O-01-2009

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH 603-635 ROGERS, LLC, YORK SECOND (SCHILLER COURT FAÇADE)

WHEREAS, the City of Elmhurst has heretofore approved a Tax Increment Development Plan and Project, designated the Tax Increment Redevelopment Project Area and adopted Tax Increment Financing all in accordance with 65ILCS 5/11-74.4-1 et seq. (hereafter the "Tax Increment Allocation Redevelopment Act"); and

WHEREAS, in accordance with the Tax Increment Allocation Redevelopment Act the City of Elmhurst may convey, dispose or permit encroachments upon its real estate in the manner and at such price it determines to be reasonably necessary to achieve the objectives of the Redevelopment Plan and Project; and

WHEREAS, the dedicated right-of-way of Schiller Court is located within the Tax Increment Redevelopment Project Area (the "Downtown TIF District"), and the 603-635 Rogers, LLC, York Second (the "Developer") has requested that the City allow certain façade improvements to encroach into Schiller Court as provided in the Development Agreement; and

WHEREAS, the City has determined it is reasonably necessary to achieve the objectives of the Redevelopment Plan and Project that it provide the appropriate permit for such encroachment into Schiller Court; and

WHEREAS, the Development Agreement is made pursuant to the authority granted by, and in full compliance with the requirements of the Tax Increment Allocation Redevelopment Act, and to that extent is an exception to all other rules, ordinances and statutes regarding, conveyance of an interest in real estate within the Downtown TIF District.

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Elmhurst, DuPage and Cook Counties, Illinois as follows:

SECTION 1. The Development Agreement by and between the City of Elmhurst and Developer dated this date and as submitted to this meeting is approved including the permit therein allowing encroachment into Schiller Court.

SECTION 2. The Mayor is hereby authorized and directed to sign and the City Clerk is hereby authorized and directed to attest to the Development Agreement, in a form in all material respects as submitted to this meeting as approved by the City Attorney.

SECTION 3. The Mayor and the City Clerk are hereby authorized to execute and attest such other documents as may be necessary for compliance with the aforesaid Agreement and conveyance herein authorized.

Copies To All
Elected Officials
1-15-09

SECTION 4. The recitals contained in the preamble of this ordinance are a material part hereof and are hereby incorporated herein. All ordinances or parts of ordinances in conflict with this ordinance are to the extent necessary, hereby amended so that the City's acts authorized hereby are in full compliance with applicable law including the City's ordinance and rules.

SECTION 5. This ordinance shall be in full force and effect from and after passage and publication according to law.

Approved this 20th day of January, 2009.

Thomas D. Marcucci, Mayor

Passed this 20th day of January, 2009.

Ayes: 12 Nays: 0

Patty Spencer

Patty Spencer, City Clerk

H:Kathy/Elmhurst/ordinance/shciller redev agrO

COUNCIL ACTION SUMMARY

SUBJECT: Ordinance B Approving a Development Agreement with 603-635 Rogers, LLC, York Second (Schiller Court Façade)

ORIGINATOR: City Attorney

DESCRIPTION OF SUBJECT MATTER: This is an Ordinance approving the Redevelopment Agreement with Willis Johnson providing for life safety and the façade improvements on the north side of Schiller Court and commit the City to a payment of $130,000 therefore and streetscape improvements to Schiller Court.

AGREEMENT FOR PRIVATE REDEVELOPMENT
603-635 ROGERS, LLC, YORK SECOND

THIS AGREEMENT, entered into on or as of the 15th day of December, 2008, by and between the CITY OF ELMHURST of DuPage and Cook Counties, an Illinois Municipal Corporation (which altogether with any successor municipal corporation or public body hereinafter designated by or pursuant to law, is hereinafter called "City"), exercising its governmental powers as an Illinois Home Rule municipality under Article VII, Section 6 of the Illinois Constitution and pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois (hereinafter referred to as the "Act"), and having its office at 209 North York Street, Elmhurst, Illinois, and 603-635 Rogers, LLC, York Second, an Illinois Series Limited Liability Company (hereinafter called "Redeveloper"), the address of which is 603 Rogers Street, Downers Grove, Illinois 60515.

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of the Act, the City has adopted a Redevelopment Plan pertaining to the redevelopment of the Central Business District Redevelopment Project Area, a copy of which is on file with the City; and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan and in accordance with the uses set forth therein, the City intends to assist the Redeveloper in the redevelopment of an existing business site on Schiller Court in the City to be redeveloped with façade renovation and improvements (the "Project"); and

WHEREAS, the City believes that the Project is in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accordance with the public purposes and provisions of the applicable federal, state and local laws.

NOW, THEREFORE, in consideration of the premises and mutual obligations of the parties hereto, each of them does hereby covenant and agree as follows:

SECTION 1: DEFINITIONS.

A. **Definition of Terms**. Certain terms used in this Agreement shall have the following meaning unless their context or use clearly indicates otherwise.

"Agreement" means this Agreement for Private Redevelopment.

"City" means the City of Elmhurst, DuPage and Cook Counties, Illinois, an Illinois Municipal Corporation.

"Construction Plans" means the detailed plans, drawings, specifications and related documents for the Project as necessary for issuance of a building permit by the City.

"Events of Default" shall mean those occurrences, actions or lack of action which shall be construed to be a breach or failure to perform pursuant to the terms of this Agreement.

"Notice of Completion" means the written notice issued by the City which evidences substantial completion of the Project in compliance with the terms of this Agreement.

"Project" means the redevelopment of the Project Site for retail use under the City's Zoning Ordinance, all as described herein.

"Project Site" means the property owned by Redeveloper as legally described on Exhibit "B", upon which property the Project is to be constructed.

"Redeveloper" shall mean 603-635 Rogers, LLC, York Second, an Illinois Series Limited Liability Company and its successors and assigns, which is the owner of the fee title to the Project Site at all times material to this Agreement.

"Redevelopment Area" means the City of Elmhurst Central Business District Tax Increment Redevelopment Project Area, as adopted by the City.

"Schiller Court" means the dedicated City right-of-way shown in Exhibit "C".

"Site Plan" means the elevation drawing by Architect's Studio, LLC and Plat of Subdivision for 136 N. York Subdivision, attached hereto as Exhibit "A".

"Streetscaping Plan" means the streetscape plan for the Project and as approved by the City and generally in accordance with Exhibit "C" hereto.

B. **Non-Limitation of Parties' Remedies**. This Section shall in no way limit the remedies of the Parties pursuant to other Sections of this Agreement and pursuant to law and equity in the event of default.

SECTION 2: REDEVELOPER'S OBLIGATIONS.

A. **Taxes**. In order to assure the proper flow of tax revenues anticipated pursuant to the Plan and this Agreement, the Redeveloper covenants that it will promptly and timely pay all real estate taxes generated on the Project Site which are legally owed, if any, when due.

B. **Project Construction**. The Redeveloper agrees to construct the Project in accordance with the terms of this Agreement and its milestone schedule.

C. **Disclosure of Parties in Interest**. The Redeveloper agrees to promptly disclose to the City during the term of this Agreement, any change to its membership or management. At the time of entry into this Agreement, the sole manager is Willis G. Johnson. The membership consists of Tivoli Enterprises, Inc. of which Willis G. Johnson is President and the Willis G. Johnson Trust dated 12/19/06.

D. **Maintenance of Improvements.** The Redeveloper agrees to maintain the Project as constructed for the term of this Agreement.

SECTION 3: COVENANTS AND RESTRICTIONS.

A. **Property Subject to Site Plan.**

The parties agree that the Site Plan for the Project is in compliance with the City's Redevelopment Plan and the City's Zoning Ordinance. The Redeveloper agrees to construct the Project in substantial conformity with the Site Plan.

B. **Duration of Covenants**. It is intended and agreed that the covenants provided in this Section 3 shall remain in effect from the date of the Agreement until the earlier of the completion of the Project by Redeveloper or the termination of the Elmhurst Central Business District Tax Increment Financing District, unless otherwise provided herein. The City shall take no action to terminate this Agreement prior to installation of the Streetscaping Plan.

C. **Guarantees**. The Redeveloper covenants and agrees for itself, and every successor in interest to the Project Site or the Project or any part thereof, that every such successor shall guarantee the redevelopment of the Project through the construction of the Project thereon, and that such construction shall, in any event, be begun and completed in the period of time specified in Section 5D herein, subject to the provision of Section 11 of this Agreement.

D. **Covenants Running with the Land**. It is intended and agreed that for the duration required herein, Redeveloper's covenants set forth in this Section 3 shall be covenants running with the land and that they shall in any event be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by the City, its successors and assigns, and against the Redeveloper, its successors and assigns and every successor in interest to the Project Site or the Project or any part thereof or any interest therein, and any party in possession or occupancy of the Project or any part thereof provided that the covenants herein shall not be binding with respect to the lessee of leased premises and any business premises. The City Clerk shall cause this Agreement or a memorandum thereof and all amendments and supplements thereto to be recorded and filed on the date hereof in the office of the DuPage County Recorder. The costs for recording and filing shall be paid by the Redeveloper.

SECTION 4: CITY'S OBLIGATIONS.

A. **Streetscape**. The City undertakes to complete the streetscape, in substantial accordance with the Streetscape Improvement Plan (Exhibit "C"). A final Streetscape Plan shall be approved by the City. The cost of the streetscape shall be paid by the City. The City shall install the streetscape improvements so that they will be substantially completed at the time of occupancy of any space in the Project Site. The City shall pay the costs of the streetscaping

herein from its Redevelopment Project Fund for the Central Business District Tax Increment District.

B. **Permitted Enhancement of Façade Improvements**. The Site Plan includes depictions of doors, windows, a bay window, porches, planters, light fixtures, cornices, shutters, awnings, banners and signs that project out from the existing wall along Schiller Court ("Façade Enhancements") into the right-of-way of Schiller Court. The City hereby grants a perpetual non-exclusive right and permit to Redeveloper and 136 York Elmhurst, LLC ("136"), their successors and assigns, for use of up to three (3) feet of Schiller Court immediately adjacent to the Project Site and the property owned by 136 (as legally described on Exhibit "D" hereto) for the placement, repair, replacement and maintenance of the Façade Enhancements, as depicted on Exhibit "A". Future enhancements of a nature substantially similar to those depicted on Exhibit A are allowed with prior notice to the City . The City further grants to Redeveloper, 136 and their successors and assigns, a perpetual non-exclusive right and permit on, over and across Schiller Court to allow placement, repair, replacement and maintenance of the Façade Enhancements and future enhancements in conformity with this paragraph and with prior notice to the City.

C. **Signage.** The City hereby confirms and represents to Redeveloper that Schiller Court fronting the Project Site, is a "street" as defined by the City's Zoning Ordinance for purposes of calculation of allowable signage on Schiller Court. The City further represents that only the area of that part of a banner projecting into Schiller Court from the Project Site and the property owned by 136 which is used to advertise an on premises business, shall be included in the calculation of allowable signage.

D. **Façade Redevelopment**. In addition to and separate and apart from the foregoing streetscape improvements, the City shall provide assistance for the Project to the Redeveloper pursuant to the Façade Improvement Assistance Program for the Central Business District, Elmhurst, Illinois, adopted on June 1, 1998. The City shall reimburse Redeveloper up to a total of $130,000.00 to partially offset Redeveloper's costs for improvement of the building façade along Schiller Court and life safety improvements internal to the Project Site (upgraded water service, sprinkler, fire alarm, front stairs to the second floor, western stairs to the second floor and western stairs from the lower level to code, installing new exit doors at the northwest corner of the Project Site and installing an elevator) to be paid to Redeveloper upon Substantial Completion of the Project.

SECTION 5: REDEVELOPER'S OBLIGATIONS AND RIGHTS.

A. **Conformance to Construction Plans and Final Site Plan**. All work with respect to the Project to be constructed or provided by the Redeveloper on the Project Site shall be in substantial conformity with the Construction Plans.

B. **Conformance to Federal, State and Local Requirements**. Except as otherwise provided herein, all work with respect to the Project shall conform to all applicable federal, state and local laws, regulations, codes and ordinances. The City hereby represents and warrants that

it will issue the necessary permits to allow construction of the Project in accordance with this Agreement and the approved Construction Plans.

C. **Time Limitations**. The Construction Plans, including a milestone schedule, shall be filed with the City at the time of Redeveloper's application for a construction permit for the Project, no later than March 1, 2009. Construction of the Project shall be substantially completed on or before September 1, 2009. As long as the Redeveloper is not in default under the terms of this Agreement, the Redeveloper shall be entitled to one automatic three (3) month extension of the completion date to December 1, 2009, upon at least a ninety (90) day written notice to the City.

D. **Improvements, Commencement and Completion Requirements**.

1. **Commencement**. The Redeveloper agrees for itself, its successors and assigns, that it shall promptly begin and diligently prosecute the substantial completion of the redevelopment of the Project Site through the construction of the Project thereon pursuant to the approved Construction Plans and in accordance with approved changes.

2. **Remedies**. In addition to all the remedies available provided by this Agreement, the Parties shall have all remedies available pursuant to law and equity to remedy defects and recover damages in the event of any violation or breach hereof.

E. **Notice of Substantial Completion**. Promptly after completion of the Project in accordance with the provisions of this Agreement and upon the request of the Redeveloper in writing to the City, the City will issue its Notice of Completion. Notice of Completion shall be considered a conclusive determination of satisfaction with respect to the obligations of the Redeveloper and its successors and assigns, that the construction of the Project is substantially completed so that occupancy permits will issue. If the City refuses or fails to provide Notice of Completion in accordance with the provisions of this Agreement, the City shall, within thirty (30) days after written request by the Redeveloper for a Notice of Completion, provide the Redeveloper with a written statement indicating in detail in which respects the Redeveloper has failed to substantially complete the Project in accordance with the provisions of this Agreement, or why the Redeveloper is otherwise in default and what measures or steps it will be necessary, in the reasonable judgment of the City, for the Redeveloper to take or perform in order to obtain Notice of Completion. Notice of Completion as provided herein shall not be unreasonably withheld, conditioned or delayed.

F. **Assignment**. Until the completion of the Project and the issuance of a Notice of Completion, the Redeveloper shall not assign, convey or transfer any interest in this Agreement, the Redeveloper itself, the Project Site or the Project, except to a mortgagee or lessee, to any other person or entity without the written consent of the corporate authorities of the City which consent will not be unreasonably withheld, conditioned or delayed. Nothing contained in this paragraph shall prohibit any mortgagee or lessee from exercising its rights under a mortgage or lease in the event of a default by the Redeveloper.

G. **Progress Reports**. Until construction of the Project has been completed, the Redeveloper shall make progress reports to the City's City Manager when milestone dates are achieved, or as requested by the City.

SECTION 6: REPRESENTATIONS OF THE REDEVELOPER.

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

A. **Organization and Authorization**. The Redeveloper is an Illinois Series Limited Liability Company duly organized and existing under the laws of the State of Illinois, and has power to enter into and by proper action has been duly authorized to execute and deliver this Agreement.

B. **Non-Conflict or Breach**. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of or any disclosure statement made or to be made on behalf of the Redeveloper or the City.

C. **Changes in Acquisition or Construction of Project**. No changes shall be made in the Project which will have the effect of impairing the permitted use or character of the Project as contemplated by this Agreement unless previously approved by the corporate authorities of the City and the Redeveloper.

D. **Conformance with Requirements and Regulations**. The Redeveloper has examined and is familiar with all the covenants, conditions, restrictions, building regulations and zoning ordinances, codes and land use regulations including, but not limited to, those referred herein affecting the Project Site and the Project and that the construction of the Project will in all respects conform to and comply with this Agreement and the permit issued by the City for construction. Provided, however, that the City acknowledges and agrees that Redeveloper is relying solely upon the representations herein contained which are made by the City and refer or relate to any of the referenced requirements and regulations.

SECTION 7: ADDITIONAL COVENANTS OF THE REDEVELOPER.

A. **Redeveloper Existence; Ownership and Operation of the Project**. The Redeveloper will do or cause to be done all things reasonably necessary to preserve and keep in full force and effect its existence as an Illinois Series Limited Liability Company, in good standing with the Illinois Secretary of State as long as the Redeveloper remains obligated to the City under this Agreement.

B. **Maintenance and Repair**. The Redeveloper agrees that it will keep the Project in good maintenance and repair as required by applicable City Codes.

C. **Further Assistance and Corrective Instruments**. The City and the Redeveloper 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 reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

SECTION 8: CONSTRUCTION OF THE PROJECT. Redeveloper shall cause construction of the Project to be commenced and to be prosecuted with due diligence and in good faith, and without delay in accordance with the provisions of this Agreement and the milestone schedule. Redeveloper shall cause the Project to be constructed in a good and workmanlike manner and in all respects in compliance with this Agreement and all applicable laws, rules, permits, requirements and regulations of any governmental agency or authorities having or exercising jurisdiction over the Property or the Project and will not cause, permit or allow any substantial deviations from this Agreement without the prior written consent of the City.

SECTION 9: EVENTS OF DEFAULT AND REMEDIES.

A. **Events of Default**. The following shall be Events of Default with respect to this Agreement:

1. If any material representation made by the City or Redeveloper in this Agreement, or in any certificate, notice, demand or request made by the City or Redeveloper, in writing and delivered to the other party pursuant to or in connection with any of said documents shall prove to be untrue or incorrect in any material respect; or

2. Default in the performance or breach of any covenant, warranty or obligation contained in this Agreement; or

3. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Redeveloper 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, custodian, trustee, sequestrator (or similar official) of the Redeveloper 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 for a period of sixty (60) consecutive days; or

4. The commencement by the Redeveloper 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 any such entity to the appointment of or taking possession by a receiver, liquidator, trustee, custodian, sequestrator (or similar official) of the Redeveloper or of any substantial part of such entity's property, or the making by any such entity of any assignment for the benefit of creditors or the failure of the Redeveloper generally to pay such entity's debts, as such debts become due or the taking of action by the Redeveloper in furtherance of any of the foregoing.

B. **Remedies on Default.**

1. In the event of any default or breach of this Agreement, or any of its terms or conditions, by either party hereto or any successors to such party, such party or successor shall, upon written notice from the other, take immediate action to cure or remedy such default or breach within thirty (30) days after receipt of such notice. If in such case action is not taken, or not diligently pursued, or the default or breach shall not be cured or remedied within ninety (90) days, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure or remedy such default or breach, including but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. Notwithstanding the preceding sentence, if a defaulting or breaching party takes immediate action to cure such default or breach and diligently pursues same, said party shall be allowed a reasonable time to cure said default or breach. The Parties shall have all other remedies provided by law and equity including, but not limited to, the right to damages, including in the case of Redeveloper's breach, reimbursement of any monies paid out for streetscape or façade improvements hereunder by the City.

2. In case the City shall have proceeded to enforce its rights under this Agreement and such proceedings shall been determined adversely to the City, then and in every such case the Redeveloper and the City shall be restored respectively to their several positions and rights hereunder; and all rights, remedies and powers of the Redeveloper and the City shall continue as through no such proceedings had been taken.

SECTION 10: OTHER RIGHTS AND REMEDIES OF THE CITY; NO WAIVER BY DELAY.

A. **No Waiver by Delay**. Any delay by a 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 the parties should not be constrained so as avoid the risk of being deprived or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches or otherwise) to exercise such remedy at a time when it may still hope to otherwise resolve the problems created by the default involved; nor shall any waiver in fact made by the a party with respect to any specific default by the other party under this Section be considered or treated as a waiver of the rights of a party, with respect to any other defaults by the other party under this Section or with respect to any defaults under any Section in this Agreement or with respect to the particular default, except the extent specifically waived in writing by a party.

B. **Rights and Remedies Cumulative**. The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party or any one or more of such remedies such not preclude the exercise by it, at the time or different times, of any other such remedies for the same default or breach by the other party. No waiver made by either such party with respect to

the performance, nor the manner of time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regardto any other obligations of the other party.

SECTION 11: DELAY IN PERFORMANCE.

Time is of the essence of this Agreement. For the purposes of any of the provisions of this Agreement, neither the City nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or to have defaulted in, its obligations assumed herein, in the event of delay in the performance of such obligation due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to acts of God, acts of public enemy, acts of Federal, State, or local government, acts of another party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, acts of nature, unusually severe weather or delays of subcontractors due to such causes, it being the purposes and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations shall be extended for the period of the delay; provided, that the party seeking the benefit of the provisions of this Section shall, within ten (10) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, of the cause or causes thereof.

SECTION 12. PAYMENT OF REAL ESTATE TAXES

The parties acknowledge that certain assumptions have been made relative to the future assessed valuation of the Project Site as improved pursuant to this Agreement. The parties further acknowledge that attaining and maintaining said assessed valuation will have a material effect on the revenues available to amortize the tax increment financing project costs (as defined in the City's Plan for Redevelopment of the Downtown TIF District, within which this Project Site lies). Accordingly, if the City is not in breach of this Agreement, the Redeveloper agrees it will not protest or object to any real estate tax assessment on the Project Site which protest or objection, if allowed, would reduce the fair market value below the current assessment plus the net cost of the Project. Within thirty (30) days of completion of the Project, Redeveloper will provide the City with the total Project costs. Nothing herein shall require a future tenant of the Project to refrain from any tax protest or objection otherwise permitted by its lease. The Redeveloper shall pay all real estate taxes when due on the Project Site. This obligation shall continue through the term of this Agreement.

SECTION 13: TERM.

The term of this Agreement shall be for ten (10) years from its date or until mutually terminated by agreement of the parties in writing, whichever is later. Provided, however, that if a covenant hereof is expressly controlled by duration language different from this general limiting section, then the particular will control.

SECTION 14: TITLES OF ARTICLES AND SECTIONS.

Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reverence only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 15: NOTICES.

All notices required and provided for in this Agreement shall be sent to the following parties on behalf of the City and the Redeveloper:

To the City:	City Manager City of Elmhurst 209 North York Street Elmhurst, Illinois 60126
With copies to:	Kenneth T. Kubiesa, City Attorney Kubiesa, Spiroff, Gosselar, Acker & DeBlasio, P.C. 105 South York Street, Suite 250 Elmhurst, Illinois 60126
To Redeveloper:	Willis G. Johnson, Manager 603-635 Rogers, LLC, York Second 603 Rogers Street Downers Grove, Illinois 60515
With copies to:	John Germanier, Esq. Sisul & Germanier, LLC 5120 main Street, Suite One Downers Grove, Illinois 60515

or to such other address(es) as any party may from time to time designate to the other party(ies) by written notice delivered in accordance with the terms of this Section. All notices shall run from the date received, and all notices shall be delivered by personal service or by certified or registered mail return receipt requested.

SECTION 16: ILLINOIS LAW AND VENUE.

This Agreement shall be construed pursuant to the laws of the State of Illinois. Litigation hereunder shall be properly filed and conducted only in the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois.

SECTION 17: SUCCESSORS AND ASSIGNS: Each of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their

respective heirs, executors, administrators, guardians, custodians, successors and assigns, subject to the provisions of this Agreement.

SECTION 18: ENTIRE AGREEMENT.

This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the Parties hereto and it supersedes all prior agreements, negotiations and discussions between the Parties relative to the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement and cause their respective seals to be **affixed** and attested thereto as of the date first written above in this Agreement.

CITY OF ELMHURST,
an Illinois Municipal Corporation,

By: _____
Mayor

603-635 Rogers, LLC, York Second, an
Illinois Series Limited Liability Company,

By: _____
Willis G. Johnson, Manager

ATTEST:

By: Patty Spencer
City Clerk

O-23-2008

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH MORNINGSIDE HAHN, LLC AND AUTHORIZING CONVEYANCE OF REAL ESTATE THEREUNDER

WHEREAS, the City of Elmhurst has heretofore approved a Tax Increment Development Plan and Project, designated the Tax Increment Redevelopment Project Area and adopted Tax Increment Financing all in accordance with 65ILCS 5/11-74.4-1 et seq. (hereafter the "Tax Increment Allocation Redevelopment Act"); and

WHEREAS, in accordance with the Tax Increment Allocation Redevelopment Act the City of Elmhurst may convey or dispose of land in the manner and at such price it determines to be reasonably necessary to achieve the objectives of the Redevelopment Plan and Project; and

WHEREAS, the City of Elmhurst owns certain real estate located within the Tax Increment Redevelopment Project Area commonly referred to as the Hahn Street Property as described on Exhibit "A" attached hereto and made a part hereof (hereafter "the Property"); and

WHEREAS, the City of Elmhurst has determined it is reasonably necessary to achieve the objectives of the Redevelopment Plan and Project that it convey the aforesaid real estate to Morningside Hahn, LLC pursuant to the terms and conditions of the Development Agreement, in a form substantially as submitted herewith and attached hereto as Exhibit "B"; and

WHEREAS, this conveyance is made pursuant to the authority granted by, and in full compliance with the requirements of the Tax Increment Allocation Redevelopment Act, and to that extent is an exception to all other rules, ordinances and statutes providing for the manner of such conveyance.

