

DEVELOPMENT AGREEMENT

AN AGREEMENT RELATING TO THE APPROVAL OF A MAJOR PLAT OF SUBDIVISION (OR MAJOR DEVELOPMENT), THE MAKING OF REQUIRED IMPROVEMENTS, AND PROVIDING FUNDS, THEREFORE, FOR TERRACE COMMERCIAL SUBDIVISION LOMBARD, IL

This Agreement, made and entered into this 22nd day of July, 2004 by and between GB ILLINOIS 1, LLC, an Indiana limited liability company (hereinafter referred to as the "Developer" or the "Owner"), and the VILLAGE OF LOMBARD, a municipal corporation, located in DuPage County, Illinois, (hereinafter referred to as the "Village").

WITNESSETH:

Whereas, the Developer is developing the real estate situated within the corporate limits of the Village, legally described in Exhibit 1 attached hereto and made a part hereof (the "Subject Property") and platted as a subdivision known as Terrace Commercial Subdivision (the "Subdivision") as shown by prints of the final plats thereof placed on file in the office of the Village Clerk of the Village; and,

Whereas, the Developer has prepared final Plats as referenced in this document which have been approved by the Plan Commission and the Corporate Authorities of the Village and which upon receipt by the Village of an Irrevocable Letter of Credit for an amount specified as security for subdivision improvements, and for such other purpose or purposes herein mentioned if any, and upon execution of this Development Agreement shall be recorded; and,

Whereas, plans and specifications for the making of the required improvements within the boundaries of the aforesaid Subdivision, as prepared by ARC Design Resources, Inc. dated November 13, 2003 and landscape plans, as prepared by Ives / Ryan Group, Inc. dated November 12, 2003, have been approved by the Corporate Authorities of the Village, and plans for sidewalks, parkway trees, and street lighting will be submitted for the approval of the Corporate Authorities of the Village and copies thereof (collectively the "Subdivision Plans") have been filed in the office of the Village Clerk of the said Village, which copies by reference thereto are hereby incorporated as a part hereof; and,

Whereas, the Developer has entered into contracts or will enter into contracts for the work and improvements required to be made within said Subdivision pursuant to Lombard Village Code;

Whereas, the Developer has also submitted to the Corporate Authorities of the Village certain plans for the development of Lot 1 of the Subdivision (“Lot 1”), which plans are more particularly enumerated as follows and have been submitted to the Plan Commission of Village:

- (a) Subdivision Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s original application on November 14, 2003.
- (b) Layout Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s original application on November 14, 2003 with a revised date stamp of May 18, 2004.
- (c) Grading and Drainage Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s prior application on November 14, 2003 with a revised date stamp of December 5, 2003.
- (d) Detention Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s prior application on November 14, 2003 with a revised date stamp of December 5, 2003.
- (e) Utility Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s prior application on November 14, 2003 with a revised date stamp of December 5, 2003.
- (f) Erosion Control Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s prior application on November 14, 2003 with a revised date stamp of December 5, 2003.
- (g) Storm Water Pollution Prevention Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s prior application on November 14, 2003 with a revised date stamp of December 5, 2003.
- (h) Details Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer’s prior application on November 14, 2003 with a revised date stamp of December 5, 2003.

- (i) Photometric Plan prepared by Arc Design Resources, Inc. under its project number 03011 and submitted to the Village along with the Developer's prior application on November 14, 2003 with a revised date stamp of December 5, 2003.
- (j) Elevation for the proposed CVS Pharmacy building to be built on Lot 1 as prepared by Stewart Nosky Architects, Ltd., bearing date November 11, 2003 with a revised date stamp of December 5, 2003;
- (k) Signage Plan prepared by ImagePoint and dated October 3, 2003, as originally submitted to the Village along with Developer's application.

The documents listed in this paragraph shall hereinafter be called the "Lot 1 Improvement Plans".

