Funding Conditions. Funding Conditions 3 through 19 set forth in Section 6.2 of this Agreement must be satisfied not more than 90 days prior to date of the closing on the acquisition of the Property as set forth in Funding Condition 6.2.1 of this Agreement.

6.2 List of Funding Conditions. The Funding Conditions are as follows:

1. Retail Developer shall have closed on its acquisition of the Property and provided the Village with a copy of the recorded deed to the Property evidencing the sale of the Property to Retail Developer.

2. Residential Developer shall have closed on its acquisition of the Residential Parcel and provided the Village with a copy of the recorded deed to the Residential Parcel evidencing the sale of the Residential Parcel to Residential Developer.

3. Retail Developer shall have provided the Village with a written confirmation from Retail Developer that, since November 17, 2015 (the date of execution of the Memorandum of Understanding), there have been no changes in such party’s financial condition which would adversely impact its ability to purchase the Property and complete construction of the Off Site Improvements and the Retail Project.

4. Residential Developer shall have provided the Village with a written confirmation from Residential Developer that, since November 17, 2015 (the date of execution of the Memorandum of Understanding), there have been no changes in such party’s financial condition which would adversely impact its ability to purchase the Residential Parcel and complete construction of its portion of the Residential Project.

5. Retail Developer shall have executed, and provided the Village with an opportunity to review the executed copy of, a lease with Whole Foods Market, a best-in-class organic grocer for not less than a forty-two thousand (42,000) square foot store on the Retail Parcel (“*Whole Foods*”).

6. Retail Developer shall have executed, and provided the Village with an opportunity to review the executed copies of, leases for 50% of the leasable area depicted on the Site Plan (which leasable area excludes the Retail Outlots), which 50% shall include at least four Retail Anchors (including Whole Foods).

7. Retail Developer shall have provided the Village with evidence from the escrow agent in the escrow established pursuant to the Intergovernmental Agreement that Retail Developer has deposited into such escrow the amount of \$1,370,726.00 as prepayment of water and sewer connection fees to Lake County for the Retail Project.

8. Retail Developer shall have provided the Village with written confirmation that IDOT has provided to both the Village and Retail Developer written or verbal confirmation that IDOT has approved the Intersection Design Study of the signalization improvement portion of the Intersection Improvements.

9. Retail Developer shall have obtained from Illinois Environmental Protection Agency (“*IEPA*”), and provided the Village with copies of, the required permit issued by IEPA necessary to proceed with commencement of construction of the Project.

10. Retail Developer shall have provided the Village with a written confirmation from Retail Developer that Retail Developer has entered into one or more third party guaranteed maximum price or lump sum contract(s) for the construction of the On-Site Improvements.

11. Residential Developer shall have provided the Village with a written confirmation from Residential Developer that Residential Developer has entered into one or more third party guaranteed maximum price or lump sum contract(s) for the construction of the Residential Project, which third party may include an affiliate of Residential Developer.

12. Retail Developer shall have provided the Village with courtesy copies of the general contractor or subcontractor detailed final estimates for the construction of the Off-Site Improvements (it being acknowledged that selection of the contractor or subcontractor shall be in Retail Developer’s sole discretion).

13. Residential Developer shall have provided written confirmation to the Village that its architects, engineers, and general contractor have consented to assignments permitting the Residential Lender to use such contracts with such parties to cause the completion of the Residential Project in the event that Residential Developer defaults on the Residential Completion Guaranty. While not required for the satisfaction of the Funding Condition in this Section 6.2.13, Residential Developer agrees to provide the Village Manager with copies of the documents set forth in this Section 6.2.13 within 30 days after the date on which Residential Developer closes on its acquisition of the Residential Parcel.

14. Residential Developer shall have received a binding commitment, in form and content that is typical in its industry, for construction financing from the Residential Lender for the Residential Project, and shall have provided the Village with an opportunity to review the executed copy of the binding commitment.

15. Retail Developer shall have delivered to the Village a detailed budget for the construction of the Off Site Improvements.

16. Retail Developer shall have provided the Village with an opportunity to review a detailed budget and scope of work for the Retail Project.

17. Residential Developer shall have provided the Village with an opportunity to review a detailed budget and scope of work for the Residential Project.

18. Retail Developer shall have delivered to the Village the original, fully executed, Retail Guaranty.

19. Residential Developer shall have delivered to the Village a copy of the original, fully executed, Residential Completion Guaranty.

## **ARTICLE SEVEN USE OF VILLAGE FUNDS**

7.1 Use. The Village Funds shall be used only to reimburse Retail Developer for TIF Eligible Expenses that Retail Developer incurred after the date of adoption by the Village of the Inducement Resolution, and continues to incur. TIF Eligible Expenses include, without limitation, property assembly costs as set forth in Section 3(q)(2) of the TIF Act, including land acquisition; provided, however, that in no event shall the initial disbursement of TIF Eligible Expenses related to the reimbursement of Retail Developer for acquisition of the Property exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00). Retail Developer shall be reimbursed for the remainder of the expenses for acquisition of the Property upon submission of the final request for reimbursement through the TIF Funding Escrow in the manner described in this Section 7.1. Retail Developer's final request for reimbursement shall be for the remainder of the expenses for acquisition of the Property, which request shall be accompanied by a certification signed by the Authorized Retail Developer Representative stating that requests for reimbursement have been submitted for all possible TIF Eligible Expenses incurred by Retail Developer for the Retail Project, other than (1) engineering inspection fees and (2) expenses related to the acquisition of Property. The final reimbursement for expenses for acquisition of the property will occur no later than the date that on which the Village Manager delivers the Certificate of Substantial Completion-Retail pursuant to Section 8.1 of this Agreement.

7.2 Release of Funds from TIF Funding Escrow. The TIF Funding Escrow shall set forth the process for releasing funds in the TIF Funding Escrow to Retail Developer. The TIF Funding Escrow shall provide for the process by which monthly draw requests are submitted by Retail Developer and reviewed and approved by the Village, and shall require, among other things, Retail Developer to: (1) provide detailed invoices and proof of payment for work that has been completed and with quantities that are actually constructed where applicable; (2) provide partial waivers for work that has not been completed or final lien waivers for work that has been completed; and (3) explain the process by which payouts shall be submitted, reviewed and paid. The TIF Funding Escrow shall also require the Village to review and approve the monthly draw request within 30 days after the monthly draw request (and all required documentation) is delivered by Retail Developer to the Village Manager.

## ARTICLE EIGHT DEVELOPER CONSTRUCTION OBLIGATIONS

The Developers shall have the specific obligations set forth in this Article Eight in connection with the Project, as well as such obligations as set forth elsewhere in this Agreement. Upon, but not before, satisfaction of (a) the Village's obligation in Section 5.2 of this Agreement to approve the Final Engineering Plans, and (b) the Village's obligation in Section 5.3 of this Agreement to deposit the Initial Village Funds into the TIF Funding Escrow, the Developers shall have the following obligations:

### 8.1 Retail Developer Obligations.

A. Commencement of Construction. Retail Developer shall commence construction of the Retail Project within one year after the date on which the Initial Village Funds are deposited into the TIF Funding Escrow, provided that the Village shall have issued the necessary building permits for such construction as provided in Section 5.2 of this Agreement.

B. Scope of Construction Obligation. Provided that the Village shall have issued the necessary building permits for construction required by the Village Code, Retail Developer shall, prior to the date that is the Guaranty Date, satisfy each of the following three obligations (collectively, the "***Retail Construction Obligation***"): (1) substantial completion of construction of all of the Off-Site Improvements in accordance with the Final Engineering Plans and the Intersection Design Study; (2) substantial completion of construction of all of the On-Site Improvements on the Retail Parcel in accordance with the Final Engineering Plans and the On Site Improvement Completion Plan, and the notes contained thereon, attached to this Agreement as **Exhibit J**; and (3) substantial completion of construction of the "exterior core and shell" of all Retail Private Buildings so that such Retail Private Buildings are ready for interior build out (specifically excluding those Retail Private Buildings that are to be located on the Retail Outlots). For purposes of this Agreement, substantial completion of the "exterior core and shell" of the Retail Private Buildings shall mean weather-tight construction with exterior walls in substantial conformance with the "Architectural Plans-Retail" referenced in the 2016 PUD Special Use Ordinance, roof and storefront windows and doors (but excluding, without limitation, concrete floors, HVAC, interior plumbing, and interior electrical); provided, however, that no doors, windows, and storefront are required for the Retail Private Building depicted as Building J on the Site Plan. The Retail Construction Obligation for Building J shall require that a plywood finish be provided in the area in which storefront windows and doors are to be located, in a color that matches the color of other storefront elevations.

C. Substantial Completion. Satisfaction of the Retail Construction Obligation, prior to the date that is the Guaranty Date, shall constitute, and shall be deemed to be, "Substantial Completion - Retail," and shall allow for the Retail Guaranty to be returned to Retail Developer, as provided in Section 9.4.A of this Agreement.

D. Initial Process for Determination of Substantial Completion-Retail. Retail Developer shall notify the Village Manager when Retail Developer determines that it has achieved Substantial Completion-Retail. If the Village Manager agrees that Substantial Completion-Retail

has occurred, then the Village Manager shall, within 15 days after receipt of the notice from Retail Developer, deliver to Retail Developer a Certificate of Substantial Completion certifying that Retail Developer has satisfied the Retail Construction Obligation sufficient to warrant return of the Retail Guaranty. The date on which such Certificate of Substantial Completion is delivered shall, for purposes of this Agreement, be the date of Substantial Completion-Retail. If the Village Manager does not agree that Substantial Completion-Retail has occurred, then the Village Manager shall, within 15 days after receipt of the notice from Retail Developer, deliver to Retail Developer a notice that the parties will engage in the extended process for determination of Substantial Completion-Retail, as set forth in Section 8.1.E of this Agreement.

E. Extended Process for Determination of Substantial Completion-Retail. Within 15 days after the Village Manager notifies Retail Developer that the parties will engage in the extended process for determination of Substantial Completion-Retail, the Village and Retail Developer shall each select and hire, each at its own cost, a professional architect or engineer (individually, a “**Retail Project Architect/Engineer**”). Within 30 days after both Retail Project Architect/Engineers are hired, they shall inspect, and collectively make a determination with respect to the achievement of Substantial Completion-Retail.

(i) In the event that the two Retail Project Architect/Engineers jointly determine that Substantial Completion-Retail has occurred, then Retail Developer shall so notify the Village Manager.

(ii) In the event that the two Retail Project Architect/Engineers jointly determine that additional work needs to be done to achieve Substantial Completion-Retail, then Retail Developer shall perform such work, and the process described in this Section 8.1.E shall begin again.

(iii) In the event that the two Retail Project Architect/Engineers cannot agree within the 30 day time period, then, within 14 days after the expiration of the 30 day time period, the Retail Project Architect/Engineers shall jointly select and hire a third architect or engineer (“**Retail Project Third Party Architect/Engineer**”). The Retail Project Third Party Architect/Engineer shall inspect the work and make a determination within 30 days after being hired. Retail Developer shall perform any additional work deemed necessary by the Retail Project Third Party Architect/Engineer to achieve Substantial Completion-Retail. Any additional work performed by Retail Developer shall be inspected by the Retail Project Third Party Architect/Engineer within seven days after completion by Retail Developer. Once the Retail Project Third Party Architect/Engineer determines that Substantial Completion-Retail has been achieved, it shall notify the Village and Retail Developer. This determination shall be final and binding on Retail Developer and the Village for purposes of this Agreement. Retail Developer and the Village shall share the cost of the third architect or engineer so selected.

(iv) Within 15 days after the Retail Project Third Party Architect/Engineer notifies the Village Manager that Substantial Completion-Retail has been satisfied pursuant to Section 8.1 of this Agreement, the Village Manager shall deliver to Retail Developer a Certificate of Substantial Completion certifying that Retail Developer has satisfied the Substantial Completion - Retail Construction Obligation sufficient to warrant return of the Retail Guaranty. The date on which such Certificate of Substantial Completion is delivered shall, for purposes of the return of the Retail Guaranty, be the date of Substantial Completion-Retail.

8.2 Residential Developer Obligations.

A. Commencement of Construction. Residential Developer shall commence construction of the Residential Project within one year after the date on which the Initial Village Funds are deposited into the TIF Funding Escrow, provided that the Village shall have issued the necessary building permits for such construction as provided in Section 5.2 of this Agreement.

B. Scope of Construction Obligation. Provided that the Village shall have issued the necessary building permits for construction required by the Village Code, Residential Developer shall, prior to the date that is the Guaranty Date, satisfy each of the following two obligations (collectively, the “*Residential Construction Obligation*”): (1) construction of the Residential Private Building, including the parking structure, so that all of the residential units within the Residential Private Building qualify for issuance of a temporary certificate of occupancy under the Village’s codes; and (2) construct of all of the On Site Improvements on the Residential Parcel including internal drives, and surface parking and landscaping. Notwithstanding the foregoing, Residential Developer and the Village acknowledge and agree that Residential Developer will install and complete landscaping only when weather permits.

C. Substantial Completion. Substantial completion of the Residential Construction Obligation, prior to the date that is the Guaranty Date, shall constitute, and shall be deemed to be “Substantial Completion - Residential.”

D. Initial Process for Determination of Substantial Completion-Residential. Residential Developer shall notify the Village Manager when Residential Developer determines that it has achieved Substantial Completion-Residential. If the Village Manager agrees that Substantial Completion-Residential has occurred, then the Village Manager shall, within 15 days after receipt of the notice from Residential Developer, deliver to Residential Developer a Certificate of Substantial Completion certifying that Residential Developer has satisfied the Residential Construction Obligation sufficient to warrant return of the Residential Completion Guaranty. The date on which such Certificate of Substantial Completion is delivered shall, for purposes of this Agreement, be the date of Substantial Completion-Residential. If the Village Manager does not agree that Substantial Completion-Residential has occurred, then the Village Manager shall, within 15 days after receipt of the notice from Residential Developer, deliver to Residential Developer a notice that the parties will engage in the extended process for determination of Substantial Completion-Residential, as set forth in Section 8.2.E of this Agreement.

E. Extended Process for Determination of Substantial Completion-Residential. Within 15 days after the Village Manager notifies Residential Developer that the parties will engage in the extended process for determination of Substantial Completion-Residential, the Village and Residential Developer shall each select and hire, each at its own cost, a professional architect or engineer (individually, a “*Residential Project Architect/Engineer*”). Within 30 days after both Residential Project Architect/Engineers are hired, they shall inspect, and collectively make a determination with respect to achievement of Substantial Completion - Residential.

(i) In the event that the two Residential Project Architect/Engineers jointly determine that Substantial Completion-Residential has occurred, then Residential Developer shall so notify the Village Manager.

(ii) In the event that the two Residential Project Architect/Engineers jointly determine that additional work needs to be done to achieve Substantial Completion-Residential, then Residential Developer shall perform such work, and the process described in this Section 8.2.E shall begin again.

(iii) In the event that the two Residential Project Architect/Engineers cannot agree within the 30 day time period, then, within 14 days after the expiration of the 30 day time period, the Residential Project Architect/Engineers shall jointly select and hire a third architect or engineer ("**Residential Project Third Party Architect/Engineer**"). The Residential Project Third Party Architect/Engineer shall inspect the work and make a determination within 30 days after being hired. Residential Developer shall perform any additional work deemed necessary by the Residential Project Third Party Architect/Engineer to achieve Substantial Completion-Residential. Any additional work performed by Residential Developer shall be inspected by the Residential Project Third Party Architect/Engineer within seven days after completion by Residential Developer. Once the Residential Project Third Party Architect/Engineer determines that Substantial Completion-Residential has been achieved, this determination shall be final and binding on Residential Developer and the Village for purposes of this Agreement. Residential Developer and the Village shall share the cost of the third architect or engineer so selected.

(iv) Within 15 days after the Residential Project Third Party Architect/Engineer notifies the Village Manager that Substantial Completion-Residential has been satisfied pursuant to Section 8.2 of this Agreement, the Village Manager shall deliver to Residential Developer a Certificate of Substantial Completion certifying that Residential Developer has satisfied the Residential Construction Obligation. The date on which such Certificate of Substantial Completion is delivered shall, for purposes of this Agreement, be the date of Substantial Completion-Residential.

## ARTICLE NINE GUARANTY

### 9.1 Retail Guaranty.

A. Nature and Delivery of the Retail Guaranty. Prior to the delivery by Retail Developer of the final Funding Certification, Retail Developer shall deliver to the Village Manager the original, fully executed, Retail Guaranty.

B. Remedy Upon Occurrence of a Retail Developer Substantial Completion Default. In the event Retail Developer fails to achieve Substantial Completion-Retail prior to the Guaranty Date, and such failure continues for a period of 30 days after Retail Developer receives notice from the Village of such failure (a "**Retail Developer Substantial Completion Default**"), then the Guarantor under the Retail Guaranty shall pay to the Escrow Agent, as defined in Exhibit I of this Agreement, twenty five million dollars (\$25,000,000.00) (the "**Liquidated Damages Payment**"), which Liquidated Damages Payment shall be released to the Village as liquidated damages

pursuant to the Retail Guaranty. Concurrent with payment of the Liquidated Damages Payment to the Village, the Escrow Agent shall release the entire amount, if any, remaining in the TIF Funding Escrow as of the date of the Retail Developer Default, notwithstanding the limitation on reimbursement of land acquisition expenses set forth in Section 7.1 of this Agreement. Retail Developer acknowledges that actual damages likely to result from a breach of Section 8.1.B of this Agreement are difficult to estimate and/or ascertain on the date of this Agreement. The Parties intend that Retail Developer's payment of the liquidated damages amount would serve to compensate the Village for any breach by Retail Developer of its obligations under Section 8.1 of this Agreement and the Parties do not intend for it to serve as a penalty or punishment for any such breach by Retail Developer.

