



MANAGER’S MEMO ITEM

ITEM: Authorize execution of a Redevelopment Agreement for the Curtiss Block
WORKSHOP DATE: September 13, 2005
PREPARED BY: David Fieldman, Deputy Village Manager
BID AMOUNT: \$n/a **ACCOUNT:** n/a
BUDGET AMOUNT: \$n/a

PURPOSE: To authorize the execution of a Redevelopment Agreement for the property commonly referred to as the Curtiss Block.

BACKGROUND:

As part of the comprehensive downtown revitalization program, the Village has been actively facilitating the redevelopment of the land commonly referred to as the Curtiss Block. Over the past several years, the Village has acquired the property, completed demolition of some of the existing buildings, remediated environmental contamination and selected a developer for the property. Tonight, the Staff and the selected developer, New England Builders, are requesting the Council to review and consider the attached Redevelopment Agreement (RDA).

DEVELOPMENT SUMMARY:

Parcel Size	3.02 acres	Commercial Space	35,000 s.f.
Number of Buildings	4	On-Street Parking	66
Maximum Height	4 stories	Residential Parking	153
Residential Units	126	Total Parking	219
Residential Density	41.7 units/acre		

REVIEW & APPROVAL PROCESS:

The following is a summary of the review and approval process for the Curtiss Block redevelopment.

Redevelopment Agreement Approval (September 20 Council Meeting): The RDA would establish the business terms of the development including the general parameters for the buildings, public improvements and land uses, cost responsibilities, development schedule, land acquisition terms and protections in the event of default.

Plan Commission Public Hearing (October): Per the terms of the RDA, the developer would be submitting a complete application for planned development approval. A public hearing is required. The details of the development would be discussed during this phase.

Council Approval of the Zoning Petition (November): Based on the findings of the Plan Commission public hearing, the Mayor and Council would be asked to review and approve the final planned development ordinance.

TERMS OF THE REDEVELOPMENT AGREEMENT:

The attached RDA contains the following major terms.

Developer Obligations

- Acquire the property in phases.
- Develop the site per the attached concept plans and approved zoning plans. This includes both public and private improvements.
- Pay for all private improvements.
- Adhere to a specific development schedule attached to the agreement.
- Lease the commercial spaces to approved uses attached to the agreement.
- Disclose to purchasers that the property is subject to the downtown SSA.
- Guarantee completion of the project by posting a \$350,000 letter of credit that can be drawn upon by the Village in the event that the developer falls behind the development schedule or abandons the project.
- Submit a letter of credit in the amount of 110% of the cost of public improvements

Village Obligations

- Sell the property in phases.
- Pay for public improvements in an amount not to exceed \$860,000.
- Pay for the costs of demolition in an amount not to exceed \$50,000 plus 10% overhead and administration fee.
- Pay for the costs of asbestos removal in an amount not to exceed \$30,000 plus 10% overhead and administration fee.
- Complete underground tank removal and remediation.

FINANCIAL PERFORMANCE:

Village TIF Costs

Village TIF Expenses to Date:	\$6,770,000
Future Village TIF Expense Obligations per RDA:	<u>\$1,145,000</u>
Total Village TIF Expenses:	\$7,915,000

Village TIF Revenues

Proceeds from Sale of Land:	\$2,971,310
Net Present Value of Real Estate Tax Increment:	<u>\$6,100,000</u>
Total Village Revenues:	\$9,071,310

Village TIF Leverage Ratio

Total Developer Investment:	\$40,000,000
Total Village TIF Investment:	\$7,915,000
TIF Leverage Ratio:	5.06

Net Impact to the TIF \$1,156,310

Village Rate of Return on Investment: 14.6%

ATTACHMENTS:

The ordinance authorizing execution of the Redevelopment Agreement and the Redevelopment Agreement.

STAFF RECOMMENDATION:

Staff recommends that Council approve the ordinance authorizing the execution of the attached Redevelopment Agreement.

REQUESTED COURSE OF ACTION:

Staff requests that Council place the attached ordinance on the Council Meeting of September 20, 2005.

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND ACADIA OTG, LLC.**

WHEREAS, the Village of Downers Grove has undertaken to revitalize portions of its downtown business district and in furtherance of that effort has created, pursuant to the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended (the "TIF Act"), a TIF District to help finance some of the redevelopment costs involved with the revitalization project; and

WHEREAS, the Village undertook a careful and thorough process to identify a development team to undertake the portion of the revitalization project known as the "Curtiss Block," which process included many public meetings and work sessions and consideration of numerous factors and standards; and

WHEREAS, at the conclusion of that process the Village selected Acadia OTG, LLC as the developer (the "Developer") for the Curtiss Block project, which property is depicted and legally described in the redevelopment agreement attached to this Ordinance as Exhibit A (the "Property"); and

WHEREAS, since that selection the Developer has prepared plans for the Curtiss Block project, and the Village and the Developer have negotiated the terms and conditions of a redevelopment agreement to govern the project; and

WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of the Village and its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with third parties for the purpose of achieving these purposes; and

WHEREAS, the Village is authorized under the provisions of the TIF Act to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act; and

WHEREAS, to stimulate and induce redevelopment pursuant to the TIF Act, the Village, after giving all notices required by law and after conducting all public hearings required by law, adopted the following ordinances:

- (a) Ordinance No. 3997, adopted December 22, 1997, titled "An Ordinance Approving the Village of Downers Grove Tax Increment Downtown Redevelopment Plan and Project" (the "Redevelopment Plan"), as amended by Ordinance No. 4455 on November 5, 2002; and
- (b) Ordinance No. 3998 adopted December 22, 1997, titled "An Ordinance Designating the Village of Downers Grove Tax Increment Downtown Redevelopment Project

Area" ("Downtown Redevelopment Project Area"), as amended by Ordinance No. 4456 on November 5, 2002; and

(c) Ordinance No. 3999, adopted December 22, 1997, titled "An Ordinance Adopting Tax Increment Financing for the Village of Downers Grove"; and

WHEREAS, the Developer seeks to improve the Property with mixed retail and residential development generally in accordance with the plans depicted in the redevelopment agreement attached to this Ordinance as Exhibit A; and

WHEREAS, the Developer has entered into contracts or will enter into contracts for the construction of the public improvements necessary to serve the Property; and

WHEREAS, the Village proposes to finance certain Redevelopment Project Costs to be incurred in connection with site preparation, environmental remediation, demolition, and construction of certain public improvements by utilizing tax increment financing in accordance with the TIF Act, as well as through other financing mechanisms; and

WHEREAS, it is necessary and appropriate for the successful completion of the Redevelopment Project approved by Ordinance No. 3997 that the Village enter into a redevelopment agreement with the Developer to provide for the development of the Property, thereby implementing and bringing to completion a significant portion of the Redevelopment Plan; and

WHEREAS, the Village has determined that the redevelopment agreement attached to this Ordinance as Exhibit A (the "Redevelopment Agreement") includes the necessary and appropriate terms and provisions for the successful completion of the development of the Property; and

WHEREAS, it is economically not feasible for the Developer to undertake the redevelopment, and the Developer thus is unable to undertake the redevelopment of the Property without certain TIF assistance from the Village, and the Village has determined that it is appropriate and desirable and in the best interests of the Village to assist the Developer in the manner set forth in the Redevelopment Agreement; and

WHEREAS, the Village is desirous of having the Property developed for the uses described in this Agreement to eliminate the blight factors and characteristics found in the Property, to serve the needs of the Village, and to produce increased tax revenues for the various taxing districts authorized to levy taxes within the Property; and

WHEREAS, the Mayor and Village Council of the Village of Downers Grove, after due and careful consideration, have concluded that the development of the Property on the terms and conditions set forth in the Redevelopment Agreement will promote sound planning, increase the taxable value of property within the Village, enable the Village to control the development of the area, and otherwise promote, enhance, and serve the best interests and general welfare of the Village and its citizens;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, DuPage County and State of Illinois, as follows:

Section 1. Recitals. The foregoing recitals are incorporated into this Ordinance as findings of the Council.

Section 2. Approval of Redevelopment Agreement. The Redevelopment Agreement shall be, and it is hereby, approved in substantially the form attached to this Ordinance as Exhibit A and in final form satisfactory to the Village Manager. The Mayor and Village Clerk are hereby authorized and directed to execute and deliver the Redevelopment Agreement and any other necessary and appropriate related documents after such documents have been properly executed and delivered by the Developer.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

Mayor

ATTEST:

Village Clerk

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A REDEVELOPMENT AGREEMENT
BY AND BETWEEN THE VILLAGE OF DOWNERS GROVE
AND ACADIA OTG LLC
(The Curtiss Block Project)

Prepared by:

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After recording, return to:

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and

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**A REDEVELOPMENT AGREEMENT
BY AND BETWEEN THE VILLAGE OF DOWNERS GROVE
AND [ACADIA OTG LLC]
(The Curtiss Block Project)**

THIS REDEVELOPMENT AGREEMENT (the "*Agreement*"), is made and entered into as of the ____ day of _____ 2005 by and between the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation (the "*Village*"), and ACADIA OTG LLC, or a wholly controlled affiliate thereof (the "*Developer*") (the Village and the Developer shall be referred to collectively as the "*Parties*" and individually as a "*Party*").

ARTICLE 1: RECITALS

1.1 The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety, and welfare of the Village and its inhabitants, to prevent the spread of blight, to encourage private development in order to enhance the local tax base, to increase employment, and to enter into contractual agreements with third parties for the purpose of achieving these purposes.

1.2 The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the "*TIF Act*"), to finance redevelopment in accordance with the conditions and requirements set forth in the TIF Act.

1.3 To stimulate and induce redevelopment pursuant to the TIF Act, the Village has, after giving all notices required by law and after conducting all public hearings required by law, adopted the following ordinances:

- (a) Ordinance No. 3997, adopted December 22, 1997, titled "*An Ordinance Approving the Village of Downers Grove Tax Increment Downtown Redevelopment Plan and Project*" (the "*Redevelopment Plan*"), as amended by Ordinance No. 4455 on November 5, 2002;
- (b) Ordinance No. 3998 adopted December 22, 1997, titled "*An Ordinance Designating the Village of Downers Grove Tax Increment Downtown Redevelopment Project Area*" ("*Downtown Redevelopment Project Area*"), as amended by Ordinance No. 4456 on November 5, 2002;
- (c) Ordinance No. 3999, adopted December 22, 1997, titled "*An Ordinance Adopting Tax Increment Financing for the Village of Downers Grove*".

1.4 The Redevelopment Project Area includes a tract of real property consisting of approximately 3.02 acres, located at Main Street and Burlington Avenue in Downers Grove, Illinois, and legally described on Exhibit A attached to this Agreement (the "*Property*").

1.5 The Village is the sole owner of the Property and the Village and the Developer desire that the Property be transferred, in phases, to the Developer in accordance with the terms of this Agreement.

1.6 The Developer seeks to improve the Property with mixed retail and residential development generally in accordance with the plans attached to this Agreement as Exhibit B.

1.7 The Property is classified within the DB Downtown Business District of the Village's Zoning Ordinance, which DB District authorizes development in the form depicted in Exhibit B.

1.8 The Developer has submitted PD Concept Plans (as defined herein) for its proposed planned development ("PD") of mixed retail and residential uses within the Property, which plans have been accepted by the Village. The Developer intends to file an application for final approval of its PD in accordance with Section 3.1 of this Agreement.

1.9 As part of the development pro formas and construction budgets, the Developer and the the Village Engineer have developed estimates of the cost of construction of the public improvements necessary to service the Property, which cost estimates have been approved by the Village Engineer and are attached hereto and by this reference incorporated herein as Exhibit C (collectively the "*Approved Cost Estimate*").

1.10 The Developer has entered into contracts or will enter into contracts for the construction of the public improvements necessary to serve the Property.

1.11 The Village proposes to finance certain Redevelopment Project Costs to be incurred in connection with site preparation, environmental remediation, demolition, and construction of certain public improvements and related professional fees by utilizing tax increment financing in accordance with the TIF Act, as well as through other financing mechanisms, including extension of a special service area.

1.12 It is necessary for the successful completion of the Redevelopment Project that the Village enter into this Agreement with the Developer to provide for the development of the Property, thereby implementing and bringing to completion a significant portion of the Redevelopment Plan.

1.13 It is economically not feasible for the Developer to undertake the redevelopment, and the Developer thus is unable to undertake the redevelopment of the Property without certain tax increment financing ("*TIF*") assistance from the Village, which the Village has been willing to and continues to be willing to provide under the terms and conditions contained herein, and the Village has determined that it is desirable and in the Village's best interests to assist the Developer in the manner set forth herein and as this Agreement may be supplemented and amended.

1.14 The Village is desirous of having the Property developed for the uses described in this Agreement to eliminate the blight factors and characteristics found in the Property, to serve the needs of the Village, and to produce increased tax revenues for the various taxing districts authorized to levy taxes within the Property; and the Village, to stimulate and induce the development of the Property, has agreed to finance certain Redevelopment Project Costs through tax increment revenues, all in accordance with the terms and provisions of the TIF Act and this Agreement.

1.15 The Developer and the Village desire to establish by this Agreement terms for the development of the Property, including among other matters the construction and installation of the required public and private improvements.

1.16 The Developer and the Village desire that the Property be developed and used only in substantial compliance with this Agreement and in compliance with the Requirements of Law.

1.17 The Mayor and Village Council of the Village of Downers Grove, after due and careful consideration, have concluded that the zoning, subdivision, and development of the Property on the terms and conditions hereinafter set forth, will promote sound planning, increase the taxable value of property within the Village, enable the Village to control the development of the area, and otherwise promote, enhance, and serve the best interests and general welfare of the Village and its citizens.

1.18 Pursuant to notice as required by statute and ordinance, all required public hearings have been held by all appropriate commissions or other bodies relating to subdivision controls, zoning, and other requested relief granted herein, and recommendations with respect thereto have been submitted to the Mayor and Village Council.

ARTICLE 2: DEFINITIONS; RULES OF CONSTRUCTION

2.1 **Definitions.** Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

“Change in Law”: The occurrence, after the Effective Date, of an event described in Section (a) below, unless such event is excluded pursuant to Section (b) or Section (c) below:

- (a) Change in Law means any of the following: (i) the enactment, adoption, promulgation, or modification of any applicable federal, state, or local law, ordinance, code, rule, or regulation (other than by the Village); (ii) the order or judgment of any federal or state court, administrative agency, or other governmental body; (iii) the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval, or permit (or the suspension, termination, interruption, revocation, modification, denial, or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Agreement; or (iv) the adoption, promulgation, modification, or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village).
- (b) An event described in Section (a) above shall not be a Change in Law unless the event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement.
- (c) An event which would otherwise be a Change in Law pursuant to Section (a) and Section (b) above shall not be a Change in Law if the event is caused by the fault of the Party relying thereon.

“Collector”: The officer or officers of the County of DuPage, Illinois, who is or are at the time obligated under applicable law to collect and pay over to the Village the Incremental Property Taxes pursuant to and in accordance with the TIF Act.

“Corporate Authorities”: The Mayor and Village Council of the Village of Downers Grove.

“Cost of Work”: shall mean the cost of construction and construction related work as determined by reference to Exhibit M attached hereto and made a part hereof.

“Improvements”: The buildings and all related improvements that are part of the development of the Property as provided in the PD Final Plans. See also definition of “Public Improvements.”

“Incremental Property Taxes” means the ad valorem taxes, if any, arising from the taxes levied upon the Property, which taxes are attributable to the increases in the then current equalized assessed valuation (“EAV”) of each taxable lot, block, tract, or parcel in the Property over and above the total Initial EAV of each such lot, block, tract, or parcel of real property, all as determined by the County Clerk of DuPage County, Illinois, pursuant to and in accordance with the TIF Act, the TIF Ordinances, and this Agreement.

“Internal Revenue Code”: The United States Internal Revenue Code of 1986, as amended.

“Local Government Debt Reform Act”: 30 ILCS 350/1 *et seq.*, as amended.

“PD Concept Plans”: The preliminary plat or plats of subdivision, site plans, exterior appearance plans, Preliminary Engineering Plans, landscaping plans, and other plans for the mixed use development of the Property as a whole attached to this Agreement as Exhibit B. The PD Concept Plans reflect development within the Project of approximately 126 residential dwelling units, approximately 34,000 square feet of retail/commercial space, and approximately 215 on- and off-street parking spaces.

“PD Final Plans”: The final plans for the mixed use development of the Property as a whole, including without limitation the final plat or plats of subdivision, site plans, exterior appearance plans, engineering plans, and landscaping plans.

“Person”: Any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government, or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

“Preliminary Engineering Plans”: The preliminary plans and specifications for the public improvements necessary to serve the Property, attached hereto as part of Exhibit B.

“Project Phase”: One of the individual phases of development within the Property. Currently there are three Project Phases planned for the development, known as Project Phase I, Project Phase II, and Project Phase III and shown in the PD Concept Plans. A particular Project Phase may be further defined with greater specificity by the Village and the Developer at the of submission by the Developer of a building permit application for that Project Phase.

“Project Phase Plans”: The PD Final Plans for a particular phase of the Project and any and all additional Village-approved plans in their final form, which may include, without limitation, a subdivision plat, site plans, exterior appearance plans, engineering plans, landscaping plans, and other plans, approved by the Village for a particular Project Phase.

“Project Phase Property”: The portion of the Property to be conveyed to the Developer for development as one of the Project Phases.

“Public Improvements”: The Improvements to be conveyed or dedicated to the Village as “Public Improvements” as generally indicated on the Preliminary Engineering Plans, including certain stormwater system main and connections, potable water mains, sanitary sewer mains, streets and curbs, street lighting, sidewalks, and parkway trees and landscaping, that the Developer is obligated to construct in connection with the Project or a particular Project Phase, pursuant to the provisions of this Agreement. More precise definitions and descriptions of Public Improvements, such as legal descriptions and the like, may be prepared and approved in writing by the parties from time to time.

“Public Improvements Costs”: The Public Improvements Phase I Costs and the Public Improvements Phase II Costs, collectively.

“Public Improvements Phase I Costs”: The actual Cost of Work incurred by the Developer to complete the Public Improvements for Project Phase I, as described in Exhibit C attached hereto.

“Public Improvements Credit”: A credit in the amount of \$860,000.00 to be granted by the Village against the purchase price for Project Phase I, as described in Section 4.2(a) of this Agreement, representing the agreed “not to exceed” costs of Public Improvements to be completed as part of Project Phase I.

“Public Improvements Phase II Costs”: The actual Cost of Work incurred by the Developer to complete the Public Improvements for Project Phase II, as described in Exhibit C attached hereto.

“Redevelopment Plan”: The “Redevelopment Plan” as defined in Ordinance No. 3997, as amended by Ordinance No.4455.

“Redevelopment Project”: The retail and residential buildings and public gathering areas and related improvements made or to be made in the Property consisting of those improvements described in this Agreement and depicted in the Plans.

“Redevelopment Project Costs”: All qualifying redevelopment project costs authorized by the TIF Act and this Agreement.

“Requirements of Law”: All applicable federal, State of Illinois, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

“TIF Fund”: The special fund established pursuant to Ordinance No. 3999 and held in accordance with the provisions of Section 10 of this Agreement.

“TIF Act”: The Tax Increment Allocation Redevelopment Act, as amended, 65 ILCS 511-74.4- 1, *et seq.*

“TIF Ordinances”: means Ordinances No. 3998, 3999 and 4456 all adopted by the Village on December 22, 1997 and November 5, 2002, as described in the Recitals to this Agreement.

“Uncontrollable Circumstance”: Any event that is beyond the reasonable control of and without the fault of the Party relying thereon and includes, but is not limited to, the following events:

- (a) a Change in Law;
- (b) insurrection, riot, civil disturbance, sabotage, act of public enemy, explosion, nuclear incident, war, or naval blockade;
- (c) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather condition, or other similar act of God;
- (d) governmental condemnation or taking other than by the Village; or
- (e) strikes or labor disputes, other than those caused by the unlawful acts of the Developer.

Uncontrollable Circumstance shall not include economic hardship, impracticability of performance, commercial or economic frustration of purpose, strikes or labor disputes caused by the unlawful acts of the Developer, or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

2.2 Rules of Construction.

- (a) Grammatical Usage and Construction. In construing this Agreement, pronouns include all genders, and the plural includes the singular and vice versa.
- (b) Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.
- (c) Calendar Days. Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

ARTICLE 3: PLAN APPROVALS

3.1 Submission of PD Final Plans, Final Subdivision Plat.

- (a) Submission of Application, Plans. The Developer shall submit to the Village a complete, properly prepared application for planned development final plan approval, including PD Final Plans, on or before December 1, 2005, which plans shall be substantially consistent with the PD Concept Plans. Within 90 days after Village final approval of the PD Final Plans, the Developer shall submit a fully and properly completed application for a building permit for the Project Phase I (known as the "Building One").
- (b) Final Plat of Subdivision. The plans submitted as part of the application for planned development final plan approval shall include a properly prepared final plat of subdivision depicting the Property subdivided into lots and depicting, among other things, all public easements and rights of way including without limitation a public street and right-of-way for Mochel Drive. The final plat of subdivision shall be substantially in conformance with the PD Concept Plans. The Village shall pay for preparation and duplication of the final plat of subdivision.

3.2 Review of Planned Development Final Plan Application. The Village shall cause the planned development final plan application to be reviewed and considered promptly by the Plan Commission and the Village Council in accordance with the procedures set forth in the Zoning Ordinance and Subdivision Code and applicable standards set forth therein and in the Design Guidelines, the Redevelopment Plan, the provisions of this Agreement, and applicable Requirements of Law.

3.3 Review of Final Project Phase Plans. If and when the Developer has submitted plans and other documents required or necessary for a particular Project Phase, the Village staff shall review those plans and documents considering the same standards set forth in Section 3.2 above.

3.4 Approvals and Permits. The Village shall make an approval or issue a permit in a timely manner provided that the application therefor satisfies applicable standards and Requirements of Law. No approval or issuance of a permit shall be unreasonably delayed or withheld.

3.5 Other Governmental Approvals. The Developer shall be solely responsible for undertaking and making, in a timely manner, all actions and submittals required to secure all approvals, consents, permits, licenses, authorizations, and easements required from other governmental bodies and agencies (collectively "Other Governmental Approvals") to construct a Project Phase that the Developer has proceeded to construct and develop. The Village shall cooperate with and assist the Developer in obtaining Other Governmental Approvals, including approvals from the Illinois Department of Transportation and other governmental bodies related to access to and work on State roads and for stormwater management and discharge. The Developer shall deliver to the Village a copy of each Other Governmental Approval promptly after it has been secured.

3.6 Compliance with Approved Project Phase Plans. The Developer shall undertake all development within a Project Phase that the Village has conveyed to it in compliance with the Village-approved Project Phase Plans for that Project Phase.

