

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott R. Niehaus, Village Manager

DATE: August 24, 2016 (B of T) Date: September 1, 2016

TITLE: Yorktown Commons Utility Service and Economic Development Agreement

SUBMITTED BY: Department of Community Development *NS*

BACKGROUND/POLICY IMPLICATIONS:

Your Economic and Community Development Committee submits for your consideration its recommendation on the above referenced petition. The ECDC recommends approval for a Utility/Incentive Agreement for the Yorktown Commons Planned Development to address proposed infrastructure enhancements.

The Economic and Community Development Committee (ECDC) reviewed the request at its March 21, 2016 meeting and unanimously supported the concept, subject to development of a formal agreement for Village Board consideration.

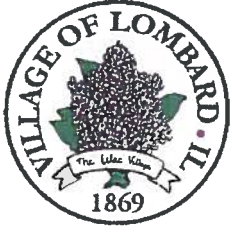
Fiscal Impact/Funding Source:

Review (as necessary):
Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

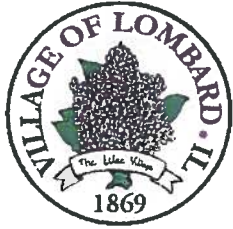
TO: Scott R. Niehaus, Village Manager

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

DATE: September 1, 2016


RE: **Yorktown Commons Utility Service and Economic Development Agreement**

Attached is a current draft (as of August 23, 2016) of the Yorktown Commons Utility Service and Economic Development Agreement that is being advanced for Village Board consideration at the September 1, 2016 meeting. This agreement is still subject to a few changes which are anticipated to be transmitted to the Village Board next week as part of the late agenda packet, along with the companion final exhibits. However, in the interim, we are offering the current draft version, along with a summation memorandum, so that the elected officials and the public are aware of the matter that is pending before the Village Board.



MEMORANDUM

TO: Scott R. Niehaus, Village Manager

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

DATE: September 1, 2016

RE: **Yorktown Commons Utility Service and Economic Development Agreement**

Village staff has been working with Yorktown representatives on implementing the previously approved Yorktown Commons mixed-use residential/commercial redevelopment project. Yorktown and their investment partners are moving forward with their plans, with an eye on securing GrayStar PG II LLC as their preferred developer and completing construction due diligence activities in 2016. As part of the companion engineering review effort, the Village determined that operating levels at the existing Yorktown sanitary sewer lift station are at or beyond capacity.

Staff and the Yorktown team have been exploring options to address the lift station capacity issues and the Village contracted with Baxter & Woodman to assist in the review. The culmination of this effort is that it would be in the Village's best interest that an additional lift station and force main be constructed for the Yorktown Commons development. This additional facility could provide for requisite sanitary sewer accommodations for the development and possibly creating capacity for other future development activity.

INCENTIVE REQUEST

Yorktown (as YTC Land Owner LLC) is requesting an in-kind incentive to address the existing sanitary sewer utility infrastructure deficiency. The project may consist of up to 970 multiple-family dwelling units within the four phases along with ancillary commercial space. This number is variable as the project could be developed with other residential use types in lieu of multiple family dwelling units. However, based upon GrayStar's preliminary plans submitted for Parcels 1 and 2 and projections for Parcel 4, the project developers would be obligated to pay a range of approximately \$1,209,225 to \$1,821,352 in fees to the Village's water and sewer fund for capital infrastructure.

Based upon initial data provided for by Yorktown's engineering consultant, the cost of a new lift station and companion force main is currently estimated to be approximately \$1,644,128. The concept being advanced is that in lieu of collecting the requisite water/sewer fees associated with the building permits associated with Parcels 1, 2 and 4 of the Yorktown Commons development, they would be directly providing the in-kind improvement by constructing the new lift station directly. No other funding sources (i.e., sales tax rebates, property tax rebates, and the like) are contemplated as part of this phase of the project. As this approach differs from traditional

funding mechanisms (i.e., the developer pays the requisite fees and the Village allocates the funds to its Capital Improvement Fund for future construction use), it should be memorialized within the framework of an agreement.

