

11/28/94

DEVELOPER'S AGREEMENT

THIS AGREEMENT made this 28th day of November, 1994

- AMONG: THE VILLAGE, INC. a corporation of the State of New Jersey, hereinafter called the "DEVELOPER";
- AND: THE BOROUGH OF OLD TAPPAN, a municipal corporation of the County of Bergen, hereinafter called the "BOROUGH";
- AND: THE PLANNING BOARD OF THE BOROUGH OF OLD TAPPAN, hereinafter called either the "BOARD" or the "PLANNING BOARD."

W I T N E S S E T H:

WHEREAS, the DEVELOPER is the owner of, or has under contract to purchase, unimproved land as shown on certain site plan maps entitled:

"Woods Edge at Old Tappan" consisting of 27 maps prepared by Harper & Palmieri, Consulting Engineers and Land Surveyors, P.A., sealed by Rocco Palmieri, P.E. & L.S. dated September 29, 1992 and amended to September 13, 1994 as well as a landscape plan prepared by Land Concepts Inc., William Glaner, Landscape Architect, N.J. CAL 531, dated September 29, 1992 consisting of 3 sheets

WHEREAS, the DEVELOPER is desirous of erecting a planned residential development consisting of 7 one family dwellings, and 133 townhouse units upon the land and premises as shown in conformity with the provisions of the Borough Code of the Borough of Old Tappan.

WHEREAS, the DEVELOPER is desirous of entering into a

DEVELOPER's Agreement with the BOROUGH and the PLANNING BOARD as to said premises in view of the provisions of the Borough Code which, among other things, requires that prior to the granting of final approval of any subdivision map or site plan, the DEVELOPER shall have installed or shall have furnished performance guarantees for the ultimate installation of the several improvements therein mentioned, and that no final plat shall be approved by the PLANNING BOARD until the completion of all such required improvements has been certified to the PLANNING BOARD by the Borough Engineer, unless satisfactory performance guarantees to cover the cost of all such improvements or the uncompleted portions thereof, are filed by the DEVELOPER; and

WHEREAS, it is mutually desired by the parties hereto that the premises shown on the plats as aforesaid shall be improved and developed in accordance with the Borough Code including but not limited to the Planned Residential Development Ordinance of the Borough of Old Tappan (Section 14-9.1, et seq.) and in such manner as will insure protection to the surrounding and neighboring properties, as well as the public roads in and about said area to the end that said development shall result in a desirable residential development within the Borough of Old Tappan;

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

I. That the DEVELOPER will:

1. Ownership of Lands

Upon execution and delivery of this Agreement, file with the PLANNING BOARD a copy of last title report plus a certificate from the DEVELOPER certifying to the BOROUGH and the PLANNING BOARD that title to the lands shown on the aforesaid map is or will be validly vested in the DEVELOPER and that there have been no changes or, if changes then specifying same and, upon closing, a further certificate from a title company that title thereupon became vested in the DEVELOPER. Before signing the final site plan, a title search will be furnished to the Board Attorney citing any exceptions to title or encumbrances.

2. Deeds of Dedication

Execute and deliver to the BOROUGH, proper deeds granting easements in and to any areas shown on the preliminary or final plats as a sanitary sewer and water main easement in and to other areas deemed necessary for sanitary sewer or water main purposes.

3. Improvements and Work to be Done

Make, install, and perform at its own sole cost and expense, all improvements and work:

(a) shown on the schedule attached hereto and made a part hereof as Schedule A, hereinafter called the "Site Improvement Schedule";

(b) shown on the site plan and plats herein

mentioned;

(c) in the event that after execution of this Agreement or during the course of the installation of the public improvements set forth in the Site Improvement Schedule, a condition develops which is caused by the DEVELOPER (or by those acting for it), adversely affecting the public health or safety or constituting a threat thereto, or a condition develops, which is caused by the DEVELOPER (or by those acting for it), inimical to the general welfare, DEVELOPER agrees to take all necessary steps and make all installations that may be necessary to abate said threat or condition; and

(d) required by any governmental agency, board, department, bureau or other unit, including State of New Jersey, the County of Bergen and Borough agencies and departments.

4. Drainage Facilities

Install all storm sewer and drainage facilities, manholes, pipes, connections and curb lines, etc., as shown on the aforementioned plats together with such necessary changes as shall be reasonably required by the Borough Engineer, all of which shall be installed and laid out in such manner as may be approved by the Borough Engineer.