C. Beneficiary of Retail Guaranty. The sole guarantee and beneficiary of the Retail Guaranty will be the Village.

9.2. Residential Completion Guaranty. Prior to the delivery by Retail Developer of the Funding Certifications, Residential Developer shall deliver to the Village Manager evidence that the original, fully executed, Residential Completion Guaranty has been delivered to and accepted by the Residential Lender and that the Residential Completion Guaranty has become effective, which Residential Completion Guaranty shall state that it shall remain in effect until at least the Substantial Completion Date. The Residential Completion Guaranty contemplates that, in the event that Residential Developer fails to achieve Substantial Completion Residential prior to the Guaranty Date, and such failure continues for a period of 30 days after Residential Developer receives notice from the Village of such failure (a "*Residential Developer Substantial Completion Default*") or defaults under its loan with the Residential Lender, Residential Developer shall cause the Residential Guarantors to reimburse the Residential Lender for all costs and expenses incurred by the Residential Lender in taking possession or control of the of the Residential Project and completing the construction of the Residential Project pursuant to the plans and specifications approved by the Village for the Residential Project.

9.3 Guaranty and Tax Exempt Nature of Bond. The terms of the Guaranties shall be subject to such modifications acceptable to the Village and Developers as may be necessary to assure the tax exempt nature of any TIF issuance instrument used by the Village for its funding obligation pursuant to Section 5.3 of this Agreement.

9.4 Cancellation of Guaranties.

A. The Retail Guaranty shall be cancelled on the date on which the Village Manager delivers the Certificate of Substantial Completion required pursuant to Section 8.1 of this Agreement.

B. The Residential Completion Guaranty shall not be cancelled prior to the date on which Village Manager delivers the Certificate of Substantial Completion required pursuant to Section 8.2 of this Agreement.

## ARTICLE TEN REAL ESTATE TAX CHALLENGES

10.1 Real Estate Tax Payments. Retail Developer and Residential Developer agree to pay all applicable real estate taxes levied during their respective periods of ownership against their respective interests in the Project on or prior to the date same become due and shall not allow said taxes to become delinquent.

10.2 When Bonds are Tax Exempt. In the event that (a) the Village elects to issue Bonds to provide the Village Funds, and (b) such Bonds are tax exempt, then Retail Developer and Residential Developer shall reasonably cooperate with the Village to assure that no actions jeopardize the tax exempt nature of such instrument(s). In conjunction therewith, at all times while any tax-exempt obligations financing or refinancing the Off-Site Improvements are outstanding, the Village, Retail Developer, and Residential Developer will not enter into any impermissible agreement under Treas. Reg. Section 1.141-4(e)(4), including any agreement that requires Retail Developer and Residential Developer not to contest or protest real estate taxes assessed against the Property or portions thereof, or that prohibits Retail Developer and/or Residential Developer from seeking a deferral of such property taxes.

10.3 Right to Protest Real Estate Taxes. It is understood and agreed by the Village and Retail Developer that, except as expressly and specifically stated below, in no event shall Retail Developer (or any tenant of the Retail Project) or Residential Developer have any limitation on their rights to contest, challenge or protest real estate taxes assessed or imposed against their respective portions of the Property; provided, however, that, notwithstanding the foregoing, in the event the Village chooses not to use proceeds of tax exempt obligations as a source for the Village Funds and so long as no tax-exempt obligations financing or refinancing of the Village Funds are outstanding, and solely as applies to the Retail Parcel other than those portions occupied by the Retail Anchors (and in no event ever to the Residential Parcel), Retail Developer agrees, for itself and its tenants other than the Retail Anchors, that it shall not seek, without the Village's prior written approval, to appeal any determination of the tax assessment applicable to the Retail Parcel to the Illinois Appellate Court (it being expressly acknowledged and agreed that Retail Developer has the unfettered right to contest, challenge or protest real estate taxes assessed or imposed against the Retail Parcel in any other legally available proceeding or venue other than a challenge to the Illinois Appellate Court, including without limitation the right to seek relief from the Illinois Property Tax Appeal Board and the Circuit Court of Lake County, Illinois); and further provided, however, that the foregoing specific limitation on the right to seek an appeal to the Illinois Appellate Court shall no longer apply to Retail Developer, or its tenants, or the Retail Project upon retirement of any non-tax exempt Bonds the Village may have issued to provide the Village Funds.

10.4 Conveyance. In recognition of the nature of the Project and the Village's projections of the need for incremental tax revenues to finance Redevelopment Project Costs, in accordance with the TIF Act, for so long as the TIF District is in existence, neither Retail Developer nor Residential Developer shall knowingly undertake to convey or lease any portion of the Property to persons whose ownership and use of such portion of the Property will cause that portion of the Property to be exempt from payment of property taxes, and both Developers will impose in all leases and/or deeds conveying all or any portion of the Property, a prohibition against granting such conveyance. This prohibition shall apply only for so long as the Retail Guaranty is in effect.

10.5 Tax Exempt Status. Neither Retail Developer nor Residential Developer nor any subsequent Property owner or tenant shall assert tax-exempt status in a manner that would have an impact on the payment of real estate taxes during their respective periods of ownership of their respective portions of the Property. This prohibition shall apply only for so long as the Retail Guaranty is in effect.

**ARTICLE ELEVEN  
RETAIL DEVELOPER' S AND RESIDENTIAL DEVELOPER' S  
COVENANTS AND AGREEMENTS**

11.1 Sale of the Retail Parcel and Open Space Parcels. No portion of the Retail Project, the Retail Parcel (other than the Retail Outlots), or the Open Space Parcels may be transferred or conveyed, without prior written approval of the Village, for a period of five (5) years from the date on which the Village deposits the Initial Village Funds into the TIF Funding Escrow, and any conveyance in violation of the foregoing shall be of no force and effect or be binding on the Village. In no event shall the Retail Parcel (other than the Retail Outlots) be transferred or conveyed separate and apart from the Open Space Parcels without prior written approval of the Village. Notwithstanding the foregoing, the Open Space Parcels may, at any time, be transferred or conveyed to the entity that is the owner of the Residential Parcel or to the Lake County Forest Preserve District. Upon any transfer or conveyance of the Retail Parcel, the transferee or grantee shall be bound by this Agreement with respect to all obligations of Retail Developer hereunder, including but not limited to the Retail Construction Obligations. By acceptance of such transfer or conveyance of the Retail Parcel, such transferee or grantee shall be deemed to have assumed and agrees to perform all obligations of Retail Developer hereunder, including, without limitation, the Retail Construction Obligation, with the same force and effect as if such transferee or grantee were the original party hereto as Retail Developer.

11.2 Compliance with Applicable Laws. Retail Developer and Residential Developer each separately warrant with respect to its own actions that it shall at all times acquire, install, construct, operate and maintain its portion of the Project in conformance with all applicable federal, state and local laws, rules, ordinances and regulations. Retail Developer and Residential Developer each have examined and is familiar with and agrees that its portion of the development of the Project shall be performed in accordance with all applicable covenants, conditions, restrictions, codes and regulations, including federal, state and local ordinances affecting the Project. The Village shall not enact any law, ordinance, rule or regulation (or amendment thereto) which would have the effect of increasing Retail Developer's or Residential Developer's obligations hereunder, including an increase in the cost of the Project, unless said law, ordinance, rule or regulation is one of general applicability to similar properties in the Village.

11.3 Progress Reports and Meetings. Retail Developer and Residential Developer shall provide update reports on the progress of each's respective portion of the Project and shall meet with and make presentations to the Corporate Authorities and Village staff as reasonably requested by the Village Manager or his designee in order to keep the Village apprised of the progress of their respective portions of the Project. The Retail Developer reports shall be made monthly until Substantial Completion-Retail, and quarterly thereafter. The obligations set forth in this Section 11.3 shall terminate with respect to Retail Developer upon the issuance of the certificate of occupancy for the last Retail Private Building on the Retail Parcel. Notwithstanding the foregoing,

with regard to all of the Retail Outlots, Retail Developer shall provide a report (within fourteen days if a written request is sought) only upon request by the Village. The Residential Developer reports shall be made monthly until Substantial Completion-Residential, and quarterly thereafter. The obligations set forth in this Section 11.3 shall terminate with respect to Residential Developer upon the issuance of a final certificate of occupancy for all of the residential units within the Residential Private Building.

11.4 Fees and Expenses.

A. Developers shall pay all Village imposed fees on their respective Projects in the amounts, at the times, and for the categories, specifically set forth in the Village Code from time to time. With respect to the four (4%) percent engineering fees attributable to the IDOT road Off-Site Improvements, said amount shall not be charged as part of the engineering fees but rather a duly qualified inspector selected by the Village shall inspect the IDOT road Off-Site Improvements and invoice Retail Developer. Retail Developer shall pay such invoices and all such costs shall be deemed to be TIF Eligible Expenses.

B. The parties acknowledge and agree that the only fees that shall be due and payable to the Countryside Fire Protection District shall be a onetime payment by Retail Developer in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) payable at the time of issuance of the first building permit for the core and shell of a Retail Private Building; and a onetime payment by Residential Developer in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) payable at the time of issuance of the first building permit for the core and shell of the Residential Private Building.

11.5 Loan Agreement.

A. Prior to the date that is Substantial Completion-Retail, Retail Developer shall not use the Retail Parcel as collateral for any other property or project or for anything other than the cost of constructing the Retail Project. Retail Developer's loan agreement, if any, shall expressly provide that the amount of said loan may not be increased without the consent of the Village, which consent shall not be withheld if the debt-to-equity ratio for the proposed increased loan is maintained at the same level as the existing loan at the time the existing loan was initially issued. Nothing in this Section shall prevent a parent entity of Retail Developer from using the Retail Parcel for security as a part of any securitized debt offering.

B. Prior to the date that is Substantial Completion-Residential, Residential Developer shall not use the Residential Parcel as collateral for any other property or project or for anything other than the cost of constructing the Residential Project. Residential Developer's loan agreement shall expressly provide that the amount of said loan may not be increased without the consent of the Village, which consent shall not be withheld if the debt-to-equity ratio for the proposed increased loan is maintained at the same level as the existing loan at the time the existing loan was initially issued.

11.6 Retail Developer Existence. Retail Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as a Delaware Limited Liability Company authorized to do business in Illinois, so long as Retail Developer

maintains an interest in the Retail Parcel or has any other remaining obligations pursuant to the terms of this Agreement.

11.7 Residential Developer Existence. Residential Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois Limited Liability Company authorized to do business in Illinois, so long as Residential Developer maintains an interest in the Residential Parcel or has any other remaining obligations pursuant to the terms of this Agreement.

11.8 Open Book Project for Retail Project. That portion of the Project that is the Retail Project and the construction of the Off Site Improvements shall be an “open book” project meaning that Retail Developer and its general contractors will assure continuing access to the Village’s agents for the purpose of reviewing and auditing their respective books and records relating to any item necessary to determine the costs of their respective portions of the Project. Retail Developer shall make available to the Village for inspection by the Village Manager or his designee, with seven (7) days after receipt of notice from the Village, copies of any partnership, limited liability operating agreements or joint venture agreements pertaining to the Property to which Retail Developer is a party. The foregoing Village review rights shall terminate one (1) year after the date that is Substantial Completion-Retail, unless Retail Developer has failed to make available any such books and/or records requested in writing by the Village.

11.9 Reputable Contractors. Retail Developer and Residential Developer shall exercise prudence and good faith in attempting to contract with persons or entities who are reputable and experienced in their respective areas for the provision of services or material for the design and construction of the Project at costs not in excess of market rates. The obligations set forth in this Section 11.9 shall terminate with respect to Retail Developer upon the issuance of the certificate of occupancy for the last Retail Private Building on the Retail Parcel. The obligations set forth in this Section 11.9 shall terminate with respect to Residential Developer upon the issuance of a final certificate of occupancy for all of the residential units within the Residential Private Building.

11.10 Designation of General Contractors. The Village agrees that Retail Developer and Residential Developer may designate in their respective discretion the general contractor (or general contractors) for Retail Developer’s and Residential Developer’s portion of the Project. The general contractor (or general contractors), designated by Retail Developer and Residential Developer shall be experienced and reputable. The obligations set forth in this Section 11.10 shall terminate with respect to Retail Developer upon the issuance of the certificate of occupancy for the last Retail Private Building on the Retail Parcel. The obligations set forth in this Section 11.10 shall terminate with respect to Residential Developer upon the issuance of a final certificate of occupancy for all of the residential units within the Residential Private Building.

11.11 Development Signage for the Property. Developers shall have the right to install “Coming Soon” signage on the Property. Said signage shall be designed, located and installed in a manner acceptable to the Village and in conformance with the Village sign code.

11.12 Cross Connection Construction Escrow. That portion of the Off-Site Improvements on Milwaukee Avenue consisting of the signalization improvement and primary Property entrance and access improvements is depicted on the Cross Connection Conceptual Plan

attached to this Agreement as **Exhibit K**. The Cross Connection Conceptual Plan also depicts a future improvement consisting of two cross connections ("**Cross Connection**") between the Property and the retail mall property located across the street from the Property, on the West side of Milwaukee Avenue (the "**Retail Mall Property**"). The Cross Connection will be constructed by the Village if and when the applicable and necessary owners of the Retail Mall Property consent to the construction. Prior to the commencement of any of Off-Site Improvements, Retail Developer shall deposit the amount of \$100,000.00 into an interest bearing escrow with the Village to cover the estimated cost of the Cross Connection. All interest shall accrue for the benefit of, and be paid to, the Village. The Village agrees that no further contribution or payment or construction work of any kind shall be required by Developer for the Cross Connection. Further, the parties acknowledge and agree that the Cross Connection shall not be considered to be an Off-Site Improvement as defined in this Agreement.

11.13 Redevelopment Project Area. The Project will be located entirely within the Property. Notwithstanding the foregoing, all road and public utility improvements required for the Project that are located within the adjacent public rights-of-way of Milwaukee Avenue and Townline Road are within the Redevelopment Project Area.

11.14 Initial Occupancy of Retail Project. Retail Developer agrees that, unless the Village provides prior written approval, not more than 20% of the leasable area of the Retail Project shall be initially occupied by a business or entity that (a) is located at a store in the Village as of the Effective Date of this Agreement, and (b) closes its store in the Village within the time period that is between 60 days prior to, and 60 days after, locating within the Retail Project. A violation of this Section 11.14 shall be subject to the default provisions set forth in Section 15.1.B.3 of this Agreement.

11.15 Requirements under the County Sewer and Water Second Amendment. The County Sewer and Water Second Amendment imposes on the Village certain construction obligations for the sanitary sewer and water supply construction work applicable to the "Cuneo Intersection Service Area" (as defined in the County Sewer and Water Second Amendment). Retail Developer agrees that, as part of the Retail Project, Retail Developer shall be responsible for performing all of such construction work for and on behalf of the Village. Retail Developer shall indemnify the Village from any and all costs, assessments, penalties or fees imposed by Lake County as a result of Retail Developer's failure to fully comply with all the requirements, duties and responsibilities attributable to the Village as set forth in the County Sewer and Water Second Amendment during the term of the County Sewer and Water Second Amendment.

**ARTICLE TWELVE  
REPRESENTATIONS AND WARRANTIES OF  
RETAIL DEVELOPER AND RESIDENTIAL DEVELOPER**

12.1 By Retail Developer. To induce the Village to execute this Agreement and perform the obligations of the Village herein, Retail Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date that Retail Developer executes this Agreement and until the date of Substantial Completion-Retail, the following are true and correct:

A. Organization and Authorization. Retail Developer is a duly organized and existing limited liability company in good standing under the laws of the State of Delaware and is authorized to and has the power to enter into, and by proper action has been duly authorized to do business in the State of Illinois and to execute, deliver and perform this Agreement. Retail Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement required of Retail Developer. There are no actions at law or similar proceedings which are pending or threatened against Retail Developer which would materially and adversely affect the ability of Retail Developer to proceed with the construction and development of this project. The execution, delivery, and performance by Retail Developer of this Agreement does not constitute or will not, upon the giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which Retail Developer is a party or may be bound hereunder.

B. Non-Conflict or Breach. Neither the execution or delivery of this Agreement by Retail Developer, the consummation of the transactions contemplated hereby by Retail Developer, nor the fulfillment of, or compliance with, the terms and conditions of this Agreement by Retail Developer conflict with or results in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Retail Developer or any organizational documents, any restriction, agreement or instrument to which Retail Developer or any of its partners or joint venturers is now a party or by which Retail Developer or any of its partners or joint venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Retail Developer, any related party or any of its joint venturers under the terms of any instrument or agreement to which Retail Developer, any related party or any of its partners or joint venturers is now a party or by which Retail Developer any related party or any of its joint venturers is bound.

C. Financial Resources. Retail Developer and any of its affiliates to which portions of this Agreement are assigned, pursuant to the terms of this Agreement, will have, at the time of assignment, sufficient financial and economic resources to implement and complete the Retail Construction Obligation.

D. Survival of Representations and Warranties. Retail Developer agrees that all of its representations and warranties set forth in this Article are true as of the execution date of this Agreement and shall remain true until the date of Substantial Completion-Retail.

12.2 By Residential Developer. To induce the Village to execute this Agreement and perform the obligations of the Village herein, Residential Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date that Residential Developer executes this Agreement and until the date of Substantial Completion-Residential, the following are true and correct:

A. Organization and Authorization. Residential Developer is an Illinois Limited Liability Company authorized to do business in Illinois and existing under the laws of the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform this Agreement. Residential Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement

required of Residential Developer. There are no actions at law or similar proceedings which are pending or threatened against Residential Developer which would materially and adversely affect the ability of Residential Developer to proceed with the construction and development of this project. The execution, delivery, and performance by Residential Developer of this Agreement does not constitute or will not, upon the giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which Residential Developer is a party or may be bound hereunder.

