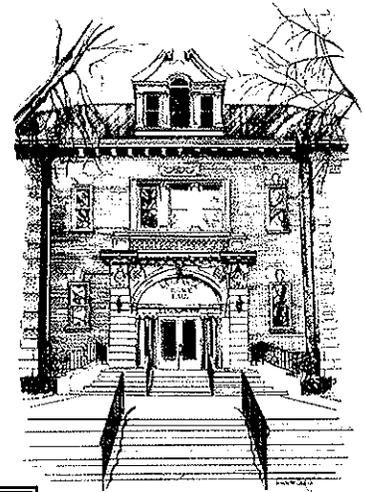


Village of La Grange



VILLAGE BOARD MEETING

MONDAY, NOVEMBER 13, 2006

7:30 p.m.

Village Hall Auditorium

53 S. La Grange Road

La Grange, IL 60525

Elizabeth M. Asperger
Village President

Robert N. Milne
Village Clerk

VILLAGE OF LA GRANGE
BOARD OF TRUSTEES REGULAR MEETING

Village Hall Auditorium
53 South La Grange Road
La Grange, IL 60525

AGENDA

Monday, November 13, 2006 – 7:30 p.m.

1. CALL TO ORDER AND ROLL CALL
President Elizabeth Asperger
Trustee Richard Cremieux
Trustee Mike Horvath
Trustee Mark Langan
Trustee Tom Livingston
Trustee Nicholas Pann
Trustee Barb Wolf

2. PRESIDENT'S REPORT
This is an opportunity for the Village President to report on matters of interest or concern to the Village.
 - A. Oath of Office – Firefighter / Paramedic Brian Goodman

 - B. Employee Recognition – Police Lieutenant William Trzeciak, Armed Robbery Incident

3. PUBLIC COMMENTS REGARDING AGENDA ITEMS
This is the opportunity for members of the audience to speak about matters that are included on this Agenda.

4. OMNIBUS AGENDA AND VOTE
Matters on the Omnibus Agenda will be considered by a single motion and vote because they already have been considered fully by the Board at a previous meeting or have been determined to be of a routine nature. Any member of the Board of Trustees may request that an item be moved from the Omnibus Agenda to Current Business for separate consideration.
 - A. Award of Contract – Replacement of Village Hall Fire Alarm System

 - B. Award of Contract - Police Department / Reconditioning and Upgrade of Pistol Range

 - C. Consolidated Voucher 061113

 - D. Minutes of the Village of La Grange Board of Trustees Town Meeting, Monday, October 23, 2006

5. CURRENT BUSINESS

This agenda item includes consideration of matters being presented to the Board of Trustees for action.

A. Ordinance – Planned Development Final Plan and Design Review Approval to Authorize a Mixed Use Building in the C-1 Central Commercial District, 93 S. La Grange Rd., MIDCO La Grange, LLC: *Referred to Trustee Langan*

B. La Grange Business Association / Our Hometown Holiday – 2006 Christmas Walk Sponsorship: *Referred to Trustee Pann*

C. Preliminary Review of the Proposed 2006 Property Tax Levy Request: *Referred to Trustee Horvath*

6. MANAGER'S REPORT

This is an opportunity for the Village Manager to report on behalf of the Village Staff about matters of interest to the Village.

7. PUBLIC COMMENTS REGARDING MATTERS NOT ON AGENDA

This is an opportunity for members of the audience to speak about Village related matters that are not listed on this Agenda.

8. EXECUTIVE SESSION

The Board of Trustees may decide, by a roll call vote, to convene in executive session if there are matters to discuss confidentially, in accordance with the Open Meetings Act.

9. TRUSTEE COMMENTS

The Board of Trustees may wish to comment on any matters.

10. ADJOURNMENT

The Village of La Grange is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations so that they can observe and/or participate in this meeting, or who have questions, regarding the accessibility of the meeting or the Village's facilities, should contact the Village's ADA Coordinator at (708) 579-2315 promptly to allow the Village to make reasonable accommodations for those persons.

PRESIDENT'S REPORT

VILLAGE OF LA GRANGE
Fire Department

BOARD REPORT

TO: Village President, Village Clerk, and
Board of Trustees and Village Attorney

FROM: Robert J. Pilipiszyn, Village Manager and
David W. Fleege, Fire Chief

DATE: November 13, 2006

RE: **OATH OF OFFICE – FIREFIGHTER/PARAMEDIC BRIAN GOODMAN**

With the resignation of Firefighter/Paramedic Greg Hamm in August 2006, a vacancy was created in the La Grange Fire Department. The La Grange Board of Fire and Police Commissioners have appointed Mr. Brian Goodman to the position of Firefighter/Paramedic effective November 13, 2006.

Brian is a licensed paramedic and is scheduled to attend the Firefighter II Training Academy in March, to achieve his training certification. Brian most recently worked for a private ambulance provider. He is single and resides in Sycamore, Illinois.

We are pleased to present Brian Goodman to the Village Board and we invite him to step forward so that Village Clerk Robert Milne can administer the oath of office.

2-A

VILLAGE OF LA GRANGE
Police Department

BOARD REPORT

TO: Village President, Village Clerk,
Board of Trustees and Village Attorney

FROM: Robert J. Pilipiszyn, Village Manager and
Michael A. Holub, Chief of Police

DATE: November 13, 2006

RE: **EMPLOYEE RECOGNITION - POLICE LIEUTENANT WILLIAM
TRZECIAK, ARMED ROBBERY INCIDENT**

In recognition of outstanding performance of duty surrounding an armed robbery incident, we ask the Village Board to formally acknowledge the performance of Police Lieutenant William Trzeciak.

In July, we received a report of an armed robbery at the Clark Gas Station located at 5300 S. La Grange Road in Countryside, IL. The offender was alleged to have displayed a weapon and to have also held the handgun to the head of a child.

Lt. Trzeciak responded quickly to the location, where he saw the offender exit the store. Lt. Trzeciak responded without hesitation and took the armed robbery suspect into custody. Nobody was injured in the incident, and a handgun was subsequently recovered at the scene.

Lt. Trzeciak was nominated for a Gallantry Star Award by the members of his own shift, who recognized his valiant effort and immediate response. The criterion for this award is as follows:

An award for an act of distinguished bravery in the arrest of a person who is a major threat to the welfare of the village, community and/or the officer or for a serious injury received in the line of duty, inflicted intentionally by an adversary.

We recommend that the Village Board recognize Lieutenant William "Bill" Trzeciak for his individual effort and request that the Village President present him with the Gallantry Star Award.

2-B

OMNIBUS VOTE

VILLAGE OF LA GRANGE
Department of Public Works

BOARD REPORT

TO: Village President, Village Clerk
Board of Trustees, and Village Attorney

FROM: Robert Pilipiszyn, Village Manager
Ken Watkins, Director of Public Works

DATE: November 13, 2006

RE: **AWARD OF CONTRACT – REPLACEMENT OF VILLAGE
HALL FIRE ALARM SYSTEM**

The FY 2006-07 Building and Grounds budget provides for the replacement of the fire alarm system at the Village Hall. The present system is outdated and inadequate for the structure. Additional audible devices are required and some areas in the building lack any detection devices. Updating current devices to visual devices, (for the hearing impaired) is required under the Americans with Disabilities Act. The current system also lacks the means to take the alarm in and out of service for normal maintenance.

Competitive proposals were solicited from local vendors known to be capable of providing alarm systems which meet our needs and specifications. The following table reflects the quotes received:

VENDOR/LOCATION	QUOTE
ADT/Oak Brook, IL	\$32,660
Patriot Electric System/Orland Park, IL	\$33,850
Alliance Electric/Burbank, IL	\$34,150
FY 2006-07 Building and Grounds / Improvements Line Item	\$30,000

The low quote was submitted by ADT of Oak Brook, Illinois. The system proposed by ADT has been reviewed by the Fire Department and found to be an adequate fire protection system for the Village Hall. We are very familiar with this firm as they currently maintain the burglar and fire alarm systems in all Village facilities. They most recently installed the security system at the East Avenue Pump Station. All work was performed according to our specifications and in a satisfactory manner.

The Building and Grounds Budget reflects \$30,000 for the replacement of the alarm system. There are sufficient reserves in the General Fund to cover the difference of \$2,660. Attached for your consideration is the required budget amendment form recognizing this transfer of funds and a resolution which formerly incorporates the budget amendment into the FY 2006-07 Operating and Capital Improvements Budget.

4-A

It is our recommendation that the Village Board authorize staff to enter into an agreement with ADT of Oak Brook, Illinois for the installation of a new fire alarm system for the Village Hall in an amount not to exceed \$32,660. We further recommend approval of the attached resolution, amending the FY 2006-07 Operating and Capital Improvements Budget in the amount of \$32,660 to reflect the cost of the system.

4-A.1

VILLAGE OF LA GRANGE

RESOLUTION R-06-_____

BUDGET AMENDMENT – REPLACEMENT OF VILLAGE HALL
ALARM SYSTEM – BUILDING & GROUNDS DEPARTMENT

BE IT RESOLVED that the President and Board of Trustees of the Village of La Grange adopt the 2006-07 Operating and Capital Improvements Budget Amendment as set forth in the document as attached hereto and made a part here of.

Adopted this ____ day of _____, 2006, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

Approved this ____ day of _____, 2006

Elizabeth M. Asperger, Village President

ATTEST:

Robert N. Milne, Village Clerk

4-A.2

VILLAGE OF LA GRANGE
Police Department

BOARD REPORT

TO: Village President, Village Clerk,
Board of Trustees and Village Attorney

FROM: Robert J. Pilipiszyn, Village Manager and
Michael A. Holub, Chief of Police

DATE: November 13, 2006

RE: **AWARD OF CONTRACT – POLICE DEPARTMENT / RECONDITIONING
AND UPGRADE OF PISTOL RANGE**

The FY 2009-10 Village budget provides for the replacement of the Police Department's pistol range. However, the current condition of the pistol range has deteriorated to a point that it requires more immediate attention in the form of reconditioning and selected upgrades.

We are currently experiencing a number of system malfunctions and the time spent to correct them is increasing. Representative examples of such problems include the following:

- Many of the parts used to keep positions #2-4 operating were salvaged from position #1 which has been inoperable for quite some time.
- Parts for repairs from the manufacturer are limited.
- There are health concerns related to the increased exposure of contaminants through inhalation and contact while performing maintenance duties.
- There are safety issues related to system malfunctions with the target carriers which requires an officer to cross or step over the firing line during exercises.
- Equipment down time effects usage for our department and departments that rent the pistol range.
- Carrier malfunction leads to significant damage to the acoustical material and walls.
- The lack of equipment that provides for communication between the control booth and the firing line requires instructors to be on the line more frequently to communicate with shooters, increasing risk and exposures. (system upgrade)

A service representative from MDS Caswell conducted an assessment of our facility. He described the infrastructure of the pistol range as structurally sound. The targeting system was found to be most

4-B

critically in need of updates and repair. He advised that the manufacturer no longer makes the parts and equipment being used and current supplies are limited. He felt the bullet trap and baffles were in good condition and did not need replacement. However, the lack of plating on the walls at the end of the range (near bullet trap) has led to significant structural damage to walls. Furthermore, damaged wall coverings and improperly applied acoustical material has caused rail/carrier malfunctions. Finally, an available connectivity wire upgrade has never been made which leads to frequent target carrier stoppages and the need to clear rails and wire before, during, and after training is conducted.

We propose that improvements be performed at this time in order to continue to provide realistic and appropriate training to our officers as well as area officers. With the proper reconditioning and upgrades, we will once again have a state-of-the-art training facility and a safer environment to practice and teach the skills and knowledge required for use of force. The inclusion of the environmental changes to the walls and acoustical materials will increase safety, enhance the learning and teaching experience, and provide cleaner and quieter surroundings. We also believe that making the changes now will decrease future costs pertaining to the pistol range due to the availability of replacement parts, a suitable service contract, and a more manageable budget for future upgrades.

A written quotation was solicited from MDS Caswell for the purchase and installation of the necessary improvements described above. The proposal includes the RTS-360 turning target system, EF5 local controllers, a touch screen PC based master controller with a remote tablet controller (PDA type), improved booth panels, communication system, sidewall steel for the most vulnerable portions of the walls, new acoustical foam for sound dampening, freight, installation, and training. The quote also includes the removal and lead abatement of the existing acoustical material and a one-year warranty. The following table reflects the quote submitted and available funds.

VENDOR / LOCATION	QUOTE
MDS Caswell / Minneapolis, Minnesota	\$78,850
FY 2006-07 BUDGET	
Equipment Replacement Fund / YTD accrual for pistol range replacement scheduled in 2009-10	\$119,000

The reconditioning and upgrading of the pistol range during this budget year will allow for the unused funds to be identified as ERF surplus and reduce required annual reserves over the next ten years. Attached for your consideration is the required budget amendment form requesting a budget amendment and a resolution which formally incorporates the budget amendment into the FY 2006-07 Operating and Capital Improvements Budget.

Detroit Armor Corp., now MDS Caswell, installed our range in 1991. By using MDS Caswell we will be able to retrofit some existing equipment. They have become our preferred maintenance vendor and are a sole source vendor to perform the scope of work outlined above. Using another company would

4-B.1

Purchase – Police Department / Upgrade and Recondition of Pistol Range
Board Report – November 13, 2006 – Page 3

require complete replacement at a considerably higher cost. MDS Caswell has been established for 80 years and is a recognized leader in firearms training equipment and services.

As an aside, we have rental agreements with the Villages of La Grange Park and Western Springs to practice in our pistol range. The hourly rate charged to these jurisdictions will increase to recognize the cost of these improvements. It is also another example of intergovernmental cooperation.

It is our recommendation that the Village Board waive the competitive bidding process and authorize staff to enter into an agreement with MDS Caswell of Minneapolis, MN for the reconditioning and upgrading of the Police Department's pistol range as described above in an amount not to exceed of \$79,000. We further recommend approval of the attached resolution, amending the FY 2006-07 Operating and Capital Improvements Budget in the amount of \$79,000 to reflect this expenditure.

4-B.2

VILLAGE OF LA GRANGE

RESOLUTION R-06-_____

BUDGET AMENDMENT – RECONDITIONING AND UPGRADE OF
POLICE DEPARTMENT PISTOL RANGE

BE IT RESOLVED that the President and Board of Trustees of the Village of La Grange adopt the 2006-07 Operating and Capital Improvements Budget Amendment as set forth in the document as attached hereto and made a part here of.

Adopted this ____ day of _____, 2006, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

Approved this ____ day of _____, 2006

Elizabeth M. Asperger, Village President

ATTEST:

Robert N. Milne, Village Clerk

4-B.3

BUDGET AMENDMENT REQUEST FORM

Pursuant to Village policy, an amendment to the annual budget that alters the total expenditures of any fund and is in excess of \$10,000 may be approved by a two-thirds vote of the Village Board. No amendment of the budget shall be made increasing the budget in the event revenues or reserve funds are not available to effectuate the purpose of the revision.

Transfer Funds From:

<u>01-07-66-6660</u>	<u>Equipment Replacement Fund</u>	<u>\$79,000</u>
Account Number	Fund/Description	Amount
_____	_____	_____
Account Number	Fund/Description	Amount
_____	_____	_____
Account Number	Fund/Description	Amount
_____	_____	_____

Transfer Funds To:

<u>01-07-66-6600</u>	<u>Police – New Equipment</u>	<u>\$ 79,000</u>
Account Number	Fund/Description	Amount
_____	_____	\$ _____
Account Number	Fund/Description	Amount
_____	_____	\$ _____
Account Number	Fund/Description	Amount
_____	_____	_____

Purpose: Purchase of equipment to upgrade and recondition pistol range. See attached Board Report.

Requested: Michaela Stahl Date: 11/13/06
Department Head

Recommended: [Signature] Date: 11.13.06
Approved: Village Manager

Village Board: _____
 Approved Date

Recorded By Date: _____
 Finance Department

4-B.4

VILLAGE OF LA GRANGE

Disbursement Approval by Fund

November 13, 2006

Consolidated Voucher 061113

<u>Fund No.</u>	<u>Fund Name</u>	<u>11/13/06 Voucher</u>	<u>11/03/06 Payroll</u>	<u>Total</u>
01	General	152,747.93	239,693.14	392,441.07
21	Motor Fuel Tax			0.00
22	Foreign Fire Insurance Tax			0.00
23	TIF	169,314.05		169,314.05
24	ETSB	2,824.59		2,824.59
40	Capital Projects	21,898.11		21,898.11
50	Water	110,666.49	33,739.30	144,405.79
51	Parking	14,615.50	18,849.17	33,464.67
60	Equipment Replacement	6,666.36		6,666.36
70	Police Pension	750.00		750.00
75	Firefighters' Pension			0.00
80	Sewer	1,696.27	7,177.97	8,874.24
90	Debt Service	1,839,029.43		1,839,029.43
91	SSA 4A Debt Service			0.00
93	SAA 269			0.00
94	SAA 270			0.00
		<u>2,320,208.73</u>	<u>299,459.58</u>	<u>2,619,668.31</u>

We the undersigned Manager and Clerk of the Village of La Grange hereby certify that, to the best of our knowledge and belief, the foregoing items are true and proper charges against the Village and hereby approve their payment.

Village Manager

Village Clerk

President

Trustee

Trustee

Trustee

Trustee

Trustee

Trustee

4-6

MINUTES

VILLAGE OF LA GRANGE
BOARD OF TRUSTEES TOWN MEETING
Community Center
200 Washington
La Grange, IL 60525

Monday, October 23, 2006 - 7:30 p.m.

1. CALL TO ORDER AND ROLL CALL

The Board of Trustees of the Village of La Grange town meeting was called to order at 7:30 p.m. by President Asperger. In the absence of Village Clerk Milne, President Asperger conducted the roll call as follows:

PRESENT: Trustees Cremieux, Horvath, Langan, Livingston, Pann and Wolf with President Asperger presiding.

ABSENT: None

OTHERS: Village Manager Robert Pilipiszyn
Village Attorney Mark Burkland
Village Prosecutor John Kenney
Community Development Director Patrick Benjamin
Assistant Community Development Director Angela Mesaros
Environmental Health / Development Supervisor, Curt Trusner
Building Inspector Rich Urban
Code Enforcement Patrick Boyle
Finance Director Lou Cipparrone
Public Works Director Ken Watkins
Assistant Public Works Director Mike Bojovic
Public Works Foreman Russell Davenport
Police Lieutenant Vic Arnold
Fire Chief David Fleege
Suburban Life Reporter Joe Sinopoli

2. PRESIDENT'S REPORT

President Asperger welcomed all to the second in a series of three Town Meetings being held in various areas of the Village and began by introducing Village officials and staff to the audience. President Asperger explained that there would be a brief business meeting prior to opening the floor for audience comments and questions.

President Asperger stated that the next Plan Commission meeting scheduled on Tuesday, November 7 at 7:30 p.m. in the Village Hall will consist of continued discussion of Zoning Code Amendments, with the use of computer models to illustrate proposed building coverage changes and floor area ratio.

The La Grange Business Association's Halloween Walk will be held on Saturday, October 28 at 10:00 a.m. at Cossitt School playground and carved pumpkins will be displayed in the Public Plaza adjacent to the parking structure. Hours for trick or treating on October 31 are from 3:00 p.m. to 7:00 p.m.

President Asperger gave detailed information on early and absentee voting as determined by the Cook County Clerk.

The last day for the Farmer's Market will be Thursday, October 26.

With sincere appreciation of his military duty in Iraq, President Asperger noted that La Grange Police Officer Miles Odom has returned and will be honored on Veteran's Day, November 11, 2006 at the Robert E. Coulter Jr., American Legion Post in La Grange.

Lastly, President Asperger announced that the La Grange Police Department is accepting applications for their Police Cadet program and young adults between the ages of 14 and 19 are eligible. An orientation will be held at the La Grange Village Hall on November 15 for newly accepted applicants.

3. PUBLIC COMMENTS REGARDING AGENDA ITEMS

Patricia Gilbert, 40 East Avenue inquired about item 4B, the creation of parking restrictions on the 700 Block of East Elm. Ms. Gilbert indicated a "No Parking" sign had just been posted on East Avenue. Public Works Director Ken Watkins noted that the sign posted on East Avenue was not related to the agenda item and he would contact the County for information on the sign installed on East Avenue.

4. OMNIBUS AGENDA AND VOTE

- A. Ordinance (#O-06-33) – Central Business District / Creation of Short Term Parking Spaces / Loading Zones
- B. Ordinance (#O-06-34) – Creation of Parking Restrictions / 700 Block of E. Elm Avenue (Elm Avenue between Washington Avenue and East Avenue)
- C. Ordinance (#O-06-35) – Design Review Permit (DRP) #70, 301 West Hillgrove, Jerry Burjan / Burcor Properties

4-P.1

- D. Ordinance (#O-06-36) – Consolidation of Lots, 809 South 6th Avenue, 813 South 6th avenue, 824 South 7th Avenue and 850 South 7th Avenue (La Grange Bible Church)
- E. Purchase – Police Department / Replacement of Uninterruptible Power System (D & B Power Associates Inc., Batavia, Illinois - \$12,673)
- F. Consolidated Voucher 061023 - \$726,214.23
- G. Minutes of the Village of La Grange Board of Trustees Regular Meeting, Monday, October 9, 2006

It was moved by Trustee Langan to approve items A, B, C, D, E, F and G of the Omnibus, seconded by Trustee Pann. Approved by roll call vote.

Ayes: Trustees Cremieux, Horvath, Langan, Livingston, Pann, Wolf and President Asperger
Nays: None
Absent: None

Prior to opening the floor to the audience, President Asperger noted numerous accomplishments throughout the Village which included:

- the construction and opening of the parking structure last December
- the construction of the Public Plaza
- reconstruction of Hillgrove Avenue
- record numbers of construction permits for both remodeling and new single family homes
- implementation of voter approved ¼ of 1% sales tax increase for maintenance of the Central Business District
- a special service area within the TIF District for commercial property owners to contribute their fair share to the maintenance of the Central Business District
- refinanced 1998 Streetlight bonds effecting a \$100,000 savings to Village residents
- enhanced e-mail notification to residents who choose to sign up
- optional on-line application for direct debt authorization – water bill payments
- sewer cleaning and televising survey to determine repair and replacement needs
- emergency disaster training
- new state of the art dispatch center
- participating in regional drug investigation leading to numerous arrests
- part-time police officer program
- working with the Illinois Department of Transportation to improve pedestrian and traffic safety within the Ogden Avenue and La Grange Road corridors

4-D.2

- new library under construction
- new hospital patient care wing
- new Park District recreation facility

President Asperger indicated that the next Town Meeting on November 27 would include information on emergency services and disaster planning.

5. CURRENT BUSINESS

None

6. MANAGER'S REPORT

Village Manager Robert Pilipiszyn explained that weather conditions have delayed the completion of the protective sealant application to the second and third level of the parking structure and thanked residents for their patience. Mr. Pilipiszyn noted that the next Village Board meeting would be at the Village Hall on November 13 and the last of the Village Board Town meetings would be held at Seventh Avenue School on November 27. Mr. Pilipiszyn also noted that Village offices would be closed on Friday, November 10 in observance of Veteran's Day.

7. PUBLIC COMMENTS REGARDING MATTERS NOT ON AGENDA

Ron Mc Quigg, 218 East Avenue expressed his concerns at not having a community swimming pool. President Asperger explained that previously the Park District presented a referendum to voters to construct a swimming pool, however it was rejected. President Asperger suggested that Mr. Mc Quigg contact the La Grange Park District directly for more information. It was noted that the new swimming pool at the Lyons Township High School South Campus will have community hours.

Ms. Noel, 725 E. Cossitt noted that large trucks have been traveling on Cossitt Avenue through the residential area. Public Works Director Ken Watkins believes the trucks are utilizing this emanate from Brookfield, and caused by weight limit changes in La Grange Park. President Asperger noted that the Village would contact both Brookfield and La Grange Park to seek more information and a solution.

Patricia Topps, 211 E. Elm indicated that large trucks are traveling along Hayes Avenue and drivers are littering. President Asperger responded that the Department of Public Works would follow-up on the matter and suggested that residents attempt to get the license plate number and report the matter to the Police.

4-0.3

Steve Guggenheim, 321 S. Sixth Avenue inquired why the parking structure was partially closed. President Asperger referred to Village Manager Pilipiszyn who indicated that the protective sealant Kelmar being applied is subject to specific weather conditions. Mr. Guggenheim inquired why the sealant was not applied sooner and was informed that the Village Board originally took a conservative approach on cost concerns, however was later advised that the sealant would reduce annual maintenance.

Jim Mc Daniel, 213 Hayes Avenue stated that he heard the Community Center was going to be demolished. President Asperger responded that the Village owns the property and there are no plans to demolish the building.

Leonard Bruce, 230 Sawyer expressed concerns relating to drugs and crime. President Asperger assured Mr. Bruce that the Village is working very hard to eradicate drugs and criminal activity, however community involvement is an important part.

A female resident inquired about the development of condominiums at Elm Avenue and Bluff Avenue and safety issues for pedestrian crossing along the Indiana Harbor Belt Railroad at 47th Street and 9th Avenue. President Asperger referred the first question to Patrick Benjamin Community Development Director who indicated that the developer for the condominiums has recently filed a request for an extension. President Asperger explained that there is a long range plan to separate the Indiana Harbor Belt Railroad grade crossings at 47th Street and East Avenue. President Asperger noted the Village would investigate pedestrian crossing improvements at 9th Avenue and 47th Street.

Joe Heniff, 30 S. Sixth Avenue inquired where cars will park if Village Parking Lot 2 is developed and President Asperger indicated that staff continues to seek alternate parking solutions should the lot be developed.

Joann who resides on East Avenue inquired if a traffic study was completed for the strip mall along Ogden Avenue and East Avenue and Mr. Benjamin noted that a traffic study was performed and recommendations were incorporated into the plan approvals.