5. Sewers

(a) Section 14-9.1(d) of the Borough Code, pertaining to planned residential developments, requires that such a development shall be joined to a centralized sanitary sewer system as defined in the Code and that such connection is to be

approved by various governmental agencies and authorities having jurisdiction thereof. DEVELOPER proposes to make its sewer connection through the conditionally approved but presently undeveloped project known as Dorotockey's Run. Pursuant to a separate agreement between them, DEVELOPER may construct certain sewer improvements over the property of Dorotockey's Run in order to connect the sewer system servicing its development to a fully approved sewer system servicing portions of the BOROUGH. The projected costs of all such sewer system improvements, including those which may be installed across the property of Dorotockey's Run, have been included in the provisions of Paragraphs 30 and 34 hereof pertaining to performance and maintenance guarantees. However, the DEVELOPER's plans to service its project also depend on the installation of certain sewer improvements in DeWolf Road by other parties. Therefore, in the event of a failure or non-compliance in the performance required by others for the installation of said sewer improvements in DeWolf Road from the "tenth hole" pumping station to the pumping station at the intersection of Old Tappan Road and DeWolf Road, then and in that event DEVELOPER shall have the right to install same and shall post an additional performance bond or irrevocable letter of credit in the amount of such sewer improvements to be installed in DeWolf Road which amount shall be determined by the Borough Engineer but not to exceed 120% of the cost of same. In the event the DEVELOPER installs said improvement, then, upon satisfactory completion and acceptance of said improvement, DEVELOPER shall also post an

additional maintenance bond in the amount of 15% of the cost of said improvements.

(b) The DEVELOPER shall install all sanitary sewer and draining facilities, manholes, pipes, connections at curb lines, etc. as shown on the preliminary and final maps, together with such necessary changes as shall be reasonably required by the Borough Engineer, all of which shall be installed and laid out in such manner as may be approved by the Borough Engineer. Nothing herein shall impair, abridge, restrict or modify the lawful jurisdiction of the Board of Health and Health Officer of the Borough of Old Tappan to require the installation of additional sanitary sewers, drains or facilities which either of them may lawfully require in connection with the developement and in conjunction with all matters over which they have lawful jurisdiction.

(c) In addition, the DEVELOPER shall install all sewers in accordance with the rules and regulations of the Borough of Old Tappan relating to sanitary sewer installations.

(d) DEVELOPER shall also be required to obtain, at its own sole cost and expense, any and all permits as may be required by the Bergen County Utilities Authority and the N.J. D.E.P. for the installation of said sewer system.

(e) As a condition precedent to the issuance of certificate of occupancy for any dwelling unit within the project, the sewer system to be installed by the DEVELOPER within the development shall be joined to a centralized sanitary sewer system as defined by Borough Code Section 14-4 and said system and its

connection or linkage shall be fully and unconditionally approved by the State of New Jersey DEP, the Bergen County Utilities Authority, the Mayor and Council of the Borough of Old Tappan and the Borough Engineer.

(f) Any construction of homes or dwelling units prior to the installation and availability of an operable public sewer system is at the risk of the DEVELOPER and such construction shall not in any way obligate the BOROUGH to grant or issue a certificate of occupancy.

6. Certificate of Occupancy; Extent of
Street Improvements; Utility Connections

Before any certificate of occupancy shall be issued for any particular home or dwelling unit, such home or dwelling unit for which the certificate of occupancy is sought, must be fully completed in accordance with the terms and provisions of this Agreement, and in compliance with all municipal ordinances and regulations. The road or roads abutting the home or dwelling unit for which a certificate of occupancy is sought, if any, shall have been brought to sub-grade, subject to the approval of the Borough Engineer, and have a four (4") inch macadam base course so as to make the same accessible and usable for ingress or egress for police, fire and garbage removal equipment and shall be completed, to the satisfaction of the Borough Engineer, to such an extent as to provide full and complete access to any house and to all units within a cluster.

The DEVELOPER shall install all underground structures such as water mains, water curb line taps or extensions

to each and every proposed townhouse cluster and each and every single family house lot (whether or not a house has been constructed on any individual lot or a townhouse structure has been constructed with respect to any such proposed cluster on the aforesaid map), install gas mains, gas curb line taps or extensions (if natural gas service is available), and install such water main hydrants as required by the preliminary plat. All such improvements shall be installed in conformity with the requirements of the BOROUGH and the several utility corporations owning such utilities.

Nothing contained in this Agreement shall authorize the use or occupation of any building prior to the issuance of a certificate of occupancy for said building and prior to the installation of an approved sanitary sewer network and system to service the building in accordance with the Codes and Ordinances of the Borough of Old Tappan.

7. Grading of Streets

Before grading of any street, public or private, the entire right of way which is to comprise the area of the street shall be cleared of all debris, branches, matted leaves, mud and mire, and any other unsuitable materials. Any private road within the development shall have a paved width of 30', and shall in all other respects conform to Borough standards and specifications for public streets.

