

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
SEPTEMBER 26, 2006 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Redevelopment Agreement for the property at the northeast corner of Main & Maple	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Deputy Village Manager

SYNOPSIS

An ordinance has been prepared authorizing the Mayor to execute a Redevelopment Agreement (RDA) for the property located at the northeast corner of Main & Maple.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2006-2011 identified *Vibrant Major Commercial Corridors*.

FISCAL IMPACT

The sale of the Village-owned property to the developer will generate \$400,000 in revenue for the Downtown Tax Increment Financing (TIF) fund. Additional revenue from the sale of the property could be generated if the development generates profit greater than indicated on the development pro-forma.

The development is expected to generate approximately \$61,500 in annual real estate tax increment for a total of \$1.15 million in total tax increment over the life of the TIF district (\$750,000 Net Present Value).

RECOMMENDATION

Approval on the October 3, 2006 active agenda.

BACKGROUND

The subject property, located at the northeast corner of Main Street and Maple Avenue, is currently owned by the Village and improved with a public parking lot. The Village Council directed staff to facilitate the redevelopment of this property as part of the Downtown Tax Increment Financing Strategy. In March 2006, the Village published a Request for Proposals for the redevelopment of this property. Proposals were due on April 30, 2006. Six (6) proposals were received. On July 11, 2006 the Village Council approved a motion authorizing the Village Manager to negotiate an RDA with InterCapital Partners. Staff has completed the negotiations and prepared the attached RDA for Council consideration. The RDA contains the following key terms.

Developer Obligations

- Purchase the property for \$400,000.
- Pay an additional purchase price for the property equal to 50% of the profit in excess of 11%.
- Apply for and obtain a planned development for the redevelopment of the property.
- Develop the site according to the approved planned development ordinance.
- Submit a letter of credit in the amount of \$250,000 to guarantee completion of the development.
- Lease the majority of the commercial space to retail sales tax producing tenants. A maximum of 2,500 square feet may be leased to non sales tax producing tenants.
- Pay all Village permit and review fees.
- Adhere to the development schedule contained in the RDA.

Village Obligations

- Sell the property to the developer.
- Duly consider the petition for planned development for the redevelopment of the property
- Permit the developer to install a development sign on the site per Village Code after the approval of the planned development but prior to the closing on the property.

Development Summary

Parcel Size	14,800 square feet
Residential Units	5 townhomes
Commercial Space	5,800 square feet (gross)
Building Height	3 stories
Parking	9 interior spaces <u>10 exterior spaces</u> 19 total spaces

ATTACHMENTS

Ordinance

Redevelopment Agreement

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND INTERCAPITAL MAIN AND MAPLE, LLC**

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

WHEREAS, the Village undertook a careful and thorough process to identify a development team to undertake the portion of the revitalization project known as the "Main & Maple Project," which process included consideration of numerous factors and standards; and

WHEREAS, at the conclusion of that process the Village selected Intercapital Main and Maple, LLC as the developer (the "Developer") for the Main & Maple Project, which property is depicted and legally described in the redevelopment agreement ("Redevelopment Agreement") attached to this Ordinance as Exhibit A (the "Property"); and

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

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

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

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

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

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

WHEREAS, the Developer seeks to improve the Property with mixed retail and residential development generally in accordance with the plans depicted in the Redevelopment Agreement; and

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

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

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

WHEREAS, the Village has determined that the Redevelopment Agreement includes the necessary and appropriate terms and provisions for the successful completion of the development of the Property; and

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

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

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

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

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

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

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

Mayor

ATTEST:

Village Clerk

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REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of the ____ day of _____ (“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 **INTERCAPITAL MAIN AND MAPLE, LLC**, an Illinois corporation, (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, on March 28, 2006, the Village issued a request for proposals to the development community seeking development proposals for the Property (hereinafter defined);

WHEREAS, on July 18, 2006, the Village authorized the Village Manager to negotiate the terms of a redevelopment agreement with Developer (hereinafter defined); and

WHEREAS, the Village 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 residential 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 own and redevelop the Property; and

WHEREAS, it is necessary for the successful completion of the Project (as defined in Article Two) 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 Board of Directors of the Developer for consideration and review, which Board of Directors has 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.

"Additional Compensation" As defined in Section 15.2(b).

"Agreement" means this Redevelopment Agreement.

"Calculation Date" As defined in Section 15.2(b)(i).

"Certificate of Completion" shall be the document issued by the Village, upon Project Completion as defined herein, which Certificate of Completion shall be in substantial compliance with Exhibit "G" attached hereto and shall be in recordable form. The Project shall be deemed completed by the Village ("Project Completion") and the Certificate of Completion will be issued evidencing Developer's satisfaction of the terms of the Agreement when: (i) all the Residential Units have been issued a Certificate of Occupancy; and (ii) the Commercial Units have been issued a white-box Certificate of Occupancy, which for purposes of this agreement means complete with major systems (electrical, plumbing, and HVAC) and interior drywall, but not bathrooms, interior finishes and fixtures nor Tenant improvements having been installed; and (iii) all public improvements are completed and accepted by the Village.

“Certificate of Occupancy” shall be the document issued by the Village allowing for occupancy of Residential Units, or tenant build out (white-box) of Commercial Units.

“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 means 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).

“Closing” means the “Closing” as such term is defined in the Real Estate Sale Provisions.

“Commercial Units” shall be those ground floor spaces located within the Project, which are constructed and intended to be leased to retail or commercial users. Commercial Units shall not include any common areas, parking areas, building service areas, horizontal or vertical circulation areas, or such other areas not being leased to retail or commercial users. The area of the Commercial Units is intended to be approximately 5,400 net square feet, but shall not be less than 5,000 net square feet.

“Concept Plans” means the plans submitted by the Developer on April 28, 2006, attached hereto and incorporated herein by reference as Exhibit “B”. The Concept Plans contain five (5) residential condominium units with approximately nine (9) residential parking spaces, approximately 5,400 net square feet of commercial space and approximately ten (10) surface parking spaces.

“Core/Shell Completion” means the time the Project Lender's inspecting architect certifies the completion of the core and shell of the building to the lender that the (i) Residential Units are substantially complete including installation of core/shell HVAC, plumbing and electrical systems and interior drywall, but not interior finishes such as flooring, paint, plumbing and electrical fixtures, appliances, and cabinets, and (ii) the Commercial Units are "white box" complete with major systems (electrical, plumbing, and HVAC) and interior drywall, but not bathrooms, interior finishes and fixtures nor Tenant improvements having been installed.

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

“Day” means a calendar day.

“Developer” means InterCapital Main and Maple, LLC, an Illinois limited liability company, or any successor in interest thereof permitted pursuant to Section 10.10 hereof.

“Developer's Base Profit” means eleven percent (11%) of Total Development Costs.

“Excess Profit” means the amount, if any, by which Profit exceeds the Developer's Base Profit.

“Final Compensation Date” means the date on which the final amount of Additional Compensation has been determined and paid, in accordance with Section 15.2(b)(i).

"Final Plans" means all of the plans required to be submitted for consideration of a Final Planned Development. The Final Plans shall substantially conform to the Concept Plans attached hereto as Exhibit "B".

"Lender" The lender who has given Developer a construction loan for the Project.

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

"Permitted Transfers" Permitted Transfers are (i) transfers of interests in connection with the sale of individual condominium units 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, or to assume any obligation to Developer, but merely a successor in title under this Agreement); (ii) transfer of the Commercial Unit or Units after a Certificate of Completion is issued; (iii) transfers of any property to the condominium associations to be established, (iv) 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 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, and (v) transfers to family members or trusts for estate or tax planning purposes.

"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 which will be adopted by the Village, approving the Project as a Planned Development.

“Profit” means the amount by which Total Revenues exceed Total Development Costs.

“Project” means the development, construction, financing, and completion of the mixed-use condominium building with five (5) residential condominium units, approximately ten (10) exterior parking spaces, nine (9) residential parking spaces and approximately 5,400 net square feet of commercial space and related improvements in accordance with the Concept Plans.

“Property” means the approximately 14,800 square feet of land presently utilized for public parking, which is legally described in Exhibit “A” upon which the Project will be implemented.

“Real Estate Sale Provisions” means those provisions set forth in Article Fifteen hereof.

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

“Residential Units” means the residential condominium units on the upper levels and the residential garages on the ground level of the project as set forth in the Concept Plans.

“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.

“Total Development Costs” means the actual costs incurred by Developer, for the development and construction of the Project as listed in Exhibit “C” attached hereto and incorporated herein by reference. In the event not all Residential and Commercial Units are completed, leased, or sold by the Calculation Date, Total Development Costs will include

reasonably estimated costs required to complete, carry, close and/or lease those units, subject to the independent appraiser procedure in Section 15.2.

"Total Revenues" means all sales proceeds from the sale of Residential Units and the Commercial Units, subject to the independent appraiser procedure in Section 15.2. Total Revenues shall include the contract price of any Residential Units or Commercial Units that are contracted for sale but not yet closed and the appraised value pursuant to Section 15.2 hereof of any Residential Units or Commercial Units that are not contracted for sale.

"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;
 - (vi) unavailability of materials not caused by acts of the 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 in the employ of the Developer (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 Mitchell E. Mize (and, in his absence, Edward I. Biskind or Edward J. Kiss) 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 18.2.