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Elmhurst, DuPage and Cook Counties, Illinois as follows:

SECTION 1. The Development Agreement by and between the City of Elmhurst and Morningside Hahn, LLC dated this date and as submitted to this meeting is approved and the conveyance of real estate as described therein and in accordance with the terms and conditions thereof is hereby authorized.

SECTION 2. The Mayor is hereby authorized and directed to sign and the City Clerk is hereby authorized and directed to attest to the Development Agreement, in a form in all material respects as attached hereto as Exhibit "B" and approved by the Cit Attorney.

SECTION 3. In accordance with the terms of the aforesaid Agreement, the Mayor is hereby authorized and directed to convey and transfer the aforesaid real estate to Morningside Hahn, LLC or its nominee by a proper deed of conveyance, at the time of closing as requested by the Development Agreement, and the City Clerk is hereby authorized to acknowledge and attest such deed and to affix thereto the seal of the City of Elmhurst.

SECTION 4. The Mayor and the City Clerk are hereby authorized to execute and attest such

other documents as may be necessary for compliance with the aforesaid Agreement and conveyance herein authorized.

SECTION 5. The recitations contained in the preamble of this ordinance are hereby incorporated herein. All ordinances or parts of ordinances in conflict with this ordinance are to the extent necessary, hereby amended so that the City's acts authorized hereby are in full compliance with applicable law including the City's ordinance and rules.

SECTION 6. This ordinance shall be in full force and effect from and after passage and publication according to law.

Approved this 21st day of July, 2008.

Thomas D. Marcucci, Mayor

Passed this 21st day of July, 2008.

Ayes: 8 Nays: 6

Patty Spencer

Patty Spencer, City Clerk

H:Kathy/Elmhurst/ordinance/approving agmt morningside hahn llc

Copies To All
Elected Officials
7-03-08
7-17-08

COUNCIL ACTION SUMMARY

DATE: July 17, 2008

SUBJECT: Ordinance – Approving a Development Agreement with Morningside Hahn LLC and Authorizing Conveyance of Real Estate Thereunder

ORIGINATOR: City Manager / City Attorney

DESCRIPTION OF SUBJECT MATTER:

Attached for Council consideration is an ordinance that approves the Development Agreement (DA) between the City of Elmhurst and Morningside Hahn, LLC, Inc. for the Hahn Street properties. Also attached is a revised draft DA dated July 17, 2008. Revisions are non-substantive and changes made were simple corrections for clarity and accuracy. The DA exhibits, as distributed to the City Council at the meeting of July 7th, have not changed.

The material terms of the DA are as follows:

1. To build a mixed use, retail and residential condominium development at a construction cost of $36.3 million on the Hahn Street properties and the Pauli property (hereinafter the "Subject Property"); and
2. To purchase the Pauli property in accordance with its purchase contract and include it in the Subject Property; and
3. To construct the redevelopment according to a plan that will be substantially as presented in Morningside's response to the City's RFP and as approved by the City in general conformity to that response with changes therein as are approved by the City through the Planned Development zoning process. The site plan as originally presented remains unchanged, however, the number of condo units increases from 82 to 102 units, the number of townhomes remains unchanged, and the total number of residential parking spaces decreases from 223 to 175 (109 units x 1.6 cars/unit = 175 proposed spaces).
4. The developer will agree to restrict 80% of the retail space to uses generating sales tax as defined by the DA; and
5. Developer will agree to restrict its ability to challenge real estate tax assessments or rates for the Subject Property; and
6. The developer will remediate the contamination of the Pauli Property; and
7. The developer will insure and indemnify the City against claims arising during construction of the redevelopment or as a result of the DA; and
8. Developer will secure its performance obligations under the DA by letters of credit, bonds, liens in favor of the City and the right of reverter or some combination thereof as the City determines; and
9. The developer will pay the City a share of its "excess profits" according to this formula:

   12.5% from 10% to 12.5% Internal Rate of Return ("IRR")
   40% if IRR is over 12.5% to 15%
   50% if IRR is over 15%; and

10. The developer will construct public improvements including retail parking spaces, 100 public parking spaces, a plaza and streetscaping.

The City's obligations will be:

1. To convey the Hahn Street properties to the developer; and
2. Pay $2.1 million or less to the developer to reimburse him for the cost of purchasing the Pauli property based upon an appraisal by an appraiser chosen by the City; and
3. Pay from TIF funds for the permit fees, zoning application fees, real estate transfer tax and impact fees; and
4. Establish an escrow account into which the City's payment for the Pauli property and the construction loan proceeds will be deposited and paid out for construction. Reports to the City and an accountant's review of that escrow account will insure that amount of "excess profits" paid to the City are correctly calculated; and
5. If the developer defaults under the DA, the City may require reverter of title or recover on bonds or letters of credit provided by Morningside.

COPY

DEVELOPMENT AGREEMENT PERTAINING TO THE HAHN STREET PROPERTY IN THE DOWNTOWN REDEVELOPMENT PROJECT AREA OF THE CITY OF ELMHURST

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made this 21st day of July, 2008, by and between the **CITY OF ELMHURST,** an Illinois municipal corporation (the "City"), and **MORNINGSIDE HAHN LLC,** an Illinois Limited Liability Company ("Developer").

PREAMBLES

WHEREAS, the City has heretofore determined that it is in the public interest to adopt and has adopted a Tax Increment Redevelopment Plan and Project (the "Plan"), pursuant to the Tax Increment Allocation Redevelopment Act 65 ILCS 5/11-74.4-3, *et al* (the "Act"), for the Downtown Redevelopment Project Area (the "Redevelopment Area"), within its Downtown Tax Increment Financing District ("TIF I"); and

WHEREAS, the City is the fee record owner of the "Hahn Street Property", which is currently improved with office buildings and public parking and includes the Hahn Street and north/south alley right-of-way, located within TIF I and is legally described in Exhibit "A" attached hereto; and

WHEREAS, the Developer is the contract purchaser of the "Pauli Property" pursuant to a Purchase Agreement dated March 14, 2007 and amendments thereto. The Pauli Property is located within TIF I and is also legally described on Exhibit "A" attached hereto; and

WHEREAS, the City issued a request for proposals (the "RFP") seeking a developer for the redevelopment of the Hahn Street Property and Pauli Property (collectively, the "Subject Property"), the Developer responded to the City's RFP, and, after proper review and

consideration, the City chose the Developer to redevelop the Subject Property as more fully described in this Agreement; and

WHEREAS, Developer would not proceed to redevelop the Subject Property without the adoption of the Plan, the designation of the Redevelopment Area and establishment of the Downtown Redevelopment District ("TIF I"); and

WHEREAS, Developer, as a part of the Redevelopment (as hereinafter defined), will construct and convey to the City by dedication or deed, certain Public Improvements (as hereinafter defined), including, but not limited to, public parking spaces, easements for access thereto, a public plaza and other streetscape improvements; and

WHEREAS, the Subject Property is presently located within the C-4A Zoning District of the City and the parties intend that it will remain therein subject to a Planned Development Conditional Use approved therefore by ordinance ("Planned Development" or "PD"), so as to permit the Redevelopment and use of the Subject Property as described in this Agreement; and

WHEREAS, to implement the Plan, it is necessary that the City enter into this Agreement with Developer in order, inter alia, to provide for the Redevelopment of the Subject Property in a manner which will further the Plan and the objectives of TIF I; and

WHEREAS, Developer, by this Agreement, agrees to construct the buildings, parking areas and other Public Improvements at an estimated cost of construction of $36,300,000; and in substantial conformity with the Planned Development as approved by the City; and

WHEREAS, the Redevelopment of the Subject Property is in the public interest in that it will enhance the City's tax base and revenue, create an environment within the Redevelopment Area which will contribute to the welfare of the City, preserve or enhance property values in the vicinity of the Redevelopment Area, strengthen the economic well-being of the Redevelopment

Area and the City by achieving development which functionally complements the adjacent properties and uses; and

NOW, THEREFORE, in consideration of the mutual promises and representations hereinbefore and hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1

INCORPORATION OF PREAMBLES; DEFINITIONS

1.1 **Preambles**. The preambles set forth above are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out herein.

1.2 **Definitions**. In addition to the words and phrases defined above and elsewhere herein, the words and phrases set forth in this section, as used in this Agreement, shall have the following meanings unless the context or use indicates another or different meaning and intent:

1.2.1 **Agreement**. This Development Agreement.

1.2.2 **Certificate of Occupancy**. A Certificate issued by the City from time to time at the request of Developer upon substantial completion permitting occupancy and complying with Legal Requirements.

1.2.3 **Closing**. The time of conveyance of the Hahn Street Property from the City to Developer.

1.2.4 **Condominium Act**. The Illinois Condominium Property Act, 765 ILCS 605/1 *et seq.*

1.2.5 **Developer's Response to RFP**. The Developer's response to the City's RFP, which with revisions is attached hereto as Exhibit "B".

1.2.6 **Development Schedule**. Developer's estimated schedule for zoning approval of the Planned Development, Final Plan approval, issuance of building permits and construction of the Redevelopment of the Subject Property, including a date of Final Completion, as set forth in Exhibit "C" attached hereto, or as such schedule may be extended per Section 3.11-11D of the Zoning Ordinance or otherwise as allowed in the Agreement.

1.2.7 **Escrow**. An escrow account established by escrow agreement at a mutually acceptable title company as described in paragraph 3.10 herein.

1.2.8 **Final Completion**. The time at which the Redevelopment is completed as reasonably determined by the City, which shall not be earlier than issuance of Certificates of Occupancy and the City's acceptance of Public Improvements.

1.2.9 **Final Plan**. The final plan of the Planned Development as approved in accordance with Section 3.2 herein.

1.2.10 **Hahn Contract**. The real estate purchase contract between Developer and the City for the Hahn Street Property dated within thirty (30) days of this Agreement.

1.2.11 **Highway Agreement**. The Highway Authority Agreement entitled "Tiered Approach to Corrective-Action Objective Agreement" between AMOCO Oil Company and the City of Elmhurst dated February 27, 2001.

1.2.12 **Information Center Building**. The building at 236 N. York Street on the Subject Property to be used by the Developer as a pre-construction sales office for the

Redevelopment per Subsection 3.8.3 herein, including placement of signs thereon in conformity with Legal Requirements.

1.2.13 **Legal Requirements**. All laws including the TIF Act, rules, regulations, ordinances, orders, decrees and judgments of any governmental body, agency, department, or court having jurisdiction of the subject matter involved, including, without limiting the foregoing, applicable ordinances, and rules and regulations of the City, including but not limited to the Zoning and Subdivision Ordinances, this Agreement and the City's ordinance establishing the Planned Development.

1.2.14 **Pauli Contract.** The real estate purchase contract dated March 14, 2007 and amendments thereto between Developer and owners of the Pauli Property.

1.2.15 **Preliminary Plan**. The land use and site plan included as part of the Developer's Response to the RFP, and any revisions thereto that may be approved during the Plan Commission and City PD approval process consistent with Sec. 9.1.1 of this Agreement.

1.2.16 **Public Improvements.** The public plaza, access easements or rights-of-way, one hundred (100) public parking spaces and streetscape as set out in the Planned Development.

1.2.17 **Redevelopment**. The development to be constructed by Developer within the Redevelopment Area on the Subject Property, as shown in the Preliminary Plan and Final Plan and pursuant to this Agreement.

1.2.18 **Subdivision Ordinance**. Chapter 23 of the Elmhurst Municipal Code.

1.2.19 **TIF Act**. The Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*

1.2.20 **Zoning Ordinance**. Chapter 22 of the Elmhurst Municipal Code.

ARTICLE 2

REPRESENTATIONS; INFORMATION TO BE PROVIDED

2.1 **City Representations**. The City hereby represents and warrants that it has full lawful right, power and authority, under currently applicable law and in accordance with its powers as an Illinois Home Rule municipality, to execute, deliver and perform the terms and provisions of this Agreement; that this Agreement has been duly and validly authorized and approved by all necessary City proceedings; and that this Agreement is valid, binding and enforceable against the City in accordance with its terms. The City also represents that to the best of its knowledge and belief, Developer will not be obligated to the City or any other local government including the County of DuPage for any impact fee not disclosed in this Agreement; there will be no relocation of traffic signals required by the City to develop the Subject Property except as provided herein; and water and sewer facilities adequate to serve the Subject Property are available in adjacent rights-of-way.

2.2 **Developer's Representations**. Developer hereby represents and warrants that it is an Illinois Limited Liability Company in good standing under the laws of the State of Illinois, and is duly qualified to do business in the State of Illinois; that it has full lawful right, power and authority, under currently applicable law, to execute, deliver and perform the terms and provisions of this Agreement as Developer of the Subject Property; that this Agreement has been duly and validly authorized and approved by all necessary corporate proceedings; and that this

Agreement is valid, binding and enforceable against Developer, or its successors or assigns, in accordance with its terms. Developer further represents that there are no actions of law or similar proceedings which are pending or threatened against Developer or any of its members or managers which might result in any material or adverse change in its financial condition that would affect its financial ability to carry out its obligations under this Agreement. Developer hereby represents to the City that it has the financial strength to obtain the financing to construct the Redevelopment, and perform its obligations under this Agreement.

2.3 **Disclosure of Shareholders and Officers of Developer.** Developer has on or prior to the date of this Agreement disclosed in writing to the City and the City Manager, all the members, managers, and any officers of Developer, and the percentage of interest owned by each of them.

ARTICLE 3

OBLIGATIONS OF THE DEVELOPER FOR REDEVELOPMENT OF THE SUBJECT PROPERTY

3.1 **Mixed Use Development**. Developer shall be obligated to develop townhouses, residential condominiums, retail space, and parking on the Subject Property, all in substantial conformity with the Preliminary Plan, Developer's Response to RFP, the requirements of this Agreement, the PD and the Final Plan. The Preliminary Plan shall be part of the ordinance approving the PD and shall substantially conform to Developer's Response to RFP (Exhibit "B") unless the City approves changes to the Preliminary Plan as included in the ordinance approving the PD. Construction of the Redevelopment shall follow the Development Schedule set forth in Exhibit "C" as may extended pursuant to Section 3.11-11D of the Zoning Ordinance or otherwise allowed in this Agreement.

3.2 **Preliminary and Final Plan for Planned Development**. Developer will apply to the City for Plan Development approval for the Redevelopment. Developer's Response to the RFP will become the Preliminary Plan for the Planned Development without any substantial changes thereto except as approved by the City and agreed by Developer. The Final Plan may contain such modifications to the Preliminary Plan as Developer reasonably elects, so long as it substantially conforms to the Preliminary Plan, the Zoning Ordinance, the Subdivision Ordinance and any other Legal Requirements. The City shall administratively review the draft Final Plan and other documents, including, but not limited to the condominium declaration of covenants, restrictions and easements, to determine substantial conformity to this Agreement, Exhibit "B", the Zoning Ordinance, the Subdivision Ordinance and any other Legal Requirements. "Administrative review" as used above means review by the City Manager or other appropriate City staff as determined by the City Manager. If the draft Final Plan and documents aforesaid are not in substantial conformity with the Preliminary Plan, Zoning Ordinance, the Subdivision Ordinance and Legal Requirements, the City Manager shall disapprove and notify Developer of the reasons therefore so that Developer can make corrections and re-submit for certification. The City Manager shall approve or disapprove the draft Final Plan and documents aforesaid, within ten (10) business days of its submittal to the City. If the Final Plan is so approved by the City Manager, he shall forward it to the City's Zoning and Planning Commission for certification as required by Section 3.11-11B.3. of the Zoning Ordinance.

3.3 **Planned Development Application**. The Zoning and Planning Commission will conduct the necessary public hearing for PD approval upon the Developer's application

therefore, and the City Council shall render a decision on such application promptly after the recommendation of the Zoning and Planning Commission. The City and Developer shall promptly and with due diligence begin performance of each obligation under this Agreement upon passage and the City's approval of this Agreement.

3.4 **Permits**. The City shall cooperate with Developer in securing all such necessary permits, approvals, consents, documents and plats and, after Developer has properly applied to the City therefore and is in compliance with the terms of this Agreement and the Planned Development. The City thereupon shall promptly issue all permits required to be issued by the City. The City further agrees to sign all applications, requests, permits, documents or plats which require execution by the City, provided they are in proper form and comply with the Final Plan, drawings and Legal Requirements. Upon execution of this Agreement, there shall be no unreasonable or discriminatory increases, or unreasonable or discriminatory changes in the method of calculation of the respective building permit fees, sewer or water tap-on fees, inspection fees or any other fees or charges of the City to be paid by Developer, as compared to such City fees or charges in effect as of the date on which this Agreement was approved by all parties hereto. Requirements of the City's Building Code currently as in effect as of the date of this Agreement shall apply to Redevelopment under this Agreement.

3.5 **Completion**. Subject to Permitted Delays and delays allowed by the City Manager under the provisions of this Agreement, Developer agrees that it will complete the Redevelopment not later than the dates for Final Completion therefore in the Development Schedule (Exhibit "C"). If Developer fails or refuses to finally complete the Redevelopment as aforesaid within the time limits set forth herein or otherwise defaults hereunder or terminates this

Agreement before Final Completion, Developer agrees that the Subject Property shall revert to the City and the Pauli Property shall be conveyed to the City, all as provided in Sections 4.9 and 9.4 herein and in the deeds of conveyance of the Hahn Street Property from the City to Developer.

3.6 **Delays Allowed by City Manager.** Notwithstanding anything to the contrary contained herein, including the Development Schedule, the City Manager will, at the request of Developer, delay any date for performance or termination hereunder, including, but not limited to dates for the commencement or completion of construction or otherwise as set out in the Development Schedule. Any such delay approved by the City Manager will be for a reasonable time period under the circumstances then prevailing, and such delay will be granted for good cause reasonably determined by the City Manager. However, the parties agree that delays which are caused for those reasons set forth in Sec. 7.1 of this Agreement shall establish good cause for this purpose.

3.7 **Certificates of Occupancy**. The City shall issue Certificates of Occupancy individually for each tenant space in the retail building and each residential unit as each is substantially completed in accordance with the Legal Requirements applicable thereto.

3.8 **City's Incentives to Developer**. The City shall provide certain incentives to Developer as follows:

3.8.1 **Waiver of Application and Permit Fees.** On behalf of the Developer, the City using TIF I funds, will pay all City or County assessed zoning application fees, permit fees, real estate transfer taxes and impact fees to the school districts and park district, if any, due on account of the Redevelopment. TIF I will also pay any excess

over $100,000 paid by the Developer for utility relocation costs including capping or removal of overhead wires and existing utility lines and equipment from the Subject Property so that all utilities are underground at Final Completion.

3.8.2 **Purchase Price of Pauli Property.** Pursuant to Article 4 herein, the City will deposit into Escrow the following:

a. The third party costs incurred by Developer in connection with its purchase of the Pauli Property, including appraisal costs, all estimated to be less than $100,000, but in no event more than that amount, except if the excess over $100,000 would significantly reduce profits as calculated under Sec. 3.12 herein; and

b. The lesser of either: (i) Two Million Dollars ($2,000,000); or (ii) the value of the Pauli Property as of the March 14, 2007 date of the Pauli Contract as determined by an appraiser who is chosen by the City and approved by the Developer.

The City's deposits will be as aforesaid paid into Escrow for the use of Developer to pay all or a portion of the purchase price for the Pauli Property as required by the Pauli Contract.

3.8.3 **Use of Information Center Building.** Upon the City's approval of the Preliminary Plan, the Developer may use and occupy the Information Center Building without charge by the City and post marketing signs on the Hahn Street Property. The Developer hereby indemnifies and holds the City harmless against any claim or damage arising from such use or occupation, and agrees to provide insurance coverage as

approved by the City and pay whatever costs may be attributable to that use and occupancy including real estate taxes which may be assessed against that property during Developers use and occupancy thereof.

3.8.4 **Conveyance of the Hahn Street Property.** The City shall convey the Hahn Street Property to Developer at Closing in accordance with Article 4 of this Agreement.

3.9 **Establishment and Operation of Escrow.** Prior to the Developer's purchase of the Pauli Property and the Closing, the Developer and City shall establish Escrow accounts by entering into an escrow agreements with a mutually acceptable title company (the "Title Company" or "Escrowee") which shall act as escrowee for the purposes of facilitating the Closing, accepting, documenting and disbursing Developer's contributions, loan proceeds and other revenues, and expenses including but not limited to all hard and soft costs relating to Redevelopment, and for providing reports thereof to the City. The title company shall record documents including any security interest to or from the City and an Escrow shall hold deeds from Developer to the City as may be necessary to convey the Subject Property to the City in the event of Developer's default or the termination of this Agreement before Final Completion. The parties shall share equally, the costs of the Escrows for two (2) years from Closing and thereafter if any Escrow continues, the City shall pay its cost.

3.10 **Construction, Maintenance and Guarantee of Public Improvements.** The Developer shall construct the Public Improvements in accordance with the Subdivision Ordinance and applicable Legal Requirements and shall post a letter of credit at the time that construction permits are issued by the City based on an engineer's estimate as therein provided. If the cost for that letter of credit exceeds a reasonable estimate therefore by SB Freidman, if

issued on or about September 30, 2007, the City shall pay the excess over that amount, or may determine that the letter of credit is not required. At the time of acceptance of the Public Improvements by the City, the City shall release the letter of credit, if any, and Developer shall provide a letter of credit bond or other security reasonably determined by the City, to guarantee the maintenance of those Public Improvements as required by the Subdivision Ordinance and Legal Requirements. The regular maintenance of the public parking spaces that are part of the Public Improvements, after acceptance thereof by the City, shall be provided by Developer or its successor or assigns, as set out in the condominium declaration of covenants, restrictions and easements for the Subject Property which shall also provide for the City's payment of its fair share of said maintenance costs. That condominium declaration shall be approved by the City Attorney prior to its recordation at Closing. The maintenance of the streetscape and plaza and the cost thereof shall be the City's sole responsibility. The City shall pay for and maintain any and all directional, identification, security and parking control signs and devices it deems necessary to control access to and from parking in the public parking spaces. The condominium declaration shall provide for this right of the City to place these signs or devices at location on the Subject Property as it deems necessary.

3.11 **Retail Use of Subject Property.** At least eighty percent (80%) of the available rentable retail space in the Redevelopment shall be used for the primary purpose of retail sales that result in City sales or use tax payable to the City. "Primary use for retail sales" as used in this Section means that the majority of the revenue generated from each retail premises in the Redevelopment shall be from sales that result in sales or use taxes to the City under applicable state law and City ordinance currently in effect. The Developer or its successor or assign shall

give the City thirty (30) days prior written notice of any retail lease that would be subject hereto. This covenant and requirement shall run with the land, and remain enforceable by the City until the termination of TIF I on or about March 1, 2021.

3.12 **Excess Profit.** The Developer shall pay to the City, a portion of its profits from the Redevelopment in accordance with the schedule below. Calculations of profits will be performed utilizing a standard IRR financial model calculating return based on Developer's equity invested and all net proceeds from the sale of commercial space and condominium residences. In the event the Developer does not sell the commercial component of the Subject Property, the computation shall be made upon the sale of all of the residences being sold as part of the Redevelopment. The formula is as follows:

a. If the Internal Rate of Return ("IRR") is 10% to 12.5%, then 12.5% of that profit shall be paid to the City; and

b. If the IRR is over 12.5% to 15%, then 40% of that profit shall be paid to the City; and

c. If the IRR is over 15%, then 50% of that profit shall be paid to the City.

The IRR calculation and computation of the excess profit payment by the Developer to the City hereunder, shall be made by an accounting firm selected by the City and approved by Developer. The cost therefore shall be shared equally by the City and Developer. That calculation and computation shall be made in accordance with the method set out in the S.B. Friedman Report attached hereto as Exhibit "D" and only after the aforesaid accounting firm conducts a review of the Escrow's books and records and reports to the City regarding the income and expenses for the Redevelopment. These Escrow records shall include documentation of residential sales, and

commercial leases, or any other documentation deemed necessary by the Escrow and used to make the aforementioned computation. To the fullest extent legally possible, the materials cited above including the appraisal of the Pauli Property shall be deemed proprietary and not subject to the Freedom of Information Act. The Excess Profit contemplated in this Section 3.13, if any, shall be paid to the City upon the closing of the sale of the last residential unit or two (2) years after the Closing, whichever is later, but in any event, no later than four (4) years after Closing.

