

RESOLUTION 15-85

**A RESOLUTION AUTHORIZING EXECUTION OF A
RENEWED AND RESTATED DEVELOPMENT AGREEMENT
RELATING TO THE CLUBLANDS SUBDIVISION**

WHEREAS, the Village previously entered into a development agreement with Neumann Homes, Inc., to lay out the scope and obligations of the landowner/developer in developing the Clublands Subdivision, and

WHEREAS, the financial collapse of Neumann and its bankruptcy resulted in the original development agreement being in a state of default, and

WHEREAS, BMB Associates I LLC is the current title holder of the vacant and unimproved properties within Clublands, and

WHEREAS, BMB wishes to resume development of Clublands, and

WHEREAS, the Village Administrator and Village Attorney, acting upon the direction of the Mayor and Village Board has negotiated a renewed and restated development agreement in the form attached as Exhibit A hereto, and

WHEREAS, the Exhibit A agreement is intended to renew and refresh the covenants set forth in the defaulted agreements with Neumann, and to lay out a course for the resumption of the sales of houses in Clublands, ensuring to the maximum extent possible the necessary elements to protect current landowners and the Village as a whole from risks of development, and

WHEREAS, the Village is contemplating the refunding of the existing special service area bonds affecting the Clublands development and the Deercrest development in a combined refunding bond issuance, and

WHEREAS, Antioch Land Trust LLC, an affiliate of BMB Associates I LLC, owns certain lots within the Deercrest Subdivision previously owned by Neumann, and

WHEREAS, the interconnected nature of the proposed joint refunding necessitates that the agreement set forth in Exhibit A include certain limited obligations of Antioch Land Trust in connection with the issuance of the refunding bonds, along with the primary obligations of BMB Associates I LLC as the successor developer of Clublands, and

WHEREAS, the corporate authority finds and declares that the Exhibit A agreement is an appropriate and necessary agreement, that its terms are fair and equitable, and that the same should be executed and implemented,

NOW THEREFORE, BE IT RESOLVED by the Village of Antioch, Lake County, Illinois, as follows:


Village of Antioch, Illinois

SECTION ONE: The Mayor, Clerk and Administrator are directed to execute and implement the attached Exhibit A Renewed and Restated Clublands Development Agreement.

SECTION TWO: This resolution shall take effect immediately upon passage.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS 16TH DAY OF NOVEMBER, 2015.

ATTEST:



LAWRENCE M. HANSON, MAYOR

LORI K. FOLBRICK, VILLAGE CLERK

RENEWED AND RESTATED CLUBLANDS DEVELOPMENT AGREEMENT

FOR AND IN CONSIDERATION of the mutual undertakings and covenants described herein, the VILLAGE OF ANTIOCH and BMB ASSOCIATES I LLC (collectively, the "Parties") do hereby agree as follows:

PREAMBLE

WHEREAS, the VILLAGE OF ANTIOCH, a municipal corporation existing under the laws of the State of Illinois (the "Village") previously entered into a contractual document known as the Clublands Development Agreement dated October 28, 2002 ("Development Agreement") with Neumann Homes, Inc. ("NHI" or "Neumann"), a true copy of which is attached hereto as Exhibit A and incorporated herein by reference, and

WHEREAS, NHI commenced the development of the Clublands subdivision, being a large parcel of undivided land within the corporate boundaries and jurisdiction of the Village, pursuant to the terms and conditions of the Development Agreement, and

WHEREAS, the lands referred to in the Development agreement were partially improved with roads, sewers, water lines, and other utilities, as well as a number of single-family homes, and

WHEREAS, NHI filed for bankruptcy protection in 2007, and it was subsequently liquidated, leaving behind a partially completed subdivision, incomplete infrastructure and a host of legal issues, bond claims, contractors' liens and the like, and

WHEREAS, during the course of the NHI bankruptcy, the property in Clublands that was then still owned by NHI was transferred to BMB Associates I LLC, a Delaware limited liability company ("BMB"), an entity controlled by ColeTaylor Bank, which had provided mortgage lending on said parcels, and

WHEREAS, ColeTaylor subsequently conveyed certain parcels to the Clublands Homeowners' Association, which was set up by NHI pursuant to the plats and the Development Agreement, and

WHEREAS, ColeTaylor thereafter conveyed its entire membership interest in BMB to Troy Mertz, and

WHEREAS, the terms and conditions of the Development Agreement were transferrable and binding on the successors and assigns of NHI, and

