

DEVELOPMENT AND PERFORMANCE AGREEMENT
Village of Loch Lloyd, Missouri
S9-Redev, LLC

THIS DEVELOPMENT AND PERFORMANCE AGREEMENT (“Agreement”) entered into and made effective as of February 20, 2025, by and between the Village of Loch Lloyd, Missouri, a village organized and existing under the laws of the State of Missouri (the “Village”), and S9-Redev, LLC, a Missouri limited liability company, or its permitted successors and assigns (the “Company”) (the Village and the Company are each a “Party” or collectively the “Parties”). Capitalized terms not defined elsewhere in this Agreement shall have the meaning set forth in Section 1.01 hereof.

ARTICLE I – RECITALS

Section 1.01. The Village consists of a large gated single-family residential development in Cass County, Missouri with numerous amenities including, but not limited to, an investor-owned country club (which includes a golf course and swimming pool), walking trails, lakes, ponds, and assorted waterways providing premium luxury living just outside of the Kansas City Metropolitan core.

Section 1.02. The Company is the owner of certain real property (“Sechrest Property”) which was previously operated within the Village as a golf course amenity commonly known as the Sechrest Nine.

Section 1.03. The Company is now seeking to develop portions of the Sechrest Property to include additional amenities for families such as a parklike serene environment with recreational facilities and an activity field (the “Center Cut”), along with bordering residential construction on approximately 45 +/- new lots (“Residential Parcels”), all of which are located within the jurisdictional boundaries of the Village. The Center Cut is identified by legal description on Exhibit “A” attached hereto and incorporated by reference herein.

Section 1.04. In furtherance of developing the Sechrest Property, the Company has submitted an application (“Application”) seeking to rezone four (4) separate Residential Parcels from Recreational Open Space to R-1 Residential. These Residential Parcels are each identified by legal description on Exhibit “B” attached hereto and incorporated by reference herein. A copy of the completed Application is attached hereto and incorporated by reference herein as Exhibit “C”.

Section 1.05. The Village has processed the Application. This effort has included a review by the Village Planning and Zoning Commission allowing for a public hearing and eventual findings of fact and recommendation of denial to the Board of Trustees. The processing of the Application has also included a review by the Board of Trustees which allowed for additional public hearing and significant discussion over conditions for approval of the Application. Significant focus has been drawn to the foreseeable impacts of developing the Residential Parcels (including storm water, sanitary sewer, potable water, engineering and environmental surveys, construction traffic, landscaping, and access). Concerns have also been expressed over assurances

that the amenities included within the Center Cut will be constructed and perpetually maintained in parklike care for which the Village is renowned.

Section 1.06. At the conclusion of the public hearing and discussion by the Board of Trustees, there remained concerns over the process for development of the Residential Parcels, and anticipated improvements within the Center Cut. Upon a motion duly made, seconded and unanimously approved the Board of Trustees voted to continue further determination on the Application until February 19, 2025 and provided instructions for negotiation, drafting, and submission of this Agreement immediately subsequent to further consideration of the Application.

Section 1.07. The Parties have since negotiated and drafted this Agreement for consideration as part of any change in zoning to the Residential Parcels.

Section 1.08. By this Agreement, the Company is agreeing to comply with the subdivision development requirements and improvements as outlined in the Residential zoning designation of the Unified Development Ordinance as adopted by the Village, subject only to accepted variances as identified herein or within the staff report (“Staff Report”) dated January 23, 2025, attached hereto and incorporated by reference herein as Exhibit “D”. This process will require approval of a preliminary plat, prior to any construction, and final plat, prior to the issuance of any building permits for any contemplated residence.

Section 1.09. The Parties desire to ensure that the Company will accomplish the requirements of the Village in protecting the public health, safety, and welfare of the residents. The Parties further wish to reach agreements with respect to improvements with the Center Cut, all infrastructure modifications and improvements, and all development criteria.

Section 1.10. These Recitals are an integral part of this Agreement and form the basis upon which the Parties have entered into this Agreement.

ARTICLE II – DEFINITIONS & RULES OF INTERPRETATION

Section 2.01. Definitions. Terms not defined elsewhere in this Agreement shall have the following definitions:

- a. “Affiliate” means a person or entity which, directly or through one or more intermediaries, owns or controls, or is controlled by or which is under common control with the Company or any of its assignees, including any special purpose entity created for the purpose of owning any of the Project Sites.
- b. “Applicable Laws and Regulations” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, policy, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement, or decision of or agreement with, or by, any Governmental Authorities.

- c. "Certificate of Completion of Construction" means a certificate substantially in the form of Exhibit "E" attached hereto.
- d. "Board of Trustees" means the elected and/or otherwise appointed Board of Trustees for the Village of Loch Lloyd, Missouri.
- e. "Village Event of Default" means an event of default as defined by Section 10.02.
- f. "Company Event of Default" means an event of default as defined by Section 10.01.
- g. "Construction Inspector" means a Village agent, representative, employee, contractor, or designee designated by the Village to perform inspections.
- h. "Effective Date" means the date of this Agreement.
- i. "Environmental Laws" means any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial administrative or regulatory decrees, judgments, or orders relating to the protection of human health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. ("CERCLA"), as amended, the Resource, Conservation and Recovery Act, 42 U.S.C. 6901 et seq. ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. 1251 to 1387, as the foregoing may be amended from time to time.
- j. "Event of Default" means any Event of Default provided in Article X hereof.
- k. "Excusable Delay" means delays due or related to acts of terrorism, acts of war or civil insurrection, or any natural occurrence, strikes, riots, floods, earthquakes, fires, casualties, pandemics, acts of God, labor disputes, governmental restrictions or priorities, embargos, litigation, tornado, approval by regulatory authorities, or any other circumstances beyond the reasonable control of the applicable party using reasonable diligence to overcome which prevent such party from performing its specific duties hereunder in a timely manner; provided, however, Excusable Delay does not include circumstances directly or indirectly related to lack of financing; unanticipated, or unexpected increases in the costs of construction; or errors in business judgment by the Party; and provided that Excusable Delay shall only extend the time of performance for the period of such Excusable Delay, which shall begin on the day following the date on which the Party has knowledge of the event of Excusable Delay first occurring and shall thereafter extend until the date on which the event which has caused the Excusable Delay has been materially

corrected or substantially performed, or reasonably should have been materially corrected or substantially performed, given reasonable efforts.

