

PLANNED UNIT DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE VILLAGE OF HARTLAND

AND

LIGHTNING DEVELOPMENT LLC

[INSERT DATE]

2 MULTIFAMILY

3 PLANNED UNIT DEVELOPMENT AGREEMENT

4  
5 THIS PLANNED UNIT DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as  
6 of the \_\_\_\_ day of \_\_\_\_\_ 2020, by and between LIGHTNING DEVELOPMENT  
7 LLC, a Wisconsin limited liability company hereafter, (the “Developer”) and the VILLAGE OF  
8 HARTLAND, a Wisconsin Municipality, (the “Village”).

9 RECITALS

- 10 A. Developer is the owner of approximately 16.9160 acres of real property located in the  
11 Village of Hartland and legally described on Exhibit A attached hereto (the “Site”) and  
12 desires to develop it for multifamily residential purposes (the “Project”).  
13
- 14 B. Developer desires to develop 6 multifamily residential buildings, together with a club house  
15 and amenity spaces in one continuous phase as specifically depicted on Exhibit B (the “Site  
16 Plan”) and specifically called out in highlighted notations on Exhibit E (the precise “Plans  
17 and Specifications”) and requests zoning and development permission.  
18
- 19 C. Upon consideration of the final plans for the proposed development, it was determined by the  
20 Plan Commission and the Village Board that a total site density of not more than 150  
21 multifamily residential units is consistent with the general density requirements of the land  
22 use as described in the Village of Hartland Comprehensive Development Plan: 2035.  
23
- 24 D. In order to preserve portions of an Isolated Natural Resources Area (“INRA”) within the Site,  
25 the Village and the Developer have agreed to aggregate the improvements on the Site and  
26 that the Developer create or preserve certain trail areas within the Site and preserve same as  
27 amenities accessible to the general public and therefore, certain requirements of the Zoning  
28 Code have been adjusted via PUD Zoning.  
29
- 30 E. Upon Execution and recording of this Agreement, the Site shall be re-zoned to RM-1 District  
31 with both Planned Unit Development (“PUD”) and Upland Conservancy Overlay Districts as  
32 shown in the attached Exhibit C to facilitate the proposed residential use.  
33
- 34 F. The Developer submitted a Certified Survey Map for development of the Project within the  
35 Village of Hartland, a copy of which is attached hereto as Exhibit D (the “Certified Survey  
36 Map” or “CSM”), which was considered by the Plan Commission and recommended for  
37 approval subject to the incorporation of : (1) representations made during the consideration

38 process by the Developer; (2) final approval of the engineering by Village Staff; and (3) the  
39 execution and recording of this Planned Unit Development Agreement.

40

41 G. The Village of Hartland is requiring that, as conditions of its approval of development on the  
42 Site through the issuance of Occupancy Permits , Developer must install limited public  
43 improvements associated with the development of the Site and that the acceptance of the  
44 dedication of those public improvements shall be contingent upon the construction of said  
45 improvements according to applicable State and municipal specifications and ordinances.<sup>1</sup>

46

47 H. The Village Board has duly approved Developer’s plans and specifications for the Project,  
48 conditioned upon Developer’s entry into this Agreement.

49

50 I. Developer agrees to develop the Site as herein described in strict accordance with this  
51 Agreement.

52 FINDINGS

53 The Village of Hartland Plan Commission and Village Board of Trustees have made the  
54 following findings as they relate to the Project.

55 A. The proposed site will be provided with adequate drainage facilities for surface water and  
56 storm water conditioned on the Developer implementing the approved designs in accordance  
57 with Village ordinances and subject to Village Engineer approval.

58

59 B. The proposed site will be accessible from public roads Campus Drive and Scenic Road and  
60 through internal private roads intended to carry the traffic that is projected to be generated by  
61 the proposed development conditioned on development of private roads within the site and  
62 correct development-related limited improvements on the adjacent Village road: Campus  
63 Drive.

64

65 C. No undue constraint or burden has been identified that will be imposed on public services  
66 and facilities, such as fire and police protection, street maintenance, water, sanitary sewer  
67 and storm drainage, and maintenance of public areas by the proposed development.

68

69 D. The private roadways on the site of the proposed development have been represented to be  
70 adequate to serve the residents of the proposed development although in certain respects they  
71 do not meet the minimum standards of all applicable ordinances or administrative regulations  
72 of the Village.

---

<sup>1</sup> The limited public improvements consist of (a) water system shut off valve, (b) slight modification of campus drive paved area to facilitate entrance into the southern entrance of the Site.

- 73
- 74 E. Private water and sewer facilities connected to public facilities will be provided. Private  
75 water and sewer facilities shall be maintained, repaired and replaced by the owner of the Site  
76 in perpetuity.
- 77
- 78 F. The entire Site to be included in this Planned Unit Development Overlay District shall be  
79 held under single ownership at all times.
- 80
- 81 G. The locations of the two entrances/exits have been represented to prevent unnecessary  
82 interference with the safe and efficient movement of traffic on surrounding streets, and the  
83 development has been represented to not create an unreasonable adverse effect upon the  
84 general traffic pattern of the surrounding neighborhood. The size, quality and design of all  
85 buildings, landscaping and other site development features in the Project have been  
86 represented to be compatible with the general character of the Village and specifically to the  
87 surrounding neighborhood, and the design of the development has been represented to be an  
88 attractive and harmonious development that is compatible with and one that will not  
89 adversely affect the property values of the surrounding neighborhood.
- 90
- 91 H. It has been represented that this Project will create an attractive residential environment of  
92 sustained desirability and economic stability, including structures in relation to terrain,  
93 consideration of safe pedestrian flow, ready access to recreation space, and compatible with  
94 overall plans for the community.
- 95
- 96 I. The total net residential density within the Planned Unit Development Overlay District is  
97 compatible with the Village of Hartland Comprehensive Development Plan: 2035. The total  
98 net density is also consistent with and does not exceed the density of development permitted  
99 in the underlying basic use zoning district.
- 100
- 101 J. Structure types will be compatible with other structural types permitted in the underlying  
102 basic use district.
- 103
- 104 K. No provision has been made for the installation of any new public facilities other than the re-  
105 routing of a segment of an existing natural trail over to a public right of way to accommodate  
106 the construction of Building No. 1 as there will not be any.
- 107
- 108 L. Adequate, continuing fire and police protection is understood to exist.
- 109
- 110 M. The population density of the development has been shown to not have an adverse effect  
111 upon the community's capacity to provide needed school or other municipal service facilities.
- 112

