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PREPARED BY:

Barbara A. Adams
Burke, Weaver & Prell
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Suite 800
Chicago, IL 60603

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COOK COUNTY RECORDER

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RESUBDIVISION AND DEVELOPMENT AGREEMENT

BY, BETWEEN, AND AMONG
THE VILLAGE OF NORTHBROOK
AND

PARKWAY BANK AND TRUST COMPANY,
not individually but solely as Trustee
u/t/a dated October 18, 1996 and known as
Trust No. 11479

AND

WAYNE BERMAN

(BERMAN'S RESUBDIVISION)

DATED AS OF APRIL 24, 1997

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RESUBDIVISION AND DEVELOPMENT AGREEMENT FOR BERMAN'S RESUBDIVISION

THIS AGREEMENT is dated as of the 24th day of April, 1997, and is by, between, and among the VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation (the "Village"), PARKWAY BANK AND TRUST COMPANY, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479 (the "Owner"), and WAYNE BERMAN, an individual (the "Developer").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth herein, and pursuant to the Village's home rule powers, the parties hereto agree as follows:

SECTION 1. RECITALS.

- A. The Village is a home rule unit by virtue of the provisions of the 1970 Constitution of the State of Illinois.
- B. The Owner is the legal owner of the Property.
- C. The Developer is one of the beneficial owners of the trust that is the Owner, along with Edward Huske.
- D. The Owner and the Developer desire and propose to resubdivide and develop the Property pursuant to, and in accordance with, this Agreement.
- E. A public hearing was held by the Northbrook Plan Commission on February 4, 1997 and continued to March 4, 1997 and March 18, 1997 to consider (i) rezoning of the Property from the R-2 Single Family Residential District to the R-3 Single Family Residential District, (ii) approval of a variation to allow combined tentative plan and final subdivision plat review for the resubdivision of the Property, (iii) approval of the final plat for the resubdivision of the Property into two lots of record, and (iv) waiver of the requirement to create a separate storm water detention outlot. On March 18, 1997, the Plan Commission recommended approval of the rezoning, the variation for combined tentative plan and final subdivision plat review, the final plat, and the waiver of the storm water detention requirement in Resolution No. 97-PC-7.
- F. The rezoning of the Property from the R-2 Single Family District to the R-3 Single Family Residential District was approved by the Corporate Authorities of the Village in Ordinance No. 97-23.
- G. The Corporate Authorities of the Village, after due and careful consideration, have concluded that the resubdivision of the Property pursuant to and in accordance with this Agreement would further enable the Village to control the development of the Property and the surrounding area and would serve the best interests of the Village.

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SECTION 2. DEFINITIONS.

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

"Building Code": Chapter 6, entitled "Building and Construction Regulations," of the Municipal Code.

"Corporate Authorities": The President and Board of Trustees of the Village.

"Elevations": Those certain architectural elevations depicting the 2026 Walters Structure, prepared by Town Studios, Inc., consisting of one sheet, with latest revision date of March 1, 1997, attached as Exhibit A.

"Final Engineering Plan": That certain final engineering plan prepared by Gary A. Wiss, Incorporated, consisting of three sheets, with latest revision date of April 23, 1997, attached as Exhibit B.

"Final Plat": That certain final plat of subdivision of the Berman Resubdivision, prepared by MM Surveying Co., Inc., consisting of one sheet, with latest revision date of April 23, 1997, attached as Exhibit C.

"Improvements": The public and private improvements including, without limitation, the improvements listed in Subsection 5.A of this Agreement, to be made in connection with the resubdivision and development of the Property, described or listed on the Final Engineering Plan.

"Lot": Lots 1 and 2 of the Property, as depicted on the Final Plat.

"Municipal Code": The Northbrook Municipal Code (1988), as the same has been and may, from time to time hereafter, be amended.

"Plan Commission": The Plan Commission of the Village, established by Section 2-451 of the Municipal Code.

"Property": That certain tract of land consisting of approximately one acre, commonly known as 1796 Shermer Road, Northbrook, Illinois and legally described in Exhibit D.

"Public Improvement Standards Manual": Village of Northbrook Standards and Specifications for Public and Private Improvements, dated October, 1990, as the same has been and may, from time to time hereafter, be amended.

"Recorder's Office": The office of the Recorder of Deeds, Cook County, Illinois.

"Subdivision Code": The Northbrook Subdivision and Development Code (1991), as the same has been and may, from time to time hereafter, be amended.

"Zoning Code": The Northbrook Zoning Code (1988), as the same has been and may, from time to time hereafter, be amended.

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"2026 Walters Structure": That certain residential structure located on the property commonly known as 2026 Walters Avenue as of the date of this Agreement, which structure the Developer proposes to relocate to Lot 2 of the Property.

SECTION 3. APPROVAL OF FINAL PLAT OF SUBDIVISION.