WHEREAS, BMB has proposed to work with the Village to allow the Village to refinance the Special Service Area Bonds known colloquially as "SSA-2" which encumber the Clublands properties, including both the developed properties currently owned by third parties, and the remaining lands owned by BMB as well as other special service area bonds affecting the neighboring "Deercrest" subdivision by issuance of a combined bond issuance (the "Series 2015 Bonds"), and

WHEREAS, BMB further proposed to resume development of the Clublands subdivision consistent with the existing plats, the Development Agreement and the recorded Covenants, Conditions and Restrictions of Record, subject to certain modifications described generally herein, and

WHEREAS, the Village, as the issuer of the SSA-2 bonds, has cooperated in the intended refinancing effort, and continues to do so, and

WHEREAS, the Village and BMB wish to formally acknowledge the continued viability of the Development Agreement and its continued applicability to the sale of existing lots, and the development of new residential lots within the Clublands subdivision, and for this reason, the said parties enter into this Renewed and Restated Development Agreement.

TERMS AND CONDITIONS

NOW THEREFORE be it agreed as follows:

1. The recitals set forth in the foregoing Preamble are merged into this agreement as substantive parts thereof.

2. The Parties acknowledge and agree that the Development Agreement was intended to, and did bind NHI and the Village, and that the terms and conditions set forth therein were intended to and did constitute binding covenants running with the land, and shall bind all successors and assigns of BMB in perpetuity.

3. The parties acknowledge and agree that this Renewed and Restated Development Agreement will be recorded with the Lake County Recorder of Deeds in evidence of the continuing covenants once fully executed and approved by the corporate authorities of each party.

4. The Development Agreement was one part of a group of documents that NHI and the Village had negotiated to develop the Clublands properties, and that group included, but is not limited to the following principal agreements:

- a. The Development Agreement;
- b. The Anest Settlement Agreement;
- c. The Potable Water Improvement Agreement;
- d. The Park Fee Reimbursement Agreement;
- e. The Sewer and Water Recapture Ordinances;
- f. The SSA-2 Bond Ordinance.

5. Due to the Village's utilization of surety bond proceeds and undertaking litigation related thereto, and related to defending certain lien claims, some of the public improvements described in the foregoing principal agreements were completed, and are now fully paid for, within the control of the Village (although not yet formally accepted by the corporate authorities thereof), and for that reason, BMB is not entitled to any additional benefits (such as recapture or any other financial incentive) from said agreements, (other than is specifically provided for in paragraphs 7

and 9 of this Renewed and Restated Development Agreement), but is fully entitled to connect to and tap onto the utilities in the course of development, pursuant to the Development Agreement and the Ordinances of the Village.

6. At the time of executing this Renewed and Restated Development Agreement, BMB covenants and agrees that it has fully reviewed the existing infrastructure within the Clublands subdivision, that it is satisfied with the level of knowledge and information available to it about the locations and types of installed wet and dry utilities, and the conditions of the roadways, whether improved, partially improved or unimproved, and BMB further acknowledges that it is the obligation of the developer of the land to connect to the existing water and sewer lines and other utilities, and to improve and install roads according to the development plans, plats and the Development Agreement without monetary contribution by the Village (other than the continued cooperation of the Village in the refinancing of the SSA-2 bonds described herein).

7. The Parties further agree that the Sewer and Water Recapture Ordinances were adopted for the benefit of NHI, and whatever rights of recapture may exist, if any, are owned by the Liquidator of the assets of NHI, not BMB. Additionally, the Village acknowledges that NHI obtained the right to certain sewer line tap-on credits from Lake County. The Parties agree that nothing in this Agreement is intended to modify those rights, leaving BMB free to pursue them to the extent that it has the right to do so.

8. The Parties acknowledge that the Park Fee Reimbursement Agreement has been previously fully satisfied by the dedication of lands within the Clublands subdivision, including any that may be required by the Development Agreement to be included in the platting of any currently unimproved phases of the Clublands subdivision, and as such, no further cash contribution shall be required as a result thereof.

9. The Potable Water Improvement Agreement has also been fully satisfied from NHI funds, the proceeds of the initial placement of the SSA-2 bonds, Village funds and the proceeds of litigation against one or more of NHI's sureties, and other than is set forth in this paragraph, BMB is not entitled to any further cash contribution from that Agreement, and conversely is not required to make any further contributions thereunder, aside from the ordinary tap fees otherwise currently required. The parties therefore acknowledge that there are ongoing requirements within the Potable Water Improvement Agreement which provide for the payment of certain tap-on fees to NHI. In the bankruptcy, BMB obtained the right to 25% of the tap-on fees described therein, and it represents to the Village that it remains the current, sole owner of the right to such fees to be paid in the future to the Liquidator of NHI. The Village will make the appropriate payments required by the Potable Water Improvement Agreement to NHI's Liquidator and it will be the responsibility of BMB to collect its share without further assistance from the Village.