B. Non-Conflict or Breach. Neither the execution or delivery of this Agreement by Residential Developer, the consummation of the transactions contemplated hereby by Residential Developer, nor the fulfillment of, or compliance with, the terms and conditions of this Agreement by Residential Developer conflict with or results in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Residential Developer or any organizational documents, any restriction, agreement or instrument to which Residential Developer or any of its partners or joint venturers is now a party or by which Residential Developer or any of its partners or joint venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Residential Developer, any related party, or any of its joint venturers under the terms of any instrument or agreement to which Residential Developer, any related party, or any of its partners or joint venturers is now a party or by which Residential Developer, any related party, or any of its joint venturers is bound.

C. Financial Resources. Residential Developer and any of its affiliates to which portions of this Agreement are assigned, pursuant to the terms of this Agreement, will have, at the time of assignment, sufficient financial and economic resources to implement and complete the Residential Construction Obligation.

D. Survival of Representations and Warranties. Residential Developer agrees that all of its representations and warranties set forth in this Article are true as of the execution date of this Agreement and shall remain true until the date of Substantial Completion-Residential.

### **ARTICLE THIRTEEN REPRESENTATIONS AND WARRANTIES OF THE VILLAGE**

The Village represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

13.1 Organization and Authority. The Village is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and has all requisite corporate power and authority to enter into this Agreement.

13.2 Authorization. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement: (i) have been duly authorized by all necessary corporate action on the part of the Village; (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement; and (iii) shall not, by lapse of time, giving of notice, or otherwise, result in any breach of any term,

condition or provision of any indenture, agreement or other instrument to which the Village is subject.

13.3 Litigation. To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village, the TIF District, the Property, the Retail Project, or the Residential Project in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

13.4 Authority to issue the Bonds and Issuance of Written Report. The Village has the authority to adopt the Bond Ordinance, and the authority and capacity to issue the Bonds in the amount necessary to satisfy the Village's obligation to deposit the Initial Village Funds into the TIF Funding Escrow within the time period required in Section 5.3.A of this Agreement. Within 30 days following receipt of a written request from Retail Developer, made at any time, but not more than one time, prior to the date on which Retail Developer acquires the Property, the Village shall obtain and deliver to Retail Developer and Residential Developer a letter prepared by the Village's independent professional financial consultant confirming that the Village's representations and warranties set forth in this Section 13.4 are true and correct as of the date of issuance of such written letter.

13.5 Survival of Representations and Warranties. The Village agrees that all of its representations and warranties set forth in this Section and elsewhere in this Agreement are true as of the execution date of this Agreement and shall remain true until the date of Substantial Completion-Retail.

#### **ARTICLE FOURTEEN LIABILITY AND RISK INSURANCE**

14.1. Builder's Risk. Prior to commencement of construction of any portion of the Project, each of Retail Developer and Residential Developer, each at its cost and expense, shall procure and maintain builder's risk insurance with a deductible not to exceed \$100,000 against risks of physical loss, including collapse, covering the total value of work performed and equipment, supplies, and materials furnished for each Retail Private Building, excluding the Retail Outlots (with respect to Retail Developer) and for the Residential Private Building (with respect to Residential Developer). The insurance policies required pursuant to this Section 14.1 shall be maintained in full force and effect for each Retail Private Building, excluding the Retail Outlots (with respect to Retail Developer) until the date on which property insurance becomes effective for such Retail Private Building, and shall be maintained in full force and effect for the Residential Private Building (with respect to Residential Developer) until the date on which property insurance becomes effective for the Residential Private Building.

14.2. Commercial Liability and Other Policies. Each of Retail Developer and Residential Developer, or, if either Developer has selected a contractor, then that Developer's contractor, shall maintain for the duration of its contract, including warranty period, the following insurance purchased from a company or companies lawfully authorized to do business in the State of Illinois and having a rating of at least A-minus and a class size of at least VIII as rated by A M. Best Ratings, such insurance as will protect the contractor from claims set forth below which may arise



- (b) Provide separate endorsements to name the Village of Vernon Hills as additional insured; and
- (c) Provide thirty (30) days' notice, in writing, of cancellation or material change.

14.4 The contractor's insurance shall be primary in the event of a claim.

14.5 The Village shall be provided with certificates of insurance and endorsements evidencing the above required insurance prior to issuance of any permits to start earth work or construction of work, and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least thirty (30) days prior to the expiration of cancellation of any such policies. Said Notices and Certificates of Insurance shall be provided to: Village of Vernon Hills Building Commissioner, 290 Evergreen Drive, Vernon Hills, Illinois 60061. Certificates of Insurance shall be provided only during the time periods set forth in Section 14.1 and 14.2.

14.6 In addition, a certificate of insurance that states the Village has been endorsed as an "additional insured" by the Contractor's insurance carrier shall be provided to the Village. Specifically, this certificate must include the following language: "The Village of Vernon Hills and its elected and appointed officials, employees, agents, consultants, attorneys and representatives, are, and have been endorsed, as an additional insured under the above reference policy number on a primary and non-contributory basis for general liability and automobile liability coverage for the duration of the contract term."

14.7 Failure to Comply. In the event Retail Developer or Residential Developer fails to obtain or maintain any insurance coverages required under this Agreement, the Village may, after providing Retail Developer or Residential Developer with notice and an opportunity to cure as provided in Section 15.1 of this Agreement, purchase such insurance coverages and charge the expense thereof to the applicable Developer. Said applicable Developer shall reimburse the Village within thirty (30) days after receipt of an invoice for the coverage, or said Developer shall stop all work on its portion of the Project until said Developer has complied with the requirements of this Article.

## **ARTICLE FIFTEEN DEFAULT AND REMEDIES**

### 15.1 Defaults/Remedies.

A. General. Subject to the limitations set forth in Section 15.1.B of this Agreement, upon a breach of this Agreement, or if any of the Parties shall fail to perform or keep any term or condition required to be performed or kept by such party, such party shall, upon notice from the other party, proceed to cure or remedy such default or breach within forty-five (45) days after receipt of such notice from the Village (in the event of any such failure by Residential Developer or Retail Developer), or from Residential Developer or Retail Developer (in the event of any such failure by the Village); provided, however, that if such default is incapable of being cured within said forty five (45) day period and the defaulting party commences to cure the default within said forty five (45) day period and proceeds with due diligence to cure the same, the forty-five (45) day period shall automatically be extended, but in no event more than ninety (90) days, and such party shall not be deemed to be in default under this Agreement ("*Default*"). In the event of an

occurrence of a Default, the aggrieved party or parties may institute such proceedings against the defaulting party as may be necessary or desirable in its opinion to cure and remedy such default or breach, including seeking damages and/or specific performance.

B. Notwithstanding the general provisions in Section 15.1.A of this Agreement, the following special provisions shall apply:

1. Retail Developer Substantial Guaranty Default. In the event of a Retail Developer Substantial Guaranty Default, the Village's sole and exclusive remedy shall be the remedy set forth in Section 9.1.B of this Agreement. The Village shall follow only the procedures set forth in Section 9.1.B of this Agreement to exercise its rights in the event of a Retail Developer Substantial Guaranty Default.

2. Residential Developer Substantial Guaranty Default. In the event of a Residential Developer Substantial Guaranty Default, the Village's sole and exclusive remedy shall be the remedy set forth in Section 9.2 of this Agreement. The Village shall follow only the procedures set forth in Section 9.2 of this Agreement to exercise its rights in the event of a Residential Developer Substantial Guaranty Default.

3. Initial Retail Project Occupancy Default. In the event of a Default by Retail Developer of Section 11.14 of this Agreement, the Village's sole and exclusive remedy shall be against Retail Developer and a fine in the amount of Five Dollars (\$5.00) per square foot of the specific tenant space that is the basis for the Default.

4. Specific Village Defaults. In the event that the Village fails to perform its obligation under Sections 5.3 and 5.4 of this Agreement (Deposit of Village Funding and Issuance of Bonds), Section 8.1 of this Agreement (Delivery of Certificate of Substantial Completion for Retail), or Section 8.2 (Delivery of Certificate of Substantial Completion for Residential), then Retail Developer or Residential Developer, as the case may be, may, 15 days after delivery of notice to the Village, institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such failure, including seeking damages, specific performance, and/or a writ of mandamus from the Circuit Court of Lake County, IL.

C. Additional Events of Default for Retail Developer. The following events shall also be deemed a Default against Retail Developer under this Agreement up to and including the date of issuance of the Final Certificate of Occupancy for the last building to be constructed in the Retail Project including the Retail Outlots, provided that the Village provides the notice and opportunity to cure in the manner set forth in Section 15.1.A of this Agreement:

- (i) The entry of a decree or order for relief by a court having jurisdiction in the premises with respect to Retail Developer, respectively, in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official), of Retail Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs

and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

- (ii) The commencement by Retail Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Retail Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official), of Retail Developer.

D. Additional Events of Default for Residential Developer. The following events shall also be deemed a Default against Residential Developer under this Agreement up to and including the date of issuance of the Final Certificate of Occupancy for the last unit in the Residential Project, including the parking garage, provided that the Village provides the notice and opportunity to cure in the manner set forth in Section 15.1.A of this Agreement:

- (i) The entry of a decree or order for relief by a court having jurisdiction in the premises with respect to Residential Developer, respectively, in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official), of Residential Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.
- (ii) The commencement by Residential Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Residential Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official), of Residential Developer.

15.2 Legal Fees. In the event legal action or other proceeding is brought for enforcement of this Agreement or with respect to an alleged breach, default or misrepresentation, each Party shall pay its own attorneys' fees and related costs.

15.3 No Waiver by Delay. Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Default be considered or treated as a waiver of the rights by the waiving party of any future Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

15.4 Rights and Remedies Cumulative. Except as expressly provided in this Agreement with respect to Retail Developer Substantial Guaranty Defaults and Residential Developer Substantial Guaranty Defaults (which are and shall be exclusive remedies), the rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Default.

## **ARTICLE SIXTEEN EQUAL EMPLOYMENT OPPORTUNITY AND PREVAILING WAGE**

16.1 No Discrimination. Neither Retail Developer nor Residential Developer will discriminate against any employee or applicant for employment on the basis of race, color, religion, sex or national origin. To the fullest extent permitted by law, Retail Developer and Residential Developer will take affirmative action to ensure that applicants are employed and treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Retail Developer and Residential Developer agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

16.2 Advertisements. Retail Developer and Residential Developer will, in all solicitations or advertisements for employees placed by or on behalf of Retail Developer and Residential Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

16.3 Contractors. Any contracts made by Retail Developer and Residential Developer with its general contractor in connection with Retail Developer's Project and Residential Developer's Project respectively, shall contain language similar to that recited in Sections 16.1 and 16.2 above.

16.4 Prevailing Wage Act. Retail Developer agrees to comply with the applicable provisions, if any, of the Illinois State law providing for the payment of the prevailing rate of wage with respect to work on any portion of the Project that is required under the Prevailing Wage Act to be paid the prevailing rate of wage.

## **ARTICLE SEVENTEEN MISCELLANEOUS PROVISIONS**

17.1 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested; provided, however, that any notice that is required to be given as part of a Retail Developer Substantial Guaranty Default or a Residential Developer Substantial Guaranty Default pursuant to Article Nine of this Agreement shall be given only by

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both (a) overnight courier; and (b) registered or certified first class mail, postage prepaid, return receipt requested.

***If to Village:***

Village of Vernon Hills  
290 Evergreen Drive  
Vernon Hills, IL 60061  
ATTN: Village Manager

With a copy to:

Schain Banks  
70 W. Madison Street, Suite 5300  
Chicago, IL 60602  
ATTN: Robert Kenny

***If to Retail Developer:***

Mellody Farm LLC  
1211 West 22<sup>nd</sup> Street, Suite 300  
Oak Brook, Illinois 60523  
ATTN: Matthew Hendy

With a copy to:

Mellody Farm LLC  
1211 West 22<sup>nd</sup> Street, Suite 300  
Oak Brook, Illinois 60523  
ATTN: Property Management

With a copy to:

General Counsel  
Regency Centers, L.P.  
One Independence Drive, Suite 114  
Jacksonville, Florida 32202

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and with a copy to:

Holland & Knight

131 S Dearborn Street 30<sup>th</sup> Floor

Chicago, IL 60603

ATTN: Steven Elrod

***If to Residential Developer:***

Melody Farm Residential Partners LLC

191 Waukegan Road, Suite 202

Northfield, IL 60093

ATTN: Tim Anderson

With a copy to:

Holland & Knight

131 S Dearborn Street 30<sup>th</sup> Floor

Chicago, IL 60603

ATTN: Steven Elrod

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

17.2 Time of the Essence. Time is of the essence of this Agreement.

17.3 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

17.4 Recordation of Agreement. The Parties agree to record this Agreement in the office of the Lake County Recorder of Deeds.

17.5 Severability. If any provision of this Agreement, or any section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

17.6 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

17.7 Entire Contract; Integration. This Agreement (together with the exhibits attached hereto) is the entire contract between the Village, Residential Developer, and Retail Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, including but not limited to the Memorandum of Understanding, and is a full integration of the agreement of the Parties.

17.8. Amendments. This Agreement may not be modified or amended except by a written instrument executed by (1) the Village, and by (2) Developer, but only that Developer that is directly affected by the proposed modification or amendment.

17.9 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the Village, Residential Developer, and Retail Developer. This Agreement is not intended to, and does not, create any third party beneficiary rights whatsoever.

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

17.11 Cooperation and Further Assurances. The Village, Residential Developer, and Retail Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village, Residential Developer, or Retail Developer or other appropriate persons, all and singular, the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

17.12 Nature, Survival, and Transfer of Obligations.

A. Retail Developer. Retail Developer's transfer restriction shall be as set forth in Section 11.1 of this Agreement. Nothing in this Agreement shall prevent Retail Developer from conveying a financial interest in the Retail Parcel, the Retail Developer and/or a Retail Developer Affiliate to an institutional investor, joint venturer or lender that is providing financing and/or capital for or on behalf of either Retail Developer or a Retail Developer Affiliate, so long as that Developer (or a Developer Affiliate), retains control of the Retail Construction Obligation.

B. Residential Developer. Residential Developer agrees not to sell or transfer its legal or beneficial interest in all or any portion of the Residential Parcel other than a transfer to a Developer Affiliate, prior to receipt of the Temporary Certificate of Occupancy for the Residential Private Building. Nothing in this provision shall prevent Residential Developer from conveying a financial interest in the Residential Parcel, the Residential Developer and/or a Residential

Developer Affiliate to an institutional investor, joint venturer or lender that is providing financing and/or capital for or on behalf of either Residential Developer or a Residential Developer Affiliate, so long as that Developer (or a Developer Affiliate), retains control of the Residential Construction Obligation.

C. Developer Affiliate. “Developer Affiliate” shall mean, with respect to any Person, (a) any other Person which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, (i) such Person or (ii) any general partner, manager or managing member of such Person; (b) any other Person 50% or more of the equity interest of which is held beneficially or of record by (i) such person or (ii) any general partner, manager or managing member of such Person, and (c) any general partner, limited partner or member of (i) such Person or (ii) any general partner or managing member of such Person. As used in the previous sentence, “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

D. Binding Effect. All obligations assumed by each Developer under this Agreement shall be binding upon that Developer, and upon any and all of that Developer’s heirs, successors, and assigns.

E. Limitation of Owner Obligations and Rights. Except for specific rights and affirmative obligations assigned to each respective Developer pursuant to the terms of this Agreement, the rights and obligations of all owners of portions of the Property under this Agreement shall be limited to those rights and obligations directly related to or arising out of the portion of the Property owned by such owners.

F. Excluded Assignments. This Section does not prohibit, nor require the Village’s consent to, the collateral assignment of this Agreement to Developer’s construction lender, or a permanent lender, if required thereby. If any mortgagee or institutional investor shall succeed to Developer’s interest in the Property pursuant to the exercise of remedies under a mortgage or joint venture agreement, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of Developer’s interest in this Agreement, the Village hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of Developer hereunder and under the 2016 PUD Special Use Ordinance; provided, however, that:

1. If such party accepts an assignment of Developer’s interest under this Agreement, then such party has no liability under this Agreement for any Event of Default of Developer which accrued prior to the time such party succeeded to the interest of Developer under this Agreement (a “*Pre-Existing Default*”), in which case Developer shall remain solely responsible; but
2. No party who has succeeded to the interest of Developer under this Agreement shall have any right to any permit or approval from the Village to the extent that a Pre-Existing Default has resulted in noncompliance under the 2016 PUD Special Use Ordinance or this Agreement unless and

until such noncompliance with the 2016 PUD Special Use Ordinance or this Agreement has been corrected.

If any mortgagee does not expressly accept an assignment of Developer's interest hereunder, then such party shall be entitled to no rights and benefits under this Agreement.

G. The Village. Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or except as provided herein without the express written approval of Retail Developer and Residential Developer.

17.13 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions 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.

17.14 Conflicts. To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful. Notwithstanding the foregoing, in the event of a conflict between this Agreement and the 2016 PUD Special Use Ordinance, the 2016 PUD Special Use Ordinance shall control.