- l. “Governmental Authorities” or “Governmental Authority” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, property and/or homeowner association, city, village, or otherwise), whether now or hereafter in existence, including but not limited to the Village. Specially, though not exclusively, included within this definition is the Northwest Cass County Water Resource District and the Community Improvement District.
- m. “Land Use Applications” means all applications that must be filed by the Company with the Village in accordance with the Village’s zoning ordinance, subdivision regulations, right-of-way and easement vacation ordinances, and building regulations to receive approval from the Village to develop or provide for the development of the Project Sites with the Projects, which may include, but is not limited to, applications for subdivision, zoning, right-of-way and easement vacation, and building permit approvals.
- n. “Lien” is defined in Section 7.04.
- o. “Permits” is defined in Section 5.02.
- p. “Plans and Specifications” means the schematic drawings, the design development drawings, and the construction plans and specifications prepared by the Project Engineer for the development of the Projects in accordance with Article 6.01.
- q. “Projects” means the improvements and development of the Sechrest Property, including, individually, the Residential Parcels, and the Center Cut, and all additions, modifications, improvements, replacements and substitutions made to the Projects. “Project” means a single phase to be constructed as part of the Projects from time to time by the Company.
- r. “Project Site” or “Project Sites” means all of the real estate described in Exhibits “A” and “B” attached hereto and by this reference made a part hereof, as may be divided into separate developable areas as determined by the Company, each being a Project Site.
- s. “South HOA” means the Loch Lloyd Homes Association, Inc., and its successors and assigns.
- t. “Transfer” is defined in Section 11.01.

Section 2.02. Rules of Interpretation. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

- a. The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with Section 12.04 below.
- b. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.
- c. Words of gender shall be deemed and construed to include correlative words of the masculine, feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.
- d. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.
- e. In the event of some ambiguity in this Agreement, the Parties shall be deemed to have jointly authored this Agreement and nothing shall be construed against or in favor of one party based on it being deemed the sole author.

ARTICLE III – REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Village. The Village hereby represents and warrants to the Company that:

- a. Due Authority. The Village has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been or will be duly and validly authorized and approved by all necessary Village proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Village, enforceable in accordance with its terms.

- b. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.
- c. No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the Board of Trustees, threatened against the Village with respect to the Projects, the Project Sites, or this Agreement. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Village, threatened against the Village seeking to restrain, enjoin or in any way limit the approval or delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Village to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Village of, the terms and provisions of this Agreement.
- d. Governmental or Corporate Consents. Except for Board of Trustee approval, no other consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any Governmental Authority or corporate entity in connection with the execution and delivery by the Village of this Agreement.
- e. No Material Change. There has been no material adverse change in the business, financial position, prospects or results of operations of the Village which could affect the Village's ability to perform its obligations pursuant to this Agreement.
- f. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Village under this Agreement.
- g. Construction Permits. Except as otherwise provided herein, and subject to the Company's compliance with the terms and conditions of this Agreement, the Village will timely issue the permits and licenses pursuant to the requirements of the Village Unified Development Ordinance to permit the Projects to be constructed pursuant to this Agreement.
- h. Compliance with Laws. The Village is in compliance with all Applicable Laws and Requirements with respect to any of its affairs, business, and operations as contemplated by this Agreement.

- i. Survival of Representations and Warranties. The representations and warranties set forth in this Section 3.01 shall survive the completion of the Projects and/or termination of this Agreement.

Section 3.02. Representations and Warranties of the Company. The Company hereby represents and warrants to the Village that:

- a. Due Authority. The Company has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Company herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms.
- b. No Defaults or Violation of Law. As of the date this Agreement is finally agreed upon, the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing. To its knowledge the Company is not in default of its obligations under any other agreement related to the Project Sites or the Projects, and the execution and performance of the Company's obligations hereunder will not constitute a default under any agreement to which the Company is a party.
- c. No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the Company (including the knowledge of any member of the Company executing this Agreement), threatened against the Projects or the Company (or any member or Affiliate of the Company) related to the Projects. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Company (including the knowledge of any member of the Company executing this Agreement), threatened against the Company (or any member or Affiliate of the Company) seeking to restrain, enjoin or in any way limit the approval or delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Company (or any member or Affiliate of the Company) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Company (or any member or Affiliate of the Company) of, the terms and provisions of this Agreement, or that would have a material adverse effect on the financial condition of the Company (or any member or Affiliate of the Company).
- d. No Material Change. (i) The Company has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of

business and the transactions contemplated by this Agreement and (ii) there has been no material adverse change in the business, financial position, prospects or results of operations of the Company, or any Affiliate of the Company, which could affect the Company's ability to perform its obligations pursuant to this Agreement.

- e. Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any Governmental Authority or corporate entity in connection with the execution, delivery and performance by the Company of this Agreement, other than the permits, licenses, consents, approvals and other authorizations that the Company commits to obtain and comply with as set forth in Section 6.06 hereof.
- f. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which, with the lapse of time, or the giving of notice, or both, would constitute a default or an event of default on the part of the Company under this Agreement, or any other material agreement or material instrument to which the Company is a party or by which the Company is or may be bound.
- g. Approvals. Except as otherwise provided herein, the Company and its Affiliates have received and are in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct their business as heretofore conducted by it and to own or lease and operate their properties as now owned or leased by it.
- h. Compliance with Laws. The Company is in compliance with all Applicable Laws and Requirements with respect to its affairs, business, and operations as contemplated by this Agreement.
- i. Financial Capability. The Company has secured the financial resources to complete the Projects as described herein within the time periods described herein.
- j. Survival of Representations and Warranties. The representations and warranties set forth in this Section 3.02 shall survive the completion of the Projects and/or termination of this Agreement.

ARTICLE IV - DEVELOPMENT OBLIGATIONS

Section 4.01. Commencement and Completion of the Projects.

- a. The Village and the Company acknowledge that the Project is expected to consist of a single phase constructed over a period of months or years. However, notwithstanding the foregoing, the Company or its affiliates will commence

construction of the Center Cut amenities and improvements (“Center Cut Amenities”) (i) simultaneously with the commencement of construction beginning on the Residential Parcels within the Project, (ii) as soon as reasonably practicable after approval of the required preliminary plat, (iii) issuance of all relevant permits, (iv) and with an estimated substantial completion date of one year from the date the preliminary plat is approved, with reasonable extension to be granted by the Board of Trustees upon showing by the Company of diligent efforts to complete the Center Cut Amenities. Commencement of construction shall be determined by mobilization, the commencement of site clearance, and grading operations. Substantial completion of any individual Project shall be determined by the Village’s acceptance or deemed acceptance of a Certificate of Completion of Construction for each phase or Project pursuant to Exhibit “E”.

