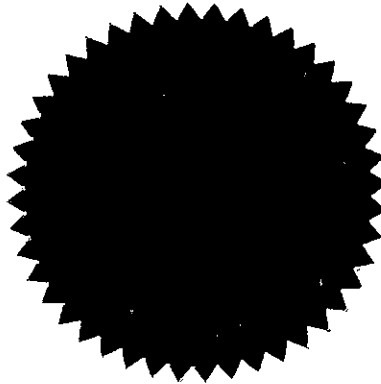


ORDINANCE      4833  
                          4834

**PAMPHLET**

**FRONT OF PAMPHLET**

GRANTING A CONDITIONAL USE FOR A  
PLANNED DEVELOPMENT IN THE B3 DISTRICT,  
A CONDITIONAL USE TO ALLOW MORE THAN  
ONE PRINCIPAL BUILDING ON A LOT AND GRANTING  
VARIATIONS FROM THE LOMBARD SUBDIVISION  
AND DEVELOPMENT ORDINANCE AND SIGN ORDINANCE  
AN ORDINANCE AUTHORIZING THE EXECUTION  
OF A SECOND AMENDMENT TO THE PRE-DEVELOPMENT  
AGREEMENT FOR 2700 S. HIGHLAND AVENUE  
(HIGHLANDS OF LOMBARD)



PUBLISHED IN PAMPHLET FORM THIS 16TH DAY OF JUNE, 2000.  
BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD,  
DUPAGE COUNTY, ILLINOIS.

  
Lorraine G. Gerhardt  
Village Clerk

**ORDINANCE NO. 4833**  
**AN ORDINANCE GRANTING A CONDITIONAL USE FOR A  
PLANNED DEVELOPMENT IN A B3 DISTRICT,  
GRANTING A CONDITIONAL USE TO ALLOW  
MORE THAN ONE PRINCIPAL BUILDING ON A LOT  
AND GRANTING VARIATIONS FROM  
THE LOMBARD ZONING ORDINANCE, SUBDIVISION AND  
DEVELOPMENT ORDINANCE AND SIGN ORDINANCE**

(PC 00-24 The Highlands of Lombard Subdivision)

WHEREAS, the below described property is zoned B3 Community Shopping District;  
and

WHEREAS, the President and Board of Trustees of the Village of Lombard approved Ordinance 4123 on January 18, 1996 providing for a Pre-Development Agreement for the below described property; and

WHEREAS, the President and Board of Trustees of the Village of Lombard approved Ordinance 4201 on September 5, 1996 providing for a First Amendment to the Pre-Development Agreement for the below described property; and

WHEREAS, an application has heretofore been filed requesting approval of (1) a conditional use for a planned development to provide for the construction of a 4 lot planned development commonly referred to as The Highlands of Lombard, (2) a conditional use to allow more than one principal building on a lot, and (3) variations from the Lombard Zoning Ordinance (Title 155 of the Village Code), Subdivision and Development Ordinance (Title 154 of the Village Code) and Sign Ordinance (Title 153 of the Village Code), all on the property described in Section 1 below; and,

WHEREAS, a public hearing on such application have been conducted by the Village of Lombard Plan Commission on May 15, 2000 pursuant to appropriate and legal notice; and,

WHEREAS, the Plan Commission has filed its recommendations with the President and Board of Trustees recommending approval of the conditional use for a planned development, conditional use to allow more than one principal building on a lot, and the variations described herein; and

WHEREAS, the President and Board of Trustees approve and adopt the findings and recommendations of the Plan Commission and incorporate such findings and recommendations herein by reference as if they were fully set forth herein; and

WHEREAS, the President and Board of Trustees of the Village of Lombard have reviewed the request and find it would be in the best interest of the Village to grant said

conditional uses and variations subject to the terms and conditions established by this ordinance; and

WHEREAS, the President and Board of Trustees of the Village of Lombard have approved a Preliminary Plat of Subdivision for The Highlands of Lombard which identifies the property described below as proposed Lots 2 through 5 and which includes a proposed Lot 1. (All references herein to any lots shall mean or refer to the proposed lots shown on the approved Preliminary Plat of Subdivision for The Highlands of Lombard as approved by the President and Board of Trustees on \_\_\_\_\_, 2000 attached hereto and made a part hereof.)

NOW, THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That this ordinance is limited and restricted to the property generally located at the northwest corner of Butterfield Road and Highland Avenue, Lombard, Illinois, and legally described as follows:

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH RANGE 11, EAST OF THE OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 995.24 FEET TO THE POINT OF BEGINNING; CONTINUING THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER 1513.66 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF BUTTERFIELD ROAD [ROUTE 56]; THENCE NORTH 80 DEGREES. 33 MINUTES, 53 SECONDS EAST ALONG SAID NORTHERLY LINE OF BUTTERFIELD ROAD 299-29 FEET TO A POINT OF CURVE; THENCE EASTERLY ALONG THE CURVE TO THE LEFT TANGENT TO THE LAST DESCRIBED COURSE HAVING A RADIUS OF 9191.29 FEET FOR AN ARC DISTANCE OF 1008.16 FEET, SAID CURVE HAVING A CHORD LENGTH OF 1007.65 FEET BEARING NORTH 77 DEGREES, 25 MINUTES, 21 SECONDS EAST TO ITS INTERSECTION WITH THE WEST LINE OF HIGHLAND AVENUE, AS SAID HIGHLAND AVENUE WAS DEDICATED BY DOCUMENT NO. 342659; THENCE NORTH 02 DEGREES, 26 MINUTES, 58 SECONDS WEST ALONG THE WEST LINE OF SAID HIGHLAND AVENUE 803.59 FEET; THENCE SOUTH 87 DEGREES, 33 MINUTES, 02 SECONDS WEST 149.49 FEET TO A POINT OF CURVE: THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 255.00 FEET FOR AN ARC DISTANCE OF 199.52 FEET, SAID CURVE HAVING A CHORD LENGTH OF

194.47 FEET BEARING SOUTH 65 DEGREES 08 MINUTES 06 SECONDS WEST TO A POINT OF REVERSE CURVE; THENCE SOUTHWESTERLY ALONG ARC OF SAID CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 170.00 FEET FOR AN ARC DISTANCE OF 146.29 FEET, SAID CURVE HAVING A CHORD LENGTH OF 141.82 FEET BEARING SOUTH 67 DEGREES 22 MINUTES 19 SECONDS EAST TO A POINT OF TANGENCY; THENCE NORTH 87 DEGREES, 58 MINUTES, 32 SECONDS WEST 209.95 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 120.00 FEET FOR AN ARC DISTANCE OF 179.30 FEET, SAID CURVE HAVING A CHORD LENGTH OF 163.08 FEET BEARING NORTH 45 DEGREES 10 MINUTES 11 SECONDS WEST TO A POINT OF TANGENCY; THENCE NORTH 02 DEGREES 21 MINUTES 50 SECONDS WEST A DISTANCE OF 482.60 FEET; THENCE SOUTH 87 DEGREES 38 MINUTES 10 SECONDS WEST 507.29 FEET TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

Said Parcel of Land Herein Described Contains 31.93 Acres, More or Less

A portion of P.I.N. 06-29-300-004

(Hereinafter the "Subject Property").

SECTION 2: That a conditional use for a planned development is hereby granted for the Subject Property, to provide for the construction of The Highlands of Lombard, subject to compliance with the conditions set forth in Section 5 below.

SECTION 3: A conditional use is granted to allow more than one principal building on Lot 2, and any lot created by resubdivision of Lot 2, of the Subject Property and to allow more than one principal building to utilize easements and/or air rights over Lot 5 and to allow more than one principal building to utilize air rights over Lot 4 of the Subject Property subject to compliance with the conditions set forth in Section 5 below.

SECTION 4: The following variations are hereby granted relative to the Subject Property, subject to the conditions set forth in Section 5 below:

- A. That a variation be and hereby is granted from the requirements of Section 155.508.B.3 of the Village Code to allow (a) multiple family uses on Lot 2 to exceed 40% of the floor area of the planned development, and (b) to exempt, from the 40% site area and floor area limits on use exceptions, all uses the Second Amendment allows as a permitted use.
- B. That variations be and are hereby granted from the requirements of Sections 155.508.C.6a and b, 155.414.J and K and 155.707.A.4 of the Village Code to

allow required yards, transitional yards and transitional landscape yards to be reduced or eliminated when (a) part or all of any such yard(s) is/are provided on Lot 1, or (b) Lot 3 or the east line of the northwest portion of Lot 2 abuts proposed Lot 1, provided a landscaped area shall be provided on Lot 1 in an easement as shown on the approved Final Plan of Planned Development as defined in the Second Amendment to Pre-Development Agreement approved by the President and Board of Trustees on \_\_\_\_\_, 2000 pursuant to Ordinance No. \_\_\_\_\_ (hereinafter referred to as the "Second Amendment").

- C. That a variation be and hereby is granted from the requirements of Section 154.506.D of the Village Code to allow future lots to be created by further division of Lot 2 without frontage on a public street so long as adequate vehicular access to a public street is assured, and to allow Lots 2, 4 and 5, without direct access to a public street, so long as adequate vehicular access is assured.
- D. That a variation be and hereby is granted from the requirements of Sections 154.507.A and B of the Village Code so that Lots 4 and 5 need not be conveyed to the Lot 1 owner and to further allow for ownership of Lots 4 and 5 to be other than in equal interests, but rather may vary depending on an owner's acreage or such other factor or factors as the Village may approve.
- E. That a variation be and hereby is granted from the requirements of Sections 154.602.D.3.e, f and g of the Village Code to allow permits for grading and foundation work to be issued prior to the completion of the water distribution system, sanitary sewer system and public right-of-way improvements, with other building permits to be issued subject to the approval of the appropriate Village officials, all under the terms and conditions set forth in the Second Amendment.
- F. That a variation be and hereby is granted from the requirements of Section 155.103.C.10 of the Village Code to modify the automatic revocation period for variations from twelve (12) months to twenty-four (24) months if work is not substantially under way within that time.
- G. That a variation be and hereby is granted from the requirements of Section 155.103.F.11 of the Village Code to modify the automatic expiration period for commencing construction for conditional uses from twelve (12) months to twenty-four (24) months if work is not substantially under way within that time and an elimination of the automatic revocation period if work is not completed within eighteen (18) months thereof.
- H. That a variation be and hereby is granted from the requirements of Section

155.103.I of the Village Code to modify the site plan review process in the manner set forth in the Second Amendment.

- I. That a variation be and hereby is granted from the requirements of Section 155.205.a.2.c of the Village Code to allow the signage/feature wall on Lot 5 and the detention pond retaining wall on Lot 4 at the heights and in the locations shown on the Approved Final Plan of Planned Development (as defined by the Second Amendment).
- J. That a variation be and hereby is granted from the requirements of Section 155.205.A.2.e of the Village Code to allow the Plan Commission, as part of the site plan approval process set forth in the Second Amendment, to determine whether a site plan may deviate from the clear sight regulations where practical difficulties arise due to site topography and grade differentials, provided the Plan Commission makes a finding that public safety is not compromised.
- K. That a variation be and hereby is granted from the requirements of Section 155.210.A.3 of the Village Code to allow structured parking to exceed fifteen (15) feet in height, subject to site plan approval by the Plan Commission, provided the accessory structure height does not exceed the height of the principal building.
- L. That a variation be and hereby is granted from the requirements of Section 155.210.D.8 of the Village Code to allow lighting levels at property lines to exceed one-half (0.5) foot candles, subject to site plan approval by the Plan Commission, for (1) private street lighting where the private street intersects with a public street, and (2) lighting at all property lines other than at the perimeter of the proposed Highlands of Lombard subdivision.
- M. That a variation be and hereby is granted from the requirements of Section 155.212 of the Village Code to allow Sites or lots within Lot 2 to have parking and drive aisles which occupy more than thirty percent (30%) of a required yard provided such yard is not at the perimeter of Lots 2, 4 and 5 taken as a whole.
- N. That a variation be and hereby is granted from the requirements of Section 155.404.I of the Village Code to allow entry signage for Lot 2 to be located within an easement on Lot 1 in conformance with the Approved Final Plan of Planned Development (as defined in the Second Amendment).
- O. That a variation be and hereby is granted from the requirements of Sections 155.414.B and C of the Village Code to modify the list of permitted and conditional uses and to prohibit certain otherwise allowed uses, all as set forth in

the B3 Use List which is an exhibit to the Second Amendment.

- P. That a variation be and hereby is granted from the requirements of Section 155.414.E of the Village Code to allow minimum lot widths of less than one hundred (100) feet, subject to site plan approval by the Plan Commission.
- Q. That variations be and hereby are granted from the requirements of Section 155.414.F of the Village Code to eliminate yard requirements where yards are not at the perimeter of Lots 2, 4 and 5 taken as a whole, subject to the terms and conditions of the Second Amendment; to allow no yard to be provided abutting Lots 4 or 5; to allow any Lot or Site, which does not front on a public street or on Lot 3, to have a front yard of no less than fifteen (15) feet, with the front yard being that yard most oriented to the private access drive providing the primary vehicular access to the Lot or Site; and to allow for the reduction or elimination of any yard required, where the north line of Lot 2 abuts the south line of Lot 1, if the yard is provided on Lot 1 by covenant to the extent such yard is not provided on Lot 2.
- R. That a variation be and hereby is granted from the requirements of Section 155.414.G of the Village Code to allow buildings in excess of two (2) stories provided that (1) no building shall exceed one hundred thirty (130) feet in height and (2) for all buildings every foot of height above thirty (30) feet shall require one (1) additional foot of building setback from Butterfield Road and Highland Avenue, and shall comply with the line of sight from Highland Green Subdivision depicted on Sheet LP-2 of the Approved Final Plat of Planned Development (as defined in the Second Amendment).
- S. That a variation be and hereby is granted from the requirements of Section 155.414.H of the Village Code to eliminate the ten percent (10%) open space requirement per Lot provided that the overall percentage of open space in the planned development is no less than twenty-five percent (25%), with pond surfaces counted as open space.
- T. That a variation be and hereby is granted from the requirements of Section 155.414.I.2 of the Village Code to allow restaurant uses to conduct a portion of their business in open air or partially enclosed areas as a permitted use, subject to site plan approval.
- U. That variations be and hereby are granted from the requirements of Sections 155.414.F, J and K, 155.707.A.4 and 155.508.C.6.a and b of the Village Code to allow the required yard, transitional yard and transitional landscape yard between

a B3 property and a CR property to be provided in whole or in part on Lot 1 provided (1) the owner of Lot 1 records a covenant running with the land on Lot 1 establishing such yard on Lot 1 at a depth which, when combined with the depth of the applicable yard provided on Lot 2, equals the yard depth requirement of the Village Code, and provided (2) the building on Lot 2 is in compliance with the line of sight from Highland Greens Subdivision depicted on Sheet LP-2 of the Approved Final Plan of Planned Development (as defined the Second Amendment).

- V. That a variation be and hereby is granted from the requirements of Sections 155.503 and 155.507 of the Village Code to modify the planned development submittal requirements to allow the submittal to be modified to require only (1) identification of buildable areas, and (2) other documents required by the Director of Community Development, all subject to the terms and conditions set forth in the Second Amendment and with the requirement that all development be subject to a site plan approval process, before the Plan Commission, relative to each of the identified buildable areas.
- W. That a variation be and hereby is granted from the requirements of Sections 155.602.A.3, 4 and 7 of the Village Code to allow shared parking as a permitted use for Lot 2, and to further permit, as a permitted use, lots or Sites within the Subject Property to utilize off-site and/or shared parking with other lots or Sites within the Subject Property, subject to site plan approval by the Plan Commission and the terms and conditions of the Second Amendment.
- X. That a variation be and hereby is granted from the requirements of Section 155.602.A.5 of the Village Code to allow parking spaces abutting Lots 4 and 5 to be no less than sixteen and one half (16-1/2) feet in length if there will be an overhang onto Lot 4 or 5 which does not interfere with the growth of any required plantings, subject to site plan approval by the Plan Commission. If any parking spaces overhang a sidewalk on Lot 4 or 5, a minimum of five feet of sidewalk width shall be maintained.
- Y. That a variation be and is hereby granted from the requirements of Section 155.602.A.10.d.3 of the Village Code to allow, subject to site plan approval by the Plan Commission, off-street parking area lighting for Lot 2 to exceed three (3.0) foot candles at all property lines except at a property line at the perimeter of Lots 2, 4 and 5 taken as a whole.
- Z. That a variation be and is hereby granted from the requirements of Section 155.603.A.1 of the Village Code to allow, subject to site plan approval by the



Plan Commission, (1) loading berths in a required front, corner side or side yard so long as the yard is not at the perimeter of proposed Lots 2, 4 and 5 taken as a whole, and (2) loading berths to be located wholly or partially on another lot created within Lot 2 if a loading area is shared by one or more users on adjacent lots pursuant to easements.