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

DESIGNATION OF DEVELOPER

The Village hereby designates Developer as the exclusive developer for the Property, subject to the terms of this Agreement and only so long as Developer is not in default of this Agreement after the expiration of all applicable cure periods. The Village hereby represents and warrants to Developer that the Village has taken all necessary actions and has complied with all requirements imposed by law including, but not limited to, the requirements of Section 5/11-74.4-4 (c) of the Act, required to be taken and met prior to the designation of Developer as the exclusive developer for the Property.

ARTICLE SIX

DEVELOPER'S ACCESS TO THE PROPERTY

6.1 Feasibility Period. Upon execution of this Agreement, Developer shall have sixty (60) days from the Effective Date to complete all due diligence ("Due Diligence Period") on the Property. In the event Developer's Phase I environmental report requires a Phase II environmental report and the Phase II environmental report has not been obtained within the 60 day period, Developer can extend the Due Diligence Period an additional 30 days to obtain the Phase II environmental report. Developer's right to access the Property as Developer deems necessary and appropriate is set forth in the License Agreement by and between Intercapital Main and Maple, LLC and the Village (the "License Agreement"), a copy of which is attached as

Exhibit "D". Developer and Village have executed the License Agreement on or before the execution of this document.

ARTICLE SEVEN

ACQUISITION OF THE PROPERTY

7.1 Conveyance at Closing. The date for Closing shall be established pursuant to the Real Estate Sale Provisions. At Closing, subject to the provisions set forth in Article Fifteen, the Village shall convey to Developer, by quit claim deed, all of the Village's rights, title and interest to the Property.

7.2 Use of Plans. In the event of exercise by the Village of its rights under Section 7.3 hereof, Developer shall assign to the Village, or as the Village shall direct, all of its right, title and interest in the Final Plans. At the Closing, Developer shall deliver to the Village letters from the architect and engineer that prepared the Final Plans permitting the Village or its assignee to use them, in accordance with this Section 7.2, without charge to complete the Project.

7.3 Repurchase by the Village. If subject to extension for Uncontrollable Circumstance: (a) the Developer falls more than one hundred twenty (120) days behind the time schedule to apply for building permits or to complete the proposed building as set forth in Exhibit "E", or (b) if no substantial work is proceeding on the building for the Project for a period of one hundred twenty (120) days after the target dates set forth in Exhibit "E", then any of such events shall constitute a violation of this Agreement, and thereafter the Village Manager may notify the Developer in writing that if Developer does not cure the violation within the cure period as hereafter provided the Village demands return (the "Return") of the Property (the "Return Notice"). If Developer does not cure such violation within thirty (30) business days of receipt of the Return Notice, or if the violation will take more than thirty (30) days to cure, if Developer does not commence to cure within the thirty (30) days and diligently proceed to complete the

cure, then within thirty (30) days after the cure period has expired, Developer shall convey the Property ("Buyback Closing") to the Village subject only to such exceptions as were recorded against the Property when the Property was conveyed to Developer. The Village purchase price shall be Four Hundred Thousand (\$400,000.00) for the Return of the Property. The balance of the Letters of Credit tendered by Developer shall be returned to the Developer at Buyback Closing. Developer shall convey the property by special warranty deed, shall assume any costs for title insurance in the amount of the original purchase price for the Property and Developer and Village shall execute such other customary title documents as are commonly used in similar commercial transactions in the Chicago, Illinois metropolitan area.

All of Developer's obligations herein shall be documented by Developer, to the satisfaction of the Village prior to the Return Closing Date. Failure of the Developer to comply with these terms and conditions after written notice to Developer required under Section 7.3 and expiration of any cure periods provided therein shall constitute an Event of Default as defined herein.

ARTICLE EIGHT

VILLAGE COVENANTS AND AGREEMENTS.

8.1 Village's Redevelopment Obligations. The Village shall have the obligations set forth in this Article Eight 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.

8.2 Conveyance of Property. Subject to the Real Estate Sale Provisions, the Village will convey the Property to the Developer at the Closing.

8.3 Village Cooperation. The Village agrees to cooperate with Developer to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village. As part of the Planned Unit Development land use approval process ("P.U.D. Approval), the Village shall further consider reasonable requests of Developer, to obtain variances, or other relief from Village Zoning and Subdivision ordinances necessary ("Zoning Approvals") for the construction of the Project in substantial conformance with the Concept Plans.

8.4 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 (in effect on the date that an application for a building permit and/or earth moving permit for such development or construction is filed) 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, in recordable form, as defined herein 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 Residential Units in the condominium 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. Interior finishes such as flooring or paint shall not be required.

8.5 **Signage.** The Village will allow the Developer to place "reasonable" signage on the Property to advertise the Project after obtaining zoning/PUD approvals, in accordance with all Village Ordinances.

ARTICLE NINE

DEVELOPER'S COVENANTS AND AGREEMENTS.

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

9.2 **Permit Application Deadlines.** As a condition of Closing, Developer shall have obtained Final Planned Development approval as shall be necessary or appropriate to construct the Project in accordance with the Concept Plans (collectively "Required Permits"). Developer shall proceed with the application for permits and timely construction of the Project.

9.3 **Construction Financing Deadline.** The Developer hereby acknowledges and agrees that it shall demonstrate to the Village's reasonable satisfaction by way of submittal to the Village of a standard loan commitment for construction of the Project, in such form as would be commercially reasonable for a project of comparable size and cost which commitment evidences that Developer has sufficient funds and/or financing to pay the cost of the Project and any other obligations of Developer hereunder relating to the Property. Developer shall also submit to the Village the project development budget as soon as it is available but not later than seven (7) days prior to the date of Closing.

Prior to commencing construction of the Project, Developer shall provide to Village evidence that: (i) all permits for the Project from the Village and all other agencies have been obtained; and (ii) all zoning ordinances and resolutions have been obtained.

9.4 Timing of Developer's Obligations. Developer covenants and agrees to construct or cause to be constructed the Project, subject to Uncontrollable Circumstance, in substantial compliance with the schedule attached as Exhibit "E".

9.5 Compliance with Applicable Laws. Consistent with its warranties in Article Twelve, 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 in effect on the date that an application for a building permit and/or earth moving permit for such development or construction is filed. 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.

9.6 Letter of Credit, Permits and Other Security Prior to Closing.

Prior to Closing, Developer shall provide to Village evidence that: (i) all zoning ordinances and resolutions have been obtained; (ii) the Lender has approved the budget for the Project, (iii) the Developer has a completely executed financing commitment. As a condition of Closing, Developer shall deliver to Village an unconditional irrevocable letter of credit in the amount of Two Hundred Fifty Thousand (\$250,000.00) Dollars in form and substance acceptable to Village (the "LOC") which LOC may be drawn on by Village upon the occurrence of a Penalty Event. A Penalty Event shall occur if completion of work shown on the Development Schedule is not completed on or before the Default Date, to the extent a Default Date is listed on Exhibit "E",

subject to extension for Uncontrollable Circumstances. The LOC shall be allowed to be reduced upon the request of Developer submitted to the Village Manager, as setforth herein: (a) One Hundred Thousand 00/100 (\$100,000.00) Dollars of the LOC at the time that the Village certifies the completion of the foundation of the building; (b) One Hundred Thousand 00/100 (\$100,000.00) Dollars of the LOC at the time that the Project Lender's inspecting architect certifies Core/Shell Completion; (c) the remaining LOC shall be released to Developer at the Final Compensation Date. Developer, prior to the release of the LOC per (c) shall post such maintenance guaranties as are required for public improvements per Village ordinance.

9.7 Leased Space. The commercial space shall be leased to sales-tax providing tenants in one of the permitted uses listed on Exhibit "F" to this Agreement, provided that one (1) tenant (no more than 2,500 square feet) can be non-sales tax producing, but must also be one of the permitted uses listed on Exhibit "F", unless otherwise agreed to by the Village. 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 three (3) years, unless otherwise agreed to by the Village in its sole discretion. In the event a retail space is vacant more than six (6) months after issuance of the Certificate of Completion of the Commercial Units, Developer may petition the Village Council for the right to enter into a Lease for that space with a non sales tax providing tenant, the Village shall have sole discretion in granting such request.

9.8 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, certified by the president or chief financial officer or other authorized signatory of the reporting lessee as being true, complete, and accurate in all respects, promptly after the Developer receives the same from such party. For all leases that do not provide for the release of such information to the Developer or the Village under the terms of the lease, the Developer shall use good faith efforts to secure from each such tenant a power of attorney letter, or such other form as shall be reasonably required by the Village and the Illinois Department of Revenue to release such information to the Village. Such forms shall be addressed to the Illinois Department of Revenue and shall authorize the Illinois Department of Revenue to release all gross revenue and sales tax information to the Village during any period in which such a tenant continues to operate or own a business within the Property, and such information shall be used solely for the purposes of determining sales tax revenues due the Village and shall otherwise be kept confidential by the Village, except to the extent required by applicable law.

9.9 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.

9.10 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.

9.11 Tax Exempt Status. Consistent with its covenant in Section 9.7, Developer and successor owners (but with respect to residential unit owners, only those residential unit owners who do not occupy their residential unit), shall not assert a tax-exempt status for real

estate tax purposes (except for a senior citizen or homeowner's exemption) 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.

9.12 Real Estate Tax Payments. Developer and successor owners, including but not limited to residential 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. Non-payment of Real Estate Taxes by subsequent owner and/or tenants under new leases shall not be considered a default under this Agreement.

