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DEVELOPMENT AND PROPERTY MAINTENANCE AGREEMENT 95143257

BY, BETWEEN, AND AMONG

THE VILLAGE OF NORTHBROOK

DEPT OF RECORDING 1283.00
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COOK COUNTY RECORDER

AND

AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO
U/T/A NO. 11781309

AND

ORIX TMK NORTHBROOK VENTURE II

AND

THE SPORTS AUTHORITY, INC.

DATED AS OF FEBRUARY 28, 1995

VILLAGE SQUARE OF NORTHBROOK
PHASE II

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Prepared by:

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DEVELOPMENT AGREEMENT (Village Square of Northbrook Phase II)

THIS AGREEMENT is dated as of the 28th day of February, 1995, and is by, between, and among the VILLAGE OF NORTHBROOK, an Illinois home rule municipal corporation (the "Village"); AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated December 28, 1993 and known as Trust No. 11781309 (the "Owner"); ORIX TMK NORTHBROOK VENTURE II, an Illinois joint venture (the "Developer"); and THE SPORTS AUTHORITY, INC., a Delaware corporation ("Sports Authority").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth herein and pursuant to the Village's home rule powers and all other applicable laws, specifically including, but without limitation, 65 ILCS 5/11-74.3-1 et seq., the parties hereto agree as follows:

SECTION 1. RECITALS.

- A. On January 4, 1993, the Village entered into the Annexation Agreement (as defined herein) in order to, among other things, control the development of a portion of the Property (as defined herein) and the surrounding area.
- B. Pursuant to notice and public hearing as provided by statute, the Annexation Agreement will have been terminated as of the Effective Date (as defined herein) of this Agreement.
- C. The Property is located within the North Skokie Boulevard Business Redevelopment District (as defined herein).
- D. Owner is the record title owner of a portion of the Property and is a land trust under which Sports Authority and Builders Square, Inc. ("Builders Square") have the sole power of direction.

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E. Developer is an Illinois joint venture comprised of the following entities: (i) ORIX Skokie, Inc., an Illinois corporation; and (ii) TMK Development of Northbrook II, Inc., an Illinois corporation.

F. Developer is the contract purchaser of (i) the Builders Square's Parcel (as defined herein) and (ii) the Blum Parcel (as defined herein).

G. Developer desires and proposes to develop the Property pursuant to and in accordance with this Agreement, and Developer and Sports Authority have jointly applied for three special permits and other zoning and subdivision approvals required for such development.

H. Pursuant to notice published in the *Chicago Sun Times* on September 13, 1994, as provided by statute, a public hearing was held by the Plan Commission of the Village on September 28, October 12, and October 27, 1994 on Developer and Sports Authority's special permit requests. On November 1, 1994, in Resolution No. 94-PC-15, the Plan Commission recommended to the Corporate Authorities (as defined herein) that the requested special permits be granted subject to various conditions and limitations.

I. The Corporate Authorities, after due and careful consideration, have determined that the development of the Property pursuant to and in accordance with this Agreement would (i) advance the public purposes set forth in Northbrook Ordinance No. 94-32 and the public purposes set forth in the North Skokie Boulevard Business District Redevelopment Plan (as hereinafter defined), (ii) further enable the Village to control and foster the development and redevelopment of the Property and of the surrounding area, and (iii) serve the best interests of the Village.

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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:

"Annexation Agreement": That certain Annexation Agreement dated as of January 4, 1993 between the Village of Northbrook and LaSalle National Trust N.A. Successor to LaSalle National Bank, U/T/A No. 113872 and Freed Northbrook Limited Partnership.

"Annual Fee Ordinance": Village of Northbrook Ordinance No. 94-18, as the same has been and may, from time to time hereafter, be amended.

"Blum Parcel": That portion of the Property consisting of approximately 1.2 acres, with frontage on Skokie Boulevard, to be consolidated into Lot 1 as provided in Section 5 of this Agreement, and legally described in Exhibit A.

"Builders Square Parcel": That portion of the Property consisting of approximately 12.18 acres and legally described in Exhibit B.

"Buildings": Collectively, the Sports Authority Building, the Main Building, the Outlot A Building, and the Outlot B Building.

"Building Code": Chapter 6, entitled "Building and Construction Regulations" of the Northbrook Municipal Code (1988), as the same has been and may, from time to time hereafter, be amended.

"Corporate Authorities": The President and Board of Trustees of the Village.

"Developer": ORIX TMK Northbrook Venture II, an Illinois joint venture.

"Effective Date": The date on which this Agreement shall become effective pursuant to Subsection 3B of this Agreement.

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"Elevation Plan": Those certain elevation plans prepared by J. T. Staub & Associates, consisting of: Drawing A-4 dated February 3, 1995, Drawing EL-1 dated February 10, 1995, Drawing A-1 (two pages), dated February 10, 1995, copies of which are attached hereto as Exhibit C.

"Final Engineering Plan": That certain engineering plan to be prepared by Mackie Consultants and approved by the Village Engineer pursuant to Subsection 12K of this Agreement.

"Final Plat of Subdivision and Consolidation": That certain final plat of subdivision and consolidation prepared by Mackie Consultants, and dated January 6, 1995, a copy of which is attached hereto as Exhibit D.

"Final Site Plan": That certain site plan prepared by J. T. Staub, consisting of Sheet No. SD-1 and dated February 28, 1995, a copy of which is attached hereto as Exhibit E.

"Improvements": The public and private on-site and off-site improvements (other than the Buildings), including, without limitation, the landscaping, to be made in connection with the development of the Property, described or listed on the Final Engineering Plan and on the Landscape Development Plan and as more fully described in Section 13 of this Agreement.

"Landscape Development Plan": That certain landscape development plan prepared by J. T. Staub, consisting of Sheet LP-1 and dated December 13, 1994, a copy of which is attached hereto as Exhibit F.

"Lot 1": That portion of the Property designated "Lot 1" on the Final Plat of Subdivision and Consolidation.

"Lot 2": That portion of the Property designated "Lot 2" on the Final Plat of Subdivision and Consolidation.

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"Main Building": The single, contiguous, and connected retail shopping center building, as described in Section 12 of this Agreement, to be constructed by Developer along the east side of Lot 1 of the Property as depicted on the Final Site Plan and on the Elevation Plan.

"North Skokie Boulevard Business District Redevelopment Plan": The business redevelopment plan for the North Skokie Boulevard Business Redevelopment District, adopted by Village of Northbrook Ordinance No. 94-32, pursuant to 65 ILCS 5/11-74.3-1 *et seq.*

"North Skokie Boulevard Business Redevelopment District": The business redevelopment district established by Village of Northbrook Ordinance No. 94-32, pursuant to 65 ILCS 5/11-74.3-1 *et seq.*, which district includes, without limitation, the Property, the Nursing Home Parcel, and the Phase I Parcel.

"Nursing Home Parcel": That certain tract of property consisting of approximately 1.29 acres, located adjacent to and south of the Property, currently used as a nursing home, and legally described in Exhibit G.

"Outlot A Building": The single, contiguous, and connected building, as described in Section 12 of this Agreement, to be constructed by Developer and located west of the Main Building on the Property, as depicted on the Final Site Plan and on the Elevation Plan.

"Outlot B Building": The single, contiguous, and connected building, as described in Section 12 of this Agreement, to be constructed by Developer and located southwest of the Main Building on the Property, as depicted on the Final Site Plan and on the Elevation Plan.

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"Phase I Development Agreement": That certain Development and Public Right-of-Way Vacation Agreement dated as of July 28, 1994 between the Village of Northbrook and ORIX TMK Northbrook Venture

"Phase I and II Master Plan": That certain master plan prepared by J. T. Staub, consisting of Sheet No. SDC and dated February 28, 1995, a copy of which is attached hereto as Exhibit H.

"Phase I Parcel": That certain tract of property consisting of approximately 9.05 acres, located adjacent to and south of the Property, to be developed pursuant to the Phase I Development Agreement, and legally described in Exhibit I.

