

VILLAGE OF LOMBARD  
REQUEST FOR BOARD OF TRUSTEES ACTION  
For Inclusion on Board Agenda

  X   Resolution or Ordinance (Blue)   X   *Waiver of First Requested*  
       Recommendations of Boards, Commissions & Committees (Green)  
       Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: February 22, 2006 (BOT) Date: March 2, 2006

TITLE: 11-37 E. St. Charles Road - First Amendment to the Redevelopment Agreement

SUBMITTED BY: Department of Community Development *[Signature]*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration an ordinance authorizing a First Amendment to the Redevelopment Agreement between the Village of Lombard and New Urban Lombard, LLC in regard to the East St. Charles Road Condominium Development. Staff is requesting a waiver of first reading. (DISTRICT #4)

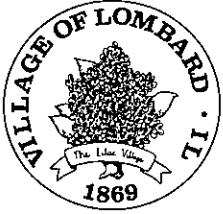
Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X *[Signature]* \_\_\_\_\_ Date 2/23/06

*acting*

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



## MEMORANDUM

**TO:** William T. Lichter, Village Manager

**FROM:** David A. Hulseberg, AICP, Director of Community Development *edk*

**DATE:** March 2, 2006

**SUBJECT:** PC 06-01: 7-37 East St. Charles Road (Hammerschmidt Property)

At the February 2, 2006, Village Board meeting, the Board approved a first reading of the Ordinance approving zoning actions associated with the redevelopment of the Hammerschmidt property at 7-37 East St. Charles Road. The Board voted at the February 16 meeting to table all other actions to the March 2, 2006 meeting.

Please place these items on the March 2, 2006 Board agenda, with the following actions to be taken by the Village Board:

1. Approve an Ordinance approving the First Amendment to the Redevelopment Agreement between the Village and New Urban Lombard LLC, with a waiver of first reading.
2. Approve the second reading of the planned development Ordinance (PC 06-01); and
3. Approve the variation Ordinance granting relief from the sanitary sewer/ stormwater separation requirements (BOT 06-06), with a waiver of first reading. This item was previously provided to the Board members within their February 16, 2006 packet.

Please contact me if you have any questions on the aforementioned materials.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE AND NEW URBAN LOMBARD, LLC, IN REGARD TO THE EAST ST. CHARLES ROAD CONDOMINIUMS DEVELOPMENT**

BE IT ORDAINED, by the President and Board of Trustees of the Village of Lombard,

DuPage County, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village find as follows:

- A. The Village of Lombard (hereinafter referred to as the "VILLAGE") is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as from time to time amended (hereinafter referred to as the "TIF ACT").
- C. Pursuant to its powers and in accordance with the TIF ACT, on February 2, 1989, the corporate authorities of the VILLAGE adopted Ordinance Numbers 3121, 3122 and 3123, approving a tax increment redevelopment plan and project, designating a tax increment redevelopment project area and adopting tax increment financing relative to the VILLAGE'S downtown area tax increment financing district (hereinafter referred to as the "DOWNTOWN TIF DISTRICT") for redevelopment and revitalization of a portion of the corporate limits of the VILLAGE, which property is legally described on EXHIBIT A attached hereto and made part hereof (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA").
- D. Pursuant to and in accordance with the TIF ACT, on June 6, 2002, the corporate authorities of the Village adopted Ordinance No. 5145, entitled "An Ordinance Amending Ordinance No. 3121, Adopted February 2, 1989, and the Redevelopment Plan and Project Attached Thereto as Exhibit "B", in Regard to the Termination Date for the Village of Lombard's Downtown Tax Increment Financing District," for the Village's DOWNTOWN TIF DISTRICT, by which the termination date for the DOWNTOWN TIF DISTRICT was extended to December 31, 2011, subject to the receipt of 2011 incremental real estate tax revenues during 2012.
- E. New Urban Lombard, LLC (hereinafter referred to as the "DEVELOPER") desires to redevelop a portion of the REDEVELOPMENT PROJECT AREA, said portion thereof including property owned by the Village, and property adjacent thereto, legally described on EXHIBIT B and EXHIBIT C, respectively, attached hereto and

made part hereof, on which the DEVELOPER intends to construct a mixed use residential and commercial/retail development (hereinafter referred to as the "DEVELOPMENT").

- F. In accordance with the TIF ACT, the VILLAGE, pursuant to Ordinance No. 5666, adopted on June 2, 2005, approved a Redevelopment Agreement with the DEVELOPER relative to the DEVELOPMENT (hereinafter referred to as the "REDEVELOPMENT AGREEMENT"), so that redevelopment within the DOWNTOWN TIF DISTRICT could continue.
- G. In order to address certain unforeseen environmental remediation costs, to make minor clarifications, and to include additional site enhancements and modifications to the final site plan, provisions associated with the completion of public improvements and site improvements, and other matters affecting Developer's proposed development plans, certain amendments now need to be made to the REDEVELOPMENT AGREEMENT.

SECTION 2: Based upon the foregoing, and pursuant to the TIF ACT, the FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT, attached hereto as EXHIBIT D, is hereby approved, and the President and Clerk of the VILLAGE be and they are hereby authorized and directed to execute on behalf of the Village of Lombard said FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT, attached hereto as EXHIBIT D.

SECTION 3: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2006.

First reading waived by action of the Board of Trustees this \_\_\_\_ day of \_\_\_\_\_, 2006.

Passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2006.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED by me this \_\_\_\_ day of \_\_\_\_\_, 2006.

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William J. Mueller  
Village President

ATTEST:

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Brigitte O'Brien  
Village Clerk

Published by me in pamphlet form this \_\_\_\_ day of \_\_\_\_\_, 2006.

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Brigitte O'Brien  
Village Clerk

## EXHIBIT A

### REDEVELOPMENT PROJECT AREA

#### **(Legal Description of Downtown T.I.F. District)**

Lots 1 and 2 of the Resubdivision of Lot 6 of Block 27 of the Original Town of Lombard, Lots 1, 2, 3, and 4 of the Original Town of Lombard, Lots 1, 2, 3, the North 25 ft. of Lot 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 in Caverno's Subdivision, Lot 1 in Lombard Bible Church Consolidation Plat, Lots 1, 2, 3, 4, and 5 in Owner's Subdivision in Block 18 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, and 7 in Block 11 of the Original Town of Lombard, Lots 8, 9, 10, 11, and 12 in J.B. Hull's Subdivision of part of Block 11 and part of outlot 4 of the Original Town of Lombard, Lots 7, 8, 9, 12, 13, 14, 15, 16, 17 and 18 of Grove Park Subdivision, Lots 2, 3, 4, 5, 6, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 in Grove Park Subdivision, Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 in Grove Park Subdivision First Addition, Lots 11 and 12 in W.H. Maple's Subdivision, Lots 3, 4, 5, 6, 7, 8, 9, 10, and 11 in Block 10 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8 in the Subdivision of Outlot 10 in the Original Town of Lombard, Lots 1, 2, 4, and 5 of Block 19 in the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8, of J.B. Hull's Subdivision of Lot 3 of Block 19 of the Original Town of Lombard, Lot 43 excepting the North 20 feet thereof in Orchard Subdivision, Lots 1 and 2 of Timke's Resubdivision, all of Park Manor Condominium, including all Chicago & Northwestern Railroad right-of-way and all public rights-of-way adjacent to the above-described property all being in the Northeast Quarter of Section 7, Township 39 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois.

Of that part of Block 22 of the Original Town of Lombard described by beginning at a point on the East line of Main Street, 499.0 feet North of the Southwest corner of said Block 22 and running thence Easterly to a point on the center line of said Block 22 that is 386.6 feet to the Southerly line of said Parkside Avenue; thence Southwesterly along the Southerly line of said Parkside Avenue to the East line of Main Street; thence South on the East line of Main street, 291.85 feet to the place of beginning, Lots 1, 2, and 3 in James' Subdivision of Part of Block 22 of the Original Town of Lombard, Lots 28, 29, 30, and 31 of Part of Block 22 in N. Matson & Others Resubdivision, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 in Block 17 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in Block 16 of the Original Town of Lombard, Lots 1, 2, the East 1/2 of Lot 3, Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 in Block 12 of the Original Town of Lombard, Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 in Block 18 of H.O. Stone & Company's Addition to Lombard, Lombard Tower Condominiums, Charlotte-Garfield Condominiums, including all Chicago & Northwestern Railroad right-of-way and all public rights-of-way adjacent to the above-described property all being in the Northwest Quarter of Section 8, Township 39 North, Range 11, East of the Third Principal Meridian all in DuPage county, Illinois.



**EXHIBIT C**

**ADJACENT PARCEL**

**LOT 11 AND LOT 12 (EXCEPT THE WEST 28 FEET OF LOT 12) IN Block 17 of the Original Town of Lombard, a Subdivision of Section 5, 6, 7, and 18 in TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 9483, IN DU PAGE COUNTY, ILLINOIS.**



**EXHIBIT D**

**FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT**

**FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT  
FOR THE EAST ST. CHARLES ROAD CONDOMINIUMS DEVELOPMENT  
COMPRISING A PART OF THE DOWNTOWN LOMBARD T.I.F. DISTRICT  
OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS**

This First Amendment to the Redevelopment Agreement For The East St. Charles Road Condominiums Development, Comprising A Part Of The Downtown Lombard T.I.F. District Of The Village Of Lombard, DuPage County, Illinois (hereinafter referred to as the “**First Amendment**”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2006, by and between New Urban Lombard, LLC an Illinois limited liability company (hereinafter referred to as the “**Developer**”), and the Village of Lombard, a municipal corporation, located in DuPage County, Illinois, (hereinafter referred to as the “**Village**”)(The Village and Developer are also referred to herein collectively as the “**Parties**”).

**WITNESSETH**

**WHEREAS**, the Village is the fee simple title holder of the property legally described on EXHIBIT 1 attached hereto and made a part hereof (hereinafter referred to as the “**Village Parcel**”); and

**WHEREAS**, the Developer desires to acquire fee simple title to the Village Parcel; and

**WHEREAS**, the Developer also intends to acquire a parcel of real estate immediately adjacent to and west of the Village Parcel consisting of approximately 0.11 acres, more or less, legally described in EXHIBIT 2 attached hereto and made a part hereof (hereinafter referred to as the “**Adjacent Parcel**”)(the Village Parcel and the Adjacent Parcel shall be collectively referred to as the “**Subject Property**”); and

**WHEREAS**, on June 2, 2005, the Corporate Authorities of the Village adopted Ordinance 5666 authorizing the execution of a Redevelopment Agreement for the Village Parcel and the Adjacent Parcel (hereinafter referred to as the “**Original Agreement**”); and

**WHEREAS**, the Parties are also desirous of amending the Original Agreement to make minor clarifications, to address certain unforeseen environmental remediation costs, and to include additional site enhancements and modifications to the final site plan, provisions associated with the completion of public improvements and site improvements, and other matters affecting Developer’s proposed development plans for the Subject Property, as forth herein; and

**WHEREAS**, the Corporate Authorities of the Village and the Developer deem it to be the mutual advantage of the Parties and in the public interest that the Original Agreement be amended as hereinafter provided;

**NOW, THEREFORE**, in consideration of the premises, the mutual promises herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

**Section 1. Incorporation of Recitals/Defined Terms:** The Parties agree that the foregoing recitals are incorporated into this First Amendment as if fully recited herein. All defined terms contained in the Original Agreement shall have the same meaning when utilized in this First Amendment, unless otherwise expressly provided herein.

**Section 2. Approval Of Development Plans And Construction Schedule:** That Subsection A of Section II of the Original Agreement is hereby amended to delete the phrase "the Material Specification Schedule and the Interior Standards Schedule" and replace that phrase with "the Exterior Materials Specifications and the Interior Standards Specifications," to read as follows:

- A. The Village hereby approves the Preliminary Site Plan, the Scheme A Concept Drawing, the Exterior Materials Specifications and the Interior Standards Specifications as the development plans for the Project (the "Approved Development Plans"). Subject to Section II.C below, any material change in the Approved Development Plans shall be subject to the approval of the Village.

**Section 3. Environmental Conditions:** That Section III of the Original Agreement is hereby amended to include the following additional provisions:

E. The parties acknowledge that an environmental assessment of the Village Parcel has revealed the presence of some contaminated soil and/or fill material on the Village Parcel. Subject to the following provisions of this Agreement, after the closing, the Developer shall cause certain additional work to be performed on the Village Parcel not originally contemplated under Developer's development plans to address the contained soil and/or fill material. Such work may include both capping impacted soils and excavation and disposal of impacted soils (the "Site Work"). Any excavation, transportation and disposal of impacted soils conducted as part of the Site Work and all other aspects of the Site Work shall be performed in compliance with applicable federal, state and local laws. In connection with the foregoing, it is also expressly understood and agreed between the parties that:

- (1) In order to meet its obligations hereunder, Developer shall contract with Testing Services Corporation (the "Environmental Consultant") or another environmental consultant mutually agreeable to the Parties.
- (2) The Village shall reimburse the Developer for its actual costs incurred in performing the Site Work in the manner set forth below, such costs to include the

hard and soft costs of such work, including without limitation amounts paid to the Environmental Consultant and its contractors, any fees and/or charges related to any disposal of impacted soils, and the fees and charges of any other environmental contractor (or of any subcontractor retained by an environmental contractor) or of any other consultant or third party contractor or attorney retained by Developer to assist in the Site Work (collectively, "Costs"). Notwithstanding the foregoing, the maximum amount of the Costs that the Village shall reimburse Developer shall not exceed the sum of Eighty-Five Thousand and No/100 Dollars (\$85,000.00) (the "Village's Contribution"). The Village shall have no further responsibility for any cost, expenses, fees, liabilities or obligations in any way related to the contamination and other environmental matters located on or about the Village Parcel, or Developer's efforts to investigate, cleanup, remove, contain, treat or in any other way address the presence of the contamination and other environmental matters in, on, at, under, or about the Village Parcel.

- (a) Upon completion of the Project and issuance of a certificate of occupancy for the Project and upon acceptance of the public improvements for the Project, the Village agrees to reimburse the Developer for the Costs up to a limit of the Village's Contribution. The Village's reimbursement shall be limited to Tax Increment Financing (TIF) revenues generated as a result of the Project, in the maximum amount set forth in subparagraph (b) below.
- (b) The Developer shall submit to the Village receipts with waiver of lien certificates, as appropriate, for the Costs. The Village agrees to reimburse the Developer for Costs up to the limit of the Village's Contribution.
- (c) The Village's Contribution shall come solely from TIF incremental revenues generated collectively by the Village Parcel and the Adjacent Parcel prior to December 31, 2011. In addition to the Village's Contribution, the Village agrees to pay interest at a rate of four-and-one-half percent (4.5%) annually on the outstanding balance of the Costs not then reimbursed to Developer, up to the limit of the Village's Contribution, such interest payments to be paid solely from the TIF incremental revenues generated by the Project, as described hereinabove.
- (d) Paragraph 11(e) of the Rider, which is attached to the Real Estate Sales Contract, is hereby deleted in its entirety.

**Section 4: Stormwater Variation:** That Section III of the Original Agreement is hereby amended to include the following additional provision:

- F. The Village agrees to approve a variation from Section 50.026 of the Lombard Village Code to allow for connection of the stormwater system for the Subject Property into a combined sewer line located within the St. Charles Road right-of-way. Moreover, as the

Subject Property was previously developed with buildings and structures covering over eighty percent (80%) of the Subject Property prior to May 1, 2005, the Village represents that the release rate for the proposed development on the Subject Property shall be the maximum of 0.04 cfs for the 50% annual recurrence (2-yr) rainfall event as set forth in Section 151.55 of the Village Code.

**Section 5: Undertakings On The Part Of The Developer:** That Subsection C of Section IV of the Original Agreement is hereby amended to delete the phrase “Interior Standards Schedule” and replace that phrase with “Interior Standards Specifications,” to read as follows:

- C. The condominium units to be constructed as part of the Project shall include, at a minimum, the interior finishes set forth in the Interior Standards Specifications set forth in EXHIBIT 7, attached hereto and made a part hereof.

**Section 6: Fence Installation:** That Section IV of the Original Agreement is hereby amended to include the following additional provision:

- G. The Developer shall install a six-foot (6’) high fence along portions of the South boundary of the Subject Property. The fence shall be identical in style, color and design as the existing fence located on the adjacent Village-owned property at 115 East St. Charles Road. Said fence shall extend from its current termination point at the southeast corner of the Subject Property and shall extend westerly along the southern property line of the Subject Property up to the existing retaining wall currently located along the southern property line.

**Section 7: Public Improvements:** That Section IV of the Original Agreement is hereby amended to include the following additional provision:

- H. Commencement of construction of the public improvements detailed in the Approved Development Plans may begin only after the Developer has delivered one or more irrevocable letters of credit in a form satisfactory to the Village and issued by a bank or financial institution approved by the Village in an amount equal to one hundred fifteen percent (115%) of the Developer's engineer's estimate of cost (hereinafter the “**Letter of Credit**”) of construction as reasonably approved by the Village's engineer or one hundred fifteen percent (115%) of actual construction cost for the following improvements, as defined per Section 154.703 of the Village Code as public improvements, pertaining to the development as shown on the Approved Development Plans:
  - (i) any stormwater detention facilities to be constructed on the Subject Property as required by Village Code, but subject to the variation described in Section III.F hereof;
  - (ii) public sidewalks, parkway trees and sod along the South side of the St. Charles Road adjacent to the Subject Property; and

(iii) underground utilities (including water distribution system, sanitary sewer system, and storm sewers) with appurtenances; storm water control systems (including retention or detention facilities ); and all related grading improvements; and

(iv) Parking lot pavement, curb and gutter, signs, parking pavement, fencing and lighting.

(hereinafter the “**Public Improvements**”).

The Developer agrees to cause the Public Improvements to be made and constructed with due dispatch and diligence. The Developer agrees that all work in the construction of said Public Improvements shall be done in a good, substantial and professional manner, that all manufactured materials used therein shall be new and of good quality, that same shall at all times be subject to inspection by the Village, shall all be reasonably satisfactory to the Village and shall be subject to the Village’s reasonable approval. The Developer will, at its sole cost and expense, furnish all reasonably necessary engineering services for said Public Improvements.

The Public Improvements, subject to the Letter of Credit and included within the Approved Development Plans, shall be completed within twenty-four (24) months following the receipt of a building permit for the Project, unless otherwise extended by amendment to the Agreement, consented to by the Corporate Authorities of the Village, with said consent not to be unreasonably withheld. The Letters of Credit and all assurances, guarantees, acceptances, and related matters shall comply with the Lombard Village Code, except as otherwise expressly provided for herein. In the event that the Village shall be forced to complete the Public Improvements, the Developer hereby grants a temporary easement to the Village to facilitate the necessary construction activity. The construction of Public Improvements by the Developer and issuance of approvals by the Village for the development shall comply with the following schedule:

(a) Sediment and Erosion Control

Sediment and erosion control measures shall be implemented as per Chapter 154 of the Lombard Village Code prior to the issuance of building permits or authorization to proceed with mass grading or other improvements to the Subject Property. Said measures shall be maintained during the entire construction process and shall be inspected and repaired as necessary after each significant rainfall. Failure to do so may result in the issuance of a stop work order for any outstanding Public Improvements or building permits.

(b) Tree preservation measures

It is acknowledged by the parties that no trees are currently located on the Subject Property. Accordingly, no tree preservation measures shall be required of the Developer and same shall not be required as a condition to issuance of building

permits, authorization to proceed with mass grading, or any other improvements to the Subject Property.

(c) Authorization to proceed with Public Improvements

Upon approval of the final engineering plans, receipt of all required fees, approval of the Letter of Credit, recording of the First Amendment, and completion of items (a) and (b) above, authorization to begin Public Improvements will be given by the Village.

(d) Construction of Storm Water Control System

The storm water management system for that portion of the Subject Property upon which construction activities have begun is to be operational prior to any paving or building construction. An operational storm water management system means that the volume of the storm water detention is adequate for the flow being directed to it and the restrictor outlet is in place and that the system has been reviewed and approved by the Village's Director of Community Development.

(e) Issuance of Building Permits

(1) Foundation-Only Permits

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

(2) Building Permits; Fire Hydrants

Building construction may commence only upon provision of adequate emergency access to the building site (gravel sub base) and an operational fire hydrant within three hundred (300) feet of the subject building site. It is acknowledged by the Parties that one (1) fire hydrant currently exists adjacent to the Subject Property along St. Charles Road at the East boundary of the Subject Property. As part of the construction of the Project, Developer shall install such additional hydrants as necessary to satisfy the requirements of the Village Code.

(f). Acceptance of Public Improvements

(1) Final record drawings (as built), including final grading and all utilities, shall be submitted for the review and approval of the Village's Director of Community Development prior to acceptance of the Public Improvements by the Village.

- (2) Engineer's Certification. The design engineer is to certify that the detention facilities were constructed in accordance with Chapter 151 of the Lombard Village Code, and that the Project was constructed substantially to plan.
- (3) All deficiencies described in the final punch list shall be satisfactorily completed and approved by the Village's Directors of Public Works and Community Development
- (4) A maintenance guarantee in the form of a letter of credit shall be submitted and approved in compliance with Chapter 154 of the Lombard Village Code (hereinafter the "**Maintenance LC**"); provided, however, that the Maintenance LC shall be in an amount equal to ten percent (10%) of the actual costs to construct the Public Improvements, described in Section IV(I)(f)(7)(i), and shall be maintained by Developer for two (2) years following acceptance of those Public Improvements, by the Corporate Authorities of the Village.
- (5) The Public Improvements described in Section IV(I)(f)(7)(i) shall require acceptance by the Corporate Authorities of the Village. Upon acceptance by the Corporate Authorities of the Village, the Letter of Credit shall be returned to the Developer.
- (6) The Maintenance LC, upon inspection and determination that no deficiencies exist, shall be returned to the Developer at the time of its expiration, which shall be one (1) year following acceptance of the Public Improvements described in Section IV(I)(f)(7)(i) by the Corporate Authorities of the Village.
- (7) Care shall be taken to avoid damage to existing public infrastructure, including, but not limited to, utilities and curbs, during construction. Any public infrastructure damaged during construction shall be repaired to the satisfaction of the Village and in compliance with the Agreement and all relevant Village codes and ordinances.
  - (i) Upon approval and acceptance of the aforesaid Public Improvements by the Village, the following Public Improvements shall become the property of the Village and subject to its control, and if deemed necessary or desirable by the Corporate Authorities of the Village, a formal dedication or conveyance to the Village shall be made by the Developer:
    - (a) public sidewalks, parkway trees and sod along the South side of the St. Charles Road adjacent to the Subject Property; and
    - (b) underground water distribution lines, fire hydrants and appurtenances located on the Subject Property and outside of the proposed building to be constructed on the Subject Property.



- (ii) Public Improvements that will not be conveyed to the Village and will remain the property of the owner(s) of Subject Property include:
  - (a) any sanitary system and stormwater detention related facilities (including retention or detention facilities); and all related grading improvements to be constructed on the Subject Property; and
  - (b) parking lot pavement, curb and gutter, signage, pavement parking, fencing and lighting constructed on the Subject Property.

(8) The Public Improvements will be accepted by the Corporate Authorities of the Village after certification by the Village Engineer and Village's Director of Community Development that said Public Improvements are in compliance with previously approved plans, specifications, and relevant codes and ordinances with said certification to not be unreasonably withheld or delayed. All required fees and procedures shall be provided prior to such acceptance. The Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and, employees from any and all claims, damages, judgments, costs and settlements including, but not limited to attorneys' fees that may arise from construction, use, repair, or maintenance of said Public Improvements before they are accepted by the Village.

(9) For any stormwater improvements constructed on the Subject Property, the Developer shall provide the Village with an easement to convey rights to the Village or its contractors to enter onto the Subject Property to inspect the stormwater improvements to ensure compliance with Village Code. However, the responsibility of maintaining said stormwater improvements on the Subject Property shall remain the responsibility of the owner(s) of the Subject Property.

**Section 8: Additional Conditions:** That Section IV of the Original Agreement is hereby amended to include the following additional provision:

I. The Developer shall meet all of the conditions of approval as set forth in Ordinance \_\_\_\_\_ dated March 2, 2006, which granted approval of a conditional use for a planned development with a building height deviation on the Subject Property:

**Section 9: Exhibit 7:** EXHIBIT 7 of the Original Agreement shall be amended to insert "INTERIOR STANDARDS SPECIFICATIONS" below EXHIBIT 7.

**Section 10: Escrow:** Section 7 of EXHIBIT 9, the Real Estate Contract attached to the Original Agreement, shall be amended to delete "Klein, Thorpe & Jenkins, Ltd., 20 N.

Wacker Drive, Suite 1660” and to insert “Chicago Title and Trust Company, 171 North Clark Street” to read as follows:

- 7. The earnest money shall be held by Chicago Title and Trust Company, 171 North Clark Street, Chicago, Illinois, for the mutual benefit of the parties in a non interest-bearing account.

**Section 11: Continuity of Agreements:** That the Original Agreement, to the extent not amended hereby, shall remain in full force and effect, in accordance with the terms, as if fully set forth herein.

**Section 12: Recording:** That this First Amendment shall be recorded with the DuPage County Recorder’s Office at the Developer’s expense.

**In witness whereof,** the parties hereto have caused these presents to be duly executed on their behalf respectively and have caused their respective Corporate Seals to be affixed hereto, all as of the day and year first above written.

New Urban Lombard, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_  
Name and Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name and Title: \_\_\_\_\_

Village of Lombard:

By: \_\_\_\_\_  
William J. Mueller, Village President

Attest: \_\_\_\_\_  
Brigitte O’Brien, Village Clerk

ACKNOWLEDGMENTS

STATE OF ILLINOIS    )  
  ) SS  
COUNTY OF DUPAGE    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that William J. Mueller, personally known to me to be the President of the VILLAGE of Lombard, and Brigitte O'Brien, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Commission expires \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_  
Notary Public

STATE OF DUPAGE )  
 ) SS  
COUNTY OF ILLINOIS )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that the above-named \_\_\_\_\_ and  
\_\_\_\_\_, are personally known to me to be the \_\_\_\_\_  
and \_\_\_\_\_ of \_\_\_\_\_ and also personally known  
to me to be the same persons whose names are subscribed to the foregoing instrument as such  
\_\_\_\_\_ and \_\_\_\_\_ respectively, and that they appeared  
before me this day in person and severally acknowledged that as such \_\_\_\_\_ and  
\_\_\_\_\_ they signed and delivered the said instrument, consenting to its recordation,  
pursuant to authority given by said trust as their free and voluntary act, and as the free and  
voluntary act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this \_\_\_\_\_ day of \_\_\_\_\_,  
2006.

Commission expires \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**SCHEDULE OF EXHIBITS**

**EXHIBIT 1: LEGAL DESCRIPTION OF THE VILLAGE PARCEL**

**EXHIBIT 2: LEGAL DESCRIPTION OF THE ADJACENT PARCEL**

**EXHIBIT 1**  
**VILLAGE PARCEL**

Lot 1 in St. Charles Corridor Redevelopment Plat of Resubdivision of part of Sections 5, 6, 7, 8 and 18 Township 39 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois.

Permanent Index Numbers of :     06-08-108-005  
   06-08-108-009  
   06-08-108-011

**EXHIBIT 2**

**ADJACENT PARCEL**

**LOT 11 AND LOT 12 (EXCEPT THE WEST 28 FEET OF LOT 12) IN Block 17 of the Original Town of Lombard, a Subdivision of Section 5, 6, 7, and 18 in TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 9483, IN DU PAGE COUNTY, ILLINOIS.**