

THIS DOCUMENT PREPARED BY:

E. Kenneth Friker  
Klein, Thorpe and Jenkins, Ltd.  
15010 S. Ravinia Ave., Suite 10  
Orland Park, Illinois 60462

For Recorder's Use Only

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ANNEXATION AND DEVELOPMENT AGREEMENT  
(15610 LAGRANGE ROAD PLANNED UNIT DEVELOPMENT) –  
15610 S. LAGRANGE ROAD

INTRODUCTION.

1. THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the VILLAGE OF ORLAND PARK, Illinois, an Illinois municipal corporation (hereinafter referred to as the "Village") and SWC 156TH, LLC, an Illinois Limited Liability Company (hereinafter referred to as "Owner").

2. The Property subject to this Agreement and legal title to which is vested in part in the Owner (excepting such portion as is dedicated to the public), is legally described as follows:

PARCEL A:

PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOW: BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF THE AFORESAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, AND A LINE 50.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE AFORESAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF A PARCEL OF LAND KNOWN AS U.S. TRACT NO. A100-2; THENCE WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 322.50 FEET TO A POINT ON A PARALLEL LINE TO SAID EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, SAID POINT ALSO BEING ON THE EAST LINE OF A PARCEL OF LAND

KNOWN AS U.S. TRACT NO. A100; THENCE SOUTH ALONG SAID PARALLEL LINE, A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16; THENCE WEST ALONG SAID SOUTH LINE, A DISTANCE OF 896.30 FEET, MORE OR LESS TO THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED FROM THE UNITED STATES OF AMERICA TO THE VILLAGE OF ORLAND PARK, DATED APRIL 26, 1971; THENCE NORTHEAST WITH SAID PARCEL OF LAND, A DISTANCE 725.30 FEET, MORE OR LESS, TO A POINT ON THE SOUTH LINE OF A PARCEL OF LAND KNOWN AS U.S. TRACT NO. A110; THENCE NORTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 424.70 FEET TO A POINT; THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 242.70 FEET, TO A POINT; THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 42.00 FEET, TO A POINT; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 122.00 FEET, TO A POINT; THENCE SOUTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 259.00 FEET TO A POINT ON A LINE, THAT IS 395.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16; THENCE EAST WITH SAID PARALLEL LINE, A DISTANCE OF 556.00 FEET TO A POINT ON SAID EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16; THENCE SOUTH WITH SAID EAST LINE, A DISTANCE OF 345.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, SITUATE IN THE STATE OF ILLINOIS, COUNTY OF COOK.

PARCEL B:

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 36 NORTH, RANGE 12 BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 16 AFORESAID THAT IS 932.50 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 16; THENCE WESTERLY ALONG A STRAIGHT LINE, A DISTANCE OF 556.0 FEET TO A POINT THAT IS 947.50 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 16; THENCE NORTHWESTERLY ALONG A STRAIGHT LINE A DISTANCE OF 259.0 FEET TO A POINT; THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 42.0 FEET TO A POINT; THENCE NORTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 122.0 FEET TO A POINT; THENCE SOUTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 42.0 FEET TO A POINT; THENCE NORTHWESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 135.40 FEET TO A POINT THAT IS 582.50 FEET

SOUTH OF THE NORTH LINE AND 921.0 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 16; THENCE EASTERLY ALONG A STRAIGHT LINE. A DISTANCE OF 921.0 FEET TO A POINT IN THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 16, THAT IS 582.50 FEET SOUTH OF THE NORTH LINE OF SOUTHEAST QUARTER OF SECTION 16; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 16, A DISTANCE OF 350.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY ILLINOIS (EXCEPT THAT PART OF 96TH AVENUE ALSO KNOWN AS LAGRANGE ROAD LYING EAST OF THE WEST RIGHT OF WAY LINE OF LAGRANGE ROAD AS DEDICATED BY DOCUMENT 10123562 AND THAT PART CONTAINED IN CONDEMNATION CASE 11L50834 ALSO EXCEPT THAT PART CONTAINED WITHIN 156TH STREET AS DEDICATED PER DOCUMENT NUMBERS (0920245102, 0826331109 AND 0630717115)

PIN NOS. 27-16-401-005, -008 and -011

The said property is hereinafter referred to as the "Subject Property".