9.13 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 those taxes.

9.14 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 do so and the Developer shall reimburse the Village's reasonable costs and expenses in doing so. The Village will use reasonable efforts to give Developer notice and the right to cure, before performing its self-help remedies under this Section 9.14.

9.15 Fees and Expenses. Developer shall pay all Village imposed fees, including but not limited to permit, inspection, review, tap-on, school and park impact fees, 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 at the time that an application for a building permit and/or earth moving permit for such development or construction is filed.

Developer's failure to pay the fees and expenses described in this Section 9.15, or elsewhere in this Agreement (after the applicable notice and cure period provided in Section 16.1), shall constitute an Event of Default hereunder. 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 Special Tax Allocation Fund.

ARTICLE TEN

ADDITIONAL COVENANTS OF DEVELOPER.

10.1 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.

10.2 Construction of Project. Subject to Section 9.2, 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, in accordance with Exhibit "E", subject to Uncontrollable Circumstances and the other provisions of this Agreement.

10.3 Indemnification. Developer (use of the term "Developer" herein includes permitted successors and assigns of Developer, but in accordance with Section 10.11(c)(i) does not include future owners who do not succeed to the right of Developer), 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 Developer’s contractors, subcontractors or materialmen in connection with the Project; or

c. material misrepresentations or omissions of Developer relating to the Project, financials or this Agreement which are the result of information supplied or omitted by Developer or by its agents, employees, contractors or persons acting under the control or at the request of 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 (after the required notice and cure period) by Developer.

The provisions of this Section 10.3 shall not apply to a loss which arises out of (in whole or in part) intentional misconduct or gross 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.

10.4 Insurance. Prior to Closing, Developer (or Developer's contractor) shall deliver to the Village, at Developer's cost and expense, insurance required to be carried by Developer pursuant to Article Fourteen.

10.5 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.

10.6 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.

10.7 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 9.10, 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 real estate taxes (except for senior citizen or homeowner exemptions), 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.

10.8 Disclosure. Developer hereby represents, warrants and covenants to the Village the member of the Developer at the time of this Agreement is Edward I. Biskind. At the time of execution of this Agreement and prior to closing, no change shall be made in the members owning the Developer or in their ownership interests without the consent of the Village, which shall not be unreasonably withheld.

10.9 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 and revenues of the Project. The foregoing Village review rights shall terminate thirty (30) days after the Final Compensation Date, unless the Developer has failed to make available any such books and/or records of Developer requested in writing by the Village for the Project. (No financial statements of any members of Developer shall be required). 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 all such financial disclosures are solely pertaining to the Project and shall not be required to be personal financial records of any member of the Developer and 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 thirty (30) days after written 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 (as determined by Developer in its commercially reasonable opinion). 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.

10.10 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 therefor. If the Village does not respond to the notice of such intended assignment within such thirty-day (30) period, such assignment shall be deemed denied. 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.

10.11 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 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, or except as otherwise provided in this Agreement, 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 Permitted Transfers: (i) transfers of interests in connection with the sale of individual condominium units and such units' interest in the common elements of

the condominium to the future owner of such unit, (including the owners of Commercial Units) (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. Developer shall not be required to obtain Village review, approval or consent to any Permitted Transfer. In the event of a 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 from the assignee 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 ELEVEN

ADHERENCE TO VILLAGE CODES AND ORDINANCES.

All development and construction of the Project shall comply in all respects with the 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 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 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 TWELVE

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:

12.1 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.

12.2 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 or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its members is now a party or by which Developer or any of its members are 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.

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

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

12.5 Limit on Use of Land as Security. Developer shall not use the Property as security for any financing purposes other than for the acquisition and development of the Project, provided,

however, that this restriction shall terminate upon issuance of Certificates of Occupancy for the Project. Violation of this covenant shall constitute an Event of Default.

ARTICLE THIRTEEN

REPRESENTATIONS AND WARRANTIES OF THE VILLAGE.

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

13.1 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 has all requisite corporate power and authority to enter into this Agreement.

13.2 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.

13.3 Litigation. To the best of the Village's knowledge, there are no proceedings (including code violations, condemnation proceedings and environmental claims) pending or threatened against or affecting 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.

ARTICLE FOURTEEN

LIABILITY AND RISK INSURANCE.

14.1 Liability Insurance Prior to Completion. At the Closing, 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 One Million and no/100 Dollars (\$1,000,000.00) each occurrence and Two Million and no/100 Dollars (\$2,000,000.00) 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 may satisfy its insurance obligations in this Article Fourteen by way of a blanket policy or policies which includes other liabilities, properties and locations having a general policy aggregate of at least Ten Million and no/100 Dollars (\$10,000,000.00). Developer shall provide to the Village a replacement certificate not less than seven (7) days prior to expiration of any policy.

14.2 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 FIFTEEN

REAL ESTATE SALE PROVISIONS

15.1 As Is Purchase.

a. This Agreement is an arms-length agreement between the parties. Except as expressly provided herein to the contrary, the Purchase Price was bargained on the basis of an "AS IS, WHERE IS" transaction and reflects the agreement of the parties that there are no representations, disclosures, or express or implied warranties, except for any representations of Village to Developer set forth in this Agreement.

Subject to the terms of this Agreement, Developer is purchasing the Property, and, except as set forth herein, the Property shall be conveyed and transferred to Developer, "AS IS, WHERE IS, AND WITH ALL FAULTS," and specifically and expressly without any warranties or guaranties, either express or implied, of any kind, nature or type whatsoever from or on behalf of Village. Without limiting the generality of the foregoing except as set forth herein, Village HAS NOT MADE, AND DOES NOT AND WILL NOT MAKE WITH RESPECT TO THE PROPERTY, ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR WITH RESPECT TO THE VALUE, PROFITABILITY, BUILDABILITY, MORTGAGEABILITY OR MARKETABILITY OF THE PROPERTY, OR THE PRESENCE OF HAZARDOUS MATERIALS THEREIN, THEREON, OR THEREUNDER

WHICH WARRANTIES ARE HEREBY DISCLAIMED. Except as otherwise provided in this Agreement, Developer has had, and will have pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigations as Developer deems necessary, desirable or appropriate with respect to the Property. Such inquiries and investigations of Developer shall be deemed to include, but shall not be limited to, the physical condition of the Property, the suitability of the Property for the Intended Use (as defined below), such state of facts as an accurate survey and inspection of the Property would show, and all zoning and other codes, ordinances and regulations of any governmental entity applicable to the ownership, maintenance or operation of the Property.

15.2 Purchase Price.

a. The Village shall transfer title to the Property at the price of Four Hundred Thousand Dollars (\$400,000.00), plus, Developer shall pay closing costs to the extent provided under Section 15.6.

b. In addition to the purchase price of Four Hundred Thousand Dollars (\$400,000.00), the Developer shall pay to the Village additional compensation ("Additional Compensation") which consists of fifty percent (50%) of Excess Profit as set forth herein as follows.

(i) Upon the date ("Calculation Date") which is the earlier of (a): twelve (12) months after Project Completion, or (b) sixty (60) days after the closing of the sale (or lease) of the last remaining Residential Unit and Commercial Unit (all of the Residential Units have been sold or leased and all of the Commercial Units have been sold or leased), Developer shall submit to Village a preliminary calculation of estimated Additional Compensation including a detailed itemization of Total Revenues and Total Development Costs by category as outlined in Exhibit "C" attached hereto. In the event

that any Residential Units or Commercial Units remain unsold as of the date Developer submits such preliminary calculation of estimated Additional Compensation to Village, then Total Revenues and Total Development Costs shall be adjusted to include the appraised value of such unsold units and remaining development costs as determined by an independent appraiser mutually selected by Village and Developer, and Developer shall not be required to submit an adjusted calculation of estimated Additional Compensation until thirty (30) days after Developer's receipt of the appraiser's report. Any appraiser designated to serve in accordance with the provisions of this Agreement (a) shall be qualified to appraise residential and commercial real estate in the metropolitan area, (b) shall be an M.A.I. member of the American Institute of Real Estate Appraisers, or an A.R.P.A. member of the Society of Real Estate Appraisers (or any successor association or body of comparable standing if such Institute or Society is not then in existence), and (c) shall have been actively engaged in the appraisal of real estate in the metropolitan area for a period of not less than five (5) years immediately preceding his appointment. In the event the Village and Developer can not agree upon an independent appraiser, the Village shall pick an independent appraiser and the Developer shall pick an independent appraiser and the two independent appraisers will pick a third independent appraiser who will be the independent appraiser who will determine the appraised value of such unsold units;

(ii) Within thirty (30) days after its receipt of Developer's preliminary or adjusted (in the case where an appraisal is required) calculation of estimated Additional Compensation pursuant to this Section 15.2, Village shall notify Developer of its agreement or disagreement with Developer's preliminary or adjusted calculation. In the event that the Village and Developer disagree with the information contained in

Developer's preliminary or adjusted calculation of estimated Additional Compensation, an independent certified public accounting firm mutually selected by Village and Developer shall review the statement and issue an opinion as to the correct amounts of Profit and Additional Compensation as defined in this Agreement, which amounts shall be deemed final by the parties.

(iii) Within thirty (30) days after Developer's receipt of Village's notice of agreement with Developer's preliminary or adjusted calculation of estimated Additional Compensation, or within thirty (30) days after receipt of the independent accounting firm's review and opinion if so required, Developer's calculation of estimated Additional Compensation as adjusted by the independent accounting firm's opinion and/or the appraiser's report shall be deemed final, and Developer shall remit the amount of the Additional Compensation to the Village.