- b. The Company or its affiliates will cause to be constructed the residences on the Residential Parcels as market conditions allow. The Company or its affiliates will use commercially reasonable efforts to expeditiously market the Residential Parcels.
- c. Upon reasonable advance notice, the Company and its project teams shall meet with the Village Clerk, the Village Planner, the Zoning Administrator, the Construction Inspector, and Village Engineer as defined by the Village of Code of Ordinances, and as designated by the Village to review and discuss the design and construction of the Projects to enable the Village to monitor the status of construction and to determine that the Projects are being completed in accordance with this Agreement and Applicable Laws and Regulations. Company acknowledges that plans for development of the Center Cut will be open records subject to disclosure upon submission to the Village and shall timely submit such plans to allow for review and approval pursuant to the development process.
- d. Construction of the Projects shall be pursued in a good and workmanlike manner in accordance with the terms of this Agreement and in strict compliance with all Applicable Laws and Regulations, including but not limited to the adopted building codes and Unified Development Ordinance of the Village.
- e. Prior to commencement of construction, Village may request, and the Company upon request, shall provide the Village, or any assignee hereunder, with sufficient evidence of experience in the development and operation of developments comparable to the Projects. The sufficiency of such evidence shall be at the sole reasonable determination of the Village Board of Trustees.

Section 4.02. Requirements Prior to Commencement of Projects.

- a. The Village and Company acknowledge that, as of the date of this Agreement, the Company has not finalized any construction contract or notice to proceed with any

contractor for the Projects. Company acknowledges that Company is required to obtain a construction permit for each Project, phase, portion, and/or lot within the Projects. Company and Village acknowledge that it is Company's intention to complete the construction in one phase.

- b. Access. The Company has represented that it has a recorded access easement (the "Easements") with the South HOA authorizing its construction equipment, contractors, sub-contractors, representatives, agents, and any future purchasers of lots within the Project to access the roadways, gates, parkways, and private streets owned and maintained by the South HOA. A copy of the Easement is attached hereto and incorporated by reference herein as Exhibit "F". The Village is not a party to the Easement. Access by the Company and its affiliates will be limited to the rights, reservations, obligations, conditions, and authority granted by the Easement. To the extent that the Company breaches the terms of the Easement, the South HOA may seek to enforce its rights pursuant to any remedies contained within the terms of the Easement, and by any action at law or in equity.

ARTICLE V – COMPLIANCE WITH VILLAGE RESOLUTIONS AND ORDINANCES

Section 5.01. General. Except as otherwise provided herein, the Company will comply with all Applicable Laws and Regulations, including but not limited to the Village's ordinances, resolutions, rules and procedures required in connection with the Projects.

Section 5.02. Permits and Approvals. The Company will obtain and comply with any necessary permits, licenses, fees, consents, approvals, and other authorizations required from Governmental Authorities, including, but not limited to, those required by Environmental Laws, the applicable Water District (the "Permits"), and the Village will cooperate with the Company to obtain any and all such Permits and shall use reasonable efforts to expedite any such Permits which are within the control of the Village.

ARTICLE VI – DESIGN OF THE PROJECTS

Section 6.01. General. The Company will provide the Village with any necessary Plans and Specifications for the purpose of reviewing Land Use Applications for the Projects. The Village agrees to cooperate with the Company and to process and timely consider all complete applications as received, all in accordance with the adopted municipal codes and laws of the State; provided, however, that nothing herein contained shall be construed as the Village's current approval of, or acquiescence to, any approvals, the parties acknowledge that such matters can only be approved by the Village in the proper exercise of its municipal functions through appropriate governmental procedures.

Section 6.02. Final Plats and Specifications. The Company will prepare and submit preliminary plat, and final plats for the Residential Parcels and the Center Cut, for the Village's review in accordance with the Village's platting review and approval process. The Village and Company agree that (1) the approved plats for the Residential Parcels and the Center Cut shall guide the design and construction of the Projects; and (2) the Company may make changes from

time to time but only as permitted by the Board of Trustees consistent with applicable codes and ordinances. Preliminary plat applications, final plat applications, land disturbance permits, and building permits, submitted by the Company shall all be subject to adherence to all existing development requirements of the Village including final lot layout plans, lot sizes, building setbacks, sidewalks, and trail improvements, landscaping and berming plans, and any applicable building and design regulations, except as may be adjusted by approved variances pursuant to the requirements and process established by the Unified Development Ordinance.

Section 6.03. Right-of-Way and Easement Dedications. No preliminary plat application nor final plat application shall be considered complete for review and prospective approval by the Village Planning and Zoning Commission and/or the Village Board of Trustees until such time as the Company shall obtain and submit copies to the Village of all necessary consents, easements, rights-of-way, and access authorizations (“Authorizations”) to the Project Sites from all applicable Governmental Authorities which have control over the streets, roads, trails, sidewalks, thoroughfares, access points, gates, common areas, and parkways within the Village. Such Authorizations shall be recorded and/or in a recordable format. Such Authorizations shall be recorded, if not otherwise previously recorded concurrently with the recording of any approved final plat at the cost of the Company.

Section 6.04. Conveyance of Easements. No preliminary plat application nor final plat application, shall be considered complete for review and prospective approval by the Village Planning and Zoning Commission and/or the Village Board of Trustees unless such preliminary plat and final plat includes references and locations of any dedication of all necessary rights-of-way and utility easements within the Project Sites required by any public utilities, property owners, and/or Governmental Authorities which, in the Village’s judgment, are reasonably necessary for the ownership and maintenance of any public facilities to be dedicated to the public utilities and/or Governmental Authorities in connection with the Projects. The easements contemplated herein shall include an easement within Area 4 of the Residential Parcels allowing for installation of sanitary sewer, water service and applicable utilities from Grace Drive to the undeveloped parcel owned by Mike and Melissa Neighbors, or any subsequent assignee or owner, and applicable stubs for sewer and water service to be provided to the same. The Company shall have no additional requirements for sewer or water service beyond what is stated in this agreement.

Section 6.05. Dedications to the Village. The Village shall be under no obligation to accept the dedication or conveyance of any right-of-way or easements until the Village has determined that the right-of-way or easements are necessary for the ownership and maintenance of any public facilities which will be dedicated to the Village in connection with the Projects, and any public facilities which will be dedicated to the Village in connection with the Projects have been inspected and approved to the reasonable satisfaction of the Village.

Section 6.06. Governmental Authority Approvals. In addition to the requirements of Section 6.01 through 6.05 above, no preliminary plat application nor final plat application shall be considered complete for review and prospective approval by the Village Planning and Zoning Commission and/or the Village Board of Trustees until such time as the Company provides written plans, engineering reports, analysis, along with any necessary approvals from Governmental Authorities responsible for providing potable water, sanitary sewer, storm water and erosion

control, fire protection, emergency response, environmental protection, and/or police protection which provides service and/or exercises jurisdiction within the areas of the Village wherein the Project is located. Such plans, engineering reports, analysis and approvals must show that the portions of the Projects reflected in such preliminary plat or final plat are adequately engineered to avoid causing damage to neighboring property owners, any greater damaging stormwater flow to downstream property owners (including, but not limited to, Loch Lloyd Lake), or decreased services to the residents of the Village. The approvals shall specifically include, but not be limited to, the following at the determination and discretion of the Village Planner, Zoning Administrator, and/or Village Engineer:

- a. Stormwater drainage and impacts on downstream properties (including, but not limited to, Loch Lloyd Lake),
- b. Water volume, capacity, and water quality impacts on Loch Lloyd Lake,
- c. Water service and impacts on water pressure and volume within the Village including the method and manner of financing any necessary improvements,
- d. Sanitary sewer service and capacity within the Village including the method and manner of financing any necessary improvements,
- e. Vehicular circulation, traffic volumes, noise and light pollution, and physical impacts on existing streets,
- f. Pedestrian circulation,
- g. Preservation of open space, natural features, wildlife, and topographic landforms,
- h. Mitigation of impacts to residents and Village infrastructure during construction,
- i. Compliance with rules, regulations, and covenants of the applicable HOA; and
- j. A maintenance agreement describing how the Company will maintain the Center Cut and the remaining land formally known as the Sechrest 9 during and after the Projects are completed.

