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Doc#: 0411932009
Eugene "Gene" Moore Fee: \$42.50
Cook County Recorder of Deeds
Date: 04/28/2004 10:12 AM Pg: 1 of 10

This instrument prepared by,
And after recording,
Please return to:

Schwartz, Cooper,
Greenberger
& Krauss, Chartered
180 N. LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Ronald B. Grais, Esq.

This space reserved for Recorder's use only

MEMORANDUM OF CERTAIN CONTRACT PROVISIONS

Property of Cook County Clerk's Office

Handwritten notes: JCB, Cook Co., IL, NNNT 010 40514 + 010 40445

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MEMORANDUM OF CERTAIN CONTRACT PROVISIONS

This Memorandum of Certain Contract Provisions ("Memorandum") is made as of this 21st day of April, 2004, by **THE WOODS OF SOUTH BARRINGTON, L.L.C.**, a Delaware limited liability company ("Seller").

WITNESSETH:

WHEREAS, Seller is a contract purchaser of the Property, consisting of approximately 597 acres of land located in the Village of South Barrington, Illinois, and legally described on Exhibit A attached hereto and made a part hereof; and certain other real property) pursuant to an Agreement of Purchase and Sale (the "Purchase Agreement") dated December 17, 1997, as Amended originally by and between Seller hereunder, as purchaser, and LASALLE NATIONAL BANK, as Trustee under Trust Agreement dated November 20, 1974 and known as Trust Number 10-29663-09, LASALLE NATIONAL BANK, as Trustee under Trust Agreement dated January 6, 1975 and known as Trust Number 48415, LASALLE NATIONAL BANK, as Trustee under Trust Agreement dated December 20, 1974 and known as Trust Number 48413, LASALLE NATIONAL BANK, as trustee under Trust Agreement dated May 6, 1975 and known as Trust Number 48845 and KLEHM PROPERTIES INC., an Illinois corporation (collectively, "Owner"), as seller. Owner's interest in the Purchase Agreement has been assumed by First America Bank, as Trustee under Trusts Nos. 1-03-114, 1-03-115, 1-03-116, 1-03-117 and 1-03-118;

WHEREAS, that certain Agreement for Sale of Real Estate dated as of February 10, 2004 (the "Contract"), was entered into between Seller and **TOLL BROTHERS, INC.**, a Delaware corporation, which has been assigned to **ACACIA CREDIT FUND 9-A L.L.C.**, a Delaware limited liability company ("Purchaser"), pertaining to the sale and purchase of the real property; and

WHEREAS, as a condition to the closing of the transaction contemplated under the Contract, Seller is required to execute and record a memorandum of the terms of Section 5. of each of the Purchase Agreement and the Contract, a copy of which Section 5. is attached hereto as Exhibit B; provided, however, Owner, Seller and Purchaser have agreed that upon Purchaser's conveyance of any or all of Areas B, C or N as set forth in the Consent Decree dated December 19, 2003, Case No. 01 CH 14950, Circuit Court of Cook County to the Village of South Barrington, or its permitted assignee, the South Barrington Park District, this Memorandum shall automatically terminate with respect to Areas B or C upon such conveyance, and shall automatically terminate as to Area N, on the later of the date of conveyance of Area N to the Village of South Barrington or its permitted assignee, the South Barrington Park District or 90 days after the date hereof.

IN WITNESS WHEREOF, Seller has executed and delivered this Memorandum as of the day and year first above written.

THE WOODS OF SOUTH BARRINGTON, L.L.C.,
a Delaware limited liability company

By: *Dominic Adducci*
Name: Dominic Adducci
Its: Managing Director of the Sole Member.

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 22nd day of April, 2004 before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Dominic Adduci being the person authorized by THE WOODS OF SOUTH BARRINGTON, L.L.C., a Delaware limited liability company ("Company"), to execute such instrument to me personally well known, who stated that he is the Managing Director of said Company, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

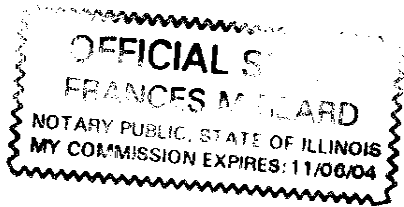
22nd IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 22nd day of April, 2004.

