

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

DISTRICT #4

Resolution or Ordinance (Blue) 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 : September 28, 2006 **B of T** October 5, 2006

SUBJECT: Draft DuPage Theatre Redevelopment Agreement

SUBMITTED BY: William T. Lichter, Village Manager

BACKGROUND/POLICY IMPLICATIONS:

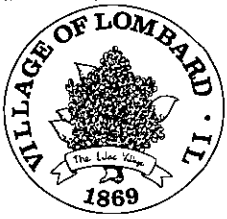
Please see attached memorandum

Fiscal Impact/Funding Source:

Review (as necessary):

Finance Director _____ Date _____
Village Manager W. T. Lichter Date 9/28/06

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.



To: Honorable President and Board of Trustees
From: William T. Lichter, Village Manager *WTL*
Date: September 28, 2006
Subject: **Draft DuPage Theatre Redevelopment Agreement**

At a special meeting on June 21, 2006, the Village Board directed staff to continue to work with RSC and Associates on a Redevelopment Agreement for the DuPage Theater. Since that time, several meetings have been held with Mr. Curto to work out terms of an Agreement that would be consistent with the Village Board's direction. Attached is the draft Redevelopment Agreement. Outlined below are the major elements that have been included in the Agreement. Mr. Curto concurs with the draft document.

CAPPING FINANCIAL INCENTIVES TO THE DEVELOPER

Financial terms have been capped at the amount directed by the Board of Trustees. In Section II.G (page 5), the Village agrees to pay to the developer \$900,000 for eligible expenses upon execution of the Redevelopment Agreement (II.G.1), and reimburse up to \$3,869,000 for eligible expenses plus seven percent (7%) interest from TIF revenues generated by the project (II.G.2). However, the developer will only have until the 2017 tax levy collected in 2018 to be reimbursed even if the TIF increment generated by the project at that time is less than the contractual amount. This provision was included as an added incentive for the developer to begin the project as soon as possible. Additionally, Section II.H (page 6) reflects the rebate of sales tax to the developer through the term of the extended TIF district as previously agreed to by the Village. The previous estimate was that the sales tax rebate would be about \$472,000.

PURCHASE OF THE PROPERTY

Section II.D (page 4) addresses this matter. The purchase price of the land is \$2,300,000. The developer will pay \$125,000 upon execution of the Redevelopment Agreement. Under terms of the Redevelopment Agreement, as well as the real estate sales contract which would be attached thereto as an exhibit, payment for the balance (\$2,175,000) would also be due at the time of closing. However, an option would be provided for RSC to delay that payment, in which case a 7% interest rate would be charged on the outstanding balance of the purchase price until paid. As previously discussed, this could result in a total payment to the Village of up to an estimated \$4.68 million for the land in principal and interest which could be deposited in the General Fund. The Village would also receive \$1.8 million in additional TIF increment

that would be placed in the downtown TIF for eligible uses. In addition, as previously discussed, the purchase would be structured so that upon payment of the purchase price to the Village by RSC, a like amount in TIF increment would be transferred to RSC as reimbursement for the cost of the land (see Section II.G.3, page 6).

The developer will have performed his necessary due diligence prior to closing and shall close on the purchase of the redevelopment parcel within 30 days of the acceptance date of the approved Redevelopment Agreement.

As indicated in Section III.D (page 7), the developer will provide a letter of credit in the amount of \$500,000 to cover any TIF deficiency after 2018 unless TIF revenues generated by the project have equaled or exceeded \$675,000 for two consecutive tax years beginning with the 2011 tax levy (Section IV.B.3, page 10) .

Pursuant to a provision of Section II.D that was not previously discussed with the Village Board, should payment not be made in full at the closing, the Village would be entitled to record a first mortgage against the entire redevelopment parcel. At such time as the developer delivers the itemized list of costs and sources of payment, provides evidence that the construction financing is ready to be put in place with sources being identified, and delivers the construction schedule, the Village would subordinate its first mortgage to the developer's lender(s). The intent of this provision is to guarantee that the Village is either paid for the property or regains title to the entire property should construction not begin by June 1, 2008 as required in Section III.A (page 6).

DEMOLITION

As noted in Section III.C (page 7), the Developer will be responsible for the partial demolition of the building on the redevelopment parcel, subject to being reimbursed by the Village for the costs thereof in an amount not to exceed \$300,000. The developer must seek at least three proposals for the partial demolition with the Village retaining the right of contract approval. Demolition must take place within ninety (90) days of the developer taking title to the redevelopment parcel.

CONSTRUCTION PHASING AND COMPLETION OF THE THEATRE

As noted above, construction must begin no later than June 1, 2008. As indicated in Section III.F (page 7), the developer may complete the project in phases. However, the theatre portion must either be completed first or at the same time as other portions of the project. No residential occupancy permits will be issued other than for the six loft units in the theatre building until issuance of a certificate of occupancy for the theatre.

