

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:**

THE ABOVE SPACE FOR RECORDER'S USE

**VILLAGE OF DOWNERS GROVE
SUBDIVISION IMPROVEMENT AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of February, 2006, by and between the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation ("Village"), Joel Anderson ("Owner") and Joel Anderson Homes, Lt.d ("Developer").

WITNESSETH

WHEREAS, the Village is a body politic and corporate, duly organized and existing under the laws of the State of Illinois; and

WHEREAS, the Village may exercise any power and perform any function pertaining to its government by virtue of 65 ILCS 5/ 1-1 *et seq.*; and

WHEREAS, the Village is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution and pursuant to said section, may exercise any power and perform any function pertaining to its government and affairs for the protection of the health, safety, morals and welfare; and

WHEREAS, the Owner is the fee simple title owner of the approximately 4.8 acres of real estate located 5737 Brookbank Road (PIN 09-17-108-015 and described on Exhibit A, attached hereto and made part hereof by this reference (the "Property"); and

WHEREAS, Joel Anderson Homes, Ltd. is the Developer of the project who shall be responsible for subdividing the Property and installing all of the project improvements; and

WHEREAS, the Developer desires to subdivide and develop the Property and has

submitted to the Village a Final Plat of Subdivision with exceptions designated as the Nelson Meadow Subdivision (the "Subdivision"); said Plat of Subdivision is on file in the Office of the Village Clerk and is incorporated into this Subdivision Improvement Agreement (hereinafter "Agreement") by this reference, as though fully set forth; and

WHEREAS, the Village is willing to approve the Final Plat of Subdivision provided that this Agreement is signed in order to ensure the completion of certain Project Improvements, as defined herein, in accordance with the Municipal Code of the Village ("Village Codes"), as a condition to the issuance of Building and Occupancy Permits for any building to be constructed on the Property; and

WHEREAS, the definitions found in the Village Codes shall apply to the terms used in this Agreement.

NOW, THEREFORE, in consideration of the foregoing preambles, Ten and 00/ 100 Dollars (\$10.00), and other good and valuable consideration, the receipt of which is acknowledged, the Village, Owner and Developer agree as follows:

1. INCORPORATION OF PREAMBLE.

The preamble is incorporated herein as if each and every one of its terms were set forth herein.

2. INSTALLATION OF IMPROVEMENTS.

The Developer shall furnish at its own cost and expense all necessary materials, labor, and equipment to complete the improvements required by the Village Codes. These improvements are defined in the Village Subdivision Regulations (Chapter 20 of the Village Codes) and depicted in the final engineering plans (Exhibit B) and may include some or all of the following improvements: streets (public and private), traffic signals, traffic control devices, parking area(s), utilities, sidewalks, street lighting, sanitary sewer system, storm sewers and storm water detention system, water supply system, soil erosion and sedimentation control, tree preservation, common area

landscaping, and all other improvements identified in either the Village Codes or in the ordinances approved by the Village Council in connection with the development (hereinafter collectively designated, "Project Improvements"). All these Project Improvements shall be in accordance with the standards, specifications and requirements of the Village. The Project Improvements are indicated on Exhibit B attached hereto and made a part hereof which has been prepared by C.M. Lavoie and Associates, Incorporated, dated February 16, 2005, last revision December 5, 2005, who are registered professional engineers.

3. SECURITY FOR PROJECT IMPROVEMENTS.

Attached hereto as Exhibit C, is a complete cost estimate prepared by the project engineer, for the construction of the Project Improvements described in Paragraph 2 hereof. Upon the execution of this Agreement, the Developer will deposit with the office of the Village Engineer good and sufficient security for the completion of the Project Improvements as set forth in Section 20.402 of the Subdivision Ordinance ("Security Instrument").

4. RECORDATION OF PLAT.

Upon receipt of a fully executed copy of this Agreement and the Security Instrument deemed acceptable to the Village, the Developer/ Owner shall record this Agreement and the Final Plat of Subdivision within ninety (90) days of Village Council approval.

5. REDUCTION OF SECURITY.

Reduction of security shall be accomplished consistent with the requirements set forth in the Village Codes.

