

AN AGREEMENT RELATING TO SCHOOL IMPACTS
OF THE ALTER DEVELOPMENT

THIS AGREEMENT is made and entered into on this 26th day of October, 2009, by and among the VILLAGE OF GRAYSLAKE, an Illinois municipal corporation (the "Village"), FREMONT ELEMENTARY SCHOOL DISTRICT NO. 79, an Illinois school district (the "District"), and LAKE COUNTY LAND HOLDINGS, L.L.C., a Delaware corporation ("Developer") (collectively, the Village, the District, and Developer are hereinafter referred to from time-to-time as the "Parties").

IN CONSIDERATION OF the mutual promises and covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Recitals.

A. The Developer is the owner of record of approximately 641 acres of real property generally located at or along Peterson Road, west of Illinois Route 83 and extending west of Alleghany Road, which property is legally described in Exhibit 1 attached hereto (the "Property").

B. The Property has been or may be annexed to the Village pursuant to an annexation agreement between the Developer and the Village (the "Annexation Agreement") that sets forth or shall set forth the terms and conditions for the development of the Property.

C. The Parties acknowledge and agree that the development of the Property, as proposed, will result in significant long-term benefits to the community, the Village, and the District.

D. The Parties acknowledge and agree that residential development on the Property will have certain impacts on the District, and the best interests of all the Parties will be served to address those impacts in the manner hereinafter described.

E. To minimize adverse financial impacts on the School District, the parties acknowledge that it is important (i) to time residential development with non-residential development to minimize adverse financial impacts on the District, and (ii) to cause appropriate School District Enhancement Fees to be paid by the Developer to the District.

F. This Agreement is entered into pursuant to the authority conferred upon the Village and the District, including without limitation Article VII, Section 10 of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220.

Section 2. Definitions.

A. Definitions Generally. Unless otherwise provided, terms used in this Agreement shall have the same meaning as provided in the Grayslake Zoning Code.

B. Special Definitions. For purposes of this Agreement, the following words when used in this Agreement shall be defined as hereinafter set forth:

1. Age-Restricted Development. A residential development that is designed to serve persons 55 years of age and older, where at least 80% of the dwelling units in such development are Age-Restricted Units. Such limitations shall be enforced by restrictive covenants or other similar means.
2. Age-Restricted Units. Dwelling units in an Age-Restricted Development where at least one resident is at least 55 years of age and there are no permanent residents under 21 years of age.
3. General Development Plan. The general development plan for the Property as approved by the Village in connection with the Annexation Agreement.
4. Market Rate Apartments. Apartments in an Apartment Building (as those terms are defined under the Grayslake Zoning Code, but exclusive of two-family dwellings and attached single-family dwellings

such as townhouses having separate facilities except for common devising walls and roofs) that are made available based on prevailing market rates for rent and without any restriction regarding rental adjustment. Market Rate Apartments do not include Age-Restricted Units or Apartments in an Apartment Building that are for sale or intended for sale.

5. Model Units. Dwelling units, irrespective of type, that are authorized under the Annexation Agreement to be constructed and used for sale and promotional purposes.
6. Population Equivalent (P.E.). The calculated population that would normally produce 100 gallons of sanitary sewage per day in accordance with IEPA standards.
7. Residential Sewerage Flow. The amount of sewage (as expressed in P.E.) generated from the residential development within the Property.

Section 3. Residential Development Parameters.

A. General Limitations. Developer shall not develop any residential units on the Property except in accordance with the following restrictions:

1. Total Dwelling Units. Developer shall not develop more than 801 dwelling units on the Property. The dwelling units shall further be limited as follows:
 - a. Age-Restricted Units. A total of 178 dwelling units on the Property are planned to be Age-Restricted Units. A minimum of 145 of the total maximum 801 dwelling units shall be Age-Restricted Units except that the Age-Restricted Units may be replaced with non-residential development or open space; except that no more than ten Age-Restricted Units may be replaced with public open space. There shall be no limit on the number of Age-Restricted Units provided the total number of residential units shall not exceed 801. In addition, to the extent that the number of Age-Restricted Units is fewer than 145 units, then the total maximum dwelling units authorized for the Property shall be reduced from 801 on a unit-for-unit basis.
 - b. Apartments. No more than 78 apartments may be developed on the Property, which apartments shall all be Market Rate Apartments, not more than 50 of which may be designed or constructed with two bedrooms, and the remainder of which shall be designed and constructed with not more than one bedroom.

