

ORDINANCE NO. 14-46

**AN ORDINANCE APPROVING AN AGREEMENT
BETWEEN THE VILLAGE OF MANTENO AND
CURWICK V, LLC, FOR THE IMPROVEMENT AND
DEVELOPMENT OF LAND WITHIN THE WINDFIELD
ESTATES SUBDIVISION, PHASE II**

BE IT ORDAINED by the Village President and Board of Trustees of the Village of Manteno, Kankakee County, Illinois, as follows:

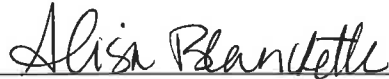
Section 1

That the Agreement between the Village of Manteno and Curwick V, LLC, for the improvement and development of land within the Windfield Estates Subdivision, Phase II, in substantially the form attached hereto, is hereby approved for and on behalf of the Village. The Mayor and Village Clerk are hereby authorized to execute the same for and on behalf of the Village with such changes as deemed necessary by the Village Attorney.

Section 2

This ordinance shall be immediately in full force and effect after passage and approval.

This ordinance was passed and deposited in the office of the Village Clerk of the Village of Manteno this 6th day of April, 2015.



ALISA BLANCHETTE, Village Clerk

APPROVED by me this 6th day
of April, 2015.


TIMOTHY O. NUGENT, Mayor

AGREEMENT

This **AGREEMENT** (the “Agreement”), is made and entered into this _____ day of March, 2015, A.D., by and between the **VILLAGE OF MANTENO**, an Illinois Municipal Corporation (hereinafter sometimes referred to as “Village”), and Curwick V, LLC, an Illinois limited liability company (hereinafter sometimes referred to as “Curwick”). The Village and Curwick may sometimes be referred to individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Curwick has purchased property known as Windfield Estates Phase 2 and Windfield Estates Phase 3, located in the Village of Manteno, and which property is depicted on “Exhibit A” attached hereto and is legally described on “Exhibit B” attached hereto (hereinafter “Subject Property”); and

WHEREAS, the portion of the Subject Property known as Windfield Estates Phase 3 consists of approximately 24.8 (this is the acres shown on Exhibit A) acres of undeveloped land which is currently used for agricultural purposes, and the portion of the Subject Property known as Windfield Estates Phase 2 consists of 61 vacant single family lots (three drainage ditch lots and a right of way dedication for Sandburg Drive); and

WHEREAS, the public improvements in Windfield Estates Phase 2 have not been completed; and

WHEREAS, the original developer and/or owner (hereinafter collectively the “Developer”) of the Subject Property has failed and defaulted on their obligations to complete the public improvements identified on “Exhibit C”, attached hereto, in Windfield Estates Phase 2; and

WHEREAS, pursuant to Article VII, Section 10, of the Constitution of the State of Illinois, which permits Units of Local Government to contract with individuals, associations or corporations in any manner not prohibited by law or by ordinance, the Village and Developer desire to enter into this Agreement in order to regulate certain matters pertaining to the Improvements and the development of the Subject Property in the manner and upon the terms and conditions contained in this Agreement; and

WHEREAS, in addition, a number of the lots (“Floodplain Lots”) in Windfield Estates Phase 2 are located within the floodplain as depicted on the current Flood Insurance Rate Map (FIRM); and

WHEREAS, Curwick is in the process of obtaining a map revision to the current FIRM to establish that all buildable portions of such Floodplain Lots are not within the designated floodplain and may need to fill certain lots in connection with the development of such lots; and

WHEREAS, the Village acknowledges that this executed Agreement will permit orderly growth, planning and development of the Village, will increase the tax base of the Village, and will promote and enhance the health, safety and welfare of the Village.

NOW THEREFORE, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, Curwick and Village hereby agree as follows:

SECTION ONE: Incorporation of Preambles. The recitals contained in the Preamble hereto are material and are hereby incorporated as a part of this Agreement. Curwick and the Village shall fully cooperate with each other in carrying out the terms of this Agreement. All parties represent that they have full authority to enter into this Agreement pursuant to law.