ARTICLE 4

LAND CONVEYANCE TERMS

4.1 **Scope of Article**. This Article governs the conveyance of the Hahn Street Property and the funding the Purchase Price of the Pauli Property, both of which are necessary for the Redevelopment, and this Article establishes all terms and conditions thereof.

4.2 **Time of Conveyance of Hahn Street Property by City**. The City shall convey the Hahn Street Property to Developer at the time that the construction loan for the Redevelopment is initially funded.

4.3 **Hahn Contract.** The terms and conditions of the conveyance of the Hahn Street Property to the Developer at Closing will be fully described in a standard commercial real estate contract between the parties which will be consistent and in conformity with the terms and conditions of this Agreement and dated within thirty (30) days of the date of this Agreement.

4.4 **Security for Construction Financing**. Prior to Closing, and upon notice from Developer, the City will take whatever action is reasonably necessary to allow Developer's lender to secure its construction financing for the development against the Hahn Street Property,

including as the lender might reasonably require, a lien or encumbrance against the Hahn Street property.

4.5 **Consideration for Hahn Street Property Conveyance**. As and for the consideration to the City for its conveyance of the Hahn Street Property to Developer, the City's financial assistance in acquiring the Pauli Property, and its agreement to allow Developer's lender security against the Hahn Street property, Developer shall convey or dedicate to the City as it so directs and in conformity with the Condominium Act, the Public Improvements including the one hundred (100) public parking spaces, access easements,, the Public Improvements, and streetscape (except trees, tree grates and light poles to be provided by the City) within the Redevelopment and on the Subject Property.

4.6 **Funding of Pauli Property**. The City agrees to pay into Escrow the earnest money deposit, if any, and the purchase price of the Pauli Property per Section 3.8.2 hereof, at or before the Developer closes on its purchase of Pauli Property pursuant to the Pauli Contract.

4.7 **Remediation of Pauli Property**. Under the terms of this Agreement, during construction of the Redevelopment it will be the Developer's obligation to complete any and all remediation within the boundaries of the Pauli Property and in compliance with state and federal law. It is contemplated between the parties that any contaminates that fall within the right-of-way of York Street, alleys or other City rights-of-way within or adjacent to the Redevelopment after remediation by Developer, will be retired in place, in conformity with Illinois law, the Highway Agreement, and permits issued by the Illinois Environmental Protection Agency. After retirement in place, neither the Developer nor its successors or assigns shall be liable for contaminants remaining within the aforementioned right-of-way pursuant to this Agreement.

4.8 **Representations and Warranties**. The parties to this Agreement hereby represent and warrant to one another, as further consideration, and as an inducement to enter into this Agreement, that as of the date on which they each respectively execute this Agreement, and on and as of the Closing date, all representations and warranties made herein are true and correct; the information included in any documents required hereunder to be delivered to either party to this Agreement shall be true, correct and complete in all material respects; there are no claims, causes of action or other litigation or proceedings pending or, to the best of their respective knowledge, threatened in respect to the subject matter of this Agreement, or the ownership, operation or environmental condition, except matters referred to in the Highway Agreement, of the Subject Property or any part thereof; there are no violations of any health, safety, pollution, environmental, zoning or other Legal Requirements concerning the Subject Property which have not been heretofore corrected prior to Closing; they have not dealt with any broker or finder with respect to the real estate transaction contemplated by this Article, and hereby indemnify one another for any claim for a brokerage commission or finder's fee asserted by any person claiming to have been engaged by either of them; and there are no unpaid general or special real estate or other ad valorem taxes, fees, charges or assessments against the Subject Property.

4.9 **Reverter of Hahn Street Property.** As to the Hahn Street Property, after Closing and in the event that Developer fails to finally complete the Redevelopment as required under this Agreement, or by such other date to which the date of Final Completion has been extended per the terms of this Agreement, then the City may give notice to Developer or its successors and assigns and to the Escrow to record the deed of reconveyance of title to the City. The City's deed to Developer shall include this right of reverter. Notwithstanding anything to

the contrary in this Agreement or the deed, the right of the City to reverter shall remain junior, subject and subordinate to the rights of any lender of construction or end-loan financing, and Developer shall require that any such lender agree in its loan documents for the Project, which the City shall approve, that it release its mortgage and other security if the City causes full payment of outstanding principal interest, costs and penalties attributable to the project to be made to that lender at or after the aforesaid time of failure of Developer to substantially complete and the notice of reverter is given by the City.

4.10 **Discrepancies in Descriptions**. The parties intend that the description of the Hahn Street Property in Exhibit "A", herein includes all of the real property and all interest held by the City therein, including the vacated Hahn Street and the north/south alley within the Subject Property, but not any other alleys or rights-of-way therein. Accordingly, if prior to delivery of the deed under subparagraph 4.5 of this Agreement, it appears that the legal descriptions do not include or correctly describe such real property or interests therein, the legal description thereof shall be modified to correctly describe the same.

4.11 **Other Terms of Conveyance**. This Article shall be governed by and construed in accordance with the laws of the State of Illinois. Time is of the essence of this Agreement.

ARTICLE 5

INDEMNITY

5.1 **Indemnification of City**. Developer agrees to indemnify, pay the City's attorneys' fees for defense if not paid by insurance, and hold harmless the City, its Mayor, Aldermen, employees, agents, representatives and attorneys, in both their official and individual

capacities, from and against all claims, causes of action and suits of every kind and nature, including liabilities, damages, costs and expenses by reason of:

5.1.1 A failure by Developer to perform any obligation provided herein; and

5.1.2 A claim for personal injury or property damage arising by reason of any activity relating to the examination, inspection, measuring or testing or any construction activity on the Subject Property; and

5.1.3 A claim for personal injury or property damage after reverter of the Hahn Street Property or conveyance of the Pauli Property to the City, arising by reason of Developer's construction in or alterations of the Subject Property or change to its environmental condition while Developer held title to those properties; and

5.1.4 Any intentional violation of the Act or other Legal Requirement by Developer;

Hereinafter singly or collectively referred to as a "Claim" for the purpose of this Article, other than a Claim arising out of the City's own negligence. The City shall give Developer notice of any Claim, and with respect to a Claim for moneys owed by Developer to the City, Developer shall make payment of such Claim or contest the same within fifteen (15) days from the date of such notice. In the event Developer does not make timely payment or contest, the City shall have all remedies at law or equity for the collection thereof, including enforcement costs, all of which remedies may be exercised against Developer concurrently or consecutively, or in such other manner and sequence as may be determined by the City.

5.2 **Indemnification of Developer**. City agrees to indemnify, pay the Developer's reasonable attorneys' fees for defense if not paid by insurance, and hold harmless the Developer,

its members and officers, from and against all claims, causes of action and suits of every kind and nature, including liabilities, damages, costs and expenses by reason of:

5.2.1 A failure by City to perform any of act required of it under this Agreement; and

5.2.2 Any violation of the Act or other Legal Requirement by City alleged by a third party;

These are singly or collectively referred to as a "Developer Claim" for the purpose of this Article, other than a Developer Claim arising out of the Developer's own negligence. The Developer shall give City notice of any Developer Claim, and with respect to a Developer Claim for moneys owed by City to Developer, City shall make payment of such Developer Claim or contest the same within fifteen (15) days from the date of such notice. In the event City does not make timely payment or contest, the Developer shall have all remedies at law or equity for the collection thereof, including enforcement costs, all of which remedies may be exercised against City concurrently or consecutively, or in such other manner and sequence as may be determined by the Developer.

5.3 **Required Insurance**. Developer shall purchase and maintain such insurance as may protect Developer, and the City, its officers, agents, and employees as additional insureds, to the extent possible, from the Claims as set forth in paragraph 5.1, and shall provide the City a certificate of insurance for the City's approval within twenty one (21) days after both parties approve this Agreement. The certificates required by this Paragraph shall contain a provision that coverage will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the City. Such certificate shall be delivered to the City prior to Developer, its agents, consultants or contractors entering onto the Hahn Street Property.

ARTICLE 6

PAYMENT OF REAL ESTATE TAXES

6.1 **Assessed Valuation**. The parties acknowledge that certain assumptions have been made relative to the future market value and assessed valuation of the Subject Property, as improved pursuant to this Agreement under the Act, and further acknowledge that attaining and maintaining such assessed valuation will have a material impact on the revenues available to amortize tax increment financing costs in the Redevelopment Area in accordance with the Plan. Accordingly, Developer hereby covenants to develop and use the Subject Property as provided herein. This covenant shall run with the land, and be binding and enforceable against Developer's successors and assigns for a period of twenty (20) years.

6.2 **Restrictions**. Developer agrees that while it owns that part of the Subject Property devoted to residential uses and prior to conveyance to the residential users, it will not protest or object to any real estate tax assessment on that part of the Subject Property in any manner that would reduce the assessed value of that part of the Subject Property, except to correct errors of the Assessor. As to the retail premises, the Developer agrees that it or its successor in title, will not protest or object to any real estate tax assessment through the 2013 tax year. Developer further agrees that it will not file any tax rate objection or protest as to the Subject Property through the 2013 tax year.

ARTICLE 7

OCCURRENCES CONSTITUTING PERMITTED DELAYS

7.1 **Permitted Delays.** Performance by Developer hereunder shall not be deemed to be in default where delays or defaults are due to force majeure, the fault of the other party, war, unusual weather conditions, oncoming seasonal weather conditions, significant real estate market

conditions for residential condominiums or the inability of Developer to secure construction financing for the Development, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation, and which make it reasonable to delay any date for performance or construction in the Development Schedule, or Final Completion of the Redevelopment ("Permitted Delays"). An extension of time for any such cause shall be as determined by the City Manager and as required under Section 3.6 hereinabove, and be for no longer than the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice claiming such extension is sent to the City not more than thirty (30) days after the commencement of the cause or not more than thirty (30) days after the Developer could have first reasonably recognized the commencement of the cause, whichever is later.

ARTICLE 8

TERMINATION

8.1 **Developer's Termination.** The parties agree that the Developer may terminate this Agreement within two (2) years of the City's approval of the Planned Development and upon prior written notice to the City, only if Developer is unable to fund the construction loan for the Redevelopment for the reason that, even after making all reasonable efforts to market the sale of the residential condominiums or lease of retail space in the Redevelopment prior to construction as set out in Section 9.1.2 hereinbelow, the Developer has not met the pre-construction sales or leasing requirements of its construction lender. If Developer terminates pursuant to this Section, the City will reimburse the Developer for any real estate taxes it pays for the Subject Property subsequent to said termination, and the Developer will take appropriate action at the City's

option to cause conveyance of the Pauli Property and/or reverter of the Hahn Street Property to the City as provided by the Agreement and the Escrow.

8.2 **City's Termination.** The City may terminate this Agreement for any reason after two (2) years of the City's approval of the Planned Development, upon thirty (30) days prior written notice to Developer. If the City terminates this Agreement pursuant to this Section, the Developer will take appropriate action at the City's option to cause conveyance of the Pauli Property and/or reverter of the Hahn Street Property to the City as provided by this Agreement and the Escrow.

ARTICLE 9

REMEDIES-LIABILITY

9.1 **Remedies.**

9.1.1. This Agreement obligates the City to do the following (the "City Obligations"), all subject to the terms and conditions of this Agreement:

a. Allow the construction lender security in the Hahn Street Property; and

b. Convey the Hahn Street Property to the Developer;

c. Fund the Purchase Price for the Pauli Property; and

d. Issue permits in accordance with the Legal Requirements, subject to any written agreement by the City to waive or modify fees.

e. Timely processing, review and approval of the Planned Development, including the Preliminary Plan. In the event that processing of the PD through the Plan Commission and City Council results in an increase in

construction costs required by the City that would significantly reduce profits as calculated in Sec. 3.12 herein, then the City shall pay that extra cost.

In the event the City fails to reasonably perform any of the City Obligations under this Agreement, the Developer shall have the right, but not the obligation, as its sole and exclusive remedy, to seek specific performance. If Developer is successful in its claim for specific performance, Developer shall also be entitled to reasonable court costs and attorneys' fees associated with pursuing the same.

9.1.2. This Agreement obligates the Developer to do the following (the "Developers Obligations"), all subject to the terms and conditions of this Agreement, as follows:

a. After approval of the PD, conduct commercially reasonable pre-construction marketing for a minimum of six (6) months, for the residential condominiums and retail space so as to achieve sales and leasing commitments that may be required by the Developer's construction lender for funding of the construction loan; and

b. Construct the Redevelopment pursuant to the PD and Development Schedule; and

c. Build and convey to the City the Public Improvements, including but not limited to, the public plaza, streetscape and the 100 public parking spaces.

In the event Developer fails to perform any of the foregoing Developer Obligations or other obligation under this Agreement, except for reasons sufficient for delay under Section 3.6 above, the City shall have the right, but not the obligation, to institute legal action to cure, correct or remedy any Developer Default, to recover damages for any Developer Default, or to obtain any

other remedy consistent with the purposes of this Agreement, at law or in equity. In the event City shall institute legal action because Developer breached any of the Developer Obligations, and a breach shall be established by a final judgment against the Developer after all appeals have been concluded, the City shall be entitled to recover all damages, which will include statutory interest on any sums found to be due from the date when such amount was found to be due until the date such sum is actually paid, and reasonable enforcement costs incurred therefore, including reasonable attorneys' fees and court costs.

9.2 **Curative Periods; Default**. Subject to any extensions of time allowed in this Agreement, failure or delay by either party to perform its obligations hereunder, shall constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy with due diligence. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the defaulting party diligently proceeds therewith; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or

remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

9.3 **Other Acts of Default**. In addition to the Developer Obligations, each of the following acts of Developer shall also constitute a breach or default by Developer: breach by Developer of its obligations under the loan documents for funding of construction of the Redevelopment; the filing or execution or occurrence of a petition by Developer seeking any debtor relief, the making of an assignment for the benefit of creditors by Developer, Developer's execution of any instrument for the purpose of effecting a composition of creditors, or adjudication of Developer as bankrupt.

9.4 **Reverter.** In addition to any other remedy available to the City for default of Developer hereunder or upon failure of the Developer to achieve Final Completion of the Redevelopment as provided in this Agreement and in accordance with the Development Schedule, the City may require at its option pursuant to the terms of the Escrow and this Agreement, that if Developer owns the Pauli Property at that time, then it be conveyed to the City, and/or that after Closing that title to the Hahn Street Property revert to the City pursuant to the terms of the deed restriction and this Agreement. The deed or deeds from the City to the Developer for the Hahn Street Property shall provide that title to the Hahn Street Property may revert to the City at its option upon default by the Developer. At the time of conveyance of the Pauli Property to Developer and the Closing for the Hahn Street Property respectively, the Developer shall deposit into Escrow the deeds conveying those properties to the City.

ARTICLE 10

GENERAL

10.1 **Notice**. All notices and demands required hereunder shall be in writing and shall be deemed given when received upon personal or electronic delivery or three (3) days after deposit in the United States Mail, postage, prepaid, certified, addressed to the parties as follows:

If to the City:	Thomas Borchert, City Manager City of Elmhurst 209 North York Street Elmhurst, Illinois 60126
With a copy to:	Kenneth T. Kubiesa, City Attorney Kubiesa, Spiroff, Gosselar, Acker & DeBlasio, P.C. 105 South York Street, Suite 250 Elmhurst, Illinois 60126
If to Developer:	Morningside Equities Group, Inc. c/o David Strosberg 223 West Erie Street, Third Floor Chicago, Illinois 60610
With a copy to:	Scott M. Day, Esq. Day & Robert, P.C. 300 East Fifth Avenue, Ste. 365 Naperville, Illinois 60563

10.2 **Cooperation**. The City and Developer will make every reasonable effort to expedite giving effect to the terms and provisions hereof and acknowledge that the successful performance of this Agreement requires their continuous and diligent cooperation and effort.

10.3 **Recording**. At any time after the date on which this Agreement is approved by all parties hereto, the City shall record a Memorandum of this Agreement against the Subject Property. Such Memorandum shall be subject to unilateral termination by Developer upon any termination of this Agreement, upon any uncured default by the City, or upon passage of the time limits as to objection to real estate taxes or assessments, and such termination statement shall be

conclusive insofar as expunging the Memorandum of record; provided, however, that such statement of termination shall not be deemed to have waived, released or impaired any obligation of Developer, or any right or remedy of the City provided herein, if the City contends that Developer improperly recorded such statement of termination.

10.4 **Successors and Assigns**. Until the Final Completion of the Redevelopment, neither Developer nor any member of Developer, shall assign or transfer all or any part of its, his or her rights or interest in the Subject Property except as to sales to residential users, and grants of lien against the Subject Property in favor of lenders. The City's prior written approval, which shall not be unreasonably withheld, shall be required for any assignment or transfer as aforesaid to lenders in foreclosure, by deed in lieu of foreclosure, or to a buyer who agrees to undertake and perform the duties and obligations of the Developer under this Agreement.

10.5 **Binding Upon Successors in Interest**. This Agreement shall be binding upon the parties hereto and their respective heirs, successors, administrators, assigns, or other successors in interest.

10.6 **Titles of Paragraphs**. Titles of the several parts, paragraphs, sections, or articles of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any provision. The word "herein," "hereunder," "hereof," "hereto" and the like refer to the entirety of this Agreement.

10.7 **Applicable Law and Jurisdiction**. The parties hereto agree to submit any dispute between them to the jurisdiction of the Circuit Court for the 18th Judicial Circuit, DuPage County, Illinois, and the appellate courts therefore. The applicable law shall be the law of the State of Illinois.

10.8 **Amendments**. This Agreement, and any exhibits attached hereto, may be amended only by the mutual written consent of the parties hereto, including the adoption of an ordinance or resolution of the City approving said amendment, as provided by law, and by the execution of the amendment by the parties or their successors in interest.

10.9 **Time of Essence**. Time is of the essence of this Agreement.

10.10 **Entire Agreement**. The terms and conditions set forth in this Agreement and its Exhibits supersede all prior oral and written negotiations, agreements or understandings, and constitute the entire agreement between the City and Developer.

10.11 **Counterparts**. This Agreement may be executed in counterparts, each of which shall constitute an original Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

CITY OF ELMHURST, ILLINOIS

By: _____
Thomas D. Marcucci, Mayor

Attest:

Patty Spencer
Patty Spencer, City Clerk

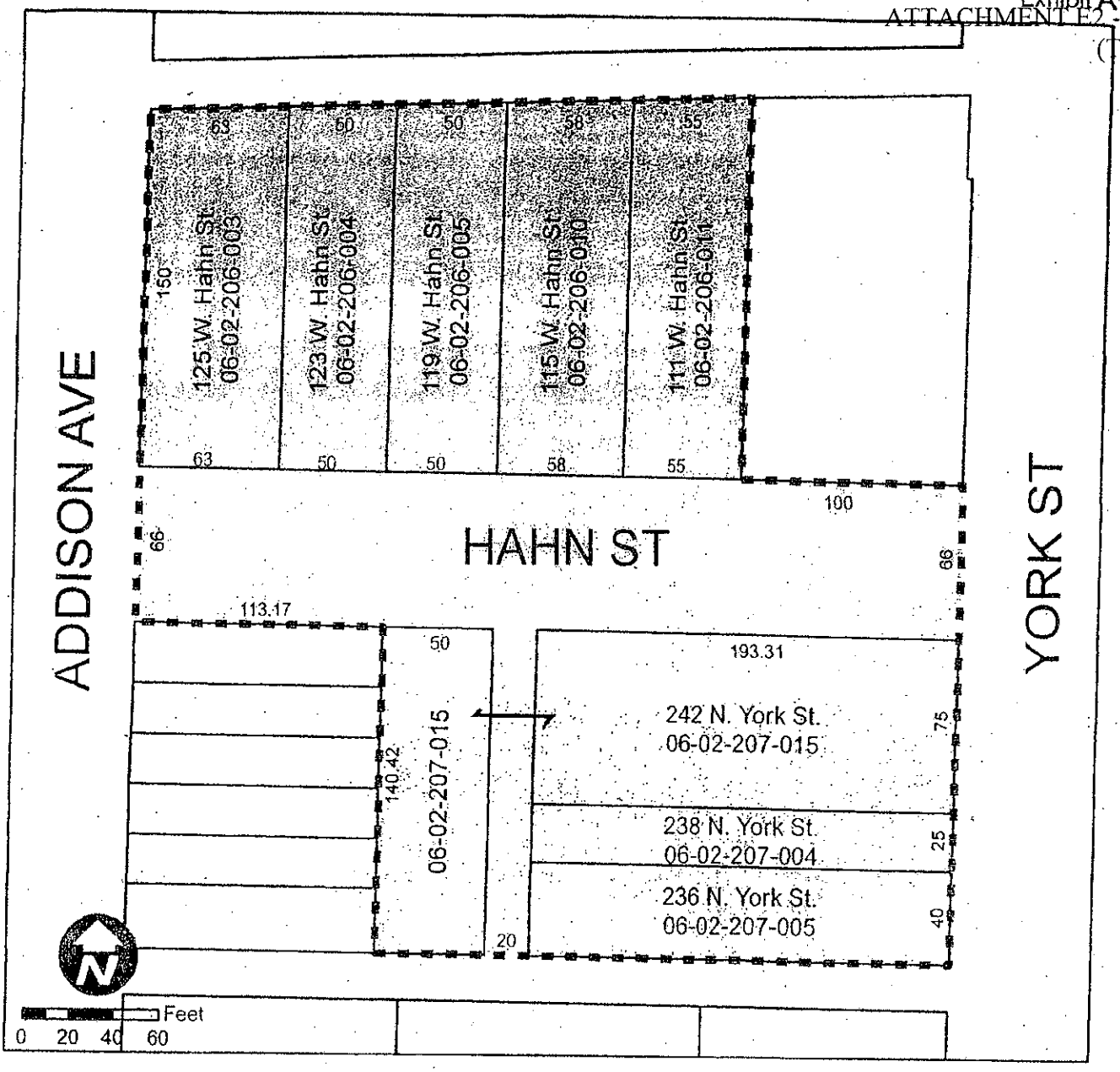
MORNINGSIDE LLC,
an Illinois Limited Liability Company

By: _____
Its: MANAGING MEMBER
(Manager or Member)

H:\Kathy\elmhurst\Redev. Agreements\hahn st agr 8.13.08 DOC.DOC

LIST OF EXHIBITS

Exhibit "A"	-	**Legal Description of Subject Property (including the Hahn Street Properties and Pauli Property)**
Exhibit "B"	-	**Developer's Response to RFP (Preliminary Plan)**
Exhibit "C"	-	**Development Schedule**
Exhibit "D"	-	**S.B. Friedman Report**



Hahn Street Property

P.I.N.s 06-02-206-003, -004, -005, -010, -011 and 06-02-207-004, -005, -015 (Commonly known as 111, 115, 119, 123 and 125 W. Hahn St. and 236, 238, and 242 N. York St., Elmhurst, IL)

Copies To All Elected Officials

Lots 5, 6, 7, 8, 9, 16 and the West 13 feet of Lot 10 in "Hahn's Subdivision of Lots 2, 3, 4, 5 and 6 and the North ½ of Lots 7 and 8 in Block 1 in the Plat of Town of Cottage Hill", recorded December 8, 1891 as Document 47483; and Lots 1 and 2 in the "Resubdivision of Lots 12, 13, 14 & 15 in Hahn's Subdivision", recorded June 21, 1940 as Document 412178; along with the alley lying West of, and abutting, said Lots 1 & 2; along with the Hahn Street Right-of-Way, lying between the West Right-of-Way line of York Street and the East Right-of-Way line of Addison Avenue, all in the East Half of the Northeast Quarter of Section 2, Township 39 North, Range 11 East of the Third Principal Meridian, in DuPage County, Illinois.

All parcel dimensions were obtained from the DuPage County Tax Plat Map and are for assessment purposes only. Accuracy is not guaranteed.