Subsequent to the date of this Agreement, the Corporate Authorities shall adopt a valid and binding resolution in substantially the form attached as Exhibit E to this Agreement, which Resolution shall (i) grant a variation for combined tentative plan and final plat approval, (ii) approve the Final Plat, and (iii) grant a waiver of the requirement to create a separate storm water detention outlet.

SECTION 4. DEVELOPMENT AND RESUBDIVISION OF THE PROPERTY.

Notwithstanding any use or development right that may be applicable or available to the Property pursuant to the Zoning Code, the Property shall, as of, and at all times after the date of, this Agreement, only be used and developed pursuant to and in accordance with this Agreement, including, without limitation, the following:

A. Number and Use of Lots. The Property shall be comprised of two Lots, as depicted on the Final Plat. The existing residential structure and garage on Lot 1 shall comply with the minimum building restriction line shown on the Final Plat and all other requirements of this Agreement. Lot 2 may be developed with the 2026 Walters Structure, if the Owner and Developer elect to move such structure from its current location and relocate it on Lot 2 pursuant to and in accordance with Section 6 of this Agreement.

B. Real Estate Tax Parcels. It is contemplated that the Property will be divided, for real estate tax purposes, into two tax parcels so as to allow each Lot to be a designated tax parcel and receive a separate real estate tax bill.

C. Compliance with All Plans, Codes, and Agreements. Development of the Property, except for minor alterations due to final engineering and site work approved by the Village Engineer or the Director of Development, as appropriate and permitted under Subsection 11-603J of the Zoning Code, shall be pursuant to and in strict accordance with the following:

- i. this Agreement;
- ii. the Final Plat;
- iii. the Final Engineering Plan;
- iv. the Elevations;
- v. the Zoning Code;
- vi. the Subdivision Code;
- vii. the Building Code;

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- viii. the Public Improvement Standards Manual; and
- ix. all other applicable federal, state, and Village laws, statutes, ordinances, resolutions, rules, and regulations.

In the event of a conflict between or among any of the above plans, documents, regulations, or codes, the plan, document, regulation or code that provides the greatest control and protection for the Village, as determined by the Village Manager, shall control, except to the extent that any such regulation or code has been expressly modified by this Agreement. All of the above plans, documents, regulations and codes shall be interpreted so that duties and requirements imposed by any one of them are cumulative among all of them.

SECTION 5. IMPROVEMENTS.

A. Description of Improvements. The Developer shall, at its sole cost and expense, construct and install the Improvements designated on the Final Engineering Plan, including, without limitation, the following:

- i. Storm water detention area as depicted on the Final Engineering Plan including the retaining walls and storm sewer pipe and appurtenances;
- ii. Sanitary sewer service facilities as depicted on the Final Engineering Plan;
- iii. Water main service facilities as depicted on the Final Engineering Plan; and
- iv. Visual screening along the south lot line of the proposed Lot 2 consisting of an arbor vitae hedge from the sidewalk to the front of the house and a cedar fence of six feet in height from the front of the house to the rear lot line of Lot 2.

B. Design and Construction of Improvements. The Improvements shall be designed and constructed pursuant to and in accordance with (i) the Final Engineering Plan and (ii) the Public Improvement Standards Manual. The Improvements shall be substantially completed, as determined by the Village Engineer, prior to the issuance by the Village of a certificate of occupancy for any building or structure located on Lot 2 of the Property.

C. Dedication and Acceptance of Public Improvements. Neither the execution of this Agreement nor the approval or recordation of the Final Plat shall constitute an acceptance by the Village of any public facilities that are depicted as "dedicated" on the Final Plat or Final Engineering Plan, if any, or of any public Improvements. The acceptance of public Improvements shall be made only by the adoption of a resolution by the Corporate Authorities after there has been filed with the Village Manager a certification by the Village Engineer stating that the same have been

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fully, or individually, completed, and that the inspected construction or installation thereof has been approved by the Village Engineer.

SECTION 6. RELOCATION OF 2026 WALTERS STRUCTURE.

If the Owner and Developer desire to do so, the 2026 Walters Structure may be moved from its current location, off the Property, and relocated upon Lot 2 of the Property. In the event of the movement and relocation of the 2026 Walters Structure to Lot 2, the Owner and the Developer shall comply with the requirements of all Village codes and ordinances and all other applicable standards and requirements of every kind, including, without limitation, the following:

A. Permit Required. The Owner and Developer shall obtain a permit for moving the 2026 Walters Structure, as required by Section 22-76 of the Municipal Code and shall provide, as a part of the application for such permit, all required information and materials, including, without limitation, the following:

- i. In lieu of the requirements of the Village's current annual fee ordinance, the Developer shall have deposited with the Village (a) a surety bond, from a corporate surety approved by the Village Manager, guaranteeing the proper performance by the Developer of the moving and relocation of the 2026 Walters Structure to Lot 2 of the Property, and (b) evidence of commercial general liability insurance, naming the Developer and the Village as additional insureds for the moving and relocation of the 2026 Walters Structure, with limits for the project of at least \$1,000,000, and protecting the Village and its property and the personal property of all third parties from all damage and claims of any kind or nature relating to such moving and relocation; and
- ii. The Developer shall have obtained all necessary permits for the moving of the 2026 Walters Structure on State of Illinois roads and rights-of-way from the Illinois Department of Transportation.