8. Street Signs

The DEVELOPER shall erect metal street name and

sign posts when called for in accordance with the approved plats and plans. Said signs and posts shall conform to the specifications of the BOROUGH and shall be installed pursuant to the requirements of the BOROUGH, in accordance with accepted practices.

9. Trees

In addition to installing all trees and plantings shown on its approved landscaping plan as referred to herein, the DEVELOPER will comply with the provisions of all current ordinances relating to installation and preservation of trees. DEVELOPER shall safeguard and preserve those trees on the premises, as required by the terms of its preliminary approval by the Planning Board, except such as are located within a street area, foundation area, easement area, or driveway area, as shown on the approved preliminary plat, or except such trees as may be felled upon the written approval of the Construction Official. No application for the felling of trees shall be made to the Construction Official for any trees located within 10' of any lot boundary line, except insofar as the Borough Engineer in writing shall recommend the removal of such trees for swale or other grading purposes. The DEVELOPER shall also specifically preserve those trees as may be designated by the Borough Shade Tree Commission, which trees shall be situated within a buffer area as designated by the preliminary plat approved by the Planning Board.

10. Grading of Lots

(a) Subject to the DEVELOPER's obligation to

preserve living trees, the DEVELOPER agrees that the entire area of any lot on which a townhouse cluster or house is built, from a distance of ten (10) feet from the rear line of each townhouse cluster or house and the prolongation thereof in both directions, to the curb line of the street, shall be graded, covered with topsoil to a minimum depth of six (6) inches and seeded with grass. The DEVELOPER shall have the right and authority to place sod in lieu of grass seeding and in lieu of topsoil, provided that the sod is placed on and in a subsurface condition that, in the opinion of the Borough Engineer and Construction Official, the ultimate landscaping results will be equal or superior to a seeded lawn.

(b) DEVELOPER shall provide individual site grading and utility plans for the single family dwellings to be constructed, which plans shall be reviewed and approved by the Borough Engineer prior to the issuance of building permits for these units.

11. Underground Utilities

All utility installations will be underground.

12. Declaration and Covenants - Master Deed

Prior to the issuance of any building permit and without qualification as to any of the general terms herein provided, DEVELOPER shall provide the Planning Board and the Governing Body, for their approvals in consultation with their respective counsel, with proposed restrictive covenants to be contained in the Master Deed to be recorded with respect to this project indicating the manner by which the open spaces and buffered

areas shall be restricted against improvements other than for the purpose for which they were designed and approved. The restrictive covenants contained therein shall also further require the continued maintenance and repair of all streets, except those dedicated to the public use, and all other common elements including specifically the bio-filtration (detention) basin by a condominium association to be created by the DEVELOPER. The restrictive covenant in the Master Deed shall explicitly state that maintenance of the bio-filtration (detention) basin is the responsibility of the condominium association and not the responsibility of either the County of Bergen or the Borough of Old Tappan. Said Master Deed and restrictive covenants shall also provide for a means of assessment of the unit owners in the association which assessment shall require, if the same remains unpaid, that it shall be a lien on the property of any individual unit owner.

In addition, the Master Deed and restrictive covenants shall embody an Affordable Housing Plan pertaining to, among other things, controls on affordability, applicant selection and certification, initial pricing of affordable units, controls on continued affordability and resale and such other provisions as may be required for an inclusionary housing project pursuant to the "Fair Housing Act" (PL 1985 c.222) and the regulations of the New Jersey Council on Affordable Housing (COAH) promulgated thereunder as well as any applicable ordinances of the Borough of Old Tappan or regulations of the Affordable Housing Agency of the Borough of

Old Tappan.

13. Additional Requirements Pertaining to
Low and Moderate Income Dwelling Units

In addition to the DEVELOPER's obligation to comply with the provisions of Paragraph 12 as to the affordable housing units to be constructed as part of this development, the DEVELOPER shall also meet the following requirements:

(a) Fourteen (14) townhouse units are to be reserved for fourteen (14) moderate income persons or families and fourteen (14) townhouse units are to be reserved for low income persons or families as those terms are defined by law, except as provided by an inter-municipal or intra-municipal transfer allowed by Borough ordinance and specifically approved by the Planning Board.

(b) The distribution of bedroom units for the low and moderate income dwellings shall comply with the provisions of Borough Code Sec. 14-9.3(d)(4)(a) pertaining to distribution of dwelling types.

(c) The building heights and coverages of the townhouse clusters shall meet all of the requirements of the Borough Code pertaining to planned residential developments, Section 14-9.1 et seq.

