
**VILLAGE OF SUGAR GROVE
BOARD REPORT**

TO: VILLAGE PRESIDENT & BOARD OF TRUSTEES
FROM: WALTER MAGDZIARZ, COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: DISCUSSION: SETTLERS RIDGE ANNEXATION AGREEMENT AMENDMENT
AGENDA: NOVEMBER 15, 2016 VILLAGE BOARD MEETING
DATE: NOVEMBER 10, 2016

ISSUE

Shall the Village Board discuss an amendment of the Settlers Ridge annexation agreement.

DISCUSSION

The Village Board has anticipated amending the Settlers Ridge annexation agreement since the Great Recession changed the assumptions of residential land development and new home construction across the region. However, the resolution of the litigation between the Village and the surety for the completion of public improvements in Settlers Ridge Units 1A and 1B—in favor of the Village—contributed to the postponement of this decision. Now that the Village has nearly completed the public improvements in Settlers Ridge Units 1A and 1B the development is positioned to move forward and the current Settlers Ridge residents can have some certainty that the development is viable.

The Applicant, LCP SLJV 2008-1 IL-1, LLC and LCP Settlers Ridge Development (“LCP”), owns approximately 100 lots in Unit 1A and Unit 1B and the unsubdivided lands lying north of Prairie Street. LCP is requesting an amendment of the current annexation agreement in order to facilitate construction and development in Settlers Ridge following the Great Recession and the resulting changed assumptions about new home development in the market. The amendment is not intended to change the vision for Settlers Ridge but to modify the obligations of the developer and future builders with respect to future public improvements and financial matters.

The original annexation agreement is a massive complex document that memorialized the original builder’s personal vision for the entire 1,331 acre Settlers Ridge master planned development and laid out the builder/developer’s obligations to minimize the direct impact of the development on the residents of Sugar Grove.

The annexation agreement amendment applies only to lots and land owned by LCP in the portion of Settlers Ridge lying north of Prairie Street, referred to as the “Affected Properties” in the agreement. The amendment is mainly focused on LCP’s obligations for completing public improvements both on- and off-site, and the staging of development on the property. The key points of the amendment are:

1. The Village Board will have the right to approve all architecture and landscaping standards at the time each subdivision approval.

The existing Annexation Agreement contained extensive, detailed architectural plans that made sense when Kimball Hill was the owner, developer and builder for the entire project. This is no longer the case. New builders will have to develop and present new building plans. LCP shares the Village and residents desire to see new homes constructed that fit with the existing homes and vision for the subdivision. In order to accomplish this, LCP has agreed that the Village Board will have the right to review and approve all architecture as included in Section II-b-10 of the proposed amendment.

2. A provision for age restricted housing is included.

There is no approval of age-restricted housing with this amendment (Section II-c), only that the Village may elect to approve age-restricted housing as part of one or more Development Areas within the property.

3. Required off-site improvements are greatly reduced as the amount of territory the Applicant can develop is significantly less than what the original agreement anticipated.

The Village staff and consultants collaborated with LCP to determine the impact of LCP's development area on the existing thoroughfare network and identified the improvements needed based on LCP's development (Section IV-a, and Exhibit H). An update traffic study was performed applying LCP's anticipated development and current traffic counts on area thoroughfares. LCP is obligated to make improvements to the Gordon and Galena intersection, including traffic signals, the Gordon and Parkside Drive intersection, and the realignment of Prairie Street at Gordon Road. The specific nature of the improvements and the timing of their construction is provided in Exhibit H.

4. Required fees and impact fees and the timing of payments are modified from the original agreement.

The fees and donations described in the original annexation agreement no longer reflect the reality of today's development environment, but the Village still has needs requiring some financial assistance from this development. The fees are somewhat less than those in other recently negotiated agreements only because of the park and school land donations and the off-site road improvements LCP is obligated to provide. Section IV-c and Exhibit I establish the new fees and the schedule for their gradual escalation in the future.

5. School and park donations are modified to clarify expectations for site improvements.

LCP will provide the school and park site donation as required by the original annexation agreement (Section IV-c-4). The amendment clarifies the timing of any conveyance of land and the nature of site improvements obligated by LCP. "Improvements" in this context means grading and seeding and will permit the

parcels to be used for open play purposes per the Park District. As with the original agreement, no new recreation equipment or structures are being required of LCP on either school or park land donation.

6. Future commuter train station site.

The original annexation agreement and the approved development plan identified a commuter rail station in the Settlers Ridge project. The amendment recognizes that the original location may not be optimal and a location farther west along Prairie Street was identified. LCP agreed to the relocation and to conveying the tract of land to the Village for this purpose in the future. LCP is not obligated to construct or fund the improvement (Section IV-c-4-v).

7. The conveyance of the water storage and treatment system is clarified.

The original agreement included provisions for the construction and eventual conveyance of the water storage and treatment system. While this was understood by the original parties, this wasn't the case with the new owners. Consequently, the section pertaining to the water storage and treatment system was updated and clarified to remove the ambiguity (Section IV-e-1).

8. Signage, both permanent and temporary, for the project and Development Areas is addressed.

LCP has a need for the type, number, duration, and size of signs for the project and each Development Area that cannot be easily addressed by the Zoning Ordinance. The amendment proposes general sign standards but allows LCP and the Village to agree to specific sign standards for different types and uses of signs with the approval of each Development Unit without any further amendment of the annexation agreement amendment (Section VI-a).

9. New provisions for subdivision and performance bonds.

Given the Village's recent experience with collecting on performance bonds or guarantees following the Great Recession, the amendment includes very specific requirements and procedures for these guarantees. These exceed the requirements in the Village Code. Additionally, the Village is requiring any developer in Settlers Ridge that posts a performance bond to deposit a separate cash deposit equal to 5% of the amount of the performance bond until the aggregate equals \$100,000 for the purpose of costs unrecoverable under the performance bond, e.g., expenses related to mitigation of damages due to a breach of the annexation agreement amendment (Section VI-r-1).

COSTS

All costs incurred by the Village with negotiating the terms of the annexation agreement amendment are borne by the Applicant.

ATTACHMENTS

1. Settlers Ridge annexation agreement amendment.

RECOMMENDATION

That Village Board provide the developer and Village staff with input and direction concerning the draft annexation agreement amendment in order to prepare the Ordinance adopting the annexation agreement amendment.

This instrument prepared by and after recording return to:

Thompson Coburn LLP
55 East Monroe Street
37th Floor
Chicago, Illinois 60603
Attention: Bernard Citron

This space reserved for Recorder's use only.