B. Conditions for Relocation. Any permit for the relocation of the 2026 Walters Structure from its current location to Lot 2 of the Property shall be subject to various terms, conditions, and restrictions, including, without limitation, the following:

- i. All traffic equipment, including, without limitation, signs and signals, blocking the transportation of the 2026 Walters Structure must be temporarily removed by a contractor approved by the Village Engineer; all such traffic equipment must be replaced by the approved contractor as soon as practicable after the move, but in no event more than two hours after their removal;
- ii. All wires or cables and other utility structures blocking the transportation of the 2026 Walters Structure must be temporarily removed by the appropriate public utility, with the cost thereof to be paid by the Owner and Developer unless otherwise provided by law or franchise agreement with the affected utility; and

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- iii. The Owner and Developer shall pay to the Village, immediately and upon presentation of a written demand or demands therefor, and prior to the issuance of any temporary or final certificate of occupancy for the 2026 Walters Structure, all fees, costs, and expenses incurred by the Village in connection with the relocation of the 2026 Walters Structure, including, without limitation, the cost of Village services required in connection with the relocation of the 2026 Walters Structure, which shall include, without limitation, proposed route review, traffic control, police and fire protection, road access control, and any other services provided by Village personnel.

C. No Variations for Lot 2. The Owner and Developer shall not seek, and the Village shall not grant, any variations in connection with the relocation of the 2026 Walters Structure upon Lot 2.

SECTION 7. PERFORMANCE GUARANTEES.

A. General Requirements. As security to the Village for the performance by the Developer of the Developer's obligations to construct and complete the Improvements pursuant to and in accordance with this Agreement, the Developer shall deposit with the Village Manager performance guarantees ("Guarantee") consisting of a cash deposit and a letter of credit from a bank or other financial institution having capital resources of at least \$50,000,000.00 in form and substance substantially conforming with Exhibit F and satisfactory to the Village Attorney. The cash deposit portion of the Guarantee shall be at least ten percent of the amount required pursuant to Subsection 7.B of this Agreement.

B. Amount of Guarantee. The Guarantee shall be in a total amount equivalent to either:

- i. the total amount plus 10 percent of the actual, executed contracts for the construction of the Improvements, plus applicable Village review and inspection fees; or
- ii. in the event that actual, executed contracts for such Improvements are not available, the total amount plus 25 percent of an estimate of the cost of the Improvements, plus applicable Village review and inspection fees.

All such contracts and estimates shall be subject to review and approval by the Village Engineer.

C. Reduction of Guarantee. The aggregate amount of each letter of credit may be reduced by the Developer in accordance with the schedule contained in the Subdivision Code. All requests by the Developer to reduce the amount of the letters of credit shall be accompanied by and shall include, without limitation, the following:

- i. the total original amount of the applicable letter of credit;

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- ii. an itemized list of all approved and pending requests to reduce the total original amount of the applicable letter of credit;
- iii. the total original amount of the contract for the improvement(s) on which a reduction is requested;
- iv. the amounts of any increases or decreases in the total original amount of the contract;
- v. the amount of the reduction in the applicable letter of credit requested by the Developer; and
- vi. lien waivers from all contractors and subcontractors of the Developer for the improvement(s), evidencing that payment for the reduction amount has been made.

Unless so reduced, the letters of credit deposit shall be held by the Village in escrow until completion of the applicable Improvements and shall, at the Village's discretion, be drawn on or retained by the Village in the event that the Developer fails to construct and complete, in a good and workmanlike manner pursuant to and in accordance with this Agreement, the applicable Improvements or any portion thereof. Upon the Village's certification of completion of construction of the applicable Improvements, the Village shall release the applicable letter of credit. All Guarantee deposits shall be maintained at the Developer's sole cost and expense.

SECTION 8. RECAPTURE.

A. **Paid By Developer.** The parties do hereby acknowledge that the Developer has no obligation to pay any recapture amount as a result of prior installation of improvements benefitting the Property.

B. **Paid To Developer.** The parties do hereby acknowledge that the Developer is not entitled to any recapture amounts as a result of the installation of the Improvements.

SECTION 9. DONATIONS AND CONTRIBUTIONS.

The Developer has entered into agreements for the satisfaction of applicable donation and contribution requirements with the following districts: (i) Northbrook Park District; (ii) Northbrook/Glenview School District #30; and (iii) Glenbrook High School District #225.

SECTION 10. PAYMENT OF VILLAGE COSTS.

In addition to any other costs, payments, permit fees or other fees required by this Agreement or by applicable Village ordinances and codes, the Owner and the Developer agree that they will pay to the Village, immediately and upon presentation of a written demand or demands therefor, all fees, costs, and expenses incurred by the Village in connection with the resubdivision of the Property as required by the Subdivision Code, including without limitation the negotiation, preparation, consideration, and review of this Agreement, including those fees and expenses that the Village has paid and will pay to its legal counsel, Burke, Weaver & Prell.

