


To: Honorable President and Board of Trustees
From: William T. Lichter, Village Manager 
Date: October 13, 2006
Subject: **Revised Draft of the DuPage Theatre Redevelopment Agreement**

The attached document sets forth revised language to address the four issues raised by the Village Board at the meeting of October 5, 2006. Those issues related to the following:

1. Deadline for construction to begin;
2. Demolition;
3. Construction phasing option;
4. Timetable for conveyance of the theatre to a civic organization.

In addition, a fifth revision has been added to address an issue that was raised by Trustee Tross subsequent to the October 5, 2006 meeting relative to the initial \$900,000 TIF incremental revenue payment. Pursuant to that revision, the \$900,000 will be held by the Village and paid out for TIF eligible expenses that have been or will be incurred by the developer rather than being deposited with the developer upon execution of the Redevelopment Agreement.

Also attached is a letter from Mr. Curto indicating that RSC & Associates is willing to act as Construction Manager for the Village should the Village Board decide to proceed with partial demolition prior to sale of the property. Additionally, an updated pro forma as requested by Trustee Seby is included.

Mr. Curto is in agreement with the revisions reflected in the attachment.

DuPage Theatre Redevelopment Agreement

Issue	Language from 9/25/06 Draft Reviewed by the Village Board on 10/5/06	Proposed Revised Language to Address Concerns Raised by the Village Board
<p>Project Start Date (Section III.A.)</p>	<p>Developer shall submit all plans, specifications, and other information necessary for action upon and issuance of, by all applicable governmental agencies, the approvals, consents, permits, licenses and authorizations reasonably necessary or required for the Project, with construction of the Project to begin on or before June 1, 2008.</p>	<p>Developer shall submit all plans, specifications, and other information necessary for action upon and issuance of, by all applicable governmental agencies, the approvals, consents, permits, licenses and authorizations reasonably necessary or required for the Project, with construction of the Project to begin on or before December 31, 2007. Notwithstanding the foregoing, if (i) the Developer's lender(s) imposes specific pre-sale requirements (hereinafter referred to as the "Pre-Sale Requirements") as a condition to Developer being able to access all of the financing for the Project to be provided by said lender(s), with the Developer providing the Village with written notice of said Pre-Sale Requirements within fifteen (15) days of the Developer being advised of same by said lender(s), and (ii) the Developer advises the Village in writing at least thirty (30) days prior to December 31, 2007 that the Developer has not met the said Pre-Sale Requirements, (with said written notice to set forth the specific number of pre-sales achieved as of the date of said written notice), then the December 31, 2007 date referenced above shall be extended to the thirtieth (30th) day following the Developer having achieved the Pre-Sale Requirements or June 1, 2008, whichever occurs first. If there is an extension of the December 31, 2007 date, the Developer shall thereafter provide the Village with written reports in regard to the status of the Developer's satisfaction of the Pre-Sale Requirement upon the Village's written request, but not more frequently than semi-monthly.</p>
<p>Demolition (Section III.C.)</p>	<p>The Developer shall obtain no less than three (3) proposals for the partial demolition of the building currently located on the Redevelopment Parcel, with said partial demolition to be consistent with the Approved Development Plans attached hereto as EXHIBIT 3 so as to preserve the historic elements of said building, which are intended to be incorporated into the Project (hereinafter referred to as the "Partial Demolition"), and with said proposals for the Partial Demolition being subject to the review of, and approval by, the Village, prior to the Developer awarding the contract for the Partial Demolition (said</p>	<p>The Village shall either provide for the partial demolition of the building currently located on the Redevelopment Parcel, prior to conveying title to the Redevelopment Parcel to the Developer, with said partial demolition to be consistent with the Approved Development Plans attached hereto as EXHIBIT 3 so as to preserve the historic elements of said building, which are intended to be incorporated into the Project, (hereinafter referred to as the "Partial Demolition"), or, at the Village's option, reimburse the Developer for the Developer's actual costs in proceeding with said Partial Demolition after the conveyance of title to the</p>

