

Ordinance No. 2020-07

**AN ORDINANCE OF THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS,
APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF WEST
DUNDEE AND WESTBROOK AT CANTERFIELD, LLC**

WHEREAS, the Village of West Dundee, Kane County, Illinois (the "*Village*") is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, the Village, through its Village President and Board of Trustees (the "*Corporate Authorities*"), is actively pursuing opportunities to revitalize blighted properties in the Village; and,

WHEREAS, the Corporate Authorities have determined that the best course of action to achieve its revitalization goal is to use the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1, *et seq.*) (the "*TIF Act*"); and, to that end, in 2018, approved a Redevelopment Plan and Project (the "*Redevelopment Plan*") for the designated Main Street and Downtown Redevelopment Project Area (the "*Project Area*"), and adopted tax increment financing for the payment and financing of "redevelopment project costs" within the Project Area, as authorized by the TIF Act; and,

WHEREAS, Westbrook at Canterfield, LLC, an Iowa limited liability company (the "*Developer*"), has submitted a proposal to the Village to construct a 126-unit senior housing development, along with an assisted living and memory car facility (the "*Project*") on nine acres located at the southwest corner of Angle Tarn and Route 31 in the Village (the "*Subject Property*") and has requested financial assistance from the Village without which the Developer will not be able to purchase the Subject Property and complete the Project; and,

WHEREAS, the Corporate Authorities have reviewed the Developer's proposal and request for financial assistance and believe that as the Project will further the redevelopment goals of the Village, enhance the tax base of the Village and other taxing districts, and be in the best interest of its residents.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, as follows:

Section 1. That the recitals in the preambles to this Ordinance are incorporated into this Section 1 as if fully set forth herein.

Section 2. That the Development Agreement between the Village of West Dundee and Westbrook at Canterfield, LLC, attached hereto and made a part hereof, is hereby approved and the President, Village Clerk, and Village Manager are hereby authorized to execute and deliver said Development Agreement and undertake any and all actions as may be required to implement its terms on behalf of the Village.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this 16th day of March, 2020, pursuant to a roll call vote as follows:

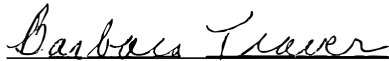
AYES: Trustees Hanley, Yuscka, Anderley, Wilbrandt, Kembitzky and Price
NAYS: None
ABSENT: None

APPROVED this 16th day of March, 2020.



Village President

Attest:



Village Clerk

Published in pamphlet form:
March 16, 2020

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE VILLAGE OF WEST DUNDEE, KANE COUNTY, ILLINOIS AND
WESTBROOK AT CANTERFIELD, LLC**

THIS DEVELOPMENT AGREEMENT (the "*Agreement*") is entered into as of the 16th day of March, 2020 ("*Effective Date*") by and between the Village of West Dundee, Kane County, Illinois, an Illinois municipal corporation ("*Village*"), and Westbrook at Canterfield, LLC, an Iowa limited liability company ("*Developer*").

In consideration of the mutual covenants and agreements set forth in this Agreement, the Village and the Developer hereby agree as follows:

ARTICLE 1: RECITALS

1.1 The Village is a home-rule municipality pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois with the power and authority to perform any function pertaining to its government and affairs and is engaged in the development of its commercial properties abutting Route 31 which includes nine (9) acres located at the Southwest corner of Angle Tarn and Route 31.

1.2 The Village has the authority pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase job opportunities, and to enter into contractual agreements with third parties for the purpose of achieving these purposes.

1.3 Pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1, *et seq.*, as from time to time amended (the "*TIF Act*"), the President and Board of Trustees of the Village (collectively, the "*Corporate Authorities*") are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a "blighted area" or a "conservation area" as such terms are defined in the TIF Act.

1.4 To stimulate and induce development and redevelopment pursuant to the TIF Act, the Village, after giving all required notices, conducting a public hearing and making all findings required by law, on the 7th day of May, 2018, pursuant to Ordinance Nos. 2018-07, 2018-08 and 2018-09 approved a Redevelopment Plan and Project (the "*Redevelopment Plan*") for an area designated as the Main Street and Downtown Redevelopment Project Area (the "*Project Area*") which Project Area included the Subject Property, and adopted tax increment financing for the payment and financing of "redevelopment project costs" incurred within the Project Area as authorized by the TIF Act.