"Property": That certain tract of property (excluding the property to be dedicated to the Village as identified in the Final Plat of Subdivision and Consolidation), composed of Lot 1 (including the Blum Parcel) and Lot 2 consisting of approximately 19.79 acres, and legally described in Exhibit J.

"Public Improvement Standards Manual": Village of Northbrook Standards and Specifications for Public and Private Improvements, dated October 1990, as the same has been and may, from time to time hereafter, be amended.

"Signage Plan": That certain signage and wall sign criteria plan dated as of February 28, 1995, a copy of which is attached hereto as Exhibit K.

"Sports Authority Building": The single, contiguous, and connected building, as described in Section 12 of this Agreement, to be constructed on Lot 2 of the Property, as depicted on the Final Site Plan and on the Elevation Plan.

"Subdivision Code": The Village of Northbrook Subdivision and Development Code (1991), as the same has been and may, from time to time hereafter, be amended.

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"Zoning Code": The Northbrook Zoning Code (1988), as the same has been and may, from time to time hereafter, be amended.

SECTION 3. DEVELOPER ACQUISITION OF BUILDERS SQUARE PARCEL AND BLUM PARCEL.

A. Transfer Contemplated. Developer and the Village acknowledge and agree that Developer has heretofore entered into (i) a valid and enforceable contract to purchase and acquire the Builders Square Parcel and (ii) a valid and enforceable contract to purchase and acquire, in a three-way transaction with the Village, the Blum Parcel, and that said contracts are each in full force and effect. The parties further acknowledge and agree that the Developer's purchase and acquisition of the Builders Square Parcel and the Blum Parcel are both essential and necessary parts of this Agreement.

B. Conditions Precedent to Effective Date. The Effective Date of this Agreement shall be the date on which all of the conditions precedent set forth in 1 through 4 below have been satisfied:

1. The closing of Developer's purchase and acquisition of the Builders Square Parcel; and
2. The closing of Developer's purchase and acquisition of the Blum Parcel; and
3. The execution of this Agreement by all parties to this Agreement; and
4. The recordation of this Agreement in the Office of the Cook County Recorder of Deeds.

C. Failure to Satisfy Conditions. If the conditions set forth in Paragraphs 3B1 through 3B4 of this Agreement are not satisfied in full on or before April 30, 1995, then the Effective Date shall not occur and this Agreement shall, as of April 30, 1995, be deemed null and void and of no force or effect.

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SECTION 4. ADOPTION OF ANNEXATION AGREEMENT TERMINATION RESOLUTION.

Subsequent to the adoption of a resolution approving this Agreement, the Corporate Authorities shall adopt a valid and binding resolution, substantially the same as Exhibit L ("Annexation Agreement Termination Resolution"), approving the amendment and termination of the Annexation Agreement.

SECTION 5. ADOPTION OF FINAL PLAT OF SUBDIVISION AND CONSOLIDATION APPROVAL RESOLUTION.

Subsequent to the adoption of the Annexation Agreement Termination Resolution, the Corporate Authorities shall adopt a valid and binding resolution, substantially the same as Exhibit M ("Final Plat of Subdivision and Consolidation Approval Resolution"), approving, subject to final engineering, an amended final plat of subdivision and a plat of consolidation for the Property pursuant to Sections 3-302 and 3-303 of the Subdivision and Development Code. The Final Plat of Subdivision and Consolidation shall depict the consolidation of the individual lots of record on the Property, including specifically, but without limitation, the consolidation of the Blum Parcel into Lot 1.

SECTION 6. ADOPTION OF SPECIAL PERMIT ORDINANCE.

Subsequent to the adoption of the Final Plat of Subdivision and Consolidation Approval Resolution, the Corporate Authorities shall adopt a valid and binding ordinance, substantially the same as Exhibit N ("Special Permit Ordinance"), granting, pursuant to Section 11-602 of the Zoning Code, (i) an amendment to the special permit granted pursuant to Ordinance No. 92-70 to allow for buildings in excess of 7,500 square feet on the Property and (ii) a special permit for a planned development on the Property. The Special Permit Ordinance shall not become effective until the Effective Date of this Agreement.

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SECTION 7. ADOPTION OF AUTOMOTIVE AUDIO INSTALLATION FACILITY SPECIAL PERMIT ORDINANCE.

Subsequent to the adoption of the Automotive Special Permit Ordinance, the Corporate Authorities shall adopt a valid and binding ordinance, substantially the same as Exhibit O ("Automotive Special Permit Ordinance"), granting a special permit to allow an automotive audio and telephone installation facility (Village S.I.C. Code No. 7549.02) on the Property pursuant to Section 11-602 of the Zoning Code. The Automotive Special Permit Ordinance shall not become effective until the Effective Date of this Agreement.

SECTION 8. ADOPTION OF BLUM VACATION AGREEMENT TERMINATION RESOLUTION.

Subsequent to the adoption of the Automotive Special Permit Ordinance, the Corporate Authorities shall adopt a valid and binding resolution, substantially the same as Exhibit P ("Blum Vacation Agreement Termination Resolution"), approving the termination of that certain Public Right-of-Way Vacation Agreement dated as of December 22, 1992 between the Village and the owner of the Blum Parcel.

SECTION 9. ADOPTION OF BUILDING CODE AMENDMENT ORDINANCE.

Subsequent to the adoption of the Blum Vacation Agreement Termination Resolution, the Corporate Authorities shall adopt a valid and binding ordinance, substantially the same as Exhibit Q ("Building Code Amendment Ordinance"), amending Section 6-19 of the Building Code to allow for waivers to be granted by the Corporate Authorities to the pallet rack shelving provisions of the Building Code.

SECTION 10. ADOPTION OF BUILDING CODE WAIVER RESOLUTION.

Subsequent to the adoption of the Building Code Amendment Ordinance, the Corporate Authorities shall adopt a valid and binding resolution, substantially the same as Exhibit R ("Building Code Waiver Resolution"), waiving application of certain of the pallet rack shelving provisions with respect to Sports Authority. The Municipal Code Waiver Resolution shall not become effective until the Effective Date of this Agreement.

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SECTION 11. DEMOLITION OF EXISTING BUILDINGS AND STRUCTURES.

Developer shall comply with the following schedule and provisions with respect to the demolition and removal of the four buildings existing on the Property as of the Effective Date of this Agreement (the "Existing Buildings").

- A. The existing vacant bowling alley and restaurant building shall be demolished and removed from the Property prior to the issuance of any grading or building permits for any new buildings, structures, or improvements on any portion of the Property.
- B. The northernmost building on the Blum Parcel shall be demolished and removed from the Property prior to issuance of either a temporary or permanent certificate of occupancy for the Main Building.
- C. The southernmost building on the Blum Parcel shall be demolished and removed from the Property prior to May 15, 1996.
- D. The middle building on the Blum Parcel shall be demolished and removed from the Property within 30 days after the date of vacation of such building by the current tenant thereof, Metrocom Communications, Inc. d/b/a Ameritech Cellular ("Ameritech"). Developer agrees that it will not, without the prior written consent of the Village, extend the term of Ameritech's lease of the premises within such building.
- E. All Existing Buildings shall be demolished and removed from the Property prior to issuance of either a temporary or permanent certificate of occupancy for the Outlot A Building.

The Village shall, upon receipt of a complete application for demolition, issue the necessary demolition permits for the demolition of the Existing Buildings. The demolition and removal of the Existing Buildings shall be at Developer's sole cost and expense.

SECTION 12. DEVELOPMENT OF THE PROPERTY.

Notwithstanding any use or development right that may be applicable or available to the Property pursuant to the Zoning Code, the Property shall, as of, and at all times after, the Effective Date of this Agreement, only be used and developed pursuant to and in accordance with this Agreement, including, without limitation, the following:

- A. Site Features. The Property shall be developed with (i) no buildings or structures other than the Buildings and the Improvements, (ii) ancillary

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outdoor parking facilities, (iii) signage as permitted in this Agreement, and (iv) landscaped open space as shown on the Landscape Development Plan

B. Size of Buildings.

1. Sports Authority Building. The Sports Authority Building shall consist of not more than approximately 54,075 square feet of gross floor area, with a footprint and in the location as depicted on the Final Site Plan.