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Further, the Owner and the Developer agree that they will continue to be liable for and to pay such costs incurred in connection with any applications, documents or proposals, whether formal or informal, of whatever kind submitted by it during the term of this Agreement in connection with the use and development of the Property. Further, the Owner and the Developer agree that they shall be liable for, and will pay upon demand, all costs incurred by the Village for publications and recordings required in connection with the aforesaid matters.

SECTION 11. LIABILITY AND INDEMNITY OF VILLAGE.

A. **Village Review.** The Owner and the Developer acknowledge and agree that the Village is not, and shall not be, in any way, liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Property or the Improvements, or the issuance of any approvals, permits, certificates, or acceptances for the development or use of the Property or the Improvements, and that the Village's review and approval of any such plans and the Improvements and issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Owner or the Developer, or any of their respective heirs, successors, assigns, tenants, and licensees, or any third party, against damage or injury of any kind and at any time.

B. **Village Procedures.** The Owner and the Developer acknowledge that notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and the Final Plat and agree not to challenge such approval on the grounds of any procedural infirmity or of any denial of any procedural right.

Beneficiary (s) (ies) OF TRUST 11479

C. **Indemnity.** The Owner and the Developer agree to, and do hereby, hold harmless and indemnify the Village, the Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, and attorneys from any and all claims that may, at any time, be asserted against any of such parties in connection with (i) the Village's review and approval of any plans or the Improvements, (ii) the Village's issuance of any approvals, permits, certificates, or acceptances for the development or use of the Property, (iii) any actions taken by the Village pursuant to Subsection 11.B of this Agreement, (iv) the development, construction, and maintenance of the Property and the Improvements, and (v) the performance by the Owner or the Developer of its obligations under this Agreement and all related agreements.

D. **Defense Expense.** The Owner and the Developer shall, and do hereby agree to, pay all expenses incurred by the Village in defending itself with regard to any and all of the claims mentioned in Subsection 11.C of this Agreement. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the Village.

SECTION 12. COMPLETION OF CONSTRUCTION AND RELOCATION.

If the Developer fails to diligently pursue all construction and relocation activities as required in or permitted by this Agreement to completion within the time period prescribed in the building and moving permit or permits issued by the Village for such construction and

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relocation, and if the building and moving permit or permits are not renewed within three months after the expiration thereof, the Developer shall, within 60 days after notice from the Village, remove any partially constructed or partially secured buildings, structures, and improvements from the Property or other property. In the event that the Developer fails or refuses to remove said buildings, structures, and improvements, as required, the Village shall have, and is hereby granted, in addition to all other rights afforded to the Village in this Agreement and by law, the right, at its option, to demolish and/or remove any of said buildings, structures, and improvements, and the Village shall have the right to charge the Developer an amount sufficient to defray the entire cost of such work, including legal and administrative costs. If the amount so charged is not paid by the Developer within 30 days following a demand in writing by the Village for such payment, such charge, together with interest and costs of collection, shall become a lien on the Property, and the Village shall have the right to collect such charge, with interest and costs, and to enforce such lien in the same manner as in mortgage foreclosure proceedings.

SECTION 13. ENFORCEMENT.

The parties hereto may, in law or in equity, by suit, action, mandamus or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement provided, however, that the Owner and the Developer agree that they shall not seek, and do not have the right to seek, to recover a judgment for monetary damages against the Village or any Village elected or appointed officials, officers, employees, agents, representatives, or attorneys on account of the negotiation, execution or breach of any of the terms and conditions of this Agreement. In the event of a judicial proceeding brought by any party to this Agreement against the other party for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees incurred in connection with such judicial proceeding.

Notwithstanding any other right of the Village provided in this Agreement, upon a finding by the Village that the Developer has failed to develop the Property and the Improvements in accordance with any of the requirements of this Agreement, neither the Owner nor the Developer will object to the Village taking all actions necessary to vacate the Final Plat in accordance with the procedures of the Subdivision Code.

SECTION 14. EXERCISE OF RIGHTS.

The Village shall be under no obligation to exercise rights granted to it in this Agreement except as it shall determine to be in its best interest. No failure to exercise at any time any right granted herein to the Village shall be construed as a waiver of that or any other rights.

SECTION 15. NATURE AND SURVIVAL OF OBLIGATIONS.

The parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute both the personal obligation of the party liable for its payment, and the heirs, successors, and assigns of such party, and also a lien upon the Property enforceable in the same manner as in mortgage foreclosure proceedings, until paid. The lien of the charges provided for herein shall be subordinate to the lien of any first mortgage now or hereinafter placed upon all or any portion of the Property; provided, however, that such subordination shall apply only to charges that have

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become due and payable prior to a sale or transfer of the Property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Property from liability for any charges thereafter becoming due, nor from the lien of any subsequent charge.

SECTION 16. SUCCESSORS.