GIVEN under my hand and Notary Seal this 22nd day of April, 2004.

My commission expires _____.

Frances M. Beard
Notary Public

PIN NUMBERS



- 01-21-202-003
- 01-21-204-004
- 01-21-400-002
- 01-28-200-005
- 01-28-200-006
- 01-28-200-008
- 01-28-400-001
- 01-28-401-001
- 01-28-402-001
- 01-33-200-009
- 01-33-200-011
- 01-33-200-012
- 01-33-200-014
- 01-33-200-015
- 01-33-200-016
- 01-33-200-017
- 01-33-200-018
- 01-33-200-019

- 01-33-200-012
- 01-33-200-013
- 01-33-200-015
- 01-33-200-017

Rte. 59 + Higgins Road
South Barrington, Illinois

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION****PARCEL 1:**

THAT PART OF SECTION 28, AND 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 00°19'35" EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 2624.22 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 28; THENCE SOUTH 00°04'45" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 643.38 FEET; THENCE SOUTH 89°40'35" WEST, A DISTANCE OF 1079.11 FEET TO A POINT ON LINE 1079.10 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SECTION 33; THENCE SOUTH 00°04'45" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 281.47 FEET; THENCE NORTH 89°40'35" EAST, A DISTANCE OF 1079.11 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 33; THENCE SOUTH 00°04'45" EAST ALONG SAID EAST LINE, A DISTANCE OF 1707.93 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 33; THENCE NORTH 89°58'22" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 508.00 FEET; THENCE SOUTH 00°02'15" WEST, A DISTANCE OF 428.90 FEET; THENCE SOUTH 89°58'22" EAST, A DISTANCE OF 508.00 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 33; THENCE SOUTH 00°02'15" WEST ALONG SAID EAST LINE, A DISTANCE OF 351.59 FEET TO A POINT ON THE NORTH LINE OF HIGGINS ROAD DEDICATED PER DOCUMENT NUMBER 1208573; THENCE NORTH 69°18'19" WEST ALONG SAID NORTH LINE, A DISTANCE OF 2766.41 FEET TO A POINT ON THE EAST LINE OF ILLINOIS ROUTE 59 ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 11194096; THENCE NORTH 00°11'17" WEST ALONG THE EAST LINE OF SAID ILLINOIS ROUTE 59, A DISTANCE OF 2421.01 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33; THENCE NORTH 00°11'05" WEST ALONG THE EASTERLY RIGHT OF WAY LINE OF STATE ROUTE 59 RECORDED AS DOCUMENT 11190496, A DISTANCE OF 2637.83 FEET TO A POINT ON THE NORTHERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°12'10" WEST ALONG THE EASTERLY RIGHT OF WAY LINE OF STATE ROUTE 59 RECORDED AS DOCUMENT NUMBER 11668686, A DISTANCE OF 485.70 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG THE EASTERLY RIGHT OF WAY LINE OF STATE ROUTE 59 RECORDED AS DOCUMENT NUMBER 11113029 FOR THE FOLLOWING THREE (3) COURSES; (1) THENCE NORTHERLY ALONG A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 4724.70 FEET AND A CHORD BEARING OF NORTH 06°32'11" EAST, AN ARC LENGTH OF 1111.22 FEET TO A POINT OF TANGENCY; (2) THENCE NORTH 13°16'19" EAST, A DISTANCE OF 303.90 FEET TO A POINT OF CURVATURE; (3) THENCE NORTHERLY ALONG A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 1482.40 FEET AND A CHORD BEARING OF NORTH 01°26'20" WEST, AN ARC LENGTH OF 761.22 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 89°50'29" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 276.87 FEET; THENCE SOUTH 00°09'31" WEST, A DISTANCE OF 752.98 FEET; THENCE SOUTH 89°50'29" EAST, A DISTANCE OF 394.43 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 107.00 FEET, AN ARC LENGTH OF 154.21 FEET TO A POINT OF TANGENCY; THENCE NORTH 07°34'59" EAST, A DISTANCE OF 98.51 FEET TO A POINT OF CURVATURE;