Now, therefore, for and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Section 1: Commencement of construction of the public improvements detailed in the Subdivision Plans and in the Lot 1 Improvement Plans may begin only after the Developer has delivered one or more Irrevocable Letters 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 or 115% of actual construction cost for the following improvements ("Public Improvements") pertaining to the Subdivision as shown on the Subdivision Plans:

- (a) the stormwater detention pond and related facilities to be constructed on Lot 3 of the Subdivision;
- (b) the right-of-way improvement (being a left turn lane) within the Grace Street right of way for the northern-most access point;
- (c) public sidewalks and parkway trees and sod along the adjacent sides of the North Avenue and Grace Street rights of way;
- (d) street lights along the Grace Street rights of way (designed per Village specifications and approved by the Village, with said costs not to exceed \$35,000);
- (e) underground utilities (including water distribution system, sanitary sewer system, and storm sewers) with appurtenances; storm water control systems (including retention or detention ponds, drainage ways and related facilities); and all related grading improvements;
- (f) parking lot pavement, curb and gutter, signage, pavement parking and lighting, per Section 154.603 et. seq. of the Village Code.

Section 2: The Developer agrees to cause to be made in such Subdivision with due dispatch and diligence, the Public Improvements enumerated in paragraph 1 above. 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 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 improvements.

Section 3: The Public Improvements subject to the Letter of Credit and included within the final site plan, landscape plan, and engineering plans shall be completed within twenty-four (24) months following the recording of the final Plat of Subdivision unless otherwise extended by amendment to this agreement, consented to by the Corporate Authorities of the Village. All Letters of Credit, assurances, guarantees, acceptances, and related matters shall comply with the Lombard Village Code. In the event that the Village shall complete the Public Improvements, the Owner/Developer shall grant a temporary easement to the Village to facilitate the necessary construction activity. The construction of Public Improvements by the Developer and issuance of approvals by the Village for the Terrace Commercial Subdivision shall comply with the following schedule:

A. Sediment and Erosion Control

Sediment and Erosion control measures shall be implemented as per Chapter 154 of the Lombard Village Code prior to the issuance of building permits or authorization to proceed with mass grading or other improvements to the 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

All necessary tree preservation measures including tagging of trees to be preserved and fencing around the tree drip lines, shall be implemented prior to issuance of building permits, authorization to proceed with mass grading, or any other improvements to the property.

C. Authorization to proceed with public improvements

Upon approval of the final engineering plans, receipt of all required fees, approval of the Letter of Credit, recording of this Agreement and the Final Plat of Subdivision, and completion of items "A" and "B" above, authorization to begin public improvements will be given by the Village.

D. Construction of Storm Water Control System

The storm water detention pond and a storm water management system for that portion of the property upon which construction activities have begun is to be operational prior to any paving or building construction. An operational storm water detention pond and storm water management system means that the volume of the storm water detention pond 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 Director of Community Development. Final grading and landscaping of the detention pond shall be completed in conjunction with final landscaping.

E. Issuance of Building Permits

1) Foundation-Only Permits

Foundation-only permits may be issued upon completion of adequate construction 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 construction may commence only issued upon provision of adequate emergency access to the building site (gravel sub base) and an operational fire hydrant within 300 feet of the subject building site.

F. Acceptance of Public Improvements

- 1) Final Record Drawings (as built), including final grading and all utilities, shall be submitted for the review and approval of the Director of Community Development prior to acceptance of the public improvements.
- 2) Engineer's Certification. The Design Engineer is to certify that the detention pond was constructed in accordance with Chapter 151 of the Lombard Village Code, 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 Directors of Public Works and Community Development
- 4) A maintenance guarantee in the form of a Letter of Credit shall be submitted and approved. Said guarantee and Letter of Credit shall comply with Chapter 154 of the Lombard Village Code.
- 5) The public improvements to be dedicated to the Village shall be accepted by the Corporate Authorities of the Village. Upon acceptance by the Corporate Authorities of the Village, the installation guarantee (Letter of Credit) shall be returned to the Developer.
- 6) The maintenance guarantee Letter of Credit, upon inspection and determination that no deficiencies exist, 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 utilities and curbs, during construction. Any public improvement damaged during construction shall be repaired to the satisfaction of the Village and in substantial compliance with this agreement and all relevant Village codes and ordinances.

Section 5: Dedication of Public Improvements:

Upon approval and acceptances of the aforesaid Public Improvements by the Village, said public improvements shall become the property of the Village and subject to its control, and if deemed necessary or desirable by the Corporate Authorities of the Village, a formal dedication or conveyance to the Village shall be made by the Owner and Developer.