A. **Binding Effect.** The Owner and the Developer acknowledge and agree that the obligations assumed by them under this Agreement shall be binding upon it and any and all of their respective heirs, successors, and assigns and the successor owners of record of all or any portion of the Property.

B. **Transferee Assumption.** To assure that such heirs, successors, and assigns have notice of this Agreement and the obligations created by it, the Owner and the Developer agree:

- i. that this Agreement shall be recorded with the Recorder's Office;
- ii. to incorporate, by reference, this Agreement into any and all agreements that the Owner and the Developer shall enter into for the transfer (as defined below) of all or any portion of the Property to any party not a party to this Agreement; and
- iii. to require, prior to the transfer (as defined below) of all or any portion of the Property, the transferee of said portion of the Property to execute an enforceable written agreement agreeing to be bound by the provisions of this Agreement and to provide the Village with such reasonable assurance of the financial ability of such transferee to meet the obligations of the Owner and the Developer under this Agreement. The Village agrees that upon a successor becoming bound to the personal obligation created herein in the manner provided herein and providing the financial assurances required by this Section, the personal liability of the Owner and the Developer or other predecessor obligor shall be released to the extent of the transferee's assumption of liability. The Owner and the Developer agree to notify the Village in writing at least 30 days prior to any date upon which the Owner or the Developer transfers a legal or beneficial interest in any portion of the Property to a transferee. The Owner and the Developer shall, at the same time, provide the Village with a fully executed copy of the hereinabove required agreement by the transferee to be bound by the provisions of this Agreement and the transferee's proposed assurances of financial capability.

C. **Transfer Defined.** For the purposes of this Section:

- i. The term "transfer" shall include any assignment, transfer, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Property, in whole or in part, by volun-

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tary or involuntary sale, foreclosure, merger, sale and leaseback, consolidation, or otherwise.

- ii. The term "transfer" shall not include any conveyance to a bona fide purchaser, for value, of a Lot.

SECTION 17. REPRESENTATIONS AND WARRANTIES.

A. Representations and Warranties of Owner. In order to induce the Village to enter into this Agreement and to adopt the resolutions and grant the rights herein provided for, the Owner warrants and represents to the Village that:

- i. The Owner is the Trustee of an Illinois land trust;
- ii. The Owner has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary actions to authorize the execution, delivery, and performance of this Agreement;
- iii. All necessary consents of any Board of Directors, shareholder, creditors, investors, partners, judicial or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained;
- iv. No consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village) is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement; and
- v. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of the Owner, (ii) will not result in a breach or default under any agreement to which the Owner is a party or to which it or the Property are bound, and (iii) will not violate any restriction, court order or agreement to which the Owner is subject.

B. Representations and Warranties of Developer In order to induce the Village to enter into this Agreement and to adopt the resolutions and grant the rights herein provided for, the Developer warrants and represents to the Village that:

- i. The Developer is an individual, residing in Northbrook, Illinois;
- ii. The Developer has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary actions to authorize the execution, delivery, and performance of this Agreement;
- iii. No consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village) is

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required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement; and

- iv. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of the Developer, (ii) will not result in a breach or default under any agreement to which the Developer is a party or to which it or the Property are bound, and (iii) will not violate any restriction, court order or agreement to which the Developer is subject.

SECTION 18. SEVERABILITY.

It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property be held invalid by a court of competent jurisdiction, then the remaining Agreement shall remain valid and in full force and effect.

SECTION 19. TERM.

The provisions of this Agreement shall run with and bind the Property, and shall inure to the benefit of, and be enforceable by, the Owner, the Developer, and the Village, and any of their respective legal representatives, heirs, grantees, successors, and assigns, from the date this Agreement is recorded and until the improvements are approved by the Village and the public Improvements as required by this Agreement and the Subdivision Code are accepted by the Village. Following such approval and acceptance, the Village agrees, upon written request of the Owner or the Developer, to execute appropriate and recordable evidence of termination of this Agreement, with the appropriate survival language, as contemplated in this Section. If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rule imposing time limits, then such provisions shall continue only until 21 years after the death of the survivor of the now living lawful descendants of the current Governor of the State of Illinois as of the date of this Agreement.

SECTION 20. AMENDMENTS.

No amendment to this Agreement shall be effective unless it is in writing and approved by the Village (by resolution duly adopted) and by the Owner and the Developer.

SECTION 21. NOTICES.

All notices and other communications in connection with this Agreement shall be in writing, shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States post office, and shall be sent certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

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2011-01-01

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For notices and communications to the Owner:

Parkway Bank and Trust Company, not individually
but solely as Trustee u/t/a dated October 18, 1996
and known as Trust No. 114769
4800 N. Harlem Avenue
Harwood Heights, IL 60656
Attention: Trust Officer

For notices and communications to the Developer:

Mr. Wayne Berman
1796 Shermer Road
Northbrook, IL 60062

with a copy (which need not be sent by certified or registered mail) to:

Alexander R. Domanskis, Esq.
Snow, Gussis, Fox & Domanskis
111 West Washington Street
Suite 707
Chicago, IL 60602

For notices and communications to the Village:

Village of Northbrook
1225 Cedar Lane
Northbrook, Illinois 60062
Attention: Village Manager

with a copy (which need not be sent by certified or registered mail) to:

Steven M. Elrod, Esq.
Burke, Weaver & Prell
55 West Monroe Street, Suite 800
Chicago, Illinois 60603

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

SECTION 22. EXHIBITS.