- AA. That a variation be and hereby is granted from the requirements of Sections 155.706.C and 155.709 of the Village Code to eliminate the five (5) foot perimeter landscape requirement for (1) the north boundary of Lot 3, (2) Lot 2, except at the perimeter of Lots 2, 4 and 5 taken as a whole, and (3) at the north boundary of Lot 2 where it abuts Lot 1 if the transitional landscape yard is being provided on Lot 1.
- BB. That a variation be and is hereby granted from the requirements of Sections 153.103.I and 155.103.C of the Village Code to allow the Plan Commission to authorize variations from the sign regulations of the Village Code (Title 153) in conjunction with site plan approval for Lots or Sites, provided (1) no prohibited type of sign as listed in Section 153.207 of the Village Code may be allowed by the Plan Commission, and (2) written notice shall be given to other owners or property within Lot 2 in the same manner provided for zoning amendments, at least fifteen (15) days but no more than thirty (30) days, prior to the date of the Plan Commission meeting at which the Plan Commission will review an application for site plan approval with deviations from Title 153 of the Village Code.
- CC. That a variation be and hereby is granted from the requirements of Section 153.208.A.1 of the Village Code to permit signs to be legible only from either the nearest right-of-way, private street, or common perimeter access drive, whichever is closer.
- DD. That a variation be and hereby is granted from the requirements of Section 153.225 of the Village Code to allow (1) the common signage identifying The Highlands of Lombard to be located on Lot 4 and Lot 5 and elsewhere within easements for the benefit of the entire development as depicted on the Approved Final Plan of Planned Development (as defined in the Second Amendment) and to allow (2) monument signage within an easement along Highland Avenue, as depicted on the Approved Final Plan of Planned Development, with same to include tenant/business names.
- EE. That a variation be and hereby is granted from the requirements of Section 153.233.G of the Village Code to allow the Plan Commission to authorize

freestanding signs on a lot or site as part of the site plan approval process before the Plan Commission.

- FF. That a variation be and hereby is granted from the requirements of Section 153.505.B.5.e of the Village Code to allow (1) the freestanding signs depicted on the Approved Final Plan of Planned Development, and to allow (2) the Plan Commission to authorize such other freestanding signs as it deems appropriate subject to the site plan approval process.
- GG. That a variation be and hereby is granted from the requirements of Section 153.602 of the Village Code to allow references to "frontage" or "building frontage" to include frontage on a private street established within the Subject Property and to allow The Highlands of Lombard to qualify for shopping center identification signage.
- HH. That a variation be and hereby is granted from the requirements of Section 155.103.C of the Village Code to allow the Plan Commission to authorize any deviations regarding parking standards as part of the site plan approval process subject to the terms expressed in the Second Amendment.

SECTION 5: The conditional uses and variations set forth in Sections 2, 3 and 4 above shall be granted subject to compliance with the following conditions:

- A. The Subject Property shall be developed in accordance with the terms and conditions of a Second Amendment to Pre-Development Agreement ("Second Amendment"), the execution of which has been authorized by Ordinance No. \_\_\_\_\_ adopted \_\_\_\_\_, 2000.
- B. The Subject Property shall be developed in accordance with the Preliminary Plat of Subdivision prepared by Spaceco, Inc. dated April 4, 2000 (a copy of which is attached hereto as Exhibit A and made part hereof) and the Engineering Plans (identified as Site Improvements, Sheets 1 - 10) prepared by Spaceco, Inc. dated April 4, 2000, ("Engineering Plans") (a copy of which is attached hereto as Exhibit B and made part hereof) all as amended and approved by the President and Board of Trustees, and in accordance with the final plat of subdivision and final engineering plans upon approval of same by the President and Board of Trustees.
- C. The Subject Property shall be developed in conformance with the plans incorporated as exhibits into the aforesaid Second Amendment, except as

modified by the terms and conditions of the Second Amendment or this Ordinance.

- D. Any major deviation from the approved Engineering Plans or from the final engineering plans as and when approved shall require a Planned development amendment.
- E. The sight triangle(s) shall be represented on all final engineering plans and no deviations are permitted, except as may be allowed by the Plan Commission in site plan approval, providing the Plan Commission makes a finding that public safety will not be compromised.
- F. No parking is allowed within five feet (5') of any utility line.
- G. Prior to the issuance of a certificate of occupancy, all necessary access to public roads from private streets and parking areas shall be substantially completed.
- H. The Village of Lombard shall not be held responsible for restoration or repair of landscaping, irrigation systems, parking areas, or drive aisles where an easement is provided to the Village.
- I. No parking area shall be established any closer than twenty (20) feet from the back of curb established within Lot 3 as shown on the Preliminary Plat of Subdivision and no building shall be established any closer than thirty (30) feet from back of said curb.
- J. Emergency vehicle access to and between Lots 1, 2 and 3 shall be provided by way of an easement as shown on the Preliminary Plat of Subdivision. No other vehicular cross-access shall be allowed between Lot 1 on the one part and Lots 2 and 3 on the other part, except for any common maintenance vehicles.
- K. Weather permitting, no later than six (6) months following completion of mass grading, any Site (as defined in the Second Amendment) which is not under construction pursuant to permits issued by the Village shall be seeded and thereafter maintained in a sightly condition as turf until construction commences.
- L. The planned development shall not be considered approved until final engineering has been submitted to and approved by the Village.
- M. That the petitioner shall apply for and receive site plan approval for the development of Lots 4 and 5 prior to site plan approval for Lot 2 or any lots

created by the division of Lot 2.

- N. That the following site improvement provisions be included as part of the development:
1. All retaining walls to be located on Lot 2 (or any subsequent lots created by the division of Lot 2) shall be of a similar style, color and treatment, unless a wavier is granted by the Lombard Plan Commission;
  2. Internal 20 foot by 20 foot line of sight provisions shall be met, unless waived by the Plan Commission through the site plan approval process;
  3. All perimeter fenoing shall be consistent with the existing perimeter fencing on Lot 1;
  4. Aeration and lighting systems shall be provided for the retention ponds on Lots 4 and 5 as part of the site plan approval process for those lots;
  5. Parking lot and internal roadway grades shall not exceed seven (7) percent for the B3 portion of the development;
- O. A 30 foot line of sight easement at the northwest corner of Highland Avenue and Butterfield Road rights of way shall be provided.
- P. A remote emergency access to the B3 portion of the development for fire apparatus shall be provided through the cemetery. The installation will be required before construction is started in areas that are not immediately adjacent to Highland Avenue and shall be designed to meet Village requirements.
- Q. The Fire Department requires that the south secondary access drive from Highland Avenue be designed to provide fire apparatus the ability to circulate around the entire site. This drive shall not be designed in a way where it would only serve a portion of the buildings or parking areas.
- R. The primary water main loop shall be at a minimum a continuous 10" diameter loop. The petitioner shall demonstrate that the proposed water main loop will be adequate for the types and sizes of proposed buildings to be included in the development.
- S. The developer shall provide additional water main and hydrants as required by the Village when individual properties are developed.

- T. The Village requires that all parkway trees maintain a minimum spacing of 25' on center.
- U. Final construction documents for all improvements within the Highland Avenue right of way shall be submitted to and approved by the Village prior to the start of construction within the right of way.
- V. Final intersection and entrance drive geometrics shall be submitted to the Village for review and approval prior to starting any access drive improvements. The main entrance to the development shall properly align with the Yorktown Mall south entrance.
- W. The developer shall provide an intersection design study of the main entrance intersection. The study shall utilize 2020 traffic projections and shall also confirm required easements for locating signal equipment.
- X. The developer shall secure concurrence from the owners of the Yorktown Mall south entrance road prior to the start of any work outside of the Village right of way on the east leg of the intersection. The Village shall receive written proof of an agreement between the parties for their work.
- Y. All on-site public utilities owned and maintained by the Village or Glenbard Wastewater Authority shall be located within utility easements of at least 30 feet in width. Utility easements abutting public rights-of-way may be less than 30 feet in width, subject to approval by the Director of Community Development and Director of Public Works.
- Z. No utilities shall be located underneath permanent structures or retaining walls unless approved by the Director of Community Development and the Director of Public Works.
- AA. All monument signs require a landscape plan.
- BB. To increase seasonal color, perennials and/or bulbs shall be planted in the landscape median, around the monument signs and in the Lot 4 and 5 retention areas.
- CC. The main entrance to the development be designed to properly align with the Yorktown Mall south entrance.

SECTION 6: That where a term is used in this Ordinance with the first letter(s) thereof being capitalized, and said term is not specifically defined in this Ordinance, said term shall be as

Ordinance No. 4833  
Re: PC 00-24  
Page 13

defined in the Second Amendment.

SECTION 7: This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this 1st day of June, 2000.

First reading waived by action of the Board of Trustees this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Passed on second reading this 15th day of June, 2000.

Ayes: Trustees Schaffer, Sebby, Florey and Kufrin

Nays: None

Absent: Trustees Borgatell and Tross

Approved this 15th day of June, 2000.

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

ATTEST:

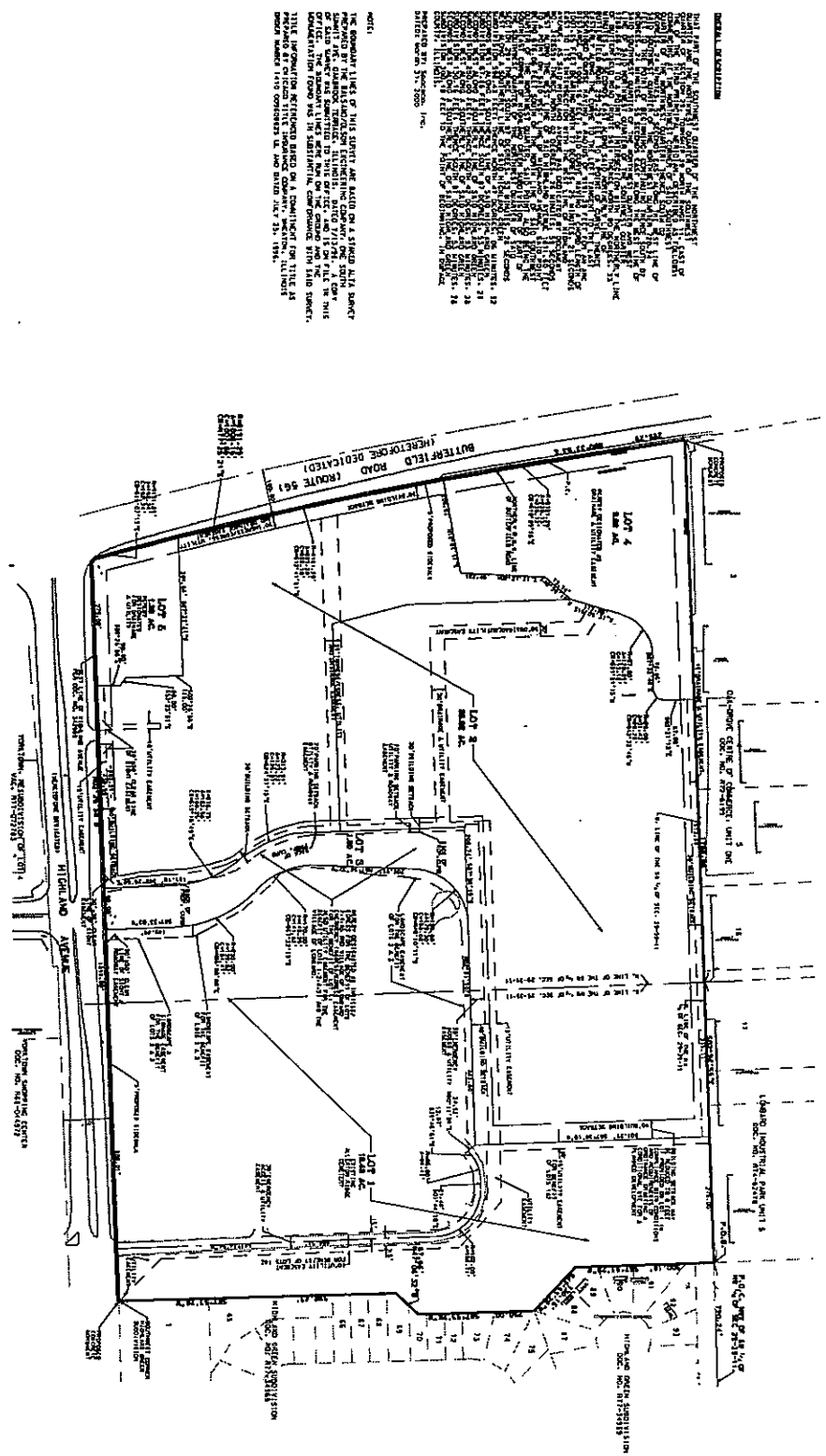
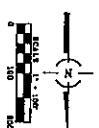
  
\_\_\_\_\_  
Lorraine G. Gerhardt, Village Clerk

Published by me in pamphlet form this 22nd day of June, 2000.

\_\_\_\_\_  
Lorraine G. Gerhardt, Village Clerk

# HIGHLANDS OF LOMBARD PRELIMINARY PLAT OF SUBDIVISION

ON A PART OF THE UNINCORPORATED QUARTERS OF THE UNINCORPORATED TOWNSHIP OF ROSEMONT, COUNTY OF ST. LOUIS, MISSOURI, AS SHOWN ON THE PLAT OF THE ORIGINAL SURVEY OF SAID TOWNSHIP, DATED JANUARY 11, 1820.



**GENERAL DESCRIPTION**  
 THIS PLAT OF SUBDIVISION IS A PART OF THE UNINCORPORATED QUARTERS OF THE UNINCORPORATED TOWNSHIP OF ROSEMONT, COUNTY OF ST. LOUIS, MISSOURI, AS SHOWN ON THE PLAT OF THE ORIGINAL SURVEY OF SAID TOWNSHIP, DATED JANUARY 11, 1820. THE SUBDIVISION IS A PART OF THE UNINCORPORATED QUARTERS OF THE UNINCORPORATED TOWNSHIP OF ROSEMONT, COUNTY OF ST. LOUIS, MISSOURI, AS SHOWN ON THE PLAT OF THE ORIGINAL SURVEY OF SAID TOWNSHIP, DATED JANUARY 11, 1820. THE SUBDIVISION IS A PART OF THE UNINCORPORATED QUARTERS OF THE UNINCORPORATED TOWNSHIP OF ROSEMONT, COUNTY OF ST. LOUIS, MISSOURI, AS SHOWN ON THE PLAT OF THE ORIGINAL SURVEY OF SAID TOWNSHIP, DATED JANUARY 11, 1820.

**NOTES**  
 THE SUBDIVISION IS A PART OF THE UNINCORPORATED QUARTERS OF THE UNINCORPORATED TOWNSHIP OF ROSEMONT, COUNTY OF ST. LOUIS, MISSOURI, AS SHOWN ON THE PLAT OF THE ORIGINAL SURVEY OF SAID TOWNSHIP, DATED JANUARY 11, 1820. THE SUBDIVISION IS A PART OF THE UNINCORPORATED QUARTERS OF THE UNINCORPORATED TOWNSHIP OF ROSEMONT, COUNTY OF ST. LOUIS, MISSOURI, AS SHOWN ON THE PLAT OF THE ORIGINAL SURVEY OF SAID TOWNSHIP, DATED JANUARY 11, 1820.

FOR REVIEW  
PURPOSES ONLY

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ORDINANCE NO. 4834

**AN ORDINANCE AUTHORIZING THE  
EXECUTION OF A SECOND AMENDMENT TO THE PRE-DEVELOPMENT  
AGREEMENT**

(PC 00-24: Highlands of Lombard)

(See also Ordinance No.(s) 4123, 4201 and \_\_\_\_\_)

**THIS SECOND AMENDMENT TO THE PRE-DEVELOPMENT AGREEMENT** (hereinafter referred to as "this Second Amendment") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2000, and is by, between and among the VILLAGE OF LOMBARD, an Illinois non-home rule municipal corporation (hereinafter referred to as "the Village"); MID-AMERICA REAL ESTATE CORPORATION, an Illinois Corporation, (hereinafter referred to as "the Developer"); LaSALLE BANK, N.A., not individually but as successor trustee under a Trust Agreement dated October 16, 1984 and known as Trust No. 109023 and EDWARD F. HEIL, sole beneficiary of said Trust (hereinafter collectively referred to as "Owner"). (The Village, the Developer and Owner are collectively referred to herein as "the Parties").

