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GLENWOOD SCHOOL WEST CAMPUS

STUDENT RESIDENTIAL CENTER

AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_ day of January 2013 by and between **THE FOX RIVER AND COUNTRYSIDE FIRE/RESCUE DISTRICT**, a municipal corporation of the State of Illinois and **KIVA REAL ESTATE INVESTMENTS, LLC**.

**WITNESSETH**

**WHEREAS, THE FOX RIVER AND COUNTRYSIDE FIRE/RESCUE DISTRICT** is a municipal corporation of the State of Illinois (hereafter “**FOX RIVER**” or the “**DISTRICT**”) serving over 25,000 residents and property owners in Campton, St. Charles and Wayne Townships in Kane and DuPage Counties, Illinois; and

**WHEREAS**, it is the statutory obligation of the **DISTRICT** to provide as nearly adequate fire and rescue services to the residents and property owners of the **DISTRICT**; and

**WHEREAS, KIVA REAL ESTATE INVESTMENTS, LLC**. (hereafter “**KIVA**”) is a limited liability company organized and existing under the law of the State of Illinois, with its principal place of business in Skokie, Illinois; and

**WHEREAS, KIVA** is the Contract-Purchaser of certain property consisting of 120 acres located in Campton Township, Kane County, Illinois, commonly referred to as the former Glenwood School (the “**Property**”) and located within the corporate boundaries of the **DISTRICT**; and

**WHEREAS, KIVA** has petitioned the corporate authorities of the Village of Campton Hills (the “**Village**”) for annexation and for a special use for the **Property** for use as an alcohol and substance abuse treatment facility (the “**Facility**”); and

**WHEREAS**, the parties hereto recognize that while the **Facility** will fill a community need for the services it will provide, its operations will or may impact the ability of the **DISTRICT** to provide fully adequate fire and rescue services to the other residents and property owners in the **DISTRICT**; and

**WHEREAS, KIVA** desires to be a good neighbor and corporate citizen of the community and the **District** and is willing to make the commitments, promises and undertakings as hereinafter provided in order to insure that the **DISTRICT** will continue to provide the highest quality of fire and rescue services within the **DISTRICT** and to otherwise fulfill its statutory mission;

**NOW, THEREFORE, in consideration of the mutual promises herein and hereafter contained, the DISTRICT and KIVA do hereby agree as follows:**

**SECTION 1 – Incorporation of Recitals.** The above and forgoing recitals are hereby incorporated into this Agreement as if fully set forth.

**SECTION 2 – Use of KIVA Water Supply.** KIVA agrees that the water supply located on the Property may be used by the DISTRICT as follows:

- A. Use of Water Supply for Emergency Response and Training.** KIVA agrees that the DISTRICT (and any other emergency response entity which is a member of any Mutual Aid Box Alarm System or party to an Auto-aid agreement with the DISTRICT) shall be permitted emergency access to the Property's water supply, without charge, for the purpose of emergency fire and/or rescue response and may draw on the water capacity of the Property subject to the limits of the system as determined by the operator of the system for such emergency purpose. KIVA further agrees that the DISTRICT (and any other emergency response entity which is a member of any Mutual Aid Box Alarm System or party to an Auto-aid agreement with the DISTRICT) shall be entitled upon reasonable notice to KIVA to use the Property's water supply, without charge, in connection with training activities of the DISTRICT, also subject to the limits of the system as determined by the operator of the system
- B. Improvements to Water Supply Access.** Within one (1) year from commencing operations at the Property (accepting its first patient at the Property), KIVA agrees to provide a paved access from the principal road traversing the Facility to the "Fill Hydrant Area."

**SECTION 3 – Transition Payment.** The parties recognize that any general real estate taxes levied and extended by the District will not be paid or collected until approximately June of 2014. Accordingly, in order to minimize the impact of the KIVA project, KIVA agrees to make a one-time transition payment to the DISTRICT in the amount equal to the general real estate tax payment that would be received by the DISTRICT based upon the most current Equalized Assessed Valuation of the Property and the DISTRICT's tax rate for 2012 general real estate taxes payable in 2013. The Transition Payment shall be made within sixty (60) days from commencing operations at the Property (accepting its first patient at the Property).

**SECTION 4 – Emergency Transport.** The DISTRICT shall serve the Facility with high quality emergency medical response and emergency medical transport services consistent with its statutory obligations and the needs of the DISTRICT and its residents. KIVA agrees that the Facility shall utilize the ambulance and transport services of the DISTRICT for all emergency transport of any patients, employees or visitors to the Facility if available and ready to respond.

