

EXHIBIT H

**PRELIMINARY DEVELOPMENT AGREEMENT
BUCKINGHAM ORCHARD SUBDIVISION**

**AN AGREEMENT RELATING TO THE APPROVAL OF
A MAJOR PLAT OF SUBDIVISION ,
THE MAKING OF REQUIRED IMPROVEMENTS
AND PROVIDING FUNDS, THEREFOR, FOR
BUCKINGHAM ORCHARD SUBDIVISION, LOMBARD, ILLINOIS**

THIS AGREEMENT (hereinafter, the "Development Agreement") is made and entered into this _____ day of November, 2004 by and between the **VILLAGE OF LOMBARD**, a municipal corporation (hereinafter referred to as "Village") and **DEARBORN BUCKINGHAM GROUP**, an Illinois corporation, (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the Developer is the owner and developer of the real estate situated within the corporate limits of the Village, legally described in Exhibit 1 attached hereto and made a part hereof and platted as a subdivision of the Subject Property known as Buckingham Orchard Subdivision, as shown by prints of the final plats thereof placed on file in the office of the Deputy Village Clerk of said Village (hereinafter, the "Subject Property"), and intends to develop the Subject Property in accordance with the terms and provisions of this Development Agreement; and

WHEREAS, Developer has prepared final plats as referenced in this Development Agreement, which have been approved by the Plan Commission and the Village Board of Trustees of said Village and which, upon receipt by the Village of an irrevocable letter or letters of credit (hereinafter singularly referred to as "Irrevocable Letter of Credit" or collectively referred to as "Irrevocable Letter(s) of Credit") for an amount specified as security for subdivision public improvements, and for such other purpose or purposes herein mentioned, if any, and upon execution of this Development Agreement shall be recorded; and,

WHEREAS, a site plan and preliminary engineering plans and specifications for the construction and installation of the required public improvements within the boundaries of the aforesaid subdivision of the Subject Property and off-site public improvements, as prepared by Spaceco, dated September 13, 2004, have been approved by the President and Board of Trustees of the Village (hereinafter, the "Corporate Authorities"), and copies thereof have been filed in the office of the Deputy Village Clerk of the said Village, which copies by reference thereto are hereby incorporated as a part hereof. A final version of the site plan and engineering plans and specifications (hereinafter, the "Plans and Specifications") will be submitted by the Developer to the Village for approval, which approval shall be a condition precedent to the issuance of any building or authorization to proceed with construction as discussed hereinafter; and,

WHEREAS, the developer has entered into contracts or will enter into contracts for the work and public improvements required to be made within said subdivision of the Subject Property and

off-site under the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code), this Development Agreement and the Annexation Agreement governing the annexation and zoning of the Subject Property, which Annexation Agreement is entered into between the parties hereto of even date herewith.

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

SECTION 1:

COMMENCEMENT OF CONSTRUCTION

Commencement of construction of the public improvements detailed herein may begin only after the Developer has delivered one or more Irrevocable Letter(s) of Credit in a form satisfactory to the Village and issued by a bank or financial institution approved by the Village in an amount equal to 115% of the Developer's engineer's estimate of cost of construction as approved by the Village's engineer for underground utilities (including water distribution system, sanitary sewer system, and storm sewers with appurtenances; stormwater control systems (including retention or detention ponds, drainage ways and related facilities); right-of-way improvements, (streets, curbs, gutters, sidewalks, streetlights, and parkway landscaping); and all related grading improvements.

SECTION 2:

CERTAIN OBLIGATIONS OF DEVELOPER

The Developer agrees to cause to be made in such subdivision of the Subject Property with due dispatch and diligence, such improvements as are required under the aforesaid Subdivision and Development Ordinance, the Plans and Specifications, and the additional conditions approved by the Village's Plan Commission on September 20, 2004, and as modified by the Corporate Authorities on November 4, 2004, attached hereto and incorporated herein as Exhibit 2. The Developer will, when required to, bring about progress in the work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said public improvements, to the end that said improvements will be duly and satisfactorily completed within the time or times herein mentioned. The Developer agrees that all work in the construction of said public improvements shall be done in a good, substantial and workmanlike manner, that all manufactured materials used therein shall be new and of good quality, that same shall at all times be subject to inspection by the Village, shall all be satisfactory to the Village and shall be subject to its approval. The Developer will at its expense furnish all necessary engineering services for said public improvements.