113 N. Adequate guarantee is provided for permanent preservation of open space areas conditioned  
114 on the zoning of the Isolated Natural Resource Area under Upland Conservancy Overlay  
115 District and that no other development will occur except that which is approved herein.  
116

117 The care and maintenance of open space will be provided by a management organization for  
118 the Project.  
119

120 O. Developer has committed to payment of the appropriate property tax liability for the Site and  
121 has voluntarily agreed to subject the Site to a covenant running with the land as detailed in  
122 section XVIII (H.) hereafter continue to bear its share of the general property tax burden, in a  
123 manner consistent with other non-exempt properties in the Village, should the Site and/or  
124 Project qualify at any time for tax-exempt status.  
125

126 P. Aggregation of residential development has been permitted to protect and preserve portions  
127 of an INRA.

128 NOW, THEREFORE, in consideration of the incorporation of all of the above Recitals and  
129 Findings, the covenants of the Village set forth herein, and other good and valuable  
130 consideration, the receipt and sufficiency of which is hereby acknowledged, Developer does  
131 hereby agree to develop the Site as follows:

132 Section I. PUD Requirements

133 A. Developer shall comply with this Agreement.  
134

135 B. The Project shall include not more than 150 single family residential units as detailed on the  
136 Site Plan (Exhibit E).  
137

138 C. The Project shall at all times comply with the requirements of the RM-1 Residential District,  
139 except as defined below, and the requirements of the UCO - Upland Conservancy Overlay  
140 District as that district is mapped on the Site.  
141

142 D. All of the above Recitals and Findings are made applicable to the Project and Site and are  
143 incorporated and made a part of this Agreement.  
144

145 Section II. Improvements.

146 Developer shall prepare the Site and construct the improvements on the Site and on Campus  
147 Drive as described below (all at Developer's sole expense) in accordance with the plans and  
148 specifications attached to this Agreement as Exhibits ("Project").

- 149 A. Streets.
- 150 1. Developer shall, at its sole expense, grade, construct and surface private roadways on the
- 151 Site as shown on and in accordance with the plans and specifications set forth on Exhibit
- 152 E.<sup>2</sup>
- 153 2. At the commencement of the Project, Developer shall install tracking pads at all points
- 154 where construction traffic enters or departs from the Site. Gravel drive areas shall be
- 155 required for the respective staging areas of each building sought to be constructed in
- 156 order to be eligible to apply for a Building Permit. No Occupancy Permit will be issued
- 157 for any specific building until the binder lift has been installed which would reasonably
- 158 permit residents of same and emergency vehicles to ingress and egress from the Site and
- 159 to park without jeopardy of damage or blockage.
- 160 3. Developer shall construct and surface the private roadways called for under this Section
- 161 in one continuous phase which commits, subject to documented weather delays, to full
- 162 construction of all six (6) residential buildings, all stand alone garages and all amenity
- 163 buildings and elements on or before June 1, 2022 as shown on Exhibits E. & K.
- 164
- 165 B. Sanitary Sewer.
- 166 1. Developers shall, at its sole expense, construct, install, and provide a complete private
- 167 sanitary sewage collection system throughout the entire Site that performs in accordance
- 168 with the plans and specifications set forth on Exhibit E and at no cost to the Village. The
- 169 construction of the sanitary sewer system required hereunder shall be constructed so as to
- 170 fully service the Project.
- 171 2. Subject to the provisions of Sections II. and Section IV. of this Agreement, and upon
- 172 completion of the private sanitary sewage collection system serving the Site in
- 173 accordance with the plans and specifications set forth on Exhibit E, the Village may
- 174 accept and allow such system to be connected to the existing Village sewage collection
- 175 system subject to compliance with all testing requirements deemed reasonable by the
- 176 Village Engineer.
- 177 3. The Village Board has no obligation to allow any private improvements to be connected
- 178 to the existing Village sewage collection system until the applicable components of the
- 179 sanitary sewer have been installed in accordance with plans and specifications approved
- 180 by the Village as set out in Exhibit E. At its sole expense, Developer shall clean and
- 181 televise the sewer system prior to its connection to the Village sanitary sewer system and
- 182 shall provide a written report and DVD copy of the televised inspection thereof.
- 183 4. No Occupancy Permit shall be processed or issued until the portion of the sanitary sewer
- 184 collection system servicing the entire building for which the Occupancy Permit is sought
- 185 has been duly approved for connection to and actually is connected to the Village sewage
- 186 collection system.

---

<sup>2</sup> THE TEMPORILY NAMED "SCENIC ROAD" SHALL NOT BE USED BY CONSTRUCTION TRAFFIC SERVICING THE MULTIFAMILY PROJECT AFTER THE BINDER LIFT HAS BEEN PLACED ON, ANY PART OF SCENIC ROAD.

187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226

C. Water.

1. Developer shall, at its sole expense construct, install, furnish, and provide a completed private system of water distribution throughout the entire Project, in accordance with the plans and specifications attached hereto as Exhibit E and including such provisions for connection to future development or expansion of the water system as deemed necessary by the Village. The construction of the municipal water system required hereunder shall be conducted so as to fully service the Project.
2. Upon completion of the water system serving the Site in accordance with the plans and specifications set forth in Exhibit E, Developer shall dedicate, and the Village shall accept, limited elements of the water system, it deems appropriate and, subject to the terms of this Agreement, allow connection to the Village water system.
3. The Village Board has no obligation to allow connection of any component of the private water distribution system until the applicable component of the water distribution system has been inspected by the Village Engineer and DPW representative and is determined to be installed in accordance with plans and specifications approved by the Village.
4. Developer hereby consents to the connection by any third parties including the Village, with and through its private water system in order to obtain municipal water or to establish availability of water on a loop basis, on its behalf and on the part of its successors in interest and assigns, without cost except for payment to the Village or its successor of the gallonage used notwithstanding that the water is being transported through Developer's private system. This shall constitute a covenant running with the Site which also includes a general easement for the benefit of the Village on the Site acting through agents or contractors to accomplish any connection/installation that may be necessary.
5. No occupancy permit shall be processed or issued unless a Private Hydrant Maintenance Agreement has been executed and included as part of this Agreement, and until the water distribution system servicing the entire building for which it is sought has been satisfactorily connected to the Village system as determined by the Village Engineer.

