

STATE OF MICHIGAN
COUNTY OF WASHTENAW
VILLAGE OF MANCHESTER

**DEVELOPMENT AGREEMENT FOR EMERALD GLEN
PLANNED UNIT DEVELOPMENT**

AGREEMENT between Wexford-Emerald Glen, L.L.C., a Michigan limited liability company, (the "Developer") and the Village of Manchester, a Michigan municipal corporation ("Village"), to confirm certain rights and obligations relating to development and use of an approximately 81 acre, 103 unit, development located in the Village of Manchester on property more particularly described on the attached Property Description Exhibit (the "Property").

RECITATIONS:

The Developer applied for approval of Planned Unit Development zoning of the Property under the Village of Manchester Zoning Ordinance, as amended.

As an integral part of the application process, and if and when the Developer proceeds with development of the Property as approved by the Village, the Developer has offered and agreed to make certain on-site and off-site improvements and to proceed with other undertakings in order to insure that public services and facilities affected by the development will be capable of accommodating increased service and facility loads caused by the development and which Developer and the Village agreed were necessary and roughly proportional with the burden imposed; to protect the natural environment and conserve natural resources; to insure compatibility with adjacent uses of land; to promote use of the Property in a socially and economically desirable manner; and to achieve other legitimate objectives authorized under the Zoning Ordinance. The proposed planned unit development would not have been approved by the Village without the Developer's offer and agreement as stated herein

For the purpose of confirming the rights and obligations of the parties in connection with the on-site and off-site improvements and other obligations to be undertaken by the Developer as it proceeds with development of the Property as approved by the Village, the parties have entered into this Development Agreement to take effect on MARCH 10, 2003 at which time the Village granted Final Site Plan approval to the Emerald Glen Planned Unit Development.

Emerald Glen PUD
Development Agreement 3/10/03

NOW, THEREFORE, as an integral part of the grant of rezoning to Emerald Glen Planned Unit Development and site plan approval for the Property **IT IS AGREED AS FOLLOWS:**

1. The Developer agrees to develop the Property in accordance with this Agreement and the Final Site Plan dated 04/09/02, last revised on February 17, 2003, and subject to all conditions contained within the approved Final PUD Area Plan and resolutions, the approved construction plans, permits, conditions, and all other applicable laws and ordinances.
2. The Developer has submitted to the Village the preliminary Master Deed and Bylaws dated March 6, 2003, for the condominium development. The condominium documents shall be subject to review and approval by the Village attorney, planner and engineer prior to recordation.
3. The project shall be developed in three (3) construction sequences. Construction Sequence One (1) shall be substantially complete prior to any development occurring in Construction Sequence Two (2). Construction Sequence One (1) and Two (2) shall be substantially complete prior to any development occurring in Construction Sequence Three (3).
4. Substantially complete shall mean that all of the following have occurred: the installation, maintenance and approval of all public utilities, landscaping and infrastructure in accordance with approved site plans and any conditions thereof; and not less than fifty (50) percent of the homes in each Construction Sequence have been issued building permits.
5. All building plans shall be consistent with the architectural elevations and floor plans as provided to, and approved by the Planning Commission as part of the Final Site Plan. Additional architectural control required by the Planning Commission as part of Final Site Plan is provided for in the development's Master Deed and Bylaws, and the requirements stated therein are incorporated by reference as if fully stated herein.
6. There shall be no signs that permanently identify the project. However, for marketing and sales purposes only, the Developer shall be permitted to install a temporary sign in accordance with the Village Zoning Ordinance. The sign shall be removed within five (5) years of final site plan approval.
7. Developer agrees to timely complete the "Improvement Projects" as more particularly described below:
 - A. The "On-Site Improvement Project," as referenced in this Agreement, shall mean installation of the following: pavement for all road rights-of-way on the Property; drives, streets and alleys, curbs, driveway openings, landscaping, erosion and

sedimentation controls, final grading, street lighting of a decorative design, boulder retaining walls, fences, trails, boardwalks, sidewalks, benches and safety lighting, in accordance with the Final Site Plan; all utility infrastructure, including, without limitation, gas, wire and cable utilities, the storm water drainage system, sewer and water lines all as set forth in the Final Site Plan and in accordance with the schedule therein as approved for the Property. Developer shall bear final responsibility for all the On-Site Improvement Project in accordance with this agreement and approved plans. The On-Site Improvement Project shall be divided between three (3) "Construction Sequences" as shown on the approved Final Site Plan, and developed in phases as described in paragraph 3 above.