Bri Bill on Sixth Avenue inquired if speed bumps could be placed in the alley between La Grange Road and Sixth Avenue to reduce speeders and President Asperger noted that transportation professionals discourage the use of speed bumps to calm traffic due to questionable effectiveness and safety concerns.

Keith Hollenbeck of the La Grange Bible Church noted that as a church they are attempting to address issues related to youth and drugs and thanked the Board for their support in this community effort.

4-0.4

Dan Colantuono, 344 S. Ninth Avenue inquired about sewer repairs and road construction for Bluff Avenue. Ken Watkins Director of Public Works noted that plans were submitted to the State of Illinois in the Spring and the Village hopes to have a response for funding by next year. He also inquired about a public park on the site of Meadowbrook Manor and was referred to the Park District.

Patricia Topps, 211 E. Elm aired concerns regarding the lack of street lights on Cossitt Avenue east of Bluff Avenue and sand seeping onto the public sidewalk from La Grange Materials. President Asperger noted that staff would look into her concerns.

David Bier inquired about the cumulative effect of sewer drains being constructed in rear yards and its impact on the Village's sewer system. President Asperger explained that the Village is budgeting for sewer replacements as needed. Public Works Director Ken Watkins explained that restrictors ease the amount of water draining into the sewers. President Asperger also noted that the Village is considering a maximum lot coverage standard as part of the Zoning Code review process.

Reverend Debra Williams – Pastor of Davis Memorial Church believes that audience comments made this evening impact the entire community and reiterated her request that the Village Board reactivate the Human Relations Commission to collaborate and interact so that decision making is represented by the entire community.

8. EXECUTIVE SESSION

9. TRUSTEE COMMENTS

Trustee Cremieux thanked everyone for attending the Town Meeting and that such interaction makes the Village Board more effective.

10. ADJOURNMENT

At 8:50 p.m. it was moved by Trustee Langan and seconded by Trustee Cremieux to adjourn. Approved by unanimous voice vote.

Elizabeth M. Asperger, Village President

ATTEST:

Robert N. Milne, Village Clerk

Approved Date

4-0.5

CURRENT BUSINESS

VILLAGE OF LA GRANGE
Administrative Offices

BOARD REPORT

TO: Village President, Village Clerk and
Board of Trustees

FROM: Robert J. Pilipiszyn, Village Manager
Mark Burkland, Village Attorney
Patrick D. Benjamin, Community Development Director

DATE: November 13, 2006

RE: **ORDINANCE — PLANNED DEVELOPMENT FINAL PLAN AND
DESIGN REVIEW APPROVAL TO AUTHORIZE A MIXED USE
BUILDING IN THE C-1 CENTRAL COMMERCIAL DISTRICT,
93 S. LA GRANGE RD., MIDCO LA GRANGE, LLC**

The Village Board last considered the La Grange Pointe application on September 11, 2006. At that time several issues remained outstanding between the developers and the approval of the planned development final plans for the proposed project. The Village Board gave the Village Staff and Village Attorney direction on those issues and asked us to negotiate them with the developers.

We have since conducted numerous negotiations with the developers in an effort to reach agreement on the terms of the development agreement and related documents. A revised development agreement was subsequently distributed to the Village Board. That version was further revised to incorporate (a) revisions offered by members of the Village Board and (b) proposed changes from the developers that the Village staff and Village Attorney believed would be acceptable to the Village Board.

Attached to this report are the following documents:

1. A draft ordinance that would approve the project.
2. The current draft of the development agreement in a form that we can represent as being consistent with the Village Board's direction from the September 11 meeting.

5-A

3. The current Declaration of Restrictions, which is consistent with the current draft of the development agreement and the draft ordinance.
4. Samples of residency agreements.
5. The owners' operating agreement, which indicates percentages of ownership.

Three terms of the development agreement remain at issue.

First, the developers' object to provisions of the agreement that allow the Village to withhold a certificate of occupancy for any of the first 15 dwelling units if the developers are currently in violation of the agreement, even if that violation does not relate to the dwelling unit for which the certificate is requested. For example, the developer believes the Village should not have the authority to withhold a certificate if the developer has violated the construction traffic routing provision of the agreement.

Second, the developers object to the Village's requirement that the Village retain, for one full year after the 15th dwelling unit is occupied, the right to consent to a transfer of interests. The developers argue that the Village's right to consent should expire on the date that the 15th occupancy takes place. They object to any period of time after that 15th occupancy. This objection is counter to one of the Village's key interests which is to observe and assess how the developer is operating this facility for a period of one year. Please see Section 12C of the development agreement.

Third, the developers object to the requirement that a transferee should be required to execute a "transferee assumption agreement" even after the Village's right to approve a transfer has expired. This development agreement, consistent with the Village's model development agreement, requires a transferee assumption agreement for any transfer during the term of the development agreement. The developers say that no transferee assumption agreement should be required after the expiration of the Village's right to consent to a transfer. The developers will argue that because the development agreement will be recorded against the property and because most or all of the terms of the development agreement will have been fulfilled by the time the Village's right to consent expires, there is no need for a transferee assumption agreement after that time. The Village Board must decide if the developers' arguments are persuasive.

As for the various documents the Village has requested, the residency agreements and the owners' operating agreement are attached. Despite several requests, the

5-A,1

developers have not provided us with absorption information of other urban senior living facilities of this type in the Chicagoland market.

If after discussion at Monday's meeting the Village Board and the developers reach agreement and the project is ready for approval, then the Board may direct the staff to make the final changes to the documents so that everything is ready for approval at the November 27 meeting. (If the changes are very few, then it may be possible to make those changes during Monday's meeting and move forward immediately with the approval.) If the Board determines not to approve the project, then it would be appropriate for the Village Board to adopt a resolution of denial which the Village Attorney will have available at your meeting on Monday night.

5-A.2

VILLAGE OF LA GRANGE

ORDINANCE NO. O-_____

AN ORDINANCE APPROVING
PLANNED DEVELOPMENT FINAL PLANS
AND A DESIGN REVIEW PERMIT
FOR A RETAIL/RESIDENTIAL MIXED USE BUILDING
AT 93 SOUTH LA GRANGE ROAD

WHEREAS, Midco La Grange, LLC (the "*Applicant*") is the legal title owner of the property commonly known as 93 South La Grange Road in the Village of La Grange (the "*Subject Property*"), which Subject Property is legally described on Exhibit A attached to and made a part of this Ordinance by this reference; and

WHEREAS, the Subject Property is approximately 30,150 square feet in area and is classified within the C-1 Central Commercial District pursuant to the La Grange Zoning Code; and

WHEREAS, the Applicant proposes to construct a three-story building consisting of approximately 49,368 square feet in area, 23 off-street parking spaces, and related improvements (the "*Project*"); and

WHEREAS, the Applicant previously filed applications with the Village requesting approval of a text amendment, a special use permit, planned development approval, design review approval, and modifications of certain regulations in the Zoning Code to accommodate development of the Project on the Subject Property; and

WHEREAS, the President and Board of Trustees of the Village of La Grange, by La Grange Ordinance No. 0-04-60 titled "An Ordinance Approving A Zoning Code Text Amendment, A Special Use Permit, And Planned Development Concept Plans For A Mixed Use Building At 93 South La Grange Road" and adopted on December 13, 2004 (the "*First Approval Ordinance*"), approved a text amendment, a special use permit, site plans, development concept plans, and modifications for the Project; and

WHEREAS, the Applicant now seeks approval of planned development final plans and a design review permit for the Project (the "*Application*"); and

WHEREAS, as provided in the First Approval Ordinance, the ground story of the Project will consist of approximately 14,080 square foot in total floor area with approximately 8,698 square feet of area devoted to leaseable retail commercial space, approximately 3,454 square feet devoted to restaurant space

5-A.3

and approximately 1,928 square feet devoted to common areas for residential use; and

WHEREAS, also as provided in the First Approval Ordinance, the second and third stories of the Project will contain 30 dwelling units encompassing approximately 29,024 square feet of floor area (35,288 gross floor area); and

WHEREAS, the La Grange Plan Commission conducted a public hearing to consider the Application on January 10, 2006, pursuant to notice thereof properly published in the Suburban Life, and the Plan Commission, after considering all of the testimony and evidence presented at the public hearing, has found the Plans to be in substantial conformity with the development concept plans approved by the First Approval Ordinance, all as set forth in the Plan Commission's Findings for PC Case #167; and

WHEREAS, the residential dwelling units within the Project will be restricted to residents aged 62 years and older; and

WHEREAS, no fee title interests in the residential dwelling units within the Project will be sold, and neither will the units be leased in a traditional manner, but instead the units will be occupied pursuant to "residency agreements" that are similar to rental agreements but with significant differences; and

WHEREAS, the calculation and determination of the appropriate minimum number of off-street parking spaces to be provided for the residential dwelling units within the Project has been made based on the unusual type of residential occupancy that will exist within the Project; and

WHEREAS, that calculation and determination of the appropriate minimum number of off-street parking spaces is not applicable to or appropriate for any other type of residential occupancy within the Project such as individual ownership of the dwelling units, or traditional leasing of the dwelling units, or dwelling units without an age restriction; and

WHEREAS, the President and Board of Trustees have determined that the Application, subject to the significant conditions set forth in this Ordinance and in the development agreement required by the First Approval Ordinance and this Ordinance, satisfies the standards established in Article XIV, Parts IV and V of the Zoning Code governing special use permits, design review permits, and planned developments;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of La Grange, County of Cook and State of Illinois, as follows:

5-A.4

Section 1. Recitals. The foregoing recitals are incorporated into this Ordinance as findings of the President and Board of Trustees.

Section 2. Approval of Planned Development Final Plans. The Board of Trustees, acting pursuant to the authority vested in it by the laws of the State of Illinois and by Article XIV, Parts IV and V of the Zoning Code, hereby approves the planned development final plans prepared by Midco La Grange LLC/HPD Cambridge, Inc. and having a last revision date of January 10, 2006, in the form attached to and by this reference incorporated into this Ordinance as Exhibit B (the "*Approved Final Plans*"), subject to the conditions stated in Section 4 of this Ordinance.

Section 3. Approval of Design Review Permit. The Board of Trustees, acting pursuant to the authority vested in it by the laws of the State of Illinois and by Article XIV, Part IV of the Zoning Code, hereby approves a design review permit for the Project for the plans included as part of the Approved Final Plans attached to this Ordinance as Exhibit B, subject to the conditions stated in Section 4 of this Ordinance.

Section 4. Conditions on Approvals. The approvals of the Approved Final Plan and the design review permit granted in Sections 2 and 3 of this Ordinance are granted expressly subject to all the following conditions:

- A. Satisfaction of Conditions set forth in First Approval Ordinance. The Applicant shall fulfill and abide by all terms and conditions set forth in the First Approval Ordinance, including but not limited to all conditions set forth in Section 6 of the First Approval Ordinance.
- B. Unconditional Agreement and Consent. The Applicant shall execute and deliver to the Village, within 30 days after the effective date of this Ordinance, an unconditional agreement and consent in the form attached to this Ordinance and by this reference incorporated into this Ordinance as Exhibit C.
- C. Limitation on Transfers of Dwelling Units. As stated in the recitals to this Ordinance incorporated as findings of the Board of Trustees, the calculation and determination of the appropriate minimum number of off-street parking spaces for the Project is not applicable to or appropriate for any other type of residential occupancy within the Project such as individual ownership of the dwelling units, or traditional leasing of the dwelling units, or dwelling units without an age restriction. The Applicant has not provided, and the Subject Property as developed in accordance with the Approved Final Plans will not include, sufficient off-street parking spaces for the approved

5-A-5

number of residential dwelling units if those dwelling units are not age restricted or are occupied in any manner other than pursuant to residency agreements, as provided in Subsection D of this Section 4.

- D. Age Restricted Occupancy of Dwelling Units. The Board of Trustees has found and determined, as part of its approval of the planned development concept and final plans for this Project, that it is beneficial to and in the best interests of the Village and its residents to provide age-restricted residential dwelling units of the type proposed by the Applicant. For these reasons, among others, each residential dwelling unit within the Project shall be age-restricted, and each dwelling unit shall be occupied only pursuant to a "residency agreement" a form of which has been provided by the Applicant and is attached to this Ordinance as Exhibit D or a similar instrument.
- E. Future Off-Street Parking. No form or type of residential occupancy shall be authorized or allowed within the Property other than the use approved by this Ordinance except only if all Village code-required off-street parking spaces for such other form or type of residential occupancy are provided by the owner or owners of the Property or, if approved by the Board of Trustees in the sole exercise of its legislative discretion, a fee is paid to the Village in an amount equal to all costs and expenses incurred or estimated to be incurred by the Village to provide all such required off-street parking spaces.
- F. Commencement of Construction. The Applicant shall secure a building permit and commence actual construction of the Project on or before June 1, 2007. In addition to the provisions of Section 5 of this Ordinance related to all of the terms and conditions of this Ordinance, the Board of Trustees may immediately revoke all approvals granted in this Ordinance if the Applicant shall fail to satisfy the condition set forth in this Subsection F. The provisions of this Subsection E shall not be construed or applied in any way as a limitation on the Village in the exercise of the Village's authority in response to a violation of any term or condition of this Ordinance or of any applicable code, ordinance, or regulation of the Village.
- G. Development Agreement. The Applicant shall execute and deliver to the Village, within 30 days after the effective date of this Ordinance, a development agreement in the form attached to this Ordinance as Exhibit E.

- H. Recording of Ordinance. This Ordinance shall be recorded against the Subject Property in the Office of the Cook County Recorder of Deeds.
- I. Materials. The Applicant shall provide the Village with samples of all final building materials, including manufacturer and product name and number, for exterior of the building on the Subject Property prior to issuance of building permits.
- J. Streetscape. The Applicant shall be required to coordinate with Village Staff and the Village Engineer and revise plans according to meet all applicable Village standards for streetscape and landscaping improvements.

Section 5. Violation of Condition or Code. Any violation of any term or condition stated in this Ordinance or of any applicable code, ordinance, or regulation of the Village shall be grounds for the rescission by the Board of Trustees of the approvals made in this Ordinance.

Section 6. 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; provided, however, that this Ordinance and the approvals made in it, shall be null and void and of no force an effect if the Applicant fails to execute and deliver the Unconditional Agreement and Consent in accordance with Subsection 4B of this Ordinance or if the Applicant fails to execute and deliver a development agreement in accordance with Subsection 4G of this Ordinance.

ADOPTED this ____ day of _____ 2006.

AYES:
 NAYS:
 ABSENT:

APPROVED by me this ____ day of _____ 2006.

 Elizabeth M. Asperger, Village President

ATTEST:

 Robert N. Milne, Village Clerk

5-A.7

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

**[Accuracy of this legal description
must be confirmed by staff]**

Lots 14, 15, 16, 17 and the South ½ of Lot 18 in Leiter's Addition to La Grange in the northeast 1/4 of Section 4, Township 38 North, Range 12 East of the Third Principal Meridian, (Except that part of said lots dedicated and taken for Alley by Plat of Dedication recorded as Document No. 10543312), in Cook County, Illinois.

Commonly known as 93 South La Grange Road, La Grange, Illinois.

5-A.8

EXHIBIT B

APPROVED FINAL PLANS

[to be inserted]

5-A.9

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

TO: The Village of La Grange, Illinois (the "Village");

WHEREAS, _____, _____, and _____ (collectively the "Applicant") are the legal and record title owners of the property commonly known as 93 South La Grange Road in the Village (the "Subject Property"); and

WHEREAS, the Applicant sought numerous approvals from the Village necessary to develop the property as a planned development with a mixed use building and related improvements in accordance with plans therefor submitted by the Applicant (the "Project"); and

WHEREAS, La Grange Ordinance No. _____, adopted by the President and Board of Trustees of the Village of La Grange on _____, 2006 (the "Ordinance"), grants approval of planned development final plans and a design review permit for the Project, subject to various conditions; and

WHEREAS, the Applicant desires to give Village its unconditional agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in the Ordinance;

NOW, THEREFORE, the Applicant and the Village do hereby agree and covenant as follows:

1. The Applicant shall, and does hereby, unconditionally agree to, accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of that certain La Grange Ordinance No. _____, adopted by the Village Board of Trustees on _____, 2006.

2. The Applicant acknowledges and agrees that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's review and approval of any plans for the Subject Property, or the issuance of any permits for the use and development of the Subject Property, and that the Village's review and approval of any such plans and issuance of any such permits does not, and shall not, in any way, be deemed to insure the Applicant against damage or injury of any kind and at any time.

3. The Applicant acknowledges and agrees that (a) the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance and have considered the possibility of the rescission of the approvals granted by the Ordinance as provided for in the Ordinance, and (b) the Applicant shall not challenge any such rescission on the grounds of any procedural infirmity

5-A.10

or any denial of any procedural right, provided that the Applicant be provided with any notice required by statute or ordinance.

4. The Applicant shall, and does hereby, hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may be asserted at any time by any third party against any of such parties in connection with (a) the Village's review and approval of any plans and issuance of any permits, (b) the procedures followed in connection with the adoption of the Ordinance, (c) the development, construction, maintenance, and use of the Subject Property, and (d) the performance by the Applicant of its obligations under this Unconditional Agreement and Consent.

5. The Applicant shall, and does hereby, agree to pay all expenses incurred by the Village in defending itself with regard to any and all of the claims mentioned in this Unconditional Agreement and Consent. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees and costs, and also shall include the reasonable value of any services rendered by any employees of the Village.

6. The Applicant consents to the approvals granted in La Grange Ordinance No. _____ and to the recordation of the Ordinance against the Subject Property for the purpose of providing notice that the Applicant shall be subject to the terms, conditions, restrictions, and provisions of the Ordinance.

DATED this ____ day of _____ 2006.

[APPLICANT]

Attest:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[APPLICANT]

Attest:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[APPLICANT]

Attest:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

5-A.11

EXHIBIT D

**FORM OF RESIDENCY AGREEMENT
FOR OCCUPANCY OF DWELLING UNITS
WITHIN APPROVED PROJECT**

[to be inserted]

5-19-12

EXHIBIT E

DEVELOPMENT AGREEMENT

[to be inserted]

4039092_v3

5-19-13

VILLAGE OF LA GRANGE

**AN AGREEMENT REGARDING DEVELOPMENT
OF THE PROPERTY AT 93 SOUTH LA GRANGE ROAD
FOR THE PROJECT KNOWN AS LA GRANGE POINTE**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the ____ day of _____ 2006 (the "Effective Date"), and is by and between the VILLAGE OF LAGRANGE, an Illinois municipal corporation (the "Village"), and _____ (the "Developers").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows:

Section 1. Recitals.

A. The Property, as defined in Section 2 of this Agreement is owned and controlled by the Developers.

B. The Developers desire and propose to develop the Property with a mixed use building and related facilities, including retail uses on the first story and age-specific residential uses on the upper stories.

C. The Developers have submitted to the Village Engineer an estimate of the cost of construction of the Improvements (as defined herein) necessary to service the Property, which cost estimate has been approved by the Village Engineer and is attached hereto and by this reference incorporated herein as **Exhibit A** (the "Approved Cost Estimate"); and

D. The Village and the Developers desire that the Property be developed and used only in compliance with this Agreement.

E. The Board of Trustees, after due and careful consideration, has concluded that the development and use of the Property pursuant to and in accordance with this Agreement would further enable the Village to control the development of the area and would serve the best interests of the Village.

F. The Board of Trustees has reviewed and considered the proposed development of the Property, and the zoning approvals requested to allow for its implementation, and have found them (i) to be consistent with the character of, and existing development patterns in, the Village and (ii) to satisfy the standards of the La Grange Zoning Code (the "Zoning Code") applicable to them.

Section 2. Definitions. Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

"Force Majeure": Strikes, lockouts, acts of God, or other factors beyond a party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure shall

5-A.14

not include delays caused by weather conditions, unless those conditions are unusually severe or abnormal considering the time of year and the particular location of the Property.

“Improvements”: All of the improvements and facilities necessary to serve the Property, including without limitation the improvements shown on Village-approved final engineering plans and final landscaping plans (*see* Section 4 of this Agreement), and the improvements set forth in drawings, exhibits, details, specifications, and related communications issued to the Developer by the Village including but not limited to water mains, storm sewers, sanitary sewers, streets, alleys, street and alley pavement, lighting, sidewalks, street furniture, rough and final grading, landscaping, soils, trees, sod, seeding, and other landscaping, and all other improvements required pursuant to this Agreement and the Requirements of Law.

“Project”: The public and private improvements of the Project and adjacent rights-of-way to be developed by the Developers in accordance with the plans therefor approved by the Village and with the provisions of this Agreement.

“Property”: The real property of approximately 30,176 square feet in area generally located at the northeast corner of the intersection of La Grange Road and Cossitt Avenue within the Village, and legally described in **Exhibit B** to this Agreement.

“Requirements of Law”: All applicable federal, State of Illinois, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

Section 3. Zoning of Property; Approval of Development Plans. The Property currently is classified within the Village’s C-1 Central Commercial District pursuant to the Zoning Code. Promptly after execution of this Agreement by the Developers, the Village shall adopt an ordinance, substantially in the form of the ordinance attached as **Exhibit C** to this Agreement, approving the planned development final plans for the Project.

Section 4. Approval of Engineering and Landscaping Plans. Prior to the issuance by the Village of any permit for work within the Property, the Developers shall produce (a) final engineering plans for the Project that conform with all preliminary engineering plans and (b) final landscaping plans for the Project that conform with all preliminary landscaping plans, all of which shall be satisfactory to the Village Engineer.

Section 5. Development of the Property.

A. **General Restrictions.** Subject to any Village-approved particular terms for development and the restrictive covenants set forth in Subsection 5C of this Agreement, and except for minor alterations due to final engineering and site work approved by the Village Engineer or the Community Development Director, as appropriate, development of the Property shall be pursuant to and in accordance with the following: (1) this Agreement, (2) Village-approved planned development final plans, site plans, final engineering plans, and final landscaping plans, (3) the La Grange Zoning Code, (4) La Grange building regulations, and (5) all other Requirements of Law. Unless otherwise provided in this Agreement, in the event of a conflict between or among any of the above plans or documents, the plan or document that provides the greatest control and protection for the Village, as determined by the Village Manager, shall control. All of the above plans and documents shall be interpreted so that the

5-A.15

duties and requirements imposed by any one of them are cumulative among all of them, unless otherwise provided in this Agreement.

B. Easements. Utility and enforcement easements shall be granted to the Village and other governmental bodies and utility services over, on, and across the Property, including without limitation any common areas, for the purposes of enforcing applicable laws, making repairs, installing, and servicing utilities, and providing public and emergency services.

C. Restrictive Covenants. In addition to the restrictions set forth in this Section 5, all development of and on the Property shall be subject to the declaration of covenants recorded against the Property. See Section 8 of this Agreement.

D. Damage to Public Property. The Developers shall maintain the Property and all streets, sidewalks, and other public property in and adjacent to the Property in a good and clean condition at all times during development of the Property and construction of the Improvements. Further, the Developers shall promptly clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Property by the Developers or any agent of or contractor hired by, or on behalf of, the Developers, and shall repair any damage that may be caused by the activities of the Developers or any agent of or contractor hired by, or on behalf of, the Developers. If, within one hour after the Village gives the Developers notice to clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Property by the Developers or any agent of or contractor hired by, or on behalf of, the Developers, the Developers neglect or fail to clean, or undertake with due diligence to clean, the affected public property, then the Village shall be entitled to clean, either with its own forces or with contract forces, the affected public property and to recover from the Developers the greater of \$500.00 or the sum equal to the total cost incurred by the Village, including without limitation administrative costs.

Section 6. Improvements.

A. Developers' Duty to Construct Improvements. The Developers, at their sole cost and expense, shall construct and install all of the Improvements on the Property and within adjacent public rights-of-way and easements. Construction of the Improvements shall commence on or before June 1, 2007, and shall include, without limitation, the following Improvements:

1. Public Utilities. All public utilities necessary to support the Project, including natural gas, electrical, telephone, cable, water, and sewer, and the abandonment, removal, relocation, or adjustment of public utilities found to conflict with the Project or be of no functional use to the Project or the Village.

2. Streetscape. All public sidewalk and landscape elements in accordance with the Village's streetscape standards and as specified on the approved plans, providing such visual and functional amenities as benches, tree grates, bicycle racks, decorative sidewalk finishes, sidewalk paver panels, planting areas, and lighting elements.

3. Alley Improvements. Reconstruction of the public alley abutting the Property from its intersection with Cossitt Avenue to a point of transition located 20 feet north of the north property line of the Property, including without limitation (a) widening to a 20-foot

5-A.16

width, (b) concrete pavement removal and construction, (c) surface drainage structures and stormwater conveyance structures, (d) curb and gutter, (e) pavement transitions, (f) installation of a cul-de-sac within the alley and extending into the Property to facilitate the required turning geometry, (g) special streetscape finishes and geometry, and (h) traffic signs and markers. The concrete apron between Cossitt Avenue and the alley shall be reconstructed to accommodate two-way travel, including widening and installation of the same improvements applicable to the alley itself.

B. Standards Applicable to Improvements.

1. General Standards. All Improvements shall be designed and constructed pursuant to, and in accordance with, the final engineering plans, the final landscaping plans, and all other applicable Village standards, and to the satisfaction of the Village Engineer. All work performed in the construction of the Improvements shall be conducted in a good and workmanlike manner and in accordance with the schedule established in Section 6C of this Agreement. All materials used for construction of the Improvements shall be new and of first-rate quality.

2. Special Standards. All design and construction of the Improvements shall conform to the standards of the Metropolitan Water Reclamation District of Greater Chicago (the "MWRD") and the Illinois Department of Transportation ("IDOT").