All costs associated with the building permit fees that would go to cover the costs of plan review and inspections would still be collected by the Village and would be allocated to the general fund. Additionally, all requisite funds that are allocated to the Glenbard Wastewater Authority (GWA) for their operations will still be paid.

Key benefits to the project and incentive are as follows:

1. The incentive addresses an existing deficiency to the Village's sanitary sewer lift station capacities in the Yorktown area.
2. Through the agreement, the developer can advance their mixed use development concept which is intended to strengthen the long-term viability of the center.
3. The companion development will significantly improve property taxes for the area.
4. The anticipated residents will create an additional market demand for the existing businesses.

The draft agreement also includes the following additional provisions:

1. Timelines for commencing and completing the lift station.
2. Reservations of "Population Equivalent" to ensure that sufficient lift station capacity will remain in order for the Yorktown Commons project to be completed.
3. The ability for the recapture agreement to be applied toward any additional properties that may connect to the proposed lift station in the future, assuming available capacity that is not already allocated to the Yorktown Commons Phases 1, 2 and 4.

ECDC REVIEW

The Economic and Community Development Committee (ECDC) reviewed the request at its March 21, 2016 meeting and unanimously supported the concept, subject to development of a formal agreement to be considered by the Village Board. The ECDC support was based upon the provisions set forth within the Village-wide Economic Incentive Policy in November, 2015 and which identifies the policies that should be met in order to receive any financial consideration.

Staff engaged the services of Kane McKenna Associates to review Yorktown's incentive need and in response they represented that given the data provided, their pro-forma demonstrates that a gap exists in their figures and that an incentive can be supported.

RECOMMENDATION:

The ECDC and staff recommend approval of the attached Yorktown Commons Utility Service and Economic Development Agreement to address proposed infrastructure enhancements. Please place this item on the September 1, 2016 Village Board agenda for consideration and approval of the attached agreement.

**YORKTOWN COMMONS
UTILITY SERVICE AND ECONOMIC DEVELOPMENT AGREEMENT**

This Yorktown Commons Utility Service and Economic Development Agreement (the "Agreement") is entered into on this ____ day of _____, 2016 (the "Effective Date") by and between the Village of Lombard, Illinois, an Illinois municipal corporation (the "Village"), and YTC Land Owner, LLC, a Delaware limited liability company (the "Developer"). (The Village and the Developer are sometimes referred to herein collectively as the "Parties" and individually as a "Party.")

RECITALS

- A. The Village deems it to be of significant importance to encourage development and redevelopment within the Village.
- B. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.
- C. Pursuant to Article VII, Section 10 of the 1970 Illinois Constitution, the Village has the authority to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or ordinance.
- D. The Village is authorized under Section 8-1-2.5 of the Illinois Municipal Code (65 ILCS 5/8-1-2.5) to appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any commercial enterprise, that are

deemed necessary or desirable for the promotion of economic development within the Village.

E. Yorktown Shopping Center is a commercial center within the Village, generally bounded by 22nd Street on the North, Highland Avenue on the West, Butterfield Road on the South and the Northern Baptist Seminary property on the East, as more accurately depicted on EXHIBIT A, attached hereto and made part hereof (“Yorktown Center”).

F. The Developer has received approval to develop the Subject Property (as defined in Recital I. below), along with other property, with a four (4) phase development, pursuant to Village Ordinance No. 7177, adopted January 21, 2016, entitled “Ordinance No. 7177 Granting Conditional Use Approval for a Planned Development with Companion Deviations, Use Exceptions, and Variations,” as amended by Ordinance No. 7215, adopted May 19, 2016, entitled “Granting an Amendment to Ordinance 7177 Granting a Conditional Use for the Yorktown Commons Planned Development” (collectively, the “Ordinance”), as depicted on EXHIBIT B attached hereto and made part hereof, with said four (4) phases generally consisting of the following types of uses:

- Phase 1 – either single-family residences, townhomes, rowhomes, or multi-family apartments or condominium units, with the possibility of ancillary and supporting retail commercial uses ;
- Phase 2 – either single-family residences, townhomes, rowhomes, or multi-family apartments or condominium units, with the possibility of ancillary and supporting retail commercial uses ;
- Phase 3 – a one-story commercial building; and
- Phase 4 – either single-family residences, townhomes, rowhomes, or multi-family apartments or condominium units, with the possibility of ancillary and supporting retail commercial uses;

(each a “Phase”, and Phase 1, Phase 2 and Phase 4 being collectively the “Project”).

