

## **DEVELOPMENT AGREEMENT**

### **AN AGREEMENT RELATING TO THE APPROVAL OF A MAJOR DEVELOPMENT, THE MAKING OF REQUIRED IMPROVEMENTS, AND PROVIDING FUNDS, THEREFOR, FOR CHRIST THE KING CHURCH & SCHOOL, LOMBARD, IL**

**This Agreement**, made and entered into this 18th day of November, 2004 by and between \_\_\_\_\_ (hereinafter referred to as the "Developer" or the "Owner"), and the VILLAGE OF LOMBARD, a municipal corporation, located in DuPage County, Illinois, (hereinafter referred to as the "Village").

#### **WITNESSETH:**

**Whereas**, the Owner/Developer is expanding its existing buildings and stormwater facilities on an 8.86 acre tract of real estate situated within the corporate limits of the Village, legally described in Exhibit 1 attached hereto and made a part hereof (hereinafter referred to as the "Subject Property"); and,

**Whereas**, the Owner/Developer has prepared final plans for the Subject Property and for Public Improvements, as referenced in this document (said plans are attached as EXHIBIT 2), which have been approved by the Plan Commission and the Corporate Authorities of the Village and which, upon receipt by the Village of an Irrevocable Letter of Credit for an amount specified as security for proposed Public Improvements, and for such other purpose or purposes herein mentioned if any, and upon execution of this Development Agreement, the Development Agreement shall be recorded; and,

**Whereas**, the Owner/Developer has also submitted to the Corporate Authorities of the Village certain plans for the development of the Subject Property, which plans are more particularly enumerated as follows and have been submitted to the Plan Commission of Village:

1. Site plans prepared by prepared by Patrick Engineering, Inc. dated September 17, 2004,
2. Building Elevations, prepared by Plunkett Raysich Architects dated September 17, 2004.
3. Landscape Plan, prepared by Daniel Weinbach & Partners, LTD., dated July 14, 2004.
4. Signage package, prepared by Plunkett Raysich Architects dated September 17, 2004 and updated October 18, 2004.

5. Engineering Plan, prepared by Patrick Engineering, Inc. dated September 17, 2004.

The documents listed in this paragraph are attached as Exhibit 2 and made a part hereof (hereinafter referred to as the "Development Plans"). Said Development Plans have been approved by the Corporate Authorities of the Village, and copies thereof have been filed in the office of the Village Clerk of the said Village, which copies by reference thereto are hereby incorporated as a part hereof; and,

**Whereas**, the Owner/Developer has entered into contracts or will enter into contracts for the construction of the Public Improvements required to be made within said development of the Subject Property pursuant to Lombard Village Code; and,

**Whereas**, in lieu of providing all Public Improvements as described and enumerated herein, the Owner/Developer is seeking assurances from the Village that Public Improvements will not need to be constructed concurrent with the development of the Subject Property, but can be provided for at a later date; and

**Whereas**, the Village also seeks assurances from the Owner/Developer that contributions for public right-of-way improvements are provided for by the Owner/Developer at a future date and upon a request from the Village;

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

**Section 1:** Commencement of construction of the Public Improvements detailed in the Development Plans may begin only after the Owner/Developer has delivered one or more Irrevocable Letters of Credit in the form attached hereto as Exhibit 3 to the Village and issued by a bank or financial institution approved by the Village in an amount equal to 115% of the Owner/Developer's Engineer's estimate of cost of construction as approved by the Village's engineer or 115% of actual construction cost for the following improvements ("Public Improvements" as defined per Section 154.703 et. seq. of the Village Code) pertaining to the development as shown on the Development Plans and as further required by the Village as a condition to the approval for the proposed development, as detailed in Exhibit 2. The term "Public Improvements" shall mean the following:

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

- (b) parking lot pavement, curb and gutter, signage, pavement parking and lighting;  
and
- (c) public street and curb improvements, sidewalk, street lighting, watermain, sanitary sewer and storm sewer improvements required within the 15<sup>th</sup> Street right-of-way not varied or amended by this Agreement.

**Section 2:** The Owner/Developer agrees to cause the Public Improvements enumerated in Section 1 above to be made and constructed with due dispatch and diligence in accordance with the Development Plans. The Owner/Developer will, when required to bring about progress in the Public Improvement work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said Public Improvements, to the end that said Public Improvements will be duly and satisfactorily completed within the time or times herein mentioned. The Owner/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 satisfactory to the Village and shall be subject to the Village's approval. The Owner/Developer will, at its sole cost and expense, furnish all necessary engineering services for said Public Improvements.

**Section 3:** The Public Improvements subject to the Letter of Credit and included within the Development Plans shall be completed within twenty-four (24) months following the recording of this Agreement unless otherwise extended by amendment to this Agreement, consented to by the Corporate Authorities of the Village, with said consent not to be unreasonable withheld. All Letters of Credit, assurances, guarantees, acceptances, and related matters shall comply with the Lombard Village Code. In the event that the Village shall be forced to complete the Public Improvements, the Owner/Developer hereby grants a temporary easement to the Village to facilitate the necessary construction activity. The construction of Public Improvements by the Owner/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

All necessary tree preservation measures including tagging of trees to be preserved and fencing around the tree drip lines as delineated on the Tree Survey included in the Development Plans, shall be implemented prior 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 this Agreement, and completion of the work referenced in subsections (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 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.