ARTICLE 4: CONVEYANCES OF PROPERTY

4.1 Transfer of Property to Developer.

- (a) Phased Transfer. The Village shall convey the Property to the Developer in phases. A description of the phases of Property transfers, together with the schedule therefore, is set forth in Exhibit D.
- (b) Outside Dates for Transfers. The outside dates for property transfers, subject to an Uncontrollable Circumstance and to extensions of time in the event of a delay by the Village that shall materially affect the timing for conveyance of property, shall be as follows:
 - (i) Closing on the Project Phase Property for Phase I shall occur the earlier of 15 days after receipt of building permits or May 1, 2006.
 - (ii) Closing on the Project Phase Property for Phase II shall occur no later than 24 months after the closing for the Project Phase Property for Phase I.
 - (iii) Closing on the Project Phase Property for Phase III shall occur no later than 18 months after the closing for the Project Phase Property for Phase II.
- (c) Establishing Closing Dates. Provided that it is not in default hereunder, the Developer shall have the right to establish a closing date for each Project Phase Property by sending written notice to the Village not less than 30 days prior to such proposed closing date; provided, however, that such closing date shall be established within the outside dates set forth in Subsection (b) above.
- (d) Failure to Close. If the Developer fails to close on any Project Phase Property within the relevant time periods set forth in Subsection (b) above, and provided that the Village has fulfilled its obligations hereunder, the Village may deliver written notice to the Developer requiring it to purchase such Project Phase Property within six months after receipt of such notice. In the event that the Developer fails to purchase such parcel within said six-month period, the Village may terminate this Agreement with respect to any unconveyed Project Phase Properties.

4.2 Conditions. The following conditions and requirements shall apply to the conveyances of Project Phase Properties to the Developer:

- (a) Purchase Prices. The purchase price for the Property shall be \$2,971,310 *minus* the Public Improvements Credits and shall be allocated to each Project Phase as follows: Phase I: \$910,000 *minus* the Public Improvements Credit; Phase II: \$1,575,310; and Phase III: \$486,000 Project Phase, the purchase price *minus* the

Public Improvements Credit if any shall be referred to as the “*Approved Purchase Price*”).

- (b) Reconciliation of Public Improvements Costs. At the completion and delivery to the Village of the Public Improvements for Project Phase I, the Developer shall present to the Village a certified, detailed accounting of the Public Improvements Phase I Costs, together with a certified estimate of the Public Improvements Phase II Costs including a ten percent (10%) contingency. If the Public Improvement Phase I Costs together with the estimate of Public Improvements Phase II Costs are less than the Public Improvements Credit, then the Phase II Approved Purchase Price shall be increased commensurately. If the Public Improvement Phase I Costs together with the estimate of Public Improvements Phase II Costs exceed the Public Improvements Credit, then there shall be no adjustment.

At the completion and delivery to the Village of the Public Improvements for Project Phase II, the Developer shall present to the Village a certified, detailed accounting of the Public Improvements Phase II Costs. If the Public Improvement Costs are less than the Public Improvements Credit, then the Approved Purchase Price for Phase III shall be increased commensurately or the difference paid by Developer to Village. If the Public Improvement Costs exceed the Public Improvements Credit, as adjusted as set forth in Section 4.2(b) above, then the Approved Purchase Price for Phase II shall be decreased commensurately or the difference paid by Village to Developer, but in no case shall the Public Improvements Costs reimbursable by Village exceed \$860,000.

- (c) No Default of Developer. The Developer shall not be in default of any provision of this Agreement; provided, however, that the Village may proceed to convey a particular Project Phase Property if the Village, in the exercise of its sole discretion, determines that the default is not material to the property transfer.
- (d) Satisfaction of Schedule Benchmarks. The Developer shall have achieved the schedule benchmarks set forth for each Project Phase included in Exhibit D attached hereto and made a part hereof.
- (e) As Is Condition. The Developer shall accept property in an “as is” condition except as provided in Subsections (g) and (h) of this Section below.
- (f) Demolition. The Developer shall demolish all structures in within the Property. Promptly after presentation by the Developer to the Village of invoices for demolition work, the Village shall directly pay the general contractor and/or sucontractor which performed the work, at the direction of the Developer, for the Cost of Work, including a general contractor’s fee of 10% for overhead, incurred to complete the demolitions, in an amount not to exceed \$50,000.00. Each contract for demolition work shall be subject to the prior written approval of the Village.
- (g) Tank Removal and Remediation. The Village shall remove all known underground storage tanks within the Property, as identified in any Phase I or

Phase II environmental report (which have previously been provided to the Developer), and remediate, to the extent required by applicable Requirements of Law, any environmental conditions caused by such underground storage tanks no later than December 31, 2005. The Village may request the assistance of the Developer in the remediation of any particular property, but the Developer shall have no obligation to do so.

- (h) Asbestos Remediation. Prior to demolition of structures by the Developer on the Property, the Developer shall remove all known asbestos, as identified in any Phase I or Phase II environmental report (which have previously been provided to the Developer), and remediate, to the extent required by applicable Requirements of Law, any environmental conditions caused by such asbestos or asbestos containing materials. Promptly after presentation by the Developer to the Village of invoices for asbestos remediation work, the Village shall directly pay the general contractor and/or subcontractor which performed the work, as directed by the Developer, for the Cost of Work, including a general contractor's fee of 10% for overhead, incurred to complete the remediation, in an amount not to exceed \$30,000.00. Notwithstanding anything in this Agreement to the contrary, the Developer shall not assume any liability of the Village with respect to injuries, losses or damages arising from asbestos existing on or within the property.
- (i) Escrow and Closing. Each conveyance shall be consummated through a "New York style" deed and money escrow with Chicago Title Insurance Company (the "Title Company") on the terms and conditions provided herein and such additional non-monetary terms and conditions as are agreed to between the Village and the Developer in the instructions for the escrow.
- (j) Fee Simple Title. The Village shall convey good and marketable fee simple title to each Project Phase Property to the Developer by recordable quit claim deed, subject only to the permitted exceptions contained in the pro forma title commitment delivered pursuant to Subparagraph (e) of this Section 4.2, which may include the following:
 - (i) covenants, restrictions, and easements of record that do not materially interfere with the use and occupancy of the property for its intended use; and
 - (ii) general real estate taxes for the current and future years, after the date of closing; and
 - (iii) this Agreement; and
 - (iv) other exceptions determined and agreed to by the Parties prior to the closing in the manner set forth in this Agreement.
- (k) Title Insurance. The Village shall deliver, or cause to be delivered, to the Developer a commitment for an ALTA Form B Owner's Policy of Title Insurance issued by the Title Company for the relevant Project Phase Property and dated not more than 90 days prior to the anticipated date of closing. The commitment shall

commit to the issuance of a policy insuring fee simple ownership in the Developer as of the date of the recording of the Deed, and without exclusions relating to creditors' rights generally, with extended coverage over the general exceptions contained in the policy and subject to permitted exceptions. The title policy shall be in the amount of the purchase price for the Project Phase Property then being conveyed to the Developer, if any, or in a nominal amount if the Developer is not paying a purchase price.

- (l) Survey. The Village shall deliver, or cause to be delivered, a current ALTA survey of the relevant Project Phase Property dated within 6 months before the date of closing for that Project Phase Property.
- (m) Title and Survey Defects. If, not less than 10 days prior to the anticipated date of closing, the Developer notifies the Village in writing about exceptions to title disclosed by the title commitment that are not among the permitted exceptions or about unpermitted survey defects, then the Village shall have 30 days after the date of the Developer's notice to have those title or survey defects cured or insured over and, if the Village does not cause such title or survey defects to be cured or insured over within that time or a mutually agreed additional period of time, or is unable to deliver to the Developer at the closing the title policy required in the form required hereinafter, then the Developer may elect to either:
 - (i) agree to extend the date of closing to permit the Village additional time to remove or cause the Title Company to insure over said title or survey defects; or
 - (ii) the Developer may elect to terminate this Agreement with respect to future Project Phases.

If the Developer does not object to any title exceptions or survey defects prior to the applicable dates, then the Developer will have waived its right to object thereto and all such matters shall thereafter be deemed permitted exceptions to title.

- (n) Costs. The Village shall bear all costs and charges in connection with the issuance of the title policy (other than endorsements required by the Developer or its lender) and the cost of recording the Deed and any other release or conveyance documents necessary to convey fee simple title to the Developer, as provided herein. The Developer shall bear all costs and charges in connection with recordation of any security documents, the issuance of any loan policy of title insurance for any mortgage financing it obtains, the issuance by the Title Company of any endorsements required by the Developer or its lender, and any money lender's escrow charges. The Parties shall share equally the costs of the deed and money escrow described in Subparagraph (i) above.
- (o) Taxes. Real estate taxes then due and payable, and all such other taxes, assessments, liens, and charges of whatever nature that are then due and payable or that shall be due and payable at any time in the future (for periods of time prior to closing) and that affect the property, shall be paid in full and removed as a lien

or charge against the property prior to delivery of the Deed. The Village shall not be obligated to prorate real estate taxes, but shall pay all taxes to the date of closing on or before the date they are due, and the Village agrees to indemnify the Developer and its lender against, and to hold such parties harmless from, the payment of all such taxes.

- (p) Village Documents. As a condition to closing for a Project Phase Property, the Village shall deliver the following, or cause the following to be delivered, to the escrowee:
- (i) the Deed;
 - (ii) a GAP undertaking indemnifying the Title Company for any loss or claim arising out of any actions by or on account of the Village that affects the state of title to the property from the date of issuance of the title commitment to the date of conveyance of the property to The Developer;
 - (iii) an ALTA Statement; and
 - (iv) an affidavit of title in customary form; and
 - (v) a seller's closing statement in customary form; and
 - (vi) any required real estate transfer declarations or exemption forms; and
 - (vii) such other documents, instruments, certifications, and confirmations as may be reasonably required and designated by the Title Company to fully effect and consummate the transaction contemplated hereby and to issue the Title Policy.
- (q) Developer Documents. As a condition to closing, the Developer shall deliver the following, or cause the following to be delivered, to the escrowee:
- (i) the Purchase Price and other amounts due from the Developer at the closing;
 - (ii) a GAP undertaking indemnifying the Title Company for any loss or claim arising out of any actions by or on account of the Developer that affects the state of title to the property from the date of issuance of the title commitment to the date of conveyance of the property to the Developer;
 - (iii) an ALTA Statement; and
 - (iv) such other documents, instruments, certifications, and confirmations as may be reasonably required by the Title Company to fully effect and consummate the transaction contemplated hereby and issue the Title Policy.

- (r) As Is; No Warranties. The Developer's acceptance of a deed to a specific property shall be deemed its acknowledgment that, subject to the Village's representations and warranties in this Agreement and the Village's performance of its obligations under this Agreement, the conveyance of that property on the closing date is being made on an "as-is" basis based on the conditions existing as of the closing date without warranty or representation of any kind by the Village or any of the Village's officers, employees, attorneys, agents or representatives. This acknowledgment shall survive the closing date. The Village disclaims any and all warranties, express or implied, with respect to that property and the Developer hereby assumes the risk that adverse past, present, or future physical characteristics and conditions of any portion of that property may not have been revealed by its inspection or investigation.
- (s) Conditions to Closing. The following shall be conditions precedent to the closing for each property:
- (i) The Village shall have approved any and all Final Project Phase Plans for the applicable Project Phase.
 - (ii) The Developer shall have delivered to the Village one or more written final commitments that the Developer has received from one or more lenders for construction financing, or evidence that the Developer has otherwise made appropriate financial arrangements, to satisfy and pay all of the costs that the Developer will incur in the redevelopment of the applicable Project Phase (other than any costs that the Village is to pay through its use of TIF Funds or otherwise hereunder). Such lenders' commitments or evidence of other financial arrangements shall confirm, to the reasonable satisfaction of the Village, that all such costs will be paid.
 - (iii) The Developer is not in default of this Agreement.
 - (iv) The Developer shall have received the building permit and all other governmental permits that may be required for development of the relevant Project Phase, and the final plat of subdivision including that Project Phase shall have been completed and recorded.

4.3 Tax Division. The Developer, with the assistance of the Village as appropriate, shall take such actions as may be necessary to cause the division or consolidation, as appropriate, of portions of each property into separate real estate tax parcels consistent with the approved plans for such portion of the property.

ARTICLE 5: OPTIMIZATION OF SALES TAXES

5.1 Leases. To achieve the benefit of optimal sales tax revenue for the Village, the Developer agrees that the initial lease term for all leases for all retail sales tax producing tenant space within the Project shall be not less than three years unless otherwise agreed to by the Village in its sole discretion. The Developer shall submit to the Village a copy of each lease of space within the Property within 30 days after the lease has been executed by the tenant.

The Developer shall seek to lease the net rentable square footage of the retail space to tenants that are compatible with and encourage the strongest opportunity for growth of other retail developments in the Village in a manner reasonably intended to produce optimum sales tax revenues. Notwithstanding the foregoing, the Developer agrees that, unless the Village specifically approves otherwise in advance in writing, not less than 90 percent of all leased first-floor floor area for the initial term of retail leases undertaken during the term of this Agreement shall be leased to retail sales tax producing tenants excluded from the "List of Discouraged Uses" in Exhibit E to this Agreement and, preferably, included in the "List of Encouraged Uses" also in Exhibit E.

5.2 Tax Information. Unless otherwise approved by the Village Council in its sole discretion, the Developer shall use good faith efforts to include a provision, in all leases within the Project for retail sales tax producing tenants, that the lessees shall annually file with the Village copies of the ST-1 monthly sales tax forms, or any appropriate successor forms, that are filed by retailers with the State of Illinois. For all leases in which the tenant is required to keep on the leased premises and/or provide to the Developer its gross income and sales tax returns with respect to the portion of the property being leased by such tenant, and/or including all original sales records as defined in any such lease, the Developer shall provide the Village with copies of all such documents, certified by the president or chief financial officer of the reporting lessee as being true, complete, and accurate in all respects, promptly after the Developer receives the same from such party. For all leases that do not provide for the release of such information to the Developer or the Village under the terms of the lease, the Developer shall use good faith efforts to secure from each such tenant a power of attorney letter, or such other form as shall be reasonably required by the Village and the Illinois Department of Revenue to release such information to the Village. Such forms shall be addressed to the Illinois Department of Revenue and shall authorize the Illinois Department of Revenue to release all gross revenue and sales tax information to the Village during any period in which such a tenant continues to operate or own a business within the Property, and such information shall be used solely for the purposes of determining sales tax revenues due the Village and shall otherwise be kept confidential by the Village, except to the extent required by applicable law.

ARTICLE 6: CONSTRUCTION OF IMPROVEMENTS

6.1 Development Standards. Each Project Phase, except for non-material alterations approved by the Village Engineer due to field conditions, shall be developed pursuant to and in accordance with the following:

- (a) this Agreement (but not including the PD Concept Plans after they have been superseded by the PD Final Plans); and
- (b) the approved Project Phase Plans for that Project Phase; and
- (c) the PD Final Plans; and
- (d) the Zoning Ordinance, including the DB Downtown Business District; and
- (e) other applicable provisions of the Downers Grove Municipal Code; and
- (f) all other Requirements of Law.

In the event of a conflict among the provisions of the documents and plans listed above, the first listed document or plans shall govern and control. Subject to the foregoing, all of the items identified in Paragraphs (a) through (f) above shall be interpreted so that the duties and requirements imposed by them are cumulative in nature.

6.2 Improvements Required; Commencement of Certain Work. The Developer shall construct and install, or cause to be constructed and installed, all Improvements shown on the PD Final Plans and the approved Project Phase Plans for each Project Phase as and to the extent provided for in this Agreement. The Developer may commence certain work on a property such as demolition, remediation, and earthwork prior to the transfer of that property pursuant to a Right of Entry/Proceed at Own Risk Agreement in the form attached hereto as Exhibit K.

6.3 Design and Construction of Improvements.

- (a) General Standards. The Improvements for each Project Phase shall be designed and constructed pursuant to and in accordance with the terms of this Agreement, the Final Project Phase Plans therefor, and all permits and approvals as are required to be secured from all governmental agencies having regulatory jurisdiction over such Project Phase. The Developer shall cause all work on such Improvements to be completed in a good and workmanlike manner and with due dispatch. All materials used in the construction of such Improvements shall be new and of first quality.
- (b) Contract Terms; Prosecution of the Work. The Developer shall include in every contract for work on the Improvements terms requiring the contractor to prosecute the work diligently and continuously, in full compliance with, and as required by or pursuant to, this Agreement and all applicable Requirements of Law, until it is properly completed. If any work is abandoned or performed in violation of this Agreement or of the contract therefor, then the Developer shall promptly act to cause the work to be completed properly through alternative means.
- (c) Engineering Services. The Developer shall provide, or cause to be provided, all engineering services required for the design of the Public Improvements, and all engineering services required for the design and construction of the balance of the Improvements. The engineering services required for the construction of the Public Improvements shall be included in the Cost of Work for the Public Improvements.
- (d) Village Inspections. All work by the Developer on Improvements shall be subject to inspection by Village representatives at all times.
- (e) Other Approvals; Utilities. When the construction and installation of any Improvement requires the consent, permission, or approval of any public agency or private party, the Developer shall promptly file all applications, post all security, pay all fees and costs, and otherwise take all steps that may be legally and reasonably required to obtain such consent, permission, or approval. The Village shall cooperate with the Developer in its efforts to obtain such consents, permission, and approvals, including execution of appropriate applications, agency permits, and related documents. Notwithstanding the need for the Developer still to secure an approval from another governmental agency (that is, in addition to the Village) to proceed with the installation of a utility, the Developer may commence installation of such utility prior to securing such

approval, but only after approval by the Village of the plans therefor and only pursuant to a properly executed agreement therefor with the Village.

- (f) Construction Traffic. In advance of the commencement of construction on each Project Phase, the Village reserves the right to establish reasonable routes of access for construction traffic to protect pedestrians and to minimize disruption of traffic and damage to paved street surfaces.

At all times during construction of Improvements, and until completion of construction of such Improvements and approval and, where appropriate, acceptance thereof by the Village, the Developer shall keep, or cause to be kept, the designated routes free and clear of mud, dirt, debris, obstructions, and hazards and shall repair, or cause to be repaired, any damage caused by any construction traffic. If the Developer shall fail to keep or cause to be kept such routes free and clear of mud, dirt, debris, obstructions, or hazards, then the Village may undertake to do so and the Developer shall reimburse the Village's costs and expenses in doing so.

- (g) Streets; Access and Circulation. All streets shall be constructed or reconstructed in accordance with, and as required by or pursuant to, this Agreement and all such streets that are public or to be public shall be dedicated to the Village when they are completed. The final surface course of any such street shall not be installed until all heavy vehicle construction traffic permitted to utilize the street pursuant has ceased. No heavy vehicle construction traffic shall be permitted to utilize any street after installation of the final surface course of the street; provided, however, that if reasonably direct access to a construction site cannot be made available by any other route, then the Developer shall be permitted to use the streets for heavy vehicle construction traffic provided the Developer, during the period of such use, keeps the streets reasonably free and clear of mud, dirt, debris, obstructions, and hazards. Upon receipt of notice from the Village, given not later than 30 days after the Developer ceases its use of a street for heavy vehicle construction traffic, the Developer shall restore and repair such street to the standards established herein for the construction of such street to the extent such street has been damaged as a result of the work undertaken by the Developer pursuant to this Agreement.

The Developer acknowledges and agrees that the Village shall not have any obligation to accept any street constructed within or serving a Project Phase unless and until (i) construction of such street has been completed and approved by the Village Engineer, (ii) the Developer's use of such street for heavy construction vehicles has ceased and the Developer has restored and repaired any damage to such street as hereinabove provided, and (iii) the Developer has posted a the Guaranty Letter of Credit with the Village as hereinafter provided. The Village shall not be obligated to keep any street serving or within a given Project Phase cleared, plowed, or otherwise maintained until the street has been accepted by the Village (unless other arrangements satisfactory to the Village, in its sole discretion, shall have been made).

- (h) Streetlight Construction; Energy Charges. The design of all streetlights, including banner arms, within a given Project Phase shall conform to the Design Guidelines and all applicable Requirements of Law. Decorative streetlights shall be installed by the Developer as part of the Public Improvements.
- (i) Environmental Compliance. The Developer, subject to the provisions of Subsections 4.2(g) and (h) of this Agreement, shall have sole responsibility and duty for compliance with all applicable environmental laws and regulations and shall provide the Village, from time to time, with all reasonable and appropriate documents reflecting such compliance.

6.4 Schedule for Completion of Public Improvements. All Public Improvements within each Project Phase shall be completed by the Developer and made ready for inspection and approval (and, as to Public Improvements, acceptance by the Village) in accordance with the development phasing and project schedule attached hereto as Exhibit D, except that the final lift of paving and landscaping for Public Improvements in Project Phase I shall not occur until the completion of the Public Improvements in Project Phase II. The Developer shall be allowed extensions of time beyond the completion dates set forth in that schedule in the case of a delay caused by an Uncontrollable Circumstance. The Developer shall, within a reasonable period of time following the occurrence of an Uncontrollable Circumstance but not more than 30 days, give notice to the Village of such occurrence, the period or anticipated period of delay that has been or will be occasioned by such Uncontrollable Circumstance, and the steps that the Developer has taken or intends to take to complete the Public Improvements that cannot then be completed.

6.5 Inspection, Dedication and Maintenance of Public Improvements.

- (a) Final Inspection and Approval of Public Improvements. The Developer shall notify the Village when it believes that Public Improvements for any given Project Phase have been completed and shall request inspection and approval, and acceptance by the Village. The notice and request shall be given not less than 14 days in advance of the applicable completion date required by this Agreement to allow the Village Engineer time to inspect those Public Improvements and to prepare a punch list of items requiring repair or correction and to allow the Developer the time it needs to make all required repairs and corrections. The Developer shall provide the Village with drafts of the documents of title transfer for the Public Improvements at the time of such initial notice. The Village Engineer shall cause completed Public Improvements to be inspected promptly and either approved or disapproved. For any Public Improvements that are not approved, the reasons therefor shall be set forth in a written notice to the Developer. After the Developer's correction of the items set forth in the notice, the Village Engineer, at the Developer's written request, shall cause such Public Improvements to be re-inspected promptly after receipt of the Developer's written notice requesting the re-inspection, and either approved or disapproved.
- (b) Dedication and Acceptance of Public Improvements. The Developer shall convey to the Village, and the Village shall accept, all Public Improvements after they are completed and inspected and approved by the Village Engineer. Neither the execution of this Agreement nor the approval or recording of any final plat of

subdivision shall constitute an acceptance by the Village of any Public Improvement, including any street or other public facility that is depicted as "dedicated" on the applicable final plat of subdivision. No Public Improvement shall be accepted by the Village except by a resolution duly adopted by the Mayor and Village Council specifying the Public Improvement being accepted.

6.6 "As-Built" or "Record" Drawings and Specifications of Public Improvements.

The Developer, not later than 21 days after the time it gives the notice of completion and request for approval and acceptance of completed Public Improvements, shall provide to the Village three sets of "as-built" or "record" drawings and specifications for all such Public Improvements, including one set on a reproducible mylar and one set in a computerized format compatible with the Village's computer system. These "as-built" or "record" drawings and specifications shall comply with the requirements of the Downers Grove Municipal Code, shall depict such Public Improvements as built and shall include all final dimensions, elevations, and calculations necessary to fully describe such Public Improvements and to establish that they have been constructed in compliance with all applicable Village standards and all other Requirements of Law. The cost of production of such drawings and specifications shall be included in the Cost of Work of the Public Improvements.