KIVA agrees to guarantee payment of all charges for emergency medical transport from the facility within ninety (90) days of the DISTRICT providing its statement for such services. The DISTRICT shall provide duplicate statements to KIVA for all emergency transports from the Facility.

**SECTION 5 – Non-emergency Transport.** In the event the DISTRICT shall hereafter institute a program to provide non-emergency medical transport services, KIVA agrees to utilize such

services to the fullest extent possible, subject to the **DISTRICT** being able to meet the transport needs of the Facility. The **DISTRICT** agrees that all transport fees for such services shall be at the lowest rate charged by the **DISTRICT** to other similarly situated customers within the **DISTRICT**, or if there are no other similarly situated customers, at the lowest rate charged by the providers of substantially similar services located nearest the Facility.

**SECTION 6 – Development of Emergency Response Plan.** The parties agree that development of an emergency response plan is essential to the promotion of public safety at the Facility. **KIVA** and the **DISTRICT** agree to promptly develop a joint emergency response plan, in cooperation with other local law enforcement or emergency response agencies that shall address, at a minimum, the following:

- A. Regular inspections of the Facility by the **DISTRICT**;
- B. Compliance by **KIVA** with the **DISTRICT**'s alarm ordinance;
- C. Any warnings, information or other similar communications to the Village of Campton Hills Police Department or other law enforcement agency shall be copied to the **DISTRICT**;
- D. Ongoing training of all **KIVA** staff at the Facility in CPR and public safety issues, including a bi-annual review, to be conducted by **DISTRICT** personnel;
- E. Development of a staff plan for response to fire alarms, false alarms and notification procedures, including but not limited to evacuation of the Facility;
- F. Coordination of other emergency response plans, including "All-Hazards" emergencies, including weather-related and hazardous materials emergencies;
- G. Insuring all-weather access by the **DISTRICT** to the Facility and the Fill-Hydrant area.

**SECTION 7 – Donations by KIVA.** As a good neighbor and corporate citizen of the **DISTRICT** and the community, **KIVA** agrees to make the following payments to the **DISTRICT**:

- A. A payment of \$50,000 to the **DISTRICT** toward the upgrade of one **DISTRICT** engine to Advanced Life Support status, or toward such other **DISTRICT** purpose as determined in the **DISTRICT**'s discretion. The payment shall be made in four (4) equal installments with the first installment to be paid six (6) months after the Facility commences operations, and the remaining three (3) installments to be paid annually thereafter on the anniversary date of the first payment.
- B. Payments toward the cost of funding additional **DISTRICT** personnel or toward such other **DISTRICT** purpose as determined in the **DISTRICT**'s discretion, as follows:
  - 1. When **KIVA** reaches an occupancy level of at least 50% but less than 70% (the "50% Occupancy Level"), **KIVA** shall be obligated to pay the **DISTRICT** \$40,750 per year pursuant to the terms hereof (the "50% Occupancy Level Payment").

2. When KIVA reaches an occupancy level of at least 70% but less than 90%, (the "70% Occupancy Level"), KIVA shall be obligated to pay the DISTRICT \$81,500 per year pursuant to the terms hereof (the "70% Occupancy Level Payment").
3. When KIVA reaches an occupancy level of at least 90%, (the "90% Occupancy Level"), KIVA shall be obligated to pay the DISTRICT \$163,000 per year pursuant to the terms hereof (the "90% Occupancy Level Payment").
4. Occupancy Levels shall be determined by dividing the total number of actual patient days experienced during a defined twelve (12) month period by 35,040 days, which is the total number of possible patient days during any given twelve ("12") month period.
5. Beginning twelve ("12") months after the Facility commences operations, KIVA shall monitor on a monthly basis its prior twelve ("12") month occupancy level to determine whether the initial 50% Occupancy Level has been achieved. Kiva shall make the first 50% Occupancy Level Payment within 30 days of determination it has achieved the 50% Occupancy Level, however such payment shall be prorated based on the number of days left in the calendar year. Thereafter, all annual payments due pursuant to this Paragraph shall be made in 2 equal installments on January 15<sup>th</sup> and July 15<sup>th</sup> of each year.
6. Once the initial 50% Occupancy Level has been achieved, funding shall never drop below the 50% Occupancy Level Payment even if the actual occupancy level drops below the 50% Occupancy Level.
7. Once the initial 50% Occupancy Level has been achieved, Kiva shall thereafter monitor its occupancy levels twice per year on January 15<sup>th</sup> and July 15<sup>th</sup> to determine the appropriate level of funding. Except as set forth in subparagraph 8 below, all subsequent increases or decreases in funding required pursuant to this Section shall not begin until 6 months after such Occupancy Level determination has been made.
8. Notwithstanding the provisions of the foregoing subparagraph 7, once the 90% Occupancy Level has been achieved, the payments pursuant to that Occupancy Level shall continue unless the occupancy level (as determined at the regular 6 month intervals) thereafter drops below 80%, in which case the funding level shall return to the 70% or 50% Occupancy Levels (as the case may be) 6 months after such determination has been made.
9. In the event the 90% Occupancy Level has been achieved, and the occupancy level (as determined at the regular 6 month intervals) thereafter drops below 80%, then from that point forward, the payment amount previously required at the 90% Occupancy Level (\$163,000) shall thereafter be required when KIVA reaches an occupancy level of at least 85% and both the "90% Occupancy Level" and the "90% Occupancy Level Payment" shall thereafter be referred to, respectively, as the "85% Occupancy Level" and the "85% Occupancy Level Payment."