(2) Building Permits

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

(f). Acceptance of Public Improvements

- (1) Final Record Drawings (as-builts), including final grading and all utilities, shall be submitted for the review and approval of the Director of Community Development prior to acceptance of the Public Improvements.
- (2) Engineer's Certification. The Design Engineer is to certify that the detention pond was constructed in accordance with Chapter 151 of the Lombard Village Code, and that the Public Improvements were constructed substantially to plan.
- (3) All deficiencies described in the final punch list shall be satisfactorily completed and approved by the Directors of Public Works and Community Development.
- (4) A maintenance guarantee in the form of a Letter of Credit shall be submitted and approved. Said guarantee and Letter of Credit shall comply with Chapter 154 of the Lombard Village Code.
- (5) The Public Improvements to be dedicated to the Village as described in Section 5, shall be accepted by the Corporate Authorities of the Village. Upon acceptance by the Corporate Authorities of the Village, the installation guarantee (Letter of Credit) shall be returned to the Owner/Developer.
- (6) The maintenance guarantee Letter of Credit, upon inspection and determination that no deficiencies exist, shall be returned at the time of its expiration.

**Section 4:** Construction Damage to Public Improvements:

Care shall be taken to avoid damage to 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 this Agreement and all relevant Village codes and ordinances.

**Section 5:** Dedication of Public Improvements:

Upon approval and acceptance of the aforesaid Public Improvements by the Village, any constructed Public Improvements located within the 15<sup>th</sup> Street, 16<sup>th</sup> Street and Main Street rights-of-way shall become the property of the Village and subject to its control, and if deemed necessary or desirable by the Corporate Authorities of the Village, a formal dedication or conveyance to the Village shall be made by the Owner/Developer.

**Section 6:** Letter of Credit:

It is expressly understood that this Agreement is conditioned upon and subject to the delivery to the Village of the document provided for in Section 1 above from the financial institution approved by the Village, and such approval shall not be unreasonably withheld, and subject to the Corporate Authorities of the Village approving same and placing same on file.

**Section 7:** Notices:

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

to the Owner/Developer at:

Christ the King Parish  
1501 South Main Street  
Lombard, Illinois 60148  
Attn: Fr. Peter Jarosz

with a copy to:

Mary Riordan, Ltd.  
980 North Michigan, Suite 950  
Chicago, Illinois 60611  
Attn: Mary Riordan

If to the Village:

Village Manager  
Village of Lombard  
255 East Wilson Avenue  
Lombard, IL 60148

with copies to:

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

Klein, Thorpe & Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
Attention: Thomas P. Bayer

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

**Section 8:** Site Access

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

**Section 9:** Public Improvements within the 15<sup>th</sup> Street right-of-way

- (a) For the street improvements within the 15<sup>th</sup> Street right-of-way as required by Section 154.306(D) of the Lombard Village Code, the Owner/Developer has requested a variation from said Section 154.306 (D) which requires the following Public Improvements:
- 1) Street: From an underimproved right-of-way, full improvement of the street and the adjacent side of the right-of-way is required.
  - 2) Sidewalk: A sidewalk is required on the adjacent side and for the full length of the right-of-way abutting the subject property.
  - 3) Street Lights: Street lights are required along the full length of the adjacent side of the right-of-way.
  - 4) Parkway: Trees and ground cover are required on the adjacent side of the right-of-way.
- (b) Additionally, the Owner/Developer has requested zoning relief from Section 155.705 (C) of the Lombard Village Code requiring parkway trees along the 15<sup>th</sup> Street right-of-way, as well as Section 155.706 (C)(2)(a)(1) of the Lombard Village Code requiring perimeter parking lot trees along the north side of the parking lot.
- (c) As consideration for granting said relief, the Village and the Owner/Developer agree to the following provisions:
- (1) Concurrent with the development of the Subject Property, the Owner/Developer shall undertake the following activities and complete the following improvements within the 15<sup>th</sup> Street right-of-way:
    - i. surveying the existing ditch line on the South side of the 15<sup>th</sup> Street right-of-way;
    - ii. regrading the ditch line to eliminate any low spots;
    - iii. inspection and cleaning of any existing culverts; and
    - iv. repairing or replacing any culverts, as required by the Village Engineer.