SECTION 3:

COMPLETION OF PUBLIC IMPROVEMENTS

The public improvements subject to the Irrevocable Letter(s) of Credit and included within the Plans and Specifications shall be completed within twenty-four (24) months of recording of the final plat of subdivision of the Subject Property unless otherwise extended by amendment to this Development Agreement by the Corporate Authorities. All Irrevocable Letter(s) of Credit, assurances, guarantees,

acceptances, and related matters shall comply with the Village's Subdivision and Development Ordinance. The construction of public improvements by the Developer and issuance of approvals by the Village for Buckingham Orchard Subdivision shall comply with the following schedule:

A. Sediment and Erosion Control.

Sediment and erosion control measures shall be implemented as per the Subdivision and Development Ordinance and the Plans and Specifications prior to the issuance of building permits or authorization to proceed with mass grading or other public improvements to the Subject Property. Said measures shall be maintained during the entire construction, process and shall be inspected and repaired as necessary after each significant rainfall. Failure to do so may result in the issuance of a stop work order for any outstanding public improvements or building permits.

B. Tree Preservation Measures.

The Village will not impose a tree preservation requirement as a condition of this development. The Developer, however, will use reasonable efforts to preserve as many trees as is reasonably possible around the perimeter of the Subject Property.

C. Authorization to Proceed with Public Improvements.

- 1) Upon approval of the Plans and Specifications, receipt of all required fees, approval of the Irrevocable Letter(s) of Credit, recording of this Development Agreement and the final plat of subdivision of the Subject Property, and completion of items "A" and "B" above, authorization to construct all public improvements will be given by the Village in accordance with the Plans and Specifications. However, a bituminous concrete base course shall not be installed in areas set aside for roadway construction until the stormwater management facilities are constructed and storage volumes are verified.
- 2) Village represents it will not impose or collect any impact fees for said subdivision of the Subject Property, except as may be set forth in the Annexation Agreement for Buckingham Orchard Subdivision, of even date herewith, and approved by the Corporate Authorities.

D. Construction of Stormwater Control System.

The stormwater management system for the Subject Property is to be operational prior to the issuance of any building permits for private improvements for properties or installation of a bituminous concrete base course in areas set aside for roadway construction. An operational stormwater management system means that the volume of the stormwater detention/retention pond(s) designated for collection of stormwater runoff generated by the aforesaid subdivision of the Subject Property is adequate for the flow being directed to it and the restrictor outlet is in place and that the system has been reviewed and approved by the Village's Director of Community Development. There shall be excluded from the calculation of the required capacity of the stormwater management system all land situated within the right-of-way of

Pleasant Lane. Final grading and landscaping of the detention/retention pond(s) shall be completed in conjunction with final landscaping for each development phase.

The Village and the Developer agree to the following additional stormwater requirements as part of this Development in order to address stormwater management design concerns:

- 1) The Developer, or any successor homeowner associations established in relation to the Subject Property, shall maintain at least a \$1,000,000 general liability insurance policy for the benefit of the Developer, or any successor homeowner associations over the stormwater detention basin, as depicted in EXHIBIT 3.
- 2) A consulting engineer hired by the Columbine Glen Homeowner's Association shall be allowed to review the stormwater management plans and calculations submitted to the Village, as part of the Village's building permit process for the development of the Subject Property by the Developer prior to a site improvements permit being issued.
- 3) The stormwater management plan for the development of the Subject Property shall demonstrate no adverse impact for the Columbine Glen stormwater detention basin, as required by the DuPage County Ordinance.
- 4) The Developer shall provide a copy of the approved as-built plans for the stormwater management facilities for the Subject Property to the Village for transmittal to the Columbine Glen Homeowner Association's consulting engineer.

E. Issuance of Building Permits.

1) Foundation-Only Permits.

Foundation-only permits may be issued upon completion of adequate access to the corresponding building sites and the completion of underground utility work across the street frontage of the subject building site. Adequate access shall mean a maintained gravel access road.

2) Building Permits.

Building permits may be issued upon provision of adequate emergency access to the building site, an operational fire hydrant within 300 feet of the subject building site, and the completion of underground utility work across the street frontage of the subject building site. Adequate emergency access shall mean a maintained roadway with a base course and first layer of asphalt that will support the Village's fire trucks as approved by the Village's fire chief.

3) Model Home/Unit.

Developer may commence construction of a model home/unit on either of Lot 1 or Lot 4. Such construction may proceed simultaneously with infrastructure construction, provided that the model home/unit may not be opened for viewing by the public until the following conditions have been satisfied:

- a) the stormwater management system for the Subject Property shall be operational; and
- b) all standards applicable to the issuance of a certificate of occupancy by the Village shall have been met.

F. Certificates of Occupancy.

Issuance of a certificate of occupancy (hereinafter, a “Certificate of Occupancy”) for a dwelling unit shall be issued upon satisfactory completion of the following:

- 1) Inspection and approval by the Village’s bureau of inspectional services;
- 2) Completion of the water distribution system including testing and chlorination. No occupancy permits for dwelling units shall be granted by the Village until the water distribution system has been looped through the development. This requirement shall not apply to a sales office and model unit/building;
- 3) Completion of the sanitary sewer system to the building for which the Certificate of Occupancy is requested;
- 4) Substantial completion of the public street system to the building for which the Certificate of Occupancy is requested and either a turnaround capability for a fire truck or a bituminous roadway through the development in a manner to provide two means of emergency access for each such building. Substantial completion shall include curbs, gutter, street lights and the base course of asphalt;
- 5) Subject to the provisions of Section 3.F.8 below, sidewalks must be installed across the frontage of each lot;
- 6) Subject to the provisions of Section 3.F.8 below, landscaping of the subject building site must be substantially completed, weather permitting. This includes parkway trees, final grading and ground cover;
- 7) Record drawings (as-builts) of the sanitary sewer and domestic water facilities required to serve the building shall be submitted and approved prior to issuance of the first Certificate of Occupancy; and
- 8) A Certificate of Occupancy may be issued at the reasonable discretion of the Village’s Director of Community Development during winter conditions notwithstanding the lack of 5) and 6) above provided cash or its equivalent in the amount of 115% of the estimated cost is posted to assure such completion.

G. Other Improvements.

- 1) All required landscaping and other public improvements shall be completed within 24 months of final plat of subdivision of the Subject Property approval or prior to

acceptance of the public improvements, whichever date occurs first.

- 2) A buffering plan shall be implemented consistent with the alternatives set forth in the Plans and Specifications.

H. Acceptance of Public Improvements/Easements.

- 1) Final record drawings (“as-builts”), including final grading and all utilities, shall be submitted for the review and approval of the Village’s Director of Community Development prior to acceptance of the public improvements.
- 2) Engineer’s Certification. The Developer’s engineer is to certify that the stormwater management system were constructed in accordance with the Village’s flood control ordinances, and that the project was constructed substantially to plan.
- 3) All deficiencies described in the final punch list shall be satisfactorily completed and approved by the Village’s Directors of Public Works and Community Development.
- 4) A maintenance guarantee in the form of an irrevocable letter of credit shall be submitted and approved. Said maintenance guarantee and irrevocable letter of credit shall comply with the Village’s Subdivision and Development Ordinance.
- 5) The public improvements to be dedicated to the Village shall be accepted by the Corporate Authorities. Upon acceptance by the Corporate Authorities, the public improvement installation guarantee (i.e., the Irrevocable Letter(s) of Credit) shall be returned to the developer.
- 6) Upon inspection and determination that no deficiencies exist, the maintenance guarantee (irrevocable letter of credit), shall be returned at the time of its expiration.

SECTION 4:

CONSTRUCTION DAMAGE TO PUBLIC IMPROVEMENTS

Care shall be taken to avoid damage to public improvements, including but not limited to, utilities and curbs during construction. Any public improvement damaged during construction shall be repaired by the Developer at no cost to the Village and to the satisfaction of the Village and in substantial compliance with this agreement and all relevant Village ordinances.

SECTION 5:

DEDICATION OF PUBLIC IMPROVEMENTS

Upon the Village’s approval and acceptance of the public improvements, same shall become the property of the Village and subject to its control. A formal dedication or conveyance of the public improvements to the Village shall be made by the Developer, if deemed necessary by the Corporate Authorities.

SECTION 6:

IRREVOCABLE LETTER(S) OF CREDIT

It is expressly understood that this agreement is conditional upon and subject to (1) the delivery to the Village of the document provided for in Section 1 from a financial institution reasonably approved by the Village, (2) approval of same by the Corporate Authorities, and (3) placing same in the Village's files.

SECTION 7:

NOTICES

All notices or demands to be given hereunder shall be in writing, and the mailing of any such notice or demand by Certified or Registered Mail. Said notices shall be provided as follows:

If to the Village or Corporate Authorities:	President and Board of Trustees Village of Lombard 255 East Wilson Avenue Lombard, Illinois 60148
With Copies to:	Village Manager Village of Lombard 255 East Wilson Avenue Lombard, Illinois 60148
	Director of Community Development Village of Lombard 255 East Wilson Avenue Lombard, Illinois 60148
	Thomas P. Bayer Klein, Thorpe and Jenkins, Ltd. 20 North Wacker Drive Suite 1660 Chicago, Illinois 60606
If to the Developer:	Christopher F. Coleman The Dearborn Buckingham Group, Inc. 1775 Winnetka Road, Suite 102 Northfield, IL 60093
With a Copy to:	Davia O'Keefe Shain, Burney, Ross & Citron 222 North LaSalle Street, 19 th Floor

Chicago, IL 60601

or to such other address as any party may from time to time designate in a written notice to the other parties.