2. Main Building. The Main Building shall consist of not more than approximately 180,000 square feet of gross floor area, with a footprint and in the location as depicted on the Final Site Plan.

3. Outlot A Building. The Outlot A Building shall consist of not more than 4,200 square feet of gross floor area, with a footprint and in the location as depicted on the Final Site Plan.

4. Outlot B Building. The Outlot B Building shall consist of not more than 7,600 square feet of gross floor area, with a footprint and in the location as depicted on the Final Site Plan.

C. Architectural Features of Buildings. The Buildings shall be constructed of masonry material, except for certain architectural features depicted on the Elevation Plan. The Buildings shall have such architectural features only as depicted on the Elevation Plan.

D. Density and Lot Coverage. The total floor area ratio for the Property, as defined in the Zoning Code, shall not exceed 0.285. The total amount of lot coverage for the Property shall not exceed 50 percent.

E. Parking. No use shall be permitted on the Property that does not independently satisfy the Village's off-street parking regulations as provided in Section 9-104 of the Zoning Code.

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F. Compliance With All Plans, Codes and Agreements. The development of the Property shall be pursuant to and in strict accordance with the plans, codes, and agreements set forth in (i) through (xiii) below, except for minor alterations due to final design, final engineering, or site work approved by the Village Engineer or the Director of Development, as appropriate and except as expressly modified by or pursuant to this Agreement:

- (i) this Agreement;
- (ii) the Final Site Plan;
- (iii) the Final Engineering Plan;
- (iv) the Landscape Development Plan;
- (v) the Elevation Plan;
- (vi) the provisions of the C-5 Boulevard Commercial District of the Zoning Code;
- (vii) all other applicable provisions of the Zoning Code;
- (viii) the Building Code;
- (ix) the Subdivision Code;
- (x) the Public Improvement Standards Manual;
- (xi) the North Skokie Boulevard Business District Redevelopment Plan;
- (xii) the Phase I and II Master Plan; and
- (xiii) all other applicable federal, state, and Village laws, statutes, ordinances, resolutions, rules, and regulations.

In the event of a conflict between or among any of the above plans, codes, or agreements, the plan, code, or agreement that provides the greatest control and protection for the Village, as determined by the Village Manager, shall control, except to the extent that such plan or code has been expressly modified by this Agreement. All of the plans, codes, and agreements set forth in (i) through (xiii) above shall be interpreted

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so that duties and requirements imposed by any one of them are cumulative among all of them.

G. Signage.

1. General. All signage on the Property shall comply, and be in strict accordance, with the Zoning Code. Developer acknowledges that the Village is now contemplating, and may in the future contemplate, an amendment to the signage provisions of the Zoning Code. In the event that an amendment is adopted at any time after the Effective Date of this Agreement that imposes restrictions on the height, style, and size of signs in the C-5 District that are more restrictive than the signage allowed pursuant to this Agreement or relief has been granted to such plan or code, Developer agrees to replace the nonconforming signage on the Property with conforming signage in accordance with any applicable amortization schedule that may be set forth in the Zoning Code.

2. Uniformity of Signage. All shopping center and tenant identification signage on the Buildings shall be in accordance with the Signage Plan and shall consist of individual, internally lit letters, utilizing, throughout, the same letter style, and the same color pattern, which pattern shall not exceed two colors (including black and white). All shopping center and tenant identification signage on the Buildings shall comply with Section 9-106 of the Zoning Code. In the event of a conflict between the Signage Plan and any other provision of, or exhibit to, this Agreement, the Signage Plan shall control.

3. Monument-Style Signs. Developer shall be permitted to construct two freestanding monument-style signs generally as depicted on the Signage Plan, at the location depicted on the Final Site Plan.

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4. Edens Expressway Frontage. No freestanding signs of any kind shall be constructed or located at any point along the Edens Expressway frontage of the Property.

5. Village of Northbrook Sign. At the discretion and direction of the Corporate Authorities, Developer shall, at its sole cost and expense, construct one standard "Village of Northbrook" identification sign at the location designated on the Final Site Plan. The sign shall be in accordance with specifications provided by the Village Manager and shall not be included in the calculation of the amount of signage allowed pursuant to this Agreement or the Zoning Code. Developer shall allow the Village, or any designated Village representative, to enter upon the Property for purposes of providing maintenance to such sign.

H. Coordination of Development with Phase I Parcel. Developer shall insure that (i) the development of the Property is, at all times, coordinated with the development of the Phase I Parcel; (ii) all architecture, landscaping, and signage on the Property is compatible with that on the Phase I Parcel; (iii) interior vehicular access between the Property and the Phase I Parcel shall remain open and unobstructed at all times; and (iv) no development shall occur on the Property that is inconsistent with the Phase I and II Master Plan.

I. Occupants and Interior Build Out of the Buildings.

1. Sports Authority Building.

a. Anchor Retail Space. The initial occupant of the approximately 42,000 square foot anchor retail user space of the Sports Authority Building shall be The Sports Authority. The Village shall have no obligation to issue either a temporary or a permanent certificate of occupancy for the initial occupancy of said anchor retail space to any user other than The Sports Authority. The Sports Authority

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Building anchor retail space shall consist of not more than approximately 42,000 square feet.

- b. South Side Retail Space. The retail space on the south side of the Sports Authority Building shall consist of not less than two retail spaces which, in the aggregate, shall consist of not more than approximately 4,875 square feet.
- c. North Side Retail Space. The retail space on the north side of the Sports Authority Building shall be used for one or more retail spaces which, in aggregate, shall consist of not more than approximately 7,200 square feet.

2. Main Building.

- a. Minimum Retail User Spaces. There shall be not less than six individual retail user spaces in the Main Building.
- b. Initial Occupancy. The initial occupants of the retail user spaces identified on the Final Site Plan as "Shop 1," "Shop 2," "Shop 3," "Shop 4," "Shop 5," and "Shop 6" shall be as follows:

Shop 1:	The Container Store, Inc.
Shop 2:	Circuit City Stores, Inc.
Shop 3:	Crown Books Corporation, d/b/a Super Crown Books
Shop 4:	Marshall's
Shop 5:	Fresh Fields Markets, Inc., d/b/a Fresh Fields
Shop 6:	Nordstrom Rack, Inc. d/b/a Nordstrom Rack

The Village shall have no obligation to issue either a temporary or a permanent certificate of occupancy for the initial occupancy of any of the above retail user spaces to any user for any such retail user space other than as specifically identified above.

- 3. Outlot A Building. The Outlot A Building shall consist of one or more retail spaces which shall, in the aggregate, consist of not more than 4,200 square feet.

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4. Outlot B Building. The Outlot B Building shall consist of not less than two retail spaces which shall, in the aggregate, consist of not more than 7,600 square feet.

J. Dumpsters. Dumpsters and all other garbage receptacles shall be located on the Property only in the specific locations as depicted on the Final Site Plan. All dumpsters and other garbage receptacles shall be contained in fully enclosed structures at all times except temporarily when necessary for refuse collection operations.

K. Final Engineering Plan. On or before April 17, 1995, Developer shall submit to the Village Engineer (i) an engineering plan for the development of the Property as provided for in this Agreement and (ii) documentation satisfactory to the Village Engineer establishing that the Illinois Department of Transportation ("IDOT") has approved the engineering plan submitted by Developer with regard to all matters within IDOT jurisdiction. The engineering plan submitted by Developer pursuant to this Subsection shall be promptly reviewed and approved by the Village Engineer if, and only if, said plan conforms to this Agreement and to all applicable federal, state, and Village statutes, codes, ordinances, and regulations, specifically including, not without limitation, the provisions of the Municipal Code concerning stormwater management and related issues. The engineering plan approved by the Village Engineer pursuant to this Subsection shall be the "Final Engineering Plan." The Village shall have no obligation to issue a building permit for any portion of the Property unless and until the Final Engineering Plan has been approved by the Village Engineer.