3. Contract Terms; Prosecution of the Work. The Developers and all of their contractors shall prosecute the work diligently, continuously, in full compliance with, and as required by or pursuant to, this Agreement, until the work is properly completed. Each Developers' contract with a contractor shall provide that the Developers may take over and prosecute the work if the contractor fails to do so in a timely and proper manner.

4. Engineering Services. The Developers shall provide, at their sole cost and expense, all engineering services for the design and construction of the Improvements, including without limitation full inspection services of a professional engineer responsible for overseeing the construction of the Improvements. The Developers shall promptly provide the Village with the name of the resident engineer and a telephone number or numbers at which the engineer can be reached at all times.

5. Village Inspections and Approvals. Village representatives shall have the full, right, permission, and authority to inspect all work on the Improvements at all times and to confirm compliance with all Requirements of Law.

6. Other Approvals. If the construction and installation of any Improvement require the consent, permission, or approval of any person, including without limitation approvals from the MWRD, from IDOT for work within the La Grange Road right-of-way, and from the Illinois Environmental Protection Agency, then the Developers shall take all steps required to obtain the required consent, permission, or approval. No work requiring the consent, permission, or approval of any person shall commence without that prior consent, permission, or approval.

C. Schedule for Completion of Improvements. All Improvements shall be completed and made ready for inspection, approval, and any required acceptance by the Village pursuant to

5-A.17

the construction schedule approved by the Village Engineer as part of the final engineering plans. The Developers shall be allowed extensions of time beyond the completion dates set forth in the construction schedule only for delay caused by Force Majeure. The Developers shall, within two days after any unavoidable delay commences and again within two days after the delay terminates, give notice to the Village for its review and approval of the delay, the cause for the delay, the period or anticipated period of the delay, and the steps taken by the Developers to mitigate the effects of the delay. Any failure of the Developers to give the required notice shall be deemed a waiver of any right to an extension of time for any the delay.

D. Final Inspections and Approvals. When the Developers determine that an Improvement has been properly completed, the Developers shall request final inspection, approval, and, as appropriate, acceptance of the Improvement by the Village. The notice and request shall be given sufficiently in advance to allow the Village time to inspect the Improvement and to prepare a punch list of items requiring repair or correction and to allow the Developers time to make all required repairs and corrections prior to the scheduled completion date. The Developers shall promptly make all necessary repairs and corrections as specified on the punch list. The Village shall not be required to approve or accept any Improvement until all of the Improvements, including without limitation all punch list items, have been fully and properly completed.

E. Dedication and Acceptance of Specified Improvements. The Developers shall dedicate to the Village the Improvements detailed on the approved plans, including water mains, storm sewers, sanitary sewers, streets, alleys, street and alley pavement, lighting, sidewalks, street furnishings, landscaping, soils, trees, sod, and other landscaping constructed within dedicated public rights-of-way or easements. Nothing whatsoever shall constitute an acceptance by the Village of any Improvement except only express acceptance by the Village. Prior to acceptance of the Improvements to be accepted by the Village, the Developers shall execute, or cause to be executed, all documents that the Village shall request to transfer ownership of the Improvements to, and to evidence ownership of the Improvements by, the Village, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Village. The documents transferring ownership of the Improvements to, and to evidence ownership of the Improvements by, the Village shall be acceptable in form and substance to the Village Attorney. The Developers, simultaneously, shall grant or cause to be granted to the Village all insured easements or other property rights as the Village may require to install, operate, maintain, service, repair, and replace the Improvements that have not previously been granted to the Village, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the Village.

F. Owner's Guaranty and Maintenance of Improvements. The Developers hereby guarantee the prompt and satisfactory correction of all defects and deficiencies in the Improvements that occur or become evident within two years after approval and any required acceptance of the Improvements by the Village pursuant to this Agreement. If any defect or deficiency occurs or becomes evident during the two-year period, then the Developers shall, after 10 days' prior written notice from the Village (subject to Force Majeure), correct it or cause it to be corrected. If any Improvement is repaired or replaced pursuant to the demand of the Village, the Guaranty provided by this Section 6F shall be extended, as to the repair or replacement, for two full years from the date of the repair or replacement. If an owners' association is required to be created pursuant to a declaration meeting the requirements of Section 8 of this Agreement,

5-A.18

then, unless the owners' association has assumed all responsibility for maintenance, and, in all events, for a period of at least two years after Village approval, the Developers shall, at their sole cost and expense, maintain, without any modification, except as specifically approved by the Village Engineer, in a first-rate condition, at all times, the Improvements. If the Village Engineer determines, in the Village Engineer's sole and absolute discretion, that the Developers are not adequately maintaining, or have not adequately maintained, any Improvement, then the Village may, after 10 days' prior written notice to the Developers, enter on any or all of the Property for the purpose of performing maintenance work on and to any affected Improvement. If the Village shall cause to be performed any work pursuant to this Section 6F, then the Village shall have the right to draw from the performance securities deposited pursuant to Section 10 of this Agreement, or the right to demand immediate payment directly from the Developers, based on costs actually incurred or on the Village's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire costs of the work, including without limitation legal fees and administrative expenses. The Developers, after demand by the Village, pay the required amount to the Village.

G. Issuance of Building and Occupancy Permits. The Village shall have the absolute right to withhold any building permit or certificate of occupancy at any time the Developers are in violation of, or is not in full compliance with, any term of this Agreement. See also Subsection 12C4 of this Agreement related to issuances of certificates of occupancy.

H. Completion of Construction. If the Developers fail to diligently pursue all construction, as required in, or permitted by, Sections 5 and 6 of this Agreement, to completion within the time period prescribed in the building permit or permits issued by the Village for the construction, and if the building permit or permits are not renewed within three months after expiration, the Developers shall, within 60 days after notice from the Village, remove any partially constructed or partially completed buildings, structures, or improvements from the Property. If the Developers fail or refuse to remove the buildings, structures, and improvements as required, then the Village shall have, and is hereby granted, in addition to all other rights afforded to the Village in this Agreement and by law, the right, at its option, to demolish and/or remove any of the buildings, structures, and improvements, and the Village shall have the right to charge the Developers an amount sufficient to defray the entire cost of the work, including without limitation legal and administrative costs.

Section 7. Construction Traffic and Parking; Streets.

A. Designated Traffic Routes. The Village may designate routes of access to the Property for construction traffic to protect pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that the designated routes shall not unduly hinder or obstruct direct and efficient access to the Property for construction traffic. The Developers shall keep all routes used for construction traffic free and clear of mud, dirt, debris, obstructions, and hazards and shall repair all damage caused by the construction traffic.

B. Parking. All construction vehicles, including passenger vehicles, and construction equipment shall be parked within the Property or in areas designated by the Village.

C. Streets and Alleys.

1. Developers' Requirement. All streets and alleys designated to be dedicated to the Village, if any, shall be constructed and dedicated to the Village in accordance with this Agreement.

2. Protection of Final Surface Course. Except with the prior express consent of the Village, no construction traffic shall be permitted to utilize any street or alley to be dedicated to the Village after installation of the final surface course of that street or alley. If the Developers use the street or alley for construction traffic, then the Developers shall keep the street or alley free and clear of mud, dirt, debris, obstructions, and hazards and shall, after the use is no longer necessary, restore and repair that street or alley to Village standards.

3. Dedication and Acceptance. No street or alley shall be deemed to be accepted by the Village, and the Village shall have no obligation or liability in respect of the street or alley, until the street or alley has been completed, approved, and accepted by the Village in accordance with Subsection 6E of this Agreement. The Developers acknowledge and agree that (a) the Village shall not be obligated to accept any street or alley until all construction traffic on the street has ceased and the street or alley has been completed and, if necessary, restored and repaired as required by this Agreement and (b) the Village shall not be obligated to keep any street or alley cleared, plowed, or otherwise maintained until the street or alley has been completed, approved, and accepted by the Village in accordance with this Agreement, or until other arrangements satisfactory to the Village Engineer, in the Village Engineer's sole and absolute discretion, shall have been made.

Section 8. Declaration of Covenants. Prior to the issuance of a building permit for the Property, a declaration of covenants, acceptable in form and substance to the Village Attorney, shall be recorded against the Property. The declaration must be approved by the Board of Trustees prior to becoming effective.

Section 9. Fees, Dedications, Donations, and Contributions.

A. Negotiation and Review Fees. In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by the Requirements of Law, the Developers shall pay to the Village, immediately after presentation of a written demand or demands for payment, all legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued in connection with the review and processing of plans for the development of the Property and in connection with the negotiation, preparation, consideration, and review of this Agreement. Payment of all fees, costs, and expenses for which demand has been made, but payment has not been received, by the Village prior to execution of this Agreement, shall be made by a certified or cashier's check contemporaneous with the execution of this Agreement by the Village. Further, the Developers agree that they will continue to be liable for and to pay, immediately after presentation of a written demand or demands for payment, the fees, costs and expenses incurred in connection with any applications, documents, or proposals, whether formal or informal, of whatever kind submitted by the Developers during the term of this Agreement in connection with the use and development of the Property. Further, the Developers agree that they shall be liable for and will pay after demand all fees, costs, and expenses incurred by the Village for publications and recordings required in connection with the above matters.

5-A, 20

B. Other Village Fees. In addition to all other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Developers shall pay to the Village all application, inspection, and permit fees, all water and sewer general and special connection fees, tap-on fees, charges, and contributions, and all other fees, charges, and contributions pursuant to the Requirements of Law.

C. Dedications, Donations, and Contributions to the Village. The Developers shall dedicate sites, easements, and rights-of-way as required by this Agreement, including without limitation all of the following:

1. Easement for Cul-De-Sac. The Developers shall grant to the Village a permanent, irrevocable easement in a form satisfactory to the Village Engineer and the Village Attorney providing for access on and over the alley cul-de-sac (a) as a vehicular turnaround for general public use and (b) for inspection, maintenance, repair, and replacement of the alley cul-de-sac by the Village.

2. Reimbursement for New Electrical, Communications Utilities. Prior to issuance of any building permit authorizing above-ground work on the Property, the Developers shall pay the Village the sum of \$170,711.59 as its proportionate share of the costs and expenses incurred by the Village for the relocation and construction of improved electrical power and communications utilities within the alley right-of-way and easements, serving the Property and adjacent property.

3. Open Space Contribution. The Developers shall contribute \$50,000.00 to the Village for public open space improvements. The Village shall spend that contribution on improvements within the same block as the Property. The contribution shall be paid within five business days after issuance by the Village of the first building permit for work within the Property.

4. Future Off-Street Parking. As provided in this Agreement and in La Grange Ordinance No. _____ granting various approvals for the Project, the number of off-street parking spaces being provided by the Developers for the Project is insufficient for any other form or type of residential dwellings within the Property. Accordingly, the Developers agree that no form or type of residential occupancy can be authorized or allowed within the Property other than the type of residential occupancy currently approved for the Project except only if such other type of residential occupancy is approved by the Board of Trustees and (a) all Village code-required off-street parking spaces for such other form or type of residential occupancy are provided by the owner or owners of the Property, or (b) the Board of Trustees, in the sole exercise of its legislative discretion, grants a variation reducing the required minimum number of off-street parking spaces, or (c) the Board of Trustees, in the sole exercise of its legislative discretion, authorizes the payment of a fee in an amount equal to all costs and expenses incurred or estimated to be incurred by the Village to provide all such required off-street parking spaces and such fee is paid to the Village by the owner or owners of the Property.

Section 10. Performance Security.

A. Performance and Payment Letter of Credit or Bond. As security to the Village for the performance by the Owner of the Owner's obligations to construct and complete the

5-A.21

Improvements pursuant to and in accordance with this Agreement, the Developers shall deposit with the Village Manager the following:

1. Inspection and Legal Work Escrow. A \$10,000 inspection and legal work escrow to be drawn upon for engineering, additional legal costs, special inspections, or analyses costs that are incurred by the Village that must be provided by outside vendors (the "Inspection and Legal Work Escrow"). If the debits to the Inspection and Legal Work Escrow reduce the balance to \$1,000 at any time, then the Developers are required to restore the Inspection and Legal Work Escrow to the \$10,000 level. The remainder of the Inspection and Legal Work Escrow shall be distributed to the Developers within 60 days after issuance of the final certificate of occupancy for the Project.

2. Letter of Credit or Bond. A performance and payment letter of credit in a total amount equal to 105 percent of the Approved Cost Estimate (the "Performance and Payment Letter of Credit") or a performance and payment bond in a total amount equal to 125 percent of the Approved Cost Estimate (the "Performance and Payment Bond"). The letter of credit or bond shall be referred to from time to time as the "Performance and Payment Security."

B. Maintenance of Security. The deposit of the Performance and Payment Security and the Inspection and Legal Work Escrow shall be a condition precedent to the effectiveness of the Village's approval of the planned development final plans. At any time after satisfactory completion of 50 percent of the Improvements, as determined by the Village Engineer, the President and the Board of Trustees of the Village may reduce the amount of the required Inspection and Legal Work Escrow in their sole and absolute discretion; provided, however, that, if the Developers have deposited a Performance and Payment Bond with the Village, then the Inspection and Legal Work Escrow shall not be reduced to an amount less than 5 percent of the Approved Cost Estimate. The Performance and Payment Security and the Inspection and Legal Work Escrow shall be maintained and renewed by the Developers, and shall be held in escrow by the Village, until approval and acceptance, where appropriate, of all the Improvements by the Village pursuant to Subsections 6D and 6E of this Agreement and until the posting of the Guaranty Letter of Credit required by Subsection 10C below. After the acceptance and posting of the Guaranty Letter of Credit, the Village shall release the Performance and Payment Security and any amounts remaining in the Inspection and Legal Work Escrow.

C. Guaranty Letter of Credit. As a condition of the Village's approval and acceptance, where appropriate, of any or all of the Improvements pursuant to Subsections 6D and 6E of this Agreement, the Developers shall post a letter of credit in the amount of 10 percent of the actual total cost of the Improvements as security for the performance of the Developers' obligations under this Agreement (the "Guaranty Letter of Credit"). The Guaranty Letter of Credit shall be held by the Village in escrow until the end of the two-year guaranty period set forth in Subsection 6F of this Agreement or until two years after the proper correction of any defect of deficiency in the Improvements pursuant to Subsection 6F and payment thereof, whichever occurs later. If the Village is required to draw on the Guaranty Letter of Credit by reason of the Developers' failure to fulfill its obligations under this Agreement, then the Developers, within 10 days thereafter, shall cause the Guaranty Letter of Credit to be increased to its full original amount. The Guaranty Letter of Credit may provide that it may be reduced, with the written approval of the Village, after two years to reflect the expiration of the two-year guaranty period as to some or all of the Improvements. In that event, the Village shall authorize a reduction to an amount not less than the amount reasonably estimated by the Village Engineer

5-A.22

to be 10 percent of the value of the Improvements for which the guaranty period has not yet expired.

D. Interests and Costs. The Developers shall not be entitled to interest on the Inspection and Legal Work Escrow. The Developers shall bear the full cost of securing and manufacturing the Performance and Payment Security, the Guaranty Letter of Credit, and the Demolition Letter of Credit.

E. Form of Bond, Letters of Credit. The Performance and Payment Security and the Guaranty Letter of Credit each shall be in a form satisfactory to the Village Attorney and shall comply with the following conditions.

1. Performance and Payment Bond. The Performance and Payment Bond shall be in substantially the form attached to this Agreement as **Exhibit D** and shall be from a surety company acceptable to the Village and licensed to do business in the State of Illinois with a general rating of A and a financial size category of Class XV or better in Best's Insurance Guide. The penal sum of the Performance and Payment Bond shall not be reduced by reason of any Improvement work satisfactorily completed and shall include attorney's fees, court costs, and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of the surety under the Performance and Payment Bond. No changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of either the Village or the Developers to the other in or to the terms of this Agreement; in or to the schedules, plans, drawings, or specifications for the Improvements; in or to the method or manner of performance of the Improvement work; or in or to the mode or manner of payment therefor, shall operate in any way to release the Developers or the surety or affect the obligation of either of them under the Performance and Payment Bond and all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances, and all notice of any and all defaults by the Developers, shall be waived by the surety under the Performance and Payment Bond.

2. Letter of Credit. Each letter of credit, whether the Performance and Payment Letter of Credit or the Guaranty Letter of Credit, shall be in substantially the form attached to this Agreement as **Exhibit E** and shall be from a bank acceptable to the Village and having capital resources of at least \$25,000,000, with an office in the Chicago Metropolitan Area and insured by the Federal Deposit Insurance Corporation. Each letter of credit shall, at a minimum, provide that (a) it shall expire no earlier than the later of two years after the date of its issuance or 45 days after delivery to the Village, in the manner provided in Section 15 of this Agreement, of written notice that the letter of credit will expire, (b) it may be drawn on based upon the Village Manager's certification that the Developers have failed to fulfill any of the obligations for which the letter of credit is security, as stated in Subsections 10A, 10B, and 10C above as well as for the reasons stated in Subsections 10F and 10G below, (c) it shall not require the consent of the Developers prior to any draw on it by the Village, (d) it shall not be canceled without the prior written consent of the Village, and (e) if at any time it will expire within 45 or any lesser number of days, and if it has not been renewed, and if any obligation of the Developers for which it is security remains uncompleted or unsatisfactory, then the Village, without notice and without being required to take any further action of any nature whatsoever, may call and draw down the letter of credit and thereafter either hold all proceeds as security for the satisfactory completion of all obligations or employ the proceeds to complete all obligations

5-A.23

and to reimburse the Village for any and all costs and expenses, including legal fees and administrative costs, incurred by the Village, as the Village shall determine. Upon completion of the Developers' obligations to construct and complete the Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Developers any proceeds remaining on deposit with the Village drawn from the letter of credit.

The Performance and Payment Letter of Credit may provide that the aggregate amount of the letter of credit may be reduced upon joint written direction by the Developers and the Village to reimburse the Developers for payment of Improvement work satisfactorily completed. No reduction to reimburse the Developers for payment of Improvement work satisfactorily completed shall be allowed except upon presentation by the Developers of proper contractors' sworn statements, partial or final waivers of lien, as may be appropriate, and all additional documentation as the Village may reasonably request to demonstrate satisfactory completion of the Improvement in question and full payment of all contractors, subcontractors, and material suppliers.

The Guaranty Letter of Credit shall not be reduced by reason of any cost incurred by the Owner to satisfy its obligations under Sections 6 or 9 of this Agreement.

F. Replenishment of Security. If at any time the Village determines that the funds remaining in the Inspection and Legal Work Escrow and the Performance and Payment Security are not sufficient to pay in full the remaining unpaid cost of all Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, or that the funds remaining in the Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the Improvements and all unpaid or reasonably anticipated Village fees, costs, and expenses, then, within 15 days after a demand by the Village, the Developers shall increase the amount of the Inspection and Legal Work Escrow or the appropriate bond or letter of credit to an amount determined by the Village to be sufficient to pay unpaid fees, costs, and expenses. Failure to so increase the amount of the security shall be grounds for the Village to retain any remaining balance of the Inspection and Legal Work Escrow and to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the appropriate bond or letter of credit. Upon completion of the Developers' obligations to construct and complete the Improvements pursuant to and in accordance with this Agreement, and after reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Owner any remaining funds in the Inspection and Legal Work Escrow and any proceeds remaining on deposit with the Village from any bond or letter of credit.

G. Replacement Bond, Letters of Credit. If at any time the Village determines that the surety company issuing the Performance and Payment Bond is not licensed to do business in the State of Illinois with a general rating of A and a financial size category of Class XV or better in Best's Insurance Guide or the bank issuing either the Performance and Payment Letter of Credit or the Guaranty Letter of Credit is without capital resources of at least \$25,000,000, or if at any time the Village determines that the surety company or bank is unable to meet any federal or state requirement for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable or unwilling to honor the bond or letter of credit at any time during its term, or if the Village otherwise reasonably deems itself to be insecure, then the

Village shall have the right to demand that the Developers provide a replacement bond or letter of credit, as the case may be, from a surety company or bank satisfactory to the Village.

The replacement bond or letter of credit shall be deposited with the Village not later than 15 days after a demand. Upon deposit, the Village shall surrender the original bond or letter of credit to the Developers. Failure to provide a replacement bond or letter of credit shall be grounds for the Village to retain any remaining balance of the Inspection and Legal Work Escrow and to receive the proceeds of, or to draw down, as the case may be, the entire remaining balance of the appropriate bond or letter of credit.

The proceeds received or drawn down by the Village from any bond or letter of credit pursuant to this Subsection 5G shall be held by the Village as part of, and subject to the provisions of this Agreement relating to, the Inspection and Legal Work Escrow if, and only if, the Developers shall have filed with the Village, within five days after receipt by the Village of the proceeds, an enforceable written agreement (1) agreeing that the proceeds received or drawn down by the Village from any bond or letter of credit are received as additional security for the performance by the Developers of each and every obligation of the Developers pursuant to this Agreement, including without limitation the construction and completion of the Improvements; (2) waiving the benefit of, and all right to assert any claims pursuant to or under, Section 3 of the Public Construction Bond Act, 30 ILCS 550/3; and (3) releasing the Village from, agreeing that the Village shall not be liable for, and agreeing to indemnify and hold the Village harmless from, any claims, litigation, and liability occasioned by, connected with, or in any way attributable to any failure to comply with the requirements of Section 3 of the Public Construction Bond Act, 30 ILCS 550/3. The agreement required by the preceding sentence shall be in form and substance satisfactory to the Village Attorney and, in the event no agreement is filed with the Village as and when required pursuant to the preceding sentence, the Village shall have the right to retain the proceeds without restriction.

H. Use of Funds in the Event of Breach of Agreement. If the Developers fail or refuse to complete the Improvements in accordance with this Agreement, or fail or refuse to correct any defect or deficiency in the Improvements as required by Subsection 6F of this Agreement, or fails or refuses to restore property in accordance with a demand made pursuant to Subsection 6D of this Agreement, or fails or refuses to pay immediately any amount demanded by the Village pursuant to Section 9 of this Agreement, or in any other manner fails or refuses to meet fully any of its obligations under this Agreement, then the Village in its discretion, may retain all or any part of the Inspection and Legal Work Escrow and/or initiate a claim against, or draw on, as the case may be, and retain all or any of the funds remaining in the appropriate bond or letter of credit. The Village thereafter shall have the right to exercise its rights under Subsections 6G and 6H of this Agreement, to take any other action it deems reasonable and appropriate to mitigate the effects of any failure or refusal, and to reimburse itself from the proceeds of the Inspection and Legal Work Escrow and/or the appropriate bond or letter of credit for all of its costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Developers' failure or refusal to fully meet its obligations under this Agreement. If the funds remaining in the Inspection and Legal Work Escrow and/or the appropriate bond or letter of credit are insufficient to repay fully the Village for all costs and expenses, and to maintain a cash reserve equal to the required Guaranty Letter of Credit during the entire time such Guaranty Letter of Credit should have been maintained by the Developers, then the Developers shall upon demand of the Village therefor immediately deposit with the

Village any additional funds as the Village determines are necessary to fully repay such costs and expenses and to establish such cash reserve. After (1) completion of the Developers' obligations to construct and complete the Improvements pursuant to and in accordance with this Agreement, (2) correction of all defects and deficiencies in the Improvements as required by Subsection 6F of this Agreement, (3) restoration of property in accordance with a demand made pursuant to Subsection 6H of this Agreement, (4) payment of all amounts demanded by the Village pursuant to Section 9 of this Agreement, (5) compliance with all other terms of this Agreement, and (6) reimbursement of the Village for all fees and all costs and expenses, including legal fees and administrative costs, incurred by the Village, then the Village shall release to the Owner any remaining Inspection and Legal Work Escrow and any proceeds remaining on deposit with the Village from any Performance and Payment Security.

I. Village Lien Rights. If any money, property, or other consideration due from the Owner to the Village pursuant to this Agreement is not either recovered from the performance security deposits required in this Section 10 or paid or conveyed to the Village by the Developers within 10 days after a demand for payment or conveyance, then the money, or the Village's reasonable estimate of the value of the property or other consideration, together with interest and costs of collection, including legal fees and administrative expenses, shall become a lien upon all portions of the Property in which the Developers retain any legal, equitable, or contractual interest, and the Village shall have the right to collect the amount or value, with interest and costs, including legal fees and administrative expenses, and the right to enforce the lien in the same manner as in statutory mortgage foreclosure proceedings. The lien shall be subordinate to any first mortgage now or hereafter placed upon the Property; provided, however, that any subordination shall apply only to charges that have become due and payable prior to a sale or transfer of the Property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Any sale or transfer shall not relieve the Property from liability for any charges thereafter becoming due, nor from the lien of any subsequent charge.

Section 11. Liability and Indemnity of Village.

A. Village Review. The Developers acknowledge and agree that the Village is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the Village's review and approval of any plans for the Property or the Improvements, or the issuance of any approvals, permits, certificates, or acceptances for the development or use of the Property or the Improvements, and that the Village's review and approval of those plans and the Improvements and issuance of those approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Developers, or any of their heirs, successors, assigns, tenants, and licensees, or any other person, against damage or injury of any kind at any time.

B. Village Procedure. The Developers acknowledge and agree that notices, meetings, and hearings have been properly given and held by the Village with respect to the approval of this Agreement and agrees not to challenge the Village's approval on the grounds of any procedural infirmity or of any denial of any procedural right.

C. Indemnity. The Developers agree to, and do hereby, hold harmless and indemnify the Village, the Corporate Authorities, the Plan Commission, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, (collectively the "Village Indemnitees") from any and all claims that may be asserted at any time by any person

5-A.26

or entity not a party to this Agreement against any of the Village Indemnitees in connection with (1) the Village's review and approval of any plans for the Property or the Improvements; (2) the issuance of any approval, permit, certificate, or acceptance for the Property or the Improvements; and (3) the development, construction, maintenance, or use of any portion of the Property or the Improvements.

D. Defense Expense. The Developers shall, and do hereby agree to, pay all expenses, including without limitation legal fees and administrative expenses, incurred by the Village in defending itself with regard to any and all of the claims referenced in Section 11C of this Agreement.