6. VILLAGE ENGINEER'S APPROVAL.

All work related to the Project Improvements shall be subject to inspection and approval of the Village Engineer, and his written approval thereof shall be a condition precedent to release of or reduction of the Security Instrument. The approval provided for in this paragraph shall not constitute final acceptance of any or all of the Project Improvements.

7. **REIMBURSEMENT FOR COSTS.**

The Developer shall pay to the Village all plan review, inspection and other fees, as required by the Village Codes.

8. **INSURANCE.**

Prior to commencement of any work provided for herein, Developer and/ or its contractor shall furnish the Village with evidence of insurance providing for workmen's compensation and employer's liability insurance, including occupational disease coverage and comprehensive liability insurance to cover said work in the following amounts:

- (a) Workmen's compensation (statutory limits);
- (b) Employer's liability (limits \$1,00,000.00/ \$2,00,000.00) including liability for injury or death of Village's employees;
- (c) A minimum of Two Hundred Fifty Thousand and 00/ 100 Dollars (\$250,000.00) for injury to one person;
- (d) A minimum of Five Hundred Thousand and 00/ 100 Dollars (\$500,000.00) for injury to more than one person; and
- (e) A minimum of One Hundred Thousand and 00/ 100 Dollars (\$100,000.00) for property damage.

The above amounts being the minimum for each accident. Said certificates of insurance shall name the Village as an additional insured with respect to construction of the Project Improvements covered by this Agreement.

9. **INDEMNIFICATION OF VILLAGE.**

The Developer hereby agrees, to the greatest extent permitted under Illinois law, to indemnify and hold harmless the Village, its agents, servants, and employees, and each of them, against all loss, damage, attorney's fees or expenses which they may sustain or become liable for on account of injury or death of persons, or on account for damage to or destruction of property resulting from the performance of work under this Agreement by the Developer or his contractors or any employee or subcontractor of any of them, or by the Village, its agents, servants, or

employees, or due to the condition of the premises or other property of the Developer upon, about, or in connection with which any work incident to the performance of the terms of this Agreement is carried on except for any negligent or willful act or omission by the Village, its agents, servants, employees or contractors.

10. PERFORMANCE GUARANTEE

The Developer for the Project Improvements herein specified guarantees that the workmanship and material furnished under the specifications and used in said Project Improvements will be furnished and performed in accordance with well-known, established practice and standards recognized by engineers in the trade. All such Project Improvements shall be new and of the best grade of their respective kinds for the purpose. All materials and workmanship will be guaranteed by the Developer for a period of two (2) years from the date for final acceptance by the Village ("Guarantee Period").

There shall be retained by the Village, under the Security Instrument, an amount equal to ten percent (10%) of the amount of the Security Instrument as a performance guarantee, as set forth in Section 20.402 of the Subdivision Code.

The Developer shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of this performance guarantee, and shall leave the improvement in good and sound condition, satisfactory to the Village and the Village Engineer, at the expiration of the Guarantee Period.

Further, if during said Guarantee Period, the improvement shall, in the opinion of the Village Engineer or Village, require any repairs or renewal which, in his or its judgment are necessitated by reason of settlement of foundation, structure, or backfill, or other defective workmanship of materials, the Developer shall, upon notification by the Village Engineer or Village of necessity for such repairs or renewals, make such repairs or renewals at its own cost and expense. Should the Developer fail to make repairs or renewals within a reasonable time following

written notification, in each case taking into account winter weather conditions, thereof from the Village, or fail to start working within thirty (30) days after such notification, the Village may cause such work to be done, either by contract or otherwise, and the entire cost and expense thereof shall be paid and deducted from the amount retained in the Security Instrument. Should such cost and expense exceed the amount retained or remaining in the Security Instrument, the Developer shall pay such amount of excess to the Village.