D. Storm/Surface Water System & Site Grading.

1. Developer shall, at its sole expense, construct, install, furnish, and provide facilities for storm and surface water drainage servicing the Site in accordance with the plans and specifications set forth on Exhibits F, F-1, F-2 .
2. The Village Board shall have no obligation to approve the storm/surface water system until the system has been inspected by the Village Engineer and installed in accordance with plans and specifications approved by the Village as set out in Exhibit F, F-1, F-2 ..
3. Developer and each of its successors in interest of the Site shall be severally responsible for the maintenance of all detention and retention basins and private storm sewer as shown on Exhibits F, F-1, F-2 . both before and after completion of said facilities. This

227 includes the responsibility for routinely conducting all dredging and cleaning of detention  
228 and retention basins and private storm sewer to assure that they perform adequately. This  
229 responsibility shall be recorded in a Storm Water Management Facility Maintenance  
230 Agreement with respect to the Site in the form attached hereto as Exhibits F F-1, F-2.  
231 Developer shall, at its sole expense, grade the Site in accordance with the final Master  
232 Grading plans and specifications set forth on Exhibit E. Developer will be allowed to  
233 deviate up to six inches (6”) from the final Master Grading plans upon completion of the  
234 Site grading. Developer shall be required to complete elements of the Master Grading  
235 plans related to surface water drainage for the entirety of the Site prior to issuance of any  
236 Occupancy Permit by the Village. A building grading plan in compliance with the final  
237 Master Grading plans and specifications shall be submitted by the Developer at the time  
238 of permitting for each individual building to the Village Engineer or Building Inspector  
239 for approval.

240 E. Site Clearing/Restoration.

- 241 1. Developer shall, at its sole expense, remove and dispose of all destroyed trees, brush, tree  
242 trunks, and shrubs, and all rubbish currently located on the Site in accordance with all  
243 applicable State, Federal and municipal codes and ordinances.
- 244 2. Developer shall not destroy or remove any live vegetation nor conduct any grading,  
245 filling or other construction related activities, except as approved in Exhibit E, within the  
246 Isolated Natural Resource Area zoned UCO – Upland Conservancy Overlay District  
247 except as set forth in the finally approved plans and specifications and under any required  
248 issued DNR permit.
- 249 3. Developer shall be responsible for compliance with all applicable provisions of Chapter  
250 90 of the Village Code of Ordinances pertaining to clearing, protection, and replacement  
251 of trees including, but not limited to submission of a tree protection plan and obtaining of  
252 a tree permit prior to start of work on the Site.
- 253 4. Developer shall not establish any private wells or septic systems on the Site.

254  
255 F. Landscaping and Erosion Control.

- 256 1. Developer, and all its agents, contractors and subcontractors shall grade, seed and  
257 otherwise landscape the Site in strict compliance with the plans and specifications set  
258 forth on Exhibit E, and shall at all times remain in compliance with all applicable  
259 municipal and state erosion control restrictions and requirements. Developer shall  
260 complete required erosion control inspections and reports in accordance with the erosion  
261 control permit standards. Developer shall be responsible for costs of periodic compliance  
262 inspections of erosion control facilities that will be conducted by the Village Engineer or  
263 his designee.
- 264 2. If any erosion control facilities (including but not limited to bales, silt fence and berms)  
265 are washed out or otherwise rendered ineffective as determined by the Village Engineer  
266 or Building Inspector, Developer shall repair or replace said facilities within 48 hours of

267 being so notified in writing by the Village Engineer or Building Inspector. If Developer  
268 fails to repair or replace said facilities within 48 hours of being so notified by the Village  
269 Engineer or Building Inspector, the Village may, but is not required to, repair or replace  
270 such facilities and charge 125% percent of all costs incurred by the Village in so  
271 reinstalling said facilities to Developer. The Village may collect this amount from any  
272 amounts payable to Developer that the Village is holding pursuant to this Agreement.  
273 3. Developer shall, simultaneous with the execution of this Agreement, provide the Village  
274 a temporary general access easement to the Village in the form attached hereto and  
275 incorporated by reference as Exhibit G to permit repair or replacement of said facilities in  
276 the event of a default by Developer.

277  
278 G. Street Signs, Pavement Markings and Street Lights.

- 279 1. Developer shall provide and install (subject to Village approval) all signs and pavement  
280 markings as specified in Exhibit E.
- 281 2. Developer shall also provide and install private streetlights for the Site as specified in  
282 Exhibit L at no cost to the Village.
- 283 3. Following installation of private streetlights by Developer, streetlight electricity shall  
284 always be paid for by the owner of the Project.

285  
286 H. Hazardous Substances.

287 Developer hereby represents and warrants to the Village that Developers has conducted a  
288 Phase I environmental assessment of the Site, the resulting report for which is attached as  
289 Exhibit H, and that Developer has no knowledge of, nor reason to believe that, any  
290 “hazardous substances” as defined in U.S.C. § 9601 or listed in Chapter 40 of the Code of  
291 Federal Regulations nor any petroleum, crude oil, natural gas or other petroleum product are  
292 currently present on the Site. If, during the course of carrying out its obligations under this  
293 Agreement, Developer acquires information indicating the possible existence of a hazardous  
294 substance or petroleum product on the Site, Developer shall immediately notify the Village  
295 Engineer/Village Manager of this information and be responsible for appropriate removal  
296 and cleanup.

297  
298 I. Pathways/Sidewalks.