10. The Village also is pursuing one remaining claim against a surety of NHI, and whatever proceeds are recovered from such claim, if any, shall be the property of the Village and expended at its sole discretion.

11. The Development Agreement incorporated and was integrally related to the Anest Settlement Agreement, and as such, the Parties acknowledge and agree that the Anest Settlement Agreement remains in full force and effect, and is binding on BMB as the assignee or successor of NHI.

12. Within the Development Agreement, there are covenants of NHI to construct certain amenities for the ultimate benefit of the homeowners within the Clublands subdivision, and the Parties acknowledge that because of the NHI bankruptcy and the subsequent national economic recession the economic realities of developing the balance of the Clublands subdivision is likely to make construction of all such amenities difficult, if not impossible for BMB. The primary obligation thereunder is for BMB to construct certain clubhouse facilities for the benefit of the Clublands subdivision. As such, the Parties anticipate that BMB will come forward at the appropriate times to petition the Village to consider modifications to those covenants, and accordingly, the Village agrees to review such a petition in good faith, giving due and proper attention to the interests of the existing third party residents of the Clublands Subdivision through their Homeowners' Association. BMB acknowledges receipt of a draft agreement that was negotiated by the Village Attorney with a prior prospective redeveloper (Walton), and BMB has expressed an intention to utilize that draft as a model for its own negotiations with the Homeowners' Association.

13. Within the Development Agreement and within the Anest Settlement Agreement, there were provisions made for issuing a second Special Service Area bond, intended to fund the construction of additional infrastructure and public improvements within what has been designated as Phase 4 of the Clublands Subdivision. Due to the seriously altered financial situation presented following the Village's declaration of a default by NHI followed almost immediately thereafter by the bankruptcy of NHI and the recession that then followed shortly afterwards, the parties acknowledge and agree that no further SSA bonds are appropriate to issue on this property, and as such, agree that all clauses, terms, conditions and covenants contained in the Development Agreement and the Anest Settlement Agreement relating to the issuance of a second series of bonds for Phase 4 of the Clublands Subdivision are nullified, abrogated, set aside and will not be acted upon by either Party.

14. The Village agrees that the existing storm sewer improvements within the Clublands subdivision are sufficient to support the construction of up to 56 single family homes. The Village agrees that it shall issue up to 56 building permits to BMB or its assignee for single family home construction on lots not considered contributory to the Miller Road stormwater drainage system provided BMB (or its assignee) pay the fees and costs relating thereto. Prior to issuance of the 57th building permit (or any building permits thereafter), and in any event prior to the issuance of a building permit on any lot considered contributory to the Miller Road stormwater drainage system. BMB will be required to construct the Miller Road storm sewer improvements and associated detention pond improvements as set forth certain plans prepared by Manhard Engineering originally dated 8-31-2004 and revised November 2012 which are attached hereto as Exhibit A. Thereafter the Village agrees that it shall issue building permits for any remaining lots in the Clublands subdivision when requested by BMB or its assignee, provided that such party pays all applicable fees and costs therefore and provided the parcels for which building permits are requested are otherwise developed in accordance with the Clublands PUD.

15. In connection with the storm sewer improvements required under Paragraph 14 hereof, BMB acknowledges that the Village's preferred solution involves a gravity storm sewer that will require the acquisition of off-site easement rights. The Village agrees to cooperate with BMB to help obtain such easement rights to enable the gravity storm sewer. In the event neither BMB nor the Village is able to obtain such easement rights, after using commercially reasonable

efforts therefor, the Village agrees that BMB may elect to provide the required storm sewer capacity by installation of a system utilizing a lift station.

16. The Developer agrees that it will develop the Clublands property in compliance with Village of Antioch, Illinois Ordinance No. 02-09-32 dated September 16, 2002 (the "PUD Ordinance"). The Village acknowledges that the Developer, together with homebuilders that Developer may contract with, will bring specific architectural plans to the Village for approval prior to construction. To the extent such plans do not substantially conflict with any plans approved under the PUD Ordinance, the Village agrees that it shall approve such plans. To the extent such plans do substantially conflict with plans approved under the PUD Ordinance, the Developer and/or homebuilder may request modifications to the PUD Ordinance with regard to such plans and the Village agrees it will entertain such revisions pursuant to the Village's normal process for amending the PUD Ordinance.

