

DEVELOPMENT FEE AGREEMENT

AGREEMENT made this 14th day of *November*, 1994, by and between:

THE BOROUGH OF OLD TAPPAN, a New Jersey public body corporate with municipal offices located at 227 Old Tappan Road, Old Tappan, New Jersey (hereinafter referred to as "the Borough"); and

THE VILLAGE, INC., a New Jersey corporation with principal offices located at
(hereinafter referred to as "the Developer");

W I T N E S S E T H :

WHEREAS, by Resolution dated *9/21/94*, the Planning Board of the Borough of Old Tappan approved an amendment to the developer's subdivision and site plan approval which permitted, inter alia, the payment of a development fee in lieu of constructing fourteen (14) units of affordable housing on the developer's site in accordance with N.J.A.C. 5:93-8.1, et seq., and Section 17-5 of the Revised General Ordinances of the Borough;

WHEREAS, a condition of said approval is the execution by the Borough of a Regional Contribution Agreement with a receiving municipality in accordance with the regulations promulgated the Fair Housing Act;

WHEREAS, a portion of the development fee to be paid by the Developer to the Borough is to be transferred to a receiving municipality via Regional Contribution Agreement for the construction of affordable housing;

WHEREAS, the Borough has negotiated with the City of Jersey City for the transfer of fourteen (14) units of affordable housing from the Borough to Jersey City for the sum of \$20,000 per unit or a total of \$280,000;

WHEREAS, the parties have agreed to a development fee calculated as follows: the amount of the regional contribution agreement (\$20,000 per unit) plus 30% of that amount for rendering units more affordable (\$6,000 per unit) plus 20% of that amount for administrative expenses (\$4,000) for a total of \$30,000 per unit or \$420,000 total;

WHEREAS, upon signing a Regional Contribution Agreement, the Borough shall be obligated to make payments in accordance therewith and therefore, prior to execution of said Regional Contribution Agreement, the Developer must pay the development fee or provide satisfactory assurance of payment;

NOW, THEREFORE, in consideration of the mutual undertakings and covenants herein contained, it is agreed as follows:

1) **Development fee.** The Developer shall pay the Borough the sum of \$420,000 as and for a development fee in lieu of construction fourteen (14) units of affordable housing on-site.

2) **Conditions precedent.** This Agreement is conditioned upon the Borough entering into a Regional Contribution Agreement with Jersey City for the transfer of the fourteen (14) units of affordable housing and the approval of said Regional Contribution Agreement by the Council On Affordable Housing.

3) **Time for payment.** The development fee as set forth in paragraph 1 hereinabove shall be paid by the Developer to the Borough prior to execution of the Regional Contribution Agreement contemplated hereby. In lieu of payment prior to execution of the Regional Contribution Agreement, the Developer, prior to execution of the Regional Contribution Agreement, may post an irrevocable letter of credit from a reputable

banking institution in a form satisfactory to the Borough Attorney with the Borough in the amount of the development fee as set forth hereinabove. Said irrevocable letter of credit shall secure payment of the development fee and shall be payable to the Borough upon demand.

4) **Assignment.** The Developer shall not assign its rights and obligations under this Agreement without the written consent of the Borough, which consent shall not be unreasonably withheld.

5) **Modification.** This Agreement may not be modified except in writing signed by the parties.

6) **Notice.** All notices contemplated hereby shall be given by Certified Mail, Return Receipt Requested, addressed to the parties at their offices as hereinabove in the first recital clause designated.

7) **Governing law.** This Agreement shall be governed by the laws of New Jersey.

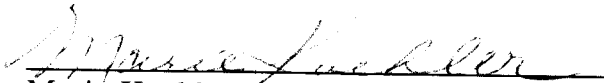
8) **Severability.** If any section, part of any section or phrase of this Agreement is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Agreement.

9) **Complete Agreement.** This Agreement is a complete agreement between the parties hereto. This agreement can only be changed by an agreement in writing signed by the parties.

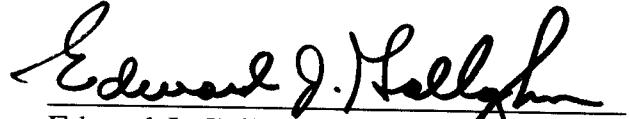
This Agreement is entered into as of the day and year first written above and executed in at least three (3) original copies of which one is to be delivered to the Developer and the others to the Borough Clerk.

IN WITNESS WHEREOF, the parties have caused their corporate presents to be hereunto affixed the said day and year.

ATTEST:

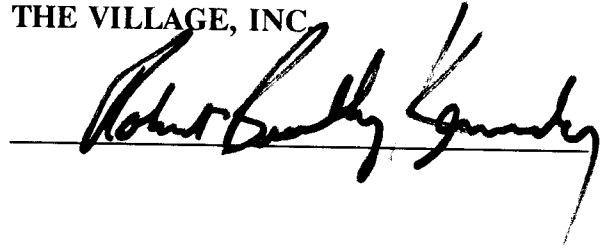

Marie Koehler, Borough Clerk

BOROUGH OF OLD TAPPAN


Edward J. Gallagher, Mayor

THE VILLAGE, INC.


Ray N. Apple, A.S.C.


Robert Bandy Gandy

State of New Jersey }
 }
County of Bergen } SS:

BE IT REMEMBERED that on this day of 1994, before me,
the subscriber, a Notary Public of the State of New Jersey, personally appeared
and made proof to my satisfaction, that:

(a) this person is the Asst. secretary of The Village, Inc.;

(b) The Village, Inc. is a party to the foregoing Instrument;

(c) this person is the attesting witness to the signing of this document by the corporate officer who is Robert Bradley Kennedy, the President of The Village, Inc.;

(d) this document was signed and delivered by The Village, Inc. as its voluntary act duly authorized by a proper resolution of its Board;

(e) this person well knows the Corporate Seal of said corporation which was affixed to this document; and

(f) this person signed this proof to attest to the truth of these facts.


Barry S. Kaplan, Esq.

Sworn to and Subscribed to
before me this 18 day of
November, 1994.

Annexa Marie Zup
Notary Public, State of New Jersey
My Commission expires: 10/26/09

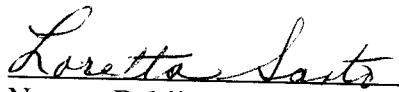
ACKNOWLEDGEMENT OF CLERK

State of New Jersey }
 } SS:
County of Bergen }

BE IT REMEMBERED that on this 15th day of November 1994, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Marie Koehler and made proof to my satisfaction, that she is the Clerk of the Borough of Old Tappan, that the Borough of Old Tappan is a party to the foregoing Instrument, that she well knows the Corporate Seal of said Borough, that the seal affixed to said Instrument is the Corporate Seal of said Borough and said seal was so affixed and said Instrument was signed and delivered by Edward J. Gallagher, who was at the date thereof Mayor of the Borough of Old Tappan, in the presence of this deponent, and said Mayor at the same time acknowledged, that he signed, sealed and delivered the same as his voluntary act and by virtue of authority from said Borough and that deponent, at the same time subscribed his name to said Instrument as attesting witness to the execution thereof.


Marie Koehler

Sworn to and Subscribed to
before me this 15th day of
November, 1994.



Notary Public, State of New Jersey
My Commission expires: