

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
APRIL 11, 2006 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Redevelopment Agreement for 933 Curtiss Street (Former Hart's Garage)	Resolution Ordinance ✓ Motion Discussion Only	David Fieldman Deputy Village Manager

SYNOPSIS

A motion is requested to indicate Council's preliminary support for a redevelopment agreement for the property located at 933 Curtiss Street (Former Hart's Garage).

FISCAL IMPACT

A positive net impact of approximately \$800,000 to the Downtown Tax Increment Financing (TIF) District.

RECOMMENDATION

Approval on the April 18, 2006, consent agenda.

BACKGROUND

The subject property, 933 Curtiss Street, is located near the southeast corner of Curtiss Street and Mochel Drive. The subject property is improved with a vacant building formerly occupied by Hart's Garage. The owners of the property wish to demolish the existing building and construct a 3-story retail and office building. The owners have indicated that they would not proceed with the proposed redevelopment without financial assistance from the Downtown Tax Increment Financing District. By simple motion, staff is seeking direction to continue with this redevelopment project according to the terms and conditions of the proposed agreement. If the Council approves the motion, the Developer will file a petition for planned development and proceed through the zoning approval process. The Council will be asked to take final action on the agreement at the same time the Council considers the planned development petition. These items are expected to be before the Council during the summer.

Development Summary

Building Size

Retail Space	9,900 square feet
<u>Office Space</u>	<u>19,800 square feet</u>
Total Size	27,900 square feet

Building Height

3 stories, 47 feet

Parking Required

No parking spaces are required in the downtown district

Parking Provided

up to 58 employee parking permits to be sold to the developer

Key Agreement Terms

- Developer shall develop the site in substantial conformance with the plans attached to the agreement.
- Developer shall construct the development as approved by the Planned Development Ordinance.
- Developer shall lease at least 70% of the retail space to sales tax producing tenants
- Developer shall remediate the environmental contamination on the site and shall obtain a No Further Remediation Letter from the Illinois Environmental Protection Agency.
- Developer shall submit proof of paid invoices for TIF-eligible expenses prior to the Village reimbursement for these items.
- The Village shall reimburse the Developer for TIF-eligible expenses according to the following conditions:
 - Total financial assistance shall not exceed \$500,000.
 - The amount of financial assistance shall be subject to an adjustment based on the sales revenue from the office condominium units. If the total sales revenue from the office condos is equal to or less than \$3,663,000, there shall be no adjustment to the financial incentive. If the total sales revenue from the office condos is greater than \$3,663,000, the amount of financial assistance shall be reduced by \$0.50 for each incremental dollar in excess of \$3,663,000.
 - The Village shall waive building permit fees in an amount not to exceed \$30,000. The financial assistance shall be reduced in an amount equal to the fee waiver.
 - The financial assistance shall be paid to the developer on a pay-as-you-go basis from the incremental real estate tax generated by the development. This payment schedule will function like a real estate tax rebate. For years 1 through 5, the developer shall receive 75% of the incremental real estate tax generated by the development. For years 6 through the end of the TIF District or until the financial assistance is paid off, the developer shall receive 50% of the incremental real estate tax generated by the development. The payment stream shall be subject to a 4% annual interest payment on the un-paid principal.
- The Village shall sell to the developer up to 58 employee parking permits for the parking deck as long as the Village provides employee parking in the deck.

Financial Summary

Village TIF Expenses	\$500,000
Village TIF Revenues	\$1,300,000
Net Impact to the TIF	\$800,000
Village TIF Leverage Ratio	
Total Development Cost:	\$5,400,000
Net Developer Investment After Incentive:	\$4,900,000
Village TIF Investment:	\$500,000
TIF Leverage Ratio:	9.8 to 1

ATTACHMENTS

Redevelopment Agreement

REDEVELOPMENT AGREEMENT
5151 Mochel Drive (Former Hart's Garage)

THIS REDEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of April, 2006 ("Agreement Date") by and between the **VILLAGE OF DOWNERS GROVE, ILLINOIS**, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the "Village"), and **THREE LIGHTS DEVELOPMENT, LLC** (the "Developer"). (The Village and the Developer are sometimes referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the Village is a home rule unit of government in accordance with Article VII, Section 6, of the Constitution of the State of Illinois, 1970; 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 presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise be in the best interests of the Village; and

WHEREAS, 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 "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

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

1. 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;

2. 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;

3. Ordinance No. 3999, adopted December 22, 1997, titled *"An Ordinance Adopting Tax Increment Financing for the Village of Downers Grove"*.

WHEREAS, the Developer owns the parcels of land legally described in **Exhibit "A"**, which shall hereinafter be referred to as the "Property"; and

WHEREAS, the Developer represents and warrants to Village that Developer, and its principals, are skilled in the development of office condominiums and retail mixed-use developments and are able to provide to the Village skill, knowledge and expertise as well as input from other experts and consultants in mixed use development projects; and

WHEREAS, the Developer desires to redevelop the Property; and

WHEREAS, the Village passed an ordinance on _____, after giving all notices and conducting all public hearings required by law: Ordinance Number _____, which approved a mixed use planned development of approximately 19,800 square feet of office condominium units and approximately 9,900 square feet of commercial space for the Property the "Planned Development"); and

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

WHEREAS, the Village has determined that it is desirable and in the Village's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law; and

WHEREAS, this Agreement has been submitted to the Managers of the Developer for consideration and review, which Managers have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer, including the adoption of a Resolution precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE

INCORPORATION OF RECITALS.

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village and of the Developer according to the tenor and import of the statements in such Recitals.

ARTICLE TWO

DEFINITIONS.

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the recitals hereto and as follows:

“Act” means the Tax Increment Allocation Redevelopment Act found at 65 ILCS 5-11-74.4-1, et seq.

“Agreement” means this Redevelopment Agreement and all of the exhibits and attachments referenced herein and made a part hereof.

“Change in Law” means the occurrence, after the Effective Date, of an event described below, provided (a) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and (b) such event is not caused by the Party relying thereon: Change in Law includes any of the following: (i) the enactment, adoption, promulgation or modification of any 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 or with respect to those made by the Village, only if they violate the terms of this Agreement).

“Corporate Authorities” means the Village Mayor and Village Council of the Village of Downers Grove, Illinois.

“Day” means a calendar day.

“Developer” means **THREE LIGHTS DEVELOPMENT, LLC**, an Illinois limited liability company, or any successor in interest thereof permitted pursuant to **Section 7.9** hereof.

“Downtown Redevelopment Tax Increment Fund” means the special fund established pursuant to Ordinance No. 3998, 3999 and 4456.

“Final Plans” means all of the plans approved by the Village Council for the Project, containing a total of 19,800 square feet of office condominium units and approximately 9,900 square of commercial space in one (1) building, substantially as shown in the approved site plan attached as Exhibit B hereto.

“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 comprising 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, pursuant to and in accordance with the Act, the TIF Ordinances and this Redevelopment Agreement, and includes any replacement or

amended taxes, subject to the determination thereof on a “per parcel” or a “per area” basis under applicable law.

“Party” means the Village and/or Developer and its successors and/or assigns as permitted herein, as the context requires.

“Person” means 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.

“Planned Development Ordinance” means the Planned Development Ordinance adopted by the Village, approving the Project as a Planned Development.

“Project” means the development, construction, financing, and completion of the mixed-use office condominium building with 19,800 square feet of office condominium units and approximately 9,900 square feet of commercial space and related improvements in accordance with the Final Plans, and pursuant to the Planned Development Ordinance.

“Property” means the approximately 12,000 square feet of land presently improved with a vacant dilapidated commercial building, which is legally described in Exhibit “A” upon which the Project will be implemented.

“Redevelopment Plan” means the “Redevelopment Plan” for the Downtown as defined in the Village Ordinance No 3997 and Ordinance No. 4455.

“Redevelopment Project Costs” means those redevelopment project costs authorized by the Act.

“State” means the State of Illinois.

“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” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and
- (b) is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather conditions or other similar Act of God;
 - (iv) governmental condemnation or taking other than by the Village;
 - (v) strikes or labor disputes, other than those caused by the acts of Developer;

Uncontrollable Circumstance shall not include: (1) economic hardship or impracticability of performance, (2) commercial or economic frustration of purpose, (3) unavailability of materials, strikes or labor disputes caused by the acts of Developer, or (4) a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

“Village” means the Village of Downers Grove, Illinois, an Illinois municipal corporation.

“Village Engineer” means the person so designated by the Village Manager as the Village Engineer.

ARTICLE THREE
CONSTRUCTION.

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

(a) Definitions include both singular and plural.

(b) Pronouns include both singular and plural and cover all genders.

(c) The word “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

(d) Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(e) All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the terms of this Agreement shall control.

(f) Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.

(g) The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Developer is entitled to rely on

the full power and authority of the persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.

(h) In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Jeffrey R. Walker (and, in his absence, Jeffrey R. Brown) as its authorized representatives who shall individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection (each such individual being an "Authorized Developer Representative"). Developer shall have the right to change its Authorized Developer Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 14.2.

ARTICLE FOUR

IMPLEMENTATION OF PROJECT

The Village and the Developer agree to cooperate in implementing the Project in accordance with the Parties respective obligations set forth in this Agreement.

ARTICLE FIVE

VILLAGE COVENANTS AND AGREEMENTS.

5.1 Village's Redevelopment Obligations. The Village shall have the obligations set forth in this Article Five for the development, construction, financing, completion and furtherance of the Project.

This Agreement shall not constitute a debt of the Village within the meaning of any constitutional statutory provision or limitation.

5.2 Reimbursement for TIF Eligible Expenses. (a) for years one through five (1-5) of the Agreement (year one shall commence upon the issuance of a final certificate of occupancy), the Village shall pay out of the Downtown Redevelopment Tax Increment Financing Fund an amount equal to seventy five percent (75%), of the incremental property taxes received by the Village arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the EAV as of the initial date of this Agreement; after year five (5) of the Agreement, the Village shall pay out of the Downtown Redevelopment Tax Increment Financing Fund an amount equal to fifty percent (50%), of the incremental property taxes received by the Village arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the EAV as of the initial date of this Agreement; provided that the total amount of reimbursement shall not exceed five hundred thousand dollars (\$500,000.00) for Redevelopment Project Costs pursuant to the terms of the Developer's Note attached hereto as Exhibit " C" .

5.3 Waiver of Building Permit Fees. The Village shall waive Village-assessed PD application fees, building permit and inspection fees in an amount not to exceed \$30,000.00. Developer shall pay any permit, application, inspection and/or consultant fees for Village out-of-pocket expenses. Developer shall pay any permit and inspection fees in excess of the \$30,000.00 cap. The amount of reimbursement for TIF eligible expenses to be paid by the Village pursuant to Paragraph 5.2 shall be reduced by the amount of the application, permit and inspection fees waived on a dollar for dollar basis.