17. Developer also makes the following commitments for the benefit of the Village:

- a. Prior to undertaking development work, Developer shall post performance bonds as required by the Village's Building Code, Subdivision Ordinance, and Watershed Development Ordinance to cover performance and installation of public and quasi-public improvements. Such bonds shall be subject to review and approval as to form and content by the Village, including the examination and approval of the contracts for the construction of the improvements in questions. The Village's approval shall not be unreasonably withheld, conditioned or delayed.
- b. Prior to the development thereof, Developer shall prepare and complete engineering plans and final plat documents for Phase 4. If these plans are not in substantial compliance with, and as conceived in, the Original PUD Ordinance (as may be amended) including the final plat of subdivision and final engineering plans approved by the Village for Phase 4, then Developer may petition to amend the PUD Ordinance to incorporate a more commercially marketable product. Notwithstanding this reservation of rights, the Parties acknowledge that overall density of the Clublands Subdivision was established and limited by the Anest Settlement Agreement and that the Parties are bound to those limits on overall density and that any amendment of the PUD Ordinance cannot exceed those limits.

18. Nothing herein should be taken as an indication of the Parties to modify any of the previously approved and recorded plats of Clublands subdivision, or any approved and recorded plat of any phase thereof.

19. Except as modified herein, the Development Agreement shall remain in full force and effect.

20. The Parties recognize that payments from BMB to the Village other than payments made by BMB of taxes of general applicability may be deemed to be private payments under the Internal Revenue Code of 1986, as amended (the "Code"), and that any such payments may cause interest on the Series 2015 Bonds and other financing instruments to be includible in the gross income of the owner thereof for federal income tax purposes. Accordingly, the Parties covenant and agree that if the Series 2015 Bonds are issued on a tax-exempt basis, the Village will accept no payment from BMB pursuant to any provision of this Agreement without first obtaining the advice of Bond Counsel that such payment will not impair the status of interest on

the Series 2015 Bonds or other financing instruments issued on a tax-exempt basis under the Code as not includible in the gross income of the owners thereof for federal income tax purposes.

21. The Village expressly agrees and recognizes that security for the Series 2015 Bonds and other financing instruments and payments of interest on Series 2015 Bonds and other financing instruments are limited to (a) taxes of general applicability, and (b) the amounts on deposit in the funds and accounts created under the ordinances and proceedings authorizing the issuance of the Series 2015 Bonds or other financing instruments. The Village recognizes that improper agreements with taxpayers may cause tax receipts to be classified as private payments under the Code. Accordingly, the Village covenants not to enter into or enforce any agreements with taxpayers, including, specifically BMB, that would modify the obligations of such taxpayers under general law without an opinion of Bond Counsel that such agreement or enforcement will not adversely affect the tax-exempt status of interest on the Series 2015 Bonds or other financing instruments issued on a tax-exempt basis for federal income tax purposes. If BMB requests that the Village enter into an agreement with BMB which would require an opinion from Bond Counsel under Paragraph 20 above or this Paragraph 21, then BMB agrees to pay the legal fees of Bond Counsel in conjunction with the issuance of such opinion. In the event that the Series 2015 Bonds are issued on a tax-exempt basis, no provision of this Agreement or any other agreement, written or oral, will be enforced for the benefit of the holders of the Series 2015 Bonds or other financing instruments or in any way to increase revenues available to pay interest on the Series 2015 Bonds or other financing instruments.

22. BMB, with respect to the Clublands and Antioch Land Trust LLC ("ALT"), with respect to Deercrest, agree to provide to the Village (except as otherwise provided), the underwriter of the Series 2015 Bonds, the Trustee (as defined in the Trust Indenture executed by the Village in connection with the Series 2015 Bonds) and the Consultant (as defined in the Trust Indenture executed by the Village in connection with the Series 2015 Bonds) certain continuing information concerning the development of the special service areas until such time as the Village has issued 200 building permits for the construction of single family homes or townhomes within the special service areas. This information includes the following (for each special service area, as applicable): quarterly reports setting forth (A) status of completion of construction of the public and quasi-public improvements required by this agreement; (B) the number of single-family and townhome parcel sales, (C) the number of single-family and townhome parcels for which building permits have been issued by the Village, (D) a description of the lots sold and the range of sales prices for such lots, (E) the number of homes constructed, (F) any pending litigation which would adversely affect the ability of BMB to complete the construction of the public and quasi-public improvements under this agreement, (G) any material change in the structure or ownership of the BMB or ALT, respectively, (H) any failure of BMB or ALT to pay by the date due general ad valorem property taxes, the special taxes or any other governmental charge on lots owned by BMB or ALT, (I) any denial or termination of credit, (J) the occurrence of any event of bankruptcy with respect to the BMB or ALT or their affiliates Developer, (K) any significant amendments to land use entitlements for the special service areas if such amendments are likely to prevent or delay the construction of the public and quasi-public improvements required by this agreement or sales of BMB or ALT-owned lots, (L) any previously undisclosed governmentally-imposed preconditions to commencement or continuation of construction of the public and quasi-public improvements required by this agreement if such preconditions are likely to prevent or delay the construction of the public and quasi-public improvements required this Agreement, and (M) any changes of which the ALT or BMB is aware, if material, in the alignment, design or likelihood of completion of