**WITNESSETH**

WHEREAS, the Owner and Village previously entered into a Pre-Development Agreement pursuant to Ordinance 4123, adopted January 18, 1996 (hereinafter referred to as the "Original Agreement") for the Property legally described in Section 2 below (hereinafter referred to as "the Property"); and

WHEREAS, the Owner and Village previously entered into a First Amendment to Pre-Development Agreement pursuant to Ordinance 4201, adopted September 5, 1996 (hereinafter referred to as the First Amendment) for the Property; and

WHEREAS, the Developer has entered into an agreement with the Owner for the development of the non-cemetery portion of the Property legally described in Section 3 below (hereinafter referred to as the "B3 Property"); and

WHEREAS, the Owner and Developer have petitioned the Village for, among other things, approval of a preliminary plat of subdivision, and a final plan of planned development for the Property; and



WHEREAS, the Owner and Developer have petitioned the Village for approval of a planned development for the B3 Property; and

WHEREAS, the Original Agreement provided that "At the time that final site plan and development approvals are petitioned for by the Owner, the parties will enter into a final Development Agreement which shall supercede this Pre-Development Agreement and control the development of the subject property."; and

WHEREAS, the Owner and Developer have submitted a Second Amendment to develop the Property pursuant to and in accordance with this agreement; and

WHEREAS, the Second Amendment is intended to serve as the final Development Agreement for the Property; and

WHEREAS, public hearings were held by the Village Plan Commission on May 15, 2000 for the purpose of considering, among other things, whether the B3 Property should be granted a conditional use for a B3 Planned Development under the Lombard Zoning Ordinance, with certain deviations and variations allowed; and the Plan Commission has considered the proposed Preliminary Plat of Subdivision for the Property; and the Plan Commission has submitted to the Corporate Authorities of the Village its findings and recommendations with respect to said applications; and

WHEREAS, the Corporate Authorities of the Village of Lombard have reviewed this matter at meetings held on June 1, 2000 and \_\_\_\_\_ and have heard testimony and public comment from all interested persons and have received written evidence, including the written Petition and supporting material filed with the Village, by the Petitioner; and

WHEREAS, after considering the evidence and testimony submitted, the corporate authorities have carefully reviewed and considered the applications of Owner and Developer and have determined that the Planned Development, the Preliminary Plat of Subdivision and a final plan of planned development should be approved, but only in accordance with this Second Amendment.

NOW, THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President and Village Clerk be and hereby are authorized to sign and attest to the Second Amendment to the Development Agreement which is incorporated by reference and attached hereto as Exhibit "A", all by and between the Parties; and

SECTION 2: This ordinance is limited and restricted to the Property generally located at the northwest corner of Butterfield and Highland Avenue, Lombard, Illinois and legally described as follows:

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH RANGE 11, EAST OF THE OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER: THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 720.24 FEET TO THE POINT OF BEGINNING; CONTINUING THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER 1788.66 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF BUTTERFIELD ROAD [ROUTE 56]; THENCE NORTH 80 DEGREES, 33 MINUTES, 53 SECONDS EAST ALONG SAID NORTHERLY LINE OF BUTTERFIELD ROAD 299.29 FEET TO A POINT OF CURVE; THENCE EASTERLY ALONG THE CURVE TO THE LEFT TANGENT TO THE LAST DESCRIBED COURSE HAVING A RADIUS OF 9191.29 FEET FOR AN ARC DISTANCE OF 1008.16 FEET, SAID CURVE HAVING A CHORD LENGTH OF 1007.65 FEET BEARING NORTH 77 DEGREES, 25 MINUTES, 21 SECONDS EAST TO ITS INTERSECTION WITH THE WEST LINE OF HIGHLAND AVENUE, AS SAID HIGHLAND AVENUE WAS DEDICATED BY DOCUMENT NO. 342659; THENCE NORTH 02 DEGREES, 26 MINUTES, 58 SECONDS WEST ALONG THE WEST LINE OF SAID HIGHLAND AVENUE 1611.60 FEET TO A POINT ON SAID WEST LINE OF HIGHLAND AVENUE, SAID POINT BEING 676.06 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF HIGHLAND GREEN SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 29; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 598.43 FEET; THENCE NORTH 47 DEGREES, 06 MINUTES, 32 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 67.66 FEET; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 250.00 FEET; THENCE SOUTH 42 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 130.16 FEET; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 300.18 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

Said Parcel of Land Herein Described Contains 51.36 Acres, More or Less

P.I.N. 06-29-300-004

**SECTION 3:** The B3 Property is generally located at the northwest corner of Butterfield and Highland Avenue, Lombard, Illinois and legally described as follows:

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH RANGE 11, EAST OF THE OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 995.24 FEET TO THE POINT OF BEGINNING; CONTINUING THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER 1513.66 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF BUTTERFIELD ROAD [ROUTE 56]; THENCE NORTH 80 DEGREES. 33 MINUTES, 53 SECONDS EAST ALONG SAID NORTHERLY LINE OF BUTTERFIELD ROAD 299-29 FEET TO A POINT OF CURVE; THENCE EASTERLY ALONG THE CURVE TO THE LEFT TANGENT TO THE LAST DESCRIBED COURSE HAVING A RADIUS OF 9191.29 FEET FOR AN ARC DISTANCE OF 1008.16 FEET, SAID CURVE HAVING A CHORD LENGTH OF 1007.65 FEET BEARING NORTH 77 DEGREES, 25 MINUTES, 21 SECONDS EAST TO ITS INTERSECTION WITH THE WEST LINE OF HIGHLAND AVENUE, AS SAID HIGHLAND AVENUE WAS DEDICATED BY DOCUMENT NO. 342659; THENCE NORTH 02 DEGREES, 26 MINUTES, 58 SECONDS WEST ALONG THE WEST LINE OF SAID HIGHLAND AVENUE 803.59 FEET; THENCE SOUTH 87 DEGREES, 33 MINUTES, 02 SECONDS WEST 149.49 FEET TO A POINT OF CURVE: THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 255.00 FEET FOR AN ARC DISTANCE OF 199.52 FEET, SAID CURVE HAVING A CHORD LENGTH OF 194.47 FEET BEARING SOUTH 65 DEGREES 08 MINUTES 06 SECONDS WEST TO A POINT OF REVERSE CURVE; THENCE SOUTHWESTERLY ALONG ARC OF SAID CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 170.00 FEET FOR AN ARC DISTANCE OF 146.29 FEET, SAID CURVE HAVING A CHORD LENGTH OF 141.82 FEET BEARING SOUTH 67 DEGREES 22 MINUTES 19 SECONDS EAST TO A POINT OF TANGENCY; THENCE NORTH 87 DEGREES, 58 MINUTES, 32 SECONDS WEST 209.95 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 120.00 FEET FOR AN ARC DISTANCE OF 179.30 FEET, SAID CURVE HAVING A CHORD LENGTH OP 163.08 FEET BEARING NORTH 45 DEGREES 10 MINUTES 11 SECONDS WEST TO A POINT

OF TANGENCY; THENCE NORTH 02 DEGREES 21 MINUTES 50 SECONDS WEST A DISTANCE OF 482.60 FEET; THENCE SOUTH 87 DEGREES 38 MINUTES 10 SECONDS WEST 507.29 FEET TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

Said Parcel of Land Herein Described Contains 31.93 Acres, More or Less  
A portion of P.I.N. 06-29-300-004

SECTION 4: This ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this 1st day of June, 2000.

First reading waived by action of the Board of Trustees this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Passed on second reading this 15th day of June, 2000.

Ayes: Trustees Schaffer, Sebby, Florey and Kufrin

Nays: None

Absent: Trustees Borgatell and Tross

Approved this 15th day of June, 2000.

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

ATTEST:

  
\_\_\_\_\_  
Lorraine G. Gerhardt, Village Clerk

**EXHIBIT A**

**SECOND AMENDMENT TO PRE-DEVELOPMENT AGREEMENT**

**AN AGREEMENT RELATING TO THE APPROVAL  
OF A B3 PLANNED DEVELOPMENT  
AND A PRELIMINARY PLAT OF SUBDIVISION  
FOR THE HIGHLANDS OF LOMBARD, ILLINOIS**

DATED \_\_\_\_\_, 2000

~~This Document was Prepared by:~~

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~~Suite 3400~~

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~~(312) 443-0609~~

After Recording Return to:

Director of Community Development

Village of Lombard

255 East Wilson Avenue

Lombard, Illinois 60148-3926

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**EXHIBITS**

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- EXHIBIT B - AREA B3 LEGAL DESCRIPTION
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## SECOND AMENDMENT TO PRE-DEVELOPMENT AGREEMENT

**THIS SECOND AMENDMENT TO PRE-DEVELOPMENT AGREEMENT** (hereinafter referred to as "this Second Amendment") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2000, and is by, between and among the VILLAGE OF LOMBARD, an Illinois non-home rule municipal corporation (hereinafter referred to as "the Village"); MID-AMERICA REAL ESTATE CORPORATION, an Illinois Corporation, (hereinafter referred to as "the Developer"); LaSALLE BANK, N.A., not individually but as successor trustee under a Trust Agreement dated October 16, 1984 and known as Trust No. 109023 and EDWARD F. HEIL, sole beneficiary of said Trust (hereinafter collectively referred to as "Owner"). (The Village, the Developer and Owner are collectively referred to herein as "the Parties").

### **SECTION 1. RECITALS.**

#### **WHEREAS:**

A. Owner and Village previously entered into a Pre-Development Agreement pursuant to Ordinance No. 4123, adopted January 18, 1996 (hereinafter "the Original Agreement"), providing in pertinent part at Section 5 thereof:

"At the time that final site plan and development approvals are petitioned for by the Owner, the parties will enter into a final Development Agreement which shall supercede this Pre-Development Agreement and control the development of the subject property."

B. Owner and Village previously entered into a First Amendment to Pre-Development Agreement pursuant to Ordinance No. 4201 adopted on September 5, 1996 (hereinafter "the First Amendment").

C. Developer has entered into an agreement with Owner for the development of the non-cemetery portion of the Property (as hereinafter defined).

D. The Property is located in DuPage County, York Township, within the Village limits. The Property (hereinafter referred to as "the Property" or as "Lots 1 through 5 of the Subdivision") is legally described in Exhibit A attached hereto and made a part hereof. The Property consists of (1) a B3 zoned parcel, legally described on Exhibit B attached hereto and made a part hereof and hereafter referred to as "the B3 Property" or "Lots 2-5", and (2) a CR zoned parcel, legally described on Exhibit C attached hereto and made a part hereof and hereinafter referred to as "the Cemetery Property" or "Lot 1."

E. Owner is the record legal title holder (LaSalle) and beneficial owner (Heil) of the Property.

F. Developer is the prospective developer of the B3 Property.

G. Owner and Developer have petitioned the Village for, among other things, approval of a planned development and approval of a preliminary plat of subdivision for the proposed development of the Property.

H. Owner and Developer desire and propose to develop the B3 Property pursuant to and in accordance with this Second Amendment and to make certain subdivision improvements for the Property.

I. Public hearings were held by the Village Plan Commission on May 15, 2000 for the purpose of considering, among other things, whether the B3 Property should be granted a conditional use for a B3 Planned Development under the Lombard Zoning Ordinance, with certain deviations and variations allowed; and the Plan Commission has considered the proposed Preliminary Plat of Subdivision for the Property; and the Plan Commission has submitted to the Corporate Authorities (as hereinafter defined) of the Village (~~hereinafter referred to as the "Corporate Authorities"~~) its findings and recommendations with respect to said applications.

J. The Corporate Authorities (as hereinafter defined) have carefully reviewed and considered the applications of Owner and Developer and have determined that the Planned Development and Preliminary Plat of Subdivision should be approved, but only in accordance with this Second Amendment.

K. Conditional upon the execution of this Second Amendment, the Village has (1) approved an Preliminary Plat of Subdivision for the Property in accordance the provisions of the Lombard Subdivision and Development Ordinance, and (2) granted a conditional use for a Planned Development on the B3 Property, with certain variations and deviations allowed, in accordance with the provisions of the Lombard Zoning Ordinance.

L. A final plat of subdivision will be recorded upon: (a) approval by the Village; (b) receipt by the Village of an Irrevocable Letter of Credit for an amount specified as security for subdivision improvements and for such other purpose or purposes as herein mentioned, if any; and (c) execution of this Second Amendment. The planned development shall not be considered approved until final engineering has been submitted to and approved by the Village.

M. Various plans and specifications for the making of required public and private improvements, landscaping, sidewalks, streetlights, parkway trees, and storm drainage facilities, on-site or off-site, have been or are to be approved by the Corporate Authorities of the Village.

N. Owner or Developer has or will enter into all necessary contracts for the Public and Private Improvements (as hereinafter defined) required to be made for the Property pursuant

to the Planned Development Ordinance, the Plat of Subdivision, this Second Amendment or otherwise.

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth herein, the Parties agree as follows:

**SECTION 2. DEFINITIONS.**

Whenever used in this Second Amendment, the following terms shall have the following meanings unless a different meaning is required by the context:

**"Assisted Living Housing"**: A multifamily dwellings for the aged or infirm which is not a "lodging house," "dormitory," or a "convalescent, nursing, or rest home" as such terms are defined in the Lombard Zoning Ordinance and which includes individual dwellings units where unit owners/tenants may receive assistance with certain daily living functions from an on-site or off-site services provider. Assisted Living Housing shall be considered a residential building and a ~~permitted~~ prohibited use for purposes of this Second Amendment.

**"B3 Property"**: That certain tract of property consisting of approximately 31.93 acres and legally described on Exhibit B attached hereto.

**"Cemetery Property"**: That certain tract of property consisting of approximately 19.43 acres and legally described on Exhibit C attached hereto.

**"Developer"**: Mid-America Real Estate Corporation and/or any successor who assumes the rights and obligation thereof under this Second Amendment in whole or in part.

**"Development"**: Any improvement of the Property requiring a permit or other approval from the Village.

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

**"Engineering Plan"**: That certain engineering plan attached hereto as Exhibit K, prepared by Spaceco, Inc., identified as "Site Improvements," and consisting of 10 sheets, dated April 4, 2000, as may be amended with approval of the Village Director of Community Development or his/her designee.

**"Preliminary Subdivision Plat"**: That certain preliminary subdivision plat prepared by Spaceco, Inc., consisting of one sheet, dated April 4, 2000, attached as Exhibit J, as may be amended with Village approval.

**"Lot 1" or "Lot 1 of the Subdivision"**: That certain property designated on the Preliminary Subdivision Plat as Lot 1 which the Village has zoned CR.

**"Lots 2 through 5" or "Lots 2 through 5 of the Subdivision"**: The B3 Property. As to any of Lots 2 through 5 individually, that lot so designated on the Preliminary Subdivision Plat.

**"Off-Site Roadway Improvements"**: Those certain off-site roadway improvements to be constructed by the Owner or Developer as shown on the list of Public Improvements attached hereto as Exhibit L.

**"Owner"**: The beneficial owner and record title holder or holders of the Property or any successors thereto.

**"Plan Commission"**: The Plan Commission of the Village, as provided for by the Lombard Municipal Code, as the same has been and may, from time to time hereafter, be amended.

**"Planned Development Ordinance"**: That certain ordinance approved by the Village on or about \_\_\_\_\_, 2000 and known as Ordinance No. \_\_\_\_\_, granting a conditional use for a Planned Development for the B3 Property, granting certain variations and exceptions, and approving a Final Planned Development Plan, as said ordinance may be amended from time to time.

**"Private Improvements"**: The private (not to be dedicated to or accepted by the Village), common area, on-site improvements to be made in connection with the subdivision and non-building development of the Property, described or listed or shown on the approved plans and plats referenced in this Second Amendment and Exhibit M attached hereto.

**"Property"**: That certain tract of property consisting of approximately 51.36 acres and legally described in Exhibit A.

**"Public Improvements"**: The public improvements to be made in connection with the subdivision and non-building development of the Property described or listed on the Engineering Plan, on Exhibit L to this Second Amendment, or both.

**"Sign Ordinance"**: Village of Lombard Sign Ordinance known as Title 15, Chapter 153 of the Lombard Municipal Code, as amended from time to time.

**"Site"**: All of or any portion of Lot 2 for which a submission is made for ~~Site-Plan~~ site plan approval in accordance with the terms of this Second Amendment. To the extent allowed by this Second Amendment, a Site may incorporate easement rights and/or air rights over a portion of Lot 5 and air rights over Lot 4.

**"Storm Water Control Facilities":** Those detention/retention areas, culverts, swales or other facilities on the Property for the conveyance, detention, or other management of stormwater shown, described or listed on the Engineering Plan, on any final engineering plans approved by the Village, or in any stormwater management permits issued for the B3 Property.

**"Subdivision and Development Ordinance":** Village of Lombard Subdivision and Development Ordinance known as Title 15, Chapter 154 of the Lombard Municipal Code, as amended from time to time.

**"Zoning Ordinance":** Village of Lombard Zoning Ordinance known as Title 15, Chapter 155 of the Lombard Municipal Code, as amended from time to time.

### **SECTION 3. CONFLICT WITH MUNICIPAL CODE**

In the event and to the extent that any of the provisions of this Second Amendment are deemed to be in conflict or inconsistent with any provision(s) of the Lombard Municipal Code, the provisions of this Second Amendment shall control and, to the fullest extent allowed by law, such provision(s) of the Lombard Municipal Code shall be deemed to be waived, amended, or not to apply to the Property pursuant to the Planned Development approval extended to the B3 Property and/or the contractual agreements of the parties hereto. In addition, the Village agrees that no ordinance, now existing or hereafter enacted, regulating condominiums shall be applicable to Lot 2 to the extent that the requirements of such ordinance are more restrictive than those of the Illinois Condominium Property Act, as amended from time to time.