- (1) No certificates of occupancy for apartments on the Property (other than authorized Model Units) may be issued earlier than five years after the first building permit is issued for any portion of the Property.
 - (2) In addition to the requirement discussed in Section 3 A.1.b.(1), no certificates of occupancy for apartments on the Property (other than authorized Model Units) may be issued until at least 500,000 square feet of non-residential buildings have been built.
 - (3) Notwithstanding paragraphs (1) and (2) above; certificates of occupancy for apartments on the Property may be issued provided a minimum of 1,000,000 square feet of non-residential buildings have been built.
 - (4) The minimum fair market value (based on purchase price) of a one-bedroom apartment shall not be less than \$185,000, and the minimum fair market value of a two-bedroom apartment shall not be less than \$220,000 [which values are expressed in 2008 dollars and shall be adjusted based on the Engineering News Record (ENR) Building Cost Index.
 - (5) The Landlord of any residential rental property shall limit the number of parking spaces assigned to rental unit tenants to not more than 2 primary spaces per unit and guest parking of not more than 10% of the total number of primary parking spaces. The provisions of the Annexation Agreement shall contain parking regulations for the rental properties consistent with this paragraph (5).
- c. Detached Market Rate Single-Family Dwelling. No more than 123 detached market rate single-family dwellings may be developed on the Property.
- (1) No more than 41 certificates of occupancy for detached market rate single-family dwellings on the Property may be issued in the first year of sales and no more than 82 certificates of occupancy for detached market rate single-family dwellings on the Property may be issued in the first two years of sales.
 - (2) Certificates of occupancy for detached market rate single-family dwellings may only be issued in accordance with the following limitations:

- (a) No certificates of occupancy for detached market rate single-family dwellings on the Property (other than authorized Model Units) may be issued earlier than five years after the first building permit is issued for any portion of the Property.
 - (b) No certificates of occupancy for detached market rate single-family dwellings on the Property (other than authorized Model Units) may be issued until at least 500,000 square feet of non-residential buildings have been built.
 - (c) Notwithstanding paragraphs (a) and (b) above; certificates of occupancy for detached market rate single-family dwellings on the Property may be issued provided a minimum of 1,500,000 square feet of non-residential buildings have been built.
- d. Townhomes and Condominiums. Other than Age-Restricted Units, Apartments, and Detached Market Rate Single-Family Dwellings, the remaining types of dwellings to be developed on the Property will be townhomes and condominiums as described in the General Development Plan. In the event the number of Apartments built is less than 78, or the number of Detached Market Rate Single-Family Dwellings built is reduced below 123, the number of townhomes or condominiums can be increased by a corresponding number.
2. General Development Plan. The Village and the Developer agree that no change in the authorized number or type of dwelling units in, or in the phasing requirements under, the General Development Plan for the Property shall be approved that is inconsistent with Sections 3.A and 3.B of this Agreement and that would result in an increase in the number of students generated from the Property [based on page 5, Table 4 of the Gruen Gruen and Associates "Fiscal Impact of Proposed Cornerstone on Fremont School District no. 79, Mundelein High School District No. 120, and Grayslake Community High School District No. 127 Using Lake County School Impact Model," dated February 2009 ("*Gruen February 2009 Fiscal Impact Report*")], unless the District first approves such change.
3. Dwelling Unit Designs. All dwelling units constructed on the Property shall substantially conform with the "Cornerstone, A New Beginning:

Project Vision and Pattern Book," as amended, which will be an exhibit to the Annexation Agreement.

B. General Phasing Requirements. Residential development on the Property (as measured by Residential Sewerage Flow) shall be coordinated with the construction of non-residential development as follows:

1. Phase I. The total amount of Residential Sewerage Flow from the Property (exclusive of Residential Sewerage Flow attributable to Age-Restricted Units and authorized Model Units) shall not exceed 750 P.E. until at least 500,000 square feet of non-residential buildings have been built on the Property.
2. Phase II. The total amount of Residential Sewerage Flow (exclusive of Residential Sewerage Flow attributable to Age-Restricted Units and authorized Model Units) from the Property shall not exceed 1,500 P.E. until at least 1,000,000 square feet of non-residential buildings have been built on the Property.
3. Phase III. The total amount of Residential Sewerage Flow (exclusive of Residential Sewerage Flow attributable to Age-Restricted Units and authorized Model Units) from the Property shall not exceed 2,250 P.E. until at least 1,500,000 square feet of non-residential buildings have been built on the Property.
4. Total Residential Sewerage Flow. The total Residential Sewerage Flow from the Property shall not exceed 3,000 P.E., unless the Village expressly permits additional Residential Sewerage Flow, but in no event shall the total Residential Sewerage Flow exceed 3,500 P.E.
5. Transfer of Residential Sewerage Flow. Nothing in this Agreement shall prevent the Developer or the Village from allowing the total amount of Residential Sewerage Flow to be less than 3,000 P.E. in which case the PE allocation shall be transferred to the non-residential development within the Property.