1.5 The Developer has submitted a proposal to the Village to acquire and develop approximately nine (9) acres legally described on *Exhibit A* attached hereto (the "*Subject Property*") with the construction of a 126-unit senior housing development to include an assisted living and memory care facility (the "*Project*").

1.6 The Developer has advised the Village that in order to proceed with the Project and complete all of the development required to accomplish its proposal, financial assistance from the Village is necessary due to the extraordinary storm water improvements, site grading requirements, detention basin construction, sidewalks and extensive landscaping to provide screening and buffers between adjacent residential property.

1.7 After a review of all of the goals and objectives of the Redevelopment Plan and concluding that the Project, as presented by the Developer, is in furtherance of the Redevelopment Plan, the Village is prepared to provide the financial assistance to the Developer in accordance with the terms and conditions as hereinafter provided because the Village believes that the redevelopment of the Subject Property shall eliminate blight factors found within the Project Area; increase the tax base of the Village and taxing districts authorized to levy taxes upon the Subject Property; provide job opportunities for its residents; and, improve the general welfare of the community.

ARTICLE 2: CONDITIONS PRECEDENT TO THE VILLAGE'S OBLIGATIONS

2.1 The Developer hereby agrees that it or an affiliate of Developer (as used herein, an "affiliate" is any entity owning a fifty-one percent (51%) or more controlling interest) will acquire fee simple title to the Subject Property on or before May 31, 2020, and will notify the Village upon such acquisition. Developer shall thereafter undertake the following:

- (a) On or before October 30, 2020, the Developer shall have delivered to the Village a commitment for construction financing related to the Project in a form reasonably acceptable to the Village.
- (b) On or before March 31, 2021, the Developer shall have commenced construction of the Project in accordance with the final plans as approved by the Planning and Zoning Commission of the Village, the Appearance Review Commission of the Village, the Village engineers and the Village Board (collectively, "*Village Approvals*"), all required permits and all applicable codes of the Village and continue construction without interruption, unless due to Force Majeure as set forth in 6.4 hereof, and shall have completed the Project and received a certificate of occupancy on or before March 31, 2023 (the "*Completion Date*").

2.2 Within one (1) year of the completion of the Project, the Developer shall deliver to the Village an itemization of all costs incurred in connection with the Project including the cost of acquisition of the Subject Property with a copy of the closing statement and all paid bills, invoices, receipts, and other documentation reasonably requested by the Village to evidence a total cost of no less than \$35,000,000 by the Developer at the Subject Property (total "*Project Costs*"), including approximately \$1,100,000 (but Developer may spend less than this amount) for site preparation including storm water improvements, detention basin costs, sidewalks, landscaping and any other site improvements deemed necessary to complete the Project in accordance with Village Approvals (collectively, the "*Site Improvements*").

2.3 In the event the Developer, or Developer's affiliate, for any reason does not acquire the Subject Property on or before May 31, 2020, this Agreement shall terminate (unless extended by

written agreement executed by the parties), Developer shall not be deemed to be in default of this Agreement and the parties shall have no further rights or obligations.

ARTICLE 3: VILLAGE'S OBLIGATIONS

3.1 Within thirty (30) days after receipt of all documentation required to be submitted by the Developer pursuant to Section 2.2 of this Agreement, the Village shall review the costs of the Site Improvements incurred by the Developer to affirm such costs which constitute "Redevelopment Project Costs" under the TIF Act. For purposes of this Agreement, "Redevelopment Project Costs" shall mean and include all costs and expenses as defined as "redevelopment project costs" in Section 11-74.4-3(q) of the TIF Act. The Developer acknowledges that the determination of Redevelopment Project Costs and qualification for reimbursement of the cost of the Site Improvements is subject to the TIF Act, all amendments to the TIF Act, before and after the date of this Agreement, and judicial interpretations of the TIF Act rendered during the term of this Agreement. The Village has no obligation to the Developer to attempt to modify such judicial interpretations but will cooperate with the Developer in obtaining approval of Redevelopment Project Costs.

3.2 The Village has established a special tax allocation fund solely for the Project Area (the "STAF") into which the Village shall deposit all Incremental Taxes as defined below, generated from the Project Area.