### **SECTION 4. ZONING.**

#### **A. B3 Planned Development.**

The Corporate Authorities have approved a conditional use for a Planned Development for the B3 Property. All regulations of the B3 Community Shopping Center District shall apply except as modified by the Planned Development Ordinance or this Second Amendment. All provisions of the Original Agreement or the First Amendment which are in conflict with the provisions of this Second Amendment regarding the regulation of the B3 Property are deemed void, superceded, and of no effect. The terms and conditions of the original agreement and the First Amendment regarding Lot 1 shall remain in full force and effect unless and except to the extent that this Second Amendment modifies such terms and conditions.

#### **B. Plan Approval and Reference.**

The B3 Property shall be developed as a B3 Planned Development in accordance with this Second Amendment and the Planned Development Ordinance and in compliance (or in the case of preliminary plans, substantial compliance) with the following plans and exhibits which the Village has approved or hereby approves:

1. Exhibit D: B3 Final Plan of Planned Development (Sheet SP-2)
2. Exhibit E: Overall Site Plan (Sheet SP-1)
3. Exhibit F: Landscape Plan (LP-1)
4. Exhibit G: Cross-Section and Line of Sight Plan (Sheet LP-2)
5. Exhibit H: Common Area Lighting Plan (Sheet LP-3)
6. Exhibit I: Entry Feature Concepts (Sheets LP-4 and EF-1)
7. Exhibit J: Preliminary Subdivision Plat (Sheet P1: 4 of 10)
8. Exhibit K: Preliminary Engineering Plans (Site Improvements) (Sheets 1 to10)
9. Exhibit L: Public Improvements List
10. Exhibit M: Private Improvements List
11. Exhibit N: B3 Use Chart
12. Exhibit O: Stormwater Management Agreement

In the event, and to the extent, the Planned Development Ordinance, which is hereby incorporated by reference, by its terms and conditions requires that the Property development proceed in a manner inconsistent with or per terms and conditions in addition to the terms of this Second Amendment, the Planned Development Ordinance shall control.

With respect to the B3 Property, any major deviation from the Engineering Plan, or from final engineering plans approved by the Village, shall require a Planned Development amendment.

**C. Permitted, Conditional, and Prohibited Uses/Liquor**

1. The Village acknowledges that the Planned Development Ordinance grants a conditional use to permit more than one principal building on Lots 2 and for more than one principal building on Lot 2 to utilize easements and/or air rights over Lot 5 and/or air rights over Lot 4. For purposes of this Second Amendment, multiple principal buildings on or over such lots shall be deemed permitted uses.

2. Uses on the B3 Property shall be permitted, allowed as a conditional use only, or prohibited, all in accordance with the use listings set forth on the B3 Use Chart attached hereto as Exhibit N. The Director of Community Development may determine zoning compliance for land uses which, although not identified by name on Exhibit N, are deemed to be similar in nature and clearly compatible with the uses on Exhibit N.

3. No ~~multi-~~ multiple family use or any use which this Second Amendment allows as a permitted use but which the Lombard Zoning Ordinance allows in a B3 District only as a conditional use shall be deemed to be a use exception for purposes of site area or floor area limitations which the Lombard Zoning Ordinance imposes on use exceptions within a planned development. The Village further acknowledges and agrees that the Planned Development

Ordinance grants any and all variations or other relief necessary to exempt such uses from any such restrictions, but to the extent any further relief from the Lombard Zoning Ordinance is necessary to effectuate the intention of the Parties in this respect, the Village agrees to promptly take all necessary action required and allowed by law to effectuate such intent.

4. To the fullest extent the Village is authorized by law to regulate satellite dishes, absent any grant of variation, each building on a Site shall be entitled to the use of 3 but no more than 3 satellite dishes. The location and screening of satellite dishes shall be subject to the ~~Site Plan~~ site plan approval process provided for in Section 5.I of this Second Amendment.

5. Notwithstanding anything to the contrary in this Second Amendment, there shall be no more than 240,000 square feet of gross floor area of retail uses in total on the B3 Property. Unless the Corporate Authorities approve a conditional use therefore, no Site(s) shall be developed with a retail use structure having a building footprint that exceeds 65,000 square feet and no attached retail uses shall have a gross floor area which exceeds 130,000 square feet. The Village may grant such conditional uses without amending the Planned Development Ordinance or this Second Amendment. A retail use shall be a use primarily directed to the sale of goods or commodities directly to the ultimate consumer, not including restaurants or cafes.

6. Notwithstanding anything to the contrary in this Second Amendment or the Lombard Zoning Ordinance, open air, partially enclosed, or screened in uses on Lot 2 (which may or may not extend over or upon Lot 5 or over Lot 4) which are part of or associated with permitted restaurant uses shall be permitted uses rather than conditional uses.

7. The Village acknowledges that the proposed development of the B3 Property may include restaurants, hotels, and other uses that, to offer the complete service necessary to their economic viability, may require a liquor license. The Village confirms that it has, as a matter of principle and overall Village planning, no objection to one or more establishments on the B3 Property obtaining liquor licenses from the Village. To the extent necessary to make such liquor licenses available to the users of the B3 Property, the Village agrees to amend its ordinances to provide and allow for the creation of additional liquor licenses which shall be available to the users of the B3 Property provided that such user(s) make proper application and meet all requirements of all applicable law. The location of any such liquor establishments on the B3 Property shall be in accordance with good planning standards and all provisions of applicable law. The Village's refusal to issue licenses on the basis that the request is not in compliance with good planning standards shall be exercised only in cases of a clear abuse of such reasonable standards.

## **SECTION 5. DEVELOPMENT.**

The development of the B3 Property shall comply with (a) the plans which are exhibits to this Second Amendment, (b) the Planned Development Ordinance, (c) the Lombard Municipal Code except as the provisions thereof may be inconsistent with any of the aforesaid or with the

provisions of the Second Amendment or the Planned Development Ordinance, and (d) the following regulations:

### **A. Height**

The height and story limitations of the Lombard Zoning Ordinance for the B3 District shall not apply to the B3 Property, provided, however, that no building shall exceed 130 feet in height and no building shall be located closer to Highland Avenue or Butterfield Road than a distance which is less than the sum of (a) the applicable yard or setback requirements of the B3 District, and (b) the number of feet of height of the building in excess of 30 feet. Further, any building on a Site abutting the south boundary of Lot 1 shall be in compliance with the line of sight cross-section as depicted on Exhibit G attached hereto.

### **B. Yard and Setbacks**

1. No yard, setback, or perimeter landscape area requirements shall apply to sites within Lot 2 with respect to their relation to Lots 4 and 5. No yard, setback, or perimeter landscape area requirements shall apply to sites within Lot 2 where such areas are not at the perimeter of Lots 2, 4 and 5 taken as a whole; except that for any site which does not front on a public street or on Lot 3, the front yard shall be no less than 15 feet, with the front yard being that yard most oriented to the private access drive providing the primary vehicular access to the site. In addition, the Village agrees to permit, subject to ~~Site Plan~~ site plan approval, development on Lot 2 that utilizes easements and/or air rights over Lot 5 and/or air rights over Lot 4 for open air, partially enclosed, or screened in uses.

2. The building setback at the north boundary of Lot 2 where ~~is it~~ abuts Lot 1 may be reduced or eliminated, subject to ~~Site Plan~~ site plan approval, when:

(a) Owner records a covenant running with the land against Lot 1 establishing a building setback from the north boundary of Lot 2 which, when combined with the setback provided on Lot 2, equals 40 feet, and such covenant also establishes a transitional landscape yard abutting the north boundary of Lot 2 which, when combined with the landscape yard provided on Lot 2 equals 30 feet; and

(b) The building on Lot 2 is in compliance with the line of sight from Highland Green Subdivision depicted on Exhibit G attached hereto.

3. The transitional landscape yard at the north boundary of Lot 2 where it abuts Lot 1 may be reduced or eliminated, subject to ~~Site Plan~~ site plan approval, when the Owner of Lot 1 records a covenant running with the land against Lot 1 establishing a transitional landscape yard abutting Lot 2 which, when combined with the landscape yard provided on Lot 2 equals 30 feet.



4. A transitional landscape yard abutting Lot 1 at the north boundary of Lot 3 and at the east line of the northwest portion of Lot 2 is not required except to the extent depicted on Exhibit F attached hereto, and such yard is provided within an easement on Lot 1.

5. No perimeter landscape yard shall be required at the north boundary of Lot 2 where it abuts Lot 1 if the transitional landscape yard is being provided on Lot 1. No perimeter landscape yard is required at any other point where Lot 2 or Lot 3 abut Lot 1 except for the transitional yard provided for in subsection 5.B.4 above.

6. For any ~~Lot lot~~ or ~~Site site~~ that does not adjoin a public right-of-way, such ~~Lot lot~~ or ~~Site's site's~~ front property line and front yard shall be the line and yard most oriented to the private roadway within Lot 3. All front yard or front setback requirements, when measured from Lot 3, shall be no less than 30 feet from back of curb; if the ~~Lot lot~~ or ~~Site site~~ is not adjacent to Lot 3 or a public right-of-way, the front yard and front setback requirement shall be no less than 15 feet from the ~~Lot lot~~ or ~~Site site~~ property line most oriented to Lot 3 or to such other perimeter access drive providing primary vehicular access to the ~~Lot lot~~ or ~~Site site~~.

7. Parking setbacks from the back of curb of Lot 3 shall be 20 feet.

### **C. Streets, Parking and Sidewalks**

1. Except as shown on Exhibits L and M, and described herein, the Village shall not require that the B3 Property be improved with any public or private streets, sidewalks, bikeways, pedways or the like; provided, however, with respect to ~~Site Plan~~ site plan approval for individual Sites on Lot 2, the Village may require that such Sites include such on-site service walkways, walkways adjacent to the building(s), drive aisles, access aisles or private streets as the Village may deem necessary in the reasonable exercise of its discretion consistent with the requirements of the Lombard Municipal Code. Further provided, in the event of any discrepancy between Exhibits L and M and the terms and conditions of the Planned Development Ordinance, the Ordinance shall control as to the requirements for providing sidewalks, bikeways, pedways or the like. In the event any private streets are required to provide access to Sites without direct access to the private street located within Lot 3, such streets shall not be required to have a pavement width exceeding 24 feet (27 feet from back of curb to back of curb) nor landscape areas adjacent to curb greater than 5 feet along each curb. Common access drives at the perimeters of Lots or Sites shall have a pavement width of at least 22 feet (25 feet from back of curb to back of curb) and shall have parking lot landscape islands at the intersection with parking drive aisles. The petitioner shall provide for pedestrian access from the Main Street right of way to the B3 portion of the development, unless waived by the Director of Community Development.

2. Lots and/or Sites on the B3 Property need not front on a public street if the Village is provided reasonably satisfactory evidence that such lots or Sites have adequate access to a public street by reason of common area drives or easement rights over private drives.

3. Any Lombard ordinance, standard, rule or regulation requiring that a minimum five foot perimeter landscape area be maintained on a lot is subject to the following exceptions in addition to any other exceptions provided in this Second Amendment:

a. Uses on separate Sites shall be allowed to establish shared and/or connecting drive aisles and/or walkways which may extend through any perimeter landscape areas;

b. Uses on separate Sites shall be allowed to establish shared drive aisles or private streets along and over the Sites' common boundary;

c. Where the Village gives site plan approval for Sites to establish adjacent or shared parking, loading or service areas along the common boundary of Sites, such approval can allow for elimination of perimeter landscape areas at Site boundaries where such facilities will be located.

4. Off-street parking facilities for different buildings, structures or uses, or for a mixed-use building or structure, may be provided collectively and permitted for two or more users, whether such users are on the same Site or more than one Site. In the event two or more users with complementary parking demand apply for ~~Site Plan~~ site plan approval which includes a total number of parking spaces less than cumulatively required for all uses on such Sites, or where the parking on any one of the Sites proposed for a shared parking arrangement is less than required by the Lombard Zoning Ordinance, ~~Site Plan~~ plan approval may be denied on such grounds unless the applicants provide satisfactory evidence to the Director of Community Development that (a) the cumulative parking proposed to be provided will be sufficient for all proposed uses of such Sites, and (b) that appropriate agreements and protections, subject to approval as to form and content by the Director of Community Development and the Village attorney, will be made to ensure the continued availability of adequate parking for all proposed and future users of all such Sites.

5. Private street lighting may exceed 0.5 foot candle and parking lot lighting may exceed 3.0 foot candles at (a) all property lines other than those at the perimeter of the B3 Property, and (b) where a private street intersects with a public street.

6. For parking spaces abutting Lot 4 or Lot 5, up to 1-1/2 feet of the required length of a surface parking space may be provided outside of a curb and in an area which overhangs landscape areas on Lot 4 or Lot 5 unless the overhang interferes with any planted materials which are required as part of any approved landscape plan or ~~Site Plan~~ site plan. If any parking spaces overhang a sidewalk on Lot 4 or 5, a minimum of five feet of sidewalk width shall be maintained.

7. The clear sight triangle shall be represented on all plans as appropriate and no deviations are permitted unless the Plan Commission through the site plan approval process determines that public safety will not be compromised.

8. No parking shall be allowed within five feet (5') of a utility line. The Village shall not be responsible for restoration or repair of landscaping, irrigation systems, parking areas or drive aisles where an easement exists.

9. For Sites created within Lot 2, parking areas and drive aisles may occupy more than 30 percent of a required yard provided such yard is not at the perimeter of Lots 2, 4 and 5 taken as a whole.

10. An easement to the Village for emergency access across Lots 2 and 3 to Lot 1 shall be provided as shown on the Preliminary Plat of Subdivision for remote emergency access. The installation will be required before construction is started in areas that are not immediately adjacent to Highland Avenue and shall be designed to meet Village requirements.

11. The south secondary access drive from Highland Avenue be designed to provide circulation for fire apparatus around the entire site and shall not be designed in a way where it would only serve a portion of the buildings or parking areas.

12. Parking lot and internal roadway grades shall not exceed seven (7) percent for the B3 portion of the development.

13. Final intersection and entrance drive geometrics shall be submitted to the Village for review and approval prior to starting any access drive improvements. The main entrance to the development shall properly align with the Yorktown Mall south entrance. Final construction documents for all improvements within the Highland Avenue right of way shall be submitted to and approved by the Village prior to the start of construction within the right of way. The developer shall provide an intersection design study of the main entrance intersection utilizing 2020 traffic projections and shall also confirm required easements for locating signal equipment. The developer shall secure concurrence from the owners of the Yorktown Mall south entrance road prior to the start of any work outside of the Village right of way on the east leg of the intersection. The Village shall receive written proof of an agreement between the parties for their work.

#### **D. Open Space**

The open space requirements of the Lombard Zoning Ordinance shall be applied to the B3 Property in whole and not to individual Sites. At all times the B3 Property shall include not less than 25 percent of its area as open space. Pond surfaces shall be counted as open space.

## E. Design Standards

1. In the ~~Site Plan~~ site plan approval process, the Village may consider the compatibility of the architecture, design and materials proposed for development of a Site with the design and materials used or proposed to be used for other Sites. Development shall be uniform in high quality of design and high quality of materials with other development approved or proposed for the B3 Property. Exclusive of window areas, exterior facades shall consist of no less than ~~60~~ 70 percent stone, brick, split face block or cedar. Office buildings, however, may have glass exteriors. In addition, the following design elements are encouraged to provide continuity among the distinctive site designs:

- (a) Uplighting of building exteriors;
- (b) Decorative brick pavers at the main building entry;
- (c) Common design of directional signage;
- (d) Freestanding sign supports that are compatible with the monument signage depicted on Exhibit F attached hereto;
- (e) Common parking lot and private roadway poles and fixtures.

2. All Sites shall comply with the Village's minimum lot area requirements for B3 lots as provided for in the Zoning Ordinance or Subdivision and Development Ordinance. Minimum lot width may be less than 100 feet, subject to ~~Site Plan~~ site plan approval.

3. All outdoor trash collection areas shall be screened on all four sides, with a masonry wall uniform with the principal building; such areas shall be located no closer than 15 feet to any other structure unless protected with approved automatic fire sprinklers.

4. Loading berths and/or docks shall be screened to the fullest extent practicable. Loading berths may be located in a required yard if such a yard is not at the perimeter of Lots 2, 4 and 5 taken as a whole. Further, loading berths may be located across Site lines if a loading area is shared by more than one Site pursuant to an easement, subject to ~~Site Plan~~ site plan approval.

5. The Landscape Plans attached hereto as Exhibits F and G are approved and accepted by the Village in satisfaction of all right-of-way landscaping requirements for the B3 Property notwithstanding any provision of the Lombard Municipal Code to the contrary. Unless necessary in accordance with good planning practices or proposed by an applicant for ~~Site Plan~~ site plan approval, ~~Site Plan~~ site plan approval for individual lots or ~~Sites~~ sites will not be subject to any requirement to provide any additional perimeter trees except at the perimeter of Lots 2, 4 and 5 taken as a whole. The right-of-way landscaping as shown on Exhibit F shall not take the

place of any required perimeter landscaping. In the ~~Site Plan~~ site plan approval process for any ~~Lot~~ lot or ~~Site site~~, when a ~~Lot~~ lot or ~~Site site~~ boundary is not at the perimeter of Lots 2, 4 and 5 taken as a whole, the Village may allow the Site Plan to deviate from any or all Code requirements relating to perimeter trees or landscaping if same is in accordance with good planning practices.

