

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of November, 2010, and is by and among the **COUNTY OF LAKE** ("County"), a body politic and corporate, **KILDEER TWO, LLC.**, ("Kildeer Two") an Illinois limited liability company, and Cypress Grove Development, LLC, an Illinois limited liability company ("Cypress Grove Development") ("Kildeer Two and Cypress Grove Development are hereinafter collectively referred to as the "Developer." The County, Cypress Grove Development and Kildeer Two are hereinafter collectively referred to as the "Parties" and individually as a "Party" as the context may require.

RECITALS

Whereas, Kildeer Two was the owner of record of certain real property consisting of approximately 72.3 acres, located at the northeast corner of the intersection of Quentin Road and IL Highway 22 in unincorporated Lake County and legally described in **Exhibit A** to this Agreement and commonly known as Kildeer Estates (the "Development");

Whereas, Kildeer Two is the permittee under Lake County Highway Access Permit No. 090-402-08, ("Original Access Permit") and as permittee under said permit is required to comply with the provisions of the Lake County Highway Access Regulation Ordinance ("Access Ordinance");

Whereas, Kildeer Two is affiliated with Dartmoor Homes, which is the permittee under Lake County Site Development Permit No. 151142-SC ("Development Permit") and as permittee under said permit is required to comply with the Lake County Unified Development Ordinance ("UDO");

Whereas, Kildeer Two is required to construct pursuant to the Original Access Permit and the Access Ordinance certain access improvements, to wit: (1) highway widening to improve the intersection of Quentin Road and Ensell Road (said roadway improvements hereinafter referred to as "Roadway Improvements"); (2) traffic signal located at the intersection of Quentin Road and Ensell Road ("Traffic Signal"); and a bike path located on the east side of Quentin Road along the frontage of the Development ("Bike Path"), all as more fully described in the Original Access Permit and the Access Ordinance (hereinafter referred to collectively as "Access Improvements");

Whereas, to date Kildeer Two has not constructed any of the required Access Improvements, nor completed all of the internal improvements requirements under the UDO for the Development, and has been declared in default on both the Original Access Permit and the Development Permit and the terms and conditions of the subdivision and restoration assurances for the subdivision ("Assurances");

Whereas, the County has notified Kildeer Two that due to its defaults under the Development Permit, the Original Access Permit and the Assurances, no further building permits will be issued for the Development;

DRAFT

Whereas, as of June 25, 2010, 16 building permits have been issued by the County to Kildeer Two for the Development;

Whereas, as a result of Kildeer Two's default on the Original Access Permit, the County drew upon Northern Trust Letter of Credit No. SLC302774, one of the performance assurances under the Original Access Permit;

Whereas, the first phase of the Development consists of 56 lots which are identified on Exhibit "A" attached hereto (the "Phase One Lots");

Whereas, 15 of the Phase One Lots have been conveyed to separate lot purchasers, but all remaining Phase One Lots have been conveyed by a deed in lieu of foreclosure to Hawthorn 45, LLC, an Illinois limited liability company ("Hawthorn");

Whereas, by separate contract with Hawthorn, Cypress Grove Development was granted the right to purchase the lots owned by Hawthorn and is the developer of such Phase One Lots, and, in relation to such Phase One Lots, is subject to the same rights and obligations of Kildeer Two under the Original Access Permit and Access Ordinance;

Whereas, the Development also contains 54 additional lots constituting the second phase of the Development, which are identified on Exhibit "A" attached hereto (the "Phase Two Lots")Kildeer Two;

Whereas, in order to serve the residents currently occupying homes within the Development, the County presently requires the installation of the Roadway Improvements and a temporary traffic signal, as provided below;

Whereas, the parties desire that Cypress Grove Development construct and complete the Access Improvements in accordance with the requirements of the Access Ordinance, and which may permit further building permits to be issued for the Development, as provided herein;

Whereas, the parties have agreed to a schedule and manner for the construction and completion of all the Access Improvements, which shall include the construction of the Access Improvements in three phases and which shall occur in accordance with the issuance of two successive access permits, all of which are more fully described herein;

Whereas, the Developer has submitted to the County cost estimates for the completion of the Access Improvements, divided into costs estimates for the Roadway Improvements, cost estimates for the Traffic Signal and cost estimates for the Bike Path; and

Whereas, the Developer has been in the process to annex the development into the Village of Hawthorn Woods, which annexation may occur before or during the pendency of this Agreement.