B. The "Off-Site Improvement Project" shall mean improvements made by the Village to Village infrastructure outside the boundaries of the Property. Developer agrees to pay a fair share of the costs determined to be its equitable participation in such improvements as follows:

- (i) Fifteen (15%) percent of the total costs to improve the sanitary sewer pump station on the West side of Riverside Drive at Vernon Street. The Current estimated cost for the improvement as shown on the attached Exhibit A is four hundred eighty-eight thousand three hundred (\$488,300.00) dollars;
- (ii) Eighty-four (84%) percent of the total costs to install a new twelve (12) inch water main from the existing twelve (12) inch main on the railroad grade at the North end of Macomb Street, South along Macomb to Territorial, West along Territorial to Galloway, South along Galloway to the proposed booster station. The current estimated cost for this improvement is four hundred twenty-three thousand (\$423,000.00) dollars for completion of the improvement and approximately eighty-six thousand (\$86,000.00) for engineering oversight;
- (iii) One Hundred (100%) percent of the total costs for installation of a sidewalk on the South side of Territorial and the West side of Elton connecting to the nearest existing Village sidewalk. The sidewalk shall be installed in conformance with Village specification and as part of the first phase of development.

Total costs for each Off-Site Improvement Project shall mean the actual cost of the improvements and any and all reasonable and customary costs incurred by the Village including by way of example all financing, engineering, planning, legal, administrative and contingency costs and expenses associated therewith.

C. Prior to commencement of any construction or work on the Property, Developer shall deliver to the Village all performance and payment guarantees required by this Agreement in a form acceptable to the Village which shall include a performance guarantee for the On-Site Improvement Project as required by this paragraph, the escrow account or letter of credit for the payment of fees and Developer's portion of the Off-Site Improvement project in accordance with paragraph 19 of this agreement and the financial assurances as required in paragraph 8 herein.. In accordance with the approved final site plans, the On-Site Improvement Project shall be completed in three construction sequences. The parties agree that the total performance guarantee for construction of the On-Site Improvement Project shall be in the amount of \$2,490,000.00, which shall be delivered to the Village in three installments to correspond with the commencement of each construction sequence. Construction of the first sequence shall be guaranteed by a performance bond or other financial guarantee acceptable to the Village in the amount of \$1,500,000.00. Upon substantial completion of sequence one of the Development, and prior to commencement of any construction or work on sequences two or three of the Development, the Developer shall secure performance of sequence two of the Development with a performance bond or other financial guarantee acceptable to the Village in the amount of \$540,000.00. Sequence three of the Development shall not be commenced until sequence two is substantially complete and a performance bond or other performance guarantee acceptable to the Village is made in the amount of \$450,000.00. Such performance guarantees shall be delivered to the Village in the form of a cash deposit, certified check, irrevocable bank letter of credit, corporate surety bond or other security acceptable to the Village. For the purpose of protecting the Village from construction defects, Developer agrees to warrant each sequence of construction for a period of one year after final approvals, acceptance and public dedication of the sequence. If defective work is discovered and corrected within the warranty period, warranty for the corrected work shall be extended for one (1) year from the correction date. The Developer agrees to permit ten (10%) percent of the performance guarantee for each construction sequence to continue through the warranty period of the completed and finally approved construction sequence or, if work is corrected during the warranty period, the parties shall agree upon an appropriate performance guarantee to continue for one (1) year from the correction date. The performance guarantee shall not be terminated or canceled by Developer unless either (i) the Village releases Developer from all or any part of this obligation or (ii) the warranty period has expired. Any security required by this agreement shall contain a provision which requires that the Village be notified in writing no less than 60 days prior to termination or cancellation of the security. Failure of Developer to provide and maintain security required by this contract shall constitute a breach of contract and forfeiture by Developer of any right to continue with the development of the Property and the Village may withhold issuance of any approvals, inspections, permits, certificates of occupancy and may require

Developer to stop work and further progress of the project until such time as a security reasonably acceptable to the Village is reinstated or otherwise provided. Developer shall indemnify and hold harmless the Village for any damages resulting from the Village's actions under this paragraph. As the On-Site Improvement Project progresses and improvements required by the development plans are completed and finally approved by the Village Engineer, the amount of the security required by this paragraph may be proportionately reduced on the initiative of the Village or petition of the Developer, but at no time shall the security be reduced below the estimated cost for completion of all required improvements under the plans for the construction sequence of the On-Site Improvement Project.