11. COMPLETION OF PROJECT IMPROVEMENTS.

(a) The Developer shall cause the Project Improvements to be completed within three (3) years from the date hereof, or, in the alternative, maintain, extend, or substitute the Security Instrument in the full amount provided therein, less any reductions theretofore from time to time approved by the Village, until such time as said Project Improvements are completed. Streets, trees and sidewalks shall be installed from time to time as buildings within the development are completed, subject to winter weather conditions. Developer shall cause its engineers to correct drawings to show work as actually constructed, and said engineers shall turn over original tracings thereof to the Village as and for the Village's property. In the event Developer fails or refuses to cause the extension or substitution of the Security Instrument to be delivered to the Village not less than forty-five (45) days prior to said expiration date, the Village shall have the right, but not the obligation to draw upon the Security Instrument then in force in accordance with the provisions contained therein to complete said Project Improvements.

(b) Upon completion of any Project Improvement and, further, upon the submission to the Village of a certificate from the engineering firm employed by the Developer stating that the said Project Improvements have been completed in conformance with this Agreement, Village ordinances, the final engineering plans and specifications relative thereto, and any applicable Agreements and all state and federal laws and standards, the Village Engineer shall, within seven (7) business days after the Village receives the aforesaid certification from the Developer's engineer

either (i) recommend to the Village's corporate authorities final acceptance of said Project Improvement or (ii) designate in writing to Developer all corrections or alterations which shall be required to obtain a recommendation of final acceptance of said Project Improvement, specifically citing sections of the final engineering plans and specifications, the applicable ordinances or this Agreement, any applicable Agreement or state or federal law or standard, relied upon by said Village Engineer. Should the Village Engineer reject any Project Improvement, or any portion or segment thereof, for a recommendation of final acceptance, the Developer shall cause to be made to such Project Improvement such corrections or modifications as may be required by the Village Engineer. The Developer shall cause the Project Improvements to be submitted and resubmitted as herein provided until the Village Engineer shall recommend final acceptance of same to the corporate authorities of the Village and the corporate authorities shall finally accept same. No Project Improvement shall be deemed to be finally accepted until the corporate authorities shall, by appropriate resolution, finally accept same.

Upon completion and as a condition of final acceptance by the Village, Developer agrees to convey and transfer those improvements, which are deemed by the Village to be public improvements to the Village by appropriate bill(s) of sale.

12. COMPLIANCE WITH LAWS AND ORDINANCES.

Notwithstanding this Agreement, in the event an existing valid ordinance of the Village was overlooked at the date hereof, the Developer, upon notice from the Village, and prior to acceptance of the Project Improvements, shall install or perform the improvement or work so required unless otherwise provided in the documentation referenced in this Agreement; further, any law or ordinance which shall be passed by the Village after the date of this Agreement, which is a law or ordinance directed to life-safety consideration, shall apply to the Property as of the effective date of said law or ordinance unless a building permit has been issued, in which case work may be completed pursuant to that building permit. However, should the "life-safety"

ordinance contain a retroactive clause and an occupancy certificate has not been issued, the building shall be brought into conformance with the retroactive ordinance. All future work for which building permits have not been issued shall comply to said life-safety law or ordinance.

13. LIEN WAIVERS.

The Developer shall furnish the Village with a contractor's affidavit showing all subcontractors and materialmen and lien waivers that all persons who have done work, or have furnished materials under this Agreement, and are entitled to a lien therefor under any laws of the State of Illinois, have been fully paid or are no longer entitled to such lien.

14. OCCUPANCY PERMITS.

It is agreed that no final occupancy permits shall be issued for any building in said subdivision until all Project Improvements required for such building by this Agreement, except for final surface course of roads, sidewalks, and parkway trees have been completed. Parkway trees for a subdivided lot shall be installed within six (6) months from the issuance of an occupancy permit for such lot. Temporary occupancy permits may be issued prior to the completion of any of the Project Improvements when deemed appropriate by the Village in accordance with applicable Village Codes. However, a certificate of occupancy must be obtained within six (6) months from the date of receipt of the temporary occupancy permit. Occupancy permits may be issued for model home facilities used for construction and sale purposes only and not for regular residential habitation prior to the completion of the improvements.