Any disputes between the Company and the Village Engineer must be resolved before final approvals are granted and construction may begin.

Section 6.07. Compliance with Project Plans Submitted and Represented. The Company has submitted renderings, plans, presentations, and evidence (“Impact Representations”) with its Application and during the public hearings before both the Village Planning and Zoning Commission and the Board of Trustees. The Impact Representations show the intended development of the Project Sites and include details on the recreational facilities that will be constructed and maintained within the Center Cut and general locations of lots, landscaping, streets and structures within the Residential Parcels. The Impact Representations are incorporated by reference herein and made a part of this Agreement by reference as Exhibit “G”. The Impact Representations also reflect the following:

- a. Impacts on the character of existing adjoining residential areas,
- b. Development densities, lot layouts, lot sizes, building setbacks, sidewalks, and trail improvements, landscaping and berming plans, site and building design standards, and limitations on construction activities and access routes,
- c. Buffering and visual screening of existing residential properties,
- d. Impacts on existing recreational facilities, and

- e. Proximity to existing or planned recreational facilities.

The Village will, in its review of any preliminary plat application and/or final plat application, consider the conformity of such preliminary plat application, final plat application, and or site plan, with the Impact Representations and other provisions of this Agreement as critical factors in determining whether to approve or disapprove the same.

The Company hereby accepts and agrees that it will not seek approval of any preliminary application and/or final plat application which provides for; greater density, smaller lot sizes, smaller building setbacks, decreased site and building design standards, lower buffering and visual screening, increased negative impacts on existing recreational facilities, nor fewer improvements to existing or planned recreational facilities, than what has been included within the Impact Representations.

Section 6.08. Sechrest Improvements and Recreational Amenities. The Company has represented its willingness and desire to construct certain improvements on the Center Cut (“Center Cut Improvements”) and to maintain the same in a parklike manner (defined below). With the submission of the first preliminary plat application for any of the Residential Parcels, the Company shall concurrently submit a detailed preliminary plat application for the development of the Center Cut Improvements to include the following:

- a. Rehabilitation or reconstruction of the bathroom,
- b. Rehabilitation, relocation, and/or reconstruction of the trail system substantially similar to the trail system reflected in the Impact Representations and constructed of materials that are substantially similar and consistent with the existing trail system,
- c. Location and plans for installation of an activities field, other recreational facilities, and limited off-street parking for up to eight (8) golf carts, to be constructed within the Center Cut,
- d. A construction schedule for completion of the Center Cut Improvements, which said construction shall be completed prior to the sale/closing of one-half (1/2) of the lots within the Residential Parcels,
- e. A plan for perpetual maintenance of the Center Cut and the Center Cut Improvements and the remainder of the Sechrest 9 in a condition commensurate with the quality and care provided to the Loch Lloyd Country Club including regular mowing of lawn areas (excluding any areas that are planned, and installed with native plantings), control of weeds, and maintenance of the trees and trail system (“a Parklike Manner”),
- f. The Company agrees that should the main lake pump break or need enhancement in its sole discretion, the Company will fix and/or update the same. However, should the Company’s existing lake access be terminated for any reason, the Company shall have no additional requirements related to the lake pump.
- g. Approval by the applicable Governmental Authority for relocation of any existing birdhouses within the Sechrest Property that would be disturbed by construction, and
- h. A deed restriction executed and recorded within thirty (30) days of the execution of this Development Agreement in favor of the Village and the South HOA, prohibiting the utilization of the Center Cut or any remainder of the Sechrest Nine golf course for any activity or use besides those authorized for recreational open space. The deed restriction shall be released/terminated in the event this Agreement becomes void.

Section 6.09. Construction Activities. Construction activities within the Sechrest Property including the Center Cut and the Residential Parcels shall be limited to Monday through Saturday between the hours of 7:00 a.m. and 8:00 p.m. Any temporary construction roads shall be constructed of gravel and shall be maintained in a condition to limit nuisance due to dust or dirt. Access and use of the streets, roadways, thoroughfares, and access gates owned and controlled by the South HOA shall be governed by the Easement held between the Company and the South HOA. Authorized representatives from the Company, the Village, and the South HOA, shall meet regularly (at least monthly) to monitor the streets being used for construction access while construction activities are being conducted on the Sechrest Property. The Company agrees to remove any soil or debris deposited on the streets and to repair any damage to the streets as a result of construction activity.

Section 6.10. Phasing. The Company anticipates a single-phase completion of the Projects within the Sechrest Property.

Section 6.12. Financial Surety. Prior the approval of any preliminary plat application, final plat application, or site plan, the Village may request, and the Company shall provide a financial surety in the form of a Letter of Credit satisfactory to the Village Board of Trustees to guarantee the financial capability of the Company to restore the graded portions of the Center Cut and that the proposed trail improvements, landscaping, and berming, within the Center Cut are constructed, installed, and the remaining areas of the Sechrest (including but not limited to the Center Cut), are maintained to an appropriate level, including regular mowing and of lawn areas (excluding areas planned, approved, and constructed with native plantings), control of weeds, and maintenance of the trees and the trail systems.

Section 6.13 Force Majeure. For purposes of this Agreement, "Force Majeure" refers to any event or circumstance beyond the reasonable control of a Party, which prevents or delays the performance of any obligation under this Agreement, including but not limited to, acts of God, war, terrorism, civil disturbance, labor strikes, governmental actions, fire, flood, earthquake, pandemic, epidemic, or other natural disaster, failure of supply chains, or any other event of similar nature or effect.

A Party claiming the occurrence of a Force Majeure event shall promptly notify the other Party in writing, providing details of the event, its expected duration, and the impact on performance. Such notice shall be given within 7 days of the occurrence of the event.

Upon the occurrence of a Force Majeure event, the affected Party shall be excused from the performance of its obligations to the extent and for the duration of the Force Majeure event, provided that the affected Party takes reasonable steps to mitigate the effect of such event and resume performance as soon as reasonably possible.

The Party affected by the Force Majeure event shall use commercially reasonable efforts to overcome or minimize the delay or failure in the performance of its obligations under this Agreement.