17.15 Effective Date. The Effective Date of this Agreement shall be January 17, 2017; provided, however, that this Agreement shall not take effect, and shall be automatically null and void, if, on or before January 17, 2017: (a) any one or more of the following three events occur: (i) the State of Illinois either eliminates the Village's share of the Illinois Local Government Distributive Fund ("*LGDF*"), or reduces the Village's share of the LGDF by 50% or more, (ii) the interest rate for market rate bonds for AAA-rated agencies published by Standard & Poor's Financial Services that would be applicable for the issuance of the Bonds by the Village is higher than six percent (6%), or (iii) the Village's authority to adopt the Bond Ordinance and issue the Bonds is lawfully eliminated by the government of either the United States or the State of Illinois; and (b) the Village delivers to each Developer notice that one or more of the three events has occurred.

17.16 Term. Except as provided in this Section 17.16 or as specified in other Sections of this Agreement, this Agreement shall remain in full force and effect for twenty-three (23) years from the date the TIF District was created, unless the Redevelopment Plan with respect to the Project is extended or until termination of the TIF District or until otherwise terminated pursuant to the terms of this Agreement. The following provisions of this Agreement shall automatically terminate as to Retail Developer on the date that the Certificate of Substantial Completion-Retail is issued: Section 8.1; Section 9.4.A. Sections 16.1 through Section 16.3 shall automatically terminate for each of the Retail Private Buildings, including the Retail Outlots, when Final Certificates of Occupancy are issued for the last Retail Private Building on the Retail Parcel. The following provisions of this Agreement shall automatically terminate on the date that the Certificate of Substantial Completion - Residential is issued: Section 8.2; Section 9.4.B. Sections 16.1 through 16.3 shall automatically terminate upon issuance of the Final Certificate of Occupancy for all of the residential units within the Residential Private Building, including the parking garage.

17.17 Estoppel Certificates. Each of the parties hereto agrees to provide the other, upon not less than fifteen (15) days prior request, an estoppel certificate certifying that this Agreement is in full force and effect (unless such is not the case, in which such parties shall specify the basis for such claim), that the requesting party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default), and certifying such other matters reasonably requested by the requesting party.

17.18 Drafter Bias. The Parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the Parties, all of which are represented by independent counsel and that this Agreement is a compilation of said negotiations. As a result, in the event that a court is asked to interpret any portion of this agreement, none of its parties shall be deemed the drafter hereof and none shall be given the benefit of such presumption that may be set out by law.

17.19 Mutual Defense

A. TIF District. In the event that litigation is commenced against the Village challenging the adoption of the TIF District on the limited procedural basis of the public hearing conducted by the Village, or the limited substantive basis of the qualification of the Property under Section 3(v) of the TIF Act, the Village and Developers agree to mutually defend such litigation, including the hiring of attorneys and consultants as deemed necessary and prudent and the splitting of the cost of such attorneys and consultants.

B. Intergovernmental Agreement. In the event that litigation is commenced against the Village challenging the terms, conditions, or approvals contemplated by or set forth in, the Intergovernmental Agreement, the Village and Developers agree to mutually defend such litigation, including the hiring of attorneys and consultants as deemed necessary and prudent and the splitting of the cost of such attorneys and consultants.

**ARTICLE EIGHTEEN  
EFFECTIVENESS**

Retail Developer and Residential Developer shall execute this Agreement not later than 30 days after the Corporate Authorities' authorization of execution of this Agreement or else this Agreement will be deemed void.

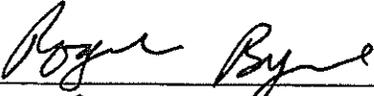
**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed on or as of the .day and year first above written.

**SIGNATURES ON NEXT PAGE**

For Execution - 2/7/2017

IN WITNESS THEREOF, the Village, Residential Developer, and Retail Developer have entered into this Agreement as of this 10<sup>th</sup> day of January 2017

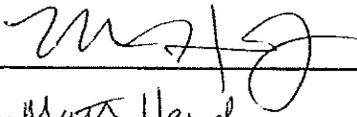
**VILLAGE OF VERNON HILLS**

By:   
Name: Roger Byrne  
Title: Village President

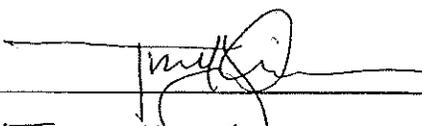
**MELLODY FARM LLC, a Delaware limited liability company**

By: Regency Centers, L.P., a Delaware limited partnership, its sole member and manager

By: Regency Centers Corporation, a Florida corporation, its general partner

By:   
Name: Matt Hendy  
Title: VP Market Officer

**MELLODY FARM RESIDENTIAL PARTNERS LLC**

By:   
Name: TIMOTHY ANDERSON  
Title: MANAGER

STATE OF )  
 ) SS  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that \_\_\_\_\_, of Mellody Farm LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Mellody Farm LLC, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017

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

My commission expires \_\_\_\_\_.

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that \_\_\_\_\_, of Mellody Farm Residential Partners LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Mellody Farm Residential Partners LLC, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017

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

My commission expires \_\_\_\_\_.

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF LAKE )

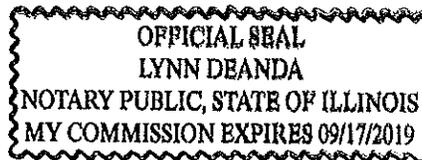
I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Roger L Byrne, personally known to me to be the Village President of the Village of Vernon Hills, an Illinois municipal corporation, and ~~John Kalmar, personally known to me to be the Village Clerk of the Village of Vernon Hills,~~ and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Village President and ~~Village Clerk,~~ they signed and delivered said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Board of Trustees of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10<sup>th</sup> day of January, 2017

Lynn Deanda  
Notary Public

My Commission Expires:

9/17/2019



## EXHIBIT LIST

- EXHIBIT A Legal Description
- EXHIBIT B Certificate of Substantial Completion
- EXHIBIT C Funding Certification
- EXHIBIT D Off-Site Improvement Plans
- EXHIBIT E Residential Completion Guaranty
- EXHIBIT F Retail Guaranty
- EXHIBIT G Site Plan
- EXHIBIT H List of TIF Eligible Expenses
- EXHIBIT I Form of TIF Funding Escrow
- EXHIBIT J OnSite Improvement Completion Plan
- EXHIBIT K Cross Connection Conceptual Plan

**EXHIBIT A**

MELLODY FARM SUBDIVISION, THAT PART OF THE SOUTHEAST QUARTER OF SECTION 33 AND THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 44 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS.

NOTE: The legal description for the Property was, prior to the recordation of the Plat of Subdivision, as follows:

LEGAL DESCRIPTION:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 33 AND THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 44 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EASTERLY OF THE EASTERLY LINE OF MILWAUKEE AVENUE (AS WIDENED), WESTERLY OF THE CENTER LINE OF THE DES PLAINES RIVER, SOUTHERLY OF A LINE WHICH RUNS FROM A POINT 11.85 CHAINS SOUTH OF THE CENTER POST OF SECTION 34 TO A POINT 9.09 CHAINS SOUTH OF THE CENTER POST OF SECTION 33, AND NORTH OF THE NORTH LINE OF STATE ROUTE 60 AS WIDENED BY CONDEMNATION IN CASE 87 ED 11, IN LAKE COUNTY, ILLINOIS.

**EXHIBIT B**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

[Village Letterhead]

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

The Village of Vernon Hills (the "*Village*"), Melody Farm LLC (the "*Retail Developer*"), and Melody Farm Residential Partners LLC (the "*Residential Developer*") entered into that certain Redevelopment Agreement dated \_\_\_\_\_, 2017 (the "*RDA*"), which RDA was authorized by that certain Resolution No. \_\_\_\_\_ adopted by the Village President and Board of Trustees on \_\_\_\_\_, 2017

**[FOR RETAIL]**

The Village acknowledges that the Retail Developer has satisfactorily completed performance of the Retail Construction Obligation, as defined in the RDA. Accordingly, pursuant to Section 8.1 of the RDA, the date of this Certificate shall be the date of Substantial Completion-Retail, as defined in the RDA.

**[FOR RESIDENTIAL]**

The Village acknowledges that the Residential Developer has satisfactorily completed performance of the Residential Construction Obligation, as defined in the RDA. Accordingly, pursuant to Section 8.2 of the RDA, the date of this Certificate shall be the date of Substantial Completion-Residential, as defined in the RDA.

VILLAGE OF VERNON HILLS

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

Village Manager

Date: \_\_\_\_\_

EXHIBIT C

FUNDING CERTIFICATION

(Certification No. \_\_)

To: Village Manager  
Village of Vernon Hills  
290 Evergreen Drive  
Vernon Hills, IL 60061

The Village of Vernon Hills (the "*Village*"), Melody Farm LLC (the "*Retail Developer*"), and Melody Farm Residential Partners LLC (the "*Residential Developer*") entered into that certain Redevelopment Agreement dated \_\_\_\_\_, 2017 (the "*RDA*"), which RDA was authorized by that certain Resolution No. \_\_\_\_ adopted by the Village President and Board of Trustees on \_\_\_\_\_, 2017

Pursuant to Section 5.3.A and Article Six of the RDA, the Village is obligated to deposit \$18,000,000 into an escrow fund, but only after Retail Developer has certified to the Village Manager that each of the 19 specified Funding Conditions (as defined in the RDA) has been satisfied.

In accordance with Section 5.3.A and Article Six of the RDA, the undersigned, on behalf of Retail Developer, hereby certifies that the following Funding Conditions have been satisfied:

**[RETAIL DEVELOPER TO IDENTIFY FUNDING CONDITIONS PRECEDENT TO WHICH CERTIFICATION APPLIES, WITH REFERENCE TO SECTION NUMBER OF RDA]**

MELLODY FARM LLC

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

For Execution – 2/7/2017

EXHIBIT D

OFF-SITE IMPROVEMENT PLANS



For Execution – 2/7/2017

**EXHIBIT E**

**RESIDENTIAL COMPLETION GUARANTY**

**EXHIBIT E**

**RESIDENTIAL COMPLETION GUARANTY**

THIS RESIDENTIAL COMPLETION GUARANTY ("Guaranty") made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by TIMOTHY J. ANDERSON, an individual ("Anderson Guarantor"), and RICHARD AARONSON, an individual ("Aaronson Guarantor"); together with Anderson Guarantor, jointly and severally, individually and collectively, "Guarantor", in favor of \_\_\_\_\_, a national RECIPIENTS association, its successors and assigns ("Lender").

WHEREAS, Melody Farm Residential Partners LLC, an Illinois limited liability company ("Borrower"), and Lender entered into that certain Construction Loan Agreement dated on or about the date hereof (the "Loan Agreement") whereby Lender agreed to make a loan (the "Loan") to Borrower in the maximum amount of up to \_\_\_\_\_ Million \_\_\_\_\_ Thousand and \_\_\_/100 Dollars (\$ \_\_\_\_\_), to finance the development and construction of a three-story residential building (the "Project") on the approximately 7-acre parcel of land located within a mixed use planned development at the northeast corner of Milwaukee Avenue and Townline Road, in Vernon Hills, Lake County, Illinois and

WHEREAS, Borrower, the Village of Vernon Hills ("Village"), and Melody Farm LLC are parties to that certain Redevelopment Agreement dated \_\_\_\_\_, 2016 ("RDA"), pursuant to which RDA Borrower has agreed to construct the Project; and

WHEREAS, in connection with the Loan, Borrower has executed and delivered to Lender that certain promissory note (the "Note") dated of even date herewith in the amount of the Loan, which Note is secured by (i) a Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage") dated of even date herewith made by Borrower in favor of Lender on the Project, and (ii) the other Loan Documents; and

WHEREAS, Guarantor will derive an economic benefit from the Loan evidenced and secured by the Note, the Mortgage and the other Loan Documents; and

WHEREAS, Lender has relied on the statements and agreements contained herein in agreeing to make the Loan, and the execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan by Lender;

**AGREEMENTS**

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of Lender and its successors, endorsees, transferees, participants and assigns as follows:

1. Guarantor, absolutely, unconditionally, irrevocably and jointly and severally guarantees:

(a) the full, complete and punctual observance, performance and satisfaction of all of the obligations, duties, covenants and agreements of Borrower under the Loan Agreement and the other Loan Documents with respect to the construction and completion of the Improvements free of any claim for mechanics', materialmen or any other liens,

and in accordance with (1) all laws and regulations applicable to the Project and construction, (2) the Plans and Specifications (substantially and in all material respects) and (3) the time periods and other requirements set forth in the Loan Documents, including, without limitation, the following:

- (i) To perform, complete and pay for (or cause to be performed, completed and paid for) the construction and to pay all costs of said construction (including any and all cost overruns) and all other costs associated with the Project (including, without limitation, the costs of any architects' and engineers' fees), if Borrower shall fail to perform, complete or pay for such work, including any sums expended in excess of the amount of indebtedness incurred by Borrower under the Loan Agreement or the other Loan Documents, whether or not the construction of the Project is actually completed;
  - (ii) If Borrower fails to satisfy the Residential Construction Obligation prior to the date that is the Guaranty Date (as those terms are defined in the RDA) and Lender exercises its rights under the Mortgage or other Loan Documents to take possession or control of the Project and complete the construction of the improvements therein, to reimburse Lender for all costs and expenses incurred by Lender in so taking possession or control of the Project and completing the construction pursuant to the Plans and Specifications;
- (b) If any mechanics' or materialmen liens should be filed, or should attach, with respect to the Project by reason of the construction of the Improvements, to immediately cause the removal of such liens, or post security satisfactory to Lender (which may be in the form of a title endorsement satisfactory to Lender) against the consequences of their possible foreclosure;
- (c) If any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever, should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment delivered upon the Project and owned by Borrower, attached to the Project or used in connection with the construction of the Improvements, to immediately cause the removal of such lien(s) or post security against the consequences of their possible foreclosure;
- (d) To pay the premiums for all policies of insurance required to be furnished by Borrower pursuant to the Loan Agreement during the construction if such premiums are not paid by Borrower;
- (e) To pay (A) all accrued and unpaid interest on the Loan, including, without limitation, default interest, breakage costs and late fees due under the Loan Agreement through the Final Completion Date; and (B) all operating expenses to the extent not paid in accordance with the Loan Agreement through the Final Completion Date, including, without limitation, real estate taxes and insurance premiums; and
- (f) The full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 8 hereof).

All obligations described in subsection (a) of this Section 1 are referred to herein as the "Guaranteed Obligations."

2. In the event Borrower shall fail to pay in full, when due, any of the Guaranteed Obligations, Guarantor agrees, on demand by Lender or any holder of the Note (which demand may be made concurrently with notice to Borrower that Borrower is in default of its obligations), to perform all the Guaranteed Obligations and notwithstanding any stay, injunction or other prohibition preventing the enforcement of such obligations as against Borrower. Lender shall have the right, at its option, either before, during or after commencing foreclosure or sale proceedings, as the case may be, and before, during or after pursuing any other right or remedy against Borrower or Guarantor, to perform any and all of the Guaranteed Obligations by or through any agent, contractor or subcontractor of its selection, all as Lender in its sole discretion deems proper to satisfy the purpose and requirements of the Loan Documents and this Guaranty, and Guarantor shall indemnify and hold Lender free and harmless from and against any and all loss, damage, cost, expense, injury, or liability Lender may suffer or incur in connection with the exercise of its rights under this Guaranty or the performance of the Guaranteed Obligations. Furthermore, Lender shall not have any obligation to protect or insure any collateral for the Loan, nor shall Lender have any obligation to perfect its security interest in any collateral for the Loan.

In the event that Lender shall have made demand upon the Guarantor to complete or cause completion of the Improvements, the Guarantor shall be entitled to requisition and draw all of the undisbursed portion of the Loan funds intended to be used for completion of the Improvements pursuant to the Budget (but not in excess of the total amount of the Loan), and Lender shall disburse such funds for the purpose of (and to the extent necessary for) the completion the Improvements in accordance with the Budget; provided that: (i) Guarantor shall then be performing the Guaranteed Obligations or causing performance of the same with due diligence; (ii) the Loan shall be In Balance; (iii) all such disbursements of the Loan to Guarantor shall be secured by the Mortgage and the other Loan Documents with the same priority as all previous amounts of the Loan to Borrower; (iv) no Default shall have occurred and be continuing following the date demand has been made by Lender for Guarantor's performance hereunder; and (v) Guarantor shall otherwise comply with the provisions and conditions of the Loan Agreement governing requisitions and disbursements of the Loan.

During the course of any construction undertaken by Lender or any other party on behalf of Lender in accordance with the terms of this Guaranty, Guarantor shall pay on demand any amounts due to contractors, subcontractors, and material suppliers and for permits and licenses necessary or desirable in connection therewith. Guarantor's obligations in connection with such work shall not be affected by any errors or omissions of the General Contractor, architect, or any subcontractor or agent or employee of any of the foregoing in the design, supervision, and performance of the work; it being understood that such risk is assumed by Guarantor. Neither the completion of the construction by Lender or any other party on behalf of Lender nor failure of said party to complete the construction shall relieve Guarantor of any liabilities hereunder; rather, such liability shall be continuing and may be enforced by Lender to the end that the construction shall be timely completed, lien-free, without loss, cost, expense, injury or liability of any kind to Lender.

All of the remedies as set forth herein and/or provided for in any of the Loan Documents or at law or equity shall be available to Lender, and the choice by Lender of one such remedy over

another shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seeking any other remedy under this Guaranty, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy. Without limitation to the generality of the foregoing, it is expressly hereby acknowledged and agreed that the obligations of Guarantor hereunder are independent of the obligations of Borrower, Guarantor or any other guarantor or indemnitor under any of the other Loan Documents to which they may be a party, and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Borrower, any other guarantor or indemnitor and whether or not Borrower is joined in any such action or actions.

3. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by Lender and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which Guarantor may have against Borrower, (c) waive any defense, right of set-off or other claim which Guarantor or Borrower may have against Lender or any holder of the Note, (d) waive any and all rights Guarantor may have under any anti-deficiency statute or other similar protections, (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (f) waive any failure by Lender to inform Guarantor of any facts Lender may now or hereafter know about Borrower, the Project, the Loan, or the transactions contemplated by the Loan Agreement, it being understood and agreed that Lender has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonperformance of the Guaranteed Obligations. Further, and without limitation to the foregoing: (A) Lender, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment or performance under the Loan Documents, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations and/or the Loan Documents, and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of any of Borrower's obligations under the Loan Documents and take and hold security for the payment or performance of this Guaranty or the Loan Documents; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment or performance of Borrower's obligations under the Loan Documents, any other guaranties of the Loan, or any other obligation of any person (including any other guarantor) with respect to the Loan; (v) enforce and apply any security now or hereafter held by or for the benefit of Lender in respect of this Guaranty or the Loan and direct the order or manner of sale thereof, and to bid at any such sale, or exercise any other right or remedy that Lender may have against any such security, in each case as in its discretion it may determine, including foreclosure on any such security pursuant to one or more judicial or non-judicial sales, even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of Guarantor against Borrower or any security for the Guaranteed Obligations; (vi) apply any payments or recoveries from Borrower, Guarantor or any other source, and any proceeds of any security, to the Guaranteed Obligation in such manner, order and priority as Lender may elect

(whether or not those obligations are guaranteed by this Guaranty or secured at the time of the application); and (vii) exercise any other rights available to it under the Loan Documents.

Lender may take any of the foregoing actions upon any terms and conditions as Lender may elect, without giving notice to, or obtaining consent from, Guarantor and without affecting the liability of any Guarantor to Lender, and this Guaranty and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason, including, without limitation, the occurrence of any of the following, whether or not Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or the Loan, or with respect to any other guaranty of or security for the payment or performance of the Guaranteed Obligations or the Loan; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Loan Documents, or of any other guaranty or security for the Guaranteed Obligations or the Loan, in each case whether or not in accordance with the terms of the Loan Documents or any agreement relating to such other guaranty or security; (iii) any Loan Document, at any time being found to be illegal, invalid or unenforceable with respect to Borrower; (iv) the application of payments received from any source (other than payments received pursuant to this Guaranty or from the proceeds of any security for the Guaranteed Obligations or the Loan except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations or the Loan) to the payment of indebtedness other than the Loan, even though Lender might have elected to apply such payment to any part or all of the Loan; (v) Lender's consent to the change, reorganization or termination of the ownership structure or existence of Borrower or any of its Affiliates and to any corresponding restructuring of the Loan, including, without limitation, the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Loan, including, without limitation, the Guaranteed Obligations; (vii) the acquisition or transfer of title to the Project to Lender, any Affiliate of Lender or any designee of Lender (including, without limitation, any purchaser through foreclosure, deed in lieu or otherwise); (viii) any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty; (ix) any waiver, extension, modification, forbearance, delay or other act or omission of Lender, or their failure to proceed promptly or otherwise as against Borrower, Guarantor or any security; or any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of any Guarantor as against Borrower; or (x) any dealings occurring at any time between Borrower and Lender, whether relating to the Guaranteed Obligations or otherwise.

The liability of Guarantor and the rights of the Lender under this Guaranty will not be impaired or affected in any manner by, and Guarantor hereby consents in advance to, and waives any requirement of notice for, any (1) disposition, impairment, release, surrender, substitution, or modification of any collateral securing the Guaranteed Obligations or the obligations created by this Guaranty or failure to perfect a security interest in any collateral; (2) release (including adjudication or discharge in bankruptcy) or settlement with Borrower or any other party which may be or become liable for the Guaranteed Obligations (including, without limitation, any maker, indorser, guarantor or surety); (3) delay in enforcement of payment of the Guaranteed Obligations or delay in

enforcement of this Guaranty; (4) delay, omission, waiver, or forbearance in exercising any right or power with respect to the Guaranteed Obligations or this Guaranty; (5) defense arising from the enforceability, validity or genuineness of any of the Loan Documents; (6) defenses or counterclaims that the Borrower may assert under or in respect of any of the Loan Documents, including, but not limited to, failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, infancy, statute of limitations, lender liability, accord and satisfaction and usury; or (7) other act or omission which might otherwise constitute a legal or equitable discharge of the undersigned. Credit may be granted or continued from time to time by Lender to Borrower without notice to or authorization from Guarantor, regardless of the financial or other condition of Borrower at the time of any such grant or continuation. Lender shall not have any obligation to disclose or discuss with Guarantor its assessment of the financial condition of Borrower. Guarantor acknowledges that no representations of any kind whatsoever have been made by Lender. No modification or waiver of any of the provisions of this Guaranty shall be binding upon Lender except as expressly set forth in a writing duly signed and delivered by Lender.

4. Guarantor further agrees that Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor of the time for payment of interest or principal under the Note, it being the intent hereof that, subject to Lender's compliance with the terms of this Guaranty, Guarantor shall remain liable for the payment of the Guaranteed Obligations, until the Guaranteed Obligations has been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantor further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Note, the Loan Agreement, the Mortgage or other Loan Documents, and may waive or release any provision or provisions of the Note, the Loan Agreement, the Mortgage and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or Guarantor's obligations hereunder.

5. This is an absolute, present and continuing guaranty of performance and completion and not of collection. Guarantor agrees that this Guaranty may be enforced by Lender without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Note, Loan Agreement, Mortgage or any of the other Loan Documents through foreclosure or sale proceedings, as the case may be, under the Mortgage or otherwise, or resorting to any other guaranties, and Guarantor hereby waives any right to require Lender to join Borrower in any action brought hereunder or to commence any action against or obtain any judgment against Borrower or to pursue any other remedy or enforce any other right. Guarantor further agrees that nothing contained herein or otherwise shall prevent Lender from pursuing concurrently or successively all rights and remedies available to it at law and/or in equity or under the Note, Loan Agreement, Mortgage or any other Loan Documents, and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of Guarantor's obligations hereunder, it being the purpose and intent of Guarantor that the obligations of Guarantor hereunder shall be absolute, independent and unconditional under any and all circumstances whatsoever and Guarantor shall remain fully liable for the payment and performance of all of the Guaranteed Obligations until the Loan and all Guaranteed Obligations have been indefeasibly paid and performed in full. None of Guarantor's obligations under this Guaranty or any remedy for the

enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Borrower under the Note, Loan Agreement, Mortgage or other Loan Documents or by reason of the bankruptcy of Borrower or by reason of any creditor or bankruptcy proceeding instituted by or against Borrower. As used in this Guaranty, an "indefeasible" payment shall mean and refer to a payment that is no longer subject to potential disaffirmance, impairment, set aside, offset, recoupment, defeasance, recovery, disallowance, or recapture pursuant to the provisions of any federal or state law, regulation or order applicable to or governing creditors' rights, including, without limitation, Title 11 of the United States Code, as amended, either by reason of the passage of time following such payment or the final judgment of a court of competent jurisdiction establishing the unassailable right of the party receiving such payment to retain such payment without reduction, offset, or other impairment.

6. If and to the extent that, for any reason, any payment (or portion thereof) by or on behalf of Borrower or Guarantor in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by Lender or any holder of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or insolvency, the appointment of a receiver, intervenor, conservator, trustee or similar officer for Borrower, or otherwise, then the obligations of Guarantor shall be automatically reinstated and will continue to be effective as though such payment had not been made regardless of whether Lender contested the order requiring return of such payment. Guarantor agrees that it will indemnify Lender on demand for all costs and expenses (including, without limitation, fees and expenses of counsel) incurred by Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

7. In the event Lender or any holder of the Note shall assign the Note and this Guaranty to any other person, Guarantor will accord full recognition thereto and agrees that all rights and remedies of Lender or such holder hereunder shall be enforceable against Guarantor by such assignee with the same force and effect and to the same extent as would have been enforceable by Lender or such holder but for such assignment; provided, however, that unless Lender shall otherwise consent in writing, Lender shall have an unimpaired right, prior and superior to that of its assignee or transferee, to enforce this Guaranty for Lender's benefit to the extent any portion of the Guaranteed Obligations or any interest therein is not assigned or transferred.

8. If: (a) Lender or the holder of this Guaranty retains an attorney for collection of this Guaranty, or this Guaranty is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent Lender in any proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Lender upon demand all reasonable attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

9. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Lender or the holder of the Note under the remainder of this Guaranty shall continue in full force and effect.

10. TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LENDER AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF CHICAGO AND STATE OF ILLINOIS, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION.

11. ANY INDEBTEDNESS OF BORROWER TO GUARANTOR NOW OR HEREAFTER EXISTING IS HEREBY SUBORDINATED TO THE PAYMENT AND PERFORMANCE OF THE GUARANTEED OBLIGATIONS. UNTIL SUCH TIME AS ONE HUNDRED PERCENT (100%) OF THE GUARANTEED OBLIGATIONS SHALL HAVE BEEN SATISFIED OR DISCHARGED, REGARDLESS OF THE AMOUNT OF ANY GUARANTOR'S OBLIGATION TO LENDER HEREUNDER, EACH GUARANTOR IRREVOCABLY WAIVES ANY AND ALL RIGHTS SUCH GUARANTOR MAY HAVE AT ANY TIME (WHETHER ARISING DIRECTLY OR INDIRECTLY, BY OPERATION OF LAW OR CONTRACT) TO ASSERT ANY CLAIM AGAINST BORROWER ON ACCOUNT OF PAYMENTS MADE BY SUCH GUARANTOR UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY AND ALL RIGHTS OF SUBROGATION, REIMBURSEMENT, EXONERATION, CONTRIBUTION OR INDEMNITY. UNTIL SUCH TIME AS ONE HUNDRED PERCENT (100%) OF THE GUARANTEED OBLIGATIONS SHALL HAVE BEEN SATISFIED OR DISCHARGED, REGARDLESS OF THE AMOUNT OF GUARANTOR'S OBLIGATION TO LENDER HEREUNDER, EACH GUARANTOR IRREVOCABLY SUBORDINATES ANY AND ALL GUARANTEED OBLIGATIONS OF THE BORROWER TO SUCH GUARANTOR, PRESENT AND FUTURE, HOWEVER EVIDENCED, TO THE PRIOR PAYMENT OF THE GUARANTEED OBLIGATIONS TO LENDER

12. Guarantor hereby waives, until the earlier of (a) the Guaranteed Obligations shall have been indefeasibly paid, performed and completed in full and (b) the Loan and all other amounts due under the Loan Documents have been indefeasibly paid in full and the Loan satisfied, any claim, right or remedy, direct or indirect, that any Guarantor now has or may hereafter have against Borrower or any of its assets in connection with this Guaranty or the performance by Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and, including without limitation, (i) any right of subrogation, reimbursement, exoneration or indemnification that Guarantor now has or may hereafter have against Borrower, (ii) any right to enforce, or to participate in, any claim, right or remedy that Lender now have or may hereafter have against Borrower, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by or on behalf of Lender. Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its right of subrogation, reimbursement, exoneration, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, exoneration or indemnification Guarantor may have against Borrower or against any collateral or security, and any rights of contribution Guarantor may have against any such other guarantor, shall be junior and subordinate to any and all rights Lender may have against Borrower, to all right, title and interest Lender may have in any such collateral or security, and to any and all rights Lender may have against such other guarantor. If any amount shall be paid to Guarantor on account of any such subrogation, reimbursement, exoneration, indemnification or contribution rights at any time when (A) all Guaranteed Obligations shall not have been indefeasibly paid, performed and completed in full, or (B) the Loan shall not have been indefeasibly paid and satisfied in full, such amount shall be held in trust for Lender and shall forthwith be paid over to Lender to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

13. Any amounts received by Lender from any source on account of the Loan may be utilized by Lender for the performance of the Guaranteed Obligations and in such order or priority as Lender may from time to time elect.

14. GUARANTOR AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR TO ENFORCE OR DEFEND ANY RIGHT UNDER THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS GUARANTY AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GUARANTOR FURTHER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY LEGAL PROCEEDING BROUGHT BY OR ON BEHALF OF LENDER WITH RESPECT TO THIS GUARANTY OR OTHERWISE IN RESPECT OF THE LOAN, ANY AND EVERY RIGHT GUARANTOR MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN, OTHER THAN A COMPULSORY COUNTERCLAIM, AND (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING CONTAINED IN THE IMMEDIATELY PRECEDING SENTENCE SHALL PREVENT OR PROHIBIT GUARANTOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST LENDER WITH RESPECT TO ANY ASSERTED CLAIM.

For Execution - 2/7/2017

15. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (i) if hand delivered or if sent by telecopy, effective upon receipt or (ii) if delivered by overnight courier service, effective on the next Business Day following delivery to such courier service, or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, effective two (2) Business Days after deposit in the United States mails; addressed in each case as follows:

Anderson Guarantor:

Mr. Timothy J. Anderson  
c/o Focus Development, Inc.  
191 Waukegan Road, Suite 202  
Northfield, Illinois 60093

Aaronson Guarantor:

Mr. Richard Aaronson  
c/o Atlantic Realty Partners Inc.  
3378 Peachtree Road, North East  
Atlanta, Georgia 30326

Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With Copies To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

16. In order to induce Lender to make the Loan, Guarantor makes the following representations and warranties to Lender set forth in this Section. Guarantor acknowledges that but for the truth and accuracy of the matters covered by the following representations and warranties, Lender would not have agreed to make the Loan.

(a) Any and all balance sheets, net worth statements, and other financial data with respect to Guarantor which have heretofore been given to Lender by or on behalf of Guarantor fairly and accurately present in all material respects the financial condition of Guarantor as of the respective dates thereof.

(b) The execution, delivery, and performance by Guarantor of this Guaranty does not and will not contravene or conflict with (i) to Guarantor's actual knowledge, any laws, order, rule, regulation, writ, injunction or decree now in effect of any Government Authority, or court having jurisdiction over Guarantor, (ii) any contractual restriction binding on or affecting Guarantor or Guarantor's property or assets which may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty, (iii) the instruments creating any trust holding title to any assets included in Guarantor's financial statements, or (iv) other documents of Guarantor.

(c) No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by Guarantor of this Guaranty or for the validity or enforceability hereof.

(d) This Guaranty creates legal, valid, and binding obligations of Guarantor enforceable in accordance with its terms, except as may be limited by: (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally; and (ii) general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(e) Except as disclosed in writing to Lender, there is no action, proceeding, or investigation pending or, to the knowledge of Guarantor, threatened or affecting Guarantor, which may materially adversely affect Guarantor's ability to fulfill his obligations under this Guaranty. There are no judgments or orders, in the aggregate, for the payment of money rendered against Guarantor for an amount in excess of \$50,000. Guarantor is not in default under any agreements which may materially adversely affect Guarantor's ability to fulfill its obligations under this Guaranty.

All of the foregoing representations and warranties shall be deemed remade on the date of the Initial Disbursement of Loan Proceeds, on the date of each advance of Loan Proceeds, and upon any extension of the Loan pursuant to the Loan Agreement. Guarantor hereby agrees to indemnify and hold Lender free and harmless from and against all loss, cost, liability, damage, and expense, including reasonable attorney's fees and costs, which Lender may sustain by reason of the inaccuracy or breach of any of the foregoing representations and warranties as of the date the foregoing representations and warranties are made and are remade.

17. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death of Guarantor. If more than one party executes this Guaranty, the liability of all such parties shall be joint and several.

18. Each Guarantor shall deliver or cause to be delivered to Lender all of the Guarantor financial statements to be delivered in accordance with the terms of the Loan Agreement. In addition, each Guarantor covenants and agrees to furnish to Lender, (i) not later than sixty (60) days after the end of each calendar quarter, a personal financial statement containing balance sheet and income statement, and global operating and property statement and global debt schedule, each certified to Lender by such Guarantor as being true and complete in all material respects and (ii) copies of all filed tax returns with all schedules as well as corresponding K-1s, with respect to such Guarantor within ten (10) days of filing; Each Guarantor will, promptly after Lender's written request therefor, provide Lender with such other financial information as Lender may reasonably request. Each Guarantor represents and warrants to Lender that all financial statements furnished or to be furnished to Lender with respect to such Guarantor will accurately reflect, in all material respects, such Guarantor's financial condition at the times and for the periods therein stated.

19. Each of the undersigned Guarantors hereby covenants, represents, warrants and agrees that so long as any portion of the Guaranteed Obligations remains outstanding, such Guarantor will not give or otherwise transfer or dispose of any material portion of such Guarantor's assets to any other person or entity for less than the reasonably equivalent value of such assets.

20. THIS GUARANTY, THE NOTE, AND ALL OTHER INSTRUMENTS EVIDENCING AND SECURING THE LOAN SECURED HEREBY WERE NEGOTIATED IN THE STATE OF ILLINOIS, AND DELIVERED BY GUARANTOR OR BORROWER, AS APPLICABLE, AND ACCEPTED BY LENDER IN THE STATE OF ILLINOIS, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND THE UNDERLYING TRANSACTIONS EMBODIED HEREBY. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION OF THE IMPROVEMENTS AND PERFORMANCE OF THIS GUARANTY AND THE GUARANTEED OBLIGATIONS ARISING HEREUNDER, THIS GUARANTY SHALL BE GOVERNED BY, AND EXCEPT TO THE EXTENT PRE-EMPTED BY FEDERAL LAW, CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

21. Lender shall be entitled to honor any request for Loan Proceeds made by Borrower and shall have no obligation to see to the proper disposition of such advances. Guarantor agrees that his/its obligations hereunder shall not be released or affected by reason of any improper disposition by Borrower of such Loan Proceeds.