Now, therefore, in consideration of the foregoing recitals, and the mutual covenants and agreements of the Parties as set forth herein, the County, Kildeer Two and Cypress Grove Development hereby agree as follows:

1. **Incorporation of Recitals.** The above and foregoing Recitals, including, without limitation, any defined terms set forth therein, are incorporated into and made a part of this Agreement.

2. Building Permits. No further building permits will be requested by the Developer or issued by the County for the Development except as provided in this Agreement.

a. Permits after mutual execution of this Agreement.

Upon execution of this Agreement by all Parties and the completion of the Roadway Improvements as described under Section 3.a below, Cypress Grove Development may apply for, and shall receive approval, from the County or other governmental authority having jurisdiction over the Development, for building permits on the 40 remaining Phase One Lots, in addition to the 16 building permits already issued as of June 25, 2010 (such lots which are eligible for building permits being identified on Exhibit "A" hereto as the "Phase One Building Permit Lots"), provided that the criteria under the applicable ordinance for the issuance of the building permit or permits are met. In the event that the property has been annexed into a municipality, the determination of whether the criteria for the issuance of any building permits are met shall rest with such municipality. Notwithstanding anything to the contrary herein, upon the completion of the of the Roadway Improvements as described under Section 3.a. below, the failure of Cypress Grove Development to fulfill any obligations under Section 3.b below or any other provision of this Agreement shall not limit or block the ability of Cypress Grove Development to obtain building permits for the Phase One Lots.

b. Permits after Roadway Improvements and Traffic Signal.

Upon completion of the Roadway Improvements as described in 3(a)below, and the County's receipt of a letter of credit in the amount of \$448,300 to cover the estimated cost of the Traffic Signal and Bike Path as described in 3.b below, Cypress Grove Development may apply for, and shall receive approval, from the County or other governmental authority having jurisdiction over the Development, for building permits on the Phase Two Lots, provided that the criteria under the applicable ordinance for the issuance of the building permit or permits are met. In the event that the property has been annexed into a municipality, the determination of whether the criteria for the issuance of any building permits are met shall rest with such municipality. Cypress Grove Development will not apply for, nor obtain, any building permits for Phase Two Lots if it is noncompliant with this agreement as per paragraph 2(c) of this agreement.

c. No Phase Two building permits upon noncompliance with this Agreement.

Should the letter of credit not be posted as provided in Section 3(b) below, or should Cypress Grove Development at any time fail to comply with the terms of this Agreement, upon notice from the County of said noncompliance no further building permits will be applied for or issued to Cypress Grove Development or any other entity or person for Phase Two Lots until the said noncompliance is corrected.

3. Construction and Completion of Access Improvements. The Access Improvements will be constructed fully in compliance with the Access Ordinance and with the Phase One and Phase Two Access Permits, as follows:

a. Phase One: Roadway Improvements. Cypress Grove Development shall submit to the County a cash performance guarantee in the amount of \$240,000 to cover the estimated cost of the Roadway Improvements, within three (3) days after the

execution of this Agreement. Upon timely receipt of the cash performance guarantee from Cypress Grove Development, the County shall issue a limited access permit that shall permit access to the Development for the residents then living in the Development plus the residents of any additional homes that may be constructed on the Phase One Lots, and for Cypress Grove Development LLC to access the Development ("Phase One Access Permit"): (i) to construct the Roadway Improvements commencing on or before May 15, 2011 and, (ii) to construct subdivision improvements within the Development, and (iii) to construct homes on the Phase One Lots. The Phase One Access Permit shall require construction of the Roadway Improvements on or before July 1, 2011 in accordance with the same standards for construction that applied under the Original Access Permit. Cypress Grove Development shall notify the County upon the completion of the Roadway Improvements. Upon said notice of completion, the County shall inspect the Roadway Improvements and if found to be satisfactory and in compliance with the standards and requirements of the Access Ordinance and the Phase One Access Permit, the County shall release the \$240,000 cash performance guarantee back to Cypress Grove Development except for a 15% retainage as a maintenance guarantee for two years, in accordance with the Access Ordinance.