(d) The timing and development of the low and moderate income units within the project shall be in direct proportion to the market place units as each cluster is developed, all in accordance with the staging provisions of Borough Code Sec. 14-9.3(d)(4)(b) and as approved by the Planning Board. The

DEVELOPER shall be required to construct said low and moderate income housing units proposed for the development regardless of the sale or ownership of any or all of the market place units, according to the phasing schedule annexed hereto as **Exhibit B**.

14. Additional Covenants as to Sewer System

The DEVELOPER shall also cause to be executed and recorded in the Bergen County Clerk's office a deed or deeds, or other instruments satisfactory to the Planning Board Attorney and Borough Attorney subjecting all lots within the subdivision to the following covenants:

"The Grantee does hereby covenant for the benefit of the Borough of Old Tappan, that the private sanitary sewer system situated on its property will at all times be free from any seepage and shall not contaminate any storm drainage runoff.

The Grantee does further covenant that for and during its ownership of the subject premises, it will, at its own cost and expense take all necessary steps to repair any portion of the private sanitary sewer system located on its lot so as to prevent any seepage, and that upon its failure to make such repairs within a reasonable period of time the Borough, upon thirty (30) days' written notice to the Grantee, may cause any portion of the system to be repaired (so as to abate the seepage condition) at the expense of the Grantee, which expense shall be a lien upon the Grantee's property in favor of the Borough until paid in full.

This covenant shall include a grant of easement

in favor of the BOROUGH or its designees to permit access to the sanitary sewer system for the performance of work required to remedy any such seepage condition.

This covenant shall run with the land and shall be binding upon the Grantee and upon all subsequent owners of each lot during their respective periods of ownership, and shall be binding upon any and all heirs, devisees, personal representatives, successors and assigns of the Grantee who become owners for and during its respective periods of ownership of the aforementioned premises.

Said obligation contained herein shall be the sole responsibility of the owner irrespective of the failure, neglect or refusal of any prior owner to perform his obligations hereunder, or the failure of the BOROUGH as beneficiary of this covenant to endeavor to enforce it.

This covenant includes the obligation of such owner to indemnify and save harmless the BOROUGH from and against all liability and damages arising out of the design, construction, operation, maintenance or malfunction of the private sanitary sewer system and to pay on demand all costs, charges, fees and expenses incurred by the indemnitee in defending against all claims and actions alleging such liability and damages.

Nothing contained in this covenant shall be deemed to diminish, expand or otherwise modify or affect any rights or remedies that may now or hereafter exist independently of and without regard to the existence of this covenant.

In the event that the sanitary sewer system is deeded over to the BOROUGH, the BOROUGH shall assume all responsibility for the operation and maintenance of that sanitary sewer system and shall be responsible for any malfunctions thereof.

15. Time for Completion

All of the improvements and work referred to in this Agreement shall be completed within three (3) years from September 21, 1994, the date of amended preliminary site plan approval and amended PRD conditional use approval pertaining to this project, provided, however, that after two (2) years from such date the BOARD or the BOROUGH may require that an additional performance guaranty be provided in light of then prevailing costs, if necessary to adequately secure the BOROUGH.

16. Compliance with Law

All of the improvements referred to in this Agreement shall be performed in accordance with any applicable BOROUGH specifications, State and County laws and specifications, and set forth in ordinances, rules and regulations which the BOROUGH has adopted or approved. All said public improvements shall be installed subject to the inspection and approval of the Borough Engineer, or someone designated in writing by the Borough Engineer for that purpose.

17. Building Permits Required

The DEVELOPER agrees that no building shall be commenced until the building permit and other necessary permits and approvals shall have been duly issued.

18. Certificate of Occupancy

Nothing contained in this Agreement shall authorize the use or occupation of any building prior to the issuance of a certificate of occupancy for said building.

In no case shall a certificate of occupancy be issued if a material breach or default in this Agreement has occurred and has not been cured. Without limitation upon any other remedy provided herein or by law, the Borough Council may order that no, or no further, certificates of occupancy shall be issued until any material breach of default in this Agreement is cured.

19. Submission of Detailed Plans

In the event that the Borough Engineer, in his opinion, reasonably requires any further details for the preliminary plat and plans submitted and approved, DEVELOPER shall furnish said details on reasonable written notice within a reasonable time. DEVELOPER agrees also to submit road plans and profiles and detailed sewer system and drainage plans as may be required by the Borough Engineer.

20. Inspection of Improvements

The BOROUGH contemplates the inspection of all facilities to be accepted by it. The Borough Engineer shall inspect the installation of all improvements shown on the Public Improvement Schedule annexed as Schedule A hereto. The DEVELOPER shall notify the Engineer at least forty-eight (48) hours prior to the commencement of construction of any such facilities. In the event of temporary suspension of construction, the Engineer shall

be notified of the renewed starting date of construction. Back filling, after the laying of any drainage pipes, manholes, or other facilities in connection therewith, shall be absolutely forbidden except after the inspection and approval by the Borough Engineer or his duly authorized representative.