22. This Guaranty may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

23. Lender hereby notifies each Guarantor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Guarantor, which information includes the name and address of each Guarantor and other information that will allow Lender to identify each Guarantor in accordance with the Act.

24. The terms of this Guaranty may be waived, modified or amended only by an instrument in writing duly executed by Guarantor and Lender.

25. Neither failure to exercise, nor any delay in exercising, on the part of Lender, any right or remedy under this Guaranty or any of the Loan Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. This Guaranty is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof with respect to Guarantors' performance hereunder.

26. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-  
SIGNATURE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

**GUARANTOR**

[Signature Page to Performance and Completion Guaranty]

1642976

For Execution – 2/7/2017

**EXHIBIT F**  
**RETAIL GUARANTY**

**EXHIBIT F**

**RETAIL GUARANTY**

**THIS RETAIL GUARANTY** (this “*Guaranty*”) is dated as of \_\_\_\_\_ by **REGENCY CENTERS, L.P.**, a Delaware limited partnership (“*Guarantor*”), for the benefit of the **VILLAGE OF VERNON HILLS**, an Illinois home rule municipal corporation (the “*Village*”).

**RECITALS:**

**WHEREAS**, the Village, Melody Farm LLC (“*Retail Developer*”), and Melody Farm Residential Partners LLC (“*Residential Developer*”) are parties to that certain Redevelopment Agreement dated \_\_\_\_\_, 2016 a true and complete copy of which is attached hereto as Exhibit A (the “*RDA*”); and

**WHEREAS**, pursuant to the RDA, the Village has agreed to provide the Village Funds (as defined in the RDA) to Retail Developer for the reimbursement of TIF Eligible Expenses (as defined in the RDA) incurred by Retail Developer; and

**WHEREAS**, pursuant to the RDA, Retail Developer has agreed to undertake the Retail Construction Obligation (as defined and described in the RDA); and

**WHEREAS**, Guarantor has a financial interest in Retail Developer, and in consideration of the Village’s performance of its obligations in the RDA, Guarantor has agreed to provide this Guaranty to the Village;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Guarantor hereby agrees as follows:

1. **Definitions.** Words and phrases not otherwise defined herein shall have the meaning set forth in the RDA.

2. **Guaranty.**

(a) Guarantor hereby absolutely, unconditionally and irrevocably agrees that, in the event Retail Developer fails to achieve Substantial Completion-Retail prior to the Guaranty Date, and such failure continues for a period of 30 days after Retail Developer receives notice from the Village of such failure (the “*Failure*”), Guarantor shall pay to the Village the amount of **Twenty Five Million and 00/100 Dollars (\$25,000,000.00)** (the “*Liquidated Damages Payment*”) as liquidated damages and not as a penalty, the parties acknowledging that actual damages in the event of a Failure would be difficult if not impossible to determine and that the amount of the Liquidated Damages Payment represents the parties’ best estimate as to what those damages will be. Retail Developer acknowledges that actual damages likely to result from a breach of Section 8.1.B of the RDA are difficult to estimate and/or ascertain on the date of this Agreement. The Parties

intend that Retail Developer's payment of the Liquidated Damages Payment would serve to compensate the Village for any breach by Retail Developer of its obligations under Section 8.1.B of the RDA and the Parties do not intend for it to serve as a penalty or punishment for any such breach by Retail Developer.

(b) Upon payment of the Liquidated Damages Payment to the Village, the Village shall be deemed to have irrevocably and unconditionally released and discharged Guarantor and Retail Developer from any and all claims, actions, causes of action, rights, demands, debts, obligations, damages, liabilities, judgments or losses of any kind whatsoever that the Village has or may have against Guarantor and/or Retail Developer arising out of or connected with this Guaranty and/or the satisfaction of the Retail Construction Obligation in the RDA.

3. **Representations and Warranties.** The following shall constitute representations and warranties of Guarantor, and Guarantor hereby acknowledges that the Village is entering into the RDA and performing its obligations thereunder, including providing the Village Funds in reliance thereon:

(a) Guarantor is not in default and no event has occurred that with the passage of time and/or the giving of notice will constitute a default under any agreement to which Guarantor is a party, the effect of which will impair performance by Guarantor of its obligations under this Guaranty. Neither the execution and delivery of this Guaranty nor compliance with the terms and provisions hereof will violate any applicable law, rule, regulation, judgment, decree or order, or will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind that creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the property or assets of Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which Guarantor is a party or to which Guarantor may be subject.

(b) There is not any litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to Guarantor's knowledge, threatened that could adversely affect performance by Guarantor of its obligations under this Guaranty.

(c) Neither this Guaranty nor any statement or certification as to facts previously furnished or required herein to be furnished to the Village, its advisors or agents, by Guarantor, contains any material inaccuracy or untruth in any representation, covenant or warranty or omits to state a fact material to this Guaranty.

(d) Guarantor has an ownership interest in Retail Developer, and as such will receive a substantial economic benefit from the provision of the Village Funds to Retail Developer.

4. **Continuing Guaranty.** Guarantor agrees that the payment of the Liquidated Damages Payment to the Village by Guarantor shall not be subject to any counterclaim, set-off,

abatement, deferment or defense based upon any claim that Guarantor may have against the Village (with the exception of any counterclaim, set-off, abatement, deferment or defense based upon any claim that Retail Developer may have against Village), and shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by, any circumstance or condition (whether or not Guarantor shall have any knowledge thereof), including without limitation:

(a) any failure, omission or delay on the part of the Village, the Retail Developer, Guarantor, or any other party to conform or comply with any term of the RDA or any failure by any party to give any notice required under the RDA;

(b) any waiver, compromise, release, settlement or extension of time of payment or performance or observance of any of the obligations or agreements contained in the RDA;

(c) any action or inaction by Village under or in respect of the RDA, any failure, lack of diligence, omission or delay on the part of the Village to perfect, enforce, assert or exercise any lien, security interest, right, power or remedy conferred on it in the RDA, or any other action or inaction by any party;

(d) commencement of any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Retail Developer, Guarantor, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(e) any merger or consolidation of Retail Developer or Guarantor into or with any entity, or any sale, lease or transfer of any portion of the Project to any other person or entity; or

(f) any change in the ownership of Retail Developer or Guarantor or any change in the relationship between such parties, or any termination of any such relationship.

5. **Waivers.** Guarantor expressly and unconditionally waives (i) notice of any of the matters referred to in Section 4 above, (ii) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of non-payment under the RDA, (iii) any right to the enforcement, assertion or exercise against Retail Developer, Guarantor, or any other party of any right or remedy conferred under the RDA, and (iv) any requirement of diligence on the part of any person or entity.

6. **Subordination.** Guarantor agrees that any and all present and future debts and obligations of Retail Developer to Guarantor hereby are subordinated to the claims of the Village and hereby are assigned by Guarantor to the Village as security for Retail Developer's obligations under the RDA and Guarantor's obligations under this Guaranty.

7. **Enforcement Costs.** If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding; (b) one or more attorneys is retained to represent the Village in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; or (c) one or more attorneys is retained to represent the Village in connection with this Guaranty, then Guarantor shall pay to the Village upon demand all reasonable fees, costs and expenses incurred by the Village in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees, in addition to all other amounts due hereunder.

8. **Binding Effect; Several Liability.** This Guaranty shall be binding on Guarantor and Village. It is agreed that the liability of Guarantor hereunder is several and independent of any other guarantees or other obligations at any time in effect with respect to Retail Developer's obligations or any part thereof and that Guarantor's liability hereunder may be enforced regardless of the existence, validity, enforcement or non-enforcement of any such other guarantees or other obligations.

9. **No Waiver of Rights.** No delay or failure on the part of the Village to exercise any right, power or privilege under this Guaranty or of the RDA shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance between the parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. No notice to or demand on Guarantor in any case shall entitle Guarantor to any other or further notice or demand in the same, similar or other circumstance.

10. **Modification.** The terms of this Guaranty may be waived, discharged, or, other than as set forth in Section 11 hereof, terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. No amendment, modification, waiver or other change of any of the terms of this Guaranty shall be effective without the prior written consent of the Village and Guarantor.

11. **Termination.** This Guaranty shall terminate and be cancelled and returned to Guarantor concurrent with the delivery of the Certificate of Substantial Completion to Retail Developer, all pursuant to Sections 8.1 and 9.4.A of the RDA.

12. **Joinder.** Any action to enforce this Guaranty may be brought against Guarantor without any reimbursement or joinder of Retail Developer or any other party in such action.

13. **Severability.** If any provision of this Guaranty is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Guarantor and the Village shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Guaranty and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Notice.** All notices, communications and waivers under this Guaranty shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or

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certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To the Village: Village of Vernon Hills  
290 Evergreen Drive  
Vernon Hills, Illinois 60061  
Attention: Village Manager

In each case with a copy to: Robert Kenny, Esq.  
Schain Banks  
70 W. Madison St., Ste. 5300  
Chicago, Illinois 60602

To the Guarantor: Regency Centers  
1211 West 22nd Street, Suite 300  
Oak Brook, Illinois 60523  
Attention: Nick Wibbenmeyer

With a copy to: General Counsel  
Regency Centers, L.P.  
One Independent Drive, Suite 114  
Jacksonville, Florida 32202

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section 14 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

15. **CONSENT TO JURISDICTION.** TO INDUCE THE VILLAGE TO ACCEPT THIS GUARANTY, GUARANTOR IRREVOCABLY AGREES THAT, SUBJECT TO THE VILLAGE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS GUARANTY WILL BE LITIGATED IN UNITED STATES DISTRICT COURTS HAVING SITUS IN THE NORTHERN DISTRICT OF ILLINOIS. GUARANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT HAVING SITUS IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

16. **WAIVER OF JURY TRIAL.** GUARANTOR AND THE VILLAGE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GUARANTOR AGREES

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THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE VILLAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES EXCEPT FOR CLAIMS ARISING OUT OF THE VILLAGE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**IN WITNESS WHEREOF**, Guarantor has executed this Guaranty as of the date first above written.

***[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]***



For Execution ~ 2/7/2017

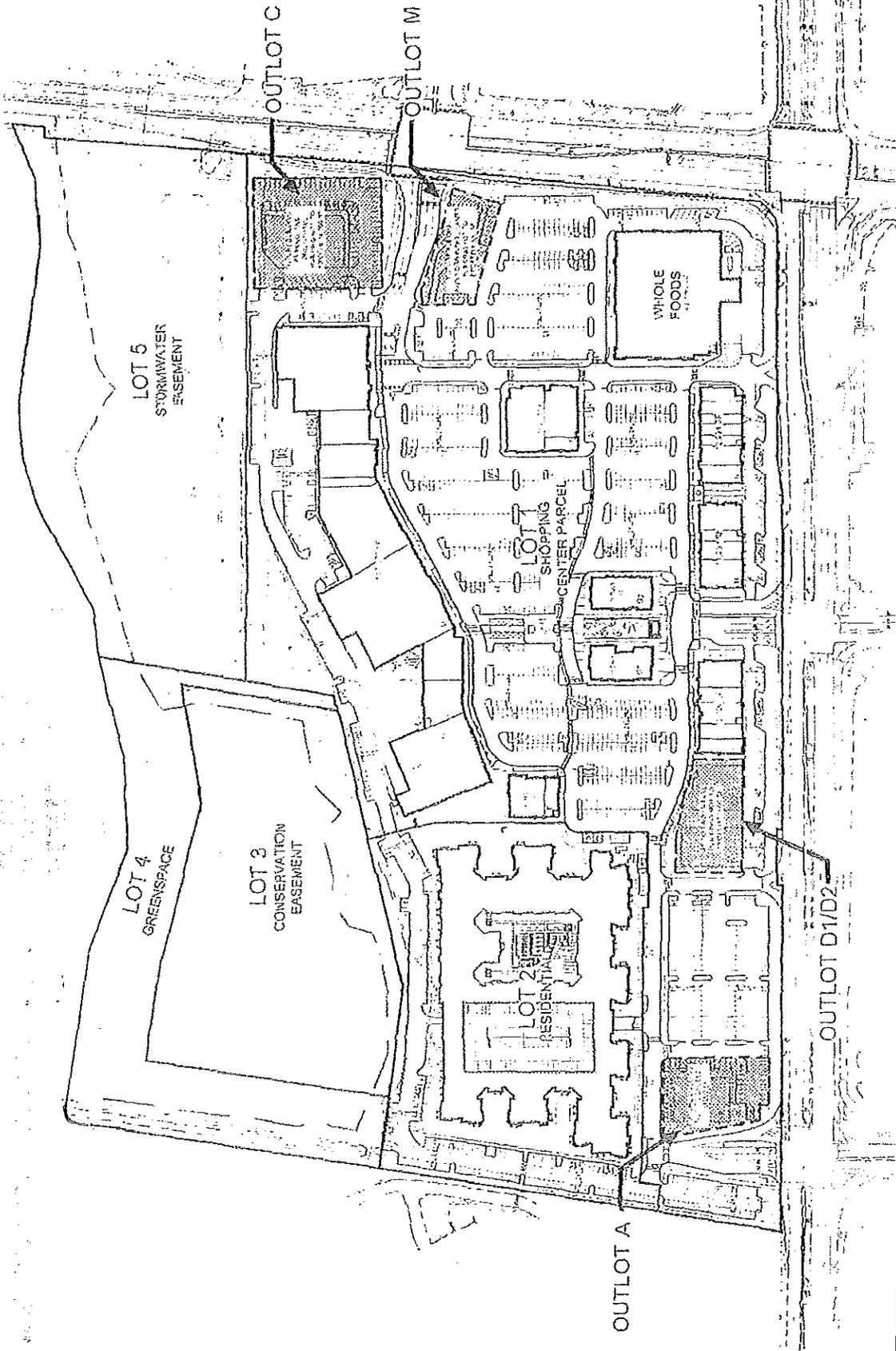
**EXHIBIT G**

**SITE PLAN**

1 sheet prepared by Manhard Consulting, Ltd dated November 15, 2016  
Entitled "Site Plan"

TOTAL RETAIL BUILDINGS  
APPROXIMATELY 280,985 SF

RESIDENTIAL 280 UNITS



**EXHIBIT H**

**LIST OF TIF ELIGIBLE EXPENSES**

TIF Eligible Expenses (as defined in Article Two of the Redevelopment Agreement), for which the Village Funds may be used pursuant to and in accordance with Article Seven of the Redevelopment Agreement, include specifically, but without limitation, the following:

**Costs of studies, surveys, development of plans, including:**

Site planning; topographical survey; geotechnical engineering; civil engineering design; SWPPP (Stormwater Pollution Prevention Plan); traffic engineering design and geometrics; off- site public improvement civil engineering design; and Phase 1 and Phase 2 environmental consultant fees and remediation costs incurred to remove any contamination found on the Property subject to the limitation that these services do not relate to the design of any buildings or any vertical construction of buildings on the Property.

**Legal fees, including:**

Those legal fees relating to all aspects of the land use entitlement process, including Lake County and the Village of Vernon Hills; the TIF District creation process; and negotiation of the Redevelopment Agreement. Legal fees will not be reimbursed for matters relating to construction contracts, leasing, and other legal issues that relate to on site improvements or vertical construction of buildings.

**Property assembly costs, including:**

Land acquisition, including the value of any stock transfer in lieu of cash payment; title; survey; legal fees related to land acquisition; and appraisal fees related to land acquisition.

**On-Site Construction Hard Costs, including:**

Site preparation, including site clearing, tree removal, earth moving, erosion control, site grading, detention pond, utility installation for any utility to be dedicated to public utilities (such as Lake County, IDOT or the Village), and retaining walls as shown in the Final Engineering Plans.

**Public Improvements, including:**

Com Ed permit fees related to off-site public improvements, including the costs incurred to bury the existing overhead lines (but excluding Com Ed permit fees related to on site improvements);

General requirements, such as contractor security fencing, washrooms, etc. and General conditions and Contractors fee prorated only if they relate to the off-site

**public improvements. These fees will not be paid to the extent that they relate to the on-site improvements.**

**Lake County Permit Fees, including:**

**Permit fees related to the public improvement connection fees on site payable under Section 51.23 of the Lake County Code of Ordinances (including, without limitation, the final costs (verified by Lake County) of the water and sewer connection fees to Lake County, but not including any charges payable under Section 51.24 of the Lake County Code of Ordinances. No costs will be reimbursed for individual service line connections or inspections.**

**IDOT and Village Bonds, including:**

**Public improvement bonding costs related to the off-site public improvements but not the on-site public improvements (unless related to utilities to be dedicated to public utilities).**

**Hard Costs, including:**

**Hard costs for all off-site public improvement work, including but not limited to:**

**Asphalt paving, concrete paving, curbs and gutters, off site sidewalks;**

**Sanitary sewer mains, water mains, storm sewer mains off site and those on site that are to be dedicated to a public utility (such as Lake County, IDOT or the Village), but not lines not dedicated to a public utility; and**

**Detention pond.**

**Hard Costs for On-Site Improvements shall not be reimbursed, except as previously identified.**

**Engineering Inspection Fees, including specifically the fees described in Section 11.4.A of the Redevelopment Agreement.**

EXHIBIT I

FORM OF TIF FUNDING ESCROW

THIS DEVELOPMENT ESCROW AGREEMENT (the "Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ and is made and entered into by and between MELLODY FARM LLC, a Delaware limited liability company ("Retail Developer"), the VILLAGE OF VERNON HILLS, an Illinois home rule municipal corporation (the "Village") and CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation (the "Escrow Agent")

RECITALS

A. The 54 acres of real property located in Vernon Hills, Illinois legally described on Exhibit A attached hereto (the "Property") is intended to be developed with a retail project and residential project by Retail Developer and Melody Farm Residential Partners LLC, an Illinois limited liability company (the "Residential Developer"), as more particularly described as the "Project" in that certain Redevelopment Agreement between and among Retail Developer, Residential Developer, and the Village, dated as of \_\_\_\_\_, 2017 (the "RDA").