Section 12. Nature, Survival, and Transfer of Obligations.

A. Binding on Developers. All obligations assumed by the Developers under this Agreement shall be binding on the Developers jointly and severally, on any and all of the Developers' successors and assigns, and on any and all successor legal or beneficial owners of record of all or any portion of the Property. The Developers further agree that all payment and conveyance obligations under this Agreement, together with interest and costs of collection, including legal fees and administrative expenses, may, if not satisfied as required by this Agreement, become an enforceable lien upon the Property pursuant to Subsection 10I of this Agreement.

B. Notice to Successors. To assure that all successors, assigns, and successor owners have notice of this Agreement and the obligations created by it, the Developers shall:

1. Funds for Recording Document. Deposit with the Village Clerk, at the time of execution of this Agreement, a sufficient sum, in current funds, to reimburse the Village for the actual cost of recording this Agreement with the Cook County Recorder of Deeds; and

2. Inclusion in Residency Agreements. Incorporate, by reference, this Agreement into each residency agreement and any and all instruments of sale or other transfer of all or any portion of the Property.

3. Transferee Assumption Agreement. During the term of this Agreement, no Transfer shall be effective until after the transferee has executed an enforceable written agreement, in substantially the form attached hereto as **Exhibit F**, agreeing to be bound by the provisions of this Agreement ("Transferee Assumption Agreement").

C. Village Approval of Successor Owners.

1. No Transfer without Village Approval. Except as provided in Paragraphs 4 and 5 of this Subsection C, the Developers shall not sell, assign, transfer, or otherwise convey any rights or approvals conferred or granted by the Village or this Agreement or any legal or beneficial interest in the Property (a "Transfer"), other than the occupancy pursuant to a residency agreement of an individual dwelling unit or a lease of retail space within the Project, without the prior, express, written approval of the Village.

2. Notice to Village of Proposed Transfer. The Developers shall give notice to the Village of any proposed Transfer. The Village shall have 30 days after receipt of any such

5-14.27

notice to approve or disapprove the proposed Transfer and such further time to which the Developers agree (the "Notice Period"). During the Notice Period, the Village may require the Developers to provide information about the proposed transferee, including without limitation financial information and development and management experience sufficient for the Village to make an informed, reasoned determination regarding the qualifications of the proposed transferee to fulfill the obligations of this Agreement and to properly and successfully manage and operate the Project and the Developers shall promptly provide such information.

3. Approval or Disapproval; Transferee Assumption Agreement. The Village shall not unreasonably delay its decision whether to approve a proposed transferee. If the Village disapproves a proposed transferee, then the Village shall state its reasons for disapproval. If the Village does not respond to the notice within the Notice Period, then the Village shall be deemed to have consented to the proposed Transfer. No Transfer shall be effective until after the transferee has executed a Transferee Assumption Agreement.

4. Expiration of Village Right of Approval. The Village's right to approve a Transfer shall expire one year after the first date on which 15 dwelling units within the Project are physically occupied, or deemed to be physically occupied, by residents pursuant to executed residency agreements, as follows:

- (a) Physically Occupied. A unit shall be physically occupied when the Village has issued a certificate of occupancy for the unit and the unit is actually occupied by one or more residents pursuant to a valid, executed residency agreement.
- (b) Deemed to be Physically Occupied. A unit shall be deemed to be physically occupied if: (i) the Developers have applied for a certificate of occupancy for the unit, the unit is subject to a valid, executed residency agreement, and the unit satisfies applicable code standards for issuance of a certificate of occupancy, but (ii) the Village has unreasonably failed or refused, within five business days after receipt of the application, either to issue a certificate of occupancy for that unit or to issue written notice to the Developers stating that the unit does not qualify for a certificate of occupancy and specifying the code provision at issue and the steps required by the Developer for the unit to qualify for a certificate of occupancy. Under these circumstances, the date that the unit shall be deemed to be physically occupied shall be the fifth day after receipt of the application by the Village.

The Developers shall promptly provide written notice to the Village stating the Developers' determination of the first date on which 15 dwelling units within the Project are physically occupied or deemed to be physically occupied. The Village shall have the opportunity to confirm the date stated in the notice, including review of executed residency agreements and reasonable access to the building to verify occupancy of the dwelling units.

5. Transfer to Qualified Buyer. Notwithstanding the terms of Subsection C1 of this Section, the Village shall be deemed to have approved a Transfer by the Developers of an interest in the Property if all fees and costs required to be paid by the Developers have been paid in full and if the Transfer is made to a "Qualified Buyer." For purposes of this Subsection C5 a

5-A.28

“Qualified Buyer” means a person or entity that satisfies all of the following standards and conditions:

- (a) has not less than seven years of successful senior development and management experience, including the maintenance and operation of residential and retail developments, and
- (b) has executed and delivered to the Village the transferee assumption agreement in substantially the form attached to this Agreement as **Exhibit F**, acknowledging and fully accepting and agreeing to be bound by the terms of this Agreement, and further acknowledging that any modification, amendment, or other change to the Project shall require approval of the Village’s Board of Trustees in its sole discretion, and
- (c) has delivered to the Village evidence acceptable to the Village, in the reasonable exercise of the Village’s judgment, of that person’s or entity’s financial ability and qualifications to purchase and operate the Project including without limitation financial statements and binding commitments of funds for purchase and for operation from a reputable, locally or nationally recognized financial institution, bank, insurance company, pension fund, or other substantially similar institution, and
- (d) has confirmed in writing to the Village that no dwelling unit within the Project shall be sold in fee title, but rather that all such dwelling units shall be “leased” pursuant to a residency agreement that does not transfer fee title interest to the occupant, and
- (e) has confirmed in writing to the Village that no dwelling unit shall be occupied by any person in violation of the restrictions and requirements defined in the Declaration of Restrictions encumbering the Property, including without limitation any age restrictions.

D. Developers Still Bound. Notwithstanding any Transfer, the Developers shall remain fully liable for all of the Developers’ obligations under this Agreement accruing prior to the effective date of any such Transfer and for the duty to indemnify the Village as provided in Subsection 11C of this Agreement against all claims that accrue, or that are relate to any matter occurring, prior to the effective date of any such Transfer regardless of when any such claim may be asserted.

Section 13. Term. This Agreement shall be in full force and effect from and after the Effective Date for 20 years or for the longest term allowed by law; provided, however, that this Agreement shall be of no force or effect until the Developers shall have first paid in full the amounts due to the Village as a condition precedent to the execution of this Agreement by the Village, pursuant to Section 9 of this Agreement, but no delay in payment shall serve to extend the date of termination of this Agreement.

Section 14. Enforcement. The parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the

5-A.29

Developers agree that they will not seek, and do not have the right to seek, to recover a judgment for monetary damages against the Village or any of its elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys on account of the negotiation, execution, or breach of this Agreement. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any and all buildings and structures within the Property at any time when the Developers have failed or refused to meet fully any of its obligations under this Agreement. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement pursuant to this Section 14, the prevailing party shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

Section 15. General Provisions.

A. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (4) by facsimile, or (5) by electronic Internet mail ("e-mail").

Facsimile notices shall be deemed valid only to the extent that they are actually received by the individual to whom addressed and followed by delivery of actual notice in the manner described in either (1), (2), or (3) above within three business days thereafter at the appropriate address set forth below.

E-mail notices shall be deemed valid only to the extent that they are opened by the recipient on a business day at the address set forth below and followed by delivery of actual notice in the manner described in either (1), (2), or (3) above within three business days thereafter at the appropriate address set forth below.

Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt, or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (c) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection 15.A, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of La Grange
53 South La Grange Road
P.O. Box 668
La Grange, Illinois 60525

with a copy to:
Mark E. Burkland
Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, Illinois 60603

5-A.30

Notices and communications to the Owner shall be addressed to, and delivered at, the following address:

with a copy to:

B. Time of the Essence. Time is of the essence in the performance of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

D. Non-Waiver. The Village shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the Village to exercise at any time any right granted to the Village shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the Village's right to enforce that right or any other right.

E. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

F. Governing Law. This Agreement shall be governed by and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

G. Severability. It is hereby expressed to be the intent of the parties to this Agreement that should any provision, covenant, agreement, or portion of this Agreement or its application to any Person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any Person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

I. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

J. Exhibits. Exhibits A through F attached to this Agreement are, by this reference, incorporated in, and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

5-A.31

K. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

L. Changes in Laws. Unless otherwise provided in this Agreement, any reference to the Requirements of Law shall be deemed to include any modifications of, or amendments to, the Requirements of Law that may occur in the future.

M. Authority to Execute. The Village hereby warrants and represents to the Developers that the persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities. The Developers hereby warrant and represent to the Village (1) that they are the record and beneficial owners of fee simple title to the Property, (2) that no other person has any legal, beneficial, contractual, or security interest in the Property, (3) that they have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and to bind the Property as set forth in this Agreement, (4) that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (5) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developers will (a) result in a breach or default under any agreement to which the Developers are a party or to which it or the Property is bound or (b) violate any statute, law, restriction, court order, or agreement to which the Developers or the Property are subject.

N. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against the Village or the Developers.

O. Recording. After the Developers have paid to the Village the amounts due pursuant to Section 9 of this Agreement and the Developers have paid to the Village an amount sufficient to cover the cost of recording this Agreement, the Village shall cause this Agreement to be recorded in the office of the Recorder of Cook County.

[SIGNATURE BLOCKS]

3904999_v7

5-A, 32

EXHIBIT F

VILLAGE OF LA GRANGE

RESOLUTION NO. _____

A RESOLUTION APPROVING AND AUTHORIZING
THE EXECUTION AND ATTESTATION
OF A TRANSFEREE ASSUMPTION AGREEMENT
WITH _____

WHEREAS, the Village of La Grange and _____ (the "Developers"), entered into that certain agreement relating to the development of property commonly known as 93 South La Grange Road (the "Subject Property") with an effective date of _____, 2006, and recorded in the Office of the Cook County Recorder of Deeds on _____, 2006, as Document Number _____ (the "Development Agreement"), in connection with the development and use of the Subject Property; and

WHEREAS, _____ (the "Transferee") intends to purchase the Subject Property or a portion of it or rights in it from the Developers (the "Transfer Property"); and

WHEREAS, as a condition to the conveyance of the Transfer Property to the Transferee, the Village and the Developers require that the Transferee agree to comply with all the terms, requirements, and obligations of the Development Agreement and the approvals made by the Village for the Project;

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of La Grange, Cook County and State of Illinois, as follows:

Section 1. Recitals. The foregoing recitals are incorporated herein as if fully set forth.

Section 2. Approval of Transferee Assumption Agreement. The Transferee Assumption Agreement by and between the Village and the Transferee shall be, and the same hereby is, approved in a form substantially the same as is attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1 (the "Transferee Assumption Agreement").

Section 3. Execution of Transferee Assumption Agreement. The Village President and Village Clerk shall be, and they hereby are, authorized and directed to execute and attest, respectively, the Transferee Assumption Agreement on behalf of the Village of La Grange; provided, however, that they shall neither execute nor attest the Transferee Assumption Agreement on behalf of the Village unless and until (a) the Transferee shall have fully executed and delivered an original of the Transferee Assumption Agreement to the Village, (b) the Transferee shall have deposited with the Village Manager the performance security required pursuant to Section 3 of the Transferee Assumption Agreement, and (c) the Transferee shall have paid all fees, costs, and expenses due pursuant to Section 9 of the Transferee Assumption

5-A.33

Agreement for which demand has been made prior to the execution of the Transferee Assumption Agreement by the Village.

Section 4. Effective Date. This Resolution shall be in full force and effect upon its passage and approval in the manner provided by law.

PASSED this ____ day of _____ 20__.

AYES:

NAYS:

ABSENT:

APPROVED this ____ day of _____ 20__.

Village President

ATTEST:

Village Clerk

5-A.34

TRANSFeree ASSUMPTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____ 20____, by and among _____ (the "Developers"), and _____ (the "Transferee"), and the Village of La Grange, an Illinois municipal corporation (the "Village"),

WITNESSETH:

WHEREAS, the Transferee intends to purchase from the Developers all or certain interests or rights in the real property situated in Cook County, Illinois, known as 93 South La Grange Road and legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof (the "Transfer Property"); and

WHEREAS, the Transferee will become the legal owner of the Transfer Property; and

WHEREAS, as a condition to the conveyance of the Transfer Property by the Developers, the Developers and the Village require that the Transferee agree to comply with all the terms, requirements, and obligations set forth in that certain development agreement titled "An Agreement Regarding Development Of The Property At 93 South La Grange Road For The Project Known As La Grange Pointe" with an effective date of _____, 2006, and recorded in the Office of the Cook County Recorder of Deeds on _____, 2006, as Document No. _____, by and between the Village and Owner, as amended from time to time (the "Development Agreement"), pursuant to which the development of the Subject Property was approved;

NOW, THEREFORE, in consideration of the agreement of the Developers to convey the Transfer Property to the Transferee and of the Village to accept the transfer of obligations as provided herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by and among the Village, the Developers, and the Transferee as follows:

Section 1. Recitals. The foregoing recitals are by this reference incorporated herein and made a part hereof as substantive provisions of this Agreement.

Section 2. Assumption of Obligations.

A. Agreement to Assume Obligations. The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors, and administrators, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of the Development Agreement, including all exhibits and attachments thereto, as they relate to any and all improvements on or for the Subject Property and regardless of whom the terms, requirements, and obligations are to be performed and provided for by, or on whom they are imposed.

B. Specific Acknowledgements and Agreements. The Transferee, by way of specific acknowledgement and agreement but not limitation of the broad agreement set forth in Subsection A of this Section 2, hereby acknowledges and agrees as follows:

5-A,35

1. No dwelling unit within the Project shall be occupied by any person in violation of the restrictions and requirements defined in the Declaration of Restrictions encumbering the Property, including without limitation the prohibition on transfer of any fee title interest in any dwelling unit within the Project and the permanent minimum age restriction of 62 years applicable to all dwelling units within the Project.
2. The Village shall not make any parking spaces available to residents of any dwelling unit within the Project in any Village-owned or operated parking lot.
3. No owner of the Property or any portion of the Property shall at any time seek to have all or any portion of the Property ruled or declared to be exempt from payment of property taxes (no matter how denominated or termed), and no portion of the Property shall ever be exempt from the payment of property taxes.

Section 3. Assurances of Financial Ability. Contemporaneously with the Transferee's execution of this Agreement, the Transferee shall deposit with the Village Manager the performance security required by Section 10 of the Development Agreement. After execution of this Agreement by the Village and deposit with the Village Manager of the required performance security, the Village shall surrender the original performance security, if any, to the Developers. In addition, and not in limitation of the foregoing, the Transferee, upon the request of the Village, shall provide the Village with any reasonable assurances of financial ability to meet the obligations assumed hereunder as the Village may require from time to time.

Section 4. Payment of Village Fees and Costs. In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement or the Development Agreement or by applicable Village codes, ordinances, resolutions, rules, or regulations, the Transferee shall pay to the Village, immediately upon presentation of a written demand or demands therefor, all legal, engineering, and other consulting or administrative fees, costs, and expenses in connection with the negotiation, preparation, consideration, and review of this Agreement.

Section 5. Acknowledgment. The Village hereby acknowledges its agreement to the Transferee's assumption of the obligations to comply with the terms, requirements, and obligations of the Development Agreement, including all exhibits and attachments thereto.

[Section 6. Trustee Exculpation. This Agreement is executed by _____ not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by _____ are undertaken by it solely as Trustee as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against the Trustee by reason of any of terms, provisions, stipulations, covenants, conditions, and/or statements contained in this Agreement. Any such liability shall be asserted instead against the property contained in Trust Number _____ or the beneficiaries thereof or against.]

5-A,36

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

VILLAGE OF LA GRANGE

ATTEST:

By: _____
Village President

Village Clerk

[DEVELOPERS]

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

[DEVELOPERS]

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

[TRANSFEREE]

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

5-A.37

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing instrument was acknowledge before me on _____, 20___, by _____, the Village President of the VILLAGE OF LA GRANGE, an Illinois municipal corporation, and by _____, the Village Clerk of said municipal corporation.

Signature of Notary

SEAL

My Commission expires: _____

STATE OF ILLINOIS)
)
COUNTY OF _____) SS

The foregoing instrument was acknowledged before me on _____, 20___, by _____, the _____ of _____ and _____, the _____ of said _____, which individuals are known to me to be the identical persons who signed the foregoing instrument as such officers of the limited liability company for and on behalf of said limited liability company, and that they executed the same as their free and voluntary act and deed, and as the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned.

Signature of Notary

SEAL

My Commission expires:

5-A-38

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 20____, by _____, _____ of _____, as Trustee under Trust No. _____ and by _____, _____ of said _____, which individuals are known to me to be the identical persons who signed the foregoing instrument as such officers of the _____ for and on behalf of said _____, and that they executed the same as their free and voluntary act and deed, and as the free and voluntary act and deed of the _____, for the uses and purposes therein mentioned.

Signature of Notary

SEAL

My Commission expires: _____

3904999_v7

5-19, 39

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS (“**Declaration**”) is entered into as of _____, 2006, by Midco LaGrange, LLC, an Illinois limited liability corporation (hereafter called “**Declarant**”).

PREMISES

A. Declarant owns the property legally described on Exhibit “A” attached hereto and made a part hereof, which property is subject to the jurisdiction of the Village of La Grange, Illinois (the “**Village**”), is commonly known as 93 South La Grange Road, La Grange, Illinois, and which shall be referred to herein as the “**Property**.”

B. The Declarant desires to subject the Property to the conditions, covenants, and restrictions (collectively, the “**Restrictions**”) set forth herein in order to comply with Section 6-A of La Grange Ordinances Nos. O-04-60 and _____ (the “**Ordinances**”).

NOW, THEREFORE, in consideration of the premises, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby creates the following Restrictions to be binding upon the Property from and after the date that Declarant shall record an executed copy of this Declaration, which recording shall occur upon Village granting Declarant a building permit allowing Declarant to commence construction upon the Property consistent with the planned development approved by Village in the Ordinance.

1. Age Restriction For All Dwelling Units. The Property is subject permanently to a minimum age restriction of 62 years for occupants of all dwelling units within the Property. At least one occupant in any spousal relationship shall be 62 years of age or older, but the younger spouse may be less than 62 years of age. No person under the age of 18 years shall be a resident of any dwelling unit within the Property, but a person under the age of 18 years may be a guest of a resident of a dwelling unit for not more than 30 days in any six-month time period.
2. No Sales or Leases of Dwelling Units. No dwelling unit within the Property shall be sold in fee title or leased pursuant to a traditional residential lease agreement. Rather, all dwelling units within the Property shall be occupied pursuant to a residency agreement in a form similar to the form of agreement attached to this Declaration as Exhibit A.
3. Village Parking Permits. The Village has determined that no permits can or shall be issued by the Village to residents of the Property for parking within any Village-owned or operated parking lot or structure. The Village requires that all potential residents be advised in writing of this determination of the Village.
4. No Property Tax Exemption or Sale to Tax Exempt Entity. No owner of the Property or any portion of the Property shall at any time seek to have all or any portion of the Property ruled or declared to be exempt from payment of property taxes (no matter how denominated or

5-A.40

termed) or any other taxes or assessments in lieu of property taxes, and no portion of the Property shall ever be exempt from the payment of property taxes or any taxes levied against the Property or portion thereof in lieu of ad valorem property taxes. No portion of the Property shall be sold, donated to, or otherwise transferred or given in any way to a not-for-profit or tax exempt entity of any type or kind. Nor shall any portion of the Property be occupied by any not-for-profit or tax exempt entity of any type or kind in any manner at any time so as to cause the Property or any portion of the Property to be eligible for or declared or ruled to be exempt from payment of property taxes or any other taxes or assessments in lieu of property taxes.

5. Village's Rights, Remedies. The Village shall have the right to enforce the provisions of this Declaration and to take or institute all such actions against any violation of, or failure or refusal to abide by, any provision of this Declaration as may be necessary to achieve compliance. The Village shall be entitled to reimbursement from the owner or owners of the Property for all costs and expenses incurred by the Village in enforcing the provisions of this Declaration, including without limitation reasonable attorneys' fees and court costs, and the Village further shall have a lien against the Property for any and all costs and expenses incurred in connection with enforcing the provisions of this Declaration plus an amount equal to 9 percent interest per annum on all such costs and expenses from the date such costs or expenses are incurred through the date the Village is reimbursed. Authorized representatives of the Village also shall have the right to enter upon and into the Property and the principle buildings within the Property at reasonable times to inspect the Property and determine compliance with this Declaration, and a permanent easement for such access is hereby granted to the Village.

6. Captions. The captions of the sections and sub-sections of this Declaration are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

7. Governing Laws. This Declaration shall be construed in accordance with the laws of, but not the conflicts of laws rules or standards of, the State of Illinois and any applicable federal laws and regulations.

8. Severability. If any term, provision, or condition contained in this Declaration shall, to any extent, be invalid or unenforceable, then that term, provision, or condition shall not be applied to the extent but only to the extent of such invalidity or unenforceability, but that term, provision, or condition shall otherwise be applied and, further, the remainder of this Declaration shall not be affected thereby, and each term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

9. Waiver of Default. No failure to enforce a term, provision, or condition of this Declaration, nor any waiver of any default in the performance of any term, provision, or condition contained in this Declaration, shall be deemed to be a waiver or limitation on the right or ability to enforce any term, provision, or condition of this Declaration at any time or to act against any other default in the performance of the same or any other term, provision, or condition of this Declaration at any time. The rights and remedies given to any person or entity or the Village under this Declaration shall be deemed to be cumulative, and no one of such rights and remedies shall be exclusive of any of the others or of any other right or remedy at law or in

5-A.41

equity which any such person or entity or the Village might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such person or entity or the Village shall not impair that person's or entity's or the Village's standing to exercise any other right or remedy.

10. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Declaration.

11. Attorneys' Fees. In the event a Party or the Village institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing Party or the Village after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

12. No Amendments, Modifications, Changes, or Waivers without Village Approval. No restriction or term of this Declaration may be amendment, modified, or otherwise changed in any way, or waived by any person or entity, without the prior express written approval of the Village.

13. Covenants Running with Land. The provisions in this Declaration shall be rights, interests, covenants, agreements, obligations, and liabilities running with the land and shall inure to the benefit of the Village and also shall inure to the benefit of and be binding upon Declarant and its respective successors and assigns, owning all or any portion of the Property, and all persons or entities claiming under them. No transferor of a portion of the Property shall have any obligation or liability under this Declaration for any claim or matter accruing or resulting from conditions created subsequent to transfer by such transferor to its portion of the Property. This Declaration shall continue in full force and effect for 50 years from and after the date of this Declaration as set forth above, and shall thereafter automatically be extended and renewed for successive periods of 10 years, unless all then owners of all portions of the Property and the Village agree in writing that this Declaration shall not be extended and renewed beyond the then current initial term or renewal period. The termination of this Declaration shall not limit or affect any remedy at law or in equity that any person may have against any other person with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date above first written.

DECLARANT:

Midco LaGrange, LLC, an Illinois limited liability corporation

By: _____

Name: _____

Its: _____

5-A-42

CONSENT OF LENDER

In consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, _____, a _____
_____ ("Lender"), as the holder of the Promissory Note and first lien Mortgage on the land (or a portion of the land) covered by the foregoing Declaration, hereby consents to, approves of, and agrees to be bound by all of the terms, covenants, warranties, representations and conditions of the foregoing Declaration.

IN WITNESS WHEREOF, Lender has executed this Consent on _____, 2006.

LENDER:

By: _____
Name: _____
Its: _____
Date: _____

ATTEST:

By: _____
Name: _____
Its: _____
Date: _____

5-A.43

EXHIBIT A

4124080_v2

5-A.45

with
Refundable
Deposit

Residence Agreement - Rental Agreement

Date: _____

Resident(s): _____

Proposed Date of Entrance: _____

Type of Apartment: _____ Apartment Number _____

Number of Occupants: _____

Accommodation Fee: _____

Monthly Service Fee: _____

Single Person: _____ Additional Person Fee: _____

Parking Fee: _____ Pet Deposit Fee: _____

This Agreement, made and entered into as of the date below signed, between MIDCO LAGRANGE, LLC, hereinafter referred to as the Sponsor, and the individual or individuals named above, hereinafter called the Tenant or Resident.

WITNESSETH:

WHEREAS, the Sponsor operates the Residence listed above, hereinafter referred to as La Grange Pointe; and

WHEREAS, Tenant has applied for and has been accepted as a Tenant of La Grange Pointe, all on the terms and conditions stated herein, and is paying the Accommodation Fee shown above as provided in this Agreement;

NOW, THEREFORE, in consideration of the Tenant's payment of the Monthly Rental as provided herein, and Tenant's observance of the terms hereof, the Sponsor agrees to furnish to the Tenant at La Grange Pointe the accommodations and services described herein during the Term of this Agreement, as follows:

5-A.46

1. ACCOMMODATION FEE, AND MONTHLY CHARGES

(a) The Tenant agrees to pay an Accommodation Fee in the amount of \$ _____ for the apartment designated above, payable upon execution to this Agreement, receipt of which are hereby acknowledged by the Tenant, which payment is non-refundable except as hereinafter provided. In the event that the apartment is not completed and ready for occupancy within _____ months of the date of this Agreement, the Accommodation Fee shall be refunded.

(b) A Monthly Rental of \$_____ shall be paid by the Tenant at the beginning of each month, or such larger or smaller amount per month as may from time to time be determined to be necessary by the Sponsor. The Sponsor reserves the right from time to time to change or adjust the Monthly Rental to meet the financial needs of financing and operating La Grange Pointe and providing the service specified, provided however that said adjustments shall not in any twelve month period exceed the greater of (i) 10%, or (ii) the increase in Cost of Living as measured by the Consumer Price Index. The sponsor will give thirty days notice in writing prior to any such increase.

2. SERVICES AND FACILITIES TO BE PROVIDED

In addition to occupancy and use of the apartment designated above during the term of this Agreement, the following services and facilities will be provided the Tenant:

- (a) Trash pick-up and sewer and water fees.
- (b) Air conditioning and heating of the common areas.
- (c) Building and grounds maintenance service.
- (d) Stove, refrigerator and garbage disposal in kitchen and individually controlled heating and air-conditioning units in the apartment.
- (e) Use of recreational and common areas.
- (f) Laundry hook-up.
- (g) Weekly housecleaning. (Approximately one hour)
- (h) Emergency call system.
- (i) Scheduled transportation.

The Sponsor will endeavor to make available through third parties those additional services listed on Schedule A. Such services will be charged for separately. No

5-A.47

assurances can be given that such additional services will be available or that, if available, such services will be available without interruption or at favorable rates.

3. CHARACTER OF TENANCY

(a) NATURE OF TENANCY. The privilege of occupying an apartment unit shall continue throughout the term of this Agreement, unless canceled in a manner provided in this Agreement. The tenancy privilege shall be for the Tenant only and shall not inure to the use or benefit of the heirs, assignees or representatives of Tenant, nor may Tenant assign or sublet an apartment unit, and any attempted assignment or subletting shall be void. If a Tenant marries a spouse who is not a Tenant and who desires to reside in La Grange Pointe, such spouse shall be required to apply for tenancy, and if meeting the qualifications therefore, upon acceptance to pay and required admissions or continuing fees applicable to joint tenants.

THE TENANT UNDERSTANDS THAT OCCUPANCY IN LA GRANGE POINTE IS LIMITED TO PERSONS ABLE TO CARE FOR THEMSELVES AND THAT THE SPONSOR HAS NO RESPONSIBILITY FOR THE HEALTH OR CARE OF THE TENANT.

(b) ABSENCES, VACATIONS, ETC. Tenant is free to leave La Grange Pointe for visits, trips and vacations; provided, however, that Tenant shall continue to be responsible for the Monthly Rental during any trips or vacations, or while confined in a hospital, until this Agreement shall be terminated.

(c) INDEMNIFICATION. The Sponsor shall not be liable for, and Tenant agrees to and does hereby indemnify, defend and hold the Sponsor harmless from claims, damages or expenses resulting in any injury or death to persons and any damage to property caused by, resulting from, attributable to, or in any way connected with, the negligent or intentional act or acts or omission to act of Tenant.

(d) NO LIMITATION. Nothing herein shall be deemed to limit the ability of the Sponsor, and the Sponsor specifically reserves the right, to lease or otherwise make apartment units in La Grange Pointe available to others by means other than this Tenancy Agreement on such terms as the Sponsor determines.

5-A.48

4. OBLIGATIONS OF THE TENANT

The Tenant agrees as follows:

(a) To pay the Monthly Rental on the Date of Entrance and on the first day of each and every month thereafter during the term of this Agreement and to pay such other charges as are provided for herein. The Monthly Rental shall be prorated over any partial months.

(b) To certify to the Sponsor annually in writing that Tenant is able to care for himself or herself and to keep on file with the Sponsor a current Designation of Physician and Personal Representative, and on request of the Sponsor to cause Tenant's physician to furnish the Sponsor with summarized medical findings, to secure a medical examination at least once a year, and on request of the Sponsor, to cause the examining physician to provide the Sponsor with a report of his findings.

(c) To abide by and conform to the rules, policies and principles for the operation of La Grange Pointe, as they now exist or as they may hereafter be established or changed by the Sponsor for the welfare of all concerned.

(d) That the Tenant's age, application papers, statement of finances, medical forms, health history and reference reports are a part of this Agreement, and any misrepresentation or material omission shall render this Agreement voidable at the option of the Sponsor.

(e) That the Sponsor shall not be responsible for the loss of any property belonging to the Tenant, due to theft or any other cause; that neither the Sponsor, nor the management, administration or staff thereof are guarantors or insurers of the health or safety of Tenant and that Tenant assumes all responsibility for his or her own medical care.

(f) That Tenant shall not have any kind of pet in La Grange Pointe without the Sponsor's prior written consent and payment of such additional amounts as the Sponsor may require.

(g) Upon termination of this Agreement, to promptly and peacefully vacate La Grange Pointe, removing all of Tenant's possessions located therein.

5-A-49

5. TERM AND TERMINATION

(a) The Term of the Agreement shall commence on the date the apartment unit is available for occupancy and end upon the vacation of the unit by the Tenant along with the Tenant's belongings (in the case of dual occupancy, the vacation of the surviving Tenant), or when sooner terminated as provided herein. Upon death of the Tenant or death or vacation of the surviving Tenant, the monthly charge shall be made for each month or partial month until the apartment unit is fully vacated for up to a maximum of three months after which time this Agreement shall terminate absolutely.

(b) This Agreement may be terminated by Tenant at any time and for any reason on ninety (90) days written notice, but no such termination shall be effective while Tenant is occupying an apartment at La Grange Pointe.

(c) This Agreement may be terminated by the Sponsor at any time in the event that Tenant fails to pay the Monthly Rental or violates any of the terms of this Agreement in any respect and such failure or violation continues after thirty (30) days written notice to the Tenant.

(d) In the event notice of termination is given under (b) or (c) above, this Agreement shall not terminate until the end of the applicable notice period except by mutual consent, in writing, by the Sponsor and the Tenant. Until such termination, the Tenant shall be charged the Monthly Rental, together with such amount as will cover any other expenses incurred on behalf of the Tenant.

(e) If any time the Sponsor, in its sole discretion, after consulting with Tenant's physician and/or family shall consider Tenant's continued occupancy in La Grange Pointe undesirable or detrimental to La Grange Pointe, Tenant or other Tenants of La Grange Pointe, or deems Tenant's physical or mental condition to be such as to require care or services not offered at La Grange Pointe, the Sponsor may terminate this Agreement without prior notice, and on such termination the monthly charge will cease, or in lieu of such termination, the Sponsor may on request permit Tenant to reside temporarily in a hospital, nursing home or other residence at Tenant's cost and expense, during which time the Monthly Rental shall continue.

5-A, 50

6. DUAL OCCUPANCY

(a) If the apartment is to be occupied by two persons, both such persons shall execute this Agreement and each shall be considered a Tenant hereunder so as to be jointly and severally liable for the observance of this Agreement and for the payment of all charges hereunder.

(b) In the event of the death of one of the Tenants occupying an apartment, this Agreement shall remain in effect as to the other tenant with the Monthly Rental adjusted to the single rate.

(c) In the event of voluntary termination by either Tenant or termination for cause by the Sponsor, and on request of the other Tenant, the Sponsor shall permit this Agreement to remain in effect as to one Tenant only, with appropriate adjustments to the Monthly Rental.

7. STORAGE AND LOSS OF PERSONAL PROPERTY

(a) **STORAGE OF PROPERTY OF TENANT.** The Sponsor shall have the right to remove and store all personal property of a Tenant who has died or permanently left La Grange Pointe, or a Tenant who for medical reasons is no longer able to occupy an apartment unit in La Grange Pointe. The Sponsor shall safeguard such property until released to the Tenant or a third party authorized by the Tenant, or to the legal representative of Tenant or Tenant's estate. A reasonable charge for such storage may be made by the Sponsor for such storage. Upon termination of the Agreement, Tenant or Tenant's representative shall remove any stored property within 90 days after which time the Sponsor shall have no responsibility with respect thereto and may dispose of such property as it sees fit.

(b) **LOSS OF PROPERTY.** Other than for property stored pursuant to subparagraph (a) above, Sponsor shall not be liable for loss or theft of a Tenant's property or for any casualty loss to Tenant's property whether fire, flood, earthquake or other casualty and Tenant shall be responsible for insuring all of tenant's property.

5-A.51

8. SUBORDINATION TO FINANCING

The Tenant agrees that his/her rights under this Agreement shall at all times be subordinate and junior to the lien of all deeds of trust or mortgages covering the real estate known as La Grange Pointe. Upon request, Resident agrees to execute, acknowledge and deliver to the Sponsor's lenders written evidence of such subordination.

9. ACKNOWLEDGEMENT OF ASSIGNMENTS AND LIENS AND SUBORDINATION OF RIGHTS

The Tenant understands that the Sponsor has received loans for the purpose of purchasing the land and constructing La Grange Pointe. To secure these loans Sponsor has granted security interests in La Grange Pointe. If Sponsor fails to meet its obligations to the lending institution, it may foreclose upon La Grange Pointe and lending institution or a purchaser at foreclosure will become the new owner of La Grange Pointe. Upon such a foreclosure, lending institution or such purchaser would be under no obligation to continue to act as sponsor and could terminate your occupancy agreement; provided that lending institution or purchaser has agreed with Sponsor that in such event the lending institution or purchaser will give you at least 30 days notice of such termination.

I have read and understand, and have discussed any part of this Acknowledgment of Assignments and Liens and Subordination of rights which I do not understand with my counsel and/or family, and I agree that my rights under my Occupancy Agreement are subject to the limitation expressed above.

10. MISCELLANEOUS

(a) PARTIAL INVALIDITY. The invalidity of any restriction, condition, or other provision of this Agreement, or any part of the same, shall not impair or affect in any way the validity, enforceability, or effect of the rest of this Agreement.

(b) OTHER OCCUPANT. No person other than the Tenant or Tenants entering into this Agreement may occupy the accommodations covered by this Agreement, except for temporary overnight stays by family and friends.

5-A.52

(c) SUCCESSOR RESIDENTS. Upon notice of termination of this Agreement, the Sponsor shall make reasonable efforts to secure a new resident for the living unit referred to in this Agreement. If, at such time, other apartment units in La Grange Pointe are vacant, the Sponsor shall be required to devote equal, but not greater, efforts to secure a new resident for the living unit referred to in this Agreement. The Sponsor shall have no obligation to secure a new resident for any particular living unit before any other living units.

(d) NO CONTINUING CARE. This Agreement is not what is legally or commonly referred to as "Life Care" or "Continuing Care".

(e) AMENDMENT. No amendment between the parties hereto is valid unless contained in writing executed by Sponsor and the Tenant.

(f) BENEFIT AND ASSIGNMENT. This Agreement shall be binding upon the Tenant and the heirs, executors, administrators of the Tenant and shall inure to the benefit of and be binding upon the Sponsor, its successors and assigns. The occupancy benefits of a Tenant, however, shall be expressly non-assignable.

(g) The use of the singular and any particular gender shall include the appropriate number and gender as the context requires.

By: MIDCO LAGRANGE, LLC
Managing Partner

BY: _____
Name, Title **Date**

THE UNDERSIGNED RESIDENT(S) HAS (HAVE) READ AND UNDERSTAND(S) THE FOREGOING AGREEMENT, AND HAS (HAVE), TO THE EXTENT DEEMED NECESSARY, CONSULTED COUNSEL OR OTHERS DEEMED APPROPRIATE WITH RESPECT TO ANY QUESTION CONCERNING THE FOREGOING AGREEMENT.

RESIDENT: _____ **DATE:** _____

RESIDENT: _____ **DATE:** _____

WITNESS: _____ **DATE:** _____

5-A-53

Schedule A

Additional Services

1. Personal Assistance (ie, shopping, ect.)
2. A flexible meal program in the restaurant consisting of reduced prices for residents
3. Educational and recreational programs
4. Personal laundry, dry cleaning service
5. Tray service to the room when approved by the manager and a physician
6. Handyman Service
7. Non-scheduled transportation service
8. Car washing and cleaning
9. Grocery delivery

5-A.54

Without
refundable
Deposit

Residence Agreement - Rental Agreement

Date: _____

Resident(s): _____

Proposed Date of Entrance: _____

Type of Apartment: _____ Apartment Number _____

Number of Occupants: _____

Accommodation Fee: _____

Monthly Service Fee: _____

Single Person: _____ Additional Person Fee: _____

Parking Fee: _____ Pet Deposit Fee: _____

This Agreement, made and entered into as of the date below signed, between MIDCO LAGRANGE, LLC, hereinafter referred to as the Sponsor, and the individual or individuals named above, hereinafter called the Tenant or Resident.

WITNESSETH:

WHEREAS, the Sponsor operates the Residence listed above, hereinafter referred to as La Grange Pointe; and

WHEREAS, Tenant has applied for and has been accepted as a Tenant of La Grange Pointe, all on the terms and conditions stated herein, and is paying the Accommodation Fee shown above as provided in this Agreement;

NOW, THEREFORE, in consideration of the Tenant's payment of the Monthly Rental as provided herein, and Tenant's observance of the terms hereof, the Sponsor agrees to furnish to the Tenant at La Grange Pointe the accommodations and services described herein during the Term of this Agreement, as follows:

5-A-55

1. ACCOMMODATION FEE, AND MONTHLY CHARGES

(a) The Tenant agrees to pay an Accommodation Fee in the amount of \$ _____ for the apartment designated above, payable upon execution to this Agreement, receipt of which are hereby acknowledged by the Tenant, which payment is non-refundable except as hereinafter provided. In the event that the apartment is not completed and ready for occupancy within _____ months of the date of this Agreement, the Accommodation Fee shall be refunded.

(b) A Monthly Rental of \$ _____ shall be paid by the Tenant at the beginning of each month, or such larger or smaller amount per month as may from time to time be determined to be necessary by the Sponsor. The Sponsor reserves the right from time to time to change or adjust the Monthly Rental to meet the financial needs of financing and operating La Grange Pointe and providing the service specified, provided however that said adjustments shall not in any twelve month period exceed the greater of (i) 10%, or (ii) the increase in Cost of Living as measured by the Consumer Price Index. The sponsor will give thirty days notice in writing prior to any such increase.

2. SERVICES AND FACILITIES TO BE PROVIDED

In addition to occupancy and use of the apartment designated above during the term of this Agreement, the following services and facilities will be provided the Tenant:

- (a) Trash pick-up and sewer and water fees.
- (b) Air conditioning and heating of the common areas.
- (c) Building and grounds maintenance service.
- (d) Stove, refrigerator and garbage disposal in kitchen and individually controlled heating and air-conditioning units in the apartment.
- (e) Use of recreational and common areas.
- (f) Laundry hook-up.
- (g) Weekly housecleaning. (Approximately one hour)
- (h) Emergency call system.
- (i) Scheduled transportation.

The Sponsor will endeavor to make available through third parties those additional services listed on Schedule A. Such services will be charged for separately. No

5-A-56

assurances can be given that such additional services will be available or that, if available, such services will be available without interruption or at favorable rates.

3. CHARACTER OF TENANCY

(a) NATURE OF TENANCY. The privilege of occupying an apartment unit shall continue throughout the term of this Agreement, unless canceled in a manner provided in this Agreement. The tenancy privilege shall be for the Tenant only and shall not inure to the use or benefit of the heirs, assignees or representatives of Tenant, nor may Tenant assign or sublet an apartment unit, and any attempted assignment or subletting shall be void. If a Tenant marries a spouse who is not a Tenant and who desires to reside in La Grange Pointe, such spouse shall be required to apply for tenancy, and if meeting the qualifications therefore, upon acceptance to pay and required admissions or continuing fees applicable to joint tenants.

THE TENANT UNDERSTANDS THAT OCCUPANCY IN LA GRANGE POINTE IS LIMITED TO PERSONS ABLE TO CARE FOR THEMSELVES AND THAT THE SPONSOR HAS NO RESPONSIBILITY FOR THE HEALTH OR CARE OF THE TENANT.

(b) ABSENCES, VACATIONS, ETC. Tenant is free to leave La Grange Pointe for visits, trips and vacations; provided, however, that Tenant shall continue to be responsible for the Monthly Rental during any trips or vacations, or while confined in a hospital, until this Agreement shall be terminated.

(c) INDEMNIFICATION. The Sponsor shall not be liable for, and Tenant agrees to and does hereby indemnify, defend and hold the Sponsor harmless from claims, damages or expenses resulting in any injury or death to persons and any damage to property caused by, resulting from, attributable to, or in any way connected with, the negligent or intentional act or acts or omission to act of Tenant.

(d) NO LIMITATION. Nothing herein shall be deemed to limit the ability of the Sponsor, and the Sponsor specifically reserves the right, to lease or otherwise make apartment units in La Grange Pointe available to others by means other than this Tenancy Agreement on such terms as the Sponsor determines.

5-A.57

4. OBLIGATIONS OF THE TENANT

The Tenant agrees as follows:

(a) To pay the Monthly Rental on the Date of Entrance and on the first day of each and every month thereafter during the term of this Agreement and to pay such other charges as are provided for herein. The Monthly Rental shall be prorated over any partial months.

(b) To certify to the Sponsor annually in writing that Tenant is able to care for himself or herself and to keep on file with the Sponsor a current Designation of Physician and Personal Representative, and on request of the Sponsor to cause Tenant's physician to furnish the Sponsor with summarized medical findings, to secure a medical examination at least once a year, and on request of the Sponsor, to cause the examining physician to provide the Sponsor with a report of his findings.

(c) To abide by and conform to the rules, policies and principles for the operation of La Grange Pointe, as they now exist or as they may hereafter be established or changed by the Sponsor for the welfare of all concerned.

(d) That the Tenant's age, application papers, statement of finances, medical forms, health history and reference reports are a part of this Agreement, and any misrepresentation or material omission shall render this Agreement voidable at the option of the Sponsor.

(e) That the Sponsor shall not be responsible for the loss of any property belonging to the Tenant, due to theft or any other cause; that neither the Sponsor, nor the management, administration or staff thereof are guarantors or insurers of the health or safety of Tenant and that Tenant assumes all responsibility for his or her own medical care.

(f) That Tenant shall not have any kind of pet in La Grange Pointe without the Sponsor's prior written consent and payment of such additional amounts as the Sponsor may require.

(g) Upon termination of this Agreement, to promptly and peacefully vacate La Grange Pointe, removing all of Tenant's possessions located therein.

5-A.58

5. TERM AND TERMINATION

(a) The Term of the Agreement shall commence on the date the apartment unit is available for occupancy and end upon the vacation of the unit by the Tenant along with the Tenant's belongings (in the case of dual occupancy, the vacation of the surviving Tenant), or when sooner terminated as provided herein. Upon death of the Tenant or death or vacation of the surviving Tenant, the monthly charge shall be made for each month or partial month until the apartment unit is fully vacated for up to a maximum of three months after which time this Agreement shall terminate absolutely.

(b) This Agreement may be terminated by Tenant at any time and for any reason on ninety (90) days written notice, but no such termination shall be effective while Tenant is occupying an apartment at La Grange Pointe.

(c) This Agreement may be terminated by the Sponsor at any time in the event that Tenant fails to pay the Monthly Rental or violates any of the terms of this Agreement in any respect and such failure or violation continues after thirty (30) days written notice to the Tenant.

(d) In the event notice of termination is given under (b) or (c) above, this Agreement shall not terminate until the end of the applicable notice period except by mutual consent, in writing, by the Sponsor and the Tenant. Until such termination, the Tenant shall be charged the Monthly Rental, together with such amount as will cover any other expenses incurred on behalf of the Tenant.

(e) If any time the Sponsor, in its sole discretion, after consulting with Tenant's physician and/or family shall consider Tenant's continued occupancy in La Grange Pointe undesirable or detrimental to La Grange Pointe, Tenant or other Tenants of La Grange Pointe, or deems Tenant's physical or mental condition to be such as to require care or services not offered at La Grange Pointe, the Sponsor may terminate this Agreement without prior notice, and on such termination the monthly charge will cease, or in lieu of such termination, the Sponsor may on request permit Tenant to reside temporarily in a hospital, nursing home or other residence at Tenant's cost and expense, during which time the Monthly Rental shall continue.

5-A.59

6. DUAL OCCUPANCY

(a) If the apartment is to be occupied by two persons, both such persons shall execute this Agreement and each shall be considered a Tenant hereunder so as to be jointly and severally liable for the observance of this Agreement and for the payment of all charges hereunder.

(b) In the event of the death of one of the Tenants occupying an apartment, this Agreement shall remain in effect as to the other tenant with the Monthly Rental adjusted to the single rate.

(c) In the event of voluntary termination by either Tenant or termination for cause by the Sponsor, and on request of the other Tenant, the Sponsor shall permit this Agreement to remain in effect as to one Tenant only, with appropriate adjustments to the Monthly Rental.

7. STORAGE AND LOSS OF PERSONAL PROPERTY

(a) **STORAGE OF PROPERTY OF TENANT.** The Sponsor shall have the right to remove and store all personal property of a Tenant who has died or permanently left La Grange Pointe, or a Tenant who for medical reasons is no longer able to occupy an apartment unit in La Grange Pointe. The Sponsor shall safeguard such property until released to the Tenant or a third party authorized by the Tenant, or to the legal representative of Tenant or Tenant's estate. A reasonable charge for such storage may be made by the Sponsor for such storage. Upon termination of the Agreement, Tenant or Tenant's representative shall remove any stored property within 90 days after which time the Sponsor shall have no responsibility with respect thereto and may dispose of such property as it sees fit.

(b) **LOSS OF PROPERTY.** Other than for property stored pursuant to subparagraph (a) above, Sponsor shall not be liable for loss or theft of a Tenant's property or for any casualty loss to Tenant's property whether fire, flood, earthquake or other casualty and Tenant shall be responsible for insuring all of tenant's property.

5-A.60

8. SUBORDINATION TO FINANCING

The Tenant agrees that his/her rights under this Agreement shall at all times be subordinate and junior to the lien of all deeds of trust or mortgages covering the real estate known as La Grange Pointe. Upon request, Resident agrees to execute, acknowledge and deliver to the Sponsor's lenders written evidence of such subordination.

9. ACKNOWLEDGEMENT OF ASSIGNMENTS AND LIENS AND SUBORDINATION OF RIGHTS

The Tenant understands that the Sponsor has received loans for the purpose of purchasing the land and constructing La Grange Pointe. To secure these loans Sponsor has granted security interests in La Grange Pointe. If Sponsor fails to meet its obligations to the lending institution, it may foreclose upon La Grange Pointe and lending institution or a purchaser at foreclosure will become the new owner of La Grange Pointe. Upon such a foreclosure, lending institution or such purchaser would be under no obligation to continue to act as sponsor and could terminate your occupancy agreement; provided that lending institution or purchaser has agreed with Sponsor that in such event the lending institution or purchaser will give you at least 30 days notice of such termination.

I have read and understand, and have discussed any part of this Acknowledgment of Assignments and Liens and Subordination of rights which I do not understand with my counsel and/or family, and I agree that my rights under my Occupancy Agreement are subject to the limitation expressed above.

10. MISCELLANEOUS

(a) PARTIAL INVALIDITY. The invalidity of any restriction, condition, or other provision of this Agreement, or any part of the same, shall not impair or affect in any way the validity, enforceability, or effect of the rest of this Agreement.

(b) OTHER OCCUPANT. No person other than the Tenant or Tenants entering into this Agreement may occupy the accommodations covered by this Agreement, except for temporary overnight stays by family and friends.

5-A.61

(c) SUCCESSOR RESIDENTS. Upon notice of termination of this Agreement, the Sponsor shall make reasonable efforts to secure a new resident for the living unit referred to in this Agreement. If, at such time, other apartment units in La Grange Pointe are vacant, the Sponsor shall be required to devote equal, but not greater, efforts to secure a new resident for the living unit referred to in this Agreement. The Sponsor shall have no obligation to secure a new resident for any particular living unit before any other living units.

(d) NO CONTINUING CARE. This Agreement is not what is legally or commonly referred to as "Life Care" or "Continuing Care".

(e) AMENDMENT. No amendment between the parties hereto is valid unless contained in writing executed by Sponsor and the Tenant.

(f) BENEFIT AND ASSIGNMENT. This Agreement shall be binding upon the Tenant and the heirs, executors, administrators of the Tenant and shall inure to the benefit of and be binding upon the Sponsor, its successors and assigns. The occupancy benefits of a Tenant, however, shall be expressly non-assignable.

(g) The use of the singular and any particular gender shall include the appropriate number and gender as the context requires.

By: MIDCO LAGRANGE, LLC
Managing Partner

BY: _____
Name, Title **Date**

THE UNDERSIGNED RESIDENT(S) HAS (HAVE) READ AND UNDERSTAND(S) THE FOREGOING AGREEMENT, AND HAS (HAVE), TO THE EXTENT DEEMED NECESSARY, CONSULTED COUNSEL OR OTHERS DEEMED APPROPRIATE WITH RESPECT TO ANY QUESTION CONCERNING THE FOREGOING AGREEMENT.

RESIDENT: _____ **DATE:** _____
RESIDENT: _____ **DATE:** _____
WITNESS: _____ **DATE:** _____

5-A.62

Schedule A

Additional Services

1. Personal Assistance (ie, shopping, ect.)
2. A flexible meal program in the restaurant consisting of reduced prices for residents
3. Educational and recreational programs
4. Personal laundry, dry cleaning service
5. Tray service to the room when approved by the manager and a physician
6. Handyman Service
7. Non-scheduled transportation service
8. Car washing and cleaning
9. Grocery delivery

5-A.63

OPERATING AGREEMENT FOR IRED LAGRANGE.

**OPERATING AGREEMENT
OF
IRED LAGRANGE , L.L.C.**

OPERATING AGREEMENT FOR IRED LAGRANGE.

5-A.64

THE MEMBERSHIP INTERESTS DESCRIBED IN THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY JURISDICTION. THESE INTERESTS MAY NOT BE SOLD OR OTHERWISE DISPOSED OF, OR OFFERED FOR SALE OR OTHER DISPOSITION, UNLESS A REGISTRATION STATEMENT UNDER THOSE LAWS WITH RESPECT TO THE MEMBERSHIP INTERESTS IS THEN IN EFFECT OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS IS THEN APPLICABLE TO THE MEMBERSHIP INTERESTS, AND UNLESS THE PROVISIONS OF ARTICLE VII OF THIS AGREEMENT ARE SATISFIED.