Hahn Street Property Legal Description

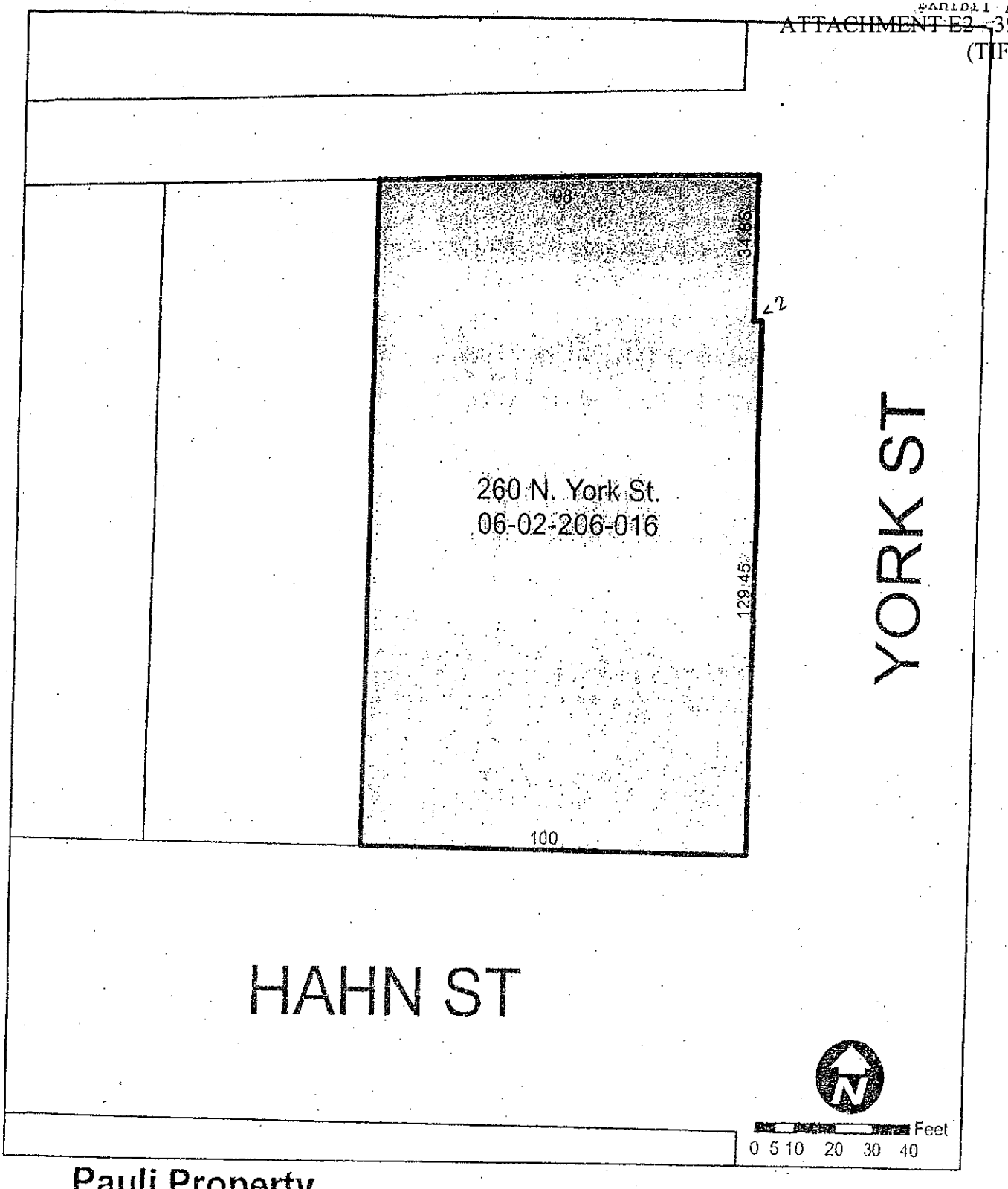
111, 115, 119, 123 and 125 W. Hahn St. and 236, 238 and 242 N. York St.
06-02-206-003, -004, -005, -010, -011 and 06-02-207-004, -005, -015

Lots 5, 6, 7, 8, 9, 16 and the West 13 feet of Lot 10 in "Hahn's Subdivision of Lots 2, 3, 4, 5 and 6 and the North ½ of Lots 7 and 8 in Block 1 in the Plat of Town of Cottage Hill", recorded December 8, 1891 as Document 47483; and Lots 1 and 2 in the "Resubdivision of Lots 12, 13, 14 & 15 in Hahn's Subdivision", recorded June 21, 1940 as Document 412178; along with the alley lying West of, and abutting, said Lots 1 & 2; along with the Hahn Street Right-of-Way, lying between the West Right-of-Way line of York Street and the East Right-of-Way line of Addison Avenue, all in the East Half of the Northeast Quarter of Section 2, Township 39 North, Range 11 East of the Third Principal Meridian, in DuPage County, Illinois.

Pauli Property Legal Description

260 N. York St.
06-02-206-016

The East 37 feet of Lot 10 and all of Lot 11, except that part thereof taken or used for highway by the State of Illinois, Department of Transportation, in "Hahn's Subdivision of Lots 2, 3, 4, 5 and 6 and the North Half of Lots 7 and 8 in Block 1 in the Plat of Town of Cottage Hill", recorded December 8, 1891 as Document 47483, in the East Half of the Northeast Quarter of Section 2, Township 39 North, Range 11 East of the Third Principal Meridian, in DuPage County, Illinois.



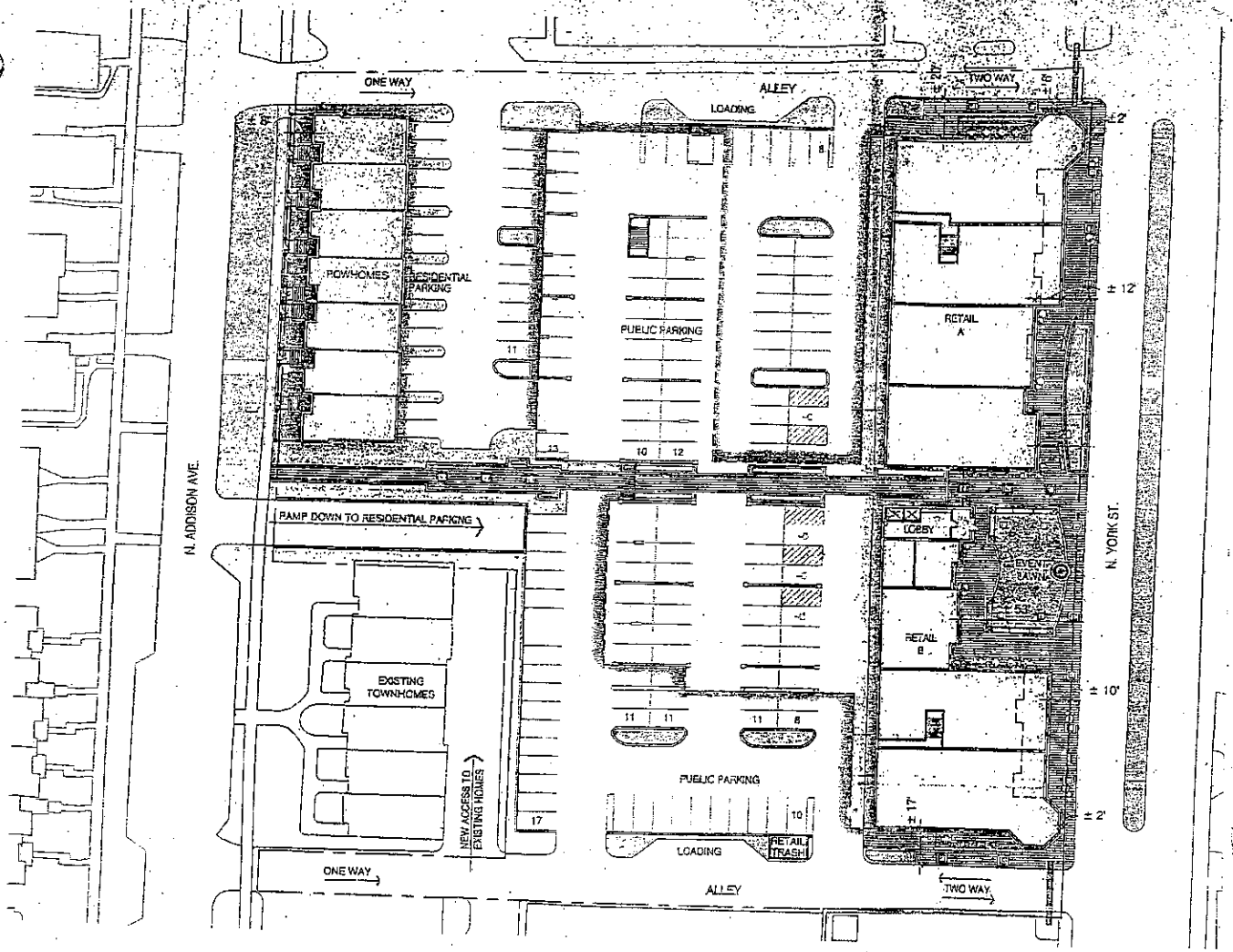
Pauli Property

P.I.N. 06-02-206-016 (Commonly known as 260 N. York St., Elmhurst, IL)

The East 37 feet of Lot 10 and all of Lot 11, except that part thereof taken or used for highway by the State of Illinois, Department of Transportation, in "Hahn's Subdivision of Lots 2, 3, 4, 5 and 6 and the North Half of Lots 7 and 8 in Block 1 in the Plat of Town of Cottage Hill", recorded December 8, 1891 as Document 47483, in the East Half of the Northeast Quarter of Section 2, Township 39 North, Range 11 East of the Third Principal Meridian, in DuPage County, Illinois.

All parcel dimensions were obtained from the DuPage County Tax Plat Map and are for assessment purposes only. Accuracy is not guaranteed.

EXHIBIT B



Retail Site Data

Retail Area	± 20,400 sf
Retail Parking required @ 2 per 1,000 sf =	42
Public Parking required	100
Total Parking Required	142
Total Parking Provided	142

Residential Site Data

Condominium Units	82
Townhome Units	7
Total Units	89
89 units x 2.5 cars per unit =	223 spaces required
Condominium Parking (provided in basement)	195
Townhome Parking (provided on grade)	28
Total Parking Provided	223

Notes to Site Plan Exhibit – June 20, 2008

- Site Plan drawing dated July 9, 2007 remains unchanged
- Total number of Retail Parking spaces remains unchanged
- Total number of Public Parking spaces remains unchanged
- Total retail area remains unchanged
- Total number of condo units increases from 82 to 102 units
- Total number of townhomes remains unchanged
- Total number of residential parking spaces decreases from 223 to 175 (109 units x 1.6 cars per unit = 175 proposed spaces)
- Total number of condominium parking spaces (provided in basement) decreases from 195 to 147 spaces
- Total number of townhome parking spaces (provided at grade) Remains unchanged

Site Plan

MORNINGSIDE GROUP HSA

NORTH DISTRICT

North 0' 25' 50' 100'

43 South Vail Avenue
Arlington Heights, Illinois 60005
Job No. 07024 © 2007
L065
July 9, 2007

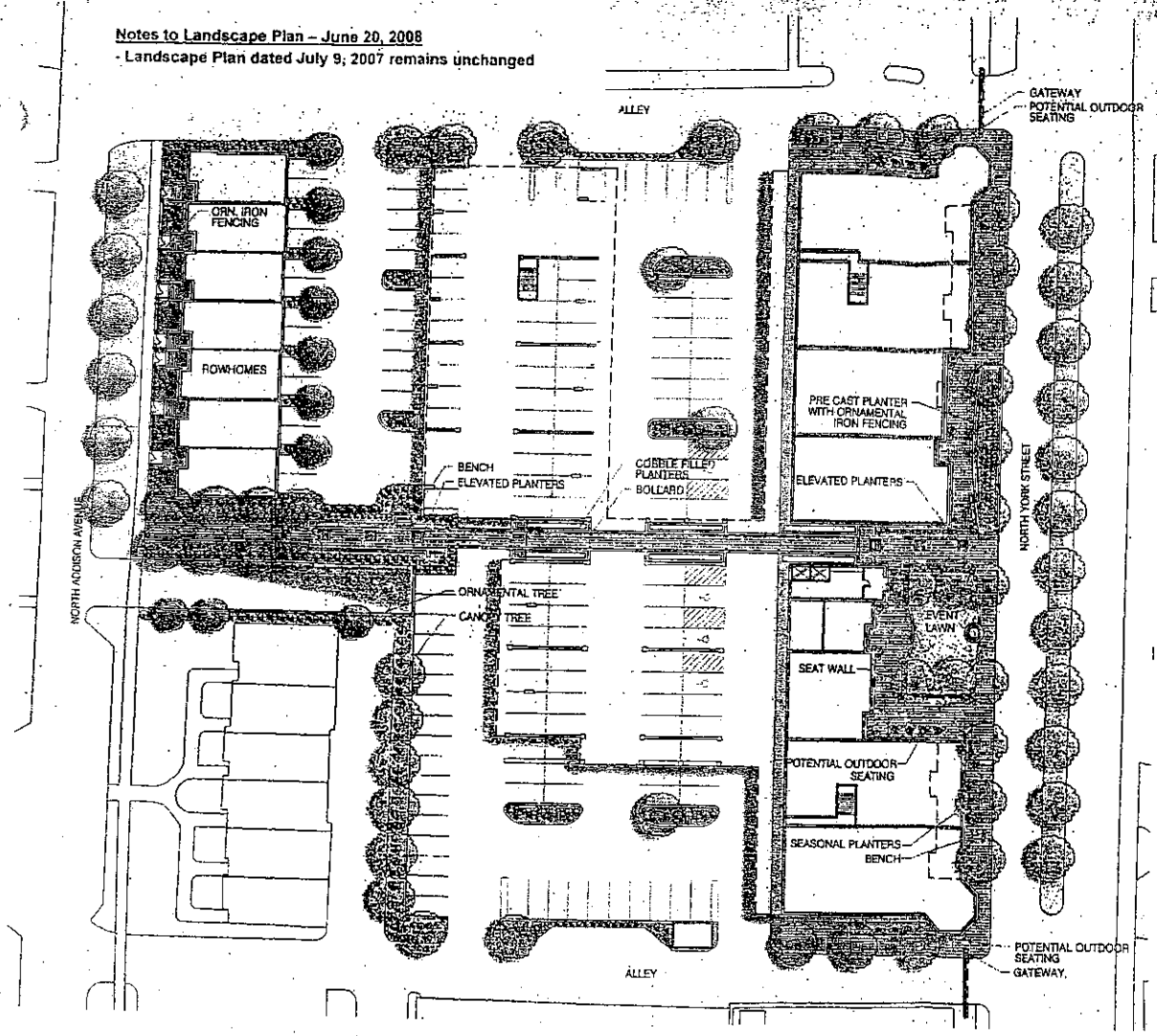
HKM ARCHITECTS + PLANNERS, INC.

ATTACHMENT E2 - 40 - (TIF I)

EXHIBIT B

Notes to Landscape Plan – June 20, 2008

- Landscape Plan dated July 9, 2007 remains unchanged



Plant List

Shade trees

Botanical name	Common name	Size 3"-4 1/2" BB
Acer platanoides 'Columnare'	Columnar Norway Maple	-
Acer x freemanii 'Autumn Blaze'	Autumn Blaze Maple	-
Celtis occidentalis	Common Hackberry	-
Ginkgo biloba	Ginkgo	-
Gleditsia triacanthos var. inermis	Thornless Honeylocust	-
Pyrus calleryana 'chanticleer'	Chanticleer Flowering Pear	-
Tilia americana 'redmond'	Redmond American Linden	-

Ornamental trees

Botanical name	Common name	Size 6-8' BB
Amelanchier lamarckii	Lamarckii Serviceberry	-
Betula populifolia 'Whitespire'	Whitespire Gray Birch	-
Cornus mas 'Golden Glory'	Golden Glory Cornelian Cherry	-
Malus sargentii 'Tina'	Tina Flowering Crabapple	-
Malus 'Red Jade'	Red Jade Flowering Crabapple	-
Malus 'Spring Snow'	Spring Snow Flowering Crabapple	-

Evergreen trees

Botanical name	Common name	Size 8' BB
Pinus nigra	Austrian Pine	-
Picea pungens 'Glauca'	Colorado Blue Spruce	-

Deciduous shrubs

Botanical name	Common name	Size 18"-3' BB
Aronia melanocarpa 'Autumn Magic'	Autumn Magic Black Chokeberry	-
Cotoneaster apiculatus	Cranberry Cotoneaster	-
Euonymus alatus 'Compata'	Dwarf Burning Bush	-
Itea virginica 'Sprich'	Little Henry Dwarf Sweetspire	-
Rhododendron 'Lemon Lights'	Lemon Lights Azalea	-
Rhododendron 'Rosy Lights'	Rosy Lights Azalea	-
Spiraea cinerea 'Gretchiem'	Gretchiem Spiree	-
Spiraea japonica 'Shirobana'	Tricolor Japanese Spiree	-
Spiraea x bumalda 'Froebeli'	Froebel Spiree	-

Evergreen shrubs

Botanical name	Common name	Size 18"-30" BB
Juniperus horizontalis 'Plumosa'	Youngstown Andorra	-
Juniperus procumbens 'Nana'	Dwarf Japanese Garden Juniper	-
Pinus mugo var. Pumilio	Dwarf Mugo Pine	-
Taxus x media 'Densiformis'	Dense Intermediate Yew	-

Perennials, groundcover, ornamental grasses

Botanical name	Common name	Size 3"-1Gal Pot
Calamagrostis acutiflora 'Overdam'	Overdam Feather Reed Grass	-
Euonymus fortunei 'Coloratus'	Purpleleaf Wintercreeper	-
Echinacea purpurea	Purple Coneflower	-
Hemerocallis 'Little Wine Cup'	Red Daylily	-
Hemerocallis 'Stella D'oro'	Yellow Daylily	-
Pennisetum alopecuroides	Fountain Grass	-
Perovskia atriplicifolia 'Little Spire'	Little Spire Russian Sage	-
Rudbeckia 'Goldsturm'	Black-eyed Susan	-
Sedum spectabile 'Autumn Joy'	Autumn Joy Sedum	-

Landscape Plan

North 0 25' 50' 100'

MORNINGSIDE GROUP HSA

NORTH DISTRICT

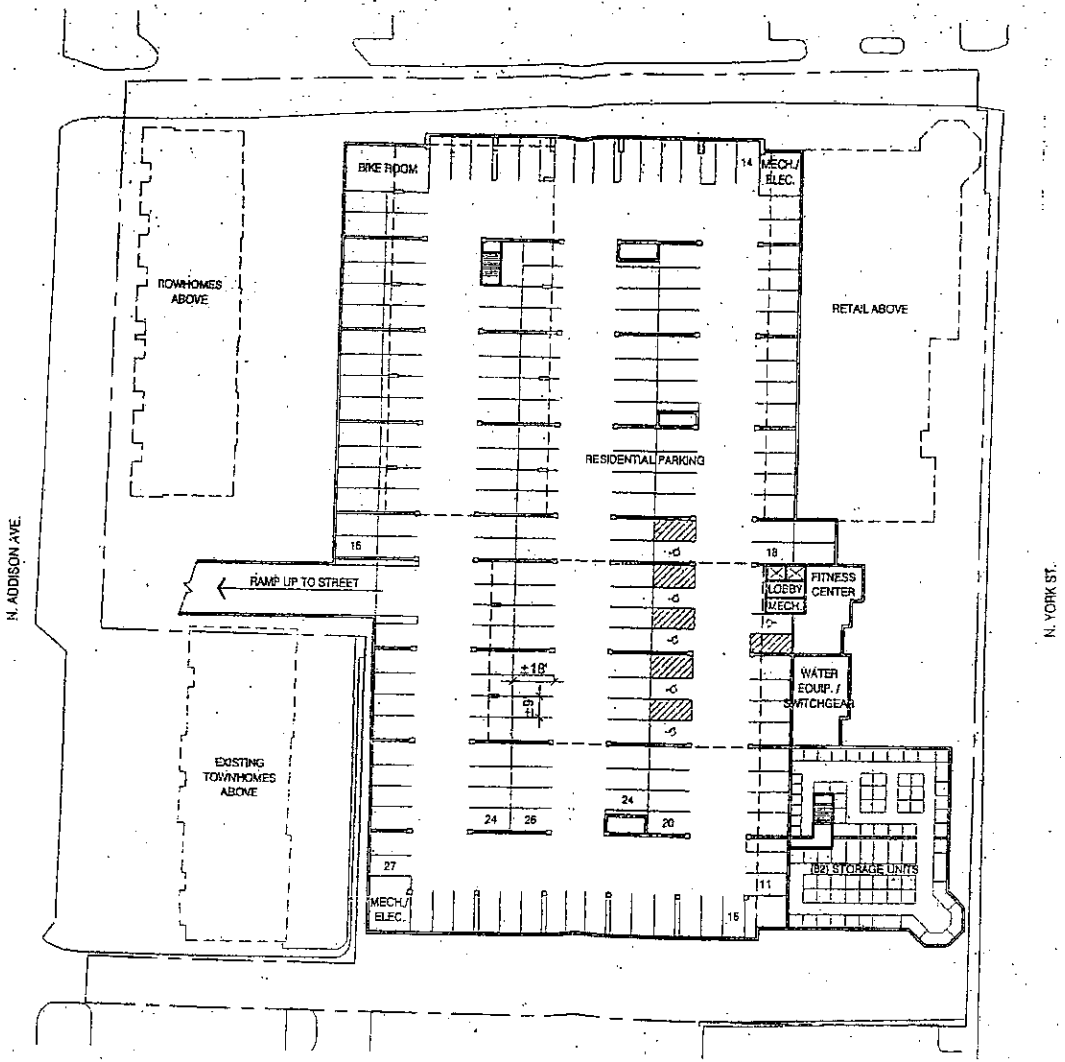
43 South Vail Avenue
Arlington Heights, Illinois 60005
Job No. 07024 © 2007
July 9, 2007

HKM ARCHITECTS + PLANNERS, INC.

EXHIBIT B

Notes to Basement Plan – June 20, 2008

- Basement Plan dated July 9, 2007 will be modified
- The number of parking spaces decreases from 195 to 147 spaces reducing the footprint of the basement



Basement Plan

MORNINGSIDE GROUP HSA

NORTH DISTRICT

North 0 25' 50' 100'

43 South Wall Avenue
Arlington Heights, Illinois 60005
Job No. 07024 © 2007
L006
July 8, 2007

HKM ARCHITECTS + PLANNERS, INC.