Issue	Language from 9/25/06 Draft Reviewed by the Village Board on 10/5/06	Proposed Revised Language to Address Concerns Raised by the Village Board
	<p>approval by the Village not to be unreasonably conditioned, withheld or delayed). Upon approval of the Partial Demolition proposal by the Village, the Developer shall proceed with said Partial Demolition, with said Partial Demolition to be completed within ninety (90) days of the Developer obtaining title to the Redevelopment Parcel. The Village shall reimburse the Developer for the Developer's actual costs in proceeding with said Partial Demolition, with said reimbursement amount not to exceed three hundred thousand and no/100 dollars (\$300,000.00).</p>	<p>Redevelopment Parcel. In regard to any Partial Demolition by the Village, the Developer shall provide the Village with input relative to the development of the request for proposals and the method of demolition, so as to preserve those portions of the aforementioned building which are intended to be incorporated into the Project. In regard to any Partial Demolition by the Developer, the Developer shall obtain no less than three (3) proposals for the Partial Demolition of the building currently located on the Redevelopment Parcel, with said proposals for the Partial Demolition being subject to the review of, and approval by, the Village, prior to the Developer awarding the contract for the Partial Demolition (said approval by the Village not to be unreasonably conditioned, withheld or delayed). Upon approval of the Partial Demolition proposal by the Village, the Developer shall proceed with said Partial Demolition, with said Partial Demolition to be completed within ninety (90) days of the Developer obtaining title to the Redevelopment Parcel. The Village shall reimburse the Developer for the Developer's actual costs in proceeding with said Partial Demolition, with said reimbursement amount not to exceed three hundred thousand and no/100 dollars (\$300,000.00).</p>
<p>Phasing of Project (Section III.F.)</p>	<p>The Developer may complete the Project in phases; however, the Developer shall complete the theatre portion of the Project first, or at the same time as the other portions of the Project, with no certificates of occupancy for any residential portion of the Project (other than the six (6) residential loft units located in the same building as the theatre) being issued until the completion of the theatre portion of the Project (completion, for purposes of this subsection F., being defined as the issuance of a certificate of occupancy by the Village for the theatre, the theatre being in a "ready for use" condition as described in EXHIBIT 11 attached hereto and made part hereof, and the conveyance of title to the theatre pursuant to subsection G. below).</p>	<p>The Developer shall complete the theatre portion of the Project first, or at the same time as the other portions of the Project, with no certificates of occupancy for any residential portion of the Project (other than the six (6) residential loft units located in the same building as the theatre) being issued until the completion of the theatre portion of the Project (completion, for purposes of this subsection F., being defined as the issuance of a certificate of occupancy by the Village for the theatre, the theatre being in a "ready for use" condition as described in EXHIBIT 11 attached hereto and made part hereof, and the Developer being in a position to immediately convey title to the theatre, pursuant to subsection G. below, upon the Village's designation of the entity that will take title to the theatre).</p>
<p>Date by Which Entity to Receive Title to the Theatre</p>	<p>Upon issuance of the certificate of occupancy relative to the theatre portion of the Project and completion of the theatre in accordance with EXHIBIT 11, (hereinafter referred to as the "Conveyance Conditions"), the Developer shall convey title to the theatre portion of the Project,</p>	<p>Upon issuance of the certificate of occupancy relative to the theatre portion of the Project and completion of the theatre in accordance with EXHIBIT 11, (hereinafter referred to as the "Conveyance Conditions"), the Developer shall convey title to the theatre portion of the Project,</p>