ENTIRE PROJECT CONDO-OWNER OCCUPIED WITH SPLIT ASSOCIATIONS (BUSINESS & RESIDENTIAL)

This is reflected in Section III.J (page 8).

BLACK BOX THEATRE TO BE “TURN KEY” READY WITH CIVIC DEDICATION

This is reflected in Section III.G (page 8) with the stipulation that the Village will have 45 days from the date on which the conveyance conditions have been satisfied to name a civic entity or the developer will have the right to convey title to the theatre portion of the project directly back to the Village.

THEATRE MARQUEE VERTICAL NAMING

This is provided for in Section III.H (page 8).

HEIGHT VARIATION

There is no reference to building height in the draft Redevelopment Agreement. However, staff is working with Daniel P. Coffey and Associates on the architectural revisions to the project plans. It is our understanding that RSC intends to submit two alternatives to the Plan Commission for consideration. One proposal will require a height variation of up to three (3) feet so as to provide more architectural features and a higher first floor for the commercial space. The other proposal will meet Village code height requirements of forty-five (45) feet.

NO PARKING VARIANCE

All required parking for the residential and commercial square footage will be on-site. Section III.I (page 8) addresses the developer’s obligation to secure sufficient off-site parking as may otherwise be needed.

REDEVELOPMENT PROPOSAL & PROCESS

The proposal from RSC & Associates would bring a 299 seat, 7,297 square foot theatre to the downtown along with the related elements of historic preservation. This is noted in Section I.H (page 2). The project plans at this time also reflect the construction of up to 121 condominium and 6 loft units, and approximately 26,000 square feet of commercial space located along Main Street and Parkside Avenue.

The following would be the necessary steps for approval based upon the status of the plans at this point:

- Planned Development approval;
- Variation for transitional building (20' required);
- Variation for transitional landscape yard (10' required);
- Possible variation for building height for one of the concepts (45' maximum permitted by code);
- Variation for stormwater detention w/County approval;
- Conditional use for outdoor dining.

Additionally, since the Village Board has indicated that no parking variance will be given, RSC will need agreement(s) with nearby property owner(s) to use their parking lots in the evening to make up any parking deficiency for the theatre.

The project would be required to appear before the Plan Commission for a public hearing in November and December. The Plan Commission would provide a recommendation to the Village Board on all but the stormwater variation. The Village Board would take action on the Planned Development with the deviations and variations as one item. Lastly, the Village Board would act on the request for a stormwater variation.

The stormwater variation would require Village Board and County Board concurrence. The project under ordinance would be required to provide for a 100-year storm event. Staff could support a variation to provide for the 2-year storm event and payment of a fee in lieu of detention for the balance of the detention required. However, we cannot guarantee the County's approval of the variation. Staff is unaware of where the proposed site detention would occur on the property.

Attachment A is an updated project schedule.

Staff will be available at the meeting of October 5 to review this report and address questions raised by the Board of Trustees.

**REDEVELOPMENT AGREEMENT
FOR THE RSC – LOMBARD, LLC DEVELOPMENT
COMPRISING A PART OF THE DOWNTOWN TIF DISTRICT
OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS**

THIS AGREEMENT is between the Village of Lombard, DuPage County, Illinois, an Illinois municipal corporation (hereinafter referred to as the "Village") and RSC – Lombard, LLC, an Illinois limited liability company (hereinafter referred to as "Developer"), and is dated this ____ day of _____, 2007.

WITNESSETH:

IN CONSIDERATION of the Preliminary Statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. 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 "Act").
- B. Pursuant to and in accordance with the requirements of the Act, on February 2, 1989, the corporate authorities of the Village adopted Ordinance No. 3121, entitled "An Ordinance Approving the Tax Increment Redevelopment Plan and Project" for the Village's Downtown TIF District, which sets forth a plan (hereinafter referred to as the "TIF Plan") for the redevelopment and revitalization of the property legally described on EXHIBIT 1 attached hereto and made part hereof, being located within the corporate boundaries of the Village (hereinafter referred to as the "Redevelopment Project Area").
- C. Pursuant to and in accordance with the Act, on February 2, 1989, the corporate authorities of the Village adopted Ordinance No. 3122, "An Ordinance Designating the Tax Increment Redevelopment Project Area," for the Village's Downtown TIF District, by which the property legally described on EXHIBIT 1 was designated as the Redevelopment Project Area.