In the event the Developer defaults in making the improvements for which a performance guarantee was required within the time period established by the Village, the Village shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements specified in the approved plans through contract or otherwise, including specifically the right to enter upon the subject Property to make the improvements. If the performance guarantee is not sufficient to allow the Village to complete the improvements for which it was posted, the Developer shall be required to pay the Village the amounts by which the costs of completing the improvements exceed the amount of the performance guarantee deposited. Should the Village use the performance guarantee or a portion thereof to complete the required improvements, any amounts remaining after said completion shall be applied first to the Village's reasonable and customary administrative costs arising out of completion of the improvements for which the performance guarantee was deposited including, without limitation, attorney fees, planning consultant fees, and engineering consultant fees incurred to complete the improvement with any balance remaining being refunded to the Developer.

- D.** The Village shall establish a special assessment district for the Property to recover Developer's participation in the actual costs to install the new twelve (12") inch water main as required in subparagraph (B)(ii) above. The actual costs for the water main extension shall include costs and expenses for financing, engineering, planning, legal, administrative and contingencies as stated in paragraph (B) above which may be rolled into the special assessment district for the water main improvement. It is anticipated that the Village may pay cash for its share of the water main improvement. If the Developer requests the Village to issue municipal bonds as a method of financing the Developer's equitable participation in the water main improvement, Developer agrees to pay one hundred percent (100%) of the costs and expenses incurred by the Village for providing such financing, specifically including all interest paid on the bonds and all legal and administrative fees associated with issuance and maintenance thereof and all such costs shall be rolled into the special assessment district for the water main

improvement. The special assessment shall be divided equally among the 103 units within the Emerald Glen site condominium to be located on the Property. The assessment shall be for a seven (7)-year period from the date of its establishment and can be prepaid at any time without penalty.

E. The On-Site Improvement Project contemplated under this Agreement shall be completed by Developer as approved by the Village within three (3) years. In the event Developer fails to complete the On-Site Improvement Project on or before such time, customary delays excepted, the Village shall be entitled to proceed as specified in paragraph (F) below. "Customary Delays", as such term is used in this Agreement, shall mean and include causes beyond the reasonable control of Developer including, but not limited to, acts of God, war, severe weather and labor strikes. The parties agree that time is of the essence. Should Customary Delays occur, a new final date for completion that is reasonably agreeable to the Village shall be established. Developer shall be responsible for timely completion by the agreed date.

F. In the event Developer has failed to complete the On-Site Improvement Project within the time period specified in paragraph (E) above and in the manner required by this agreement and the approved plans, or in the event Developer fails to properly maintain the On-Site Improvement Project prior to completion, final approval and/or dedication, and provided the Village has given Developer 60 days prior written notice of such failure to maintain and/or timely complete in conformance with this agreement and the approved plans and Developer has not completed and/or maintained the On-Site Improvement Project as demanded within said 60 days, then the Village shall have the authority, but shall not have the legal obligation, to complete the On-Site Improvement Project and/or seek completion of any maintenance that may be necessary or appropriate for conformance with approved plans, payment for which shall be from the security provided for in paragraph (C) above. In such event, all costs and expenses incurred by the Village including without limitation actual attorney fees, planning consultant fees, engineering consultant fees, and all other costs and expenses to complete and/or maintain the On-Site Improvement Project consistent with this agreement and approved plans, or any portion thereof, and as otherwise incurred by Village to enforce the provisions of this contract and the approved plans, shall be paid from the bond or other security as required in paragraph (C) above. Any remedies the Village may have under the terms of this contract are in addition to any other remedies the Village may have under its ordinances and as otherwise provided for by law.

8. Wooded areas to be preserved have been designated on the final site plan (the "Limits of Clearing"). These wooded areas and individual trees will be clearly designated on the site using silt or snow fence protective barriers. No trees or other vegetation may be removed from said areas without prior written approval from the Village. The Developer shall

provide financial assurances in a form acceptable to the Village Council in the amount of fifty thousand (\$50,000.00) dollars per Construction Sequence to preserve the woodlands specified on the final site plan and to assure the restoration of any damage that might occur to said wooded areas. This financial security is in addition to any other guarantees required by this agreement. Such financial security obligation shall be in place and approved by the Village prior to any construction or improvement and terminated upon final acceptance by the Village of each Construction Sequence, and the specific portion of the On-Site Improvement Project contained therein.