6.7 Transfer of Ownership of Public Improvements to Village. Upon the approval of, and prior to acceptance and conveyance of, Public Improvements to the Village pursuant to Subsection 6.5(b) above, the Developer shall execute, or cause to be executed, all documents as the Village shall request to transfer ownership of such Public Improvements to the Village free and clear of all liens, claims, encumbrances, and restrictions.

6.8 Two-Year Guaranty of Public Improvements. The Developer hereby agrees to cause the prompt and satisfactory correction of all defects and deficiencies in the construction of Public Improvements that are dedicated and/or conveyed to the Village, including landscaping installed by the Developer on public lands or within public rights-of-way or easements, that occur or become evident within two years after the acceptance of such Public Improvements by the Village. If any defect or deficiency occurs or becomes evident during this period, then the Developer, within 30 days, weather permitting, and also subject to further delays occasioned by Uncontrollable Circumstances, after written notification from the Village to do so, shall commence to correct or cause to be corrected such deficiency.

6.9 Issuance of Permits and Certificates. The Village, after proper application therefor, shall issue certificates of occupancy for buildings and dwelling units in accordance with Village Code standards provided that all Public Improvements (including streets through binder course) required to serve such buildings or dwelling units have been completed to the satisfaction of the Village Engineer. The Village shall have the right to withhold building permits for buildings that the Developer seeks to construct at any time that the Developer is in default of this Agreement, subject to the notice and cure provisions provided in this Agreement. The issuance of any building permit or certificate of occupancy by the Village for any building at any time prior to the completion of all Improvements and the inspection and approval (and, where appropriate, acceptance) by the Village, shall not confer on the Developer any right or entitlement to any other building permit or certificate of occupancy.

6.10 Duty to Restore Property. If the Developer is in default under this Agreement, and such default remains uncured after notice and the lapse of applicable cure periods, then the

Village, in its sole discretion and in writing, may demand removal of any or all of any partially completed building, structure, or Improvement and restoration of the property to its original condition or as directed by the Village. The Developer, within 60 days after receipt of a demand from the Village, shall remove any partially completed building, structure, or Improvement from such property and restore such property to a safe and attractive condition in accordance with the Village's demand.

6.11 Village Rights to Complete Work. Subject to the rights of the Developer's construction lender, if the Developer fails or refuses to diligently pursue to completion the construction and installation of any Improvements as required by this Article or the correction of any defect or deficiency as required by this Article, and such failure continues after notice of default and lapse of any applicable cure period, then the Village shall have the right, and the Developer hereby grants to the Village the right, in addition to all other rights afforded to the Village in this Agreement and by law, at the Village's option, to complete such construction and installation or to correct such defect or deficiency. For work on Public Improvements, the Village shall also have the right to draw on the performance security deposited pursuant to Article 7, as well as the right to demand payment directly from the Developer, based either on costs actually incurred or the Village's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of such work on Public Improvements, including legal fees and administrative expenses.

6.12 Commencement of Construction; Right of Reconveyance. Within six months after the closing of each Project Phase Property, the Developer shall commence construction of the structural improvements (such as pouring of footings and the like) for the buildings in that Project Phase. If the Developer fails to so commence construction, then the Village shall have the option, exercisable on written notice to the Developer, to have the Project Phase Property for that Project Phase reconveyed to the Village at the original price actually paid to the Village, free and clear of any liens and encumbrances created by the act or default of the Developer, with taxes, water, sewer, and other utility charges prorated as of the date of such reconveyance. The Village also may terminate this Agreement with respect to all undeveloped Project Phases.

ARTICLE 7: PERFORMANCE SECURITY

7.1 Public Improvements Performance and Payment Letter of Credit. As security to the Village for the performance by the Developer of the Developer's obligations (1) to construct and complete the Public Improvements pursuant to and in accordance with this Agreement, (2) to maintain and repair streets, sidewalks, and other public property pursuant to this Agreement, and (3) to restore property pursuant to Section 6.10 of this Agreement, the Developer shall deposit with the Village Manager a Public Improvements performance and payment letter of credit in the amount of One Hundred Ten percent (110%) of the Public Improvements Costs (the "*Public Improvements Letter of Credit*").

7.2 Schedule Performance Security Letter of Credit. As security to the Village for the performance by the Developer of the Developer's obligations to construct and complete the Improvements included in Project Phase Properties for Phases I and II (only) within the schedule described in Exhibit D attached hereto, the Developer shall deposit with the Village Manager a schedule performance letter of credit in the amount of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000) (the "*Schedule Performance Letter of Credit*"). The Public

Improvements Letter of Credit and the Schedule Performance Letter of Credit shall be referred to collectively herein as the "*Letters of Credit*".

7.3 Effect of Letters of Credit. The deposit of the Letters of Credit shall be a condition precedent to the closing for Project Phase I. The Public Improvements Letter of Credit shall be maintained and renewed by the Developer, and shall be held by the Village, until approval and acceptance, where appropriate, of all Public Improvements by the Village pursuant to Sections 6.5 and 6.7 of this Agreement and until the posting of the Guaranty Letter of Credit required by Section 7.3 below. Simultaneously with the acceptance and posting of the Guaranty Letter of Credit, the Village shall release the Public Improvements Letter of Credit. The Schedule Performance Letter of Credit shall be maintained and renewed by the Developer, and shall be held by the Village, until the architect of record for the Project has issued a Certificate of Substantial Completion with respect to the common areas (meaning those elements and areas contained in a condominium or mixed use building which do not constitute a portion of an individual dwelling unit or individual commercial space) contained in the Phase II building.

7.4 Guaranty Letter of Credit. As a condition of the Village's approval and acceptance of any or all of the Public Improvements, the Developer shall post a letter of credit in the amount of 10 percent of the Public Improvements Costs as security for the performance of the Developer's obligations under Section 6.8 of this Agreement ("*Guaranty Letter of Credit*"). The Guaranty Letter of Credit shall be held by the Village in escrow until the end of the two-year guaranty period set forth in Section 6.8 of this Agreement. If the Village is required to draw on the Guaranty Letter of Credit by reason of the Developer's failure to fulfill its obligations under this Agreement, then the Developer, within 10 days thereafter, shall cause the Guaranty Letter of Credit to be increased to its full original amount.

7.5 Costs. The Developer shall bear the full cost of securing and maintaining the Letters of Credit and the Guaranty Letter of Credit.

7.6 Form of Letters of Credit. The Letters of Credit and the Guaranty Letter of Credit each shall be in a form satisfactory to the Village Attorney. Each letter of credit, whether the Public Improvements Letter of Credit, the Schedule Performance Letter of Credit or the Guaranty Letter of Credit, shall be in substantially the form attached to this Agreement as Exhibit F1-F3 and shall be from a bank acceptable to the Village and having capital resources of at least \$25,000,000, with an office in the Chicago Metropolitan Area and insured by the Federal Deposit Insurance Corporation. Each letter of credit shall, at a minimum, provide that (a) it shall expire no earlier than the later of one year after the date of its issuance or 45 days after delivery to the Village, in the manner provided in Section 20 of this Agreement, of written notice that the letter of credit will expire, (b) it may be drawn on by certification of the Village Manager that the Developer has failed to fulfill any of the obligations for which the letter of credit is security, as stated above, (c) it shall not require the consent of the Developer prior to any draw on it by the Village, (d) it shall not be canceled without the prior written consent of the Village, and (e) if at any time it will expire within 45 or any lesser number of days, and if it has not been renewed, and if any obligation of the Developer for which it is security remains uncompleted or unsatisfactory, then the Village may, without notice and without being required to take any further action of any nature whatsoever, call and draw down the letter of credit and thereafter either hold all proceeds as security for the satisfactory completion of all obligations or employ the proceeds to complete all obligations and to reimburse the Village for any and all costs and expenses, including legal fees and administrative costs, incurred by the Village, as the Village

shall determine. Upon completion of the Developer's obligations to construct and complete the Public Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Developer any proceeds remaining on deposit with the Village drawn from the letter of credit.

The Guaranty Letter of Credit shall not be reduced by reason of any cost incurred by the Developer to satisfy its obligations under Section 6.8 of this Agreement.

7.7 Replenishment of Security. If at any time the Village determines that the funds remaining in any Public Improvements Letter of Credit are not sufficient to pay in full the remaining unpaid cost of all Public Improvements secured thereby and all unpaid or reasonably anticipated Village fees, costs, and expenses, or that the funds remaining in the Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in those Public Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, then, within 15 days after a demand by the Village, the Developer shall increase the amount of the appropriate bond or letter of credit to an amount reasonably determined by the Village to be sufficient to pay unpaid fees, costs, and expenses. Failure to so increase the amount of the security shall be grounds for the Village to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the appropriate bond or letter of credit and to hold and apply those proceeds as security hereunder. Upon completion of the Developer's obligations to construct and complete the Public Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Developer any proceeds remaining on deposit with the Village from any bond or letter of credit.

7.8 Replacement Letters of Credit. If at any time the Village determines that the bank issuing any of the Public Improvements Letter of Credit, the Schedule Performance Letter of Credit, or the Guaranty Letter of Credit is without capital resources of at least \$25,000,000, or if at any time the Village determines that the bank is unable to meet any federal or state requirement for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable or unwilling to honor the bond or letter of credit at any time during its term, or if the Village otherwise reasonably deems itself to be insecure, then the Village shall have the right to demand that the Developer provide a replacement letter of credit from a bank satisfactory to the Village.

The replacement letter of credit shall be deposited with the Village not later than 15 days after a demand. Upon deposit, the Village shall surrender the original letter of credit to the Developer. Failure to provide a replacement letter of credit shall be grounds for the Village to draw down the entire remaining balance of the letter of credit and to hold and apply those proceeds as security hereunder.

The proceeds received or drawn down by the Village from any letter of credit pursuant to this Section 7.7 shall be held by the Village as additional security for the performance by the Developer of the respective obligations of the Developer secured by such letter of credit as set forth in Section 7.1 of this Agreement.

7.9 Use of Funds in the Event of Breach of Agreement Regarding Public Improvements, Maintenance and Repair, and Restoration. If the Developer fails or refuses to complete the Public Improvements in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Public Improvements as required by this Agreement, or fails or refuses to restore property in accordance with the Village's demand, or in any other manner fails or refuses to meet fully its obligations relating to Public Improvements under this Agreement, then the Village in its discretion may draw on and retain all or any of the funds remaining in the Public Improvements Letter of Credit or the Guaranty Letter of Credit. The Village thereafter shall have the right to exercise its rights under Section 9.15 of this Agreement, to take any other action it deems reasonable and appropriate to mitigate the effects of any failure or refusal, and to reimburse itself from the proceeds of the appropriate letter of credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Developer's failure or refusal to fully meet its obligations described in Section 7.1 of this Agreement. If the funds remaining in the Public Improvements Letter of Credit or the Guaranty Letter of Credit are insufficient to repay fully the Village for all costs and expenses, and to maintain a cash reserve equal to the required Guaranty Letter of Credit during the entire time such Guaranty Letter of Credit should have been maintained by the Developer, then the Developer shall upon demand of the Village therefor immediately deposit with the Village any additional funds as the Village determines are necessary to fully repay such costs and expenses and to establish such cash reserve. After (i) completion of the Developer's obligations to construct and complete the Public Improvements pursuant to and in accordance with this Agreement, (ii) correction of all defects and deficiencies in the Public Improvements as required by Section 6.8 of this Agreement, (iii) restoration of property in accordance with a demand made pursuant to Section 6.10 of this Agreement, (iv) compliance with all other terms of this Agreement relating to Public Improvements, and (vi) reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village with respect to Public Improvements, then the Village shall release to the Developer any proceeds remaining on deposit with the Village from any Public Improvements Letter of Credit.

7.10 Use of Funds in the Event of Breach of Agreement regarding Schedule. If the Developer fails or refuses to complete the Improvements in accordance with the schedule set forth in Exhibit D attached hereto and made a part hereof, then the Village in its discretion may draw on the Schedule Performance Letter of Credit in accordance with its terms, in the amount shown in the "Penalty Draw" column of Exhibit D, in the event that the Developer fails to meet the schedule for the applicable benchmark by the date shown in the "Default Deadline" column of Exhibit D. After such draw on the Schedule Performance Letter of Credit, the Village may retain such funds to compensate itself for reasonable expenses related to such breach. The Village thereafter shall have the right to exercise its rights under Section 9.15 of this Agreement, to take any other action it deems reasonable and appropriate to mitigate the effects of any failure or refusal, and to reimburse expenses, including legal fees and administrative expenses, resulting from or under this Agreement.

ARTICLE 8: TIF FINANCING

8.1 TIF Financing. The Village and the Developer agree to implement the Redevelopment Plan through the development of the Property in accordance with their obligations as set forth in this Article 8 and this Agreement.

8.2 Village's Right To Inspect Books and Records. The Developer agrees that, up to two years after completion and acceptance of the Redevelopment Project, the Village shall with reasonable advance notice and during normal business hours, have the right and authority to review, audit and copy, from time to time, the Developer's books and records relating to the Public Improvements funded by the Village hereunder (including the following, if any: all loan statements, general contractors sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices) in order to confirm that the funds used to reimburse the Developer are for TIF purposes or other purposes permitted under the TIF Act. The Developer agrees that the Developer will maintain, or cause to be maintained, and make available, or cause to be made available, to the Village all such records evidencing the Developer's costs and expenditures and the Developer's compliance with the TIF Act.

8.3 TIF Financial Statements. The Village agrees to provide, in a timely manner, and to the extent required by law, all information required to demonstrate continued compliance with the requirements of the TIF Act. Upon request, the Village shall provide the Developer promptly with a copy of all such information submitted to the State.

ARTICLE 9: GENERAL PROVISIONS

9.1 Use of Village Parcel for Marketing, Sales, and Staging. The Developer shall be authorized to use a parcel of land at the northeast corner of the Property for a marketing and sales center and certain staging facilities, as depicted in Exhibit G attached to this Agreement. The provisions for such use shall be set forth in a license agreement between the Developer and the Village in the form attached hereto as Exhibit L.

9.2 Damage to Public Property. The Developer shall maintain the Property and all streets, sidewalks, and other public property in and adjacent to the Property in a good and clean condition at all times during the development of the Property and the construction of the Improvements; shall promptly clean all mud, dirt, and debris deposited on any street, sidewalk, or other public property in or adjacent to the Property by the Developer or any agent of or contractor hired by, or on behalf of, the Developer; and shall repair any damage to any street, sidewalk, or other public property that may be caused by the activities of the Developer or any agent of or contractor hired by, or on behalf of, the Developer.

9.3 Payment of Fees, Costs, and Donations; Certain Improvements.

- (a) General Requirements. In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Developer shall pay to the Village, as and when due, all application, inspection, and permit fees, all water and sewer general fees, tap-on fees, charges, and contributions, and all other fees, charges, and contributions required by applicable Village codes, ordinances, resolutions, rules, or regulations.
- (b) Mochel Drive Extension. The Developer shall provide, at the Developer's expense, all engineering services required for the design of the roadway known as Mochel Drive. The Village shall be responsible to reimburse the Developer by way of the Public Improvements Credit in an amount not to exceed \$860,000.00 for the Cost of Work actually incurred in constructing the extension, together

with the other Public Improvements required to be constructed by the Developer hereunder. . The estimated costs for construction of the extension are included in Exhibit C. The utility infrastructure shall include sewer and water service stubs to the edge of the right of way for use by the Developer for its buildings.

- (c) Improvements on Public Property. Except as specified in this Agreement or on the PD Final Plans, the Village shall be responsible to reimburse the Developer by way of the Public Improvements Phase Credit for the Cost of Work actually incurred by the Developer to construct or install required Public Improvements within the public rights of way outside of the boundaries of the Property, including landscaping, street furniture, street lighting, curb and gutter, and park amenities, as depicted in the PD Concept Plans. The estimated costs for construction of those required Public Improvements are included in Exhibit C. In contrast, the Developer shall pay for all such costs, *e.g.* landscaping, furniture, lighting, and amenities, within the boundaries of the Property.
- (d) Overhead Utilities. The Village shall cause, at the Village's expense, the removal, relocation, or burial of certain overhead utilities as shown in the PD Concept Plans.
- (e) Costs of Review of Plans. In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by applicable Village codes, ordinances, resolutions, rules, or regulations, the Developer shall pay to the Village, immediately upon presentation of a written demand or demands therefor including copies of any invoices or bills, all outside engineering and other consulting and administrative fees, costs, and expenses incurred or accrued in connection with the review of plans for the development of the Property. Payment of all fees, costs, and expenses, for which demand has been made, but for which payment has not been received by the Village prior to execution of this Agreement, shall be made as a condition precedent to the execution of this Agreement by the Mayor. Further, the Developer agrees that it will continue to be liable for and to pay, immediately on presentation of a written demand or demands therefor, any normally imposed fees, costs, and expenses incurred in connection with applications submitted by it in connection with the development of the Property.
- (f) Contributions (Impact Fees); Permit Fees. The required financial contributions (impact fees) payable to the Village, the Downers Grove School District, and the Downers Grove Park District in connection with the Project shall be calculated in accordance with the contributions (impact fees) in effect as of the effective date of this Agreement as set forth in Exhibit H to this Agreement. The building permit fees and similar fees of the Village shall be calculated as provided in the Village's codes and ordinances, including any properly enacted, generally applicable increase to any such fee from time to time.

9.4 Declaration of Covenants, Restrictions, and Easements. The Developer shall record against each Project Phase the Property, in forms reasonably acceptable to the Village Attorney and prior to any sale or lease of any unit for that Project Phase, one or more Condominium Declarations and/or Declaration of Covenants, Restrictions, and Easements or

similar document providing for, among other things, the establishment of one or more condominium or property owner associations to set forth the condominium or property owners' collective obligations for maintenance of the Property.

9.5 Insurance. Prior to commencement of the Redevelopment Project, the Developer or Developer's contractors shall procure and deliver to the Village at the Developer's (or such contractors) cost and expense, and shall maintain in full force and effect until each and every obligation of the Developer contained herein has been fully paid, or performed, a policy or policies of comprehensive liability insurance and, during any period of construction, contractors liability insurance, structural work act insurance and worker's compensation insurance, with liability coverage prepared under the comprehensive liability insurance, to be not less than \$2,000,000.00 each occurrence and \$5,000,000.00 total, all such policies to be in such form and issued by such companies as shall be acceptable by the Village to protect the Village and the Developer and their respective officers, employees, and agents against any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about that portion of the Redevelopment Project being constructed by the Developer, or the construction and improvement thereof by the Developer. Each policy shall name the Village as an additional insured and shall contain an affirmative statement by the issuer that it will give written notice to the Village at least 30 days prior to any cancellation or amendment of its policy.

9.6 Extension and Amendment of Special Service Areas. To provide for the maintenance of the public plazas and gathering areas, landscaping, sidewalks, street furniture, lighting, and other services and amenities throughout the Village's TIF District, including the Property, (the "special amenities"), the Village may extend the life of the existing special service area throughout the Village's TIF District, including the Property (the "SSA"). The Village also may increase the levy of the SSA throughout the SSA's entire area, if necessary, to an amount of money reasonably determined by the Village to be necessary to cover the costs of the special amenities, but not more than 15 percent greater than the current SSA rate. The costs of maintaining the special amenities shall not include the costs of maintaining the Village Green so long as the Developer or its successors or assigns are properly maintaining the Village Green pursuant to Section 9.7 of this Agreement. The Developer shall not, and hereby agrees not to, object to the extension or amendment of the SSA in accordance with this Section 9.6.

The Developer shall disclose any and all existing special service areas to potential buyers of dwelling units within the Property within any purchase and sale contracts for such dwelling units.

9.7 Maintenance of Village Green Area. The Developer is constructing, as part of the Public Improvements for Project Phase II, an area of public property currently known as the Village Green and depicted in the PD Plans. The Developer shall convey the Village Green property to the Village after it is completed and accepted by the Village. At the election of the Village, the Developer, on behalf of itself and its successors and assigns, including one or more condominium or property owner associations, shall enter into a covenant substantially in the form attached to this Agreement as Exhibit I for the maintenance of the Village Green and the Village shall grant an easement to permit Developer to exercise its obligations under such covenant (collectively, the "Village Green Covenant and Easement"). The Village Green Covenant and Easement shall be recorded along with all Condominium Declarations and/or Declaration of Covenants, Restrictions, and Easements or similar documents prepared pursuant to Section 9.4 of this Agreement.

9.8 Liability and Indemnity of Village.

- (a) No Liability for Village Review. The Developer acknowledges and agrees (i) that the Village is not, and shall not be, in any way liable for any violations of restrictive covenants applicable to the Property that may occur, or for any damages or injuries that may be sustained, as the result of the Village's review and approval of any plans for the Property or the Improvements, or as a result of the issuance of any approvals, permits, certificates, or acceptances for the development or use of any portion of the Property or the Improvements and (ii) that the Village's review and approval of any plans and the issuance of any approvals, permits, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, or licensees, or any third party, against restrictive covenant violations or damage or injury of any kind at any time.
- (b) Indemnification. The Developer agrees to, and does hereby, hold harmless and indemnify the Village, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, consultants, and attorneys, from any and all claims that may be asserted at any time against any of the parties in connection with (1) the Village's review and approval of any plans for the Property or the Improvements, (2) the issuance of any approval, permit, certificate, or acceptance for the Property or the Improvements, (3) the development, construction, maintenance, or use of any portion of the Property or the Improvements, (4) the violation of any restrictive covenant applicable to the Property and (5) the performance by the Developer of its obligations under this Agreement and all related agreements and documents.
- (c) Defense Expenses. The Developer shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims mentioned in Subsection 9.8B above.

9.9 Nature, Survival, and Transfer of Obligations. All obligations assumed by the Developer under this Agreement shall be binding on the Developer personally, on any and all of the Developer's successors and assigns, and on any and all successor legal or beneficial owners of record of all or any portion of the Property other than the owner of an individual dwelling unit or improved lot within the Property. The Developer further agrees that all payment and conveyance obligations under this Agreement, together with interest and costs of collection, including legal fees and administrative expenses, may, if not satisfied as required by this Agreement, become an enforceable lien upon the Property pursuant to Section 7.9 of this Agreement. To assure that all successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Developer shall:

- (a) Deposit with the Village Clerk, at the time of execution of this Agreement, a sufficient sum, in current funds, to reimburse the Village for the actual cost of recording this Agreement with the DuPage County Recorder of Deeds; and
- (b) Notify the Village in writing at least 15 days prior to any date upon which the Developer transfers a legal or beneficial interest in any portion of the Property, other than with respect to the individual transfer of an individual dwelling unit or improved lot within the Property, to any party not a party to this Agreement; and
- (c) Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into for the sale of all or any portion of the Property, other than with respect to the transfer of an individual dwelling unit or improved lot within the Property, to any party not a party to this Agreement; and
- (d) Require, prior to the transfer of all or any portion of the Property, or any legal or equitable interest therein, except with respect to an individual dwelling unit or improved lot within the Property, to any party not a party to this Agreement, the transferee of any portion of the Property to execute an enforceable written agreement, in substantially the form attached hereto as Exhibit J, agreeing to be bound by the provisions of this Agreement, and to provide the Village, upon request, with reasonable assurance of the financial ability of the transferee to meet those obligations as the Village may require.