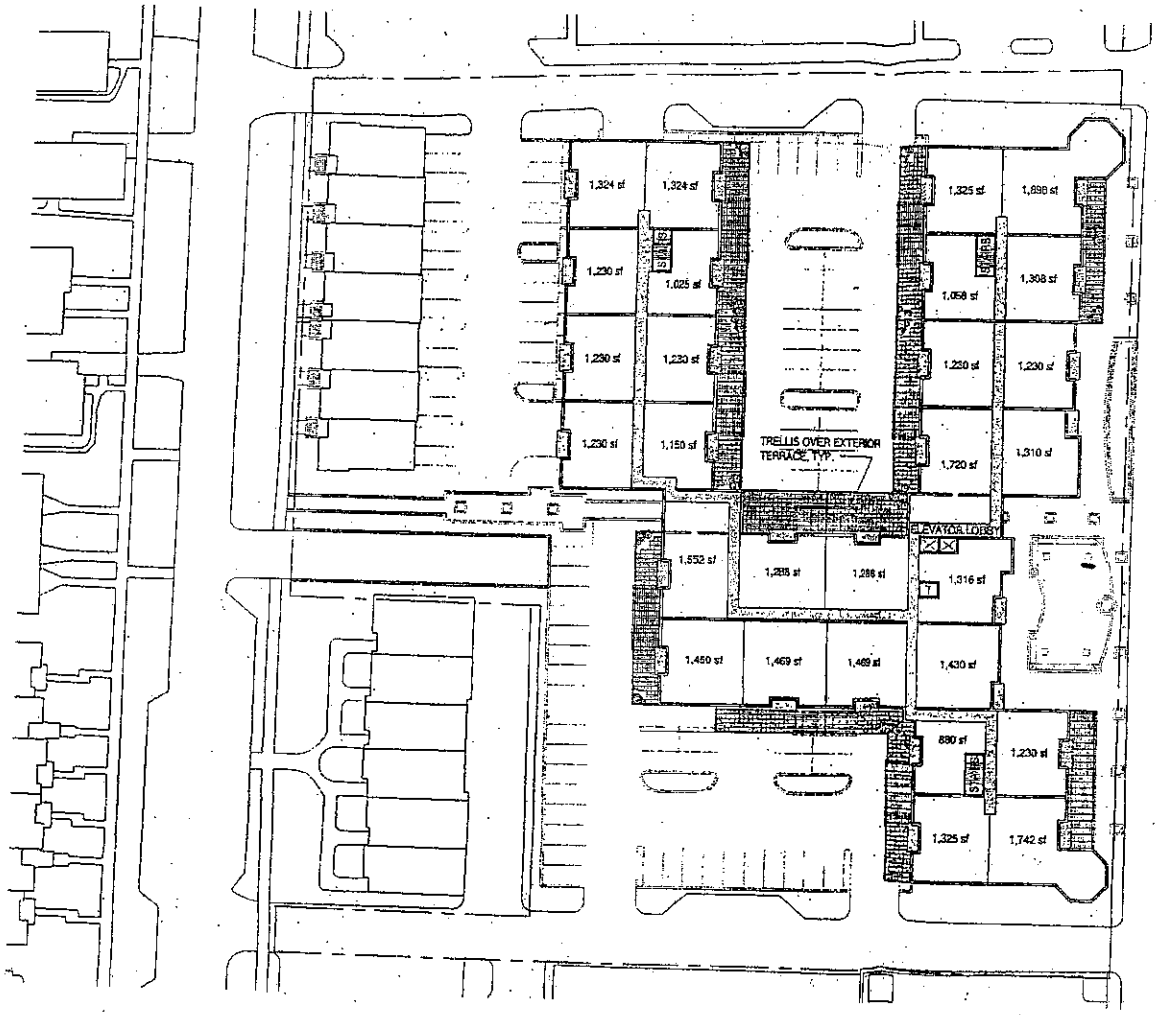
Pg. E2-3

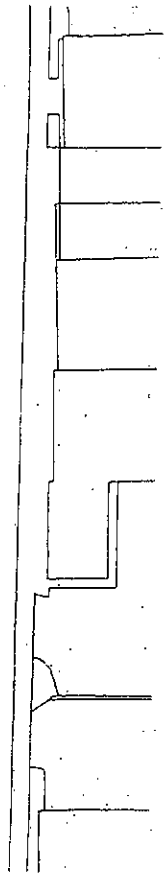
ATTACHMENT E2 - 42 - (TIF I)

EXHIBIT B

Notes to Typical Condominium Plan – June 20, 2008

- Typical Condominium Plan dated July 9, 2007 will be modified
- The size and configuration of the floor plates will remain unchanged but the number of units increases from 28 per floor to 34 per floor
- Corridors, balconies, and terraces will be altered in size and location





Typical Condominium Plan

MORNINGSIDE GROUP

HSA

NORTH DISTRICT

North 0 25' 50' 100'

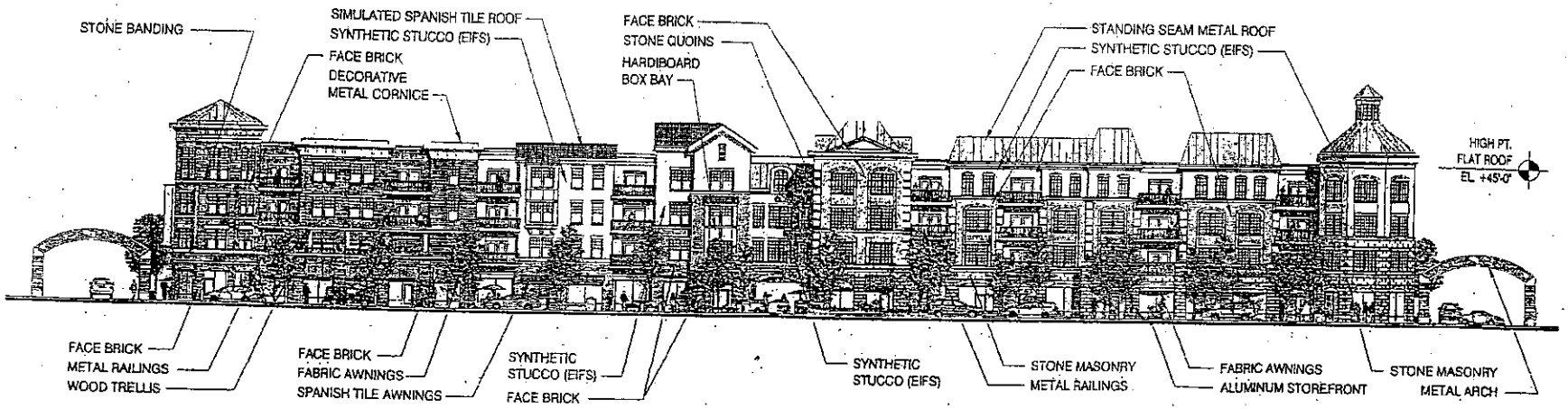
43 South Vail Avenue
Arlington Heights, Illinois 60005
Job No. 07024 ©2007
LDGS
July 9, 2007

HKM ARCHITECTS + PLANNERS, INC.

ATTACHMENT E2 - 43 -

Pg. B (TIF I)

EXHIBIT B



Notes to East Elevation Plan – June 20, 2008

- East Elevation Plan dated July 9, 2007 remains unchanged
- Locations and sizes of balconies and windows will change
- Materials and building design remain unchanged
- Retail configuration and design remain unchanged
- Overall building size and massing remain unchanged
- Roofline and height will stay the same

East Elevation

MORNINGSIDE GROUP HSA

NORTH DISTRICT

0 15' 30' 60'

43 South Vail Avenue
Arlington Heights, Illinois 60005
Job No. 07024 ©2007

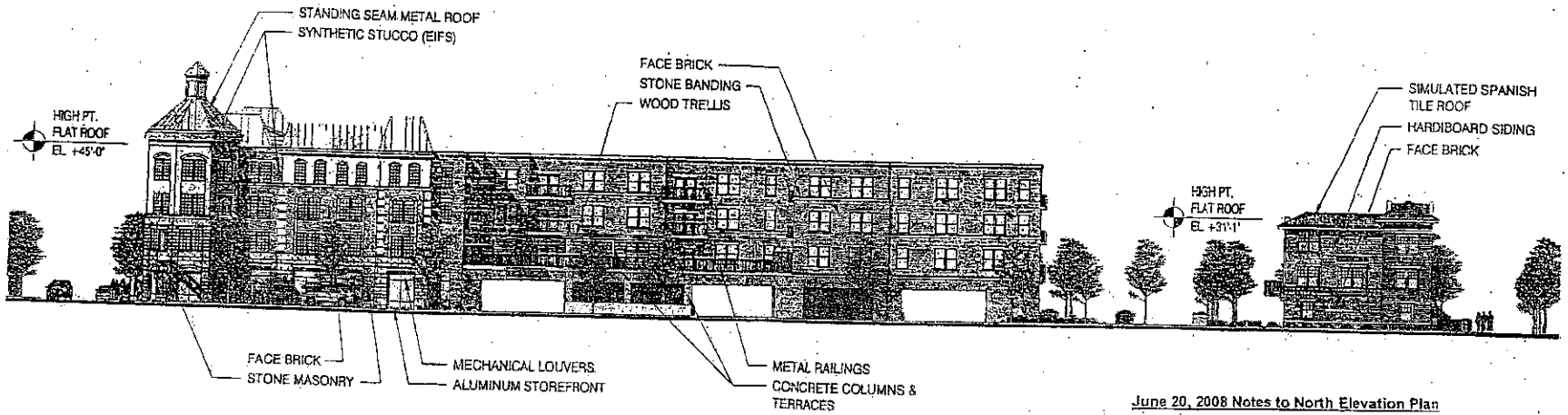
July 9, 2007

HKM ARCHITECTS • PLANNERS, INC.

Pg. B5

ATTACHMENT E2 - 44 - (TIF I)

EXHIBIT B



June 20, 2008 Notes to North Elevation Plan

- North Elevation Plan dated July 9, 2007 will be modified
- Locations and sizes of balconies and windows will change
- Materials and building design remain unchanged
- Retail configuration and design remain unchanged
- Overall building size and massing remain unchanged
- Roofline and height will stay the same
- Townhomes will remain unchanged

North Elevation

MORNINGSIDE GROUP HSA

NORTH DISTRICT

0 15' 30' 60'

43 South Vail Avenue
Arlington Heights, Illinois 60005
Job No. 07024 © 2007

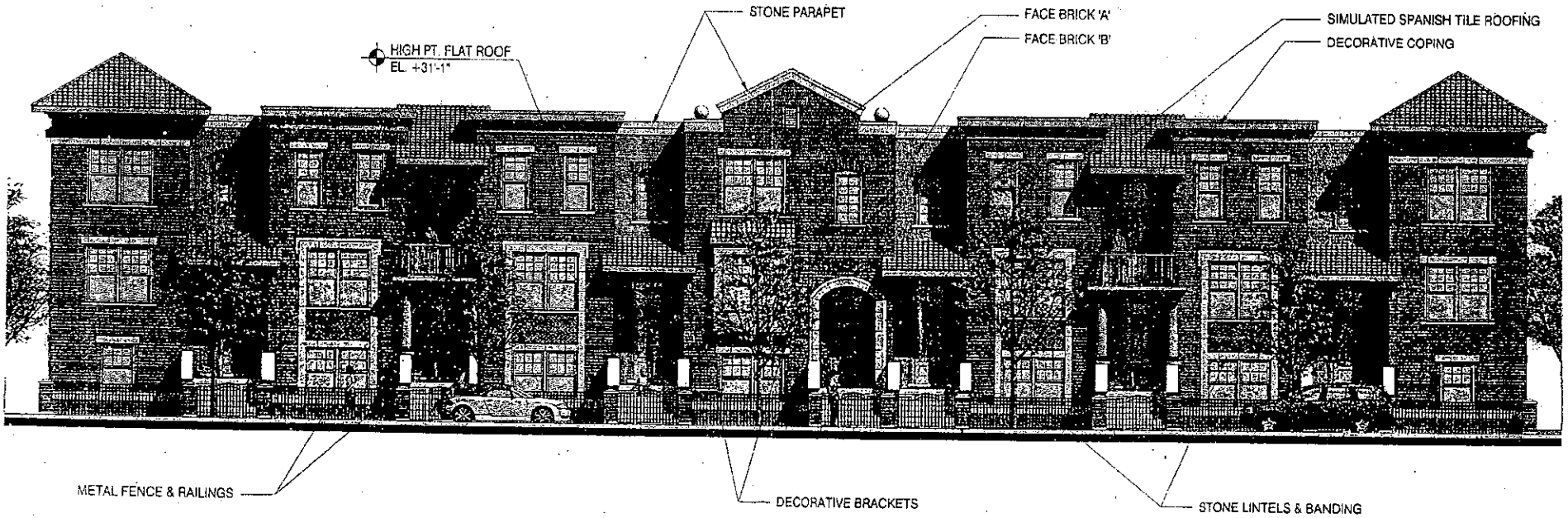
July 9, 2007

HKM ARCHITECTS + PLANNERS, INC.

Pg. B-6

ATTACHMENT E2 - 45 - (TIF I)

EXHIBIT B



West Elevation - Townhome Front

MORNINGSIDE GROUP HSA

NORTH DISTRICT

0 5' 10'

43 South Vail Avenue
Arlington Heights, Illinois 60005
Job No. 07024 © 2007

July 9, 2007

HKM ARCHITECTS + PLANNERS, INC.

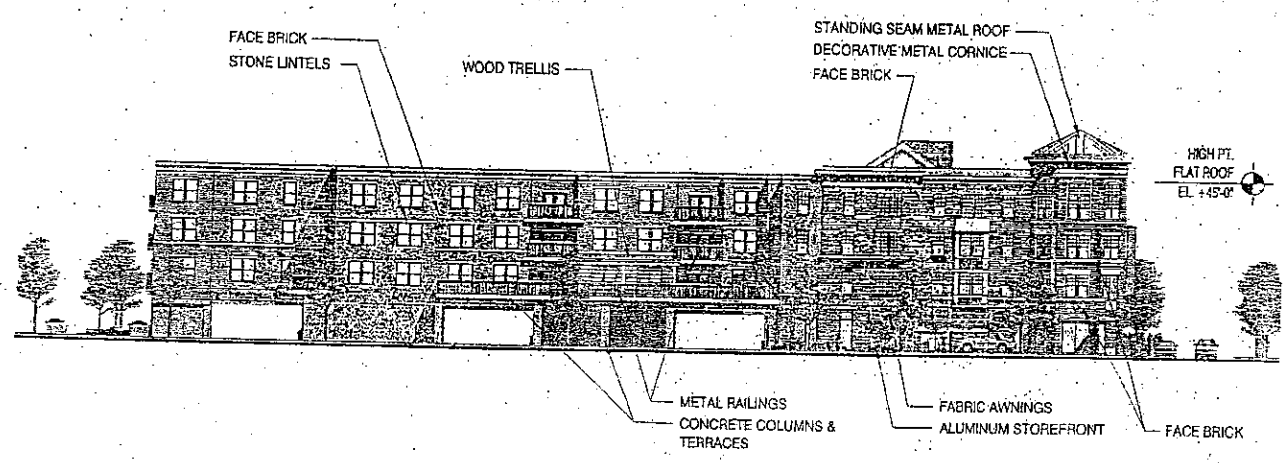
ATTACHMENT E2 - 46 -

Pg B (TIF I)

EXHIBIT B

South Elevation Plan – June 20, 2006

- South Elevation Plan dated July 9, 2007 will be modified
- Locations and sizes of balconies and windows will change
- Materials and building design remain unchanged
- Retail configuration and design remain unchanged
- Overall building size and massing remain unchanged
- Roofline and height will stay the same



South Elevation

MORNINGSIDE GROUP HSA

NORTH DISTRICT

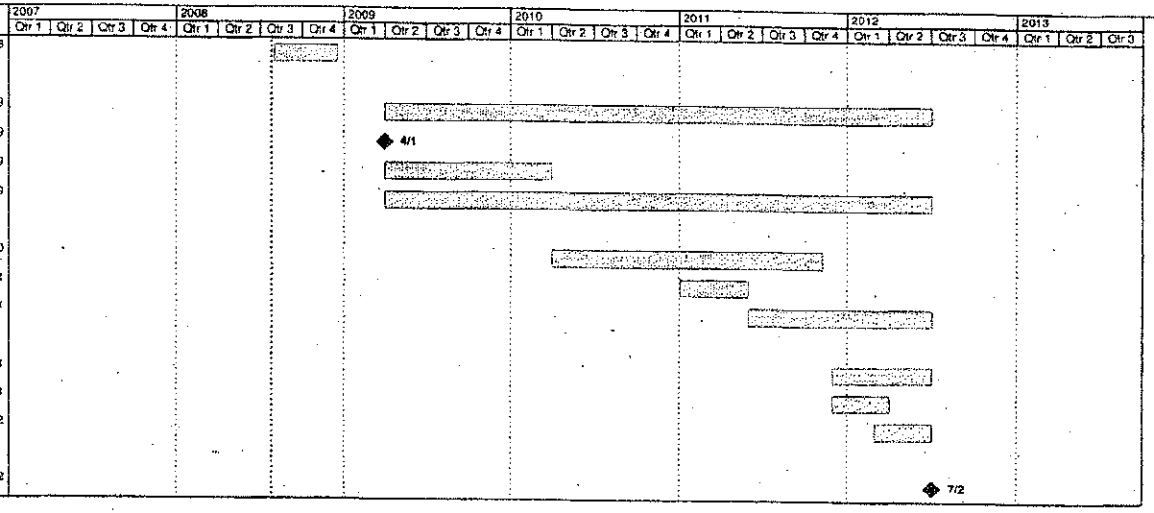
July 9, 2007

Pg.

ATTACHMENT 2 - 47 - A (TIF I)

NORTH DISTRICT PROJECT SCHEDULE
REVISED JULY 24, 2008

ID	Task Name	Duration	Start
1	PUD Process	100 days	Fri 8/1/08
2			
3	SALES AND MARKETING	849 days	Wed 4/1/09
4	Open Sales Center	0 days	Wed 4/1/09
5	Achieve 50% presales	262 days	Wed 4/1/09
6	Condominium & Townhome Sales	849 days	Wed 4/1/09
7			
8	BUILDING CONSTRUCTION	420 days	Thu 4/1/10
9	Townhome Occupancy	108 days	Mon 1/3/11
10	Condominium Unit Occupancy	284 days	Wed 6/1/11
11			
12	RETAIL	153 days	Thu 12/1/11
13	Retail Buildout	88 days	Thu 12/1/11
14	Retail Occupancy	88 days	Thu 3/1/12
15			
16	FINAL PROJECT COMPLETION	0 days	Mon 7/2/12



Project: North District
Date: Thu 7/24/08

Task | Progress | Milestone | Summary | Rolled Up Task | Rolled Up Milestone | Rolled Up Progress | Split | External Tasks | Project Summary

Pg. C-1

ATTACHMENT E2 - 48 -
EXHIBIT C (TIF I)

Basis for calculating the Internal Rate of Return for the Morningside project:

The Internal Rate of Return ("IRR") will be calculated on an "unleveraged" basis as tabulated in the attached document.

In other words, the IRR for the project will be derived via numerical iteration from the sum of: "return on equity" + "developer profit" as measured against the sum of: "total project expenditures" + "total project revenues" + "total TIF contribution (including the amount of land write down)" annually over the life of the project.

Utilizing the equation in Figure 1 below, a solution will be derived for "r"= the unleveraged IRR for the project, where "N" = the total number of years in the life of the project(defined the number of years starting with the year in which predevelopment expenditures began in 2007 through to project completion, defined as the year in which final proceeds are collected), ; "C" = total net cash flows (total development revenues, including TIF proceeds, accruing to the project less total development costs incurred) for each year; and "t"= each year in the life of the project.

$$NPV = \sum_{t=0}^{N} \frac{C_t}{(1+r)^t} = 0$$

Figure 1 - IRR formula

Based on this methodology, any solution for "r" that is less than 10% will result in 100% of profits accruing to the developer; for a solution in which 10% < r < 12.5%, then 12.5% excess profits (profits above r = 10%) will be paid to the City of Elmhurst ("City"); if 12.5% < r < 15%, then 40% of excess profits will be paid to the City; for r > 15%, 50% of excess profits will be paid to the City.

8a

O-03-2009

AN ORDINANCE APPROVING A REAL ESTATE PURCHASE AND SALE AGREEMENT AND A TERM SHEET FOR THE ACQUISITION AND REDEVELOPMENT OF REAL ESTATE WITHIN THE DOWNTOWN TIF DISTRICT (HURLEY, THORNE AND ATHAR PARCELS)

WHEREAS, the City of Elmhurst has heretofore approved a Tax Increment Development Plan and Project, designated the Tax Increment Redevelopment Project Area and adopted Tax Increment Financing all in accordance with 65ILCS 5/11-74.4-1 et seq. (hereafter the "Tax Increment Allocation Redevelopment Act"); and

WHEREAS, in accordance with the Tax Increment Allocation Redevelopment Act the City of Elmhurst may acquire, dispose of or lend for real estate in the manner and at such price it determines to be reasonably necessary to achieve the objectives of the Redevelopment Plan and Project; and

WHEREAS, the Thorne, Athar and Hurley parcels as described in the Purchase and Sale Agreement and Term Sheet attached hereto respectively as Exhibits "A" and "B", are located within the Tax Increment Redevelopment Project Area (the "Downtown TIF District");

WHEREAS, the City has determined it is reasonably necessary to achieve the objectives of the Redevelopment Plan and Project that it acquire the Hurley parcel, and agree to terms of a development agreement that will commit the City to lend upon it and acquire the Athar and Thorne parcels all within the City's Downtown TIF District; and

WHEREAS, the Purchase and Sale Agreement and Term Sheet are made and agreed to by the City pursuant to the authority granted by, and in full compliance with the requirements of the Tax Increment Allocation Redevelopment Act, and to that extent is an exception to all other rules, ordinances and statutes regarding the City's acquisition, conveyance or lending on account of real estate within the Downtown TIF District.

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Elmhurst, DuPage and Cook Counties, Illinois as follows:

SECTION 1. The Purchase and Sale Agreement and Term Sheet by and between the City of Elmhurst and the respective parties dated this date and as attached hereto as Exhibits A and B, are approved.

SECTION 2. The Mayor is hereby authorized and directed to sign the Purchase and Sale Agreement and the Term Sheet, each in a form substantially as attached hereto and approved by the City Attorney.

SECTION 3. The Mayor and the City Clerk are hereby authorized to execute and attest such other documents as may be necessary to fulfill the City's obligations under the Purchase and Sale Agreement and Term Sheet.

SECTION 4. The recitals contained in the preamble of this ordinance are a material part hereof and are hereby incorporated herein. All ordinances or parts of ordinances in conflict with this ordinance are to the extent necessary, hereby amended so that the City's acts authorized hereby are in full compliance with applicable law including the City's ordinances and rules.

SECTION 5. This ordinance shall be in full force and effect from and after passage and publication according to law.

Approved this 2nd day of February, 2009.

Thomas D. Marcucci, Mayor

Passed this 2nd day of February, 2009.

Ayes: 11 Nays: 1

Patty Spencer, City Clerk

H:Kathy/Elmhurst/ordinance/devcomO

COUNCIL ACTION SUMMARY

SUBJECT: Ordinance O-03-2009 Approving a Real Estate Purchase and Sale Agreement and a Term Sheet for the acquisition and redevelopment of real estate within the Downtown TIF District (Hurley, Thorne and Athar Parcels)

ORIGINATOR: City Attorney

DESCRIPTION OF SUBJECT MATTER: This Ordinance approves the Purchase and Sale Agreement for the Hurley property and the Term Sheet with the Developer (DevCom/Hiffman), which commits the City to the purchase of the Hurley property and to negotiate a Redevelopment Agreement with the Developer, lend the purchase price of the Thorne and Athar properties and then later purchase those properties from Developer when a mixed use, retail and parking structure can be constructed on those parcels.

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the 2nd day of February, 2009 by and between Daniel B. Hiffman, ("Seller") and the City of Elmhurst, an Illinois Municipal Corporation, ("Buyer").

WITNESSETH

NOW, THEREFORE, in consideration of the premises and the mutual agreement of the parties set forth below, the parties agree as follows:

1. Property. Seller agrees to sell and Buyer agrees to buy the real estate legally described on Exhibit "A" hereto, comprising approximately six (6) lots situated north of First Street and west of Larch Avenue in Elmhurst, Illinois, on an "As Is" basis, together with (i) all appurtenances belonging to the real estate; and (ii) all right, title and interest of the Seller to any streets, alleys, passages and other rights-of-way included in or adjacent to the described real estate. All of the foregoing hereinafter collectively called the "Property".

2. Purchase Price. The total purchase price ("Purchase Price") for the Property is One Million Eight Hundred Fifty Thousand Dollars ($1,850,000). Buyer agrees to pay the Purchase Price, plus or minus prorations and adjustments hereinafter set forth at closing.

3. Deed. Seller shall convey title or cause title to be conveyed to the Property to Buyer by General Stamped Warranty Deed, free and clear of all liens and encumbrances whatsoever, except "Permitted Exceptions" (defined below), and any "Additional Defects" (defined below) approved by Buyer.

4. Title Commitment. At the time of execution of this Agreement, Seller shall furnish to Buyer, a current commitment for title insurance, ("Commitment"), in the amount of $1,850,000.00 issued by Chicago Title Insurance Company ("Title Company"), covering the Property and showing title in fee simple in Owner subject only to Permitted Exceptions (or matters to which the title company will insure over) and liens or encumbrances of a definite and ascertainable amount ("Removable Exceptions"), which Removable Exceptions to title shall be removed at the Closing. If the Commitment or the survey to be provided pursuant to Paragraph 7 hereof indicates that title to all or any part of the Property is subject to defects other than the Permitted Exceptions, then Seller shall have a reasonable period of time, (the "Cure Period"), not to exceed forty-five (45) days after delivery to Buyer of the Commitment date down, or the survey, as the case may be, during which to remedy, in a manner reasonably satisfactory to Buyer, or remove such defect(s). In such event the Closing Date shall be extended for a period of forty-five (45) days to allow Seller to attempt to remedy the defects. Seller shall deliver to Buyer, not later than five (5) days following the expiration of the Cure Period, a further date down of the Commitment to verify the removal of such defects. If Seller is unable or, with respect to matters not resulting from its acts or omissions, unwilling to remove such defects or remedy the same in a manner reasonably satisfactory to Buyer within the Cure Period, Buyer may declare this Agreement null and void. The Commitment shall be conclusive evidence of good title as to all matters insured by the policy, subject to the Permitted Exceptions as therein stated. The Commitment fee,

Exhibit A to
Ordinance No. O-03-2009

owner's policy, up to amount of Purchase Price, title examination fee, and recording fees for any mortgage release deeds shall be paid by Seller. All loan policy premiums, excess owner's policy premiums beyond the Purchase Price, later date charges, and recording fees for the deed of conveyance and any documents required for Buyer's mortgage, if any, shall be paid by Buyer.

5. Survey. Seller shall deliver to Buyer at closing, the Richard Field 1983 Plat of Survey of the Property, (i) showing the boundaries of the Land and Property and the location of any easements or encroachments affecting the Property and the Land, and (ii) containing the legal description of the land.

