

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
6/28/2016

SUBJECT:	SUBMITTED BY:
Ordinance approving a Redevelopment and Land Purchase Agreement for Main & Maple	Enza Petrarca Village Attorney

SYNOPSIS

An Ordinance has been prepared approving a Redevelopment Agreement between the Village and Trammel Crow Chicago Development, Inc. for the properties located at the northeast corner of Main Street and Maple Avenue.

STRATEGIC PLAN ALIGNMENT

The goals for 2015-17 include *Strong, Diverse Local Economy*.

FISCAL IMPACT

The redevelopment is projected to generate \$1.3 million in revenue for the Downtown Tax Increment Financing (TIF) Fund between 2016 and the expiration of the TIF District in 2021.

Year	Sale of Village Owned Land	Property Tax Increment	Total
2016	\$126,525	\$8,832	\$135,357
2017		\$9,451	\$9,451
2018		\$18,851	\$18,851
2019		\$333,025	\$333,025
2020		\$414,697	\$414,697
2021		\$423,433	\$423,433
Total	\$126,525	\$1,208,289	\$1,334,814

For more information about the financial impact of this project and other redevelopment projects, please see the Manager's Report.

UPDATE & RECOMMENDATION

This item was discussed at the June 21, 2016 Village Council meeting. The purchase price for the Village-owned property has been increased to \$177,663. The price is based on the fair market value of land of \$545,000 per acre included in Section 20.300.d.2 of the Subdivision Ordinance. The subject property is 14,200 square feet in area ($\$545,000 \times 0.3259871 \text{ acres} = \$177,663$)

Staff recommends approval on the June 28, 2016 Active Agenda.

BACKGROUND

The subject property consists of three parcels located at the northeast corner of Main Street and Maple Avenue. The Village owns one of the parcels which is improved with a public parking lot. The petitioner, Trammel Crow Chicago Development, Inc. is proposing to redevelop the parcels with a mixed used development. Additional information about the proposed redevelopment can be found in the staff report for the petition for Special Use.

The redevelopment agreement includes the following key terms:

- The developer shall redevelop the property with a mixed use development in accordance with the development plans reviewed and approved by the Village.
- The developer shall complete the development according to the schedule included in the agreement. The development shall be completed no later than July 1, 2018.
- The developer shall purchase the Village-owned property for \$126,525. Closing on the property shall occur on or before September 9, 2016.
- The 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 developer shall pay for all costs of the project. The Village shall not provide any financial assistance.
- If the developer fails to commence construction by May 31, 2018, the developer shall lease the Village parking lot parcel back to the Village at no cost to the Village. If the developer fails to commence construction by June 2021, the Village shall have an option to purchase the parcel.

ATTACHMENTS

Ordinance

Redevelopment Agreement

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: June 28, 2016
(Name)

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

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE APPROVING A REDEVELOPMENT AND LAND PURCHASE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND TRAMMELL CROW CHICAGO DEVELOPMENT, INC. ", as presented.



SUMMARY OF ITEM:

Adoption of the attached ordinance shall approve a Redevelopment and Land Purchase Agreement with Trammell Crow Chicago Development, Inc. for the northeast corner of Main and Maple.

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____**AN ORDINANCE APPROVING A REDEVELOPMENT AND LAND PURCHASE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND TRAMMELL CROW CHICAGO DEVELOPMENT, INC.**

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

WHEREAS, the Village 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 and convey property 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 Village is the fee owner of certain real property located at the northeast corner of Main Street and Maple Avenue in the Village of Downers Grove, Illinois ("Property"), as more particularly described in the Redevelopment and Land Purchase Agreement.

WHEREAS, the Developer seeks to improve the Property with a mixed use building of retail and residential development generally in accordance with the plans depicted in the Redevelopment and Land Purchase Agreement attached hereto and incorporated herein as Exhibit A ("Agreement"); and

WHEREAS, the Council of the Village of Downers Grove, upon due consideration, has heretofore found and does hereby find that the continued ownership is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the Village and should be conveyed by law; 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 the Agreement with the Developer to provide for the development of the Property, thereby implementing and bringing to completion a significant portion of the Redevelopment Plan; and

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

WHEREAS, the Village is desirous of having the Property developed for the uses described in the 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 Council of the Village of Downers Grove, upon due consideration, pursuant to Section 2.36 of the Downers Grove Municipal Code, does hereby find that it is in the best interest of the Village to waive the requirement of notice and bids for the conveyance of Property as it is in the best interests of the residents of the Village that such property be conveyed to the Developer; 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 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. Sale of Property. That, pursuant to Section 2.36 of the Downers Grove Municipal Code, the requirement for notice and bids for the sale of the Property is hereby waived, and the proper officials, agents and employees of the Village are hereby authorized and directed to take such action as may be necessary to arrange for the conveyance of the Property to the Developer.