6. Notwithstanding any other provision of this Second Amendment or any exhibit incorporated herein, the lighting fixtures to be utilized, if available, for all private roadway lighting and parking lot lighting shall be uniform. The Village hereby approves Kim Archetype Model AR for such purposes. Should an alternative light fixture be proposed for the development, the developer shall provide complete specifications and revised photometric plans for the alternative fixture. Such additional information shall be reviewed and approved by the Director, Department of Community Development and the Director of Public Works prior to installation.

7. Subject to ~~Site Plan~~ site plan approval, accessory structured parking may exceed 15 feet in height provided that the accessory structure parking height does not exceed the height of the principal building(s) on the same site.

8. Roof mounted antenna dishes shall be ~~mounted~~ limited to three per ~~site~~ Site.

9. All retaining walls to be located on Lot 2 (or any subsequent lots created by the division of Lot 2) shall be of a similar style, color and treatment, unless a wavier is granted by the Lombard Plan Commission.

10. All perimeter fencing shall be consistent with the existing perimeter fencing on Lot 1.

11. Aeration and lighting systems shall be provided for the retention ponds on Lots 4 and 5 as part of the site plan approval process for these lots.

~~9.12.~~ Weather permitting, no later than 6 months following completion of mass grading, any Site which is not under construction pursuant to permits issued by the Village shall be seeded and thereafter maintained in a sightly condition as turf, except construction areas, until construction commences.

#### **F. Signage**

1. The common signage for the B3 Property shall substantially conform to the Entry Feature Concepts attached hereto as Exhibit I and the signage locations and details shown on Exhibits D and G respectively. Owner and/or Developer shall reserve or grant any easements necessary for the establishment and maintenance of said signs and associated landscaping in the event said signs are to be provided within easements on a Site or on Lot 1 rather than on

commonly owned areas. Said signs shall be allowed notwithstanding any provision of the Lombard Municipal Code to the contrary.

2. To the extent that the ~~Village of Lombard~~ Sign Ordinance bases signage rights and regulations on street frontage, any frontage on private streets or perimeter drive aisles on the B3 Property shall be considered to satisfy public street frontage criteria or requirements. Signs need not be legible from the nearest right-of-way if they are legible from a private street or perimeter drive aisle which is nearer the sign.

3. Notwithstanding anything to the contrary in the ~~Village's~~ Zoning Ordinance or Sign Ordinance, the Plan Commission may allow variations and deviations from the Lombard Municipal Code regarding signage on the Property as part of the ~~Site Plan~~ site plan approval process, provided that (1) the Plan Commission may not approve a sign prohibited by Section 153.207 of the Sign Ordinance, and (2) written notice shall be given to owners of property within the B3 planned development, in the same manner provided for zoning amendments, at least 15 days but no more than 30 days, prior to the date of the Plan Commission meeting at which the Plan Commission will review an application for ~~Site Plan~~ site plan approval with deviations from the ~~Village's~~ Sign Ordinance.

4. As part of the development agreement, the Plan Commission shall be given the authority to review and approve any deviations regarding parking requirement standards as part of the site plan approval process provided that written notice shall be given to other owners of property within the B3 planned development, in the same manner provided for zoning amendments, at least 15 days, but no more than 30 days, prior to the date of the Plan Commission meeting at which the Plan Commission will review an application for ~~Site Plan~~ site plan approval ~~Approval~~ with deviations from the Village's Zoning Ordinance.

#### **G. Temporary Structures**

Owner and Developer, their contractors, subcontractors, suppliers and representatives shall have the right to maintain temporary offices, structures, trailers and facilities on any part of the B3 Property under development, and to use said facilities for sales purposes and for the purposes of storage of construction materials, supplies and equipment, any ordinance, regulation or rule of the Village to the contrary notwithstanding. Such facilities, other than trailers and storage facilities, shall require a permit from the Village and have a hard surface parking area approved by the Director of Community Development or his/her designee. Such structure and storage shall be maintained in a safe and sanitary condition and shall be located no closer than 200 feet away from any residential area.

#### **H. Irrigation**

Owner and Developer shall have the right to install, use and maintain private irrigation systems on the Property, for the use and benefit of the Property, utilizing water supplied from the

detention/retention ponds constructed on the Property, provided such use presents no threat of contamination of the Village's water system. No irrigation system may be established without a permit issued by the Village. Any irrigation system structures must be constructed to be consistent and compatible with other development on the Property. No wells will be allowed without a permit issued by the Village.

## **I. Subdivision and Site Plan Approval**

1. Village acknowledges that it has approved a Preliminary Plat of Subdivision and Engineering Plans for the Property and, upon approval of a final plat of subdivision and final engineering plans, agrees to cause to be recorded the final plat of subdivision and any other documents which are required to be recorded by the agreements of the parties, Village ordinance, or other applicable law, as soon as practicable upon the satisfaction of all applicable conditions.

2. Owner and/or Developer shall grant or dedicate to Village and all other necessary parties all easements required by the Final Plat of Subdivision in conformance with the Lombard Subdivision and Development Ordinance or as otherwise approved by the Director of Community Development. All utility easements shall allow for a minimum 10 foot separation between utilities and shall provide no less than 15 feet from the centerline of the outermost utility to the nearest parallel boundary of the easement. All on-site public utilities owned and maintained by the Village or Glenbard Wastewater Authority shall be located within utility easements of at least 30 feet in width. Utility easements abutting public rights-of-way may be less than 30 feet in width, subject to approval by the Director of Community Development and Director of Public Works. The Village shall not be responsible for restoration of landscaping, parking areas or drive aisles where an easement exists. No parking shall be allowed within five feet (5') of the utility line.

3. The Parties agree that Owner shall retain the right to resubdivide the Property or any part thereof, subject to compliance with the Subdivision and Development Ordinance relative to the approval process, without the necessity of amendment to this Second Amendment.

4. Village acknowledges and agrees that Owner and Developer may enter into ground leases with one or more prospective tenants/users and that such leases may provide for the lessees' rights to be converted to legal title upon a resubdivision of Lot 2 or a ~~Lot lot~~ which has been created by a resubdivision of Lot 2. Village has the right but not the obligation to require Owner or Owner's nominee(s) to petition the Village to resubdivide at such time as all the area of any of Lot 2 has been granted ~~Site Plan~~ site plan approval. Owner or its nominee shall have the right to apply for resubdivision in conjunction with or following any application for ~~Site Plan~~ site plan approval. Prior to any such resubdivision, more than one principal building and more than one principal use will be permitted on Lot 2 or any ~~Lot lot~~ created by a resubdivision of Lot 2, and Owner or any person authorized by Owner may submit a ~~Site Plan(s)~~ site plan(s) showing all proposed improvements for development of all or part of such ~~Lot lot~~ to the Director of Community Development for approval in the manner provided in this Second Amendment. In

reviewing the Site Plan site plan, the Village shall apply all provisions of the Lombard Municipal Code, except as modified by ~~the Second Amendment~~, the Planned Development Ordinance or this Second Amendment, to the Site as if it was a subdivided lot, the intent being that if and when such Site is converted to a subdivided lot by resubdivision of Lot 2 the applicable requirements of the Lombard Municipal Ordinance shall have been imposed on the Site by the Village in the Site Plan site plan approval process.

5. No further zoning approval shall be required as a prerequisite to the receipt by Owner or Developer of the building permits necessary to the development of the B3 Property in conformance with the Final Plan of Planned Development attached hereto as Exhibit D, provided, however, that for Lot 2, except as otherwise provided in this Second Amendment, no permits for foundations or above-ground structures shall be issued until Site Plan site plan approval has been obtained in accordance with the provisions of this Second Amendment. Site Plan site plan approval shall require the affirmative majority vote of a quorum of the Plan Commission acting at a public meeting, without the necessity of public notice or public hearing other than such notice as is necessary to comply with the Open Meetings Act, following review by the Director of Community Development, who shall receive advice on such reviews by the Inter-Departmental Review Committee. If the Plan Commission has not approved, conditionally approved, or rejected a Site Plan within forty-five days (45) days, with proper application, the Site Plan shall be deemed rejected unless the applicant has consented in writing to an extension of time. Any failure of the Plan Commission to grant Site Plan site plan approval shall be appealable directly to the Corporate Authorities. The Corporate Authorities may affirm, reverse or modify the action of the Plan Commission and may attach such conditions as they deem appropriate. If the Corporate Authorities have not acted upon any such appeal within thirty (30) days of the filing of the appeal with the Director of Community Development, the submitted Site Plan shall be deemed to be rejected unless the appealing parties have consented in writing to an extension of time.

6. Applications for Site Plan site plan approval shall include the following and such other documents as the Director of Community Development may reasonably require to ensure compliance with all applicable agreements, ordinances, and regulations:

- (a) A Site Plan of the Site;
- (b) A Site Plan of the entire subdivision (Lot 1 through Lot 5 of The Highlands of Lombard Subdivision);
- (c) Final engineering plans which are consistent with and conform to the final engineering plans approved for the Property and which include information regarding remaining available capacity in the stormwater management facilities for the Property;
- (d) A Traffic Study, including information regarding remaining available vehicle trips according to the maximum allowable PM peak hour trips allowed by the traffic study for the B3 Property;
- (e) Elevations of proposed buildings;



- (f) Landscape Plans for the Site;
- (g) Sample materials and colors of proposed buildings.
- (h) Any necessary and supporting documentation, as determined by the Village of Lombard Director of Community Development, depicting shadow lines on the Winter Solstice for any proposed structures taller than 80 feet in height to be located on Lot 2 (or any division of Lot 2);
- (i) Any necessary and supporting documentation, as determined by the Village of Lombard Director of Community Development, depicting the sight lines of the proposed development from the Highland Green Subdivision. The sight lines shall depict the anticipated view of the development from grade and from the second story of the townhouses abutting Lot 1;
- (j) The developer shall provide a list of definitions for any architectural features to be proposed for the site. The list to be provided for Plan Commission review and consideration as part of site plan approval, shall be provided in narrative form and shall describe the common architectural themes existing within the development and will also include statements describing how the respective development complements or is compatible with the overall planned development.

Site ~~Plan~~ plan approval shall not be delayed or denied due to any delay or denial of ~~Site Plan~~ site plan approval submittals for another ~~Site(s)~~ Site(s).

7. Site ~~Plan~~ plan approval submittals shall include plans for all on-site improvements, if any, which are required by the ~~Lombard~~ Subdivision and Development Ordinance or Zoning Ordinance if the Village reasonably determines that such improvements should be required for the proposed use and development of the Site.

8. The Village acknowledges and agrees that Lot 2 may be developed either with commercial or ~~multi-~~ multiple family residential uses as allowed by Exhibit N to this Second Amendment.

9. Notwithstanding any provisions to the contrary in the Village's Zoning Ordinance, as part of the ~~Site Plan~~ site plan approval process, the Plan Commission shall have the authority to allow variations or deviations from Section 155.205A.2.e of the Zoning Ordinance providing that it makes a finding of fact that public safety is not compromised.

10. That the petitioner shall apply for and receive site plan approval for the development of Lots 4 and 5 prior to site plan approval for Lot 2 or any lots created by the division of Lot 2.

## **SECTION 6. MAINTENANCE OF DEVELOPMENT**

### **A. Obligation**

All commonly owned areas within the B3 Property and all common elements located within an easement anywhere on the Property, including stormwater management areas, floodplains, open space, private streets, common landscaping and common signage shall be regularly maintained by Developer, Owner or a property owner's association. Any declarations, covenants, easement agreements or other documents which shall be recorded against the Property or the B3 Property providing for such common areas maintenance shall include provisions giving the Village the right to enforce the obligations therein relating to the maintenance of all Storm Water Control Facilities. Ownership of the Property shall not be divided unless and until appropriate declarations, covenants, easement agreements or other documents have been recorded in a form and manner approved by the Director of Community Development and Village attorney. The stormwater management facilities serving only Lot 1 may and shall be maintained by the owner of Lot 1.

### **B. Evidence of Lot 1 Rights**

Owner and/or Developer shall provide the Village with satisfactory evidence of the drainage and storm water management easement rights of the owner(s) of Lot 1 over and upon the B3 Property, which rights shall not be abrogated or materially modified without the written consent of the Village.

### **C. Lot 1 Rights and Obligations**

The Parties acknowledge and agree that Lot 1 need not directly participate in any ownership rights or maintenance obligations with respect to common areas on the B3 Property. Accordingly, at the option of Owner, any and all agreements, declarations, easements or covenants made with respect to the ownership or maintenance of common areas need not provide for any ownership rights or obligations applicable to Lot 1. Nothing in the foregoing prohibits a fee being charged or assessed to Lot 1 at any time for the use and maintenance of the common areas of the B3 Property or permits the owners from abrogating the easement rights of Lot 1 with respect the drainage and storm water management of the Property.

### **D. Division of Rights**

The Owner may but need not provide for the rights, obligations, and/or ownership interests respecting common areas to be based on acreage ratios rather than equal undivided interests.

**E. Storm Water Management Agreement**

The storm water control facilities as indicated on the Engineering Plan or ~~Final Engineering Plans~~ final engineering plans approved by the Village shall be subject to the requirements of the Storm Water Maintenance Agreement attached hereto as Exhibit O. Execution of this Second Amendment shall constitute execution of the Storm Water Maintenance Agreement and no separate execution thereof shall be required.

**SECTION 7. EASEMENTS AND UTILITIES**

**A. Underground Utilities**

All newly installed electrical, telephone, cable television and natural gas distribution facilities, except electrical transformers and meters for natural gas and electricity, shall be installed underground or located within buildings. No utilities shall be located underneath permanent structures or retaining walls unless approved by the Director of Community Development and the Director of Public Works.

**B. Cable Television**

The Owner and/or Developer shall provide necessary easements for cable television service to be provided to each residential structure and commercial unit on the B3 Property.

In addition, Owner and/or Developer shall install and construct all necessary cable and other appurtenances in order to extend service to each of the residential structures on the B3 Property with cable television or shall make such agreements with a Village authorized cable television company to provide such facilities.

**C. Easements**

The record owner of the Property, or such relevant portion thereof, at the time easements are required to be granted to facilitate development of the Property as set forth in this Second Amendment, shall provide all easements which may be required by the Director of Community Development or the Glenbard ~~Sanitary District~~ Wastewater Authority to enable the Property to be properly drained and to receive water, sanitary sewer, electric, telephone, gas, and cable television service, with the Village being a named grantee in all said easements along with the applicable utility companies and cable television operator. All easements shall be in a form customarily accepted by the Village, or the Glenbard ~~Sanitary District~~ Wastewater Authority, respectively, and subject to the reasonable approval of the Director of Community Development. The location for all public improvements shall be as approved by the Village and as shown on final engineering plans approved by the Village. No parking shall be allowed within five feet (5') of a utility line.

**D. Easements on Lot 1**

All improvements relating to and associated with the development of the B3 Property proposed on Lot 1 and referenced within the Second Amendment shall be conveyed into an perpetual easement on Lot 1.

**SECTION 8. CONSTRUCTION SCHEDULE/IMPROVEMENTS**

**A. Letter of Credit**

Commencement of construction of any Public Improvements listed on Exhibit L may begin only after Owner or Developer has delivered one or more Irrevocable Letters of Credit in a form reasonably satisfactory to the Village in an amount equal to 115% of the Owner's engineer's estimate of cost of construction as approved by the Village's engineer (including, if applicable, 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); streetscape improvements (streets, curbs, gutters, sidewalks, streetlights, and parkway landscaping); and all related grading improvements.

**B. Responsibility for the Work**

Owner and/or Developer agree to cause to be made on the Property with due dispatch and diligence, such ~~Public improvements~~ Improvements required of them by this Second Amendment. Owner and/or Developer will, when required to bring about progress in the work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said ~~Public improvements~~ Improvements, to the end that said ~~Public improvements~~ Improvements will be duly and satisfactorily completed within the time or times herein mentioned. Owner and/or Developer agrees that all work in the construction of said ~~Public improvements~~ Improvements shall be done in a good, substantial and workmanlike 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 its reasonable approval. Owner and/or Developer will at their expense furnish all necessary engineering services for said ~~Public improvements~~ Improvements.

**C. Schedule**

The ~~Public improvements~~ Improvements subject to the Letter of Credit shall be completed within 24 months of recording of the final plat of subdivision unless otherwise extended by amendment to this Second Amendment by the Corporate Authorities. All Letters of Credit, assurances, guarantees, acceptances, and related matters shall comply with the Subdivision and Development Ordinance except as may be modified by this Second

Amendment. The construction of ~~Public improvements~~ Improvements by Owner and/or Developer and issuance of approvals by the Village shall comply with the following schedule:

1. Sediment and Erosion Control: Sediment and Erosion control measures shall be implemented as per the Subdivision and Development Ordinance prior to building permits or authorization to proceed with mass grading or other improvements to the 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~~ Public Improvements or building permits.