The Village agrees that upon a successor becoming bound to the personal obligation created herein in the manner provided herein and providing the financial assurances required herein, the liability of the Developer shall be released to the extent of the transferee's assumption of such liability. The failure of the Developer to provide the Village with a fully executed copy of the agreement required herein by the transferee to be bound by the provisions of this Agreement and, if requested by the Village, with the transferee's proposed assurances of financial ability before completing any transfer, shall result in the Developer remaining fully liable for all of the Developer's obligations under this Agreement but shall not relieve the transferee of its liability for all obligations as a successor to the Developer.

9.10 No Implied Waiver of Village Rights. The Village shall be under no obligation to exercise rights granted to it in this Agreement except as it shall determine to be in its best interest from time to time. Except to the extent embodied in a duly authorized and written waiver of the Village, no failure to exercise at any time any right granted herein to the Village shall be construed as a waiver of that or any other right.

9.11 Requirements of Law. Every reference in this Agreement to Requirements of Law shall include such Requirements of Law as they have been, or as they may hereafter be, amended.

9.12 Time of Essence; Cooperation. Time is of the essence in the performance of all terms and provisions of this Agreement. The Parties shall cooperate with one another on an ongoing basis and make every reasonable effort (including, with respect to the Village, the convening of meetings and, when necessary, public hearings within reasonable time periods, and the adoption of ordinances) to further the implementation of the provisions of this Agreement and the intentions of the Parties as reflected by those provisions. Each Party agrees to execute

such applications and other documents, and to otherwise cooperate, as may be necessary, proper, and appropriate to obtain approvals and authorizations from other government and administrative entities.

9.13 Term. This Agreement shall be in full force and effect from and after the date of its execution; provided, however, that this Agreement shall be of no force or effect unless and until the Developer shall have first paid in full the amounts due to the Village as a condition precedent to the execution of this Agreement by the Mayor. This Agreement shall run with and bind the Property for its term, and shall inure to the benefit of and be enforceable by the Developer and the Village, and any of their respective legal representatives, successors, and assigns.

9.14 Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (i) when delivered in person on a business day at the address set forth below, or (ii) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below, or (iii) by facsimile transmission, when transmitted to the facsimile telephone number set forth below, when actually received and when accompanied by mailing as provided in Subparagraph (2) of this Section above.

Notices and communications to the Developer shall be addressed to, and delivered at, the following addresses:

Acadia OTG LLC
4927 Main Street
Skokie, Illinois 60077
(847) 677-2000

with a copy to:
Laura E. Tilly
Miner, Barnhill & Galland
14 West Erie Street
Chicago, Illinois 60610
(312) 751-1170

Notices and communications to the Village shall be addressed to and delivered at, these addresses:

Village of Downers Grove
801 Burlington Street
Downers Grove, Illinois 60515
Attention: Village Manager
Fax: (630) 434-5571

with a copy to:
Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603
Attention: Mark E. Burkland
Fax: (312) 578-6666

By notice complying with the requirements of this Section 9.12, each Party shall have the right to change the address or addressee, or both, for all future notices and communications to such Party, but no notice of a change of address or addressee shall be effective until actually received.

9.15 Enforcement and Remedies.

(a) Enforcement. The Parties may enforce or compel the performance of this Agreement, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance; provided, however, that the Developer agrees that it will not seek, and does not have the

right to seek, to recover a judgment for monetary damages against the Village or any elected or appointed officials, officers, employees, agents, representatives, engineers, consultants, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any and all buildings and structures within the current Project Property Phase at any time when the Developer has failed or refused to meet fully any of its obligations under this Agreement in a manner relevant to the construction or occupancy of a building within that Project Property Phase. In the event of a judicial proceeding brought by one Party to this Agreement against another Party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing Party in any judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with any judicial proceeding.

- (b) Remedies. In the event of a breach of this Agreement, the Parties agree that the Party alleged to be in breach shall have, unless specifically provided otherwise by any other provision of this Agreement, 30 days after notice of any breach delivered in accordance with Section 20 of this Agreement to correct the same prior to the non-breaching Party's pursuit of any remedy provided for in this Section 22; provided, however, that the 30-day period shall be extended, but only (i) if the alleged breach is not reasonably susceptible to being cured within the 30-day period, and (ii) if the defaulting Party has promptly initiated the cure of the breach, and (iii) if the defaulting Party diligently and continuously pursues the cure of the breach until its completion. If any Party shall fail to perform any of its obligations under this Agreement, and if the Party affected by the default shall have given written notice of the default to the defaulting Party, and if the defaulting Party shall have failed to cure the default as provided in this Subsection B, then, in addition to any and all other remedies that may be available, either in law or equity, the Party affected by the default shall have the right (but not the obligation) to take any action as in its discretion and judgment shall be necessary to cure the default. In any event, the defaulting Party hereby agrees to pay and reimburse the Party affected by the default for all costs and expenses reasonably incurred by it in connection with action taken to cure the default.

9.16 Amendments and Waiver. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until the change is reduced to writing and executed and delivered by the Village and the Developer. No term or condition of this Agreement shall be deemed waived by any Party unless the term or condition to be waived, the circumstances giving rise to the waiver and, where applicable, the conditions and limitations on the waiver are set forth specifically in a duly authorized and written waiver of such Party. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

9.17 Sufficiency of Proceedings. The Village and the Developer hereby acknowledge and agree that all required notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right.

9.18 Developer's Representations. The Developer hereby warrants and represents that (i) the Developer has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Property as set forth herein, (ii) all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (iii) neither the execution of this Agreement nor the performance of the obligations assumed by, as applicable, the Developer hereunder will result in a breach or default under any agreement to which the Developer is a party or to which the Developer or the Property is bound or will violate any statute, law, restriction, court order, or agreement to which the Developer or the Property is subject.

9.19 Village's Representations. The Village hereby warrants and represents the following:

- (a) Authority of Village. The Village has full power and authority to enter into this Agreement and perform its obligations hereunder and, all action and approvals, if any, required in order to authorize the execution and performance of this Agreement by the Village have been duly taken and obtained.
- (b) Non-Contravention of Existing Documents. The execution or delivery of this Agreement, the consummation or the fulfillment of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions hereof do not conflict with or result in a material breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Village is a party or by which the Village is bound, or constitute a default under any of the foregoing; this Agreement is valid and enforceable in accordance with its terms and each instrument executed and delivered by the Village pursuant hereto shall be valid and enforceable in accordance with its terms; the Village, to the best of its knowledge and belief, is not in default in respect of any obligations with respect to the Property which, if uncured, may have any material adverse affect on the Developer or its designee or upon the Property.
- (c) Option to Acquire Property; Service Contracts. No person or entity has any right of first refusal, option, or other similar rights to acquire any interest in the Property or any part thereof. Except as otherwise disclosed by the Village to the Developer in writing, no service or construction contracts affecting the Property exist.
- (d) Payment of Impositions. If the Property was not or is not exempt from real estate taxation, the Village has paid all real estate taxes and special assessments affecting the Property that are currently due and payable, if any. If the parcels are not exempt from real estate taxation, the Village shall pay when due all real estate tax bills and bills for special assessments (to the extent such special assessments

are due and payable prior to the applicable closing), if any, affecting the Property received between the date hereof and the date of the applicable closing.

- (e) Leases and Easements. Except as otherwise disclosed to Developer by Village, there exist no leases, tenancies, rights of possession or of occupancy, easements, licenses, access rights, or party agreements, whether recorded or unrecorded, or whether in writing or not, affecting any part of the Property. Any and all leases, tenancies, rights of possession or of occupancy, easements, licenses, access rights, or party agreements shall be terminated with respect to any Project Phase Property prior to any conveyance of such property to the Developer.
- (f) Pending Litigation. There is no pending, or to the best of the Village's knowledge threatened, litigation or like proceedings (including the exercise of the power of condemnation or eminent domain), before any court or governmental agency that, if successfully pursued, could result in any adverse change in the title to or the condition of the Property or any part thereof.
- (g) Governmental Rules. The Village has received no notice of and has no knowledge of any violations or conditions on the Property that would constitute violations, of any governmental laws, rules, regulations, or orders affecting the Property.

The Village will indemnify, defend, and hold the Developer harmless from and against any loss, damages, liability or fees (including reasonable attorneys' fees) incurred by the Developer arising by reason of a breach of the foregoing warranties, representations, and covenants. In addition, in the event any of the foregoing warranties, representations, and covenants are breached prior to or as of each closing, the Developer shall not be required to close until such breach is cured, and if such breach is not cured within 30 days in accordance with Section 9.15(b) hereof, the Developer may terminate this Agreement. Each of the foregoing representations, warranties, and covenants shall be deemed made for the benefit of the Developer and its successors and assigns. All such representations, warranties, and covenants shall not merge into the deed and shall be remade on each closing date and survive the last closing for three years.

9.20 Assignment. This Agreement or any part hereof is assignable by the Developer to an entity affiliated with the Developer and wholly controlled by New England Builders, Inc. or its primary shareholders or by collateral assignment to the Developers' lender(s) only, provided that the Developer has provided evidence to the Village that assignee is an entity in good standing and has the requisite authority to accept the assignment and provided, further, that the assignee certifies in writing that the assignee accepts this Agreement and agrees to be bound by the provisions of this Agreement. This Agreement may not be assigned by the Village without the prior written consent of the Developer.

9.21 No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Village or the Developer.

9.22 Entire Agreement. This Agreement shall constitute the entire agreement of the Parties; all prior agreements between the Parties, whether written or oral, are merged into this Agreement and shall be of no force and effect.

9.23 Exhibits. The following Exhibits A through and including J attached to this Agreement are by this reference incorporated herein and made a part hereof:

Exhibit A	Legal Description of the Property
Exhibit B	PD Concept Plans
Exhibit C	Approved Cost Estimate
Exhibit D-1	Project Phasing
Exhibit D-2	Project Schedule
Exhibit E	List of Discouraged Uses and List of Encouraged Uses
Exhibit F-1	Form of Public Improvements Letter of Credit
Exhibit F-2	Form of Guaranty Letter of Credit
Exhibit F-3	Form of Schedule Performance Letter of Credit
Exhibit G	Sales and Marketing Parcel Location Plan
Exhibit H	Required Contributions (Impact Fees)
Exhibit I	Village Green Covenant and Easement
Exhibit J	Transferee Assumption Agreement
Exhibit K	Right of Entry Agreement
Exhibit L	License Agreement
Exhibit M	Cost of Work

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the date first above written.

VILLAGE OF DOWNERS GROVE

ATTEST:

By: _____
Mayor

By: _____
Village Clerk

ACADIA OTG LLC

By: NEB Development, LLC

By: _____

Name: _____

Title: _____

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

See attached.

PARCEL 1

THAT PART OF THE WEST ½ OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 9 IN BLOCK 3 OF THE PLAT OF DOWNERS GROVE RECORDED ON SEPTEMBER 10, 1869, AS DOCUMENT 11829; THENCE SOUTH 88° 34' 57" EAST ALONG THE SOUTH LINE OF BURLINGTON AVENUE, 376.05 FEET; THENCE SOUTH 01° 16' 09" WEST, 346.29 FEET TO THE SOUTH LINE OF LOT 5 IN BLOCK 5 IN CURTISS ADDITION TO DOWNERS GROVE RECORDED MARCH 8, 1866 AS DOCUMENT 7317, BEING ALSO THE NORTH LINE OF CURTISS STREET; THENCE SOUTH 80° 35' 58" WEST ALONG SAID NORTH LINE OF CURTISS STREET TO THE WEST LINE OF THE EAST 34 FEET OF LOT 6 IN SAID BLOCK 5; THENCE NORTH 01° 57' 54" WEST ALONG SAID WEST LINE, 141.45 FEET TO THE SOUTH LINE OF LOT 6 IN SAID BLOCK 3; THENCE SOUTH 78° 49' 27" WEST ALONG THE SOUTH LINES OF SAID LOT 6 AND LOTS 7 AND 8 IN SAID BLOCK 3, BEING ALSO THE NORTH LINES OF SAID LOT 6, AND LOTS 7 AND 8 IN SAID BLOCK 5, A DISTANCE OF 143.30 FEET; THENCE NORTH 01° 28' 47" WEST, 37.71 FEET; THENCE SOUTH 81° 30' 57" WEST, 20.15 FEET TO THE EAST LINE OF LOT 12 IN SAID BLOCK 3; THENCE NORTH 01° 28' 47" WEST ALONG THE EAST LINE OF SAID LOT 12 AND THE EAST LINE OF SAID LOT 11, 51.45 FEET; THENCE NORTH 88° 12' 10" EAST, 18.07 FEET; THENCE NORTH 01° 38' 39" EAST, 29.43 FEET; THENCE NORTH 88° 35' 57" WEST, 18.01 FEET TO THE EAST LINE OF LOT 10 IN SAID BLOCK 3; THENCE NORTH 01° 28' 47" WEST ALONG SAID EAST LINE OF LOT 10 AND THE EAST LINE OF LOT 9 IN SAID BLOCK 3, A DISTANCE OF 71.14 FEET TO THE NORTH LINE OF THE SOUTH 5 FEET OF SAID LOT 9 IN BLOCK 3; THENCE 88° 21' 06" WEST ALONG SAID NORTH LINE OF THE SOUTH 5 FEET, 131.82 FEET TO THE WEST LINE OF SAID LOT 9 IN BLOCK 3; THENCE NORTH 01° 35' 22" WEST ALONG THE WEST LINE OF SAID LOT 9 IN BLOCK 3, BEING ALSO THE EAST LINE OF MAIN STREET, 61.14 FEET TO SAID POINT OF BEGINNING; SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 1.63 ACRES, MORE OR LESS.

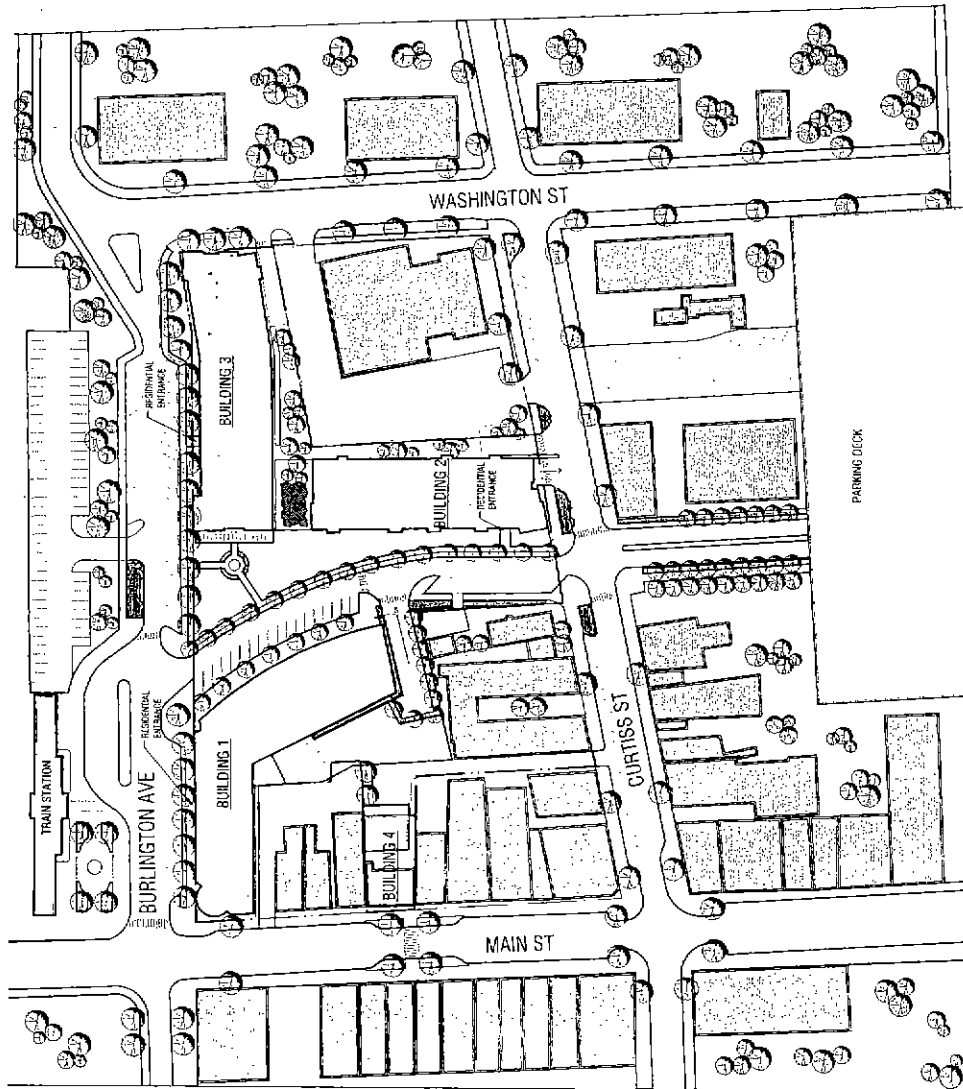
PARCEL 2

THAT PART OF THE WEST ½ OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF LOT 9 IN BLOCK 3 OF THE PLAT OF DOWNERS GROVE RECORDED ON SEPTEMBER 10, 1869, AS DOCUMENT 11829; THENCE SOUTH 88° 34' 57" EAST ALONG THE SOUTH LINE OF BURLINGTON AVENUE, 376.05 FEET TO THE POINT OF BEGINNING; THENCE THE FOLLOWING THREE COURSES BEING ALONG SAID SOUTH LINE OF BURLINGTON AVENUE; THENCE CONTINUING SOUTH 88° 34' 57" EAST, 180.63 FEET; THENCE NORTH 61° 51' 27" EAST, 27.62 FEET; THENCE SOUTH 89° 45' 27" EAST, 74.96 FEET TO THE WEST LINE OF WASHINGTON STREET; THENCE SOUTH 01° 28' 06" EAST ALONG SAID WEST LINE OF WASHINGTON STREET, 95.10 FEET TO A POINT ON THE EAST LINE OF LOT 2 OF SAID BLOCK 3, A DISTANCE OF 57.42 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 80° 45' 54" WEST, 135.59 FEET TO THE WEST LINE OF SAID LOT 2 IN BLOCK 3; THENCE SOUTH 81° 06' 46" WEST, 62.99 FEET TO THE WEST LINE OF LOT 3 IN SAID BLOCK 3; THENCE SOUTH 01° 55' 48" EAST, 64.54 FEET ALONG SAID EAST LINE OF LOT 3 IN BLOCK 3, A DISTANCE OF 64.54 FEET TO THE NORTH LINE OF SAID LOT 3 IN BLOCK 5 IN CURTISS ADDITION TO DOWNERS GROVE RECORDED MARCH 8, 1866 AS DOCUMENT 7317; THENCE SOUTH

78° 49' 27" WEST ALONG SAID NORTH LINE OF LOT 3 IN BLOCK 5, A DISTANCE OF 2.20 FEET TO THE NORTHEAST CORNER OF LOT 4 IN SAID BLOCK 5; THENCE SOUTH 02° 15' 59" EAST, 146.55 FEET TO THE NORTH LINE OF CURTISS STREET; THENCE SOUTH 80° 35' 58" WEST ALONG SAID NORTH LINE OF CURTISS STREET, 101.09 FEET; THENCE NORTH 01° 16' 09" EAST, 346.29 FEET TO SAID POINT OF BEGINNING; SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 1.18 ACRES, MORE OR LESS.

PARCEL 3

THAT PARTS OF LOTS 11 AND 12 IN BLOCK 3 OF THE ORIGINAL TOWN OF DOWNERS GROVE, IN SECTION 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING FOR A POINT OF BEGINNING ON THE WEST LINE OF SAID LOT 11, 35 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 11; THENCE EASTERLY TO A POINT ON THE EAST LINE OF SAID LOT, 30 FEET SOUTH OF THE NORTHEAST CORNER THEREOF; THENCE SOUTH, ALONG THE EAST LINES OF SAID LOTS 11 AND 12 TO A STAKE, 38 2/3RDS FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 12; THENCE WESTERLY TO A POINT ON THE WEST LINE OF SAID LOT 12, 70 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 12; THENCE NORTH, ALONG THE WEST LINES OF SAID LOTS 12 AND 11 TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS; SAID PARCEL OF LAND HEREIN DESCRIBED CONTAINS 0.14 ACRES, MORE OR LESS.

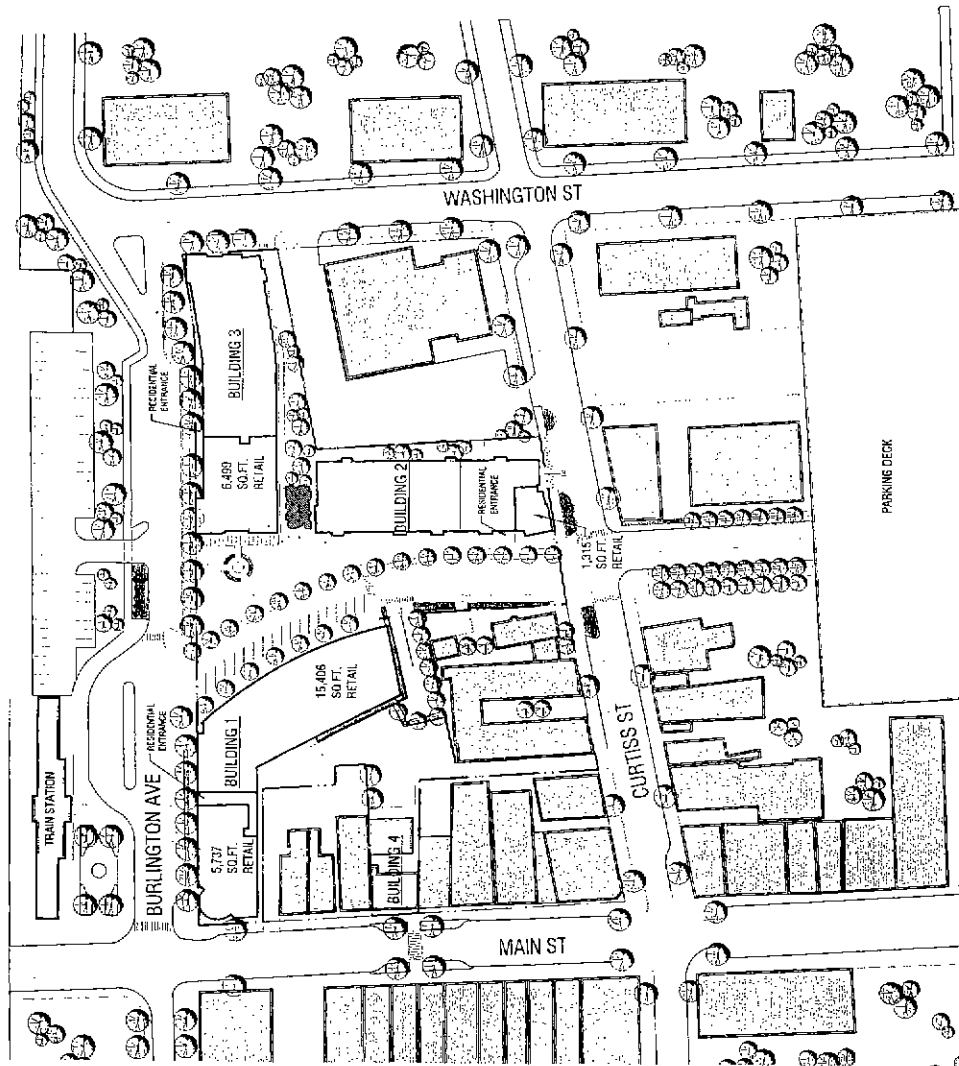


08.05.2005
 Developed by
 as Preliminary
 Conceptual Design

SITE PLAN
CURTISS BLOCK REDEVELOPMENT
 New England Builders, Inc.