3.3 Commencing on December 1st of the year in which Developer submits the required documentation in Section 3.1 above, and continuing throughout the Term of this Agreement, or on the date that is ten (10) days following the date upon which the Village receives Incremental Taxes (as defined below) from the final installment of real estate taxes, whichever occurs first, ninety percent (90%) of the Incremental Taxes with respect to the Subject Property shall be transferred and deposited into the Westbrook Subaccount of the STAF (which Subaccount shall be automatically created by the ordinance approving this Agreement) and used to annually reimburse the Developer for Redevelopment Project Costs in the amount equal to the Incremental Taxes deposited into the Westbrook Subaccount until the first to occur of: (i) receipt by the Developer of \$1,000,000 in the aggregate, as reimbursement for Site Improvements; and, (ii) December 31, 2028.

THE VILLAGE'S OBLIGATION TO REIMBURSE THE DEVELOPER UNDER SECTION 3.3 OF THIS AGREEMENT IS A LIMITED OBLIGATION TO REIMBURSE THE DEVELOPER SOLELY FOR SITE IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED \$1,000,000, PAYABLE SOLELY FROM INCREMENTAL TAXES DEPOSITED IN THE WESTBROOK SUBACCOUNT OF THE STAF FROM TIME TO TIME AND SHALL NOT BE SECURED BY THE FULL FAITH AND CREDIT OF THE VILLAGE. As used in this Agreement, "Incremental Taxes" shall mean the amount in the STAF equal to the amount of ad valorem taxes, if any, levied by the Kane County Treasurer on the parcels located in the Project Area and on the improvements therein which is attributable to the increase in the equalized assessed value of all the parcels of property and improvements located therein over the initial equalized assessed value of said parcels and improvements as of the date of this Agreement.

ARTICLE 4. REPRESENTATIONS, WARRANTIES, AND COVENANTS

4.1 To induce the Village to enter into this Agreement and to adopt the ordinances and

resolutions and grant the rights herein provided to the Developer, the Developer represents, covenants, warrants, and agrees, as the basis for the undertakings on the Developer's part herein contained, that:

- (a) All representations and agreements made by the Developer in the Agreement are true, complete, and accurate in all respects.
- (b) The Developer is an Iowa limited liability company duly formed and existing under the laws of the State of Iowa authorized to do business in Illinois, and the Developer has the power to enter into, and by proper action has been duly authorized to execute, deliver, and perform, this Agreement. The Developer will do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence and good standing as a limited liability company authorized to do business in the State of Illinois during the term of this Agreement.
- (c) The execution, delivery, and performance of this Agreement by the Developer, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of any of the terms, conditions, or provisions of any offering or disclosure statement made, or to be made, on behalf of the Developer, or any restriction, organizational document, agreement, or instrument to which the Developer, or any of its partners or venturers, is now a party or by which the Developer, or any of its partners or venturers, is bound, or constitute a default under any of the foregoing.
- (d) There are no actions at law or similar proceedings either pending or, to the best of the Developer's knowledge, threatened in writing against the Developer that would materially or adversely affect:
 - (i) The ability of the Developer to proceed with the construction and development of the Subject Property;
 - (ii) The Developer's financial condition; or
 - (iii) The level or condition of the Developer's assets as of the date of this Agreement.

4.2 The Developer further warrants, covenants and agrees during the term of this Agreement:

- (a) To continuously maintain the Subject Property in accordance with all applicable Village Codes and to continually operate the senior care facility.
- (b) To pay all taxes (including but not limited to income, sales and real estate taxes) fees, fines, as may be applicable to the Subject Property, and the operation of the senior housing facility.

4.3 To induce the Developer to enter into this Agreement and to undertake the performance of its obligations under this Agreement, the Village represents, covenants, warrants and agrees as follows:

- (a) All representations and agreements made by the Village in this Agreement are true, complete, and accurate in all respects.
- (b) The Village has the power to enter into and perform its obligations under this Agreement and by proper action has duly authorized the Village President and Village Clerk to execute and deliver this Agreement.
- (c) The execution, delivery, and performance of this Agreement by the Village, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement shall not conflict with or result in a violation or breach of the terms of any order, agreement, or other instrument to which the Village is a party or by which the Village is now bound.
- (d) There are no actions at law or similar proceedings either pending or to the best of the Village's knowledge being threatened against the Village that would materially or adversely affect:
 - (i) The ability of Developer to proceed with the construction of the Development.
 - (ii) The ability of the Village to perform its obligations under this Agreement.