Section 4. School District Enhancement Fees.

A. Fee Schedule. The Developer agrees to pay School District Enhancement Fees to the District prior to the issuance of the building permit for the initial construction of each dwelling unit in accordance with the following schedule:

Number of Bedrooms (Any Type of Dwelling Unit)	SDEF Amount
1 Bedroom (exclusive of Age-Restricted Units)	\$2,595.00
2-3 Bedrooms (exclusive of Age-Restricted Units)	6,041.00
4 or more Bedrooms (Single-Family Dwellings)	8,060.00
Age-Restricted Units	1,038.00

B. Annual Fee Adjustment The amount of the School District Enhancement Fees in the foregoing table are expressed in 2009 dollars and may be increased once annually anytime after January 1 of each year by the District based upon the Engineering News Record (ENR) Building Cost Index. By way of example and not by way of limitation, the following formula shall be used in calculating the Annual Fee Adjustment:

ENR Building Cost Index:

January 2009	5890.27
January 2008	<u>5583.84</u>
Differential	306.43

Divide by Base (Jan 2008 Index)	5583.84
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Percentage Change for 2008 - 2009	5.49% (factor of 1.0549)
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If the Fee to be adjusted is \$1000, the fee would be increased to \$1055 which is

$$\$1000 \times 1.0549 = \$1054.9 = \underline{\$1055} \text{ (rounded)}$$

Within five business days after the adoption of new School District Enhancement Fees in accordance with this Section 4.B, the District shall notify Developer in accordance with

Section 6.M. of this Agreement. In no event shall the School District Enhancement Fees be reduced due to a decrease of any kind in the ENR Building Cost Index.

C. Fee Limitations. Nothing in this Agreement shall require Developer to pay a higher or additional amount per residential unit type in any given year than that required pursuant to this Section 4. The fees established by this Agreement, and as adjusted in accordance with Section 4.B. above, shall be the exclusive fees charged to Developer for development of the residential components of the Developer's project. Notwithstanding any other provision of this Section 4, Developer's fees shall not be reduced unless (1) the District negotiates a lower fee per residential unit type with another developer and (2) the total Per-Student Real Estate Tax Revenue generated by the other development project is less than the Per-Student Real Estate Tax Revenue generated by the Developer's project on the Property. The Per-Student Real Estate Tax Revenue of the Developer's project shall be determined by (i) using the data from where the Build-Out column and Total Property Tax Revenue row intersect from page 7, Table 5 of the Gruen February 2009 Fiscal Impact Report to determine the projected ad valorem tax revenue at build-out and (ii) using the data from page 5, Table 4 of the Gruen February 2009 Fiscal Impact Report to determine the projected number of students at build-out, and dividing the projected ad valorem tax revenue by the projected total number of students at build-out. The Per-Student Real Estate Tax Revenue for the other development shall be determined by utilizing the Lake County School Impact Model ("*Model*") to estimate the District's ad valorem tax revenue at build-out. The ad valorem tax revenue at build-out shall be divided by the number of students that the Model projects to be generated at build-out.

Example:

Estimated total property tax revenue at build-out for Cornerstone	\$6,394,500
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Estimated total number of students at build-out

203.72

$\$6,394,500 / 203.72 = \$31,389$

Section 5. School District Support.

From and after the execution of this Agreement by the Parties, and for so long as the School District has a right to receive the fees established herein, upon the reasonable request of the Developer, the District shall execute letters endorsing and supporting the project proposed for the Property as a project which, under the terms of this Agreement, does not adversely affect the mission of the District and the education of its students, and shall appear at public hearings and meetings as may be reasonably requested by the Village and the Developer to present testimony in support of the project.

Section 6. Legal Relationships and Requirements.

A. Exhibits. Exhibit 1 is by this reference incorporated into and made part of this Agreement.

B. Entire Agreement. There are no representations, covenants, promises, or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the parties is relying in entering into this Agreement.

C. Amendments. Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed altered, amended, or terminated without the written and duly authorized consent of the Parties. Any requested amendment shall be promptly considered by all parties and acted upon within 60 days of receipt of the request with all reasonable documentation necessary to review the request.