15.3 Earnest Money. Upon execution of this Agreement, Developer shall deposit with the Village Twenty Five Thousand Dollars (\$25,000.00) as earnest money. All earnest money shall be applicable to the Purchase Price hereunder, but shall be non-refundable to Developer following expiration of the Due Diligence Period as provided for in Article Six, unless the Village defaults and fails to timely cure or as otherwise provided herein. Notwithstanding the above, in the event Developer is not able to obtain the Zoning Approvals or the P.U.D. Approval per Exhibit "E", Developer upon written notice to the Village can terminate this Agreement and the Earnest Money shall be returned to Developer.

15.4 Title.

a. **Title Commitment; Title Policy.** The Village will furnish to Developer a commitment for an ALTA Form B Owner's Policy of Title Insurance ("Commitment") in the amount of the Purchase Price issued by Chicago Title Insurance Company ("Title Company"),

covering the Property, together with true and legible copies of all documents creating or establishing easements, restrictions, and other items referred to as exceptions in Schedule "B" and Schedule "C" of the Commitment ("Title Documents") and an existing survey for the Property.

b. **Objections.** Developer shall have ten (10) days following execution of this Agreement to review the Commitment, Title Documents and survey and to provide to Village in writing a specific list of Developer's objections to any of them ("Title Objections"). Any item constituting an encumbrance upon or adversely affecting title to the Property (except for Consensual Liens) which is not objected to by Developer in writing by such time shall be deemed approved by Developer and shall constitute a Permitted Exception (as hereinafter defined). Any mortgages, security interests, financing statements, or any other lien (excluding liens recorded on account of any tests, or studies performed by Developer) recorded against the Property are collectively referred to as the "Consensual Liens" and none of such Consensual Liens shall constitute, be or become Permitted Exceptions. Village shall cause all Consensual Liens to be paid and discharged in full at Closing and in the event Village fails to do so, Developer in addition to other rights or remedies under this Agreement, shall have the right to deduct and apply so much of the Purchase Price as is reasonably required to do so. The phrase "Permitted Exceptions" shall mean those exceptions to title set forth in the Commitment, Title Documents and Survey and accepted or deemed approved by Developer pursuant to the terms hereof except Consensual Liens as provided above, which shall not constitute Permitted Exceptions.

c. **Cure.** Village shall have the right, but not the obligation for a period of fifteen (15) days after receipt of Developer's Title Objections (the "Cure Period"), to cure (or commit to cure at or prior to Closing) by delivery of written notice thereof to Developer within the Cure Period any or all Title Objections contained in Developer's notice. If any such Title Objections are not cured (or, if reasonably capable of being cured, Village has not committed to cure same at or prior to

Closing) within the Cure Period, or if Village sooner elects not to cure such Title Objection by written notice to Developer, Developer shall have until the earlier of the expiration of the Cure Period or five (5) days after the receipt of such written notice within which to give Village written notice that Developer elects either (i) to waive all such uncured objections (in which case the uncured objections shall become Permitted Exceptions); or (ii) terminate this Agreement. If Developer does not deliver such written notice within the above period, Developer shall be deemed to have waived its objections and all uncured Title Objections shall be Permitted Exceptions (except Consensual Liens, which shall not constitute Permitted Exceptions). If Developer terminates this Agreement in accordance with the foregoing, this Agreement shall immediately and automatically terminate, and neither party shall have any further obligations to the other hereunder (except any obligations, which this Agreement provides survive termination) and the Earnest Money shall be returned to Developer.

15.5 Closing Deliveries.

a. **Village.** Closing shall occur on the earlier of (a) thirty (30) days after (i) expiration of the Due Diligence Period; and (ii) approval by the Village of the P.U.D., provided all the conditions precedent described in this Agreement have been satisfied, including but not limited to: full execution of this Agreement, adoption of the Planned Development Ordinance along with all other required land use ordinances necessary to construct the Project, and compliance with all applicable provisions of this Agreement; but in no event shall Closing be earlier than March 31, 2007, or (b) thirty (30) days after Developer has notified the Village that it elects to close (provided that the conditions precedent to the Village's obligation to close have been satisfied). At Closing, Village shall deliver or cause to be delivered to Developer, in form and substance reasonably acceptable to Developer, each of the following documents applicable to the Property being conveyed:

- i. **Deed.** Quit Claim Deed conveying the Property to Developer (or Developer's Permitted Assignee) free and clear of all liens, claims and encumbrances except for the Permitted Exceptions.
- ii. **Possession.** Exclusive possession of the Property shall be delivered to Developer at Closing.
- iii. **Title Policy.** At Closing, Village shall provide Developer with an ALTA Form B Owner's Policy of Title Insurance for the Property, dated as of the date of the Closing, in the amount of the Purchase Price, insuring title to be in Developer (or Developer's Permitted Assignee) in indefeasible fee simple, subject to no exceptions other than Permitted Exceptions with extended coverage and Village will cooperate and execute documents in Developer's efforts to obtain the following endorsements: contiguity, PIN, survey, location, access, Owner's Comprehensive, restrictions and Creditor's Rights (the "Title Policy"). Developer shall pay the additional premium charged for extended coverage, and all listed endorsements required by Developer or its Lender.
- iv. **Closing Statement.** A Closing Statement conforming to the prorations and other relevant provisions of this Agreement.
- v. **Entity Transfer Certificate.** An Entity Transfer Certification confirming that the Village is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

vi. **Other.** Such other documents and instruments as may reasonably be required by the Title Company as necessary to consummate this transaction and to otherwise effect the agreement of the parties hereto and not inconsistent with the terms of this Agreement, including but not limited to: (1) an Affidavit of Title, and (2) an A.L.T.A. Statement.

b. **Developer.** At Closing, Developer shall deliver or cause to be delivered to Village the following, in form and substance reasonably acceptable to Village:

i. **Closing Statement.** At the Closing, a Closing Statement conforming to the proration and other relevant provisions of this Agreement.

ii. **Corporate Resolutions/Authorizations.** Such corporate, limited liability company resolutions and authorizations reasonably satisfactory to the Title Company evidencing Developer's authority to enter into and consummate this transaction and the acceptance of the conveyance of the Property, pursuant to this Agreement.

iii. **Other.** Such other documents and instruments as may reasonably be required by the Title Company to consummate this transaction and to otherwise effect the agreement of the Parties hereto and not inconsistent with the terms of this Agreement.

15.6 Prorations and Adjustments. The following shall be prorated and adjusted between Village and Developer at the Closing, except as otherwise specified:

a. Village will pay the basic premium for the Title Policy; one-half of the escrow fee and New York closing fee charged by the Title Company; the costs to prepare the Deed; the costs to obtain, deliver, and record releases of all Consensual Liens deemed unpermitted

exceptions pursuant to Section 15.3(b) at Closing; the costs to record all documents to cure Title Objections agreed to be cured by Village; the cost of state and county transfer stamps, if any, and Village's expenses and attorney's fees. Developer will pay one-half of the escrow fee and New York closing fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Village's expense; the costs to obtain an updated survey; the costs of any work required by Developer to have the survey reflect matters other than those required under this Agreement; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and all endorsements and deletions required by Developer or Developer's lender; and Developer's expenses and attorney's fees. The Village shall be responsible for all past due general real estate taxes and special assessments. All assessments, general or special, which are due and payable in arrears after the Closing, and assessments for improvements completed prior to such Closing but payable after such Closing shall be prorated at such Closing based on each party's period of ownership. Ad valorem real estate taxes for the Property will be prorated at 100% of most current available assessed value, equalization factor and tax rate between Developer and Village as of the Closing Date. Village's portion of the prorated taxes will be credited to Developer at closing as an adjustment to the Purchase Price. If the assessment(s) for the year of closing and/or prior years are not known at the Closing Date, the prorations will be based on 100% of taxes for the previous tax year. Village will promptly notify Developer of all notices of proposed or final tax valuations and assessments that Village receives after the Contract Date and prior to such Closing. If this sale or Developer's use of the Premises after such Closing results in the assessment of additional taxes for periods prior to Closing, Developer will pay the additional taxes. All taxes due as of such Closing will be paid at such Closing. Such other items that are customarily prorated in transactions of this nature, if any, shall be ratably prorated.

For purposes of calculating prorations, Developer shall be deemed to be in title to the Property on the Closing Date. All such prorations shall be made on the basis of the actual number of days of the year and month, which shall have elapsed as of such Closing Date. The amount of the ad valorem real estate tax proration shall be adjusted in cash after such Closing as and when the final tax bill for such period(s) becomes available. Village and Developer agree to cooperate and use their diligent and good faith efforts to make such adjustments no later than thirty (30) days after such information becomes available.

ARTICLE SIXTEEN

EVENTS OF DEFAULT AND REMEDIES.

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

a. If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a party hereto, 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 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 the performance or breach of any material covenant 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 cannot 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. Default by Developer in the performance or breach of any material covenant, warranty or obligation contained in this Agreement, however that such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days of written notice to the Village; provided, however, that such default shall not constitute an Event of Default if such default cannot 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 renew or extend the LOC referenced in Section 9.6 thirty (30) or more days prior to its expiry (in which event the Village may draw the full amount of the LOC), provided the Village will give Developer ten (10) days written notice prior to exercising any remedies under this Section.

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 abandons the Project on the Property. Abandonment shall be deemed to have occurred when work stops on the Property for more than thirty (30) days for any reason other than Uncontrollable Circumstances.

j. Developer fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the buildings contemplated by this Agreement and such failure continues for thirty (30) days after receipt of written notice from the Village, provided if the compliance can not be cured within thirty (30) days, Developer shall not be in default if it commences to cure within thirty (30) days of receipt of notice and diligently proceeds to completion.

16.2 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.

16.3 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 thirty (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. Notwithstanding the above, in the event Developer fails to close, the Village's sole and exclusive remedy is to retain the Earnest Money.

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.

c. In the case of an Event of Default by Developer, in addition to any other remedies at law or in equity, the Village shall be relieved of its obligations under this Agreement, including but not limited to its obligations to accord Developer, "exclusive" developer status as set forth in Article Five.

16.4 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 in the Circuit Court of DuPage County. The Village's duty to pay shall be subject to the Illinois Prompt Payment Act.

16.5 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, nor 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.

16.6 Rights and Remedies Cumulative. Except as otherwise provided in this Agreement, 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 SEVENTEEN

EQUAL EMPLOYMENT OPPORTUNITY.

17.1 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.

17.2 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.

17.3 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 17.1 and 17.2 above.

ARTICLE EIGHTEEN

MISCELLANEOUS PROVISIONS.

18.1 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 prior to Closing, 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, in which event the Earnest Money shall be returned to Developer. If the Village terminates this Agreement pursuant to this Section 18.1, 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. In the event of a termination or cancellation under this

Section, the remaining balance of the LOC shall be released to the Developer (so long as the termination or cancellation is not due to a Developer's Event of Default).

18.2 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: InterCapital Main and Maple, LLC
414 North Orleans, Suite 304
Chicago, Illinois 60610
Attention: Mitchell E. Mize
Fax: 312-970-5611

With copies to: Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street, Suite 1910
Chicago, Illinois 60601
Attention: Michael E. Ross
Fax: 312-332-4514

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.

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

18.4 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.

18.5 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.

18.6 Recordation of Agreement. The Parties agree to record this Agreement in the DuPage County Recorder's Office. The Developer shall be responsible for all recording costs. The parties agree to record the Certificate of Completion upon Project Completion.

18.7 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.

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

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 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.

18.14 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.

18.15 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.

18.16 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.

18.17 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.

18.18 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.

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

ARTICLE NINETEEN

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.

[Signature page follows.]

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:

INTERCAPITAL MAIN AND MAPLE, LLC

By:_____

Its: Manager

1\mw\agr.06\RDA-Main&Maple-Intercap (p:DownersGrove redevagt- rev-cc)

LIST OF EXHIBITS

- A. LEGAL DESCRIPTION FOR PROPERTY**
- B. CONCEPT PLANS**
- C. TOTAL DEVELOPMENT COSTS**
- D. LICENSE AGREEMENT**
- E. DEVELOPER'S SCHEDULE FOR PROJECT**
- F. PERMITTED USES**
- G. CERTIFICATE OF COMPLETION**

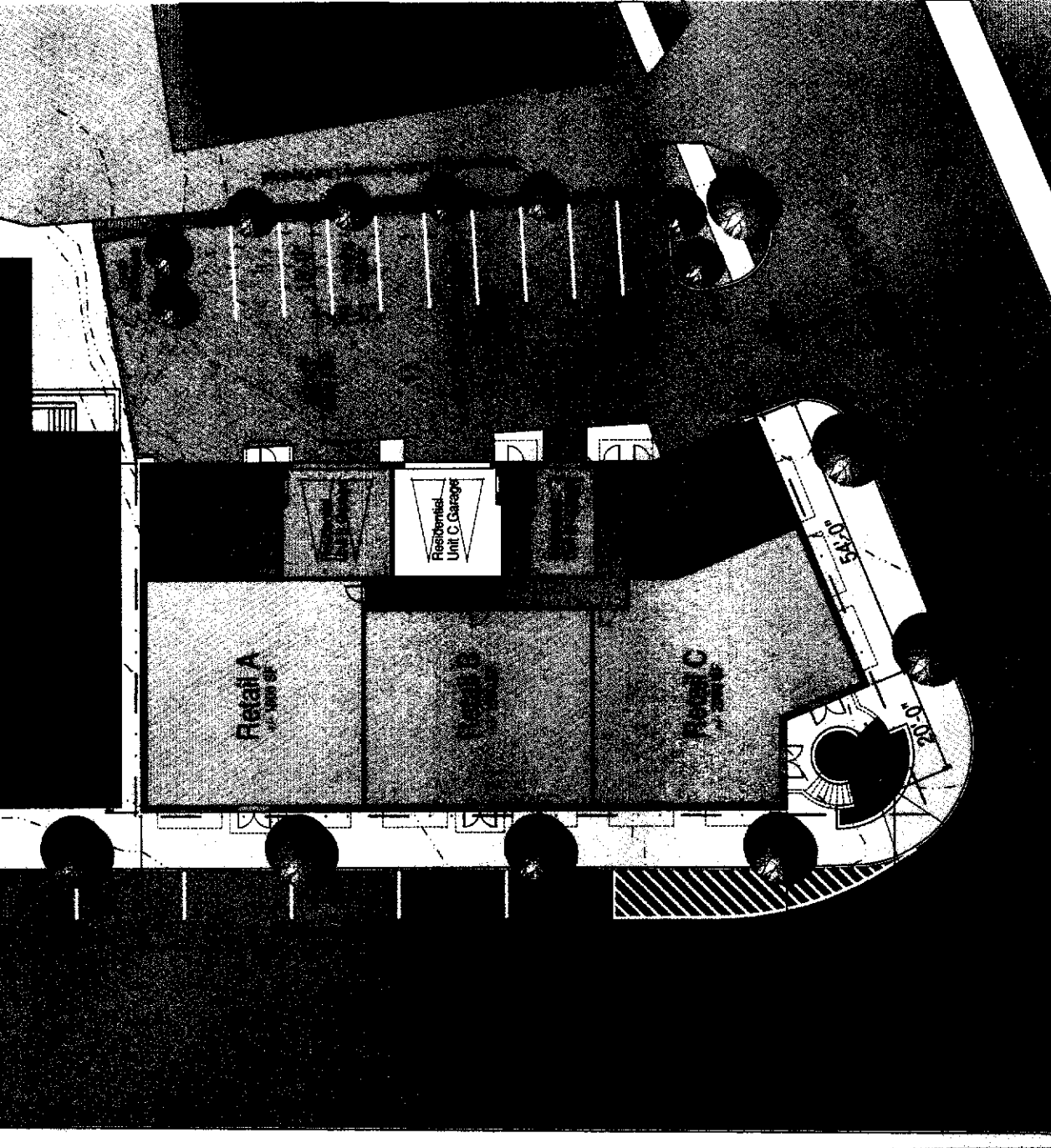
EXHIBIT A

Legal Description

OF THAT PART OF OUTLOT 1 IN CURTISS' ADDITION TO DOWNERS GROVE AS RECORDED AS DOCUMENT NUMBER 7317 LYING SOUTH OF LOT 22 IN ASSESSORS SUBDIVISION OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN AND LYING WEST OF LOT 18 IN SAID ASSESSORS SUBDIVISION; ALSO LOTS 20, 21 AND 22 IN SAID ASSESSORS SUBDIVISION; ALSO THAT PART OF LOT 18 IN SAID ASSESSORS SUBDIVISION DESCRIBED BY BEGINNING ON THE NORTH LINE OF MAPLE AVENUE AT THE SOUTHWEST CORNER OF SAID LOT 18; THENCE NORTH $1\frac{1}{2}$ DEGREES WEST ALONG THE WEST LINE OF SAID LOT 18 A DISTANCE OF 118.9 FEET; THENCE NORTH 77 DEGREES EAST A DISTANCE OF 44.2 FEET; THENCE SOUTH $4\frac{3}{4}$ DEGREES EAST A DISTANCE OF 107.4 FEET TO THE NORTH LINE OF SAID MAPLE AVENUE; THENCE SOUTH $65\frac{1}{2}$ DEGREES WEST ALONG SAID NORTH LINE A DISTANCE OF 54.2 FEET TO THE PALCE OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS

EXHIBIT B

CONCEPT PLAN



Site Plan / First Floor Plan
1"=30'-0"