G. The Developer is the owner of that portion of Yorktown Center underlying Phase 1 of the Project, as legally described and depicted on EXHIBIT C and EXHIBIT D, respectively, attached hereto and made part hereof (the “Phase 1 Property”).

- H. The Developer currently owns that portion of Yorktown Center underlying Phase 2 of the Project, along with YTC Mall Owner LLC, a Delaware limited liability company (“YTC Mall Owner”), as legally described and depicted on EXHIBIT E and EXHIBIT F, respectively, attached hereto and made part hereof (the “Phase 2 Property”), and Developer will eventually be the sole owner of the Phase 2 Property.
- I. YTC Mall Owner is the owner of that portion of Yorktown Center underlying Phase 4 of the Project, as legally described and depicted on EXHIBIT G and EXHIBIT H, respectively, attached hereto and made part hereof (the “Phase 4 Property” – the Phase 1 Property, the Phase 2 Property and the Phase 4 Property are collectively referred to as the “Subject Property”), but Developer will eventually be the sole owner of the Phase 4 Property.
- J. As of the date hereof, neither the YTC Mall Owner, nor the Developer, has any ownership interest in, that portion of Yorktown Center underlying Phase 3, as legally described and depicted on EXHIBIT I and EXHIBIT J, respectively, attached hereto and made part hereof (the “Phase 3 Property”).
- K. As of the date hereof, Greystar GP II, LLC, a Delaware limited liability company, or its nominee (“Greystar”) is the contract purchaser relative to the Phase 1 Property and the Phase 2 Property;
- L. Yorktown Center, and some areas surrounding Yorktown Center, are currently served by a Village owned, operated and maintained sanitary sewer lift station and force main, located in the Northeastern portion of Yorktown Center, immediately North of the parking structure for the Westin hotel (the “Existing Lift Station”), which, based on a study done by Baxter & Woodman, on behalf of the Village, is near to, or at, its maximum capacity relative to the provision of sanitary sewer services.
- M. In order to provide for the future development of Yorktown Center, including the Project, and some surrounding areas, thereby expanding economic development within the

Village, it is necessary to either upgrade and enlarge the Existing Lift Station, or construct a new, additional sanitary sewer lift station and force main, to serve portions of Yorktown Center, including the Project, and some surrounding areas.

- N. The Village does not currently have the funds available to upgrade and enlarge the Existing Lift Station, or to construct a new sanitary sewer lift station and force main, as referenced in Recital L. above, nor has the Village provided for upgrading and enlarging the Existing Lift Station, or constructing any such new sanitary sewer lift station and force main, within its ten (10) year capital improvement program, in a manner so as to facilitate the timely development of the Project.
- O. The Village operates a combined water and sanitary sewer system, pursuant to 65 ILCS 5/11-139-1 *et seq.* (the "Utility System").
- P. As part of the Utility System, the Village owns and operates a municipal water distribution system, and provides potable water service to properties within and outside of the Village's corporate limits, and the Village has established water rates, equipment charges, and connection fees in the Lombard Village Code and the Village's ordinances.
- Q. As part of the Utility System, the Village provides sanitary sewerage collection and treatment service to properties within and outside of the Village's corporate limits, through the Village owned and operated sanitary sewerage system and the Glenbard Wastewater Authority, an intergovernmental entity formed by the Village and the Village of Glen Ellyn to treat sanitary sewerage for the Village and the Village of Glen Ellyn, and the Village has established sanitary sewerage service rates, equipment charges, and connection fees in the Lombard Village Code and the Village's ordinances.
- R. Pursuant to Chapter 154 of the Lombard Village Code, the Village has adopted public improvements construction and engineering standards, including, but not limited to, construction completion and maintenance guaranties, relative to the construction, by a

developer of private property, of public improvements that are to be owned, operated and maintained by the Village (the "Village Public Improvements Standards").