3. The Subject Property consists of approximately 14.0 acres (Parcel A is 9.2 acres and Parcel B is 4.8 acres) and is located at 15610 S. LaGrange Road in unincorporated Orland Township, Cook County, Illinois.

4. The Subject Property is proposed to be developed under the COR - Mixed Use District classification of the Land Development Code of the Village of Orland Park (the "Code"), with a Special Use for a six (6) lot commercial planned unit development on the two (2) existing parcels with modifications to reduce the wetland setback from 50 feet to zero feet and to meet site detention requirements offsite in the regional detention facility along Ravinia Avenue.

5. The Village of Orland Park is a Home Rule Unit pursuant to the provisions of the Illinois Constitution, Article VII, Section 6, and the terms, conditions and acts of the Village under this Agreement are entered into and performed pursuant to the Home Rule powers of the Village and the statutes in such cases made and provided.

RECITALS:

1. The parties hereto desire that Parcel A of the Subject Property be annexed to the Village, subject to the terms and conditions as hereinafter set forth and that the Subject Property be zoned and developed in the manner as set forth in this Agreement under the COR - Mixed Use District provisions of the Code, with a Special Use for a six (6) lot commercial planned unit development and with modifications as specified in paragraph 4, above.

2. Owner has petitioned the Village for annexation to the Village of Parcel A of the Subject Property and for amendments to the zoning map classifying the entire Subject Property as more fully hereinafter set forth.

3. The parties hereto have fully complied with all relevant statutes of the State of Illinois and ordinances of the Village with respect to annexation including the filing of a petition by Owner requesting annexation of Parcel A of the above-described Subject Property and zoning of the entire Subject Property to enable development as herein provided. The Village has caused the issuance of proper notice and the conduct of all hearings by all necessary governmental entities to effectuate such annexation and rezoning as herein provided, including all hearings as are necessary to effectuate the plan of development herein set forth.

4. All reports by all relevant governmental entities have been submitted enabling appropriate action by the Village Board of Trustees to achieve the following:

- (a) Adoption and execution of this Agreement by ordinance;
- (b) Enactment of annexation ordinances annexing Parcel A of the Subject Property as described above to the Village;
- (c) Adoption of such ordinances as are necessary to effectuate the terms and provisions of this Agreement including the classification of the Subject Property for purposes of zoning pursuant to the terms and conditions of this Agreement;
- (d) The adoption of such other ordinances, resolutions and actions as may be necessary to fulfill and implement this Agreement pursuant to the terms and conditions herein contained.

5. The Subject Property is not within a Public Library District. No roads adjacent to or on the Subject Property are under the jurisdiction of a township. The Village does not provide fire protection services to the Subject Property.

6. The parties hereto have determined that it is in the best interests of the Village and Owner and in furtherance of the public health, safety, comfort, morals and welfare of the community to execute and implement this Agreement and that such implementation of this Agreement and development of the Subject Property pursuant to its terms and conditions will constitute an improvement of the tax base of the Village, be in implementation of the Comprehensive Plan of the Village and will constitute a preservation of environmental values.

#### SECTION 1:

##### Annexation.

Parcel A of the Subject Property is not now within the corporate limits of the Village and is contiguous to the Village. The Owner has filed a petition for annexation to the Village of Parcel A of the Subject Property pursuant to statute in such cases made and provided. The Village has by execution of this Agreement manifested its intention to annex Parcel A of the Subject Property pursuant to the terms and conditions of this Agreement.

Subject to the provisions of Chapter 65, Act 5, Article 7, of the Illinois Compiled Statutes, and such other statutory provisions as may be relevant and the home rule powers of the Village, the Village shall by proper Ordinance, cause approval and execution of this Agreement and after adoption and execution of this Agreement shall cause Parcel A of the Subject Property to be annexed to the Village. Also, the Village, upon annexation of Parcel A of the Subject Property, shall thereafter adopt all ordinances respecting the zoning, use and development of the Subject Property as herein provided. A recordable plat of annexation of Parcel A of the Subject Property to be annexed is to be prepared by Owner and attached hereto as EXHIBIT A. The new boundary of the Village resulting from such annexation shall extend to the far side of any adjacent highway and shall include all of every highway within the area so annexed.