5.4 Issuance of Parking Permits. The Village shall make available for sale to owners and tenants of the Developer, up to fifty-eight (58) permits for parking within the Village's public parking garage on Mochel Drive in parking spaces reserved for use of DB Downtown Business District employee parking, upon proper proof in accordance with Village ordinances. The

parking permits shall be made available for sale as long as the Village provides parking for DB Downtown Business District employees in the Mochel Garage. This section shall not obligate the Village to provide specific parking spaces for the Project. The Village reserves the right to amend or revise the manner in which parking permits are sold or issued to comply with the terms, restriction and conditions of the tax exempt bonds used to construct the parking deck.

5.5 Adjustment to Incentive. The total amount of assistance provided to the Developer shall be adjusted as follows: one year from the date of issuance of a Final Certificate of Occupancy for the last occupiable space, the Developer shall submit a complete audit of the revenues and expenditures produced by the Project up to and including three hundred and sixty-five (365) days from the date of issuance of the Final Certificate of Occupancy. The Village shall review the audit of the Project. In the event that the gross sales price of the office condominium units, excluding any administrative fees, brokerage fees or similar fees, sold prior to the ending date of the audit is equal to or less than \$3,663,000.00, there shall be no adjustment to the financial incentive to be paid to the Developer. In the event that the gross sales price of the office condominium units, excluding any administrative fees, brokerage fees or similar fees, sold prior to the ending date of the audit is greater than \$3,663,000.00, then the financial assistance to be paid to the developer shall be decreased by \$.50 for each incremental dollar in excess of \$3,663,000.00. Within sixty (60) days of receipt of the audit, the Village shall indicate to the Developer the adjustment applied to the financial incentive and shall take any actions required to amend the developer note attached hereto as Exhibit "C".

5.6 Defense of Redevelopment Project Area. In the event that any court or governmental agency, having jurisdiction over enforcement of the Act shall determine that the entire Redevelopment Project Area is contrary to law or is otherwise challenged before a court or

governmental agency having jurisdiction thereof, the Village will, at its sole cost and expense, defend the integrity of the Redevelopment Project Area . Developer will fully cooperate with the Village in connection with the foregoing.

5.7 Village Cooperation. The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village. As part of the Planned Development land use approval process, the Village shall further consider and grant reasonable requests of Developer for relief or variances from Village Zoning and Subdivision ordinances necessary for the construction of the Project.

5.8 Certificate of Completion/Certificate of Occupancy.

a. Within fifteen (15) days after written request from Developer and after Developer has provided all required waiver of liens and sworn statements necessary to comply with the Illinois Mechanics Lien Act and has complied with all Village codes, the Planned Development ordinance and with the obligations of this Agreement with respect to the construction of the Project, the Village shall deliver a certificate of completion and satisfaction of all construction terms, covenants and conditions contained in this Agreement or, if not complete or satisfied, a notice identifying what deficiencies exist.

b. The Village will, in relation to condominium units, and the retail spaces in the building, issue certificates of occupancy on a unit-by-unit basis (as opposed to a building by building basis or any other basis); provided, however, that the structure and common areas of the building is itself in conformance with applicable standards, codes and ordinances of the Village concerning access/egress facilities, life/safety systems and facilities and structural integrity.

ARTICLE SIX

DEVELOPER'S COVENANTS AND AGREEMENTS.

6.1 Developer's Redevelopment Obligations. Developer shall have the obligations set forth in this Article Six for the development, construction, financing, completion and furtherance of the Redevelopment Project.

6.2 Focused No Further Remediation (NFR) Letter. Developer shall obtain a Focused No Further Remediation letter from the Illinois Environmental Protection Agency. The NFR shall address the environmental issues included in the Phase II Environmental Assessment Report attached hereto as Exhibit "D".

6.3 Proof of Paid Invoices. Developer shall submit proof of paid invoices for TIF Eligible Redevelopment Costs. Proof of paid invoices for TIF Eligible Expenses shall be submitted prior to the issuance of the Final Certificate of Occupancy. Any invoices submitted after this date will not be subject to reimbursement.

6.4 Compliance with Applicable Laws. Consistent with its warranties in Article Nine, Developer shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village. Village shall not enact any law, ordinance, rule or regulation (or amendment thereto) which would have the effect of increasing Developer's obligations hereunder, including an increase in the cost of the Project, unless said

law, ordinance, rule or regulation is one of general applicability to all the property in the Village.

6.5 Covenants and Agreements.

(a) Agreement to Construct the Private Development. Subject to Uncontrollable Circumstances, Developer covenants and agrees to construct or cause to be constructed the Project at the times, in the manner and with the effect set forth in this Agreement. Without limiting the foregoing, the development time table for the Development shall be (time being of the essence), as follows:

Commencement of Construction: October 1, 2006; Completion: Fifteen (15) months after commencement of construction. Completion with respect to Developer means that the Village has issued a temporary or final certificate of occupancy it being agreed that the Village shall use good faith and due diligence in promptly performing all inspections and tests necessary for issuance of a temporary or permanent certificate of occupancy.

6.6 Leased Space. Seventy percent (70%) of the commercial space shall be leased to sales-tax producing tenants providing tenants are included in the List of Encouraged Uses as listed on Exhibit "E" to this Agreement. 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 shall not be less than five (5) years, unless otherwise agreed to by the Village in its sole discretion.

6.7 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 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, 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.

6.8 Progress Meetings. Developer shall meet with the Village Council and Village staff and make presentations to the Village Council and Village staff as reasonably requested by the Village Manager in order to keep the Village apprised of the progress of the Project.

6.9 Authorized Developer Representatives. Subject to the provisions in Article Three, the Developer's Authorized Developer Representatives has the full power and authority to meet with Village staff for purposes of coordinating and implementing obligations of the Parties under this Agreement.

6.10 Tax Exempt Status. Consistent with its covenant in Section 6.10, Developer and successor owners shall not assert a tax-exempt status during their respective period of ownership. This prohibition shall run with the land and shall expire on the date the entire Redevelopment Project Area expires or an earlier date if agreed by the Village and Developer.

6.11 Real Estate Tax Payments. Developer and successor owners, including but not limited to office condominium unit owners, agree to pay all general and special real estate taxes levied during their respective period of ownership against their respective interest in the Project on or prior to the date same is due and said taxes shall not become delinquent. Developer and successor owners shall deliver evidence of payment of such taxes to the Village upon request.

6.12 Sale Contracts. All sales contracts shall be made subject to the terms of this Agreement and shall disclose that the property lies within the boundaries of a Special Service Area , and is subject to additional taxes.

6.13 Construction Traffic. In advance of the commencement of construction on the Project, 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 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 reasonable costs and expenses in doing so.

6.14 Fees and Expenses. Except as specifically waived by Section 5.3, Developer shall pay all Village imposed fees, including but not limited to permit, inspection, review, tap-on, and storm water drainage fees required in the Village Code of Ordinances that are assessed on a uniform basis throughout the Village and are of a general applicability to all other property in the Village. Developer is solely responsible for all fees and expenses assessed by the Downers Grove Sanitary District. Without waiving its rights against Developer, the Village may be

reimbursed for said fees and expenses to the extent they are eligible costs out of the Downtown Redevelopment Tax Increment Financing Fund.

ARTICLE SEVEN

ADDITIONAL COVENANTS OF DEVELOPER.

7.1 Developer Existence. Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company, so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

7.2 Construction of Project. Developer shall diligently pursue obtaining all required permits and Developer shall cause construction of the Project on the Property to be prosecuted and completed with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

7.3 Indemnification. Developer (use of the term “Developer” herein includes permitted successors and assigns), agrees to indemnify, defend and hold the Village, Mayor, Village Council Members, Village Manager, officers, agents and employees (hereinafter “Indemnified Parties”) harmless from and against any losses, costs, damages, liabilities, claims suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys’ fees and court costs) suffered or incurred by the Indemnified Parties which are caused as a result of:

a. the failure of Developer to comply with any of the terms, covenants or conditions of this Agreement which Developer is obligated to comply with, after the benefit of any applicable notice and cure periods; or

b. the failure of Developer or any of Developer’s contractors to pay contractors, subcontractors or materialmen in connection with the Project (subject to any amounts being contested in good faith by Developer); or

c. material misrepresentations or omissions of Developer relating to the Project, financial information or this Agreement which are the result of information supplied or omitted by Developer; or

d. the failure of Developer to cure any material misrepresentations or omissions of Developer in this Agreement relating to the Project within the applicable cure provisions of this Agreement; or

e. any claim or cause of action for injury or damage brought by a third party arising out of the construction or operation of the Project by Developer; or

f. any violation by Developer of local ordinance, State or federal laws, in connection with the offer and sale of interests in the Developer or any part of the Project.

g. The occurrence of an Event of Default by Developer.

The provisions of this Section 7.3 shall not apply to a loss which arises out of (in whole or in part) intentional misconduct or negligence on the part of any Indemnified Party, but only to the extent that such Indemnified Parties' misconduct or negligence contributed to the loss, or that the loss is attributable to such Indemnified Parties' misconduct or negligence.

7.4 Further Assistance and Corrective Instruments. The Village and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's sound legal discretion.

7.5 No Gifts. Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to the Mayor, any Council member, or any officer, employee or agent of the Village, or any other person connected with the Village, any money or

anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the Village.

7.6 Conveyance. In recognition of the nature of the Redevelopment Project and the Village's projections of the need for incremental tax revenues to finance Redevelopment Project Costs, in accordance with the Act, during the life of the TIF consistent with its covenants in Section 6.9, Developer shall not knowingly undertake to convey the Property to persons whose ownership and use of such Property will cause it to be exempt from payment of property taxes), and will impose in the deed conveying all or any portion of the Property, a prohibition against granting such conveyance consistent with the covenants in Section 9.11.

7.7 Disclosure. Developer hereby represents, warrants and covenants to the Village that the members of the Developer are David A. Weiher and Marilyn L. Weiher. At the time of execution of this Agreement no change shall be made in the members owning the Developer or in their ownership interests without the consent of the Village.

