

RESOLUTION NO. 2020-111

**RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA
APPROVING AGREEMENT REGARDING TERMINATION OF PUBLIC IMPROVEMENT
REIMBURSEMENT AND DEVELOPMENT INCENTIVE AGREEMENT**

The Village Board for the Village of Caledonia resolves as follows:

WHEREAS, Parkview Development and LLC, Parkview Commons, LLC (collectively "Parkview") and the Village entered into a Public Improvement Reimbursement and Development Incentive Agreement (the "Original Agreement") with an Effective Date of May 6, 2014, and recorded as Document No. 2382925 with the Racine County Register of Deeds.

WHEREAS, the purpose of the Original Agreement was to facilitate the construction of public improvements of a turn lane within State Hwy. 32 right-of-way by Parkview of said improvements. The amount of the incentive was to be dependent upon the assessed value of a future expansion in a defined site area and the payment of the incentive was to be funded by the Property Tax Increment (as defined in the Original Agreement), per the Original Agreement.

WHEREAS, the necessary public improvements within State Highway 32 were completed by Parkview and/or Parkview's affiliates and accepted by the Wisconsin Dept. of Transportation.

WHEREAS, no incentive payments (as described in the Original Agreement) were made by the Village nor received by Parkview, and Parkview is willing to forgo any such incentive payments now and in the future with the Village specifically denying that any such payments are due under such Original Agreement.

WHEREAS, the parties wish to terminate the Original Agreement as Parkview will not meet the deadline to qualify for any such incentive and to clear title to show that Parkview did meet its construction obligations under the Original Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Agreement Regarding Termination of Public Improvement Reimbursement and Development Incentive Agreement between Parkview and the Village attached hereto as **Exhibit A** is approved and the Village President and Clerk re authorized to execute said agreement.

16th Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this day of November, 2020.

VILLAGE OF CALEDONIA

By: James R. Dobbs
James R. Dobbs
Village President

Attest: Karie Pope
Karie Pope
Village Clerk

**AGREEMENT REGARDING TERMINATION OF PUBLIC IMPROVEMENT
REIMBURSEMENT AND DEVELOPMENT INCENTIVE AGREEMENT**

**THIS AGREEMENT REGARDING TERMINATION OF PUBLIC
IMPROVEMENT REIMBURSEMENT AND DEVELOPMENT INCENTIVE**

AGREEMENT (this “Termination Agreement”) is made and entered into by and between **PARKVIEW DEVELOPMENT, L.L.C.**, a Wisconsin limited liability company and **PARKVIEW COMMONS, L.L.C.**, a Wisconsin limited liability company (collectively or individually, hereinafter referred to as "Owner") and the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin (the "Village");

RECITALS:

1. Owner has developed apartment buildings known as Parkview I, Parkview II, and Parkview III (with common addresses respectively of 5215, 5311, and 5225 Douglas Avenue within the Village of Caledonia, Racine County, Wisconsin), as well as Parkview Gardens I, Parkview Gardens II, and Parkview Gardens III (with a common address of 5321 Douglas Avenue within the Village of Caledonia, Racine County, Wisconsin). These properties, as well as contiguous land owned by Owner and/or Owner’s affiliates, are collectively or individually hereinafter referred to as "Parkview."

2. Owner and the Village entered into a Public Improvement Reimbursement and Development Incentive Agreement (the “Original Agreement”) with an Effective Date (as defined in the Original Agreement) of May 6, 2014, and recorded as Document No. 2382925 with the Racine County Register of Deeds..

3. The purpose of the Original Agreement was to facilitate the construction of

necessary public improvements of a turn lane within State Hwy. 32 right-of-way, which Owner and/or Owner's affiliates were prepared to do, and the Village agreed to provide a development incentive in the form of reimbursement to Owner for said improvements. The amount of the incentive was to be dependent upon the assessed value of any future expansion within the Site (as defined and described in the Original Agreement) by Owner, and the payment of the incentive was to be funded by the Property Tax Increment (as defined in the Original Agreement), as provided in the Original Agreement.

4. The Property Tax Increment was to be generated based on improvements on the Site (as defined and described in the Original Agreement) as set forth on Exhibit A to the Original Agreement, which is attached hereto and incorporated herein by reference.

5. The necessary public improvements were completed by Owner and/or Owner's affiliates and accepted by the Wisconsin Dept. of Transportation.

6. No incentive payments (as described in the Original Agreement) were made by the Village nor received by Owner, and the Owner is willing to forgo any such incentive payments now and in the future with the Village specifically denying that any such payments are due under such Original Agreement.

7. The parties wish to terminate the Original Agreement and the parties specifically recognize that Owner will not meet the deadline to qualify for any such incentive and to clear title to show that Owner completed the public construction obligations under the Original Agreement.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

2. **Termination of the Original Agreement.** The Original Agreement be and is terminated as of the Termination Agreement Effective Date (as defined hereinafter), with the parties having no further rights, duties, or obligations with respect thereto.

3. **Successors and Assignment.** This Termination Agreement is binding upon and enforceable against the parties' respective successors and assigns.

4. **Termination Agreement Effective Date.** This Termination Agreement becomes effective as of the date last executed by a party below (the "Termination Agreement Effective Date").

5. **Recording of this Termination Agreement.** This Termination Agreement may be recorded by Owner at Owner's expense, a copy of which will be supplied to the Village.

6. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. If executed in multiple counterparts, this Agreement shall become binding when two or more counterparts hereto, individually or taken together, bear the signatures of all parties reflected hereon as the signatories. A facsimile or electronic signature to this Agreement shall be deemed to be an original for all purposes.

7. **Duty of Cooperation.** Each party shall cooperate with the other party so that the other party may properly perform its obligations under this Agreement.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Regarding Termination of Public Improvement Reimbursement and Development Incentive Agreement on the Termination Agreement Effective Date.

PARKVIEW DEVELOPMENT, L.L.C., a Wisconsin limited liability company, and **PARKVIEW COMMONS, L.L.C.**, a Wisconsin limited liability company

By: _____
Name: Alfred G. McConnell
Title: Manager

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Personally came before me, the undersigned, Alfred G. McConnell, in the above noted capacity, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said parties.

GIVEN under my hand and notarial seal this _____ day of November 2020.

Notary Public

VILLAGE OF CALEDONIA, a municipal corporation located in Racine County, Wisconsin

By: _____
James R. Dobbs, Village President

Attest: _____
Karie Pope, Village Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

Personally came before me, the undersigned, _____ and _____, in the above noted capacities, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said party.

GIVEN under my hand and notarial seal this _____ day of November 2020.