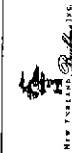
SCB
 08/10/05

Exhibit B
 PD Concept Plans



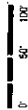
SCB

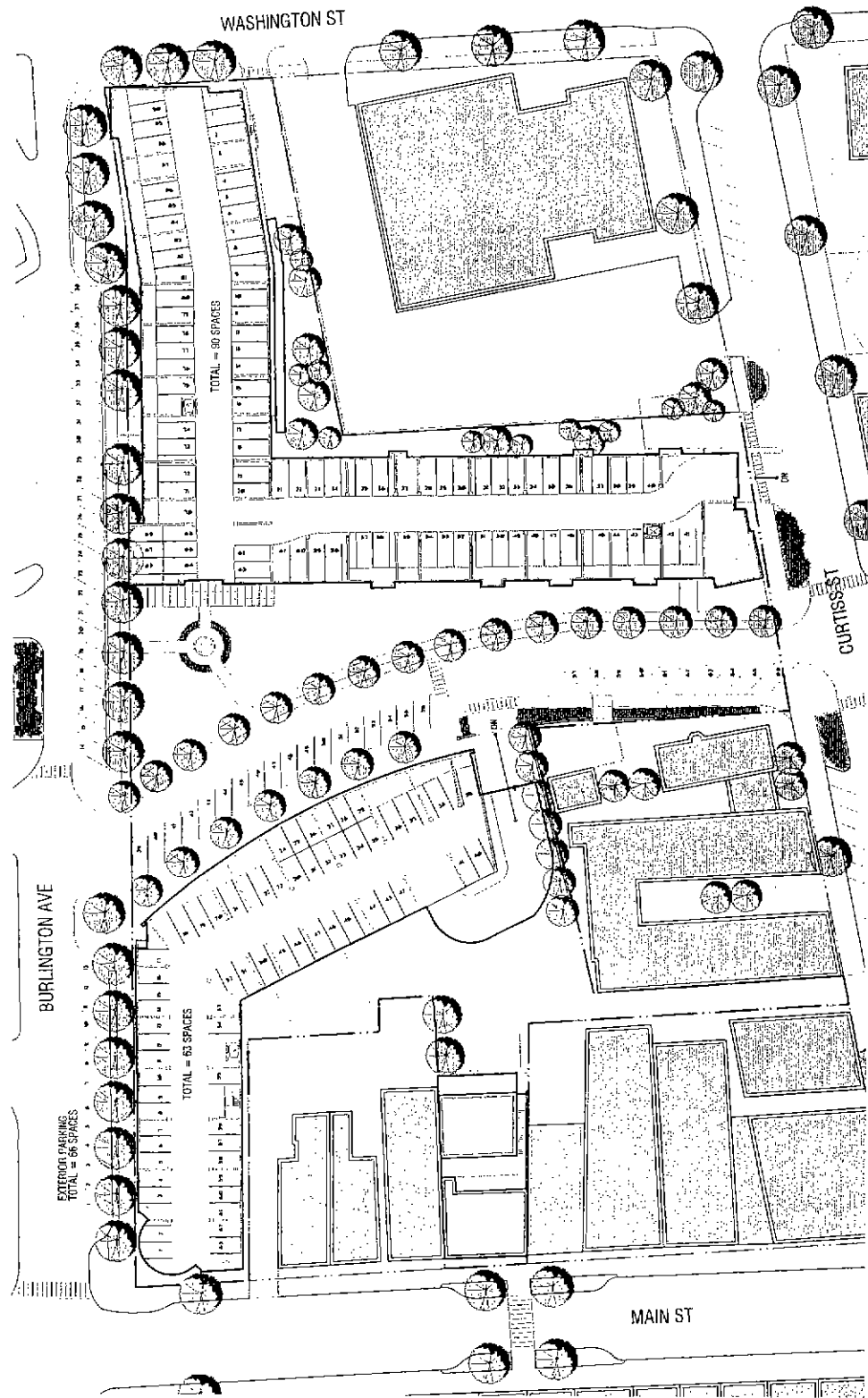
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SITE PLAN - RETAIL
CURTIS BLOCK REDEVELOPMENT
 New England Builders, Inc.

06.03.2008
 Drawing Issued
 25. Preliminary
 Conceptual Design





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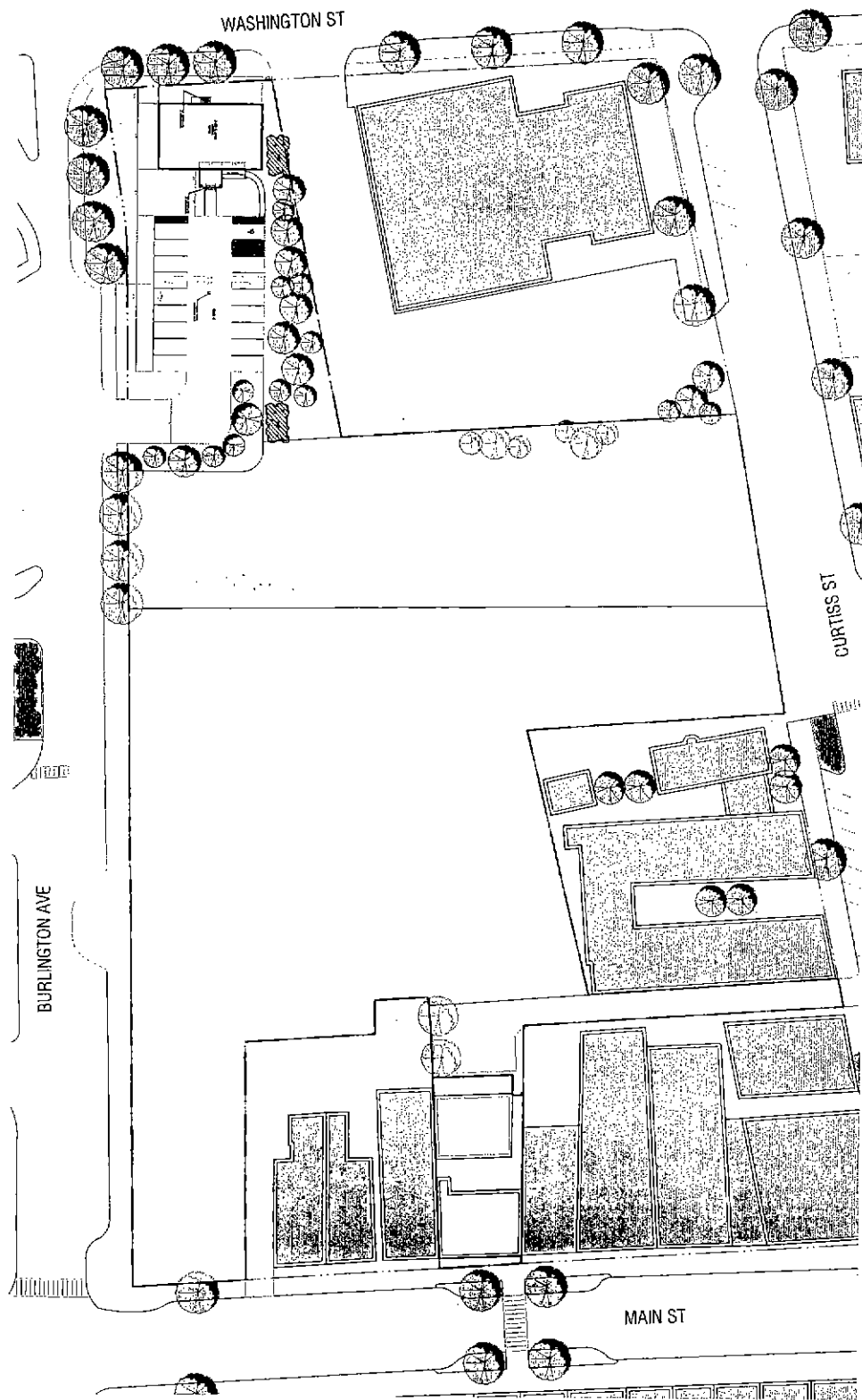
© 2003 CURTIS BUILDERS, INC.

PARKING

- BLDG #1 = 50 SPACES
- BLDG #2 = 50 SPACES
- EXTERIOR = 66 SPACES
- PARKING TOTALS = 216 SPACES

SITE PLAN - PARKING
CURTIS BLOCK REDEVELOPMENT
 New England Builders, Inc.

SCB
 CURTIS BUILDERS, INC.

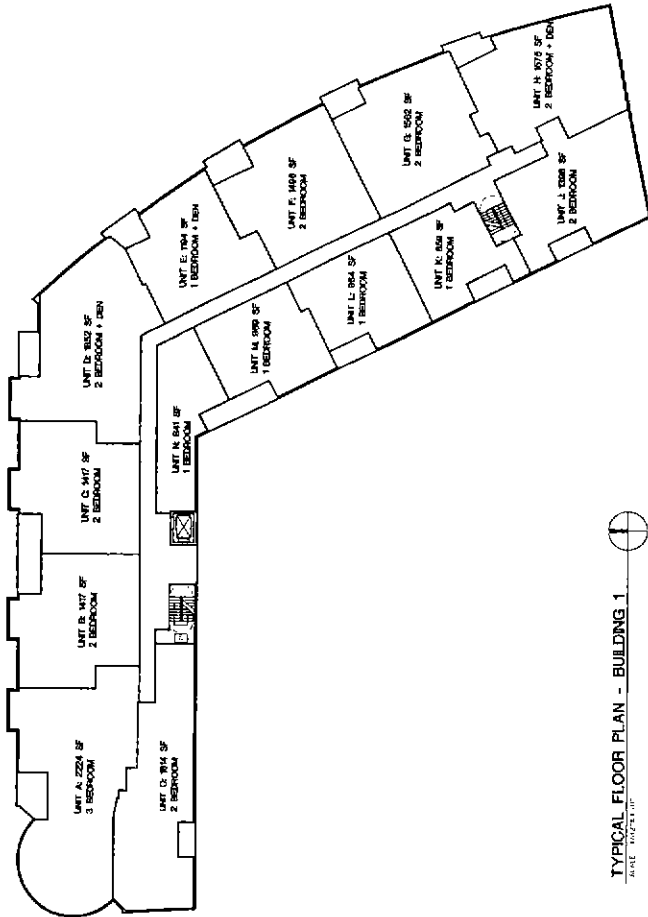


08/25/2005
 Drawing Issued
 2/1/2005
 Conceptual Design

SITE PLAN - SALES TRAILER PLAN
CURTISS BLOCK REDEVELOPMENT
 New England Builders, Inc.



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TYPICAL FLOOR PLAN - BUILDING 1

SCB

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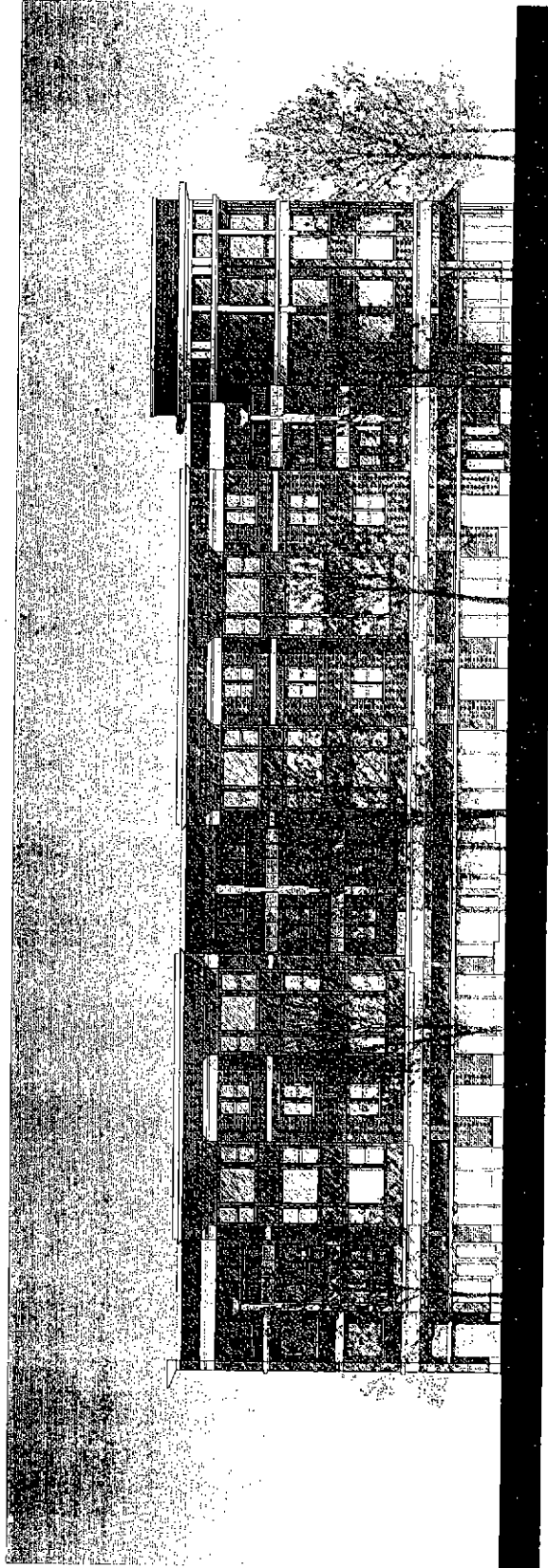
Building 1 - Typical Floor Plan
 Curtis Reed Development
 New England Builders

08.05.2005

Drawings Issued
 Conceptual Design

0'-0"





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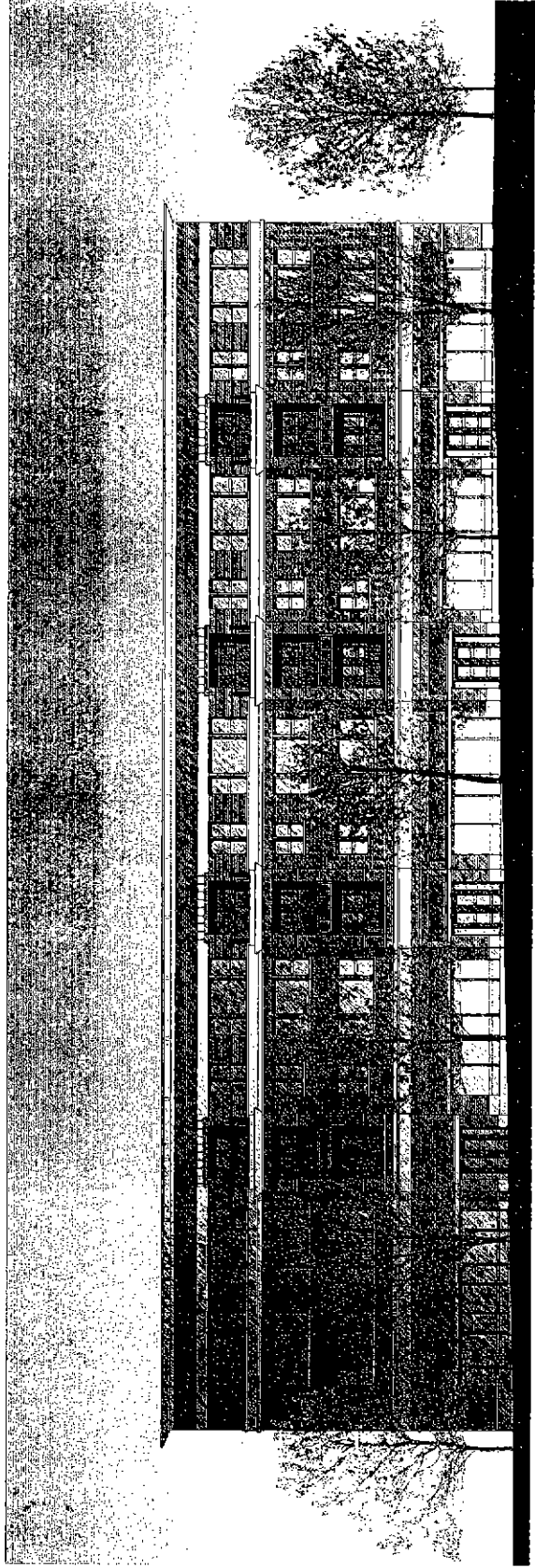
© 2004 SCB Architects, Inc.



Burlington Avenue Elevation - Building One
Curtiss Block Redevelopment
New England Builders

08.05.2005 10' 0" 1/8" = 1' 0"
Drawings created as Prokeyway Conceptual Design





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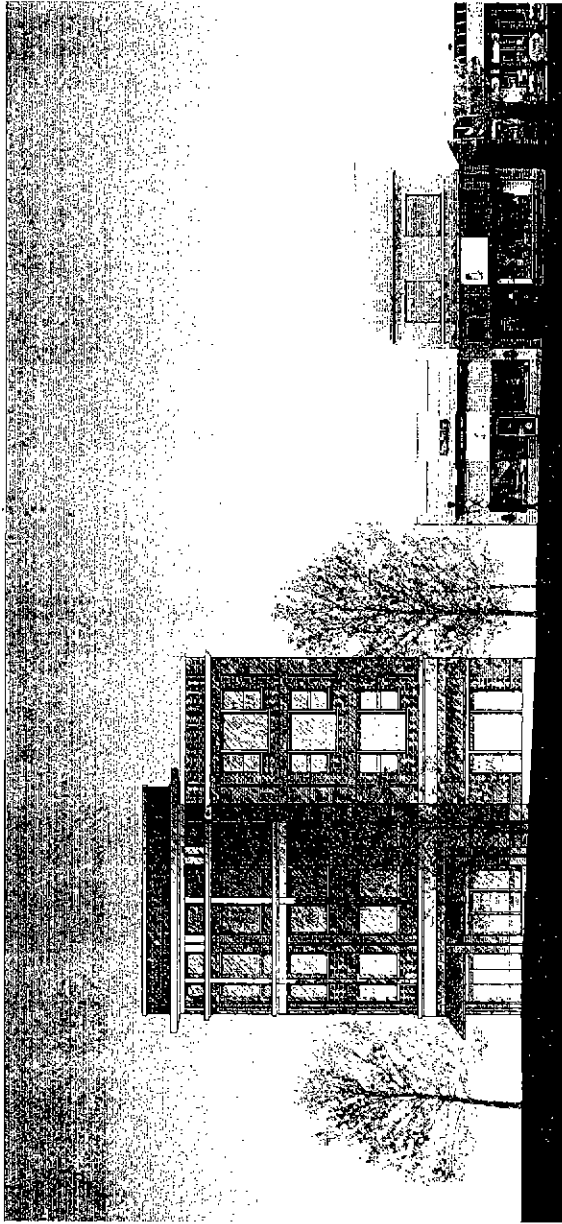
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East Elevation - Building One
Curtiss Block Redevelopment
New England Builders

08.05.2005 9'-0" 18'-0"
Drawings issued by Preliminary Conceptual Design





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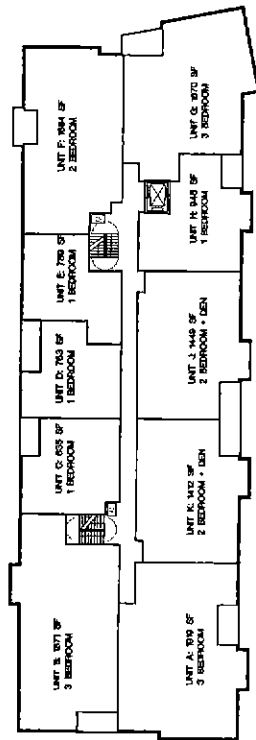
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Main Street Elevation - Building One
Curtiss Block Redevelopment
New England Builders

08.05.2005
RDP
16-G
Drawings Issued as Preliminary Conceptual Design





TYPICAL FLOOR PLAN - BUILDING 2

SCB

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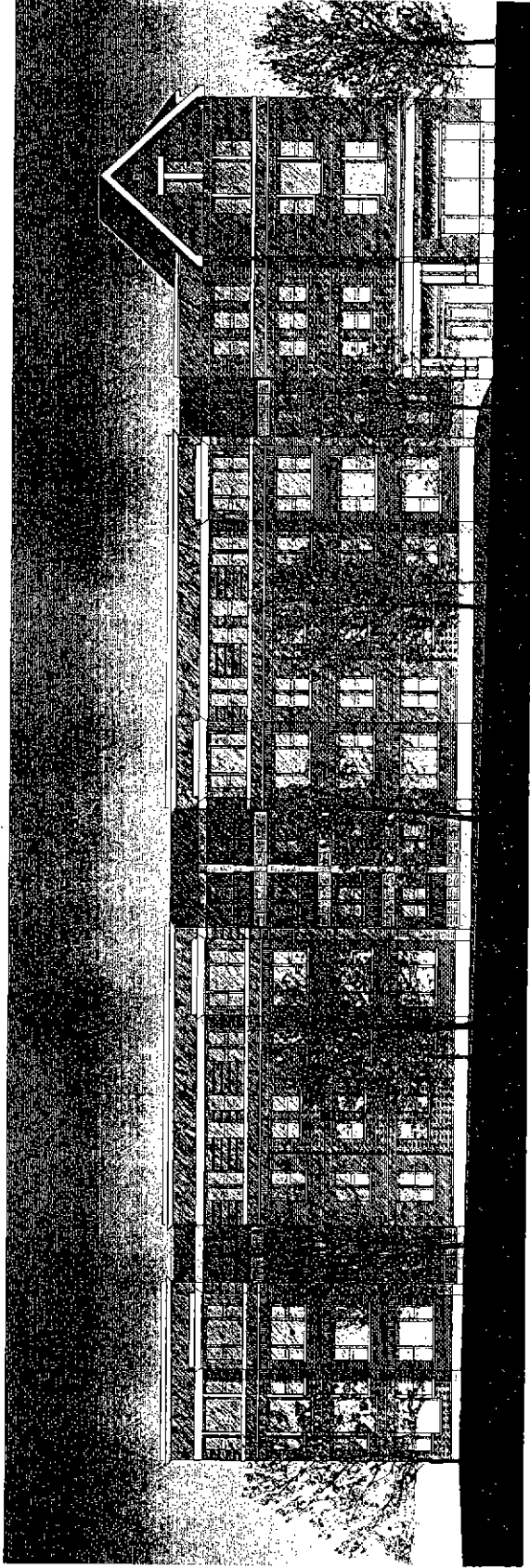