6. Conditions to Closing. The following shall be conditions to Buyer's obligations to close this transaction and accept title to the Property:

(a) The Title Company shall be prepared at closing to issue its Fee Owner's Policy of Title Insurance (the "Title Policy") in the name of Buyer as Owner, in the full amount of the Purchase Price and in conformity with the requirements referenced in Paragraph 5 of this Agreement; and

(b) All representations of Seller contained in this Agreement shall be true and correct as of the date of Closing; and

(c) That all other conditions contained herein to Buyer's obligation to purchase the Property shall have been satisfied or waived by Buyer.

7. Prorations. All general real estate taxes with respect to the Property which are not yet due and payable, and any other proratable items shall be prorated between the parties as of the date of Closing.

8. Expenses. The Title Company shall charge Seller with and pay out of the Purchase Price (i) payment of and/or prorations of general real estate taxes; (ii) the cost of title examination and the premium for the Title Policy title including those endorsements and coverages required hereunder, (iii) all amounts necessary to pay in full and obtain releases of all liens and encumbrances affecting the Property which secure or evidence government charges or obligations to pay money; and (iv) in the event that an escrow is required for closing, Buyer and Seller agree to each pay one-half of any escrow fee.

9. Rights to Owner's Escrow at Closing. At Closing, Seller shall assign its rights to Buyer under the Owners Escrow of the January 19, 2009 Option/Purchase Agreement by and between The Lincoln Group, LLC as Owner and Daniel B. Hiffman as Buyer thereunder, (the "Option Agreement").

10. Closing. Provided this Agreement has not been terminated in accordance with its terms, the consummation of the transaction contemplated herein ("Closing") shall occur at the time the transaction contemplated in the Option Agreement is closed, but no later than April 20, 2009.

11. Closing Deliveries. At or before the Closing, the parties shall execute and deliver to the Title Company the documents as follows:

Exhibit A to
Ordinance No. O-03-2009

(a) Seller shall execute or cause to be executed and deliver:

(i) General Warranty Deed conveying to Buyer fee simple title to the Property, subject only to those exceptions in accordance with Paragraph 4 above;

(ii) An Affidavit of Title covering the Property, in customary form;

(iii) Any documentation required to satisfy State or Federal income tax disclosure requirements including, but not limited to, the Foreign Investment in Real Property Tax Act of 1980, and Section 1445 of the Internal Revenue Code of 1986;

(iv) Any documentation required to satisfy State or Federal Responsible Property Transfer Act disclosure requirements.

(v) An ALTA statement, together with such contractor's affidavits, lien waivers, undertakings and indemnities as the Title Company may require to issue the Title Policy without exception for unfiled mechanic's liens; and

(vi) Such other documents, instruments, certifications and confirmations as may be reasonably required and designated by Buyer to fully effect and consummate the transaction contemplated hereby.

(b) Buyer shall execute and deliver:

(i) An ALTA statement;

(ii) The Purchase Price as provided in Paragraph 2; and

(iii) Such other documents, instruments, certifications and confirmations as may be reasonably required and designated by Seller to fully effect and consummate the transactions contemplated hereby.

(c) Seller and Buyer shall jointly execute the State of Illinois, DuPage County and any applicable City transfer/transaction tax declaration(s), the costs of which shall be paid by Seller and Buyer pursuant to applicable laws, statutes or municipal ordinances, except the Buyer agrees to pay and/or waive any such City transfer tax, and shall jointly execute and deliver to each other an agreed upon proration statement.

(d) All Closing documents to be furnished by Seller or Buyer pursuant hereto shall be in form, execution and substance reasonably satisfactory to both Buyer and Seller.

(e) All documents or other deliveries required to be made by Buyer or Seller at Closing, and all transactions required to be consummated concurrently with Closing shall be

deemed to have been delivered and to have been consummated simultaneously with all other transactions and all other deliveries, and no delivery shall be deemed to have been made and no transactions shall be deemed to have been consummated until all deliveries required by Buyer and Seller shall have been made, and all concurrent and other transactions have been consummated.

12. Representations of Seller. In addition to any representations contained elsewhere in this Agreement, Seller represents that:

(a) all appropriate authorizations to permit the execution of this Agreement, to perform all of Seller's obligations hereunder, to complete all of the transactions contemplated hereby and to execute all instruments necessary or desirable therefore, have been duly obtained;

(b) to the best knowledge of Seller after due inquiry, no part of the Property contains an underground storage tank or is otherwise subject to the requirements of the Illinois Responsible Property Transfer Act; and

(c) to the best knowledge of Seller after due inquiry, any documents required to be produced by Seller (i) are true, accurate and complete, (ii) fairly present the information which they purport to present in a manner which is not misleading in any way, and (iii) do not fail to present any information which would be necessary in order to prevent the information contained therein from being misleading.

(d) Seller will do what is reasonably necessary to consummate its transaction with The Lincoln Group, LLC as set out in the Option/Purchase Agreement dated January 19, 2009, on or before March 15, 2009 in order to deliver title to the Property to Buyer in accordance with this Agreement.

13. Simultaneous Closing. It is the intention of the parties in this Agreement that the Buyer take title to the Property simultaneously with the Seller taking title pursuant to the Option Agreement. Therefore, this Agreement allows no right or remedy to Buyer that does not exist for the Seller as purchaser under the Option Agreement. If that Option Agreement does not close, the Buyer under this Agreement shall have no right to claim damages or a right to specific performance hereunder.

14. Notices. Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant thereto shall be in writing and shall be delivered effectively upon transmission by facsimile or electronic transmission to either party's attorney as follows:

If to Buyer: Ken Kubiesa, Esq.
Kubiesa, Spiroff, Gosselar, Acker & DeBlasio, P.C.
Facsimile: (630) 516-1808
Email: kubiesa@ksgalaw.com

Exhibit A to
Ordinance No. O-03-2009

If to Seller: Michael P. Bradt, Esq.
Morrissey & Robinson
Facsimile: (630) 424-8890
Email: mbradt@mr-legal.com

15. Brokers. Seller and Buyer each represents to the other that it has not engaged, utilized, or dealt with any broker of finder in connection with this Agreement or the transactions contemplated hereby. Buyer and Seller hereby indemnify and hold the other party harmless from and against all loss, liability, damages or claims which such other party may suffer or incur as a result of the incorrectness of the foregoing representation.

16. Successors and Assigns. The provisions of this Agreement shall survive the Closing and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, as the case may be.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date set forth above.

SELLER:

Daniel B. Hiffman

Daniel B. Hiffman

BUYER:
City of Elmhurst

By: _____
Thomas D. Marcucci, Mayor

H:\Susan\Real Estate\ELMHURST\HURLEY\purchase contract_Hiffman.doc

Exhibit A to
Ordinance No. O-03-2009

EXHIBIT A
to Purchase and Sale Agreement
(HURLEY PARCEL)

LOTS 4, 5, 6, 7, 8 AND 9 IN OWNER'S RESUBDIVISION OF LOTS 1 TO 15, INCLUSIVE, IN STRUCKMANN'S RESUBDIVISION OF LOTS 19 TO 38 IN BLOCK 2 OF THE ORIGINAL TOWN OF ELMHURST, IN THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID OWNER'S RESUBDIVISION RECORDED JANUARY 3, 1927 AS DOCUMENT 227384, IN DUPAGE COUNTY, ILLINOIS.

DEVELOPMENT LOAN
COMMITMENT AND TERM SHEET
(Addison Street/DevCom Redevelopment)

WHEREAS, DevCom Realty Investments, NAI Hiffman and Arco Murray National Construction Company ("Arco") as principals (collectively the "Developer") intend to develop a retail and parking structure ("Project") on property commonly known as 135 N. Addison Street ("Thorne Property"), 149 N. Addison Street ("Athar Property"), and six (6) feet of right-of-way of Addison Street adjacent to the aforesaid parcels ("ROW Property") (collectively the "Property") all within the Downtown TIF District of the City of Elmhurst; and

WHEREAS, the City and Developer intend to enter into a Development Agreement for the Project which will include a public parking deck to be owned and operated by the City and retail premises on Addison Street to be owned by Developer; and

WHEREAS, the terms for financing and construction of the Project will be provided in the Development Agreement, which will include certain substantial and material terms and conditions as follows;

NOW, THEREFORE, the City and Developer agree that the Developer will acquire the Property and construct the Project thereon and the City will finance that acquisition and construction of the Project upon terms and conditions included in a Development Agreement as follows:

1. Developer has entered into a purchase contract for the Thorne Property that is scheduled to close on or about February 15, 2009, but may be extended by the parties to a date no later than April 15, 2009. The purchase price is $3,500,000.

2. The Developer or the City will close on the purchase of the Athar Property pursuant to a purchase contract calling for such closing on or before April 1, 2009, but not later than June 15, 2009 or as otherwise agreed by the parties. The purchase price is $970,000.

3. At closing of the purchases of the Thorne Property and the Athar Property pursuant to the respective purchase contracts, the City will loan Developer the full purchase price for each. Repayment of the City loans by Developer will be pursuant to non-recourse notes payable to the City, secured by a mortgage. The notes shall provide that Developer make monthly payments of interest only to the City at a rate of 4.875% per annum, and all principal and any unpaid interest shall come due no later than September 30, 2012 or earlier at the time that construction of the Project begins.

4. Substantial completion of the Project shall be no later than two (2) years after construction begins.

5. The Development Agreement shall contain other provisions as follows:

(a) The terms of the notes, mortgages and any or other security required by the City.

(b) If after Developer acquires the Athar property and notifies the City that the current tenant of that property has vacated, the City will then purchase the Athar Property from Developer in consideration of forgiveness of the principal amount of Developer's note to the City. The City will construct a surface public parking lot thereon for public use until construction of the Project begins.

(c) The general contractor and/or construction manager for the Project will be the Developer pursuant to terms and conditions of a contract therefor with the City. The City and Developer each will review and approve plans for the Project. The City shall pay the actual cost of construction of the Project, and have reasonable access to the books and records of Developer during construction as they agree. Payments to Developer shall be made paid through an escrow and will include a reasonable fee or profit for Developer based upon reasonable, usual and customary pricing methodology. Overhead telephone and power lines in the alley east of the Property will be buried as part of construction of the Project.

(d) Upon substantial completion of the Project, the City shall convey the "cold dark shell" of the retail component of the Project to Developer for a price determined by this formula:

Gross sq. ft. of retail component ÷ Gross sq. ft. of Project x contract purchase price for the Property of $4,470,000

(e) If at the time of substantial completion of the Project the Developer has not obtained lease commitments for the retail space sufficient so that a commercial loan for the purchase price would be available, then the City will provide a mortgage loan to Developer upon terms that are commercially reasonable and agreed by the parties.

(f) ~~The City will consider a conditional use for the height of the Project up to six (6) stories. An application for that conditional use will be processed by the City prior to issuance of a building permit.~~

STRIKE

Tom M.

(g) Uses in the retail component of the Project may be reasonably restricted by the City for a period of ten (10) years as provided in the Development Agreement.

(h) Developer ~~will~~ continue to own the Property until the Project is substantially ~~completed.~~

Begun

(i) The Developer or any successor's ability to object to or contest the City's real estate taxes will be restricted for ten (10) years or until the end of the TIF, whichever is sooner.

6. This loan commitment by the City for purchase price of the Property will expire ninety (90) days after the date hereof. The City and Developer will in good faith negotiate and cooperate so that the Development Agreement can be finalized prior to expiration.

7. The complete agreement of the parties concerning the Project will be finally set out in the Development Agreement, to be enforceable according to its terms.

IN WITNESS WHEREOF, the parties have set their hands this 5th day of January, 2009.

CITY OF ELMHURST

Thomas Marcucci, Mayor

DEVELOPER

Addison Corridor Development LLC

By

Member

H:Kathy/Elmhurst//agreements/draft term sheet.Addison Street 12/29/08

O-06-2009

AN ORDINANCE APPROVING A DEVELOPMENT, LOAN AND PURCHASE AND SALE AGREEMENT FOR THE ADDISON CORRIDOR REDEVELOPMENT PROJECT WITHIN THE DOWNTOWN TIF DISTRICT (THORNE AND ATHAR PARCELS)

WHEREAS, the City of Elmhurst has heretofore approved a Tax Increment Development Plan and Project, designated the Tax Increment Redevelopment Project Area and adopted Tax Increment Financing all in accordance with 65ILCS 5/11-74.4-1 et seq. (hereafter the "Tax Increment Allocation Redevelopment Act"); and

WHEREAS, in accordance with the Tax Increment Allocation Redevelopment Act the City of Elmhurst may lend money and acquire and dispose of real estate in the manner and at such price it determines to be reasonably necessary to achieve the objectives of the Redevelopment Plan and Project; and

WHEREAS, the Thorne and Athar parcels as described in the Development, Loan and Purchase and Sale Agreement (the "Development Agreement") attached hereto as Exhibit "1", are located within the Tax Increment Redevelopment Project Area (the "Downtown TIF District"); and

WHEREAS, the City has determined it is reasonably necessary to achieve the objectives of the Redevelopment Plan and Project that it agree to terms of the Development Agreement that will require the City to lend to the Developer to acquire the Athar and Thorne parcels and sell the Retail Premises of the Project to Developer, all as to property within the City's Downtown TIF District and pursuant to this Development Agreement; and

WHEREAS, the Development Agreement is made and agreed by the City pursuant to the authority granted by, and in full compliance with the requirements of the Tax Increment Allocation Redevelopment Act and the Term Sheet therefore approved by the City's Ordinance No. O-03-2009, and to that extent is an exception to all other rules, ordinances and statutes regarding the City's acquisition, conveyance or lending concerning real estate within the Downtown TIF District.

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the City Council of the City of Elmhurst, DuPage and Cook Counties, Illinois as follows:

SECTION 1. The Development Agreement by and between the City and the Developer dated this date and as attached hereto as Exhibit 1 is hereby approved.

SECTION 2. The Mayor is hereby authorized and directed to sign the Development Agreement in a form substantially as attached as Exhibit 1 and approved by the City Attorney.

SECTION 3. The Mayor and the City Clerk are hereby authorized to execute and attest such other documents as may be necessary to fulfill the City's obligations under the Development Agreement to purchase, sell and make a loan or loans to Developer, at such time and as provided in

Copies To All
Elected Officials
2-12-09

the Development Agreement.

SECTION 4. The recitals contained in the preamble of this ordinance are a material part hereof and are hereby incorporated herein. All ordinances or parts of ordinances in conflict with this ordinance are to the extent necessary, hereby amended so that the City's acts authorized hereby are in full compliance with applicable law including the City's ordinances and rules.

SECTION 5. This ordinance shall be in full force and effect from and after passage and publication according to law.

Approved this 17th day of February, 2009.

Thomas D. Marcucci, Mayor

Passed this 17th day of February, 2009.

Ayes: 10 Nays: 4

Patty Spencer

Patty Spencer, City Clerk

H:Kathy/Elmhurst/ordinance/devcomO

DEVELOPMENT, LOAN AND LAND PURCHASE AND SALE AGREEMENT PERTAINING TO THE ADDISON CORRIDOR REDEVELOPMENT PROJECT IN THE DOWNTOWN REDEVELOPMENT PROJECT AREA OF THE CITY OF ELMHURST, ILLINOIS

Dated: February 17, 2009

Prepared By:
Kenneth T. Kubiesa, Esq.
Kubiesa, Spiroff, Gosselar, Acker & DeBlasio, P.C.
105 South York Street, Suite 250
Elmhurst, Illinois 60126

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LIST OF EXHIBITS

EXHIBIT A Legal Description of Developer's Real Estate (including Thorne Parcel and Athar Parcel) . . . . . Attached

EXHIBIT B Plan for Retail Premises of the Project . . . . . Attached

EXHIBIT C Milestone Schedule for the Project . . . . . Attached

EXHIBIT D Term Sheet dated February 5, 2009 . . . . . Attached

EXHIBIT E Description of improvements to the Cold Dark Shell in the Retail Premises which are Developer's costs, in the ARCO/Murray letter of December 15, 2008 . . . . . Attached

DEVELOPMENT, LOAN AND PURCHASE AND SALE AGREEMENT PERTAINING TO THE ADDISON CORRIDOR REDEVELOPMENT PROJECT IN THE DOWNTOWN REDEVELOPMENT PROJECT AREA OF THE CITY OF ELMHURST, ILLINOIS

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made as of the 17th day of February, 2009, by and between the **CITY OF ELMHURST,** Illinois, an Illinois municipal corporation ("City"), and **ADDISON CORRIDOR DEVELOPMENT I, LLC,** an Illinois Limited Liability Company (the "Developer").

PREAMBLES

WHEREAS, the City has determined that it is in its public interest to adopt and has adopted a Redevelopment Plan and Project (the "Plan") pursuant to the Tax Increment Allocation Redevelopment Act, as amended, (65 ILCS 5/11-74.4-1 et seq.) (the "Act") for tax increment financing ("TIF") for the Redevelopment Project Area (the "Redevelopment Area"), which Redevelopment Area includes the Developer's Real Estate upon which will be constructed the Project, and is legally described in the Plan which is on file with the City; and

WHEREAS, the Developer would not proceed with this Project in the Redevelopment Area without the adoption of the Plan, the designation of the Redevelopment Area and the adoption of the tax increment financing; and

WHEREAS, the Plan has been prepared to address the needs of the City in meeting its redevelopment goals and objectives of its Comprehensive Plan; and

WHEREAS, one of the objectives of the Plan is to assist the Developer in development of the Project; and

WHEREAS, to implement the proposed Plan, it is necessary that the City enter into this Agreement with the Developer in order, inter alia, to loan funds to Developer to purchase the

Developer's Real Estate and then sell same to the City, so that the Project can be constructed thereon for use as retail and public parking, and thereupon convey the Retail Premises in the Project to Developer to operate same, otherwise the Redevelopment Area and the Project would not be developed by private investment alone; and

WHEREAS, the construction of the Project in the Redevelopment Area substantially benefits the properties comprising the Redevelopment Area and also provides benefits material to the City as a whole by providing additional retail shopping and public parking for residents and visitors of the City, and an increased tax base in the Redevelopment Area; Developer will be the owner of the Retail Premises of the Project, and herein agrees to purchase the Retail Premises from the City after construction of the Project, subject to the terms hereof with the object of enhancing the City's tax base and revenues and increasing job opportunities; and

WHEREAS, it is intended by the parties that all parking within the Project shall be public parking for which patrons of downtown businesses shall not be charged, a portion of which, as the City may determine, will be made available to employees of downtown businesses and residents of apartment properties within the Redevelopment Area, and that the Project shall not provide for any commuter parking; and

WHEREAS, the construction of the Project will create an environment within the Redevelopment Area which will contribute to the welfare of the City; preserve or enhance property values in the vicinity of the Project and Redevelopment Area; strengthen the economic well-being of the Redevelopment Area and the City by increasing job opportunities; achieve development which functionally and aesthetically complements adjacent properties and uses; provide safe and efficient vehicular and pedestrian accesses in, to and from the Project and Redevelopment Area; and provide safe and adequate parking in the Redevelopment Area and in the City, all in the public interest; and

NOW, THEREFORE, in consideration of the mutual promises and representations hereinbefore and hereinafter, set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

ARTICLE 1

INCORPORATION OF PREAMBLES AND DEFINITIONS

1.1 **Incorporation of Preambles**. The preambles set forth above are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Section 1.1.

1.2 **Definitions**. In addition to the words and phrases defined above and elsewhere herein, the following words and phrases as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning and intent:

1.2.1 Act. The Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11- 74.4-1 et seq.

1.2.2 Agreement. This Development, Loan and Land Purchase and Sale Agreement.

1.2.3 Certificate of Occupancy. A Certificate issued by the City at the request of the Developer upon substantial completion of the Retail Premises and upon compliance with Legal Requirements.

1.2.4 Closing. The time at which a parcel of real estate that is or was a part of the Developer's Real Estate (Thorne Parcel, Athar Parcel or Retail Premises) is conveyed to the other party under the relevant portion of this Agreement.

1.2.5 Cold Dark Shell. The Retail Premises to be conveyed by the City and owned and improved by Developer for occupancy by tenants in accordance with the

December 15, 2008 letter from ARCO/Murray National Construction Company attached hereto as Exhibit "E").

1.2.6 Developer's Real Estate. Collectively, the Thorne Parcel and Athar Parcel within the Redevelopment Project Area and all easements and appurtenances belonging thereto upon which the Project will be constructed by the City, and a part of which the City will convey to Developer as the Retail Premises, all as legally described on Exhibit "A" hereto. The Retail Premises legal is not available, but the Retail Premises will generally be located in the Project as shown on Exhibit "B" hereto.

1.2.7 Escrow. Any escrow established with the Escrowee through which the transactions contemplated by this Agreement shall be completed, including closing and money lenders escrows and any other escrow as may be required by the City or by this Agreement. The escrow instructions for each shall be in the form customarily used by the Escrowee for the transaction involved, with such special provisions added thereto as may be required to conform to the City's requirements or the provisions of this Agreement. The cost of a money lender's escrow or escrow to hold a deed for security shall be paid equally by the City and Developer.

1.2.8 Escrowee. Chicago Title and Trust Company or other title company agreed by the City.

1.2.9 Hazardous Materials. Any substance, material, waste, gas or particulate matter which is regulated by any local, governmental authority, the State of Illinois, or the United States Government, including, but not limited to, any material or

substance which is (i) defined as a "hazardous waste, " "hazardous material, " "hazardous substance, " "extremely hazardous waste, " or "restricted hazardous waste" under any provision of Illinois law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903), or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601). The term "environmental laws" as used in this Agreement, shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

1.2.10 Legal Requirements. Laws, rules, regulations, ordinances, orders, decrees and judgments of any governmental body, agency, department, or court having jurisdiction of the subject matter involved including, without limiting the foregoing, applicable ordinances, and rules and regulations of the City as modified herein.

1.2.11 Loan. One of two (2) loans that shall or may be made by the City to the Developer under this Agreement for acquisition by Developer of the Thorne Parcel and/or of the Retail Premises, as the context requires.

1.2.12 Milestone Schedule. As discussed in Section 2.4 and set out in Exhibit "C" hereto.

1.2.13 Parcel. Either the Thorne Parcel or Athar Parcel or Retail Premises as the context requires.

1.2.14 Permitted Title Exceptions. Exceptions permitted by the parties to any title policy or commitment required by this Agreement.

1.2.15 Person. A person, firm, organization, corporation, limited liability company or other legal entity, whether governmental or private.

1.2.16 Project. The mixed use, retail and public parking structure consisting of above ground construction on the Developer's Real Estate, as required by this Agreement.

1.2.17 Purchase Agreement. Those parts of this Agreement concerning conveyance of parts of the Developer's Real Estate as the context requires.

1.2.18 Retail Premises. That part of the Developer's Real Estate that includes the Cold Dark Shell, and is to be conveyed by the City to Developer for improvement as a retail shopping center upon completion of the Project, pursuant to the provisions of this Agreement and generally within the ground floor area as depicted on Exhibit "B" hereto.

1.2.19 Survey. Current topographical survey of the Property prepared by a surveyor licensed by the State of Illinois and certified to the Purchaser, Seller and Title Insurer and such other parties as Purchaser shall designate to be prepared in accordance with the standards for Land Title Surveys of the American Land Title Association (ALTA) and American Congress on Surveying and Mapping

promulgated in 1992, setting forth the legal description and street address of the Property and showing thereon all improvements (including fences), easements (visible or recorded), building lines, curb cuts, sewage, water, electricity, gas and other utility facilities (together with recording information concerning the documents creating any such easements and building lines), roads and means of physical and record ingress and egress to and from the Property by public roads (including the dimensions of abutting streets) and the gross square footage of the land included in the Property, and spotting improvements on adjoining real property which are within five feet of the property lines of the Property.

1.2.20 Title Commitment or Title Policy. A commitment for or an ALTA Owner's Title Insurance Policy for the Property issued by the Title Insurer initially in a minimal amount and at the time of Closing in the full amount of the Purchase Price, covering title to the Property on or after the date hereof, showing Seller as owner of the Property in fee simple, subject only to the Permitted Title Exceptions, and other exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at closing and which Seller shall so remove, and providing for full extended coverage over all general title exceptions contained in such policies and containing the following endorsements: 3.0 zoning endorsement, with a commitment by the Title Insurer to issue a 3.1 zoning endorsement with affirmative insurance over parking requirements; access endorsement; contiguity endorsement (regarding contiguity of the Developer's Real Estate)

endorsement insuring no violation of building lines, covenants or restrictions pertaining to that real estate.

1.2.21 Term Sheet. The Development Loan Commitment and Term Sheet approved by the parties on February 5, 2009, a copy of which is attached and made a part hereof as Exhibit "D".