The following events shall not constitute Force Majeure: (i) financial incapacity, (ii) changes in market conditions, (iii) failure to perform due to a Party's internal issues, or (iv) any event that the Party claiming Force Majeure could have avoided with the exercise of reasonable diligence.

ARTICLE VII – CONSTRUCTION

Section 7.01. General. The Company will diligently proceed with the construction of the Projects upon approval of any final plat application. Company shall deliver advance written notice of commencement of construction to the Village at least ten (10) days prior to commencement.

Section 7.02. Insurance.

- a. During the performance of its obligations under this Agreement, the Company shall cause the Sechrest Property to be continuously insured against such risks and in such amounts, with such deductible provisions as are customary in connection with the construction and operation of the type and size comparable to the Projects. The Company shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid in a timely manner the premiums with respect to the Projects within the Sechrest Property (unless the requirement therefor shall be waived by the Village in writing) the following insurance policies:
 - i. Commercial general liability (“CGL”) insurance providing coverage for those liabilities which is equal or broader than that currently covered by a CGL policy (a standard ISO CGL form) including at least the following hazards: (1) premises and operations; (2) products and completed operations; and (3) contractual liability, including coverage of indemnification provisions pursuant to this Agreement (if any); such insurance to be on an “occurrence” form with a combined limit of not less than the maximum amount of liability as published annually by the Department of Insurance in the Missouri Register, in accordance with Section 537.610 RSMo which is made applicable to political subdivisions pursuant to Section 537.600, RSMo;
 - ii. Workers’ compensation insurance or self-insurance, subject to statutory limits and employer’s liability insurance with a limit of at least \$1,000,000 per accident and per employee, and \$1,000,000 for aggregate in respect of any work or operations on or about the Sechrest Property, or in connection with the construction operations on the Sechrest Property, if applicable in accordance with the applicable worker’s compensation laws.
- b. The general contractor shall at its sole cost and expense obtain and maintain during the construction of the Projects on the Sechrest Property, a policy or policies of insurance (including, if appropriate, builder’s risk insurance during construction) to keep the Projects constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of

Missouri in an amount equal to the full insurable value thereof (subject to reasonable loss deductible provisions).

- c. In the event of loss or damage to any of the Projects, the net proceeds of property insurance carried pursuant to this Section shall be applied as provided in Sections 8.08 and 8.09 of this Agreement.
- d. Each insurance policy obtained in satisfaction of the foregoing requirements:
 - i. Shall be by such insurer or insurers as shall be financially responsible, and shall have a rating equal to or higher than A- or better by Best Insurance Guide and Key Ratings or shall be acceptable to the Village as evidenced by a written certificate delivered to the Company by the Village, and
 - ii. Shall be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved as evidenced by a written report delivered to the Village.
- e. A certificate or certificates of the insurers that such insurance is in full force and effect, shall be deposited with the Village (if so requested by the Village) and, prior to expiration of any such policy, the Company shall furnish the Village with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, the Company may choose to satisfy this requirement by providing blanket policies now or hereafter maintained by the Company if the Village's insurance consultant certifies to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement shall provide for prior written notice to the Village of any cancellation or reduction in amount of coverage.
- f. The Company shall not permit its general contractor or general contractors to commence or continue work until it shall have obtained or caused to be obtained all insurance required under this Section and the Village's Applicable Laws and Regulations. Company shall also require its general contractor or general contractors to require all of their subcontractors to obtain all insurance required under this Section and the Village's Applicable Laws and Regulations (unless general contractor's insurance satisfies all of the requirements above and covers the applicable subcontractor(s)). Said insurance shall be maintained in full force and effect until the issuance of a Certificate of Completion of Construction for the Projects or Projects being constructed by such contractor or subcontractor, and in the event of construction on an individual lot, when a Certificate of Occupancy is issued by the Village, and for any improvements within the Center Cut, when the Village has accepted a Certificate of Completion of Construction submitted by the Company.

Section 7.03. Certificate of Substantial Completion. After substantial completion of each phase or Project within the Sechrest Property (excluding construction of residences on lots which

shall be issued certificates of occupancy), and in accordance with the provisions of this Agreement, the Company will submit a Certificate of Completion of Construction to the Village. The Certificate of Completion of Construction shall be in substantially the form attached as Exhibit "E". The Construction Inspector shall, within thirty (30) days following delivery of the Certificate of Completion of Construction, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Completion of Construction and upon satisfaction of the same, shall issue any applicable acceptances, or certificates of occupancy. The Certificate of Substantial Completion shall be deemed accepted by the Village unless, prior to the end of such 30-day period after delivery, the Village furnishes the Company with specific written objections to the status of the phase or Project within the Sechrest Property, describing such objections and the measures required to correct such objections in reasonable detail.

ARTICLE VIII – COVENANTS AND AGREEMENTS

Section 8.01. Inspection. The Village may conduct such periodic inspections of the Projects and Project Sites within the Sechrest Property as may be generally provided in the Village's resolutions and ordinances. In addition, the Company agrees that the Village and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least two (2) business days' advance written notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Sites within the Sechrest Property to examine and inspect the Projects and such records of the Company as may be required to demonstrate compliance with this Agreement.

Section 8.02. Compliance with Laws. The Projects are, and will be, in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Projects, including Environmental Laws, subject to all applicable rights of the Company to contest the same.

Section 8.03. Purchase, Construction, Improvement, Installation and Operation. The Projects will be purchased, constructed, improved, installed and operated in a manner that is consistent with the intent of the Projects as described herein.

Section 8.04. Maintenance of Existence. The Company agrees that at all times prior to Completion of Construction on all of the Projects contemplated by the Company within the Sechrest Property, they will maintain its corporate or limited liability company existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation or limited liability company (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations or limited liability companies to consolidate with or merge into them, or may sell or otherwise transfer to another domestic corporation or limited liability company all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporations or limited liability companies expressly assume in writing all the obligations of the Company contained in this Agreement; and, further provided, that the surviving, resulting or transferee corporations or limited liability companies, as the case may

be, have a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer and there shall be delivered to the Village and the Board of Trustees a Certificate of an independent certified public accountant to such effect. The term "net worth", as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries. In addition, the Company shall represent to the Village, and the Board of Trustees must conclude that, in the sole opinion of the Board of Trustees the successor has the financial capability to fulfill the obligations of the Company under this Agreement and possesses the management experience to operate the Project.