2. Authorization to proceed with Public Improvements: Upon receipt of all required fees, approval of the Letter of Credit, recording of this Second Amendment, and implementation of Sediment and Erosion Control measures, the Village will give Owner and/or Developer authorization to begin any off-site ~~public improvements~~ Public Improvements, and to begin on-site ~~public improvements~~ Public Improvements upon recording of a final plat of subdivision.

3. Construction of Storm Water Control Facilities: The storm water detention pond(s) and a storm water management system for that portion of the B3 Property upon which construction activities have begun is to be operational prior to the issuance of any building permits for any above-foundation construction unless the Director of Community Development approves temporary storm water control facilities. An operational storm water detention pond and storm water management system means that the volume of the storm water detention pond 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. Final grading and landscaping of the detention pond(s) shall be completed in conjunction with final landscaping.

#### **D. Other Improvements**

1. Final grading and landscaping of the detention ponds and similar common areas must be completed and planted ~~prior to Winter 2000~~ within ~~or~~ one year after the recording of the final plat of subdivision, ~~whichever is later~~.

2. All other required landscaping and other ~~public improvements~~ Public Improvements shall be completed within 12 months of final plat approval.

#### **E. Acceptance of Public Improvements**

For any Public Improvements required to be provided by Owner and/or Developer, the following conditions of acceptance by the Village shall apply:

1. Final Record Drawings (as built), including final grading and all utilities, shall be submitted for the review and approval of the Director of Community Development;
2. The Design Engineer is to certify that the detention ponds on Lots 4 and 5 were constructed in accordance with the Village's flood control ordinances, and that the project was constructed substantially to plan;
3. All deficiencies described in the final punch list shall be satisfactorily completed and then 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 the Subdivision and Development Ordinance;
5. All easements as required relative to the Public Improvements shall have been granted and recorded;
6. The Public Improvements to be dedicated to the Village shall be accepted by the ~~Board of Trustees~~ Corporate Authorities provided a Bill of Sale and a waiver of lien is provided to the Director of Community Development. Upon acceptance by the ~~Board of Trustees~~ Corporate Authorities the Installation Guarantee (Letter of Credit) shall be returned;
7. The maintenance guarantee (Letter of Credit), upon inspection and determination that no deficiencies exist, shall be returned at the time of its expiration.

**F. Dedication and Acceptance of Public Improvements**

Upon approval and acceptances of the aforesaid Public improvements by the Village, same shall become the property of the Village and subject to its control. 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~~ Owner and/or Developer. Public Improvements shall be accepted by the ~~Board of Trustees~~ Corporate Authorities when all requirements as set forth herein have been satisfied at which time the condition and maintenance of said Public Improvements ~~improvements~~ shall be the sole obligation of the Village. The Village shall not be required to accept or maintain the ~~storm-water management facilities~~ Storm Water Management Facilities for the Property.

**G. Approval of Letter of Credit**

The rights of Owner and/or Developer to proceed with any work which, in accordance with this Second Amendment, shall be secured by a Letter of Credit, are conditional upon and subject to the delivery to the Village of such Letter of Credit, from a financial institution

reasonably approved by the Village, and subject to the placing same on file after the approval of same by the Corporate Authorities in the reasonable exercise of their discretion.

#### **H. Site Access**

Owner and/or Developer (and their contractors) shall keep all streets which provide access to the Property reasonably clean from all mud, gravel and other debris caused by them, at all times during and after construction hours. In the event of a failure to comply to the reasonable satisfaction of the Village within three (3) hours of notification of deficiency, the Village shall have the right but not the obligation to take appropriate measures to cure the deficiency. The Village may charge the contractor, and the owner of the property benefiting from the contractor's work, Owner and/or the Developer for the costs of cure.

#### **I. Traffic Controls**

Owner and/or Developer shall install on-site traffic signs and other devices as required by the Village for the proper control of vehicles and pedestrians in the area.

### **SECTION 9. DEVELOPMENT OF LOT 2 SITES**

#### **A. Foundation-Only Permits**

Foundation-only permits may be issued upon completion of adequate construction access to the corresponding building sites. Adequate access shall mean a maintained gravel access road.

#### **B. Building and other Permits**

1. The Issuance of Permits: The Village shall issue each building permit for which Owner and/or Developer, or either of its duly authorized representatives, shall apply within the earliest practical time. If the application is disapproved, the Village shall provide the applicant with a statement in writing specifying the reasons for denial of the application including specification of the requirements of law which the application and supporting documents fail to meet. The Village agrees to issue such building permits upon the applicant's compliance with those requirements of law so specified by the Village. The Village acknowledges that Owner and/or Developer, or such duly authorized representatives, may apply for, and the Village shall issue, building permits to begin construction upon portions of the B3 Property prior to the availability of public sanitary and water facilities to serve the structures to be constructed provided that the scope of the work to be performed prior to the provision of such sanitary and water facilities does not present potential harm to public health, safety or welfare. Notwithstanding the foregoing, no permit shall be issued for above-foundation construction until working fire hydrants capable of flowing one thousand gallons per minute (1,000 gpm) are installed within three hundred feet (300') of ~~the structure~~ a proposed building. The developer

shall provide additional water main and hydrants as required by the Village when individual properties are developed.

2. Temporary Structures: The Village shall permit Owner and/or Developer, or either of its duly authorized representatives, to install temporary sewage storage or treatment and water facilities (other than wells) to serve sales offices, temporary structures and any models permitted under this Second Amendment, provided that such temporary sewage storage or treatment and water facilities shall be removed and disconnected at Owner's and/or Developer's sole cost at such time as public sewer and water systems become available and the structures are connected thereto. All temporary structures shall be constructed, located or assembled by permit and shall not be used until the Director of Community Development and/or his/her designee has approved the structure for use; provided, this restriction shall not apply to trailers except for permitting and approval of utilities and accessibility.

### **C. Certificates of Occupancy**

1. Partial Occupancy: The Village shall issue certificates of occupancy in multi-tenant commercial buildings on a unit-by-unit basis provided that the unit to be occupied is completed and the construction of the entire building has progressed to the point where the Village's Fire Chief has made a reasonable determination that all fire protection and safety equipment is operational throughout the structure. The Village shall issue certificates of occupancy in multi-family residential buildings on a floor-by-floor basis provided the floor to be occupied has been completed and the construction of the entire building has progressed to the point where the Village Fire Chief has made a reasonable determination that all fire protection and safety equipment is operational throughout the structure.

2. Issuance of Certificates of Occupancy: Issuance of a Certificate of Occupancy for other than a sales office or model dwelling unit shall occur upon satisfactory completion of the following:

- (a) Inspection and approval by the Director of Community Development or his/her designee, which shall not be withheld unreasonably or without specifying in detail all reasons for failure to approve;
- (b) Completion of the water distribution system including testing and chlorination. No occupancy permits shall be issued until the water distribution system has been looped;
- (c) Completion of the sanitary sewer system to that building;
- (d) Installation of any required sidewalks across the frontage of the subject building site;



- (e) Landscaping of the subject building site must be substantially completed, including parkway trees, final grading and ground cover. This condition may be waived, however, by the Director of Community Development due to winter conditions if a Letter of Credit in favor of the Village is posted for such work;
- (f) Record drawings (as built) of the detention pond and of the sanitary sewer and domestic water facilities required to serve that building shall be submitted for approval prior to issuance of a Certificate of Occupancy; provided, that the Director of Community Development may extend the time for submission in whole or in part when the Director has determined that the work may be delayed due to winter conditions, if such work is secured by a Letter of Credit in favor of the Village;
- (g) Provision of a hard surface or asphalt base of the private street system primarily serving the subject building and either a turnaround capability for a fire truck or an all-weather gravel base through the development in a manner to provide a second means of emergency access for each building; and
- (h) Substantial completion of all necessary parking and private street access to public roads.

**SECTION 10. COMPLETION OF CONSTRUCTION.**

The parties acknowledge that development of all of the B3 Property may progress over one or more years. Accordingly, all provisions of the Lombard Zoning Ordinance which provide for expiration or revocation of variations or conditional use permits or other development approvals shall not apply to the B3 Property.

**SECTION 11. CONTRIBUTIONS AND FEES.**

**A. Contributions**

Unless expressly set forth in this Second Amendment, the Village shall not require Owner and/or Developer to make any contributions or land donations for any perceived impacts of development, including but not limited to contributions or land donations for schools, parks or library purposes.

**B. Fees**

The Village represents and warrants that Owner and/or Developer will not be responsible for any fees not heretofore paid to the Village, except as set forth in Section 20 below and the

Village's generally applicable sewer and water tap-on fees, building permit fees and any other fees imposed pursuant to the Lombard Municipal Code generally in regard to building and development if any.

**C. Reasonableness of Fees and Charges**

Owner and/or Developer further agree that any connection charges, fees, contributions, dedications and easements required by this Second Amendment are reasonable in amount, where applicable, and are reasonably related to and made necessary by the development of the B3 Property.

**SECTION 12. REMEDIES AND ENFORCEMENT.**

The Village, Owner and Developer, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of the Second Amendment by any party, or their successors or assigns, which default exists uncorrected for a period of ten (10) day after written notice to any party to such default, the party seeking to enforce said provision shall have the right of specific performance. The remedy of specific performance shall not be exclusive of any other remedy available at law or in equity. In the event any of the Parties institute legal proceedings against any other party to this Second Amendment for violation of this Second Amendment and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment in favor of the prevailing party all expenses of such legal proceedings incurred by the prevailing party, including but not limited to the court costs and reasonable attorneys' fees, witness fees and reimbursed expenses, expert witness fees, etc., incurred by the prevailing party in connection therewith (and any appeal thereof).

**SECTION 13. EXERCISE OF RIGHTS.**

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

**SECTION 14. AUTHORITY TO EXECUTE.**

The officers and/or managers, as the case may be, of Owner and Developer executing this Second Amendment warrant that they have been lawfully authorized to execute this Second Amendment on behalf of Owner and Developer respectively. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board Corporate Authorities of the Village to execute this Second Amendment. Owner and Developer and Village shall deliver to each other upon request copies of all bylaws, joint venture agreements,

resolutions, ordinances or other documents required to legally evidence the authority to so execute this Second Amendment on behalf of the respective entities.

**SECTION 15. SEVERABILITY.**

In the event that any phrase, paragraph, article or portion of this Second Amendment is found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such finding of invalidity, illegality or unenforceability as to that portion shall not affect the validity, legality or enforceability of the remaining portions of this Second Amendment. None of the Parties shall contest the validity, legality or enforceability of any phrase, article, or provision of this Second Amendment.

**SECTION 16. TERM.**

The provisions of this Second Amendment shall run with and bind the Property and shall inure to the benefit of and be enforceable by Developer, Owner, the Village, or any of their respective legal representatives, heirs, grantees, accessors and assigns unless and until amended by the Village and the then current owners of the Property or the relevant portion thereof.

**SECTION 17. AMENDMENTS.**

All amendments to this Second Amendment shall be in writing and be approved by the record owner(s) of the Property and the Village. Provided, however, that the approval of owners of individual dwelling units on Lot 2 need not be obtained if either (a) Owner or Developer have not yet turned over control of any residential development on Lot 2 to a homeowner's association, or (b) the homeowners' association is in control and approves amendment of this Second Amendment in accordance with its article, bylaws and rules. Any amendment of the provisions or regulations relating solely to the B3 Property shall not require the execution or approval by the record owner of Lot 1 and any amendments or regulations relating solely to Lot 1 shall not require the execution or approval by the record owner(s) of the B3 Property.

**SECTION 18. NOTICES.**

All notices and other communication in connection with this Second Amendment shall be in writing, shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three business days after deposits thereof in any main or branch United States post office, and shall be sent certified or registered mail, return receipt requested, postage prepaid, or by facsimile transmission which shall be effective only if receipt of transmission is confirmed by a transmission confirmation sheet, addressed as follows:

For notices and communications to the Owner:

LaSalle Bank, N.A., not individually but as successor trustee

under Trust No. 109023  
135 S. LaSalle Street  
Chicago, IL 60603  
Fax: 312-904-1563

with a copy to:

Robert J. Pugliese  
Lord, Bissell & Brook  
115 S. LaSalle Street  
Chicago, IL 60603  
Fax: 312-443-0336

and to:

Thomas A. Volini  
Town & Country Utilities, Inc.  
3990 Garfield Street  
Gary, IN 46408  
Fax: 219-981-3967

For notices and communications to the Developer:

C. Michelle Panovich  
Mid-America Asset Management  
Two Mid-America Plaza, Suite 330  
Oakbrook Terrace, IL 60181  
Fax: 630-954-7306

with a copy to:

Robert J. Pugliese  
Lord, Bissell & Brook  
115 S. LaSalle Street  
Chicago, IL 60603  
Fax: 312-443-0336

For notices and communications to the Village:

President and Board of Trustees  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148-3926  
FAX: 630-620-8222

with copies to:

- (a) Village Manager  
VILLAGE OF LOMBARD  
255 East Wilson Avenue  
Lombard, Illinois 60148  
FAX: 630-620-8222
  
- (b) Director of Community Development  
VILLAGE OF LOMBARD  
255 East Wilson Avenue  
Lombard, Illinois 60148  
FAX: 630-629-2374
  
- (c) Thomas P. Bayer  
KLEIN, THORPE AND JENKINS, LTD.  
Civic Opera Building  
20 North Wacker Drive  
Suite 1660  
Chicago, Illinois 60606  
FAX: 312-984-6444

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

**SECTION 19. EXHIBITS.**

Exhibits A through P attached to this Second Amendment are incorporated herein and made a part hereof by this reference.

**SECTION 20. GENERAL PROVISIONS.**

**A. Inconsistent and More Restrictive Amendments and Provisions**

The Village agrees that should any existing code, ordinance, rule or regulation, including, without limitation, those codes, ordinances, rules and regulations covered in the subject matter of this Second Amendment, which may relate to the zoning or subdivision of the B3 Property and to the use of improvements, buildings and appurtenances on the B3 Property and to all other development of any kind or character on that B3 Property, be interpreted in any way that is inconsistent with or more restrictive than the terms and provisions of this Second Amendment, then the terms and provisions hereof, under such circumstances, shall constitute lawfully

authorized, approved and binding amendments to the terms of any such inconsistent or more restrictive code, ordinance, rule or regulation as it relates to the B3 Property, but only for the term of this Second Amendment at which point any development not conforming with such amendments or interpretations shall be legally non-conforming unless and until a variation or other relief is granted by the Village.

**B. Less Restrictive Amendments and Provisions**

The Village agrees that should any now or hereafter existing code, ordinance, rule or regulation be adopted, enacted, modified, amended, interpreted or otherwise changed in any way so as to be less restrictive than the provisions now applicable to the B3 Property, including, without limitation, restrictions affecting zoning, subdivision, land development, construction and use of improvements, buildings and appurtenances and all other development of any kind or character on the B3 Property, then such less restrictive provisions shall inure to the benefit ~~of~~ of Owner and, anything herein to the contrary notwithstanding, Owner may elect to proceed with the development of, construction upon and use of the B3 Property in accordance with any less restrictive code, ordinance, rule or regulation applicable generally to all properties within the Village. Provided, however, that this provision is not intended to abrogate or supersede any private covenants or agreements, including the B3 Use Chart included as part of Exhibit N and made a part of this agreement, which may be recorded against the B3 Property.

**C. Continuity of Obligations**

1. This Second Amendment shall inure to the benefit of and shall be binding upon Owner's and Developer's successors in any manner in title, including any homeowners or property owners associations who may take title to common areas, but not purchasers or lessors of individual dwelling units, and shall inure to the benefit of and shall be binding upon the Village and the successor Corporate Authorities of the Village and any successor municipality.

2. Owner and Developer acknowledge and agree that the obligations assumed by each of them under this Second Amendment shall be binding upon them respectively and, except as limited aforesaid, any and all of their respective heirs, successors, and assigns and the successor record owners and/or successor developers of all or any portion of the Property. To assure that such heirs, successors, and assigns have notice of this Second Amendment and the obligations created by it, Owner and Developer agree:

(a) that this Second Amendment shall be recorded with the DuPage County Recorder of Deeds;

(b) to require, prior to the transfer of title to all or any portion of the Property, the transferee of said portion of the Property to be bound by the provisions of this Second Amendment pursuant to the execution of an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), said Assignment and Assumption Agreement to

be in a form substantially in conformance with Exhibit P attached hereto and made a part hereof. The Village agrees that upon a successor becoming bound to the personal obligations created herein in the manner provided herein, the personal liability of Owner and/or Developer or other predecessor obligor under this Second Amendment shall be released. Except for individual dwelling units, Owner agrees to notify the Village in writing at least thirty (30) days after any date upon which Owner transfers a legal or beneficial interest in any portion of the Property to a transferee (other than Developer who hereby agrees to the terms of the Assignment and Assumption Agreement and to be bound thereby upon taking a legal or beneficial interest in any portion of the Property). Any such notice given prior to the effective date of this Second Amendment shall be effective on the date given. Owner or any other predecessor obligor shall, at the same time, provide the Village with a fully executed copy of the hereinabove required Assignment and Assumption Agreement by the transferee to be bound by the provisions of this Second Amendment. In the event any transferee requires proof that a particular provision of this Second Amendment has been satisfied, the Village agrees to issue a written statement as to which provisions of this Second Amendment, if any, have been satisfied.