significant public improvements affecting the special service areas, including major thoroughfares, sewers, water conveyance systems and similar facilities. Quarterly reports shall be made available within 30 days after the end of each calendar quarter.

23. Pursuant to Resolution No. _____ adopted by the Village on _____, the Village shall authorize Lake County, as trustee for the taxing bodies affecting the Clublands and Deercrest developments, to transfer tax certificates held by Lake County within Deercrest and the Clublands to the Village in return for a payment by ALT and BMB in such amount as Lake County may require. Upon the issuance of the Series 2015 Bonds, the Village will transfer all such tax certificates to ALT, with regard to Deercrest and BMB, with regard to Clublands. Thereafter, ALT and BMB shall surrender such tax certificates to Lake County as soon as reasonably possible in order to eliminate all prior tax obligations relating thereto, provided however that ALT and BMB may elect to hold such tax certificates if ALT or BMB, as applicable, reasonably determines that doing so will allow it to remove other liens or encumbrances of record which would negatively affect its development of the property subject to such tax certificate(s) and further provided that ALT or BMB, as applicable, will surrender such tax certificates (or otherwise eliminate any prior tax obligations relating thereto) as soon as reasonably possible after it determines holding such tax certificates is no longer necessary.

24. The parties reserve the right to modify this Agreement, but only in a written document duly executed pursuant to all applicable laws, including the Illinois Municipal Code and the Antioch Municipal Code, and for that reason, no oral modifications hereof shall be of any force or effect.

25. This document is intended as the final expression of the Agreement of the parties on the matters set forth herein, and all oral and written representations, negotiations and other discussions preliminary to its execution are merged into this document.

26. This document shall be governed by the laws of the State of Illinois and the sole venue for the resolution of any disputes shall be the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois.

27. This Agreement shall remain in full force and effect until such time as the certificate of occupancy is granted by the Village to the residence constructed on the last platted lot in Phase 4 of Clublands, or twenty (20) years from its execution, whichever comes first.

28. Notices of any kind given under this Agreement shall be in writing and shall be delivered by overnight delivery (UPS or FedEx) or by email and shall be given to the following persons and entities as follows:

Village of Antioch:

James J. Keim, Administrator
874 Main Street
Antioch, IL 60002
email: jkeim@antioch.il.gov

with a copy to:

Robert J. Long
Village Attorney
Daniels, Long & Pinsel, LLC
19 North County Street
Waukegan, IL 60085
email: rlong@dlplawyers.com

BMB:

Troy Mertz
340 W. Butterfield Road
Unit 2D
Elmhurst, IL 60126
email: troymertz@gmail.com

with a copy to:

Karl Marschel
BRYAN CAVE LLP
161 North Clark Street
Suite 4300
Chicago, IL 60601-3315
email: karl.marschel@bryancave.com

29. This Agreement may be executed in counterparts, all of which shall be considered to be an original duplicate copy of this Agreement and fully enforceable.

30. If any provision, term or clause within this Agreement shall be found to be invalid by a court of competent jurisdiction, that finding shall not affect the balance of this Agreement, which shall remain in full force and effect to the fullest extent possible under the Laws of Illinois.

IN WITNESS WHEREOF, the parties have set their hands and seals on the dates below:

VILLAGE OF ANTIOCH

by: Lawrence M. Hanson,
its Mayor

Date: _____, 2015

Witness:

Lori K. Folbrick
Village Clerk

Date: _____, 2015

BMB ASSOCIATES I LLC

By: _____
Troy Mertz
its Manager

Date: _____, 2015

Joining with respect to certain reporting obligations required pursuant to Section 22 and 23 hereof, only:

ANTIOCH LAND TRUST LLC

By: _____
Troy Mertz
its Manager

Date: _____, 2015