- D. Pursuant to and in accordance with the Act, on February 2, 1989, the corporate authorities of the Village adopted Ordinance No. 3123, entitled "An Ordinance Adopting Tax Increment Financing," for the Village's Downtown TIF District, by which tax increment financing was adopted pursuant to the Act for the TIF Plan for the Redevelopment Project Area.
- E. Pursuant to and in accordance with the 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.
- F. Pursuant to and in accordance with the Act, on December 21, 2006, the corporate authorities of the Village adopted Ordinance No. _____, entitled "An Ordinance Amending Ordinance No. 3121, Adopted February 2, 1989, as Amended by Ordinance No. 5145 Adopted June 6, 2002, 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 and Revisions to the Redevelopment Plan and Project," for the Village's Downtown TIF District, by which the termination date for the Downtown TIF District was extended to December 31, 2023, subject to the receipt of 2023 incremental real estate tax revenues during 2024, and the TIF Plan was amended to address and accommodate redevelopment during the extended life of the Downtown TIF District beyond its original termination date (hereinafter referred to as the "Amended TIF Plan").
- G. The Village is the fee owner of certain real property located within the Redevelopment Project Area, said property being legally described on EXHIBIT 2 attached hereto and made part hereof (hereinafter referred to as the "Redevelopment Parcel").
- H. Developer desires to acquire ownership of the Redevelopment Parcel and intends to develop a mixed use residential (____ dwelling units), retail (____ net rentable square feet) and theatre (approximately 300 seats) development, including a parking garage containing ____ parking spaces, on the Redevelopment Parcel, as more fully shown on the plans attached hereto as EXHIBIT 3, and

made part hereof (hereinafter referred to as the "Approved Development Plans"), and Ordinance Nos. _____, _____ and _____, attached hereto as EXHIBIT 4, and made part hereof, (said Final Development Plans and Ordinances having been approved by the Village on _____, 200__, and are hereinafter referred to as the "Project").

- I. The Village is desirous of having the Redevelopment Project Area rehabilitated, developed and redeveloped in accordance with the Amended TIF Plan, and particularly the Project as a part thereof, in order to serve the needs of the Village, arrest physical decay and decline in the Redevelopment Project Area, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the Village and, in furtherance thereof, the Village is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such development.

II. UNDERTAKINGS ON THE PART OF THE VILLAGE

The Village shall undertake the following:

- A. The Village shall, if requested by Developer, reasonably assist Developer in securing and obtaining, in an expeditious manner, all non-Village governmental approvals, consents, permits, licenses and authorizations reasonably necessary or required for the Project. Developer, however, shall remain primarily responsible for preparing the submittals necessary for securing all of such necessary approvals, consents, permits, licenses and authorizations.
- B. The Village shall issue, where appropriate, and will reasonably assist Developer to obtain, such Village building permits, driveway permits, curb cut permits, licenses and other permits as Developer may require to cause the construction of the Project, all within _____ (____) days after Developer's submittal of application therefor, provided said submittals comply with the applicable ordinances of the Village and other governmental bodies having jurisdiction.
- C. To assist in expediting construction of the Project, the Village shall issue its sitework, foundation and construction permits separately as needed so long as Developer has submitted all information as required for each such permit to issue separately.
- D. The Village shall, within thirty (30) days after the approval of this Agreement, transfer title to the Redevelopment Parcel to the

Developer, in an "as-is where-is" condition with no environmental representations or warranties of any kind whatsoever, pursuant to the Real Estate Sales Contract attached hereto as EXHIBIT 5 and made part hereof (hereinafter referred to as "Contract I"), for a purchase price of two million three hundred thousand and no/100 dollars (\$2,300,000.00), to be paid as follows:

1. One hundred twenty-five thousand and no/100 dollars (\$125,000.00) upon execution of this Agreement; and
2. Two million one hundred seventy-five thousand and no/100 dollars (\$2,175,000.00) on or before December 31, 2023.

In the event the Developer chooses not to pay the amount referenced in 2 above in its entirety at the closing on the Redevelopment Parcel, any amount not paid at closing shall accrue interest at the rate of seven percent (7%) annually until paid, and the Village shall be entitled to record a first mortgage against the Redevelopment Parcel, for said unpaid amount, with said first mortgage to be in the form attached hereto as EXHIBIT 6 and made part hereof, and with said first mortgage to be in a first position relative to any and all other mortgages or liens against the Redevelopment Parcel. At such time as the Developer has:

- (a) delivered to the Village an itemized list of any and all costs to complete the Project (hereinafter referred to as the "Project Budget"), in accordance with the Approved Development Plans, certified to the Village, including the source of payment for each and every item contained in said Project Budget;
- (b) provided evidence, in a form reasonably satisfactory to the Village, of its ability to pay for the costs of the Project as itemized in the Project Budget, with said evidence to include, at a minimum, the source and amount of each and every construction loan and mezzanine loan; and
- (c) has delivered to the Village a construction schedule, including the projected date(s) of actual occupancy and date(s) of opening for the Project, subject only to delays caused by acts of God or "*force majeure*," the latter term being defined as causes which are outside the control of the parties and cannot be avoided by the exercise of due care, with said schedule providing for the completion of the theatre portion of the Project simultaneously with, or prior to, the completion of the retail and residential portions of the Project