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THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 40.00 FEET, AN ARC LENGTH OF 51.33 FEET TO A POINT OF TANGENCY; THENCE NORTH 81°06'19" EAST, A DISTANCE OF 287.58 FEET; THENCE NORTH 10°14'25" EAST, A DISTANCE OF 66.11 FEET; THENCE NORTH 00°34'33" EAST, A DISTANCE OF 384.46 FEET TO A POINT 33.00 FEET SOUTH OF AS MEASURED PERPENDICULAR TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 89°50'29" WEST ALONG A LINE 33 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 845.00 FEET; THENCE NORTH 00°09'31" EAST, A DISTANCE OF 33.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 89°50'29" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 1989.06 FEET TO A POINT ON A LINE 123.76 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 00 DEGREES 27 MINUTES 50 SECONDS EAST ALONG SAID PARALLEL LINE; A DISTANCE OF 173.25 FEET TO A POINT ON A LINE 173.24 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 28; THENCE SOUTH 89 DEGREES 50 MINUTES 29 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 123.76 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 28; THENCE SOUTH 00°27'50" EAST ALONG SAID EAST LINE, A DISTANCE OF 2454.80 FEET TO THE POINT OF BEGINNING; EXCEPT FOR THE FOLLOWING DESCRIBED PROPERTY:

PARCEL 2:

THAT PART OF SECTION 21, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 21; THENCE NORTH 89°50'29" WEST ALONG THE SOUTH LINE OF SAID SECTION 21, A DISTANCE OF 2389.69 FEET TO A POINT ON A CURVE, BEING A POINT ON THE EAST LINE OF ILLINOIS ROUTE 59 PER DOCUMENT NUMBER 11113029; THENCE NORTHERLY ALONG THE EAST LINE OF SAID ILLINOIS ROUTE 59 PER DOCUMENT NUMBERS 11113029 AND 11549027 FOR THE FOLLOWING THREE COURSES; (1) THENCE NORTHERLY ALONG A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1482.40 FEET AND A CHORD BEARING OF NORTH 21°41'01" WEST WITH AN ARC LENGTH OF 286.34 FEET TO A POINT ON A CURVE; (2) THENCE NORTHERLY ALONG A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 2242.01 FEET AND A CHORD BEARING OF NORTH 20°03'26" EAST WITH AN ARC LENGTH OF 384.99 FEET TO A POINT OF TANGENCY; (3) THENCE NORTH 24°58'30" EAST, A DISTANCE OF 2212.09 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 21; THENCE SOUTH 89°51'08" EAST ALONG SAID NORTH LINE, A DISTANCE OF 533.41 FEET; THENCE NORTH 00°21'39" WEST, A DISTANCE OF 1131.30 FEET TO A POINT ON THE EAST LINE OF SAID ILLINOIS ROUTE 59 PER DOCUMENT NUMBER 11443738; THENCE NORTHERLY ALONG SAID EAST LINE FOR THE FOLLOWING THREE (3) COURSES; (1) THENCE NORTH 24°58'30" EAST, A DISTANCE OF 1195.93 FEET; (2) THENCE NORTH 27°49'55" EAST, A DISTANCE OF 200.22 FEET; (3) THENCE NORTH 24°58'12" EAST, A DISTANCE OF 257.37 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 21; THENCE NORTH 89°57'47" EAST ALONG SAID NORTH LINE, A DISTANCE OF 134.37 FEET; THENCE SOUTH 36°57'24" WEST, A DISTANCE OF 285.13 FEET; THENCE SOUTH 00°14'47" EAST, A DISTANCE OF 600.00 FEET; THENCE SOUTH 82°06'19" EAST, A DISTANCE OF 221.79 FEET TO A POINT ON A CURVE BEING THE WEST LINE OF BARTLETT ROAD PER DOCUMENT NUMBER 11113027; THENCE ALONG THE WEST LINE OF SAID BARTLETT ROAD PER DOCUMENT NUMBERS 11113027 AND 8026898 FOR THE FOLLOWING SEVEN (7) COURSES;