- 299 1. Developer shall provide, install and pave with concrete or other specified materials those  
300 portions of onsite pathways as specified in Exhibit E.
- 301 2. Developer shall grant a permanent access easement within the CSM, Exhibits D and J, to  
302 the general public for unrestricted passage and enjoyment of a continuous natural path  
303 located within the Project except as modified in Exhibit E.
- 304 3. Paved pathways accessible to the residents and invitees of the Project, including paved  
305 pathways used for emergency access to the Project, shall be maintained year-round  
306 including winter maintenance performed in compliance with the Village Code

307 requirements for snow and ice removal and control on public sidewalks. Unpaved  
308 pathways or trails intended for use by the general public may be maintained during winter  
309 at the discretion of the Project owner. Notwithstanding anything herein to the contrary,  
310 the pathways located in the right-of-way along Campus Drive shall be maintained by the  
311 Village

- 312 4. At the time of entry into this Agreement, Developer shall grant the Village and its agents  
313 or subcontractors a permanent easement to access public access pathways and  
314 repair/maintain them at the Village's sole option in the event of default by the owner of  
315 the Site in the maintenance thereof in the form attached hereto as Exhibit J. Any repair or  
316 maintenance performed by the Village hereunder shall be assessed against equally against  
317 all building owners as a *special charge* pursuant to the Wisconsin Statutes.

318  
319 J. As Built Drawings

320 Developer shall, at its sole expense, furnish one set of reproducible "as built" plans for the  
321 Project improvements described in this Section II including the final location and elevation  
322 of the various improvements as required by the Village Engineer including, but not limited to  
323 private roadways, private sanitary sewer facilities and connection to the Village system,  
324 private water facilities and connection to the Village system, all storm water facilities, private  
325 sidewalks/paths, all signs, all roadway lights. Reproducible plans shall be provided on Mylar  
326 or another similar media acceptable to the Village Engineer together with an electronic file  
327 copy of said plans compatible with the Village's GIS software on or before the issuance of  
328 the first occupancy permit for the Project. Electronic plans provided hereunder shall include  
329 GPS locations for private manholes, private inlets, private valves and all private other  
330 structures. Electronic plans required hereunder shall be submitted before the issuance of the  
331 final Occupancy Permit for the Project.

332  
333 Section III. Dedication.

334 A. Subject to all of the other provisions of this Agreement and the exhibits attached,  
335 Developer shall, without charge to the Village, upon completion of all public improvements  
336 on the Site described as such in plans and specifications attached hereto as exhibits,  
337 unconditionally give, grant, convey and fully dedicate the same to the Village, their  
338 successors and assigns, forever, free and clear of all encumbrances whatever together with  
339 any and all necessary easements for access thereto.

340 B. Developer shall notify the Village, in writing when any public improvement described as  
341 such in the previous paragraph have been completed. Within fourteen (14) days of the date of  
342 such notice, the Village Engineer and DPW representative shall inspect and/or re-inspect as  
343 necessary any public improvements described in Developer's notice and prepare and deliver  
344 to Developer a written punch list of repairs necessary to bring such public improvement into  
345 conformance with the applicable plans and specifications. Upon Developer's written notice

346 to the Village Engineer and DPW representative that all punch list repairs for any such public  
347 improvement are complete, and following satisfactory completion of any applicable re-  
348 inspection, the Village shall, subject to the re-inspection and approval of the Village  
349 Engineer by separate resolution, accept the dedication of such public improvement.

350 Section IV. Building/Occupancy Permits.

351  
352

353 A. The Village will have no obligation to process or to issue Occupancy Permits for any  
354 building until all utilities required for fire and safety for that building have been completed  
355 and the first lift of asphalt for any roadways required to provide access for fire and safety  
356 have been installed in accordance with Exhibit K.

357 Section V. Miscellaneous Requirements and Provisions.

358 A. Survey Monuments. Developer agrees to properly place all survey or other monuments  
359 required by applicable state statute or municipal ordinance, and further agrees to permanently  
360 monument the boundaries of the environmental corridor (constituting either wetlands or other  
361 environmental corridor) by placing monuments that comply with the specifications set out in  
362 Chapter 236, Wis. Stats., at every point where a lot boundary line intersects the  
363 environmental corridor and at the mid-point of the environmental corridor boundary within  
364 each lot and at any change in direction of the boundary lines.

365

366 B. Outside Irrigation. Developer shall not use water for purposes of outside irrigation beyond  
367 the hours of 10:00 pm through 2:00am only, or as otherwise directed by the Village of  
368 Hartland from time to time.

369  
370

371 C. Grade. Exhibit E sets out maximum yard grade elevations that shall be required on the Site,  
372 subject to section II.D.3. .

373

374 D. Underground Utilities. All new electrical, telephone, gas and cable television utilities and  
375 services on the Site shall be buried underground in accordance with Chapter 50 of the  
376 Municipal Code of the Village of Hartland. Coordination of installation of such utilities and  
377 services shall be the responsibility of Developer.

378

379 E. Manner of Performance. Developer shall cause all construction called for by this Agreement  
380 to be carried out and performed in a good and workmanlike manner.

381

382 F. Permits. Developer hereby agrees to obtain, at its sole expense, all necessary permits and  
383 approvals from all governmental authorities with jurisdiction over the Site, including, but not  
384 limited to, the Village, Waukesha County, Delafield Hartland Water Pollution Control  
385 Commission, and Department of Natural Resources, when required prior to the start of  
386 construction, demolition or hazardous waste abatement with respect to the applicable portion  
387 of the Site work. Developer shall be solely responsible for paying, at the time of building  
388 permit application, all applicable sewer or water connection fees pertaining to connection of  
389 such utilities servicing the Project which are customarily and uniformly assessed.

390  
391 G. Locations. The parties agree that the locations of existing Village water, sanitary sewer and  
392 storm sewer facilities as indicated on Exhibit E are approximate locations only. It is  
393 Developer's sole responsibility to definitively locate all such Village facilities in the field,  
394 and the Village bears no liability if any of said facilities are not located where indicated in  
395 the documents described in this subsection.

396

397 Section VI. Time.

398 A. Following the execution and recording of this Agreement and its exhibits, Developer shall  
399 complete the following aspects of said improvements on the Site for the Project, all in  
400 compliance with the requirements of this Agreement, on or before the following dates:

- 401 1. Completion of installation of the first lift of asphalt on the private roadways serving the  
402 entire Project and connection to Scenic Drive pursuant to Exhibit K unless extended by  
403 the Village Board upon recommendation of the DPW Director and Village Engineer.
- 404 2. Full installation of sanitary sewage collection and water distribution systems servicing  
405 the Site pursuant to Exhibit K.
- 406 3. Completion of storm/surface water drainage facilities servicing the Site as specified in  
407 Exhibit K.