3. All the terms and conditions of this Second Amendment shall constitute covenants running with the land.

**D. Dedication of Public Lands**

In no event, including (without limitation) the exercise of the authority granted in Section 5/11-12-8 of Division 11 of Act 5 of Chapter 65 of the Illinois Compiled Statutes, shall the Corporate Authorities require that any part of the Property be designated for public purposes, except as otherwise provided in this Second Amendment or except as may be consented to in writing by Owner and/or Developer.

**E. Conveyance, Dedication and Donation of Real Estate and Certain Personal Property**

Any conveyance, dedication or donation of real estate required of Owner and/or Developer (hereinafter collectively and individually referred to as "Grantor" in this subsection 20E) to the Village or other governmental authority under this Second Amendment shall be made in conformance with the following requirements and any other applicable provisions of this Second Amendment.

- (1) Fee Simple Title: The conveyance, dedication or donation shall be of a fee simple title.
- (2) Merchantable Title: Title shall be good and marketable.

- (3) Form and Contents of Deed: The conveyance, dedication or donation shall be by delivery of a good, sufficient and recordable deed, plat of dedication or appropriate dedication on a recorded plat of subdivision.

The deed, conveyance or dedication may be subject only to:

- (a) covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;
- (b) terms of this Second Amendment;
- (c) general taxes for the year in which the deed, conveyance of dedication is delivered or made and for the prior year if the amount of the prior year's taxes is not determinable at the time of delivery, conveyance or dedication;
- (d) terms of other agreements, covenants, easements, or declarations recorded against the real estate pursuant to the direction, approval or participation by the Village; and
- (e) such other exceptions acceptable to the grantee.

- (4) Title Insurance: Grantor shall provide to grantee, not less than ten (10) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from the Chicago Title Insurance Company or such other title insurance company acceptable to the grantee. The commitment for title insurance shall be in usual and customary form subject only to the matters set forth in sub-paragraph 20.E.3(a) above and the usual and customary standard exceptions contained therein.

The commitment for title insurance shall be in the amount of the fair market value of the real estate and shall be dated not more than twenty (20) days prior to the time for delivery of the deed, conveyance or dedication. Grantor shall further cause to be issued within thirty (30) days after delivery of the deed, conveyance or dedication a title insurance policy in such amount from the company issuing the commitment for title insurance, subject only to the exceptions stated above.

All title insurance charges shall be borne by Grantor.

- (5) Taxes, Liens, Assessments, Etc.: General taxes and all other taxes, assessments, liens and charges of whatever nature affecting the real estate shall be paid and removed prior to delivery of the deed, conveyance or dedication. To the extent that any such item cannot be removed prior to delivery of the deed, conveyance or dedication because the amount of the same cannot then be determined, Grantor hereby covenants that it will promptly pay the same upon determination of such amount and that it will indemnify, hold harmless and



defend the Village against any loss or expense, including but not limited to attorneys' fees and expenses of litigation, arising as a result of a breach of the foregoing covenant.

(6) Delivery of Deed, Conveyance or Dedication: To the extent not provided in this Second Amendment, delivery of the deed, conveyance or dedication shall occur at a date, time and place mutually agreeable to Grantor and Village, otherwise at a date, time and place set by Village not less than thirty (30) days nor more than forty-five (45) days after notice thereof is given by Village to Grantor.

**F. Conveyances**

Nothing contained in this Second Amendment shall be construed to restrict or limit the right of Owner and/or Developer to sell or convey all or any portion of the Property, whether improved or unimproved, except as otherwise specifically set forth herein.

**G. Survival of Presentations**

Each of the parties agrees that the representations, warranties and recitals set forth in the preambles to this Second Amendment are material to this Second Amendment and the parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Second Amendment and the same shall continue during the period of this Second Amendment.

**H. Captions and Paragraph Headings**

The captions and paragraph headings used herein are for convenience only and are not a part of this Second Amendment and shall not be used in construing it.

**I. Reimbursement of Village for Legal and Other Fees and Expenses**

Owner and/or Developer shall receive a credit for all application fees paid to the Village which shall be applied to the obligations of Owner and/or Developer set forth in subparagraphs (1) and (2) below.

(1) To Effective Date of Agreement: The Owner and/or Developer, concurrently with the execution of this Second Amendment, shall reimburse the Village for the following expenses incurred in the preparation and review of this Second Amendment, and any ordinances, letters of credit, plats, easements or other documents relating to the Property:

- (a) the costs incurred by the Village for engineering services;
- (b) all reasonable attorneys' fees incurred by the Village in connection with this Second Amendment and the planned development or subdivision approvals provided for herein; and

- (c) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.
- (d) fees associated with the submittal of the preliminary plat and planned development

(2) From and After Effective Date of Agreement: Except as provided in this subsection, upon demand by Village made by and through its President, Owner and/or Developer from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by Village in the administration of this Second Amendment, including engineering fees, staff and/or consultant's expenses associated with the site plan approval process, attorneys' fees and out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, and the negotiation and preparation of letters of credit and escrow agreements to be entered into as security for the completion of ~~public improvements~~ Public Improvements

Such costs and expenses incurred by Village in the administration of the Second Amendment shall be evidenced to the Owner and/or Developer upon request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Owner and/or Developer at either's option from additional documents designated from time to time by the Owner and/or Developer relevant to determining such costs and expenses.

Notwithstanding the foregoing, Owner and/or Developer shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through fees established by Village ordinances, or otherwise.

In the event that any third party or parties institute any legal proceedings against the Owner and/or Developer and/or the Village, which relate to the terms of this Second Amendment, then, in that event, the Owner and/or Developer, on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

(a) Owner and/or Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, which is binding upon the Village, without the approval of the Village, which shall not be unreasonably withheld. If any such settlement, compromise or judgment is not binding upon the Village, this restriction shall not apply. Unreasonableness shall be determined by whether any such settlement, compromise or failure to appeal an adverse judgment materially impairs the benefits to the Village under this Second Amendment.

(b) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and Owner and/or Developer, on an issue having a

potentially substantial adverse effect on the Village, then the Village shall have the option of having its own legal counsel represent it or participate in the common defense at its own expense. However, if under Illinois Law, a conflict of interest exists such that legal counsel for the owner and/or developer cannot represent the Village, then the Village shall have the option of having its own legal counsel represent it or participate in the common defense at the expense of the Owner and/or Developer.

**J. Village Approval or Direction**

Where Village approval or direction is required by this Second Amendment, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Second Amendment. Approval of or direction of the Corporate Authorities of the Village shall not require any super-majority vote unless otherwise required by the ordinances of the Village or by law.

**K. Recording**


A copy of this Second Amendment and any amendments thereto shall be recorded by the Village at the expense of the Owner and/or Developer.

**L. Amendment and Integration**

This Second Amendment, including the Exhibits hereto, sets forth all the promises, inducements, agreements, conditions and understandings between Owner, Developer and the Village relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Second Amendment shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

**IN WITNESS WHEREOF**, the parties have set their hands and affixed their seals on the date first above written, the same being done after public hearing, notice, and statutory requirements having been fulfilled.


**VILLAGE OF LOMBARD**

By:   
Village President

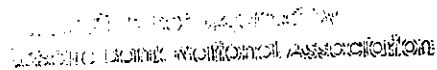
addition to this Second Amendment shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

**IN WITNESS WHEREOF**, the parties have set their hands and affixed their seals on the date first above written, the same being done after public hearing, notice, and statutory requirements having been fulfilled.

**VILLAGE OF LOMBARD**

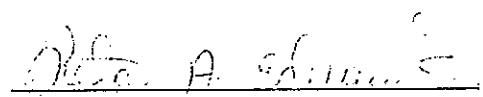
By:   
 Village President

**ATTEST:**

  
 Village Clerk

This instrument is executed by **LASALLE BANK National Association**, not personally but solely as trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by **LASALLE BANK National Association** are undertaken by it solely as trustee, as aforesaid, and not individually and all statements herein made are made to the trustee on its behalf and are to be construed accordingly, and no personal liability shall be assumed or be enforceable against **LASALLE BANK National Association** by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

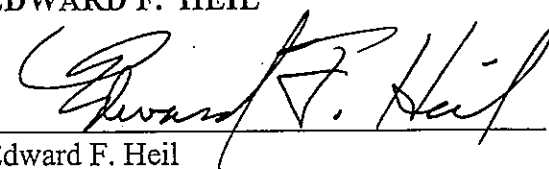
**LaSALLE BANK, N.A., not individually but as  
 successor trustee to Trust No. 109023**

By: 

**WITNESS:**

\_\_\_\_\_

**EDWARD F. HEIL**

  
 Edward F. Heil

MID-AMERICA REAL ESTATE CORPORATION

By: Michael D. Coy  
Title: PRINCIPAL

ATTEST:



ACKNOWLEDGMENTS

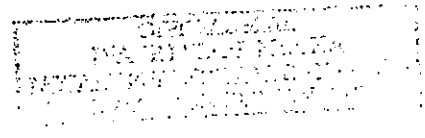
STATE OF ILLINOIS        )  
  )SS  
COUNTY OF DUPAGE        )

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

GIVEN under my hand and official seal, this 20<sup>th</sup> day of 2000.

Commission expires 1-31, 2001.

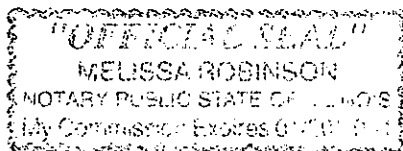
Deane Miller Muech  
Notary Public



STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF DUPAGE )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
 HEREBY CERTIFY that RETA A EDWARDS, personally known to me to be the  
~~TRUST OFFICER~~ of LaSalle Bank, N.A., and personally known to me to be the same person whose  
 name is subscribed to the foregoing instrument as such and respectively, and that he/she  
 appeared before me this day in Person and severally acknowledged that as such  
 \_\_\_\_\_ he/she signed and delivered the said instrument at his/her free and voluntary  
 act for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 2nd day of Oct, 2000  
 Commission expires Jan 30, 2004.



Melissa Robinson  
 Notary Public

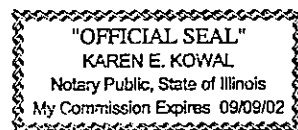
STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF DUPAGE )

On this 2nd day of October, 2000, before me, a Notary Public, duly  
 commissioned, qualified and acting, within and for said County and State, appeared in person the  
 within named Edward F. Heil to me personally well known, executed and delivered said  
 foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 2nd  
 day of October, 2000

GIVEN under my hand and Notary Seal this 2nd day of October, 2000.  
 Commission expires September 9, 2002.

Karen E. Kowal  
 Notary Public



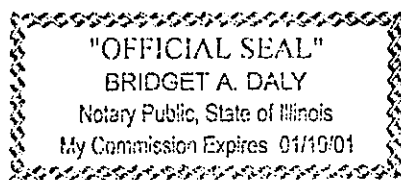
STATE OF ILLINOIS        )  
  )SS  
COUNTY OF DUPAGE        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_ and MICHAEL D. LEONIE, personally known to me  
to be the President and Secretary of Mid-America Real Estate Corporation, and personally  
known to me to be the same persons whose names are subscribed to the foregoing instrument as  
such and respectively, and that they appeared before me this day in Person and severally  
acknowledged that as such President and Secretary they signed and delivered the said instrument,  
pursuant to authority given by the Board of Directors of said Corporation as their free and  
voluntary act, and as the free and voluntary act and deed of said Corporation, for the uses and  
purposes therein set forth, and the said then and there acknowledged that said Secretary as  
custodian of the corporate seal of said Corporation caused said seal to be affixed to said  
instrument as said Secretary's own free and voluntary act and as the free and voluntary act of  
said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 2nd day of October, 2001.

Commission expires 01/19, 2001.

Bridget A. Daly  
Notary Public





## EXHIBIT A

### OVERALL DESCRIPTION

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH RANGE 11, EAST OF THE OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER: THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 720.24 FEET TO THE POINT OF BEGINNING; CONTINUING THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER 1788.66 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF BUTTERFIELD ROAD [ROUTE 56]; THENCE NORTH 80 DEGREES, 33 MINUTES, 53 SECONDS EAST ALONG SAID NORTHERLY LINE OF BUTTERFIELD ROAD 299.29 FEET TO A POINT OF CURVE; THENCE EASTERLY ALONG THE CURVE TO THE LEFT TANGENT TO THE LAST DESCRIBED COURSE HAVING A RADIUS OF 9191.29 FEET FOR AN ARC DISTANCE OF 1008.16 FEET, SAID CURVE HAVING A CHORD LENGTH OF 1007.65 FEET BEARING NORTH 77 DEGREES, 25 MINUTES, 21 SECONDS EAST TO ITS INTERSECTION WITH THE WEST LINE OF HIGHLAND AVENUE, AS SAID HIGHLAND AVENUE WAS DEDICATED BY DOCUMENT NO. 342659; THENCE NORTH 02 DEGREES, 26 MINUTES, 58 SECONDS WEST ALONG THE WEST LINE OF SAID HIGHLAND AVENUE 1611.60 FEET TO A POINT ON SAID WEST LINE OF HIGHLAND AVENUE, SAID POINT BEING 676.06 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF HIGHLAND GREEN SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 29; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 598.43 FEET; THENCE NORTH 47 DEGREES, 06 MINUTES, 32 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 67.66 FEET; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 250.00 FEET; THENCE SOUTH 42 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 130.16 FEET; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 300.18 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 06-29-300-004

PREPARED BY: Spaceco, Inc.  
DATED: March 31, 2000

## EXHIBIT B

### DESCRIPTION AREA ~~B3~~-B3 PROPERTY

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH RANGE 11, EAST OF THE OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 995.24 FEET TO THE POINT OF BEGINNING; CONTINUING THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER 1513.66 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF BUTTERFIELD ROAD [ROUTE 56]; THENCE NORTH 80 DEGREES. 33 MINUTES, 53 SECONDS EAST ALONG SAID NORTHERLY LINE OF BUTTERFIELD ROAD 299-29 FEET TO A POINT OF CURVE; THENCE EASTERLY ALONG THE CURVE TO THE LEFT TANGENT TO THE LAST DESCRIBED COURSE HAVING A RADIUS OF 9191.29 FEET FOR AN ARC DISTANCE OF 1008.16 FEET, SAID CURVE HAVING A CHORD LENGTH OF 1007.65 FEET BEARING NORTH 77 DEGREES, 25 MINUTES, 21 SECONDS EAST TO ITS INTERSECTION WITH THE WEST LINE OF HIGHLAND AVENUE, AS SAID HIGHLAND AVENUE WAS DEDICATED BY DOCUMENT NO. 342659; THENCE NORTH 02 DEGREES, 26 MINUTES, 58 SECONDS WEST ALONG THE WEST LINE OF SAID HIGHLAND AVENUE 803.59 FEET; THENCE SOUTH 87 DEGREES, 33 MINUTES, 02 SECONDS WEST 149.49 FEET TO A POINT OF CURVE: THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 255.00 FEET FOR AN ARC DISTANCE OF 199.52 FEET, SAID CURVE HAVING A CHORD LENGTH OF 194.47 FEET BEARING SOUTH 65 DEGREES 08 MINUTES 06 SECONDS WEST TO A POINT OF REVERSE CURVE; THENCE SOUTHWESTERLY ALONG ARC OF SAID CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 170.00 FEET FOR AN ARC DISTANCE OF 146.29 FEET, SAID CURVE HAVING A CHORD LENGTH OF 141.82 FEET BEARING SOUTH 67 DEGREES 22 MINUTES 19 SECONDS EAST TO A POINT OF TANGENCY; THENCE NORTH 87 DEGREES, 58 MINUTES, 32 SECONDS WEST 209.95 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 120.00 FEET FOR AN ARC DISTANCE OF 179.30 FEET, SAID CURVE HAVING A CHORD LENGTH OP 163.08 FEET BEARING NORTH 45 DEGREES 10 MINUTES 11 SECONDS WEST TO A POINT OF TANGENCY; THENCE NORTH 02 DEGREES 21 MINUTES 50 SECONDS WEST A DISTANCE OF 482.60 FEET; THENCE SOUTH 87 DEGREES 38 MINUTES 10 SECONDS WEST 507.29 FEET TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