SECTION TWO: Public Improvements. The following provisions in this Section Two relate to that portion of the Subject Property known as “Windfield Estates Phase 2”:

- A. Curwick agrees, at its cost, to construct the public improvements identified on “Exhibit C” on or before August 15, 2015. The Village agrees that upon completion of the public improvements above identified on “Exhibit C” and approval of the same by the Village engineer, the Village will accept all public improvements, which have not been previously accepted upon the approval of the village engineer, in Windfield Estates Phase 2. Upon completion of the public improvements identified on “Exhibit C”, the Village warrants that it will issue building permits for Windfield Estates Phase 2 upon submission of building plans which conform to that certain Annexation Agreement recorded August 24, 2004 with the Kankakee County Recorder of Deeds as Document Number 200419179, Village Ordinances and the payment of applicable fees.
- B. Curwick shall use its best efforts to secure approval of a map revision to determine that no portion of the Floodplain Lots are located in this floodplain and Curwick shall fill such lots as may be necessary to effectuate the map revision.
- C. The Village shall issue Curwick up to five (5) building permits for single family residential structures in the Subject Property prior to the completion of the public improvements identified on “Exhibit C”, provided, the Village shall have no

obligation to issue any such building permits to anyone other than Curwick, Curwick Construction, or an entity owned and controlled by Jerry Curwick. Notwithstanding the foregoing, the Village shall have no obligation to issue a building or occupancy permit on any lot which is currently located within a floodplain as depicted on the current Flood Insurance Rate Map (FIRM) until such time as a map revision is approved which indicates that all buildable portions of any such lots are not included in the floodplain. No construction within such lots prior to the approval of such map revision shall be allowed.

- D. Curwick shall not be required to post a bond or letter of credit with the Village for the Developer's warranty obligations with respect to any improvements performed by Developer. Curwick shall be required to post a bond or letter of credit with the Village to secure the completion of said improvements performed and completed by Curwick, provided such bond or letter of credit shall only cover work performed by Curwick and not work performed by Developer or any prior owner.

SECTION THREE: Maintenance of Lots. The Village acknowledges that certain lots within that portion of the Subject Property known as Windfield Estates Phase 2 will need to be filled. All grading (other than final grading) on said lots shall be completed prior to the issuance of an occupancy permit on any such lots. Curwick shall be required to comply with any permit requirements typically required for such excavation and earthwork activities. Curwick shall maintain such erosion control as may be required by such permits. Curwick shall plant said vacant lots with grass or similar vegetative cover as required by the Illinois Environmental Protection Agency, including during the filling and excavation work in connection with the completion of public improvements and any excavation that may be required in connection with any floodplain map revision, and Curwick shall cut and control the weeds located on such lots.

SECTION FOUR: Marketing Signage. The Village shall allow Curwick to place one (1) 8' x 8' marketing sign for the Subject Property at the west end of the drainage ditch near Spruce Street.

SECTION FIVE: Drainage Ditch. The Village has previously entered into an Inspection and Maintenance Plan Agreement, dated June 6, 2005, between Village of Manteno and Windfield Estates For Drainage Ditch Modification. The Village will agree, at the request of the Windfield Estates Homeowner's Association, to assume the Homeowner's Association's obligations under the terms of said Agreement and release the Homeowner's Association of any

further obligations thereunder. Curwick shall cause an As-Built Survey of the Drainage Ditch to be performed by an engineer licensed by the State of Illinois.

SECTION SIX: Compliance with Village Ordinances. Except as otherwise specifically set forth in this Agreement or the annexation agreement affecting the Subject Property, all development of the Subject Property shall proceed in accordance and full compliance with all applicable ordinances, resolutions, codes and requirements of the Village, as the same may be amended or adopted from time to time. Curwick can continue to use undeveloped portions of the Subject Property for agricultural uses (excluding livestock), except that Curwick shall discontinue any agricultural uses in Windfield Estates Phase 2 upon issuance of a building permit for a lot in Windfield Estates Phase 2.

SECTION SEVEN: General Provisions.

- A. Successors in Interest/Security for Public Improvements: This Agreement shall inure to the benefit of, and be binding upon, the successors in title of Curwick, its successor(s), grantee(s), lessee(s), and assign(s), and upon successor corporate authorities of the Village and successor municipalities, except that the provisions set forth in Sections 2B and 2C of this Agreement shall be personal to Curwick. It is understood that this Agreement shall run with the land and as such, shall be binding upon subsequent grantees, lessees, and successors in interest of Curwick and, as such, this Agreement and all exhibits hereto shall be recorded with the Recorder of Deeds of Kankakee County, Illinois by the Village at the sole cost and expense of the Curwick.
- B. Curwick's Faithful Performance. It is understood and agreed by the Parties hereto that, in the event all or any portion of the Subject Property is sold or conveyed at any time during the term of this Agreement, the obligations and responsibilities of Curwick, as herein set forth shall remain the obligations and responsibilities of Curwick unless otherwise approved in writing by the Village. In the event Curwick defaults on all or any part of this Agreement, Curwick shall be given a thirty (30) day period to cure said default. If Curwick does not cure said default during the thirty (30) day cure period, the Village may take any and all steps necessary to address such default, including, but not limited to, instituting any necessary legal action.