Building 2 - Typical Floor Plan
 Curtiss Block Redevelopment
 New England Builders

08.05.2005
 Drawing Issued
 Conceptual Design

0'-0" 32'-0"





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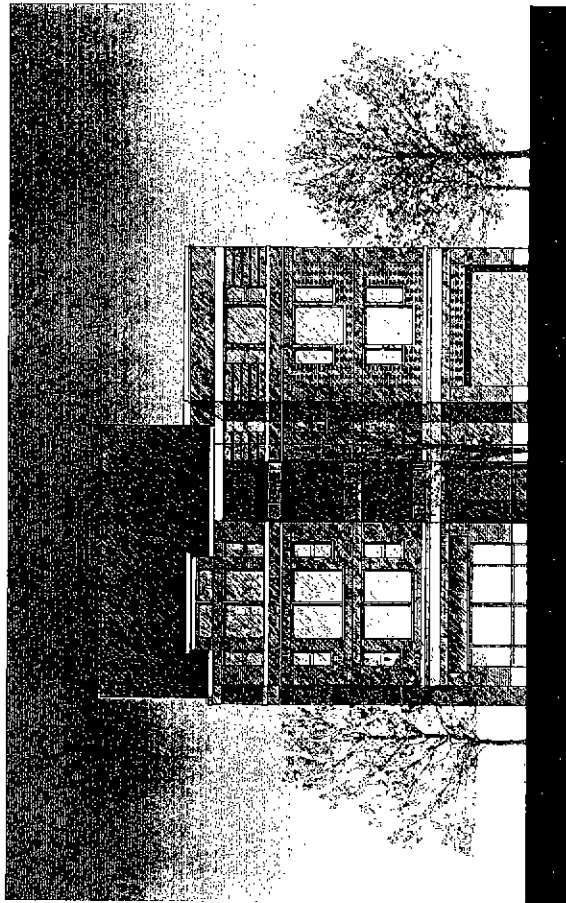
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West Elevation - Building Two
Curtiss Block Redevelopment
New England Builders

08.05.2005 0'-0" 18'-0"
Drawing Project: Primary Conceptual Design





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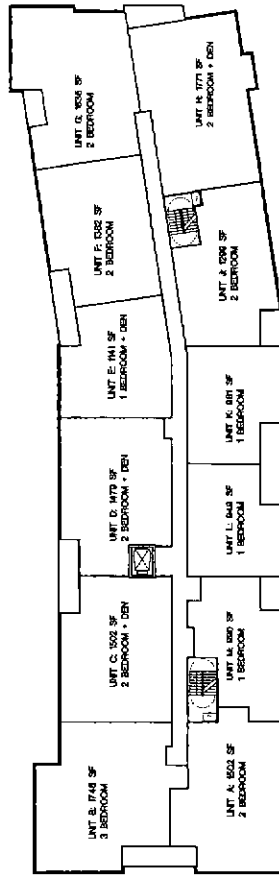
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Curtiss Street Elevation - Building Two
Curtiss Block Redevelopment
New England Builders

08.05.2005 0'-0" 18'-0"
Curtiss Block 1A Preliminary Conceptual Design





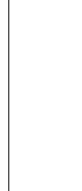
TYPICAL FLOOR PLAN - BUILDING 3

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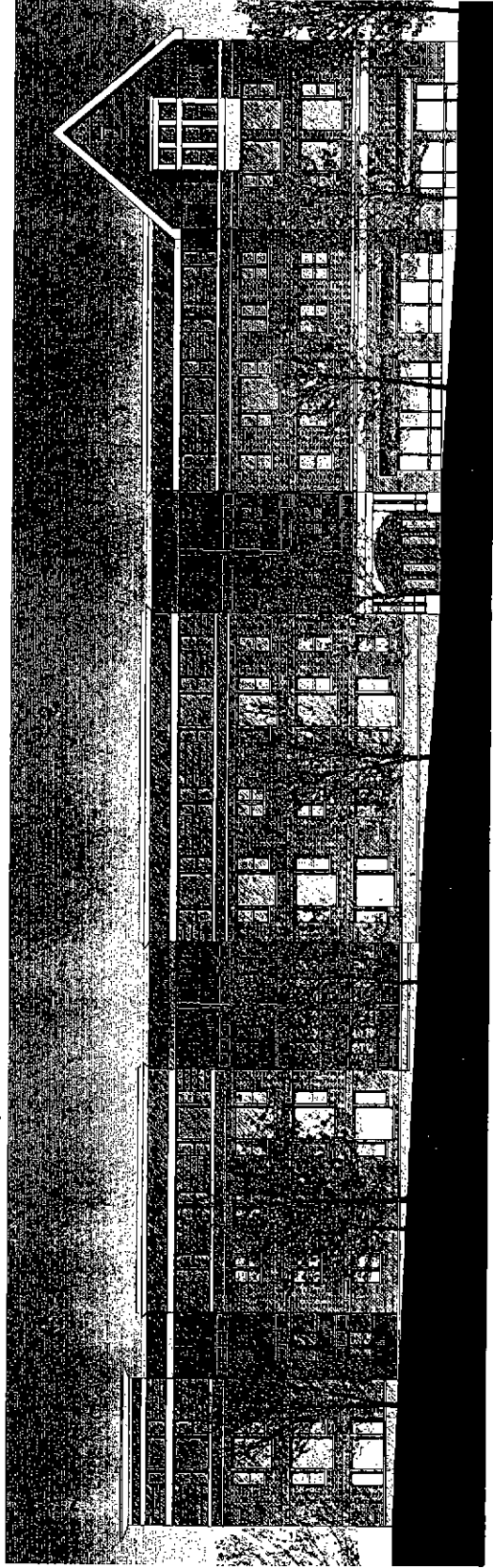
Building 3 - Typical Floor Plan
Curtiss Block Redevelopment
New England Builders



08.05.2005
Drawings Issued
Per Approved
Permitted Design



0'-0" 32'-0"



SCB

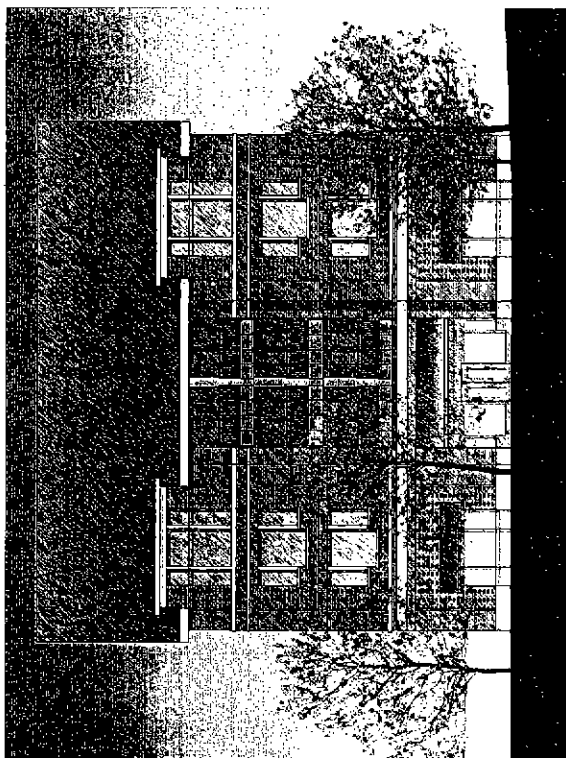
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Burlington Avenue Elevation - Building Three
Curtiss Block Redevelopment
New England Builders

08.05.2005 9'-0" 16'-0"
Drawing Issued as Preliminary Conceptual Design





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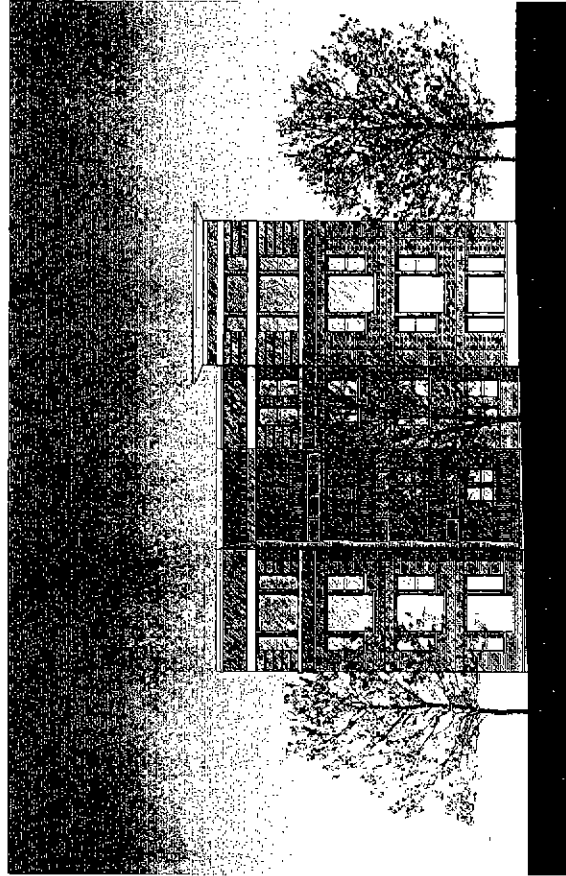
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West Elevation - Building Three
Curtiss Block Redevelopment
New England Builders

08.05.2005 0'-0" 18'-0"
Ownership/Status of Proprietary Conceptual Design





SCB

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Washington Street Elevation - Building Three
Curtiss Block Redevelopment
New England Builders

08.05.2005 04P 16'0"

Drawing Issued as Preliminary Conceptual Design



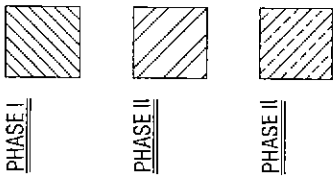
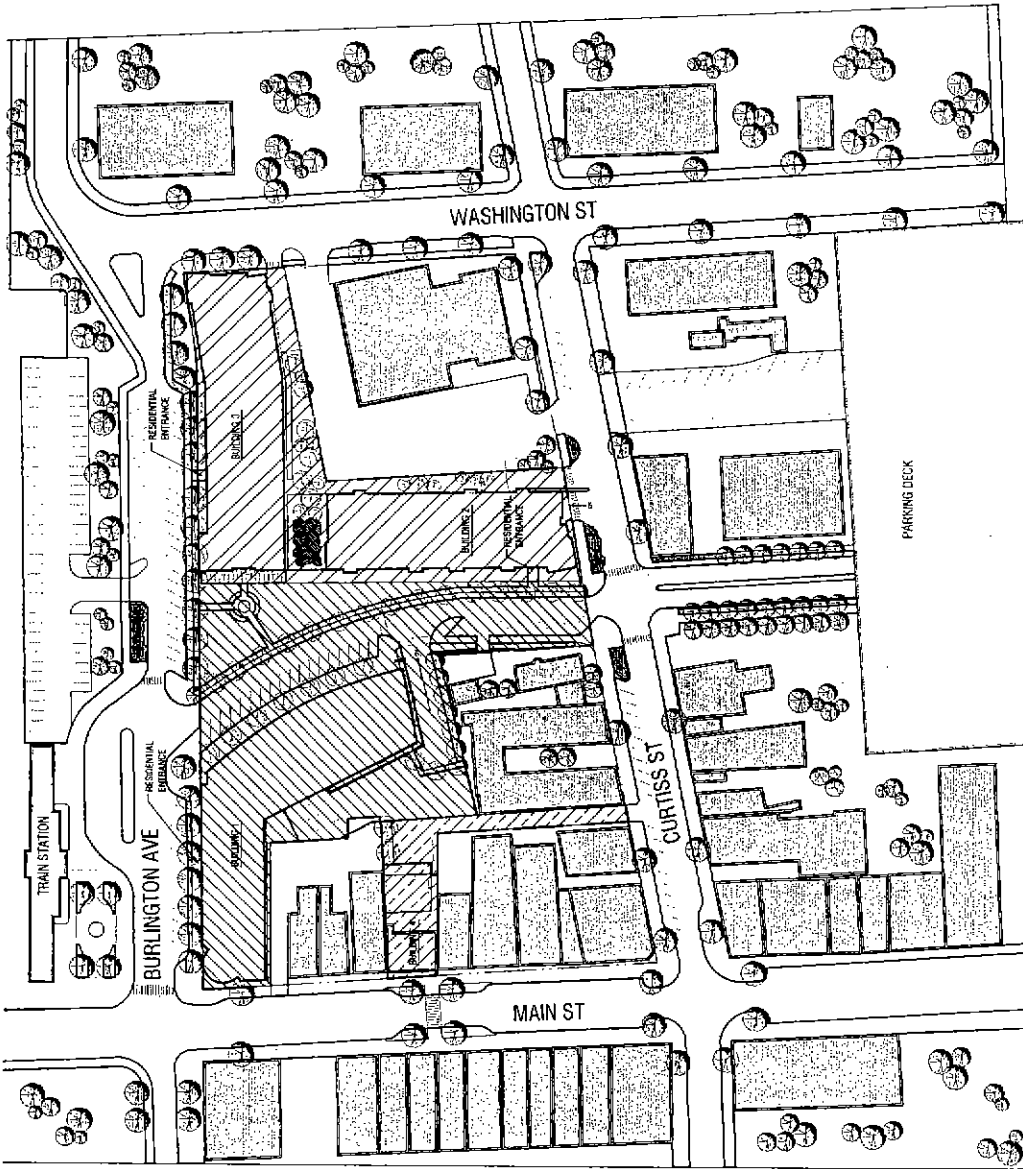
VILLAGE OF DOWNERS GROVE
CURTISS BLOCK ESTIMATES
New England Builders, Inc.

ITEM #	DESCRIPTION	QTY	UNIT MEAS	UNIT COST	TOTAL COST
ESTIMATED PARKWAY IMPROVEMENTS					
1	STRUCTURAL SOIL	1250	CY	58	\$72,500
2	PLANTING SOIL MIX	500	CY	34	\$17,000
3	TREE GRATE	14	EA	1080	\$15,120
4	TRASH RECEPTACLES WITH DOMED LIDS	10	EA	950	\$9,500
5	CONCRETE PAVERS, TYPE B 24" X 24"	900	SF	14	\$12,600
6	CONCRETE PAVERS, TYPE A, 6" X 12"	300	SF	10	\$3,000
7	LIMESTONE SCREENINGS BASE COURSE, 4"	133	SY	8	\$1,064
8	PIPE UNDERDRAINS, 4" WRAPPED	1000	LF	17	\$17,000
9	LAWN HYDRANT	6	EA	600	\$3,600
10	ORNAMENTAL TREE	25	EA	600	\$15,000
11	ALLOWANCE FOR STREET SIGNING	1	LS	20000	\$20,000
ESTIMATED ROADWAY IMPROVEMENTS					
12	POROUS GRANULAR EMBANKMENT, SUBGRADE	350	CY	33	\$11,550
13	SUBBASE GRANULAR MATERIAL, TYPE B, 6"	1100	SY	2.5	\$2,750
14	GEOTECH FABRIC FOR GROUND STABILIZATION	950	SY	15	\$14,250
15	COMB. CONC. CURB & GUTTER, TYPE B-6.12	1200	LF	17	\$20,400
16	PROTECTIVE COAT	2000	SY	1	\$2,000
17	HI-EARLY STRENGTH PCC PAVEMENT, 10"	950	SY	54	\$51,300
18	PCC DRIVEWAY PAVEMENT, 7"	900	SF	5	\$4,500
19	PCC SIDEWALK, 5", BUFF COLOR	15000	SF	8.4	\$126,000
20	HI-EARLY STRENGTH PCC X-WALK, 10", BUFF COLOR	1800	SF	8.4	\$15,120
21	HI-EARLY STRENGTH PCC X-WALK, 10", RED COLOR	500	SF	8.4	\$4,200
22	THERMOPLASTIC PAVEMENT MARKING, LINE 4"		LF	0.6	\$0
23	THERMOPLASTIC PAVEMENT MARKING, LINE 6"		LF	0.8	\$0
24	THERMOPLASTIC PAVEMENT MARKING, LINE 24"		LF	3.6	\$0
25	THERMOPLASTIC PAVEMENT MARKING, LTRS. & SYM.		SF	6	\$1,100
26	PREFORMED PLASTIC PAVEMENT MARKING, LINE 4"		LF	3.4	\$0
27	PREFORMED PLASTIC PAVEMENT MARKING, LINE 6"		LF	5	\$0
28	PREFORMED PLASTIC PAVEMENT MARKING, LINE 24"	50	LF	22	\$18,750
29	PREFORMED PLASTIC PAVEMENT MARKING, LTRS/SYM		SF	20	\$1,800
ESTIMATED LIGHTING IMPROVEMENTS					
30	LIGHT POLE FOUNDATION, 24" DIA.	150	LF	125	\$3,200
31	LIGHT POLE FOUNDATION, 30" DIA.	12	LF	150	\$900
32	HANDHOLE , BUFF COLOR	5	EA	1200	\$1,150
33	HANDHOLE ADJUSTMENT	2	EA	1600	\$3,600
34	DRILL EXISTING HANDHOLE	2	EA	450	\$6,500
35	DRILL EXISTING FOUNDATION	2	EA	575	\$3,510
36	TRENCH & BACKFILL FOR ELECTRICAL WORK	1000	LF	3.6	\$5,250
37	MODIFY EXISTING LIGHTING CONTROLLER	2	EA	3250	\$8,750
38	GROUND ROD	26	EA	135	\$313
39	CONDUIT IN TRENCH, 1" DIA., GRS	1000	LF	5.25	\$2,700
40	CONDUIT IN TRENCH, 2" DIA., GRS	1000	LF	8.75	\$5,000
41	CONDUIT IN TRENCH, 3/4" DIA., PVC SCH 40	125	LF	2.5	\$0
42	CONDUIT IN TRENCH, 1" DIA., PVC SCH 40	1000	LF	2.7	\$0
43	CONDUIT IN TRENCH, 2" DIA., PVC SCH 40	1000	LF	5	\$0
44	ELECTRIC CABLE IN CONDUIT, TRACER NO. 14-1/C		LF	0.65	\$0
45	ELECTRIC CABLE IN CONDUIT, 600V (TY THHW) NO. 10		LF	0.7	\$21,125
46	ELECTRIC CABLE IN CONDUIT, 600V (TY THHW) NO. 8		LF	1	\$970

Exhibit C
Approved Cost Estimate

47 ELECTRIC CABLE IN CONDUIT, 600V (TY THHW) NO. 6	LF	1.3	\$14,500
48 INSTALLATION OF STREET LIGHT POLE & LUM., 12'	25 EA	845	\$1,680
49 INSTALLATION OF STREET LIGHT POLE & LUM., 29'	1 EA	970	\$2,196
50 LUMINAIRES	25 EA	580	\$0
51 RECEPTACLE BOX IN PLANTERS	6 EA	280	\$0
52 POWER OUTLET IN POLE, 60 AMP TWIST LOCK-HUBBEL	6 EA	366	\$0
53 CONDUIT IN TRENCH, 4" DIA., GRS	LF	18.75	\$0
54 4" GRS CONDUIT, PUSHED OR AUGERED	LF	26.25	\$0
55 2 1/2" GRS CONDUIT, PUSHED OR AUGERED	LF	24.5	\$0
56 TYPE E SERVICE TO REFEED EXISTING CONTROLLER	LS	4000	\$0
57 5" GRS CONDUIT PLACED IN UNDERCUT	LF	29.25	\$0
58 2 1/2" GRS CONDUIT IN TRENCH	LF	18.75	\$3,530
59 ELECTRIC CABLE IN CONDUIT, 3/0 COPPER WIRE	LF	26.25	\$820
60 ELECTRIC CABLE IN CONDUIT, 600V (TY THHW) NO. 4	LF	24.5	\$0
61 DOUBLE HANDHOLE, BUFF COLOR	2 EA	1765	\$0
62 REMOVE EXISTING STREET LIGHT CONTROLLER	1 EA	820	\$0
63 2-1/2" PVC CONDUIT IN TRENCH	LF	6.6	
64 3" PVC CONDUIT IN TRENCH	LF	7.5	\$1,100
65 2" PVC CONDUIT, AUGERED	LF	19.8	\$300
66 ESTIMATED WATER & SEWER IMPROVEMENTS			
67 FIRE HYDRANTS TO BE REMOVED	2 EA	550	\$14,700
68 VALVE BOXES TO BE REMOVED	2 EA	150	\$4,900
69 DUCTILE IRON WATER MAIN, 6"	100 LF	34	\$4,900
70 DUCTILE IRON WATER MAIN, 8"	350 LF	42	\$3,100
71 DUCTILE IRON WATER MAIN, 12"	100 LF	49	\$2,500
72 WATER VALVE, 6"	5 EA	980	\$1,900
73 WATER VALVE, 8"	2 EA	1550	\$9,400
74 WATER MAIN FITTINGS	1000 LBS	2.5	\$1,250
75 CONNECTION TO EXISTING WATER MAIN	2 EA	950	\$200
76 FIRE HYDRANT w/ AUXILIARY VALVE & VALVE BOX	4 EA	2350	\$3,600
77 WATER IRRIGATION LINE, 1-1/2"	50 LF	25	\$5,000
78 WATER SERVICE VALVE & BOX	1 EA	200	\$12,750
79 VALVE VAULT, TYPE A, 5' DIA.	2 EA	1800	\$30,500
80 BYPASS SEWERAGE PUMPING	5 DAYS	1000	\$13,200
81 SANITARY SEWER, 6"	250 LF	51	\$100,000
82 SANITARY SEWER, 8"	500 LF	61	\$100,000
83 SANITARY MANHOLE, 4' DIA.	3 EA	4400	\$12,000
** CONSTRUCT NEW HIGHLAND STREET EXTENSION		860000	\$860,000

Exhibit "C"



08.05.2005
 Drawings Issued
 as Preliminary
 Conceptual Design

SITE PLAN - PHASE DIAGRAM
CURTISS BLOCK REDEVELOPMENT
 New England Builders, Inc.

SCB
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Exhibit D-1
 Project Phasing

Curtiss Development Schedule

Task	Target Completion Date	Default Deadline	Penalty Draw
Submit a complete application for Final Planned Development approval	12/15/2005	3/15/2006	NA
Obtain final planned development approval	3/30/2006	6/28/2006	\$25,000
Obtain building permit for Phase 1	4/15/2006	7/14/2006	NA
Close on Phase 1	5/1/2006	7/30/2006	\$25,000
Complete installation of footings for Phase 1	8/1/2006	10/30/2006	\$25,000
Complete construction on Phase 1	5/1/2008	7/30/2008	\$25,000
Close on Phase 2	5/1/2008	7/30/2008	\$25,000
Complete installation of footings for Phase 2	8/1/2008	10/30/2008	\$25,000
Complete construction on Phase 2	12/31/2009	3/31/2010	\$25,000
Close on Phase 3	1/1/2009	1/30/2010	\$25,000
Complete installation of footings for Phase 3	2/1/2010	5/2/2010	
Complete construction on Phase 3	12/1/2010	9/1/2010	
Complete the development	5/1/2011	7/30/2011	\$150,000

Exhibit E
List of Discouraged Uses and List of Encouraged Uses

Underlining is used to designate uses that are discouraged, **Bold** designates uses that are encouraged in the DB district.