Section 3. Approval of Redevelopment and Land Purchase Agreement. The Redevelopment and Land Purchase Agreement shall be, and it is hereby, approved in final form satisfactory to the Village Manager. The Mayor and Village Attorney are hereby authorized and directed to execute and deliver the Redevelopment and Land Purchase Agreement and any other necessary and appropriate related documents after such documents have been properly executed and delivered by the Developer.

Section 4. 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

EXHIBIT A

REDEVELOPMENT AND LAND PURCHASE AGREEMENT

REDEVELOPMENT AND LAND PURCHASE AGREEMENT

THIS REDEVELOPMENT AND LAND PURCHASE AGREEMENT ("Agreement"), is made and entered into as of this ____ day of July, 2016 ("Effective Date"), by and between the VILLAGE OF DOWNERS GROVE, a municipal corporation organized under the laws of the State of Illinois ("Village"), and TRAMMELL CROW CHICAGO DEVELOPMENT, INC., a Delaware corporation ("Developer").

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 and convey property in accordance with the conditions and requirements set forth in the Act; and

WHEREAS, in order 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*"; and

WHEREAS, the Village is the fee owner of certain real property located at the northeast corner of Main Street and Maple Avenue in the Village of Downers Grove, Illinois, as more particularly described in attached Exhibit A ("Property"); and

WHEREAS, Developer desires to purchase the Property and, together with two adjacent parcels, which Developer has under contract to purchase ("Adjacent Parcels"), redevelop the Property and the Adjacent Parcels (collectively, the "Redevelopment Site") for a mixed use building of commercial and residential uses; and

WHEREAS, on May 10, 2016, the Village Council of the Village of Downers Grove authorized the Village Manager to negotiate the terms of a redevelopment agreement with Developer; and

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

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

WHEREAS, Developer and the Village further desire to enter into this Agreement to establish the terms and conditions of the Purchase of the Property and the redevelopment of the Redevelopment Site as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

1. Incorporation of Recitals. The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Section 1, and constitute the findings, representations and agreements of the Village and of the Developer.
2. Agreement to Sell and Purchase the Property. In accordance with and subject to the terms and conditions hereof, Village shall sell to Developer and Developer shall purchase from Village the Property and all right, title, and interest of Village in the Property.
3. Property Purchase Price, Allocation and Manner of Payment. The purchase price of the Property shall be \$177,663.00 ("Purchase Price") subject to credits, debits and adjustments

as hereinafter provided, and subject to all the terms and conditions herein contained, payable as follows:

3.1. Within two (2) business days after the Effective Date, Developer shall deposit as earnest money into escrow the sum of \$5,000.00 (such sum, together with any interest thereon, being hereinafter collectively referred to and held as the "Deposit"), with First American Title Insurance Company, 801 Nicollet Mall, Minneapolis, Minnesota, Attention Kristi Broderick (the "Title Company" or the "Escrow Agent"). Escrow Agent shall hold the Deposit and make delivery of the Deposit to the party entitled thereto under the terms hereof and pursuant to an escrow agreement in a mutually agreeable form. All earnest money shall be non-refundable to Developer following expiration of the Due Diligence Period as provided for in Section 13, unless the Village defaults and fails to timely cure or as otherwise provided herein. Notwithstanding the above, in the event Developer is not able to obtain the Approvals required, Developer upon written notice to the Village can terminate this Agreement and the earnest money shall be returned to Developer.

3.2. Developer shall pay the balance of the Purchase Price by wire transfer, certified or cashier's check at Closing (as defined below), subject to credit for application of the amount of the Deposit paid to Village as provided in Section 3.1 above and subject to credit and adjustment as provided in Section 4 below.