Section 6: Letter of Credit:

It is expressly understood that this Agreement is conditional upon and subject to the delivery to the Village of the document provided for in Section 1 above from the Financial Institution approved by the Village, and subject to the Corporate Authorities of the Village approving same and placing same on file.

Section 7: Notices:

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

to the Owner / Developer at:

GB Illinois 1, LLC
600 East 96th Street, Suite 150
Indianapolis, Indiana 46240
Attn: H. Spencer Knotts, Esq.

with copy to:

Peter C. Bazos, Esq.
Schnell, Bazos, Freeman, Kramer, Schuster & Vanek
1250 Larkin Avenue, Suite 100
Elgin, Illinois 60123

and to the Village at:

Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148
Attn: Director of Community Development

or to such other place for any of them as it may in writing designate. Service of any such notice shall be deemed given on the date of personal service or three (3) days from the date of mailing.

Section 8: Site Access

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

Section 9: Traffic

The Village shall permit access to the Subdivision as shown on the final plat. It is agreed and understood that, subject to the provisions of subparagraph (b) of this Section 9, the access points shall be as follows:

- (a) The access point on North Avenue shall be a “right in – right out” access (the “North Avenue Access”). This access point shall be built so as to straddle the property line with the property to the west, but only on the condition that the property owner to the west promptly agrees to such construction, grants all necessary easements, and participates in 50% of the cost of such construction. Otherwise said North Avenue Access shall be constructed on and adjacent to the westerly property line of the subject

~~property~~ Subdivision, at Developer's sole cost and expense.

- (b) The southern most access point on Grace Street as shown on the plans (the "Southern Grace Street Access Point") shall be a "right in – right out" access.
- (c) The northern most access point on Grace Street (the "Northern Grace Street Access") shall be a full and unrestricted access point as shown on the plans.

Section 11: The Village shall permit Lot 1 to be developed as shown in the Lot 1 Improvement Plans, and agrees to issue permits for the construction of the improvements shown on said plans without undue delay.

Section 12: Acceptance:

Public improvements shall be accepted by the Corporate Authorities of the Village after certification by the Village Engineer and Director of Community Development that the improvements are in compliance with previously approved plans, specifications, and relevant codes and ordinances. 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 that has not been accepted by the Village. The Owner/Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and, employees from any and all claims, damages, judgments, costs and settlements including, but not limited to attorneys' fees that may arise from construction, use, repair, or maintenance of said improvements before they are accepted by the Village.

Section 13: Binding Effect and Term and Covenants Running with the Land:

This Agreement has been executed on behalf of the Village pursuant to action adopted by the Corporate Authorities of said Village at a meeting of said Corporate Authorities duly held on July 22, 2004.

This Agreement has been executed by the Owner and the Developer and shall be binding on the heirs and assigns of the Developer and of the Owner, but shall not be binding on a unit owner subsequent to the issuance of an occupancy permit for that unit.

This Agreement shall automatically expire upon the expiration of the maintenance guarantee Letter of Credit required at the time of acceptance of the public improvements as set forth in Section 3.J.4 above.

[signature page follows]

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 day and year first above written.

Owner and Developer;
GB ILLINOIS 1, LLC, an Indiana limited liability company

By: G.B. FFS Developers, LLC, an Indiana limited liability company,
Its sole member

By: _____
H. Spencer Knotts, Esq.

Village of Lombard:

By: _____ (Village President)

Attest: _____ (Village Clerk)

EXHIBIT 1

**DEVELOPMENT AGREEMENT DATED JULY 22, 2004 FOR
TERRACE COMMERCIAL SUBDIVISION, LOMBARD, ILLINOIS**

LEGAL DESCRIPTION

THE SOUTH 750.0 FEET, AS MEASURED ON THE WEST LINE AND PARALLEL WITH THE SOUTH LINE THEREOF, (EXCEPT THE WEST 877.74 FEET AS MEASURED ON THE NORTH AND SOUTH LINES THEREOF AND EXCEPT THAT PART LYING SOUTH OF THE NORTH LINE OF LAND TAKEN BY CONDEMNATION CASE 02ED-13) OF THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CENTER LINE OF LOMBARD ROAD (WEST LINE OF THE NORTH AVENUE MANOR, A SUBDIVISION IN SAID SECTION 32) IN DUPAGE COUNTY, ILLINOIS.

PARCEL NUMBER: 03-32-301-009