ARTICLE 2

REPRESENTATIONS, INFORMATION AND MILESTONE SCHEDULE

2.1 **City's Representations and Warranties.** The City hereby represents and warrants that as of the date hereof:

2.1.1 It will have full lawful right, power and authority, under currently applicable law and in accordance with its powers as a Home Rule municipality, to execute and deliver and to perform the terms and provisions of this Agreement; and

2.1.2 As of such date, execution, delivery and performance will have been duly and validly authorized and approved by all necessary City proceedings, findings and actions and the Agreement will be valid, binding and enforceable against the City in accordance with its terms.

2.2 **Developer's Representations and Warranties.** The Developer hereby represents and warrants that as of the date hereof:

2.2.1 It is an Illinois Limited Liability Company in good standing under the laws of the State of Illinois, and that it has full lawful right, power and authority, under currently applicable law, to execute, deliver and perform the terms and provisions of this Agreement; and

2.2.2 That the Agreement has been duly and validly authorized and approved by all necessary corporate proceedings and is valid, binding and enforceable against the Developer in accordance with its terms; and

2.2.3 That Developer is now solvent and able to pay its debts as they mature and that there are no actions of law or similar proceedings which are pending or threatened against the Developer, its managers or members which might result in any material and adverse changes in the Developer's financial condition, materially affect the Developer's assets as of the date of this Agreement, or materially affect the Developer's ability to execute, deliver and perform the terms and provisions of this Agreement; and

2.2.4 The Developer's managers, members and principals shall include only those Persons as disclosed to the City by Developer in writing prior to approval of this Agreement on or about February 17, 2009. The interest of any manager, member or principal of Developer as disclosed shall not be transferred, assigned or conveyed until the later of issuance of the Certificate of Completion, the Retail Premises being occupied by tenants, the loan, if any, for purchase of the Retail Premises being fully paid, or the City agrees.

2.3 **City's Investigation and Additional Developer's Warranties.** At or prior to entry into this Agreement, the City, by its duly authorized representatives, has conducted such investigation, and reviewed such documents as it deems necessary to satisfy itself as to the Developer's ability to perform hereunder including, without limiting the foregoing, financial information of the Developer and verification that the Developer's Real Estate is under contract for purchase by Developer and will be free of and unencumbered by any mortgage

or other lien or encumbrance that would make it unmarketable at the time of any Loan or conveyance to the City as required in this Agreement. In regard thereto, the Developer further represents and warrants that:

2.3.1 this Agreement and the information and documents provided to the City by Developer fully disclose the interest of Developer and its managers, members and principals in the Developer's Real Estate and the Developer as of the date of this Agreement; and

2.3.2 the factual matters set forth hereinabove are true, and disclosure by Developer of relevant facts regards the Developer and Developer's Real Estate is complete; and

2.3.3 The Developer shall make available for review from time to time by designated City personnel, including the City Attorney, any information concerning Developer's Real Estate this Project and construction of the Project that the City deems relevant and material to the purposes of this Agreement; and

2.3.4 Prior to any Closing hereunder, the Developer shall make available for review by designated City agents or personnel, relevant material information evidencing its continuing ability to perform, including financial information, title reports, tenant leases and information regards relocation of tenants and tenant vacation of the Thorne and Athar Parcels on Developer's Real Estate; and

2.4 **Milestone Schedule**. The attached Milestone Schedule for the Project, includes all significant or important dates that are necessary for successful completion of the Project. This Milestone Schedule shall be strictly adhered to by the parties and it may be amended

upon request of either party for substantial cause as determined by the City. The time for performance of all parties to this Agreement is of the essence, and absent amendment to the Milestone Schedule with approval of the City, the failure of either party to complete performance required by this Agreement by dates shown in the Milestone Schedule, shall be considered a breach of this Agreement and the other party shall be entitled to any remedy allowed by law or otherwise in this Agreement.

ARTICLE 3

CITY'S LOAN TO DEVELOPER FOR THORNE PARCEL ACQUISITION AND ASSIGNMENT OF THE ATHAR PARCEL CONTRACT TO THE CITY FROM DEVELOPER

3.1 **Terms of Loan**. The City shall loan funds to Developer secured by the Thorne Parcel in a principal amount of $3,500,000 plus or minus prorations, which is the price of Developer's acquisition of the acquisition of the Thorne Parcel. This Loan shall have, inter alia, the following terms and conditions:

3.1.1 An annual interest rate on unpaid principal of 4.875%; and

3.1.2 Having a final maturity no later than the date of commencement of construction of the Project as called for in the Milestone Schedule; and

3.1.3 Payments of interest only (in arrears) in equal monthly installments on or before the first day of each calendar month in an amount sufficient to timely and fully pay the prior month's interest on the Note; and

3.1.4 Providing for acceleration and payment of all outstanding principal and interest upon demand of the City if Developer is in default of any provision of the Note, or this Agreement, including the Milestone Schedule; and

3.1.5 A warranty deed from Developer to the City, shall be deposited by Developer into escrow at the Title Company at the time of Closing and disbursement of Loan proceeds to Developer, as the City's principal security for this Loan. In accordance with the escrow instructions and this Agreement, that deed may be recorded upon default of the Developer of any of the terms, conditions or provisions of this Agreement or the Loan Documents as determined by the City in accordance with the escrow instructions and within its sole and absolute discretion.

3.2 **Deliveries by Developer**. The City shall have no obligation to make the Loan for the Thorne Parcel until all of the following conditions and deliveries for the benefit of and to the City have been satisfied by the Developer:

3.2.1 An escrow or escrows shall be established at the Title Company for deposit of Closing Documents, to hold the warranty deed required under Section 3.1.5 above, and to facilitate Closing.

3.2.2 The City has heretofore received and satisfied itself with any information it has received and requires as to the amount of the Loan for the Thorne Parcel equaling, at a minimum, the Developer's price of acquisition thereof.

3.2.3 Developer shall have delivered a Note evidencing the Loan executed by the Developer, acceptable to the parties, which Note shall be secured by this Agreement, a deed by Developer in escrow with the Title Company to convey the Parcel to the City upon default of Developer, and such other security or security interest as may reasonably be required by the City and included in the Loan Documents. The Loan Documents and Note shall be non-recourse to the

Developer, its managers, members and principals except as may be otherwise set out in this Agreement, the Loan Documents and the following:

(a) obligations and liabilities under any indemnity agreement required under this Agreement including, without limitation, any environmental indemnity agreement; and

(b) fraud or material misrepresentation in connection with the negotiation and execution of this Agreement and/or the making of the Loan and any information furnished by the Developer as provided herein, and including any indemnities from the Developer to the City and its employees and agents with respect thereto; and

(c) insurance and/or condemnation proceeds received but not paid over or applied in accordance with the Loan Documents; and

(d) misappropriation of security deposits, advance or prepaid rents, cancellation or termination payments and other similar sums received by Developer from any tenants or other occupants of the Parcel, which are required for and not applied to payments due on the Note; and

(e) personal property covered by a City's security interest obtained in connection with the Loan which is taken from the Parcel by or on behalf of Developer and not replaced with personal property of the same utility and of the same or greater value; and

(f) any act of arson, malicious destruction or active waste by Developer, any principal, affiliate, member or manager of Developer; and

(g) revenues of the Parcel which are required for and not applied to payments due for the Loan or operating expenses of the Parcel (including, without limitation, any reserves or escrows required by the Loan Documents) thereby resulting in or contributing materially to a default under the Loan Documents; and

(h) the filing by Developer of a voluntary bankruptcy or insolvency proceeding or the filing against Developer of an involuntary bankruptcy or insolvency proceeding which is not dismissed within 90 days of filing; and

3.2.4 Developer acquiring the Thorne Parcel prior to disbursement of the Loan and at or before the date required by the Milestone Schedule; and

3.2.5 No default by Developer shall have occurred pursuant to this Agreement including the Milestone Schedule and no event of default on the part of the Developer shall exist with respect to and under the Loan Documents evidencing the Loan on the date of delivery thereof, provided that for purposes of this provision an event of default shall be deemed to have occurred if facts and conditions exist, which but for the passing of time or giving of notice, would constitute an event of default; and

3.2.6 Developer shall have executed and tendered to the City all Loan Documents in a form acceptable to the City; and

3.2.7 Except for any default occasioned by the City or anyone acting by or through the City, the condition of title of the Thorne Parcel shall be in accordance with the provisions of this Article 3 and shall be reflected in a standard Title Policy

in the amount of the Loan showing this Agreement or Memorandum thereof as a first lien on the Thorne Parcel as of disbursement of the Loan subject only to exceptions to title approved by the City at the time of the acquisition of the parcel by Developer, and including such special endorsements as the City may reasonably request in addition to those required by Section 1.2.21 hereinabove, and any other endorsements which may be reasonably required by the City upon a review of current title and survey evidence; and

3.2.8 Developer shall deliver to the City a Survey acceptable to the City; and

3.2.9 Developer shall deliver a Certificate that the warranties and representations, made in this Agreement and in the Loan Documents, are true and correct; and

3.2.10 There shall be no material litigation pending against the City that if adversely determined could reasonably be anticipated in the City's opinion to prevent the City from compliance with its obligations under the Loan and this Agreement; and

3.2.11 There shall be no material litigation pending against the Developer, any of its members, managers or principals that if adversely determined could reasonably be anticipated to prevent Developer from compliance with its obligations under the Loan; and

3.2.12 Neither the Parcel nor any part thereof to which the Loan relates, is subject to any existing or threatened condemnation or taken by eminent domain proceeding by any agency other than the City; and

3.2.13 All existing environmental reports and information concerning the Developer's Real Estate have been furnished to the City by the Developer.

3.3 **Loan Documents**. The Loan Documents shall include a Loan Agreement in accordance with the terms hereof, the Note, the Escrow Agreement for Deed, an Assignment of Rents and Leases, and a Security Agreement granting to the City a security interest in personal property owned, located upon and used by Developer in connection with operation of the parcel all in form and substance approved by the parties at the time of funding the Loan and, including, inter alia, requirements for:

3.3.1 Delivery by any tenant of a standard form of Non-Disturbance and Attornment Agreement required by such tenant's lease; and

3.3.2 Liability insurance with limits as provided in any tenants' leases and fire and extended coverage insurance in the amount of the full replacement cost of the improvements (excluding therefrom fire and extended coverage insurance carried by a major tenant and requiring repair or restoration of the building occupied by the tenant, provided that the City is an additional insured and loss payee with respect to any such coverage and such policies otherwise comply with the requirements hereof), reflecting the City as its interest may appear as to the former and the customary loss payee endorsement to the City as mortgagee as to the latter, in both cases non-cancelable except after 30 days prior written notice to the City; the Loan Documents shall provide that Developer shall apply proceeds to principal or the Loan. In the event that any insurer cancels insurance the City may obtain such insurance at the cost of the Developer and the cost shall be added to the outstanding balance of the Loan; and

3.3.3 An opinion of the Developer's counsel in its customary form opining as to the enforceability of this Agreement, Escrow Agreement for Deed, Note, Security Agreements and other Loan Documents; and

3.3.4 Providing that no payment default shall be deemed to have occurred unless not cured within 10 days after the occurrence thereof, or if not a monetary default then within such additional time after notice thereof from the City to the Developer as Developer shall in good faith, and with due diligence, be attempting to cure the same, but not more than 90 days provided that the insolvency of the Developer or its inability to pay its bills as they become due shall be deemed an automatic event of default; and

3.3.5 Providing for a late charge respecting any late payment in an amount of five (5%) percent for each month or part thereof that the payment is in arrears; and

3.3.6 Providing the Developer the opportunity to cure disputed liens for a reasonable period of time so long as no forfeiture of the City's assets may ensue thereby, and provided that title insurance over any such claim and/or a deposit of collateral reasonably acceptable to the City shall be required as a pre-condition of such contest. The Loan Documents shall also include such other documents as would customarily be required of a borrower by an institutional lender in a loan transaction similar to this transaction, including but not limited to, the following:

(a) Collateral assignment of the beneficial interest if necessary;

(b) an environmental indemnity from the Developer in accordance with the Section 3.3.8 hereinbelow, in a form acceptable to the City;

(c) a collateral assignment of service contracts, licenses and permits and a collateral assignment of the management agreement in effect with respect to the building. The management of the building at all times be subject to the City's reasonable approval (and City hereby approves Developer as manager), and upon foreclosure the City shall have the right to terminate the management agreement and obtain new management.

3.3.7 UCC, tax lien and judgment searches of Developer, its managers, members and principals; and

3.3.8 An environmental indemnity by Developer to City concerning violation of applicable environmental laws, or existence of Hazardous Materials caused by Developer during its ownership of the Thorne Parcel, provided that with this indemnity shall relate to the period only from and after Closing and as to the intentional, willful or negligent acts of Developer.

3.3.9 Such other reasonable requirements consistent with the provisions hereof which are customarily provided as a part of such transactions.

3.4 **Disbursement of Loan**. The date of Disbursement of the Loan for the Thorne Parcel shall be at the time of Closing as provided in the Milestone Schedule provided further that such date shall be no earlier than the date all requirements set forth in Section 3.2 hereinabove shall have been met.

3.5 **Waiver of Transfer Fee on Loan Transaction**. The City shall waive any City imposed real estate transfer fee attributable to the Loan transaction.

3.6 **Non-Acceptance of Loan**. Notwithstanding anything to the contrary herein, or in the Loan Documents, the Developer may, at any time prior to the date of disbursement of the Loan, determine by written notice to the City not to accept the Loan and finance its acquisition of the parcel from another source or sources, but in that event the other obligations of the Developer under this Agreement shall continue and shall not terminate.

3.7 **Assignment of Loan Contract**. The commitment of the City to make the Loan for the Thorne Parcel is personal to Developer and may not be transferred or assigned by Developer.

ARTICLE 4

ASSIGNMENT OF ATHAR PARCEL PURCHASE CONTRACT

4.1 **Assignment of Purchase Agreement**. In exchange for the City's promises in this Agreement, the Developer agrees to sell, assign and set over to the City any and all of Developer's interest in and to the Athar Parcel by way of its Purchase Agreement therefore dated February 11, 2009 ("Athar Purchase Contract") between Developer and Peter Cotsirilos and the estate of George P. Cotsirilos as seller of the Parcel.

4.2 **City's Acceptance of Assignment**. By approval and execution of this Agreement the City accepts assignment of the Athar Purchase Contract, and agrees to undertake the purchaser's obligations therein and to purchase of the Parcel as required by that Contract and this Agreement.

ARTICLE 5

CITY'S LOAN TO DEVELOPER FOR ACQUISITION OF THE RETAIL PREMISES

5.1 **Loan to Developer after Substantial Completion of Project**. The Developer may borrow the purchase price of the Retail Premises from the City at the time Developer purchases the

Retail Premises from the City as required by the Milestone Schedule, and upon terms as set out in this Agreement and in the Loan Documents for that transaction.

5.2 **Conditions for Loan to Developer for Retail Premises**. The City shall have no obligation to make such loan to Developer for the Retail Premises until the conditions and deliveries required in the Milestone Schedule and hereinafter are met, to wit:

5.2.1 There is no default by Developer in any terms or conditions of this Agreement or the Milestone Schedule.

5.2.2 The Developer is unable to secure tenant leases for the Retail Premises to an extent necessary that would allow it to borrow funds necessary for this purchase of the Retail Premises from the City upon commercially reasonable terms and at a price as determined by the formula in the Term Sheet.

5.2.3 The Developer delivers Loan Documents as required by the City.

5.2.4 Any other commercially reasonable requirements determined by the City.

ARTICLE 6

THE CITY'S PURCHASE OF THE THORNE PARCEL

6.1 **City's Purchase of Thorne Parcel**. The City shall purchase the Thorne Parcel from the Developer, subject to the terms and conditions of this Agreement, including the Milestone Schedule. At the City's purchase Closing, Developer shall convey fee simple title to the City or its assignee or designee by good, sufficient and recordable warranty deed subject only to the Permitted Exceptions.

6.2 **Foregiveness of Loan as Consideration.** The consideration paid by the City to Developer for its conveyance of the Thorne Parcel to the City shall be forgiveness of the Loan, plus or minus prorations and other proper charges.

6.3 **Survey**. There shall be no obligation of Developer to provide a Survey at Closing of the conveyance of the Thorne Parcel to the City, but shall provide an affidavit of "no new improvements" to the Title Company.

6.4 **Title Commitment**. No later than thirty (30) days prior to Closing, City shall order the Title Commitment, at City's sole cost and expense. The parties shall promptly thereafter attempt to agree upon exceptions to title (other than those approved by the parties referred to herein as "Permitted Exceptions"). If any exception is unacceptable to the City, Developer shall have 10 days from the date of objection to have such exceptions removed from the Title Commitment, and if Developer fails to have all such exceptions removed, City may elect, on or before 10 days thereafter accept title subject only to those such unpermitted exceptions as the Title Company has not removed upon payment of Developer or to deduct from the purchase price the cost of the premiums and security necessary for an endorsement insuring the City's marketable title with said exceptions. In addition, the City may pursue such other rights or remedies it may have hereunder, at law or in equity. At the Closing, Developer shall cause the Title Insurer to issue an owner's title insurance policy (herein a "Title Policy") to the City in the full amount of the purchase price, at City's expense, insuring marketable title to the Thorne Parcel in the City, subject only to the Permitted Title Exceptions and such other exceptions as provided hereinabove or to which the City agrees.

6.5 **Possession**. Sole and exclusive possession of Thorne Parcel shall be delivered to City at the Closing.

6.6 **Prorations**. The parties shall not prorate any items of income, but shall prorate real estate taxes.

6.7 **Waiver of Transfer Taxes**. The City's transfer taxes, if any, for this Closing shall be waived. All deed and money escrow fees shall be paid equally by the parties, but all title insurance premiums and charges for the issuance of the Title Policy shall be paid to the City.

6.8 **Developer's Maintenance of Property**. Developer shall, until Closing, at Developer's sole cost and expense, maintain the Parcel free from waste and neglect and shall keep and perform or cause to be performed all obligations of the Developer or its agents under applicable federal, state, county and municipal laws, ordinances, regulations, orders and directives.

6.9 **Developer's Possession of Thorne Parcel**. From its date of purchase on or about February 18, 2009 to this Closing, Developer shall not do, suffer or permit, or agree to do, any of the following:

6.9.1 Except as may be required in this Agreement, enter into any transaction in respect to or affecting the Thorne Parcel out of the ordinary course of business or affecting the Milestone Schedule; or

6.9.2 Sell, encumber or grant any interest in the Thorne Parcel or any part thereof in any form or manner whatsoever, or otherwise perform or permit any act which will diminish or otherwise affect City's interest under this Agreement or in or to the Parcel or which will prevent Developer's full performance of its obligations hereunder and according to the Milestone Schedule.

6.10 **City's Inspection**. Developer shall at all times after its purchase and upon reasonable prior notice, permit representatives, agents, employees, lenders, contractors, appraisers, architects and engineers designated by City access to, and entry upon, the Thorne Parcel to examine,

inspect, measure and test it for the purposes set forth herein and for all other reasonable purposes.

6.11 **Deliveries by Developer**. Developer shall deliver to the City at the time of the Title Commitment true, correct and complete copies of the following:

6.11.1 All documents evidencing the title exceptions referenced or to be referenced on the Title Commitment; and

6.11.2 All essential data, correspondence, documents, agreements, waivers, notices, applications and other records in respect to the Thorne Parcel and relating to transactions with taxing authorities, governmental agencies, utilities, vendors, tenants and others.

6.12 **Developer's Representations and Warranties**. To induce City to execute, deliver and perform this Agreement and this Article 6 and without regard to any independent investigations made by City, Developer hereby represents and warrants to City on and as of Closing for the Thorne Parcel, as follows:

6.12.1 Except for Developer, there will be no Persons, as of the Closing date, in possession or occupancy of the Thorne Parcel or any part thereof, nor are there any Persons who have at that time any possessory rights in respect to the Parcel or any part thereof;

6.12.2 As of Closing, there are no claims, causes of action or other litigation or proceedings pending or, to the best of Developer's knowledge, threatened, in respect to occupancy of any premises on the Parcel; and

6.12.3 To the best of Developer's knowledge, there are no violations of any health, safety, pollution, environmental, zoning or other Legal Requirements with respect to the Parcel, which have not been heretofore entirely corrected;

6.12.4 There are not currently, nor shall there be prior to Closing, any general or special real estate or other ad valorem taxes or assessments or any other state or city taxes, fees, charges or assessments assessed against the Parcel; and

6.12.5 There are no facts or circumstances not disclosed to the City of which Developer has knowledge and which have or could have a material adverse effect upon this Parcel and the Developer's Real Estate.

6.13 **Additional Developer's Warranties**. Developer represents and warrants that to the best of its knowledge: (i) neither the Thorne Parcel nor any part thereof is in breach of any applicable environmental laws, and (ii) the Thorne Parcel is free of any Hazardous Materials that would trigger a response or remedial action under any environmental laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached, and if such breach gives rise to or results in liability (including, but not limited to, a response action, remedial action or removal action) under any environmental laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Developer shall promptly take any and all remedial and removal action as required to clean up the Thorne Parcel, mitigate exposure to liability arising from, and keep that Parcel free of any lien imposed pursuant to, any environmental law as a result of such breach.

6.14 **Developer's Indemnification**. Additionally, but not in lieu of Developer's affirmative undertakings set forth in Section 6.13 hereinabove, Developer, its members, manages and principals agree to indemnify, defend and hold harmless the City and its grantees from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by the City and its grantees, as of a result of (a)any breach or any matter, condition or state of fact involving any applicable environmental law or Hazardous Material on or under the Thorne Parcel, which existed or arose because of an intentional, willful or negligent act of Developer, from the time of Developer's purchase of that Parcel to Closing with the City, regardless of whether or not Developer had knowledge of same as of Closing with the City.

6.15 **Closing Conditions**. The obligation to Close the transaction contemplated hereby is subject to all obligations of Developer required to be performed on or before Closing, having been timely and duly performed. If any condition precedent to Closing by Developer as set forth herein has not been fulfilled and satisfied by Developer on or before Closing, the City may, by notice to the Developer given in accordance with and subject to, any cure periods provided herein, elect at any time thereafter to terminate this Article 5 alone or this Agreement as a whole provided that the City is not itself in default, and if such termination is due to Developer's fault occurring on or after the date hereof. As one of the City's remedies available at law or under this Agreement for Developer's failure to

Close, the City may proceed to collect all reasonable costs, expenses, attorney's fees and other expenditures resulting from said default of Developer.

6.16 **Closing**. The Closing for the Thorne Parcel shall be at the offices of the Escrowee or the City's attorney, as the parties agree, and shall be on the date as called for in the Milestone Schedule, or such other date as agreed by the parties.

6.17 **Closing Documents**. At the Closing, Developer shall deliver to the Escrowee or the City in exchange for the payment to Developer of the purchase price plus or minus prorations, the following closing documents:

6.17.1 Developer's warranty deed conveying to the City or its nominee fee simple title to the parcel conveyed, subject only to the Permitted Title Exceptions and any other exceptions approved by the City;

6.17.2 Developer's certificate dated as of Closing confirming that the representations and warranties set forth in Article 5 are true and correct on and as of Closing;

6.17.3 An ALTA statement; and

6.17.4 Such other documents, instruments, certifications and confirmations as may be reasonably required and designated by the City to fully effect and consummate the transactions contemplated hereby; and

6.17.5 A release of the Note and release of any other security for the Loan.

6.18 **Transfer Tax Declaration**. The parties shall jointly execute State of Illinois and DuPage County and City of Elmhurst transfer tax declaration, if necessary.

6.19 **Concurrent Delivery at Closing**. All documents or other deliveries required to be made by either party at Closing, and all transactions required to be consummated concurrently with Closing shall be deemed to have been delivered and to have been consummated

simultaneously with all other transactions and all other deliveries, and no delivery shall be deemed to have been made and no transactions shall be deemed to have been consummated until all deliveries required by Developer and the City shall have been made, and all concurrent and other transactions shall have been consummated.

ARTICLE 7

CITY'S SALE OF RETAIL PREMISES TO DEVELOPER

7.1 **Agreement to Sell Retail Premises**. The Developer agrees to purchase and the City agrees to convey the Retail Premises as a Cold Dark Shell and after the City has subdivided the Developer's Real Estate so as to create a lot of record therefore at or about the time of completion of the Project and as required by the Milestone Schedule. The City shall cause the Retail Premises to become a legally conforming lot of record within 75 days prior to Closing of the sale of the Retail Premises to Developer by the City. The City shall provide, at no cost to Developer or its tenants, such easements in the Project as necessary for the development, maintenance and continued retail operation of the Retail Premises.