Upon the execution of this Agreement, Owner shall do all things necessary and proper to carry out the terms, conditions and provisions of this Agreement and effectuate the annexation of Parcel A of the above-described Subject Property to the Village, and to aid and assist the Village in also so doing.

The Village shall take all actions necessary to carry out and perform the terms and conditions of this Agreement and to effectuate the annexation of Parcel A of the Subject Property to the Village.

#### SECTION 2:

##### Zoning, Plan Approval and Design Standards.

A. The Village, upon annexation and necessary hearings before the relevant governmental bodies having taken place pursuant to statute and ordinances in such cases made and provided and pursuant to requisite notice having been given, shall by proper ordinance after execution of this Agreement and annexation of Parcel A of the Subject Property to the Village cause the entire Subject Property described above to be classified as COR - Mixed Use District of the Code, with a Special Use for a six (6) lot commercial planned unit development on the two (2) existing parcels, with modifications to (a) reduce detention pond setbacks from a required 50 feet to zero feet; and (b) meet site detention requirements offsite using the regional detention facility along Ravinia Avenue.

B. The Subject Property shall be developed substantially in accordance with the preliminary site plans appended hereto and incorporated herein as EXHIBIT B entitled "Retail Development SWC LaGrange Road and 156<sup>th</sup> Street Orland Park, IL. Site Plan", prepared by Soos & Associates Inc., dated 10/27/2008, last revised 5/18/17, sheet number SP-47A, subject to the following condition:

Maintain shared parking and cross-access between users for all and through all parking fields within the planned unit development.

C. The Subject Property shall further be developed in accordance with the elevation drawings titled "Retail Development SWC LaGrange Road & 156<sup>th</sup> Street Orland Park, IL.

Proposed Exterior Elevations”, prepared by Soos & Associates Inc., dated 9/19/2016, last revised 2/15/17, sheet number A-07; and “Chuy’s Orland Park, IL.”, prepared by Parkway C&A, LP, dated 4/4/17, sheet number A-01; and “Miller’s Alehouse Orland Park Elevations Revised”, prepared by FRCH Design Worldwide, dated 4/12/17, sheet numbers 2, 3 and 4; and “Retail Development SWC LaGrange Road & 156<sup>th</sup> Street Orland Park, IL. Site Amenities”, prepared by Soos & Associates Inc., dated 10/27/08, last revised 4/25/17, sheet number A-10, all subject to the following conditions:

1. Indicate window transparency on the elevation drawings for Miller’s Alehouse;
2. Work with Village staff to address the blank wall surface areas on the east and south elevations visible from LaGrange Road;
3. Screen all mechanical equipment either at grade level with landscaping or hidden behind parapets;
4. Submit separate sign permit applications for Village review of signage; and
5. Anchored masonry veneer shall have a minimum thickness of 2.625 inches.

D. The Subject Property shall further be developed in accordance with the landscape plan titled “Retail Development Overall Landscape Plan”, prepared by Kimley-Horn and Associates, Inc., dated 2/16/17, last revised 5/19/17, sheets L2.0, L2.1, L2.2, L2.3, L2.4, and L2.5, and in accordance with the Code and final landscaping plans approved by the Village, subject to the same conditions outlined in the above preliminary site plan and elevation drawings motions and the following condition:

Provide the necessary mitigation for the removal of the wetlands and trees in accordance with the United States Army Corps of Engineers’ standards and the Village Land Development Code respectively.

Owner agrees that permission for the construction of those public improvements which require approval from the Metropolitan Water Reclamation District of Greater Chicago or any other governmental agency, must be obtained. Owner agrees to maintain and keep in good repair the public improvements that are to be constructed until accepted by the Village. The Owner agrees that the Subject Property shall be developed substantially in accordance with said preliminary site plan as shown in EXHIBIT B, the elevation drawings as shown in EXHIBIT C and the preliminary landscape plan as shown in EXHIBIT D as approved or as may be subsequently amended and approved by the Village.

The parties hereto agree to cooperate in obtaining, expediting and submitting such necessary documents as may be required for the approval thereto from the Metropolitan Water Reclamation District of Greater Chicago, or any other governmental agency. Owner agrees to construct any improvements required by the aforesaid permit at Owner's sole expense.