OPERATING AGREEMENT

OF

IRED LAGRANGE, L.L.C.

THIS OPERATING AGREEMENT is made and entered into as of _____, 2006, by and among Inland Development Ventures, L.L.C., an Illinois limited liability company ("IRED") and Joseph R. Rizza, David Bossy, Firson Investment & Development Company, L.L.C., Timothy Flanagan, and HPD Cambridge, Inc. ("HPD")

RECITALS:

WHEREAS, the Company is purchasing the vacant land in LaGrange, Cook County, Illinois, containing approximately .69 acres located at 93 South LaGrange Road, LaGrange, Illinois and described on Exhibit AA@attached hereto and made a part hereof (herein defined as AProperty"); and

WHEREAS, the Members have substantial expertise in land planning and development, construction, marketing and management of real estate, and desire to acquire and develop the Property pursuant to the terms of this Agreement; and

WHEREAS, the parties hereto desire to create a limited liability company for the purposes hereinafter set forth;

5-A.65

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

Unless the context otherwise requires, the terms defined below shall, for purposes of this Agreement, have the meanings specified:

- (a) "Act" means the Illinois Limited Liability Company Act, as amended from time to time (or any corresponding provisions of succeeding law).
- (b) "Affiliate" means, with respect to any Person, any Person controlling, controlled by, or under common control with the Person in question, where Acontrolling, Acontrolled and Acontrol mean the possession of the power, directly or indirectly, to direct the management of a Person whether through ownership of voting securities, by contract, or otherwise.
- (c) "Agreement" means this Amended and Restated Operating Agreement as originally executed and as amended from time to time.
- (d) "Articles" means the Articles of Organization of the Company, as originally filed with the Secretary of State of the State of Illinois prior to the date of this Agreement, and as amended from time to time.
- (e) "Available Cash" means all cash and cash equivalents of the Company on hand at any time, less such cash reserves as the Manager deems reasonably necessary for working capital and to meet any other foreseeable cash needs of the Company.
- (f) "Business Day" means any day (determined by reference to Chicago time), other than Saturday, Sunday or a day banks are authorized or required to be closed in Chicago, Illinois.
- (g) "Capital Account" shall mean, for a Member, the capital account established and maintained for the Member under Section 3.4.
- (h) "Capital Contribution" means, with respect to any Member, the total amount of money and the fair market value of property or property interests (net of liabilities secured by such property that the Company assumes or takes subject to) which is contributed to the Company by or on behalf of such Member or a predecessor holder of the Membership Interest of such Member.
- (i) "Code" means the Internal Revenue Code of 1986, as amended from time to time (or corresponding provisions of succeeding laws).
- (j) "Company" means IRED LAGRANGE, L.L.C. , an Illinois limited liability company

5-A-66

formed under the Act pursuant to the Articles and this Agreement

(k) "Contract" shall have the meaning set forth in the Recitals.

(l) "Disability" means, with respect to any Person on any date, (i) a state or condition of incapacity or, through illness, age or similar cause, an inability to give reasoned consideration to business or financial matters, from which state or condition such Person is not expected to recover for a period of not less than 12 months, or (ii) a failure by such Person to work on a full business time basis for a period of 12 consecutive months by reason of incapacity, illness, age, or similar cause.

(m) "Effective Date" means the later of (i) the date on which the Articles have been filed with the Illinois Secretary of State and (ii) the date on which all the parties have executed a counterpart of this Agreement

(n) "Fiscal Year" means the Company's fiscal year, which shall be the calendar year unless otherwise required by law.

(o) "Manager" means the Person appointed the Manager in accordance with the relevant provisions of Article V.

(p) "Member Loan" means a loan from a Member to the Company made in accordance with Section 3.3(b).

(q) "Membership Interest" means a Member's economic rights in the Company, including the Member's share of Net Profits and Net Losses and the right to receive distributions of the Company's assets.

(r) "Members" mean the undersigned and the Persons who subsequently acquire a Membership Interest and are admitted to the Company as Members as provided in this Agreement, but does not include any Person who has ceased to own a Membership Interest, and AMember@ means any one of the Members.

(s) "Net Profits" and "Net Losses" means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, adjusted in the manner described in the Regulations promulgated under section 704(b) of the Code.

(t) "Other Members" shall mean all Members other than IRED.

(u) "Percentage Interest" means, in the case of any Member, the percentage set forth under the heading APercentage Interest@ opposite the Member's signature.

(v) "Person" means any individual, corporation, governmental agency or authority, limited liability company, partnership, trust, unincorporated association or other entity.

(w) "Phase" means all or any portion of the Property for which a plat of subdivision or development agreement has been approved by the Village of LaGrange and/or the County of

Cook or for which all hearings on a final plat of subdivision and/or development agreement have been held and approval of such plat of subdivision or development agreement is pending.

(x) "Property" shall have the meaning set forth in the Recitals and shall include all improvements, additions, replacements, and renewals thereof or thereto, all easements and any and all other rights appurtenant thereto, and all personal property owned by the Company.

(y) "Regulations" means the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.

(z) "Transfer" means any sale, transfer, assignment, exchange, gift, encumbrance, pledge, mortgage or other hypothecation or disposition, whether voluntary, involuntary, or by operation of law.

(aa) "Transferee" means any Person who acquires a Membership Interest in accordance with this Agreement.

ARTICLE II

ORGANIZATION

2.1. Formation. The parties hereto agree to form and do hereby form the Company as a limited liability company under the provisions of the Act and upon the terms and conditions, and for the limited purposes and scope, set forth in the Articles and this Agreement. The rights and duties of the Members shall be as provided in the Act, except as modified by this Agreement.

2.2. Name. The name of the Company is "IRED LAGRANGE , L.L.C. "

2.3. Purpose. The purpose of the Company is to (i) acquire, annex, zone, subdivide, improve, develop, maintain, operate, manage, lease, mortgage, sell, exchange and otherwise use and deal in and exercise control over the Property and (ii) subject to the Act, conduct such other business and engage in such other activity as the Manager may determine. The Company shall have all of the powers necessary to accomplish the purposes for which it was formed and which may be exercised legally by a limited liability company under the Act.

Notwithstanding the foregoing, for as long as the Property is encumbered with a loan ("Loan") from FIRST DUPAGE BANK, its successors or assigns, the purpose of the Company shall be limited to the acquisition, zoning, development, operation, management, refinancing and disposition of the Property, and such purposes shall not be amended without the prior written consent of FIRST DUPAGE BANK, its successors or assigns. The Company covenants:

(a) To maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity;

(b) To conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;

(c) To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities;

(d) Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, Members or shareholders;

(e) Not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;

(f) Not to enter into any contract or agreement with any party which is directly or indirectly controlling, controlled by or under common control with a Member (an "Affiliate"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Affiliate, and except for the Member Loans as described in Sections 3.3 (b) (ii) and (iii) of this Agreement;

(g) None of the Manager, any Member nor any constituent party of the Manager or a Member will seek the dissolution or winding up, in whole or in part, of the Company, nor will the Company merge with or be consolidated into any other entity;

(h) The Company has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of the Company, any Affiliate, the Guarantors or any other person;

(i) The Company now has and will hereafter have no debts or obligations other than the Member Loans described in Sections 3.3 (b) (ii) and (iii) of this Agreement and other than normal accounts payable in the ordinary course of business, the indebtedness to the Lender, the Loan; and any other indebtedness or other obligation of the Company has been paid in full prior to or through application of proceeds from the funding of the Loan.

2.4. Registered Office; Principal Place of Business. The address of the registered office and the name and address of the registered agent of the Company in the State of Illinois shall be as set forth in the Articles, as the same may be amended from time to time by the Manager. The principal place of business of the Company shall be located at 2901 Butterfield Road, Oak Brook, Illinois 60523, or at such other place as the Manager may determine. The Company may maintain such additional offices at such places as the Manager may hereafter determine. The Manager may

5-A.69

from time to time in its discretion change the location of the Company=s principal place of business and of any other office of the Company, subject to compliance with any procedures required by the Act and, with respect to the Company=s principal place of business, on notice to all the Members.

2.5. Term. This Agreement shall be effective on the Effective Date. Unless the Company is dissolved earlier under Section 8.1, the Company shall continue in existence until the close of business on December 31, 2036; provided, however, that the Manager may, with the written approval of all of the Members, extend the term of the Company for such period as it may determine to be necessary to facilitate the orderly liquidation of the Company=s assets.

2.6. Limited Liability. A Member shall not be personally liable for any of the debts, liabilities, contracts, or any other obligations of the Company. A Member will be liable only to pay to the Company the amount of its required Capital Contribution in accordance with the terms and conditions of this Agreement. In accordance with the Act, but not otherwise, a Member may under certain circumstances be required to return to the Company, for the benefit of Company creditors, amounts previously distributed to him as a return of capital. A Member shall not be required to restore a deficit balance in its Capital Account upon or following the dissolution of the Company or the Transfer of its Membership Interest.

ARTICLE III

MEMBERS; CAPITAL AND LOANS

3.1. Members. IRED, Joseph R. Rizza, David Bossy, Firson Investment & Development Company, L.L.C., Timothy Flanagan and HPD are the sole Members of the Company. The Percentage Interest of each Member is set forth opposite the name of the Member on the signature page of this Agreement. The Company may not admit additional Members without the consent of all the Members.

3.2. Capital Contributions.

(a) It is the intent of the Company to borrow money from various lenders including Inland Group Lenders (hereinafter defined) to fund the marketing, development, construction, maintenance, repair, replacement and sale of all improvements on the Property.

(b) Exhibit "A" lists the Capital Contributions of the members thereon.

(c) All of the members agree IRED's Capital Contribution shall be \$ _____ plus all payments made to pay all costs and expenses, including debt service cost and expenses of the Property incurred , after April 30, 2006 through the date of the acquisition of the Property by the Company, which amount shall be certified to the Members by IRED at the time of the acquisition of the Property and the certification shall be attached to this ated Operating Agreement as evidence of IRED's Capital Contribution to the Company.

(d) Except as provided in this Agreement or as the Members may agree, no Member shall have any obligation to make additional Capital Contributions to the Company unless

5-A.70

otherwise expressly provided in this Agreement. The Capital Contributions of the Members may be borrowed funds, but such loans may not be secured by liens against the Property.

3.3. Additional Capital Requirements.

(a) It is acknowledged by the Members that the Company will require working capital to fund its day to day operations, and it is agreed that to the extent possible, such working capital shall be first funded out of the income of the Company.

(b) If the Manager determines at any time that the Company requires additional funds in excess of the Company=s income, then:

- (i) The Company shall first use its reasonable best efforts to obtain one or more loans from outside sources to fund the Company=s capital requirements, it being the express intention of the Members to minimize the amount of working capital loans that can be made by IRED as hereinafter provided. Such loans and loans to obtain funds to develop the Property may be obtained from Inland Mortgage Investment Corporation, Inland Mortgage Corporation, Inland Mortgage Direct Funding Corporation or The Inland Real Estate Group, Inc., which are part of The Inland Real Estate Group of Companies, Inc. (collectively referred to as the "Inland Group Lenders"). IRED or an Affiliate may guaranty loans to the Company, other than loans made by IRED.
- (ii) Subject to the provisions of (i) above, IRED may, from time to time as necessary, provide loans to the Company to fund all working capital necessary to (a) pay all debt service on the loans described in (i) above, and (b) fund the day to day operating expenses of the Company, and/or (c) fund all equity requirements, including, but not limited to, construction loan equity requirements and/or long term debt equity requirements, if any. All such loans, as and if and when advanced by IRED, shall (A) be evidenced by one or more promissory notes; (B) shall bear interest at a rate of fifteen percent (15%) per annum, compounded quarterly, from the date advanced to the date repaid; (C) may be secured by a mortgage, deed in trust or security interest on the Company=s Property (subject to the Company=s obligations under any loan agreements with other lenders); and (D) shall be repaid only out of the assets of the Company prior to any distributions to any of the Members. IRED=s right to make loans to the Company under this Section 3.3 shall terminate in the event IRED becomes dissociated from the Company.
- (iii) Subject to the provisions of (i) above, if IRED has failed to provide sufficient working capital to the Company as is permitted by the

provisions of paragraph (ii) above, then HPD may provide IRED with a written request (which request states the amount, purpose and need for the working capital) to so provide such working capital, and if IRED does not provide such working capital within 30 days of receipt of such written request from HPD and IRED does not dispute the need for such working capital, HPD shall be entitled, but not required, to provide a loan or loans to the Company to fund the amount of working capital specified in HPD's written request to IRED. All such loans, as and when advanced by HPD, shall (A) be evidenced by one or more promissory notes; (B) bear interest at a rate of fifteen (15%) per annum, compounded quarterly, from the date advanced to the date repaid; (C) shall be repaid only out of the assets of the Company prior to any distributions to any of the Members. HPD's right to make loans to the Company under this Section 3.3 shall terminate in the event HPD becomes dissociated from the Company.

(c) All loans to the Company by IRED and HPD under this Section 3.3 shall be deemed and treated as loans for all purposes, and not as Capital Contributions. IRED and HPD may borrow the funds used to make the loans to the Company, but such loans shall not be the responsibility or liability of the Company.

3.4. Capital Accounts.

(a) A separate Capital Account shall be established and maintained for each Member in accordance with this Section 3.4. Each Member's Capital Account shall be increased by (i) the amount of the Capital Contributions made by such Member to the Company and (ii) the amount of Net Profits allocated to such Member under Article IV; and shall be decreased by (iii) the amount of money and the fair market value of property (net of liabilities secured by such property that such Member assumes or takes subject to) distributed to such Member by the Company after the date of this Agreement and (iv) the amount of Net Losses allocated to such Member after the date of this Agreement.

(b) The foregoing provisions, and other provisions of this Agreement relating to the maintenance of Capital Accounts and allocation of income, gain, loss, deduction and credit, are intended to comply with 1.704-1(b) and 1.704-2 of the Regulations and shall be interpreted and applied in a manner consistent with those Regulations. If the Manager determines that it is prudent to modify the manner in which Capital Accounts, or any debits or credits thereto, are computed in order to comply with those Regulations, the Manager may make such modification provided that such modification is not likely to have a material effect on the amount distributable to any Member under this Agreement.

3.5. No Withdrawal or Payment of Interest. No Member shall have the right to (a) withdraw all or any part of its Capital Contribution prior to the dissolution of the Company, (b) receive any return or interest on any part of its Capital Contribution except as otherwise provided in this Agreement, or (c) withdraw or resign from the Company except with the consent of

the Manager or by Transfer of all of its Membership Interest in accordance with the terms of this Agreement.

ARTICLE IV

ALLOCATIONS AND DISTRIBUTIONS

4.1. Allocations of Net Profits and Net Losses.

(a) As of the end of each Fiscal Year of the Company the Net Loss or Net Profit of the Company for the Fiscal Year, and each item of income, gain, loss, and deduction, shall be determined and allocated among the Members in accordance with this Article IV.

(b) Except as provided in this Agreement, the Net Profit or Net Loss of the Company for any Fiscal Year shall be allocated among the Members in such manner as will cause the Capital Account of each Member as of the end of the Fiscal Year to equal the amount of cash that would be distributable to the Member if (i) each asset of the Company were sold for an amount equal to the book value of the asset as of the end of the Fiscal Year; and (ii) the proceeds from such hypothetical sales were applied in the manner required by Section 8.2(b). For this purpose the book value of the Company's asset shall be determined in accordance with the accounting method required to compute Net Profit or Net Loss and otherwise in accordance with Regulations promulgated under section 704(b) of the Code.

(c) The allocations set forth in this Section 4.1 are intended to allocate Net Profits and Net Losses to the Members in compliance with the requirements of section 704(b) of the Code and the Regulations promulgated thereunder. If the Manager reasonably determines that the allocation of Net Profits or Net Losses for any period pursuant to the provisions of this Section 4.1 does not satisfy the requirements of section 704(b) of the Code or the Regulations thereunder (including the minimum gain and partner minimum gain chargeback requirements of ' 1.704-2 of the Regulations and the qualified income offset requirement of ' 1.704-1(b)(2)(d) of the Regulations), then notwithstanding anything to the contrary contained in this Agreement, Net Profits and Net Losses (or items included therein) shall be allocated in such manner as the Manager shall reasonably determine to be required by section 704(b) of the Code and the Regulations promulgated thereunder; provided, however, that, if the Manager exercises its authority to make such allocations, then, notwithstanding the other provisions of this Section 4.1, but subject to section 704(b) of the Code and the Treasury Regulations promulgated thereunder, the Manager shall reallocate other items of income, gain, deduction, loss, or other items included in Net Profit or Net Loss among the Members so as to cause the Members' respective separate Capital Accounts to have balances (or as close thereto as possible) they would have if Net Profit and Net Loss and all other items of income, gain, deduction or loss were allocated without reference to the allocations permitted by this Section 4.1(c).

4.2. Tax and Special Allocations.

(a) Except as otherwise provided in this Section 4.2, the Members' distributive shares of items of Company taxable income, gross income, gain, loss, deduction, and credit shall be determined according to their respective shares of Net Profits or Net Losses to which such items relate.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the Company by a Member shall be allocated among the Members in accordance with section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair value as of the date of contribution. If the book value of any Company asset is for purposes of determining the Capital Accounts of the Members pursuant to section 704(b) of the Code, subsequent allocations of items of taxable income, gain, loss and deduction with respect to such property shall take account of any variation between the adjusted book value and its book value immediately before the adjustment in the same manner as under section 704(c) of the Code. All determinations and elections under section 704(c) shall be made by the Manager.

4.3. Changes in Members' Interests. If during any fiscal period of the Company there is a change in any Member's Membership Interest as a result of the admission of one or more Members, the disassociation of a Member, or a Transfer of a Membership Interest that does not result in the termination of the Company for federal income tax purposes, the Net Profit, Net Loss or any other item allocable to the Members under this Article IV for the period shall be allocated among the Members so as to reflect their varying interests in the Company during the period, determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under section 706 of the Code and the Regulations promulgated thereunder.

4.4. Distributions of Available Cash. The Manager may cause the Company to distribute Available Cash at any time and from time to time in its discretion. All Available Cash shall be applied as follows:

- (a) First, such Available Cash shall be applied to the repayment of interest and then principal on loans described in Section 3.3(b)(i) other than Inland Group Lenders;
- (b) Second, remaining Available Cash shall be applied to the repayment of interest and then principal on loans from Inland Group Lenders;
- (c) Third, remaining Available Cash shall be applied to the repayment of first the 15% interest and then the principal on loans from IRED and HPD as described in Sections 3.3(b)(ii) and (iii), proportionately based on the sum of such loans, until all such loans have been repaid in full;
- (d) Fourth, remaining Available Cash shall be distributed to the Members in proportion to the amount of their Capital Contributions made by them pursuant to Section 3.2, until the Members have received their respective Capital Contributions under this subsection (d); and

- (e) Sixth, the remaining Available Cash shall be distributed 76% to IRED, 19% to HPD and 5% to the Other Members (except HPD) in the percentages listed on Exhibit "B" attached hereto and made a part hereof.

4.5. Right of Offset. The Company shall have the right to offset any distribution to a Member against any amount due the Company from any Member.

4.6. Property Distributions. No property of the Company shall be distributed in kind without the consent of the Members except upon the dissolution of the Company. Any in kind distribution made pursuant to this Agreement need not be proportionate among the Members, and may exclude one or more Members, as the Manager determines.

S-A, 35

ARTICLE V

MANAGEMENT OF THE COMPANY'S BUSINESS AND AFFAIRS

5.1. Management Authority.

(a) Subject to Section 5.1(b) and (e), management of the business and affairs of the Company shall be vested in the Manager, which shall have exclusive authority to act for and bind the Company in all matters. The Manager shall have all rights, powers, and authority of a Manager under the Illinois Act and otherwise under applicable law and as provided for in this Agreement. Unless the vote, consent or approval of the Members is required by the terms of this Agreement or by the Act, the Manager shall have all right, power and authority to do for, on behalf of, and in the name of the Company, all things that the Manager deems necessary, proper, or desirable to carry out their duties and responsibilities. Without limiting by implication the generality of the foregoing, the Manager shall have all right, power, and authority to cause the Company:

(i) To acquire by purchase, exchange, lease or otherwise, property of every kind, character and description, wherever located and interests therein, of every kind or nature, including (without limitation) the Property;

(ii) To take all actions necessary to obtain all necessary permits, approvals and governmental authorizations and actions including but not limited to annexation, zoning (or rezoning), P.U.D. approvals, plat approvals, and E.P.A. approvals and permits, and building permits to develop the Property and possibly construct the improvements thereon in accordance with the plans and specifications therefor, which shall be approved by the Manager, and all on-site and off-site improvement work necessary to fit the Property for development and construction in accordance with such contracts and agreements for such work as shall be approved by the Manager;

(iii) To take all actions necessary to obtain all other requisite governmental approvals for all necessary re-zoning, subdivision, annexation, platting, improvement, or development of any land acquired by the Company, including the Property, in accordance with plans therefor approved by the Manager; and to sell or dispose of, in any manner and at such times as the Manager shall deem fit, any property owned by the Company;

(iv) To borrow money for the Company from banks and other lending institutions, including the Members or affiliates of the Members or Manager, on such terms as it deems appropriate; in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums; and to increase, extend, or refinance any mortgage loan secured by the Property; and

(v) To grant any other interests in or rights to the Property including, but not limited to, any encumbrance or hypothecation thereof or easements, leases, licenses, or other interests therein;

(vi) To construct on behalf of the Company any improvements (provided such improvements are approved by the Manager);

(vii) To develop marketing plans, price schedules, rental schedules, and sales programs on behalf of the Company, all of which shall be approved in advance by the Manager;

(viii) To purchase liability and other insurance as may be necessary, convenient, or incidental to the protection of the Company=s property or business or to the accomplishment of the purposes of the Company;

(ix) To vote or give proxies to vote any stock or other security; to exercise management rights as Managers or members of another limited liability company or as a general partner of a partnership; to participate in the management or conduct of any business; to participate in any incorporation, organization, reorganization, merger, consolidation, recapitalization, liquidation or dissolution of any business or any change in its nature; to invest additional capital in any business by subscribing to or purchasing additional stock, securities or other interests of any business; and to execute any organizational, buy-sell, stock restriction or other similar agreements;

(x) To execute on behalf of the Company all instruments and documents, including, without limitation, annual or other periodic reports and other filings required to be made to the Illinois Secretary of State or other governmental entities; checks, drafts, notes and other negotiable instruments; mortgages or deeds of trust, security agreements, and financing statements; documents providing for the acquisition, mortgage or disposition of the Company=s property, assignments, bills of sale, and leases; partnership, limited liability company, and operating agreements; and any other instrument or document necessary, convenient, or appropriate, in the opinion of the Manager, to the business of the Company;

(xi) To employ and compensate employees, agents, and professionals, including (without limitation) accountants, legal counsel, investment advisors, managing agents, engineers, surveyors, land planners, soil consultants, drainage specialists and other professionals (any of which, subject to Section 5.3, may be shareholders, directors, officers and/or employees of the Manager and/or its affiliates) to perform services for the Company, and to define their duties and authority, which may include authority granted to the Manager under the Act; to compensate them from Company funds; and to cause the same to be the employees or agents of the Manager rather than of the Company if the Manager determines such manner of retention and compensation is in or not opposed to the best interests of Company;

(xii) To purchase or decline to purchase on behalf of the Company Membership Interests offered or owned by any dissociated Member pursuant to Section 7.3; and

(xiii) To bring or defend any actions at law on in equity on behalf of the Company;

(xiv) To do and perform all such other things as may be necessary, convenient, or appropriate to the conduct of the Company=s business and not prohibited by this Agreement or the Act or reserved by the terms of this Agreement for the unanimous action or consent of the Members.

(b) Without limiting the generality of the foregoing, the Manager may revocably delegate all or any portion of the power and authority granted to him under this Agreement or the Act, including any power requiring the exercise of discretion, to any one or more Persons (including any Members or any Affiliate of a Member or the Manager), and any action taken by such Person pursuant to such delegation shall be deemed to be the act of the Manager.

(c) All determinations, acts, and designations to be made hereunder by the Company shall be made by the Manager and shall be final and binding on the Company and the Members. No Person shall be required to inquire into, and Persons dealing with the Company are entitled to rely conclusively on, the right, power and authority of the Manager to bind the Company. Every contract, deed, mortgage, lease and other instrument executed by the Manager shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that at the time of the delivery thereof: (x) the Company was in existence, (y) neither this Agreement nor the Articles has been amended in any manner so as to restrict the delegation of authority to the Manager hereunder; and (z) the Manager was duly authorized to execute and deliver the instrument. Any Person dealing with the Company or the Manager may rely upon a certificate signed by the Manager as to (i) the identity of any Member; (ii) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Manager or in any other manner germane to the affairs of the Company, or (iii) the identity of Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company.

(d) Except as expressly provided in this Agreement or the Act, no Member who is not also a Manager shall have any right to participate in, or have any power or authority over the management or control of, the business or affairs of the Company or to act for or bind the Company.

(e) Notwithstanding anything to the contrary in this Section 5.1, without the consent of all the Members the Manager may not:

- (i) Take any action in contravention of this Agreement or the Act;
- (ii) Take any action that would make it impossible to carry on the business of the Company;
- (iii) Take any action that would subject any Member to liability for the liabilities, debts, or obligations of the Company in any jurisdiction;
- (iv) Confess a judgment against the Company;
- (v) possess Company property, or assign its rights in specific Company property, for other than a Company purpose; or
- (vi) admit any Person as a Member, except as provided in this Agreement;

5-A.78

5.2. Manager. There shall be one (1) Manager, which shall be IRED. The Manager may not be removed. The Manager may resign at any time by giving written notice to all the Members. The resignation of the Manager shall take effect ten (10) Business Days after receipt of notice thereof or at such later time as shall be specified in such notice, and the acceptance of such resignation shall not be necessary to make it effective. In the event of a vacancy in the office of the Manager, IRED shall appoint a successor Manager.