AMENDMENT TO ANNEXATION AGREEMENT
SETTLERS RIDGE

This amendment (“**Amended Agreement**”) to the Annexation Agreement dated June 20, 2005 (“**Annexation Agreement**”) recorded as Document number _____ in the Kane County, Illinois Recorders office, and the subsequent amendments to the Annexation Agreement Dated _____, _____ (together with the Annexation Agreement, the “**Original Agreement**”), between the Village of Sugar Grove (“**Village**”), LCP SLJV 2008-1 IL-1, LLC (“**LCP**” or “**North Parcels Owner**”) and LCP Settlers Ridge Development, LLC (“**Northwest Parcel Developer**”), the Village, North Parcel Owners and Northwest Parcel Developer together referred to as Parties (“**Parties**”), said Amended Agreement made and entered into this ____ day of _____, 2016.

WHEREAS, the Original Agreement controlled the annexation of approximately 1,331 acres of property (“**Property**”) into the Village; and

WHEREAS, the North Parcels Owner is the current owner of portions of the Property (“**Northwest Parcel**”) as described on Exhibits “C1” and shown on Plat “C2” attached hereto; and

WHEREAS, a portion of the Property in the North Parcel have been subdivided as Settlers Ridge Units 1A and 1B (“**Settlers Ridge**”) and developed in conformance with terms of the Original Agreements and developed in conformance thereto, such parcels being shown on Exhibit “B”; and

WHEREAS, the North Parcels Owner is the current owner of the subdivided lots located within Settler’s Ridge identified on Exhibit D (the “**Landcap Lots**”) and the commercial parcel identified on Exhibit D (the “**Landcap Commercial Parcel**”); and

WHEREAS, the owners of platted lots may request and the Village may grant amendments to the Original Agreement in accordance with the terms of the Original Agreement; and

WHEREAS, the Northwest Parcel, the Landcap Lots and the Landcap Commercial Parcel shall be hereafter be referred to as the “**Affected Properties**”; and

WHEREAS, in accordance with the powers granted to the Village by the provisions of 65 ILCS 5/11-15.1-1 through 15.1-5, inclusive, relating to annexation agreements and amendments to such agreements, the Parties hereto wish to enter into and binding themselves to this Amended Agreement with respect to the Affected Properties and to provide for various other matters related directly or indirectly to the development of the Affected Properties in the Village as authorized by the provisions of said statutes; and

WHEREAS, pursuant to due notice and publication in the manner so provided by law, the appropriate zoning authorities of the Village have held the necessary public hearing(s) and have taken all further action required by the provisions of 65 ILCS 5/11-15.1-3 and the ordinances of the Village relating to the procedure for the authorization, approval and execution of this Amended Agreement by the Village; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the Parties agree as follows:

I. EFFECT OF AGREEMENTS AND DEVELOPMENT OF SETTLERS RIDGE.

- a. Development and construction on the Affected Properties shall be in conformance with the provisions set forth within this Amended Agreement. The terms, conditions, and requirements of the Original Agreement shall no longer control or govern development of the Affected Properties, and only this Amended Agreement shall control or govern development of the Affected Properties. If there is a conflict between the Original Agreement and the Amended Agreement, the terms of the Amended Agreement shall control.
- b. All Property outside the Affected Properties (“**Excluded Land**”) shall continue to be governed by the Original Agreement. The Original Agreement as it affects the Excluded Land may be amended independently of this Amended Agreement.
- c. The Village agrees to approve a revision to the PDD ordinance for the Affected Property within 60 days of the effective date of this Amended Agreement to conform the PDD ordinance (the “**Revised PDD Ordinance**”) with this Amended Agreement. Development of the Northwest Parcel and the Landcap Commercial Parcel shall be in conformance with the Revised PDD Ordinance, provided, however, that in the event of any conflict between this Amended Agreement and the Revised PDD Ordinance for the Affected Property, this Amended Agreement will control.
- d. The North Parcels Owner and the Northwest Parcel Developer, on behalf of themselves and their successors and assigns, hereby covenant not to sue and hereby waive all rights of contribution, indemnity, and unjust enrichment that the North Parcels Owner and the Northwest Parcel Developer presently have, or may in the future have against the existing owners of residential lots identified on Exhibit “J” on which residences have been completed (the “Existing Homeowners”) for: (1) the cost of any public improvements of the subdivision that the North Parcels Owner or the Northwest Parcel Developer are obligated hereunder to construct; (2) any liability that Fidelity and Deposit Company of Maryland may establish against the North Parcels Owner or the Northwest Parcel Developer or their successors and assigns in the lawsuit presently pending in the Circuit Court of the Sixteenth Judicial Circuit,

Kane County, known as Village of Sugar Grove v. Fidelity and Deposit Company of Maryland, Case No. 10 MR 597 (the “Lawsuit”) and 3) any independent claim that North Parcels Owner and the Northwest Parcel Developer may have against the Existing Homeowners with respect to construction of required public improvements for contribution, indemnity, and unjust enrichment.

- e. Notwithstanding 65 ILCS 5/11-15.1-4, any provision of any applicable municipal ordinance, the Original Agreement or this Amended Agreement, no successor to any interest of the North Parcels Owner or the Northwest Parcels Developer who obtains its, his or her interest after the date of this Amended Agreement (a “**Transferee**”), shall have any obligation to construct or complete any improvements required hereunder provided that such improvements are the subject of an existing subdivision bond, performance bond, letter of credit or cash construction escrow that is not released as part of the transfer in which the Transferee obtained Transferee’s interest in the Property. While not creating an obligation to complete any improvements, this subsection I(e) shall not require the Village to issue permits for properties for any lot or parcel not adequately served by such improvements (as determined by the Village) and this subsection I(e) shall not obligate the Village to complete said improvements.

II. ZONING AND DEVELOPMENT PLANS

- a. Reserved.
- b. The zoning and development parameters for the Northwest Parcel shall be in conformance with the preliminary plan (“**Northwest Plan**”) for the Northwest Parcel dated _____, and attached hereto as Exhibit “G” and the following terms and conditions:
 - 1. Reserved.
 - 2. The maximum number of residential units in the Northwest Parcel shall be 669,.
 - 3. Allowable housing types shall be single-family detached homes, single family attached dwelling units and multi-family dwelling units (“**Housing Types**”), as such are defined by the Village’s Zoning Ordinance.
 - 4. No development shall be undertaken except within subsequently subdivided portions of the Northwest Parcel, (“**Development Area**”), which shall be designated at the time development is proposed. Multiple Housing Types may be developed within a Development Area.
 - 5. The basic density of units of each Housing Types allowable within each Development Area within the Northwest Parcel shall be as set forth in Exhibit G, subject to approved transfers of density as provided hereinafter.