9. All permits required by the Michigan Department of Environmental Quality shall be issued prior to any work being conducted within any regulated wetlands.
10. All garages shall be a minimum of two cars and attached. No Less than ten (10) homes within the Development will be constructed with side-entry garages. In addition, Developer agrees to make every attempt to encourage the construction of homes with side entry garage doors. In an attempt to encourage and facilitate side entry garages, at Developer's option, one (1) side yard setback may be reduced to a 5 foot minimum, with the opposite side yard setback increasing to a 15 foot minimum. In no circumstance shall there be two (2) 5-foot side yard setbacks immediately adjacent to one another.
11. Home construction traffic only shall be allowed from Sanborn Road until the infrastructure is complete for Construction Sequence One (1). Upon completion of the infrastructure and any homes in Construction Sequence One (1), emergency access only will be permitted from Sanborn Road until the thirty (30) homes in Construction Sequence One (1) are granted a certificate of occupancy. In the event of an emergency, break away chains approved by the fire and police departments shall be installed.
12. The Village Engineer has found that, given the proposed access and expected traffic generated by the project, the entrance to the project at Territorial and Main is currently adequate. However, the parties expect that a further study of the intersection will be conducted by the Village engineers during the third phase of the development. Developer agrees to pay fifty (50%) percent of the total reasonable costs to improve the intersection in accordance with the Village engineer's recommendations upon a future finding that improvement of the intersection is necessary and/or appropriate. The "reasonable costs" for such an improvement are currently estimated at sixty-one thousand (\$61,000.00) dollars.
13. The Developer shall be permitted to develop up to three (3) model homes, and any number of homes for which Developer has a signed building contract, during the construction of infrastructure for Construction Sequence One (1). One of these homes shall be constructed with a side-entry garage. No Certificate of Occupancy shall be issued until the infrastructure is complete. The sales building will also be removed within three (3) months upon the completion of the model homes as provided for in this paragraph.

14. The Developer has negotiated with the Village the terms of the Final Site Plan, and such plans represent the product of the joint efforts and agreements of the Developer and the Village. The final site plan including conditions thereto, and any modification or amendment subsequently approved by the Village, is adopted by reference herein and incorporated as a part of this agreement as if fully stated herein. The Developer fully accepts and agrees to the final terms, conditions, requirements and obligations of the Final Site Plan and any approved modifications thereof, and shall not be permitted in the future to claim that the effect of the Final Site Plan or modification results in an unreasonable limitation upon use of all or a portion of the Property, or claim that enforcement of the Final Site Plan is unreasonable and/or causes an inverse condemnation or taking of all or any portion of the Property and hereby specifically waives any claims Developer may have. Developer agrees to be strictly liable for all of the On-Site Improvement Project in accordance with approved plans, standards, and specifications, and guarantees same against construction defects as provided in paragraph 7(C) above, or until such time as a proper successor in interest assumes responsibility hereunder by becoming a party hereto in an appropriate amendment, which ever is first.
15. This Agreement shall run with the land constituting the Property, and shall be binding upon and inure to the benefit of the Developer and the Village, and their respective heirs, successors, assigns and transferees.
16. This Agreement shall be interpreted and construed in accordance with Michigan law, and shall be subject to enforcement only in Michigan courts.
17. If a court of competent jurisdiction shall declare any part of this Agreement to be invalid, such ruling shall not affect any other provision of this Agreement not specifically included in said ruling.
18. The Village and its representatives shall be entitled to perform periodic inspection of the On-Site Improvement Project during construction thereof, and shall require certification by the Village Engineer that public sanitary sewer and public water are constructed in accordance with Village standards. The Village shall not accept public sanitary sewers and public water until such certification from the Village Engineer is received, and necessary utility easements have been granted by the Developer. Developer shall remain liable for required maintenance, alteration and improvements to the infrastructure and the On-Site Improvements Project on the Property until final acceptance of the construction