5.3. Transactions with Affiliates. Except as expressly provided herein, the Company may enter into transactions or agreements with the Manager, any Member, or any Affiliate of the Manager or any Member, provided such transactions or agreements are upon terms no less favorable to the Company than would be obtained by the Company in a comparable arm's length transactions with unaffiliated Persons.

5.4. Exculpation. To the fullest extent permitted under applicable law, neither the Manager nor a shareholder, partner, member, employee, trustee or agent of the Manager, shall be deemed to violate this Agreement or be liable, responsible or accountable in damages or otherwise to any Member or the Company for any action or failure to act, unless such violation or liability is attributable to such Person's bad faith. Without limiting the generality of the foregoing, each such Person shall, in the performance of his, her or its duties, be fully protected in relying in good faith upon the records of the Company and upon information, opinions, reports or statements presented to such Person by the Manager or by any Person selected by the Manager as to matters such Manager believes in good faith are within such other Person's professional or expert competence.

5.5. Indemnification. To the fullest extent permitted under applicable law, the Company shall indemnify and hold harmless the Manager, and any shareholder, partner, member, employee, trustee or agent of the Manager (each, an Indemnified Party) who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Company) by reason of or arising from any acts or omissions (or alleged acts or omissions) on behalf of the Company or in furtherance of the interests of the Company arising out of the Indemnified Party's activities as Manager, or as an officer, director, shareholder, member, partner, employee, trustee or agent of said Manager, against losses, damages or expenses (including attorneys' fees, judgments, fines and amounts paid in any action, suit or proceeding and for which such Indemnified Party has not otherwise been reimbursed), so long as such Indemnified Party did not act in bad faith. The termination of any action, suit or proceeding by judgment, order, settlement or upon a plea of *nolo contendere* or its equivalent shall not of itself (except insofar as such judgment, order, settlement or plea shall itself specifically provide) create a presumption that the Indemnified Party acted in bad faith.

5.6. Other Activities. Neither the Manager nor any of its employees or agents shall be required to manage the Company as its sole and exclusive function, and each such Person may have other business interests and may engage in other activities in addition to those relating to the Company. Except as set forth herein, neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in other investments or activities of the Manager or to the income or proceeds derived therefrom.

5-A.79

5.7. **Company Expenses.** The Company shall pay (or reimburse the Manager and the Members for) all legal, accounting, and other fees and expenses (including expenses incurred in connection with the formation of the Company) reasonably incurred in connection with the organization of the Company or the operation or management of its business and affairs.

5.8 **Legal Counsel.** The Manager shall select from time to time the attorney(s) that shall represent the Company. Such attorneys may include attorneys employed by The Inland Real Estate Group, Inc. law department or by IRED (collectively "TIREG-Law") and the TIREG-Law attorneys shall be entitled to charge their respective hourly fees then in effect from time to time. The Members and the Company hereby acknowledge that TIREG-Law has, does and will represent IRED in connection with the Company, has, does and will represent Affiliates of IRED in other matters, some of which may compete with the business of the Company and/or Other Members. Each Other Member, on behalf of itself and its Affiliates, and the Company hereby waives any conflict of interest existing or arising from TIREG-Law's representation of the Company.

ARTICLE VI

BOOKS OF ACCOUNT, RECORDS AND REPORTS

6.1. **Books of Account.** The Manager shall cause the Company to maintain full and accurate books and records at Manager's principal place of business, showing all receipts and expenditures, assets and liabilities, profits and losses, and all other matters required by the Act. The books and records of the Company shall be open to the reasonable inspection and examination of each Member in Person or by its duly authorized representative at any time during regular business hours for any purpose reasonably related to such Member=s Membership Interest.

6.2. **Information; Reports.** Any Member may obtain from the Company from time to time, upon reasonable demand for any purpose reasonably related to such Member=s Membership Interest, (i) true and full information regarding the state of the business and financial condition of the Company and any other information regarding the affairs of the Company, and (ii) promptly after becoming available, a copy of the Company=s federal, state and local income tax returns for each Fiscal Year.

6.3. **Bank Accounts.** All funds received by the Company shall be deposited in the name of the Company in such checking and savings accounts, time deposit or certificates of deposit, or other accounts or instruments at such financially sound and insured commercial banks, savings banks and savings and loan institutions as may be designated by the Manager, with one or more signatories appointed by the Manager.

6.4. **Tax Returns.** The Manager shall cause all required tax returns of the Company to be prepared and filed and furnish to each Member the information reasonably required to enable the

5-A-80

Member to properly report its distributive share of Company income, gain, loss, deduction or credit for federal, state and local income tax reporting purposes in a timely fashion.

6.5. Tax Matters Partner. IRED shall be the Atax matters partner@ pursuant to section 6231 of the Code. In the event of an audit of the Company=s federal income tax return, the tax matters partner shall promptly advise all Members of the audit and provide each Member with a copy of any final administrative adjustment resulting from such audit.

6.6. Tax Elections. Except as provided herein, the Manager may make any and all elections for federal, state and local tax purposes and the Manager shall make a timely election under section 754 and comparable provisions of state or local law upon its decision to do so.

ARTICLE VII

TRANSFERS OF MEMBERSHIP INTERESTS; DISSOCIATION AND BUY OUT

7.1. Restrictions on Transferability.

(a) Except as otherwise provided in this Article, no Member may, directly or indirectly, Transfer all or any portion of its Membership Interest (or any interest therein) without the prior written consent of the Manager. Any attempted or purported Transfer without such consent shall be void ab initio and of no effect and shall not terminate the continued membership of such Member or confer any right on the proposed Transferee. A Member may refuse to consent to any such Transfer for any reason or no reason, and the decision of the Manager shall be final and binding. Without limiting the generality of the foregoing, if the Manager decide to consent to any Transfer, he or they may specify the date upon which such Transfer shall become effective and may condition the effectiveness of their consent upon the prior satisfaction of such requirements as he or they shall determine, including, by way of illustration, an opinion of counsel satisfactory to the Member to the effect that such Transfer will not violate any then applicable federal or state securities laws or rules and regulations of the Securities and Exchange Commission or any state securities commission.

(b) Notwithstanding anything contained in this Agreement to the contrary, the Manager shall not unreasonably withhold its consent to a Transfer by a Member of its Membership Interest to an Affiliate, provided the Member remains in control of such Affiliate after the Transfer.

(c) In no event shall the Manager consent to a Transfer of a Membership Interest if such Transfer would (i) result in a termination of the Company for Federal income tax purposes, (ii) result in the Company not qualifying for an exemption from the registration requirements of any applicable Federal or state securities laws, (iii) result in any violation of any applicable Federal or state securities laws, (iv) result in a default under or the acceleration of any indebtedness of, or secured by assets of, the Company, (v) result in the Company having to register as an investment company under the Investment Company Act of 1940, as amended, or (vi) require the Company, the Manager or any affiliate to register as an investment advisor under the Investment Advisers Act of 1940, as amended.

7.2. Transferee as a Member.

(a) Upon a Transfer of a Membership Interest in accordance with this Agreement, the Transferee shall become a substituted Member, and be admitted to all the rights of a Member, only upon the satisfaction of such additional requirements as the Manager shall determine in its sole discretion, including, by the way of illustration:

- (i) Such Transferee's acceptance of, and agreement to be bound by, all of the terms and provisions of this Agreement, in form and substance satisfactory to the Manager; and
- (ii) The payment of such amount as the Manager determines to cover all expenses incurred by the Company in connection with such substitution as a Member.

From and after the date such Transferee becomes a substituted Member, it shall have all of the rights and powers, and be subject to all of the restrictions and liabilities, of its Transferor or assignor to the extent of the portion of the Membership Interest so Transferred, but such substitution shall not release such transferor or assignor from liability to the Company for any Capital Contributions he agreed to make.

(b) Any Transferee of a Membership Interest, who has received the consent of the Manager as provided herein, but does not become a substituted Member, shall, except as otherwise provided in the Act, be entitled to receive only the share of Net Profits, Net Losses and distributions of the Company to which its transferor or assignor would otherwise be entitled with respect to the Membership Interest as Transferred, and shall not have any right to participate in the management or affairs of the Company, including the right to vote on, consent to, approve or otherwise take part in any decision of the Members.

7.3. Dissociation.

(a) No Member may dissociate voluntarily without the written consent of the Manager which consent may be withheld for any reason whatsoever. The foregoing requirement of the consent of the Manager is not required if the provisions of Section 7.4 of this Agreement are applicable. If a Member is permitted to voluntarily dissociate, the Company shall have the obligation to purchase the Member's Membership Interest as set forth in subsection (d).

(b) If one or more of the following events shall occur, the Member shall be deemed to have involuntarily dissociated (herein "involuntary dissociation") and, subject to the obligations imposed by 805 ILCS 180/35-60, the Company shall have the option, but not the obligation, to purchase the Member's Membership Interest as set forth in subsection (d):

- (i) The Member Transfers all or any portion of its Membership Interest in violation of the provisions of this Article VII;
- (ii) A Person who possesses the power, directly or indirectly, to direct the management of the Member, whether through ownership of voting securities, by contract, or otherwise, suffers a Disability;

5-A.82

- (iii) The Member becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, seeks, consents to, or acquiesces in the appointment of a receiver, or fails within ninety (90) days after the appointment of a trustee, receiver or liquidator of the Member or of all or substantially all of the Member's property obtained without the Member's consent or acquiescence, to have the appointment stayed or vacated; and
- (iv) The Member's Membership Interests are the subject of a charging order which has been foreclosed.

(c) If an event of involuntary dissociation shall occur, the dissociated Member shall cease to be a Member, regardless of whether the Company decides to purchase its Membership Interest, and shall have only the rights of a Transferee until it has been readmitted as a substitute Member in accordance with the provisions of Section 7.2. No event of involuntary dissociation shall cause a dissolution of the Company.

(d) If a Member is permitted to dissociate in accordance with the provisions of Section 7.3(a) or as is otherwise provided in this ARTICLE VII other than Section 7.4, or if the Company elects to purchase a Member's Membership Interest in the event of involuntary dissociation, the Company shall purchase the Member's Membership Interest for a purchase price equal to its "fair market value," determined in accordance with this Section. For purposes of this Agreement, the "fair market value" of a Membership Interest shall mean the price at which the Membership Interest would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. If the parties are unable to agree upon the determination of the "fair market value" or the terms for payment thereof within one hundred (120) days after the approval of a Member's voluntary dissociation or the occurrence of an involuntary event of dissociation and determination of the Company to purchase the dissociating Member's Membership Interest, as the case may be, then the following shall occur:

- (i) The dissociated Member and the Manager shall select a mutually agreeable qualified appraiser within thirty (30) days after the expiration of the aforementioned 120-day period, and the qualified appraiser shall determine the fair market value of the dissociated Member's Membership Interest. If, the parties can not agree upon the selection of an appraiser, or if either party rejects the fair market value as determined by the qualified appraiser, then within thirty (30) days after the expiration of the later of the aforementioned 30 day period or the date on which the qualified appraiser delivers its report to the Members, as the case may be, either party or both may select another qualified appraiser, and the two qualified appraisers so selected shall appoint a third independent qualified appraiser to act as the arbitrator. If the two qualified appraisers cannot agree upon a third independent qualified appraiser, then the American Arbitration Association shall designate a qualified arbitrator in accordance with its rules.
- (ii) The respective parties and their designated appraisers shall then present their

5-A-83

appraisal evidence to the arbitrator in accordance with the rules of arbitration as promulgated by the American Arbitration Association. The arbitrator shall determine the fair market value of the dissociated Member's Membership Interest and his decision shall be final and binding upon the parties.

- (iii) If either party fails to designate an appraiser within the time set forth above, or any agreed extensions of time, then the determination by the appraiser so designated by the one party shall make the determination of fair market value, and such determination shall be final and binding on the parties.
- (iv) Each party shall bear its the cost of its appraisal, and shall equally bear the expense of any designated or appointed arbitrator.

(e) Unless the parties agree otherwise, the purchase price for the dissociated Member's Membership Interest shall be payable in five equal annual installments of principal, plus interest from the date of the determination of fair market value at the lowest applicable federal rate for long term obligations published by the Internal Revenue Service as of the date of the event of dissociation. The purchase price obligation shall be subordinate to: (i) any existing or future mortgage obligations and/or loans from lending institutions which the Company shall desire to obtain, and (ii) any working capital loans, including loans authorized by Section 3.3(b), and interest thereon, and shall be evidenced by the Company's promissory note. The dissociated Member shall be required to assign his or her Membership Interest to the Company as a condition to the payment of the first annual installment of interest. The Company may prepay the obligation at any time without penalty.

7.4 Buy Out. Notwithstanding any other term or provision in this Agreement to the contrary, it is agreed that if any Other Member desires to sell or transfer its Membership Interest in the Company, such Other Member must first offer in writing to sell such Membership Interest to IRED and such written offer must specify the price for the Membership Interest and the terms of the sale thereof. IRED must respond to such written offer within ten (10) business days of receipt thereof and failure by IRED to so respond in writing within such ten (10) day period shall be deemed a refusal to purchase the Membership Interest pursuant to the terms and provisions in the offer and the remaining Sections of this Article VII shall apply.

At any time, including, without limitation, after receipt of the aforementioned written offer from any Other Member to IRED for IRED to buy such Other Member's Membership Interest, either IRED or any Other Member ("Offeror") shall have the right to offer, in writing (the "Offer"), to purchase from the other, including the Other Member that made the offer to IRED, ("Offeree"), all of Offeree's right, title and interest in and to the Company (i.e., its "Membership Interest"). The Offer shall set forth the price ascribed by the Offeror to the interest in the Company of the Offeree. Such price shall be stated in terms of the price attributable to one hundred percent (100%) of the Company, which price shall reduced by any financing on the Property owned by the Company (the "Company Value"). The Offeree then shall be obligated either:

(i) To purchase the Membership Interest of the Offeror for cash at a price equal to the Company Value multiplied by the Offeror's Percentage Interest; or

(ii) To sell to the Offeror the Membership Interest of Offeree in the Company for cash at a price equal to the Company Value multiplied by the Offeree's Percentage Interest.

The Offeree shall give written notice of such election to Offeror within thirty (30) days after receipt of the Offer. If the Offeree does not give notice of its election within the aforesaid thirty (30) day period, then the Offeree shall be deemed to have consented to the sale of its Membership Interest to the Offeror in accordance with the terms of the Offer.

Any purchase and sale of Membership Interests pursuant to this Section 7.4 shall close (the "Closing") at the principal office of the Company on a date selected by the purchasing Member, which is not later than one-hundred twenty (120) days following delivery of the Offer pursuant to which the purchase and sale is to be made. In the event either the Offeror or the Offeree pursuant to this Section 7.4 shall default in its obligation, the non-defaulting Member shall be entitled to seek specific performance of the defaulting Member's obligation to purchase or sell, as the case may be, as well as pursuing any other remedies that may be available to the non-defaulting Member at law or in equity.

Any Offer shall require that the purchaser of the Membership Interests pursuant thereto shall (i) secure on or before closing the consent of any lender of the Company to the transfer, if and to the extent such lender's consent is required under applicable loan documents (or if such consent is not obtained, cause such loan to be repaid in full at the time of closing), and (ii) secure on or before closing a release or satisfactory commitment to release of any guaranty or personal liability of Company obligations to third parties (other than trade payables arising in the ordinary course of business) for which the selling Member or any guarantor or affiliate, partner, member or shareholder of the selling Member have personal liability, and (iii) cause all loans made to the Company by the seller Member to be retired in full (including the payment of all interest thereon including the 15% specified in subsection 3.3 (b) (ii) or (iii), as applicable) or purchased at par on or before closing. In addition, the purchasing Member shall cause the Company to pay the selling Member any accrued but unpaid Capital Contribution of the selling Member. The purchase price for a Membership Interest specified in an Offer shall be payable in cash. All Membership Interest(s) sold pursuant hereto shall be free and clear of all claims, liens and encumbrances of any kind and description. Said purchase price shall be (1) increased by the amount (if any) by which Capital Contributions to the Company made by the selling Member(s) from the date of the Offer through the date of closing exceed distributions of Available Cash made to such Member during such period, or (2) decreased by the amount (if any) by which distributions of Available Cash made to the selling Member from the date of the Offer through the date of closing exceed Capital Contributions to the Company made by such Member during such period. Notwithstanding anything in this Agreement to the contrary, during the period commencing with the Offer and continuing through the date of closing, Available Cash distributions shall be made in accordance with the terms hereof and the past practices of the Company. Exercise of this buy out right shall be deemed a waiver by the purchasing Member of any and all claims against the Manager and if the purchasing Member is other than IRED, the Manager shall immediately resign and the purchasing Member shall have the right to appoint a

5-A.85

new Member. In the event of a conflict between the terms and provisions of this Section 7.4 and the terms and provisions of Sections 7.1 through 7.3 of this Article VII, the terms and provisions of this Section 7.4 shall prevail.

ARTICLE VIII

DISSOLUTION AND TERMINATION

8.1. Dissolution.

(a) The Company shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

- (i) The written agreement of (i) the Manager and (ii) Members whose Percentage Interests exceed 66% of the Percentage Interests of all the Members;
- (ii) Any event that, under the Act, would cause the dissolution of the Company or make it unlawful for the business of the Company to be continued; or
- (iii) The expiration of the term of the Company under Section 2.5.

(b) Dissolution of the Company shall be effective on the date on which the event occurs giving rise to the dissolution. Notwithstanding the dissolution of the Company, the business of the Company shall continue to be governed by this Agreement until the completion of the winding up of the Company and the filing of articles of dissolution.

8.2. Distribution of Assets Upon Dissolution. Following the occurrence of an event described in Section 8.1, the Manager shall act as liquidating trustee and wind up the affairs of the Company in the following manner:

(a) The Manager shall use its best efforts to sell all of the Company's assets in an orderly manner (so as to avoid the loss normally associated with forced sales). The Manager shall have the full right and unlimited discretion to determine the time, manner and terms of any sale or sales of the assets of the Company pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions.

(b) The Manager shall apply and distribute the proceeds of all such sales, together with other funds which the Manager was unable to dispose of in accordance with paragraph (a), in the following order of priority: (A) First, to the payment of all debts and liabilities of the Company (including Member Loans and other debts owed to Members); (B) Second, to the establishment of any reserves reasonably necessary to provide for any contingent Company

liabilities and obligations (such reserves to be paid over to a bank or trust company, as escrowee, to be held by such escrowee for the purpose of disbursing such reserves in payment of any such contingent liability or obligation and to pay over the balance thereafter remaining for distribution in the manner set forth in clause (C) hereof); and (C) the balance, if any, as provided in Section 4.4.

8.3. Termination.

(a) Each of the Members will be furnished with a statement setting forth the assets and liabilities of the Company as of the date of the final distribution of Company assets under Section 8.2 and the Net Profits or Net Losses and other items allocable under Article IV of this Agreement for the fiscal period ending on such date.

(b) Upon compliance with the distribution plan set forth in Section 8.2, the Members will cease to be such, and the Manager shall cause a certificate of dissolution to be filed, whereupon the Company will terminate.

(c) Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the assets remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against the Manager or any other Member.

ARTICLE IX

AMENDMENTS

9.1. Without Members' Consent. This Agreement may be amended at any time by the Manager without the consent of the Members, upon 30 days notice to the Members of the terms of the proposed amendment, solely to cure any scrivener's error, provided that such amendment is not materially adverse to the interests of any Member.

9.2. With Members' Consent. Except as provided in Section 9.1, any amendment of this Agreement shall require the consent of all the Manager and Members whose Percentage Interest exceeds 66% of the Percentage Interest of all Members.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1. Representations.

Members that are not individuals hereby represent and warrant to the Members who are individuals that:

- (i) It is duly organized, validly existing, and in good standing under the laws of the State of Illinois.

5-A, 87

- (ii) It has full requisite power and authority to execute, deliver and perform its obligations under this Agreement. No other actions or proceedings on the part of it are necessary to authorize the execution, delivery and performance by it of this Agreement or the transactions contemplated hereby. It has duly and validly executed and delivered this Agreement. This Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors' rights generally, by equitable limitations on the availability of specific remedies, and by principles of equity.
- (iii) The execution and delivery of this Agreement by or on behalf of it and the consummation of the transactions contemplated hereby do not and will not conflict with or result in any violation of or default under any provision of any charter, bylaws, or other organizational or governing document of it or any agreement or other instrument to which it is a party or by which it or any of its properties is bound, or any permit, franchise, judgment, decree, statute, rule, regulation, or other law applicable to it or the business or properties of it.
- (iv) It is acquiring its Membership Interest solely for its own account, as principal, for investment and not with a view toward resale or distribution.

10.2. Notices. Any notice, distribution, demand or other communication required or permitted to be given under this Agreement shall be deemed to have been given for all purposes on the earlier of the date when received or the second Business Day following the date of mailing if sent by United States certified mail, return receipt requested, or the next Business Day if sent by overnight courier, addressed if to the Company or the Manager, at the principal office of the Company and, if to a Member, at its address as it appears in the Company's records.

10.3. Waiver of Partition. Each Member irrevocably waives any right that he may have to maintain any action for partition with respect to any asset of the Company.

10.4. Further Assurance. Each Member shall execute such other documents and take such further action as the Members deems necessary or appropriate to effectuate the intent of this Agreement.

10.5. Construction. As used in this Agreement, the singular shall include the plural, and the masculine shall include the feminine and neuter and vice versa, as the context requires.

10.6. Headings. The headings in this Agreement are inserted for convenience only and shall not in any way define or affect the meaning, construction or scope of any provision of this Agreement.

5-A.88

10.7. Binding Effect. Subject to the provisions of this Agreement restricting Transfers of Membership Interests, this Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.

10.8. Waivers. Neither the waiver by the Company, the Manager or any Member of a breach of or a default under any provision of this Agreement, nor the failure of the Company, the Manager or any Member on one or more occasions to enforce any of the provisions of this Agreement or to exercise any right, remedy or privilege hereunder, shall be construed as a waiver of any subsequent breach or default of a similar nature or as a waiver of any such provision, right, remedy or privilege.

10.9. Exercise of Rights. No failure or delay on the part of the Company, the Manager or any Member in exercising any right, power or privilege under this Agreement and no course of dealing between the Members or between any Member and the Company or the Manager shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies which a Member, or the Company or the Manager would otherwise have at law or in equity.

10.10. Power of Attorney. Each Member irrevocably constitutes and appoints the Manager as its agent and attorney-in-fact, with full power of substitution for the purpose of making, executing, acknowledging, recording and filing the following:

(a) Articles of organization, and any other articles, certificates or instruments which may be required to be filed by the Company or the Members under the laws of the State of Illinois;

(b) A certificate of dissolution of the Company and such other instruments or documents as may be deemed necessary or desirable by the Manager upon the termination of the Company's business;

(c) Any and all amendments of the instruments described above if such amendments either are required by law to be filed, are consistent with this Agreement or have been authorized by the particular Member; and

(d) Any and all such other instruments as the Manager deems necessary or desirable to carry out the provisions of this Agreement in accordance with its terms.

The foregoing grant of authority is a special power of attorney coupled with an interest, is irrevocable and shall survive the delivery of an assignment by a Member of the whole or any portion of its Membership Interest.

10.11. No Third Party Beneficiary. This Agreement is for the benefit of the Members,, the Manager and the Company and no other Person shall have any rights, interest or claims under this Agreement or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

10.12. Entire Agreement; Severability. This Agreement, together with the Exhibits hereto, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and no party hereto shall be bound by any communications between them on the subject matter of this Agreement unless in writing and bearing a date contemporaneous with or subsequent to the date of this Agreement. Any prior written agreements shall, upon the execution of this Agreement, be null and void. The parties agree that if any term or provision of this Agreement contravenes or is invalid under any federal, state or local law, court decision, rule, ordinance or regulation, this Agreement shall, as to the jurisdiction under which such legal authority is promulgated or rendered, be construed as if it did not contain the offending term or provision, and the remaining provisions of this Agreement shall not be affected thereby; provided, however, that if the removal of such offending term or provision materially alters the burdens or benefits of any of the parties under this Agreement, the parties agree to negotiate in good faith such modifications to this Agreement as are appropriate to insure the burdens and benefits of each party under such modified Agreement are reasonably comparable to the burdens and benefits originally contemplated and expected.

10.13. Attorneys' Fees and Expenses of Litigation. If any Member shall bring suit to enforce or interpret this Agreement, the substantially prevailing party shall be entitled to a reasonable sum as attorneys' fees and all other reasonable costs and expenses in connection with such suit, which sum shall be included in the judgment or decree entered in such suit.

10.14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws.

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

10.16. Facsimile Signature. The parties hereto agree that the sending of a facsimile signature is an acknowledgment of the execution of this Agreement by an authorized representative of the applicable party and the consent by such party to the terms and provisions of this Agreement.

IN WITNESS WHEREOF, each of the Members and the Manager have duly executed this Agreement as of the date first above written.

Inland Development Ventures, L.L.C., an Illinois limited liability company, member and Manager

By: Matthew G. Fiascone
Matthew G. Fiascone, President

HPD Cambridge, Inc., a Missouri corporation

By: _____
Its: _____

Joseph R. Rizza

David Bossy

Firson Investment & Development Company, L.L.C.

By: _____
Name: _____
Its: _____

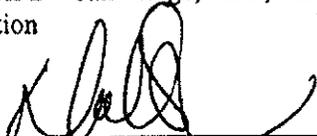
Timothy Flanagan

5-A.91

IN WITNESS WHEREOF, each of the Members and the Manager have duly executed this Agreement as of the date first above written.