Any public improvements required to serve the Subject Property, shall be constructed and installed within two (2) years from the date hereof unless extended by Agreement. If the date of completion falls after September 30, but prior to May 30, the completion date shall be the following May 30.

E. The Owner must be at all times fully responsible for all costs of such care and maintenance of any stormwater detention areas and management facilities serving the Subject Property.

F. Existing septic systems contained on the Subject Property, if any, shall be removed and any wells on the same shall be capped in accordance with the requirements of the Illinois Environmental Protection Agency and/or the Illinois Department of Transportation.

### SECTION 3:

#### Contributions.

Upon application for the initial building permit, the Owner shall pay to the Village the transportation exaction fees as provided in Article 5, Section 5-112 H. 6. of the Code.

Said sum of money shall be a lien on the Subject Property until paid, and Owner acquiesces and agrees to the payment of said sum being a lien on the Subject Property subordinate to any acquisition loan or construction development loan of this or any subsequent developer of the Subject Property from the date hereof. In the event of a default in the payment of said sums, or any part thereof, the Village shall have the right to foreclose the lien aforesaid in the same manner as provided for with respect to a mortgage foreclosure. Other than such payments to the Village as provided in this Agreement as well as the customary permit and inspection fees, no additional contributions, impact or exaction fees shall be paid to the Village by the Owner.

Village shall solely determine how said sum so paid shall be allocated and disbursed.

Sums of money required to be paid hereunder shall be obligations of the Owner and all successors in title, and no conveyance of the Subject Property shall relieve Owner or any subsequent owner or developer, of said obligation. In the event of a default in payment, in addition to the remedy of foreclosure of the lien aforementioned, the Village shall have all other rights and remedies against the Owner or any subsequent owner for the collection of monies.

### SECTION 4:

#### Water Supply.

Owner shall construct and install at its expense any necessary on-site water mains to service the Subject Property in accordance with the Code and final engineering plans

approved by the Village. The Village agrees to permit connection of the aforementioned water mains to the water facilities of the Village and to furnish water service on the same basis as said services are furnished to other parts of the Village. The water connection charge(s) shall be computed by the Village Building Department based upon the size of the water connection and the number of water meters to be installed and based upon the Village water connection charges presently in effect on the date of this Agreement.

#### SECTION 5:

##### Sanitary and Storm Sewers.

Owner shall construct and install at its expense any necessary sanitary sewers to service the Subject Property in accordance with the Code and final engineering plans approved by the Village. The Village agrees to permit connection of the aforementioned sanitary sewers to the sanitary sewer facilities of the Village and to furnish sewer service on the same basis as said services are furnished to other parts of the Village. "As built" plans of the existing sanitary sewer serving the Subject Property must be provided by Owner to the Village. Owner agrees that no surface water is to be discharged into the sanitary sewerage collection system and will make adequate provision that this will not occur.

Owner shall be required to construct and install at its expense the necessary storm sewers and storm water management facilities in accordance with the Code and final engineering plans approved by the Village utilizing the Village's regional stormwater detention along Ravinia Avenue to the west of the Subject Property. The Village shall reimburse the Owner in the amount of up to \$70,800.00 (which amount of reimbursement must be supported by receipts or paid invoices reviewed and approved by the Village and, at the Village's option, may be paid through fee waivers) for redesign costs incurred by Owner to accomplish piping the stormwater to the said Ravinia Avenue detention facility. In addition, Owner must construct the bio-swale on Lot 5 (Outlot marked as "Detention" on EXHIBIT B), which will thereafter be owned and maintained by the Village. Owner agrees to permit connection of the aforementioned storm sewers to the storm sewer system of the Village and to furnish storm sewer service on the same basis as said services are furnished to other parts of the Village. Owner shall pay all required fees due to the Village and the Metropolitan Water Reclamation District of Greater Chicago. Owner agrees that the storm water management facilities on the Subject Property, if any, shall be private. Owner and successors in title shall maintain all storm water management facilities and detention/retention basins on the remaining site after conveyance/dedication of Lots 5 and 6 to the Village in accordance with SECTION 6, below.