Notary Public

EXHIBIT A

EXHIBIT A TO THE ORIGINAL AGREEMENT

RESOLUTION NO. 2014-30

**RESOLUTION AUTHORIZING THE VILLAGE OF CALEDONIA TO
ENTER INTO A PUBLIC IMPROVEMENT REIMBURSEMENT AND
DEVELOPMENT INCENTIVE AGREEMENT WITH PARKVIEW
DEVELOPMENT, L.L.C. AND PARKVIEW COMMONS, L.L.C.**

The Village Board of the Village of Caledonia ("Village"), Racine County, Wisconsin, resolves as follows:

RECITALS

WHEREAS, the success of the Parkview Senior Living Community ("Parkview") has resulted in increased traffic and the need for a southbound left-turn lane off of Douglas Avenue into the Parkview Senior Living Community; and

WHEREAS, Parkview is willing to construct the necessary public improvements at its cost, and construct additional taxable improvements, provided that the Village agrees to provide a development incentive in the form of reimbursement to Owner for said improvements. The amount of the incentive, if any, shall be dependent upon the assessed value of any future expansion by Owner of the Parkview Senior Living Community, as provided in the terms and conditions set forth in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Public Improvement Reimbursement and Development Incentive Agreement as set forth in **Exhibit A** which is attached hereto and incorporated herein is authorized and approved, and the Village President and Village Clerk are authorized to execute said agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this
5th day of May, 2014.

VILLAGE OF CALEDONIA

By: [Signature]
Bob Bradley, President

Attest: [Signature]
Karie Torkilsen, Clerk

**PUBLIC IMPROVEMENT REIMBURSEMENT
AND DEVELOPMENT INCENTIVE AGREEMENT**
(re-recorded to correct legal description)

Legal Descriptions:

LOT 2 OF CERTIFIED SURVEY MAP NO. 2862, IN THE
NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE
SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 4 NORTH,
RANGE 23 EAST, IN THE VILLAGE OF CALEDONIA, RACINE
COUNTY, STATE OF WISCONSIN.

AND

BEING A REDIVISION OF PARCEL 3 IN CERTIFIED SURVEY
MAP 2238, OUTLOT 1 IN CERTIFIED SURVEY MAP NO.
2862 AND PARCEL 1 IN CERTIFIED SURVEY MAP NO.
2862 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 20,
TOWNSHIP 4 NORTH, RANGE 23 EAST, IN THE VILLAGE
OF CALEDONIA, RACINE COUNTY, STATE OF
WISCONSIN.

AND

LOTS 1 & 2 OF CSM 3057, RECORDED IN VOL. 9 PAGES 941-
945, DOCUMENT #2322974, BEING A REDIVISION OF PARCEL
3 OF CSM 2238 OUTLOT 1 IN CSM 2862 AND PARCEL 1 IN CSM
2862 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 20,
TOWNSHIP 4 NORTH, RANGE 23 EAST, IN THE VILLAGE OF
CALEDONIA, RACINE COUNTY, STATE OF WISCONSIN.

AND

The Southwest 1/4 of Section 20, Township 4 North, Range 23 East located in the Village of Caledonia, Racine County, Wisconsin; begin at a point on the North and South 1/4 line of said Section 20 that is located South 00°14'00" West 305.75 feet from the center of said Section 20; run thence South 00°14'00" West 294.74 feet; thence West parallel with the East and West 1/4 line of Section 20, 1,823.31 feet to the Northeasterly line of Wisconsin State Highway 32; thence North 42°46'00" West along the Northeasterly line of said Highway 32, 40.33 feet; thence East 200.58 feet; then North 00°14'00" East 530.49 feet to the South line of the 4 1/2 Mile Road; thence North 00°14'00" East 40.00 feet to the East and West 1/4 line of said Section 20; thence East 66 feet along said East and West 1/4 line; thence South 00°14'00" West 40 feet to the South line of the 4 1/2 Mile Road; thence South 00°14'00" West 118.88 feet; thence West 33 feet; thence South 00°14'00" West 146.87 feet; thence East 306.28 feet; thence North 00°14'00" East 146.87 feet; thence East 948.78 feet; thence North 00°14'00" East 118.88 feet to the South line of the 4 1/2 Mile Road; thence North 00°14'00" East 40 feet to the East and West 1/4 line of said Section 20; thence East 66 feet along said East and West 1/4 line; thence South 00°14'00" West 40 feet to the South line of the 4 1/2 Mile Road; thence South 00°14'00" West 265.75 feet; thence East 294.94 feet to the North and South 1/4 line of said Section 20 and the point of beginning, Excepting therefrom the Northerly 40 feet of the above described premises which are reserved for highway; purposes. Said land being the Village of Caledonia, County of Racine; State of Wisconsin. - Parcel # 104-04-23-20-091-000

TYSON FETTES
RACINE COUNTY
REGISTER OF DEEDS
Fee Amount: \$30.00
Pages: 22



Return to Name and Address Below:

30-22

Timothy J. Pruitt
Pruitt, Ekes & Geary, S.C.
610 Main Street, Suite 100
Racine, WI 53403

Parcel ID Number(s)
104-04-23-20-091-000
104-04-23-20-102-131 - Lot 1 of CSM 3057
104-04-23-20-102-132 - Lot 2 of CSM 3057
104-04-23-20-104-010 and CSM 2862
104-04-23-20-104-020 - CSM 2862

**PUBLIC IMPROVEMENT REIMBURSEMENT
AND DEVELOPMENT INCENTIVE AGREEMENT**

THIS AGREEMENT is made and entered into by and between **PARKVIEW DEVELOPMENT, L.L.C.**, a Wisconsin limited liability company, and **PARKVIEW COMMONS, L.L.C.**, a Wisconsin limited liability company, (collectively or individually, hereinafter referred to as "Owner"), and the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin (the "Village");

RECITALS:

1. Owner, through its affiliates, has developed apartment buildings for seniors known as Parkview I, Parkview II, and Parkview III (with common addresses respectively of 5215, 5311, and 5225 Douglas Avenue within the Village of Caledonia, Racine County, Wisconsin), which offer independent living options to seniors, as well as Parkview Gardens I and Parkview Gardens II (with a common address of 5321 Douglas Avenue within the Village of Caledonia, Racine County, Wisconsin), which offer assisted-living options to seniors. These properties, as well as contiguous land owned by Owner, are collectively or individually, hereinafter referred to as the "Parkview Senior Living Community" or the "Parkview."

2. The success of the Parkview Senior Living Community has resulted in increased traffic and the need for a southbound left-turn lane off of Douglas Avenue into the Parkview.

3. Owner is willing to construct the necessary public improvements at its cost, and construct additional taxable improvements, provided that the Village agrees to provide a development incentive in the form of reimbursement to Owner for said improvements. The amount of the incentive, if any, shall be dependent upon the assessed value of any future expansion by Owner of the Parkview Senior Living Community ("Parkview Future Expansion

Site" or Site"), as provided in the terms and conditions set forth in this Agreement. The area upon which the Parkview Future Expansion Site shall be located is currently described in Exhibit A, which is attached hereto and incorporated herein by reference. However, at the time of its development, the description of Parkview Future Expansion Site shall be set forth with more specificity on a Certified Survey Map to be submitted to the Village for approval and subsequently recorded with the Office of the Racine County Register of Deeds.