408

409 B. Except as set forth in subsection C below, time is of the essence as to all deadlines set forth  
410 in this section. Upon failure of Developer to meet one or more deadlines specified in this  
411 section, Village may (but is not required to) complete that aspect of the project and charge  
412 Developer one hundred twenty-five percent (125%) of the actual costs incurred by Village in  
413 so completing that aspect of the Project. Village may draw upon the security provided in this  
414 Agreement for the payment of said charges against Developer.

415

416 C. If delay in completion of any public improvements or the Project on the Site described in this  
417 Agreement is caused or contributed to by act, omission, misconduct or neglect of the Village  
418 or those acting for or under the Village, labor disputes, casualties, acts of God or the public  
419 enemy, governmental embargo restrictions, pandemics, shortages of fuel, labor or materials,  
420 action or non-action of public utilities or of local, state or federal governments (including, but

421 not limited to, governmental shut down orders or enactments) affecting the work or other  
422 causes beyond Developer's reasonable control, then the time of completion of such public  
423 improvements shall be extended for the additional time caused by such delay provided  
424 Developer notifies the Village Administrator of the occurrence of the delay in writing within  
425 48 hours of its occurrence or inception along with a good faith estimate of the anticipated  
426 time of the commencement or resumption of delayed work. Failure to do so will otherwise  
427 give rise to a presumption that no excusable delay has occurred.

428 Section VII. Payment of Village Fees.

429 Developer agrees to provide to the Village the following:

- 430 1. Developer and Village acknowledge that the Village has caused a needs assessment study  
431 to be performed pursuant to Wis. Stat. § 66.55 and that the Village has enacted an  
432 ordinance (§ 50-232) that imposes impact fees pertaining to the Village's services and  
433 facilities. The Parties acknowledge that the ultimate occupants of the Site will likely  
434 utilize these Village services and facilities and that the impact fees imposed by Village  
435 Ordinances are necessary to pay for the capital costs of the facilities in order to  
436 accommodate land development. Accordingly, Developer represents and warrants that it  
437 will pay to the Village impact fees in the then current amount in accordance with the  
438 Village Code upon application for each building's permits.
- 439 2. An inspection fee deposit, for inclusion in the Developer escrow maintained by the  
440 Village in the amount of \$30,000 at the time of execution of this Agreement. Developer  
441 shall be responsible for actual inspection costs and fees incurred by the Village to inspect  
442 public improvements which shall first be deducted from such deposit.
- 443 3. Developer shall continue to maintain an escrow balance with the Village through which  
444 the Village will reimburse itself for legal, administrative, engineering and fiscal expenses  
445 paid by the Village on behalf of the Project. Developer shall at all times maintain a  
446 minimum deposit of \$15,000. In the event that Developer fails to maintain the minimum  
447 deposit required for a period of ten (10) consecutive days following written notification,  
448 the Village may withhold the issuance of any Building or Occupancy Permits until the  
449 minimum deposit is restored.
- 450 4. Developer acknowledges that it is obligated to pay the sanitary sewer service fees  
451 applicable to the Site which include payment of both Connection Charges under Section  
452 86-276 of the Village Code and Regional Sewer Availability Charges ("RSAC") under  
453 Section 86-277 of the Village Code of Ordinances and that those sections and fees will  
454 be adjusted from time to time. Developer represents and warrants that it will pay to the  
455 Village the then current Connection Charge and RSAC fee for each building on the Site  
456 upon application for respective building permits including connection to the sanitary  
457 sewer system.

458 Section VIII. Security for Payment and Performance of Developer’s Obligations

459 A. Security Required. Prior to commencement of construction activities related to the  
460 Development, Developer shall deliver or cause to be delivered to the Village acceptable  
461 security equal to one hundred twenty percent (120%) of the Village Engineer’s cost estimate  
462 (which is anticipated to be \$397,804.00) of all public improvements, all private site utilities  
463 and primary roadway drive to Scenic Road for the Site shown on the plans and specifications  
464 pertaining thereto.

465  
466 B. Form of Security. Notwithstanding §236.13 (2) (1m.) (c.) of the Wisconsin Statutes, it is the  
467 preference of the Village that security be provided in the form of an irrevocable Letter of  
468 Credit (“LoC”) issued by a federally insured banking institution, the financial condition of  
469 which is acceptable to the Village, naming the Village as payee and expiring no sooner than  
470 twelve months, and being in a form acceptable to the Village Attorney. The letter of credit  
471 shall be subject only to Wisconsin law and no other regulation or publication issued by any  
472 governmental or non-governmental organization and shall be subject to be drawn upon a  
473 bank having a location within Wisconsin where the LoC can be drawn upon. The amount of  
474 such security shall be reduced subject to the provisions of Section VIII.D. hereafter and when  
475 work secured hereby is completed and/or, if applicable, dedicated to the Village.

476  
477 C. Maintenance of Security. The LoC as described in this Section VIII shall be renewed in a  
478 form acceptable to the Village Attorney no later than 30 days prior to its expiration and shall  
479 be maintained with respect to public improvements as described below for a period of time  
480 expiring 14 months after the improvements for which the security is provided are  
481 substantially complete in accordance with §236.13 (2) (am) 2. of the Wisconsin Statutes  
482 which provides:

483  
484 *For purposes of subd. 1., public improvements reasonably necessary for a project*  
485 *or a phase of a project are considered to be substantially completed at the time*  
486 *the binder coat is installed on roads to be dedicated or, if the required public*  
487 *improvements do not include a road to be dedicated, at the time that 90 percent of*  
488 *the public improvements by cost are completed.*

489  
490 In the event it is not renewed at least 30 days prior to its expiration, the Village may draw  
491 upon such security for purposes of completion of Improvements provided for in this  
492 Agreement.

493  
494 D. Reduction of Security Upon Partial Completion. The amount of the LoC may be reduced as  
495 the improvements described in the plans and specifications set forth on the attached exhibits  
496 are completed and approved by the Village Engineer and in accordance with the following  
497 procedure.