D. Waivers. No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party.

No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

E. Materiality. Each party, for itself and its successors and assigns, hereby agrees that all of the representations, promises, covenants, agreements, findings, and obligations set forth in this Agreement are material to this Agreement.

F. No Interpretation Against Drafter. This Agreement has been negotiated by all parties and shall not be construed against any party as the drafter of this Agreement.

G. Joint Defense. Except for any suit against another party or parties to the Agreement to enforce this Agreement, the Parties agree to cooperate with each other in the defense of any lawsuit regarding the legality or enforceability of this Agreement.

H. Enforcement and Remedies. This Agreement shall be enforceable in the Circuit Court of Lake County, Illinois, Nineteenth District by any party in an appropriate action at law or in equity. Upon breach of this Agreement, a party, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained. No action taken by any party hereto pursuant to the provisions of this section or pursuant to the provisions of any other section of this Agreement shall be deemed to constitute an election of remedies, and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to either party at law or in equity.

I. Counterparts. This Agreement may be executed in several counterparts, all of which shall be an original and all of which shall constitute but one and the same Agreement. This Agreement shall be executed in multiple originals, with each party to receive a fully

executed original.

J. Effective Date; Recording; Duration. The Agreement shall be in full force and effect from and after: (i) its execution by an authorized representative of the Village, the District, and the Developer, (ii) the execution of an Annexation Agreement between the Village and the Developer, and (iii) recording of the Annexation Agreement and Annexation Ordinance; and (iv) for so long as the Property is within the jurisdictional limits of the Village of Grayslake. To the extent that any portion of the Property is not within the jurisdictional limits of the Village, the terms of this Agreement shall not be applicable to such unincorporated portion or portions of the Property.

K. Successors. This Agreement shall inure to the benefit of, and be binding upon the successors in interest of the Parties and, as to the Developer, its successors or assigns to all or any portion of the Property.

L. Third-Party Beneficiaries. The Parties agree that there are no incidental or intended third-party beneficiaries of this Agreement.

M. Event of Termination. If the Property is not annexed to the Village or, if annexed, it is disconnected pursuant to the terms of the Annexation Agreement, then this Agreement shall be of no force or effect and, if this Agreement has been recorded, the District shall timely execute and deliver to Developer a recordable instrument abrogating this Agreement.

N. Notices. All notices required herein shall be in writing and shall be deemed properly served if delivered in person, by commercial overnight air courier, by facsimile or by registered or certified U.S. Mail, return receipt requested, with postage prepaid to the following or to such other or additional parties and addresses as either the Developer, the Village, or the District may from time-to-time designate by notice:

If to Village:

Village of Grayslake
10 S. Seymour
Grayslake, IL 60030
Attn: Village Manager
Phone: 847-223-8515
Fax: 847-223-4821

If to District:

Fremont School District 79
28855 N. Fremont Center Rd.
Mundelein, IL 60060
Attn: Superintendent of Schools
Phone: 847-566-0169
Fax: 847-566-7280

If to Developer:

Lake County Land Holdings LLC
c/o The Alter Group
5500 W. Howard St.
Skokie, IL 60077
Attn: Stephen M. Park, Sr. Vice President
Phone: 847-676-4300
Fax: 847-676-7855

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have caused these presents to be executed by their duly authorized corporate officers and have caused their corporate seals to be hereunto affixed all as of the day and year first above written.

VILLAGE:

VILLAGE OF GRAYSLAKE, an
municipal corporation

DISTRICT:

FREMONT ELEMENTARY SCHOOL Illinois
DISTRICT NO. 79, an Illinois school district

By: _____
Mayor

By: Sandra Bickley
Its President

Attest:

Clerk

Attest:
[Signature]
Secretary

DEVELOPER:

LAKE COUNTY LAND HOLDINGS, L.L.C., a Delaware
Corporation

By: _____

Its _____

STATE OF ILLINOIS)

) ss

COUNTY OF LAKE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that _____ personally known to me to be the President of the Board of Education of Freemont Elementary School District No. 79 and _____, District Secretary, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered this instrument as President and Secretary of said School District No. 79 and caused the District seal to be affixed hereto, pursuant to authority given by the Board of Education said School District No. 79, as their free and voluntary act and as the free and voluntary act and deed of said School District No. 79., for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2009.

Notary Public (seal)

Commission expires:

[Handwritten mark]

EXHIBIT 1

Legal Description of the Property

8706013_v5