Exhibits A through F attached to this Agreement are incorporated herein and made a part hereof by this reference.

SECTION 23. CHANGES IN LAW.

Unless otherwise explicitly provided in this Agreement and the Annexation Agreement, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as the same may be amended or modified from time to time hereafter.

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SECTION 24. GOVERNING LAW.

This Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois.

SECTION 25. HEADINGS.

The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit or describe the scope or intent of this Agreement or the intent of any provision hereof.

SECTION 26. INTERPRETATION.

This Agreement has been negotiated by both parties and shall not be construed against the party drafting this Agreement.

SECTION 27. NO THIRD PARTY BENEFICIARIES.

No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Village, the Owner or the Developer.

SECTION 28. TIME OF ESSENCE.

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

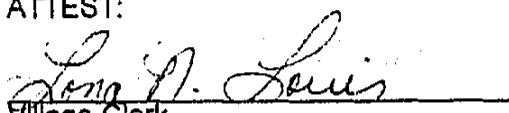
IN WITNESS WHEREOF, the parties have set their hands and affixed their seals on the date first above written, the same being done after public hearing, notice, and statutory requirements having been fulfilled.

VILLAGE OF NORTHBROOK

By: 

Village President

ATTEST:


Village Clerk

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PARKWAY BANK AND TRUST COMPANY, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479

By: [Signature]
Its: Vice President / Trust Officer

ATTEST:

[Signature]
Its: Assistant Trust Secretary

WAYNE BERMAN
[Signature]

WITNESS:

This Agreement is signed by Parkway Bank & Trust Co., not individually but solely as Trustee under a certain Trust Agreement known as Trust No. 11479. Said Trust Agreement is hereby made a part hereof and any claim against said Trustee which may result from the execution of this Agreement shall be payable only out of any trust property which may be held hereunder, and said Trustee shall not be personally liable for the performance of any of the terms and conditions of this agreement or for the validity or condition of the title of said property or for any agreement with respect thereto. Any and all personal liability of Parkway Bank and Trust Co., is hereby expressly waived by the parties hereto and their respective successors and assigns.

The Trustee in executing this document SPECIFICALLY EXCLUDES all reference to any environmental condition of the premises whether under the ILLINOIS ENVIRONMENTAL PROTECTION ACT or otherwise, the sanctionary of this Trust, as management and control of the premises and as such, has the authority on its/their own behalf to execute as environmental representative but not as agent for or on behalf of the Trustee.

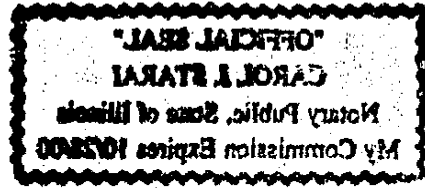
PARKWAY BANK & TRUST COMPANY, as Trustee

THE SIGNATURE OF PARKWAY BANK & TRUST CO. IS BASED SOLELY UPON INFORMATION FURNISHED BY THE BENEFICIARY OR BENEFICIARIES OF THE AFORESAID TRUST. THE UNDERSIGNED HAS NO PERSONAL KNOWLEDGE OF ANY OF THE FACTS OR STATEMENTS HEREIN CONTAINED.

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LIST OF EXHIBITS

EXHIBIT A	Elevations
EXHIBIT B	Final Engineering Plan
EXHIBIT C	Final Plat
EXHIBIT D	Legal Description of the Property
EXHIBIT E	Resolution Approving Final Plat
EXHIBIT F	Form of Irrevocable Letter of Credit

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EXHIBIT D

Legal Description of the Property

THE WEST 200 FEET OF THE EAST 250 FEET OF LOT 1 (EXCEPT THE NORTHERLY 3.28 FEET THEREOF) OF LOT 1 IN SUPERIOR COURT PARTITION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 16, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24, 1928 AS DOCUMENT 9936295, IN COOK COUNTY, ILLINOIS.

Commonly known as 1796 Shermer Road, Northbrook, Illinois.

Permanent Real Estate Index No.: 04-16-202-060-0000

After recordation of the Final Plat, the Property will be legally described as:

LOTS 1 AND 2 IN BERMAN'S RESUBDIVISION OF THE WEST 200 FEET OF THE EAST 250 FEET OF LOT 1 (EXCEPT THE NORTHERLY 3.28 FEET THEREOF) OF LOT 1 IN SUPERIOR COURT PARTITION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 16, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24, 1928 AS DOCUMENT 9936295, IN COOK COUNTY, ILLINOIS.