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(1) THENCE SOUTHERLY ALONG A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 5779.65 FEET AND A CHORD BEARING OF SOUTH 06°40'43" WEST WITH AN ARC LENGTH OF 182.71 FEET; (2) THENCE SOUTH 89°50'29" WEST, A DISTANCE OF 13.94 FEET; (3) THENCE SOUTH 00°09'31" EAST, A DISTANCE OF 154.30 FEET TO A POINT ON A CURVE; (4) THENCE SOUTHERLY ALONG A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 5779.65 FEET AND A CHORD BEARING OF SOUTH 02°02'21" WEST WITH AN ARC LENGTH OF 443.40 FEET; (5) THENCE NORTH 89°50'29" EAST, A DISTANCE OF 17.00 FEET; (6) THENCE SOUTH 00°09'31" EAST, A DISTANCE OF 991.17 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 21; (7) THENCE SOUTH 00°11'19" EAST, A DISTANCE OF 389.83 FEET; THENCE NORTH 89°48'41" EAST, A DISTANCE OF 33.00 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 21; THENCE SOUTH 00°11'19" EAST ALONG SAID EAST LINE, A DISTANCE OF 2245.24 FEET TO THE POINT OF BEGINNING, CONTAINING 158.419 ACRES OF LAND, MORE OR LESS, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY**Exhibit A****PARCEL 1**

THOSE PORTIONS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 33; THENCE NORTH 89° 58' 22" WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 508.00 FEET TO A LINE 508.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00° 02' 15" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 428.90 FEET TO A LINE 428.90 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89° 58' 22" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 508.00 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00° 02' 15" WEST ALONG SAID EAST LINE, A DISTANCE OF 351.59 FEET TO THE NORTH LINE OF ILLINOIS ROUTE 72 AS MONUMENTED AND OCCUPIED; THENCE NORTH 69° 18' 19" WEST ALONG SAID NORTH LINE, A DISTANCE OF 2766.41 FEET TO A POINT ON THE EAST LINE OF ILLINOIS ROUTE 59 ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 11194096; THENCE NORTH 00° 11' 17" WEST ALONG THE EAST LINE OF SAID ILLINOIS ROUTE 59, A DISTANCE OF 1096.63 FEET TO A POINT ON A NON-TANGENT CURVE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET WITH AN ARC LENGTH OF 80.49 FEET AND A CHORD BEARING OF SOUTH 46° 18' 23" EAST TO A POINT OF COMPOUND CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 467.00 FEET AND AN ARC LENGTH OF 68.92 FEET TO A POINT OF REVERSE CURVATURE THENCE EASTERLY ALONG A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 798.00 FEET AND AN ARC LENGTH OF 365.16 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 552.00 FEET AND AN ARC LENGTH OF 125.61 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 198.00 FEET AND AN ARC LENGTH OF 66.38 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 30.00 FEET AND AN ARC LENGTH OF 35.16 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 196.00 FEET AND AN ARC LENGTH OF 39.98 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 232.00 FEET AND AN ARC LENGTH OF 125.75 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 754.00 FEET WITH AN ARC LENGTH OF 60.64 FEET AND A CHORD BEARING OF NORTH 22° 40' 42" EAST TO A POINT OF NON-TANGENCY; THENCE SOUTH 51° 22' 16" EAST, A DISTANCE OF 822.83 FEET; THENCE SOUTH 65° 47' 33" EAST, A DISTANCE OF 381.45 FEET; THENCE SOUTH 00° 02' 39" EAST, A DISTANCE OF 557.45 FEET TO A LINE 160.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89° 58' 22" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 762.78 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33; THENCE SOUTH 00° 04' 45" EAST ALONG SAID EAST LINE, A DISTANCE OF 160.00 FEET TO THE POINT OF BEGINNING, CONTAINING 62.179 ACRES OF LAND MORE OR LESS, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2

EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS CREATED BY DEVELOPMENT, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED APRIL __, 2004 BY AND BETWEEN ACACIA CREDIT FUND 9 - A L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, THE WOODS OF SOUTH BARRINGTON, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY AND THE WOODS OF SOUTH BARRINGTON II, L.L.C. RECORDED _____ AS DOCUMENT NUMBER _____.