4. In order to receive any reimbursement under this Agreement, Owner shall construct a development upon the Parkview Future Expansion Site by December 31, 2021, which shall have an assessed value of at least \$1,000,000 over the Site Tax Incremental Base Value as defined below.

5. Owner and the Village have each determined and agree that the timing of the construction of public improvements and new development on the Parkview Future Expansion Site, as described herein, has been the topic of ongoing discussions between the parties and that the construction timetable for the new development agreed to by Owner would not have occurred without the financial assistance set forth herein.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Defined Terms.**
 - **"Property Tax Increment"** shall mean the amount of annual real property taxes (or payment in lieu of taxes as provided herein) actually received by the Village that is attributable to the application of the Village's mill rate to that portion of the assessed value of the Site that is in excess of the Site Tax

Incremental Base Value. Property Tax Increment shall not contain any tax increment levied by the Village for its sewer or water utility districts, or tax increment paid to or received by any taxing jurisdiction other than the Village.

- **"Site Tax Incremental Base Value"** shall mean the assessed value of the Site on January 1 of the year following approval of the Site's Certified Survey Map based on the condition before the construction of any Site improvements. In the event that construction of Site improvements commences prior to the above-referenced January 1 assessment date, the Village Assessor shall determine the Site Tax Incremental Base Value as of the date of approval of the Site's Certified Survey Map based on the condition before the construction of any Site improvements.

3. **Conditions of Agreement.** The making of any incentive payments to Owner under this Agreement is conditioned upon Owner's continued strict compliance with the terms of this Agreement, including, without limitation, all of the following conditions:

- a) The construction by Owner to substantial completion (subject only to "punch-list" type matters) at its cost by December 31, 2014, the public improvements approved by the Department of Transportation and the Village of Caledonia, as identified in **Exhibit B**, which is attached and incorporated herein by reference.
- b) Owner shall (to the best of its actual knowledge) comply with and/or obtain (as may be applicable) all necessary and applicable local, county, state, and federal laws, regulations, approvals, and permits, including, without

limitation, prevailing wage determinations, and any and all requisite approvals by the Village Plan Commission and/or Village Board of architectural, engineering, grading, design, and construction plans and specifications, as well as the timely payment by Owner of any and all related fees required to be paid by Owner to the Village. Additionally, during the term of this Agreement, Owner shall further have no delinquent fines, penalties, or financial obligations whatsoever, including, without limitation, taxes owed to the federal government, the State of Wisconsin, the County of Racine, Wisconsin, the Village, or any other government agency or entity on a federal, state, or local level, which remain unpaid after thirty (30) days' notice to Owner..

- c) Subject to the force majeure provisions of Section 15, Owner shall complete the development upon the Parkview Future Expansion Site, as evidenced by the issuance of an occupancy permit or final governmental approval by December 31, 2021.
- d) At such time as Owner is prepared to commence expansion of the Parkview Senior Living Community, Owner shall take the necessary steps to create a separate tax parcel via Certified Survey Map upon which the Site shall be located.
- e) Until such time as payments from the Village to Owner have ceased, Owner agrees, covenants, and warrants, which covenants and warranties shall run with the Site and bind future owners and occupants thereof, to refrain from contesting, appealing, or challenging in any venue that the Site's assessed

value should be lower than the Guaranteed Minimum Assessed Value set forth below. In the event Owner is to receive a tax refund as a result of contesting, the assessed value of the Site to the Board of Review, or as a result of filing an unlawful tax or excessive assessment claim, the Village shall be entitled to an offset against or reimbursement of any incentive payments made Owner for that amount of the assessed valuation reduced.

4. **Incentive Payments by the Village.** The Property Tax Increment to be shared by the parties is premised upon an expectation that the Parkview Future Expansion Site shall have an annual assessed value over and above the Site Tax Incremental Base Value of at least \$1,000,000 ("Guaranteed Minimum Assessed Value"). Once the Site improvements are fully complete and the fully assessed value meets or exceeds the Guaranteed Minimum Assessed Value, the Village agrees to reimburse Owner for a portion of Owner's improvement costs by paying Owner an incentive equal to 75% of the Property Tax Increment annually generated by the Site for the earlier of: (1) eight years, or (2) until Owner is reimbursed for the cost of improvements identified on Exhibit B ("Development Incentive") and related costs. In no event shall payments exceed \$120,000. Payment of Development Incentive is subject to the following conditions:

- a) The Development Incentive shall be non-interest bearing.
- b) The Village's obligation to make Development Incentive payments is conditioned upon the timely payment of all property taxes for the Site (subject to the opportunity to effect a cure of non-compliance as provided in this Agreement) and receipt by the Village Engineer of documentation

evidencing the actual construction costs incurred and related costs by Owner for construction of the public improvements.

- c) The Village's obligation to make Development Incentive payments shall be contingent on Owner's continued compliance with the terms of this Agreement.

Payments to Owner from the Village shall be made to the owner of record for the Site within sixty (60) days of the last tax settlement date (which is typically on or about August 20) following payment in full by Owner. For example, if Owner constructs a development on the Site in 2015 that meets or exceeds the Guaranteed Minimum Assessed Value, the timeline would be as follows:

2015 – Construction fully completed
January 1, 2016 – fully assessed value established by Village Assessor
December 2016 – tax bill issued to Owner
January 31/July 31, 2017 – Owner pays property tax bill in full
October 2017 – 75% of Property Tax Increment paid to Owner

5. **Taxability.** Owner shall not sell, transfer, convey, or use the Site in any manner that would render it exempt from the imposition of general property taxes under the statutes of the State of Wisconsin, except where taken in whole or in part by the exercise of eminent domain under federal or state statutes, laws, and regulations. Owner agrees that in the event the Site, or any part thereof, were deemed to be tax exempt, Owner shall make payments in lieu of taxes to the Village in an amount equal to the amount of Property Tax that would have been collected were the Site taxable and by the same date that the first installment tax payment on the Site's property would have been due were the entire Site taxable.

6. **Legal Action.** In addition to the provisions set forth in this Agreement, the Village may take any and all other appropriate action at law or equity to enforce compliance with

the provisions of this Agreement by Owner, and in the event of a legal action in which the final determination is in favor of the Village, the Village shall be entitled to collect from Owner statutory costs and disbursements, plus the Village's actual reasonable attorneys' fees and costs.

7. **Laws to Be Observed.** Owner shall at all times observe and comply, subject to the opportunity to effect a cure of non-compliance as provided in this Agreement, with all federal, state, and local laws, regulations, and ordinances (collectively, the "Laws") which are in effect or which may be placed in effect and impact the ownership and occupancy of the Site or Owner's operations and the exercise of its rights and obligations hereunder.

8. **Public Protection and Safety.** The Village shall not be responsible for any damage, bodily injury, or death arising out of Owner's ownership or occupancy of the Site or Owner's exercise of its rights hereunder whether from maintaining an "attractive nuisance" or otherwise, except as caused by the negligence or willful misconduct of the Village or any of its agents, contractors, consultants, officers, or employees.

9. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village officers, agents, consultants or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

10. **Indemnification/Hold Harmless Agreement.** Owner hereby expressly agrees to indemnify and hold the Village and its agents, consultants, officers and employees harmless from and against all claims, judgments, damages, penalties, fines, costs or loss (including reasonable fees for attorneys and consultants) and liability of every kind and nature, for injury (including death) or damage received or sustained by any person or entity in connection with this Agreement, or on account of the construction, occupancy, activities on or use of the Site and the

exercise by Owner of its rights and obligations at or for the Site pursuant to this Agreement, except to the extent as such claims or liability arise by virtue of the negligence, unlawful, or willful misconduct of the Village or any of its agents, contractors, officers, or employees. Owner further agrees to aid and defend the Village or its agents (at no cost to the Village or its agents, consultants and employees) in the event they are named as a defendant in an action pertaining in any way to this Agreement except where such suit is brought by Owner and except to the extent as such claims or liability arise by virtue of the negligence, unlawful or willful misconduct of the Village or any of its agents, contractors, officers or employees. Owner is not an agent or employee of the Village, and nothing herein is intended or shall be construed as creating a partnership or joint venture between or among the Village and Owner.

11. **Successors and Assignment.** This Agreement is binding upon and enforceable against the parties' respective successors and assigns, and the provisions hereof shall be covenants running with the land. The Village may assign its interest in this Agreement to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Village. Owner may assign its interests under this Agreement to an entity not under common ownership with Owner only as permitted, in writing and in advance, by the Village, which permission shall not be unreasonably withheld. Additionally, Owner, or if a controlling interest in Owner, is to be sold or otherwise transferred during the term of this Agreement, the Village shall be notified no less than 30 days before such sale or transfer would be effective. This Agreement shall remain in effect thereafter unless the Village, for good cause stated, gives written notice to Owner objecting to such sale or transfer, in which case this Agreement shall terminate immediately if such sale or transfer is consummated.

12. **Owner Default.** In the event Owner fails to timely perform any one or more of its obligations under this Agreement (an "Owner Default"), the Village shall promptly provide written notice to Owner to the extent known by the Village of the action or omission constituting the basis for the default. The notice shall provide Owner at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty day period may be extended to the period of time reasonably necessary to cure the default if Owner promptly commences activities to cure the default, but in no event shall the period of time to cure the default exceed one hundred and twenty (120) days from the date of the Village's notice.

In the event an Owner Default is not fully and timely cured by Owner, the Village shall have no further obligation to make any additional Development Incentive under this Agreement, and the Village shall have all of the rights and remedies available at law and in equity.

13. **Village Default.** In the event the Village fails to timely perform any one or more of its obligations under this Agreement (a "Village Default"), Owner shall promptly provide written notice to the Village to the extent known by Owner of the action or omission constituting the basis for the Village Default.

The notice shall provide the Village at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty-day (60-day) period may be extended to the period of time reasonably necessary to cure the default if the Village promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of Owner's notice.

In the event a Village Default is not fully and timely cured by the Village, Owner shall have all of the rights and remedies available at law and in equity.

14. **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address, or both:

To Owner:	Parkview Development, L.L.C. and Parkview Commons, L.L.C. c/o Alfred McConnell 2677 Orrington Avenue Evanston, IL 60201 Facsimile Number: (847) 566-6528
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To The Village:	Village of Caledonia Attention: Village Clerk 6922 Nicholson Road Caledonia, WI 53108 Facsimile Number: (262) 835-2388
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15. **Force Majeure.** In the event that Owner or Village shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, fire, earth quake, flood, terrorism, war, acts of God, or other reason beyond Owner's or Village's reasonable control, then performance of such act shall be excused for the period of delay and the period for the

performance of any such act shall be extended for a period equivalent to the period of such delay, prevention or stoppage.

16. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.

17. **Effective Date.** This Agreement becomes effective as of the date last executed by a party below.

18. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. If executed in multiple counterparts, this Agreement shall become binding when two or more counterparts hereto, individually or taken together, bear the signatures of all of the parties reflected hereon as the signatories. A facsimile or electronic signature to this Agreement shall be deemed to be an original for all purposes.

19. **Further Assurances.** Each party agrees (a) to furnish upon request to each other party such further information, (b) to execute and deliver to each other party such other documents, and (c) to do such other acts and things, all as another party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents and transactions referred to in this Agreement.

20. **Duty of Cooperation.** Each party shall cooperate with the other party so that the other party may properly perform its obligations under this Agreement.

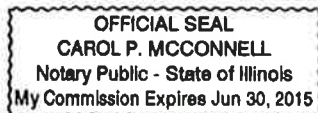
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

**PARKVIEW DEVELOPMENT, L.L.C. and
PARKVIEW COMMONS, L.L.C.**

By: Alfred G. McConnell
Name: Alfred G. McConnell
Manager

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Personally came before me this 6th day of May 2014, the above-named Alfred G. McConnell, Manager of Parkview Development, L.L.C. and Parkview Commons, L.L.C., to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said limited liability companies.



Carol P. McConnell
Notary Public, COOK County,
My Commission expires: JUNE 30, 2015

VILLAGE OF CALEDONIA

By: _____
Bob Bradley
Village President

Attest: _____
Karie L. Torkilsen
Village Clerk

STATE OF WISCONSIN)
) SS:
COUNTY OF RACINE)

Personally came before me this _____ day of _____, _____, Bob Bradley and Karie L. Torkilsen, Village President and Village Clerk of the Village of Caledonia, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Racine County, Wisconsin

My Commission expires: _____

**PARKVIEW DEVELOPMENT, L.L.C. and
PARKVIEW COMMONS, L.L.C.**

By: _____

Name: _____

Manager

STATE OF _____)

) SS:

COUNTY OF _____)

Personally came before me this ____ day of _____ 2014, the above-named _____, Manager of Parkview Development, L.L.C. and Parkview Commons, L.L.C., to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of said limited liability companies.

Notary Public, _____ County,

My Commission expires: _____

VILLAGE OF CALEDONIA

By: Bob Bradley

Bob Bradley
Village President

Attest: Karie L. Torkilsen

Karie L. Torkilsen
Village Clerk

STATE OF WISCONSIN)

) SS:

COUNTY OF RACINE)

Personally came before me this 5th day of May, 2014, Bob Bradley and Karie L. Torkilsen, Village President and Village Clerk of the Village of Caledonia, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Anthony A. Bunkelman

Notary Public, Racine County, Wisconsin

Anthony A. Bunkelman

My Commission expires: July 26, 2015

Drafted by:

Timothy J. Pruitt

Pruitt. Ekes & Geary, S.C.

EXHIBIT A

PARKVIEW GARDENS CONDOMINIUM - ADDENDUM NO. 1

LOT 2 OF CERTIFIED SURVEY MAP NO. 2862, N. THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 4 NORTH, RANGE 23 EAST, IN THE VILLAGE OF CALEDONIA, RAMSEY COUNTY, STATE OF WISCONSIN.