(with completion, for purposes of this subsection (c), being defined as the issuance of an occupancy certificate relative to the respective portion of the Project);

the Village shall:

- (i) subordinate the aforementioned first mortgage to any and all construction and mezzanine equity loans obtained by the Developer for the completion of the Project; and
 - (ii) release the aforementioned subordinated first mortgage as to any residential or retail unit that is sold by the Developer to a third party.
- E. Except as provided in Section III.L. below, the Village represents that no new or additional streetscape improvements shall be required for the Project; provided that if the Project requires modification or relocation of existing improvements (including infrastructure) to accommodate the Project, or if Developer damages existing improvements or infrastructure, the costs and expenses of such modifications, relocations and repairs shall be borne exclusively by Developer.
- F. The Village shall waive its Plan Commission fees relative to the Plan Commission proceedings in regard to the Project.
- G. The Village shall provide the Developer with TIF incremental revenues to reimburse the Developer for those TIF eligible expenses as set forth on EXHIBIT 7 attached hereto and made part hereof. Said TIF incremental revenues shall be paid to the Developer as follows:
1. Nine hundred thousand and no/100 dollars (\$900,000.00), less any amounts (not to exceed, in the aggregate, twenty thousand and no/100 dollars (\$20,000.00)) paid by the Village to Developer (or its affiliates) relative to the preparation of plans for, and the supervision of, the partial demolition of the building located on the Redevelopment Parcel, upon execution of this Agreement;
 2. Up to three million eight hundred sixty-nine thousand and no/100 dollars (\$3,869,000.00), plus interest as referenced below, from TIF incremental revenues generated from the Project, and received by the Village from time to time, from the date of this Agreement through and including the 2017 tax levy collected in 2018. Said amount shall be secured by

the Village's promissory note, in the form as attached hereto as EXHIBIT 8 and made part hereof (hereinafter referred to as the "Development Note"), with interest on the unpaid balance of said Development Note accruing at the rate of seven percent (7%) annually until paid, said interest to begin to accrue as of the issuance of the building permits for the theatre portion of the Project; and

3. An amount equal to the amount actually paid by the Developer for the Developer's acquisition of the Redevelopment Parcel pursuant to Section II.D. above (including interest), from TIF incremental revenues generated by the Project, and received by the Village from time to time, from the 2018 tax levy collected in 2019 through the end of the life of the Village's Downtown TIF District.

The amounts set forth in 2 and 3 above shall be payable solely from TIF incremental revenues generated by the Project and no other source, with all TIF incremental revenues generated by the Project, during the respective time periods referenced in 2 and 3 above, being dedicated to the payments to be made during said respective time periods.

- H. The Village shall provide the Developer with a rebate of the sales taxes generated by the non-theatre portion of the Project, pursuant to the Sales Tax Rebate Agreement attached hereto as EXHIBIT 9 and made part hereof, with said rebate to expire on December 31, 2023, subject to the payment of sales taxes received during 2024 for sales occurring during 2023.

III. UNDERTAKINGS ON THE PART OF DEVELOPER

Developer shall undertake the following:

- A. Developer shall submit all plans, specifications, and other information necessary for action upon and issuance of, by all applicable governmental agencies, the approvals, consents, permits, licenses and authorizations reasonably necessary or required for the Project, with construction of the Project to begin on or before June 1, 2008.
- B. Developer shall, within thirty (30) days of the date of this Agreement, close on the purchase of the Redevelopment Parcel pursuant to the terms of Contract I.

- C. The Developer shall obtain no less than three (3) proposals for the partial demolition of the building currently located on the Redevelopment Parcel, with said partial demolition to be consistent with the Approved Development Plans attached hereto as EXHIBIT 3 so as to preserve the historic elements of said building, which are intended to be incorporated into the Project (hereinafter referred to as the "Partial Demolition"), and with said proposals for the Partial Demolition being subject to the review of, and approval by, the Village, prior to the Developer awarding the contract for the Partial Demolition (said approval by the Village not to be unreasonably conditioned, withheld or delayed). Upon approval of the Partial Demolition proposal by the Village, the Developer shall proceed with said Partial Demolition, with said Partial Demolition to be completed within ninety (90) days of the Developer obtaining title to the Redevelopment Parcel. The Village shall reimburse the Developer for the Developer's actual costs in proceeding with said Partial Demolition, with said reimbursement amount not to exceed three hundred thousand and no/100 dollars (\$300,000.00).
- D. Developer shall, on or before January 1, 2018, provide the Village with a letter of credit in the amount of five hundred thousand and no/100 dollars (\$500,000.00), from a financial institution approved by the Village, to guaranty the Developer covenant set forth in Section IV.B. below, said letter of credit to be in the form attached hereto as EXHIBIT 10 and made part hereof.
- E. Upon acquisition of the Redevelopment Parcel, Developer shall process through the Village a consolidation petition so that all parcels comprising the Redevelopment Parcel are combined as a single lot subdivision of record for zoning and real estate taxation purposes; provided that the Developer shall have the right to separate the residential, retail and theatre components of the Project, thereafter, pursuant to a declaration of condominium, for ownership and real estate taxation purposes.
- F. The Developer may complete the Project in phases; however, the Developer shall complete the theatre portion of the Project first, or at the same time as the other portions of the Project, with no certificates of occupancy for any residential portion of the Project (other than the six (6) residential loft units located in the same building as the theatre) being issued until the completion of the theatre portion of the Project (completion, for purposes of this subsection F., being defined as the issuance of a certificate of occupancy by the Village for the theatre, the theatre being in a "ready for use" condition as described in EXHIBIT 11 attached