Issue	Language from 9/25/06 Draft Reviewed by the Village Board on 10/5/06	Proposed Revised Language to Address Concerns Raised by the Village Board
Must be Identified (Section III.G.)	for ten and no/100 dollars (\$10.00), to such entity as directed by the Village, with said conveyance to be pursuant to the contract attached hereto as EXHIBIT 12 and made part hereof (hereinafter referred to as "Contract II"). The Village shall consult with, and receive input from, the Developer in regard to the selection of the entity that will own title to the theatre portion of the Project; however, the final selection of the entity to receive title to the theatre portion of the Project shall be within the Village's sole and absolute discretion. In the event the Village does not designate an entity for receipt of title to the theatre portion of the Project within forty-five (45) days of the date on which the Conveyance Conditions have been satisfied, the Developer shall have the right to convey title to the theatre portion of the Project to the Village.	for ten and no/100 dollars (\$10.00), to such entity as directed by the Village, with said conveyance to be pursuant to the contract attached hereto as EXHIBIT 12 and made part hereof (hereinafter referred to as "Contract II"). The Village shall consult with, and receive input from, the Developer in regard to the selection of the entity that will own title to the theatre portion of the Project; however, the final selection of the entity to receive title to the theatre portion of the Project shall be within the Village's sole and absolute discretion. In the event the Village does not designate an entity for receipt of title to the theatre portion of the Project within ninety (90) days of the date on which the Conveyance Conditions have been satisfied, the Developer shall have the right to convey title to the theatre portion of the Project to the Village.
Access to the \$900,000 in TIF Incremental Revenues (Section II.G.1.)	Nine hundred thousand and no/100 dollars (\$900,000.00), less any amounts (not to exceed, in the aggregate, twenty thousand and no/100 dollars (\$20,000.00)) paid by the Village to Developer (or its affiliates) relative to the preparation of plans for, and the supervision of, the partial demolition of the building located on the Redevelopment Parcel, upon execution of this Agreement.	<p>Nine hundred thousand and no/100 dollars (\$900,000.00) (hereinafter referred to as the "TIF Advance"), to be paid in accordance with and subject to the following:</p> <p>(a) The Village shall be entitled to reduce the TIF Advance by an amount equal to the amount the Village has paid to the Developer (or its affiliates) relative to the preparation of plans for, and the supervision of, the Partial Demolition (as defined in Section III.C. below) of the building located on the Redevelopment Parcel, (hereinafter referred to as the "Village Demolition Credit"); however, said Village Demolition Credit shall not exceed twenty thousand and no/100 dollars (\$20,000.00).</p> <p>(b) Upon the execution of this Agreement, the Village shall reimburse the Developer for one hundred percent (100%) of the Pre-Construction Project Redevelopment Expenses (as defined in subsection (e) below) documented by the Developer to have been incurred by the Developer prior to such date, but in no event shall said reimbursement be less than one hundred twenty-five thousand and no/100 dollars (\$125,000.00).</p> <p>(c) Upon the execution of this Agreement, and payment of the amounts referenced in subsections (a) and (b) above from the TIF Advance, there shall be set aside by the Village, from TIF incremental revenues generated by the Downtown TIF District, as a fund from which to</p>

