

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JULY 15, 2014 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
An Ordinance Approving a Redevelopment Agreement with Downers Grove, IL (1201 Ogden) LLC	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

An Ordinance has been prepared approving a Redevelopment Agreement between the Village of Downers Grove and Downers Grove, IL (1201 Ogden) LLC (“Developer”) for the property at 1201 Ogden Avenue, Downers Grove, IL.

STRATEGIC PLAN ALIGNMENT

The goals for 2011-2018 include *Strong, Diverse Local Economy* and *Steward of Financial and Environmental Sustainability*.

FISCAL IMPACT

The Village will provide TIF assistance in an amount not to exceed \$225,000 to assist in the environmental remediation necessary for redevelopment of the site. The FY14 budget includes \$1.5 million in the Ogden Avenue TIF Fund for redevelopment projects.

UPDATE & RECOMMENDATION

This item was discussed at the July 8, 2014 Village Council meeting. At the meeting, there was a discussion regarding the responsibility of environmental remediation. The property is in foreclosure and the current property owner (a bank) is not required to remediate the site and has indicated that it is not willing to do so. Therefore, this property would not be resold and redeveloped at this time but for this agreement. The developer has more experience and capacity for environmental remediation.

Staff recommends approval on the July 15, 2014 Active Agenda.

BACKGROUND

The developer has requested assistance to redevelop the existing gas station property at 1201 Ogden Avenue with an approximately 5,000 square foot commercial building and accessory surface parking. This developer purchased and redeveloped the adjacent property with a Starbucks.

The redevelopment agreement includes the following key terms:

- Developer shall substantially complete the project, which consists of a 5,000 square foot retail development, by no later than January 1, 2016 in accordance with the approved plans.
- Developer shall remediate existing environmental conditions and obtain a No Further Remediation or Removal Letter from the State of Illinois.

- Developer shall comply with all Village ordinances and applicable laws and shall diligently pursue obtaining all required permits for the construction of the project.
- The Village agrees to reimburse Developer for up to \$225,000 for eligible costs associated with the environmental clean-up of the site.

The redevelopment of the Ogden Avenue corridor is a key component of the comprehensive plan. The Downers Grove Economic Development Corporation supports this economic development agreement.

ATTACHMENTS

Ordinance

Redevelopment Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** July 15, 2014
(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 DOWNERS GROVE, IL (1201 OGDEN), LLC", as presented.



SUMMARY OF ITEM:

Adoption of this ordinance shall approve a Redevelopment Agreement between the Village of Downers Grove and Downers Grove, IL (1201 Ogden), LLC.

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT
BETWEEN THE VILLAGE OF DOWNERS GROVE
AND DOWNERS GROVE, IL (1201 OGDEN), LLC**

WHEREAS, the Village of Downers Grove has undertaken to revitalize portions of its Ogden Avenue Corridor 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, Downers Grove, IL (1201 Ogden), LLC, the developer (the “Developer”) for the Redevelopment Project, has approached the Village with its plans and intentions to develop the property at 1201 Ogden Avenue, 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 Redevelopment 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. 4247, titled “An Ordinance Approving the Ogden Avenue Corridor Redevelopment Plan and Project” (the “Redevelopment Plan”);

(b) Ordinance No. 4248, titled "An Ordinance Designating the Ogden Avenue Corridor Redevelopment Project Area” (“Redevelopment Project Area”);

(c) Ordinance No. 4249, titled "An Ordinance Adopting Tax Increment Financing for the Village of Downers Grove, DuPage County, Illinois, in Connection with the Designation of the Ogden Avenue Corridor Redevelopment Project Area; and

WHEREAS, the Developer seeks to improve the Property with a 5,000+/- square foot commercial building and related improvements generally in accordance with the plans attached to the Redevelopment Agreement; and

WHEREAS, the Village proposes to finance certain redevelopment project costs to be incurred in connection with the Redevelopment Project 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 Plan approved by Ordinance No. 4247 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 the Redevelopment Agreement to eliminate the blight factors and characteristics found in the Property, to serve the needs of the Village, and to produce increased tax revenues for the various taxing districts authorized to levy taxes within the Property; and

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

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

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

Section 2. Approval of Redevelopment Agreement. The Redevelopment Agreement shall be, and it is hereby, approved in 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

Passed:

Published:

ATTEST: _____

Village Clerk

Imw\\ord.14\RDA-InSite

**REDEVELOPMENT AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND
DOWNERS GROVE IL (1201 OGDEN) LLC**

This Redevelopment Agreement is made and entered into this ____ day of _____, 20____, by and between the Village of Downers Grove, Illinois, an Illinois Municipal Corporation situated in the County of DuPage, Illinois (the “Village”) and Downers Grove (1201 Ogden) LLC, an Illinois limited liability company (referred to as “Developer”) located at 1400 16th Street, Suite 300, Oak Brook, Illinois 60523.

WITNESSETH:

WHEREAS, the Village is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution, 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 on Ogden Avenue 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. 4247, titled "*An Ordinance Approving the Ogden Avenue Corridor Redevelopment Plan and Project*" (the "Redevelopment Plan");
2. Ordinance No. 4248, titled "*An Ordinance Designating the Ogden Avenue Corridor Redevelopment Project Area*" ("Redevelopment Project Area");
3. Ordinance No. 4249, titled "*An Ordinance Adopting Tax Increment Financing for the Village of Downers Grove, DuPage County, Illinois, in Connection with the Designation of the Ogden Avenue Corridor Redevelopment Project Area*"; and

WHEREAS, Developer is the contract purchaser of property located at 1201 Ogden Avenue, (the "Property") located within the Redevelopment Project Area and legally described as follows:

Lots 14, 15 and 16 in Block 32 in E.H. Prince and Co's addition to Downers Grove, being a subdivision in sections 5, 6, 7 and 8, Township 38 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof recorded September 30, 1890, as document 43600, in DuPage County, Illinois.

WHEREAS, Developer intends to develop the Property and maintain the Property with no less than an approximately 5000 square foot commercial building and accessory surface parking (the "Redevelopment Project"); and

WHEREAS, Developer intends to cause the Redevelopment Project to be designed and constructed in accordance with the terms and conditions of this Redevelopment Agreement; and

WHEREAS, Developer has represented to the Village that without the economic incentives provided for within this Redevelopment Agreement, the Redevelopment Project is not economically feasible and Developer would not undertake the Redevelopment Project; and

WHEREAS, the Village has determined that the Redevelopment Project is an important project that furthers the Ogden Avenue Corridor Redevelopment Plan and will promote economic development as well as other benefits within the Village by creating employment opportunities and enhancing the Village's tax base.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and 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.

“**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).

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

“**Day**” means a calendar day.

“**Developer**” means Downers Grove (1201 Ogden) LLC, an Illinois limited liability company, or any successor in interest thereof.

“Eligible Redevelopment Project Costs” means those redevelopment project costs attributable to obtaining the NFR or Removal Letter as may be applicable.

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

“Ogden Avenue Redevelopment Tax Increment Fund” means the special fund established pursuant to Ordinance Nos. 4247, 4248, and 4249.

“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.

“Property” means the approximately 21,500 square feet of land presently improved with a 2021 +/- square foot building and canopy, 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 Developer, and all of the exhibits and attachments referenced therein and made a part thereof.

“Redevelopment Plan” means the “Redevelopment Plan” for the Ogden Avenue Corridor as defined in Village Ordinance No. 4247.

“Redevelopment Project” means the acquisition, construction, financing and completion of a building with approximately 5000 +/- square feet of commercial space and related improvements pursuant to the requirements of this Redevelopment Agreement.

“Requisition” means a request by the Developer for a payment or reimbursement of Eligible Redevelopment Project Costs pursuant to the procedures set forth in Article Five of this Redevelopment Agreement.

“Reimbursement Amount” means an amount not to exceed TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000) to be reimbursed or paid from the Ogden Avenue Redevelopment Tax Increment Fund.

“State” means the State of Illinois.

“Substantial Completion” means receiving a Focused No Further Remediation Letter from the Illinois Environmental Protection Agency for the Property consistent with the Environmental Cost Estimate prepared by ECS Midwest, LLC, dated March 12, 2014 and attached hereto and incorporated herein as Exhibit C (the **“NFR”**) and a Final Certificate of Occupancy for a minimum of 1500 square feet of the building which is a part of the Redevelopment Project. In the event that the NFR is not necessary because no new release from the existing gas station improvements has occurred, **“Substantial Completion”** will mean receiving (a) a Removal Letter from the Illinois State Fire Marshall indicating that the existing gas station improvements have been removed without a reportable release and authorizing Developer to fill in the excavation site resulting from such removal (the **“Removal Letter”**); and (b) a Final Certificate of Occupancy for a minimum of 1500 square feet of the building which is a part of the Redevelopment Project.

“TIF Ordinances” means Ordinance Nos. 4247, 4248 and 4249 all adopted by the Village and 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, or war;
 - (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.

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 Robin Rash (and, in her absence, Gerald J. Kostelny) 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. Upon Substantial Completion of the Project and the submission to the Village by the Developer of Requisition(s) for Eligible Redevelopment Project Costs incurred and paid and the approval thereof by the Village in accordance with the terms and conditions of this Redevelopment Agreement, the Village shall pay or reimburse the Developer an amount equal to the amount of Eligible Redevelopment Costs as represented on the Requisition(s) and said reimbursement shall not exceed TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000) from the Ogden Avenue Redevelopment Tax Increment Fund.

5.3 Payment Procedures. The Village and the Developer agree that the Eligible Redevelopment Project Costs constituting the Reimbursement Amount shall be paid solely from incremental property taxes that are deposited in the Ogden Avenue Redevelopment Tax Increment Fund and not otherwise. Village represents and warrants to Developer that adequate funds will be maintained by the Village in the Ogden Avenue Redevelopment Tax Increment Fund to pay the reimbursement amount. The Village and Developer intend and agree that the Reimbursement Amount shall be disbursed by the

Village for payment to the Developer in accordance with the procedures set forth in this Redevelopment Agreement. Payments to the Developer of the Reimbursement Amount for Eligible Redevelopment Project Costs shall be made upon request therefor, in a form reasonably acceptable to the Village (each being a “Requisition”) submitted by the Developer upon Substantial Completion of the Redevelopment Project. The Requisition(s) shall be accompanied by appropriately supporting documentation, including, as applicable, receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors’ affidavits or lien waivers. The Requisition(s) shall be submitted no later than ninety (90) days from Substantial Completion of the Redevelopment Project.

5.4 Approval and Resubmission of Requisitions. The Village shall give the Developer written notice disapproving any of the Requisitions within ten (10) days after receipt thereof. No such approval shall be denied except on the basis that (i) all or some part of the Requisition does not constitute Eligible Redevelopment Project Costs or has not otherwise been sufficiently documented as specified herein; (ii) any subsequent amendment to the Act or any subsequent decision of a court of competent jurisdiction makes any such payment to not be authorized; or (iii) a default pursuant to Article 12 of this Redevelopment Agreement by the Developer has occurred and is continuing. If a Requisition is disapproved by the Village, the reason for the disallowance will be set forth in writing to the Developer and the Developer may resubmit any such Requisition with such additional documentation or verification as may be required, if that is the basis for denial. The same procedures set forth herein shall be applicable to resubmittals.

5.5 Time of Payment. Provided that performance of this Redevelopment Agreement has not been suspended or terminated by the Village pursuant to Article 12, the

Village shall pay an amount not to exceed One Hundred Percent (100%) of the Requisition amount which is approved by any one or more Requisitions under this Article to the Developer within forty-five (45) days of approval of any such Requisition.

5.6 Defense of Redevelopment Project Area. In the event that any court or governmental agency, having jurisdiction over enforcement of the Act shall determine that the entire Redevelopment Project Area is contrary to law or is otherwise challenged before a court or governmental agency having jurisdiction thereof, the Village will, at its sole cost and expense, defend the integrity of the Redevelopment Project Area. Developer will fully cooperate with the Village in connection with the foregoing.

5.7 Village Cooperation. The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity other than the Village. If necessary, as part of the land use approval process, the Village shall 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.

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. The 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 Agreement to Complete the Redevelopment Project. Subject to Uncontrollable Circumstances, Developer covenants and agrees to use its best efforts to Substantially Complete the Redevelopment Project by no later than January 1, 2016, in accordance with this Redevelopment Agreement and in substantial compliance with the Redevelopment Project plans attached hereto and incorporated herein by reference as Exhibit B. 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. Notwithstanding anything to the contrary contained in this Redevelopment Agreement, Developer's failure to Substantially Complete the Redevelopment Project by January 1, 2016 will under no circumstances be an Event of Default. Any failure to Substantially Complete the Redevelopment Project by January 1, 2016 will give rise to the termination rights of the Parties under Section 14.1 of this Redevelopment Agreement.

6.4 Environmental Remediation. As part of the Redevelopment Project the Developer agrees to obtain either (a) the NFR; or (b) the Removal Letter. Notwithstanding anything to the contrary contained in this Redevelopment Agreement, Developer's failure to obtain the NFR or Removal Letter by January 1, 2016 pursuant to this Section 6.4 will under no circumstances be an Event of Default. Any failure to obtain the NFR or Removal Letter by January 1, 2016 will give rise to the termination rights of the Parties under Section 14.1 of this Redevelopment Agreement.

6.5 Authorized Developer Representatives. Subject to the provisions in Article Three, the Developer's Authorized Developer Representatives have 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 (February 6, 2024) 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.

ARTICLE SEVEN

ADDITIONAL COVENANTS OF DEVELOPER

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

7.2 **Substantial Completion of Redevelopment Project.** Upon acquisition of Property, Developer shall diligently pursue obtaining all required permits and Developer shall cause the Substantial 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 material men 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 construction 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 Party's misconduct or negligence contributed

to the loss, or that the loss is attributable to such Indemnified Party's 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 (until February 6, 2024) 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 represents, warrants and covenants to the Village that the only members of the Developer is BTS Land Holdings LLC. 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 Redevelopment Agreement may not be assigned nor may any rights hereunder be transferred by Developer except for Permitted Transfers (as hereinafter defined), until Substantial Completion of the Redevelopment Project. Any proposed assignee of any of Developer's obligations under this Redevelopment Agreement prior to Substantial Completion shall have the qualifications, financial ability, reputation and character necessary, adequate and desirable, in the 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 Redevelopment 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 or to an assignment of the Redevelopment Agreement after Substantial Completion.

7.9 **No Transfer without Village's Consent.** Prior to issuance Substantial 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 Redevelopment 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 Redevelopment Agreement with respect to the Redevelopment 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 Redevelopment 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 Redevelopment Agreement or otherwise with respect to the construction of the Redevelopment 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 Redevelopment Project other than: (i) 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 clause (i), shall herein be referred to as the "Permitted Transfers"). Developer shall not be required to obtain Village review, approval or consent to any Permitted Transfer. The Village shall have no duty to return any letter of credit or other security posted in connection with the portion of the Redevelopment Project so transferred until substitute security acceptable to the 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 Redevelopment Project and Developer shall be relieved from all further liability under this Redevelopment Agreement

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

e. Following Substantial Completion, Developer may transfer the Project without the consent of the Village.

ARTICLE EIGHT

ADHERENCE TO VILLAGE CODES AND ORDINANCES

All development and build-out 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 build-out is filed, and from time to time during build-out 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 Substantial 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 build-out 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 laws of the State of Illinois, is a home rule unit of government, and has 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

PREVAILING WAGE

The Developer is hereby notified by the Village that work contemplated by this Redevelopment Agreement may be subject to the Prevailing Wage Act 820 ILCS 130/1 *et seq.* The Developer agrees to comply with all applicable provisions of the Illinois Prevailing Wage Act as administered by the Illinois Department of Labor ("IDOL"). The Developer further agrees to contact IDOL for a determination of applicability of the Prevailing Wage Act to the projects contemplated by this Redevelopment Agreement. If required by IDOL, the Developer agrees to pay the prevailing wage rates and to require that all of its subcontractors pay prevailing wage to any laborers, workers or mechanics who perform construction work on the Redevelopment Project contemplated by this

Redevelopment Agreement. The Developer recognizes and agrees that it is solely responsible for compliance with the Prevailing Wage Act and agrees to fully indemnify, defend and hold harmless the Village pursuant to Section 7.3 above with regard to any actions or proceedings instituted regarding such compliance.

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

Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.

- (f) Failure to have funds to meet Developer's obligations.
- (g) 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 only 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 thirty (30) additional days unless extended by mutual agreement, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance of the defaulting party's obligations under this 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 Redevelopment Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

ARTICLE THIRTEEN

EQUAL EMPLOYMENT OPPORTUNITY

13.1 No Discrimination. Developer will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. To the fullest extent permitted by law, Developer will take affirmative action to ensure that applicants are employed and treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

13.3 Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with Developer's 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 build-out the Redevelopment Project, (i) by the order of any court of competent jurisdiction; (ii) 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; (iii) failure to obtain the NFR or Removal Letter on or before January 1, 2016; or (iv) the failure of the Developer to Substantially Complete the Redevelopment Project on or before January 1, 2016, 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 party 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; (ii) the cancellation or termination of this

Redevelopment Agreement shall have no effect on perpetual easements contained in any recorded document; and (iii) the cancellation or termination of this Redevelopment Agreement shall release the Village from any and all liability or obligation relating to the payment or reimbursement to the Developer for any Eligible Redevelopment Project Costs. 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 courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village: Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Attn: Village Manager
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: Downers Grove (1201 Ogden) LLC
c/o InSite Real Estate, LLC

1400 16th Street, Suite 300
Oak Brook, IL 60523
Attn: Gerald J. Kostelny

With copies to:

Downers Grove (1201 Ogden) LLC
c/o InSite Real Estate, LLC
1400 16th Street, Suite 300
Oak Brook, IL 60523
Attn: Chief Legal Officer

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 Redevelopment 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.

14.17 Term. This Redevelopment Agreement shall remain in full force and effect until Substantial Completion of the Redevelopment Project 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

DOWNERS GROVE (1201 Ogden) LLC, an Illinois limited liability company



By: **Robin Rash, Manager**

LIST OF EXHIBITS

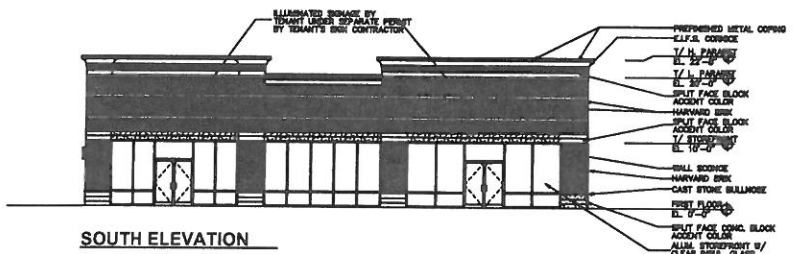
- Exhibit A LEGAL DESCRIPTION FOR PROPERTY
- Exhibit B REDEVELOPMENT PROJECT PLANS
- Exhibit C ENVIRONMENTAL COST ESTIMATE PREPARED BY ECS MIDWEST,
LLC, DATED MARCH 12, 2014

EXHIBIT A

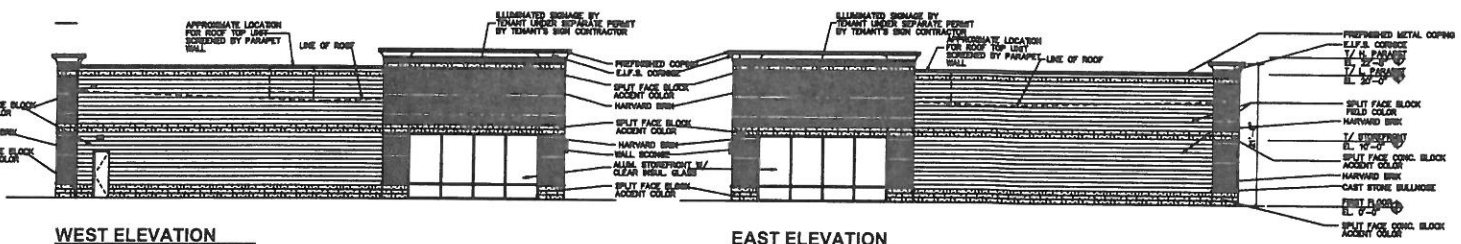
LEGAL DESCRIPTION OF THE PROPERTY

LOTS 14, 15 AND 16 IN BLOCK 32 IN E.H. PRINCE AND CO'S ADDITION TO DOWNERS GROVE, BEING A SUBDIVISION IN SECTIONS 5, 6, 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 30, 1890 AS DOCUMENT 43600, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT B
REDEVELOPMENT PROJECT PLANS
SEE ATTACHED

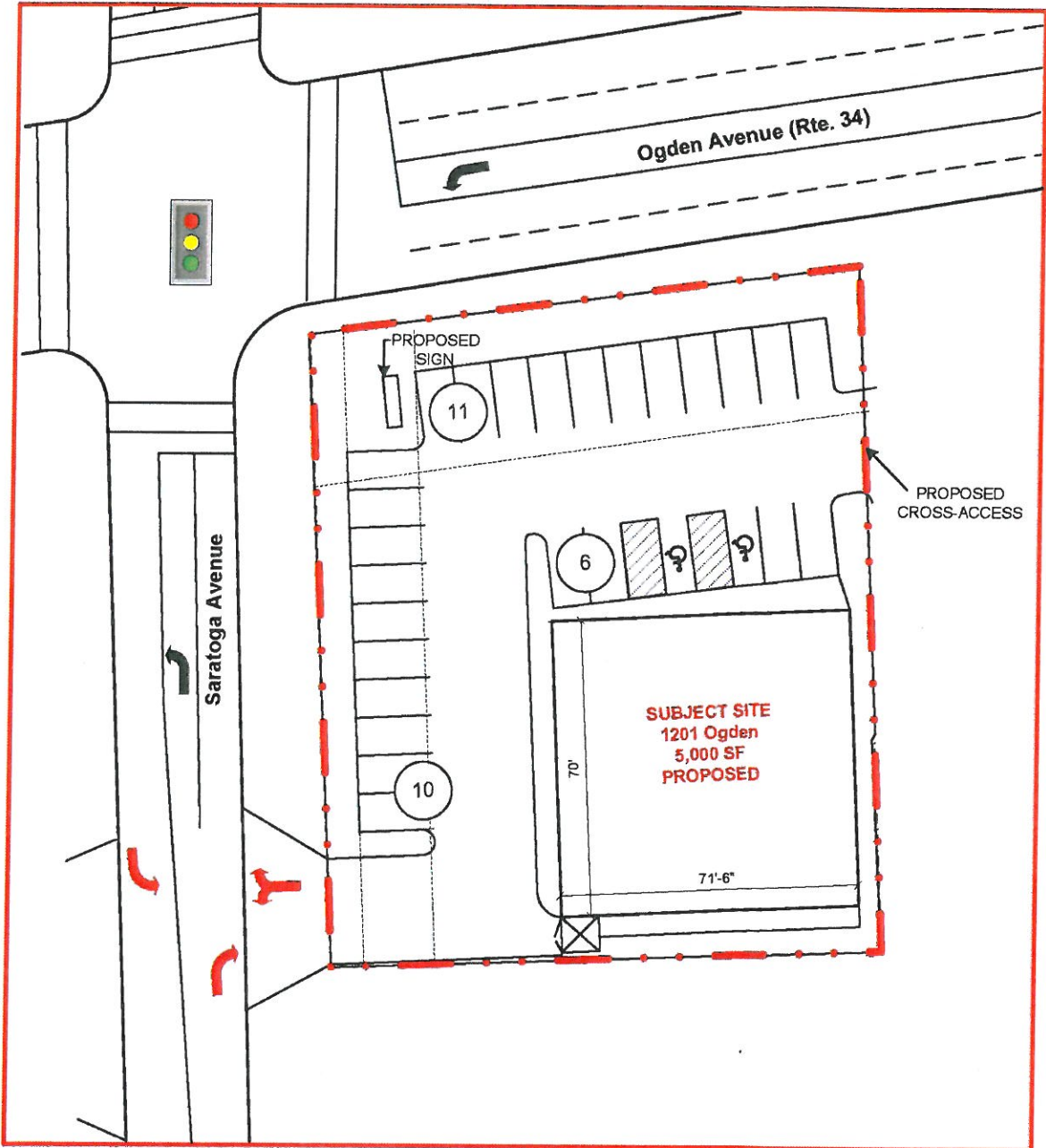


SOUTH ELEVATION



WEST ELEVATION

EAST ELEVATION



InSite

InSite Real Estate, LLC
1201 Ogden Avenue, Suite 200 | Oak Brook, IL 60151-2800
t 630-611-2900 | f 630-611-2100 | www.insiterealestate.com

Proposed Retail
Development

1201 Ogden Avenue
Downers Grove, IL

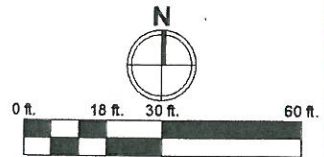


EXHIBIT C

ENVIRONMENTAL COST ESTIMATE PREPARED BY ECS MIDWEST, LLC, DATED
MARCH 12, 2014



March 12, 2014

Mr. Ed Gebauer
InSite Real Estate, LLC
1400 16th Street, Suite 300
Oak Brook, Illinois 60523

ECS Project No. 16-9742

**RE: Environmental Cost Estimate
Uno Ven Gasoline Station – Proposed InSite Development
1201 West Ogden Avenue
Downers Grove, Illinois**

Dear Mr. Gebauer:

At your request, ECS Midwest, LLC (ECS) has been retained to provide an approximate costs table for environmental work completed or to be completed at the above referenced property. The ballpark cost estimate table is attached. Please note that the costs listed in the table are approximate and are based upon current/known site conditions and current contractor costs.

If you have any questions concerning the information contained in this report, please contact either of the undersigned at (847) 279-0366. Thank you for retaining ECS for this assessment.

Respectfully Submitted,

ECS MIDWEST, LLC

Jason N. Warren
Environmental Project Manager

David T. Kwasiborski, CIAQM
Principal Industrial Hygienist

Attachments, Table

I:\Environmental\Phase II\9742 Uno Ven\cost table\9742 Uno Ven Cost Table Letter.doc

9742 Uno Ven Gasoline Station Cost Table Letter
March 12, 2014

Cost Table

**Overview of Opinion of Costs - 1201 W. Ogden Avenue, Downers Grove, IL
Proposed InSite Development (5,000 square foot Retail/Restaurant)**

Task	Estimated Cost		Scenario Weight		Most-Likely Estimated Cost
	Low End	High End	Low End	High End	
TASK 1 - Phase I	\$ 2,200	\$ 2,200	50%	50%	\$ 2,200
TASK 2 - Phase II	\$ 9,800	\$ 9,800	50%	50%	\$ 9,800
TASK 3 - SIR/ROR/RAP	\$ 19,500	\$ 30,000	50%	50%	\$ 24,750
TASK 4 - RACR	\$ 5,000	\$ 10,000	50%	50%	\$ 7,500
TASK 5 - Vapor Mitigation System Installation	\$ 20,000	\$ 50,000	75%	25%	\$ 27,500
TASK 6 - Engineered Barrier Installation and Oversight	\$ 5,400	\$ 9,700	75%	25%	\$ 6,475
TASK 7 - Removal of Fuel Tanks, Dispensers, Lines, Canopy, Soil Waste Management Disposal & Oversight	\$ 58,600	\$ 135,700	40%	60%	\$ 104,860
TASK 8 - Draft and Final NFR	\$ 3,500	\$ 5,000	50%	50%	\$ 4,250
Subtotals:					\$ 187,335
Contingency: 20%					\$ 37,467
Project Total:					\$ 224,802

Summary of Assumptions:

- Task 1** Includes Phase 1 ESA already completed and invoiced.
- Task 2** Includes Phase 2 ESA already completed and invoiced.
- Task 3** The Site Investigation Report/Remediation Objectives Report/Remedial Action Plan includes the enrollment of the site into the IEPA Voluntary SRP program and associated application fees. The IEPA usually takes about 3-4 weeks to review. Note that the IEPA can always request additional investigations at this time. If data is favorable, a "Draft NFR" can be requested at this time as well which will become final upon implementation of the plan and submittal of the completion report.
- Task 4** The Remedial Action Completion Report includes engineering time to prepare and potential oversight during barrier installation. Does not include any additional sampling the IEPA may request. The reporting takes about 1-2 weeks to complete. IEPA review takes about the same amount of time (3-4 weeks), but usually on the shorter side as they are already up to speed on the project and already approved the plan. Once approved the final NFR will be issued.
- Task 5** Based on current data, the vapor barrier will most likely be comprised of a spray applied emulsified asphalt/latex product (approx. \$4/sf x 5,000-sf); however, IEPA may request a different mitigation system @ approx. \$10/sf x 5,000-sf (ie. sub-slab venting mitigation system).
- Task 6** Barriers for areas of the property with found impacts above IEPA ROs which may need to be covered by proposed engineered barriers. Note that costs are associated with barriers that may be additional to building foundations, paved parking, etc., and oversight.
- Task 7** Removal and disposal of tanks, dispensers, lines, canopy, and appurtenances (\$40,000 allowance). Assumes disposal of 100 cubic yards (approximately 150 tons) of soil during development activities. Low end costs assume 1/10th of soil generated will be considered hazardous waste (\$638/ton), the remainder as special waste (\$96.50/ton); high end costs assume all soil will be considered hazardous waste. Costs for additional site investigation of proposed generated soil not included; classification of soil assumed to be determined by waste disposal contractor. (contractor costs to be confirmed by hard bid)
- Task 8** Time and Cost for ECS to review and advise, if any, application or permit fee, anticipated time for IEPA to process after receiving an approvable RACR. The final NFR will be issued when construction is complete (or at least when any barriers have been placed). The final total review cost for the entire project (when the NFR is granted) from the IEPA is usually around 2-3K, plus around \$500 for us to get the NFR letter recorded on the property and an extra 1K for various review and advising.