ARTICLE 5: ENFORCEMENT AND REMEDIES

5.1 Subject to the restriction on remedies contained in this Article, the parties may enforce or compel the performance of this Agreement, in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance. Notwithstanding the foregoing, the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages in any amount greater than the amount of reimbursement obligated by the Village hereunder against the Village or any elected or appointed officials, officers, employees, agents, representatives, engineers, consultants, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

5.2 In the event of a breach of this Agreement constituting an event of default, the parties agree that the party alleged to be in breach shall have, unless specifically provided otherwise by any other provision of this Article 5, 30 days after notice of any breach delivered in accordance with Section 8 to correct the same prior to the non-breaching party's pursuit of any remedy provided for in Section 5.4 and 5.7; provided, however, that the 30-day period shall be extended, but only (i) if the alleged breach is not reasonably susceptible to being cured within the 30-day period, and (ii) if the defaulting party has promptly initiated the cure of the breach, and (iii) if the defaulting party diligently and continuously pursues the cure of the breach until its completion. If any party shall fail to perform any of its obligations under this Agreement, and if the party affected by the default shall have given written notice of the default to the defaulting party, and if the defaulting party shall have failed to cure the default as provided in this Article 5.2, then, except as specifically provided otherwise in the following sections of this Article 5, and in addition to any and all other remedies that

may be available either in law or equity, the party affected by the default shall have the right (but not the obligation) to take any action as in its discretion and judgment shall be necessary to cure the default. In any event, the defaulting party hereby agrees to pay and reimburse the party affected by the default for all costs and expenses reasonably incurred by it in connection with action taken to cure the default, including attorney's fees and court costs.

5.3 Any of the following events or circumstances shall be an event of default by Developer with respect to this Agreement:

- (a) If any material representation made by the Developer in this Agreement, or in any certificate, notice, demand to the Village; or, request made by the Village in connection with any of the documents proving to be untrue or incorrect in any material respect as of the date made.
- (b) Default by the Developer in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure, or financial condition of the Developer.
- (c) The Developer's default in the performance or breach of any material covenant, warranty, or obligation contained in this Agreement.
- (d) The Developer's breach of the covenants and warranties as set forth in Section 4.2
- (e) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of the Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order un-stayed and in effect for a period of 60 consecutive days. There shall be no other cure period for this event of default.
- (f) The commencement by the Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or the consent by the Developer to the appointment of or taking possession, by a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official of the Developer or of any substantial part of the Developer's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Developer generally to pay such entity's debts as such debts become due or the taking of action by the Developer in furtherance of any of the foregoing. There shall be no cure period for this event of default.
- (g) The Developer's failure to pay all fees, taxes (including real estate taxes), fines and licenses when due during the term of this Agreement.

5.4 The Village shall have the following remedies in the event of default by the

Developer:

- (a) Subject to the provisions of this Agreement, in the case of an event of default by the Developer, beyond the applicable notice and cure periods, the Village may terminate this Agreement at which point all obligations hereunder shall be deemed null and void.
- (b) In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Village, then, and in every such case, the Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the Village shall continue as though no such proceedings had been taken.

5.5 Upon a breach or default of this Agreement, beyond the applicable notice and cure periods, the Developer shall be required to repay to the Village all amounts paid to the Developer pursuant to Section 3.3 Agreement for the Site Improvements.

5.6 The Developer agrees to indemnify and hold harmless the Village, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, consultants, and attorneys, against any and all claims that may be asserted at any time against any of such parties in connection with or as a result of (i) the Developer's development, construction, maintenance, or use of the Subject Property; or, (ii) the Developer's default under the provisions of this Agreement. Such indemnification obligation, however, shall not extend to claims asserted against the Village or any of the aforesaid parties in connection with or as a result of: (i) the performance of the Village's representations, warranties and covenants under Article 3 of this Agreement; or, (ii) the act, omission, negligence or misconduct of the Village or any of the aforesaid parties. If the Developer shall commit an event of default and the Village should employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer, on the Village's demand, shall pay to the Village the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Village.

5.7 Any of the following events or circumstances shall be an event of default by the Village with respect to this Agreement:

- (a) A default of any term, condition, or provision contained in any agreement or document relating to the Project (other than this Agreement), that would materially and adversely impair the ability of the Village to perform its obligations under this Agreement.
- (b) Failure to comply with any material term, provision, or condition of this Agreement within the time herein specified.
- (c) A representation or warranty of the Village contained herein is not true and correct in any material respect.

ARTICLE 6: GENERAL PROVISIONS

6.1 The Developer acknowledges and agrees that (i) the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans or improvements or as a result of the issuance of any approvals, permits, certificates, or acceptances for the development or use of any portion of the Subject Property or the improvements and (ii) the Village's review and approval of any plans and the issuance of any approvals, permits, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, or licensees, or any third party, against violations or damage or injury of any kind at any time.

6.2 The Developer shall hold harmless the Village, and all of its elected and appointed officials, employees, agents, representatives, engineers, consultants, and attorneys from any and all claims that may asserted at any time against any of such parties in connection with (i) the Village Approvals; or, (ii) the Village's issuance of any approval, permit or certificate. The foregoing provision, however, shall not apply to claims made against the Village as a result of a Village event of default under this Agreement, claims that are made against the Village that relate to one or more of the Village's representations, warranties, or covenants under Section 4.3 and claims that the Village, either pursuant to the terms of this Agreement or otherwise explicitly has agreed to assume.

6.3 The Village shall be under no obligation to exercise rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. Except to the extent embodied in a duly authorized and written waiver of the Village, no failure to exercise at any time any right granted herein to the Village shall be construed as a waiver of that or any other right.

6.4 Time is of the essence of this Agreement, provided, however, a party shall not be deemed in material breach of this Agreement with respect to any of its representations, warranties, covenants or obligations under this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, weather conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of Gods, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("*Force Majeure*"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

6.5 This Agreement may not be assigned by the Developer without the prior written consent of the Village, which consent shall not be unreasonably withheld; provided, however, Developer shall have the right to collaterally assign this Agreement to any lender as security under any project indebtedness without such consent. In the event Developer sells the Subject Property during the Term to an unaffiliated third-party purchaser (excluding any lender holding a security

interest in the Subject Property) without the Village's prior written consent, which consent shall not be unreasonably withheld, Village may terminate this Agreement whereupon neither party shall have any further obligation to the other.

ARTICLE 7. TERM

7.1 This Agreement shall be in full force and effect upon its execution by the parties and terminate upon first to occur: (i) reimbursement to the Developer of Redevelopment Project Costs for Site Improvements in an amount not to exceed \$1,000,000; or, (ii) December 31, 2028 (the "Term"). The parties agree to execute and deliver such documents as may be necessary to evidence the termination of this Agreement.

ARTICLE 8. NOTICES

8.1 All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (a) when delivered in person on a business day at the address set forth below, or (b) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (c) by facsimile or email transmission, when transmitted to the email address set forth below, when actually received.

Notices and communications to Developer shall be addressed to, and delivered at, the following addresses:

Westbrook at Canterfield, LLC
Attn: Asset Manager
218 6th Avenue, Suite 200
Des Moines, Iowa 50309

with a copy to:

Kirton McConkie
Attn: Bryce K. Dalton
50 East South Temple, Suite 400
Salt Lake City, Utah 84111

Notices and communications to the Village shall be addressed to and delivered at these addresses:

Village of West Dundee
102 South 2nd Street
West Dundee, Illinois 60118

with a copy to:

Kathleen Field Orr
2024 Hickory Road, Suite 205
Homewood, Illinois 60430

By notice complying with the requirements of this Article, each party shall have the right to change the address or addressee, or both, for all future notices and communications to such party, but no notice of a change of address or addressee shall be effective until actually received.

ARTICLE 9. IN GENERAL

9.1 No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until the change is reduced to writing and executed and delivered by the Village and the Developer. No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived, the circumstances giving rise to the waiver and, where applicable, the conditions and limitations on the waiver are set forth specifically in

a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

9.2 No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Village or the Developer.


9.3 This Agreement shall constitute the entire agreement of the Parties; all prior agreements between the Parties, whether written or oral, are merged into this Agreement and shall be of no force and effect.

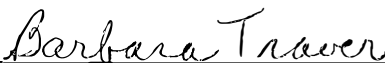
9.4 This Agreement is to be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below their respective signatures, to be effective as of the Effective Date.

VILLAGE OF WEST DUNDEE

Attest:

By: 
Village President

By: 
Village Clerk

Date: March 16, 2020

WESTBROOK AT CANTERFIELD, LLC,
an Iowa limited liability company

By: ND West Dundee, LLC,
an Iowa limited liability company
Its: Manager

By: Nelson Development 1, LLC,
an Iowa limited liability company
Its: Manager

By: _____
Name: Michael K. Nelson
Its: Manager

Date: _____, 2020

Exhibit A

Legal Description for Subject Property

LOT 1 IN ROUTE 31 AND BONCOSKY ROAD SUBDIVISION, BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHWEST QUARTER, SECTION 27, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____ AS DOCUMENT _____, IN KANE COUNTY, ILLINOIS.