SECTION 8:

SITE ACCESS

Developer (and its contractors) shall keep all streets which provide access to the subdivision of the Subject Property reasonably clean from all mud, gravel, and other debris, at all times during and after construction hours.

SECTION 9:

TRAFFIC CONTROL

The Developer shall install traffic signs and other devices as required by the Village for the proper control of vehicles and pedestrians in the area. These control devices shall meet the specifications of the Village's engineer.

SECTION 10:

ACCEPTANCE

- A. Public improvements shall be accepted by the Corporate Authorities after certification by the Village's engineer and director of community development that the public improvements are in compliance with previously approved plans, specifications, and relevant ordinances.
- B. All required fees and procedures shall be provided prior to such acceptance. The Village shall not be liable for any damages that may occur on any dedicated road within a new subdivision of the Subject Property that has not been accepted by the Corporate Authorities. The Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and employees from any and all such claims, damages, judgments, costs and settlements including, but not limited to, attorneys' fees that may arise from construction, use, repair, or maintenance or said public improvements before they are accepted by the Corporate Authorities.

SECTION 11:

**BINDING EFFECT AND TERM AND
COVENANTS RUNNING WITH THE LAND**

- A. This Development Agreement has been executed on behalf of the Village pursuant to action adopted by the Corporate Authorities at a meeting of said Corporate Authorities duly held on November ____, 2004.
- B. This Development Agreement has been executed by the Developer and shall be binding on the heirs and assigns of the Developer, but shall not be binding on a dwelling unit owner subsequent to the issuance of an occupancy permit for said dwelling unit.
- C. This Development Agreement shall automatically expire upon the expiration of the maintenance guarantee (irrevocable letter of credit) required at the time of acceptance of the public improvements as set forth in Section 3.H.4 herein.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed on their behalf respectively and have caused their respective Corporate Seals to be affixed hereto, all as of the date and year first above written.

DEVELOPER:

ATTEST:

By: _____

Its: _____

Dated: _____, 2004

DEARBORN BUCKINGHAM GROUP

By: _____

Name:

Its:

VILLAGE OF LOMBARD

ATTEST:

By: _____

Name: Barbara Johnson

Its: Deputy Village
Clerk

By: _____

Name: William J. Mueller

Its: President, Village of Lombard

Dated: _____, 2004

SCHEDULE OF EXHIBITS

- EXHIBIT 1: Legal Description
- EXHIBIT 2: Plan Commission Conditions of September 20, 2004, as Amended by the
Corporate Authorities on November 4, 2004.
- EXHIBIT 3: Preliminary Geometric Plan, prepared by Spaceco, Inc, dated September 13,
2004.

EXHIBIT 1

LEGAL DESCRIPTION

BUCKINGHAM ORCHARD

LOTS 18 AND 19 IN MILTON TOWNSHIP SUPERVISORS ASSESSMENT PLAT NO. 1
(ALSO KNOWN AS PLEASANT HILLS WEST) OF PART OF THE EAST ½ OF SECTION 1,
TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN,
ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT
452574, IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-01-401-045, 05-01-401-044, & 05-01-401-047

PROPERTY ADDRESS: 615 & 617 W. Pleasant Lane, Lombard, IL 60148

EXHIBIT 2

PLAN COMMISSION CONDITIONS OF APPROVAL SEPTEMBER 20, 2004

AS AMENDED BY THE CORPORATE AUTHORITIES ON NOVEMBER 4, 2004.

1. That the petitioner shall develop the site in accordance with the Preliminary Geometric Plan, updated September 13, 2004, prepared by Spaceco Inc.
2. That the petitioner shall satisfactorily addresses all of the comments within the IDRC report.
3. That the petitioner shall submit a revised landscape plan in conjunction with the final engineering/geometric plans. Said plan shall meet the landscape planting requirements as required by the zoning and Subdivision and Development Ordinances.
4. That the petitioner shall submit revised architectural drawings depicting the final proposed design palette of the structures, the design of which shall be subject to the approval of the Director of Community Development.
5. That the petitioner shall enter into an annexation agreement with the Village.
6. That in the event that the tract of land currently owned by ISTHA is not conveyed to the petitioner, the site plan shall be amended to remove the northern most townhouse unit on Building 3 as depicted on the submitted plan.

EXHIBIT 3

**PRELIMINARY GEOMETRIC PLAN, PREPARED BY SPACECO, INC.,
DATED SEPTEMBER 13, 2004**