Development forward and which are reasonably necessary to ascertain and assure compliance with the approved plans and this Agreement. Prior to commencement of any construction, Developer shall establish payment guarantees to secure the payment of Developer's equitable participation in the Off-Site Improvement Project described in paragraph 7(B) and the intersection improvement described in paragraph 12 of this agreement, and to secure payment of all other costs and expenses incurred by the Village in the performance of its functions related to the development of the On-Site and Off-Site Improvement Projects for which no other security is established and/or required by this agreement. The payment guarantee shall be in the form of an escrow account, irrevocable bank letter of credit or other guarantee that is acceptable to the Village. As in the construction performance guarantee required in paragraph 7(C) of this Agreement, the payment guarantee required by this paragraph shall be delivered to the Village in three sequences to correspond with projected costs and expenses for each construction sequence of the Development. The payment guarantee for construction sequence one shall be in an amount which includes the sum of the current estimate for engineering oversight by the Village engineers in the amount of \$131,200.00; the current estimate for landscape field review costs and fees by the Village planning consultants in the amount of \$5,550.00; Developers equitable share of the Off-Site Improvement Project for the sanitary sewer pump station currently estimated to be in the amount of \$73,245.00; and the cost for installation of the sidewalk described in paragraph 7(B) of this Agreement for which there is no current estimate. Prior to commencement of any work in construction sequence two, Developer shall deliver a payment guarantee to the Village to secure payment for engineering oversight fees currently estimated to be in the amount of \$74,000.00; and landscape field review costs and fees by the Village planning consultant currently estimated to be in the amount of \$5,550.00. Prior to any work in construction sequence three, Developer shall deliver a payment guarantee to the Village for engineering oversight and landscape field review costs and expenses currently estimated to be in the amount of \$79,550.00. If it is determined that an improvement to the Territorial and Main intersection is required under paragraph 12 of this Agreement, then the payment guarantee for construction sequence three shall also include Developers equitable share of the costs and expenses for the intersection improvement which is currently estimated at \$30,500.00. The parties acknowledge that the amount of payment guarantees required by this paragraph are based upon conceptual estimates and the actual costs and expenses may be more or less than those stated herein. Developer agrees to assume the risk of any reasonable fluctuations of the amounts stated herein and shall remain liable for total actual costs and expenses incurred by the Village and the actual cost for Developer's equitable share of the Off-Site Improvement Project and as otherwise provided for herein. If an escrow account is established, the account will be debited by the Village at such time as fees, costs and expenses are incurred. If an irrevocable bank letter of credit is established, Developer shall pay the fees, costs and expenses as they are incurred by the Village, and upon receipt of a monthly statement from the Village. The Village shall provide Developer with a monthly itemized accounting and notice of debits made to the escrow account or in accordance with the letter of credit. If Developer believes that any debit is unreasonable, the matter will be

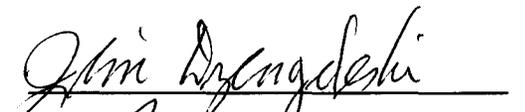
addressed and determined by Village Council upon written objection which is a final determination appealable to a Court of competent jurisdiction in accordance with laws made and provided therefore. If at any time Village determines that the amount in the escrow account or letter of credit is inadequate to cover the estimated costs/expenses/fees, Developer agrees to make an additional deposit in an amount determined by the Village to be necessary to cover the expected costs/expenses/fees. Such additional deposit shall be delivered from Developer within fourteen (14) days of written notice. Failure of Developer to pay the Village's costs, expenses and/or fees, as required herein or as otherwise provided for in the Village ordinances, and failure to make deposits with the Village as required by this paragraph, shall constitute a breach of this Agreement. A breach under this provision shall result in an immediate stop work order from the Village for any ongoing construction and improvement on the Property except where it is necessary to continue such work for public health or safety. Until such time as payments are made as required herein, Developer shall have no right to continue and the Village shall have no obligation to take any action that would cause further expenditure of Village resources.

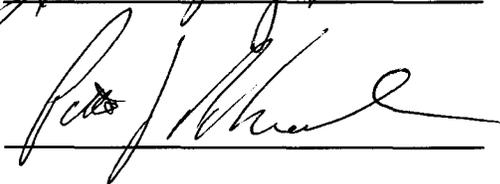
20. The Developer shall indemnify, defend and save harmless the Village, its council members, employees, agents and independent contractors from and against all claims damages, losses and expenses arising out of or resulting from the performance of the work caused in whole or in part by any act or omission of the Developer, its subcontractors or anyone for whose acts any of them may be liable, except that the Developer shall not be liable for any claims, damages, losses and expenses rising out of or resulting from the negligent acts of the Village, its council members, employees, or independent contractors. Developer shall procure and maintain during the life of this agreement Workmen's Compensation Insurance for all employees engaged in work on the project, and public liability insurance to an amount of not less than one million dollars (\$1,000,000.00) for injuries, including accidental death to any one person, and subject to the same limit for each person in an amount not less than two million dollars (\$2,000,000.00) on account of one accident, and Contractor's property damage insurance in an amount of not less than one million dollars (\$1,000,000.00). The public liability insurance shall contain a clause whereby said policy cannot be cancelled until after a written notice of intention to cancel has been filed with the Village at least ten (10) days prior to the date of cancellation, Certificates of insurance shall be filed with the Village before work under this agreement may commence. The Village shall be named as an additional insured under the policies.
21. The Village shall be responsible for maintenance, repair and replacement of the street lights installed in connection with development of the Property.