hereto and made part hereof, and the conveyance of title to the theatre pursuant to subsection G. below).

- G. Upon issuance of the certificate of occupancy relative to the theatre portion of the Project and completion of the theatre in accordance with EXHIBIT 11, (hereinafter referred to as the "Conveyance Conditions"), the Developer shall convey title to the theatre portion of the Project, for ten and no/100 dollars (\$10.00), to such entity as directed by the Village, with said conveyance to be pursuant to the contract attached hereto as EXHIBIT 12 and made part hereof (hereinafter referred to as "Contract II"). The Village shall consult with, and receive input from, the Developer in regard to the selection of the entity that will own title to the theatre portion of the Project; however, the final selection of the entity to receive title to the theatre portion of the Project shall be within the Village's sole and absolute discretion. In the event the Village does not designate an entity for receipt of title to the theatre portion of the Project within forty-five (45) days of the date on which the Conveyance Conditions have been satisfied, the Developer shall have the right to convey title to the theatre portion of the Project to the Village.
- H. In addition to the replacement of the marquee as shown in EXHIBIT 3, the Developer shall construct a vertical sign relative to the Project, as shown on EXHIBIT 3, with the name to be associated with the Project, as set forth on said vertical sign, to be subject to the prior approval of the Village.
- I. The Developer shall obtain lease/easement agreements for sufficient off-site parking spaces so as not to require a parking variation relative to the construction of the Project.
- J. The Developer shall cause the entire Redevelopment Parcel to be subject to a master property owners association, for purposes of maintaining the general common elements of the Project, and may establish as many as three (3) subordinate property owners associations relative to the various aspects of the Project (one for the retail portion of the Project, one for the residential portion of the Project and one for the theatre portion of the Project).
- K. The Developer shall prepare all releases to be issued by the Village pursuant to Section II.D.(ii) above.
- L. Notwithstanding the provisions of Section II.E. above, the Developer shall be required to provide a public sidewalk, with a minimum width of five (5) feet, along the South side of Parkside Avenue, adjacent to the Redevelopment Parcel. The sidewalk shall

be designed and constructed consistent with the development standards for sidewalks within the downtown area of the Village. For any portion of the sidewalk that is not located within the public right-of-way, the Developer shall either grant an easement to the Village for public sidewalk purposes or dedicate additional right-of-way so that the sidewalk is located in either an easement or the public right-of-way.

IV. COVENANTS OF DEVELOPER REGARDING TAX INCREMENT FINANCING

- A. Developer hereby covenants and agrees that, with regard to the assessed value as proposed by the Assessor of DuPage County, Illinois for the non-theatre portion of the Project and the Redevelopment Parcel (hereinafter referred to as the "Taxable Parcel") during the life of the Village's Downtown TIF District, Developer shall not, except as herein provided:
1. Apply for, seek or authorize any special classification of the Taxable Parcel or any exemption from the imposition or paying of any or all real property taxes extended for collection without first obtaining the prior written approval of the Village.
 2. Directly or indirectly, seek to lower the assessed valuation of the Taxable Parcel below the Minimum Assessed Valuation for the Taxable Parcel shown on EXHIBIT 13 attached hereto and made part hereof, to the extent that the assessed valuation of the Taxable Parcel for any year is determined by the DuPage County Assessor to be greater than the Minimum Assessed Valuation shown for such year on such EXHIBIT 13.
- B. Developer and the Village acknowledge that the projected incremental TIF revenues to be generated from the Project (hereinafter referred to as "TIF Revenues") are reasonably expected to equal or exceed the yearly amounts as set forth on EXHIBIT 14 attached hereto and made part hereof (hereinafter referred to as the "Minimum Yearly TIF Revenues"). To the extent that actual TIF Revenues for any given year are less than said Minimum Yearly TIF Revenues (hereinafter referred to as a "TIF Deficiency"), the Village shall be allowed to draw upon the letter of credit referenced in Section III.D. above to cover a Net TIF Deficiency as defined in subsection 1. below, subject to the following conditions:

1. Drawing upon the letter of credit shall not occur until the Village has first determined whether there are any Surplus Amount(s), as defined in subsection 2. below, and that upon application thereof there still is a TIF Deficiency (hereinafter referred to as a "Net TIF Deficiency"), and if so has notified the Developer of the Net TIF deficiency and the Developer has failed to remit the amount of the Net TIF Deficiency to the Village in cash or equivalent not later than the date upon which the tax bill disclosing the TIF Deficiency is due and payable (hereinafter referred to as the "Cash Cover").
 2. In the event that TIF Revenues for previous given year(s) exceed the Minimum Yearly TIF Revenues (hereinafter referred to as the "Surplus Amount(s)"), and said Surplus Amount(s) have not been applied previously to satisfy a TIF Deficiency, said Surplus Amount(s) shall be applied towards satisfaction of the current TIF Deficiency prior to determining the current Net TIF Deficiency that the Village shall have the right to satisfy by drawing upon the letter of credit.
 3. The letter of credit requirement imposed on the Developer by this Section IV.B. and by Section III.D. shall cease and determine when TIF Revenues for two (2) consecutive tax years, beginning with the 2011 tax levy collected in 2012, equal or exceed six hundred seventy-five thousand and no/100 dollars (\$675,000.00) in each year.
- C. In the event that the condition set forth in Section IV.B.3. above is met prior to January 1, 2018, the Developer shall not be required to provide the letter of credit as required by Section III.D.
- D. When a draw is made on the letter of credit as referenced in Section IV.B.2. above, the Developer shall, within sixty (60) days after said draw, be required to cause the dollar amount of said letter of credit to be replenished to the full amount as required by Section III.D. above.
- E. Notwithstanding the limitations on the Village's ability to draw on the letter of credit, as set forth in subsection B. above, at anytime that there is less than twenty (20) days left on the life of the letter of credit, the Village can draw upon the letter of credit for the full amount thereof, it being the intent of the Village and the Developer that replacement letters of credit be put in place by the Developer no less than thirty (30) days prior to the expiration of a current letter of credit. Prior to making a draw on the letter of credit pursuant to this subsection E., the Village shall provide the Developer with no

less than ten (10) days prior written notice of the Village's intent to do so. Said ten (10) day notice by the Village may be given at any time that there is less than sixty (60) days remaining on the life of the current letter of credit.

- F. The foregoing covenants and agreements contained in this Section IV. shall be construed and interpreted as an express agreement between Developer and the Village in that a major incentive inducing the Village to enter into this Agreement is to increase the assessed valuation of and the general real estate taxes payable with respect to the Project. This Agreement may be used by the Village, in the Village's discretion, as an admission against Developer's interest in any proceeding respecting the subject matters covered by this Agreement.

V. ADDITIONAL COVENANTS, UNDERTAKINGS AND AGREEMENTS OF THE PARTIES

- A. This Agreement incorporates all agreements and understandings of the parties hereto as of the date of its execution, concerning the Project. Each party acknowledges that no representations or warranties have been made which have not been set forth herein.
- B. Time is of the essence in the performance of this Agreement.
- C. For the purposes of any of the provisions of this Agreement, neither the Village, Developer nor any of their respective successors and assigns, as the case may be, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by acts of god, acts of public enemy, acts of Federal or State government, fires, floods, epidemics, quarantine or restriction, strike, shortage of materials, embargoes, and delays due to weather conditions or delays of construction contractors and subcontractors due to such causes; nor shall the Village or Developer be considered in breach of or default in its obligations under this Agreement in the event of any delay resulting from the conduct of any judicial, administrative or legislative proceedings, or caused by litigation or proceedings challenging the authority or right of the Village to act under the Amended TIF Plan, any of the ordinances referenced herein, or perform under this Agreement. The Village shall diligently contest any such proceedings and any appeals therefrom. The Village may settle a contested proceeding at any point, so long as the settlement results in the Village's ability to perform pursuant to this Agreement and so long as any such settlement does not impose additional obligations on Developer or increase Developer's obligations under this Agreement. It is the

purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the parties shall be extended for the period of the delay. Notwithstanding the foregoing, if the Village's Downtown TIF District is declared invalid by a final order of court or legislative process, then, in either event, the Developer shall no longer have any liability under Section IV. above, and shall not be required to post the letter of credit therein specified.