Issue	Language from 9/25/06 Draft Reviewed by the Village Board on 10/5/06	Proposed Revised Language to Address Concerns Raised by the Village Board
		<p>pay the balance of the TIF Advance, the sum of (i) nine hundred thousand and no/100 dollars (\$900,000.00) less (ii) the Village Demolition Credit and less (iii) such portion of the TIF Advance as is immediately paid to the Developer under subsection (b) above (with such set aside funds being hereinafter referred to as the "Escrowed TIF Advance Funds"). It is agreed and understood that the Escrowed TIF Advance Funds are intended to be held and disbursed in order to satisfy the Village's obligation to pay the balance of the TIF Advance to the Developer.</p> <p>(d) Following the execution of this Agreement, the Village shall pay to the Developer, from the Escrowed TIF Advance Funds, within ten (10) days of receipt of Developer's invoice therefor, any additional Pre-Construction Project Redevelopment Expenses (as defined in subsection (e) below) documented by the Developer to have been incurred by the Developer (which documentation shall accompany each such invoice). Requests for reimbursement of Pre-Construction Project Redevelopment Expenses paid by the Developer shall be forwarded to the Village's Finance Director, accompanied by a copy of the paid receipt therefor. Requests for prepayment of Pre-Construction Project Redevelopment Expenses that are to be incurred by the Developer shall be forwarded to the Village's Finance Director, accompanied by the invoice relative thereto. Unless that Village has good cause to believe that the Developer's invoice seeks reimbursement or payment for non- Pre-Construction Project Redevelopment Expenses, the Village shall pay such invoice within ten (10) days of the date of its receipt of same. If the Village elects to withhold or deny such payment based on alleged "good cause," the Village shall promptly (and in any event not later than the date payment would otherwise have been due) advise the Developer in writing as to the specific basis for the Village's position.</p> <p>(e) As used in this Section II.G.1., the term "Pre-Construction Project Redevelopment Expenses" shall mean any expenses incurred by the Developer that are (i) set forth on EXHIBIT 7 and (ii) incurred by the Developer prior to the satisfaction of the Subordination Conditions (as described in Section II.D. above).</p>

Issue	Language from 9/25/06 Draft Reviewed by the Village Board on 10/5/06	Proposed Revised Language to Address Concerns Raised by the Village Board
		<p>(f) Any portion of the Escrowed TIF Advance Funds not previously disbursed to the Developer as of the date of satisfaction of the Subordination Conditions (as described in Section II.D. above) shall be paid to the Developer on such date, and used by the Developer to pay TIF Eligible Expenses as set forth on EXHIBIT 7.</p> <p>(g) The sums to be paid by the Village to the Developer under this Section II.G.1. shall not exceed, in the aggregate, nine hundred thousand and no/100 dollars (\$900,000.00.00) less the Village Demolition Credit.</p>



Richard S. Curto
Chief Executive Officer

rcurto@rscrealestate.com
www.rscrealestate.com

October 11, 2006

Mr. William Lichter
Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3969

Re: DuPage Theater Partial Demolition

Dear Mr. Litcher:

Based upon the Village of Lombard's Trustees potential desire to partially demolish the DuPage Theater earlier than next year, RSC & Associates will act as Construction Manager ("CM") for the Village of Lombard related to the partial demolition of the Dupage Theater. The Village and CM will enter into an appropriate agreement to formalize this arrangement. Demolition will begin as soon as the Village desires and is practical.