b. Phase Two: Traffic Signal. Cypress Grove Development shall submit to the County a letter of credit in the amount of \$448,300 to cover the estimated cost of the Traffic Signal and Bike Path on or before the request for the 1st building permit affecting the Phase Two Lots, no later, however, than July 1, 2013. Upon timely receipt of the letter of credit, the County shall issue an access permit that shall permit access to the Development for the residents then living in the Development plus the residents of any additional homes that may be constructed on the Phase Two Lots, and for Cypress Grove Development to access the Development ("Phase Two Access Permit"): (i) to construct the Traffic Signal and the Bike Path, which shall commence on or before July 1, 2013 and shall be completed on or before July 1, 2014, (ii) to construct subdivision improvements within the Development, and (iii) to construct homes on the Phase Two Lots. The Phase Two Access Permit shall require construction of the Traffic Signal and Bike Path in accordance with the same standards for construction that applied under the Original Access Permit. Cypress Grove Development shall notify the County upon the completion of construction of the Traffic Signal and the Bike Path. Upon said notice of completion, the County shall inspect the Traffic Signal and the Bike Path and if found to be satisfactory and constructed in compliance with the standards and requirements of the Access Ordinance and the Phase Two Access Permit, then the County shall: (i) release the \$448,300 letter of credit back to Cypress Grove Development, except for a 15% retainage as a maintenance guarantee for two years, in accordance with the Access Ordinance, (ii) release to Cypress Grove Development any remaining balance of the Letter of Credit Funds (described under Section 4 below).

4. Temporary Traffic Signal. Upon completion of the Roadway Improvements, as described in 3(a) above, the County shall install and maintain a Temporary Traffic Signal at the intersection of Quentin Road and Ensell Road. Costs for the installation and maintenance of the Temporary Traffic Signal shall be paid from the \$158,700 cash held by the County that was paid by Northern Trust pursuant to the County's drawing upon Letter of Credit No. SLC302774. ("Letter of Credit Funds"). Said costs are currently estimated to be \$20,000. Notwithstanding said cost estimate if the cost of installation and maintenance of the Temporary Traffic Signal are more or less than the said estimate only the actual cost of the installation and maintenance of the Temporary Traffic Signal shall be paid out of the Letter of Credit Funds. The Developer agrees that the costs for the installation and maintenance of the Temporary Traffic Signal are its

sole responsibility and that it shall have no claim to recovery of any funds so paid to cover the installation and maintenance costs of the Temporary Traffic Signal. The balance of the Letter of Credit Funds that are not devoted to installation and maintenance of the Temporary Traffic Signal remain applicable toward the cost of Traffic Signal and Bike Path and shall be applied to reduce the obligation of Cypress Grove Development to post a letter of credit for the Traffic Signal and Bike Path, as provided in 3(b) above.

5. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by facsimile. Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to County shall be addressed to, and delivered at, the following address:

County of Lake
Division of Transportation
600 West Winchester Road
Libertyville, IL 60048
Attention: Paula Trigg
Fax No: (847) 984-5944

With a copy to:

Lake County State's Attorney's Office, Civil Division
18 North County Street, 3rd floor
Waukegan, IL 60085
Fax No: (847) 360-0661

Notices and communications to Cypress Grove Development or Kildeer Two LLC shall be addressed to, and delivered at, the following address:

Cypress Grove Development, LLC
175 West Central Rd.
Schaumburg, IL 60195
Attention: Mary Taylor
Fax No: (847)-519-9283

Kildeer Two, LLC
175 West Central Rd.
Schaumburg, IL 60195
Attention: Pat Taylor
Fax No: (847)-519-9283

With copies to:

Robert O'Donnell
O'Donnell Law Firm, Ltd.
230 Center Drive, Suite 102
Vernon Hills, IL 60061
Fax No: (847) 367-2758

and

Peter J. Brennan, Esquire
Suite 200
12 Salt Creek Lane
Hinsdale, Illinois 60521

6. **Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

7. **Binding on Successors and Assigns.** The Agreement shall bind, and the benefits shall inure to, the respective parties to this Agreement, their legal representatives, executors, administrators, successors in office or interest and assigns. Accordingly, the parties agree that this Agreement shall be recorded in the Lake County Recorder's office against the Phase I and II properties.

8. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

9. **Specific Performance of Agreement.** The County shall have the right to apply to Lake County Circuit Court for an injunction against any violation of this Agreement. Because the injury to the County arising from a default under any of the terms of this Agreement would be irreparable and the amount of damages would be difficult to ascertain, the Developer acknowledges and agrees that in the event of a violation of this Agreement, the County's remedies at law would be inadequate to assure the County's public purpose under this Agreement, the applicable permits and the Access Ordinance.

