

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
OCTOBER 16, 2012 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Redevelopment Agreement with Greenscape Ventures LLC for Charles Place	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Village Manager

SYNOPSIS

An Ordinance authorizing the execution of a Redevelopment Agreement with Greenscape Ventures LLC for the Charles Place development has been prepared

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 identified *Strong, Diverse Local Economy*.

FISCAL IMPACT

The Redevelopment Agreement would require the Village to make annual payments to the developer from the property tax increment generated by the development in amounts ranging from \$47,000 to over \$60,000. The payments would be made from the Downtown Tax Increment Financing Fund.

UPDATE & RECOMMENDATION

This item was discussed at the October 9, 2012 Council meeting. Additional language has been added to the agreement requiring the Developer to comply with all provisions of laws prohibiting discrimination (specifically the Civil Rights Act, the Illinois Human Rights Act, and the ADA). Staff recommends approval on the October 16, 2012 Active Agenda.

BACKGROUND

On April 18, 2006 the Village approved a redevelopment agreement with Three Lights Development, LLC for the redevelopment of the Charles Place site at 933 Curtiss Street. The key terms of the redevelopment agreement are outlined in the comparison table below. Three Lights Development LLC completed a majority of the construction of Charles Place and filed for bankruptcy in 2011. Greenscape Ventures LLC acquired the development on May 4, 2012. No payments were made to Three Lights Development LLC pursuant to the original redevelopment agreement.

Greenscape Ventures intends to complete the Charles Place development in 2013 and has requested the execution of a new redevelopment agreement (attached). The key terms of the redevelopment agreement are as follows:

- The original redevelopment agreement is declared null and void.
- Developer shall complete the development on or before July 31, 2013. Completion means that the developer has leased or sold 90% of the space in the building.
- Developer shall complete the installation of the rooftop screening as shown on the approved building plans no later than 150 days from the execution of the redevelopment agreement.

- The uses in the development shall conform to the Village’s DB Downtown Business District zoning regulations. There are no additional requirements restricting the first floor uses (all uses permitted by the Zoning Ordinance are permitted on the first floor).
- The Village shall reimburse the developer for TIF eligible expenses according to the following schedule:
 - For years 2013 - 2017: 75% of the incremental property taxes or \$60,000, whichever is less
 - For years 2018 – 2021: 50% of the incremental property taxes or \$60,000, whichever is more
 - Total financial assistance shall not exceed a principal amount of \$426,000
 - Interest of 1% per year applied to the un-paid principal
 - Payments will be made until the principal is paid or until the TIF district expires, whichever is first

The following table is a comparison of the original and proposed redevelopment agreements.

	Original Charles Place Redevelopment Agreement	Proposed Redevelopment Agreement with Greenscape
Source of Incentive	Reimbursement of TIF Increment Generated by the Charles Place Redevelopment Project	Reimbursement of TIF Increment Generated by the Charles Place Redevelopment Project
Total Potential Reimbursement	\$470,000 (\$500,000 less \$30,000 in waived building permit fees) 4% per year interest applied to unpaid principal	\$426,000 1% per year interest applied to unpaid principal
Reimbursement % Due to Property Owner	Year 1-5: 75% of incremental property taxes Year 6+: 50% of the incremental property taxes	Year 1-5: 75% of the incremental property taxes or \$60,000, whichever is less Year 6+: 50% of the incremental property taxes or \$60,000, whichever is more
Retail Restrictions	First floor space contains at least 70% retail users	No restrictions other than those appearing in Zoning Ordinance

ATTACHMENTS

Ordinance

Redevelopment Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Legal Department **DATE:** October 16, 2012
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND GREENSCAPE VENTURES, LLC", as presented.

SUMMARY OF ITEM:

Adoption of the attached ordinance will authorize a redevelopment agreement between the Village of Downers Grove and Greenscape Ventures, LLC for the redevelopment of the Mochel Drive parcel (Charles Place Redevelopment Project).

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND GREENSCAPE VENTURES, LLC**

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

WHEREAS, Greenscape Ventures, LLC, the developer (the “Developer”) for the Charles Place Redevelopment Project, has approached the Village with its plans and intentions to develop the property at 5151 Mochel Drive, Downers Grove, Illinois, which property is depicted and legally described in the redevelopment agreement attached to this Ordinance as Exhibit A (the “Property”); and

WHEREAS, the Village and the Developer have negotiated the terms and conditions of a redevelopment agreement to govern the project; and

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

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

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

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

WHEREAS, the Developer seeks to improve the Property with a mixed-use retail and office condominium development generally in accordance with the plans approved by the Village; and

WHEREAS, the Village proposes to finance certain redevelopment project costs to be incurred in connection with site preparation, environmental remediation, demolition, and construction by utilizing tax increment financing in accordance with the TIF Act; and

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

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

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

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

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

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

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

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

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

Mayor

ATTEST:

Village Clerk

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REDEVELOPMENT AGREEMENT

CHARLES PLACE

THIS REDEVELOPMENT AGREEMENT (this “Redevelopment Agreement”), is made and entered into as of the ___ day of October, 2012 (“Redevelopment Agreement Date”) by and between the VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal home rule corporation, located in DuPage County, Illinois (the “Village”), and GREENSCAPE VENTURES, LLC an Illinois Limited Liability Company (“Greenscape” or “Developer”). (The Village and the Developer are sometimes referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

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

WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base, to increase additional tax revenues realized by the Village, foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise be in the best interests of the Village; and

WHEREAS, the Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended (the “Act”), to

finance redevelopment in accordance with the conditions and requirements set forth in the Act; and

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

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

WHEREAS, the VILLAGE entered into a certain Redevelopment Agreement with Three Lights Development, LLC, (“Three Lights”) dated August 1, 2006, (“Agreement”). The Agreement pertains to the redevelopment of 5151 Mochel Drive, Downers Grove, Illinois. Due to economic conditions and other unforeseen circumstances, the Parties now desire to nullify the Agreement and adopt an entirely new Redevelopment Agreement; and

WHEREAS, On June 1, 2011, Three Lights filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code; and

WHEREAS, on April 19, 2012 the US Bankruptcy Court entered an Order Confirming Plan which *inter alia* transferred all of Three Lights interest in the Property including its rights in the Agreement to Greenscape; and

WHEREAS, the Developer is the successor in interest to all previous rights of Three Lights Development, LLC, the previous Owner and Developer of the Property; and

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

WHEREAS, the Property is developed with a three story 29,700+/- sq ft office development constructed during 2007 and 2008 that is approximately 46% vacant; and

WHEREAS, the Property is zoned DB Downtown Business District; and

WHEREAS, the Developer represents and warrants to Village that Developer, and its principals, are skilled in the development and marketing of real estate including office condominium and retail development and are able to provide to the Village skill, knowledge and expertise as well as input from other experts and consultants in office condominium and retail development projects; and

WHEREAS, the Developer desires and intends to market and to sell and/or lease for office, retail and other uses permitted pursuant to the DB Downtown Business District regulations the space in the building constructed on the Property; and

WHEREAS, the Village passed an ordinance on August 1, 2006, after giving all notices and conducting all public hearings required by law (“Planned Development”); and

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

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

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

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

execution of this Redevelopment Agreement have been undertaken and performed in the manner required by law.

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

ARTICLE ONE

INCORPORATION OF RECITALS

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

ARTICLE TWO

DEFINITIONS

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

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

“Agreement” means the Agreement between the Village and Three Lights Development, LLC, dated August 1, 2006, and all of the exhibits and attachments referenced therein and made a part thereof.

“Change in Law” means the occurrence, after the Redevelopment Agreement Date, of an event described below, provided (a) such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Redevelopment Agreement and (b) such event is not caused by the Party relying thereon: Change in Law includes any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the Village); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body; (iii) the imposition of any conditions on, or delays in the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the services to be performed under this Redevelopment Agreement; or (iv) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village or with respect to those made by the Village, only if they violate the terms of this Redevelopment Agreement).

“Completion” is achieved when Developer shall have in combination leased directly, leased in conjunction with other Condo unit owners, or sold to owner-occupants a total of ninety percent (90%) of the 29,700 square feet of rentable space in the building. Rentable space includes each condo unit’s allocable share of common area.

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

“Day” means a calendar day.

“Developer” means Greenscape Ventures, LLC, an Illinois limited liability company, or any successor in interest thereof

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

“Final Certificate of Occupancy” means a certificate of occupancy which grants the right to occupy a space without any conditions.

“Incremental Property Taxes” means the ad valorem taxes, if any, arising from the taxes levied upon the Property, which taxes are attributable to the increases in the then current equalized assessed valuation (“EAV”) of each taxable lot, block, tract or parcel comprising the Property over and above the total Initial EAV of each such lot, block, tract or parcel of real property as it was assessed by the County Clerk in 2007, pursuant to and in accordance with the Act, the TIF Ordinances and this Redevelopment Agreement, and includes any replacement or amended taxes, subject to the determination thereof on a “per parcel” or a “per area” basis under applicable law.

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

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

“Planned Development Ordinance” means the Planned Development Ordinance adopted by the Village on or about August 1, 2006.

“Property” means the approximately 12,521 square feet of land presently improved with a 29,700 +/- square foot building, which is legally described in Exhibit "A" upon which the Redevelopment Project is being implemented.

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

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

“Redevelopment Project” means the construction, financing and Completion of the building with 29,700 +/- square feet of space and related improvements pursuant to the requirements of the DB Downtown Business District and the Redevelopment Agreement.

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

“State” means the State of Illinois.

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

“Uncontrollable Circumstance” means any event which:

- (a) is beyond the reasonable control of and without the fault of the Party relying thereon; and

- (b) is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary weather conditions or other similar Act of God;
 - (iv) governmental condemnation or taking other than by the Village;
 - (v) strikes or labor disputes, other than those caused by the acts of Developer;

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

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

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

ARTICLE THREE

CONSTRUCTION

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

- (a) Definitions include both singular and plural.
- (b) Pronouns include both singular and plural and cover all genders.
- (c) The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.
- (d) Headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- (e) All exhibits attached to this Redevelopment Agreement shall be and are operative provisions of this Redevelopment Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Redevelopment Agreement. In the event of a conflict between any exhibit and the terms of this Redevelopment Agreement, the terms of this Redevelopment Agreement shall control.
- (f) Any certificate, letter or opinion required to be given pursuant to this Redevelopment Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- (g) The Village Manager, unless applicable law requires action by the Corporate Authorities, shall have the power and authority to make or grant or do those things, or described in this Redevelopment Agreement for and

on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Redevelopment Agreement. Developer is entitled to rely on the full power and authority of the persons executing this Redevelopment Agreement on behalf of the Village as having been properly and legally given by the Village.

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

ARTICLE FOUR

IMPLEMENTATION OF REDEVELOPMENT PROJECT

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

ARTICLE FIVE

VILLAGE COVENANTS AND AGREEMENTS

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

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

5.2 Reimbursement for TIF Eligible Expenses. The Village acknowledges that: i.) funds in excess of those being reimbursed by the Village herein have been expended on the Property; ii.) said expenditures were for TIF eligible expenses; and iii.) Developer shall not be required to submit any additional documentation to be eligible for the payments set forth herein. In consideration of Developer foregoing any rights it may have to TIF increment in calendar years 2009-2012 (for 2008 through 2011 real estate tax increment generated) the Village agrees to the following sharing of TIF revenues in calendar years 2013 through 2021: (a) for years one through five (1-5) commencing on January 1, 2012 the Village shall pay out of the Downtown Redevelopment Tax Increment Financing Fund beginning in 2013 (for 2012 real estate taxes) the lesser amount of \$60,000 per calendar year or seventy five percent (75%) of the incremental property taxes received by the Village arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the EAV as of the 2007 tax year ("Initial tax year"); (b) beginning in year 2018 (for the 2017 real estate taxes) the Village shall pay out of the Downtown- Redevelopment Tax Increment Financing Fund, the greater amount of \$60,000 per calendar year or fifty

percent (50%) of the incremental property taxes received by the Village arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the EAV as of the initial tax year; provided that the total principal amount of reimbursement shall not exceed four hundred and twenty-six thousand dollars (\$426,000.00) for Redevelopment Project Costs pursuant to the terms of the Developer's Note attached hereto as Exhibit "B". The reimbursement shall be paid to Developer in two equal installments within 60 days of the date the first and second installment of the real estate taxes are due and payable (May 31 and August 31).

5.3 Issuance of Parking Permits. The Village shall make available for sale to owners and tenants of the Developer, up to fifty-eight (58) permits for parking within the Village's public Parking Deck at 945 Curtiss Street in parking spaces reserved for use of DB Downtown Business District employee parking, upon proper proof in accordance with Village ordinances. The parking permits shall be made available for annual lease at the current annual lease rate. This section shall not obligate the Village to provide specific parking spaces for the Redevelopment Project. The Village reserves the right to amend or revise the manner in which parking permits are sold or issued to comply with the terms, restriction and conditions of the tax exempt bonds used to construct the parking deck.

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

sole cost and expense, defend the integrity of the Redevelopment Project Area. Developer will fully cooperate with the Village in connection with the foregoing.

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

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

ARTICLE SIX

DEVELOPER'S COVENANTS AND AGREEMENTS

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

6.2 Compliance with Applicable Laws. Consistent with its warranties in Article Nine, Developer, while Developer owns some portion of the Property shall at all times construct, operate and maintain the Redevelopment Project in conformance with

all applicable laws, rules, ordinances and regulations. All work with respect to the Redevelopment Project, shall conform to all applicable federal, State and local laws, regulations and ordinances; including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village. Village shall not enact any law, ordinance, rule or regulation (or amendment thereto) which would have the effect of increasing Developer's obligations hereunder, including an increase in the cost of the Redevelopment Project, unless said law, ordinance, rule or regulation is one of general applicability to all the property in the Village.

6.3 Covenants and Agreements.

- (a) Agreement to Complete the Redevelopment Project. Subject to Uncontrollable Circumstances: Developer covenants and agrees to use its best efforts to market and to Complete the Redevelopment Project within the times, in the manner and with the effect set forth in this Redevelopment Agreement. As of the Redevelopment Agreement Date approximately 54% of the 29,700+/- sq. ft. has been built out and leased or sold to others. Another 7300+/- sq ft has contracts pending for sale leaving a balance of 6350 +/- space not sold or leased to others.
- (b) Schedule. Without limiting the foregoing, the marketing, leasing, and sales timetable for Completion shall be (time being of the essence) on or before July 31, 2013.
- (c) If the schedule set forth in subparagraph (b) is not satisfied, then Developer shall forfeit the payment due on July 31, 2013, and any

payment due thereafter until the requirements of subparagraph (b) are first satisfied.

- (d) Furthermore, within 150 days of the date of this Agreement, Developer shall complete the installation of the rooftop screen similar in size and configuration to the approved building plans.

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

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

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

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

6.8 Sale Contracts. All sales contracts shall be made subject to the terms of this Redevelopment Agreement and disclose that the property lies within the boundaries of Special Service Area #2 as defined in Ordinance No. 4739 recorded as document R2005-282559 in the DuPage County Recorder's Office.

ARTICLE SEVEN

ADDITIONAL COVENANTS OF DEVELOPER

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

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

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

- (a) the failure of Developer to comply with any of the terms, covenants or conditions of this Redevelopment Agreement which Developer is obligated to comply with, after the benefit of any applicable notice and cure periods; or
- (b) the failure of Developer or any of Developer's contractors to pay contractors, subcontractors or materialmen in connection with the Redevelopment Project (subject to any amounts being contested in good faith by Developer); or
- (c) material misrepresentations or omissions of Developer relating to the Redevelopment Project, financial information or this Redevelopment Agreement which are the result of information supplied or omitted by Developer; or
- (d) the failure of Developer to cure any material misrepresentations or omissions of Developer in this Redevelopment Agreement relating to the Redevelopment Project within the applicable cure provisions of this Redevelopment Agreement; or
- (e) any claim or cause of action for injury or damage brought by a third party arising out of the Completion or operation of the Redevelopment Project by Developer; or
- (f) any violation by Developer of local ordinance, State or federal laws, in connection with the offer and sale of interests in the Developer or any part of the Redevelopment Project; or
- (g) the occurrence of an Event of Default by Developer.

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

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

7.5 **No Gifts.** Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to the Mayor, any Council member, or any officer, employee or agent of the Village, or any other person connected with the Village, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the Village.

7.6 **Conveyance.** In recognition of the nature of the Redevelopment Project and the Village's projections of the need for incremental tax revenues to finance Redevelopment Project Costs, in accordance with the Act, during the life of the TIF consistent with its covenants in Section 6.6, Developer shall not knowingly undertake to convey the Property to persons whose ownership and use of such Property will cause it to be exempt from payment of property taxes, and will impose in the deed conveying all or

any portion of the Property, a prohibition against granting such conveyance consistent with the covenants in Section 6.6.

7.7 Disclosure. Developer hereby represent, warrant and covenant to the Village that the only member of the Developer is Kenneth P. Neumann. At the time of execution of this Redevelopment Agreement no change shall be made in the members owning the Developer or in their ownership interests without the consent of the Village.

7.8 Assignment of Agreement. Without the express written consent of the Village Council, (which may be withheld in the Village Council's reasonable discretion) this Agreement may not be assigned nor may any rights hereunder be transferred by Developer except for Permitted Transfers (as hereinafter defined), until Completion of the Redevelopment Project. Any proposed assignee of any of Developer's obligations under this Agreement shall have the qualifications, financial ability, reputation and character necessary, adequate and desirable, in Village's sole discretion, to fulfill these obligations. The proposed assignee shall execute an assumption and assignment agreement agreeing to adhere to the terms and conditions of this Agreement, as they apply to said assignee, and shall submit such information, including financial information, as may be requested by the Village Council. Before any permissible assignment shall be of any force and effect, Developer shall give notice of such proposed assignment to the Village, and the Village Council shall have thirty (30) days to accept or reject such assignee at its sole discretion. In the event the Village rejects such assignee, the Village shall state the reasons therefore. If the Village does not respond to the notice of such intended assignment within such thirty-day (30) period, such assignment shall be deemed approved. Notwithstanding anything in this Section 7.8, no part of this Section

7.8 shall require the Village's consent to the collateral assignment hereof to Developer's construction lender or permanent lender, if required thereby or to a Permitted Transfer.

7.9 No Transfer without Village's Consent. Developer shall not be required to obtain Village review, approval or consent to any Permitted Transfer which is defined as: (i) transfers of interests in connection with the sale of individual condominium units (including parking spaces) and such units' interest in the common elements of the condominium to the future resident of such unit, (individual condominium unit owners shall not be considered to be a separate developer, but merely a successor in title under this Agreement); (ii) transfers of any property to the condominium associations to be established, and (iii) transfers to an Affiliate of Developer; as used herein, an "Affiliate of Developer" shall mean an entity which controls, is controlled by, or is under common control with Developer and which has the same manager, members, partners or shareholders owning in the aggregate, more than fifty percent (50%) of the ownership interests in Developer owning more than fifty percent (50%) of the ownership interests in said Affiliate; and as used herein, "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or rights, by contract, or otherwise (the foregoing transfers in clauses i, ii and iii shall herein be referred to as the "Permitted Transfers"). Otherwise, prior to Completion, no portion of the Project shall be transferred or conveyed without the Village Council's prior written approval (other than Permitted Transfers). Before being requested to consent to a transfer (except a Permitted Transfer) of all of the Property by Developer to another developer (a "separate

developer”) who will develop such portion of the Project and the Property, the following must be satisfied regarding such transfer:

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

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

c. All material instruments and legal documents involved and affecting any such transfer from Developer to any transferee shall be submitted to the Village Council for its approval, and no transfer shall be effective until the Village Council has authorized the Village Manager to execute the same. Except in the event of a written agreement authorized by the Village Council, no transfer shall be deemed to relieve Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Project from any of their obligations with respect thereto as to the interest transferred. Developer shall in any event notify the Village of any transfer of any interest in the Project other than Permitted Transfers. The Village shall have no duty to return any letter of credit or other security posted in connection with the portion of the Project so transferred until substitute security acceptable to Village in its sole discretion is received.

d. Upon the conveyance of the Property to a separate developer (as consented to by the Village Council, and as evidenced by execution by the separate developer of an assumption and assignment agreement in a form acceptable to the Village), such separate developer shall be responsible for the development of the Project and Developer shall be relieved from all further liability under this Agreement with respect to the Project and the Property so transferred. Each separate developer shall be bound by all terms, conditions, and obligation of this Agreement applicable to the Project and Property and, except as set forth below in this section, any reference to Developer in this Agreement shall be deemed to be (or include) a reference to a separate developer to the extent such reference is to (or includes) the Project or the Property owned by such separate developer.

ARTICLE EIGHT

ADHERENCE TO VILLAGE CODES AND ORDINANCES

All development and Completion of the Redevelopment Project shall comply in all respects with the applicable provisions in the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, Zoning and Subdivision Codes of the Village and all other germane and applicable codes and ordinances in the Downers Grove Municipal Code in effect on the date that an application for a building permit for such development or Completion is filed, and from time to time during Completion that are applicable, except as otherwise provided herein. Developer warrants that its development of the Redevelopment Project shall be performed in accordance with all the applicable covenants, conditions, restrictions, building regulations, zoning ordinances, property maintenance regulations, environmental

regulations and land use regulations, codes, ordinances, federal, State and local ordinances affecting the Redevelopment Project.

ARTICLE NINE

REPRESENTATIONS AND WARRANTIES OF DEVELOPER

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

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

9.2 Non-Conflict or Breach. Neither the execution and delivery of this Redevelopment Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Redevelopment Agreement by Developer conflicts with or results

in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made by Developer, any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.

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

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

ARTICLE TEN

REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

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

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

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

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

ARTICLE ELEVEN

LIABILITY AND RISK INSURANCE

11.1 Liability Insurance Prior to Completion. Developer shall procure and deliver to the Village, at Developer's cost and expense, and shall maintain in full force and effect until the Redevelopment Project Completion a policy or policies of comprehensive liability insurance and, during any period of Completion, contractor's liability insurance, structural work act insurance, if available and if required under Illinois law and worker's compensation insurance, with liability coverage under the comprehensive liability insurance to be not less than One Million and no/100 Dollars

(\$1,000,000.00) each occurrence and Two Million and no/100 Dollars (\$2,000,000.00) total. All such policies shall be in such form and issued by such companies as shall be acceptable to the Village to protect the Village and Developer against any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Redevelopment Project on the Property, or the Completion and improvement thereof by Developer. Each such policy shall name the Village as an additional insured and shall contain an affirmative statement by the issuer that it will give written notice to the Village at least thirty (30) days prior to any cancellation or amendment of its policy. Developer shall provide to the Village a replacement certificate not less than 30 days prior to expiration of any policy.

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

ARTICLE TWELVE

EVENTS OF DEFAULT AND REMEDIES

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

- (a) If any representation made by Developer in this Redevelopment Agreement, or in any certificate, notice, demand or request made by Developer, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material adverse respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default, within thirty (30) days of written notice from the Village.
- (b) Default by Developer for a period of thirty (30) days after written notice thereof from the Village in any representation contained in this Redevelopment Agreement concerning the existence, structure, financial condition of Developer; provided, however, that such default or breach shall not constitute an Event of Default if such default can be cured within said thirty (30) days and Developer, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default.
- (c) A material failure by Developer in the performance of any obligation hereunder or the material breach of any covenant or warranty contained in this Redevelopment Agreement; provided, however, that such default shall not constitute an Event of Default if such default can be cured within said thirty (30) days and the Developer, within said thirty (30) days initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.

- (d) Failure to have funds to meet Developer's obligations.
- (e) Developer fails to comply with applicable governmental codes and regulations.

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

- (a) if any material representation made by the Village in this Redevelopment Agreement, or in any certificate, notice, demand or request made by a party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default, within thirty (30) days after written notice from Developer.
- (b) default by the Village in the performance or breach of any material covenant contained in this Redevelopment Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default if the Village does not, within thirty (30) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default.
- (c) default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Redevelopment Agreement; provided, however, that such default shall not constitute an

Event of Default if the Village, commences cure within thirty (30) days after written notice from Developer and in any event cures such default within ninety (90) days after such notice, subject to Uncontrollable Circumstances.

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

12.3 Remedies for Default.

In the case of an Event of Default hereunder:

- (a) The defaulting party shall, upon written notice from the non-defaulting party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than 30 additional days unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this Redevelopment Agreement.
- (b) In case the Developer or Village shall have proceeded to enforce its rights under this Redevelopment Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their

several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken.

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

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

ARTICLE THIRTEEN
EQUAL EMPLOYMENT OPPORTUNITY

13.1 No Discrimination. Developer shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101 et. seq., and The Americans With Disabilities Act, 42 U.S.C. Sec. 12101 et. seq.

13.2 Advertisements. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer related to the Redevelopment Project, state that all qualified applicants will receive consideration for employment in accordance with the provisions set forth in Section 13.1 above.

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

ARTICLE FOURTEEN

MISCELLANEOUS PROVISIONS

14.1 Cancellation. In the event Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Redevelopment Plan, including Developer's duty to complete the Redevelopment Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the Village in connection with the Redevelopment Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Redevelopment Project or the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the party so materially affected may, at its election, cancel or terminate this Redevelopment Agreement in whole (or in part with respect to that portion of the Redevelopment Project materially affected) by giving written notice thereof to the other within sixty (60) days after such final decision or amendment. If the Village terminates this Redevelopment Agreement pursuant to this Section 14.1, to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided, however, that (i) the cancellation or termination of this Redevelopment Agreement shall have no effect on the authorizations granted to Developer for building permits issued and under construction to the extent permitted by said Court order; and (ii) the cancellation or termination of this Redevelopment Agreement shall have no effect on perpetual easements contained in any recorded document. If the Developer terminates this

Redevelopment Agreement pursuant to this Section 14.1, to the extent it is then appropriate, the Developer, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided, however, that the cancellation or termination of this Redevelopment Agreement shall have no effect on perpetual easements contained in any recorded document.

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

If to Village:

Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Attn: Village Clerk
Telephone: 630-434-5500
Facsimile: 630-434 5571

With copies to

Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Attn: Enza Petrarca, Village Attorney
Telephone: 630-434-5500
Facsimile: 630-434 5493

If to Developer:

Greenscape Ventures, LLC
4355 Weaver Parkway
Warrenville, Illinois 60515
Attn: Kenneth P. Neumann
Telephone: 630-281-2030
Fax: 630-281-2021

With copies to:

Thomas R. Burney
Schain, Burney, Banks & Kenny
70 W. Madison, Suite 4500
Chicago, IL 60602

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

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

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

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

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

14.7 Severability. If any provision of this Redevelopment Agreement, or any section, sentence, clause, phrase or word, or the application thereof, in any circumstance,

is held to be invalid, the remainder of this Redevelopment Agreement shall be construed as if such invalid part were never included herein, and this Redevelopment Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

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

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

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

14.11 Waiver. Any party to this Redevelopment Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver

of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Redevelopment Agreement.

14.12 Cooperation and Further Assurances. The Village and Developer each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments, easements if necessary, and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Redevelopment Agreement.

14.13 Successors in Interest. This Redevelopment Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns; provided, however, that, except as provided in **Section 7.8** hereof, Developer may not assign its rights under this Agreement without the express written approval of the Village.. Notwithstanding anything herein to the contrary, the Village may not delegate its obligation hereunder or transfer any interest in the Property without the express written approval of Developer.

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

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

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

14.17 Term. This Redevelopment Agreement shall remain in full force and effect until the Note attached as Exhibit B is paid in full or until the last payment for tax levy year 2020 is paid to Developer, whichever occurs first, unless the Redevelopment Plan with respect to the Redevelopment Project is extended or until termination of the Redevelopment Project Area or until otherwise terminated pursuant to the terms of this Redevelopment Agreement.

14.18 Estoppel Certificates. Each of the parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("Estoppel Certificate") certifying that this Redevelopment Agreement is in full force and effect

(unless such is not the case, in which such parties shall specify the basis for such claim), that the requesting party is not in default of any term, provision or condition of this Redevelopment Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting party.

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

ARTICLE FIFTEEN

EFFECTIVENESS

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

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


VILLAGE OF DOWNERS GROVE,
an Illinois municipal corporation

By: Mayor

ATTEST:

By: Village Clerk

GREENSCAPE VENTURES, LLC

A handwritten signature in black ink, appearing to read 'K. Neumann', is written over a horizontal line.

By: Kenneth P. Neumann, Member

LIST OF EXHIBITS

Exhibit A LEGAL DESCRIPTION FOR PROPERTY

Exhibit B REDEVELOPMENT NOTE

Exhibit A LEGAL DESCRIPTION FOR PROPERTY

BEING A SUBDIVISION OF PARCEL 1 OF THE W & W ASSESSMENT PLAT OF THAT PART OF THE WEST 6 FEET OF LOT 3 IN BLOCK 4, ALSO LOTS 4 AND 5 IN BLOCK 4 IN CURTISS ADDITION TO THE TOWN OF DOWNERS GROVE, BEING A SUBDIVISION OF PART OF SECTION 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS.

EXHIBIT “B”

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

**VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY, ILLINOIS
LIMITED OBLIGATION REDEVELOPMENT NOTE
(Charles Place)**

\$426,000

Downers Grove, Illinois

For value received, the VILLAGE OF DOWNERS GROVE, DuPage County, Illinois (the “Village”), an Illinois municipal corporation and home rule unit of local government existing under the Constitution and laws of the State of Illinois, promises to pay to the order of Greenscape Ventures, LLC, or its successors and assigns (the “Payee”), the maximum principal sum of Four Hundred and Twenty-Six Thousand Dollars (\$426,000.00), subject to the terms and conditions set forth herein.

1. Authority. This Redevelopment Note is issued pursuant to the exercise of the Village’s power and authority as a home rule municipality and pursuant to the Tax Increment Allocation Act of the State of Illinois (65 ILCS 5111-74.4-1 et seq.), as amended (the “Act”), and pursuant to Village Ordinances No. 3997 adopted on December 22, 1997, as amended by Ordinance No. 4455 on November 5, 2002; Ordinance No. 3998 adopted on December 22, 1997 as amended by Ordinance No. 4456 on November 5, 2002, and Ordinance No. 3999, adopted on December 22, 1997 (collectively, the “Authorizing Ordinances”). It is expressly understood that the Village agrees to pay for

Redevelopment Project Costs out of the Downtown Redevelopment Tax Increment Financing Fund received by the Village from the Property Pursuant to the Authorizing Ordinances, the Village is issuing this Redevelopment Note for the purpose of paying for various eligible Redevelopment Project Costs in accordance with the Act and with the Redevelopment Agreement dated October 16, 2012 between the Village and Payee (“Redevelopment Agreement”). The Village agrees to diligently defend (but not indemnify). at its sole cost and expense, with the full co-operation of Payee, any court action instituted by any party that challenges the Authorizing Ordinances or this Redevelopment Note. All terms used, but not defined, herein shall have the same meanings respectively given to them in the Authorizing Ordinances or (if not defined therein) in the Redevelopment Agreement.

2. Security. **This Redevelopment Note is a limited obligation of the Village and is not secured by the Village's full faith and credit.** This Redevelopment Note is secured only by the Downtown Redevelopment Tax Increment Financing Fund comprised of Incremental Property Taxes (being the ad valorem taxes, if any, arising from the taxes levied upon the Property, which taxes are attributable to the increases in the then-current equalized assessed valuation (“EAV”) of the Property, over and above the initial EAV) of the Property, as it was assessed by the DuPage County Clerk in 2007 pursuant to, and in accordance with, the Act, the Authorizing Ordinances and the Redevelopment Agreement). The Incremental Property Taxes received by the Village from the development of the Property, as more- specifically defined in the Authorizing Ordinances, are referred to herein as the “Limited Pledged Taxes”. The Limited Pledged Taxes of the Property shall be the sole security and source of repayment for this

Redevelopment Note. Deposits of Limited Pledged Taxes into special location funds to pay this Redevelopment Note shall not be subject to any additional appropriation process of the Village, and the amounts deposited therein shall be disbursed in accordance with this Redevelopment Note, the Redevelopment Agreement and the Authorizing Ordinances, all without further action by the Village.

3. Terms. The terms of this Redevelopment Note shall be:
 - a) Principal. The principal amount of this Redevelopment Note shall be in the amount of Four Hundred and Twenty-Six Thousand Dollars (\$426,000.00). The Village acknowledges that: i.) funds in excess of those being reimbursed by the Village herein have been expended on the Property; ii.) said expenditures were for TIF eligible expenses; and iii.) Developer shall not be required to submit any additional documentation to be eligible for the payments set forth herein.
 - b) Term. The term of this Redevelopment Note shall expire on December 22, 2021, or such earlier date that the Downtown TIF District is terminated, but not earlier than the date on which the final payment of any principal is made so long as the Payee is not in default of its Redevelopment Agreement with the Village. In the event that the Limited Pledged Taxes are insufficient to repay the entire principal amount of this Redevelopment Note, then the balance of any unpaid principal or interest shall not be paid.

4. Payment. All payments hereunder shall be made in lawful currency of the United States without setoff or demand, and mailed to the address of the Payee as set forth in the Redevelopment Agreement, or such other address of which Payee shall notify the Village in writing from time to time or via electronic transmittal.

a. Reimbursement for TIF Eligible Expenses. (a) for years one through five (1-5) commencing on January 1, 2012 the Village shall pay out of the Downtown Redevelopment Tax Increment Financing Fund beginning in 2013 (for 2012 real estate taxes) the lesser amount of \$60,000 per calendar year or seventy five percent (75%) of the incremental property taxes received by the Village arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the EAV as of the 2007 tax year (“Initial tax year”); (b) beginning in year 2018 (for the 2017 real estate taxes) the Village shall pay out of the Downtown- Redevelopment Tax Increment Financing Fund, the greater amount of \$60,000 per calendar year or fifty percent (50%) of the incremental property taxes received by the Village arising from the taxes attributable to the increases in the then-current equalized assessed valuation (EAV) of the Property, over and above the EAV as of the initial tax year;; provided that the total principal amount of reimbursement shall not exceed four hundred and twenty-six thousand dollars (\$426,000.00).

b. Interest. Simple interest shall accrue on the unpaid balance of this Redevelopment Note from the Redevelopment Agreement Date until repaid at a rate of one percent (1%). Interest shall be computed on the

basis of a 360 day year. Payments by the Village shall be applied first to accrued but unpaid interest, and the remainder, if any to principal. In the event that any payment shall be insufficient to pay all accrued, but unpaid interest under this Redevelopment Note, interest shall accrue but shall neither be added to principal nor itself bear interest. **Payments on this Redevelopment Note shall be paid to Developer in two equal installments within 60 days of the date the first and second installment of the real estate taxes are due and payable (May 31 and August 31).**

5. Restriction of Transfer. This Redevelopment Note has been issued pursuant to the Authorizing Ordinances, the Act and the Redevelopment Agreement. The Payee shall not pledge, assign, sell or otherwise transfer this Redevelopment Note without first giving the Village at least thirty (30) days' prior written notice of the intended transfer. Said notice shall contain the name, address and agent of the intended transferee, and the consideration being received therefore by transferor. Said notice shall also contain a statement that the transfer will not violate any applicable federal or state laws or the Redevelopment Agreement between the Payee and the Village. The provisions of this Paragraph 5 shall be binding on Payee and all of its successors and assigns. Any proposed pledge, assignment or transfer shall be bound by Section 7-8 of the Redevelopment Agreement by and between the Parties dated October 16, 2012.

6. Payee Waivers of Rights. Payee, for itself and for its successors and assigns, hereby acknowledges that Payee has received this Redevelopment Note with no representations or warranties from the Village regarding the Redevelopment Project, the Redevelopment Project Area, the projected amount of the Limited Pledged Taxes, the

likelihood of payment of this Redevelopment Note, or any other matter regarding the likelihood of payment of this Redevelopment Note. The Village has made no attempt to disclose any risks or potential risks which may be associated with this Redevelopment Note, and Payee, upon acceptance of this Redevelopment Note and in additional consideration thereof, hereby waives any rights to any disclosures, representations or warranties to which a buyer of securities would typically be entitled as to the likelihood of repayment. Payee hereby represents to the Village that Payee is sophisticated in matters of real estate development, and that Payee has conducted its own due diligence investigation of the risks associated with this Redevelopment Note. Payee, for itself and for its successors and assigns, further acknowledges that upon acceptance of this Redevelopment Note, Payee shall be estopped from raising any claims or challenges to the validity of this Redevelopment Note, the validity of the formation of the Redevelopment Project Area in which the development is located, and any other actions taken by the Village or its agents in relation to the development of the Property. Payee and each assignee and successor has fully read this entire Redevelopment Note and understands all of the terms and conditions contained herein.

7. Non-Recourse Provision. This Redevelopment Note and the obligation to pay the principal and interest hereunder are limited obligations of the Village and are payable solely from the Limited Pledged Taxes generated from the Property made available under the Authorizing Ordinances. This Redevelopment Note and the obligation to pay principal and interest hereunder do not constitute an indebtedness of the Village within the meaning of any constitutional or statutory provision, and shall not constitute or

give rise to a pecuniary liability of the Village or charge against its general credit or taxing power.

8. Default. Any failure of either party to comply with the terms of this Redevelopment Note within thirty (30) days after receipt of written notice from the other party specifying the nature and extent of the default, shall constitute an event of default hereunder, and shall entitle the non-defaulting party to all rights and remedies available at law or in equity under applicable law.

9. Notices. All notices hereunder shall be in writing, and shall be properly given if delivered in person or by a nationally-recognized “overnight” courier service with charges prepaid, and sent to the following addresses (or such other address as a party may, by proper notice, give to the other from time to time): if to the Village, c/o Village Manager, 801 Burlington Avenue, Downers Grove, Illinois, 60515; if to Payee, Greenscape Ventures, LLC, 4355 Weaver Pkwy, Warrenville Illinois 60555. Attention: Kenneth P. Neumann. Notices shall be deemed given upon delivery if personally delivered or (if given by courier) one business day after being deposited with such courier.

10. No Waiver. No waiver on the part of Payee in exercising any right or option to demand payment hereunder shall operate as a waiver thereof or preclude the exercise thereof at any time during the continuance of an event of default.

11. Governing Law. This Redevelopment Note shall be governed by and construed by the laws of the State of Illinois.

12. Waivers. The Village hereby waives demand, presentment for payment, notice of dishonor and protest.

13. Representation of the Village. The Village hereby represents and declares that all acts, conditions and things necessary to happen, exist and be performed as conditions precedent to the valid execution and delivery of this Redevelopment Note have occurred as required by law, and that the issuance of this Redevelopment Note does not exceed or violate any constitutional or statutory limitation.

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

VILLAGE OF DOWNERS GROVE

By: _____
Mayor

ATTEST:

Village Clerk