PREPARED FOR:
PARKVIEW GARDENS CONDOMINIUM ASSOCIATION, INC.
c/o ALF MACDONELL
2877 OMBROWAY AVE.
EVANSTON, IL 60201

Field design and consulting
Surveying and mapping
State: 214-347-3333
Fax: (630) 444-1312
www.cjengineering.com



VICINITY MAP
SW 1/4 OF SEC.
20-23-23
1" = 2000'



GRAPHIC SCALE
1 INCH = 80 FT.

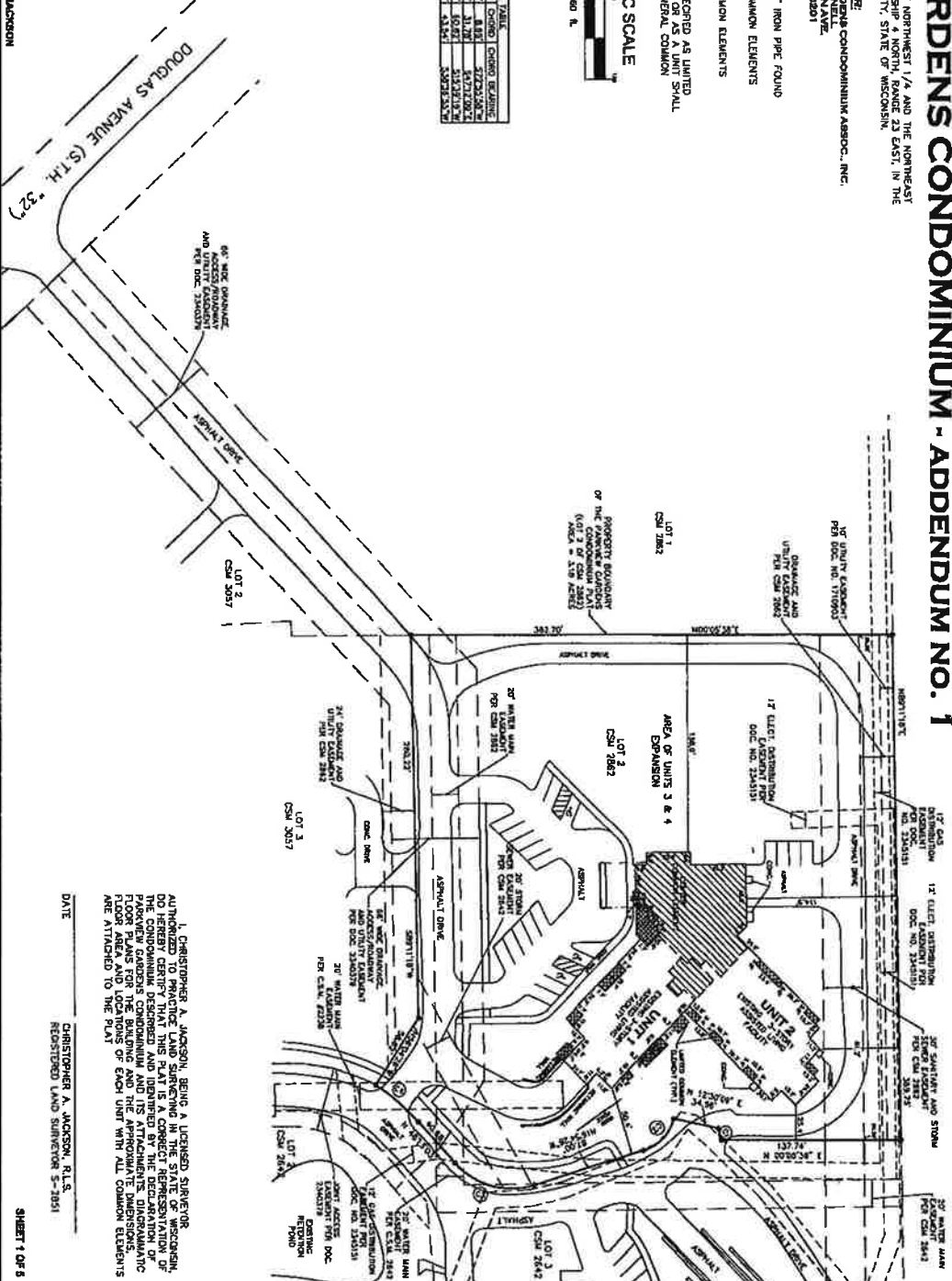
- ⑨ - INDICATES 1" IRON PIPE FOUND
- ▨ - GENERAL COMMON ELEMENTS
- ▤ - LIMITED COMMON ELEMENTS

ALL AREAS NOT SPECIFIED AS LIMITED COMMON ELEMENTS OR AS A UNIT SHALL BE CONSIDERED GENERAL COMMON ELEMENTS.

DATE	LENGTH	BEARING	AREA	PERIMETER
01	11.16	8.82	4223.32	111.16
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98	11.16	8.82	4223.32	111.16
99	11.16	8.82	4223.32	111.16
100	11.16	8.82	4223.32	111.16



THIS INSTRUMENT DRAFTED BY CHRISTOPHER A. JACKSON



1. CHRISTOPHER A. JACKSON, BEING A LICENSED SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAN IS A CORRECT REPRESENTATION OF THE SURVEYED LAND AND ITS ATTACHMENTS, DIMENSIONS, FLOOR AREA AND LOCATIONS OF EACH UNIT WITH ALL COMMON ELEMENTS ARE ATTACHED TO THE PLAN.

DATE _____ CHRISTOPHER A. JACKSON, R.L.S.
REGISTERED LAND SURVEYOR S-2851

CERTIFIED SURVEY MAP NO.

BEING A REDIVISION OF PARCEL 3 IN CERTIFIED SURVEY MAP NO. 2238, OUTLOT 1 IN CERTIFIED SURVEY MAP NO. 2862 AND PARCEL 1 IN CERTIFIED SURVEY MAP NO. 2862 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 4 NORTH, RANGE 23 EAST, IN THE VILLAGE OF CALEDONIA, RACINE COUNTY, STATE OF WISCONSIN.

○ INDICATES IRON PIPE FOUND

⊙ INDICATES 1 INCH DIA. IRON PIPE, 18 INCHES IN LENGTH, WEIGHING 1.13 LBS PER LINEAL FOOT, SET.

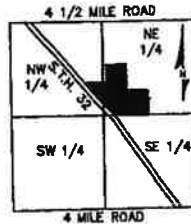
ALL DIMENSIONS SHOWN ARE MEASURED TO THE NEAREST HUNDREDTH OF A FOOT.

ALL BEARINGS SHOWN ARE REFERENCED TO THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 20-4-23, WISCONSIN STATE PLANE COORDINATE SYSTEM GRID, SOUTH ZONE, AND ALL BEARINGS ARE REFERENCED TO GRID NORTH.