THIS AGREEMENT was executed by the respective parties on the dates specified with the notarization with their names, and shall take effect on the effective date of the Village's granting of Final Site Plan approval of the Emerald Glen Planned Unit Development.

Dated this 17th day of March, 2003

WITNESSES:





VILLAGE:

Village of Manchester, a Michigan municipal corporation



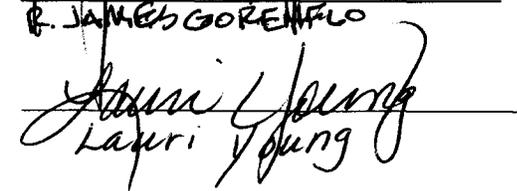
Patricia Vaillencourt, President/Mayor



Jeffery Wallace, Village Manager

WITNESSES:



R. JAMES GOREFFLO


Lauri Young

DEVELOPER:

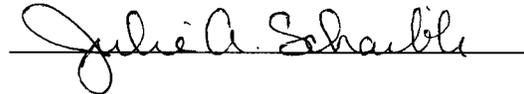
Wexford-Emerald Glen, L.L.C., a Michigan limited liability company, by Wexford Development Group, LLC, a Michigan limited liability company, Manager



Craig A. Welch, Manager

STATE OF MICHIGAN)
) Ss.
COUNTY OF WASHTENAW)

On this 17th day of March, 2003, the foregoing Agreement was acknowledged before me by Patricia Vaillencourt, President/Mayor of the Village of Manchester, a Michigan municipal corporation, on behalf of the Village.



Notary Public, _____ County, MI
My commission expires: _____

JULIE A. SCHABLE
NOTARY PUBLIC WASHTENAW CO., MI
MY COMMISSION EXPIRES May 10, 2008

STATE OF MICHIGAN)
) Ss.
COUNTY OF WASHTENAW)

On this 9th day of April, 2003, the foregoing Agreement was acknowledged before me by Craig A. Welch, Manager of Wexford Development Group, LLC, a Michigan limited liability company, Manager of Wexford-Emerald Glen, LLC, a Michigan limited liability company, on behalf of the companies.



Notary Public, _____ County, MI
My commission expires: _____

LAURI YOUNG
Notary Public, Washtenaw County, Michigan
My Commission Expires on 5/23/07

Emerald Glen PUD
Development Agreement 3/10/03

3/20/06

**FIRST AMENDMENT TO VILLAGE OF MANCHESTER/
WEXFORD-EMERALD GLEN, LLC
DEVELOPMENT AGREEMENT FOR EMERALD GLEN
PLANNED UNIT DEVELOPMENT**

This First Amendment to Development Agreement (the "Amendment") is made as of the 3rd day of April, 2006 between the Village of Manchester, as the Village, and Wexford-Emerald Glen, LLC, as Developer. Reference is made to the original Development Agreement dated March 10, 2003, between the parties (the "Development Agreement").

This Amendment shall amend the original Development Agreement, only to the extent set forth below. All other terms and conditions of the Development Agreement remain unchanged and in full force and effect.

1. The timing for the completion of the On-Site Improvement Project as described in Section 7.E. shall be changed from three (3) years to seven (7) years.

All other terms and conditions of the Development Agreement remain in effect.

IN THE WITNESS WHEREOF, the parties hereto have caused the First Amendment to be executed by their duly authorized representatives as of the 3rd day of April, 2006.

VILLAGE:

The Village of Manchester

By: Patricia Vaillencourt

Patricia Vaillencourt

Its: President/Mayor

DEVELOPER:

Wexford-Emerald Glen, LLC by Wexford
Development Group, LLC, Manager

By: Craig A. Welch

Craig A. Welch

Its: Manager