- 498 1. From time-to-time during the course of construction, Developer may request the Village  
499 Engineer to inspect the construction work completed to that date, and the Village  
500 Engineer, as agent of the Village, shall use his best efforts to make such inspection within  
501 seven (7) days after the request.
- 502 2. The request to inspect shall be accompanied by a certification prepared by Developer's  
503 engineer and stating the work completed, an estimate of the dollar value of the work  
504 completed to date of the request and since Developer's engineer's last certification and  
505 that the work has been completed in a good and workmanlike manner and in compliance  
506 with applicable plans and specifications.
- 507 3. The request for inspection shall also be accompanied by a certification from Developer's  
508 engineer estimating the cost to complete the remaining balance of the public  
509 improvements, with the estimated dollar value of the improvements completed and the  
510 estimated cost to complete the remaining public improvements being on a form and  
511 presented in a manner reasonably acceptable to the Village Engineer and Village  
512 Administrator.
- 513 4. Prior to reduction of the security amount, Developer shall deliver to the Village a sworn  
514 contractor's statement and appropriate photocopies or originals of lien waivers showing  
515 that all work in place and for which a reduction in the security is requested has been fully  
516 paid for or that all mechanic's or other liens have been waived.
- 517 5. The Village Engineer and Village Administrator shall approve a reduction in the Security  
518 provided the following are met:
- 519 i. Receipt of the required documentation from the Developer
  - 520 ii. Inspection by the Village Engineer
  - 521 iii. Certification by the Village Engineer to the Village and to the financial  
522 institution issuing any letter of credit:
    - 523 1. The dollar value of the work completed to the date of the request for  
524 inspection and since the last certification by the Village Engineer
    - 525 2. That the work has been completed in a good and workmanlike manner  
526 and in compliance with the Plat and the applicable plans and  
527 specifications
    - 528 3. That no mechanic's or other liens will attach to the Site or to any  
529 property of the Village as a result of the installation of the  
530 improvements
    - 531 4. That Developer's engineer's or Village Engineer's estimate of the  
532 dollar value of the work completed and the cost to complete the  
533 remaining improvements are reasonable.
  - 534 iv. The balance remaining in the security is at least equal to one hundred twenty  
535 percent (120%) of the cost to complete all the remaining public and private  
536 improvements plus fifteen percent (15%) of the total cost of any completed  
537 improvements.

- 538
- 539 E. Release of Security Upon Completion. Upon final completion of all of the improvements and  
540 the acceptance by the Village of the public improvements and posting of any required  
541 warranty or maintenance bond security, the then remaining balance of the security shall be  
542 released and returned, after first drawing upon the security for any fees and costs due and  
543 owing to the Village pursuant to all applicable ordinances and this Agreement.  
544
- 545 F. Return of Excess Proceeds After Default. In the event of default by Developer under this  
546 Agreement, if any of the security funds remain in the possession of the Village after all of the  
547 public and private improvements have been completed in a good and workmanlike manner  
548 and in accordance with the applicable plans and specifications, all warranty or maintenance  
549 obligations satisfied and all fees, costs and expenses of the Village, including reasonable  
550 attorney's fees, engineering fees, consultant fees, or other out-of-pocket expenses incurred in  
551 completing the improvements, in releasing liens thereon in paying for work completed prior  
552 to default are paid, or other costs incurred as a result of the default of Developer; then any  
553 remaining balance shall be paid to Developer, subject to any claim to said funds exerted by  
554 any financial institution issuing any letter of credit given as security.

555 Section IX. Guarantee of Improvements.

- 556 A. Guarantee. Developer's guarantee that all materials and workmanship furnished by  
557 Developer pursuant to this Agreement shall meet or exceed all state, federal and local  
558 requirements and specifications and that the public improvements are and will remain in  
559 good and sound condition for and during a period of twelve (12) months from the date of the  
560 issuance of the final occupancy permit for the Project. .  
561
- 562 B. Guarantee Security. Notwithstanding the following in this section, it is the preference of the  
563 Village that security be provided in the form of a letter of credit. Developer shall furnish to  
564 the Village, prior to final acceptance of dedication of the public improvements by the  
565 Village, guarantee security pursuant to §236.13 of the Wisconsin Statutes consisting, as  
566 determined by Developer, of an original, irrevocable letter of credit issued by a federally  
567 insured banking institution with an office in Wisconsin where the letter of credit can be  
568 presented for collection and subject solely to Wisconsin law and no Chamber of Commerce  
569 provisions, which is acceptable to the Village, naming the Village as payee, expiring no  
570 sooner than fourteen months from the date of substantial completion of the covered  
571 improvements and equaling in the aggregate to ten percent (10%) of the total final cost of the  
572 improvements, which guarantee security will be retained by the Village for a period of  
573 fourteen (14) months after the substantial completion of the improvements as initial security  
574 for Developer's guarantee that the workmanship and materials furnished meet or exceed all  
575 state, federal and local requirements and specifications, and that the improvements are and  
576 will remain in good and sound condition for and during the fourteen (14) month period from

577 and after their acceptance. Separate letters of credit may be utilized because the time frame  
578 for the acceptance of each type of improvement may be different.

579  
580 C. **Obligation to Repair.** Developer shall make or cause to be made, at its own expense, any and  
581 all repairs which may become necessary under and by virtue of Developer's guarantee and  
582 shall leave the improvements in good and sound condition, satisfactory to the Village and  
583 Village Engineer at the expiration of the guarantee period; provided, however, Developer's  
584 obligation to repair shall not extend to repairs necessitated by or related to any act, omission,  
585 neglect or misconduct of the Village, its agents, employees or contractors (and the guarantee  
586 security may not be drawn against in such instances).

587  
588 D. **Notice of Repair.** If during a respective guarantee period, the improvements shall, in the  
589 professional opinion of the Village Engineer, require any repairs or replacements which in  
590 his judgment are necessitated by reason of settlement of foundation, structure or backfill, or  
591 other defective workmanship or materials, Developer shall, upon written notification by the  
592 Village Engineer of the necessity for such repairs, make such repairs, at their own cost and  
593 expense. Should Developer fail to make such repairs within a reasonable time after written  
594 notice has been sent as provided herein, or fail to start work within fourteen (14) calendar  
595 days after such written notice, weather permitting, the Village may cause such work to be  
596 done, but has no obligation to do so, either by contract or otherwise, and the Village may  
597 draw upon said guarantee security to pay any costs or expenses incurred in connection with  
598 such repairs or replacements. Should the cost or expense incurred by the Village in repairing  
599 or replacing any portion of the improvements covered by this guarantee exceed the amount of  
600 the guarantee security, the Developer shall, within thirty (30) days of being invoiced by the  
601 Village, pay 125 percent of any excess cost or expense actually incurred in the correction  
602 process.