B. The Project requires construction of: (i) a retail center of not more than 285,000 square feet, as defined and more fully described in the RDA as the "Retail Project"; (ii) a three-story residential building consisting of approximately 260 executive apartments, as defined and more fully described in the RDA as the "Residential Project"; and (iii) certain regional infrastructure improvements off and outside of the Property depicted on the Final Engineering Plans (as defined in the RDA, and subject to modification and approval through the Illinois Department of Transportation ("IDOT") approval process), all of the aforesaid improvements defined and more fully described in the RDA as the "Off-Site Improvements".

C. Pursuant to the RDA, Retail Developer will construct or cause to be constructed the Retail Project and the Off-Site Improvements in conformance with the RDA.

D. Pursuant to the RDA, the Village will provide Village Funds (as defined in the RDA) in connection with the Project in the net total amount of \$20,000,000, in two installments defined in the RDA as the Initial Village Funds (\$18,000,000.00) and the Final Village Funds (\$2,000,000.00).

E. The Village Funds are to be used only to reimburse Retail Developer for certain TIF Eligible Expenses incurred in connection with the Retail Project and the Off-Site Improvements, including, without limitation, the cost for the acquisition of the Property, all in accordance with the terms and conditions of the RDA.

F. The RDA provides, inter alia, for the Village Funds to be deposited in an escrow account and disbursed from time to time in order to reimburse Retail Developer for such costs.

G. The Village and Retail Developer desire to use the Escrow Agent to collect, review and approve draws and disburse the Village Funds, in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Incorporation of Recitals; Definitions.** The Recitals are an integral part of this Agreement and are incorporated herein by reference as though set forth in full herein. All capitalized terms used herein and not otherwise defined in this Agreement shall have the meanings specified in the RDA.

2. **Establishment of Escrow and Deposit of Village Funds**

(a) **Establishment.** The parties do hereby establish this escrow (the "Escrow") with Escrow Agent to be identified as Escrow Number \_\_\_\_\_.

(b) **Initial Funding.** Within 75 days after the date on which Retail Developer delivers to the Village Manager all of the Funding Certifications as required in Section 5.3.A of the RDA, the Village will cause the Initial Village Funds to be deposited into the Escrow.

(c) **Final Funding.**

(i) Within 30 days after the date on which the Village delivers to the Retail Developer the Certificate of Substantial Completion for construction of the exterior core and shell (as defined in Section 8.1 of the RDA) of the Private Building on one of the Retail Outlots, the Village will cause \$1,000,000.00 of the Final Village Funds to be deposited into the Escrow.

(ii) Within 30 days after the date on which the Village delivers to the Retail Developer the Certificate of Substantial Completion for construction of the exterior core and shell (as defined in Section 8.1 of the RDA) of the Private Building on a second of the Retail Outlots, the Village will cause the remaining \$1,000,000.00 of the Final Village Funds to be deposited into the Escrow.

(d) **Investment.** The Village Funds shall be invested according to reasonably prudent instructions as agreed to by and from Retail Developer and the Village, recognizing preservation of capital and timely liquidity as the primary investment objectives. All costs associated with opening, managing and closing the Escrow shall be paid for out of the Village Funds. All interest that is earned on the Village Funds shall accrue to the Village. Neither the Village, nor any successor or assign of the Village, shall have any right to withdraw any Village Funds except as specifically provided in this Agreement or as otherwise agreed to by the parties in writing.

3. **Escrow Disbursements.** Except as provided in Section 5 of this Agreement, the Village Funds shall only be used as a source of payment of TIF Eligible Expenses, as outlined in Exhibit B and C and provided in the RDA, and disbursed by Escrow Agent as provided herein.

(a) **Draw Requests.** Retail Developer may submit draw requests accompanied by the documentation required herein to the Village not more than once per month. Thereafter, the Village shall have 30 days to review such submittal for completeness and conformance with the terms of this Agreement and the RDA and to advise Escrow Agent thereof in writing of its acceptance or rejection of said draw request. The Village's acceptance of the draw request shall not be unreasonably withheld and shall be given by the Village provided that the submittal is complete and in conformance with the terms of this Agreement and the RDA. Upon Escrow Agent's receipt of such acceptance from the Village, the Escrow Agent shall disburse the Village Funds to Retail Developer directly by check or electronic wire, which disbursement shall occur no later than 15 days after receiving a completed draw request from Retail Developer that the Village confirms is acceptable in writing to the Escrow Agent. If the Village fails to

respond in writing within 30 days after receiving such completed draw request, the Village shall be deemed to have approved the request, and upon receipt of notice thereof from Retail Developer, Escrow Agent shall disburse the funds as provided herein. The draw requests shall be accompanied by the following documentation, as applicable:

(i) A draw request certification in the form attached hereto as Exhibit B including Schedule 1 and Schedule 2 executed on behalf of the requesting party, with a certification from the Retail Developer's engineer that materials are in place and work has been completed on the improvements being constructed (other than funds disbursed for non-construction items) that have been and are to be disbursed. Escrow Agent shall not have any liability for loss caused by an error in the certification furnished hereunder as to work in place.

(ii) Detailed invoices and proof of payment by Retail Developer for all work that has been completed for which payment of the Village Funds is being requested, including a description of the percentage complete of the work, as applicable. The invoices shall accompany the AIA Form of application of payment, executed by the requesting party and its primary engineer covering all work for which the disbursement is to be made as of a date specified therein.

(iii) Sworn statements as are customary from Retail Developer and general contractor in substantially the form attached hereto as Exhibit C with supporting lien waivers and releases in substantially one of the forms attached hereto as Exhibit D-1 and Exhibit D-2, as applicable. The sworn statements shall set forth in detail all subcontractors with whom the Retail Developer or such contractor has entered into a contract, together with their addresses, the work and materials to be furnished, the amounts of their contracts, amounts paid to date, and balance owing.

(iv) A certificate that all certified payroll records required by the Prevailing Wage Act of Illinois, if it is applicable, as of the date of the draw request has been submitted to the Village.

(b) Notwithstanding and in lieu of the foregoing, solely an invoice and/or paid receipt, or executed Closing Statement (in the case of land acquisition reimbursement) shall be deemed sufficient for reimbursement amounts for: (1) public or quasi-public bodies, including, without limitation, Commonwealth Edison, NICOR Gas, AT&T, Comcast or IDOT; (2) costs of studies, surveys, development of plans, and specifications, implementation and administration of the redevelopment plan including but not limited to staff and professional service costs for architectural, engineering, legal, financial, planning or other services; or (3) land acquisition costs.

(c) Upon receipt of all of the foregoing documentation, and before funding any portion of the Village Funds, Escrow Agent shall confirm that:

(i) the lien waivers have been received for requested disbursement;

(ii) the statements and waivers delivered per Section 3(a)(iii) above are in form and substance satisfactory to the Escrow Agent and the Village, which Village approval shall not be unreasonably withheld. It is understood that the Escrow Agent is solely responsible for review, accuracy, and management of Waivers of Lien, Contractor's Affidavits, Sworn Statement by Owner, Sworn Statement by Contractor and all other related documents, and that said actions by the Escrow Agent shall be for the purpose of releasing and waiving any and all rights to file mechanics lien claims against the premises and / or public funds in question for those amounts and the work or materials for which they represent;

(iii) the draw request certification delivered per Section 3(a)(i) above is in substance satisfactory to the Escrow Agent and the Village, which Village approval shall not be unreasonably withheld, for the purpose of confirming that the work for which payment is being requested is complete and in conformance with the terms of this Agreement and the RDA; and

(iv) A certificate that all certified payroll records required by the Prevailing Wage Act of Illinois, if it is applicable, as of the date of the draw request has been submitted to the Village.

4. **Dispute Resolution.** If the Village rejects a draw request submitted by Retail Developer in accordance with Section 3(a), then:

(a) The Village shall provide Retail Developer and Escrow Agent with a statement setting forth: (i) which specific portions of or items in the draw request are rejected (the "Rejected Items"), (ii) which specific portions of or items in the draw request are accepted (the "Accepted Items") and (iii) the reasons for the Village's rejection of the Rejected Items.

(b) The Escrow Agent shall promptly disburse and fund the Village Funds for only the Accepted Items. The Escrow Agent shall not disburse and fund the Village Funds for the Rejected Items unless (i) it receives a further notice from the Village that a Rejected Item is accepted, in which case the item shall be treated as an Accepted Item, or (ii) it receives a decision instructing it to do so from the Impartial Professional (as defined below) pursuant to Section 4(d)(iv).

(c) In the event that the Village and Retail Developer cannot reach an agreement on whether the draw request constitutes a TIF Eligible Expense as defined in the RDA within 14 days, then the draw request for such expense shall not be paid by the Escrow Agent.

(d) In the event that the Village and the Retail Developer cannot reach an agreement regarding the non-TIF eligibility Rejected Items within 14 days, then the Village and Retail Developer shall submit the dispute to an impartial third-party that has no fewer than 10 years of real estate development experience (the "Impartial Professional") pursuant to the following procedure:

(i) The Village and the Retail Developer shall each select a third party (the "Third Parties") within seven days of failing to reach an agreement;

(ii) The Third Parties shall together choose the Impartial Professional within seven days of being selected;

(iii) The Village and the Retail Developer shall have seven days to submit materials to and confer with the Impartial Professional; and

(iv) At the end of such seven-day period, the Impartial Professional shall have 14 days to issue a decision as to whether the draw request is proper and in accordance with this Agreement and the RDA. Such decision shall be final and the Escrow Agent shall disburse or not disburse the funds in accordance with the Impartial Professional's decision.

(e) In the event that the dispute resolution provisions in this Section 4 are required or utilized, then the parties shall each pay for their own Third Parties and split the costs of the Impartial Professional.

5. **Full Disbursement in the Event of a Retail Developer Substantial Completion Default under the RDA.** If, at any time following the occurrence of a Retail Developer Substantial Completion Default, as defined in the RDA, the Escrow Agent receives a deposit of Twenty Five Million Dollars (\$25,000,000.00) from the Retail Developer or the Guarantor under the Retail Guaranty (as defined in the RDA) identified or designated by the depositor thereof as liquidated damages payable to the Village under Section 9.1.B of the RDA, and Escrow Agent is prepared to disburse same to the Village in immediately available funds, the Escrow Agent shall (i) disburse said Twenty-Five Million Dollars (\$25,000,000.00) to the Village and (ii) disburse to Retail Developer the entire amount of any and all other funds existing in the Escrow as of the date of such disbursement.

6. **Miscellaneous.**

(a) **Time.** Time is of the essence of this Agreement and of each provision hereof.

(b) **Amendments.** This Agreement may only be modified or amended by a writing executed by all of the parties hereto.

(c) **Notices.** All notices, demands, consents, approvals and other communications (each, a "Notice") that are required or desired to be given by either party to the other under this Agreement shall be in writing and shall be (a) hand-delivered, (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested, (c) sent by reputable overnight courier service, or (d) transmitted by e-mail, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by Notice to the other. Notices shall be deemed given when delivered, if delivered by hand, by overnight courier or e-mail; at the time and on the date of machine transmittal, if given by facsimile; or three days after mailing, if sent by U.S. mail. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given previously shall be deemed to be receipt by the addressee of the Notice sent. Notice addresses for the parties are as follows:

To the Village:

Village of Vernon Hills  
290 Evergreen Drive  
Vernon Hills, Illinois 60061  
Attention: Village Manager  
Email: Johnk@vhills.org

With a copy to:

Robert Kenny, Esq.

To the Retail Developer:

With a copy to:

Schain Banks  
70 W. Madison St., Ste. 5300  
Chicago, Illinois 60602  
Email: rkenny@schainbanks.com  
General Counsel  
Regency Centers, L.P.  
One Independent Drive, Suite 114  
Jacksonville, Florida 32202  
Holland & Knight LLP  
131 South Dearborn, 30th Floor  
Chicago, Illinois 60603  
Attn: Steven M. Elrod  
E-mail: steven.elrod@hklaw.com

(e) **Captions, Number and Gender.** The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference. Should there be any conflict between a caption and the provisions of the corresponding section or subsection, the provisions of the corresponding section or subsection, and not such caption, shall control and govern the construction and interpretation of this Agreement. Unless the context otherwise requires, singular nouns and pronouns used in this Agreement are to be construed as including the plural thereof.

(f) **Computation of Time.** For all purposes hereunder, the reference to "days" shall mean calendar days. If the time for performance of any provision of this Agreement ends on a day that is a Saturday, Sunday or a federal or State of Illinois holiday, then such date and time for performance shall automatically be extended until 5:00 p.m. CT on the next business day.

(g) **Drafting.** Each of the parties hereto acknowledges that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto. In the event there is a conflict between the provisions of this Agreement and the provisions of the RDA regarding the subject matter set forth herein, the provisions of the RDA shall govern and control. In the event the RDA is terminated, then this Agreement shall also be terminated automatically, without further or separate action by either party, effective the same date as the RDA is terminated, except with respect to the payment of and remedies regarding the payment of, all sums then due and owing by one party to the other under this Agreement, prior to the date of termination.

(h) **Counterparts.** This Agreement may be executed and delivered by facsimile transmission and in counterparts, all of which together shall constitute one and the same agreement.

(i) **Electronic Signatures.** Electronic or facsimile signatures shall be acceptable for any and all documents required or executed pursuant to this Agreement.

(j) **Exhibits Incorporated.** Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein. The Exhibits to this Agreement are as follows:

<b>Exhibit</b>	<b>Description</b>	<b>Section Reference</b>
A	Legal Description of Property	Recital A
B	Form of Draw Request Certification	Section 3(a)(i)
C	Form of Sworn Statement	Section 3(a)(iii)
D	Form of Lien Waiver	Section 3(a)(iii)

**Escrow Agent Provisions:**

(a) It is agreed hereby that Escrow Agent shall be governed solely by the terms and provisions of this Agreement.

(b) Escrow Agent is not a party to, or bound by any agreement which may be deposited under, evidenced by, or which arises out of the foregoing instructions.

(c) Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness, or validity of any instrument deposited with it hereunder, or with respect to the form or execution of the same, or the identity, authority, or rights of any person executing or depositing the same.

(d) Escrow Agent shall not be required to take or be bound by notice of any default of any person, or to take any action with respect to such default involving any expense or liability, unless notice in writing is given to an officer of Escrow Agent of such default and unless it is indemnified in a manner satisfactory to it against any such expense or liability. These instructions shall not be subject to rescission or modification except upon receipt by Escrow Agent of written instructions of all the parties hereto or their successors in interest, and no such modification shall be effective unless and until consented to in writing by Escrow Agent.

(e) Escrow Agent shall be protected in acting upon any notice, request, waiver, consent, receipt, or other paper or document believed by Escrow Agent to be genuine and to be signed by the proper party or parties.

(f) Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except its own willful misconduct or failure to comply with the terms hereof, and Escrow Agent shall have no duties to anyone except those signing these instructions.

(g) Escrow Agent may consult with legal counsel in the event of any dispute or questions as to the construction of the foregoing instructions, or Escrow Agent's duties hereunder, and Escrow Agent shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel.

(h) Escrow Agent assumes no liability and the parties hereto consent and agree that Escrow Agent shall have no liability for any defalcation, insolvency, receivership or conservatorship of the depository institution.

(i) Nor shall Escrow Agent have any liability due to any of the parties other than Escrow Agent filing for bankruptcy or the consequences or effect of such a bankruptcy on the funds and/or documents deposited hereunder.

(j) For its ordinary services hereunder, Escrow Agent shall be entitled to a fee of \$1,500, payable concurrently with its acceptance hereof.

(k) The parties hereto further agree that Escrow Agent assumes no liability for and is expressly released from any claim or claims whatsoever in connection with the receiving, retaining and delivering of the above papers and funds except to account for payment and/or delivery made thereon. Deposit by Escrow Agent of the instruments and funds (less its charges and expenses incurred herein) comprising this escrow in Court, shall relieve Escrow Agent of all further responsibility and liability, and Escrow Agent is hereby expressly authorized to disregard in its sole discretion any and all notices or warnings given by any of the parties hereto, or by any other person or corporation, but the said Escrow Agent is hereby expressly authorized to regard and to comply with and obey any and all orders, judgments or decrees entered or issued by any court with or without jurisdiction, and in case Escrow Agent obeys or complies with any such order, judgment or decree of any court it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated. In case of any suit or proceeding regarding this escrow to which Escrow Agent is or may be at any time a party, the undersigned jointly and severally agree to indemnify and hold harmless Escrow Agent from all loss, costs or damages incurred, including but not limited to attorneys' fees, by reason of this Agreement or the subject matter hereof or any cause of action which may be filed in connection therewith and to pay Escrow Agent, upon demand all such costs, fees and expenses so incurred.