6. The Northwest Plan shall preliminarily designate areas where development can occur, the storm water detention areas, and the collector road system within the Northwest Parcel. Prior to development of any portion of the Northwest Parcel, a Development Area for that portion shall be designated and submitted for subdivision approval pursuant to the Village's Subdivision ordinance. The proposed developer of a Development Area ("**Area Developer**") shall propose the Housing Types for each Development Area, subject to the limits of Exhibit G.
7. Prior to construction within any Development Area, the Area Developer shall be required to submit a Final PUD Plat and Plat of Subdivision as required by Chapter 16 of the Village Zoning Code (a "**Subdivision Approval**"). The Village shall approve such Final PUD Plat and Subdivision Plat so long as it is in substantial conformance with the requirements of this Amended Agreement, the Revised PDD Ordinance, and all Village Codes and Ordinances, except as modified by the provisions set forth in this Amended Agreement.
8. Simultaneously with the Subdivision Approval, Northwest Parcel Developer shall provide Village planning staff a revised North Plan showing the density for the remaining portions of the Northwest Parcel. A portion of the number of residential units within one Development may be transferred to an adjacent Development Area provided the number of such transferred units does not increase or decrease the number of such transferred units in either the transferor or transferee Development Area by more than 10% of the number of residential units as set forth on Exhibit G for the Development Areas in question. The Village Board may waive this provision without further amendment of this Amended Agreement.
9. FAR limits and dwelling unit setbacks and architectural standards for the Development Area shall be approved with each Subdivision Approval.
10. The Village shall have the right to approve all architectural elevations and standards and landscaping standards at the time of each Subdivision Approval or prior to issuance of a building permit. Architecture standards and landscaping standards in the Original Agreement shall no longer apply to construction within the Affected Property.
11. Subdivision Approvals must commence with first Development Area denoted on Exhibit G as denoted as "Development Area 1" and proceed consecutively and numerically for each Development Area as identified on Exhibit G with the exception that

Development Areas 5 and/or 6 may proceed out of sequence. If Development Areas 5 and/or 6 develop prior to Development Area 1, the roadway designated on Exhibit G adjacent to said Development Areas shall be installed to the western limit of Development Area 5 and/or 6. While a subsequent Development Area can be approved before close out of a prior Development Area, no construction shall commence on the subsequent Development Area until the public improvements for the prior Development Area have been substantially completed to the extent necessary to connect a subsequent Development Area to a prior Development Area as determined by the Village. Such connections shall consist of utilities, roadways, stormwater drainage facilities, streetlights and signage. The Village Board may waive this provision without further amendment of this Amended Agreement.

12. The Northwest Parcel Developer shall remain responsible for the construction of roads, utilities, offsite improvements and storm water facilities which are required to be constructed outside of a Development Area.
- c. Age Restricted Housing. Notwithstanding the foregoing, the Village may elect to approve an overall planned community for age-restricted housing (55 or older) for multiple Development Areas within the Northwest Parcel, and in such case the requirements for development phasing (in subparagraph 11 above) and development responsibility (in subparagraph 12 above) shall no longer apply, and any requirements will be determined by the Village in connection with the Subdivision Approval for such Development Areas. In the event such an overall planned community for age-restricted housing (55 or older) is approved by the Village, the following elements of this agreement may be adjusted as provided in a subsequent development agreement without the need to further amend this Amended Agreement: 1) Fees and Donations, 2) Maximum density of overall plan, 3) density of specific Development Areas and 4) Credits against impact fees for construction of public improvements. The decision to approve a development agreement (and the terms of such approvals) such changes remain in the absolute discretion of the Village Board.
 - d. Interim Uses of Northwest Parcel.
Interim uses set forth below shall be permitted on the Property during the term of this Amended Agreement as long as said interim uses do not have a substantial adverse impact on adjoining properties, as determined by the Village Board.
A. Farming of crops without irrigation (provided that a buffer separation of at least 20 feet from any new homes constructed and occupied on the Property is maintained) and burning of landscape debris that was generated on-site (provided that a buffer separation of at least 500 feet from any new homes constructed and occupied on the Property is maintained). As to the farming of crops, the Parties agree as follows:
 - 1) North Parcels Owner agrees not to cause or permit, a) irrigation of crops, b) keeping of livestock (except livestock will be permitted as part of a 4H, FFA or similarly sized youth project), and c) farming procedures or methods that are substantially different from those customarily followed in Northern Illinois.

- 2) VILLAGE agrees not to limit or restrict, a) hours of operation, b) selection of crops raised, c) use of pesticides and fertilizer (except that domestic or commercial sludge shall not be permitted), and d) use of farm equipment and machinery.
- B. Stockpiling and removal (and/or sale) of dirt from the site, subject to North Parcel Owner's adherence to erosion control measures and access points, which shall be designated by Village staff and/or engineering.
- C. Temporary detention.
- D. Parking lots for models.

III. VILLAGE CODES, ORDINANCES AND REGULATIONS

- a. The Parties agree that except as specifically modified within this Amended Agreement and the attached exhibits, the Affected Property shall be developed in compliance with all ordinances, codes and regulations in effect at the time of the development provided, however, that the application of any such ordinance, regulation or code shall not result in a reduction in the number of residential dwelling units approved for the Affected Property, nor result in any subdivided lot or structure constructed with the Affected Property being classified as non-conforming under any ordinance of the Village.
- b. Provided Illinois law permits such use, the Village shall allow the use of existing water service lines for all Landcap Lots.
- c. The Parties acknowledge that it is the ultimate responsibility of parcel owners within the Affected Property, Area Developers and/or home builders within the Affected Property to comply with any and all requirements of this Amended Agreement and applicable Village Codes.

IV. DEVELOPMENT REQUIREMENTS

- a. Offsite Road Improvements
1. Any road improvements that are required to be constructed outside of the boundaries of the Affected Property shall be considered an offsite road improvement (“**Offsite Road Improvement**”).
 2. Northwest Parcel Requirements. Offsite Road Improvements shall be required in connection with the development of the Northwest Parcel (“**Northwest Parcel Road Improvements**”) by the Northwest Parcel Developer. The required timing for such improvements shall be based upon either the number of residential building permits issued, the required date of completion, or some combination thereof, based upon the nature of the improvement, as shall be set forth in Exhibit “H”. Only such Offsite Road Improvements as are set forth on Exhibit “H” shall be required to be constructed in conjunction with the development of the Affected Property.
 3. The Village shall be responsible for all negotiations of the acquisition of any right-of-way required for (a) realignment of Prairie Street

as set forth in Exhibit “H-6” and (b) improvements to the intersection of Gordon Road and Parkside Drive as set forth in Exhibit “H-4”. Northwest Parcel Owner shall be responsible for reimbursement of any and all Village costs including, but not limited to, purchase price and reasonable attorneys fees and expenses incurred in said acquisition, subject to the following: 1) to the extent the Village is successful in negotiating such property acquisitions with the current owners of said property, the Village shall not approve any offer or agreement to purchase said property, without the written consent of the Northwest Parcel Owner; and 2) If the Village is required to use its power of eminent domain, the Village shall not settle any such case filed pursuant to said power of eminent domain without the written consent of the Northwest Parcel Owner. If a judgment is obtained pursuant to said power of eminent domain without a voluntary settlement, the Northwest Parcel Owner shall pay the full costs and expenses (including reasonable attorney’s fees) required under said judgment. If the Village determines not to require said acquisitions, the Village may waive this provision without further amendment of this Amended Agreement.

