

## COUNCIL WORKSHOP ITEM

**ITEM:** Morningside Development Agreement  
**DATE:** January 15, 2001  
**PREPARED BY:** Daniel P. Blondin, Village Attorney  
**PURPOSE:** Transmit and Recommend for Approval a Development Agreement between the Village of Downers Grove and the owners of the Morningside Planned Development

### DISCUSSION:

On March 7, 2000, the Downers Grove Village Council approved Ordinance No. 4184 granting planned development approval for the Morningside Project. At that time, Ordinance No. 4184 included a number of provisions which obligated the Morningside owners to undertake certain improvements for the benefit of the Village. In particular, Section 5(b) provided that "owner shall provide Village with an easement over that portion of the driveway access which adjoins the public alley located north of the property for the purpose of permitting public access and traffic over such easement to be used in conjunction with the alley. This easement shall be in such form as approved by the Village Attorney and shall be recorded before occupancy."

In addition, Section 5(c) provided that the owner would be solely responsible for snow removal from the alley and driveway, including that portion located on public property.

A development agreement has been negotiated between the Village and the owners of the Morningside Planned Development, 5329 Investors, L.P., a copy of which is attached. Under this agreement, the Morningside owners agree to provide the access easement mandated under Ordinance No. 4184. In addition, they agree to construct an access drive on this easement area, as well as the public alley located immediately to the north of the Morningside project. The owner is to be solely responsible for all costs associated with this construction and is to maintain the access alleyway for a period of not less than twenty (20) years.

In consideration of the owner's commitments, the Village has agreed as follows:

1. The Village has agreed to waive the permit fees assessed against the Morningside owners in relation to their building. This waiver shall not exceed \$15,000.
2. The Village has agreed to underground certain utilities located within the access alley area. This undergrounding effort shall not exceed \$25,000.

### ATTACHMENT:

Morningside Development Agreement  
RESOLUTION AUTHORIZING EXECUTION OF A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND 5329 INVESTORS, L.P.

### RECOMMENDATION:

It is recommended that the Village Council authorize approval of the Morningside Development Agreement by resolution.

cc: April Holden, Village Clerk  
Jerry Sprecher, Deputy Village Manager  
Arlene Balicki, Manager's Office

**REDEVELOPMENT AGREEMENT BETWEEN THE  
VILLAGE OF DOWNERS GROVE AND 5329 INVESTORS, L.P.**

This Redevelopment Agreement (hereinafter referred to as the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between the Village of Downers Grove (the "Village") and 5329 Investors, L.P. (the "Owner").

WHEREAS, The Village is an Illinois Municipal Corporation and a home-rule unit pursuant to the laws and Constitution of the State of Illinois and has designated the Downers Grove Central Business District Increment Financing District by Ordinance No. 3997 adopted December 22, 1997 which includes properties generally located in the Downers Grove Central Business District. (the "TIF District"); and,

WHEREAS, The Village has the authority to assist property owners to redevelop property within the TIF district and to reimburse itself or third parties for certain eligible costs related to such redevelopment pursuant to the Tax Increment Allocation Redevelopment Act 65 ILCS 5/11-74.4-1 (the "Act").

WHEREAS, The Owner owns certain property within the TIF District commonly known as 5329 Main Street, Downers Grove, Illinois (the "Property") and proposes to construct a five-story residential building which will include 40 condominium units (the "Project"); and,

WHEREAS, The Village has approved planned development plans for Project on the Property by Ordinance No. 4184 adopted March 7, 2000; and,

WHEREAS, the Village Council of the Village has determined that the Project will provide significant public benefit including assessed valuations in the TIF District, providing additional residential facilities within the Central Business District Area, and otherwise promote the public health and welfare through improved land usage within the TIF District; and,

WHEREAS, The Owner has agreed to provide certain roadway improvements, grant an easement for public access and provide ongoing maintenance; and,

WHEREAS, The Village has agreed to provide certain economic incentives to assist the Owner in completing the Project and in consideration of the Owner's commitment herein.

NOW, THEREFORE, for and in consideration of their mutual agreements and undertakings contained herein, the parties hereto agree as follows:

**SECTION 1. PREAMBLE AND EXHIBITS.**

- 1.1. Recitals: The foregoing recitals are hereby incorporated as though fully set forth herein.
- 1.2. Exhibits: The following documents are hereby incorporated into and made a part of this Agreement:

EXHIBIT A. Engineering Improvement Plans for 5329 Main Street, Downers Grove, IL, dated August 15, 1999, consisting of 7 pages.

EXHIBIT B. Legal description of "Access Alley".