#### SECTION 6:

##### Conveyance/Dedication of Two (2) Outlots to Village.

In consideration for (a) the Village's approval of Owner's use of the Village's regional storm water detention facility (along Ravinia Avenue to the west of the Subject Property) to accommodate stormwater detention/retention requirements for the Subject Property; (b) at the Village's discretion, the Village will pay for the transportation of suitable fill or will transport fill from stockpiles of the Palos Community Hospital South Campus project or another appropriate location to the Subject Property or do a combination of the two; and (c)



the Village will reimburse Owner for the incremental costs for the demolition of the buildings that would otherwise remain on Lots 5 and 6 (as hereinafter described) but not including the capping of the well. Owner will convey to the Village two (2) Outlots, marked as “Detention” (Lot 5) and “Wetland” (Lot 6). Such conveyance/dedication to the Village shall be in accordance with SECTION 14 hereof.

SECTION 7:

Dedication and Construction of Streets; Street Lights; Miscellaneous.

A. Street.

The Owner shall provide access to the site.

Also, Owner shall be required to keep all adjoining streets free from mud and debris generated by construction activity on the Subject Property. Such streets must be cleaned at least once a day, and more often if required by Village in its sole judgment. For each day that the streets are not cleaned as required hereunder during construction, Owner shall be subject to a fine as provided in the Code. If any such fine is not promptly paid, the Village shall have the right to stop any and all further construction until paid.

B. Miscellaneous.

The Owner shall install, maintain and locate any underground utilities that will be dedicated or conveyed to the Village including water, sanitary sewer, storm sewer and street light cables. Owner shall demolish the existing path and re-construct an eight (8’) foot wide bike path along 156<sup>th</sup> Street from LaGrange Road west, and Owner will dedicate the necessary (as determined by the Village) land to 156<sup>th</sup> Street for the bike path. In addition, Owner will construct and install the LaGrange Road sidewalk along the LaGrange Road frontage of the Subject Property

SECTION 8:

Easements.

The Owner agrees at the time of approval of this Annexation and Development Agreement to grant to the Village, and/or obtain grants to the Village of, any necessary easements for the extension of sewer, water, street, or other utilities, including cable television, or for other improvements which may serve not only the Subject Property, but other territories in the general area.

All such easements to be granted shall name the Village and/or other appropriate entities designated by the Village as grantee thereunder. It shall be the responsibility of the Owner to obtain all easements, both on site and off site, necessary to serve the Subject Property.

SECTION 9:

Developmental Codes and Ordinances and General Matters.

Owner must construct in accordance with the existing building and other developmental codes and ordinances of the Village as they exist on the date of issuance of the permit.

Upon subdivision of the Subject Property annexed, the development of same shall be in accordance with the existing building, zoning, subdivision, storm water retention and other developmental codes and ordinances of the Village as they exist on the date the permit for development of the Subject Property is issued. Planning and engineering designs and standards, and road construction and dedication of public improvements, shall be in accordance with the then existing ordinances of the Village or in accordance with the statutes and regulations of other governmental agencies having jurisdiction thereof if such standards are more stringent than those of the Village of Orland Park at such time. All fees, etc., set forth under the various ordinances of the Village shall be paid by the Owner at the rate set forth in the Village ordinances at the time each permit is issued.

No occupancy permit shall be issued for any building prior to the completion of the required public improvements. Provided, however, the construction and installation of the public improvements to be done by Owner may be commenced at any time after Owner has delivered to Village an irrevocable letter of credit, in a form satisfactory to, and from a bank or other financial institution approved by, the Village in the amount of 125% of the Owner's Engineer's estimate of the cost of construction and installation of all such improvements as approved by the Village Engineer, or 110% of actual construction contract costs, including all required lighting, streets and street lights, landscaping, sewer and water lines and storm water management facilities. As public improvements are installed or constructed by Owner, a reduction in the amount of the letter of credit will be allowed by the Village in a reasonable and timely manner in accordance with customary Village practice.

SECTION 10:

Utilities.

All future electricity, telephone, cable television and gas lines shall be installed underground, the location of which underground utilities shall be at the Owner's option.

SECTION 11:

Binding Effect and Term and Covenants Running with the Land.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Subject Property, assignees, lessees and upon any

successor municipal authorities of said Village and successor municipalities, for a period of ten (10) years from the date of execution hereof and any extended time that may be mutually agreed to by amendment, without further public hearing.