7.2 **Improvement as Shopping Center**. Developer, at its cost for those improvements as set out in Exhibit "E", shall improve the Retail Premises as a retail shopping center, consisting only of businesses generating sales tax revenue. Except as may be allowed by the City Manager for good cause shown and the City Manager's sole discretion, for a period of 10 years after Closing of the sale of the Retail Premises to Developer, at least seventy five (75%) of the leased space therein shall be used by retail tenants who state sales tax revenue therefrom and which is included in the Net State Sales Tax Incremental Revenue distributed to the City by the State of Illinois. The plan for the Retail Premises shall be approved by the City Manager if it is in accordance with this Agreement, in accordance

with all Legal Requirements, and such approval shall not be unreasonably withheld. It is understood that the public parking spaces in the Project shall satisfy all parking required for the Retail Premises imposed by Legal Requirements.

7.3 **Additional Plans**. Within 90 days after Closing and prior to the issuance of a building permit, the Developer shall furnish to the City complete architectural plans for the required construction of the Retail Premises.

7.4 **Zoning**. Developer agrees to apply to the City for classification under the Zoning Ordinance to allow retail use of the Retail Premises if required by the Legal Requirements. If the plan for construction of improvements of the Retail Premises requires variances, code amendments, text changes in the codes, ordinances or regulations of the City, or other changes, the Developer agrees that it will take appropriate action and make the appropriate application as may be necessary to allow the construction of said improvements in accordance with the plan for retail use as approved by the City.

7.5 **Price and Terms**. City agrees to sell the Retail Premises to Developer at the price determined by the formula set out in the Term Sheet, and upon terms as otherwise set forth in this Agreement. The City shall provide a loan to Developer for the purchase price of the Retail Premises to be repaid by Developer within 5 years, upon terms and conditions as set out in paragraph 5(e) of the Term Sheet and Loan Documents for that transaction at the time of this Closing. The City will convey title to the Retail Premises to the Developer as a lot of record by a recordable warranty deed, and a proper bill of sale and grant any required easements, subject only to standard title objections which Developer has reviewed and approved, all of which shall not interfere with the use or improvement of the Retail Premises as required in this Agreement.

7.6 **No Transfer by Developer**. Developer shall not convey any interest in the Retail Premises nor transfer any interest therein, except for financing purposes, to any other Person prior to the opening for business by the last tenant to initially occupy the Retail Premises after conveyance to Developer. The City Manager, in his sole discretion and for good cause shown by Developer, may allow such conveyance or transfer by Developer as may be prohibited by this Agreement.

ARTICLE 8

DEVELOPER TO CONSTRUCT THE PROJECT

8.1 **Developer Including ARCO Murray as General Contractor**. The City shall utilize the services of Developer (who shall involve ARCO Murray National Construction Company), as general contractor or construction manager of the Project, pursuant to a contract for those services to be entered into by the City and Developer within 30 days after Closing on the Thorne Parcel sale to the City.

ARTICLE 9

INDEMNITY AND SECURITY

9.1 **Developer's Indemnity**. Developer agrees to indemnify, defend and hold harmless the City, its Mayor, Aldermen, employees, agents, representatives and attorneys, in both their official and individual capacities, from and against all claims, causes of action and suits of every kind and nature, including liabilities, damages, costs, expenses and reasonable attorneys' fees by reason of

9.1.1 a failure by Developer to perform any obligation provided herein; and

9.1.2 a contract, mechanic's lien or other claim by any third party, arising by reason of this Agreement or the Developer's performance hereunder; and

9.1.3 a claim for personal injury or property damage arising by reason of Developer's performance under this Agreement, other than a claim arising out of the City's own acts or those of anyone acting by, through or for the City or the negligence of any of the foregoing. In the event Developer does not defend and make timely payment of any such claim, the City shall have all remedies at law for enforcement hereof against Developer, including reasonable attorneys fees and costs of litigation, and may pursue any action against Developer all of which remedies may be exercised concurrently or consecutively, or in such other manner and sequence as may be determined by the City.

9.2 **Required Insurance**. The Developer shall purchase and maintain such insurance as will protect the Developer and City, as additional insured (except for claims against the City relating to its work on the Developer's Real Estate) from claims set forth below which may arise out of or result from the action or omissions of the Developer or of a contractor, consultant or affiliate of the Developer or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, to wit:

9.2.1 Claims under workers' or workmen's compensation, disability benefit and other similar employee benefit laws which may be applicable;

9.2.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Developer's employees under any applicable employer's liability law;

9.2.3 Claims for damages because of bodily injury, sickness or disease, or death of persons other than the Developer's employees;

9.2.4 Claims for damages, other than work on the Developer's Real Estate, because of injury to or destruction of tangible property; and

9.2.5 Claims for damages for bodily injury or death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

9.3 **Insurance Limits and Terms**. The insurance required as aforesaid shall be issued by a company with an Best's rating of no less than A:VII, and where applicable shall be written for no less than the following limits of liability:

Worker's compensation and Occupational Diseases	Statutory limits
Employer's Liability	$500,000.00
Comprehensive General Liability Bodily Injury and Property Damage	$2,000,000.00 combined single limit
Contractual Liability for Indemnification of Owner and Owner's Representatives	$1,000,000.00 combined single limit
Comprehensive Automobile Liability (all types of vehicles)	$500,000.00 combined single limit
Umbrella Liability	$3,000,000.00 combined single limit

Certificates of insurance evidencing the required coverage as above for the Developer and any contractor, consultant or other contractor involved in operation or construction upon the Developer's Real Estate shall be delivered to the City at the time of the first Closing hereunder. The certificates required shall contain a provision that coverage will not be canceled or allowed to expire until at least (30) thirty days' prior written notice has been given to the City.

ARTICLE 10

CERTIFICATE OF COMPLETION

10.1 **City to Provide Certificate of Completion**. Promptly after completion of the Project in accordance with this Agreement, the City shall furnish the Developer with an appropriate instrument so certifying such completion. The certification by the City shall be conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to the obligations of the Developer to convey the Developer's Real Estate and to construct the Project thereon as required by this Agreement.

ARTICLE 11

REAL ESTATE TAXES

11.1 **No Tax Objections**. The Developer, its successors or assigns agree not to protest or object to any real estate tax assessment on the Developer' Real Estate or the Retail Premises which, if allowed, would reduce the assessment below the current level as of the date of this Agreement or as to the Retail Premises, on the date of Substantial Completion thereof. Nothing herein shall require a tenant or future tenant of the Retail Premises to refrain from any tax protest or objection permitted by the terms of its lease with Developer.

11.2 **Payment of Real Estate Taxes by Developer**. The parties agree that the Developer's Real Estate shall be assessed for general real estate taxes in the manner provided by applicable Legal Requirements. The Developer shall pay all real estate taxes when due on the Developer's Real Estate or the Retail Premises while it owns those properties, and shall furnish the City, at its request, with evidence of the taxes paid and when paid.

11.3 **Enforceability of Covenant**. The obligation of Developer, its successors and assigns, under this Article 11 shall continue only during the life of the City's Downtown TIF

District. This covenant shall be binding and enforceable against any subsequent owners of the Developer's Real Estate. If the City claims that Developer has breached this covenant, may refuse to issue any occupancy permit or may seek an injunction against such changed use and if allowed by a Court may seek an award of costs and attorneys' fees should the court determine that Developer is in breach of this covenant.

ARTICLE 12

OCCURRENCES CONSTITUTING PERMITTED DELAYS

12.1 **Permitted Delays**. Performance by a party hereunder shall not be deemed to be in default where delays or defaults are due to the fault of the other party, war, unusual weather conditions, oncoming seasonal weather conditions which make it reasonable to delay development so as to assure no interruption in sequential development, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than twenty (20) days after the commencement of the cause or not more than twenty (20) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

ARTICLE 13

REMEDIES

13.1 **Legal Action and Costs**. Any party to this Agreement may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other

remedy consistent with the purposes of this Agreement, at law or in equity. In the event any party shall institute legal action because of a breach of any provision or obligation contained in this Agreement, and a breach shall be established by a final judgment against a party after all appeals have been concluded, the prevailing party shall be entitled to recover all damages, costs and expenses, including reasonable attorneys' fees incurred therefor.

13.2 **Cumulative Remedies**. The rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other parties.

13.3 **Cure of Default**. The curative provisions of this Section do not apply to default debt service on the Loan or Loans. Subject to the extensions of time set forth in this Agreement, failure or delay by any party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy with due diligence. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such

time as is reasonably necessary for the curing of the same, so long as the defaulting party diligently proceeds therewith; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

13.4 **No Personal Liability**. Except as otherwise specifically provided in this Agreement, the Developer, its members, managers or principals generally shall have no personal liability for payment or performance under, or arising by virtue of this Agreement.

ARTICLE 14

GENERAL

14.1 **Memorandum of Development**. Immediately after the date hereof and at or before the first of the Closings contemplated hereby, this Agreement or a Memorandum hereof shall be recorded. The covenants and agreements of Developer set out herein shall run with the land and be binding on all successors or assigns of Developer as may be intended by the parties herein, and may be enforced by the City by appropriate action taken in the sole discretion of the City.

14.2 **Notices**. All notices and demands required hereunder shall be in writing and shall be deemed given when received upon electronic delivery as follows:

If to the City:

City of Elmhurst
ATTN: Thomas Borchert, City Manager
Fax: #630-530-3014
E-mail: Tom.Borchert@elmhurst.org

With a copy to:

Kenneth T. Kubiesa, Esq. and Andrew Y. Acker, Esq.
Kubiesa, Spiroff, Gosselar, Acker & DeBlasio, P.C.
Fax: #630-516-1808
E-mail: kubiesa@ksgalaw.com

If to Developer:

David Hollingsworth
DevCom Realty Investments
Fax: #630-961-2580
E-mail: dave@devcominc.com

Dan Hiffman
NAI Hiffman
Fax: #630-9327258
E-mail: dan@hiffman.com

With a copy to:

Michael P. Bradt, Esq.
Morrissey & Robinson
Fax: #630-424-8890
E-mail: mbradt@mr-legal.com

14.3 **Cooperation**. The City and the Developer will make every reasonable effort to expedite giving effect to the terms and provisions hereof and acknowledge that the successful performance of this Agreement requires their continuous and diligent cooperation and effort.

14.4 **Entire Agreement**. The terms and conditions set forth in this Agreement supersede all prior oral and written understandings and constitute the entire agreement between the City and Developer.

14.5 **Notice of Sale**. The City shall comply with the requirements of Section 5/1174.4(c) of the Act regards sale of City owned real estate within the Redevelopment Area, and within thirty (30) days of the date hereof make any solicitation required by the Act as determined by the City. This Agreement shall not be binding upon either party hereto if the City should determine that it is required under the Act to make this Agreement public for thirty (30) days from the date of this Agreement, for the purpose of soliciting alternative proposals but

shall be deemed binding as of and on the date hereof should the City reject any alternative proposal received within fifteen (15) days after a thirty (30) day period for receipt thereof.

14.6 **Binding on Successors**. This Agreement shall be binding upon the parties hereto and their respective heirs, successors, administrators, assigns, or other successors in interest.

14.7 **Time of Essence**. Time is of the essence of this Agreement.

14.8 **Confidentiality**. The City shall keep all documents and information delivered by the Developer to the City or its consultants confidential to the maximum extent permitted by law, including specifically 5 ILCS 140/7(1)(g). Prior to disclosure of any such documents or information the City shall notify the Developer and the Developer shall be permitted to take such action as it deems necessary to protect the confidentiality of such documents or information.

14.9 **Titles**. Titles of the several parts, paragraphs, sections, or articles of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any provision. The word "herein", "hereunder", "hereof", "hereto", "hereinafter" or "hereinabefore" and the like refer to the entirety of this Agreement.

14.10 **Jurisdiction and Venue**. The parties hereto agree to submit any dispute between them to the jurisdiction of the Circuit Court of DuPage County, Illinois, and the appellate courts thereof. The applicable law shall be the law of the State of Illinois.

14.11 **Amendment**. This Agreement, and any exhibits, if involving an amendment constituting a material variance from the terms hereof, may be amended only by the mutual consent of the parties and adoption of an ordinance or resolution of the City approving said

amendment, as provided by law, or if not a material variance as conclusively determined by the City Manager, only with his approval, and by the execution of the amendment by the parties or successors in interest. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

14.12 **Conflict**. The terms in the body of this Agreement shall control if in conflict with any exhibit hereto or other evidence of the intent of the parties.

14.13 **Counterparts**. This Agreement may be executed in counterparts, each of which shall constitute an original Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

CITY OF ELMHURST, ILLINOIS

By: _____
Thomas D. Marcucci, Mayor

Attest:

Patty Spencer
Patty Spencer, City Clerk

ADDISON CORRIDOR DEVELOPMENT I, LLC

By: _____
Its: Manager or Member

DEVELOPER'S REAL ESTATE

THORNE PARCEL

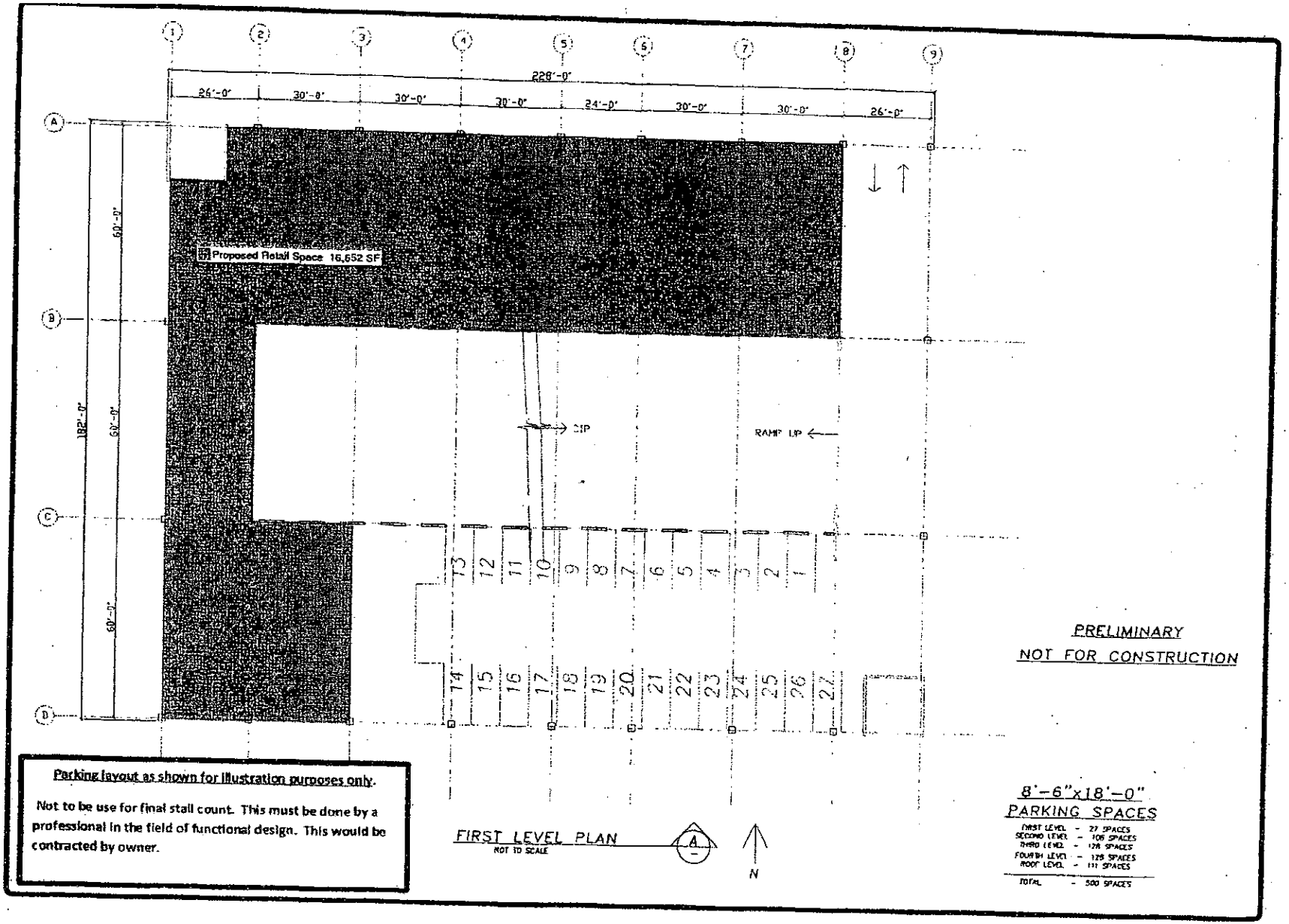
THE SOUTH 65 1/2 FEET OF LOT 10 AND ALL OF LOT 11 (EXCEPT THE SOUTH 3.00 FEET OF LOT 11 AND EXCEPT THE EAST 10.00 FEET OF THE NORTH 64.50 FEET OF THE SOUTH 67.50 FEET OF LOT 11) IN BLOCK 2 OF THE PLAT OF THE TOWN OF COTTAGE HILL IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 10, 1871 AS DOCUMENT NO. 14044, IN DUPAGE COUNTY, ILLINOIS.

P.I.N: 06-02-221-004

ATHAR PARCEL

THE NORTH 50 FEET OF LOT 10 IN BLOCK 2 IN THE PLAT OF THE TOWN OF COTTAGE HILL, BEING A SUBDIVISION IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 10, 1871 AS DOCUMENT NO. 14044, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 06-02-221-003



Parking layout as shown for illustration purposes only.

Not to be use for final stall count. This must be done by a professional in the field of functional design. This would be contracted by owner.

EXHIBIT B

Elmhurst-9-8-08..pdf (64% of Scale); pd; Projects; 2/9/2009 07:33 PM

MILESTONE SCHEDULE

1. Date of approval and execution of this Agreement - February 17, 2009

2. Loan Disbursement for Thorne Parcel - February 18, 2009 or an extension agreed by the parties.

3. Closing for Athar Parcel - 30 days after the current Athar restaurant tenant vacates and when the City receives appropriate assurances that the tenancy of the Athar restaurant is finally terminated including any right of first refusal.

4. Closing for Thorne Parcel - at such time as the last tenant vacates the premises and upon Developer notice, but no later than May 18, 2013.

5. Construction of the Project - to commence 6 months after Closing of the last of the Thorne Parcel or Athar Parcel conveyance to the City, but no later than September 30, 2013. The contract with Developer as construction manager or general contractor for the Project as required by paragraph 5(c) of the Term Sheet and this Agreement, shall be approved by the parties no later than 30 days after this Closing.

6. Date for approval of a construction contract with Developer to construct the Project - no later than March 31, 2013.

7. Developer purchases Retail Premises from the City - Within ninety (90) days of substantial completion of the Project, but before Developer improves the Cold Dark Shell for tenants.

DEVELOPMENT LOAN COMMITMENT AND TERM SHEET
(Addison Street/DevCom Redevelopment)

WHEREAS, DevCom Realty Investments, NAI Hiffman and Arco Murray National Construction Company ("Arco") as principals (collectively the "Developer") intend to develop a retail and parking structure ("Project") on property commonly known as 135 N. Addison Street ("Thorne Property"), 149 N. Addison Street ("Athar Property"), and six (6) feet of right-of-way of Addison Street adjacent to the aforesaid parcels ("ROW Property") (collectively the "Property") all within the Downtown TIF District of the City of Elmhurst; and

WHEREAS, the City and Developer intend to enter into a Development Agreement for the Project which will include a public parking deck to be owned and operated by the City and retail premises on Addison Street to be owned by Developer; and

WHEREAS, the terms for financing and construction of the Project will be provided in the Development Agreement, which will include certain substantial and material terms and conditions as follows;

NOW, THEREFORE, the City and Developer agree that the Developer will acquire the Property and construct the Project thereon and the City will finance that acquisition and construction of the Project upon terms and conditions included in a Development Agreement as follows:

1. Developer has entered into a purchase contract for the Thorne Property that is scheduled to close on or about February 15, 2009, but may be extended by the parties to a date no later than April 15, 2009. The purchase price is $3,500,000.

2. The Developer or the City will close on the purchase of the Athar Property pursuant to a purchase contract calling for such closing on or before April 1, 2009, but not later than June 15, 2009 or as otherwise agreed by the parties. The purchase price is $970,000.

3. At closing of the purchases of the Thorne Property and the Athar Property pursuant to the respective purchase contracts, the City will loan Developer the full purchase price for each. Repayment of the City loans by Developer will be pursuant to non-recourse notes payable to the City, secured by a mortgage. The notes shall provide that Developer make monthly payments of interest only to the City at a rate of 4.875% per annum, and all principal and any unpaid interest shall come due no later than September 30, 2012 or earlier at the time that construction of the Project begins.

Exhibit B to
Ordinance No. O-03-2009

4. Substantial completion of the Project shall be no later than two (2) years after construction begins.

5. The Development Agreement shall contain other provisions as follows:

(a) The terms of the notes, mortgages and any or other security required by the City.

(b) If after Developer acquires the Athar property and notifies the City that the current tenant of that property has vacated, the City will then purchase the Athar Property from Developer in consideration of forgiveness of the principal amount of Developer's note to the City. The City will construct a surface public parking lot thereon for public use until construction of the Project begins.

(c) The general contractor and/or construction manager for the Project will be the Developer pursuant to terms and conditions of a contract therefor with the City. The City and Developer each will review and approve plans for the Project. The City shall pay the actual cost of construction of the Project, and have reasonable access to the books and records of Developer during construction as they agree. Payments to Developer shall be made paid through an escrow and will include a reasonable fee or profit for Developer based upon reasonable, usual and customary pricing methodology. Overhead telephone and power lines in the alley east of the Property will be buried as part of construction of the Project.

(d) Upon substantial completion of the Project, the City shall convey the "cold dark shell" of the retail component of the Project to Developer for a price determined by this formula:

Gross sq. ft. of retail component ÷ Gross sq. ft. of Project x contract purchase price for the Property of $4,470,000

(e) If at the time of substantial completion of the Project the Developer has not obtained lease commitments for the retail space sufficient so that a commercial loan for the purchase price would be available, then the City will provide a mortgage loan to Developer upon terms that are commercially reasonable and agreed by the parties.

(f) ~~The City will consider a conditional use for the height of the Project up to six (6) stories. An application for that conditional use will be processed by the City prior to issuance of a building permit.~~

STRIKE

Jon M.

OK

(g) Uses in the retail component of the Project may be reasonably restricted by the City for a period of ten (10) years as provided in the Development Agreement.

(h) Developer ~~will continue~~ to own the Property until the Project is substantially ~~completed.~~

BEQUAL

(i) The Developer or any successor's ability to object to or contest the City's real estate taxes will be restricted for ten (10) years or until the end of the TIF, whichever is sooner.

6. This loan commitment by the City for purchase price of the Property will expire ninety (90) days after the date hereof. The City and Developer will in good faith negotiate and cooperate so that the Development Agreement can be finalized prior to expiration.

7. The complete agreement of the parties concerning the Project will be finally set out in the Development Agreement, to be enforceable according to its terms.

IN WITNESS WHEREOF, the parties have set their hands this 5th day of ~~January~~ February, 2009.

CITY OF ELMHURST

Thomas Marcucci, Mayor

DEVELOPER

Addison Corridor Development LLC

By David Hellenpuvort
Member

H:Kathy/Elmhurst//agreements/draft term sheet.Addison Street 12/29/08

ARCO/Murray
National Construction Company, Inc.

December 15, 2008

Mr. Dan Hiffman
NAI Hiffman
One Oakbrook Terrace
Suite 600
Oakbrook Terrace, IL 60181

Re: Proposed 135 & 145 N Addison Parking Deck
Value of Building Improvements Relative to the Retail Space
Elmhurst, IL

Dear Dan:

Thank you for choosing to team with ARCO/Murray on this project. Included herein is a summary of the costs of the proposed 228' x 182' parking deck associated with improvements to the retail space. The scope items included that contribute to the retail space include:

- Storefront glass system and its associated foundation elements
- Masonry walls at the back of the retail space and their associated foundation elements; highway guardrail protection the masonry wall from the first floor parking area.
- Waterproof traffic membrane on the second floor parking to protect the retail space.
- Temporary gas unit heaters and associated gas piping
- Distribution of overhead water and underslab sanitary throughout the retail space.
- All preliminary electrical distribution including electrical feeder to the retail space and multi-tenant tap box.

Dan, we again thank you for having the opportunity to be a part of your team. Should we be able to assist in any other capacity please do not hesitate to contact us.

All the best,

Leonidas J. Stellakis Bradley J. Dannegger

ARCO/Murray National Construction Co.