**SECTION 8 – Reimbursement of District Professional Fees.** KIVA agrees to promptly reimburse the **DISTRICT** for its reasonable professional fees incurred in the development and approval of this Agreement, including attendance at and participation at Village meetings.

**SECTION 9 – Annexation to the Village.** The **DISTRICT** agrees that the undertakings and donations provided for in this Agreement by KIVA minimize or eliminate to the **DISTRICT**'s satisfaction any potential negative impact on the **DISTRICT** or its ability to provide adequate fire protection and emergency response to the **DISTRICT** and the **DISTRICT** shall so advise the Village.

**SECTION 10 – Representations; Authority.** The parties hereto respectively represent and warrant to the other party that they have full authority in law and in fact to execute this Agreement and to carry out and fulfill the obligations and undertaking herein.

**SECTION 11 – Execution in Counter-parts.** This Agreement may be executed in counterparts, which together shall constitute one and the same document.

**SECTION 12 – Term and Termination.** The term of this Agreement shall commence upon the Effective Date of the Annexation Ordinance and Special Use Ordinance as defined in the Annexation Agreement to which this Agreement is attached as **Exhibit “E,”** and shall remain in full force and effect for so long as the Property is being used as the KIVA Permitted Use as set forth in said Annexation Agreement.

**SECTION 13 – Enforceability.** Either party shall have the independent right to enforce the terms of this Agreement against the other Party without the consent of any non-party.

**SECTION 14 – Binding Effect / Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns.

**SECTION 15 – Notice.** Any notices required, permitted or otherwise given pursuant to this Agreement shall be either personally delivered or shall be sent by certified mail, return receipt requested, or by facsimile transmission with a proof of facsimile receipt as follows:

If to the **DISTRICT**:

The Fox River & Countryside Fire/Rescue District  
40W304 LaFox Road  
St. Charles, IL 60175

with a copy to:

Kenneth Shepro  
P.O. Box 760  
Wayne, IL 60184  
Facsimile: (630-377-4387

If to KIVA:

Kiva Real Estate Investments LLC  
3359 Main Street  
Skokie, IL 60076

with a copy to:

Patrick M. Griffin  
Griffin | Villa | Williams LLP  
501 W. State St., Suite 203  
Geneva, IL 60134  
Facsimile: (630) 262-0644

**WHEREFORE, the parties hereto have caused this Agreement to be executed as of the date and year first above written.**

**THE FOX RIVER AND COUNTRYSIDE FIRE/RESCUE DISTRICT**

By: \_\_\_\_\_  
**President**

**KIVA REAL ESTATE INVESTMENTS LLC**

By: \_\_\_\_\_  
**Manager**

**From:** fkb856 <fkb856@gmail.com>

**To:** kcshepro <kcshepro@aol.com>

**Cc:** slmarco <slmarco@me.com>

**Subject:** Proposed Agreement

**Date:** Mon, Feb 22, 2016 12:39 pm

**Attachments:** Agreement with the District Feb 21.pdf (396K)

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Dear Mr. Shepro,

Attached is a proposed agreement between the Fox River and Countryside Fire/Rescue District and my client Maxxam Partners, LLC. It is my understanding that the consideration of entering into an agreement is on the Fire/Rescue District's agenda for the tonight's meeting.