- (2) Within six (6) months of the completion of the Public Improvements within the 15<sup>th</sup> Street right-of-way, either constructed by the Village or as part of an obligation of another private developer, the Owner/Developer shall submit to the Village for review and approval a landscape plan depicting perimeter parking lot trees along the North parking lot, in accordance with Section 155.706(C)(2)(a)(1) of the Lombard Village Code. The Owner/Developer shall install the approved plantings within six (6) months from the date of approval of the submitted landscape plan. Village shall deliver written notice to Owner/Developer twelve (12) months prior to the commencement of construction of the 15<sup>th</sup> Street right-of-way Public Improvements.
- (3) The Owner/Developer agrees to reimburse the Village for any landscape improvements installed by the Village within the 15<sup>th</sup> Street public-right-of-way that would normally be required as part of the development of the Subject Property as set forth in Section 155.705 of the Lombard Village Code.

**Section 10:** Special Assessment/Service Provisions

The Owner/Developer agrees that it will not object to the imposition of a Special Service Area or Special Assessment with respect to the construction of any public improvements affecting the area of the Subject Property and which may become necessary at a future date. The assessment formula for any such future Special Service Area or Special Assessment shall be determined as required by law, taking into account the relative benefit to the Subject Property as a result of the public improvements that are to be constructed. The Village agrees to provide written notice to the Owner/Developer at least two years prior to the creation of the Special Assessment or Special Service Area.

**Section 11:** Additional Conditions

The Owner/Developer shall incorporate the following recommendations of the Plan Commission as part of the development of the Subject Property:

- (a) The Subject Property shall be developed substantially in accordance with the site plans prepared by prepared by Patrick Engineering, Inc. dated September 17, 2004, Building Elevations, prepared by Plunkett Raysich Architects dated September 17, 2004. The Landscape Plan, prepared by Daniel Weinbach & Partners, LTD., dated July 14, 2004, the Signage package included as part of the petition prepared by Plunkett Raysich Architects dated September 17, 2004, and as revised and updated by Plunkett Raysich Architects and



submitted October 18, 2004, and the Engineering Plan, prepared by Patrick Engineering, Inc. dated September 17, 2004.

- (b) All comments in the Inter-Departmental Review Committee Report, attached hereto as Exhibit 3 and made a part hereof, shall be satisfactorily addressed as part of a building permit application.
- (c) That the Phase II development shall be submitted to the Lombard Plan Commission for site plan approval prior to construction.
- (d) Other than the signage relief approved as part of this petition, all other signage shall meet the area and height requirements as noted within Chapter 153 of the Lombard Village Code.

**Section 12:** Acceptance:

Public Improvements located within the public right of way will be accepted by the Corporate Authorities of the Village, after certification by the Village Engineer and 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 unreasonable withheld or delayed. All required fees and procedures shall be provided prior to such acceptance. The Owner/Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and, employees from any and all claims, damages, judgments, costs and settlements including, but not limited to, attorneys' fees that may arise from construction, use, repair, or maintenance of said Public Improvements before they are accepted by the Village.

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

This Agreement has been executed on behalf of the Village pursuant to action taken by the Corporate Authorities of said Village at a meeting of said Corporate Authorities duly held on November 18, 2004.

This Agreement has been executed by the Owner/Developer pursuant to action taken by the \_\_\_\_\_ of said Owner/Developer on \_\_\_\_\_, 2004 and shall be binding on the heirs and assigns of the Owner/Developer.

This Agreement shall automatically expire upon the expiration of the maintenance guarantee Letter of Credit required at the time of acceptance of the Public Improvements as set forth in Subsection 3(f)(4) above or until twenty-four (24) months after the Public Improvements have been completed within the 15<sup>th</sup> Street right-of-way, whichever occurs last.

**Section 14:** Defaults and Remedies

In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either party hereto or bound by this Agreement, such party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within said sixty (60) day period and the defaulting party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements (exclusive of the Public Improvements). The rights of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other party. No waiver made by either party with respect to any specific default by the other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this Agreement shall be limited to the non-defaulting party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting party in enforcing this Agreement. In the event of any litigation between the parties hereto resulting from a breach of this Agreement, the prevailing party in such litigation, as determined by final judgment, shall be entitled to an award of its attorneys' fees and costs incurred in such litigation.

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

Owner/Developer;

By: \_\_\_\_\_

By: \_\_\_\_\_

Village of Lombard:

By: \_\_\_\_\_ (Village President)

Attest: \_\_\_\_\_ (Deputy Village Clerk)

**EXHIBIT 1**

**LEGAL DESCRIPTION FOR  
1501 SOUTH MAIN STREET, LOMBARD, ILLINOIS  
(THE SUBJECT PROPERTY)**

THE SOUTH 406.0 FEET AS MEASURED ON THE WEST LINE OF THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE WEST LINE OF HARRISON HOMES, INC. LOMBARD VILLA UNIT #1, ALSO LOT D IN SAID HARRISON HOMES, INC. LOMBARD VILLA UNIT #1, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THEREFROM THE SOUTH 40.00 FEET AND EXCEPT THE WEST 50.00 FEET, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 702001, IN DUPAGE COUNTY, ILLINOIS.

Parcel Number: 06-20-105-001

**EXHIBIT 2**

**DEVELOPMENT PLANS FOR SUBJECT PROPERTY**

**EXHIBIT 3**  
**INTER-DEPARTMENTAL REVIEW REPORT**