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02/10/2022

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EXHIBIT E

RESOLUTION NO. 97-R-

(Approval of Final Plat for Berman's Resubdivision)

Parkway Bank and Trust Company, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479 (the "Owner") is the legal owner of approximately one acre of land commonly known as 1796 Shermer Road (the "Subject Property"). Wayne Berman (the "Applicant") is the sole beneficial owner of the trust that is the Owner. The Subject Property is zoned in the R-3 Single Family Residential District. The Applicant has applied for certain relief with respect to the Subject Property, as follows: (A) a procedural variation to allow combined tentative plan and final plat review; (B) approval of the final plat for the resubdivision of the Subject Property from one lot into two lots; (C) waiver of the requirements of Subsection 4-104 C of the Subdivision Code relating to the location of storm water detention and retention facilities.

The Plan Commission held a public hearing on the application in its regular meetings on February 4, 1997, March 4, 1997 and March 18, 1997. On March 18, 1997, the Plan Commission rendered its recommendation in favor of all of the requested relief in Resolution No. 97-PC-7.

The Board of Trustees has reviewed the Plan Commission recommendation and the materials referred to in Resolution No. 97-PC-7. Based on that review, it appears that the grant of the requested relief, subject to the conditions set forth herein, is appropriate at this time.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois, THAT:

Section 1. COMBINED TENTATIVE PLAN AND FINAL PLAT REVIEW.

A procedural variation is hereby granted to the Applicant to allow combined tentative plan and final resubdivision plat review.

Section 2. FINAL PLAT OF SUBDIVISION.

The final plat of resubdivision of the Subject Property, labeled as "Berman's Resubdivision," prepared by MM Surveying Co., Inc., consisting of one sheet, with latest revision date of _____, 1997 (the "Final Plat"), is hereby approved.

Section 3. DETENTION/RETENTION POND WAIVER.

A waiver of the requirement that detention and retention ponds be located on outlots or other common open space areas pursuant to Paragraph 4-104 C of the Subdivision Code is hereby approved.

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Section 4. EXECUTION OF PLAT.

The Village President and Village Clerk are hereby authorized and directed to execute and seal, on behalf of the Village, the Final Plat, contingent upon certification of the plat by proper county officials as to the absence of property tax delinquency and all other signatures and certifications as necessary, and receipt of the Resubdivision and Development Agreement for the Subject Property fully executed by the Owner and Developer.

Section 6. RECORDATION OF PLAT.

The Village Manager is hereby directed to record the Final Plat with the Cook County Recorder of Deeds upon satisfactory completion of administrative details relating thereto.

PASSED: This ___ day of _____, 1997.

AYES: ()

NAYS: ()

ABSTAIN: ()

ABSENT: ()

Village President

ATTEST:

Village Clerk

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EXHIBIT F

FORM OF IRREVOCABLE LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO. _____ AMOUNT: _____

EXPIRATION DATE: _____ DATE OF ISSUE: _____

[Name of Bank]

[Address]

TO: Village Manager
Village of Northbrook
1225 Cedar Lane
Northbrook, IL 60062

WE HEREBY AUTHORIZE YOU TO DRAW AT SIGHT on the _____ UP TO AN
AGGREGATE AMOUNT OF _____ United States Dollars
(\$ _____) for account of _____
_____ (the "Customer").

Drafts under this Letter of Credit shall bear upon their face the words:

Drawn under _____

Credit No. _____ Dated: _____

and shall be in a form substantially similar to the form attached hereto as Exhibit "A" and shall be accompanied by one of the following documents executed by the Village Manager, or the successor to his responsibilities:

(a) A written statement on a form substantially similar to the form attached hereto as Exhibit "B" stating that, conditioned upon proper notice to the Northbrook Village Manager, Letter of Credit No. _____ will expire within 35 days or less and that the Customer has failed to deliver to the Northbrook Village Manager evidence of a renewal of Letter of Credit No. _____; or

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(b) A written statement on a form substantially similar to the form attached hereto as Exhibit "C" stating that all or any part of the improvements required to be constructed pursuant to Section 7 of the Resubdivision and Development Agreement dated _____ by and between the Village of Northbrook, Parkway Bank and Trust Company, not individually but solely as Trustee u/v/a dated October 18, 1996 and known as Trust No. 11479, and Wayne Berman (the "Subdivision Agreement") have not been constructed in accordance with the Agreement; or

(c) A written statement on a form substantially similar to the form attached hereto as Exhibit "D" stating that all or any part of the costs, payments, permit fees or other fees required to be paid to the Village pursuant to the Agreement have not been paid in accordance with the Agreement.

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS LETTER OF CREDIT, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 500" (THE "UNIFORM RULES"). IN THE EVENT OF A CONFLICT BETWEEN THIS LETTER OF CREDIT AND THE UNIFORM RULES, THIS LETTER OF CREDIT SHALL CONTROL.

WE HEREBY AGREE with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this Letter of Credit, that:

1. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored immediately upon presentation to the drawees if negotiated on or before the above-stated Expiration Date or presented at our office together with a copy of this Letter of Credit on or before that date.