15. MAINTENANCE OF PROJECT IMPROVEMENTS.

The Developer shall be responsible for the maintenance of the Project Improvements until such time as they are accepted by the corporate authorities of the Village. This maintenance shall include routine maintenance as well as emergency maintenance such as sewer blockages and water main breaks. If the Developer fails to maintain the Public Improvements, the Village shall have the right, but not the duty, to undertake such maintenance. Developer hereby agrees to

reimburse the Village its costs for the performance of this maintenance or repair upon receipt of an invoice from the Village setting forth said cost to the Village.

16. DAMAGE TO PROJECT IMPROVEMENTS.

Developer shall be responsible for any and all damage to the Project Improvements, which may occur during the construction of the Project irrespective of whether the Project Improvements damaged have or have not been finally accepted hereunder. Developer shall replace and repair damage to the Project Improvements installed within, under or upon the Property resulting from construction activities by Developer, its successors or assigns and its employees, agents, contractors or subcontractors during the term of this Agreement, but shall not be deemed hereby to have released any other party from liability or obligation in this regard. Developer shall have no obligation with respect to damage resulting from ordinary use, wear and tear occurring after final acceptance.

17. RELEASE OF SECURITY INSTRUMENT.

At the expiration of the Guaranty Period, the amount retained in the Security Instrument, less any and all necessary expenses which have been incurred by the Village in connection with the maintenance of the Project Improvement, other than the ordinary and usual care and maintenance thereof for any improvement of such type and age, shall be released by the Village and the Security Instrument shall be terminated.

18. VILLAGE REMEDIES.

(a) From and after the date on which the Village's Engineer notifies the Developer, in writing, that the Developer is in default of any of its obligations under this Agreement, the Developer shall pay to the Village, upon demand, all of the Village's fees, costs and expenses incurred in enforcing the provisions of this Agreement against Developer, including, without limitation, engineers' and attorneys' fees, costs and expenses, and if any litigation is instituted as part of such enforcement, any court costs and filing fees in addition to the attorneys' fees incurred

therein.

(b) The Village shall have the right to pursue any and all remedies at law or in equity against the Developer and/or Owner, including, but not limited to drawing on the Security Instrument, pursuing all remedies at law to recover all costs owed by the Developer, or an action for specific performance of Developer's obligations under this Agreement.

(c) The rights and remedies of the Village as provided herein, in the Village Codes and/or in any agreements between the Village and Developer regarding the Subdivision, shall be cumulative and concurrent, and may be pursued singularly, successively, or together, at the sole discretion of the Village, and may be exercised as often as occasion thereof shall arise. Failure of the Village, for any period of time or on more than one occasion, to exercise such rights and remedies, shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default. No act or omission of the Village, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release shall be effected only through a written document executed by the Village and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of the Village's rights or remedies hereunder. Except as otherwise specifically required, notice of the exercise of any right or remedy granted to the Village is not required to be given.

19. BINDING EFFECT.

This Agreement shall be binding upon all parties, their successors, assigns, and grantees.

20. CONTINUITY OF OBLIGATIONS.

(a) This Agreement shall inure to the benefit of and shall be binding upon Developer's and Owner's successors in title, and shall be binding upon the Village and the successor Corporate Authorities of the Village and any successor municipality.

(b) Owner and Developer acknowledge and agree that the obligations assumed by each of them under this Agreement shall be binding upon them respectively and any and all of their respective heirs, successors, and assigns and the successor record owners and/ or successor Developers of all or any portion of the Property. For purposes of this section, Developer's obligations shall not be assumed by a purchaser of a single family home, townhome or condominium who is a third party purchaser from owner and/ or developer. To assure that such heirs, successors, and assigns have notice of this Agreement and the obligations created by it, Owner and Developer agree:

- (i) that this Agreement shall be recorded with the DuPage County Recorder of Deeds;
- (ii) to require, prior to the transfer of title to all or any portion of the Property, the transferee of said portion of the Property to be bound by the provisions of this Agreement pursuant to the execution of an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), said Assignment and Assumption Agreement to be in a form substantially in conformance with Exhibit F attached hereto and made a part hereof. The Village agrees that upon a successor becoming bound to the personal obligations created herein by execution of the Assignment and Assumption Agreement, the personal liability of Owner and/ or Developer or other predecessor obligor under this Agreement shall be released to the extent of the successor's interest in the Property. Owner agrees to notify the Village in writing at least thirty (30) days prior to any date upon which Owner transfers a legal or beneficial interest in any portion of the Property to a transferee. Owner or any other predecessor obligor shall, not less than seven (7) business days prior to the effective date of the Assignment and Assumption Agreement becoming enforceable against the Village, provide the Village with a fully executed copy of the hereinabove required Assignment and Assumption Agreement by the transferee to be bound by the provisions of this Agreement. Security previously posted for subdivision improvements by the Owner and/ or Developer or other predecessor obligor, shall not be released by the Village until a suitable substitute is provided by the successor and is accepted in writing by the Village. In the event any transferee or Owner or Developer requires proof that a particular provision of this Agreement has been satisfied, the Village agrees to issue a written statement as to which provisions of this Agreement, if any, have been satisfied.

(c) All the terms and conditions of this Agreement shall constitute covenants running with the land.

21. AMENDMENTS.

All amendments to this Agreement shall be in writing and approved by the Mayor and Village Council. Village ordinance provisions in effect at the time of the request for amendment shall apply, unless otherwise expressly specified.

22. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one Agreement.

23. GOVERNING LAW.

This Agreement shall be interpreted and construed in accordance with laws of the State of Illinois.

24. NOTICES.

All Notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

(a) The Village at: Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515-4776;

(b) Developer at: _____

_____ ; and

(c) Owner at: _____

_____.

IN WITNESS WHEREOF, the Village has caused this Agreement to be executed by its Mayor and attested by its Clerk as of the date first above written.

VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation

By: _____
Its: Mayor

ATTEST:

Its: Village Clerk

OWNER

By: _____
Its: _____

ATTEST:

DEVELOPER

By: _____
Its: _____

ATTEST:

jwo/ downersgrove/ Subdivision-Improvement-Agreement

EXHIBIT F

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is dated as of _____, 20__, and is entered into between _____ a _____ ("Assignor") and _____, a _____ ("Assignee").

WHEREAS, the Village of Downers Grove and _____ ("Owner") and _____ ("Developer") entered into the _____ Subdivision Improvement Agreement, dated _____, 20__, (as it may be amended, modified or supplemented from time to time, the "Agreement"), regarding the real property or a portion of the real property described on the attached Exhibit A, which Agreement was recorded by the DuPage County Recorder of Deeds on _____, 20__, as Document No. _____; and

WHEREAS, Assignor became a party to the Agreement pursuant to an Assignment and Assumption Agreement dated as of _____, 20__, which Assignment and Assumption Agreement was recorded by the DuPage County Recorder of Deeds on _____, 20__, as Document No. _____; and

WHEREAS, Assignor desires to assign all or a portion of its right, title and interest in and to the Agreement to Assignee and Assignee desires to accept said assignment and assume all or a portion of Assignor's liabilities and obligations related to or arising under the Agreement.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, (a) Assignor does hereby assign, transfer, and convey unto Assignee all or the portion as set forth in Exhibit A hereto, of Assignor's right, title and interest in and to the Agreement and any benefits hereafter derived

thereunder and (b) Assignee does unconditionally hereby assume and promise to pay and perform in full, from and after 12:01 a.m. on the date first written above, all, or the portion as set forth in Exhibit A hereto, of the obligations and liabilities of Assignor related to or arising under the Agreement.

This Agreement shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, this Assignment and Assumption Agreement is executed as of the date first written above.

ASSIGNOR:

By: _____

Its: _____

ASSIGNEE:

By: _____

Its: _____

CONSENT AND RELEASE

The undersigned, being the remaining parties to the Agreement referred to above, do hereby consent to the above Assignment and Assumption Agreement and forever releases the above Assignor (together with its successors, assigns, heirs and personal representative, as the case may be, other than Assignee) from the liabilities and obligations related to or arising under the Agreement as set forth in Exhibit A.

Executed this ____ date of _____, 20__.

By: _____

Its: _____

By: _____

Its: _____