7.8 Open Book Project. Developer's Project shall be an "open book" project meaning that Developer and the general contractor (or contractors, if more than one) will assure continuing access to the Village's agents for the purpose of reviewing and auditing their respective books and records relating to any item necessary to determine the costs of the Project. The foregoing Village review rights shall terminate one (1) year after the issuance of the final certificate of occupancy with respect to costs for the Project, unless the Developer has failed to make available any such books and/or records requested in writing by the Village. Developer shall provide to the Village copies of any partnership, limited liability operating agreements or joint venture agreements pertaining to the Property to which the Developer is a party; provided that the Developer may, (if Developer has previously provided the Village not less than thirty (30) days to review such confidential financial materials), remove from the copies of such

agreements any confidential financial information previously disclosed to the Village and not since changed in form or substance and the Village shall keep such agreements confidential, to the maximum extent permitted by law. Failure to provide the documents or allow review of the books within fifteen (15) days after request by the Village shall be an Event of Default. Developer shall exercise prudence and good faith in attempting to contract with persons or entities who are reputable and experienced in their respective areas for the provision of services or material for the design and construction of the Project at costs not in excess of market rates. The Village agrees that the Developer may designate within its discretion the general contractor (or general contractors) for the Project. The general contractor (or general contractors) designated by Developer shall be experienced and reputable.

7-9 Assignment of Agreement. Without the express written consent of the Village Council, (which may be withheld in the Village Council's reasonable discretion) this Agreement may not be assigned nor may any rights hereunder be transferred by Developer except for Permitted Transfers (as hereinafter defined), until completion of the Project. Any proposed assignee of any of Developer's obligations under this Agreement shall have the qualifications, financial ability, reputation and character necessary, adequate and desirable, in Village's sole discretion, to fulfill these obligations. The proposed assignee shall execute an assumption and assignment agreement agreeing to adhere to the terms and conditions of this Agreement, as they apply to said assignee, and shall submit such information, including financial information, as may be requested by the Village Council. Before any permissible assignment shall be of any force and effect, Developer shall give notice of such proposed assignment to the Village, and the Village Council shall have thirty (30) days to accept or reject such assignee at its sole discretion. In the event the Village rejects such assignee, the Village shall state the reasons therefore. If the Village does not respond to the notice of such intended assignment within such thirty-day (30)

period, such assignment shall be deemed approved. Notwithstanding anything in this Section 10.10, no part of this Section 10.10 shall require the Village's consent to the collateral assignment hereof to Developer's construction lender or permanent lender, if required thereby or to a Permitted Transfer.

7-10 No Transfer without Village's Consent. Prior to issuance of a certificate of completion, no portion of the Project shall be transferred or conveyed without the Village Council's prior written approval (other than Permitted Transfers). Before being requested to consent to a transfer (except a Permitted Transfer) of all of the Property by Developer to another developer (a "separate developer") who will develop such portion of the Project and the Property, the following must be satisfied regarding such transfer:

a. Any proposed transferee shall, in the Village's sole discretion, have the experience and financial ability necessary to fulfill the obligations undertaken by Developer in this Agreement with respect to the Project and all rights, duties and responsibilities being transferred. The proposed separate developer shall submit to the Village, for its review and approval, the same financial documents required hereunder of Developer.

b. Any such proposed transferee shall have expressly assumed the obligation of Developer hereunder in writing with respect to the Project and all rights, duties and responsibilities to be transferred as hereinafter provided.

c. All material instruments and legal documents involved and affecting any such transfer from Developer to any transferee shall be submitted to the Village Council for its approval, and no transfer shall be effective until the Village Council has authorized the Village Manager to execute the same. Except in the event of a written agreement authorized by the Village Council, no transfer shall be deemed to relieve Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Project from

any of their obligations with respect thereto as to the interest transferred. Developer shall in any event notify the Village of any transfer of any interest in the Project other than: (i) transfers of interests in connection with the sale of individual condominium units (including parking spaces) and such units' interest in the common elements of the condominium to the future resident of such unit, (individual condominium unit owners shall not be considered to be a separate developer, but merely a successor in title under this Agreement); (ii) transfers of any property to the condominium associations to be established, and (iii) transfers to an Affiliate of Developer; as used herein, an "Affiliate of Developer" shall mean an entity which controls, is controlled by, or is under common control with Developer and which has the same manager, members, partners or shareholders owning in the aggregate, more than fifty percent (50%) of the ownership interests in Developer owning more than fifty percent (50%) of the ownership interests in said Affiliate; and as used herein, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise (the foregoing transfers in clauses i, ii and iii shall herein be referred to as the "Permitted Transfers"). Developer shall not be required to obtain Village review, approval or consent to any Permitted Transfer. The Village shall have no duty to return any letter of credit or other security posted in connection with the portion of the Project so transferred until substitute security acceptable to Village in its sole discretion is received.

d. Upon the conveyance of the Property to a separate developer (as consented to by the Village Council, and as evidenced by execution by the separate developer of an assumption and assignment agreement in a form acceptable to the Village), such separate developer shall be responsible for the development of the Project and Developer shall be relieved from all further liability under this Agreement with respect to the Project and the Property so transferred. Each

separate developer shall be bound by all terms, conditions, and obligation of this Agreement applicable to the Project and Property and, except as set forth below in this section, any reference to Developer in this Agreement shall be deemed to be (or include) a reference to a separate developer to the extent such reference is to (or includes) the Project or the Property owned by such separate developer.

ARTICLE EIGHT

ADHERENCE TO VILLAGE CODES AND ORDINANCES.

All development and construction of the Project shall comply in all respects with the applicable provisions in the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, Zoning and Subdivision Codes of the Village and all other germane and applicable codes and ordinances in the Downers Grove Municipal Code in effect on the date that an application for a building permit and/or earth moving permit for such development or construction is filed, and from time to time during construction that are applicable, except as otherwise provided herein.

Developer warrants that its development of the Project shall be performed in accordance with all the applicable covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental regulations and land use regulations, codes, ordinances, federal, State and local ordinances affecting the Project.

ARTICLE NINE

REPRESENTATIONS AND WARRANTIES OF DEVELOPER.

Developer represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

9.1 Organization and Authorization. Developer is an Illinois limited liability company authorized to do business in Illinois and existing under the laws of the State of Illinois, and is

authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform all the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.

9.2 Non-Conflict or Breach. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or results in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made by Developer, any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.

9.3 Location of Project. The Project will be located entirely within the Property.

9.4 Financial Resources. Developer and any Affiliate to which portions of this Agreement are assigned have sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.

ARTICLE TEN

REPRESENTATIONS AND WARRANTIES OF THE VILLAGE.

The Village represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

10.1 Organization and Authority. The Village is a municipal corporation duly organized and validly existing under the law of the State of Illinois, is a home rule unit of government, and have all requisite corporate power and authority to enter into this Agreement.

10.2 Authorization. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement (i) have been duly authorized by all necessary corporate action on the part of the Village, (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.

10.3 Litigation. To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Property, the Project, the Village or the Redevelopment Project Area in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

10.4 Connections. The Village hereby agrees to permit the connection of all water lines and storm sewer lines constructed in the Redevelopment Project Area or Village utility lines existing or constructed in the Property or near the perimeter of the Property as set forth on the Final

Plans, provided that Developer complies with all requirements of general applicability promulgated by the Village for such connections. Village shall grant utility and other necessary easements as may be necessary or appropriate to accommodate the utilities shown on the Final Plans.

ARTICLE ELEVEN

LIABILITY AND RISK INSURANCE.

11.1 Liability Insurance Prior to Completion. Developer (or Developer's contractor) shall procure and deliver to the Village, at Developer's (or such contractor's) cost and expense, and shall maintain in full force and effect until each and every obligation of Developer contained herein has been fully paid, or performed, a policy or policies of comprehensive liability insurance and, during any period of construction, contractor's liability insurance, structural work act insurance, if available and if required under Illinois law and worker's compensation insurance, with liability coverage under the comprehensive liability insurance to be not less than Two Million and no/100 Dollars (\$2,000,000.00) each occurrence and Five Million and no/100 Dollars (\$5,000,000.00) total. All such policies shall be in such form and issued by such companies as shall be acceptable to the Village to protect the Village and Developer against any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Project on the Property, or the construction and improvement thereof by Developer. Each such 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 thirty (30) days prior to any cancellation or amendment of its policy. Developer shall provide to the Village a replacement certificate not less than 30 days prior to expiration of any policy.

11.2 Builder's Risk Prior to Completion. Prior to completion of the construction of the Project on the Property, as certified by the Village, Developer shall keep in force at all times builders risk insurance on a completed value basis, in non-reporting form, against all risks of physical loss, including collapse, covering the total value of work performed and equipment, supplies and materials furnished for the Project (including on-site stored materials), all as to work by Developer. Such insurance policies shall be issued by companies satisfactory to the Village. All such policies shall contain a provision that the same will not be canceled or modified without prior thirty-(30) day written notice to the Village.

ARTICLE TWELVEEVENTS OF DEFAULT AND REMEDIES.

12.1 Developer Events of Default. The following shall be Events of Default with respect to this Agreement:

a. If any representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by Developer, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material adverse respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default, within thirty (30) days after written notice from the Village.

b. Default by Developer for a period of thirty (30) days after written notice thereof from the Village in any representation contained in this Agreement concerning the existence, structure or financial condition of Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default can be cured within said thirty (30) days and Developer, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default.

c. A material failure by Developer in the performance of any obligation hereunder or the material breach of any covenant or warranty contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default can be cured within said thirty (30) days and the Developer, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.

d. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

e. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.

f. Failure to have funds to meet Developer's obligations.

g. Sale, assignment, or transfer of the Project except in accordance with this Agreement.

- h. Change in the Developer (other than to Permitted Transferee).
- i. Developer fails to comply with applicable governmental codes and regulations.

12.2 Village Events of Default. The following shall be Events of Default with respect to this Agreement:

a. if any material representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default, within thirty (30) days after written notice from Developer.

b. default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default if the Village does not, within thirty (30) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default.

c. default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the Village, commences cure within thirty (30) days after written notice from Developer and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.

- d. failure to have funds to meet the Village's obligations.

12.3 Remedies for Default.

In the case of an Event of Default hereunder:

a. The defaulting party shall, upon written notice from the non-defaulting party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than 30 additional days unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Agreement.

b. In case the Developer or Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken.

12.4 Agreement to Pay Attorneys' Fees and Expenses. In the event an Event of Default is not cured within the applicable cure periods and either or both Parties employ(s) an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement herein contained, the non-prevailing party shall pay, on demand, the prevailing party's reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action. The Village's duty to pay shall be subject to the Illinois Prompt Payment Act.

12.5 No Waiver by Delay or Otherwise. Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement

shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, or the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

12.6 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

ARTICLE THIRTEEN

EQUAL EMPLOYMENT OPPORTUNITY.

13.1 No Discrimination. Developer will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex or national origin. To the fullest extent permitted by law, Developer will take affirmative action to ensure that applicants are employed and treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Developer

agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

13.2 Advertisements. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

13.3 Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with Developer's Project shall contain language similar to that recited in **Section 13.1** and **13.2** above.

ARTICLE FOURTEEN

MISCELLANEOUS PROVISIONS.