4. Purchase Price Adjustments. The following items shall be credited, debited and otherwise adjusted as of the date of Closing, and the resulting calculation shall be an adjustment to the Purchase Price payable at Closing:

4.1. Developer shall pay all costs associated with Closing, including the following: (i) any deed tax and the cost of recording the Quit Claim Deed and any loan documents related to financing arranged by Developer; (ii) the closing fee charged by Title Company; (iii) Developer's attorney's fees; (iv) the escrow fee, if any, charged by Escrow Agent; (v) the cost of the Title Commitment, Survey (each defined below), title policy and any endorsements to the title policy specifically requested by Developer; (vi) the cost of recording any document necessary to make title acceptable to Developer (including any endorsement to the title insurance policy); (vii) any brokerage fees of the brokers involved in arranging the sale; and (viii) such other expenses as are normally paid by Developer under local custom.

5. Possession. Village shall transfer possession of the Property to Developer upon Closing.

6. Closing. The closing of the purchase and sale contemplated by this Agreement ("Closing") shall occur within thirty (30) days following the earlier of (a) expiration of the Due Diligence Period (as defined herein) or (b) Developer's earlier waiver of the Due Diligence Period, which Developer may exercise at its sole and absolute discretion. The Closing shall take place at the offices of the Title Company, or may be closed by mail or other delivery of the necessary deposits of Developer and Village to Title Company.

7. Closing Deliveries. At the Closing, Village shall execute and deliver or cause to be delivered to Developer, the following items:

7.1. A Quit Claim deed, transferring and conveying to Developer fee simple title to the Property, subject only to those easements, restrictions, conditions, and other exceptions identified in the Title Commitment and not objected to by Developer, which

Quit Claim deed shall be in recordable form and otherwise reasonably approved by Developer (the "Deed").

7.2. An affidavit from the Village as may be required by the Title Company, on a form reasonably satisfactory to Developer and Village, in order for the Title Company to issue an owner's policy of title insurance in favor of Developer with extended coverage and no tenancy exception.

7.3. A FIRPTA Affidavit in form reasonably satisfactory to Developer and Village.

7.4. A written ordinance by the Village, authorizing and approving the Village to enter into this transaction.

7.5. A reaffirmation of representations and warranties contained in this Agreement, stating that the representations and warranties made by Village herein are true and correct as of the Closing Date, the form of which shall be reasonably satisfactory to Developer and Village.

7.6. A Designation Agreement designating the Title Company as "Reporting Person" for purpose of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.

7.7. Documentation satisfactory to Developer and the Title Company terminating any previous conditions, covenants or restrictions encumbering the Property, including any previously recorded Development Agreements or Redevelopment Agreements affecting the Property.

7.8. All such other documents, instruments and funds as may reasonably be required by Developer and/or Title Company to close the sale in accordance with this Agreement.

7.9. On the Date of Closing, Developer and Village shall execute and deliver to one another counterpart originals of Closing Statements, which shall reflect any prorations contemplated hereunder.

8. Due Diligence/Title and Survey. To demonstrate that Village has good and marketable title to the Property, during the Due Diligence Period (defined below), Developer shall obtain the following:

8.1. A current commitment for title insurance issued by the Title Company, along with copies of all documents noted as encumbrances on the Title Commitment, which is in an amount equal to the Purchase Price and shall insure good, marketable fee simple title in the Property (the "Title Commitment"); and

8.2. A current survey of the Property, certified to Developer, Title Company, and Developer's lender, if any, and meeting the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and NSPS in 2011, including Items 1, 2, 3, 4, 6, 7(a), 7(b)(1), 7(c), 8, 9, 10, 11(a), 13, 14, 16, 18 and 19 of Table A thereof (the "Survey").

9. Due Diligence Materials. Within three (3) days after the Effective Date, Village will deliver to Developer copies of all documents or pertinent materials pertaining to the Property, to the extent Village is a party thereto or Village is in possession or control thereof (collectively, the "Due Diligence Materials"), and Village will make available to Developer or its representatives Village's files with respect to the Property.

10. Physical Inspections. During the Due Diligence Period (as hereinafter defined), Developer may, in its sole discretion, conduct any environmental, soil or engineering, study or test with respect to the Property that Developer deems advisable (collectively, the "Physical Inspections"). Developer shall have the obligation to restore the Property to its condition prior to any Physical Inspections. Developer will indemnify and hold Village harmless from claims, damage or liabilities arising from the negligence or wrongful act of Developer in conducting any Physical Inspections.

11. Financial Analysis. During the Due Diligence Period, Developer shall confirm that the acquisition and development of the Property shall meet the financial requirements of Developer, its lender(s), or investor(s), if any, as determined by Developer in its sole discretion.