(l) In the event that Escrow Agent performs any service not specifically provided hereinabove, or that there is any assignment or attachment of any interest in the subject matter of this escrow or any modification thereof, or that any controversy arises hereunder, or that Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or the subject matter hereof, Escrow Agent shall be reasonably compensated therefor and reimbursed for all costs and expenses occasioned thereby; and the parties hereto agree jointly and severally to pay the same and to indemnify Escrow Agent against any loss, liability, or expense incurred in any act or thing done by it hereunder, it being understood and agreed that Escrow Agent may interplead the subject matter of this escrow into any court of competent jurisdiction in Cook County, Illinois, and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities, and responsibilities hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**VILLAGE OF VERNON HILLS**, an Illinois home rule municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MELLODY FARM LLC, a Delaware limited liability company**

By: Regency Centers, L.P., a Delaware limited partnership, its sole member and manager

By: Regency Centers Corporation, a Florida corporation, its general partner

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ACCEPTED:**

**CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

MELLODY FARM SUBDIVISION, THAT PART OF THE SOUTHEAST QUARTER OF SECTION 33 AND THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 44 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS.

NOTE: The legal description for the Property was, prior to the recordation of the Plat of Subdivision, as follows:

**LEGAL DESCRIPTION:**

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 33 AND THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 44 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EASTERLY OF THE EASTERLY LINE OF MILWAUKEE AVENUE (AS WIDENED), WESTERLY OF THE CENTER LINE OF THE DES PLAINES RIVER, SOUTHERLY OF A LINE WHICH RUNS FROM A POINT 11.85 CHAINS SOUTH OF THE CENTER POST OF SECTION 34 TO A POINT 9.09 CHAINS SOUTH OF THE CENTER POST OF SECTION 33, AND NORTH OF THE NORTH LINE OF STATE ROUTE 60 AS WIDENED BY CONDEMNATION IN CASE 87 ED 11, IN LAKE COUNTY, ILLINOIS.

**EXHIBIT B**

**FORM OF DRAW REQUEST CERTIFICATION**

Chicago Title Insurance Company  
[Address]  
[Address]  
Attn:

**Re: Redevelopment Construction Escrow (Escrow # \_\_\_\_\_)**  
Ladies and Gentlemen:

In accordance with the terms of that certain Development Escrow Agreement by and among Melody Farm LLC ("**Retail Developer**"), the Village of Vernon Hills (the "**Village**") and Chicago Title Insurance Company ("**Escrow Agent**") dated as of \_\_\_\_\_, 2017 (the "**Escrow Agreement**"; capitalized terms not defined herein shall have the meanings ascribed to them in the Escrow Agreement), the undersigned, being the Retail Developer, desires to obtain a disbursement of the Village Funds in the amount of \$\_\_\_\_\_ (the "**Requested Disbursement**") as set forth in Schedule 1 pursuant to Section 3 of the Escrow Agreement. Pursuant to Section 3(a)(i) of the Escrow Agreement, the undersigned hereby certifies to the Village as follows:

The Retail Developer is entitled to receipt of the Requested Disbursement in accordance with the terms of the Escrow Agreement.

The Requested Disbursement is for work performed by the contractors described on Schedule 1 attached hereto in the amounts set forth on that Schedule.

All work for the payment of which disbursement of Village Funds is requested has previously been performed, as certified to by Retail Developer's engineer on Schedule 2.

The Requested Disbursement shall be paid directly to Retail Developer. The Requested Disbursement shall be used by the Retail Developer for the purposes set forth in the sworn statement(s) and application for payment being concurrently submitted in connection with the Requested Disbursement.

**[SIGNATURE BLOCK]**

Schedule 1

DISBURSEMENT DIRECTIONS

<b>Name of Contractor Who Performed Work for Requested Disbursement</b>	<b>Pay Disbursement To Retail Developer</b>

**Schedule 2**

**Work Performed**

**SUMMARY OF WORK PERFORMED**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

**ENGINEER'S CERTIFICATE**

In accordance with the Redevelopment Agreement, based on on-site observations and the data comprising this Draw Request, the Engineer certifies to the Village, Retail Developer and the Escrow Agent that to the best of the Engineer's knowledge, information and belief the materials are in place and work has been completed on the improvements being constructed which have a value equal to the total of the Requested Disbursement.

**ENGINEER:**

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

Date: \_\_\_\_\_



Adjusted Total Contract .....	\$	Net Amount Earned (col. 4 minus col. 5)	\$ 0.00
		Previously Invoiced (column 6) .....	\$ 0.00
		Net Amount Due this Payment (column 7)	\$ 0.00
		.....	

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

The undersigned \_\_\_\_\_, being first duly sworn on oath, deposes and says  
that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the Owner for the following  
project.

Contract Title: \_\_\_\_\_  
Contract Address: \_\_\_\_\_

That, for the purpose of this work, the foregoing orders have been placed and the foregoing parties subcontracted with, and these have furnished material or have provided labor, or both, for said project. That, the amount of such order or subcontract is as stated above and that there is due and to become due then respectively, the amounts set opposite their names for materials or labor or both. That, this statement is a full true and complete statement, of all parties furnishing labor and/or materials, and of amounts paid, due and to become due then.

Subscribed and sworn to before  
me on \_\_\_\_\_

Signed \_\_\_\_\_

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

### PARTIAL WAIVER OF LIEN TO DATE

STATE OF ILLINOIS    )  
   ) SS  
 COUNTY OF (1) \_\_\_\_\_ )

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by (2) \_\_\_\_\_ to furnish (3) \_\_\_\_\_ for the premises known as (4) \_\_\_\_\_ The undersigned, for and in consideration of (5) \_\_\_\_\_ Dollars, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to liens of mechanics, laborers and materialmen, with respect to and upon the foregoing described property, and the improvements thereon, and with respect to any statutory lien bond, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner (or contractor), on account of labor, services, material, fixtures, apparatus or machinery, furnished to this date by the undersigned for the foregoing described property.  
 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

Signature:  
 Title:

### CONTRACTOR'S AFFIDAVIT

STATE OF ILLINOIS    )  
   ) SS  
 COUNTY OF (1) \_\_\_\_\_ )

TO WHOM IT MAY CONCERN:

The undersigned, being duly sworn, deposes and says that he has been employed by (2) \_\_\_\_\_ the contractor (or owner) for the premises known as (4) \_\_\_\_\_. That the total amount of the contract including extras is (6) \$ \_\_\_\_\_ on which he has received payment of (7) \$ \_\_\_\_\_ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES(include undersigned's portion of contract) Attach additional pages if necessary	WHAT FOR	CONTRACT PRICE(6)	AMOUNT PAID(7)	THIS PAYMENT(5)	BALANCE DUE (8)	TOTAL (Undersigned MUST complete this line)

**FINAL WAIVER OF LIEN**

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF (1)\_\_\_\_\_ )

**TO WHOM IT MAY CONCERN:**

WHEREAS the undersigned has been employed by (2)\_\_\_\_\_ to furnish (3)\_\_\_\_\_ for the premises known as (4)\_\_\_\_\_, The undersigned, for and in consideration of (5)\_\_\_\_\_ Dollars, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to liens of mechanics, laborers and materialmen with respect to and upon the foregoing described property, and the improvements thereon, and with respect to any statutory lien bond, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner (or contractor), on account of labor, services, material, fixtures, apparatus, or machinery heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the foregoing described property.

\_\_\_\_\_ day of \_\_\_\_\_, 2\_\_

Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_

**CONTRACTOR'S AFFIDAVIT**

STATE OF ILLINOIS )  
 ) SS  
 COUNTY (1)\_\_\_\_\_ )

**TO WHOM IT MAY CONCERN:**

The undersigned, being duly sworn, deposes and says that he has been employed by (2)\_\_\_\_\_ the Contractor (or Owner) for the premises known as (4)\_\_\_\_\_. That the total amount of the contract including extras is (6) \$\_\_\_\_\_ on which he has received payment of (7) \$\_\_\_\_\_ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontractors for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES(include undersigned's portion of contract) Attach additional pages if necessary	WHAT FOR	CONTRACT PRICE(6)	AMOUNT PAID(7)	THIS PAYMENT(5)	BALANCE DUE (8)	TOTAL (Undersigned MUST complete this line)

**EXHIBIT J**

**ON SITE IMPROVEMENT COMPLETION PLAN**

1 sheet prepared by Manhard Consulting, Ltd  
Dated 11/15/2016 entitled "Site Plan"

TOTAL RETAIL BUILDINGS  
APPROXIMATELY 280,985 SF

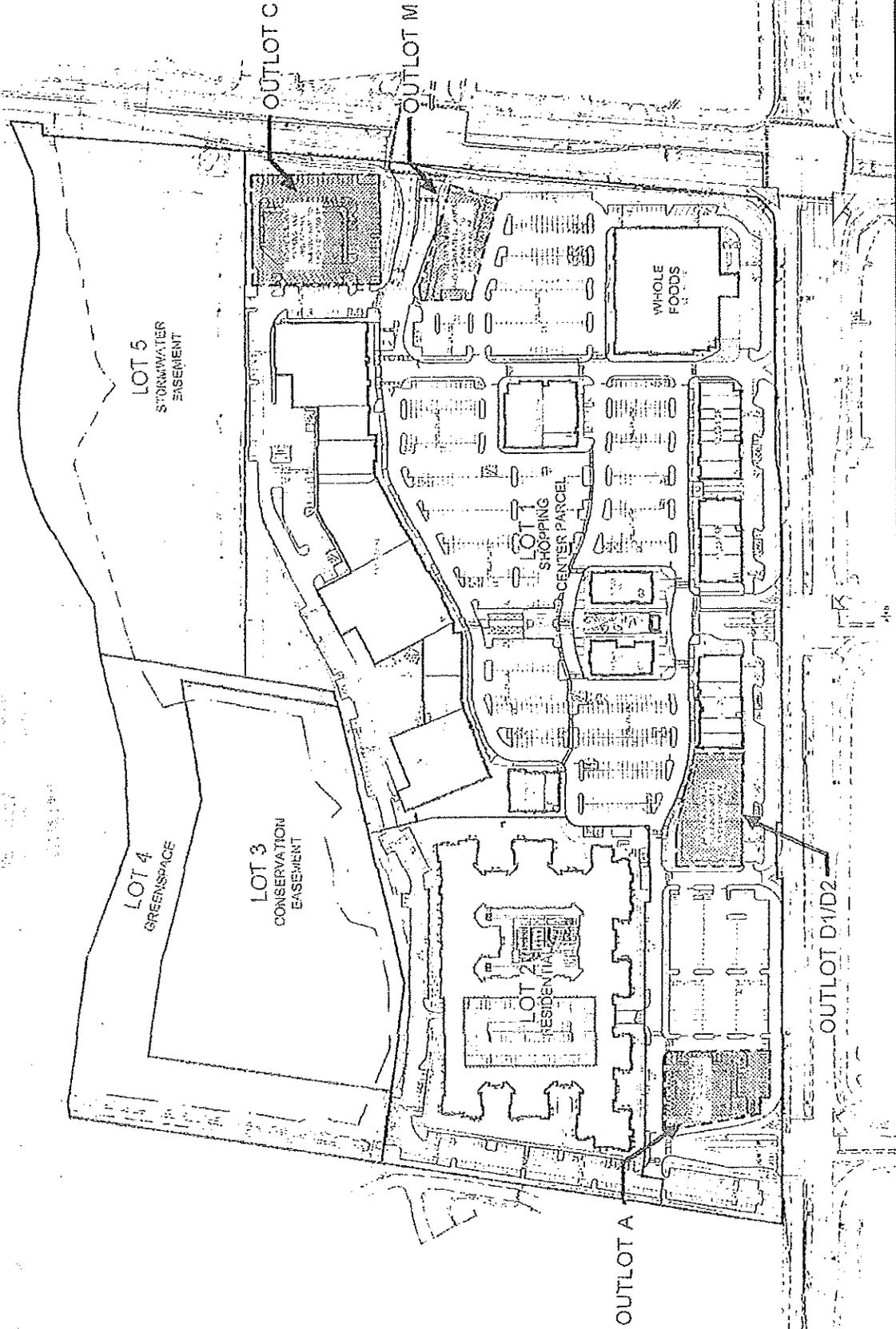
RESIDENTIAL 260 UNITS



**Manhard**

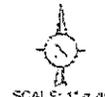
MELLOYD FARM - MIXED USE DEVELOPMENT  
VILLAGE OF VERNON HILLS, ILLINOIS  
SITE PLAN

1 of 1  
DATE: 1/11/11  
PROJECT: MELLOYD FARM - MIXED USE DEVELOPMENT



**EXHIBIT K**

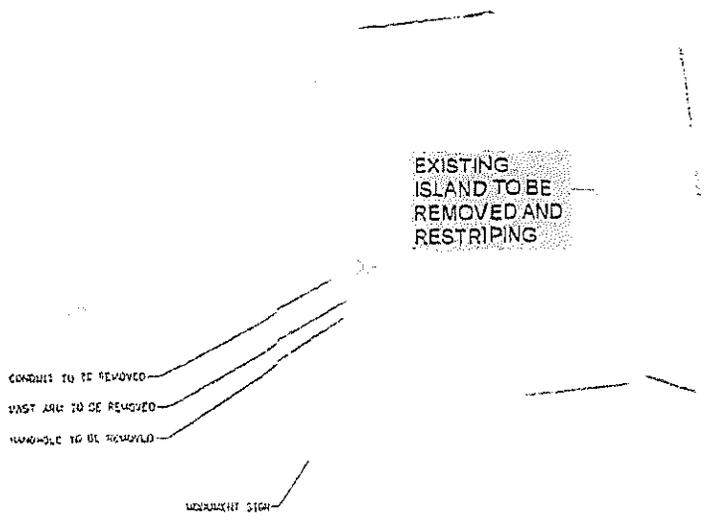
**CROSS CONNECTION CONCEPTUAL PLAN**  
**2 sheets prepared by KLOA dated 11/14/2016**  
**Entitled "Preliminary Traffic Signal Layout"**



SCALE: 1" = 40'

ITEMS TO BE COMPLETED WITH ISLAND REMOVAL:

- REMOVE AND REPLACE 2 SIGNAL HEADS
- INSTALL NEW DETECTOR LOOPS ON RING DRIVE
- MODIFY CONTROLLER FOR NEW PHASING
- RE-OPTIMIZE SIGNAL SYSTEM



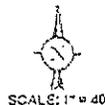
COLOR KEY:

- MAROON - EXISTING EQUIPMENT TO BE REMOVED
- BLUE - EXISTING EQUIPMENT TO REMAIN
- PINK - PROPOSED EQUIPMENT

MELLODY FARM  
VERNON HILLS, ILLINOIS

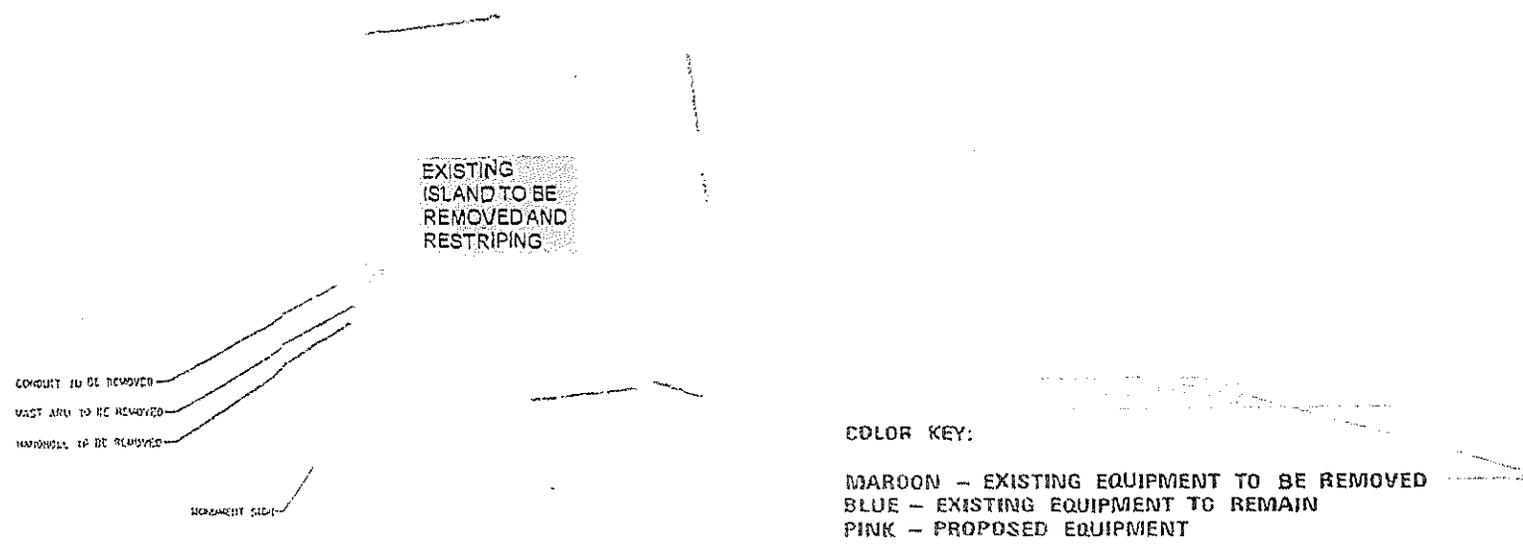
PRELIMINARY TRAFFIC SIGNAL LAYOUT  
L. RTE 21 (MILWAUKEE AVE.) AND RING DRIVE/NORTH ENTRANCE

13/00/02 E.A.



ITEMS TO BE COMPLETED WITH ISLAND REMOVAL:

- REMOVE AND REPLACE 2 SIGNAL HEADS
- INSTALL NEW DETECTOR LOOPS ON RING DRIVE
- MODIFY CONTROLLER FOR NEW PHASING
- RE-OPTIMIZE SIGNAL SYSTEM



MELLODY FARM  
VERNON HILLS, ILLINOIS

PRELIMINARY TRAFFIC SIGNAL LAYOUT  
IL RYE 21 (MILWAUKEE AVE.) AND RING DRIVE/NORTH ENTRANCE

DATE: 11/10/10