**SECTION 2. WAIVER OF PERMIT FEES.**

The Village agrees to waive (or refund if already paid) fees related to Village building and related construction permit fees up to an amount not to exceed \$15,000.00. Provided, Owner shall not be relieved of compliance with applicable building codes and other laws regarding the Project, including all required submittals for permits. Except as provided herein, Owner shall pay all other applicable fees, including but not limited to non-Village fees, such as but not limited to and fees imposed by the Downers Grove Sanitary District, as well as fees of the Village not considered building and related construction permit fees, such as the Park and School Donation fee.

**SECTION 3. UTILITY.**

- 3.1. There exists along the norther boundary of the Property certain above ground public utilities (the "Above Ground Utilities") as shown on Exhibit A, page 6. The Above Ground Utilities at this location include, Commonwealth Edison, Ameritech and AT&T Cable. The parties agree that, for the long term benefit of the Property as well as future redevelopment of area properties, the desiganted Above Ground Utilities should be placed underground. To that end the Village agrees to underground or cause to be underground, the designated Above Ground Utilities as provided herein. (the Undergrounding Project)
- 3.2. The Village's obligation under this section is subject to there existing adequate easements, dedications, rights of way or other property access and use authorizations necessary for the for the relocation of the Above Ground Utilities. The Village shall be under no obligation to acquire, by eminent domain or otherwise, any property right, it being the understanding of the parties that such rights currently exist. If, in the sole reasonable opinion of the Village, necessary property rights do not exists, such that additional property rights would be required, the Village shall so notify the Owner and shall thereafter be relieved of any obligation under this Section, unless the parties enter into a written amendment to this Agreement addressing acquisition of such issue.
- 3.3. The Village shall fund the cost of the Undergrounding Project. Provided, the Village's obligations under this Section shall not exceed \$ 25,000.00. If, in the sole opinion of the Village, the cost will exceed said amount, the Village shall so notify the Owner and shall thereafter be relieved of any obligation under this Section, unless the parties enter into a written amendment to this Agreement addressing such issue.
- 3.4. The Village's obligation to fund the Undergrounding Project is subject to Owner initiating construction and completing the Project, including but not limited to all improvements required pursuant to Section 4 of this Agreement, in a prompt and timely manner. Owner shall apply for necessary permits and cause all required plans to be prepared in a manner which conforms to applicable codes. Construction shall be initiated within 7 days of issuance of permits and shall be diligently prosecuted.
- 3.5. The Village shall cause the Undergrounding Project to be undertaken and shall cause this work to be completed in conformance with standards of the Village of Downers Grove and the

affected utilities. To the extent practical, the parties will try to coordinate such work with construction of the Project.

**SECTION 4. ACCESS ALLEY.**

- 4.1. There is currently located immediately north of the Property a public alley (the "Existing Alley") which extends east from Main Street and provides rear access for properties fronting on Maple Avenue as shown on Exhibit A, page 6. Pursuant to the Project development plans, an access driveway for the Property (the "Access") is to be located at the northern extreme of the Property, immediately south of the Existing Alley. As a part of the Project, the Owner shall design and construct, or cause the design and construction, of a public access alley (the "Access Alley") upon the Existing Alley and Access as shown on Exhibit A, page 6, as legally described in Exhibit B.
- 4.2. The Access Alley shall be constructed in conformance with plans approved by the Village and based upon standards established by the Village for such facilities. The Village shall have the right to approve any changes to the engineering plans for the Access Alley.
- 4.3. The Owner shall be solely responsible for all costs associated with the work undertaken pursuant to this Section. The Owner shall cause this work to be bid and let to responsible contractors and to be completed in conformance with standards of the Village of Downers Grove. Said work shall be completed in conformance with the approved plans not later than June 30, 2001.
- 4.4. The Village shall have the right to review construction activities and to inspect the Access Alley before final acceptance. Such work shall not be accepted until approved by the Village.
- 4.5. It is understood that, although the Village will not be a party to the construction contract and will have no obligation to any contractors, the Village will be designated a beneficiary of the Maintenance Bond or Construction Guarantee required by the plans. In addition, all insurance policies required of the contractor shall name the Village, its agents, officers and employees, as additional insured. This shall include, but is not necessarily limited to, workers compensation, automobile liability, and general liability.
- 4.6. The Owner shall administer the work in the best interest of both parties and to consult with, and keep advised, officials of the Village regarding the progress of the work and any problems encountered or changes recommended. Provided, no change order which affects the Access Alley shall be authorized except with the prior written approval of the Village.
- 4.7. The Owner shall provide a permanent access and utility easement over, upon and under the Access. This shall be without cost to the Village in a form approved by the Village Attorney.
- 4.8. The Owner shall maintain the Access Alley for a period of not less than twenty (20) years from the date of this agreement. Such maintenance shall be in conformance with Village standards for such work and shall include, but is not limited to, patching and re-paving as necessary as well as snow plowing and cleaning. This maintenance obligation shall be included in covenants, declarations and by-laws of the Project. In particular, the Declaration of Condominium for the Project shall include the following language, or such equivalent language as may be approved by

the Village Attorney:

*An Access Alley, serving the Property and other properties, has been constructed along the northern boundary of the Property, partially upon the Property and partially upon public property. An perpetual easement for public access and utilities has been given to the Village over that portion of the Access Alley located upon the Property. The Association, shall be responsible for cleaning (including snow removal), maintaining, repairing, (including patching and re-paving as necessary) and, if needed, replacing the Access Alley. In the event the Village determines that the Access Alley is not being cleaned or otherwise maintained in a proper condition, the Village shall give the Association written notice of such determination (“Deficiency Notice”), specifically identifying each item of deficiency. In the event the Association fails to correct such deficiencies within fifteen (15) days following its receipt of the Deficiency Notice, or to commence meaningful efforts to correct those deficiencies which are not capable of completion within 15 days, the Village shall have the right and authority, but not the obligation, to compel the Association to correct such deficiencies or the Village may perform or cause to be performed such maintenance or other corrective work necessary to preserve the operational integrity and condition of the Access Alley. In the event the Village determines that one or more deficiencies constitutes an immediate threat to the public health, safety and welfare, no prior notice to the Association need be given by the Village prior to the Village commencing corrective work. The Association shall be liable for all costs incurred by the Village herein. The funding requirements shall be provided by the Association pursuant to the levy of appropriate assessments against each Unit, and the payment of the funds thereby collected to the governmental authority entitled thereto. The Association shall make payment to the Village within thirty (30) days following its receipt of written requests therefor. In the event the Association fails to make timely payment of the amounts from time to time due hereunder, the Village shall have the right to record a lien against the Property in the amount due but unpaid, and the amount due multiplied by the percentage of ownership in the Common Elements of the Unit shall become a lien on each Unit. Each such lien shall be subordinate to the lien of the first mortgage on the Unit or any other portion of the Property, but shall be superior to the Association’s assessment lien with respect to the Unit for assessments which become due after the date on which the Village’s lien attaches to the Unit. The Village shall be responsible for distributing the funds received thereby to the governmental authority entitled to all or any portion thereof. No amendment to this provision shall be made affecting the rights of the Village of Downers Grove without its prior written approval. If any proposed amendment to this provision requires the prior approval of the Village of Downers Grove, such Amendment shall be submitted to the Attorney of the Village of Downers Grove for his approval.*

## **SECTION 5. GENERAL PROVISIONS.**

- 5.1. The parties agree to take such actions, including execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate from time to time to carry out the terms, provisions and intent of this agreement, and to aid and assist each other in carrying out said terms, provisions and intent.

- 5.2. This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be the Circuit Court of DuPage County, Illinois.
- 5.3. A waiver of any part of this Agreement shall be limited to that specific event and shall not be a waiver of the entire Agreement.
- 5.4. Any notices required in this Agreement shall be effective when in writing and three (3) days after mailing by certified mail return receipt requested, or by delivering the same in person or to an officer of such party or by prepaid telegram or private overnight courier, when appropriate, addressed to the party to be notified.

All notices to Downers Grove shall be sent to:

Village Manager  
 Village of Downers Grove  
 801 Burlington Avenue  
 Downers Grove, Illinois 60515

All notices to Owner shall be sent to:

5329 Investors, LP  
 Attn: Ron Mucha  
 223 West Erie Street, 3<sup>rd</sup> Floor  
 Chicago, IL 60610

- 5.5. This Agreement and the covenants, rights, benefits and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, to the extent and as applied hereunder.
- 5.6. Neither Party, nor their respective successors and/or assigns, shall challenge the legality or enforcement of any recital, provision or covenant of this Agreement. In the event any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision, or covenant of this Agreement, the Parties agrees cooperate in the defense of such challenge.

WITNESS their hands and seals the day and year first above written.

THE VILLAGE OF DOWNERS GROVE,  
 ILLINOIS, an Illinois Municipal Corporation

Attest \_\_\_\_\_  
 Village Clerk

By \_\_\_\_\_  
 Mayor

5329 INVESTORS, L.P.

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

Subscribed and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

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**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF A REDEVELOPMENT AGREEMENT  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND 5329 INVESTORS, L.P.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,  
as follows:

1. That the form and substance of a certain Redevelopment Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and 5329 Investors, L.P. (the "Owner"), in order to assist the property owner in redeveloping certain property located in the TIF district, commonly known as 5329 Main Street, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk