

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

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

X

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager *DAH*

DATE: October 8, 2008 (B of T) Date: October 16, 2008

TITLE: 11-21 E. St. Charles Road (Hammerschmidt Property)

SUBMITTED BY: Department of Community Development *WA*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing the signatures of President and Clerk on a Real Estate Purchase and Sales Contract. (DISTRICT #4)

Staff recommends approval of this request.

Please place this item on the October 16, 2008 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):
Village Attorney X
Finance Director X
Village Manager X

Date _____
Date _____
Date 10/28/08

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: David A. Hulseberg, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development *WJD*

DATE: October 16, 2008

SUBJECT: 11-21 E. St. Charles Road - Hammerschmidt Property Purchase Agreement

As a follow-up to previous Village Board direction, staff has engaged Village Counsel to prepare a purchase agreement between New Urban Lombard LLC and the Village for the property at 11-21 E. St. Charles Road. Attached for Village Board consideration is a real estate purchase and sales contract for the Subject Property.

BACKGROUND

The Hammerschmidt property was previously acquired by the Village from Timothy Ladehoff earlier this decade. On the eastern portion of the site, the Hammerschmidt Commuter Parking lot was constructed. The western portion of the site (the Subject Property) remained undeveloped. New Urban Lombard LLC applied for and received approval of zoning actions to develop the site as a mixed use commercial/residential development. They also entered into a purchase and sales agreement with the Village to acquire the Subject Property and acquired the property in 2006 for \$900,000. Since that time, they have decided not to proceed with the proposed development and the property remains vacant.

Village staff has discussed re-acquiring the Subject Property with the property owner. The form of the agreement is similar in structure and form to the agreement between the parties in 2006. The draft agreement denotes that the Village will pay a sum of \$750,000 for the property. The parties will close on the property on October 29, 2008.

In discussion with Village Counsel, staff notes that the agreement is acceptable in form, but there are a few items that need to be rectified and/or clarified between the parties prior to final signature. As such, staff is transmitting the draft agreement with this memorandum and will provide the Board members with a final agreement prior to the next Village Board meeting.

ACTION REQUESTED

Please place the attached resolution authorizing the signature of the Village President and Village Clerk on the purchase and sale of the property located at 11-21 E. St. Charles Road (PIN 06-08-108-012) on the October 16, 2008 Village Board Agenda.

R E S O L U T I O N
R _____ 08

**A RESOLUTION AUTHORIZING SIGNATURES OF
PRESIDENT AND DEPUTY CLERK ON A
REAL ESTATE PURCHASE AND SALES CONTRACT FOR THE PROPERTY
LOCATED AT 11-21 E. ST. CHARLES ROAD**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Real Estate Purchase and Sales Contract, attached hereto and marked as Exhibit A, from New Urban Lombard, LLC to the following described property:

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, according to the Plat therefore recorded April 25, 2005 as Document R2005-083483, in DuPage County, Illinois

Parcel Number: 06-08-108-012-0000

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Contract as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said Contract as attached hereto

Adopted this _____ day of _____, 2008.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2008.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

REAL ESTATE PURCHASE AND SALES CONTRACT
(Vacant Land)

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "Contract") is made as of the Effective Date (as defined in Paragraph 24 hereof) between **NEW URBAN LOMBARD, LLC**, an Illinois limited liability company, (the "Seller") and the **VILLAGE OF LOMBARD**, an Illinois municipal corporation (the "Buyer").

AGREEMENT:

1. **THE BUYER IS A MUNICIPAL ENTITY AND THIS CONTRACT IS SUBJECT TO THE APPROVAL OF AND IS NOT ENFORCEABLE UNLESS APPROVED AT AN OPEN MEETING BY THE BOARD OF TRUSTEES OF BUYER.**

2. **SALE.** The Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to a vacant parcel of land commonly known as 11-19 and 21 East St. Charles 7 East, Lombard, Illinois, with PIN 06-08-108-012-0000 located in the County of DuPage (the "Property"), which Property is legally described in Exhibit A attached hereto and made a part hereof:

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **SEVEN HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (\$750,000.00)** (the "Purchase Price"). At Closing, Buyer shall pay to Seller, in good and available funds by wire transfer or cashier's check, the Purchase Price, plus or minus prorations as provided herein.

4. **EARNEST MONEY DEPOSIT.** Within five (5) days of the Effective Date (as defined herein), Buyer shall deliver the sum of **SEVEN THOUSAND FIVE HUNDRED 00/100THS DOLLARS (\$7,500.00)** representing the earnest money (the "Earnest Money") to Buyer's Attorneys, Klein Thorpe and Jenkins, Ltd. ("KTJ"). The Earnest Money shall be held by KTJ in a non-interest bearing account for the mutual benefit of the parties (the "Earnest Money Deposit"). The Earnest Money Deposit shall be applied to the Purchase Price, unless the Earnest Money is forfeited to Seller pursuant to the terms of this Contract.

5. **CLOSING DATE.** The closing (the "Closing") of the contemplated purchase and sale of the Property shall take place through a deed and money escrow ("Escrow") on October 29, 2008 ("Closing Date") at the office of Chicago Title Insurance Company, 171 North Clark, Third Floor, Chicago, IL (the "Title Company") or at such other time and place as mutually agreed to by the parties. The cost of the closing fee and New York Style closing shall be split between the parties.

6. **ENVIRONMENTAL INSPECTION AND CONTINGENCY PERIOD.** Notwithstanding any term to the contrary in this Contract, prior to the Closing, the Village shall have the right at any time, at its sole cost and expense, to select and retain environmental and other consultants to examine and inspect the physical condition of the Property (including the groundwater and engineering) to conduct a site assessment and environmental audit, and to perform any environmental and engineering investigation or testing it deems necessary and appropriate (hereinafter "Environmental Assessment"). The Seller grants and will cause any tenants to grant, to the Village and its consultants, their employees, agents, subcontractors and



representatives, an irrevocable license and authorization to enter upon and have full access to the Property for the purposes of conducting a complete inspection of the Property and to perform such tests, including without limitation subsurface testing, soil and groundwater testing, and other tests which may physically invade the Property or improvements thereon or to conduct other environmental and engineering investigations, as the Seller, in its sole discretion, determines is necessary to protect its interests and will do nothing to interfere with the investigation of the Property (including the groundwater thereunder). This period shall be known as the "Environmental Contingency Period" (or the Contingency Period), and shall commence one day after the effective date of this Agreement. The Seller shall provide to the Village and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder). The Seller shall immediately provide all documents and information in Seller's possession, custody or control which relate or refer to the Property (including the groundwater thereunder), its present and prior uses, or to the activities at or near the Property (including the groundwater thereunder) and any and all environmental audits, reports or documents that refer or relate to the Property. If requested, the Seller will make available to the Village's consultants those key people having knowledge about the environmental practices and procedures of the Seller and prior occupants of the Property, and, if necessary, will make available all documents and information in the Seller's possession, custody or control which relate to adjacent property. The Seller shall notify the Village of the location and description of all public and private utilities on or below the Property. The term "Environmental Assessment" as referred to in this section shall include, but not be limited to, Phase I and Phase II environmental audits.

The Village shall not be obligated to take title to the Property if, in the Village's sole and exclusive judgment, for any reason whatsoever (including, without limitation, information revealed by the Environmental Assessment), it determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a health, safety or environmental hazard, or if the Environmental Assessment reveals or if at any time prior to closing the Village otherwise becomes aware of the existence of any environmental condition which may be dangerous and/or unacceptable to the Village, or in violation of any environmental law or regulation including, but not limited to, the presence of any Hazardous Material, as said term is defined below. Pursuant to this paragraph, the Village shall have the right, in its sole and exclusive judgment, to revoke its acceptance of this Agreement prior to taking title to the Property, and to declare this Agreement and the Resolution accepting it, null and void.

7. TITLE INSURANCE

Prior to Closing, Buyer, at Seller's cost and expense, shall obtain a title commitment issued by the Title Company, in the amount of the Purchase Price, with extended coverage over the standard exceptions 1 through 5 (the "Title Commitment"), together with copies of all underlying title documents listed in the Title Commitment (the "Underlying Title Documents"), subject only to those matters described in Exhibit B, attached hereto and made a part hereof (the "Permitted Exceptions"). If the Title Commitment, Underlying Title Documents or the Survey (as hereinafter defined) discloses exceptions to title, which are not acceptable to Buyer (the "Unpermitted Exceptions"), Buyer shall have five (5) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter (the "Buyer's Objection Letter") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have five (5) days from the date of receipt of the Buyer's Objection Letter ("Seller's Cure Period") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, the Closing shall be extended such additional time, but not beyond November 15, 2008 (the "Extended Title Closing Date") after Buyer's receipt of a

proforma title policy (the "Proforma Title Policy") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract, at which time the Buyer shall be entitled to have the Earnest Money Deposit returned to Buyer and this Contract shall become null and void without further action of the parties, or (ii) upon notice to Seller within ten (10) days after Buyer's receipt of Seller's intention not to cure the Unpermitted Exceptions, to take title as it then is with the right to deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount which are listed in the Title Commitment. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. The Seller shall pay the cost for any later date title commitments and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

8. **SURVEY.** Prior to Closing, Buyer, at Seller's cost and expense shall obtain an update to the survey prepared by Gentile and Associates, Inc., dated May 31, 2006, Order Number 05-18772-06, (the "Survey"), certified to Buyer, Buyer's Attorneys, Seller, Seller's Attorneys and the Title Company and such other parties as Buyer may designate, by the surveyor as being true, accurate and having been prepared in compliance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" adopted by the American Land Title Association and American Congress on Surveying and Mapping in 2005, including the following Table A items: 1, 2, 3, 4, 6, 10, 11(a), 14 and 16.

9. **DEED.** Seller shall convey fee simple title to the Property to Buyer, by a recordable Warranty Deed (the "Deed"), subject only to the Permitted Exceptions. Seller shall also execute and deliver, at Closing, any and all documents, in addition to the Deed, including an Affidavit of Title, Covenant and Warranty, Title Company documentation, including, but not limited to, an ALTA Statement, GAP Undertaking, or such other documents reasonably requested either by the Buyer or the Title Company to consummate the transaction contemplated herein and to vest fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the issuance of the Buyer's Title Company owners title insurance policy. Buyer shall be responsible for the recording fee of the Deed.

10. **CLOSING DOCUMENTS.** On the Closing Date, the obligations of the Buyer and Seller shall be as follows:

A. Seller shall deliver or cause to be delivered to the Title Company:

- i. the original executed and properly notarized Deed;
- ii. the original executed and properly notarized Affidavit of Title, Warranty and Covenant;
- iii. the original executed and properly notarized Non-Foreign Affidavit;
- iv. counterpart originals of Seller's closing statement;
- v. Termination Agreement of the Redevelopment Agreement for the East St. Charles Road Condominiums Development Comprising a Part of the

Downtown T.I.F. District of the Village of Lombard, DuPage County, Illinois, together with the First Amendment, recorded June 12, 2006 as Document Number R2006-110035, two counterpart originals executed and properly notarized by the Seller, The cost of the recording of the Termination Agreement shall be paid by the Seller;

vi. such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated hereby, including, without limitation, ALTA statements and GAP Undertaking, such other documentation as is reasonably required by the Title Company to issue Buyer its owners title insurance policy in accordance with the Proforma Title Policy and in the amount of the Purchase Price insuring the fee simple title to the Property in the Buyer as of the Closing Date, subject only to the Permitted Exceptions.

B. Buyer shall deliver or cause to be delivered to the Title Company:

i. the balance of the Purchase Price, plus or minus prorations;

ii. counterpart originals of Seller's closing statement;

iii. Two counterpart originals of the Termination Agreement executed by the Buyer and properly notarized;

iv. ALTA Statement and such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated herein.

C. The parties shall jointly deposit fully executed State of Illinois Transfer Declarations and County Transfer Declarations.

11. **POSSESSION.** Possession of the Property shall be delivered to Buyer on the Closing Date subject to the Permitted Exceptions, and in the same condition as at the time of the execution of this Contract.

12. **PRORATIONS.** At Closing, the following adjustments and prorations shall be computed as of the Closing Date and the balance of the Purchase Price shall be adjusted to reflect such prorations. All prorations shall be based on a 366-day year, with the Seller having the day prior to the Closing Day.

A. **Real Estate Taxes.** General real estate taxes for 2008 and subsequent years, special assessments and all other public or governmental charges against the Property which are or may be payable on an annual basis (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Closing Date) shall be adjusted and apportioned as of the Closing Date. If the exact amount of general real estate taxes is not known at Closing, the proration will be based on the most recent full year tax bill increased by 115% and shall be conclusive, with no subsequent adjustment.

B. Miscellaneous. All other charges and fees customarily prorated and adjusted in similar transactions shall be prorated as of Closing Date. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable (as, for example, all water, sewer, gas and utility bills), the parties shall prorate on the best available information. Final readings and final billings for utilities shall be taken as of the date of Closing.

13. CONVEYANCE TAXES. The parties acknowledge that as Buyer is a governmental entity, this transaction is exempt from any State, County or local real estate transfer tax pursuant to 35ILCS 200/31-45(b). Seller is obligated to furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.

14. COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER. The covenants, representations and warranties contained in this Paragraph shall be deemed remade as of the Closing Date and shall survive the Closing, and shall be deemed to have been relied upon by the Buyer in consummating this transaction, notwithstanding any investigation the Buyer may have made with respect thereto, or any information developed by or made available to the Buyer prior to the Closing and consummation of this transaction. Seller covenants, represents and warrants to the Buyer as to the following matters, each of which is so warranted to be true and correct as of the Effective Date and also on the Closing Date:

A. Title Matters. Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.

B. Violations of Zoning and Other Laws. Seller has received no notice, written or otherwise, from any governmental agency alleging any violations of any statute, ordinance, regulation or code. The Property as conveyed to Buyer shall include all rights of the Seller to the use of any off-site facilities, including, but not limited to, storm water detention facilities, necessary to ensure compliance with all zoning, building, health, fire, water use or similar statutes, laws, regulations and orders and any instrument in the nature of a declaration running with the Property.

C. Pending and Threatened Litigation. To the best knowledge and belief of Seller, there are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Property.

D. Eminent Domain, etc. To the best knowledge and belief of Seller, there is no pending or contemplated eminent domain, condemnation or other governmental taking of the Property or any part thereof.

E. Access to Property Utilities. No fact or condition exists which would result in the termination or impairment of access to the Property from adjoining public or private streets or ways or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.

F. Assessments. To the best knowledge and belief of Seller, there are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be

made and/or which have not heretofore been assessed and there are no special or general assessments pending against or affecting the Property.

G. Authority of Signatories; No Breach of Other Agreements; etc. The execution, delivery of and performance under this Contract by Seller is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Contract do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which Seller or the Property are bound; and will not and does not to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court, domestic or foreign, to which Seller or the Property are subject or bound.

H. Exculsory Agreements. Seller is not a party to, and the Property is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Property, other than this Contract. Buyer shall not, by reason of entering into or closing under this Contract, become subject to or bound by any agreement, contract, lease, license, invoice, bill, undertaking or understanding which it shall not have previously agreed in writing to accept. Seller warrants and represents that no written leases, licenses or occupancies exist in regard to the Property and further, that no person, corporation, entity, tenant, licensee, or occupant has an option or right of first refusal to purchase, lease or use the Property, or any portion thereof.

I. Mechanics' Liens. All bills and invoices for labor and material of any kind relating to the Property have been paid in full, and there are no mechanic's liens or other claims outstanding or available to any party in connection with the Property.

J. Governmental Obligations. To the best knowledge of Seller, there are no unperformed obligations relative to the Property outstanding to any governmental or quasi-governmental body or authority.

K. Hazardous Materials.

I. The Seller has provided to the Village any environmental record concerning the Property which Seller possess or could reasonably have attained. These records are:

(a) Phase II Environmental Exploration dated August 30, 2005 issued by Testing Service Corporation for the property located at 37 East St. Charles Road (Hammerschmidt Lumber and Fuel Company) addressed to Robert O'Neill of New Urban Communities.

(b) Impacted Soil Delineation dated October 20, 2005 issued by Testing Service Corporation for the property located at 37 East St. Charles Road (Hammerschmidt Lumber and Fuel Company) addressed to Robert O'Neill of New Urban Communities.

iv. Except as disclosed in the Environmental Reports, to the best knowledge and belief of Seller, the Property has never been used and will not be used before the Closing Date as a real estate fill, open dump or a waste dump, or for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical material substance or waste. The Property (including the groundwater thereunder) does not contain underground storage tanks or hazardous Materials, and the Seller has received no notice or does the Property (including the groundwater thereunder) violate any Federal, State, or Local Environmental Laws. For purposes of this Contract, the phrase "Environmental Laws" shall mean any federal, state or local law, statute, ordinance, order, decree, rule or regulation (including but not limited to judicial orders, administrative orders, consent agreements and permit conditions) relating to releases, discharges, emissions or disposals to air, water, Property or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde, to the treatment, storage, disposal or management of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. '9601, et seq. ("CERCLA"); the Resource Conservation and

iii. Except as disclosed in the Environmental Reports, Seller has no knowledge of (a) the presence of any Hazardous Materials (as defined below) on, under or in the Property (including the groundwater thereunder); (b) any spills, releases, discharges, or disposal of Hazardous Materials that have occurred or are presently occurring on or onto the Property (including the groundwater thereunder) which have not been fully remediated according to the standards employed by the Illinois Environmental Protection Agency; (c) any spills or disposal of Hazardous Materials that have occurred or are occurring off the Property (including the groundwater thereunder) as a result of any construction on, or operation and use of the Property (including the groundwater thereunder) which have not been fully remediated according to the standards employed by the Illinois Environmental Protection Agency; (d) the presence of any equipment containing polychlorinated biphenyl ("PCB"); or (e) the presence of any asbestos in the use or on the Property;

ii. From the Effective Date to and including the Closing Date, Seller agrees (a) to operate, maintain and manage the Property (including the groundwater thereunder) in the ordinary course of business; (b) that the Property (including the groundwater thereunder) will comply in all respects, and will remain in compliance, with all applicable federal, state, regional, county and local laws, statutes, rules, regulations or ordinances concerning public health, safety or the environment, and all Environmental Laws (as defined below); and (c) to maintain existing insurance on the Property, including the building and improvements.

(collectively referred to as the "Environmental Reports");

(c) Phase II Environmental Exploration dated October 21, 2005 issued by Testing Service Corporation for the property located at 7 East St. Charles Road re: potential environmental impact from adjoining gasoline station addressed to Robert O. Neill of New Urban Communities.

Recovery Act, 42 U.S.C. '6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. '2601, et seq. ("TSCA"), the occupational, Safety and Health Act, 29 U.S.C. '651, et seq., the Clean Air Act, 42 U.S.C. '7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. '1251, et seq., the Safe Drinking Water Act, 42 U.S.C. '3001, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. '1801, et seq. ("HMTA"), the Clean Water Act, 33 U.S.C. '1251, et seq., the Safe Drinking Water Act, 42 U.S.C. '300f, et seq., the Clean Air Act, as amended, 42 U.S.C. '7401, et seq., the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. '655, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 42 U.S.C. '136, et seq., the National Environmental Policy Act, 42 U.S.C. '4321, et seq., the Noise Control Act, 42 U.S.C. '4901, et seq., the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. '4821, et seq., the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. '11001, et seq. ("EPCRA"), and the Illinois Environmental Protection Act, and other comparable federal, state or local laws and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder, as any or all of the foregoing may from time to time be amended, supplemented or modified. For the purposes of this Contract, the phrase "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws or the release of which is regulated under Environmental Laws. Without limiting the generality of the foregoing, the term "Hazardous Materials" will include: "hazardous substances" as defined in CERCLA; "extremely hazardous substances" as defined in EPCRA; "hazardous waste" as defined in RCRA; "hazardous materials" as defined in HMTA; "chemical substance or mixture" as defined in TSCA; crude oil, petroleum and petroleum products or any fraction thereof (including "petroleum" as that term is defined in 42 U.S.C. '6991(8)); radioactive materials including source, by-product or special nuclear materials; asbestos or asbestos-containing materials; and radon.

v. Seller has received no notice of and to the best of Seller's knowledge and belief, except as disclosed in the Environmental Reports, the Property (including the groundwater thereunder) does not violate any law, regulation or agreement applicable to the Property (including the groundwater thereunder), if Seller shall (a) receive notice that any violation of any federal, state or local Environmental, health or safety law or regulation may have been committed or is about to be committed with respect to the Property (including the groundwater thereunder), (b) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed alleging violations of any federal, state or local Environmental law or regulation or requiring Seller to take any action in connection with the release of any Hazardous Materials into the environment, (c) receive any notice from a federal, state or local governmental agency or private party alleging that the Seller may be liable or responsible for costs associated with a response to or cleanup of a release of any Hazardous Materials into the environment or any damages caused thereby, (d) receive any notice that the Seller is subject to federal, state or local investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, or (e) receive any notice that the Property or assets of

Seller are subject to a lien in favor of any governmental entity for any liability under the federal, state or local Environmental Laws or regulations or damages arising from or costs incurred by such governmental entity in response to a release of a hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, then the Seller shall promptly provide the Buyer with a copy of such notice, and in no event later than seven (7) days from Seller's receipt thereof.

vi. There are no proceedings pending or, to the best knowledge and belief of Seller, threatened against or affecting the Seller in any court or before any governmental authority or arbitration board or tribunal, which if adversely determined, would materially and adversely affect the Property. The Seller is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal, which default would materially and adversely affect the Property.

vii. To the best knowledge and belief of the Seller, except as disclosed in the Environmental Reports, the Property has not been built or used, in whole or in part, on or as a landfill and the soil is not contaminated by Hazardous Substances or Hazardous Materials.

viii. The Seller covenants that he shall not create, store, release or allow the retention, storage or release of any Hazardous Substances on the Property.

ix. Seller's obligations hereunder shall in no way be impaired, reduced or released by reason of the Buyer's omission or delay to exercise any right described herein or in connection with any notice, demand, warning or claim regarding violations of any Environmental Laws governing the Property (including the groundwater thereunder).

x. Seller's liability hereunder shall not be limited by the other provisions contained in the Contract, and the Seller agrees that the indemnification contained herein is separate, independent of and in addition to Seller's other undertakings under this Contract.

L. Easements. Seller represents that the Property is adjacent to and has full and free access on all perimeter areas to and from public streets, such that no private easements or agreements are necessary to afford access to or from the Property.

M. Section 1445 Withholding. Seller represents that he/she/it/they is/are not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is/are, therefore, exempt from the withholding requirements of said Section. At Closing, Seller shall furnish Buyer with a Non-foreign Affidavit as set forth in said Section 1445.

In the event of the breach of any covenant, warranty or representation made herein or elsewhere in this Agreement by the Seller, the Seller agrees to indemnify and hold the Village, its servants, employees, agents, successors and assigns (collectively "Village Affiliates") harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorney's fees) and charges which the Village Affiliates may incur or to which the Village Affiliates may become subject as a direct or indirect consequence of such breach.

Seller shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified hereunder. If Village or any of the Village Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified hereunder, the Village and/or any of the Village Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the costs, expenses and fees payable to said attorney(s) in relation to said lawsuit shall be paid by Seller pursuant to the indemnification provision herein. Seller shall pay, promptly upon entry, any non-appealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified hereunder and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified hereunder. If such payment is not made, the Village or any Village Affiliates, at their sole discretion, may proceed to file suit against the Seller to compel such payment. The Seller also agrees that it will not settle or compromise any action, suit or proceeding without the Village's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

When used in this Paragraph, the expression "to the best knowledge and belief of Seller," or words to that effect, is deemed to mean that Seller, after reasonable examination, investigation and inquiry is not aware of any thing, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes.

15. **DEFAULT AND CONDITIONS PRECEDENT TO CLOSING.** A) It is a condition precedent to Closing that (i) fee simple title to the Property being shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and being accepted by Buyer; (ii) the covenants, representations and warranties of Seller contained in Paragraph 14 hereof and elsewhere in this Contract being true and accurate on the Closing Date or waived by Buyer in writing on the Closing Date; and (iii) Seller having performed under the Contract and otherwise having performed all of its covenants and obligations and fulfilled all of the conditions required of it under the Contract in order to Close on the Closing Date. If before the Closing Date, Buyer becomes aware of a breach of any of Seller's, representations and warranties or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to Close on the Closing Date, Buyer may, at its option (a) elect to enforce the terms hereof by action for specific performance; or (b) attempt to cure such breach or failure by Seller for a period of up to thirty (30) days following the Closing Date, charging Seller for all costs and expenses incurred in doing so and, following such attempt, to either: (a) terminate this Contract and receive a prompt refund of the Earnest Money Deposit; or (b) proceed to Close notwithstanding such breach or nonperformance. In all events, Buyer's rights and remedies under this Contract shall always be non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other, including all rights and remedies available to it at law or in equity.

B) In the event of a default by Buyer, Seller's sole and exclusive right and remedy shall be to declare a forfeiture and to retain the Earnest Money Deposit as its sole liquidated damages, it being understood that Seller's actual damages in the event of such default are difficult to ascertain and that the Earnest Money Deposit is the parties' best current estimate of such damages. Notwithstanding the foregoing, the parties agree that no default of or by either party shall be deemed to have occurred unless and until notice of any failure by the non-defaulting party has been sent to the defaulting party and the defaulting party has been given a period of ten (10) days from receipt of the notice to cure the default.

16. **BINDING EFFECT.** This Contract shall inure to the benefit of, and shall be binding upon the heirs, legatees, transferees, assigns, personal representatives, owners, agents, administrators, executors, and/or successors in interest of any kind whatsoever, of the parties hereto.

17. **BROKERAGE.** Each party hereto hereby represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such party's actions (or claiming through such party), is entitled to compensation as a consequence of this transaction. Each party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Contract. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorney's fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder. This provision shall survive the Closing.

18. **NOTICES.** Any and all notices, demands, consents and approvals required under this Contract shall be sent and deemed received: A) on the third business day after mailed by certified or registered mail, postage prepaid, return receipt requested, or B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne) for guaranteed next business day delivery, C) by facsimile transmission on the day of transmission, with the original notice together with the confirmation of transmission mailed by certified or registered mail, postage prepared, return receipt requested, or D) by personal delivery, if addressed to the parties as follows:

To Seller:

New Urban Lombard, LLC
502 West Campbell Street
Arlington Heights, Illinois 60005
Attn: Robert A. O'Neil, Director of Acquisition and Development
PHN: 847-259-2314
FAX: 847-259-2315
Email: roneill@newurbancommunities.com

with a copy to:

Gardner Carton & Douglas LLP
191 North Wacker Drive, Suite 3700
Chicago, Illinois 60606
Attention: William L. Goldbeck
PHN: 312-569-1225
FAX: 312-569-3225
Email: egoldbeck@ggcd.com

If to Buyer:

VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, IL 60148
Attn: David Hulseburg, Village Manager
PHN: 630-620-3599
FAX: 630-620-8222
Email:

With copies to:

Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attn: George A. Wagner
PHN: 312-984-6400
FAX: 312-984-6444
Email: gwagner@ktjlaw.com

Any party hereto may change the name(s) and address (es) of the designee to whom notice shall be sent by giving written notice of such change to the other parties hereto in the same manner, as all other notices are required to be delivered hereunder.

19. RIGHT OF WAIVER. Each and every condition of the Closing other than the Buyer's duties at Closing is intended for and is for the sole and exclusive benefit of Buyer. Accordingly, Buyer may at any time and from time to time waive each and any condition of Closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by Buyer shall, unless otherwise herein provided, be in a writing signed by Buyer and delivered to Seller.

20. DISCLOSURE OF INTERESTS. In accordance with Illinois law, 50 ILCS 105/3.1, prior to execution of this Contract by the Buyer, an Owner, authorized trustee, corporate official or managing agent, must submit a sworn affidavit to the Buyer disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Property, and every shareholder entitled to receive more than 7 1/2% of the total distributable income of any corporation having any real interest, real or personal, in the Property, or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the corporation or its managing agent that there is no readily known individual having a greater than 7 1/2% percent interest, real or personal, in the Property. The sworn affidavit shall be substantially similar to the one described in Exhibit C attached hereto and made a part hereof.

21. ASSIGNMENT. Buyer shall have the right to assign or transfer Buyer's interest in this Contract without the prior written consent of Seller. Buyer shall deliver to Seller a copy of the fully executed assignment and assumption by Purchaser, as assignor and the assignee.

22. MISCELLANEOUS.

A. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

B. This Contract provides for the purchase and sale of Property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that for the purpose of any litigation relative to this Contract and its enforcement, venue shall

be in the Circuit Court in the County where the Property is located and the parties consent to the in personam jurisdiction of said Court for any such action or proceeding.

C. The terms, provisions, warranties and covenants made herein, shall survive the closing and delivery of the Deed and other instruments of conveyance. This Contract shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

D. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.

E. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Property Settlement Procedures Act of 1974. In the event that either party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said party.

F. The parties warrant and represent that the execution, delivery of, and performance under this Contract is pursuant to authority, validly and duly conferred upon the parties and the signatories hereto.

G. The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

H. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

I. If the Seller is a Trust, this Contract is executed by the undersigned Trustee not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. Said Trustee hereby warrants that it possesses full power and authority to execute this Contract. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, warranties, undertakings, and agreements of said Trustee are nevertheless each and every one of them made and intended not as personal representations, covenants, warranties and agreements by the Trustee or for the purpose or with the intention of binding Trustee personally but are made and intended for the purpose of binding only the trust property, and this Contract is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as said Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this Contract or on account of any representations, covenants, warranties or agreements of said Trustee in this Contract contained either express or implied, all such personal liability, if any, being expressly waived and released.

In the event the Seller is a Trust as provided above, this Contract shall be signed by the Trustee and also by the person or entity holding the Power of Direction under the Trust. The person or entity signing this Contract is by his/her/his/their signature represents, warrants and

covenants with Buyer that he/she/they/it has the authority to enter into this Contract and the obligations set forth herein. All references to the Seller's obligations, warranties and representations shall be interpreted to mean the Beneficiary or Beneficiaries of the Trust.

J. In the event either party elects to file any action in order to enforce the terms of this Contract, or for a declaration of rights hereunder, the prevailing party, as determined by the court in such action, shall be entitled to recover all of its court costs and reasonable attorneys' fees as a result thereof from the losing party.

K. Buyer may record this Contract or any memorandum or short form of this Contract against the Property, provided that if the transaction contemplated herein does not occur and the Contract is terminated as provided herein, Buyer shall record a termination of the Contract. The recording fees for either shall be borne by the Buyer.

L. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

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

23. **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the authorized signatories of Buyer shall sign the Contract, which date shall be the date stated next to the Buyer's signature.

24. **CONTRACT MODIFICATION.** This Contract and the Exhibit(s) attached hereto, if any, are made a part hereof, or required hereby, embody the entire Contract between the parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any permitted unilateral waivers of conditions precedent by Buyer (Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.

25. **EXHIBITS.** The following Exhibits, Schedules, Riders or attachments are hereby attached hereto and made a part hereof by reference:

- Exhibit A
- Exhibit B
- Exhibit C
- Legal Description of the Property
- Permitted Exceptions
- Disclosure Affidavit

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date next to their respective signature.

SELLER:
NEW URBAN LOMBARD, LLC,
AN ILLINOIS LIMITED LIABILITY COMPANY
BY: NUCC OF ILLINOIS, Inc., an Illinois
corporation
ITS: manager

BUYER:
VILLAGE OF LOMBARD,
an Illinois municipal corporation
BY: William J. Mueller, Title: Village President
Name: William J. Mueller, Title: Village President

By: Robert A. O'Neill
Name: Robert A. O'Neill
Its: Authorized Signator

Date Seller executed: _____

By: Brigitte O'Brien
Name: Brigitte O'Brien
Title: Village Clerk

Date Buyer executed: _____

ATTEST:

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, according to the Plat thereof recorded April 25, 2005, as Document R2005-083483, in DuPage County, Illinois.
Property Address: 11-19 St. Charles and 21 St. Charles, Lombard, Illinois
Permanent Index Number: 06-08-108-012-0000

EXHIBIT A
Legal Description of the Property

EXHIBIT B
List of Permitted Exceptions

1. 2008 real estate taxes and subsequent years, not due and payable for the Property.
2. Easement recorded September 27, 1979 as Document No. R79-87538 made by Bank of Naperville, as Trustee under Trust Number 2704 to the Illinois Bell Telephone Company, its successors and assigns, the right to construct, reconstruct, add to, remove, operate and maintain communication and electric systems consisting of such wires, cables, terminals and other fixtures as the grantee may from time to time require for the purpose of tele-communications, together with the right of access to the same, including the right to clear and keep cleared such trees, roots, bushes and other obstructions from the easement over the north 10 feet of the west 5 feet of Lot 10 in Block 17 in Town of Lombard according to the Plat thereof recorded April 23, 1868 as Document 9483.
3. The Plat of St. Charles Corridor Redevelopment Plat of Resubdivision, recorded April 25, 2005 as Document No. 2005-083283 includes a Certification by the Surveyor that the land is located within Zone "C", area of minimal flooding as identified by the Federal Emergency Management Agency Flood Rate Map Panel Number 170212 0005 B dated October 17, 1978.
4. Rights, if any, of public and quasi-public utilities in the Property to maintain overhead wires along the rear of the Property as shown on survey prepared by Gentile and Associates dated
5. Rights and obligations related to a concrete wall located on a portion of the Property as shown on survey prepared by Gentile and Associates dated

EXHIBIT C
ALL SELLERS MUST SIGN AN AFFIDAVIT THAT IS
SUBSTANTIALLY SIMILAR TO THE ONE BELOW

State of Illinois
County of _____

)
)
ss.
)

DISCLOSURE AFFIDAVIT

I, _____, (hereinafter referred to as "Affiant") reside at _____, in _____, _____ County, State of _____, being first duly sworn and having personal knowledge of the matters contained in this Affiant, swear to the following:

1. That, I am over the age of eighteen and the (choose one)
[] owner or
[] authorized trustee or
[] corporate official or
[] managing agent or
[] _____ of the Real Estate (as defined herein).

2. That, the Real Estate (as defined herein) being sold to the Purchaser is commonly known as 11-19 and 21 East St. Charles Road and is located in the County of DuPage, Village of Lombard, State of Illinois (herein referred to as the "Real Estate". The Real Estate has an Assessor's Permanent Index Number of 06-08-108-012-0000.

3. That, I understand that pursuant to 50 ILCS 105/3.1, prior to execution of a real estate purchase agreement between the record fee owner of the Real Estate and Purchaser, Illinois State Law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Purchaser disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Real Estate, and every shareholder entitled to receive more than 7 1/2% of the total distributable income of any corporation having any interest, real or personal, in the Real Estate.

4. As the [] owner or [] authorized trustee or [] corporate official or [] managing agent or [] _____ of the Real Estate, I declare under oath that (choose one):
[] The owners or beneficiaries of the trust are: _____ or _____
[] The shareholders with more than 7 1/2% interest are: _____ or _____

[] The corporation is publicly traded and there is no readily known individual having greater than a 7 1/2% interest in the corporation.

This Disclosure Affidavit is made to induce the Purchaser to accept title to the Real Estate in accordance with 50 LLCs 105/3.1.

AFFIANT

SUBSCRIBED AND SWORN to before me
this _____ day of _____, 2008.

NOTARY PUBLIC