Sincerely,

Richard S. Curto
Chief Executive Officer

Lombard Development Proforma

	Total	Cost/SF	Residential	Cost/SF	Retail	Cost/SF	Theater	Cost/SF
Project Costs								
Land Acquisition	\$ -		\$ -		\$ -		\$ -	
Hard Costs:								
Condominium Balconies	\$ 25,275,414	\$ 112.40	\$ 25,275,414	\$ 156.07	\$ -		\$ -	
Condominium Terraces	\$ -		\$ -		\$ -		\$ -	
Condominium Soft Loft	\$ -		\$ -		\$ -		\$ -	
Base Condominium Parking	\$ -		\$ -		\$ -		\$ -	
Sale Condominium Parking	\$ -		\$ -		\$ -		\$ -	
Theater Parking	\$ 800,000	\$ 3.56	\$ -		\$ -		\$ 800,000	\$ 42.73
Retail with TI-New	\$ 713,195	\$ 3.17	\$ -		\$ 713,195	\$ 35.00	\$ -	
Retail TI-Theater	\$ 255,675	\$ 1.14	\$ -		\$ -		\$ 255,675	\$ 13.66
Theater Façade/Marquee	\$ 3,500,000	\$ 15.56	\$ -		\$ -		\$ 3,500,000	\$ 186.96
Demolition	\$ -		\$ -		\$ -		\$ -	
Storm Water Retention	\$ 230,000	\$ 1.02	\$ 200,172	\$ 1.24	\$ 21,957	\$ 1.08	\$ 7,871	\$ 0.42
Contingency	\$ 1,240,894	\$ 5.52	\$ 967,606	\$ 5.97	\$ 112,447	\$ 5.52	\$ 100,000	\$ 5.34
G.Cs, Fee and Insurance	\$ 1,100,000	\$ 4.89	\$ 900,000	\$ 5.56	\$ 60,994	\$ 2.95	\$ 139,906	\$ 7.47
Total GC Hard Costs	\$ 33,115,178	\$ 147.27	\$ 27,343,192	\$ 168.84	\$ 907,693	\$ 44.54	\$ 4,803,452	\$ 256.58
Soft Costs:								
Architect / Engineer	\$ 1,998,911	\$ 8.89	\$ 1,327,740	\$ 8.20	\$ 190,825	\$ 9.36	\$ 480,345	\$ 25.66
Interest	\$ 1,500,000	\$ 6.67	\$ 1,195,000	\$ 7.38	\$ 60,000	\$ 2.94	\$ 245,000	\$ 13.09
Consultants	\$ 100,000	\$ 0.44	\$ 87,031	\$ 0.54	\$ 9,546	\$ 0.47	\$ 3,422	\$ 0.18
Developer Overhead	\$ 1,500,000	\$ 6.67	\$ 1,195,000	\$ 7.38	\$ 60,000	\$ 2.94	\$ 245,000	\$ 13.09
Loan Points	\$ 200,000	\$ 0.89	\$ 174,062	\$ 1.07	\$ 19,093	\$ 0.94	\$ 6,845	\$ 0.37
Permits	\$ 400,000	\$ 1.78	\$ 375,451	\$ 2.32	\$ 40,785	\$ 2.00	\$ 12,612	\$ 0.67
Real Estate Taxes	\$ 50,000	\$ 0.22	\$ 41,306	\$ 0.26	\$ 4,531	\$ 0.22	\$ 1,576	\$ 0.08
Legal / appraisal / survey	\$ 100,000	\$ 0.44	\$ 66,035	\$ 0.41	\$ 9,062	\$ 0.44	\$ 20,000	\$ 1.07
Commission - Retail	\$ 183,393	\$ 0.82	\$ -		\$ 136,054	\$ 6.68	\$ 47,339	\$ 2.53
Marketing	\$ 200,000	\$ 0.89	\$ 165,226	\$ 1.02	\$ 18,124	\$ 0.89	\$ 6,307	\$ 0.34
Contingency	\$ 212,954	\$ 0.95	\$ 175,927	\$ 1.09	\$ 19,297	\$ 0.95	\$ 6,714	\$ 0.36
Total Soft Cost:	\$ 6,445,258	\$ 28.66	\$ 4,802,779	\$ 29.66	\$ 567,318	\$ 27.84	\$ 1,075,161	\$ 57.43
TOTAL THEATER COSTS	\$ 39,560,435	\$ 175.93	\$ 32,145,971	\$ 198.49	\$ 1,475,010	\$ 72.39	\$ 5,878,613	\$ 314.01

Lombard Development Proforma

13-Oct-06

Project Summary		Residential:
	Lofts	6
	Condos	111
	TOTAL UNITS	117
	Parking:	
	Residential w/Unit:	117
	Residential For Sale:	59
	Retail:	32
	TOTAL PARKING SPACES	208
	Project Square Footage:	
	Condo Gross Square Feet	154,334
	Terraces	12600
	Balconies	11218
	Soft Loft:	7,617
	New Retail Square Feet w/ Dock:	20,377
	Theater:	7,090 Theater Retail
		404 Circ.
		147 Circ.
		154 Circ.
		2,427 Circ.
		2,665 Theater Lobby
		186 Theater Lobby
		640 Dressing Room
		1,337 Stage
		2,729 298 Seat Theater
		942 2nd Fl - Tech Booth/Circ.
	TOTAL THEATER SF	18,721
	TOTAL SQUARE FEET	224,867