4. Security and Acceptance of Offsite Road Improvements. Northwest Parcel Developer shall comply with the provisions of this Amended Agreement as set forth in Section VI.F. below in regard to the construction and acceptance of Offsite Road Improvements.
- b. Stormwater Management. Although portions of Settlers Ridge completed at the time of this Amended Agreement have been built with bio-swales and other storm water management approaches, such design is not necessary for the Northwest Parcel as long as applicable storm water control measures are met in accordance with the Kane County StormWater Management Ordinance or applicable Village Ordinances.
- c. Fees and Donations
 1. Required fees, impact fees and development donations (“**Fees and Donations**”) that are to be paid by a developer of a Landcap Lot or an Area Developer shall be as set forth on Exhibit “I”. Any modification (other than scheduled changes of fees set forth in Exhibit I) of the Fees and Donations during the time period set forth in Exhibit “I” must be approved by the owner of the affected parcels. Any such modification and the determination of Fees and Donations after the time period set forth in Exhibit “I” may be approved by the Village Board without amendment of this Amended Agreement.
 2. The timing for the payment of the Fees and Donations shall be made in accordance with Exhibit “I”. An Area Developer shall have the option to elect to pay such Fee or Donation on a per unit basis,

payable at the time of a request for a certificate of occupancy. The Northwest Parcel Developer or any Area Developer shall also have the option of prepaying Fees and Donations at any time based on the fee amounts in effect at the time of payment.

3. If the Fee or Donation is to be collected by the Village on behalf of another governmental agency, it is the Village's obligation to remit said Fee or Donation to such entity. Payment by the Northwest Parcel Developer or an Area Developer or a Transferee that acquires lots in order to construct homes (a "**Homebuilder**"), of the required Fee or Donation to the Village, shall fulfill the requirement of said payment. The Village thereby agrees to indemnify the Developer or Homebuilder if subsequent to payment of the Fee or Donation to the Village refuses to make said payment to said other governmental agency for any reason and said refusal is challenged by such other governmental agency. The Village does not indemnify the Developer or Homebuilder for a challenge to the amount of said payment if the Village was not involved in the calculating or imposition of said fee (e.g. Fox Metro Annexation Fees).
4. Park District, School District and Municipal Land/Cash Donations
 - i. School and park donations shall be in conformance with the Sugar Grove Subdivision Regulations, except as modified herein.
 - ii. The park land and cash donation requirements for the Northwest Parcel and Landcap Lots shall be fully satisfied by the transfer of 20 acres in the North Parcel ("**Park Donation Parcel**"), as shown on Exhibit "G" to the Village or the Park District as directed by the Village. Prior to any such donation, the Northwest Parcel Developer shall provide appropriate and sufficient documentation demonstrating that the site is free from any environmental condition or any other state which would require remediation and/or interfere with its intended use. Along with the donation of the Park Donation Parcel, the Northwest Parcel Developer shall undertake grading with maximum slopes between 2% and 25% in perimeter transition areas and otherwise less than 3% to insure positive and controlled drainage of the entire Park Donation Parcel as determined by the Village Engineer, six (6) inches of topsoil, seed that shall be established per Village Code Section 12-7-3-3 and Illinois Standard Specifications for Road and Bridge Construction, Section 250 with National Seed Field of

Dreams Athletic mixture. Any right of way fronting said Park Donation Parcel shall be substantially complete as to any required public improvements in said right of way. Water and sanitary utilities will be extended from the mains to the property line of the Park Donation Parcel. The timing of this donation shall be at the direction of the Village, but the timing of final grading, seeding and extension of utilities shall be at the time of development of the adjacent Development Area, but no later than the development of 50% of the overall total approved units. Said grading, seeding, and utility work shall be completed to the satisfaction of the Park District. The Village, or Park District as appropriate, shall be responsible for the maintenance of the Park Donation Parcel as of the time the Village or Park District accepts the donation of the parcel. Should the Village allow the number of total residential units be increased an additional cash in lieu of land dedication shall be made by the developer of the additional residential units in accordance with then existing Village ordinances.

- iii. The school land and cash donation requirements for the Northwest Parcel and the Landcap Lots shall be met by the transfer of eight (8) acres (“**School Donation Parcel**”) (as shown on Exhibit “G”) to the Village of the School District as directed by the Village. Prior to any such donation, the Northwest Parcel Developer shall provide appropriate and sufficient documentation demonstrating that the site is free from any environmental condition or any other state which would require remediation and/or interfere with its intended use. Along with the donation of the School Donation Parcel, the Northwest Parcel Developer shall undertake grading with maximum slopes between 2% and 25% in perimeter transition areas and otherwise less than 3% to insure positive and controlled drainage of the entire School Donation Parcel as determined by the Village Engineer, six (6) inches of topsoil and seed that shall be established per Village Code Section 12-7-3-3 and Illinois Standard Specifications for Road and Bridge Construction, Section 250 with National Seed Field of Dreams Athletic mixture. Any right of way fronting said School Donation Parcel shall be substantially complete as to any required public improvements in said right of way. Water and sanitary utilities will be extended from the mains to the property line of the School Donation Parcel. The timing of this donation shall be at the direction of the Village, but the timing of the grading, seeding, and extension of utilities shall be at the time of

development of the adjacent Development Area, , but no later than the development of 50% of the overall total approved units. Said grading, seeding, and utility work shall be completed to the satisfaction of the School District. The Village, or School District as appropriate, shall be responsible for the maintenance of the School Donation Parcel as of the time the Village or School District accepts the donation of the parcel. Should the Village allow the number of total residential units be increased an additional cash in lieu of land dedication shall be made by the developer of the additional residential units in accordance with then existing Village ordinances.

- iv. No other park or school land/cash in lieu of land donations shall be required from the Northwest Parcel or Landcap Lots.
 - v. Possible Future Commuter Train Station. The Northwest Parcel Developer shall donate to the Village the parcel of land set forth on Exhibit G for the development of a future train station. Prior to any such donation, the Northwest Parcel Developer shall provide appropriate and sufficient documentation demonstrating that the site is free from any environmental condition or historic site issues which would require remediation and/or interfere with its intended use. The donation shall be required at such time as the Village indicates in writing a demand for said donation which shall be thereafter made within 60 days. If demand is not made provided during the term of the Amended Agreement, the obligation to provide the donation shall continue as a covenant running the land and shall be recorded against said parcel.
 - vi. Northwest Parcel Owner shall dedicate to the Village the Right of Way Dedication for At-Grade Protected Roadway Crossing known as Alexander Drive shown on Exhibit G. The donation shall be required at such time as the Village indicates in writing a demand for said donation which shall be thereafter made within 60 days. If demand is not made provided during the term of the Amended Agreement, the obligation to provide the donation shall continue as a covenant running the land and shall be recorded against said parcel.
5. Municipal Consultants' Fees. Northwest Parcel Developer and Village agree that for the costs of review by experts and other consultants necessary for the review of the development of the

Property, Developer shall reimburse the Village as required in the Village Ordinances.