2. The amount of any draft drawn under this Letter of Credit must be endorsed on the reverse hereof.

3. If, within three days after any draft drawn under this Letter of Credit is presented to us in conformance with the terms of this Letter of Credit, we fail to honor same, we agree to pay all attorneys' fees, court costs and other expenses incurred by the Village of Northbrook in enforcing the terms hereof.

4. This Letter of Credit shall expire on _____, 19____, as stated hereinabove; provided, however, that we shall notify the Northbrook Village Manager by certified mail, return receipt requested, at least 35 days prior to said expiration date, that this Letter of Credit is about to expire.

5. In no event shall this Letter of Credit or the obligations contained herein expire except upon the prior written notice required herein, it being expressly agreed that the above expiration date shall be extended as shall be required to comply with the prior written notice required herein.

6. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or required prior to honoring any draft presented in conformance with the terms of this Letter of Credit.

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7. The aggregate amount of this Letter of Credit may be reduced by the Customer only upon receipt by us of a document executed by the Northbrook Village Manager stating that such aggregate amount shall be reduced in an amount permitted by the Northbrook Subdivision and Development Code because of the satisfactory completion of all or part of the improvements required to be constructed pursuant to Section 7 of the Resubdivision and Development Agreement dated _____ by and between the Village of Northbrook, Parkway Bank and Trust Company, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479, and Wayne Berman.

8. This Letter of Credit is irrevocable.

[Signature of Bank Officer]

[Signature of Bank Officer]

[Officer's Title]

[Officer's Title]

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EXHIBIT "A" TO FORM OF IRREVOCABLE LETTER OF CREDIT

FORM OF DRAFT

[To Be Supplied By Issuing Bank]

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6-11-2010

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EXHIBIT "B" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that Letter of Credit No. _____ dated _____ in the amount of \$ _____ will expire within 35 days or less and that _____ has failed to deliver to the Northbrook Village Manager evidence of a renewal of Letter of Credit No. _____.

Very truly yours,

Northbrook Village Manager

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ENCLOSURE

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EXHIBIT "C" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that all or any part of the improvements required to be constructed pursuant to Section 7 of the Resubdivision and Development Agreement dated _____ by and between the Village of Northbrook, Parkway Bank and Trust Company, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479, and Wayne Berman have not been constructed in accordance with said agreement.

Very truly yours,

Northbrook Village Manager

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EXHIBIT "D" TO FORM OF IRREVOCABLE LETTER OF CREDIT

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that all or any part of the costs, payments, permit fees or other fees required to be paid pursuant the Re subdivision and Development Agreement dated _____ by and between the Village of Northbrook, Parkway Bank and Trust Company, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479, and Wayne Berman have not been paid in accordance with said agreement.

Very truly yours,

Northbrook Village Manager

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(Approval of Berman Resubdivision and Development Agreement)

Parkway Bank and Trust Company, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479 (the "Owner") is the legal owner of approximately one acre of land commonly known as 1796 Shermer Road (the "Property"). Wayne Berman (the "Developer") is the beneficial owner of the trust that is the Owner. The Developer proposes to resubdivide the Property into two lots and to move an existing house from another location onto the proposed lot 2. The Developer has applied for final resubdivision plat approval (Plan Commission Docket No. 97-1C) for the proposed resubdivision of the Property to be known as Berman's Resubdivision.

The Developer has agreed to enter into a resubdivision and development agreement with the Village providing for the orderly development and improvement of the Property in accordance with all applicable documents. The proposed resubdivision and development agreement has been reviewed by Village staff and the Village Attorney.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois, THAT:

Section 1. APPROVAL OF RESUBDIVISION AND DEVELOPMENT AGREEMENT.

The Resubdivision and Development Agreement, by, between, and among the Village of Northbrook, Parkway Bank and Trust Company, not individually but solely as Trustee u/t/a dated October 18, 1996 and known as Trust No. 11479, and Wayne Berman for Berman's Resubdivision is hereby approved in substantially the form attached to this Resolution.

Section 2. EXECUTION OF AGREEMENT.

The Village President and Village Clerk are hereby authorized and directed to execute and seal, on behalf of the Village, said Resubdivision and Development Agreement, only after receipt by the Village of at least two copies of such agreement fully executed by the Owner and the Developer.

Section 3. RECORDATION OF AGREEMENT.

The Village Manager is hereby directed to record said Resubdivision and Development Agreement with the Cook County Recorder of Deeds upon satisfactory completion of all administrative details relating thereto.

PASSED: This 23rd day of April, 1997.

AYES: (6) Trustees Jaeger, Frum, Karagianis, Buehler, Donewald and Meek

NAYS: (0)

ABSTAIN: (0)

ABSENT: (0)

97430919

/s/ Mark W. Damisch

Village President

ATTEST:

/s/ Lona N. Louis

Village Clerk

I hereby certify this to be a true and exact copy of the original.

6/1/97 Lona N. Louis
Date Village Clerk

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