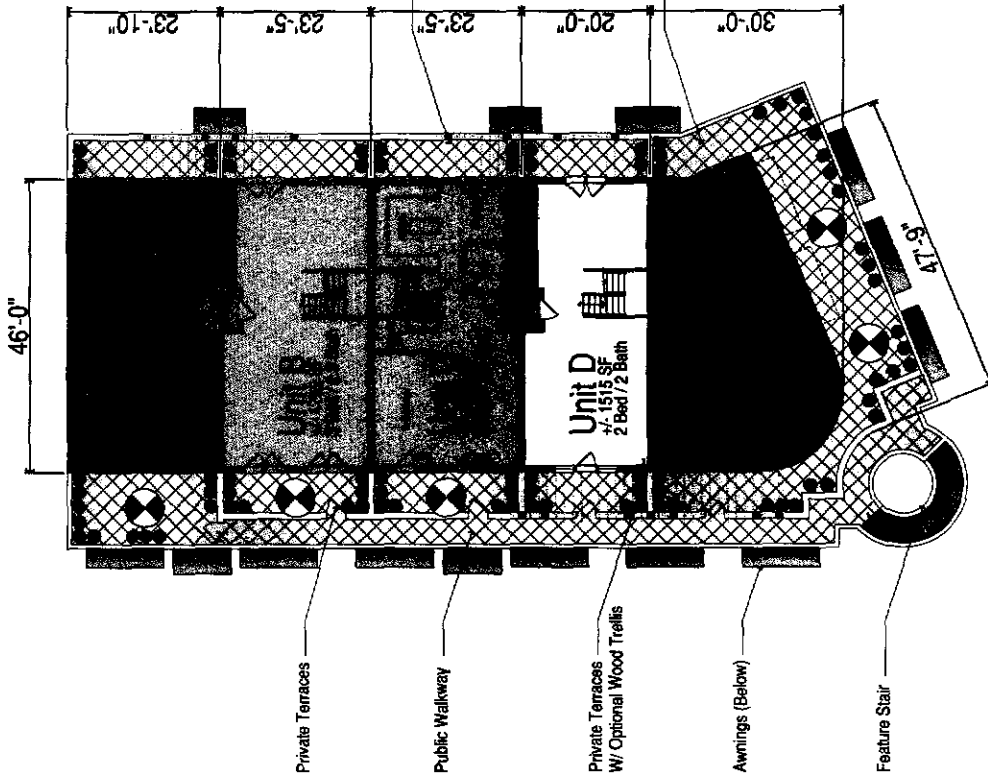
InterCapital Partners, Ltd.
Chicago, IL

Main & Maple Mixed Use Building
Downer's Grove, IL

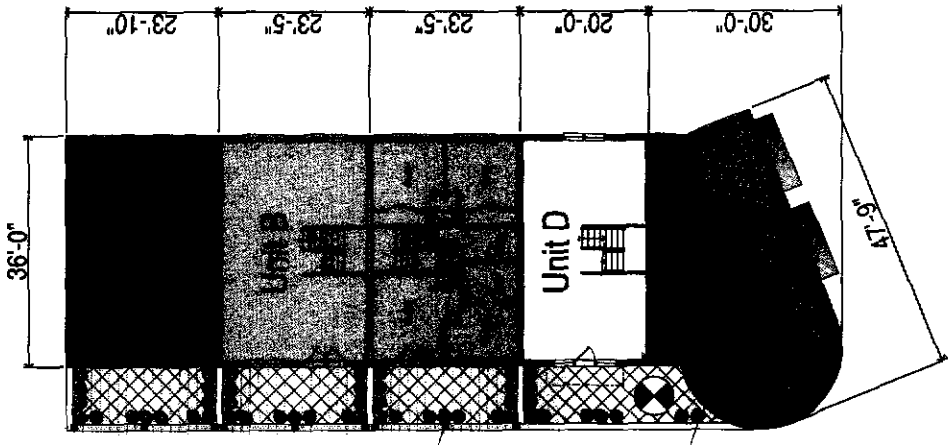
The drawings presented are illustrative of character and design intent only, and are subject to change based upon final design considerations, i.e., applicable codes, structural, and MEP design requirements, unit plan / floor plan changes, etc.

04-28-08

Architects and Planners, Inc.
Bloodgood Sharp Buster
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Second Floor Plan
1"=30'-0"



Third Floor Plan
1"=30'-0"

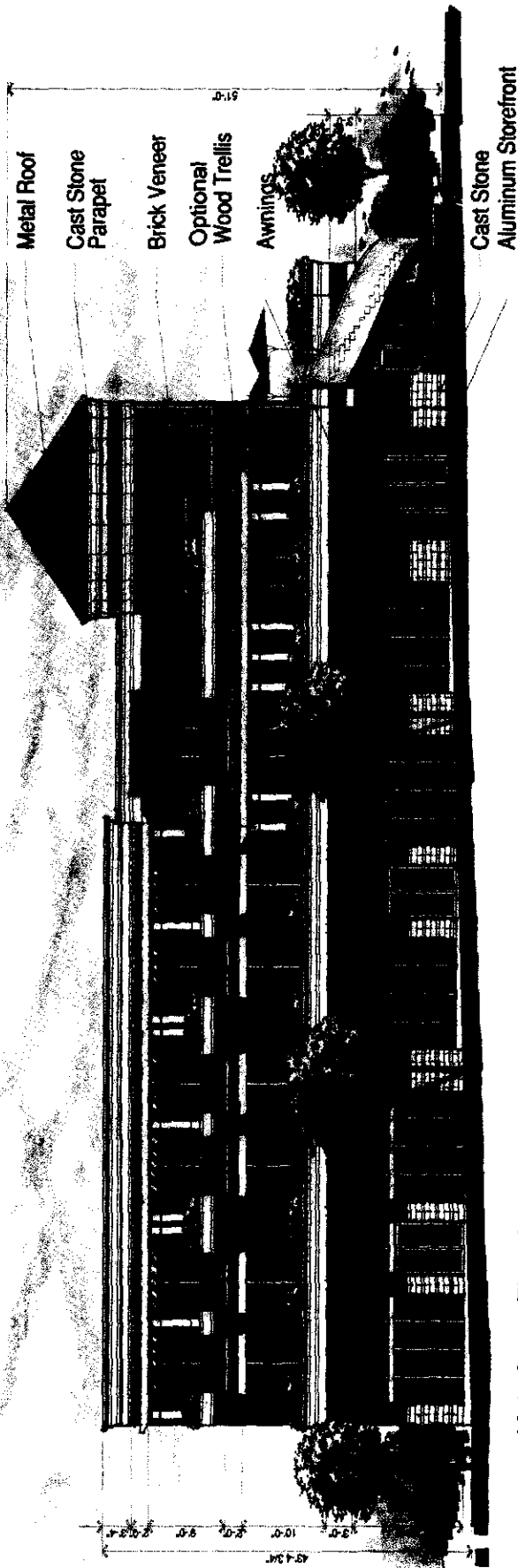
Main & Maple Mixed Use Building

Downer's Grove, IL

The architect provided no indication of character and design intent only, and is subject to change based upon final design considerations, U.S. applicable codes, programs, and MEP design requirements, unit plan / floor plan changes, etc.

04-28-05
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Bloodgood Sharp Buster
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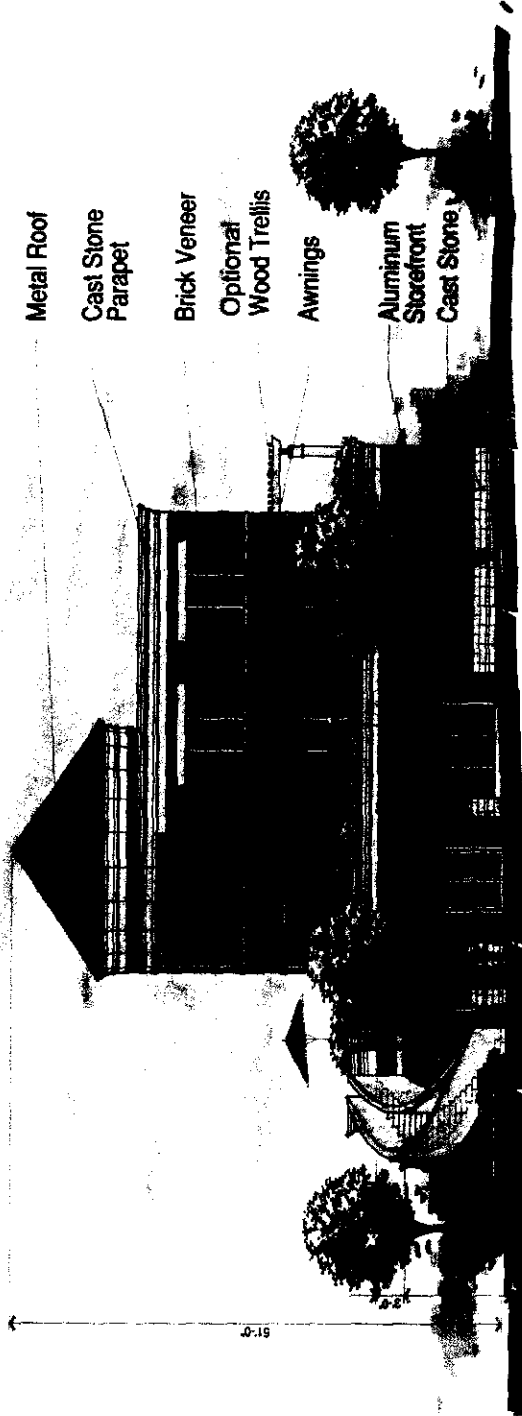
InterCapital Partners, Ltd.
Chicago, IL



Main Street Elevation
1"=20'-0"

Metal Roof
Cast Stone Parapet
Brick Veneer
Optional Wood Trellis
Awnings

Cast Stone
Aluminum Storefront



Maple Street Elevation
1"=20'-0"

Metal Roof
Cast Stone Parapet
Brick Veneer
Optional Wood Trellis
Awnings

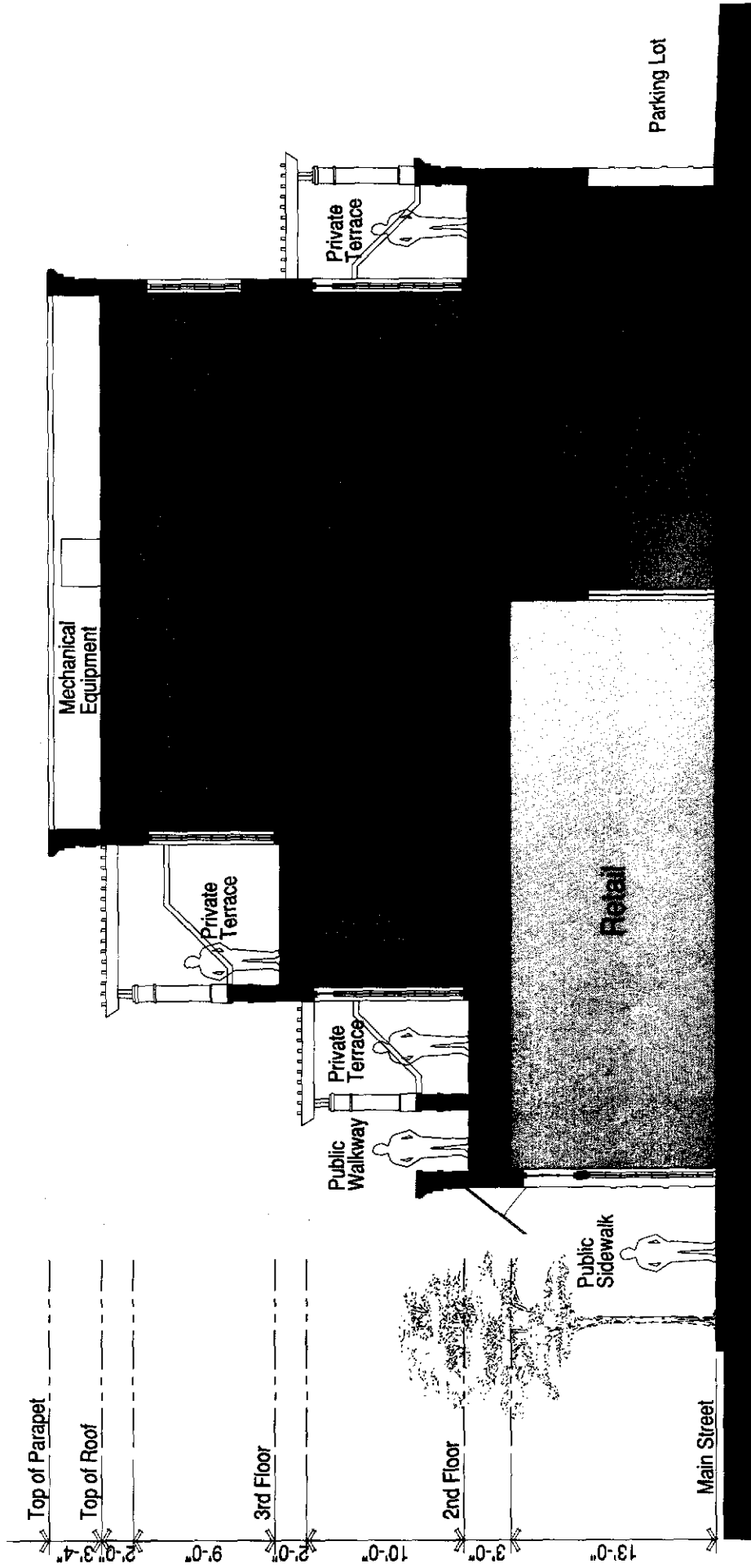
Aluminum Storefront
Cast Stone

Main & Maple Mixed Use Building

Downer's Grove, IL

The drawings presented are illustrative of character and design intent only, and are subject to change based upon final design considerations, local, state, and federal codes, and other project requirements. For more information, please contact the architect.

04-28-06
Architects and Planners, Inc.
Goodgood Sharp Rustler
P.A.



Building Section
1"=10'-0"

Main & Maple Mixed Use Building

Downer's Grove, IL

InterCapital Partners, Ltd.
Chicago, IL

The drawings provided are the property of Bloodgood Sharp Buster, Inc. and are subject to change based upon final design conditions. It is applicable to construction, structural, and MEP design requirements, and does not cover other disciplines, etc.

04-29-08



Bloodgood Sharp Buster
Architects and Planners, Inc.

EXHIBIT C

Downers Grove Development Costs

Development Hard Costs

Land Acquisition
Building Construction Cost
General Conditions
Builder/Contractors Fee
Residential Upgrades
Site Utilities and Grading, Corner Feature
Offsite Improvements (sidewalk, adjacent road, etc)
Demolition
Signage
Landscaping, Corner Feature
Permits and Fees
Fixtures & Furnishings
Retail Tenant Improvements

Development Soft Costs

Architectural/Engineering
 Architectural Design Fees
 Architectural Design Expenses
 Architectural Marketing Plans, Renderings
 Architectural Construction Oversight
 Structural Engineering
 Civil Engineering
 Environmental Engineer Assessment
 Soils Testing (Soil Borings)
 Soils Testing (Analysis)
 Other Environmental Tests, Analysis, Approvals
 Surveys and Staking

Legal
 Purchase and Development Agreement
 Project Approvals
 Lease and Sales Contract Preparation, Administration
 Condominium Document(s) Preparation and Filing
 Loan Legal and Other Closing Costs
 Closings, individual units
 Lender's legal costs

Insurance
 Builders Risk
 Title Insurance
 Liability

Lender
 Appraisal
 Inspection
 Loan Fees (Points)
 Construction/Development Interest
 Letter of Credit Fees
 Lender Consultant Fees

Marketing and Leasing
 Collateral Materials: Design & Production
 Commissions Retail Leasing
 Commissions Residential Sales
 Lease Incentives
 Residential Credits
 Advertising

Appraisal/Opinion for Valuation Purposes (see Section 15.2)
Accounting
Closing Costs (including costs incurred and costs anticipated for units which have not yet closed)
Developer Overhead (out of pocket 3rd party costs, travel, delivery, plans, etc.)
Developer's Development Fee
Real Estate Taxes
Operating Deficit (Association fees, operating expenses)

EXHIBIT D

License Agreement

This LICENSE AGREEMENT ("Agreement") is made as of this ___ day of _____ 2006, by and between the **VILLAGE OF DOWNERS GROVE**, an Illinois municipal home rule corporation ("Village") and **INTERCAPITAL MAIN AND MAPLE, LLC**, an Illinois corporation ("Licensee").

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

A. Village is a home rule unit of government in accordance with Article VII, Section 6, of the Constitution of the State of Illinois, 1970;

B. Village is the owner of a certain parcel of land in the Village of Downers Grove, County of DuPage and State of Illinois, graphically depicted on **Exhibit A** attached hereto and made a part hereof ("Property").

C. Pursuant to a redevelopment agreement (the "Redevelopment Agreement") to be executed between the Village and Licensee, Licensee may become the contract Developer of the Property, which is presently improved with a parking lot.

D. Village wishes to grant, and Licensee wishes to receive a non-exclusive license to solely perform survey, topographical, soil studies, environmental studies and other required due diligence studies on the Property, all as set forth in this Agreement.

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

1. **Grant of License for Survey and Topographical Studies.** Village hereby grants to Licensee, a non-exclusive license to solely perform preliminary survey, a topographical survey, soil borings, environmental studies and other required due diligence studies (hereinafter "Testing"), on the Property subject to: 1) Licensee not interfering with the normal daily use of the Property; and 2) Licensee providing the Village forty-eight (48) hours notice prior to entering the Property to perform any Testing.

2. **Term of License.** The license granted hereunder shall commence on the date hereof and shall terminate (the "Termination Date") upon the earlier of: (a) the date Licensee acquires fee title to the Property; (c) the date an Event of Default by Developer under the Redevelopment Agreement negotiated between the parties is not timely cured pursuant to the Redevelopment Agreement; (d) upon a breach of the terms hereof; (e) sixty (60) days after the date hereof if the Closing of the Property has not occurred pursuant to the terms of the Redevelopment Agreement; or (f) in the event the Redevelopment Agreement is terminated, upon notice of termination from one Party to the other Party. Upon the occurrence of any of the events described in the preceding

sentence, this License shall immediately expire and Licensee shall remove all evidence of the Testing and physical activity performed on the Property and shall restore the Property to the condition of the Property existing on the date of this License Agreement.

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

4. **License for Access and Construction.** In addition to the license created by this Agreement, this Agreement creates a license for access across the Property for the purpose of Testing. The term of the license for access shall terminate on the Termination Date.

5. **Return of the Property.** At the termination of Licensee's license, Licensee shall repair and restore the Property to the same Condition as existed on the date of this Agreement and in any event Licensee shall fill any holes resulting from Developer's Testing and activities on the Property.

6. **Code Compliance.** During the term of this license, Licensee shall comply with all applicable laws, statutes, ordinances, codes, rules, regulations, orders and decrees.

7. **Reservation of Rights by Village.** The right to use the Property owned by the Village is expressly reserved by Village, its successors, grantees, invitees and assigns. In addition, and not by limitation but by way of example, Village, its successors, grantees, invitees and assigns, reserve the right from time to time to grant additional licenses upon the Property, provided that such licenses do not unreasonably interfere with Licensee's testing on the Property pursuant to the terms hereof.