SECTION 13. IMPROVEMENTS.

A. Description of Improvements. Developer shall, at its sole cost and expense, without protest, construct and install the Improvements, including, without limitation, the following:

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1. Construction of dual-left turn lanes, and related traffic signal modifications, from northbound Skokie Boulevard to westbound Lake-Cook Road, as depicted on the Final Engineering Plan.
2. Construction of a right-turn only lane, and related traffic signal modifications, from northbound Skokie Boulevard to eastbound Lake-Cook Road, as depicted on the Final Engineering Plan.
3. Installation and maintenance of a traffic signal system at the main entrance to the Property as depicted on the Final Site Plan. The signal shall be equipped with four pedestrian crosswalks with pedestrian signals, an override control, and left turn signals. The signal shall be designed to interconnect with all existing and proposed signals on Skokie Boulevard and, if approved by the Illinois Department of Transportation, the ramps to the Edens Expressway. The Village agrees to enforce any existing right to recapture all or a part of the cost of such improvements that the Developer may have against neighboring property owners.
4. Provision of a bus stop facility, and the necessary land therefor, along Skokie Boulevard, if designated by PACE.
5. Dedication and installation of public sidewalk easements on the Lake-Cook Road and Skokie Boulevard frontages as depicted on the Final Plat of Subdivision and Consolidation, and installation of sidewalks at the locations depicted on the Final Site Plan.
6. Underground burial of all electrical and telephone lines abutting the Property.
7. Reservation of the land depicted on the Final Site Plan to be dedicated to the State of Illinois, at no public cost or expense, for an expanded entrance ramp to Edens Expressway.
8. Reservation of the land depicted on the Final Site Plan to be dedicated to the appropriate governmental agency, at no public cost or expense, for the purpose of widening Lake-Cook Road.
9. Removal of the existing, and installation and maintenance of the, northern half of Dennis Drive on the east side of the Nursing Home Parcel.
10. Removal of existing rumble medians along portions of the Skokie Boulevard frontage of the Property and provision of painted two-way left turn lane designations as depicted on the Final Site Plan.
11. Installation of three decorative, aerating water features in the locations depicted on the Final Site Plan, the northernmost of which shall include a cascading water feature with rocks.

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12. Installation of an underground sprinkling system for all landscaped areas.
13. Installation of benches, planters, brick pavers, and bicycle racks as depicted on the Landscape Development Plan.
14. Provision of off-site detention at, and enlargement of, the detention basin to be constructed pursuant to the Phase I Development Agreement.
15. Installation of all perimeter and parking lot landscaping with trees having a minimum caliper size of 4 inches at the time of installation.
16. Construction of a masonry and wood fence generally west of the Nursing Home Parcel as depicted on the Phase I and II Master Plan and in compliance with the detail depicted on the Landscape Development Plan.
17. Installation of such traffic control signs and markings as are necessary, to the satisfaction of the Village Engineer, to ensure safe and adequate traffic control on the Property.

B. Design, Construction, and Completion of Improvements. The Improvements shall be designed and constructed (i) pursuant to and in accordance with Subsection 12F of this Agreement and (ii) to the sole satisfaction of the Village Engineer. No obligation to commence construction of the Improvements shall occur until the Effective Date of this Agreement. The Improvements shall be completed, to the satisfaction of the Village Engineer, prior to the issuance by the Village of either a temporary or permanent certificate of occupancy for the Buildings, or any portion thereof; provided, however, that in the event that at the time Developer requests a temporary or permanent certificate of occupancy for the Buildings, or any portion thereof, seasonal planting of landscaping is not complete, or certain Improvements are not complete solely because of the continued occupancy of an Existing Building pursuant to Section 11 of this Agreement, the Village may issue a temporary or permanent certificate of occupancy, but only after Developer shall have deposited with the Village a Performance Guarantee (as defined in Section 16 of this Agreement) in an amount determined by the Village

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Engineer to cover all projected costs of such incomplete seasonal planting or Improvements. Notwithstanding the foregoing, Developer shall have the right to defer construction of the improvements described in paragraphs 1 and 2 of Subsection 13A of this Agreement to allow for coordinated construction with Cook County's proposed construction of improvements to Lake-Cook Road, provided that Developer shall, prior to issuance of any temporary or permanent certificate of occupancy for the Buildings, deposit with the Village a Performance Guarantee (as defined in Section 16 of this Agreement) in an amount determined by the Village Engineer to cover the project costs of such Improvements.

C. **Future Improvement.** In the event that the Corporate Authorities determine, in its sole discretion, exercised at any time after the Effective Date of this Agreement, that the signalized vehicular entrance to the Property from southbound Skokie Boulevard requires a second left turn lane, Developer shall, at its sole cost and expense, upon notice from the Village, cause such lane to be paved and striped and cause any necessary traffic signal modifications to be made.

D. **Phased Development.** The Village acknowledges and agrees that the development of Lot 1 and Lot 2 may occur in phases. In the event of a phased development, the following special provisions shall apply in lieu of any provision to the contrary set forth in Subsection 13B of this Agreement:

1. The following Improvements and activities shall be completed, to the satisfaction of the Village Engineer, prior to the issuance by the Village of either a temporary or permanent certificate of occupancy for any portion of the Sports Authority Building:
 - a. The Improvements described in paragraphs 1, 2, 3, 4, 7, 8, and 10 of Subsection 13A of this Agreement.
 - b. The Improvements described in paragraphs 5, 6, 12, 13, 15 and 17 of Subsection 13A of this Agreement, but only to the extent that such Improvements are located on Lot 2.

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- c. The landscaped area at the intersection of Lake Cook Road and Skokie Boulevard and the water feature to be located thereon.
 - d. The northern entrance to the Property and the landscaped islands located on both sides thereof, as depicted on the Landscape Development Plan.
 - e. The demolition of the existing vacant bowling alley and restaurant building.
 - f. An interim stormwater detention facility, acceptable to and approved by the Village Engineer.
 - g. Grading and reasonable cleanup of the Skokie Boulevard frontage of the Builders Square Parcel.
2. The following Improvements and activities shall be completed, to the satisfaction of the Village Engineer, prior to the issuance by the Village of either a temporary or permanent certificate of occupancy for any Building on Lot 1:
- a. The Improvements described in paragraphs 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, and 16 of Subsection 13A of this Agreement.
 - b. The Improvements described in paragraphs 5, 6, 12, 13, 15, and 17 of Subsection 13A of this Agreement, but only to the extent that such Improvements are located on Lot 1.
 - c. The landscaped area at the intersection of Lake Cook Road and Skokie Boulevard and the water feature to be located thereon.
 - d. The two southernmost water features described in paragraph 11 of Subsection 13A of this Agreement.
 - e. The northern entrance to the Property and the landscaped islands located on both sides thereof, as depicted on the Landscape Development Plan.
 - f. Grading and berming of the Skokie Boulevard frontage of Lot 2 of the Property.
3. In no event shall the Village be required to issue a building permit for the construction of either the Outlot A Building or the Outlot B Building prior to the issuance of a building permit for the construction of the Main Building.

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E. **Special Provisions Regarding Sports Authority.** Sports Authority shall have the right, but not the obligation, pursuant to Subsection 13B of this Agreement, to develop Lot 2 prior to the development of Lot 1. If Sports Authority exercises this right, then Sports Authority shall assume the obligations of, and be entitled to the benefits of, Developer that are set forth in, or otherwise required by, this Agreement that relate to the development of Lot 2.

F. **Additional Assistance.** In addition to all required Improvements listed in this Section, Developer agrees to assist the Village in (i) ensuring the optimal operation of all traffic signals required by this Agreement, (ii) working with the Chicago & Northwestern Railroad Company to revise train schedules in order to alleviate rush hour congestion, and (iii) working with appropriate governmental officials to cause the construction of the Lake-Cook Road/railroad underpass.

SECTION 14. DEDICATION AND ACCEPTANCE OF PUBLIC IMPROVEMENTS.