- D. Developer recognizes and agrees that the Village has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of the Approved Development Plans, (and any amendments thereto), excavation permits, grading permits, building permits and occupancy permits, and failure on the part of the Village to grant or issue any required permit shall not be deemed as the cause of a default by Developer under this Agreement or give rise to any claim against or liability to the Village pursuant to this Agreement unless contrary to any express covenant on the part of the Village set forth in this Agreement. The Village agrees, however, that such approvals and permits shall not be unreasonably withheld, conditioned or delayed.
- E. Upon the approval of this Agreement, the Village agrees that the Developer may commence pre-sale activities on, or with respect to, the Project, and if the Developer elects to do so, the Developer acknowledges that it will be doing so at its own risk.
- F. The Village agrees to permit Developer to construct, install and maintain temporary marking signs and permanent signs on the Redevelopment Parcel in accordance with the Approved Development Plans for the Project. All future signage changes, if any, shall be in compliance with the then-applicable provisions of the Village Code.
- G. The Project shall be completed in accordance with the Approved Development Plans and in accordance with all applicable ordinances, rules and regulations of the Village.
- H. All notices and requests, if any, required pursuant to this Agreement shall be sent by certified mail return receipt requested, or by personal service, addressed as follows:

If to Developer. Richard S. Curto
 President
 RSC – Lombard, LLC
 180 North LaSalle Street

Suite 2626
Chicago, Illinois 60631

with copy to: Schnell, Bazos, Freeman,
Kramer, Schuster & Vanek
1250 Larkin Avenue
Suite 100
Elgin, Illinois 60123
Attention: Peter C. Bazos

If to the Village: Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

with copy to: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attention: Thomas P. Bayer

Notice by certified mail shall be deemed given on the third day following the mailing of said notice, while notice by personal service shall be deemed given at the time of service.

- I. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, and venue in regard to any litigation between the parties in regard to this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.
- J. Developer shall not assign this Agreement to any person or entity without the prior written consent of the Village, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, at the time of such assignment, there is no default under this Agreement by Developer.
- K. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.
- L. No recourse under or upon any obligation, covenant, or agreement of this Agreement (other than an action for the specific enforcement of the Village's obligations hereunder, in which no monetary damages are being sought) or for any claim based thereon or otherwise in respect thereof shall be had against the Village, in any amount or in excess of any specific sum agreed by the Village to be

paid to Developer hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village's officers, agents and/or employees in regard to this Agreement, with all and any such rights or claims of Developer against the Village's officers, agents and/or employees being hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.

- M. Subject to the provisions of Section IV.A. above, Developer hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that may at any time be lawfully assessed against the Redevelopment Parcel or the Project.
- N. This Agreement shall be binding upon the parties hereto and their respective grantees, heirs, successors, administrators, permitted assigns or other successors in interest. All of the terms and provisions of this Agreement shall survive the closing of the transactions contemplated herein.
- O. The parties shall record a certified (by the Village Clerk) copy of this Agreement in the office of the Recorder of Deeds of DuPage County, Illinois, and upon recordation thereof, the covenants and conditions of the parties hereto shall be binding upon their successors in title and shall be deemed covenants which shall run with the land until the termination of this Agreement.

VI. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

- A. Developer hereby represents and warrants that it is an Illinois limited liability company in good standing with proper authority to execute this Agreement.
- B. Developer hereby represents and warrants that the Project requires economic assistance from the Village, including, but not necessarily limited to, an underwriting of the property acquisition, environmental remediation, demolition, site preparation and rehabilitation, reconstruction and remodeling costs associated with the Project, in order for Developer to complete the acquisition and construction in accordance with the Approved Development Plans and, but for the economic assistance to be given by the Village as herein stated, the Project, as contemplated, would not be economically viable nor eligible for the financing necessary for its completion.

- C. Developer hereby represents and warrants that the Project shall be constructed and fully completed in a good and workmanlike manner in accordance with the Approved Development Plans and all plans and specifications pertaining thereto, including any amendments as approved by the Village.
- D. Developer hereby represents and warrants that at all times it shall comply with all applicable local zoning ordinances and regulations, the building code, fire code and all other applicable Village ordinances, resolutions and regulations.
- E. Developer hereby represents and warrants that it shall comply with all applicable laws, rules and regulations of the County of DuPage, State of Illinois and the United States and all agencies thereof, having jurisdiction over it or the Project.
- F. Developer hereby represents and warrants that it shall comply with all terms, provisions and conditions and shall not default or knowingly permit a default under any document or agreement relating to the Project or the financing of the Project to which it is a party, including but not limited to this Agreement, and all agreements and documentation in connection with any loan to it in relation to the Project.
- G. Developer hereby covenants and agrees that, except as provided above, it will not, directly or indirectly, sell, transfer, assign or otherwise dispose of the Project (including the beneficial interest or power of direction over any land trust holding legal title thereto) without the prior written consent of the Village, which consent will not be unreasonably withheld, conditioned or delayed. The Village shall not withhold such consent if the proposed use by the purchaser, transferee or assignee would not lower the assessed valuation of the Taxable Parcel below the Minimum Assessed Valuation for the Taxable Parcel as shown on EXHIBIT 13 attached hereto, and would produce the same amount of sales tax revenues as anticipated to be produced by the Project.
- H. Developer hereby covenants and warrants that it will, as part of the Project, record a covenant restricting the use of the balconies/patios constructed as part of the Project, with the language of said covenant being subject to the approval of the Village.