14.1 Cancellation. In the event Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Plan, including Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the Village in connection with the Redevelopment Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the Village terminates this Agreement pursuant to this Section 14.1, to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided, however, that (i) the cancellation or termination

of this Agreement shall have no effect on the authorizations granted to Developer for buildings permitted and under construction to the extent permitted by said Court order; and (ii) the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded document. If the Developer terminates this Agreement pursuant to this Section 14.1, to the extent it is then appropriate, the Developer, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided, however, that the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded document.

14.2 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) electronic communications, whether by telex, telegram or telecopy, if followed up with an overnight delivery of same (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village:	Village of Downers Grove 801 Burlington Avenue Downers Grove, IL 60515 Attn: Village Clerk Telephone: 630-434-5500 Facsimile: 630-434-5571
With copies to:	Village of Downers Grove 801 Burlington Avenue Downers Grove, Illinois 60515 Attention: Enza Petrarca, Village Attorney Fax: 630-434-5493
If to Developer:	Three Lights Development, LLC 935 Curtiss Street, Suite 4 Downers Grove, Illinois 60515 Telephone: 630-434-4201 Fax: 630- 434-8348
With copy to:	Leigh R. Pietsch, Esq.

Kienlen & Pietsch
1776 S. Naperville Road, Building A, Suite 200
Wheaton, Illinois 60187
Telephone: 630-668-1776
Fax: 630-668-1906

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

14.3 Time of the Essence. Time is of the essence of this Agreement.

14.4 Integration. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

14.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

14.6 Recordation of Agreement. The Parties agree to record this Agreement with the DuPage County Recorder's Office.

14.7 Severability. If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included

herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

14.8 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

14.9 Entire Contract and Amendments. This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.

14.10 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the Village and Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

14.11 Waiver. Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

14.12 Cooperation and Further Assurances. The Village and Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments, easements if necessary, and documents supplemental

hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

14.13 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns; provided, however, that, except as provided in **Section 10.10** hereof, Developer may not assign its rights under this Agreement without the express written approval of the Village. Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or transfer any interest in the Property without the express written approval of Developer.

14.14 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

14.15 No Personal Liability of Officials of Village or Developer. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Mayor, Village Council member, Village Manager, any official, officer, partner, member, director, agent, employee or attorney of the Village or Developer, in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Village or Developer shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

14.16 Repealer. To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

14.17 Term. This Agreement shall remain in full force and effect for twenty-three (23) years from the date the Downtown TIF District was created, December 22, 1997, unless the Redevelopment Plan with respect to the Project is extended or until termination of the Redevelopment Project Area or until otherwise terminated pursuant to the terms of this Agreement.

14.18 Estoppel Certificates. Each of the parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("Estoppel Certificate") certifying that this Agreement is in full force and effect (unless such is not the case, in which such parties shall specify the basis for such claim), that the requesting party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting party.

14.19 Municipal Limitations. All municipal commitments are limited to the extent required by law.

ARTICLE FIFTEEN

EFFECTIVENESS

The Effective Date for this Agreement shall be the day on which this Agreement is fully executed pursuant to a duly enacted Village ordinance authorizing the execution and adoption of this Agreement. Developer shall execute this Agreement prior to Village Council authorization of execution of this Agreement.

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

VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation

By: Mayor

ATTEST:

By: Village Clerk

DEVELOPER: THREE LIGHTS DEVELOPMENT, LLC

By: David A. Weiher, Member

LIST OF EXHIBITS

- A LEGAL DESCRIPTION FOR PROPERTY**
- B CONCEPT PLANS FOR THE PROJECT**
- C. REDEVELOPMENT NOTE**
- D. PHASE II ENVIRONMENTAL REPORT**
- E. LIST OF DISCOURAGED AND ENCOURAGED USES**

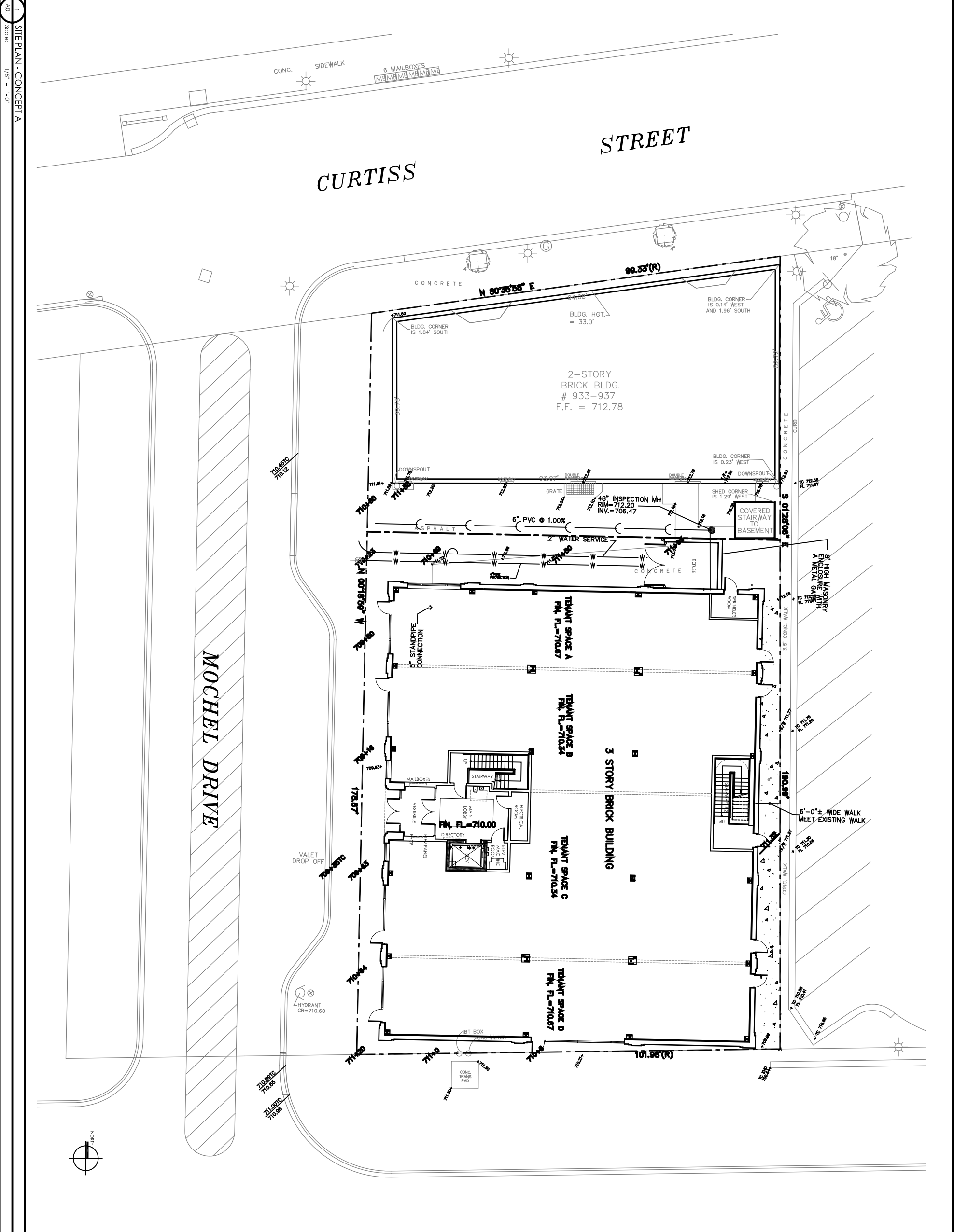
EXHIBIT A

Legal Description

EXHIBIT B

CONCEPT PLANS

1 SITE PLAN - CONCEPT A
A0.1 Scale: 1/8" = 1'-0"



A0.1

CHARLES PLACE
RETAIL / OFFICE BUILDING
5151 MOCHEL DRIVE
DOWNERS GROVE, IL

Job No: 0576.00 Date: 8 FEBRUARY 2006 Rev.: 17 FEBRUARY 2006
23 FEBRUARY 2006

STEWART ■ NOSKY
ARCHITECTS, LTD.
1411 Open Place Suite 200
Downers Grove, Illinois 60515
PH (630) 241-0444

NOT USED
Scale:

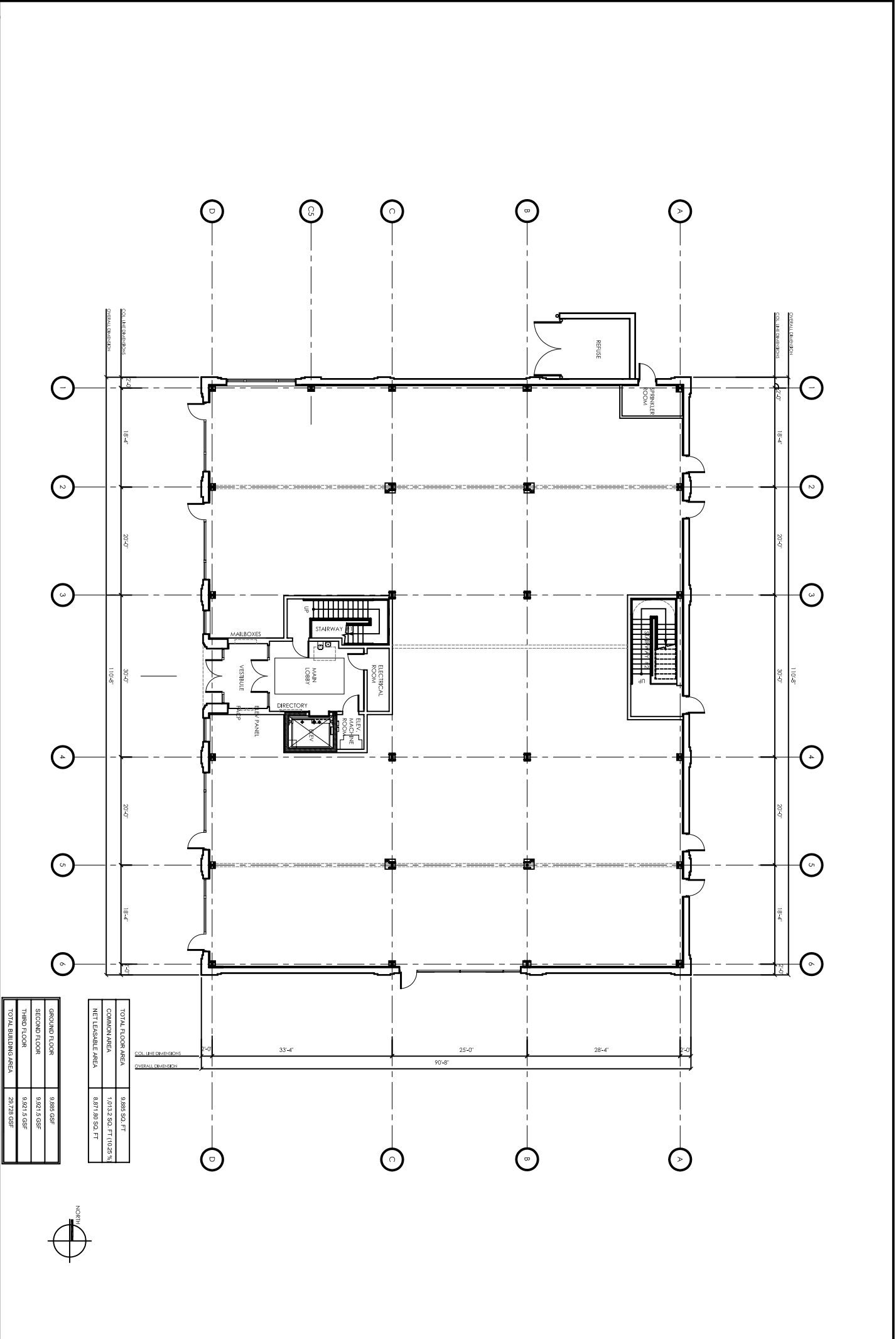
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NOT USED
Scale:

1 FIRST FLOOR PLAN
A1.1 Scale: 1/8" = 1'-0"



A1.1
 CHARLES PLACE
 RETAIL / OFFICE BUILDING
 5151 MOCHEL DRIVE
 DOWNERS GROVE, IL

STEWART ■ NOSKY
 ARCHITECTS, LTD.
 1411 Open Place, Suite 200
 Downers Grove, Illinois 60515
 PH (630) 241-0444

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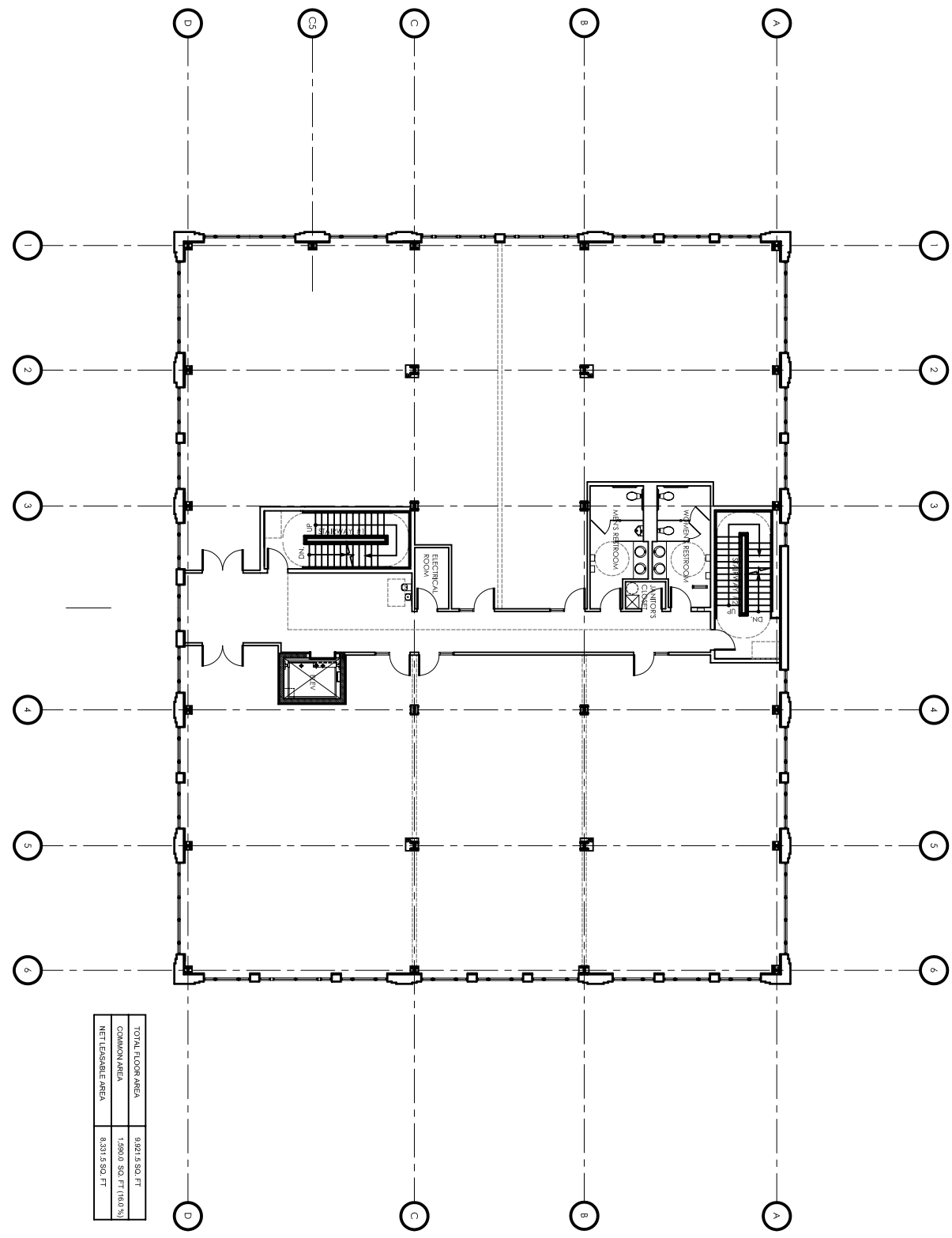
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1 SECOND FLOOR PLAN
A1.2 Scale: 1/8" = 1'-0"



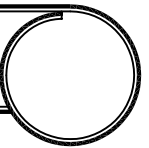
Empty rectangular area for notes or additional drawings.

A1.2

CHARLES PLACE
RETAIL / OFFICE BUILDING
5151 MOCHEL DRIVE
DOWNERS GROVE, IL

Job No: 0576.00 Date: 8 FEBRUARY 2006 Rev.: 17 FEBRUARY 2006
23 FEBRUARY 2006

STEWART ■ NOSKY
ARCHITECTS, LTD.
1411 Open Place, Suite 200
Downers Grove, Illinois 60515
PH (630) 241-0444



NOT USED
Scale:

NOT USED
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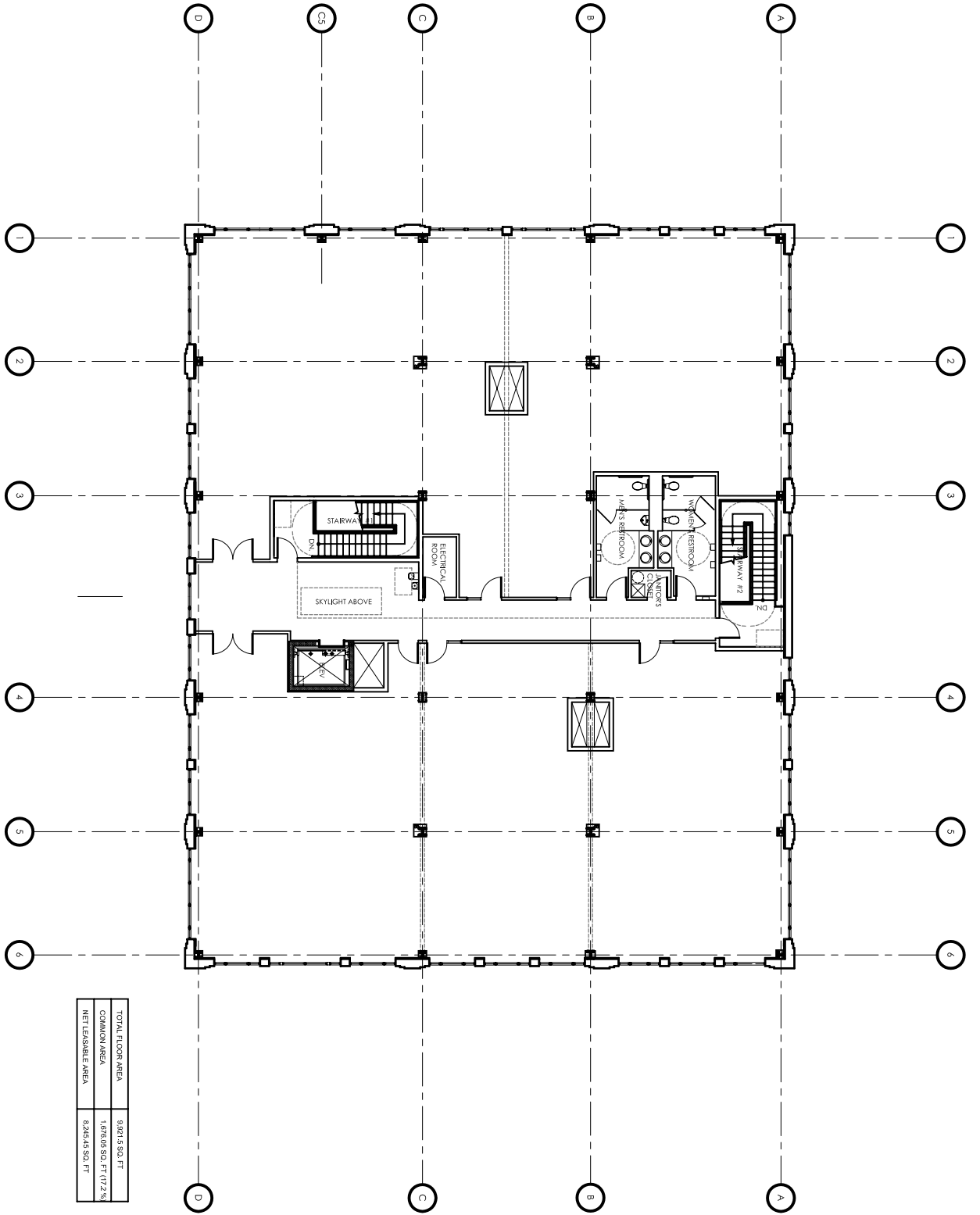
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1 THIRD FLOOR PLAN
A1.3 Scale: 1/8" = 1'-0"



TOTAL FLOOR AREA	9,821.5 SQ. FT.
COMMON AREA	1,870.5 SQ. FT. (17.2%)
NET LEASABLE AREA	8,245.5 SQ. FT.



Blank area for notes or additional information.