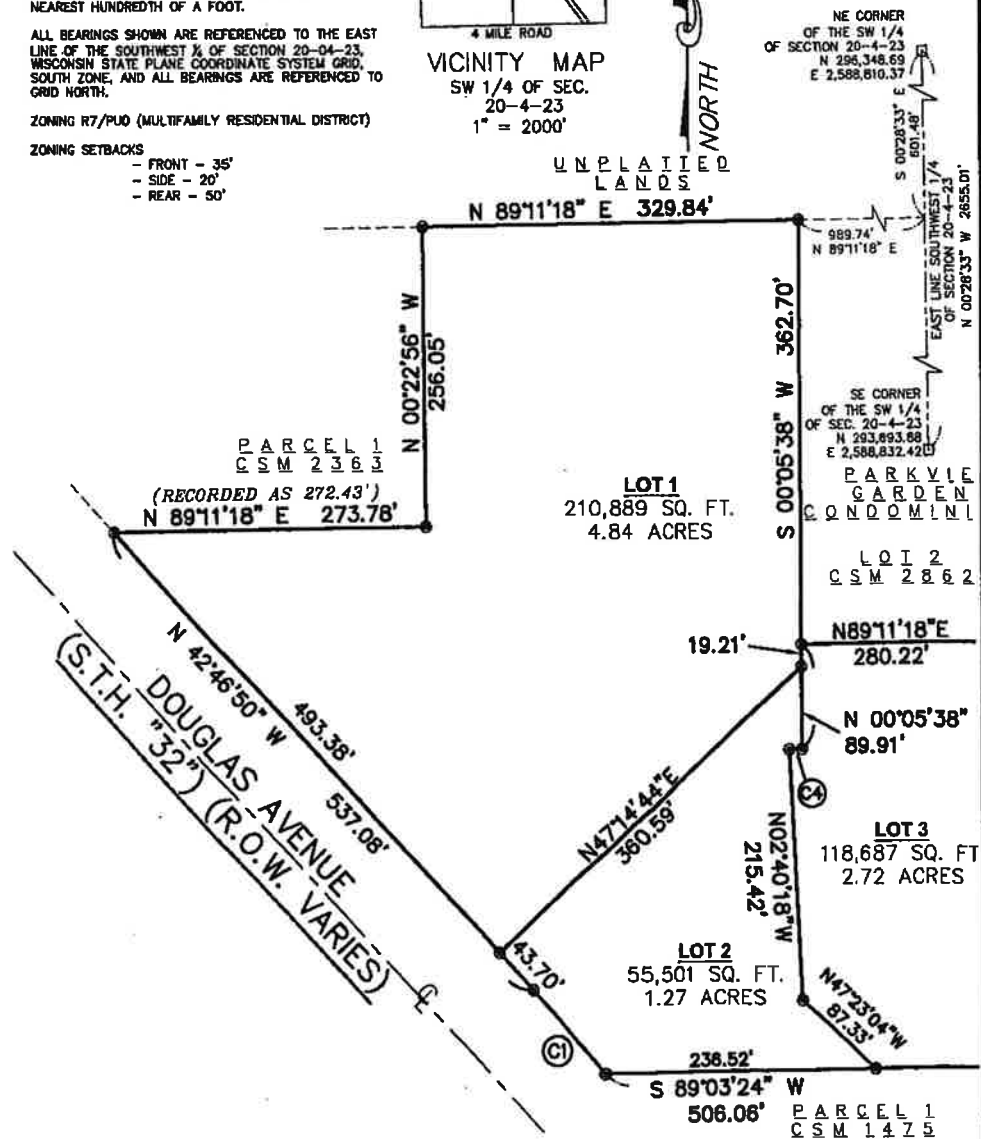
ZONING R7/PUD (MULTIFAMILY RESIDENTIAL DISTRICT)

ZONING SETBACKS

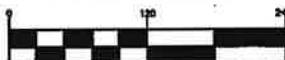
- FRONT - 35'
- SIDE - 20'
- REAR - 50'



VICINITY MAP
SW 1/4 OF SEC.
20-4-23
1" = 2000'



GRAPHIC SCALE



1 INCH = 120'

EXHIBIT B



Expert Paving Since 1959

March 24, 2014

Alf McConnell
Liberty Mortgage & Development Company
2677 Orrington Avenue
Evanston, IL 60201

**RE: STH 32 (Douglas Avenue) – Left Turn Lane
Caledonia, WI**

Dear Alf,

Thank you for inviting Black Diamond Group, Inc. to provide a proposal for this project. Black Diamond has had the privilege to provide customers with outstanding quality and service for over 55 years. Further to our various communications, our on-site meeting on Friday afternoon, and our conference call with Chris Jackson, we propose to furnish all labor, equipment, and materials necessary to complete the turn lane construction on Hwy 32 as described below.

Plans by CJ Engineering – Cover Sheet Dated 1-20-2014 – Revised 2-20-14 & 3-19-14

The work detailed below is to complete a turnkey construction of a left turn lane on STH 32. I have noted after the list of inclusions, items that are the responsibility of others as well as one alternate which may be needed. Black Diamond has completed many of these types of projects and is familiar with (and to) the Wisconsin DOT personnel that manage and oversee this type of private development on DOT highways.

Work Included –

1. Traffic control – Set up, supply, and maintain traffic control per the plan for the entire length of the project. This includes all barricade equipment, lighted arrow boards, removal of existing painted center line, placement & removal of temporary traffic tape, and flaggers.
2. Excavation and removals – Saw cut, curb removal, concrete plowable nose removal, and earth excavation.
3. Crushed aggregate base course – Supply and install 4" dense graded and 4" open graded crushed aggregate base course in pavement area and under concrete walk.
4. Storm inlets – Remove existing frame & grates and supply & install new frame & grates per plan for two storm sewer inlets.
5. Concrete work – Construct 24" gutter, 30" curb & gutter, 5" walk, and snow plowable nose.
6. Asphalt work – Construct a 5.75" thickness asphalt pavement.
7. Pavement Marking – Paint new traffic lines and symbols per plan, repaint removed center line, install "grooved in" WR tape.
8. Lawn Restoration – Backfill curb, install topsoil, seed, fertilizer, and erosion mat.
9. Relocate, furnish new, & install traffic signs per plans & DOT standards.

General Construction Terms and Conditions:

- A. All work is to be completed per Wisconsin DOT specifications.
- B. Prices provided assume the work will be constructed in one phase. Additional mobilization charges will be required if work is to be phased other than specified.
- C. The storm inlet work includes removing and replacing up to one existing concrete riser on each inlet. Any additional work to the inlet chimney would be at an additional cost per item 2 below.
- D. The price is complete for the work as shown on the plans. Any changes to the plans or additional work required by the DOT or local municipality may be cause for additional charges.
- E. The prices provided include all constructed related items as per the DOT permit #51-03m-14.
- F. Our price includes staking of the work as required to complete the construction shown. Electronic CAD files are to be supplied to us at no cost.
- G. The prices provided assume all work is to be completed prior to June 28, 2014. The project will take approximately 40 days to complete.
- H. If unstable subgrade is encountered it shall be removed and replaced with suitable aggregate for an agreed upon price between owner, or designated representative of owner, and Black Diamond Group, Inc. (See item 3 below.)
- I. Black Diamond will coordinate all work with the DOT representative. Any inspection fees associated with the construction are the responsibility of others.
- J. The Caledonia street opening permit of \$500.00 is included. All other permits & permit fees are the responsibility of the owner.
- K. The Village of Caledonia is requiring a \$5,000 cash warranty bond to be held for 15 months after the permit is issued. If they accept a warranty bond, Black Diamond Group can likely obtain one but will need to review the details of requirements from the Village in order to provide a price. BDG will use all reasonable efforts to minimize the cost of this bond and will only ask for reimbursement from the owner of our direct cost.