Permitted uses. The following uses are allowed in the DB Downtown Business District as permitted uses:

- (1) **Public, Institutional.**
 - ! Village-owned facilities and structures.
 - ! Governmental facilities and structures other than colleges, universities, and schools.
- (2) **Commercial.**
 - ! Antique shops.
 - ! Animal grooming.
 - ! Art and school supply stores.
 - ! **Art galleries and studios.**
 - ! **Bakeries, retail only, with accessory preparation, but only up to 5,000 square feet.**
 - ! Banks, financial institutions, but excluding drive-in, drive-up, and drive through facilities.
 - ! Barber shops and beauty salons.
 - ! Bicycle shops.
 - ! **Books, stationery, and newspaper stores.**
 - ! Business and professional offices.
 - ! Camera and photographic supply and repair stores.
 - ! Candy stores, retail only, with accessory preparation.
 - ! Carpet, rug, and linoleum stores and showrooms, but excluding warehousing.
 - ! **Clothing sales** and clothing rental stores.
 - ! Coin and philatelic stores.
 - ! Copying, binding, and digital imaging services.
 - ! Cosmetics and toiletry stores, retail only.
 - ! Craft and hobby shops.
 - ! Custom clothing making and millinery shops, including monogramming services.
 - ! **Department stores up to 15,000 square feet.**
 - ! Drug stores, but not including drive-through facilities.
 - ! Dry cleaning stores, retail only, no plant on site.
 - ! Electronics and household appliance stores, retail only, including radio, television, cellular, and similar products, but not including warehousing.
 - ! Flower and florist shops.
 - ! **Food stores, grocery stores, meat markets, delicatessens, ice cream shops, and similar stores other than restaurants up to 15,000 square feet.**
 - ! **Furniture stores, retail only, but not including warehousing.**
 - ! Furrier stores, retail only.
 - ! Garden supply shops and stores.
 - ! Gift and card shops.
 - ! **Glassware stores, including china, ceramic, pottery, and similar products, retail only.**
 - ! **Hardware stores up to 15,000 square feet.**
 - ! Interior decorating stores.

- ! Jewelry stores, including accessory repair and assembly, retail only.
- ! Leather goods and luggage stores.
- ! Liquor stores, but not including any customer seating, packaged goods only.
- ! Locksmith shops.
- ! Medical offices (outpatient services only) up to 3,000 square feet.
- ! Musical instrument stores, including accessory repairs.
- ! Office supply stores.
- ! Paint and wallpaper stores.
- ! Photograph developing and processing stores, retail only.
- ! Photographer studios, including accessory developing and processing.
- ! Picture framing stores, retail only.
- ! Plumbing showrooms, retail only, excluding warehousing.
- ! **Restaurants (but not including outdoor seating or drive-through facilities).**
- ! Sewing machine shops, including accessory repairs, household machines only.
- ! **Shoe stores and shoe repair shops.**
- ! Sporting goods stores, but not including sales of firearms or ammunition of any kind.
- ! Tailor shops.
- ! Ticket sales and agencies.
- ! Tobacco shops.
- ! Toy stores.
- ! Travel bureaus, including transportation ticket offices.
- ! Video stores.
- (3) Miscellaneous.
 - ! Home occupations.
 - ! Off-street parking lots and loading docks.

(d) *Special uses.* The following uses are allowed in the DB District as special uses:

- (1) **Residential.**
 - ! **Multiple-family dwellings.**
- (2) Public, Institutional.
 - ! Churches, other places of worship, and church schools, but only if existing as of June 7, 2005, and only on the property as existing on June 7, 2005.
 - ! Colleges, universities, and schools, both public and private.
 - ! Public utility facilities.
- (3) **Commercial.**
 - ! Automobile service stations, including automobile repair, minor, but excluding body repair and painting.
 - ! Animal surgical offices.
 - ! Bowling alleys.
 - ! Commercial schools.
 - ! Day care centers, subject to Section 28-1017.
 - ! **Department stores larger than 15,000 square feet.**
 - ! Drive-through facilities accessory to an authorized use (but not including drive-through restaurants).
 - ! **Food stores, grocery stores, meat markets, delicatessens, ice cream shops, and similar stores other than restaurants larger than 15,000 square feet.**
 - ! **Hardware stores larger than 15,000 square feet.**
 - ! Health and fitness clubs.
 - ! Hotels and bed-and-breakfast establishments.
 - ! Medical offices (outpatient services only) larger than 3,000 square feet.

- ! **Outdoor seating accessory to a restaurant.**
- ! Outdoor display of merchandise accessory to an authorized use.
- ! Private schools.
- ! Theaters, but not including drive-in movie theaters.
- (4) Miscellaneous.
 - ! **Planned developments.**

EXHIBIT F-1

FORM OF PUBLIC IMPROVEMENTS LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO. _____

AMOUNT: _____

EXPIRATION DATE: _____

DATE OF ISSUE: _____

[Name of Bank]

[Address]

TO: Village of Downers Grove
801 Burlington Street
Downers Grove, Illinois 60515
Attention: Village Manager

WE HEREBY AUTHORIZE YOU TO DRAW AT SIGHT on the _____ UP TO AN AGGREGATE AMOUNT OF _____ United States Dollars (\$) for account of _____ ("Customer").

Drafts under this Letter of Credit shall bear upon their face the words:

Drawn under
Credit No. _____ Dated: _____

and shall be accompanied by one of the following documents executed by the Village Manager, an individual designated as acting Village Manager, or the Assistant Village Manager:

(a) A written statement on the form attached hereto as Attachment A stating that, conditioned upon proper notice to the Downers Grove Village Manager, Letter of Credit No. _____ will expire within 45 days or less and that the Customer has failed to deliver to the Downers Grove Village Manager evidence of a renewal of Letter of Credit No. _____; or

(b) A written statement on the form attached hereto as Attachment B stating that all or any part of the public improvements required to be constructed pursuant to the Redevelopment Agreement dated _____, 2005, by and between the Village of Downers Grove and

Acadia OTG LLC ("*Redevelopment Agreement*") have not been constructed in accordance with the Redevelopment Agreement; or

(c) A written statement on the form attached hereto as Attachment C stating that all or any portion of the maintenance, repair, or restoration required to be performed pursuant to the Redevelopment Agreement in accordance with the Redevelopment Agreement; or

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS LETTER OF CREDIT, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 500" ("*UNIFORM RULES*"). IN THE EVENT OF A CONFLICT BETWEEN THIS LETTER OF CREDIT AND THE UNIFORM RULES, THIS LETTER OF CREDIT SHALL CONTROL.

WE HEREBY AGREE with the drawers of drafts drawn under and in compliance with the terms of this Letter of Credit, that:

1. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored immediately upon presentation to the drawees if presented on or before the above-stated Expiration Date or presented at our office together with the original of this Letter of Credit on or before that date.

2. The amount of any draft drawn under this Letter of Credit must be endorsed on the reverse hereof by our bank.

3. If, within three days after any draft drawn under this Letter of Credit is presented to us in conformance with the terms of this Letter of Credit, we fail to honor same, we agree to pay all attorneys' fees, court costs, and other expenses incurred by the Village of Downers Grove in enforcing the terms hereof.

4. This Letter of Credit shall expire on _____, 200__, as stated hereinabove; provided, however, that we shall notify the Downers Grove Village Manager by certified mail, return receipt requested, at least 35 days prior to the expiration date, that this Letter of Credit is about to expire.

5. In no event shall this Letter of Credit or the obligations contained herein expire except upon the prior written notice required herein, it being expressly agreed that the above expiration date shall be extended as shall be required to comply with the prior written notice required herein.

6. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or required prior to honoring any draft presented in conformance with the terms of this Letter of Credit.

7. The aggregate amount of this Letter of Credit may be reduced only upon receipt by us of a document executed by the Downers Grove Village Manager stating that the aggregate amount shall be reduced in an amount permitted by the Downers Grove subdivision regulations because of the satisfactory completion of all or part of the public improvements required to be constructed pursuant to the Redevelopment Agreement dated _____, 2005, by

and between the Village of Downers Grove and Acadia OTG, LLC, an Illinois limited liability company.

8. This Letter of Credit is irrevocable.

[Signature of Bank Officer]

[Signature of Bank Officer]

[Officer's Title]

[Officer's Title]

Attachment A to Form of Irrevocable Letter of Credit

To:

Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that Letter of Credit No. _____ dated _____ in the amount of \$ _____ will expire within 45 days or less and that _____ has failed to deliver to the Downers Grove Village Manager evidence of a renewal of Letter of Credit No. _____.

Very truly yours,

Downers Grove Village Manager

Attachment B to Form of Irrevocable Letter of Credit

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that all or any part of the public improvements required to be constructed pursuant to the Redevelopment Agreement dated _____, 2005 by and between the Village of Downers Grove and Acadia OTG LLC, have not been constructed in accordance with the agreement.

Very truly yours,

Downers Grove Village Manager

Attachment C to Form of Irrevocable Letter of Credit

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that all or any part of the costs, payments, permit fees, or other fees relating to Public Improvements and required to be paid pursuant to the Redevelopment Agreement dated _____, 2005 by and between the Village of Downers Grove and Acadia OTG LLC, have not been paid in accordance with the agreement.

Very truly yours,

Downers Grove Village Manager

EXHIBIT F-2

GUARANTY LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO. _____

AMOUNT: _____

EXPIRATION DATE: _____

DATE OF ISSUE: _____

[Name of Bank]

[Address]

TO: Village of Downers Grove
801 Burlington Street
Downers Grove, Illinois 60515
Attention: Village Manager

WE HEREBY AUTHORIZE YOU TO DRAW AT SIGHT on the
_____ UP TO AN AGGREGATE AMOUNT OF
_____ United States Dollars (\$_____) for account of
_____ (“Customer”).

Drafts under this Letter of Credit shall bear upon their face the words:

Drawn under
Credit No. _____ Dated: _____

and shall be accompanied by one of the following documents executed by the Village Manager, an individual designated as acting Village Manager, or the Assistant Village Manager:

(a) A written statement on the form attached hereto as Attachment A stating that, conditioned upon proper notice to the Downers Grove Village Manager, Letter of Credit No. _____ will expire within 45 days or less and that the Customer has failed to deliver to the Downers Grove Village Manager evidence of a renewal of Letter of Credit No. _____; or

(b) A written statement on the form attached hereto as Attachment B stating that the Developer has not fulfilled its obligations under Section 6.8 of that certain Redevelopment Agreement dated _____, 2005, by and between the Village of Downers Grove and Developer (“Redevelopment Agreement”).

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS LETTER OF CREDIT, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 500" ("*UNIFORM RULES*"). IN THE EVENT OF A CONFLICT BETWEEN THIS LETTER OF CREDIT AND THE UNIFORM RULES, THIS LETTER OF CREDIT SHALL CONTROL.

WE HEREBY AGREE with the drawers of drafts drawn under and in compliance with the terms of this Letter of Credit, that:

1. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored immediately upon presentation to the drawees if presented on or before the above-stated Expiration Date or presented at our office together with the original of this Letter of Credit on or before that date.

2. The amount of any draft drawn under this Letter of Credit must be endorsed on the reverse hereof by our bank.

3. If, within three days after any draft drawn under this Letter of Credit is presented to us in conformance with the terms of this Letter of Credit, we fail to honor same, we agree to pay all attorneys' fees, court costs, and other expenses incurred by the Village of Downers Grove in enforcing the terms hereof.

4. This Letter of Credit shall expire on _____, 200__, as stated hereinabove; provided, however, that we shall notify the Downers Grove Village Manager by certified mail, return receipt requested, at least 35 days prior to the expiration date, that this Letter of Credit is about to expire.

5. In no event shall this Letter of Credit or the obligations contained herein expire except upon the prior written notice required herein, it being expressly agreed that the above expiration date shall be extended as shall be required to comply with the prior written notice required herein.

6. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or required prior to honoring any draft presented in conformance with the terms of this Letter of Credit.

7. This Letter of Credit is irrevocable.

[Signature of Bank Officer]

[Signature of Bank Officer]

[Officer's Title]

[Officer's Title]

Attachment A to Form of Irrevocable Letter of Credit

To:

Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that Letter of Credit No. _____ dated _____ in the amount of \$ _____ will expire within 45 days or less and that _____ has failed to deliver to the Downers Grove Village Manager evidence of a renewal of Letter of Credit No. _____.

Very truly yours,

Downers Grove Village Manager

Attachment B to Form of Irrevocable Letter of Credit

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that that the Developer has not fulfilled its obligations under Section 6.8 of that certain Redevelopment Agreement dated _____, 2005, by and between the Village of Downers Grove and Acadia OTG LLC.

Very truly yours,

Downers Grove Village Manager

EXHIBIT F-3

SCHEDULE PERFORMANCE LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO. _____

AMOUNT: _____

EXPIRATION DATE: _____

DATE OF ISSUE: _____

[Name of Bank]

[Address]

TO: Village of Downers Grove
801 Burlington Street
Downers Grove, Illinois 60515
Attention: Village Manager

WE HEREBY AUTHORIZE YOU TO DRAW AT SIGHT on the _____ UP TO AN AGGREGATE AMOUNT OF _____ United States Dollars (\$ _____) for account of _____ ("Customer").

Drafts under this Letter of Credit shall bear upon their face the words:

Drawn under
Credit No. _____ Dated: _____

and shall be accompanied by one of the following documents executed by the Village Manager, an individual designated as acting Village Manager, or the Assistant Village Manager:

(a) A written statement on the form attached hereto as Attachment A stating that, conditioned upon proper notice to the Downers Grove Village Manager, Letter of Credit No. _____ will expire within 45 days or less and that the Customer has failed to deliver to the Downers Grove Village Manager evidence of a renewal of Letter of Credit No. _____; or

(b) A written statement on the form attached hereto as Attachment B stating that the Developer has failed to achieve the following required scheduling benchmarks set forth in Exhibit D to that certain Redevelopment Agreement dated _____, 2005, by and between the Village of Downers Grove and Acadia OTG LLC ("Redevelopment Agreement"); _____, and therefore the Village of Downers Grove is entitled to draw

in the following amount on this Letter of Credit pursuant to Exhibit D of the Redevelopment Agreement: \$ _____.

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS LETTER OF CREDIT, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE BROCHURE NO. 500" ("*UNIFORM RULES*"). IN THE EVENT OF A CONFLICT BETWEEN THIS LETTER OF CREDIT AND THE UNIFORM RULES, THIS LETTER OF CREDIT SHALL CONTROL.

WE HEREBY AGREE with the drawers of drafts drawn under and in compliance with the terms of this Letter of Credit, that:

1. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored immediately upon presentation to the drawees if presented on or before the above-stated Expiration Date or presented at our office together with the original of this Letter of Credit on or before that date.

2. The amount of any draft drawn under this Letter of Credit must be endorsed on the reverse hereof by our bank.

3. If, within three days after any draft drawn under this Letter of Credit is presented to us in conformance with the terms of this Letter of Credit, we fail to honor same, we agree to pay all attorneys' fees, court costs, and other expenses incurred by the Village of Downers Grove in enforcing the terms hereof.

4. This Letter of Credit shall expire on _____, 200__, as stated hereinabove; provided, however, that we shall notify the Downers Grove Village Manager by certified mail, return receipt requested, at least 35 days prior to the expiration date, that this Letter of Credit is about to expire.

5. In no event shall this Letter of Credit or the obligations contained herein expire except upon the prior written notice required herein, it being expressly agreed that the above expiration date shall be extended as shall be required to comply with the prior written notice required herein.

6. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or required prior to honoring any draft presented in conformance with the terms of this Letter of Credit.

7. This Letter of Credit is irrevocable.

[Signature of Bank Officer]

[Signature of Bank Officer]

[Officer's Title]

[Officer's Title]

Attachment A to Form of Irrevocable Letter of Credit

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that Letter of Credit No. _____ dated _____ in the amount of \$ _____ will expire within 45 days or less and that _____ has failed to deliver to the Downers Grove Village Manager evidence of a renewal of Letter of Credit No. _____.

Very truly yours,

Downers Grove Village Manager

Attachment B to Form of Irrevocable Letter of Credit

To:
Attn:

Re: Letter of Credit No. _____

Ladies and Gentlemen:

This is to advise you that the Developer has failed to achieve the following required scheduling benchmarks set forth in Exhibit D to that certain Redevelopment Agreement dated _____, 2005, by and between the Village of Downers Grove and Acadia OTG LLC ("*Redevelopment Agreement*"); _____, and therefore the Village of Downers Grove is entitled to draw in the following amount on this Letter of Credit pursuant to Exhibit D of the Redevelopment Agreement: \$_____.

Very truly yours,

Downers Grove Village Manager

Curtiss Block Redevelopment - New England Builders, Inc.
Calculation of Park and School Donations

PARK DONATION					
Unit Description:		<u>Efficiency</u>	<u>1-Bedroom</u>	<u>2-Bedroom</u>	<u>3-Bedroom</u>
No. of Units:	126	1	45	73	7
Base Donation Calculation					
Times per-unit population yield*:		1.360	78.750	129.867	20.776
Divided by 1,000:		0.001	0.079	0.130	0.021
Times 5.5 acres per 1,000 population:		0.007	0.433	0.714	0.114
Times per-acre land value of:	\$150,000	\$1,122	\$64,969	\$107,140	\$17,140
Park Donation Required:		\$1,122	\$64,969	\$107,140	\$17,140
Calculation of Credit for Open Space Dedication					
Estimated sq. ft. of Village Green:	10,000				
Acreage of Village Green:	0.23				
Times per-acre land value of:	\$150,000				
Equals credit for open space of:	\$34,435				
Total Park Donation Required:		\$190,371			
Credit for Open Space Dedication:		(\$34,435)			
NET CASH DONATION REQUIRED:		\$155,936			
Net Cash Donation Per Unit:		\$1,238			

SCHOOL DONATION					
Unit Description:		<u>Efficiency</u>	<u>1-Bedroom</u>	<u>2-Bedroom</u>	<u>3-Bedroom</u>
No. of Units:		1	45	73	7
Student Yield Calculation By Grade Level*					
Times per-unit K-6 student yield:		0.000	0.000	7.008	1.925
Times per-unit 7-8 student yield:		0.000	0.000	1.971	0.546
Times per-unit 9-12 student yield:		0.000	0.045	3.066	0.812
Calculation of Land Donation Required**					
K-6 yield times per-student acres:		0.000	0.000	0.128	0.035
7-8 yield times per-student acres:		0.000	0.000	0.042	0.012
9-12 yield times per-student acres:		0.000	0.001	0.064	0.017
Total Land Donation Required (Acres):		0.000	0.001	0.234	0.064
Times per-acre land value of:	\$150,000	\$0	\$141	\$35,111	\$9,565
School Donation Required:		\$0	\$141	\$35,111	\$9,565
TOTAL CASH DONATION REQUIRED:		\$44,817			
Total Cash Donation Per Unit:		\$356			

TOTAL DONATION	
Park Donation (net of open space credit):	\$155,936
School Donation:	\$44,817
Total Donation:	\$200,753
Total Donation per Unit:	\$1,593

* See table below for per-unit population yield assumptions for multi-family dwellings:

<u>Age Level/Bedrooms:</u>	<u>Efficiency</u>	<u>1 BR</u>	<u>2 BR</u>	<u>3 BR</u>
K-6	0.000	0.000	0.096	0.275
7-8	0.000	0.000	0.027	0.078
9-12	0.000	0.001	0.042	0.116
Adult 18+	1.360	1.749	1.614	2.499
Total Population	1.360	1.750	1.779	2.968

** See table below for calculation of per-student acreage requirements:

<u>Grade Level</u>	<u>No. of Students</u>	<u>School Acres</u>	<u>Acres Per Student</u>
K-6	600	11	0.018
7-8	900	19	0.021
9-12	2,300	48	0.021

EXHIBIT I

VILLAGE GREEN COVENANT AND EASEMENT

See attached.

Prepared By And After Recording Return To:	
---	--

RESTRICTIVE COVENANT

For and in consideration of certain accommodations made by the Village of Downers Grove, Illinois, an Illinois municipal corporation (the "Village") to Acadia OTG, LLC, an Illinois limited liability company, (hereinafter referred to as Declarant), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby covenants and agrees with The Village of Downers Grove, Illinois and its successors and assigns as follows:

1. Declarant is the owner and fee simple title holder of the real property described in Exhibit A attached hereto and made a part hereof (hereinafter the Real Property).
2. Declarant covenants and warrants on behalf of itself, its successor, assigns, transferees, grantees, that the Declarant shall, at its sole expense, perform all necessary maintenance, cleaning and repair of the improvements and landscaping located on the "Village Green" property described in Exhibit B attached hereto. Such maintenance shall include, but shall not be limited to: maintenance and cutting of grass, maintenance of trees and shrubs, planting and maintenance of seasonal plantings, sweeping, cleaning and repairing, as necessary, all walkways; cleaning and maintenance of the decorative elements and regular emptying of trash receptacles.
3. This restrictive covenant shall be effective upon the date of its recording and shall remain in full force and effect without limitation as to time.
4. This is a covenant which Declarant intends to run with the land and shall be the Real Property so as to give actual and constructive notice to any other persons or entities who may have or acquire any right, title or interest to the Real Property.
5. Notwithstanding the foregoing paragraph numbers 3 and 4, in the event of a default by the Declarant of any of the terms or conditions of a loan which is secured by a mortgage on the Real Property and failure of the Declarant to cure said default, then upon completion of proceedings initiated by any such secured lender seeking to foreclose the lien of its mortgage against the Real Property and Declarant (or completion of transfer of the Real Property in connection with a deed in lieu of foreclosure) and, in the absence of

any other cure of the default tendered by any third person or entity on behalf of the Declarant, then and in such event upon the recording of a deed (i) issued by any judicially appointed sales officer subsequent to a public sale held pursuant to the terms of the Illinois Mortgage Foreclosure Act, or (ii) in connection with a deed in lieu of foreclosure transaction; the obligations under paragraph 2 of this covenant shall cease, determine and terminate and be of no further force and effect.

6. In the event of a default by the Declarant of any of the terms or conditions of a loan which is secured by a mortgage on the Real Property, the Village shall be given notice of such default.

IN WITNESS WHEREOF, the Declarant has set its hand and seal this _____ day of _____, 2005.

By: ACADIA OTG, LLC, Its Manager

By: _____
Its: _____

The undersigned Lenders and Lessees consent to the recording of the foregoing covenant, and agree to subordinate their liens and interests to the terms and conditions set forth herein.