Pursuant to and in accordance with Article III of the Subdivision Code, the execution of this Agreement shall not constitute an acceptance by the Village of any public Improvements. The acceptance of all public Improvements shall be made only by the adoption of a resolution by the Corporate Authorities after there has been filed with the Village Manager a certification by the Village Engineer stating that such Improvements have been fully, or individually, completed, and that the inspected construction or installation thereof has been approved by the Village Engineer.

SECTION 15. MAINTENANCE.

A. **Maintenance of Improvements.** Developer shall, at Developer's sole cost and expense, maintain, in a first rate condition at all times, the Improvements, including specifically, but without limitation, the landscaped open spaces and other landscaping on the Property as depicted on the Final Site Plan and on the Landscape

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Development Plan (the "Landscaping"). The Developer shall install, construct, and maintain all Landscaping in such a manner to prevent the Landscaping from obstructing or interfering with site lines in and around the sidewalks and the roadway network on, and to and from, the Property.

B. Dennis Drive. So long as Dennis Drive east of and adjacent to the Nursing Home Parcel ("Dennis Drive") remains a dedicated public right-of-way, Developer shall, at its sole cost and expense, after the Effective Date of this Agreement, pave (in accordance with the Final Engineering Plan), maintain, repair, and remove snow from, in a first rate condition at all times, the northern half of Dennis Drive. In the event that the Village determines, in its sole and absolute discretion, that Developer has not adequately paved, maintained, repaired, or removed snow from Dennis Drive at any time, the Village may, after three days prior written notice to Developer, but shall not be obligated to, perform such paving, maintenance, or repair work on and to, or removing snow from, Dennis Drive.

C. Failure to Maintain Improvements. In the event the Village determines, in its sole and absolute discretion, that Developer has not adequately maintained the Improvements, including specifically, but without limitation, the Landscaping, or any portions thereof, pursuant to Subsection 15A of this Agreement, at any time, the Village may, after seven days prior written notice to Developer, but shall not be obligated to, enter upon any or all of the Property for the purpose of performing maintenance work on and to the Improvements including specifically, but without limitation, the Landscaping.

D. Reimbursement of Village Expense. In the event that the Village shall perform, or cause to be performed, any work pursuant to Subsection 15A or Subsection 15B of this Agreement, the Village shall have the right to charge Developer

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an amount sufficient to defray the entire cost of such work or action, including administrative costs, either before or after such cost is incurred. If the amount so charged is not paid by Developer within 30 days following a demand in writing by the Village for such payment, such charge shall, together with interest and costs of collection, become a lien upon the Property and the Village shall have the right to collect such charge, with interest and costs, and to enforce such lien as in foreclosure proceedings for mortgage liens. Such lien shall be subordinate to the lien of any first mortgage or ground lease now or hereinafter placed upon the Property; provided, however, that such 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. Such 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 16. SECURITY FOR IMPROVEMENTS.

As security to the Village for the performance by Developer of Developer's obligations to construct and complete the Improvements pursuant to and in accordance with this Agreement, Developer shall, prior to the recordation of the Final Plat of Subdivision and Consolidation, provide a performance guarantee complying with all requirements of the Subdivision Code, and in form and substance substantially conforming with Exhibit S attached hereto, and satisfactory to the Village Attorney (the "Performance Guarantee"). The aggregate amount of the Performance Guarantee may be reduced by Developer from time to time only in accordance with the requirements of the Subdivision Code.

SECTION 17. DELIVERY HOURS.

No regular deliveries to any of the occupants of the Main Building or to the anchor space in the Sports Authority Building shall be permitted during the following periods:

Monday - Friday: between 7:00 a.m. and 9:00 a.m.

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Monday - Friday: between 4:00 p.m. and 6:00 p.m.

Saturday: between 7:00 a.m. and 6:00 p.m.

SECTION 18. RIGHTS-OF-WAY VACATION ACKNOWLEDGEMENT.

Developer acknowledges and agrees that the rights-of-way, as defined in Section 2 of the Annexation Agreement (the "Rights-of-Way"), were properly, lawfully, and completely vacated by the Village and transferred to Developer's predecessor in interest to a portion of the Property pursuant to and in accordance with Section 13 of the Annexation Agreement. Developer hereby agrees that it waives and releases all of its rights to, and hereby agrees that it shall not, challenge, contest, or otherwise dispute in any way, either directly or indirectly, the vacation of the Rights-of-Way by the Village.

SECTION 19. GENERAL IMPACT FEE.

In consideration of the impact of the proposed development of the Property on the Village, Developer agrees to pay, without protest, in addition to all other specific sums required to be paid by other sections of this Agreement or by any applicable code or ordinance, a general impact fee in the amount of \$152,000 for deposit into the Village's general fund. The general impact fee shall be paid in full prior to the issuance of any certificate of occupancy for any portion of the Property.

SECTION 20. SPECIFIC IMPACT FEES.

A. Transportation. Because Developer has agreed to construct and install the traffic improvements described in Subsection 13A of this Agreement, at its sole cost and expense, prior to the issuance of a certificate of occupancy for the Property, the Village does hereby agree to adopt a valid and binding resolution, substantially the same as Exhibit T, waiving any requirement of Developer to pay a transportation impact fee for the construction of the Buildings. Developer acknowledges and agrees that the Village's

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transportation impact fee shall be applicable with respect to any future redevelopment or new construction on the Property.

3. Special Sewer Connection. Developer does hereby unconditionally agree to pay, without protest, upon application for any building permit for the construction of the Buildings, or any portion thereof, a special connection fee to be imposed by the Village for a new sanitary sewer line to be constructed in the Skokie Boulevard corridor. The fee shall be in the amount that is or will be set forth in the Annual Fee Ordinance and shall be based on an actual or projected increment in use of water and sanitary sewer services above that which exists on the Property as of the Effective Date of this Agreement.

SECTION 21. EASEMENTS.

Developer (and, if applicable, other owners of record of the Property) shall, prior to any application for any building permit for the construction of the Buildings, or any portion thereof, execute and record the Final Plat of Subdivision and Consolidation depicting and granting at Developer's sole cost and expense:

- a. to the Village, other applicable governmental bodies, and adjacent property owners, utility and enforcement easements over, on, and across the Property, for the purposes of enforcing applicable laws, making repairs, installing and servicing utilities, and providing public and emergency services to the Property and to adjacent parcels;
- b. to the Village, an easement for a fire lane over, on, and across that portion of the Property depicted as "Fire Lane" on the Final Site Plan. Developer shall cause the Fire Lane area to be clearly and conspicuously marked and posted as a fire lane and shall prohibit standing, stopping, or parking of any kind in the Fire Lane;
- c. a public non-exclusive permanent access easement for the purpose of providing access to and from the Nursing Home Parcel and Skokie Boulevard. Such easement shall also provide for (i) a temporary non-exclusive access easement for the benefit of the Nursing Home Parcel over, on, and across the perimeter of the Property, for the purpose of providing safe, efficient, and unobstructed emergency access to and from the Nursing Home Parcel and Skokie Boulevard during any and all construction of the Building and the Improvements; (ii) installation of a sign clearly

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identifying the location of such temporary emergency access drive; and
(iii) appropriate fencing around construction areas on the Property to keep unauthorized persons from entering the Property during construction; and

- d. public sidewalk easements identified in or required by Subsection 13A of this Agreement.

Developer shall, at its sole cost and expense, pave, maintain, repair, cause to be unobstructed, and immediately remove snow from, all such easements.

SECTION 22. COMPLETION OF CONSTRUCTION.