12. Utilities. During the Due Diligence Period, Developer shall confirm that all utility facilities, storm water detention facilities and curb cuts necessary to serve the Property are available, or can be obtained and/or relocated at a cost acceptable to Developer in its sole discretion, and to the extent required by such providers, that Village will allow the use of rights-of-way to locate utility infrastructure.

13. Due Diligence Period. Developer shall have a period of 180 days from the Effective Date (the "Due Diligence Period"), to satisfy itself as to those conditions set forth above and in Section 18 below to (i) give written notice to Village of any objections Developer may have; or (ii) waive all conditions to Closing as set forth above by providing written notice to Village, except that this shall not operate as a waiver of Village's covenant to deliver the Deed in accordance with this Agreement. If Developer obtains title insurance, Developer is not waiving the right to obtain a good and marketable title of record from Village. If Developer notifies Village of any such objection(s) during the Due Diligence Period, Village shall either: (a) cure

such objections as soon as reasonably possible but no later than prior to Closing (and, for purposes of this Agreement, "cure" shall include, but not be limited to, removing any such defect); or (b) decline to cure such objections. If Village declines to cure such objections Village shall so notify Developer within fifteen (15) business days of receipt of Developer's objections. Thereafter, Developer shall (i) waive such objections and proceed to Closing, or (ii) terminate this Agreement and recover the Deposit. If title defects are discovered by or reported to Developer on or prior to the Date of Closing which are not shown on the Title Commitment or the Survey, or which were created or came into existence on or after the date of delivery of the Title Commitment or the Survey, Developer shall notify Village in writing of any such title defects as soon as reasonably possible. Village may then either (a) cure such objections prior to Closing (and, for purposes of this Agreement, "cure" shall include, but not be limited to removing of any such defect); or (b) decline to cure such objections. If Village declines to cure such objections, it shall so notify Developer within ten (10) business days of notice from Developer. Thereafter, Developer shall (i) waive such objections and proceed to Closing or (ii) terminate this Agreement.

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

Subject to the terms of this Agreement, Developer is purchasing the Property, and, except as set forth herein, the Property shall be conveyed and transferred to Developer, "AS IS, WHERE IS, AND WITH ALL FAULTS," and specifically and expressly without any warranties or guaranties, either express or implied, of any kind, nature or type

whatsoever from or on behalf of Village. Without limiting the generality of the foregoing except as set forth herein, Village HAS NOT MADE, AND DOES NOT AND WILL NOT MAKE WITH RESPECT TO THE PROPERTY, ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR WITH RESPECT TO THE VALUE, PROFITABILITY, BUILDABILITY, MORTGAGEABILITY OR MARKETABILITY OF THE PROPERTY, OR THE PRESENCE OF HAZARDOUS MATERIALS THEREIN, THEREON, OR THEREUNDER WHICH WARRANTIES ARE HEREBY DISCLAIMED.

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

15. Village's Representations and Warranties. The Village makes the following representations and warranties, which representations and warranties are true and correct on the date hereof and shall be true on the Closing Date and shall survive the Closing:

15.1. The Village owns the Property free and clear of all encumbrances except those identified in the Title Commitment.

15.2. To the best of Village's knowledge, there is no action, suit, proceeding or investigation pending which would become a cloud on the title to the Property or any portion thereof, or which questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto, in any court or by any federal, district, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

15.3. The Village is neither a "foreign person" nor a "foreign corporation" (as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended).

15.4. No work has been performed or is in progress at, and no materials have been furnished to, the Property or any portion thereof by or on behalf of Village which could give rise to any mechanic's, materialmen's or other liens and no such liens are outstanding.

15.5. There are no other agreements to lease, occupy, sell, option, mortgage, manage, service or otherwise encumber or dispose of its interest in the Property.

15.6. The copies of documents comprising Due Diligence Materials are accurate copies of all material documents comprising the Due Diligence Materials.

15.7. The Village's warranties and representations contained in this Section shall survive the delivery of the Deed and Closing. In the event any of the representations and warranties contained herein becomes untrue as of the date of the Closing as a result of information received by Village or occurrences subsequent to the Effective Date hereof or otherwise, Village shall promptly notify Developer. A reaffirmation of representations and warranties contained in this Section, the form of which shall be reasonably

satisfactory to Developer and Village and executed by Village or, if Village is a single-asset entity, by another entity or individual, as requested by Developer, which individual or entity reasonably demonstrates the financial strength to undertake such continuing representations, warranties and indemnities, shall be provided at Closing.