6. Staff Time. Northwest Parcel Developer and Village agree that for the costs of review by staff necessary for the review of the development of the Property, Developer shall reimburse the Village as required in the Village Ordinances. This obligation shall commence upon the Village's approval of this Amended Agreement.

d. Construction of Public Improvements

1. Reserved.
2. Bicycle Paths and Sidewalks: The Area Developer of any Development Area shall install sidewalk and bicycle paths as necessary to integrate sidewalk and bicycle circulation into the overall community and provide circulation within the Development Area and the Property to parks, amenities and the Village's Regional Bicycle Path as noted on the Village's Regional Bicycle Path Plan and as necessary to ensure continuity between Units 1A and 1B. The Area Developer shall integrate the bicycle paths with the sidewalk system along public roads by increasing the sidewalk width in order to accommodate bicycles. Any improvements impacting the Right of Way shall be graded, seeded, and restored to its original condition, to the satisfaction of the Village Engineer. Bicycle paths shall only be required to be constructed in conjunction with the development of a specific Development Area. Bicycle paths shall be a minimum width of ten feet (10') and constructed of either asphalt or concrete in such cross section as is required by the Village's Subdivision Code. Upon completion of a bicycle path, the Village agrees to accept the bicycle paths within Village Right of Way at the time the Village accepts the sidewalks within the applicable Development Area. Any bicycle paths not located within Village Right of Way shall be deeded to the home owners association at the time of turnover of association property with a public access easement being recorded upon said Paths at or prior to the time of dedication to the Homeowners Association. Any required reconstruction of existing paths due to the actions of the Northwest Parcel Developer or an Area Developer that disturbs an existing path shall be made complaint with the then current ADA guidelines for accessible curb ramps by the entity disturbing said path.
3. Development Area Roads

- i. Roads within Development Areas shall only be required to be constructed at the time of development of a Development Area. The roads within the Northwest Parcel that connect Development Areas shall be required to be constructed by Northwest Parcel Developer at a time approved by the Village with the first Subdivision Approval for a Development Area. There shall be required a minimum of two roadway access points (either temporary or permanent) for each Development Area for emergency access purposes.
- ii. The right of way requirements within Development Areas shall be in accordance with Exhibit "G".

e. Water System

1. Water Supply and Storage System

- i. As required per the Original Agreement, the water storage tank, two wells and treatment facility ("**Water Supply and Storage System**") have been constructed and are operational. Within 90 days of execution of this Amended Agreement, the North Parcels Owner shall transfer, through a quit claim deed and bill of sale the following:
 - a) Land upon which the storage tank, wells (10 and 11), raw water main, appurtenances, and treatment facility is located.
 - b) All personal property and fixtures located upon VI (a) (i) above.
 - c) All plans and documents concerning the Water Supply and Storage System that is in the actual possession of the North Parcels Owner.
- ii. In the case that any element of the Water Supply and Storage System is not located on Village owned property, appropriate easements shall be granted, as necessary for the Village's access, use, maintenance, and operation of the same.
- iii. Village agrees to accept the transfer of the Water Supply and Storage System in a 'where-is, as-is condition'. The North Parcels Owner makes no representations as to the construction or operating conditions of the Water Supply and Storage System nor does the North Parcels Owner

accept any responsibility for any repairs or modifications of the Water Supply and Storage System that the Village may find necessary.

- iv. The transfer of the Water Supply and Storage System shall be considered to satisfy all of the North Parcels Owner's obligations with respect to the Water Supply and Storage System unless densities increase due to a subsequent development agreement hereunder. The only additional water system improvements that shall be required are those to serve a Development Area. Based on currently approved housing densities no additional improvements to the water system shall be required and there is sufficient capacity.
- v. Upon transfer of the Water Supply and Storage System, all water tap-on fees (except for the cost of water meters) shall be permanently waived except as noted on Exhibit I for all LandCap Lots and all development within the Northwest Parcel unless densities increase due to a development agreement hereunder. This provision shall survive the term of the Amended Agreement.
- vi. The Village through this Amended Agreement hereby confirms that there is adequate capacity in the Water Supply and Storage System to allow for the full build out of the Northwest Parcel at the maximum densities specified in Section II(b)(2) and in accordance with the provisions of the Amended Agreement.

2. Water Distribution System

- i. Looping of Water Mains. Northwest Parcel Developer shall agree to provide a water looping system as required by the Village engineer.
- ii. Connection to Village Water Main System. Upon receipt of a properly completed application and payment of applicable connection fees, the Village shall be obligated to permit connection of residences and buildings contemplated to be built on the Property and the facilities for fire protection, as provided in this Amended Agreement, to the Village's water supply system, and to supply water thereto to the same extent as may be supplied to other structures and areas within the Village. Northwest Parcel. All buildings hereafter constructed on the Property shall be required to use the Village water supply system.

iii. If the Village requires the oversizing of water utilities within the Northwest Parcel as they are extended to serve properties outside of the Northwest Parcel, the North Parcels Owner, or the Northwest Parcel Developer constructing such utility lines shall be allowed to recapture the cost of such oversizing. Extending a utility to the far side of its property shall not be considered oversizing. The calculation of oversizing shall be subject to the discretion of the Village.

f. Sewer System

1. If the Village requires the oversizing of sewer lines within the Northwest Parcel as they are extended to properties outside of the Northwest Parcel, the North Parcels Owner, or the Northwest Parcel Developer constructing such utility lines shall be allowed to recapture the cost of such oversizing. Extending a utility to the far side of its property shall not be considered oversizing. The calculation of oversizing shall be subject to the discretion of the Village.

2. Annexation to Fox Metro Water Reclamation District (“FOX METRO”). Northwest Parcel Developer, at Northwest Parcel Developer’s recommendation, liability and expense, agree to file the necessary petitions to request the annexation of the Property to FOX METRO so that all the Property is served by FOX METRO. Village shall use its best efforts to assist Northwest Parcel Developer in the annexation process. VILLAGE agrees that Northwest Parcel Developer in their sole discretion shall be allowed to determine the sequencing and timing of annexation to FOX METRO on a parcel by parcel basis, and that the entire site need not be annexed at the same time.

3. If North Parcels Owner or Northwest Parcel Developer cannot obtain any necessary easements for the construction of the Sewer System, the Village agrees to utilize its power of eminent domain to obtain said easements, subject to the North Parcels Owner or Northwest Parcel Developer advance funding all the costs, expenses, attorney’s fees and expert fees. If the Village is required to undertake eminent domain, it shall be done in a timely manner so as to not delay construction within a Development Area.

g. Stormwater System

1. No recapture shall be allowed for improvements related to the storm water system. Extending a utility to the far side of its property shall not be considered oversizing.