A. Penalty for Failure to Complete. In the event that all of the Improvements (except for seasonal planting of landscaping) and the shells of the Main Building and the Sports Authority Building have not been built or are not complete on or before June 30, 1996, the Village shall have the right, after providing Developer with a 30-day notice and opportunity to cure, to impose a penalty in the amount of \$1,500 for each day after June 30, 1996 that the Improvements (except for seasonal planting of landscaping) and the shells of the Main Building and the Sports Authority Building remain unbuilt or uncompleted. In the event that such penalty is imposed by the Village, Developer shall promptly pay the penalty amount to the Village for deposit into the Village's general fund. The Village shall have no obligation to issue either a temporary or permanent certificate of occupancy for all or any portion of the Buildings until the penalty amount is paid in full. If the penalty is not paid by Developer within 30 days following a demand in writing by the Village for such payment, such charge, together with interest and costs of collection, shall become a lien on the Property, and the Village shall have the right to collect such charge, with interest and costs, and to enforce such lien in the same manner as in mortgage foreclosure proceedings. The Village shall not be entitled to impose a penalty pursuant to this Subsection 22A if the failure to complete construction of all of the Improvements (except for seasonal planting of landscaping or the continued occupancy of an Existing Building by Ameritech pursuant to Section 11D

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of this Agreement) and the shells of the Main Building and the Sports Authority Building prior to June 30, 1996, is due exclusively to a "force majeure." For purposes of this Subsection 22A, the definition of "force majeure" shall be limited to strikes, lock-outs, casualty, earthquakes, floods, and severe and unusual weather conditions that are entirely outside of the control of Developer.

B. Removal of Partially Completed Structures. In addition to the payment of the penalty provided for in Subsection 22A of this Agreement, if applicable, if Developer fails to diligently pursue (i) all demolition as contemplated in Section 11 of this Agreement to completion within the time period prescribed in the applicable demolition permit or permits issued by the Village for such demolition or construction, or (ii) construction of all of the Buildings to completion within the time period prescribed in the applicable building permit or permits issued by the Village for such construction, and if the applicable demolition or building permit or permits are not renewed within three months after the expiration thereof, Developer shall, within 60 days after notice from the Village, remove any partially constructed, partially completed, or partially demolished buildings, structures, Improvements, weeds, and debris from the Property. In the event that Developer fails or refuses to remove any of said buildings, structures, Improvements, weeds, or debris from the Property as required, the Village shall have and is hereby granted by the Developer, in addition to all other rights afforded to the Village in this Agreement and by law, permission, authority, and the right, at its option, to demolish and remove said buildings, structures, Improvements, weeds, and debris from the Property, and the Village shall have the right to charge Developer an amount sufficient to defray the entire cost of such work, including legal and administrative costs. If the amount so charged is not paid by Developer within 30 days following a demand in writing by the Village for such payment, such charge, together with interest and costs of collection, shall

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become a lien on the Property, and the Village shall have the right to collect such charge, with interest and costs, and to enforce such lien in the same manner as in mortgage foreclosure proceedings.

C. Completion of Excavation. If Developer commences any excavation on the Property and has not received a building permit for either the Main Building or the Sports Authority Building within six months following the date that Developer commences such excavation, Developer shall, within 30 days after notice from the Village, either (i) take the necessary action to obtain a building permit for either Building or (ii) fill any such excavation. In the event that Developer fails or refuses to perform either of the foregoing, the Village shall have, and is hereby granted, in addition to all other rights afforded to the Village in this Agreement and by law, permission, authority, and the right, at its option, to fill such excavation, and the Village shall have the right to charge Developer an amount sufficient to defray the entire cost of such work, including legal and administrative costs. If the amount so charged is not paid by Developer within 30 days following a demand in writing by the Village for such payment, such charge, together with interest and costs of collection, shall become a lien on the Property, and the Village shall have the right to collect such charge, with interest and costs, and to enforce such lien in the same manner as in mortgage foreclosure proceedings.

SECTION 23. LIABILITY AND INDEMNITY OF VILLAGE.

A. Village Review. The parties 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 or improvement, or the issuance of any approvals, permits, certificates, or acceptances, relating to the use and development of the Property, and that the Village's review and approval of any such plans and the Improvements or the issuance of any such approvals,

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permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure any of the parties, or any of their heirs, successors, assigns, tenants, and licensees, against damage or injury of any kind and at any time.

B. **Village Procedures**. The parties acknowledge that notices, meetings, and hearings have been properly given and held by the Village with respect to the adoption of the Annexation Agreement Termination Resolution, the Final Plat of Subdivision and Consolidation Approval Resolution, the Special Permit Ordinance, the Automotive Special Permit Ordinance, the Blum Vacation Agreement Termination Resolution, the Building Code Amendment Ordinance, the Building Code Waiver Resolution, the Transportation Impact Fee Waiver Resolution pursuant to Section 20 of this Agreement, and the approval and execution of this Agreement, and agree not to challenge any of such actions, on any substantive basis or on the grounds of any procedural infirmity or of any denial of any procedural right.

C. **Indemnity**. Developer agrees to, and does hereby, hold harmless and indemnify the Village, the Corporate Authorities, all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with (i) the Village's review and approval of any plans or Improvements, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; (ii) any actions taken by the Village pursuant to Subsection 23B of this Agreement; (iii) the development, construction, and maintenance of the Property; and (iv) the performance by Developer of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.

D. **Defense Expenses**. Developer shall, and does hereby agree to, pay, without protest, all expenses incurred by the Village in defending itself with regard

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to any and all of the claims identified in Subsection 23C of this Agreement. These expenses shall include all out-of-pocket expenses, such as attorneys' and experts' fees, and shall also include the reasonable value of any services rendered by any employees of the Village.

SECTION 24. PAYMENT OF VILLAGE COSTS.

In addition to any other costs, payments, permit fees, or other fees required by this Agreement or by applicable Village ordinances and codes, Developer agrees that it will pay to the Village, immediately upon presentation of a written demand or demands therefor, (i) three and one-half percent of the cost of all of the Improvements, and (ii) legal and development fees incurred 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, including, without limitation, those fees and expenses that the Village has paid and will pay to its legal counsel, Burke, Weaver & Prael, to the extent that all such fees are not covered by routine application and permit fees. Further, Developer agrees that it will continue to be liable for and to pay such costs incurred in connection with any applications, documents, or proposals, whether formal or informal, of whatever kind submitted by it during the term of this Agreement in connection with the use and development of the Property. Further, Developer agrees that it shall be liable for and will pay upon demand all costs incurred by the Village for publications and recordings required in connection with the aforesaid matters.

SECTION 25. ENFORCEMENT.

The parties hereto 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 Developer agrees that it will not seek and does not have the right to seek to recover a judgment for monetary damages against the Village or any elected or appointed Village officials, agents, representatives, attorneys, or

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employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement. In the event of a judicial proceeding brought by any party to this Agreement against any other party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

SECTION 26. EXERCISE OF RIGHTS.

The Village shall be under no obligation to exercise the rights granted to it in this Agreement except as it shall determine to be in its best interest. No failure to exercise at any time any right granted herein to the Village shall be construed as a waiver of that or any other rights.

SECTION 27. NATURE AND SURVIVAL OF OBLIGATIONS.

The parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute both the personal obligation of the party liable for its payment, and the successors of such party, and also a lien upon the Property until paid. The lien of the charges provided for herein shall be subordinate to the lien of any mortgage now or hereinafter placed upon the Property; provided, however, that such 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. Such 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 28. SUCCESSORS, TRANSFEREES, AND RELEASE OF TRANSFEROR.

A. **Binding Effect.** Owner, Developer, and Sports Authority, acknowledge and agree that this Agreement shall be binding upon each of them and any and all of their respective heirs, successors, transferees, and assigns and the successor

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owners of record of all or any portion of the Property, except as otherwise expressly provided in Subsection B of this Section.