A1.3
 CHARLES PLACE
 RETAIL / OFFICE BUILDING
 5151 MOCHEL DRIVE
 DOWNERS GROVE, IL



STEWART - NOSKY
ARCHITECTS, LTD.
 5411 Open Place, Suite 200
 Downers Grove, Illinois 60515
 PH (630) 241-9444

EXHIBIT “C”

THIS OBLIGATION IS A LIMITED OBLIGATION OF THE VILLAGE AND MAY CONTAIN RISKS TO THE HOLDER. ANY PURCHASER, ASSIGNEE OR SUCCESSOR SHOULD CONSULT WITH SECURITIES COUNSEL AND CONDUCT DUE DILIGENCE PRIOR TO ACCEPTING THIS REDEVELOPMENT NOTE. ANY POTENTIAL PURCHASER SHOULD READ THIS ENTIRE REDEVELOPMENT NOTE AND UNDERSTAND ITS TERMS PRIOR TO ACCEPTING THIS REDEVELOPMENT NOTE.

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS
LIMITED OBLIGATION REDEVELOPMENT NOTE
(Former Hart’s Garage Property at the south east corner of Main and Curtiss.)**

\$500,000

Downers Grove, Illinois

For value received, the VILLAGE OF DOWNERS GROVE, DuPage County, Illinois (the “Village”), an Illinois municipal corporation and home rule unit of local government existing under the Constitution and laws of the State of Illinois, promises to pay to the order of Three Lights Development, LLC, or its successors and assigns (the “Payee”), the maximum principal sum of Five Hundred Thousand Dollars (\$500,000.00), subject to the terms and conditions set forth herein.

1. Authority. This Redevelopment Note is issued pursuant to the exercise of the Village’s power and authority as a home rule municipality and pursuant to the Tax Increment Allocation Act of the State of Illinois (65 ILCS 5/11-74.4-1 et seq.), as amended (the “Act”), and pursuant to Village Ordinances No. 3997 adopted on December 22, 1997, as amended by Ordinance No. 4455 on November 5, 2002; Ordinance No. 3998 adopted on December 22, 1997 as amended by Ordinance No. 4456 on November 5, 2002, and Ordinance No. 3999, adopted on December 22, 1997 (collectively, the “Authorizing Ordinances”). It is expressly understood that the Village agrees to pay for Redevelopment Project Costs out of the Downtown Redevelopment Tax Increment Financing Fund received by the Village from the Property Pursuant to the Authorizing Ordinances, the Village is issuing this Redevelopment Note for the purpose of paying for various eligible Redevelopment Project Costs in accordance with the Act and with the Redevelopment Agreement dated _____, between the Village and Payee (the “Redevelopment Agreement”). The Village agrees to diligently defend (but not indemnify), at its sole cost and expense, with the full co-operation of Payee, any court action instituted by any party that challenges the Authorizing Ordinances or this Redevelopment Note. All terms used, but not defined, herein shall have the same meanings respectively given to them in the Authorizing Ordinances or (if not defined therein) in the Redevelopment Agreement.

2. Security. **This Redevelopment Note is a limited obligation of the Village and is not secured by the Village's full faith and credit.** This Redevelopment Note is secured only by the Downtown Redevelopment Tax Increment Financing Fund comprised of Incremental Property Taxes (being 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 the Property, over and above the initial EAV) of the Property, all as determined by the DuPage County Clerk pursuant to, and in accordance with, the Act, the Authorizing Ordinances and the Redevelopment Agreement). The Incremental Property Taxes received by the Village from the development of the Property, as more specifically defined in the Authorizing Ordinances, are referred to herein as the "Limited Pledged Taxes". The Limited Pledged Taxes of the Property shall be the sole security and source of repayment for this Redevelopment Note. Deposits of Limited Pledged Taxes into special allocation funds to pay this Redevelopment Note shall not be subject to any additional appropriation process of the Village, and the amounts deposited therein shall be disbursed in accordance with this Redevelopment Note, the Redevelopment Agreement and the Authorizing Ordinances, all without further action by the Village.
3. Terms. The terms of this Redevelopment Note shall be:
 - a) Principal. The principal amount of this Redevelopment Note shall be an amount (to be determined by the Village after review and approval of all receipts and invoices submitted to the Village by Payee in support of Payee's request for payment of Redevelopment Project Costs) equal to the total of all Redevelopment Project Costs as reduced in an amount equal to the building and permit fees waived by the Village pursuant to Section 5.3 of the Redevelopment Agreement and as further adjusted pursuant to Section 5.5 of the Redevelopment Agreement as shall in good faith be determined and approved by the Village; provided, however, that the principal amount of this Redevelopment Note shall not exceed Five Hundred Thousand Dollars (\$500,000.00). At such time as the Village has made its determination of the principal amount of this Redevelopment Note in accordance with the foregoing, the Village shall execute a modification of this Redevelopment Note which shall fix and define such principal amount.
 - b) Term. The term of this Redevelopment Note shall expire on December 22, 2021, or such earlier date that the Downtown TIF District is terminated, but not earlier than the date on which the final payment of any principal is made so long as the Payee is not in default of its Redevelopment Agreement with the Village. In the event that the Limited Pledged Taxes are insufficient to repay the entire principal amount of this Redevelopment Note, then the balance of any unpaid principal shall not be paid.

4. Payment. All payments hereunder shall be made in lawful currency of the United States, without setoff or demand, and mailed to the address of the Payee as set forth in the Redevelopment Agreement, or such other address of which Payee shall notify the Village in writing from time to time or via electronic transmittal.
5. Reimbursement for TIF Eligible Expenses. (a) for years one through five (5) of the Agreement (year one shall commence upon the issuance of a final certificate of occupancy), the Village shall pay out of the Downtown Redevelopment Tax Increment Financing Fund received by the Village from the Property an amount equal to seventy five percent (75%), of the incremental property taxes arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the initial EAV; After year five (5) of the Agreement, the Village shall pay out of the Downtown Redevelopment Tax Increment Financing Fund received by the Village from the Property an amount equal to fifty percent (50%), of the incremental property taxes arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the initial EAV; The total amount of reimbursement shall not exceed five hundred thousand dollars (\$500,000.00) for Redevelopment Project Costs pursuant to the terms of the Redevelopment Agreement for Redevelopment Project .
6. Interest. Simple interest shall accrue on the unpaid balance of this Redevelopment Note from the date the Village issues its final certificate of occupancy until repaid at a rate of four percent (4%). Interest shall be computed on the basis of a 360 day year. Payments by the Village shall be applied first to accrued but unpaid interest, and the remainder, if any to principal. In the event that any payment shall be insufficient to pay all accrued, but unpaid interest under this Redevelopment Note, interest shall accrue but shall neither be added to principal nor itself bear interest. Payments on this Redevelopment Note shall be made on the last business day of each December beginning in the year immediately following the calendar year in which the Store opens for business.
7. Restriction of Transfer. This Redevelopment Note has been issued pursuant to the Authorizing Ordinances, the Act and the Redevelopment Agreement. The Payee shall not pledge, assign, sell or otherwise transfer this Redevelopment Note without first giving the Village at least thirty (30) days' prior written notice of the intended transfer. Said notice shall contain the name, address and agent of the intended transferee, and the consideration being received therefore by transferor. Said notice shall also contain a statement that the transfer will not violate any applicable federal or state laws or the Redevelopment Agreement between the Payee and the Village. The provisions of this Paragraph 5 shall be binding on Payee and all of its successors and assigns. Any proposed pledge, assignment or transfer shall be bound by Section 7-9 of the Redevelopment Agreement by and between the Parties dated

8. Payee Waivers of Rights. Payee, for itself and for its successors and assigns, hereby acknowledges that Payee has received this Redevelopment Note with no representations or warranties from the Village regarding the Development, the Redevelopment Project Area, the projected amount of the Limited Pledged Taxes, the likelihood of payment of this Redevelopment Note, or any other matter regarding the likelihood of payment of this Redevelopment Note. The Village has made no attempt to disclose any risks or potential risks which may be associated with this Redevelopment Note, and Payee, upon acceptance of this Redevelopment Note and in additional consideration thereof, hereby waives any rights to any disclosures, representations or warranties to which a buyer of securities would typically be entitled as to the likelihood of repayment. Payee hereby represents to the Village that Payee is sophisticated in matters of real estate development, and that Payee has conducted its own due diligence investigation of the risks associated with this Redevelopment Note. Payee, for itself and for its successors and assigns, further acknowledges that upon acceptance of this Redevelopment Note, Payee shall be estopped from raising any claims or challenges to the validity of this Redevelopment Note, the validity of the formation of the Redevelopment Project Area in which the development is located, and any other actions taken by the Village or its agents in relation to the development of the Property. Payee and each assignee and successor has fully read this entire Redevelopment Note and understands all of the terms and conditions contained herein.
9. Non-Recourse Provision. This Redevelopment Note and the obligation to pay the principal and interest hereunder are limited obligations of the Village and are payable solely from the Limited Pledged Taxes generated from the Property made available under the Authorizing Ordinances. This Redevelopment Note and the obligation to pay principal and interest hereunder do not constitute an indebtedness of the Village within the meaning of any constitutional or statutory provision, and shall not constitute or give rise to a pecuniary liability of the Village or charge against its general credit or taxing power.
10. Default. Any failure of either party to comply with the terms of this Redevelopment Note within thirty (30) days after receipt of written notice from the other party specifying the nature and extent of the default, shall constitute an event of default hereunder, and shall entitle the non-defaulting party to all rights and remedies available at law or in equity under applicable law.
11. Notices. All notices hereunder shall be in writing, and shall be properly given if delivered in person or by a nationally-recognized “overnight” courier service, with charges prepaid, and sent to the following addresses (or such other address as a party may, by proper notice, give to the other from time to time): if to the Village, c/o Village Manager, 801 Burlington Avenue, Downers Grove, Illinois, 60515; if to Payee, Three Lights Development, LLC, 935 Curtiss Street, Suite 4, Downers Grove, Illinois 60515. Notices shall be deemed given upon delivery

if personally delivered or (if given by courier) one business day after being deposited with such courier.

12. Legal Fees and Costs. In any proceeding instituted to collect any unpaid amounts due under this Redevelopment Note, or to enforce any term of this Redevelopment Note, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs of litigation from the other party.
13. No Waiver. No waiver on the part of Payee in exercising any right or option to demand payment hereunder shall operate as a waiver thereof or preclude the exercise thereof at any time during the continuance of an event of default.
14. Governing Law. This Redevelopment Note shall be governed by and construed by the laws of the State of Illinois.
15. Waivers. The Village hereby waives demand, presentment for payment, notice of dishonor and protest.
16. Representation of the Village. The Village hereby represents and declares that all acts, conditions and things necessary to happen, exist and be performed as conditions precedent to the valid execution and delivery of this Redevelopment Note have occurred as required by law, and that the issuance of this Redevelopment Note does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Village has caused this Redevelopment Note to be executed in its name and on its behalf by the signature of its President, and its corporate seal to be affixed hereto and attested to by the Village Clerk.