- C. No Waiver or Relinquishment of Right to Enforce Agreement. The failure of any party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's rights, to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. No waiver by the Village shall be valid or binding on the Village unless it is in writing signed by the Village and only to the extent therein set forth.
- D. Cumulative Remedies. Unless expressly provided otherwise herein, the rights and remedies of the parties provided for herein shall be cumulative and concurrent and shall include all other rights and remedies available at law or in equity, may be pursued singly, successively or together, at the sole and absolute discretion of either party and may be exercised as often as occasion therefore shall arise.
- E. Section Headings and Subheadings. All section headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or applicability of any of the provisions thereunder whether covered by or relevant to such heading or not.
- F. Curwick's Construction Activities. Curwick agrees to defend and hold the Village harmless from any and all claims which may arise out of any construction activities on the Subject Property, except those which are conducted by the Village or the Village's employees or agents from which the Village agrees to defend and hold Curwick harmless.
- G. Covenants to Run With Land. The covenants, agreements, indemnities and other terms and provisions contained in this Agreement touch and concern and shall be appurtenant to and shall run with the Subject Property and any portion thereof. Each and every person and entity that, from time to time, acquires any interest or estate in all or any portion of the Subject Property from Curwick shall acquire such interest or estate subject to said covenants, agreements, indemnities and other terms and provisions and, during the period of time that he, she or it owns such interest or estate, he, she or it shall be obligated to pay and perform any and all obligations of the Curwick applicable to that portion of the Subject Property in which he, she or it holds any estate or interest. Such obligations shall be

continuing personal obligations of the Curwick and shall constitute personal obligations of any person or entity other than the Curwick who from time to time acquires title to all or any portion of the Subject Property, solely and exclusively with respect to obligations that arise, accrue or occur during the time that such person or entity holds any interest or estate in and to such portion of the Subject Property, and otherwise rather shall run with and shall constitute a burden on the Subject Property and each portion thereof. All rights under this Agreement shall touch and concern the Subject Property and each portion thereof, and shall run with the title to the Subject Property and each portion thereof. Such rights shall be personal to each and every person or entity who, from time to time, may acquire title to any portion of the Subject Property, solely and exclusively during the time that such person or entity holds any interest or estate in and to such portion of the Subject Property.

- H. No Personal Liability of Corporate Authorities: The parties acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.
- I. Notices: Notices or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village:

Village of Manteno
98 E. Third Street
Manteno, Illinois 60950
Attention: Village Clerk

with a copy to:

Joseph Cainkar
Louis F. Cainkar, Ltd.
30 N. LaSalle Street, Suite 3922
Chicago, Illinois 60602

If to Curwick:

Curwick V, LLC
Attn: Jerry Curwick
600 N. Main Street
Manteno, Illinois 60950

with a copy to:

Kenneth Carlson
Tracy, Johnson & Wilson
2801 Black Road, Second Floor
Joliet, Illinois 60435

or to such other address as any party may from time to time designate in a written notice to the other party.

- J. Amendments. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Curwick and the Village relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them. In the event such amendment applies only to a portion of the Subject Property, then only the owners of the portion of the Subject Property proposed to be affected by such amendment shall be required to consent to and execute such amendment.
- K. Invalidity of any Provision. If any provision, clause, word or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word or designation contained herein.
- L. Effectiveness of Agreement. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not be effective unless and until signed by all of the parties hereto. If this Agreement is not fully executed and delivered by both the Village and Curwick within thirty (30) days of the date first above written, or

if Curwick shall fail to close on the purchase of the Subject Property pursuant to any real estate purchase contract to which it is party, this Agreement shall automatically become null and void and of no further force and effect (as if it had never existed).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute same, the day and year first above written.

Village:

VILLAGE OF MANTENO,

An Illinois Municipal Corporation

By: Timothy O'Keefe

Name: _____

Its: Village President

Dated: 4-6-15

Attest:

By: Alisa Blanchette

Name: _____

Its: Village Clerk

Dated: 4-6-15

Curwick V, LLC:

By: [Signature]

Its: Pres.

Dated: 3-30-15

EXHIBIT A

EXHIBIT B

EXHIBIT C

1. Complete sanitary sewer improvements;
2. Complete sidewalks at pipeline crossings and on park site (complete sidewalks on lots as homes are constructed);
3. Complete and test water main;
4. Perform as-built survey;
5. Complete installation of street lights; and
6. All grading (other than final grading) and soil stabilization.