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

9. **Indemnity.** Licensee for and on behalf of itself and all successors, grantees, invitees and assigns, assumes sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly or arising out of the activities, operations or Testing of the Property by Licensee, its successors, grantees, invitees and assigns and all of their officers, directors, employees, representatives and agents. Further, Licensee, for itself, its successors, grantees, invitees and assigns, and for those claiming by, through or under any of them, hereby releases Village, its members, agents and employees (collectively, the "Indemnitees") from any and all claims or demands for loss, liability, expense, cost or damage (whether to person or property), including, without limitation, reasonable attorneys' fees and litigation costs incurred by the Indemnitees in connection therewith, that may arise from the Testing by Licensee, including entry upon Property,

its successors, grantees, invitees and assigns, and all of their officers, directors, employees, representatives and agents. Licensee hereby agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all liability, loss, claim, demand, lien, damage, penalty, fines, interest, cost and expense (including without limitation, reasonable attorneys' fees and litigation costs) incurred by the Indemnitees for injuries to persons (including, without limitation, loss of life) and for damage, destruction or theft of property which is directly or indirectly due to or arising out of the activity, work or thing done, permitted or suffered by Licensee in connection with Testing, and entry onto Property or for any act or omission of Licensee, its successors, grantees, invitees and assigns and any of their officers, directors, employees, representatives and agents. Licensee shall cooperate with Village in the defense of any such claims, demands or action, including, without limitation, the employment, at the sole expense of Licensee, of legal counsel satisfactory to Village.

10. Insurance. Licensee, at its sole cost and expense, shall purchase and keep in full force and effect during the term hereof, Commercial General Public Liability Insurance (including, but not limited to, contractual liability insurance covering, without limitation, Licensee's indemnification obligations hereunder) in an amount not less than One Million and no/100 Dollars (\$1,000,000.00) per occurrence whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof with a minimum aggregate limit of Two Million and no/100 Dollars (\$2,000,000.00) and provided that same shall not be cancelled without thirty (30) days prior notice to Owner.

Licensee, concurrently with execution hereof, or upon Licensee's commencement of Testing of the Property as permitted hereunder, whichever is earlier, shall deposit with Village, insurance certificates evidencing the foregoing coverage, together with satisfactory evidence of payment of the premiums thereon. All such insurance shall name the Indemnitees as additional insureds. Licensee shall deliver said insurance certificates to the Village Attorney's office at 801 Burlington Avenue, Downers Grove, Illinois, 60515, or as otherwise directed by Village from time to time.

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

In the event any such lien is filed against any portion of the Property or any improvements thereon, Licensee shall remove or cause to be removed such lien within thirty (30) days of written notice from Village. In the event Licensee does not remove or cause to be removed such lien within said thirty (30) day period, Village shall have the right, but not the obligation, to cause such lien to be released and Licensee shall pay on demand all of Village's costs in connection therewith, together with interest thereon at the interest rate set forth in Paragraph 13 hereof, accruing from and after the date of such demand until Village's receipt of full payment therefor.

12. Code Violation. Licensee shall not permit any code violation to be filed against the Property as a result of Licensee's activities and/or testing.

In the event Licensee receives notice of such a code violation, either from the Village or its successors, Licensee shall remove or cause to be removed such violation within the time specified in said code violation notice. In the event Licensee does not remove or cause to be removed such code violation within said time period, Village shall have the right, but not the obligation, to cause such violation removed and Licensee shall pay on demand all of Village's costs in connection therewith, together with interest thereon at the interest rate set forth in Paragraph 13 hereof, accruing from and after the date of such demand until Village's receipt of full payment therefor.

13. Breach by Licensee. If Licensee breaches any provision in this Agreement and fails to cure any such breach within two (2) days after written notice thereof, in addition to any other right or remedy available at law or in equity, including but not limited to termination of this Agreement, the Village shall have the right, but not the obligation, to cure any such breach and Licensee agrees to reimburse Village for the cost thereof upon demand, together with interest accruing thereon at an annual rate of interest equal to eighteen percent (18%) from and after the date of Village's demand therefor until Village's receipt of full payment therefor.

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

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

If to Village:

Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515
Attention: Village Clerk
Fax: 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 Licensee:

InterCapital Main and Maple, LLC
414 North Orleans, Suite 304
Chicago, Illinois 60610
Attention: Mitchell E. Mize
Fax: 312-970-5611

With a copy to:

16. Prevailing Party. In the event either party shall use legal counsel to enforce this Agreement, the non-prevailing party shall pay the legal fees of the prevailing party.

17. Binding on Successors. This Agreement shall be binding upon and shall inure to the benefit of the Village and the Licensee and the respective successors and permitted assigns of each upon execution hereof by the Village and the Licensee. Two (2) duly executed duplicate originals of this Agreement shall be provided to each party. This Agreement creates no rights as a third party beneficiary or otherwise in any person not a party.

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

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

LICENSEE:

INTERCAPITAL MAIN AND MAPLE, LLC
An Illinois Corporation

By: _____

Printed Name: _____

Title: _____

VILLAGE:

VILLAGE OF DOWNERS GROVE,
An Illinois municipal home rule corporation

By: _____

Village Manager

Attest: _____

Village Clerk

State of Illinois)
County of Cook)

I, _____, a Notary Public, in and for _____ Group, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the same instrument as his own free and voluntary act and as the free and voluntary act of _____, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2006

Notary Public

EXHIBIT A

Legal Description

OF THAT PART OF OUTLOT 1 IN CURTISS' ADDITION TO DOWNERS GROVE AS RECORDED AS DOCUMENT NUMBER 7317 LYING SOUTH OF LOT 22 IN ASSESSORS SUBDIVISION OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN AND LYING WEST OF LOT 18 IN SAID ASSESSORS SUBDIVISION; ALSO LOTS 20, 21 AND 22 IN SAID ASSESSORS SUBDIVISION; ALSO THAT PART OF LOT 18 IN SAID ASSESSORS SUBDIVISION DESCRIBED BY BEGINNING ON THE NORTH LINE OF MAPLE AVENUE AT THE SOUTHWEST CORNER OF SAID LOT 18; THENCE NORTH 1 ½ DEGREES WEST ALONG THE WEST LINE OF SAID LOT 18 A DISTANCE OF 118.9 FEET; THENCE NORTH 77 DEGREES EAST A DISTANCE OF 44.2 FEET; THENCE SOUTH 4 ¾ DEGREES EAST A DISTANCE OF 107.4 FEET TO THE NORTH LINE OF SAID MAPLE AVENUE; THENCE SOUTH 65 ½ DEGREES WEST ALONG SAID NORTH LINE A DISTANCE OF 54.2 FEET TO THE PALCE OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS

EXHIBIT E

Development Schedule

Action	Target Date	Default Date	Penalty Event/ Amount
Execute RDA	9/1/2006	None	None
Due Diligence	9/1/2006	None	None
Complete Due Diligence	11/1/2006	None	None
Architectural Drawings	11/1/2006	None	None
Complete Architectural Drawings	2/15/2007	None	None
Bid, Review, Negotiate Construction	2/15/2007	None	None
Execute Construction Contract	3/24/2007	None	None
Obtain Final Planned Development Approval	3/1/2007	5/30/2007	\$10,000
Submit Construction Financing Commitment and Development Budget	3/24/2007	None	None
Close on the Property	3/31/2007	6/29/2007	\$15,000
Apply for a Building Permit	3/1/2007	None	None
Obtain a Building Permit	3/31/2007	6/30/2007	\$10,000
Mobilize for Construction (weather)	4/1/2007	None	None
Commence Initial Sitework	5/1/2007	None	None
Commence Foundation Construction	6/1/2007	None	None
Complete Installation of the Foundation	8/1/2007	10/30/2007	\$15,000
Complete Core and Shell	5/1/2008	7/30/2008	\$25,000
Complete the Development	10/31/2008	12/31/2008	\$25,000

EXHIBIT F

Permitted Uses

Permitted uses.

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.
- * 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.
- * 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.

EXHIBIT G

VILLAGE OF DOWNERS GROVE CERTIFICATE OF COMPLETION

Date: _____

In accordance with the Redevelopment Agreements (“Agreement”) between the Village of Downers Grove (“Village”) and InterCapital Main and Maple, LLC, an Illinois corporation (the “Developer”), the Village of Downers Grove hereby certifies that in accordance with the terms contained in the Agreement, specifically Article Two, Definitions, “Certificate of Completion,” that the Project has been deemed completed.

Based on an inspection or inspections of the Project (as defined within the Agreement), the Village of Downers Grove certifies this following:

1. that the residential units have been issued a Certificate of Occupancy dated _____, _____;
2. that the commercial units have been issued a “White Box” Certificate(s) of Occupancy dated _____, _____, which for purposes of this Certificate means that all major systems (electrical, plumbing and HVAC) and interior drywall, but not bathrooms, interior finishes or fixtures nor tenant improvements have been installed;
3. all public improvements have been completed and accepted by the Village;
4. to the knowledge of the Village, there are no other fees or obligations owed under the Agreement except for as required as to additional compensation; and
5. that to the best of knowledge of the Village of Downers Grove, Developer is not in default of any provisions of the Agreement as of the date of this Certificate of Completion.

The Certificate is made with the intent that it may be relied upon by the Village, the Developer and third parties as a condition of payment and completion as defined under the Agreement. This Certificate is dated _____.

Signed by: _____
Village Manager
Village of Downers Grove