Section 8.05. Renovation, Maintenance and Access Repairs. The Company shall, (i) execute the Sechrest improvements and recreational amenities set forth in Section 6.08; (ii) keep or cause to be kept, the Sechrest Property in reasonably safe operating condition and keep, or cause to be kept the Sechrest Property in good condition, making such repairs thereto, and renewals and repairs thereof, which are necessary to maintain the Sechrest Property in a Parklike Manner; and (iii) to permit access to the Sechrest Property to all Loch Lloyd residents and their guests for reasonable recreational purposes, subject to such rules as are necessary for the public health, safety and welfare. Any such rules or restrictions shall be subject to the reasonable approval of the Board of Trustees. The Company may post signs restricting its liability for accidents or injuries for people entering the Sechrest Property. Notwithstanding the foregoing, if the Company or its Affiliates elects to construct and operate an executive Par 3 course on the Center Cut, the Company or its Affiliates may restrict access to that portion of the Center Cut that is operated as the executive Par 3, including any attendant facilities, provided, however, that the walking trail system, bathroom facility, activities field and/or other recreational facilities to be constructed within the Center Cut, and at least 5 feet on both sides of the walking trail system shall remain open for use by all Loch Lloyd residents and their guests.

Section 8.06. Taxes, Assessments and Other Governmental Charges.

- a. Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Sechrest Property, or any part thereof or interest therein under the ownership and control of the Company, or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of, or in addition to, taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen.
- b. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest

or otherwise contest any property tax valuation, assessment, classification or similar action.

Section 8.07. Permits and Authorizations. The Company shall not do work, nor permit others under its control to do any work, on the Projects or within the Project Sites of the Sechrest Property related to any repair, rebuilding, restoration, replacement, modification or addition to the Projects, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The Village agrees to act promptly on all requests for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in strict compliance with all applicable building and zoning laws and governmental regulations and requirements, and in accordance with those requirements.

Section 8.08. Damage or Destruction.

- a. If any portion of the Project within the Center Cut or remainder of the improved areas within Sechrest is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding such portion of the Project is of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction. The net proceeds of casualty insurance required by Section 7.02 hereof received with respect to such damage or loss to a portion of the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the affected portion of the Project or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or retained by the Company to be used as provided herein.
- b. If the net proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.
- c. Except as otherwise provided in this Agreement, in the event of any such damage by fire or any other casualty, the provisions of this Agreement shall be unaffected and the Company shall remain and continue to be liable for the payment of any and all charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.
- d. The Company agrees to give prompt notice to the Village with respect to all fires and any other casualties occurring in, on, at or about the Project Sites.

Section 8.09. Environmental Requirements. As used in this Section, the following terms have the following meanings:

- a. "Hazardous Substances" means all (i) "hazardous substances" (as defined in 42 U.S.C. §9601(14)), (ii) "chemicals" subject to regulation under Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time (iii) natural gas liquids, liquefied natural gas or synthetic gas, (iv) any petroleum, petroleum-based products or crude oil, or (v) any other hazardous or toxic substances,

wastes or materials, pollutants, contaminants or any other substances or materials which are included under or regulated by any Environmental Law.

- b. The Company will provide the Village with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards which are given by or on behalf of the Company to any federal, state or local or other agencies or authorities or which are received by the Company from any federal, state or local or other agencies or authorities with respect to any portion the Sechrest Property which it owns and/or controls. Such copies shall be sent to the Village concurrently with their being mailed or delivered to the Governmental Authorities or within ten (10) days after they are made or received by the Company.
- c. The Company will use its best efforts to comply with and operate and at all times use, keep and maintain the Sechrest Property which it owns and/or controls, and every part thereof (whether or not such property constitutes a facility, as defined in 42 U.S.C. § 9601 *et. seq.*) in conformance with all applicable Environmental Laws. Without limiting the generality of the foregoing, the Company will not use, generate, treat, store, dispose of, or otherwise introduce any Hazardous Substance into, or on, the Sechrest Property which it owns and/or controls or any part thereof nor cause, suffer, allow or permit anyone else to do so except in the ordinary course of the operation of the Company's business and in compliance with all applicable Environmental Laws.
- d. The Company hereby agrees that, anything to the contrary notwithstanding, it will defend, indemnify and hold harmless the Village, its governing body members, employees, attorneys and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including reasonable attorneys' fees and court costs) resulting from, arising out of, or in any way connected with the presence of Hazardous Substances on any of the Project Sites and/or on the Sechrest Property which is owned and/or controlled by the Company.

ARTICLE IX – INDEMNIFICATION AND RELEASE

Section 9.01. Indemnity. The Company agrees to indemnify, defend, and hold the Village, its Trustees, officials, agents and employees (collectively, the "Village Indemnified Parties") harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorneys' fees, directly resulting from:

- a. the Company's actions and undertaking in design, construction, sale, operation and implementation of the Projects and the performance of the terms of this Agreement;
- b. the negligence or willful misconduct of the Company, its employees, agents or independent contractors in connection with the design, construction, sale, operation and implementation of the Projects and the performance of terms of this Agreement;

- c. any unreasonable delay or expense resulting from any litigation filed against the Company by any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor;
- d. the Company's Event of Default in any term of this Agreement.

Section 9.02. Notification of Action. In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which the Company may become obligated to one or more of the Village Indemnified Parties hereunder, any one of the Village Indemnified Parties shall give timely notice to the Company of the occurrence of such event. After receipt of such notice, the Company may elect to defend, contest or otherwise protect the Village Indemnified Parties against any such Action, at the cost and expense of Company, utilizing counsel of the Company's choice. The Village Indemnified Parties shall assist, at Company's sole discretion, in the defense thereof. In the event that the Company shall fail to timely defend, contest or otherwise protect any of the Village Indemnified Parties against such Action, the Village Indemnified Parties shall have the right to do so, and (if such defense is undertaken by the Village Indemnified Parties after notice to the Company asserting the Company's failure to timely defend, contest or otherwise protect against such Action) the cost of such defense shall be at the expense of the Company.

Section 9.03. Settlement. Any Village Indemnified Parties shall submit to the Company any settlement proposal that the Village Indemnified Parties shall receive, which may only be accepted with the approval of the Company. Neither the Company nor the Village Indemnified Parties will unreasonably withhold its consent to a proposed settlement.

Section 9.04. Survival. The right to indemnification set forth in this Agreement arising during the term of this Agreement shall survive the completion of development and construction of the Projects on the Project Sites within the Sechrest Property.

ARTICLE X – EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Company Event of Default. Subject to Excusable Delays, a "Company Event of Default" shall include the following:

- a. Any representation or warranty made by the Company herein or in any written statement or certificate furnished to the Village proven untrue as of the date of the issuance or making thereof and shall not be corrected or brought into compliance within forty-five (45) days after there has been given to the Company by the Village a written notice specifying such representation;
- b. Default in the performance or breach of any written agreement (including, but not limited to, memoranda of understanding) entered into between the Company and the Village related to the Project or any phase of the Project or Projects.
- c. Substantial default in the performance or breach of any other covenant or agreement of the Company in this Agreement not specifically covered in (a) or (b) above, and

continuance of such default or breach for a period of sixty (60) days after Village has delivered to Company a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such sixty (60) day period, but can reasonably be expected to be fully remedied and the Company is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Company shall, immediately upon receipt of such notice, diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch; provided, however, notwithstanding any other provision of this Agreement to the contrary, in no event shall a Company Event of Default be deemed to exist if the facts underlying the specific potential Company Event of Default have been caused by a Village Event of Default.