10. **Non-Waiver.** None of the Parties shall be under any obligation to exercise any of the rights granted to them in this Agreement. The failure of any Party to exercise at any time any such right shall not be deemed or construed to be a waiver thereof, nor shall such failure void or affect that Party's right to enforce such right or any other right.

11. **Consents.** Whenever the consent or approval of any Party hereto is required in this Agreement, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed, and, in all matters contained herein, all parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

12. **Governing Law.** This Agreement shall be governed by, and enforced in accordance with the laws of the State of Illinois.

13. **Severability.** It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

14. **Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

15. **Headings.** The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

16. **Exhibits.** The exhibits attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

17. **Amendments and Modifications.** No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

18. **Force Majeure.** The obligations of the parties hereto to construct the Access Improvements shall be subject to delays caused by strikes, weather conditions and other causes beyond the reasonable control of the responsible party. The County Engineer shall have the sole authority to determine whether there is a qualifying delay under this paragraph.

19. **Agreement to Remain in Force in Case of Annexation of Development.** It is the Parties' mutual understanding that the Developer is seeking to have the Development annexed into the Village of Hawthorne Woods. It is the Parties' agreement that should the Development be annexed into Hawthorne Woods or any other municipality, that all of the terms of this Agreement shall remain in full force and effect, including but not limited to the terms relating to the seeking and issuance of building permits set for in paragraph 2 above.

20. **Authority to Execute.** Each of the respective Parties hereto warrants and represents to each other Party that the persons executing this Agreement on its behalf have been properly authorized to do so by all appropriate corporate and/or County resolutions.

21. **Execution of Agreement.** The County and the Developer will each execute two (2) counterpart originals of this Agreement.

SEE SIGNATURE PAGES ATTACHED

WHEREFORE, the undersigned has signed this Agreement on the date and year first above written

ATTEST:

COUNTY OF LAKE

By: _____

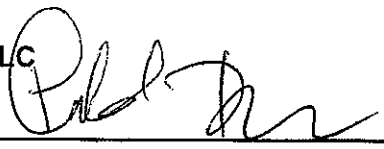
Printed: _____

Printed: _____

Title: County Clerk

Title: County Board Chairman

KILDEER TWO, LLC

By:  _____

Printed: Patrick Taylor

Its: manager

CYPRESS GROVE DEVELOPMENT, LLC

By:  _____

Printed: Mary Taylor

Its: manager

EXHIBIT A

PHASE ONE LOTS

LOTS 1 - 13 (BOTH INCLUSIVE), LOTS 52 - 83 (BOTH INCLUSIVE) AND LOTS 100 - 110 (BOTH INCLUSIVE), IN CYPRESS GROVE, BEING A SUBDIVISION OF THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 9, 2007 AS DOCUMENT NUMBER 6117957, AND CERTIFICATE OF CORRECTION RECORDED FEBRUARY 19, 2007 AS DOCUMENT NUMBER 6139886, IN LAKE COUNTY, ILLINOIS.

PHASE ONE BUILDING PERMIT LOTS

LOT 1, LOTS 3 - 6 (BOTH INCLUSIVE), LOT 9, LOTS 52 - 57 (BOTH INCLUSIVE), LOT 59, LOT 60, LOTS 62 - 68 (BOTH INCLUSIVE), LOT 71, LOTS 73 - 83 (BOTH INCLUSIVE), LOTS 100 - 105 (BOTH INCLUSIVE) AND LOT 110 IN CYPRESS GROVE, BEING A SUBDIVISION OF THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 9, 2007 AS DOCUMENT NUMBER 6117957, AND CERTIFICATE OF CORRECTION RECORDED FEBRUARY 19, 2007 AS DOCUMENT NUMBER 6139886, IN LAKE COUNTY, ILLINOIS.

PHASE TWO LOTS

LOTS 14 - 51 (BOTH INCLUSIVE) AND LOTS 84 - 99 (BOTH INCLUSIVE) IN CYPRESS GROVE, BEING A SUBDIVISION OF THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 43 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 9, 2007 AS DOCUMENT NUMBER 6117957, AND CERTIFICATE OF CORRECTION RECORDED FEBRUARY 19, 2007 AS DOCUMENT NUMBER 6139886, IN LAKE COUNTY, ILLINOIS.