15.8. Seller has the requisite power and authority to enter into and perform this Agreement. This Agreement has been duly executed and delivered by Seller and is a valid and binding obligation of Seller in accordance with its terms.

16. Commissions. Developer has dealt with no broker, finder or other person in connection with the sale or negotiation of the sale of the Property in any manner that might give rise to any claim for commission against the Village.

17. Developer's Representations and Warranties. Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof and will be true and correct on the date of Closing and will survive Closing:

17.1. Developer is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Illinois.

17.2. Developer, acting through its duly empowered and authorized officer, has all necessary power and authority to own and use its properties and to transact the business in which it is engaged.

17.3. Developer, acting through its duly empowered and authorized officer, is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

18. Village Approvals. Prior to the Closing, Developer shall use commercially reasonable efforts to apply for and obtain all necessary approvals, and entitlements for the

development of the Redevelopment Site from the Village, including zoning approval in the form of a planned unit development, including PUD site plan approval, by the Downers Grove Village Council (collectively, the "Approvals"), the effectiveness of which Approvals shall be conditioned on the completion of the Closing.

19. Development of the Project. Following the Closing, Developer shall proceed with the redevelopment of the Redevelopment Site for a mixed use building of commercial and residential uses in accordance with the Approvals and as generally set forth in the design proposal attached hereto as Exhibit C ("Project"). As currently planned, the Project shall consist of 8 levels of improvements (including two below grade parking levels) containing approximately 115 residential rental units, 161 parking stalls, 3,900 square feet of retail space within a total of approximately 200,000 gross square feet.

20. Anticipated Timing of Development. Developer's anticipated development schedule is attached hereto as Exhibit "D", provided, however that the failure to meet any such anticipated schedule dates shall not be a default hereunder. Upon substantial completion of the Project, the Village and Developer mutually shall execute a release of this Agreement, in recordable form, which shall be recorded by Developer promptly after such substantial completion. For purposes of this paragraph, "substantially complete" shall mean the earlier to occur of (a) the issuance of a final certificate of occupancy for the Project (excluding the retail elements), or (b) when the residential portion of the Project is sufficiently complete that it can be occupied and used for its intended purpose.

21. Construction Commencement.

21.1 If, subject to extension for Uncontrollable Circumstances, Developer fails to commence construction on the Project on or before May 31, 2018, then Village

Manager may notify Developer in writing ("Village Notice") that if construction commencement does not occur within thirty (30) business days after Developer's receipt of such Village Notice, Developer shall lease the Property to the Village for parking purposes at no rental cost to the Village until such time when Developer is prepared to commence construction ("Lease"). Thereafter the Village and Developer will enter into a Lease under mutually acceptable terms. The Lease will commence on the 31st business day after Developer's receipt of the Village Notice, provided Developer does not commence construction within the preceding thirty (30) business days and will terminate thirty (30) days after Developer provides the Village with written notice that Developer intends to commence construction. Upon providing such notice to the Village, the Village shall relinquish possession of the Property to Developer within thirty (30) days, and Developer thereafter shall commence construction within ninety (90) days. If Developer does not commence construction within such 90-day period, the Village may resume its Lease of the Property for parking purposes until Developer provides subsequent notice that it intends to commence construction.

21.2 If, subject to extension for Uncontrollable Circumstances, (a) Developer fails to commence construction on the Project on or before the fifth (5th) anniversary of the Effective Date, the Village shall have an option to purchase the Redevelopment Site for fair market value ("Option") by providing Developer with written notice of exercise of the Option ("Exercise Notice"). Upon Developer's receipt of the Exercise Notice, the parties will negotiate in good faith to establish the fair market value of the Redevelopment Site. If the parties do not arrive upon a stipulated fair market value within twenty (20) days after Developer's receipt of the Exercise Notice, the fair market

value will be determined by a mutually agreeable appraiser. The Closing on the Option will occur thirty (30) days after the fair market value is established. Developer may enter into a purchase agreement for the sale of the Redevelopment Site at any time prior to receipt of the Notice Exercise. Upon Developer's request, the Village will provide recordable written confirmation of the termination of the Option after construction commencement.