The terms and conditions of this Agreement relative to the contributions to the Village, construction and/or dedication of public improvements, granting of easements to the Village, dedication of rights-of-way to the Village and the developmental standards established herein shall constitute covenants which shall run with the land.

SECTION 12:

Notices.

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

For the Village:

1. Keith Pekau  
Village President  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462
2. John C. Mehalek  
Village Clerk  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462
3. E. Kenneth Friker  
Village Attorney  
Klein, Thorpe & Jenkins, Ltd.  
15010 S. Ravinia Avenue - Suite 10  
Orland Park, Illinois 60462

For the Owner:

1. SWC 156<sup>TH</sup>, LLC  
9440 Enterprise Drive  
Mokena, Illinois 60448  
Attn: Joe Bochenski, Manager
2. Murray J. Lewison  
Johnson and Colmar  
2201 Waukegan Road – Suite 260  
Bannockburn, Illinois 60015

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

SECTION 13:

Permits and Letter of Credit.

The Owner shall not be entitled to obtain the building permit, nor any sign permits, and shall not be entitled to construction of any other appurtenant facilities unless and until the proper letter of credit or cash deposit has been made to the Village in accordance with the Code. The letter of credit or cash deposit shall specifically include an amount to cover the cost of street trees and bicycle path, if any, as required by the Code and this Agreement.

Owner agrees that any dirt stock piles resulting from the development of the Subject Property shall be located in places as designated and approved by the Village, and for reasonable time periods not to exceed five years, unless an extension is agreed to by the Village. In addition, the Village, after providing Owner with 30 days advance written notice, or 10 days advance written notice in the event of a bona fide emergency as determined by the Village, shall have the right to draw upon the letter of credit provided for in this agreement to relocate or remove any dirt stock pile which results from the development should they not be placed in an approved location or if the pile is causing a storm water drainage problem, or should it not be permitted to remain beyond the time period specified by the Village; provided, however, that the Village will not draw upon the letter of credit if Owner relocates or removes the stock piles as directed by the Village within the applicable notice period.

SECTION 14:

Conveyance, Dedication and Donation of Real Estate.

Any conveyance, dedication or donation of real estate required of the Owner (hereinafter referred to as Grantor for purposes of this SECTION 14) to the Village or other governmental authority under this Agreement shall be made in conformance with the following requirements and any other applicable provisions of this Agreement:

A. Fee Simple Title. The conveyance, dedication or donation shall be of a fee simple title by trustee's deed or other appropriate instrument, as determined by the Village.

B. Merchantable Title. Title to the real estate shall be good and marketable.

C. Form and Contents of Deed. The conveyance, dedication or donation shall be by delivery of a good, sufficient and recordable deed, plat of dedication, or appropriate dedication on a recorded plat of subdivision. The deed, conveyance or dedication may be subject only to:

(1) covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;

(2) terms of this Agreement;

(3) general taxes for the year in which the deed, conveyance or dedication is delivered or made and for the prior year if the amount of prior year's taxes is not determinable at the time of delivery, conveyance or dedication; and

(4) such other exceptions acceptable to the grantee.

D. Title Insurance. Grantor, shall provide to the Village (hereinafter referred to as Grantee for purposes of this Section), not less than ten (10) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from Chicago Title Insurance Company or such other title insurance company acceptable to the Grantee. The commitment for title insurance shall be in usual and customary form subject only to:

(1) the usual and customary standard exceptions contained therein;

(2) taxes for the year in which the deed is delivered and for the prior year if the amount of such prior year's taxes is not determinable at the time of delivery of the deed, conveyance or dedication;

(3) subparagraphs 1 and 2 of paragraph C above; and

(4) such other exceptions as are acceptable to the grantee.

The commitment for title insurance shall be in the amount of the fair market value of the real estate and shall be dated not less than twenty (20) days prior to the time for delivery of the deed, conveyance or dedication. Grantor shall further cause to be issued within thirty (30) days after delivery of the deed, conveyance or dedication a title insurance policy in such amount from the company issuing the commitment for title insurance, subject only to the exceptions stated above.

All title insurance charges shall be borne by Grantor.