VII. REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

- A. The Village hereby represents and warrants to Developer that, subject to its compliance with the Act, it has the power and authority to execute, deliver and perform the terms and obligations of this Agreement.
- B. In any place in this Agreement where the approval of the Village is required or inferred, the Village agrees that it shall not unreasonably withhold, condition or delay such approval.

VIII. DEFAULTS AND REMEDIES

The term "Event of Default" shall have the following meanings:

- A. The breach by any party hereto of a monetary covenant, which breach continues for more than fifteen (15) days following written notice from the other party; or
- B. The breach by any party of a non-monetary covenant, and the continuance of such breach for more than sixty (60) days following written notice from the other party; provided, however, that in the event such default is incapable of being cured within 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.

Upon the occurrence of an Event of Default, 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. 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.

IX. AGREEMENT TERM

The term of this Agreement shall commence as of the date of its execution (the date set forth on page 1) after approval by the corporate authorities of the Village and continue until fully performed by the parties, except the Village's obligation to make payment of TIF incremental revenues to Developer shall expire at the termination of the Village's Downtown TIF District as required by the Act.

VILLAGE OF LOMBARD,
a municipal corporation

ATTEST:

By: _____
William J. Mueller
Village President

Brigitte O'Brien
Village Clerk

RSC – LOMBARD, LLC,
an Illinois limited liability company

By: _____
Richard S. Curto
Its Manager

180264-49/72

EXHIBIT 1

**(Legal Description
of the
Tax Increment Redevelopment Project Area
for the
Village's Downtown TIF District)**

EXHIBIT 2
(Legal Description
of the
Redevelopment Parcel)

EXHIBIT 3
(Approved Development Plans
for
the Project)

EXHIBIT 4
**(Ordinances Approving
the Project)**

EXHIBIT 5

**(Real Estate Sales Contract
for the Transfer of Title to the
Redevelopment Parcel - "Contract I")**

EXHIBIT 6

**(First Mortgage Document
to be Recorded Against the Redevelopment Parcel
to Secure the Payment Due the Village
if Full Payment is Not Made at the Closing)**

EXHIBIT 7

**(List of TIF Eligible Expenses
that are to be Covered by the
TIF Incremental Revenue Payments
Being Made to the Developer)**

EXHIBIT 8
(Development Note)

EXHIBIT 9
(Sales Tax Rebate Agreement)

EXHIBIT 10

**(Letter of Credit
to Guaranty Incremental Revenue Generation
After 1/1/18)**

EXHIBIT 11

**(Description of "Ready for Use"
Requirements Relative to the Theatre)**

EXHIBIT 12

**(Real Estate Sales Contract
for the Transfer of Title to the
Theatre Portion of the Project – “Contract II”)**

EXHIBIT 13

**(Minimum Assessed Valuation
for the
Taxable Parcel)**

EXHIBIT 14
(Minimum Annual
TIF Revenues
to be Generated from the Project)

2006										2007		comments
July	August	September	October	November	December	January	February					
Sale of property Letter of intent received with \$10,000 good faith payment Dec 2005				RSC to begin environmental review of site			January 4 - first reading January 18 - second reading January 19 - closing					
Development agreement				October 5 - Draft Agreement presented to Village Board				February 1 - Approve redevelopment agreement & taxing district rebaselining agreement		Approval of agreement cannot occur until after TIF extension is approved and recorded		
Plan Commission approval	July 17 workshop session			October 17 - Petition for Public Hearing filed	November 20 Plan Commission hearing	December 18 second Plan Commission hearing	January 4 - first reading January 18 - second reading					
Building permit process										Project to start by June 1, 2008 - No phasing plan.		
TIF extension	Village begins TIF extension process (SB 838 approved 5/19/06)	August 17 - Announcement of available TIF report August 21 - Mail notices of public meeting to taxing districts & residences/ taxpayers within the TIF	September 6 - Public Meeting (7:00 p.m.) September 21 - Adopt ordinance calling for JRB meeting & public hearing September 28 - Mail notices to all residences within 750 feet, Mail JRB meeting notices	October 19 - Joint Review Board meeting (4:30 p.m.)	November 15 - Publish 1st notice of public hearing November 17 - Publish 2nd notice of public hearing; Mail notices of public hearing to all residences and taxpayers within the TIF	December 7 - Public hearing (part of BOT meeting) December 21 - Adopt ordinances for TIF extension, amendment to redevelopment plan, & adopting TIF	January 4 (if 12/21 BOT meeting is cancelled) - Adopt ordinances for TIF extension, amendment to redevelopment plan, & adopting TIF					

Timeline does not include deadlines that must be met in order for the developer to receive incentives.