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EXHIBIT B

SECTION 5.

5. Covenants of Purchaser. To induce Seller to execute, deliver and perform this Agreement, Purchaser hereby covenants and agrees as follows:

(a) After Closing, Purchaser shall assume and perform all of the obligations of Developer set forth in the Annexation Agreement, except those obligations specifically required to be performed by the owner of the Commercial Parcel. Purchaser's obligations shall include (but are not limited to) construction of the Sanitary Sewer Improvements including (but not limited to) sanitary sewer mains from the Village Sewer Facility at Bartlett Road and Higgins Road along the easterly boundary of the Land and in the utility easement at the northerly boundary of the Commercial Parcel, and the required lift stations as shown on the Preliminary Plat of Subdivision, as same shall be further delineated on the final engineering plans approved by the Village, which sewer mains shall be sized to service the Commercial Parcel; Water Improvements (including fire protection); Stormwater Improvements (storm water drainage/flood plain/wetlands, detention basins); Roadway Improvements; Pedestrian Improvements; Street Lighting; and establishment of the Owners' Associations, all as contemplated by the Annexation Agreement. Purchaser's agreement to perform the obligations of Developer shall be further memorialized in the DOEA, as hereinafter described.

(b) Purchaser shall be required to purchase exclusively from Klehm Boys Partnership, an Illinois partnership, doing business as Charles Klehm & Sons Nursery ("KBP") or any affiliated entity designated by KBP any trees, shrubs, evergreens, perennials, ornamental grasses, bulbs, grass, ground cover, annual, other landscape ornamental materials or any other plant or nursery stock (collectively, the "Landscape Materials") that Purchaser intends to purchase and use on the Property as landscape materials for the development of the Property for the intended use (including, without limitation, Landscape Materials to be used for purposes of developing berms, streets, entrances, cul-de-sacs, and other related portions of the Property), provided that the respective Landscape Material is then available in proper quantity and good condition and competitively priced. The purchase price for the Landscape Materials shall be the applicable wholesale prices then being charged by KBP and payable in accordance with KBP's normal nursery practices (which wholesale prices shall be the wholesale prices applicable to purchases of the quantity intended for the entire development of the Property, as set forth in KBP's regular listing of wholesale prices distributed to the public), and KBP shall pay any freight charges from nurseries other than the KBP nursery at the Property; provided, however, the provisions of this Section (b) shall be subject to the provisions of subsection (c) below, and in the event of any conflict the provisions of subsection (c) shall govern. The provisions of this subsection (b) are not intended to require Purchaser to use any particular landscaping material in connection with the development of the Property, but merely to require Purchaser to purchase its selected materials from KBP, subject to the terms and conditions described above.

(c) At Closing, Purchaser will be required to purchase from KBP the following minimum quantity of trees per acre of the Property: (i) "in ground" shade trees in number and trunk caliper so that the product of the number of trees purchased multiplied by the trunk caliper is a minimum of forty-five (45) inches per acre; plus (ii) five (5) "in ground" conifer trees per acre. Purchaser shall have the right to purchase as many trees in addition to the minimum amount required above as Purchaser shall desire, at the price described herein. Commencing on or about the date hereof, and proceeding diligently, Purchaser, accompanied by a representative of KBP,