- d. Failure of the Company to (i) submit and obtain approval of a completed preliminary plat and final plat application to the Village for the Residential Parcels pursuant to the terms of this Agreement within one (1) year of the effective date of this Agreement, (ii) submit and obtain approval of a preliminary plat and final plat for the Center Cut Amenities included within the Impact Representations, (iii) commence construction of the infrastructure and utilities for the Residential Parcels and Center Cut Amenities, and (iv) the Company shall proceed immediately with maintenance of the entire Sechrest property and Center Cut owned or controlled by the Company (including mowing, weed control, and dead vegetation removal) subject only to areas for which a land disturbance permit has been issued, and actual grading has commenced. The Company may submit and seek extensions of the one (1) year deadline referenced hereinabove from the Board of Trustees, which said deadline will not be unreasonably denied for additional one (1) year terms if the Company demonstrates to the satisfaction of the Board of Trustees diligent and reasonable efforts for continued design, negotiations, and/or development of the Sechrest Property.

Any such default or breach by the Company applicable to one Project phase shall not affect the rights of Company with respect to work on other Project phases which have commenced construction. For avoidance of doubt, a default by the Company with respect to one Project phase shall not constitute a default by the Company with respect to another Project phase which has commenced construction.

Section 10.02. Village Event of Default. A “Village Event of Default” shall include the following:

- a. Any representation or warranty made by the Village herein or in any written statement or certificate furnished to the Company proven untrue as of the date of the issuance or making thereof and shall not be corrected or brought into compliance within forty-five (45) days after there has been given to the Village by the Company a written notice specifying such representation and requiring it to be remedied;
- b. The occurrence and continuance of any default in the performance or breach of any covenant or agreement of the Village in this Agreement, and continuance of such

- default or breach for a period of sixty (60) days after there has been given to the Village by Company a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such sixty (60) day period, but can reasonably be expected to be fully remedied and the Village is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Village shall, immediately upon receipt of such notice, diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch; provided, however, notwithstanding any other provision of this Agreement to the contrary in no event will a Village Event of Default be deemed to exist if the facts underlying the specific potential Village Event of Default have been caused by a Company Event of Default.
- c. If the Company fails to obtain final plat approval and the Village rezones the land back to ROS, this agreement shall immediately become null and void and all obligations herein shall terminate including, but not limited to, the deed restriction referenced in 6.08.

Section 10.03. Remedies.

- a. Upon the occurrence of a Company Event of Default, the Village shall have the right to pursue any one or more of the following courses of action: (i) to suspend issuance of any new permits or certificates, or process new applications for portions of any Projects that have not commenced construction (commencement of construction pursuant to this Section 10.03 shall mean and include issuance by the Village of a land disturbance permit and/or a building permit); (ii) to take such actions as deemed necessary by the Village to remedy the breach, the costs of which may be charged to the Company; (iii) to terminate this Agreement with respect to the applicable Project at issue by written notice to the Company, which termination shall be effective with respect to the applicable Project as of the effective date which is set forth in said notice (but shall not affect any other Project(s) which have commenced construction); (iv) to institute any and all proceedings permitted by law or equity including, without limitation, actions for specific performance and/or damages, (but in no event shall the Company be enjoined from continuing constructing any improvements upon which construction has commenced); and (v) as to a breach of Section 10.01(d) above, in addition to seeking any one or more of the foregoing remedies herein, the Village may, following written notice to the Company, direct the Village Clerk to begin the process of rezoning the undeveloped remainder of the Sechrest Property including any undeveloped Residential Parcels back to the original Recreational Open Space designation following required public notices and hearings.
- b. Upon the occurrence of a Village Event of Default, the Company shall have the right to pursue any one or more of the following courses of action: (i) to take such actions as deemed necessary by the Company to remedy the breach, the costs of which may be charged to the Village; (ii) to terminate this Agreement by written notice to the Village, which termination shall be effective as of the effective date which is set forth in said notice; and (iii) to institute any and all proceedings permitted by law or equity including, without limitation, actions for specific performance and/or damages.

- c. If any attorney is employed by either Party with regard to any legal or equitable action, or other proceeding, brought by such Party for enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees and other costs and expenses incurred, including attorneys' fees and costs of appeal, in addition to any other relief to which the prevailing Party may be entitled.

ARTICLE XI – ASSIGNMENT

Section 11.01. Assignment or Sale Prior to Completion of Construction. Except as to the development of Residential Parcels which are sold and/or otherwise conveyed to builders within the Sechrest Property, prior to the Completion of Construction of the Projects within the Sechrest Property, the Company shall not assign any of its rights hereunder (a “Transfer”) without first obtaining the written consent of the Village. Notwithstanding the foregoing, the Village shall not withhold its consent if it is reasonably satisfied that the proposed assignee has significant experience developing and/or managing residential and recreational projects like the Projects identified within the Impact Representations and the financial ability to complete and maintain the Projects identified within the Impact Representations including but not limited to the perpetual maintenance of the Center Cut and remaining Sechrest Nine. Subject to the requirements of Section 8.04, and notwithstanding the foregoing, so long as the Company is not in default hereunder, the Company may (a) consummate a Transfer to an Affiliate without the necessity of obtaining the consent of the Village upon a showing that the Affiliate has sufficient experience in the development and operation of comparable projects, or (b) collaterally assign this Agreement to lenders providing financing for the Project. Company shall notify Village of any Transfer permitted hereunder within thirty (30) days of closing on such assignment.

In the event of a Transfer pursuant to this Section 11.01, upon delivery to the Village of an assumption document as described in Section 11.02(b) below, the Company shall be released from any further obligations set forth herein accruing after the date of such assignment.

Section 11.02. Assignment or Sale After Completion of Construction. Following Completion of Construction of the Projects, this Agreement and the rights, duties and obligations hereunder as they relate to each of the Projects may only be assigned or sold to a third party by the Company, but subject to the following:

- a. The Company shall represent to the Village, and the Village shall conclude that, in the sole reasonable opinion of the Village the assignee has the financial capability to fulfill the obligations of the Company under this Agreement and possesses the management experience to develop, maintain, and operate the Projects including the perpetual maintenance of the Center Cut and remaining Sechrest Nine.
- b. Every assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the Village, assume all of the obligations of the

Company under this Agreement, and agree to be subject to all the conditions and restrictions to which the Company is subject.