If you should have any questions or concerns please do not hesitate to contact me

F. Keith Brown

847 910 5045

One of the attorneys for Maxxam Partners, LLC

On behalf of

Sent from Windows Mail

FD-5



## AGREEMENT

**THIS AGREEMENT**, is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, by and between **THE FOX RIVER AND COUNTRYSIDE FIRE/RESCUE DISTRICT**, a municipal corporation of the State of Illinois, and **MAXXAM PARTNERS, LLC**, a Delaware limited liability company.

## **W I T N E S S E T H**

**WHEREAS, THE FOX RIVER AND COUNTRYSIDE FIRE/RESCUE DISTRICT** is a municipal corporation of the State of Illinois (hereafter “**FOX RIVER**” or the “**DISTRICT**”) serving over 25,000 residents and property owners in Campton, St. Charles and Wayne Townships in Kane and DuPage Counties, Illinois; and

**WHEREAS**, it is the statutory obligation of the **DISTRICT** to provide as nearly adequate fire and rescue services to the residents and property owners of the **DISTRICT**; and

**WHEREAS, MAXXAM PARTNERS, LLC** (hereafter “**MAXXAM**”), is a limited liability company organized and existing under the law of the State of Delaware; and

**WHEREAS, MAXXAM** is the Contract-Purchaser of certain property consisting of 120 acres located in Campton Township, Kane County, Illinois, commonly referred to as the former Glenwood School (the “**Property**”) and located within the corporate boundaries of the **DISTRICT**; and

**WHEREAS, MAXXAM** has petitioned the corporate authorities of the County of Kane (the “**County**”) for a special use for the Property for use as an alcohol and substance abuse treatment facility (the “**Facility**”); and

**WHEREAS**, the parties hereto recognize that while the Facility will fill a community need for the services it will provide, its operations may impact the ability of the **DISTRICT** to provide fully adequate fire and rescue services to the other residents and property owners in the **DISTRICT**; and

**WHEREAS, MAXXAM** desires to be a good neighbor and corporate citizen of the community and the District and is willing to make the commitments, promises and undertakings as hereinafter provided in order to insure that the **DISTRICT** will continue to provide the highest quality of fire and rescue services within the **DISTRICT** and to otherwise fulfill its statutory mission.

NOW, THEREFORE, in consideration of the mutual promises herein and hereafter contained, the **DISTRICT** and **MAXXAM** do hereby agree as follows:

**SECTION 1 – Incorporation of Recitals.** The above and forgoing recitals are hereby incorporated into this Agreement as if fully set forth.

**SECTION 2 – Transition Payment.** The parties recognize that any general real estate taxes levied and extended by the **DISTRICT** will not be paid or collected until approximately \_\_\_\_\_ of 201\_\_\_. Accordingly, in order to minimize the impact of the **MAXXAM** project, **MAXXAM** agrees to make a one-time transition payment to the **DISTRICT** in the amount equal to the general real estate tax payment that would be received by the **DISTRICT** based upon the most current Equalized Assessed Valuation of the Property and the **DISTRICT**'s tax rate for 201\_\_ general real estate taxes payable in 201\_\_\_. The Transition Payment shall be made within sixty (60) from commencing operations at the Property (accepting its first patient at the Facility).

**SECTION 3 – Donations by MAXXAM.** As a good neighbor and corporate citizen of the **DISTRICT** and the community, **MAXXAM** agrees to make a payment of \$50,000 to the **DISTRICT** toward the upgrade of one **DISTRICT** engine to Advanced Life Support status, or such other **DISTRICT** purpose as determined in the **DISTRICT**'s discretion. The payment shall be made in four (4) equal installments with the first installment to be made six (6) months after the Facility commences operations, and the remaining three (3) payments to be made annually thereafter on the anniversary date of the first payment.

**SECTION 4 – Compliance With Cost Recovery Ordinance No. 2015-02.** **MAXXAM** shall comply with Ordinance No. 2015-02 regarding recovery of costs and, in connection therewith, shall guarantee payment of, and accept any liability for, any patient of the Facility for such costs incurred.

**SECTION 5 – Approval by the County for Special Use.** The **DISTRICT** agrees that the undertakings and donations provided for in this Agreement by **MAXXAM** minimize or eliminate any potential negative impact on the **DISTRICT** or its ability to provide adequate fire protection and emergency response to the **DISTRICT** and the **DISTRICT** shall so advise the County.

**SECTION 6 – Representations; Authority.** The parties hereto respectively represent and warrant to the other party that they have full authority in law and in fact to execute this Agreement and to carry out and fulfill the obligations and undertaking herein.

**SECTION 7 – Execution in Counter-parts.** This Agreement may be executed in counterparts, which together shall constitute one and the same document.