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shall tag which trees are (subject to Closing) to be purchased by Purchaser by an identification method to be agreed to by Purchaser and KBP. As soon as reasonably possible following the designation of the trees, KBP shall notify Purchaser of the total purchase price for such trees as determined in accordance with the provisions of this paragraph. The purchase price for such trees shall be fifty percent (50%) of the applicable wholesale price then being charged by KBP to its customers in the ordinary course of its business and the purchase price shall be payable in accordance with KBP's normal nursery practices (which wholesale prices shall be the wholesale prices applicable to purchases of the quantity intended for the entire development of the Property, as set forth in KBP's regular listing of wholesale prices distributed to the public), and KBP shall pay any freight charges from nurseries other than the KBP nursery at the Property. KBP and any affiliates designated by KBP shall have the right (but not the obligation) to remove any Landscape Materials not purchased by Purchaser and remaining on the Property for a period of ninety (90) days after Purchaser's designation of the trees it is purchasing, and Purchaser hereby agrees that it shall permit KBP, its affiliates, agents, and their employees or subcontractors to enter upon the Property and remove such Landscape Materials. In connection with any such entry and removal, KBP shall maintain or cause to be maintained reasonable and adequate liability insurance to cover such activities and to indemnify and hold harmless Purchaser from and against any claims, losses, liens, liabilities, damages, expenses and costs (including, without limitation, reasonable attorneys' fees and costs) arising from KBP's or its affiliates' or agents' entry and removal activities hereunder. Notwithstanding anything herein to the contrary, neither KBP nor Seller shall have any obligation and shall incur no liability whatsoever for any Landscape Materials remaining on the Property which KBP elects not to remove, and all such Landscape Materials not removed by KBP or its affiliates prior to the end of such 90-day period, shall belong to Purchaser as its sole and exclusive property.

(d) (i) At such time as Purchaser has extended sanitary sewer and water lines for the property immediately adjacent to the Roy and Sarah Klehm Parcel, consisting of approximately 12 acres located on the south side of Penny Road and shown on Exhibit E hereto, Purchaser shall be required to extend such utility lines for such sanitary sewer and water service to the boundary of Roy and Sarah Klehm Parcel with lines of sufficient size to serve the existing use of the same as a single-family home. The construction cost for such utility extension shall be Purchaser's responsibility, but the tap-on, usage and other fees payable to the municipality, utility companies or other public or private third parties shall be paid by the owners of the Roy and Sarah Klehm Parcel.

(ii) At such time as Purchaser has extended sanitary sewer and water lines for the property immediately adjacent to the Commercial Parcel shown on Exhibit E hereto, Purchaser shall be required to extend such utility lines for such sanitary sewer and water service to the boundary of the Commercial Parcel with lines of sufficient size to serve 500,000 s.f. of commercial space. The construction cost for such utility extension shall be Purchaser's responsibility, but the tap-on, usage and other fees payable to the municipality, utility companies or other public or private third parties shall be paid by the owners of the Commercial Parcel. Purchaser shall extend the water and sanitary sewer lines to the Commercial Parcel no later than fifteen (15) months after Closing.

(iii) At such time as Purchaser has extended sanitary sewer and water lines for the property immediately adjacent to the Rose School, Purchaser shall be required to extend such utility lines for such sanitary sewer and water service to the boundary of the Rose School site with lines of sufficient size to serve an elementary school. The construction cost for such utility extension shall be Purchaser's responsibility, but the tap-on, usage and other fees payable to the

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municipality, utility companies or other public or private third parties shall be paid by the owner of the Rose School site.

(e) The provision of this Section 5 shall survive the Closing; provided, however, that as to paragraphs 5(b) and 5(c): (i) only Purchaser, any successor developer of the entire Property, and any professional contractors/developers that acquire portions of the Property from Purchaser for construction and resale or leasing (but not purchasers or tenants of residences or other improvements constructed on the Property) shall be obligated to purchase the Landscape Materials, as described in this Section; and (ii) the provisions of paragraphs 5(b) and 5(c) shall apply only to Landscape Materials purchased for the original development of the Property and not renovation, redevelopment or other future activities, the intent being that the provisions of this Section automatically shall terminate with respect to each portion of the Property upon the completion of development thereof. A summary of the provisions of this Section 5. shall be included in a memorandum of agreement to be recorded on the Closing Date, which shall be a Permitted Exception.