21. County Requirements

DEVELOPER represents that it has heretofore complied and/or that it will in the future comply with all requirements of the Bergen County Planning Board, the Bergen County Engineer, the Bergen County Road Department, and the Bergen County Department of Public Works and hereby further represents that, before commencing the work, it will secure all County, State and Federal approvals required for such work.

22. Duty re: Unsafe Conditions

The DEVELOPER shall correct and make safe any dangerous or unsafe conditions created, caused or suffered to exist by the DEVELOPER (or by those acting for it) affecting public safety or general welfare, if such condition develops. In the event that such condition exists, notice shall be given by certified mail to the DEVELOPER, whereupon DEVELOPER shall correct such condition forthwith. If the DEVELOPER fails to correct such condition within such period of time as the BOROUGH in its notice shall specify, the Borough Council may order the corrective work to be done, and the DEVELOPER and its surety shall reimburse and indemnify the BOROUGH for all costs and expenses incurred thereby.

23. Dust and Nuisance Provisions

DEVELOPER agrees not to commit a public or private nuisance by reason of dirt, dust, debris, air pollution, gas, smoke or other annoyance resulting from construction, trucking or other operations.

24. Municipal Officials, etc.
Not Liable on Contract

The covenants, undertakings, agreements and other obligations mentioned in this Agreement shall not be construed as representations by the Borough Council, the PLANNING BOARD, or by any Borough Officer, BOARD or employee to have or to assume any contractual or other liability to or with any persons, firms or corporations purchasing any land, building or improvements from the DEVELOPER or otherwise using or having any interest in the same, nor shall this Agreement be construed to work any liability on the BOROUGH or PLANNING BOARD to third persons.

25. Indemnification of Municipality

DEVELOPER shall be and remain liable for any and all damage or money loss occasioned to the BOROUGH or the BOARD or their officers or agents by any neglect, wrongdoing, omission or commission of or by the DEVELOPER or by any person, firm or corporation acting for the DEVELOPER hereunder arising from the making of the improvements, the performance of the terms hereof, or from or out of this Agreement, and shall save, indemnify and hold harmless the BOROUGH, its officers, agents, boards, and employees from any and all actions at law or in equity, charges, debts, liens, encumbrances, costs and counsel fees which may arise from

any such damage or loss, from the making of the improvements, the performance of the terms hereof or from or out of this Agreement, except where the BOROUGH or its agents have been judicially determined to have acted contrary to law or failed to perform acts required by law or by this Agreement or have been guilty of negligence.

DEVELOPER shall not be required to indemnify or hold harmless the BOROUGH or any of its agents or agencies with respect to any lawsuits filed in prerogative writ against the BOROUGH or any of its agents or agencies for granting approvals of this project.

27. DEVELOPER Responsible to Third Parties

Nothing contained in this Agreement shall be construed to give any person or legal entity, not a party to this Agreement, any claim against the BOROUGH or any of its agents or agencies with respect to the matter of the installation of improvements, or for any damages arising therefrom.

28. Municipal Consent to Assignment of Sale

It is agreed that any assignment hereof for sale of the premises in whole or in part (other than individual unit sales) shall not operate to relieve the DEVELOPER from its obligations hereunder, without the express written consent of the PLANNING BOARD and Borough Council of the Borough of Old Tappan.

29. Performance Guarantees

(a) Prior to final site plan approval, the DEVELOPER shall file with the Borough Clerk a performance bond with

surety, or an irrevocable Letter of Credit, satisfactory to the BOROUGH and approved by the Board Attorney in an amount as determined by the Borough Engineer based upon Schedule A less credit for work already approved as completed in place. Said surety shall be for the installation of the improvements required hereunder, and for the performance of the terms and conditions of this Agreement. If a portion of said improvements shall have been installed by the DEVELOPER, and approved and certified by the Borough Engineer, after the granting of final site plan approval, the DEVELOPER may apply to the Borough Council for a reduction in the amount of such performance bond or Letter of Credit to be filed, and action upon such application shall be taken in accordance with the certification of the Borough Engineer.

(b) Upon execution of this Agreement, the DEVELOPER shall post a cash deposit in the amount of FORTY THOUSAND, THREE HUNDRED AND xx/100 (\$40,300.00) Dollars to insure the DEVELOPER's obligation to grade all lots, to install all monuments, street signs and shade trees in the development and to provide as built plans. If the DEVELOPER shall fail to perform such obligations within a time and in a manner as specified by the Borough Engineer, the BOROUGH shall be permitted to charge the costs of such work against such cash deposit and to make withdrawals from same for this purpose. The amount, if any, left over in such cash deposit after imposition of the BOROUGH's charges shall be returned to the DEVELOPER.