603  
604 E. **Maintenance Prior to Acceptance.** Developer shall maintain the public improvements until  
605 such time as they are accepted by the Village in dedication. This maintenance shall include  
606 routine maintenance. In cases where emergency maintenance is required, such as sewer  
607 blockages, the Village retains the right to complete the required emergency maintenance in a  
608 timely fashion and bill Developer for all actual associated costs. All improvements shall be  
609 maintained so they conform at the time of their acceptance by the Village to the applicable  
610 plans and specifications attached as exhibits to this Agreement.

611 **Section X. Method of Improvement.**

612 Developer hereby agrees to engage contractors for all work included in this Agreement who are  
613 qualified to perform the work. Developer further agrees to use materials and make the various  
614 installations in accordance with the applicable plans and specifications made a part of this

615 Agreement by exhibit reference including those standard specifications as the Village Board or  
616 its Commissions may have adopted and published prior to this date.

617 Section XI. Zoning.

618 The Village does not guarantee or warrant that the subject lands of this agreement will not at  
619 some later date be rezoned, nor does the Village herewith agree to rezone the lands into a  
620 different zoning district. Should this occur Developer will be entitled to legal non-conforming  
621 zoning rights as provided under Wisconsin law and municipal ordinances.

622 Section XII. Indemnification and Insurance.

623 A. Indemnification.

624 1. In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement  
625 or documents incorporated herein by reference, Developer shall INDEMNIFY AND  
626 SAVE HARMLESS the Village, its officers, agents and employees, and shall DEFEND  
627 the same from and against any and all liability, claims, loss damages, interest, actions,  
628 suits, judgments, costs, expenses, attorneys' fees, and the like, which result from or arise  
629 in the course of out of, or as a result of the performance, mis-performance, or  
630 nonperformance of Developer's obligations under this agreement or the negligent  
631 construction or operation of public improvements covered thereby until the dedication of  
632 said public improvements is accepted by the Village and after the dedication of said  
633 improvements only if the occurrence giving rise to the claim predates the dedication.

634 2. In every case where judgment is recovered against the Village if notice and opportunity  
635 to defend has been given to the Developer of the pendency of the suit within ten (10)  
636 days after service of the summons and complaint on the Village, the judgment shall be  
637 conclusive upon the Developer not only as to the amount of damages, but also as to its  
638 liability to the Village.

639 B. Insurance. Developer and/or Developer's contractors shall maintain at all times, until the  
640 acceptance by the Village of all public improvements' insurance with minimum limits and  
641 coverage as shown below:

642 1. For Developer's contractors and others working on the Site, Worker's Compensation,  
643 including Occupational Disease, Insurance meeting the statutory requirements of the  
644 State of Wisconsin, and Employer's Liability insurance in an amount of at least Five  
645 Hundred Thousand Dollars (\$500,000.00).

646 2. For Developer and Developer's contractors, Comprehensive Liability Insurance  
647 providing limits for bodily injury and personal injury of One Million Dollars  
648 (\$1,000,000.00) combined single limit. The policy must include the Village and its  
649 agents, officers and employees as "additional insured" and provide premises, operations,  
650 elevators, damage, blanket contractual covering indemnities within contract documents,  
651 products and completed operations coverage and be endorsed as "primary and non -

652 contributory" to any insurance of the additional insured, except from their sole  
653 negligence.

654 3. For Developer's contractors and others working on the Site, Comprehensive Automobile  
655 Liability Insurance, on occurrence basis, covering all owned, non-owned and hired  
656 vehicles with limits of liability equal to those set forth in paragraph B (2) above.

657 C. Proof of Insurance Coverage for Village. Developer shall furnish to the Village, prior to  
658 commencement of construction or Site preparation activities, evidence of the issuance of  
659 policies covering the above recited insurance requirements in the form of a Declaration  
660 referencing all applicable policies along with endorsements referencing the policy numbers  
661 of the applicable polices and signed by an authorized person. **An ACORD 25 certificate**  
662 **shall not be acceptable.** All endorsements to those policies must state that notice of any  
663 material change in coverage or nonrenewal or cancellation will be provided to the Village not  
664 less than thirty (30) days prior to the effective date of any such change, nonrenewal or  
665 cancellation. All endorsements shall name the Village of Hartland, its officers, employees  
666 and agents as an additional insured. The form of the endorsement of insurance will be subject  
667 to the approval of the Village's attorney, prior to commencement of construction or Site  
668 preparation activities, which shall not be unreasonably withheld.

669 D. No Limit on Liability. It is understood and agreed that the insurance coverage and limits  
670 required above shall not limit the extent of Developer's responsibilities and liabilities  
671 pursuant to this Agreement or imposed by law.

#### 672 Section XIII. Amendment Parties.

673 Notwithstanding the foregoing, or any other provision of this Agreement, it is expressly  
674 understood and agreed that any or all of the provisions of this Agreement may be amended,  
675 modified, waived, and/or annulled by written agreement by and between the Developer and the  
676 Village alone.

#### 677 Section XIV. General Conditions and Regulations.

678 All the provisions of the Village ordinances relating to the development of land shall bind the  
679 parties hereto and be a part of this Agreement as fully as if set forth at length herein. This  
680 Agreement and all work and improvements required hereunder shall be performed and carried  
681 out in strict accordance with and subject to the provisions of said ordinances and this Agreement.  
682 This Agreement shall not be deemed to modify or suspend any provisions of the Village  
683 Ordinances (now existing or as subsequently amended) relating to the development or use of  
684 land. All such provisions shall apply to the Project in accordance with applicable law.

#### 685 Section XV. Assignment.

686 Developer shall not assign this Agreement without the prior written consent of the Village.

687 Section XVI. Amendments.

688 The Village Board and Developer, by mutual consent, may amend this Agreement at any  
689 meeting of the Village Board of the Village of Hartland. The Village Board shall not, however,  
690 be obligated to consider consenting to an amendment until after first having received a  
691 recommendation from the Village Plan Commission.