A PORTION OF P.I.N. 06-29-300-004

PREPARED BY: Spaceco, Inc.  
DATED: March 31, 2000

## EXHIBIT C

### DESCRIPTION ~~REMAINDER~~ OF CEMETERY PROPERTY

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 39 NORTH RANGE 11, EAST OF THE OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 720.24 FEET TO THE POINT OF BEGINNING; CONTINUING THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER 1788.66 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF BUTTERFIELD ROAD [ROUTE 56]; THENCE NORTH 80 DEGREES, 33 MINUTES, 53 SECONDS EAST ALONG SAID NORTHERLY LINE OF BUTTERFIELD ROAD 299.29 FEET TO A POINT OF CURVE; THENCE EASTERLY ALONG THE CURVE TO THE LEFT TANGENT TO THE LAST DESCRIBED COURSE HAVING A RADIUS OF 9191.29 FEET FOR AN ARC DISTANCE OF 1008.16 FEET, SAID CURVE HAVING A CHORD LENGTH OF 1007.65 FEET BEARING NORTH 77 DEGREES, 25 MINUTES, 21 SECONDS EAST TO ITS INTERSECTION WITH THE WEST LINE OF HIGHLAND AVENUE, AS SAID HIGHLAND AVENUE WAS DEDICATED BY DOCUMENT NO. 342659; THENCE NORTH 02 DEGREES, 26 MINUTES, 58 SECONDS WEST ALONG THE WEST LINE OF SAID HIGHLAND AVENUE 1611.60 FEET TO A POINT ON SAID WEST LINE OF HIGHLAND AVENUE, SAID POINT BEING 676.06 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF HIGHLAND GREEN SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 29; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 598.43 FEET; THENCE NORTH 47 DEGREES, 06 MINUTES, 32 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 67.66 FEET; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 250.00 FEET; THENCE SOUTH 42 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 130.16 FEET; THENCE SOUTH 87 DEGREES, 53 MINUTES, 28 SECONDS WEST ALONG A SOUTHERLY LINE OF SAID HIGHLAND GREEN SUBDIVISION 300.18 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29,

TOWNSHIP 39 NORTH RANGE 11, EAST OF THE OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER 995.24 FEET TO THE POINT OF BEGINNING; CONTINUING THENCE SOUTH 02 DEGREES, 24 MINUTES, 55 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND WEST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER 1513.66 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF BUTTERFIELD ROAD [ROUTE 56]; THENCE NORTH 80 DEGREES, 33 MINUTES, 53 SECONDS EAST ALONG SAID NORTHERLY LINE OF BUTTERFIELD ROAD 299.29 FEET TO A POINT OF CURVE; THENCE EASTERLY ALONG THE CURVE TO THE LEFT TANGENT TO THE LAST DESCRIBED COURSE HAVING A RADIUS OF 9191.29 FEET FOR AN ARC DISTANCE OF 1008.16 FEET, SAID CURVE HAVING A CHORD LENGTH OF 1007.65 FEET BEARING NORTH 77 DEGREES, 25 MINUTES, 21 SECONDS EAST TO ITS INTERSECTION WITH THE WEST LINE OF HIGHLAND AVENUE, AS SAID HIGHLAND AVENUE WAS DEDICATED BY DOCUMENT NO. 342659; THENCE NORTH 02 DEGREES, 26 MINUTES, 58 SECONDS WEST ALONG THE WEST LINE OF SAID HIGHLAND AVENUE 803.59 FEET; THENCE SOUTH 87 DEGREES, 33 MINUTES, 02 SECONDS WEST 149.49 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 255.00 FEET FOR AN ARC DISTANCE OF 199.52 FEET, SAID CURVE HAVING A CHORD LENGTH OF 194.47 FEET BEARING SOUTH 65 DEGREES 08 MINUTES 06 SECONDS WEST TO A POINT OF REVERSE CURVE; THENCE SOUTHWESTERLY ALONG ARC OF SAID CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 170.00 FEET FOR AN ARC DISTANCE OF 146.29 FEET, SAID CURVE HAVING A CHORD LENGTH OF 141 .82 FEET BEARING SOUTH 67 DEGREES 22 MINUTES 19 SECONDS EAST TO A POINT OF TANGENCY; THENCE NORTH 87 DEGREES, 58 MINUTES, 32 SECONDS WEST 209.95 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 120.00 FEET FOR AN ARC DISTANCE OF 179.30 FEET, SAID CURVE HAVING A CHORD LENGTH OF 163.08 FEET BEARING NORTH 45 DEGREES 10 MINUTES 11 SECONDS WEST TO A POINT OF TANGENCY; THENCE NORTH 02 DEGREES 21 MINUTES 50 SECONDS WEST A DISTANCE OF 482.60 FEET; THENCE SOUTH 87 DEGREES 38 MINUTES 10 SECONDS WEST 507.29 FEET TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

A portion of 06-29-300-004

PREPARED BY: Spaceco, Inc.

DATED; March 31, 2000

## EXHIBIT L

### LIST OF PUBLIC IMPROVEMENTS

#### Butterfield Road

1. 5 foot sidewalk along the north side of Butterfield Road between Highland and the western boundary of proposed development.
2. Right-of-way landscaping along the north side of Butterfield Road.
3. Partial removal of retaining wall along the north side of Butterfield Road. (Note: the remaining section of wall will continue to be IDOT's responsibility).

#### Highland Avenue

1. 5 foot sidewalk along the west side of Highland between Butterfield Road and the proposed spine road.
2. Right-of-way landscaping along the west side of Highland Avenue.
3. All pavements, curbs, gutter, striping, drainage and associated construction for the spine road within the Highland Avenue right-of-way.
4. All pavements, curbs, gutters, striping, drainage and associated construction for access north of the spine road within the Highland right-of-way.
5. All associated construction for the curbed island removal and re-striping of the Yorktown Shopping Center access to Highland Avenue.
6. Northbound Highland Avenue left turn lane to spine road and all associated pavement and curb removal/construction and striping.
7. Southbound Highland Avenue left turn lane to Yorktown Shopping Center and all associated pavement and curb removal/construction and striping.
8. Traffic signals at spine road intersection and all associated modifications, additions and interconnect controls.

#### Utilities

1. 10" or greater water main, valves, fire hydrants, within the site, to be dedicated to the Village.
2. 10" or greater water main, valves, fire hydrants, within cemetery site, to be dedicated to the Village.
3. 120 foot auger, case and pressure connection for the 10" water main crossing under Highland Avenue.
4. 8" sanitary sewer, manholes, and stubs, within the site, to be dedicated to the Village.
5. 160' auger, case and manhole for the 8" sanitary sewer line crossing under Highland Avenue.

## EXHIBIT M

### LIST OF PRIVATE IMPROVEMENTS

1. On-site storm sewer and associated inlets, catch basins and manholes.
2. On-site spine road pavements, curb, gutter and walkways.
3. Detention/stormwater management ponds, wetlands, associated appurtenances.
4. Decorative water features (i.e. aerators).
5. On-site landscaping per approved planned development plans.
6. Lighting along spine road per approved planned development plans.
7. On-site retaining walls around detention ponds, along cemetery and along western property line.
8. On-site mass grading and drainage.
9. Fencing per approved development plans.

**EXHIBIT N****B3 USE CHART**

<b>USE</b>	<b>LOT 2</b>
<b><u>Dwelling units – Single Family</u></b>	<b><u>Prohibited</u></b>
<b><u>Dwelling units – Two Family</u></b>	<b><u>Prohibited</u></b>
<b><u>Dwelling units, Multiple Family - on any floor</u></b>	<b><u>Conditional</u></b>
<b><u>Dwelling units – Assisted Living Housing Facilities</u></b>	<b><u>Prohibited</u></b>
<b>Amusement recreation centers which combine bowling with any three or more of pool and/or billiards; food service; lounge areas; other amusements.</b>	<b>Conditional</b>
<b>Animal hospitals and kennels</b>	<b>Prohibited</b>
<b>Antique shops</b>	<b>Prohibited</b>
<b>Art and school supply store</b>	<b>Permitted</b>
<b>Art shops or galleries, but not including auction rooms</b>	<b>Permitted</b>
<b>Automobile Accessory Stores</b>	<b>Prohibited</b>
<b>Automobile Repair</b>	<b>Prohibited</b>
<b>Automobile Service</b>	<b>Prohibited</b>
<b>Bakeries, retail only</b>	<b>Permitted</b>
<b>Barber shops</b>	<b>Permitted</b>
<b>Banquet Hall</b>	<b>Permitted</b>
<b>Beauty shops</b>	<b>Permitted</b>
<b>Bicycle sales, rental, and repair stores</b>	<b>Permitted</b>
<b>Book and stationery stores</b>	<b>Permitted</b>
<b>Bowling alley</b>	<b>Conditional</b>
<b>Business machine sales and service</b>	<b>Permitted</b>
<b>Camera and photographic supply stores</b>	<b>Permitted</b>
<b>Candy and ice cream stores</b>	<b>Permitted</b>



<b>USE</b>	<b>LOT 2</b>
<b>Carpet and rug stores, retail sales only</b>	<b>Permitted</b>
<b>China and glassware stores</b>	<b>Permitted</b>
<b>Closet and storage organizer stores</b>	<b>Permitted</b>
<b>Clothing and costume rental stores</b>	<b>Permitted</b>
<b>Coin and philatelic stores</b>	<b>Prohibited</b>
<b>Clothiers pressing establishments</b>	<b>Permitted</b>
<b>Clubs, non-profit/fraternal</b>	<b>Prohibited</b>
<b>Convention center</b>	<b>Permitted</b>
<b>Custom dressmaker</b>	<b>Permitted</b>
<b>Dairy products, retail sales</b>	<b>Permitted</b>
<b>Dance halls</b>	<b>Prohibited</b>
<b>Day care centers</b>	<b>Conditional</b>
<b>Department stores</b>	<b>Permitted</b>
<b>Drive-in and drive through establishments/ services</b>	<b>Conditional</b>
<b>Drug stores</b>	<b>Permitted</b>
<b>Dry cleaning</b>	<b>Permitted</b>
<b>Dry good stores</b>	<b>Permitted</b>
<b>Educational services</b>	<b>Permitted</b>
<b>Elderly care</b>	<b>Prohibited</b>
<b>Entertainment center</b>	<b>Conditional</b>
<b>Financial institutions</b>	<b>Permitted</b>
<b>Flower shops</b>	<b>Permitted</b>
<b>Food stores, grocery stores, meat markets and delicatessen</b>	<b>Permitted</b>
<b>Funeral homes</b>	<b>Prohibited</b>
<b>Furniture store</b>	<b>Permitted</b>
<b>Gasoline stores</b>	<b>Prohibited</b>
<b>Gift shops</b>	<b>Permitted</b>

<b>USE</b>	<b>LOT 2</b>
<b>Greenhouses and nurseries</b>	<b>Prohibited</b>
<b>Hardware stores</b>	<b>Permitted</b>
<b>Hobby shops, for retail sales of items to be assembled or used</b>	<b>Permitted</b>
<b>Home improvement center</b>	<b>Permitted</b>
<b>Hotel/motel</b>	<b>Permitted</b>
<b>Jewelry stores, including watch repair</b>	<b>Permitted</b>
<b>Launderettes, automatic, self-service only or hand laundries</b>	<b>Prohibited</b>
<b>Massage parlors</b>	<b>Prohibited</b>
<b>Medical and dental clinics</b>	<b>Permitted</b>
<b>Motor vehicle sales</b>	<b>Prohibited</b>
<b>Music stores</b>	<b>Permitted</b>
<b>Offices - business or professional</b>	<b>Permitted</b>
<b>Optician sales, retail and orthopedic and medical appliance</b>	<b>Permitted</b>
<b>Outpatient medical care facility</b>	<b>Permitted</b>
<b>Outside display and sales of products the sale of which is a permitted or conditional use</b>	<b>Conditional</b>
<b>Outside service areas for other permitted or conditional use</b>	<b>Conditional, except restaurants are permitted</b>
<b>Package liquor and party supply stores</b>	<b>Prohibited</b>
<b>Paint, glass, and hardware stores</b>	<b>Permitted</b>
<b>Parking garages, other than accessory to a permitted use</b>	<b>Conditional</b>
<b>Parks, libraries, and other public uses</b>	<b>Permitted</b>
<b>Pet grooming services, not including animal hospitals or overnight visits</b>	<b>Prohibited</b>
<b>Pet shops</b>	<b>Permitted</b>

USE	LOT 2
Photography studios, including the developing of film and pictures when conducted as part of the retail business on the premises	Permitted
Picture framing, when conducted for retail trade on the premises only	Permitted
Pool halls	Prohibited
Post office	Prohibited
Printing and duplicating services	Permitted
Psychics, ESP readers, and fortune tellers	Prohibited
Public utility and service uses	Prohibited
Radio and television only - sales, service, and repair	Prohibited
Repair, rental, and servicing of any article the sale of which is a permitted use in the district	Conditional
Restaurants with or without entertainment, dancing, and/or amusement devices	Permitted, except adult uses are prohibited
Restaurants with drive-through	Prohibited
Schools, business or commercial	Permitted
Shoe, clothing, and hat repair stores	Permitted
Secondhand stores and rummage shops	Prohibited
Sewing machine sales and service-household appliances only	Permitted
Shoe sales and repair	Permitted
Sign printers	Permitted
Silk screening services	Permitted
Sporting goods stores	Permitted
Studios; art, sculptor, composer, dance, martial arts, or woodcraft	Prohibited
Tailor/seamstress shops	Permitted

<b>USE</b>	<b>LOT 2</b>
<b>Taverns and cocktail lounges</b>	<b>Prohibited</b>
<b>Television, recording, and radio stations</b>	<b>Prohibited</b>
<b>Theaters, indoor only</b>	<b>Permitted</b>
<b>Ticket agencies</b>	<b>Permitted</b>
<b>Tobacco shops</b>	<b>Prohibited</b>
<b>Toy shops</b>	<b>Permitted</b>
<b>Travel bureaus and transportation ticket offices</b>	<b>Permitted</b>
<b>Watchman quarters</b>	<b>Prohibited</b>
<b>Wearing apparel shops</b>	<b>Permitted</b>
<b>Variety shops</b>	<b>Permitted</b>
<b>Video tapes, sales and rental of, electronic game cartridges and similar items</b>	<b>Permitted</b>

## EXHIBIT O

### STORMWATER MAINTENANCE AGREEMENT

1. The Storm Water Control Facilities will be maintained by the ~~record owner~~ Owner of the Property unless and until ownership of the Property is divided. Prior to any division of ownership the owner will record easement agreements or cause to be formed a property owners' associations for the purposes of owning and maintaining certain common areas of the Property, including the Storm Water Control Facilities. All declarations, easement agreements, covenants or other documents establishing the ownership and management rights and responsibilities for the Storm Water Control Facilities shall be recorded and subject to approval by the Director of Community Development and the Village attorney and shall not be modified or amended without the Village's consent.

2. The ~~record owner~~ Owner of the Property, or the property owners' association, as applicable, will grant an easement to the Village for rights of Maintenance of the Storm Water Control Facilities substantially in the form of such easement appended to the ~~Lombard~~ Subdivision and Development Ordinance, subject to approval as to form and content by the Director of Community Development and the Village attorney.

**EXHIBIT P**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** is dated as of

\_\_\_\_\_, 2000, and is entered into between \_\_\_\_\_, a  
\_\_\_\_\_, (“Assignor”) and \_\_\_\_\_, a  
\_\_\_\_\_ (“Assignee”).

**WHEREAS**, the Village of Lombard, an Illinois non-home rule municipal corporation;  
MID-AMERICA REAL ESTATE CORPORATION, an Illinois Corporation; LaSALLE BANK,  
N.A., not individually but as successor trustee under a Trust Agreement dated October 16, 1984  
and known as Trust No. 109023 and EDWARD F. HEIL, sole beneficiary of said Trust, entered  
into a Second Amendment to Pre-Development Agreement (hereinafter “Second Amendment”)  
regarding the real property described on the attached Exhibit A, which Agreement was recorded  
by the DuPage County Recorder of Deeds on \_\_\_\_\_, 2000, as Document No.  
\_\_\_\_\_ ; and

**WHEREAS**, Assignor is a party to the Second Amendment [or became a party to the  
Second Amendment pursuant to an Assignment and Assumption Agreement dated as of  
\_\_\_\_\_, 2000, which Assignment and Assumption Agreement was recorded by  
the DuPage County Recorder of Deeds on \_\_\_\_\_, 19\_\_\_, as Document No.  
\_\_\_\_\_]; and

**WHEREAS**, Assignor desires to assign all its right, title and interest in and to the Second  
Amendment to Assignee and Assignee desires to accept said assignment and assume all of

Assignor's liabilities and obligations related to or arising under the Second Amendment as it relates Lot [ describe property] as referred to therein.

**NOW, THEREFORE**, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, (a) Assignor does hereby assign, transfer, and convey unto Assignee all of Assignor's right, title and interest in and to the Second Amendment and any benefits hereafter derived thereunder and (b) Assignee does unconditionally hereby assume and promise to pay and perform in full, from and after 12:01 a.m. on the date first written above, all obligation and liabilities of Assignor related to or arising under the Second Amendment as it relates to the property legally described on Exhibit A attached hereto and incorporated herein.

This Agreement shall be governed by the laws of the State of Illinois.

**IN WITNESS WHEREOF**, this Assignment and Assumption Agreement is executed as of the date first written above.

ASSIGNOR:

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

Its: \_\_\_\_\_

ASSIGNEE:

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

Its: \_\_\_\_\_

CONSENT AND RELEASE

The undersigned, being the remaining parties to the Second Amendment referred to above, do hereby consent to the above Assignment and Assumption Agreement and forever releases the above Assignor (together with its successors, assigns, heirs and personal representative, as the case may be, other than Assignee) from all liabilities and obligations related to or arising under the Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_



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