By: _____
Name: _____
Its: _____

LESSEES:

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

Legal Description of Real Property

PERMANENT INDEX NUMBERS:

EXHIBIT B

Legal Description of Village Green Property

EASEMENT GRANT

FOR AND IN CONSIDERATION OF THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation ("Grantor"), does hereby grant and convey unto ACADIA OTG LLC, an Illinois limited liability company ("Grantee"), and unto its successors and assigns, an easement to construct, maintain, improve and repair the Village Green improvements described in Exhibit "B" attached hereto and made a part hereof, on the real estate described in Exhibit "A" attached hereto, situated in the Village of Downers Grove, in the County of DuPage, and State of Illinois (the "Real Estate").

And Grantor does expressly covenant that it is the owner in fee of the Real Estate, and has good right to grant said easement and that Grantee, its employees, agents, assigns and lessees shall at all times have free access to and egress from and over the Real Estate to construct maintain, improve and repair the said Village Square improvements.

Grantor retains all of its rights to the use and occupation of the Real Estate not inconsistent with the use by the Grantee, its successors and assigns, of the easement herein granted for the purposes aforesaid.

Grantor shall have the right to revoke, terminate and cancel this Grant of Easement in the event that the Grantee has materially failed to perform its obligation under the Restrictive Covenant between Grantee and Grantor, dated as of even date herewith, and recorded with the DuPage County Recorder of Deeds as Document No. _____, and Grantee has failed to cure such failure within sixty (60) days of written notice from the Grantor to Grantee specifying such failure.

IN WITNESS WHEREOF, Grantor has caused this instrument to be duly executed and its corporate seal to be hereto affixed by the proper corporate officers thereunto duly authorized, this ___ day of _____, 2003.

VILLAGE OF DOWNERS GROVE, an Illinois
Municipal corporation

By: _____

ATTEST:

By: _____

Dated: _____

State of Illinois)
) SS:
County of Cook)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO
HEREBY CERTIFY, that _____, the _____ of Village Of Downers Grove,
an Illinois Municipal corporation and _____, the _____ of Village of Downers
Grove, personally known to me to be the same persons whose names is subscribed to the
foregoing instrument as such _____ and _____ respectively, appeared
before me this day in person and acknowledged that they signed and delivered the said
instrument as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2005.

Commission expires:

NOTARY PUBLIC

This instrument was prepared by:

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

EXHIBIT "B"

DESCRIPTION OF VILLAGE GREEN IMPROVEMENTS

EXHIBIT J

TRANSFEE ASSUMPTION AGREEMENT

VILLAGE OF DOWNERS GROVE

RESOLUTION NO. _____

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION
AND ATTESTATION OF A TRANSFEE ASSUMPTION AGREEMENT
WITH [ACADIA OTG LLC]

WHEREAS, the Village of Downers Grove and [Acadia OTG LLC] ("*Developer*"), entered into that certain agreement relating to the development known as the _____ dated as of _____, 2005, and recorded in the Office of the DuPage County Recorder of Deeds on _____, 2005, as Document Number _____ ("*Development Agreement*"), in connection with the development and use of the _____ property in the Village ("*Subject Property*"); and

WHEREAS, [TRANSFEE] ("*Transferee*") purchased the Subject Property from the Developer ("*Transfer Property*"); and

WHEREAS, as a condition to the conveyance of the Transfer Property to the Transferee, the Village and the Developer require that the Transferee agree to comply with all the terms, requirements, and obligations of the Development Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Village Council of the Village of Downers Grove, County of DuPage and State of Illinois, as follows:

Section 1. Recitals. The foregoing recitals are incorporated herein as if fully set forth.

Section 2. Approval of the Transferee Assumption Agreement. The Transferee Assumption Agreement by and between the Village and the Transferee shall be, and the same hereby is, approved in a form substantially the same as is attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1 ("*Transferee Assumption Agreement*").

Section 3. Execution and Attestation of the Transferee Assumption Agreement. The Mayor and Village Clerk shall be, and they hereby are, authorized and directed to execute and attest, respectively, the Transferee Assumption Agreement on behalf of the Village of Downers Grove; provided, however, that they shall neither execute nor attest the Transferee Assumption Agreement on behalf of the Village unless and until (i) the Transferee shall have fully executed and delivered an original of the Transferee Assumption Agreement to the Village, (ii) the

Transferee shall have deposited with the Village Manager the performance security required pursuant to Section 3 of the Transferee Assumption Agreement, and (iii) the Transferee shall have paid all fees, costs, and expenses due pursuant to Section 4 of the Transferee Assumption Agreement for which demand has been made prior to the execution of the Transferee Assumption Agreement by the Village.

Section 4. Effective Date. This Resolution shall be in full force and effect upon its passage and approval in the manner provided by law.

PASSED this ____ day of _____ 200__.

AYES:

NAYS:

ABSENT:

APPROVED this ____ day of _____ 200__.

Mayor

ATTEST:

Village Clerk

TRANSFEREE ASSUMPTION AGREEMENT

THIS AGREEMENT, made as of this ____ day of _____, 200__, by, between, and among Acadia OTG LLC ("*Developer*"), [TRANSFEREE] ("*Transferee*"), and the Village of Downers Grove, an Illinois municipal corporation ("*Village*"),

WITNESSETH:

WHEREAS, the Transferee purchased from the Developer certain real property situated in DuPage County, Illinois known as the _____ of Downers Grove and legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof ("*Subject Property*"); and

WHEREAS, the Transferee now is the legal owner of the Subject Property; and

WHEREAS, as a condition to the conveyance of the Subject Property by the Developer, the Developer and the Village require that the Transferee agree to comply with all the terms, requirements, and obligations set forth in that certain development agreement titled "A Development Agreement By and Between the Village of Downers Grove and Acadia OTG LLC" dated as of _____, 200__, and recorded in the Office of the DuPage County Recorder of Deeds on _____, 200__, as Document No. _____, by and between the Village and Developer, as amended from time to time ("*Development Agreement*"), pursuant to which the development of the Subject Property was approved;

NOW, THEREFORE, in consideration of the agreement of the Developer to convey the Subject Property to the Transferee and of the Village to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between and among the Village, the Developer, and the Transferee as follows:

Section 1. Recitals. The foregoing recitals are by this reference incorporated herein and made a part hereof as substantive provisions of this Agreement.

Section 2. Assumption of Obligations. The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors, and administrators, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of the Development Agreement, including all exhibits and attachments thereto, as they relate to any and all improvements on or for the Subject Property and regardless of whom the terms, requirements, and obligations are to be performed and provided for by, or on whom they are imposed.

Section 3. Assurances of Financial Ability. Contemporaneously with the Transferee's execution of this Agreement, the Transferee shall deposit with the Village Manager the performance security required by Section 5 of the Development Agreement. Upon execution of this Agreement by the Village and deposit with the Village Manager of the required

performance security, the Village shall surrender the original performance security, if any, to the Developer. In addition, and not in limitation of the foregoing, the Transferee shall, upon the request of the Village, provide the Village with any reasonable assurances of financial ability to meet the obligations assumed hereunder as the Village may require from time to time.

Section 4. Payment of Village Fees and Costs. In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement or the Development Agreement or by applicable Village codes, ordinances, resolutions, rules, or regulations, the Transferee shall pay to the Village, immediately upon presentation of a written demand or demands therefor, all legal, engineering, and other consulting or administrative fees, costs, and expenses in connection with the negotiation, preparation, consideration, and review of this Agreement.

Section 5. Acknowledgment and Release of Transferor. The Village hereby acknowledges its agreement to the Transferee's assumption of the obligations to comply with the terms, requirements, and obligations of the Development Agreement, including all exhibits and attachments thereto, and the Village hereby releases the Developer from any personal liability for failure to comply with the terms, requirements, and obligations of the Development Agreement, but only as they relate to improvements on or for the Subject Property.

Section 6. Trustee Exculpation. This Agreement is executed by _____ not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by _____ are undertaken by it solely as Trustee as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against the Trustee by reason of any of terms, provisions, stipulations, covenants, conditions, and/or statements contained in this Agreement. Any such liability shall be asserted instead against the property contained in Trust Number _____ or the beneficiaries thereof or against.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

VILLAGE OF DOWNERS GROVE

ATTEST:

By: _____
Mayor

Village Clerk

[DEVELOPER]

By: _____

ATTEST:

Its: _____

By: _____

Its: _____

[TRANSFEREE]

ATTEST:

By: _____

Its: _____

By: _____

Its: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

The foregoing instrument was acknowledge before me on _____, 200__, by _____, the Mayor of the Village of Downers Grove, an Illinois municipal corporation, and by _____, the Village Clerk of said municipal corporation.

Signature of Notary

SEAL

My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 200__, by Christopher D. Rintz, the President of [Acadia OTG LLC] and _____, _____ of said company, which individuals are known to me to be the identical persons who signed the foregoing instrument as such officers of the limited liability company for and on behalf of said limited liability company, and that they executed the same as their free and voluntary act and deed, and as the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned.

Signature of Notary

SEAL

My Commission expires:

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 200__, by
_____, _____ of _____, as Trustee under Trust
No. _____ and _____, _____ of said
_____, which individuals are known to me to be the identical persons who signed
the foregoing instrument as such officers of the _____ for and on behalf of said
_____, and that they executed the same as their free and voluntary act and deed,
and as the free and voluntary act and deed of the _____, for the uses and purposes
therein mentioned.

Signature of Notary

SEAL

My Commission expires: _____

EXHIBIT K

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY ("Agreement") is made as of this ____ day of _____, 2005, by and between the Village of Downers Grove, an Illinois municipal corporation ("Village") and Acadia OTG LLC, an Illinois limited liability company ("Developer").

The following recitals of fact are a material part of this Agreement.

A. Village is the owner of that certain parcel of land in the Village of Downers Grove, County of DuPage, and State of Illinois, legally described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property").

B. Village and Developer have executed between them a Redevelopment Agreement by and Between the Village of Downers Grove and Acadia OTG LLC (The Curtiss Block Project) dated _____, 2005, (the "RDA") evidencing their agreement to implement a proposal by Developer to develop an approximately 3.02 acre site for mixed residential and commercial use (the "Project");

C. The RDA contemplates that the Village will grant a right of entry to commence certain work on the Property such as demolition, remediation, and earthwork prior to transfer of applicable portions of the Property to Developer;

D. The Village now wishes to grant, and the Developer wishes to receive, a non-exclusive right of entry to enter onto the Property for such purposes as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreement of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. *Grant of Right of Entry.* Village hereby grants to Developer, its employees, agents, and subcontractors, a non-exclusive right of entry to enter onto the Premises for the purpose of commencing certain work, including, but not limited to demolition, remediation, and earthwork, pavement removal, mass grading, stockpiling and staging of equipment and materials. The Right of Entry shall be without cost to the Developer.

2. *Term of Right of Entry.* The Right of Entry granted hereunder shall commence on the date hereof and shall terminate on the earlier to occur of: i) the termination of the RDA; or ii) the date that Phase II of the Project is required to be completed under the RDA, as such date may be modified or extended pursuant to the RDA.

3. *Right of Entry Only.* This Agreement creates a Right of Entry only and Developer acknowledges that Developer does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Premises by virtue of this Right of Entry or Developer's use of the Premises pursuant hereto.

4. *No Transfer by Developer.* Developer shall not transfer any of its rights hereunder without the prior written consent of Village. Any such assignment made without the prior written consent of Village shall be null and void and of no force or effect and shall entitle Village to terminate this Agreement.

5. *Condition of Premises; Indemnity.* Developer acknowledges that it (a) has physically inspected the Premises, and (b) enters onto the Property with full knowledge of the condition thereof. Furthermore, Developer for and on behalf of itself and all successors, grantees, invitees and assigns, assumes sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly due to the condition of the Property or the activities, operations or use of the Property by Developer, its successors, grantees, invitees and assigns and all of their officers, directors, employees, representatives and agents. Further, Developer, for itself, its successors, grantees, invitees and assigns, and for those claiming by, through or under any of them, hereby releases Village, its officers, directors, agents and employees (collectively hereinafter referred to as the "Indemnitees") from any and all claims or demands for loss, liability, expense, cost or damage (whether to person or property), including, without limitation, reasonable attorneys' fees and litigation costs incurred by the Indemnitees in connection therewith, that may arise from operations on, or the use of, the Property by Developer, its successors, grantees, invitees and assigns, and all of their officers, directors, employees, representatives and agents. Developer hereby agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all liability, loss, claim, demand, lien, damage, penalty, fine, interest, cost and expense (including, without limitation, reasonable attorneys' fees and litigation costs) incurred by the Indemnitees for injuries to persons (including, without limitation, loss of life) and for damage, destruction or theft of property which is directly or indirectly due to the activity, work or thing done, permitted or suffered by Developer in or about the Property, or for any act or omission of Developer, its successors, grantees, invitees and assigns and any of their officers, directors, employees, representatives and agents. Developer shall cooperate with Village in the defense of any such claims, demands or action, including, without limitation, the employment, at the sole expense of Developer, of legal counsel satisfactory to Village.

6. *Insurance.* Developer, at its sole cost and expense, shall purchase and keep in full force and effect during the term hereof:

(a) Commercial General Public Liability Insurance (including, but not limited to, contractual liability insurance covering, without limitation, Developer's indemnification obligations hereunder) in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence whether involving bodily injury liability (or death resulting therefrom) or property

damage liability or a combination thereof with a minimum aggregate limit of Two Million Dollars (\$2,000,000.00);

(b) Developer, simultaneously with the execution hereof, shall deposit with Village original insurance policies evidencing the foregoing coverages, together with satisfactory evidence of payment of the premiums thereon. All such insurance shall name the Indemnitees as additional insureds.

7. *No Liens.* Developer shall not permit any lien to be filed against the Property or any improvements thereon for any labor or materials in connection with work of any character performed or claimed to have been performed on Property or the Property at the direction or sufferance of Developer.

In the event any such lien is filed against the Property or any improvements thereon, Village shall have the right, but not the obligation, to cause such lien to be released and Developer shall pay on demand all of Village's costs in connection therewith, together with interest thereon at the interest rate set forth in Paragraph 10 hereof accruing from and after the date of such demand until Village's receipt of full payment therefor.

8. *Laws and Permits.* Development shall use the Property in compliance with applicable Federal, State and local laws, rules and regulations, and lawful administrative orders issued under authority hereof.

9. *Breach by Developer.* If Developer breaches any provision in this Agreement and fails to cure any such breach within thirty (30) days after written notice thereof, in addition to any other right or remedy available at law or in equity, Village shall have the right, but not the obligation, to cure any such breach and Developer agrees to reimburse Village for the cost thereof upon demand, together with interest accruing thereon at an annual rate of interest equal to six percent (6%) from and after the date of Village's demand therefor until Village's receipt of full payment therefor.

10. *No Warranty; Integration.* Village hereby makes and has made no representations, statements, warranties or agreements to Developer in or in connection with this Agreement or the Property. This Agreement embodies the entire understanding of the parties hereto, and there are no further or other agreements or understanding, written or oral, in effect between the parties relating to the subject matter hereof.

11. *Notices.* All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or on the third (3d) day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid, as follows:

If to Village: Village of Downers Grove
801 Burlington Street
Downers Grove, Illinois 60515
Attn: Village Attorney

If to Developer: Acadia OTG LLC
c/o New England Builders, Inc.
4927 Main St.
Skokie, IL 60077
Attn.: Christopher D. Rintz
Vice President

12. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

VILLAGE:

The Village of Downers Grove

By:

Name/Title:

DEVELOPER:

Acadia OTG LLC

By: NEB Development LLC,
its Manager

By:

Name/Title: Christopher D. Rintz,
Vice President

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Common Address:

EXHIBIT L

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made as of this ____ day of _____, 2005, by and between the Village of Downers Grove, an Illinois municipal corporation ("Village") and Acadia OTG LLC, an Illinois limited liability company ("Developer").

The following recitals of fact are a material part of this Agreement.

A. Village is the owner of that certain parcel of land in the Village of Downers Grove, County of DuPage, and State of Illinois, legally described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Premises").

B. Village and Developer have executed between them a Redevelopment Agreement by and Between the Village of Downers Grove and Acadia OTG LLC (The Curtiss Block Project) dated _____, 2005, (the "RDA") evidencing their agreement to implement a proposal by Developer to develop an approximately 3.02 acre site for mixed residential and commercial use (the "Project");

C. The RDA contemplates that the Village will grant a license to Developer to place a sales trailer and conduct certain staging activities on a portion of the site for the Project;

D. The Village now wishes to grant, and the Developer wishes to receive, a non-exclusive license to utilize Premises as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreement of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. *Grant of License.* Village hereby grants to Developer, its employees and agents, a non-exclusive license to utilize a portion of the Premises depicted in Exhibit B attached hereto for placement of a temporary sales trailer, together with appropriate landscaping, and certain staging activities. The license shall be without cost to the Developer.

2. *Term of License.* The license granted hereunder shall commence on the date hereof and shall terminate on the earlier to occur of: i) the termination of the RDA; or ii) the date that Phase II of the Project is required to be completed under the RDA, as such date may be modified or extended pursuant to the RDA.

3. *License Only.* This Agreement creates a license only and Developer acknowledges that Developer does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Premises by virtue of this license or Developer's use of the Premises pursuant hereto.

4. *Return of the Premises.* At the termination of Developer's license, Developer shall repair and restore the Premises to the same condition as it was at the time of the execution of this Agreement.

5. *No Transfer by Developer.* Developer shall not transfer any of its rights hereunder without the prior written consent of Village. Any such assignment made without the prior written consent of Village shall be null and void and of no force or effect and shall entitle Village to terminate this Agreement.

6. *Condition of Premises; Indemnity.* Developer acknowledges that it (a) has physically inspected the Premises, and (b) accepts the Premises with full knowledge of the condition thereof. Furthermore, Developer for and on behalf of itself and all successors, grantees, invitees and assigns, assumes sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly due to the condition of the Premises or the activities, operations or use of the Premises by Developer, its successors, grantees, invitees and assigns and all of their officers, directors, employees, representatives and agents. Further, Developer, for itself, its successors, grantees, invitees and assigns, and for those claiming by, through or under any of them, hereby releases Village, its officers, directors, agents and employees (collectively hereinafter referred to as the "Indemnitees") from any and all claims or demands for loss, liability, expense, cost or damage (whether to person or property), including, without limitation, reasonable attorneys' fees and litigation costs incurred by the Indemnitees in connection therewith, that may arise from operations on, or the use of, the Premises by Developer, its successors, grantees, invitees and assigns, and all of their officers, directors, employees, representatives and agents. Developer hereby agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all liability, loss, claim, demand, lien, damage, penalty, fine, interest, cost and expense (including, without limitation, reasonable attorneys' fees and litigation costs) incurred by the Indemnitees for injuries to persons (including, without limitation, loss of life) and for damage, destruction or theft of property which is directly or indirectly due to the activity, work or thing done, permitted or suffered by Developer in or about the Premises, or for any act or omission of Developer, its successors, grantees, invitees and assigns and any of their officers, directors, employees, representatives and agents. Developer shall cooperate with Village in the defense of any such claims, demands or action, including, without limitation, the employment, at the sole expense of Developer, of legal counsel satisfactory to Village.

7. *Insurance.* Developer, at its sole cost and expense, shall purchase and keep in full force and effect during the term hereof:

(a) Commercial General Public Liability Insurance (including, but not limited to, contractual liability insurance covering, without limitation, Developer's indemnification obligations hereunder) in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence whether involving bodily injury liability (or death resulting therefrom) or property

damage liability or a combination thereof with a minimum aggregate limit of Two Million Dollars (\$2,000,000.00);

(b) Developer, simultaneously with the execution hereof, shall deposit with Village original insurance policies evidencing the foregoing coverages, together with satisfactory evidence of payment of the premiums thereon. All such insurance shall name the Indemnitees as additional insureds.

8. *No Liens.* Developer shall not permit any lien to be filed against the Premises or any improvements thereon for any labor or materials in connection with work of any character performed or claimed to have been performed on Premises or the Premises at the direction or sufferance of Developer.

In the event any such lien is filed against the Premises or any improvements thereon, Village shall have the right, but not the obligation, to cause such lien to be released and Developer shall pay on demand all of Village's costs in connection therewith, together with interest thereon at the interest rate set forth in Paragraph 10 hereof accruing from and after the date of such demand until Village's receipt of full payment therefor.

9. *Laws and Permits.* Development shall use the Premises in compliance with applicable Federal, State and local laws, rules and regulations, and lawful administrative orders issued under authority hereof. Developer shall obtain from the village all required land use reviews and permits prior to installing a sales trailer on the Premises.

10. *Breach by Developer.* If Developer breaches any provision in this Agreement and fails to cure any such breach within thirty (30) days after written notice thereof, in addition to any other right or remedy available at law or in equity, Village shall have the right, but not the obligation, to cure any such breach and Developer agrees to reimburse Village for the cost thereof upon demand, together with interest accruing thereon at an annual rate of interest equal to six percent (6%) from and after the date of Village's demand therefor until Village's receipt of full payment therefor.

11. *No Warranty; Integration.* Village hereby makes and has made no representations, statements, warranties or agreements to Developer in or in connection with this Agreement or the Premises. This Agreement embodies the entire understanding of the parties hereto, and there are no further or other agreements or understanding, written or oral, in effect between the parties relating to the subject matter hereof.

12. *Notices.* All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed or on the third (3d) day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid, as follows:

If to Village: Village of Downers Grove

801 Burlington Street
Downers Grove, Illinois 60515
Attn: Village Attorney

If to Developer: Acadia OTG LLC
c/o New England Builders, Inc.
4927 Main St.
Skokie, IL 60077
Attn.: Christopher D. Rintz
Vice President

13. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

VILLAGE:

The Village of Downers Grove

By:

Name/Title:

DEVELOPER:

Acadia OTG LLC

By: NEB Development LLC,
its Manager

By:

Name/Title: Christopher D. Rintz,
Vice President

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Common Address:

EXHIBIT B

DEPICTION OF PORTION OF PREMISES SUBJECT TO LICENSE

EXHIBIT M

COST OF WORK

A. General Conditions: (not to exceed 10% of Item B)

Superintendent
Building and site clean up and general labor
Punchlist technician and detail foreman
Blueprint reproduction
Construction office and related equipment & supplies
Dewatering
Dumpsters
Dust control
Temporary protection
Barricades and temporary fences
Safety equipment and inspections
Temporary toilets
Temporary water, heat and power
Temporary road and drives
Traffic control and flagmen
Progress photos (McShane Fleming)
Superintendent mobile phone
Superintendent vehicle expense - gas and allowance
Security - Gates, fencing, window protection, dogs, guards, concrete watch
Vandalism repairs
Final cleaning
Construction locks
Warranty service
Interim surveys and layout
As Built Surveys
Construction signage
Permits and Related Inspections

B. Hard Costs:

NEB Labor - Actual recorded costs plus 47.5% burden to cover fringes, payroll taxes (FICA, Medicare, FUTA, SUTA) and Workmen's Comp Insurance. And General Liability Insurance

Subcontractors - Actual cost

Materials - Actual cost + 5%

Equipment - Actual Cost = 5%

C. General Contractor's Fee:

10% of Items A & B - above to cover Contractors offsite overhead and administration costs including accounting, project management.

Excluded: Performance and Payment Bonds