V. LANDCAP LOT AND ADJOINING HOA PARCEL REQUIREMENTS

- a. For any Landcap Lot and any adjoining parcel owned by Settlers Ridge Community Association, Inc., all parkway improvements, including, but not limited to, final grading, seeding, the installation of an apron, and the installation a sidewalk fronting said lot and/or adjoining any properties owned by the homeowner's association, shall be completed prior to issuance of a Certificate of Occupancy for the home on such lot. However, such improvements shall not be installed between November 1st and April 15th of any given year. If this provision delays installation of the improvements, the Village shall still issue a temporary certificate of occupancy for dwelling units on Landcap Lots. The owners of the Landcap Lots shall utilize the Village's municipal tree purchasing service as organized from time to time.
- b. The Village shall have the right to approve all architectural elevations and standards and landscaping standards prior to issuance of a building permit. Architecture standards and landscaping standards in the Original Agreement shall no longer apply to construction within the Affected Property.
- c. Except as specifically denoted in this section, North Parcels Owner and Northwest Parcel Developer have no responsibility for any improvements in Unit 1A and Unit 1B of Settlers Ridge.

VI. CONSTRUCTION AND RELATED ISSUES

- a. Signage. The Village agrees to allow the following signage to be used in the development only on private property approved by the Village:
 1. Project signs: Northwest Parcel Developer shall be allowed four (4) project signs in locations approved by the Village. Said signs can be two sided with a maximum area of 200 square feet per side and a maximum height of fifteen (15) feet, and two (2) of them may be externally illuminated. Such signs are to be removed by Northwest Parcel Developer upon completion of 95% build out of the Northwest Parcel.
 2. Development Unit Signs: Any such signs (and removal timeframes for the same) shall be separately agreed to by the Village and Northwest Parcel Developer or any Area Developer or any Homebuilder (as applicable) without further amendment of the Amended Agreement.
 3. Sales or Marketing Signs/Flags: Any such signs (and removal timeframes for the same) shall be separately agreed to by the Village and Northwest Parcel Developer or any Area Developer or any Homebuilder (as applicable) without further amendment of the Amended Agreement.
 4. Temporary For Sale/Promotional Signs: Any such signs (and removal timeframes for the same) shall be separately agreed to by the Village and Northwest Parcel Developer or any Area

Developer or any Homebuilder (as applicable) without further amendment of the Amended Agreement.

5. Directional Sign: Any such signs (and removal timeframes for the same) shall be separately agreed to by the Village and Northwest Parcel Developer or any Area Developer or any Homebuilder (as applicable) without further amendment of the Amended Agreement.
 6. Permanent Monument Signs: Any such signs shall be separately agreed to by the Village and Northwest Parcel Developer or any Area Developer (as applicable) without further amendment of the Amended Agreement.
 7. Model Home Signs: Any such signs (and removal timeframes for the same) shall be separately agreed to by the Village and Northwest Parcel Developer or any Area Developer or any Homebuilder (as applicable) without further amendment of the Amended Agreement.
 8. Village “Gateway” Sign: Northwest Parcel Developer agrees to pay for and install an illuminated Village gateway sign as shown on Exhibit (?), to be located at the northeast corner of the North Parcel adjacent to Galena Boulevard, and Developer will also dedicate the area for said sign and grant appropriate easements of access for the Village to maintain said sign. Said land shall be dedicated and said sign shall be installed at the same time as the Galena Boulevard/Gordon Road intersection improvements are made per Group Exhibit “H”.
- b. Model Homes. Within each Development Area, an Area Developer or Homebuilder shall be permitted to construct up to two (2) model homes of each home product type. The Village may grant approval for additional model homes at the time the Development Area is approved.. Model homes may be constructed upon completion of a binder base road, and may not be issued a temporary certificate of occupancy until temporary water and sanitary sewer facilities are available for the model homes which meet the Village’s requirements for public health standards. At the time of completion and opening of model homes, a binder course pavement shall be completed on the street the model homes are fronting, unless otherwise prevented by the weather or the timing restrictions imposed pursuant to this Amended Agreement. Northwest Parcel Developer hereby agrees to indemnify, defend, and hold harmless the Village and the Corporate Authorities, officers, agents, employees, and consultants (collectively “Indemnitees”) from all claims, liabilities, costs and expenses incurred by or brought against all or any of the Indemnitees as a direct and proximate result of the construction of any model home units (if permitted) prior to the installation of the public street and water improvements required to service such dwelling unit. Model homes will not be used to market other developments outside of the Affected Properties and the use thereof will be discontinued when 95% of the occupancy permits for a particular Development Area have been issued. Notwithstanding the foregoing sentence, one Area Developer or Homebuilder may use its model homes in one Development Area to market another Development Area

within the Affected Properties until 95% of all occupancy permits are issued for all Development Areas under such Area Developer's or Homebuilder's control. The Village Board may waive this provision without further amendment of this Amended Agreement.

- c. Occupancy Permits. The Village shall use its best efforts to issue occupancy permits in a timely manner after application, therefore, or post a notice of denial informing the applicant specifically as to the corrections necessary as a condition precedent to the issuance of an occupancy permit and designation the section of this Amended Agreement, State or Federal law, the Village Code of Ordinance relied upon by the Village in its request for correction.

The Village may issue temporary occupancy permits in accordance with Village Ordinances during a six (6) month period, between November 1 and June 1 of each year, when final grading work, landscaping, sidewalk, driveway, and other pavement installation cannot be completed.

- d. Sales Trailers/Construction Office. A sales trailer area shall be approved and allowed to be constructed at such time as utilities are available to the sales trailer area and a gravel road able to support emergency vehicles is available along with a parking lot for potential home buyers in accordance with Village Ordinances or otherwise as approved with each Subdivision Approval.
- e. Mass Grading. The Area Developer of any Development Area may undertake site preparation, mass grading, and installation of underground utilities prior to obtaining final plat approval for the Development Area, at its sole risk, provided: (a) the Village Engineer has reviewed and approved the proposed grading and utility plan; (b) the Village has issued a mass grading permit; (c) The Area Developer has posted a performance bond or Letter of Credit acceptable to the Village as to form and issuer for dirt work/mass grading; and (d) soil erosion control, tree protection measures, and any other governmental approvals are in place.
- f. Sidewalks. Concrete sidewalks shall not be installed between November 1st and April 15th of any given year. If this provision delays installation of the sidewalks within a Development Area, the Village shall still issue a temporary certificate of occupancy for dwelling units within a Development Area or on a Landcap Lot so long as the other required Site Improvements are completed.
- g. Trees: The Northwest Parcel Developer or Area Developer shall utilize the Village's municipal tree purchasing service as organized from time to time.
- h. Utilities. The Northwest Parcel Developer agrees to bury all overhead utility lines existing at the time of development that run within the Northwest Parcel or the Landcap Commercial Parcel, as applicable. The Northwest Parcel Developer further agrees to extend all required public improvements to the borders of its Property and off-site where designated in the final engineering plans and as noted in this Amended Agreement.
- i. Prohibition on Private Wells and Septic Fields. New privately owned and/or operated wells and new septic systems shall be prohibited.

- j. Reserved.
- k. Northwest Parcel Developer or an Area Developer shall add a five (5) foot wide right of way strip across lots which otherwise only have alley frontage as required by the Village during the permitting or Final Plat process for any such lots.
- l. Traffic Law Enforcement. Northwest Parcel Developer shall enter into a separate written agreement providing for traffic law enforcement on all private drives (alleys, etc.) of the Property with the Village.
- m. Deed Restriction. A deed restriction shall be recorded on all platted residential lots prohibiting re-subdivision of those lots, subsequent to recording the final plat.
- n. Completion of Public Improvements. Northwest Parcel Developer shall be responsible for master improvements within the Northwest Parcel outside of Development Areas, with specific timing determined by the Village in connection with the Subdivision Approvals for each Development Area. The failure of an Area Developer of a specific Development Area to complete the associated Development Area improvements (including but not limited to grading, installation of utilities, construction of roads and sidewalks, bike paths, and landscaping) (“**Site Improvements**”) shall not be considered as a default of the obligations and provisions of this Amended Agreement as it applies to the North Parcels Owner, Northwest Parcel Developer, or any other Area Developers of other Development Areas. The Village shall not be allowed to withhold approval for any other Area Developer of any other Development Area, nor may the Village deny building permits within any other Development Area for failure to complete the Site Improvements within a Development Area except in the event that a utility system, roadway, or Site Improvement that was required to be constructed in one Development Area fails to serve another Development Area in which case, a condition of the approvals of the non-defaulting Development Area shall be a requirement to complete the utility system integral to its own Development Area in the defaulting Development Area. Said improvements shall be in accordance with the standards set forth in Village Ordinances.
- o. The Northwest Parcels Owner or its successor and assigns shall transfer ownership of all islands within all rights of way and common areas over which it continues to have ownership, to a Homeowners Association for maintenance, subject to the Village having a permanent non-revocable no-cost option to purchase any island within the Village’s rights of way. If the Village exercises this option, an agreement setting forth the details shall be entered into at the time of recordation of the Final Plat of Subdivision for a Development Area.
- p. The Owners and their successors and assigns agree to follow the Kane County stormwater regulations as they are in effect at the time development of a Development Area is submitted for approval.
- q. Construction Routes and Street and Site Cleanup: Northwest Parcel Developer agrees to limit construction routes into the subdivision to access points off Galena

Boulevard, Gordon Road, and Prairie Street or such other routes as designated by the Village staff from time to time. Construction routes shall be subject to Village staff/Engineer approval. Northwest Parcel Developer, Area Developers and Homebuilders acknowledge that, depending on weather conditions, construction traffic entering and leaving a construction site creates debris, especially dirt and mud clods on streets and roadways adjacent to the construction site. Northwest Parcel Developer, Area Developers and Homebuilders agree that they shall inspect and clean the streets and roadways adjacent to and within 1,000 feet of the entrance to Northwest Parcel Developer's, Area Developer's and Homebuilder's respective construction sites as needed during each morning and evening while construction is occurring on said site. Northwest Parcel Developer, Area Developers and Homebuilders further agree to periodically mow weeds, pick up trash and debris and repair and replace soil erosion control fencing so as to comply with applicable ordinances of the Village in their respective sites. In addition, Northwest Parcel Developer shall cause each street constructed within Development Area, prior to the acceptance of such street, to be plowed within twelve (12) hours following an accumulation of three (3) inches of snow thereon. Salt applications shall be done as requested by the Village. As security for such obligations, and as a condition of the issuance of any filling or grading permits, Northwest Parcel Developer Area Developers and Homebuilders each agree to separately deposit within the Village the sum of twenty-five thousand (\$25,000.00) dollars ("Site Control Escrow") for their respective Development Areas. In the event Northwest Parcel Developer, Area Developers or Homebuilders fail to clean or snow plow the streets, mow weeds, pick-up debris or repair or replace soil erosion control fencing as reasonably required within their respective areas of control, as herein provided, or within twenty-four (24) hours after receipt of notice from the Village of the failure of Northwest Parcel Developer, Area Developer or Homebuilder to comply with this provision, then the Village may perform or contract with others to perform such undertaking and deduct the cost thereof from the applicable Site Control Escrow. Northwest Parcel Developer, Area Developer or Homebuilder shall, within 15 business days following written notice from the Village, replenish their Site Control Escrow as funds are from time to time properly withdrawn therefrom by the Village, so as to maintain the same at a twenty-five thousand (\$25,000.00) dollar balance. All sums remaining on deposit with the Village pursuant to this provision shall be returned to Northwest Parcel Developer, Area Developer or Homebuilder upon final acceptance by the Village of all public improvements in a given Development Area, or completion of a Development Area in accordance with the last Final Plat thereof, whichever shall be the last to occur.

r. Subdivision and Performance Bonds

1. North Parcels Owner, Northwest Parcel Developer or any Area Developer, as security for the completion ("**Completion Security**") of either Off-site Improvements or on site improvements required for the Development of a specific Development Area may choose to either: (i) submit a Letter of Credit (in such form and from such an entity as is acceptable to the Village); (ii) post a performance bond (a "**Performance Bond**") as is acceptable to the Village; or (iii) establish with the Village or with a title company agreeable to Developer and the Village a cash construction escrow. If any security

requirement is in excess of \$4,000,000.00, that full security requirement must be split proportionally between two issuers of said Performance Bond or Letter of Credit and a Performance Bond. (A single issuer shall include affiliated issuers). If a cash construction escrow is established, said escrow shall be in conformance with an escrow agreement that allows for the direct payment of the costs of construction of the improvements, and further allows the Village to direct the payment from the Escrow for completed improvements. The amount of the Completion Security shall be in the amount of 120% of the engineer's estimated cost for the engineering and construction of said improvements. Said amount shall be reviewed by the Village Engineer and adjusted annually (with new security issued to cover any increases in the required amount) to reflect changes in the estimated costs. In the case of Default by the Northwest Developer, all such engineering costs shall be adjusted to reflect inflation. The Completion Security shall be required to be posted in accordance with the Subdivision Control Ordinance. If Northwest Parcel Developer or any Area Developer elects to post a Performance Bond, Northwest Parcel Developer or Area Developer, as applicable, shall deposit a separate cash amount (the "**Cash Deposit**") equal to 5% of such Performance Bond until the aggregate amount of Cash Deposits equals one hundred thousand dollars (\$100,000.00) for the Northwest Parcel Developer or for each individual Area Developer. The Cash Deposits are to secure the incidental costs of a breach under the Performance Bond and may be drawn upon by the Village to cover costs unrecoverable under the Performance Bond and all costs associated with pursuing said Performance Bond, including but not limited to 1) attorneys fees, 2) engineering fees and studies, 3) cost increases for public improvements not sufficiently covered by the Performance Bond and 4) expenses relating to mitigation of damages due to a breach. Said amounts may be drawn upon after a written notice is sent by the Village to the Northwest Parcel Developer or Area Developer, as applicable, of said breach provided said breach is not cured within 30 days thereof.

2. Upon the completion of all Offsite Road Improvements or Site Improvements for a particular Development Area, the Village shall accept said improvements so long as they are constructed in conformance with the engineering plans approved by the Village and have also obtained all approvals required by any other applicable permitting agency. Road Improvements need not be accepted by the Village if submitted after October 15th of any given year until April 15th of the following year. The Northwest Parcel Developer or Area Developer shall submit a request for acceptance of the Public Improvements with customary sworn statements, lien waivers and warranty

provisions. The Village agrees to inspect the Public Improvements within thirty (30) days of a request by such developer of the Development Area and either:

- i. Agree to accept the Public Improvements; or
 - ii. Issue a punch list within fifteen (15) days of the field review of items that are required to be addressed in order to be in compliance with the approved construction documents (“**Punch List**”).
3. If the Village issues a Punch List: (i) developer shall address the items and then resubmit a request for acceptance of the Public Improvements and (ii) the Parties will thereafter proceed in accordance with the previous paragraph V.G.2.
 4. The Village agrees to accept all such Site Improvements upon full completion of all improvements within in a Development Area, and approved, subject to maintenance periods and warranties as specified in the Subdivision Control Ordinance and release the Completion Security as to that Development Area.

VII. GENERAL PROVISIONS

- a. Severability. This Amended Agreement is entered into pursuant to the provisions of 65 ILCS Sec 5/11-15.1, et seq. In the event any part or portion of this Amended Agreement (except those provisions relating to the requested rezoning of the Affected Property identified herein and the ordinances adopted in connection herewith) is held to be invalid by any court of competent jurisdiction, said part, portion, clause, word or designation of the Amended Agreement shall be deemed to be excised from this Amended Agreement and the invalidity thereof shall not effect such portion or portions of this Amended Agreement as remain. In addition, the Parties shall take all action necessary or required to fulfill the intent of this Amended Agreement as to the use and development of the Affected Property.
- b. If for any reason during the term of this Amended Agreement, as set forth in paragraph C below, any approval or permission granted hereunder regarding plans or plats of subdivision or zoning is declared invalid, the Village agrees to take whatever action is necessary to reconfirm such plans, plat approvals or zoning ordinances effectuating the zoning, variations and plat approvals proposed herein.
- c. Time is of the Essence. It is understood and agreed by the Parties that time is of the essence in this Amended Agreement, and that all Parties will make every reasonable effort to expedite the matter hereof. It is further understood and agreed by the Parties that the successful consummation of this Amended Agreement requires their continued cooperation.
- d. Headings. The article headings are for convenience only, and in no way define, limit or describe the scope or intent or any article or section of this Amended Agreement.

arising from this Amended Agreement shall be filed in the Circuit Court for the 16th Judicial Circuit, Kane County Illinois.

- j. Cooperation. The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Amended Agreement and to aid and assist each other in carrying out the terms and objectives of this Amended Agreement and the intentions of the Parties as stated herein.
- k. Amendment. Except as may otherwise be provided herein, this Amended Agreement, together with the exhibits attached hereto, may be amended only by the written agreement of the Parties, and execution of all required ordinances and after providing public notice as provided by law.
- l. Preservation of Zoning. The Village acknowledges that under current state law, the zoning approved under this Amended Agreement and the Revised PDD Ordinance survive the expiration of this Amended Agreement.
- m. Stop Orders. The Village shall issue stop orders as necessary to ensure development occurs as required by this Amended Agreement and Village Ordinances.
- n. Backup Special Service Area: Establishment and Purpose. Owners and subsequent Developers and their respective successors, shall not object to and agree to cooperate with the Village in establishing a special service area (“SSA”), or any number thereof, for the Property to be utilized as a backup mechanism for the care and maintenance of the common facilities (“Common Facilities”), which include but are not limited to, detention areas, lift stations, common landscaped areas, private parks, bicycle paths, trails, subdivision monumentation, signage, and any other common areas of the subdivision. The SSA shall be established prior to the sale of any dwelling unit to an individual owner of the dwelling unit. The SSA shall be established on a Unit by Unit basis at the time of final platting of a portion of the Property. North Parcels Owner shall annex developed areas within the Northwest Parcel into the existing Homeowners Association or establish, through a declaration of covenants on the Northwest Parcel, a separate homeowners association, which shall have the primary responsibility of providing for the regular care, maintenance, renewal and replacement of the Common Facilities including, without limitation, the mowing and fertilizing of grass, pruning and trimming of trees and bushes, removal and replacement of diseased or dead landscape materials, mosquito abatement, possible aeration of retention basins (including but not limited to new mechanical improvements to add aeration if the Village determines such aeration is necessary, it being acknowledged that the design, if functional, does not require aeration), and the repair and replacement of monument signs, so as to keep the same in a clean, sightly and first class condition (the “**Common Facilities Maintenance**”). If at any time such Homeowners Association fails to conduct the Common Facilities Maintenance, then the Village shall have the right, but not the obligation, to undertake such maintenance and utilize the SSA to provide sufficient funds to pay the costs of the Common Facilities Maintenance undertaken by the Village. The SSA shall provide for the authority of the Village to levy up to One dollar and Fifty cents (\$1.50) per \$100.00 of assessed valuation (“Rate Cap”) to fund the payment of the aforesaid costs and expenses. A maintenance easement (“**Common Facilities Maintenance Easement**”) shall be established over all of those Common Facilities located on the

Final Plat for each Phase of Development in favor of the Village and any future Homeowners Association that undertakes responsibility for the Common Facilities Maintenance. The substance of the Common Facilities Maintenance Easement shall be as approved by legal counsel for the Village and Northwest Parcel Developer, which approvals shall not be unreasonably withheld. The Village shall, for the duration of this Amended Agreement, have a non-revocable, no-cost option to acquire any islands within Village right-of-ways as well as common area lots. Said option agreement shall be put in writing to the satisfaction of the Village Attorney prior to recording the final plat and recorded simultaneously with the recording of the Final Plat.

- o. Disconnection. Owner and Developer shall not petition to disconnect any portion or all of said Property from the Village hereafter.

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the Parties have executed this Amended Agreement the day and year first above written.

VILLAGE:

THE VILLAGE OF SUGAR GROVE

By: _____
Name: _____
Title: _____

Attest: _____

NORTH PARCELS OWNER:

LCP SLJV 2008-1 IL-1, LLC

By: _____
Name: _____
Title: _____

NORTHWEST PARCEL DEVELOPER:

LCP SETTLERS RIDGE DEVELOPMENT, LLC

By: _____
Name: _____
Title: _____

**EXHIBIT LIST
(TO BE PROVIDED)**