Black Diamond Group Inc. is a Wisconsin Department of Commerce certified Woman Owned Business Enterprise. Certification documentation supplied upon request.

WE PROPOSE hereby to furnish material, labor and equipment - complete in accordance with above specifications for the sum of: **\$89,980.00**

The Wisconsin DOT reserves the right to modify the work scope to fit field conditions that may be discovered during construction (see item 12 in DOT permit). The following list offers descriptions of and possible costs related to some of the items of added work that could be required. This list may or may not be complete but is offered based on our experience with these types of projects. The costs provided are not firm prices. Should additional work be added by the DOT the cost of the work will be provided to the owner for approval prior to the work being completed. All reasonable efforts will be made to minimize any added project costs.

1 – Additional Paving at Match Point: The project plans call for the new curb and new asphalt to match into the existing asphalt pavement at the old curb flange line. Often the DOT requires repair of the adjacent asphalt to ensure a proper match. Although not shown on the plan, the DOT may require repair at the entire match point of the project, the added cost would be as listed below and would include milling the existing asphalt 2.25" deep and placement of a new asphalt surface of the same thickness.

Possible Additional Cost – \$4,730.00

2 – Repair / Rebuilding of Existing Inlet Structures: The project plans call for replacing the existing storm inlet frames and grates with new to match the new curb section. It is possible that the existing storm sewer masonry may need additional repair or rebuilding once exposed. Although it is not possible to identify the amount of work that may or may not be required, stated below is likely the most a repair could cost (other than a full replacement of the structure itself).

Possible Additional Cost – \$3,800.00

3 – Subgrade Stabilization: The DOT will require that they inspect the earth subgrade for stability prior to placing the stone base. If unstable soil is encountered, it will be removed and replaced with crushed stone. The cost listed below is to stabilize 50% of the area excavating 12" deeper and placing stone.

Possible Additional Cost – Add \$10,000.00 to the price listed below.

Payment terms: Payment is due in full upon completion of work and receipt of invoice. No retainer is to be held.

The following Black Diamond Group Incorporated Terms and Conditions are hereby incorporated by reference in this agreement.

BLACK DIAMOND GROUP, INC.

ACCEPTANCE OF PROPOSAL
Owner / Owner's Representative

Signature: 

Signature: _____

Joseph Teglia, Sales

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

Date: 3-24-14

Date: _____

AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, BLACK DIAMOND GROUP INCORPORATED ("BDG"), HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES PERFORMING, FURNISHING, OR PROCURING LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO BDG, ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. BDG AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.

1. **Offer, Governing Provisions and Follow-up Work.** Any order for asphalt, concrete, paving services or related services ("Services") or related materials ("Materials") (Services and Materials sometimes referred to collectively as the "Work") which is placed with BDG, regardless of how placed, is subject to these terms and conditions. Any future orders, regardless of how placed, will also be subject to these terms and conditions. No modified or other conditions will be recognized by BDG unless specifically agreed to in writing and failure of BDG to object to provisions contained in any purchase order or other communications from Buyer shall not be construed as a waiver of these terms and conditions, nor an acceptance by BDG of any such provisions. No order accepted by BDG shall be altered or modified by Buyer unless agreed to in writing.

by BDG, and no such order may be canceled or terminated except upon payment of BDG's loss, damage and expense arising from such cancellation or termination, as set forth herein. Quotations or proposals are subject to change, without notice, if not accepted within fifteen (15) days. Change orders, when signed by the parties, shall become a part of this contract.

IT IS RECOGNIZED THAT BUYER MAY HAVE FORMS THAT HAVE TERMS AND CONDITIONS PRINTED THEREIN WHICH DIFFER FROM OR ADD TO THE TERMS AND CONDITIONS CONTAINED HEREIN, AND THAT SUCH FORMS MAY LIMIT ACCEPTANCE OF THE TERMS AND CONDITIONS OF SUCH FORMS. IN THE INTEREST OF ECONOMY AND CONVENIENCE, IT WILL BE PERMISSIBLE FOR BUYER TO PLACE AN ORDER WITH BDG ON SUCH FORM, BUT IT IS EXPRESSLY UNDERSTOOD THAT NONE OF THE TERMS AND CONDITIONS THEREIN SHALL BE DEEMED EFFECTIVE, AND IN THE CASE OF SUCH CONFLICT, THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL BE DEEMED EFFECTIVE AND AGREED TO BETWEEN BDG AND BUYER, AND THAT ACCEPTANCE OF SUCH FORMS SHALL NOT BE DEEMED TO BE AN ACCEPTANCE OF THE TERMS AND CONDITIONS OF SUCH FORMS.

2. Warranties and Limitations. BDG hereby warrants to the Buyer that all new asphalt paving work shall be free from defects in materials and workmanship for a period of one (1) year from the date of substantial completion of the asphalt work (the "BDG Limited Warranty"). In the event that the Buyer discovers a defect in materials or workmanship, it must notify BDG within thirty (30) days of the discovery of the defect. The Buyer's sole and exclusive remedy shall be repair or replacement, at BDG's sole discretion, of the work by BDG.

The BDG Limited Warranty shall be conditioned on: (i) the pavement being used only for the traffic type and volume that it was designed for; (ii) acceptance by the Buyer of recommended work which is related to the structural integrity of the Work; (iii) acceptance by the Buyer of all proposed change orders related to the structural integrity of the Work; and, (iv) the truth of all of the assumptions stated in the contract.

This limited warranty shall not create any liability for, nor shall BDG have any obligation for, any damage or failure caused by: (i) natural forces, such as water, frost cracks or freeze/thaw cycles; (ii) tree roots; (iii) chemical or petroleum damage; (iv) winter salt application; or, (v) punctures or gouges, such as those caused by snowplows or kickstands. This limited warranty does not cover cracking in the asphalt as cracking occurs as a result of natural conditions which are beyond BDG's control.

THE BDG LIMITED WARRANTY IS IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND BDG SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT OR OTHER THEORIES OF LAW, WITH RESPECT TO ANY MATERIALS USED BY BDG OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATED TO SERVICES PROVIDED BY BDG.

Without limiting the generality of the foregoing, BDG specifically disclaims any liability for property damage or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, costs of substitute products, facilities or services, down-time, shut-down costs, recall costs or any other types of economic loss and for claims of Buyer's customers or any third party for any such damages. BDG SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

During construction of the Work, conditions may present that, in our professional opinion, require a change in the scope of the Work in order to preserve the structural integrity of the Work. If we recommend such a change and Buyer does not accept the change order, the BDG Limited Warranty shall be void and of no effect.