B. Transferee Assumption. To assure that any potential heir, successor, transferee, or assign has notice of this Agreement and the obligations created by it, Owner, Developer, and Sports Authority agree:

- (i) that this Agreement shall be recorded with the Cook County Recorder of Deeds;
- (ii) to incorporate, by reference, this Agreement into any and all real estate sales contracts entered into for the sale of all or any portion of the Property to any party not a party to this Agreement; and
- (iii) to require, prior to the transfer of all or any portion of the Property, the transferee of said Property to execute an enforceable written agreement agreeing to be bound by the provisions of this Agreement and, in the event that the Buildings (except vacant tenant space) and all Improvements are not completed at the time of such transfer, to provide the Village with such reasonable assurance of the financial ability of such transferee to meet those obligations as the Village may require and as are required pursuant to this Agreement. The Village agrees that upon a successor becoming bound to the personal obligation created herein in the manner provided herein and providing the financial assurances required by this Section, the personal liability of Owner, Developer, or Sports Authority or other predecessor obligor shall be released to the extent of the transferee's assumption of liability. Owner, Developer, or Sports Authority (as the case may be) agree to notify the Village in writing at least 30 days prior to any date upon which Owner, Developer, or Sports Authority proposes to transfer a legal or beneficial interest in any portion of the Property to a transferee. Owner, Developer, or Sports Authority shall, at the same time, provide the Village with a fully executed copy of the hereinabove required agreement by the transferee to be bound by the provisions of this Agreement and the transferee's proposed assurances of financial capability.

C. Transfer Defined. For purposes of this Section, the term "transfer" shall be deemed to include any assignment, transfer, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Property, or any beneficial interest therein, in whole or in part, by voluntary or involuntary sale, foreclosure, merger, sale and leaseback, consolidation, or otherwise.

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D. **Mortgagees of Property.** This Agreement shall be binding on all mortgagees of the Property or other secured parties automatically upon such mortgagee assuming title to the Property, in whole or in part, by a foreclosure or a deed in lieu of foreclosure without the necessity of executing such assumption agreement. Until such time, however, a mortgagee or other secured party shall have no personal liability hereunder.

E. **Prohibited Assignments.** It is the express intent of the parties hereto that this Agreement, and all of the rights and privileges granted herein, are for the sole and exclusive benefit of Owner, Developer, and Sports Authority until the Effective Date. Accordingly, notwithstanding Subsections 28A, 28B, 28C, and 28D of this Agreement, and except as provided in Subsections 28F and 28G of this Agreement, in the event that Owner, Developer, or Sports Authority, at any time prior to the Effective Date, does, or attempts to voluntarily or involuntarily transfer, assign, or otherwise dispose of its interests in the Property, in whole or in part, or its rights and obligations under this Agreement, this Agreement, and all of the rights and privileges granted herein, shall be null and void and be of no force or effect.

F. **Conveyance of the Builders Square Parcel to Developer.** Notwithstanding anything to the contrary set forth in Subsection 28B, 28C, or 28E of this Agreement, Owner may, after notice to the Village, transfer, sell, or otherwise assign its ownership interest in the Builders Square Parcel to Developer, and thereafter be relieved, together with Builders Square, of all liability hereunder, or under the Annexation Agreement, with respect to the Builders Square Parcel, without the execution of a Transferee Assumption Agreement.

G. **Conveyance of Lot 2 to Developer.** Notwithstanding anything to the contrary set forth in Subsections 28B, 28C, or 28E of this Agreement, Owner and

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Sports Authority may, after notice to the Village, transfer, sell, or otherwise assign their ownership interest in Lot 2 to Developer, and thereafter be relieved of all liability hereunder with respect to Lot 2 without the execution of a Transferee Assumption Agreement.

SECTION 29 REPRESENTATIONS AND WARRANTIES

In order to induce the Village to enter into this Agreement and to adopt the ordinances and resolutions and grant the rights herein provided for Developer and Sports Authority, collectively or individually, as the case may be, hereby warrant and represent to the Village as follows:

- (a) ORIX Skokie, Inc. is duly organized, validly existing, and in good standing under the laws of the State of Illinois.
- (b) TMK Development of Northbrook II, Inc. is duly organized, validly existing, and in good standing under the laws of the State of Illinois.
- (c) Sports Authority is duly organized, validly existing, and in good standing under the laws of the State of Delaware.
- (d) Owner, Developer, and Sports Authority each have the independent authority and the legal right to make, deliver, and perform this Agreement and each has taken all necessary corporate, partnership, and venture actions to authorize the execution, delivery, and performance of this Agreement.
- (e) All necessary consents of any Board of Directors, shareholders, creditors, investors, partners, judicial, or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained.
- (f) No consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village) is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.
- (g) The individuals executing this Agreement on behalf of Owner, Developer, and Sports Authority have the power and authority to execute and deliver this Agreement on behalf of Owner, Developer, and Sports Authority, respectively.
- (h) No mortgagee or any other secured party that has an interest in the Property as of the Effective Date of this Agreement has an objection to

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either (i) the execution and performance of this Agreement by the Owner or (ii) the binding nature of this Agreement with respect to the Property Developer shall deliver to the Village Clerk, at the time of Developer's execution of this Agreement, a document acceptable in form to the Village Attorney and executed by any and all existing mortgagees or secured parties, acknowledging this warranty and confirming the validity thereof.

- (i) The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law under any contractual obligation of Developer; (ii) will not result in a breach or default under any agreement to which Developer is a party or to which Developer or the Property, in whole or in part, is or are bound; and (iii) will not violate any restriction, court order, or agreement to which Developer or the Property, in whole or in part, is or are subject.

SECTION 30. NONSEVERABILITY.

It is the express intent of the parties hereto that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, then this entire Agreement shall thereupon be held invalid and of no force or effect, it being the intent of the parties that all of the provisions of this Agreement be treated as an individual whole.

SECTION 31. TERM.

This Agreement shall run with and bind the Property in perpetuity, and shall inure to the benefit of and be enforceable by the Village and all parties hereto, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns. If any of the privileges or rights created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of Richard M. Daley, Mayor of the City of Chicago.

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SECTION 32. AMENDMENTS.

No amendment to or modification of this Agreement shall be effective unless it is in writing and is approved by the Village, by resolution duly adopted, and all parties hereto (or their respective successors and assigns)

SECTION 33. NOTICES.

Any notices or other communications required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to Owner:

American National Bank &
Trust Company of Chicago
U/T/A 11781309
33 North LaSalle Street
Chicago, IL 60690
Attention: Land Trust Department

For notices and communications to Developer:

ORIX TMK Northbrook Venture II
c/o ORIX Real Estate Equities, Inc.
100 North Riverside Plaza, Suite 1400
Chicago, IL 60606

With a copy to:

TMK Development
2275 Half Day Road, Suite 350
Bannockburn, IL 60015
Attention: Terence M. King

and to:

Lawrence M. Freedman, Esq.
Ash Anos Freedman & Logan
77 West Washington Street, Suite 1211
Chicago, IL 60602

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For notices and communications to Sports Authority:

The Sports Authority, Inc.
3383 North State Road 7
Ft. Lauderdale, FL 33319
Attention: President

With a copy to:

The Sports Authority, Inc.
3383 North State Road
Ft. Lauderdale, FL 33319
Attention: Vice President-Real Estate

And to:

Harold W. Francke, Esq.
Riddick & Wolfe
203 North LaSalle, Suite 1800
Chicago, IL 60601

For notices and communications to the Village:

Village of Northbrook
1225 Cedar Lane
Northbrook, IL 60062
Attention: Village Manager

With a copy to:

Steven M. Elrod, Esq.
Burke, Weaver & Prell
55 West Monroe Street, Suite 800
Chicago, IL 60603

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

SECTION 34. EXHIBITS.

Exhibits A through T attached to this Agreement are incorporated herein and made a part of this Agreement by this Section.

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SECTION 35. CHANGES IN LAWS.

Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

SECTION 36. HEADINGS.

The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement or the meaning, scope, or intent of any provision hereof.

SECTION 37. INTERPRETATION.

This Agreement has been negotiated all parties and shall not be construed against the party drafting this Agreement.

SECTION 38. GOVERNING LAW.

This Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws, and not the conflict of laws rules, of the State of Illinois.

SECTION 39. TIME OF ESSENCE.

Time is of the essence in the performance of all terms and provisions of this Agreement.

SECTION 40. COMPLETE AGREEMENT; SUPERSEDEANCE.

This Agreement is the complete agreement of the parties regarding the Property and shall, as of the Effective Date, supersede and nullify all prior drafts and agreements concerning the Property or any portion thereof, other than the Agreement to Terminate the Annexation Agreement.