30. BOROUGH's Professional Costs

The engineering, planning and legal fees or charges for services rendered to the PLANNING BOARD and to the Borough Council in connection with this Agreement and in connection with the site plan and improvements made hereunder shall be paid by the DEVELOPER in accordance with N.J.S.A 40:55D. For this purpose, the DEVELOPER shall deposit, after the execution of this Agreement, a cash deposit in the sum of THIRTY-FIVE THOUSAND and xx/100 (\$35,000.00) DOLLARS, which sum shall be posted in four stages (the first upon signing herewith and each successive equal deposit when the balance on deposit drops to ten (10%) percent of the total cash deposit, namely THREE THOUSAND, FIVE HUNDRED and xx/100 (\$3,500.00) DOLLARS. It is specifically agreed, that if during the course of the development it appears that the amount of the deposit made is inadequate to meet such costs, the BOROUGH may require such additional sums to be deposited with it as it might determine necessary and reasonable; and the DEVELOPER further agrees forthwith to provide the same. No building permits or certificate of occupancy shall be issued until such additional deposit shall be made. The BOROUGH shall be and is hereby authorized by the DEVELOPER to disburse the said deposits in payment of such services as are rendered upon proper vouchers therefore, duly sworn to and signed by the person or persons rendering the services and the unused portion of any such deposits shall be returned to the DEVELOPER by the BOROUGH upon completion of the improvement undertaken and certification of such completion to the BOROUGH by

the Borough Engineer.

31. Incorporation of Plat Details

In addition to anything herein contained, anything shown on the approved preliminary and final plats, or on the approved profiles, etc., and not specifically included in the Agreement or mentioned herein, shall be considered as a part of this Agreement, said maps and plans being made a part hereof by reference except for such necessary changes as may be required and approved by the Borough Engineer as work progresses.

32. Restriction Against Sales Prior to Final Approval

Until such time as DEVELOPER has obtained final site plan and conditional use approval and all conditions thereof have been satisfied, DEVELOPER agrees neither to accept any deposits on sales of lots or townhouses nor to enter into any contracts or agreements for future sales unless there is a written provision in each of said contracts, agreements, and deposit receipts or in the approved Public Offering Statement stating that the sale or transfer of such lot or property is expressly subject to all said approvals having been obtained and such conditions satisfied.

33. Maintenance Bonds

DEVELOPER agrees to provide the BOROUGH with a maintenance bond, guaranteeing for a period of 18 months from the date of acceptance of such public improvements, all workmanship and materials in connection with the said work to be performed by the DEVELOPER under this Agreement. Said maintenance bond shall be in

a form satisfactory to the Board Attorney and in the amount of TWO HUNDRED SIXTY-FOUR THOUSAND, ONE HUNDRED and xx/100 (\$264,100.00) DOLLARS as suggested by the Borough Engineer. The maintenance bond shall provide for the reimbursement of all expenditures incurred by the BOROUGH for repair, maintenance and operation during said 18 month period. Completion of the work shall be evidenced by a written certificate of the Borough Engineer and upon issuance of such certificate, the DEVELOPER shall, by written application to the BOROUGH, request approval of said work and at the same time tender the required maintenance bond.

DEVELOPER further agrees to replace any trees and seeded areas installed under the Public Improvement Schedule where such trees or seeded areas die within the 18 month period for the maintenance bond.

34. Compliance with Conditions of Resolutions

DEVELOPER agrees to comply with each of the conditions and matters set forth in the Resolution adopted by the Old Tappan Planning Board, on December 1, 1993 granting preliminary site plan approval and PRD conditional use approval, the Resolution adopted by the BOARD on September 21, 1994 granting amended preliminary site plan approval and PRD conditional use approval, and additionally agrees to comply with any conditions to be contained and set forth in any further resolutions of the PLANNING BOARD on DEVELOPER's applications for final site plan approval and

DEVELOPER further agrees that the Condominium

Master Deed , by-laws and other documents which it shall submit in connection with the required low and moderate income housing units of this project (the forms of which documents shall be approved by the Borough Attorney and Planning Board Attorney) shall in all respects conform to the rules and regulations of the New Jersey Council on Affordable Housing, toward the end that the BOROUGH will receive full credit for such housing units with respect to its Mount Laurel obligation.