692 Section XVII. Exculpation of Village Elected Officials in Personal Capacity.

693 The parties agree that the President, Village Clerk, Board of Trustees and Plan Commission  
694 members of the Village of Hartland, may have entered into or may be signatory to this  
695 Agreement solely in their official capacity and not individually, and shall have no personal  
696 liability or responsibility hereunder; and personal liability as may otherwise exist, being  
697 expressly released and/or waived.

698 Section XVIII. Miscellaneous Provisions

- 699 A. This Agreement may be executed in one or more counterparts, each of which shall be  
700 deemed an original but all of which together shall constitute one and the same instrument.  
701
- 702 B. This Agreement is the complete and entire agreement of the parties with respect to the  
703 matters covered by this Agreement, and it shall supersede all prior agreements to the  
704 contrary. No agreements, promises, or representations made during or in connection with  
705 the negotiations for or approval of this Agreement shall be binding or effective unless  
706 they are included herein. This Agreement may be introduced into evidence by any party  
707 without objection in any action to enforce the terms of this Agreement. No modification  
708 of this Agreement shall be binding unless in writing and signed by Developer and  
709 Village.  
710
- 711 C. The Parties acknowledge and represent that this Agreement is the subject of negotiation  
712 by all parties and that all parties together shall be construed to be the drafter hereof and  
713 this Agreement shall not be construed against any party individually as drafter.  
714
- 715 D. Legal Relationship. Nothing in this Agreement shall be construed to create an  
716 employer/employee relationship, joint employer, a joint venture or partnership  
717 relationship, or a principal/agent relationship.  
718
- 719 E. Survival. All agreements, representations, or warranties made herein shall survive the  
720 execution of this Agreement and the making of the grants hereunder. This Agreement  
721 shall be binding upon the Parties, their respective successors and assigns.  
722

723 F. Recording of Agreement. This Agreement shall be recorded with the Register of Deeds  
724 for Waukesha County.

725  
726 G. Easements. Developer shall provide documentation satisfactory to the Village that it has  
727 legal power and authority to grant all easements required under or contained in this  
728 Agreement.

729  
730 H. PILOT.

731  
732 i. Developer, and its successors in interest, shall pay (or cause to be paid) all  
733 *ad valorem property taxes* defined as taxes properly assessed against any  
734 portion of the Site and Project (including not only the land of the Site, but  
735 all buildings and improvements thereon, and all fixtures and rights and  
736 privileges appertaining thereto) owned by the Developer before such taxes  
737 become delinquent. The foregoing shall not prohibit the Developer from  
738 contesting, in good faith, the assessed value of any portion of the Project  
739 Site.

740  
741 ii. In the event that any portion of the Site or Project becomes exempt from  
742 *ad valorem taxes*, the then owner of such exempt portion(s) of the Site or  
743 Project shall make (or cause to be made) annual payments in lieu of taxes  
744 in amounts equal to what the *ad valorem property taxes* would have been  
745 for such portion of the Site and Project for county, school district,  
746 technical college district and municipal assessed taxes, including any  
747 special districts established by the Village including but not limited to  
748 drainage districts (computed with the values as determined by the Village  
749 assessor for non-tax exempted similar sites and projects, subject to the  
750 then owner's right to contest such determination) had it not been exempt.  
751 The notice of such assessment shall be given in the same manner and  
752 timeframe as if the exempt portion of the Site and Project were not  
753 exempt. Such payment in lieu of taxes shall be due and payable at the  
754 same time and in the same manner as the *ad valorem property taxes* would  
755 have been due and payable for such year's *ad valorem property taxes*. If  
756 the then owner fails to make a payment in lieu of taxes when due, the  
757 Village may, in addition to all other remedies available to it, levy a special  
758 charge pursuant to Wis. Stat. § 66.0627 and any amendment thereto against  
759 the exempt portion of the Site and Project owned by such then owner in  
760 the amount of the unpaid payments provided any recoveries are limited to  
761 the amount then due. Notwithstanding the levying of such special charge,  
762 the payment obligation under this Article XVIII(H) shall be the sole

763 obligation of the then owner of the exempt portion of the Site and Project  
764 (where prior owners, including Developer, would not be liable if not the  
765 then owner of the exempt portion(s) of the Property). The covenant  
766 contained in this Article XVIII(H) shall be deemed to be a covenant  
767 running with the land and shall be binding upon the Developer and all of  
768 its successors that then become owners of any portion of the Site and  
769 Project. The Village is hereby expressly declared to be a permanent  
770 beneficiary of such covenant and shall be entitled to enforce same against  
771 the Developer and all of its successors that then become owners of an  
772 exempt portion of the Site or Project. The covenants and obligations set  
773 forth in this Article shall be embodied in a separate document as shown on  
774 Exhibit \_\_\_\_ and recorded against the Site .

775 IN WITNESS WHEREOF, Developer and the Village have caused this Agreement to be signed  
776 by their appropriate officers in three (3) original counter-parts the day and year first above  
777 written.

LIGHTNING DEVELOPMENT LLC

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

Name: Matthew Burow

Title: Manager

VILLAGE OF HARTLAND

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

Jeffrey Pfannerstill, Village President

Attest: \_\_\_\_\_

Darlene Igl  
Village Clerk

[NOTARY STATEMENTS FOLLOW]



## SCHEDULE OF EXHIBITS

*Exhibit A Legal Description*

*Exhibit B Site Plan*

*Exhibit C Zoning Exhibit*

*Exhibit D Certified Survey Map*

*Exhibit E Plans and Specifications*

*Exhibit F, F-1, F-2 Storm Water Management Facility Maintenance Agreement s*

*Exhibit G Temporary Access Easement*

*Exhibit H Phase I Evaluation*

*Exhibit I Public Access Easement*

*Exhibit J Permanent Access/Maintenance Easement*

*Exhibit K Construction Sequencing and Completion Timeline*

Exhibit L Lighting Plan and Photometric Analysis

Exhibit M- Private Hydrant Maintenance Agreement

Exhibit N- Updated Traffic Study with date of \_\_\_\_\_

Exhibit O- Tree Survey

Exhibit P PILOT Agreement