95143257

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SECTION 41. COUNTERPART EXECUTION.

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

SECTION 42. OWNER'S LIMITED CONSENT.

The Village acknowledges and agrees that the Owner hereby subjects that portion of the Property owned by the Owner to the covenants, conditions, and restrictions set in this Agreement and, by the signature of its duly authorized representative below joins in the execution of this Agreement for the limited purposes of consenting to and permitting the recordation of this Agreement against the Property in the Office of the Cook County Recorder of Deeds.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals as of the date first above written.

VILLAGE OF NORTHBROOK

By: Mark W. Damm
Village President

ATTEST:

Lona N. Lewis
Village Clerk

AMERICAN NATIONAL BANK & TRUST
COMPANY OF CHICAGO, as Trustee under Trust
Agreement dated December 28, 1993 and known
as Trust No. 11781309

ATTEST:

By: _____

Its: _____

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IN WITNESS WHEREOF, the parties have set their hands and affixed their seals as of the date first above written.

VILLAGE OF NORTHBROOK

ATTEST:

Village Clerk

By: _____

Village President

ATTEST:

[Handwritten Signature]

By: _____

Its: _____

**AMERICAN NATIONAL BANK & TRUST
COMPANY OF CHICAGO, as Trustee under Trust
Agreement dated December 28, 1993 and known
as Trust No. 11781309**

The instrument is hereby acknowledged by the Trustee, not personally, but solely as Trustee, under the authority of the Trust Agreement, and the signature of the Trustee on this instrument is hereby acknowledged. The Trustee, by its signature, acknowledges the execution of this instrument and the validity of the warranties, covenants and conditions hereunder. The Trustee, by its signature, acknowledges the personal liability of the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

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ORIX TMK NORTHBROOK VENTURE II

By: ORIX SKOKIE, INC.

By: [Signature]
Its: Exec VP

ATTEST:

By: [Signature]
Its: SECRETARY

By: TMK DEVELOPMENT OF NORTHBROOK II, INC.

By: [Signature]
Its: President

ATTEST:

By: [Signature]
Its: Asst Sec

THE SPORTS AUTHORITY, INC.

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

95143257

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ORIX TMK NORTHBROOK VENTURE II

By: ORIX SKOKIE, INC.

ATTEST:

By: _____

Its: _____

By: _____

Its: _____

By: TMK DEVELOPMENT OF NORTHBROOK II,
INC.

ATTEST:

By: _____

Its: _____

By: _____

Its: _____

THE SPORTS AUTHORITY, INC.

ATTEST:

By: Richard J. Szymula

Its: Senior Vice President, CFO
Treasurer, Secretary

By: _____

Its: _____

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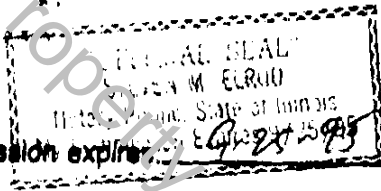
UNOFFICIAL COPY

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ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on Feb 27, 1995, by Mark Demuth, the Village President of the VILLAGE OF NORTHBROOK, an Illinois municipal corporation, and by Anna Lars, the Village Clerk of said municipal corporation.



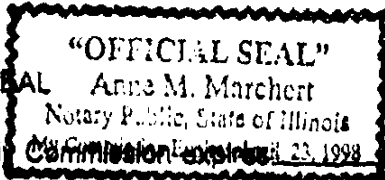
[Signature]
Signature of Notary

SEAL

My Commission expires: 4-25-95

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

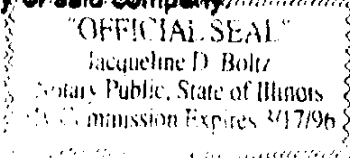
This instrument was acknowledged before me on FEB 28 1995, 1995, by J. MICHAEL WHELAN, President of AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement, dated December 28, 1993 and known as Trust No. 11781300, and Gregory S. Kasprzyk, Secretary of said company.



[Signature]
Signature of Notary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on Feb 27, 1995, by James H. Printon, Exec Vice President of ORIX SKOKIE, INC. and Jeffrey C. Plaster, Secretary of said company.



[Signature]
Signature of Notary

SEAL

My Commission expires: 3-17-96

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 1995, by _____,
_____ President of TMK DEVELOPMENT OF NORTHBROOK II, INC. and _____
_____ Secretary of said company.

Signature of Notary _____

SEAL

My Commission expires: _____

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

This instrument was acknowledged before me on Feb. 27, 1995, by Richard J. Lynch, Jr.
Senior Vice President, CFO, Treasurer and Secretary of The Sports Authority, Inc.

Carol Vail
Signature of Notary _____

SEAL

My Commission expires: _____



CAROL VAIL
MY COMMISSION # CC332314 EXPIRES
December 22, 1999
BONDED THRU TRU FARM INSURANCE, INC.

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LIST OF EXHIBITS

EXHIBIT A	Blum Parcel Legal Description
EXHIBIT B	Builders Square Parcel Legal Description
EXHIBIT C	Elevation Plan
EXHIBIT D	Final Plat of Subdivision and Consolidation
EXHIBIT E	Final Site Plan
EXHIBIT F	Landscape Development Plan
EXHIBIT G	Nursing Home Parcel Legal Description
EXHIBIT H	Phase I and II Master Plan
EXHIBIT I	Phase I Parcel Legal Description
EXHIBIT J	Property Legal Description
EXHIBIT K	Signage Plan
EXHIBIT L	Annexation Agreement Termination Resolution
EXHIBIT M	Final Plat of Subdivision and Consolidation Approval Resolution
EXHIBIT N	Special Permit Ordinance
EXHIBIT O	Automotive Special Permit Ordinance
EXHIBIT P	Blum Vacation Agreement Termination Resolution
EXHIBIT Q	Building Code Amendment Ordinance
EXHIBIT R	Building Code Waiver Resolution
EXHIBIT S	Performance Guarantee
EXHIBIT T	Transportation Impact Fee Waiver Resolution.

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EXHIBIT A

Blum Parcel Legal Description

PARCEL 1: LOTS 59, 60, AND 81 AND THAT PART OF LOTS 61, 62, 63, 79, 80, AND 82 LYING NORTHEASTERLY OF THE NORTHEASTERLY RIGHT OF WAY LINE OF SKOKIE VALLEY ROAD IN MANUS NORTH SHORE TERRACE A SUBDIVISION OF THE EAST ½ OF THE NORTH WEST ¼ OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THAT PART OF VACATED ATLANTIC AND NEW JERSEY AVENUES IN MANUS NORTH SHORE TERRACE AFORESAID LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 59 IN MANUS NORTH SHORE TERRACE AFORESAID AND NORTHEASTERLY OF THE NORTHEASTERLY RIGHT OF WAY LINE (AND SAID LINE EXTENDED) OF SKOKIE HIGHWAY (SKOKIE VALLEY ROAD) IN COOK COUNTY, ILLINOIS.

PARCEL 3: THAT PART OF THE SOUTH ½ OF NEW HAMPSHIRE AVENUE TOGETHER WITH THAT PART OF ATLANTIC AVENUE IN MANUS NORTH SHORE TERRACE, BEING A SUBDIVISION IN THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 2 TOWNSHIP 42 NORTH RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE EAST LINE OF ATLANTIC AVENUE IN SAID MANUS NORTH SHORE TERRACE, AND LYING 30.00 FEET NORTHEASTERLY OF AND CONCENTRIC WITH A CURVED LINE CONVEX TO THE SOUTHWEST AND HAVING A RADIUS OF 8135.16 FEET, SAID CURVED LINE BEING DRAWN FROM A POINT 202.86 FEET WEST OF THE NORTHEAST CORNER OF LOT 59 IN MANUS NORTH SHORE TERRACE AFORESAID, TO A POINT 236.70 FEET WEST OF THE SOUTHEAST CORNER OF LOT 58 IN SAID MANUS NORTH SHORE TERRACE, IN COOK COUNTY, ILLINOIS.

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