35. Insolvency or Abandonment of the Work

If, before the completion of the work, the DEVELOPER abandons the job, files a voluntary petition in bankruptcy or insolvency, or is declared bankrupt or insolvent, or suffers any type of receivership, insolvency, bankruptcy, or other similar proceeding to be filed against it which proceeding remains unresolved after a period of sixty (60) days, or ceases work for a period of ten (10) consecutive working days without the permission of the Borough Engineer and fails to resume work within ten (10) days after receipt of notice by certified mail at the address stated in this Agreement, then it shall be the duty of the DEVELOPER's surety immediately to undertake the completion of the work at the expense of the DEVELOPER and its surety, or to pay to the BOROUGH the cost of the completion of the work as a local improvement pursuant to the provisions of N.J.S.A. 40:56-1, et seq.

36. Severability

The provisions of this contract are severable; if any one provision be determined unenforceable, this shall have

no effect on the balance of the provisions hereof which shall remain in full force and effect.

37. Successors Bound

This Agreement shall be binding upon the successors and assigns of the parties hereto.

38. Agreement Not Construed as Waiver

Nothing herein contained shall be construed as preventing either party from exercising in any court of law or elsewhere any rights or duties which it may have by statute, ordinance or law. Nothing herein contained shall be deemed a waiver by any party of any ordinance or state statute or other law, or be construed as an abridgement, preemption or waiver of the powers of any BOROUGH board, agency or public body. This clause shall not operate to confer upon any such public body any powers, rights or duties it does not now possess, nor abridge the rights of the DEVELOPER in relation to such public body nor any third party.

39. Modifications in Writing

This Agreement may only be changed, modified or amended by a written instrument signed by all the parties hereto.

40. Contract Provisions Construed as Conditions

Each of the provisions hereof shall have the same force and effect as if set forth at length as conditions of the grant of subdivision approval.

II. That the PLANNING BOARD will:

1. Approve the location of structures and public

improvements as shown on the said plat.

2. Upon no default then existing in the performance of this Agreement by the DEVELOPER, authorize the Construction Official to issue building permits for the erection of townhouse clusters and single family homes on the site in accordance with the provisions of the Borough Code previously referred to herein.

III. That the BOROUGH will:

1. Accept dedication of the public improvements and easements shown on the plat, provided by certificate of the Borough Engineer and further provided that the DEVELOPER shall not be in default of any of the provisions of this Agreement and shall post a maintenance bond to run from the date of the acceptance by the BOROUGH for eighteen (18) months as hereinabove provided.

2. The BOROUGH further agrees to pay the annual maintenance and use charge for fire hydrants, after installation by the DEVELOPER, as herein required.

IV. It is mutually understood and agreed by the parties hereto that any amendment, extension, modification or alteration in any of the terms and conditions of this Agreement or the waiver or release of any conditions or requirements by the BOROUGH shall not relieve any surety from its obligations on the performance of maintenance bonds.

THIS AGREEMENT shall be binding upon the respective heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be signed by their property officers and their corporate seal to be affixed the day and year first above written.

Attest:

John A. Hughes
Secretary

THE VILLAGE INC.
a Corporation of the State of
New Jersey

By: *Robert J. Kennedy*
President

ATTEST:

Marie Koehler
MARIE KOEHLER
Borough Clerk

MAYOR AND COUNCIL OF THE
BOROUGH OF OLD TAPPAN

By:

Edward J. Gallagher
EDWARD J. GALLAGHER, MAYOR

ATTEST:

Malcolm Davies
MALCOLM DAVIES
Secretary

PLANNING BOARD OF THE
BOROUGH OF OLD TAPPAN

By:

Walter Frueh
WALTER FRUEH, CHAIRMAN

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CONSTRUCTION COST ESTIMATE

WOODS EDGE

Lot 8, Block 303 Lot 9, Block 602 Lots 1 & 2, Block 603
Borough of Old Tappan
Bergen County, New Jersey