21.3 For purposes of this Section, "commence construction", and all similar derivations, shall mean excavation and the pouring of footings for the improvements to be constructed on the Redevelopment Site. Upon Developer's commencement of construction, as defined herein, all of the Village's rights under this Section 21 shall terminate and be of no further force or effect.

21.4 For purposes of this Agreement, "Uncontrollable Circumstance" means any event which:

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

(v) strikes or labor disputes, other than those caused by the acts of Developer;

(vi) unavailability of materials not caused by acts of the Developer;

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

22. Compliance with Applicable Law. Developer shall, at all times, acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations in effect as of the date of the application for the building permit. All work with respect to the Project shall conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned unit development codes, building and fire prevention codes, environmental codes, life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village in effect as of the date of the application for the building permit. Village shall not enact any law, ordinance, rule or regulation (or amendment thereto) which would have the effect of increasing Developer's obligations hereunder, including an increase in the cost of the Project, unless said law, ordinance, rule or regulation is one of general applicability to all the property in the Village.

23. Fees and Expenses. Developer shall pay all Village imposed fees, including but not limited to permit, inspection, review, tap-on, school and park impact fees, and storm water drainage fees required in the Village Code of Ordinances that are assessed on a uniform basis throughout the Village and are of a general applicability to all other property in the Village at the

time that an application for a building permit and/or earth moving permit for such development or construction is filed. Developer's failure to pay the fees and expenses described in this Section, or elsewhere in this Agreement (after the applicable notice and cure period) shall constitute an event of default hereunder.

24. Construction Traffic. In advance of the commencement of construction on the Project, the Village reserves the right to establish reasonable routes of access for construction traffic to protect pedestrians and to minimize disruption of traffic and damage to paved street surfaces, provided such routes do not materially interfere with Developer's construction activities or result in a material increase in cost to Developer and that no more strict standards will be imposed than are typically imposed for similar projects. At all times during construction the Developer shall keep, or cause to be kept, the designated routes free and clear of mud, dirt, debris, obstructions, and hazards and shall repair, or cause to be repaired, any damage caused by any construction traffic. If the Developer shall fail to keep or cause to be kept such routes free and clear of mud, dirt, debris, obstructions, or hazards, then the Village may do so and the Developer shall reimburse the Village's reasonable costs and expenses in doing so. The Village will allow Developer to use Village rights-of-way during construction of the Project, including the closure of sidewalks as necessary. The Village will use reasonable efforts to give Developer notice and the right to cure, before performing its self-help remedies under this Section.

25. Operation Pending Closing. During executory period of this Agreement, Village shall (a) operate, maintain and manage the Property in a manner substantially consistent with Village's past practices, including continuing repair and preventative maintenance, maintenance of adequate insurance with respect to the Property (including both commercial general liability insurance and property insurance) and full and timely compliance with any contracts, leases,

permits, warranties and applicable law, (b) not lease, convey or otherwise transfer any of the Property, (c) execute no contracts, leases or other agreements regarding any of the Property (including any amendment or modification of any contract, lease, permit or warranty) without the consent of Developer, (d) undertake no repairs or alterations of the Property of a capital nature without the consent of Developer, and (e) promptly deliver to Developer a copy of any notice, consent, waiver, request or other communication Village receives from any public or private entity with respect to any of the Property.

26. Insurance. Developer shall cause each contractor engaged in the construction and installation of any Project improvement to furnish insurance coverage (including workers' compensation, liability and property damage) in such amounts as are reasonably satisfactory to Developer and Village, provided that such limits shall not be in excess of what is commercially reasonable.

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

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

b. the failure of Developer or any of Developer's contractors to pay Developer's contractors, subcontractors or materialmen in connection with the Project; or

c. material misrepresentations or omissions of Developer relating to the Project or this Agreement which are the result of information supplied or omitted by Developer or by its agents, employees, contractors or persons acting under the control or at the request of Developer; or

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

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

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

The provisions of this Section shall not apply to a loss which arises out of (in whole or in part) intentional misconduct or gross negligence on the part of any Indemnified Party, but only to the extent that such Indemnified Parties' misconduct or negligence contributed to the loss, or that the loss is attributable to such Indemnified Parties' misconduct or negligence. The Village and the Indemnified Parties hereby waive all Claims against Developer to the extent such claims are covered by insurance policies, provided that claims for any attorneys' fees not covered by insurance shall not be deemed waived.