VILLAGE OF DOWNERS GROVE

By: _____
Mayor

ATTEST:

Village Clerk

EXHIBIT D

Phase II Environmental Report

**PHASE II INVESTIGATION OF 939 CURTISS
STREET, DOWNERS GROVE: SECTION 8,
TOWNSHIP 38 NORTH, RANGE 11 EAST,
DUPAGE COUNTY, ILLINOIS.**

JOB # 2005-081-2

August 30, 2005

Prepared for:
Charles Properties
Downers Grove, IL



The Green Environmental Group, Ltd.
Environmental Assessments & Consulting

August 30, 2005

Mr. and Ms. David Weiher
Charles Properties
935 Curtiss Street
Downers Grove, IL 60098

Dear Mr. And Ms. Weiher:

The Green Environmental Group, Ltd. (Green Environmental) was retained to conduct a Phase II investigation for the real property located at 939 Curtiss Street in Downers Grove, Illinois (hereafter referred to as the "Site"). The Site building is currently vacant. A Phase I Environmental Site Assessment (Phase I; dated May 30, 2003) conducted by Green Environmental (Job No. 2003-015-03020-1) identified four Recognized Environmental Conditions (RECs) in connection with the project site. Based on the client's requirements, the specific objective of our services is to assess the condition of subsurface soil in the vicinity of the identified RECs. The RECs are as follows:

- 1. Sanborn Fire Insurance maps from 1933 indicated two underground gasoline tanks off the northwest corner of the 939 Curtiss building.**

No records with regards to these tanks could be found. The Village of Downers Grove has acquired land in the area of the depicted tanks. Given the generalized location of the Sanborn map and the lack of a current survey, it is unclear if the depicted tank area is located on the *property* or the west adjacent site. The current status of the tanks is unclear.

A Phase II assessment was performed on the project site and west adjacent sites in April of 2002. Versar, Inc. performed the assessment for the Village of Downers Grove. The assessment included the advancement of a soil boring and groundwater monitoring well off the northwest corner of the 939 Curtiss building to address the tanks. A soil sample was collected from five to seven feet below surface grade and analyzed for VOC and PNA constituents. Analytical results indicated low levels of toluene (0.0072 mg/kg) with all other constituents below detection limits.

Groundwater sampling in this area indicated the presence of toluene (0.0074 mg/L) and tetrachloroethene (0.0016 mg/L). The Phase II did not address the status of the tanks.

2. The 935 Curtiss unit on the first floor is occupied by a dry cleaners.

The dry cleaners employs perchloroethylene solvent in on-site operations. Indications of a potential release from the dry cleaners were noted in a Phase II assessment performed on the *property* and west adjacent sites in April of 2002. Versar, Inc. performed the assessment for the Village of Downers Grove. The assessment included the advancement of soil borings and groundwater monitoring wells off the west side of the 935 Curtiss building and the northwest corner of the 939 Curtiss building. Groundwater sampling off the northwest corner of the 939 Curtiss building indicated levels of Vinyl Chloride above Illinois EPA Class I Groundwater Remediation Objectives.

3. The 939 Curtiss building is occupied by an automotive body shop. Indications of releases and degradation of the floor were noted within this building.

Paint staining was noted within the paint storage and mixing area. Degradation of the concrete floor was observed in the area used to clean the paint gun and the area of a parts washer.

4. A floor drain observed within the 939 Curtiss building may possibly be a dry well.

The 939 Curtiss building has been in automotive use since the 1930's. Indications of spills were noted throughout the building. The discharge point of the drain is unknown. If this drain represents a dry well, any previous release to the drain would have impacted the *property* ground.

In addition to the identified RECs this proposal addresses the on-site use of two aboveground storage tanks. These tanks, located in the southwest corner of the building, contained heating oil prior to being converted to waste oil and waste antifreeze tanks. The tanks were filled/drained through pipes extending through the building wall at the southwest corner.

Based on the client's requirements, the purpose of this investigation is to assess the condition of the subsurface soils in the vicinity of the identified RECs surrounding the 939 Curtiss building which is currently vacant and is being considered for redevelopment. Specifically, the objectives of the subsurface investigation are to:

- determine if project site's subsurface soil has been impacted in a manner which preclude

redevelopment of the building;

- determine if project site's subsurface soil along the north side of the building has been impacted by the north adjoining dry cleaning operations;
- attempt to determine if two underground storage tanks, depicted on historical Sanborn maps, are present through the use of a magnetometer;
- determine if the project site's subsurface soil at the location of depicted underground storage tanks has been impacted by the presence of this system;
- determine if the project site's subsurface soil at the interior staining and degradation points has been impacted by previous on-site releases;
- determine if the project site's subsurface soil at the location of interior floor drain(s) has been impacted by potential previous releases to these systems;
- determine if the project site's subsurface soil at the location of exterior fill port for on-site aboveground storage tanks has been impacted by previous filling/draining activities;
- provide a preliminary indication of the magnitude of soil contamination, if present; and
- provide a summary of the results of the investigation activities.

This assessment is not intended to identify groundwater contamination, to delineate the extent of contamination on the project site, if present, or to fulfill the requirements of any State-regulated closure or remediation program.

The field work for the investigation was completed on July 22, 26 and 27, 2005. Eight (8) boreholes, designated as BH-1 thru BH-8, were conducted at the Site. The boreholes were advanced using a truck-mounted, hydraulic soil probe. Soil samples were collected using a Macro-Core®, continuous-core sampler. Subsequent to collection, all soil samples were field screened for signs of contamination.

The native (i.e., non-fill) soils at the Site consisted of a brown silty clay to sandy clay soils with some lower discontinuous sand layers and some areas of limestone. Saturated soils were not

encountered, however, moist conditions were encountered at a depth of 12 feet on the north side of the Site.

Based on the field screening and laboratory results, some indications of adverse impact were identified in the area on the north side of the building in back of the dry cleaners. Some indications of contamination were noted in other areas of the Site but at levels below action levels. Most parameters tested for as part of this investigation, were below their respective IEPA Remediation Objectives (ROs) and below the laboratory detection limits for the test method employed. Based on the soil borings, sampling performed and the representative laboratory analysis, the primary concern at the Site is the contamination from the dry cleaners. Green Environmental has further recommendations regarding the Site as far as demolition of the building; the dry cleaners is currently in the Site Remediation Program of the Illinois EPA.

We trust that this report meets your project requirements at this time. Should you have any questions concerning this project, please feel free to contact the undersigned at (630) 462-9762.

Sincerely,

Prepared by:



William W. Frerichs, Project Manager
THE GREEN ENVIRONMENTAL GROUP, LTD.

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I. INTRODUCTION

1. PROJECT DESCRIPTION

The Green Environmental Group, Ltd. (Green Environmental) was retained to conduct a Phase II investigation for the real property located at 939 Curtiss Street, Downers Grove, Illinois (hereafter referred to as the "Site"). The Site is currently vacant but most recently was used for an auto body shop. It is located in downtown Downers Grove.

The study area is in the Section 8 in Township 38 North, Range 11 East, in DuPage County, Illinois. The location of the Site is indicated on a United States Geological Survey (U.S.G.S.) topographical map presented as **Figure 1**.

2. PURPOSE OF STUDY

- determine if project site's subsurface soil has been impacted in a manner which preclude redevelopment of the building;
- determine if project site's subsurface soil along the north side of the building has been impacted by the north adjoining dry cleaning operations;
- attempt to determine if two underground storage tanks, depicted on historical Sanborn maps, are present through the use of a magnetometer;
- determine if the project site's subsurface soil at the location of depicted underground storage tanks has been impacted by the presence of this system;
- determine if the project site's subsurface soil at the interior staining and degradation points has been impacted by previous on-site releases;

- determine if the project site's subsurface soil at the location of interior floor drain(s) has been impacted by potential previous releases to these systems;
- determine if the project site's subsurface soil at the location of exterior fill port for on-site aboveground storage tanks has been impacted by previous filling/draining activities;
- provide a preliminary indication of the magnitude of soil contamination, if present; and
- provide a summary of the results of the investigation activities.

This assessment is not intended to identify groundwater contamination, to delineate the extent of contamination on the project site, if present, or to fulfill the requirements of any State-regulated closure or remediation program.

3. BACKGROUND INFORMATION

A. Physical Site Description

939 Curtiss Street is part of a larger parcel that includes 933,935 and 937 Curtiss Street. The 933, 935 and 937 addresses are all within one building located north of the 939 building. The 939 Curtiss Street portion is improved with a commercial building.

B. Adjacent Property Land Uses

North: Commercial building on the same site which contains offices, a nail salon, Chucks Gourmet, etc.

South: Downers Grove Parking Structure

East: Bank

West: Roadway leading to parking garage, commercial beyond.

C. Published Area Geology

The stack unit classification of the subject area according to the document entitled "Potential for Contamination of Shallow Aquifers From Land Burial of Municipal Wastes" appears to be Unit "E", which is "Uniform, relatively impermeable silty or clayey till at least 50 feet thick; no evidence of interbedded sand and gravel." There is low risk of environmental hazards from nearby pollutant sources, through ground transmission, if this area is confirmed to be Unit "E".

4. SCOPE OF WORK

The delineation of contaminants, if any, was beyond the scope of the current phase of the investigation.

A total of eight (8) soil borings were proposed at the project site as follows;

Two (2) borings to be advanced to a depth of up to 16.0 feet below land surface (bls) along the north side of the building to address the adjoining dry cleaners. One of these borings will be advanced off the north side of the depicted underground storage tanks.

One (1) boring to be advanced to a depth of up to 16.0 feet bls off the south side of the depicted underground storage tanks.

Two (2) borings to be advanced to a depth of up to 8.0 feet bls within the building at the locations of paint staining and floor degradation.

Two (2) borings to be advanced to a depth of up to 8.0 feet bls within the building at the location of the drain(s) (possible dry well).

One boring (1) to be advanced to a depth of up to 8.0 feet bls in the area of the exterior fill port for the aboveground storage tanks.

The soil borings were advanced using a truck-mounted Geoprobe® rig, which uses hydraulic

power to advance a small diameter sampling tube to retrieve a soil core. Soil samples were collected on a continuous basis and field screened for indications of contamination. Worst case soil samples were collected from each areas of concern and submitted to an independent analytical laboratory for target contaminant analysis.

All eight boreholes were advanced. One of the 16 foot borings was terminated early because of refusal at 11.5 feet. A total of 9 soil samples were collected. Based on the use of dry cleaning solvents on the Site, and the painting operations in the auto body shop, the contaminants of concern for the investigation included the following indicator groups:

- Volatile Organic Compounds (VOCs); VOCs were chosen since they cover dry cleaning compounds, petroleum products and paint solvents.
- Polynuclear aromatics (PNAs); PNAs cover the heavy end of petroleum products.
- PCBs, PCBs were examined because of the long term automotive use of the garage.
- Metals (pH was also examined in conjunction with metals); Metals were examined due to the use of automotive paints.