In the event this Agreement is assigned in whole pursuant to this Section 11.02, upon delivery to the Village of the assumption document required by subparagraph (b), the Company shall be released from any further obligations set forth herein accruing after the date of such assignment. The Company shall notify Village of any such assignment including presentation of the assumption of obligation instrument at least fifteen (15) days prior to the closing on such assignment. At all times, without the consent of the Village, the Company may collaterally assign this Agreement to lenders providing financing for the Projects.

ARTICLE XII – MISCELLANEOUS PROVISIONS

Section 12.01. Consents and Cooperation. Except as otherwise stated herein, wherever in this Agreement the consent or approval of the Village is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned, shall be in writing and shall be executed by a duly authorized officer or agent of the Party granting such consent or approval. Further, the Village Board of Trustees and the Company agree to take such actions as may be reasonably necessary to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent. Any consent or approval required by the Village shall be controlled by the terms, conditions and obligations of the Unified Development Ordinance, as adopted, and as may be amended by Village, ordinances, or statutes that may apply.

Section 12.02. Relationship. In the performance of this Agreement, the Company shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the Company a partner, joint venturer with, or agent of, the Village. The Village and the Company agree that neither Party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the Village and the Company.

Section 12.03. Applicable Law. This Agreement shall be taken and deemed to have been fully executed, made by the Parties in, and governed by, the laws of the State of Missouri for all purposes and intents.

Section 12.04. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Village and the Company with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Village and the Company or its successors and assigns.

Section 12.05. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Section 12.06. Severability. In the event any section, term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision.

Section 12.07. Limit on Liability. The Parties agree that no Trustee, official, director, officer, agent, employee, representative, attorney or consultant of the Village shall be personally or otherwise in any way liable to the Company in the event of any default, breach or failure of performance by the Village under this Agreement or for any amount which may become due to the Company or with respect to any agreement, indemnity, or other obligation under this Agreement. The limitation on liability discussed in this Section shall not apply to an individual's personal liability for their ultra vires actions beyond and outside of their capacity as a Trustee, official, director, officer, agent, employee, representative, attorney or consultant of the Village.

Section 12.08. Headings. Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

Section 12.09. Notices. Any notice, demand, or other communication required by this Agreement to be given by either Party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally, or by a reputable overnight delivery service:

In the case of the Company to: S9-Redev, LLC
Attn: Jessie Bustamante
11150 Overbrook Road, Suite 210
Leawood, KS 66211-2235

With a copy to: Steve Mauer
Mauer Law Firm
1100 Main Street, Suite 2100
Kansas City, MO 64105

In the case of the Village to: Village of Loch Lloyd, Missouri
Attn: Village Clerk
16610 Eden Bridge
Village of Loch Lloyd, MO 64012

With a copy to: Jonathan Zerr, Village Attorney
Kapke Willerth, LLC
3304 NE Ralph Powell Road
Lee's Summit, MO 64064

or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

Section 12.10. Waiver. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

Section 12.11. Negotiation of Agreement. The Village and Company are governmental and business entities, respectively, each having been represented and advised by competent counsel, and each fully participating in the negotiation and drafting of this Agreement. Both the Village and Company have had ample opportunity to review and comment on all previous drafts of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

Section 12.12. Tax Implications. The Company acknowledges and represents that (1) neither the Village nor any of its officials, employees, consultants, attorneys or other agents have provided to them any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Company is relying solely upon its own tax advisors in this regard.

Section 12.13. Exhibits. All exhibits which are attached or referred to in this Agreement are specifically incorporated herein by reference and form an integral part hereof.

Section 12.14. Agreement to Control. In the event of any conflict between the terms of this Agreement and any other agreements between the Village and the Company, the provisions of this Agreement shall control and supersede the conflict.

Section 12.15. Term of Agreement. Except as otherwise provided herein, this Agreement shall continue in force until such time as the Projects within the Impact Representations are completed and the Company, or its authorized successor or assign, presents a plan that is accepted by the Village Board of Trustees for the perpetual maintenance of the Center Cut Amenities and remaining Sechrest Nine as recreational open space.

Section 12.16. Electronic Storage of Documents. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means.

Section 12.17. Survival of Representations. The representations of the Parties set forth in this Agreement shall survive the Term of this Agreement as identified in Section 12.15 above.

Section 12.18. Encumbrance of Covenants. The covenants, conditions and agreements herein shall run with the Sechrest Property and shall be binding upon and inure to the benefit of the parties hereto, their successors or assigns, and any future subsequent owners of the Sechrest Property. The Company, and any affiliate of the Company, shall be prohibited from utilizing the

undeveloped remainder of the Sechrest Property including the Center Cut and the remainder of the Sechrest Nine golf course, for any activities or uses other than those authorized for Recreational Open Space. Any conveyance of the Center Cut, or the remainder of the Sechrest Nine golf course, by the Company to a non-Affiliate shall be made subject to deed restriction discussed in Section 6.08(g).

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Development and Performance Agreement on the date first written above.

VILLAGE OF LOCH LLOYD, MISSOURI

By: _____
Randal Schultz, Chairman

(SEAL)

ATTEST:

By: _____
Anthony Lafata, Village Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss.
COUNTY OF CASS)

BE IT REMEMBERED, that on this _____ day of _____, 2025, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Randal Schultz, the Chairman of the Board of Trustees for the Village of Loch Lloyd, Missouri, and Anthony Lafata, Clerk for the Village of Loch Lloyd, Missouri, a village existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said village, and such person duly acknowledged the execution of the same to be the free act and deed of said village.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

My Commission Expires:

Notary Public

EXHIBIT A
Legal Description of the Center Cut

EXHIBIT B
Legal Descriptions of the Residential Parcels

EXHIBIT C
Completed Application

EXHIBIT D
Staff Report

EXHIBIT E
FORM OF CERTIFICATE OF COMPLETION OF CONSTRUCTION

The undersigned, S9-REDEV, LLC (the “Company”), pursuant to that certain DEVELOPMENT AND PERFORMANCE AGREEMENT (the “Development Agreement”) effective as of the _____ day of _____, 2025, by and between the VILLAGE OF LOCH LLOYD, MISSOURI (the “Village”), a village organized and existing under the laws of the State of Missouri, and the Company, hereby certifies to the Village as follows:

1. That as of _____, 20__, the construction and development of the _____ phase of the Projects has been substantially completed in accordance with the Development Agreement.

2. The _____ Phase has been substantially completed and installed in a good and workmanlike manner and in accordance with the Plans and Specifications (as defined in the Development Agreement).

3. This Certificate of Completion of Construction is being issued by the Company to the Village in accordance with the Development Agreement to evidence the Completion of Construction and the Company’s satisfaction of all obligations and covenants with respect to such construction.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, _____.

S9-REDEV, LLC
a Missouri limited liability company

By: _____
Name: _____
Title: _____

ACCEPTED:

VILLAGE OF LOCH LLOYD, MISSOURI

By: _____
Name: _____
Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT F
Access Easement

EXHIBIT G
Impact Representations

(will be completed in single phase)