28. Successors and Assigns. Until construction of the Project is substantially complete (as defined herein), Developer shall not assign or transfer its interest in the Property, or its rights under this Agreement except with the prior written approval of the Village, which may be given or withheld in the reasonable exercise of the Village's discretion, and except with respect to contracting and subcontracting work related to the improvements to the

Redevelopment Site. Notwithstanding the foregoing, Developer may assign its right to purchase the Property to an affiliate entity or another entity in which Developer holds an ownership interest. The terms and provisions hereof shall be binding upon, and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto and shall be binding upon all future owners of all or any part of the Redevelopment Site and shall be deemed covenants running with the land.

29. Severable. In the event that any portion of this Agreement shall be held invalid for any reason, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

30. Waiver. Any waiver, whether express or implied, by any party of a breach of any provision of this Agreement will not operate as or be construed to be a waiver of any subsequent breach of this Agreement.

31. Default by Developer. If Developer defaults in performing any of Developer's obligations under the terms of this Agreement for any reason other than Village's default, after providing Developer with ten (10) business days' prior written notice of default and opportunity to cure, or if such cure cannot be completed within ten (10) business days, Developer shall be allowed such reasonable additional time to cure as is necessary, provided such cure is commenced within ten (10) business days and pursued diligently, Village may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach.

32. Default by Village. If Village defaults in performing any of Village's obligations under the terms of this Agreement for any reason other than Developer's default, after providing Village with ten (10) business days' prior written notice of default and opportunity to cure,

Developer may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach. Village shall be allowed such reasonable additional time to cure as is necessary, provided such cure is commenced within ten (10) business days and pursued diligently, Developer may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach.

33. Notices. All notices and demands specified herein shall be deemed appropriately and timely given when delivered personally or deposited by a recognized overnight delivery service or in the United States mail to the addresses hereinafter set forth by certified mail (return receipt requested). The addresses of the parties hereto are as follows until changed by written notice given as above:

To the Village at:	Village of Downers Grove Attn: Village Attorney 801 Burlington Avenue Downers Grove, IL 60515
To Developer at:	Trammell Crow Chicago Development, Inc. 2215 South York Road Suite 204 Oak Brook, IL 60523 Attn: Grady Hamilton and John Carlson
With a Copy to:	Marcus A. Mollison Dorsey & Whitney LLP Suite 1500 50 South Sixth Street Minneapolis, MN 55402

34. Equal Employment Opportunity; No Discrimination. Developer will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex or national origin. To the fullest extent permitted by law, Developer will use its good faith efforts to ensure that applicants are employed and treated during employment, without

regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

36. Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with Developer's Project shall contain language similar to that recited in Section 34 and Section 35 above.

37. Recordation of Agreement. The Parties agree to record this Agreement in the DuPage County Recorder's Office. The Developer shall be responsible for all recording costs.

38. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper in DuPage County, Illinois.

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

execution, delivery and performance of this Agreement, or any failure in that connection.

40. Effective Date. This Agreement may be executed in counterparts. This Agreement shall be effective as of the date of execution and acknowledgement by the Village and Developer.

IN WITNESS WHEREOF, the Village and Developer have caused this Agreement to be duly executed on the day and year below written.

VILLAGE OF DOWNERS GROVE

By: _____

Its: _____

By: _____

Its: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF DU PAGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ and _____, the _____ and _____, respectively, for the Village of Downers Grove, a municipal corporation organized under the laws of the State of Illinois, on behalf of the Village.

Notary Public

DEVELOPER:

TRAMMELL CROW CHICAGO
DEVELOPMENT, INC.

By: _____

Its: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF DU PAGE)

The foregoing instrument was acknowledged before me, this ____ day of _____, 2016,
by _____, the _____ of Trammell Crow Chicago
Development, Inc., a Delaware corporation, on behalf of the corporation.

Notary Public

EXHIBIT A**PROPERTY LEGAL DESCRIPTION**

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

EXHIBIT B
INTENTIONALLY DELETED

EXHIBIT C
PRELIMINARY DESIGN PROPOSAL

**EXHIBIT D
ANTICIPATED DEVELOPMENT SCHEDULE**

<u>Action</u>	<u>Target Date</u>
Execute RDA	June 28, 2016
Complete Due Diligence	September 9, 2016
Obtain Final Planned Development Approval	June 28, 2016
Close on the Property	September 9, 2016
Apply for Demolition Permit	August 26, 2016
Apply for Building Permit	September 16, 2016
Substantial Completion of the Development	July 1, 2018