5. LIMITATIONS OF ASSESSMENT

- This report has been prepared for the exclusive use of The Weiher family, Charles Properties and development partners and their financing parties. No other party may rely on this report without the written approvals of the Client and The Green Environmental Group, Ltd.
- This report should be read in conjunction with the aforementioned Phase I report by The Green Environmental Group, Ltd. (Phase I; dated May 30, 2003) conducted by Green Environmental (Job No. 2003-015-03020-1) which identified four Recognized Environmental Conditions (RECs) in connection with the project site.
- This report accurately portrays information and conditions that existed at the time of the investigation field work. No other warranty is expressed or implied.

6. CONSTRAINTS / UNUSUAL CONDITIONS

Other than high heat and humidity during the sampling days there were no physical restrictions on access to the Site, limitations or unusual conditions encountered during the investigation activities. One 16' boring was terminated at 11.5 feet due to refusal; there was no indication of what the resistance depth was.

II. INVESTIGATION ACTIVITIES

1. FIELD WORK

The field work for the investigation was completed on July 22 and 27th. Eight (8) boreholes, designated as BH-1 thru BH-8, were advanced at the Site, within the 939 Curtiss Street building and on the north and west sides of the building.

A summary of the boring locations is described in the table below, with the parameters sampled for. The locations of the boreholes are indicated on **Figure 2**.

Borehole	Location	Interior?	Purpose	Metals	Lead/pH	VOCs	Semi-Volatiles	PCBs	PNAs
BH-1	NW corner-exterior		evaluate historic tank location and dry cleaners	✓	✓	✓			✓
BH-2	N side - exterior		evaluate dry cleaners			✓			
BH-3	NW corner, south of BH-1 - exterior		evaluate historic tank location	✓	✓	✓			✓
BH-4	SW corner, by former oil storage -exterior		evaluate oil storage area			✓	✓	✓	✓
BH-5	NE , by paint area	✓	evaluate paint operations	✓		✓			
BH-6	N/NE by triple basin	✓	evaluate possible leakage form tripe basin	✓		✓			
BH-7	NW Corner, near former bathroom	✓	evaluate interior drains			✓			
BH-8	SW, by presumed dry well	✓	evaluate dry well	✓		✓	✓		

2. SOIL SAMPLING

The bore holes were advanced using a truck-mounted, hydraulic soil probe (HSP). The HSP uses both static and dynamic percussion forces to advance the sampling tubes and to retrieve soil core samples. The samples were collected using a Macro-Core[®], continuous-core sampler. The Macro-Core[®] is a solid barrel, open tube made of steel, 4-feet in length, and has an inside diameter of 1.5 inches. Generally, the tubes were driven to the bottom of each sampling interval and returned to the surface to retrieve a soil core. The initial sample was collected to a depth of 4 feet. Subsequent samples were collected continuously, over 3-foot intervals, to the respective borehole termination depths. In between each sampling event, a new PETG liner was inserted within the sampling tube to reduce the potential for cross-contamination. Disposable latex and nitrile gloves were used and replaced between the handling of each sample.

3. FIELD SCREENING

Subsequent to collection, all soil samples were field screened for indications of contamination. The screening activities involved an initial examination using visual and tactile methods to detect unusual discoloration and/or soil consistency. If the samples had odors they were also noted. A portion of each soil sample was also placed in a Ziploc[®] bag and allowed to equilibrate near room temperature for a period of time. Subsequently, the total organic vapor (TOV) concentration within the internal head-space of each bag was measured using a photoionization detector (PID), outfitted with a 10.6 electron volt discharge lamp and calibrated to 100 parts per million (ppm) of isobutylene gas. The use of PID screening does not provide chemical specific information. However, it does provide a measure of the total concentration of organic vapors from the sample in the void space of the bag. Elevated TOV levels (i.e., greater than 10-20 ppm) are often used as an indicator of the presence of impact from volatile compounds and to determine the relative impact of samples to one another. Overall, these activities were intended as a pre-analytical screen to identify the most impacted (i.e., worst case) soil samples based on the detection of the highest TOV concentration, the most visible staining, and/or the strongest odors.

4. SAMPLE COLLECTION FOR ANALYSIS

A. Soil Samples

All samples were collected in accordance with the United States Environmental Protection Agency's (USEPA's) document entitled Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, USEPA Publication SW-846 (SW-846). To facilitate the analysis for volatile compounds (BETX), the soil samples were immediately preserved in the field in accordance with SW-846 Method 5035. This generally consisted of obtaining three subcore samples of soil, weighing approximately 5 grams each, at each sample location. The subcores were collected in dedicated tubes made of Teflon® and placed into 40 milliliter (mL) vials, fitted with septum-top caps. Two of the vials contained Sodium Bisulfate preservative, while the third contained Methanol. At each sampling location, aliquots of soil were also collected in laboratory-prepared, 4-ounce, glass jars to facilitate the analysis for the remaining target compound (PNAs). The 4-ounce jars were completely filled with soil, allowing only minimal head-space, and subsequently sealed with Teflon®-lined lids. Subsequent to collection, all sample jars were preserved on ice in insulated containers for storage during transport to the laboratory. The samples were subsequently submitted to First Environmental Laboratories in Naperville, Illinois, using standard chain-of-custody handling procedures.

5. LABORATORY ANALYSIS

Soil samples collected from the borehole locations were analyzed for the indicator compounds previously noted. All testing was conducted using analytical methods approved for use within the USEPA's manual SW-846 or alternative EPA-approved methods. The samples were analyzed using the following analytical methods (All in soil matrix):

- VOCs SW 5035A/8260B
- PCBs 8032; prep 3540C
- PNAs 8270; prep 3540C
- Lead 6010B; prep 3050B

- RCRA metals 6010B; prep 3050B
- TPH SW 8015B

6. SOIL REMEDIATION CRITERIA SELECTION

The laboratory analysis results for this investigation were compared to the IEPA's document entitled Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code, Part 742), commonly referred to as the "TACO" guidelines.

A. Soil

Within Tier 1 of TACO, separate remediation criteria are listed for two categories of land uses, residential and industrial/commercial, with the guidelines for residential properties being the most stringent. Each of these categories are further subdivided into the following potential exposure pathways: the inhalation, ingestion, and the soil component of the migration to groundwater routes. In the case of the soil component of the migration to groundwater exposure route, two categories of groundwater types are available, Class I and Class II. A Class I situation is one in which the area groundwater is used as a potable water resource (as defined in 35 Ill. Adm. Code, Part 620) and is generally most protective; less restrictive remediation objectives are allowed in areas where the groundwater is classified as a general resource (Class II).

Since the present development of the Site (commercial/industrial), the analytical results for this investigation were specifically compared to the Tier I SROs for commercial properties (Appendix B, Table A in TACO).

III. INVESTIGATION RESULTS

1. GEOLOGY / HYDROGEOLOGY

The native (i.e., non-fill) soils encountered at the Site consisted of a gray/brown, loam to sandy clay loam extending to the termination depth of the borehole. Saturated soils were not encountered. More details regarding the encountered subsurface geology and soil conditions can be found on borehole log sheets presented in **Appendix A** of this report.

2. FIELD SCREENING

A. Soil

Based on the screening results, only two boring holes indicated significant impacts. Elevated TOV values were detected at BH-2 and BH-8 and were used as a basis for taking worse case samples; lacking field instrumentation indications, the bottom of the other boreholes were used for samples submitted to the lab. Two samples were submitted for BH-8 because of high indicator levels and differences in odors. More details regarding the field screening results and the sample locations can be found on the borehole log sheets in **Appendix A**.

3. ANALYTICAL RESULTS

A complete copy of the laboratory analytical report prepared by First Environmental Laboratories can be found in **Appendix B** of this report. A brief description of the analysis results for each of the contaminant groups is presented in the succeeding sections.

A. Volatile Organic Compounds (VOCs)

Based on the laboratory results, Boring Hole 1 had the only results which exceed standards. No

other results were detected at levels exceeding the laboratory reporting limits except for ethyl benzene at BH-6, which is well below the standards.

BH-2 was the only location which had VOC levels that were detectable and above standards. Benzene, 1,1-Dichloroethane, trans-1,3-Dichloropropene, and Vinyl Chloride were all above standards. These are dry cleaning related compounds. Worker exposure standards are not exceeded, but Class I and II ground water standards are exceeded.

B. Polynucleated Aromatics (PNAs)

BH-1 has Naphthalene detectable at 73 parts per billion; this is below the standards, and thus is not an issue.

C. Semi-Volatiles

BH-8 had one compound (1,3- Dichlorobenzene) above detectable levels. There is no set standard for this compound, which is often times a gasoline decomposition product.

D. Lead

All lead levels detected were with normal background levels for the metropolitan area.

E. RCRA Metals

RCRA metals were detected at the locations tested, but all within normal metropolitan area levels.

IV. CONCLUSIONS

1. SUMMARY OF FINDINGS

Based on the findings of this assessment, including the results of field screening and the laboratory analysis, no indications of contamination were noted that would require cleanup, except for the boring hole north of the building nearest the dry cleaners. All of the parameters tested for were below the Illinois EPA Tier I RO (or within normal Metropolitan area levels in the case of metals) and/or the detection limit of the test method employed.

2. DISCUSSION

Based on the soil borings conducted, and the representative laboratory analysis, the Site has been impacted by dry cleaning operations; the automotive body shop appears to have minimal impact on the property. The minor contamination present is below standards.

3. RECOMMENDATIONS

Based on the findings of this assessment, Green Environmental has the following recommendations:

The building may be destroyed without danger from environmental issues (please note that an asbestos survey by a licenced inspector is necessary before demolition).

Excavations for new construction does not appear to be a significant issue. Care should be taken to clean out the triple basin before demolition. The area of the south possible drywell where some contamination was noted should be done carefully to insure that there are no hot spots that the borings missed.

Most problematic is the presence of high levels of contaminants, especially vinyl chloride at the north side of the building, which appears to be from the degradation of Tetrachloroethene from

the dry cleaning operations conducted within the adjoining building. Depending on excavation depth, worker protection may be necessary and excavation of soil as hazardous waste will probably be required. Since the dry cleaning operation is currently participating in the Site Remediation Program, efforts under that program and the redevelopment of the 939 Curtiss building should be co-ordinated.

We trust that this report meets your project requirements at this time. Should you have any questions concerning the reported findings, please feel free to contact the undersigned at (630) 462-9762.

Sincerely,

Prepared by:

William W. Frerichs



Registered Environmental Property Assessor

REPA 1113

THE GREEN ENVIRONMENTAL GROUP, LTD.

EXHIBIT E

LIST OF DISCOURAGED AND 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.

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