All asphalt and concrete pavement will eventually crack. BDG does not warrant the Work against cracking, since cracking occurs as a result of conditions beyond BDG's control. BDG does not warrant against pavement movement as pavement movement occurs as a result of expansion of underlying soils caused by weather related issues which are beyond BDG's control.

Buyer shall indemnify BDG against any and all losses, liabilities, damages and expense (including, without limitation, attorneys fees and other costs of defending any action), which BDG may incur as a result of any claim by Buyer or others arising out of or in connection with the Services and/or Materials sold hereunder, and based on product and/or service defects not proven to have been caused solely by BDG's negligence.

All of the Work is conclusively accepted as satisfactory unless BDG is notified by Buyer in writing within 3 days after the Work is completed. Any claim for damage to property is conclusively waived unless BDG is notified as to the details of the claim, in writing, within 24 hours of the occurrence.

3. Prices and Payments. If Buyer fails to pay any invoice when due, BDG may, at its option: (i) delay further Services to Buyer until such invoice is paid, and/or (ii) terminate any or all contracts with Buyer. All invoices are due and payable in net cash upon receipt of the invoice. Any invoice that is not paid timely shall bear interest at the rate of one and one half percent (1.5%) per month from the due date or the highest amount allowed by applicable law, whichever is less. Buyer shall be responsible for, and shall remit to BDG, all costs, expenses and reasonable attorneys' fees incurred by BDG in obtaining payment of any invoice or portion thereof.

4. Modifications and Cancellations. No specifications, terms or conditions may be cancelled or altered by Buyer except as evidenced by a written change order signed by Buyer and BDG. Buyer shall designate a representative who shall have express authority to bind Buyer with respect to all matters requiring Buyer's approval or authorization, including, without limitation, change orders. In the event that Buyer desires to cancel the Work, Buyer may do so by paying for all Materials purchased by BDG for the Work and a charge of: (i) if BDG has not commenced the Work, 15 % of the contract price; (ii) if BDG has commenced the Work, the value of the completed work plus 25% of the remainder of the contract price and a reasonable demobilization fee.

5. Average Depth of Material. Whenever this contract or related proposal includes a reference to materials quoted at various depths, i.e., base layers, asphalt, concrete, top soil, stone, etc., the reference shall be interpreted to mean average depth. Variations occur in the field due to natural or manmade conditions which will dictate the necessity for average depth.

6. Concealed or Unknown Conditions. If conditions are encountered at the site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in this contract, or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this contract, then BDG shall give notice of such conditions to Buyer. If these conditions cause an increase in BDG's cost of, or time required for, performance of any of the Work, Buyer shall be responsible for such cost and shall consent to an adjustment of the schedule for performance.

7. **Scheduling.** BDG will use its best efforts to provide Buyer with 3-5 business days notice prior to the commencement of the Work. Once the Work has commenced, BDG will use its best efforts to complete the Work within a reasonable time. BDG shall not be liable for delays due to causes beyond the reasonable control of BDG. If, for any reason, whether at the request of Buyer, or due to weather, a portion of the Work is delayed, Buyer shall pay for all of the Work completed prior to suspension of the Work upon receiving BDG's partial invoice.

8. **Damage to Existing Property / Structure.** Buyer shall indemnify and hold BDG harmless for any claim or damage suffered by BDG related to damage to existing pavement or structures, or other claims of parties, whether Buyer or from adjacent property, with property rights, arising out of BDG's performance of this contract, provided that BDG has performed in accord with the terms, conditions and specifications of this contract. BDG is not responsible for damage to existing pavement or underlying structures, including utility lines, due to construction practices or traffic.

9. **Survey.** Buyer is responsible for establishing property lines and for assisting BDG to locate the Work on the site. Buyer is responsible for Materials placed as directed in the event of a trespass. Buyer is responsible for the cost of any survey work necessary to locate the Work.

10. **Email.** Notice or authorization given by Buyer's designated representative via email shall be binding on Buyer.

11. **Grade.** BDG shall not be responsible for any standing water on the Work if new or existing pavement elevations are less than 2%. If Buyer directs construction of Work with less than 2% drainage, the BDG Limited Warranty is void.

12. **Utilities.** The Buyer is required to inform BDG of any private utilities located in the area where the Services are to be performed.

13. **Permits.** Unless otherwise stated in this contract, Buyer shall be responsible to pay for and obtain any required permits for the Work. Cost of permits is not included in the contract price.

14. **Miscellaneous Construction Issues.** The Work is built to support Buyer's specified or reasonably intended use. Use that is heavier than specified or reasonably intended will result in premature wear and possible failure of the Work. Materials used in seal coating, crack sealing and pavement marking wear off with traffic flow. BDG cannot guaranty the longevity of sealing materials or pavement marking materials. Buyer should allow 48 hours for sealer to cure before driving on it. BDG shall not be responsible for sealer left on concrete or buildings from prior applications; dust or debris from blowers on vehicles near the site. BDG is not responsible for the removal of contaminated materials if encountered.

15. **Landscaping.** Unless landscaping is expressly included within the Work, BDG is not responsible for: damage to landscaped areas of Buyer's property as a result of project preparation, execution or completion; modifications required in landscaping to ensure proper drainage from the site of the Work; and backfilling asphalt or concrete pavement edges.

16. **Evidence of Financial Ability.** At any time prior to completion of the Work, BDG may request in writing that Buyer provide reasonable evidence that Buyer has made financial arrangements to fulfill Buyer's obligations under the contract. Thereafter, Buyer shall, within three (3) days of the receipt of such request, furnish such evidence of financial ability as a condition precedent to commencement or continuation of the Work. In the event that Buyer is unable to furnish such evidence, BDG may, at its sole discretion, discontinue the Work.

17. **Employee Training.** All of BDG's employees participate in BDG's drug and alcohol testing program and all of BDG's employees are OSHA 10 trained. In the event that Buyer requires other or additional training, testing or participation in other programs sponsored by Buyer, Buyer shall compensate BDG for all of BDG's labor cost related to such participation.

18. **Force Majeure.** BDG shall not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond BDG's reasonable control, including, without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slow-down, war, riot, delay in transportation or inability to obtain necessary labor, materials or production facilities. BDG's liability for other delays or failure of performance shall be limited to the portion of the contract price attributable to the Work delayed.

19. **Construction, Venue, Severability.** This contract shall be governed and construed in all respects by the laws of the State of Wisconsin. The parties hereto agree that the only proper venue for any cause of action arising hereunder shall be in the state courts of the State of Wisconsin and Buyer hereby consents to the jurisdiction of the state courts of the State of Wisconsin. In the event that any provision of this contract is declared void or unenforceable by any competent legislative or judicial authority, such declaration shall not affect the enforceability of any other provision of this contract, it being the intent of the parties that this contract shall be severable and applied as if such void or unenforceable provision had not been included herein.