Inland Development Ventures, L.L.C., an Illinois limited liability company, member and Manager

By: _____
Matthew G. Fiascone, President

HPD Cambridge, Inc., an ~~Illinois~~ ^{Missouri} corporation DS,
By: 
Its: DAVID SANDERS
PRES.

Joseph R. Rizza

David Bossy

Firson Investment & Development Company, L.L.C.

By: _____
Name: _____
Its: _____

Timothy Flanagan

5-A.92

IN WITNESS WHEREOF, each of the Members and the Manager have duly executed this Agreement as of the date first above written.

Inland Development Ventures, L.L.C., an Illinois limited liability company, member and Manager

By: _____
Matthew G. Fiascone, President

HPD Cambridge, Inc., an ~~Illinois~~ ^{MISSOURI} corporation 208

By: _____
Its: _____
DAVID SANDERS
PRES.
Joseph R. Rizza

David Bossy

Firson Investment & Development Company, L.L.C.

By: _____
Name: _____
Its: _____

Timothy Flanagan

5-A.93

IN WITNESS WHEREOF, each of the Members and the Manager have duly executed this Agreement as of the date first above written.

Inland Development Ventures, L.L.C., an Illinois limited liability company, member and Manager

By: _____
Matthew G. Fiascone, President

HPD Cambridge, Inc., an Illinois corporation

By: _____
Its: _____

Joseph R. Rizza

David Bossy

Firson Investment & Development Company, L.L.C.

By: Michael D. Firsek

Name: MICHAEL D. FIRSEK

Its: MANAGER

Timothy Flanagan

5-A.94

Exhibit "B"

CAPITAL CONTRIBUTIONS	PERCENTAGE INTEREST	MEMBERS
\$-----	76%	IRED LaGrange, L.L.C., an Illinois limited liability company
\$0	2%	Joseph R. Rizza
\$0	1%	David Bossy
\$0	1%	Firson Investment & Development Company, L.L.C.
\$0	1%	Timothy Flanagan
\$0	19%	HPD Cambridge, Inc

5-17-95

EXHIBIT A

5-A.96

VILLAGE OF LA GRANGE
Community Development Department

BOARD REPORT

TO: Village President, Board of Trustees
Village Clerk and Village Attorney

FROM: Robert J. Pilipiszyn, Village Manager
Patrick D. Benjamin, Community Development Department

DATE: November 13, 2006

RE: **LA GRANGE BUSINESS ASSOCIATION / OUR HOMETOWN
HOLIDAY - 2006 CHRISTMAS WALK SPONSORSHIP**

Attached you will find a request from the La Grange Business Association seeking authorization and financial support for the annual Hometown Holiday Christmas Walk to be held on Saturday, December 2, 2006 from 5:00 p.m. to 9:00 p.m.

The La Grange Business Association is again requesting that the Village co-sponsor the annual Hometown Holiday Christmas Walk. At this time the La Grange Business Association is requesting the Village contribute an amount not to exceed \$12,000. This amount has been provided for in our Fiscal Year 2006/2007 Budget. The Village's position of sponsorship is committed to marketing the event, which includes newspaper advertisements, posters, and most importantly the production and mailing of the booklet indicating participants and activities for the evening.

The annual Hometown Holiday Christmas Walk has always been a positive reflection of the Village of La Grange and brings shoppers into the community which is the ultimate goal of both the La Grange Business Association and the Village of La Grange.

It is recommended that the Village again support the Hometown Holiday Christmas Walk's cost of advertising and marketing for 2006 in an amount not to exceed \$12,000, with the following conditions as outlined in our sponsorship policy:

- The La Grange Business Association will provide a complete financial statement for the organization for fiscal year 2006;
- The La Grange Business Association will provide a budget for this event including line item detail;

5-B

- The La Grange Business Association will acquire cash sponsorship to match the Village contribution;
- The La Grange Business Association will provide a complete final accounting for this event;
- The Village of La Grange is to be prominently listed on all advertising, including, but not limited to, posters, web sites and newspaper advertising. All advertising is to be approved by Village staff prior to public presentation
- All events are to be coordinated to the satisfaction of the Village.

The Co-Chairman of the La Grange Hometown Holiday Christmas Walk, Ms. Taylor Jaeger will be in attendance at your meeting to answer any questions you may have.

5-B.1

LGBA
La Grange Business Association
106 Calendar Avenue
La Grange, IL 60525

October 30, 2006

VIA HAND DELIVERY

Mr. Patrick Benjamin
Village of La Grange
53 S. La Grange Road
La Grange, IL 60525

Re: LGBA – Christmas Walk 2006

Dear Pat:

What started as an idea of two businesswomen has now become a holiday tradition in La Grange. Our Hometown Holiday, the La Grange Christmas Walk is celebrating its 14th year and will be held Saturday, December 2nd from 5-9 throughout Downtown La Grange.

The Village of La Grange and the La Grange Business Association have successfully partnered to provide our residents a magical evening filled with community spirit. Once again, activities will start at 5:00 p.m. on the Village Hall lawn with an All-Village Sing, followed by Santa's arrival by fire truck and the lighting of the "Village Tree". We would like to continue the practice of lighting the large evergreen-style tree on the south end of the Village Hall lawn.

We have been pleased with the arrangement of having Santa situated in the Village Hall Board Room and would like to continue with this idea. Mrs. Claus and several Elves would also be in attendance. Last year we added musical entertainment to provide a festive atmosphere during the wait to see Santa. Face painting and improved decorations are also part of the plans for the Village Hall.

The walk is also being improved in other ways. Plans are underway to have more strolling musicians, more costumed characters and ice sculptures situated throughout the Central Business District and The Triangle. There also will be two horse drawn carriages and three trolley cars in the downtown area that evening.

We again request that the Fire Department deliver Santa to the Village Hall at 5:30 p.m. Estimates from past years have indicated that roughly 4,000 people are in town the night of the Walk, so we also request any additional police manpower that you deem necessary.

5-B.2

LGBA – Christmas Walk
October 30, 2006
Page two

The La Grange Business Association has worked diligently each year to continue to improve the quality of Our Hometown Holiday. Committee members volunteer countless hours coordinating the details which insure the success of this event. We truly appreciate the help of the Village with sponsorship and the help from Village Departments to help decorate our town.

The La Grange Business Association would like to formally request the marketing funds of \$12,000.00 which have been budgeted by the Village. We believe our partnership makes “Our Hometown Holiday” an event that is enjoyed by our community and envied by our neighbors.

The Village of La Grange will be included in all newspaper, website, direct mail and other corresponding marketing materials as a “Co-Sponsor” of this important community event along with the LGBA. The La Grange Business Association will provide the necessary expense and receipt reports so that the Village can make their reimbursement.

Again, the La Grange Business Association would like to thank the Village of La Grange for their participation and support of this wonderful event.

Please call me at (708) 482-7700 with any questions or concerns that you may have.

Sincerely,



Taylor H. Jaeger
Co-Chairman of “The La Grange Christmas Walk 2006

P.S. I ask that you forward this letter or share its contents with the appropriate Village staff so that they will be informed of the plans for this year.

5-13-3

VILLAGE OF LA GRANGE
Finance Department

BOARD REPORT

TO: Village President and Board of Trustees, Village Clerk and Village Attorney

FROM: Robert J. Pilipiszyn, Village Manager
Lou Cipparrone, Finance Director

DATE: November 2, 2006

RE: **PRELIMINARY REVIEW OF THE PROPOSED 2006 PROPERTY TAX LEVY REQUEST**

The **Truth in Taxation Law** requires a preliminary review of the proposed property tax levy by corporate authorities at least 20 days prior to the adoption of the tax levy to determine if the aggregate levy is more than 5 percent greater than the preceding year's tax levy extension, exclusive of debt service. If the proposed levy is estimated to exceed the preceding year's levy by more than 5 percent, the Village must hold a public hearing prior to the adoption of the proposed property tax levy. The proposed Truth in Taxation levy request, excluding debt service, shows a total increase of 4.37 percent over the prior year's extension. Therefore, the Village of La Grange is not required to hold a public hearing regarding the 2006 property tax levy.

The proposed Village and Library's property tax levy increase of 4.37 percent over the prior year's extension, exclusive of debt service is also subject to the **Property Tax Limitation Act**, which limits the increase in property tax extensions, exclusive of debt service and new property growth, to five percent, or the percent of increase in the national Consumer Price Index (CPI), whichever is less. The consumer price index rate for the 2006 levy determined as of December 2005 was 3.4 percent. The percentage increase in the tax levy over the 3.4 percent CPI represents new growth from estimated construction of \$5 million dollars during the next fiscal year. If such new growth does not occur, the property tax levy will automatically be lowered by Cook County. A detailed analysis of the property tax levy is presented later in this report.

DETAILED PROPERTY TAX LEVY ANALYSIS

The Village Limiting Rate

The key feature resulting from the property tax limitation legislation is the calculation of the limiting rate. The aggregate rate extended for those funds subject to the Limitation Laws cannot exceed the limiting rate. The general formula for the limiting rate for the 2006 levy year is:

2006 Limiting Rate
2005 aggregate extension x 1.034 x rate increase factor
(excluding debt service) (voter approved)
(2006 est. EAV – 2006 est. new property) divided by 100

5-6

As shown above, the limiting rate formula allows for growth in aggregate extensions by the amount of the limit, **plus** amounts for voter approved rate increases and new property. When calculating the limiting rate, the Village must also make its best estimate concerning the 2006 EAV and 2006 new property, as these figures will not be known until the month of October, 2007 following the December, 2006 tax levy.

New growth includes improvements or additions that increased the assessed value of that real property during the levy year. It does not include maintenance, remodeling or triennial reassessments. The Village is estimating new growth of \$5,000,000 based upon increased residential and commercial construction Village wide. Cook County reported new growth in the Village during 2005 of \$12,971,996; \$4,162,575 in 2004 and \$3,135,222 in 2003. Detailed information regarding new growth in 2005 is not available from Cook County at this time. This new growth does not include any new construction within the TIF District. The new growth within the TIF District resulting from redevelopment projects is accounted for separately by the County. In order to capture new growth, taxing districts must take advantage of such growth in the year it becomes available. Otherwise, it will become part of the succeeding years' base EAV and not subject to an increased levy. The Village's limiting rate for the 2006 tax levy is calculated as follows:

(2005 extension)						
6,212,117	x	1.034	=	6,423,329	=	1.1206
(578,199,926 - 5,000,000) divided by 100				5,731,999		
(2006 est. EAV - 2006 est. new growth)						

General Fund Levy

The cumulative increase in the General Fund levy is \$261,904 or 7.18%. This significant increase in the General Fund levy is a result of the overall decrease in pension levies (IMRF, Social Security, Police and Fire Pension Funds) which are discussed in detail later in this report. The General Fund levies are utilized to support Village operating expenditures including: Police, Fire, Public Works, Community Development, Finance and Administration. These funds also support major capital improvement projects including street reconstruction in accordance with the Board's direction. The Forestry Tax, Police and Fire Protection, and Street and Bridge levies are calculated at a percentage of their maximum rate based on prior year EAV. The Ambulance Service levy is an estimate of the cost to provide this service based upon a percentage of the Fire Department's budget.

The IMRF and Social Security levies are based on actual payroll figures. The IMRF levy also reflects the current 2006 contribution rate of 10.24 percent decreasing to 9.56 percent in 2007. This rate decrease reflects positive investment returns IMRF has experienced due to the recent economic recovery. The corporate levy represents the balance available under the tax cap.

5-011

Police and Fire Pension Fund Levies

Police and Fire Pension Fund levies are based on independent actuarial valuations of each fund. The Village's actuary, Tim Sharpe, performed an actuarial valuation for the year ending April 30, 2006 to calculate the Village's contribution (tax levy) to the Police and Fire Pension Funds. Mr. Sharpe will be in attendance at the November 13, 2006 Village Board meeting to provide an overview of the valuations and answer any questions. The results of the actuarial valuations are summarized below.

The Police Pension Fund's required minimum annual Village contribution decreased by \$67,161 (-12.47%) to \$471,380. The Fire Pension Fund's required minimum annual Village contribution increased by \$8,958 (1.88%) to \$486,327.

An actuarial update was completed this year for the Police Pension Fund as we typically alternate annually between full valuations and updates. A full valuation was completed this year for the Fire Pension Fund due to several issues which needed to be addressed. The Fire Pension full valuation completed last year, for April 30, 2005, did not include updated annual firefighter salaries due to the then on-going negotiation of the firefighter's union contract. It also did not include the disability pension for a firefighter which became effective in August, 2005. For these reasons the Fire Pension Fund did not experience the extremely positive results as the Police Pension Fund.

Included in both the update for the Police Pension Fund and the full valuation for the Fire Pension Fund is the change from the 5-year smoothed market method of recognizing gains and losses to the actual market method. The primary reason for changing to the actual method is based on the assumption that the investment portfolio will incur earnings annually, on an ongoing basis and not fluctuate between years with losses and gains. Using the 5-year smoothed market method we were typically deferring only gains to future years with no offsetting losses.

Utilizing the actual market method of recognizing gains and losses and investment returns of over 12% for both funds, the actuarial results reflected increased assets of \$2.1 million in the Police Pension Fund and \$1.2 million in the Fire Pension Fund. The percent funded status increased in the Police Pension Fund from 67.2% to 74.7% and increased in the Fire Pension Fund from 56.7% to 62.4%. The Police and Fire Pension Funds remain in a strong position and are comparable to the average State funded status of approximately 65%.

The overall investment rate of return of 12% was due primarily to higher than expected returns of approximately 22% from the variable annuity section of the investment portfolio. It is important to note, even though the pension funds experienced positive returns from variable annuities the past few years, these types of investments are long term in nature and historically average returns of between 8%-10%. These investments may also have periods of low returns as we experienced in the early 2000's. History demonstrates that the value of a well-diversified portfolio, comprised of fixed and variable investment products, will outperform other financial assets such as bonds and cash over long periods of time.

5-C.2

Debt Service Levies (Bond and Interest)

The Village's debt service levy which is excluded from the Truth in Taxation calculation decreases by \$7,888. This reflects the change in next year's debt amortization schedule for the 1988 G.O. Bond issue for the Police/Fire facility. The Library's debt service levy which is also excluded from the Truth in Taxation calculation decreases by \$34,317. This reflects the change in the subsequent year's debt amortization schedule for the 2004 G.O. bond issue for construction of the new library building. Debt service levies fluctuate annually depending on the debt amortization schedule.

Library Tax Levy

The La Grange Public Library is classified as a "municipal library" rather than as a separate public library district. As a municipal library, the Library does not have its own authority to levy property taxes. Therefore, the Library must levy taxes as part of the Village's annual property tax levy. The Library's tax levy request also represents an increase of 4.37 percent over the 2005 property tax levy extension. This amount reflects the allowable increase under the Property Tax Limitation Act and is equal to the amount of the increase of the Village tax levy request. Representatives from the La Grange Library will be in attendance at the November 13, 2006 board meeting to answer any questions regarding the tax levy request for the Library.

Special Service Area Tax Levy

In addition to the annual property tax levy, the Village files a Special Service Area levy with Cook County to fund on-going maintenance of the Central Business District. The Special Service Area tax levy is not subject to the Truth in Taxation requirements. The Special Service Area boundaries substantially follow that of the TIF District, with the exclusion of any single-family and multi-family properties. By ordinance, the Special Service Area levy is to be adjusted annually by the Consumer Price Index utilized as part of the Property Tax Limitation Act. Therefore, the 2006 Special Service Area levy of \$53,406 reflects an increase of 3.4 percent over last years levy of \$51,650.

Exhibits 1, 2, and 3

Exhibit 1 shows the Village's Truth in Taxation calculation. The proposed 2006 property tax levy request of \$6,479,360 represents an increase of \$271,277 or 4.37 percent from the 2005 tax levy of \$6,208,083.

Exhibit 2 presents historical data about the Village's assessed valuation, EAV and new growth.

5-c.3

Exhibit 3 is a comparison of the Village and Library 2005 and 2006 property tax rates on residential property. Assuming the tax levy is adopted as presented, the proposed increase of 4.37% on a home with an assessed property value of \$250,000 (which is a market value of ~\$400,000) results in annual increase of \$25.13 from the Village levy and \$1.37 from the Library levy.

It should be noted at this time, the Village Board is merely announcing the 2006 preliminary tax levy. The ordinance adopting the 2006 tax levy will be presented at the December 11, 2006 Village Board meeting.

Recommendation

We recommend that the Village Board approve the attached resolution announcing an estimated 2006 tax levy of \$6,479,360, exclusive of debt service, which is a 4.37 percent increase from the 2005 tax levy.

5-C.4

VILLAGE OF LA GRANGE
RESOLUTION _____
RESOLUTION PUBLISHING
PROPOSED REAL ESTATE TAX LEVY
FOR FISCAL YEAR 2006-07

WHEREAS, the VILLAGE OF LA GRANGE is required by law to determine the amounts of money estimated to be necessary to be raised by taxation for the upcoming fiscal year upon the taxable property in the Village; and

WHEREAS, the Village is required under State Statute 35 ILCS 200/18-55 to make such a determination at least 20 days prior to the date of a required public hearing,

THEREFORE, IT IS HEREBY RESOLVED by the President and Board of Trustees of the VILLAGE OF LA GRANGE, that the estimated amount of said levy is hereby determined to be the sum total amount of \$ 6,479,360.

Resolved in open meeting this 13th day of November, 2006.

AYES: _____

NAYS: _____

ABSENT: _____

Approved this 13th day of November, 2006.

Village President _____
Elizabeth M. Asperger

Attest: Village Clerk _____
Robert N. Milne

5-63

**VILLAGE OF LAGRANGE
LIMITING RATE AND
TRUTH IN TAXATION CALCULATIONS**

EXHIBIT 1

(Proposed 2006 Tax Levy for the 2007-08 budget year with 2005 Extended Tax Levy.)

2006 LEVY PROJECTION

LIMITING RATE CALCULATION:

(2005 extension, excluding debt service) 6,212,117 X		(CPI increase) 1.034	=	6,423,329 =	1.1206
(578,199,926 - (2006 est. EAV)		5,000,000)/100 (2006 est. new growth)		5,731,999	

TRUTH IN TAXATION CALCULATION:

	EXTENDED 2005 LEVY FOR FY 06-07	EXT. 2005 LEVY RATES	PROPOSED 2006 LEVY FOR FY 07-08	DOLLAR CHANGE	% CHANGE	EST. 2006 LEVY RATES	MAXIMUM LEGAL RATES*
2006 EAV 578,199,926 (EST.) 2005 EAV 571,699,926							
GENERAL FUND LEVIES							
CORPORATE FUND	257,406	0.0450	460,730	203,324	78.99%	0.0797	0.4375
FORESTRY TAX	145,211	0.0254	148,642	3,431	2.36%	0.0257	0.0500
CROSSING GUARDS	0	0.0000	0	0	0.00%	0.0000	0.0200
POLICE PROTECTION	1,165,124	0.2038	1,189,136	24,012	2.06%	0.2057	0.4000
FIRE PROTECTION	1,165,124	0.2038	1,189,136	24,012	2.06%	0.2057	0.4000
AUDITING	0	0.0000	0	0	0.00%	0.0000	0.0050
STREET & BRIDGE	255,549	0.0447	257,265	1,716	0.67%	0.0445	0.0600
AMBULANCE SERVICE	300,000	0.0525	300,000	0	0.00%	0.0519	0.2500
IMRF	183,515	0.0321	177,952	-5,563	-3.03%	0.0308	N/A
SOCIAL SECURITY	<u>173,796</u>	<u>0.0304</u>	<u>184,768</u>	<u>10,972</u>	<u>6.31%</u>	0.0320	N/A
SUBTOTAL GEN. FUND	3,645,725	0.6377	3,907,629	261,904	7.18%	0.6758	1.6225
PENSION LEVIES							
POLICE PENSION FUND	538,541	0.0942	471,380	-67,161	-12.47%	0.0815	N/A
FIRE PENSION FUND	<u>477,369</u>	<u>0.0835</u>	<u>486,327</u>	<u>8,958</u>	<u>1.88%</u>	<u>0.0841</u>	N/A
SUBTOTAL OTHER FUNDS	1,015,910	0.1777	957,707	-58,203	-5.73%	0.1656	
TOTAL VILLAGE TAX LEVY W/O DEBT SERVICE	4,661,635	0.8154	4,865,336	203,701	4.37%	0.8415	
TOTAL LIBRARY TAX LEVY	<u>1,546,448</u>	0.2705	<u>1,614,024</u>	<u>67,576</u>	4.37%	0.2791	0.4600
TOTAL TAX LEVY-TRUTH IN-TAXATION PURPOSE	<u>6,208,083</u>	1.0859	<u>6,479,360</u>	<u>271,277</u>	4.37%	1.1206	
DEBT SERVICE LEVY							
DEBT SERVICE - Village	323,138	0.0565	315,250	-7,888	-2.44%	0.0545	
DEBT SERVICE - Library	<u>719,616</u>	0.1259	<u>685,299</u>	<u>-34,317</u>	<u>-4.77%</u>	0.1185	
TOTAL PROPERTY TAX LEVY	<u>7,250,837</u>	1.2683	<u>7,479,909</u>	<u>229,072</u>	3.16%	1.2937	
SPECIAL SERVICE AREA LEVY	<u>51,650</u>	n/a	<u>53,406</u>	1,756	3.40%		

5 x 6

VILLAGE OF LAGRANGE
COMPARATIVE EQUALIZED ASSESSED VALUATIONS (EAV)
AND EAV GROWTH (NEW AND OTHER)

EXHIBIT 2

LEVY YEAR	ASSESSED VALUATION	X	STATE EQUALIZER FACTOR	=	(EAV)	EAV GROWTH INCREASE/ (DECREASE)	% INCR/-DCR	NEW GROWTH	OTHER GROWTH
1991	100,926,777	X	2.0523	=	207,132,024	2,256,348	1.10%	922,718	1,333,630
1992	100,690,430	X	2.0897	=	210,412,791	3,280,767	1.58%	1,002,086	2,278,681
1993	110,172,321	** X	2.1407	=	235,845,887	25,433,096	12.09%	2,145,359	23,287,737
1994	110,094,531	X	2.1135	=	232,684,791	-3,161,096	-1.34%	1,202,720	-4,363,816
1995	115,678,873	X	2.1243	=	245,736,629	13,051,838	5.61%	11,861,094	1,190,744
1996	135,027,644	** X	2.1517	=	290,538,982	44,802,353	18.23%	15,663,453	29,138,900
1997	134,771,687	X	2.1489	=	289,610,878	-928,104	-0.32%	941,208	-1,869,312
1998	135,041,788	X	2.1799	=	294,377,593	4,766,715	1.65%	1,584,900	3,181,815
1999	147,451,925	** X	2.2505	=	331,840,558	37,462,965	12.73%	2,611,861	34,851,104
2000	136,689,081	X	2.2235	=	303,928,172	-27,912,386	-8.41%	658,319	-28,570,705
2001	137,556,750	X	2.3098	=	317,728,581	13,800,409	4.54%	1,903,529	11,896,880
2002	172,617,977	** X	2.4689	=	426,176,523	108,447,942	34.13%	7,078,569	101,369,373
2003	172,869,731	X	2.4598	=	425,224,964	-951,559	-0.22%	3,135,222	-4,086,781
2004	171,946,272	X	2.5757	=	442,882,014	17,657,050	4.15%	4,162,575	13,494,475
2005	209,260,588	** X	2.7320	=	571,699,926	128,817,912	29.09%	12,971,996	115,845,916
2006*	211,639,797	X	2.7320	=	578,199,926	6,500,000	1.14%	5,000,000	1,500,000

Notes:

- NEW GROWTH INCLUDES IMPROVEMENTS OR ADDITIONS THAT INCREASE THE EAV OF THE PROPERTY
- OTHER GROWTH INCLUDES REASSESSMENTS (TRIENNIAL/SALE OF PROPERTY), REMODELING, AND INC. OR DI IN THE STATE MULTIPLIER.
- EAV IS COMPUTED BY MULTIPLYING THE ASSESSED VALUATION BY THE STATE EQUALIZER FACTOR.

* ESTIMATED EAV, NEW AND OTHER GROWTH

** TRIENNIAL REASSESSMENT

5-C.7

VILLAGE OF LA GRANGE / PUBLIC LIBRARY
TAX LEVY SUMMARY

WHAT EFFECT WILL THIS HAVE ON MY TAXES?

	<u>2005 RATE</u>	<u>2006 RATE</u>
ASSESSED PROPERTY VALUE (As determined by Cook County Assessor's Office)	\$250,000	\$250,000
X (TIMES) CLASSIFICATION FACTOR	<u>16%</u>	<u>16%</u>
= (EQUALS) ASSESSED VALUATION	\$40,000	\$40,000
X (TIMES) STATE EQUALIZER	2.7320	2.7320
- (MINUS) HOMEOWNERS' EXEMPTION	<u>(\$5,000)</u>	<u>(\$5,000)</u>
= (EQUALS) EQUALIZED ASSESSED VALUATION	\$104,280	\$104,280
/ (DIVIDED BY)	<u>100</u>	<u>100</u>
	\$1,042.80	\$1,042.80
X (TIMES) VILLAGE TAX RATE	<u>0.872</u>	<u>0.896</u>
= (EQUALS) VILLAGE TAX BILL	\$909.22	\$934.35
DIFFERENCE IN VILLAGE RATE	\$25.13	
LIBRARY TAX RATE	<u>0.396</u>	<u>0.398</u>
= (EQUALS) LIBRARY TAX BILL	\$413.37	\$414.72
DIFFERENCE IN LIBRARY RATE	\$1.36	
TOTAL VILLAGE/PUBLIC LIBRARY TAX BILL	<u>\$1,322.58</u>	<u>\$1,349.07</u>
DIFFERENCE IN TOTAL TAX RATE	\$26.49	

5-6-8