OT-214
rev. 10/25/94

BOND ITEM	QUANTITY	UNIT	PRICE	COST
General Site Work				
1. Soil erosion and sediment control	1	LS	\$5,000.00	\$5,000.00
2. Clearing and grading	1	LS	\$45,000.00	\$45,000.00
Drainage				
3. Catch basins/manholes	35	EACH	\$1,500.00	\$52,500.00
4. 15" rcp	1342	LF	\$25.00	\$33,550.00
5. 18" rcp	38	LF	\$30.00	\$1,140.00
6. 24" rcp	100	LF	\$35.00	\$3,500.00
7. 36" rcp	568	LF	\$35.00	\$17,780.00
8. 42" rcp	132	LF	\$35.00	\$4,620.00
9. 48" rcp	8	LF	\$35.00	\$280.00
10. Headwalls, with riprap	8	EACH	\$750.00	\$6,000.00
11. Detention basin	1	LS	\$250,000.00	\$250,000.00
Sanitary Sewer				
12. 8" pvc	3702	LF	\$20.00	\$74,040.00
13. 4" pvc building connection	79	EACH	\$1,000.00	\$79,000.00
14. Manhole	18	EACH	\$1,250.00	\$22,500.00
15. Off-site sanitary sewer: De Wolf Road				
Manhole	11	EACH	\$3,500.00	\$38,500.00
Pvc (various sizes)	1800	LF	\$90.00	\$162,000.00
Orangeburgh Road				
Manhole	5	EACH	\$1,000.00	\$5,000.00
8" pvc	1491	LF	\$90.00	\$134,190.00
16. Drop manhole	1	EACH	\$4,500.00	\$4,500.00
Water System				
17. Wet tap	1	EACH	\$2,600.00	\$2,600.00
18. 8" dip, on-site	2600	LF	\$35.00	\$91,000.00
19. Hydrants	4	EACH	\$2,500.00	\$10,000.00
20. Valves	14	EACH	\$525.00	\$7,350.00
21. 3/4" service connection	64	EACH	\$1,000.00	\$64,000.00
Roadway				
22. Roadway excavation/embankment	10830	CY	\$4.00	\$43,320.00
23. Dense graded aggregate	960	CY	\$20.00	\$19,200.00
24. Stabilized base	1200	TON	\$35.00	\$42,000.00
25. Surface crse.	700	TON	\$35.00	\$24,500.00
26. Pavement replacement	1800	SY	\$20.00	\$36,000.00
27. Driveway replacement	845	SY	\$10.00	\$8,450.00
28. Belgian block curb	5200	LF	\$15.00	\$78,000.00
29. Guide rail	520	LF	\$12.00	\$6,240.00
30. Concrete sidewalk	1700	SY	\$25.00	\$42,500.00
31. Topsoil, 1/2 right-of way	2000	SY	\$2.50	\$5,000.00
Misc. Utilities				
32. Underground utilities	1	LS	\$48,000.00	\$48,000.00
TOTAL				\$1,467,260.00
120% Performance Bond				\$1,760,712.00
15% Maintenance Bond				\$264,106.80
Engineering Fee				\$25,000.00
CASH ITEM	QUANTITY	UNIT	PRICE	COST
1. Lot grading	10	EACH	\$1,000.00	\$10,000.00
2. Monuments	6	EACH	\$300.00	\$1,800.00
3. Street signs	4	EACH	500	\$2,000.00
4. As-built plans	1	LS	\$6,500.00	\$6,500.00
5. Shade trees	100	EACH	\$200.00	\$20,000.00
Total Cash Bond				\$40,300.00

COLONIAL REALTY DEVELOPMENT CORP.

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EXHIBIT B**WOODS EDGE AT OLD TAPPAN****PHASING SCHEDULE OF CONSTRUCTION****PHASE I**

BUILDING NO	MINIMUM PERCENTAGE LOW AND MODERATE INCOME UNITS	PERCENTAGE OF MARKET HOUSING UNITS
17	0	6/126 = 4.8%
21	2/14 = 14.2%	10/126 = 7.9%
	(10%)	(25% + 1 unit)
19	2/14 = 14.2%	16/126 = 12.7%
18	2/14 = 14.2%	22/126 = 17.5%
22	4/14 = 28.6%	26/126 = 20.6%
23	6/14 = 42.8%	30/126 = 23.8%
13	8/14 = 56.3%	34/126 = 27.0%
	(50%)	(50%)
14	8/14 = 56.3%	39/126 = 30.9%
15	8/14 = 56.3%	45/126 = 35.7%
16	8/14 = 56.3%	51/126 = 40.5%
20	8/14 = 56.3%	56/126 = 44.4%

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EXHIBIT B

WOODS EDGE AT OLD TAPPAN

PHASING SCHEDULE OF CONSTRUCTION

PHASE II		
BUILDING NO	MINIMUM PERCENTAGE LOW AND MODERATE INCOME UNITS	PERCENTAGE OF MARKET HOUSING UNITS
6	8/14 = 56.3%	62/126 = 49.2%
11	8/14 = 56.3%	68/126 = 54.0%
12	10/14 = 71.4%	72/126 = 57.1%
	(75%)	(75%)
1	12/14 = 85.7%	76/126 = 60.3%
2	12/14 = 85.7%	82/126 = 65.1%
4 Lots	12/14 = 85.7%	86/126 = 68.2%
3	12/14 = 85.7%	92/126 = 73.0%
8	12/14 = 85.7%	98/126 = 77.8%
9	12/14 = 85.7%	104/126 = 82.5%
10	12/14 = 85.7%	108/126 = 85.7%
7	14/14 = 100%	112/126 = 88.9%
	(100%)	(90%)
5		117/126 = 92.9%
4		123/126 = 97.6%
3 Lots		126/126 = 100%