E. Taxes, Liens, Assessments, Etc.

General taxes and all other taxes, assessments, liens and charges of whatever nature affecting the real estate shall be paid and removed prior to delivery of the deed, conveyance or dedication. To the extent that any such item cannot be removed prior to delivery of the deed, conveyance or dedication because the amount of the same cannot then be determined, Grantor hereby covenants that it will promptly pay the same upon determination of such amount and that it will indemnify, hold harmless and defend the Village against any loss or

expense, including but not limited to attorneys' fees and expenses of litigation, arising as a result of a breach of the foregoing covenant.

F. Delivery of Deed, Conveyance or Dedication.

To the extent not provided in this Agreement, delivery of the deed, conveyance or dedication shall occur at a date, time and place mutually agreeable to Grantor and Village, otherwise at a date, time and place set by Village not less than thirty (30) days after notice thereof is given by Village to Grantor.

G. Environmental Assessment.

Not less than five days prior to any conveyance, dedication or donation of real estate required under this Agreement, any Village ordinance or other requirement, the Grantor, at its sole cost and expense, shall have caused to be prepared and submitted to the Village, a written report of a site assessment and environmental audit, in scope, form and substance, and prepared by an independent, competent and qualified environmental engineer ("Engineer") satisfactory to the Village (the "Environmental Audit"), and dated not more than sixty (60) days prior to the transfer date, showing the Engineer made all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial and customary practice in an effort to minimize liability, which takes into account and satisfies the "innocent landowner" provision set forth at 42 U.S.C. 96901(35), such that consistent with generally accepted engineering practice and procedure, no evidence or indication came to light which would suggest there was a release of substances on the property which could necessitate an environmental response action, and which demonstrates that the property and the facility complies with, and does not deviate from, all applicable federal, state, county, regional and local environmental statutes, laws, ordinances, rules and regulations, including any licenses, permits or certificates required thereunder.

The Environmental Audit shall also demonstrate that the property and the improvements located thereon, if any, do not contain:

- (1) asbestos in any form;
- (2) urea formaldehyde;
- (3) transformers or other equipment that contain fluid containing polychlorinated biphenyls;
- (4) underground storage tanks, or
- (5) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority (the "Authorities") or which poses a hazard to the health and safety of the occupants of the property or the facility, or the occupants of adjacent property.

The Environmental Audit shall also demonstrate that the property and facility are not, and have not been, the subject of any past, existing or threatened investigation, inquiry or proceeding concerning environmental matters by the Authorities, and that no notice or submission concerning environmental matters has been given or should be given with regard to the property and the facility to the Authorities. The Environmental Audit shall demonstrate that the property and facility are not subject to, or covered by, the requirements of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11001, et seq., and that the property is not now being used and has never been used for any activities involving directly or indirectly the use, treatment, storage or disposal of any hazardous or toxic chemical, material, substance or waste.

The Grantor of the property and facility acknowledges and agrees that the Village shall not be obligated to take title to any land if, in its sole and exclusive judgment (including without limitations, information revealed by the Environmental Audit), that the use or condition of the property, or any part thereof, poses a material health, safety or environmental hazard.

#### SECTION 15:

##### Reimbursement of Village for Legal and Other Fees and Expenses.

###### A. To Effective Date of Agreement.

The Owner, concurrently with annexation and zoning of the property or so much thereof as required, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (1) the costs incurred by the Village for engineering services;
- (2) all attorneys' fees incurred by the Village; and
- (3) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expenses.

###### B. From and After Effective Date of Agreement.

Except as provided in the paragraph immediately following this paragraph, upon demand by Village made by and through its President and Owner from time to time shall promptly reimburse Village for all enumerated reasonable expenses and costs incurred by Village in the administration of the Agreement, including and limited to engineering fees, attorneys' fees and out of pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, and the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of land

improvements.

Such costs and expenses incurred by Village in the administration of the Agreement shall be evidenced to the Owner upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Owner at its option from additional documents relevant to determining such costs and expenses as designated from time to time by the Owner.

Notwithstanding the immediately preceding paragraph, Owner shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against the Owner, and/or the Village, which relate to the terms of this Agreement, then, in that event, the Owner, on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

1. Owner shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.

2. If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and Owner, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Owner shall reimburse the Village from time to time on written demand from the President of Village and notice of the amount due for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

In the event the Village institutes legal proceedings against Owner for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against Owner all expenses of such legal proceedings incurred by Village, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the Village in connection therewith. Owner may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Owner.

#### SECTION 16:

##### Warranties and Representations.

The Owner represents and warrants to the Village as follows:

1. That the Owner is the legal title holder and the owner of record of the Subject Property and that Joe Bochenski is the sole Member/Manager of said limited liability



company.

2. That the Owner proposes to develop the Subject Property in the manner contemplated under this Agreement.

3. That other than the Owner, no other entity or person has any interest in the Subject Property or its development as herein proposed.

4. That Owner provided the legal descriptions of the Subject Property set forth in this Agreement and the attached Exhibits and that said legal descriptions are accurate and correct.

5. With respect to any real estate herein which will become property of the Village, Owner (and its undersigned officer) warrants and represents, to the best of its knowledge, that during the period of its ownership or control over said Subject Property it has no knowledge of, nor reason to suspect, that there has been any underground storage (or other) tank or any presence, disposal, release or threatened release of hazardous substances or hazardous wastes on, from or under the property, by or through Owner or any other party whatsoever. Owner (and its undersigned officer) similarly represents and warrants that to the best of its knowledge, there was not underground storage (or other) tank, not any presence, disposal, release or threatened release of hazardous substances or hazardous waste on, from or under the property prior to Owner's acquisition of ownership or control of the property.

Owner (and its undersigned officer) similarly further represents and warrants that to the best of its knowledge, the property (including underlying soil and ground water conditions) is not in violation of any state, local, federal, municipal or other law, statute, regulation, code, ordinance, decree or other relating to hygienic or environmental conditions, and during ownership of the property by Owner, no party has stored or disposed of any flammable explosives, radioactive materials, hazardous waste, toxic substances or other related materials on, under or about the property. The Owner shall and does hereby agree to indemnify, protect, defend, and hold the Village harmless from and against any claims, losses, demands, costs, proceedings, suits, liabilities, damages and causes of action, including consequential damages and attorneys' fees of counsel selected by the Village and other costs of defense incurred, arising against or suffered by the Village or its assigns as a consequence, directly or indirectly, of any misrepresentation by Owner of the foregoing representations and warranties, whether discovered before or after the conveyance of any of the Subject Property to the Village.

#### SECTION 17:

##### Continuity of Obligations.

Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Owner, Owner shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon Owner by this Agreement until such obligations

have been fully performed or until Village, at its sole option, has otherwise released Owner from any or all of such obligations.

SECTION 18:

No Waiver or Relinquishment of Right to Enforce Agreement.

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION 19:

Village Approval or Direction.

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

SECTION 20:

Singular and Plural.

Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

SECTION 21:

Section Headings and Subheadings.

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

SECTION 22:

Recording.

A copy of this Agreement and any amendment thereto shall be recorded by the Village at the expense of the Owner.

SECTION 23:

Authorization to Execute.

The Owner and the officers of the Owner executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on behalf of the Owner and that all representations and warranties made by Owner herein are also made by the officer of the Owner executing this Agreement.

The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. The Owner and Village shall, upon request, deliver to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all bylaws, resolutions, ordinances, partnership agreements, letters of direction or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

SECTION 24:

Amendment.

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

SECTION 25:

Counterparts.

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION 26:

Curing Default.

The parties to this Agreement reserve a right to cure any default hereunder within thirty (30) days from written notice of such default.

SECTION 27:

Conflict Between the Text and Exhibits.

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

SECTION 28:

Severability.

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve Village from performance under such invalid provision of this Agreement.

SECTION 29:

Definition of Village.

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

SECTION 30:

Execution of Agreement.

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on page 1 hereof which date shall be the effective date of this Agreement.

VILLAGE OF ORLAND PARK,  
an Illinois Municipal Corporation

By: \_\_\_\_\_  
Village President

ATTEST:

\_\_\_\_\_  
Village Clerk

OWNER:

SWC 156<sup>TH</sup> , LLC

By: \_\_\_\_\_  
Joe Bochenski,  
Its Member/Manager

ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
                                      ) SS.  
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that KEITH PEKAU, personally known to me to be the President of the Village of Orland Park, and JOHN C. MEHALEK, personally known to me to be the Village Clerk of said municipal corporation, 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 President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_ day of \_\_\_\_\_, 2017.

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

Commission expires \_\_\_\_\_