S. As a condition of Project approvals, the Village has required that the Developer, at Developer's sole cost and expense, to design and construct a new sanitary sewer lift station and force main, to serve the Project, with said new sanitary sewer lift station to be located at the Northeast corner of Phase 4 of the Project, adjacent to Grace Street, and with said force main running to the West and then to the North, so as to connect to an existing sanitary sewer in 22nd Street, all as more specifically depicted on EXHIBIT K attached hereto and made part hereof (the "New Lift Station and Force Main").

T. The Developer has indicated to the Village that the Developer will, at Developer's sole cost and expense, design and construct the New Lift Station and Force Main, subject to:

(1) The Village agreeing to waive the water and sanitary sewer connection fees, solely as set forth in Section 50.100 of the Lombard Village Code, with no waiver of any other fees, including, but not limited to:

- (a) the Glenbard Wastewater Authority connection fee;
- (b) any engineering review and inspection fees;
- (c) building permit fees; or
- (d) any stormwater management related fees;

relative to the development of each Phase of the Project;

(2) The Village reserving capacity in the New Lift Station and Force Main for the development of the Project to the full extent allowed by the Ordinance;

(3) The Village entering into a recapture agreement with the Developer, relative to the recapture of a portion of the cost of the construction of the New Lift Station and Force Main from those properties that will be able to develop as a result of the Developer's construction of the New Lift Station and Force Main, and which connect to the New Lift Station and Force Main; and

- (4) The reservation of capacity within the Existing Lift Station for:
 - a. Two (2) future restaurant pads located along the east side of Highland Avenue, as legally described and depicted on EXHIBIT L and EXHIBIT M, respectively, attached hereto and made part hereof (the “Highland Parcel”); and
 - b. Development of the Phase 3 Property.

U. The Village is willing to approve said waiver of water and sanitary sewer connection fees, the reservation of capacity in the Existing Lift Station and the New Lift Station and Force Main, and the approval of the recapture agreement, as referenced in Recital S. above, in exchange for the Developer designing and constructing the New Lift Station and Force Main subject to the conditions set forth in Article 2 of this Agreement, and, in particular, provided:

- (1) That Developer has escrowed sufficient deposit funds as contemplated in Section 2.01 below, in connection with the Construction Escrow (as defined in Section 2.01 below), to complete the construction of the New Lift Station and Force Main in accordance with the Final Engineering Plans (as defined in Section 2.02 below);
- (2) The New Lift Station and Force Main is constructed in accordance with the Final Engineering Plans (as defined in Section 2.02 below);
- (3) The New Lift Station and Force Main is constructed at no expense to the Village, except as expressly set forth herein;
- (4) The New Lift Station and Force Main is constructed within dedicated right-of-ways and/or either existing or newly granted easements in favor of the Village, so that, upon completion of the construction thereof, acceptance by the Village, and conveyance of the title thereto to the Village, the Village will be able to own, operate and maintain said New Lift Station and Force Main;

- (5) Upon completion of the New Lift Station and Force Main, and acceptance thereof by the Village, title thereto is conveyed to the Village, by the Developer, pursuant to a properly executed bill of sale;
 - (6) Said waiver of water and sanitary sewer connection fees shall only apply to the base connection fees, as provided for in Section 50.100 of the Lombard Village Code, and shall not apply to any other fees, including, but not limited to, any engineering review and inspection fees, building permit fees, Glenbard Wastewater Authority fees or stormwater management related fees; and
 - (7) The Developer disconnects the properties, as legally described and depicted on EXHIBIT N and EXHIBIT O, respectively, attached hereto and made part hereof, from the Existing Lift Station, and connects them to the New Lift Station and Force Main, at Developer's sole cost and expense (the "Disconnections/Reconnections").
- V. The Developer and the Village agree that the New Lift Station and Force Main will contain capacity in excess of that required to serve the Project and that, at some time in the future, the New Lift Station and Force Main may be utilized to serve other portions of Yorktown Center or some other areas surrounding Yorktown Center.
- W. The Village is authorized under the Illinois Municipal Code (65 ILCS 5/8-1-2.5) to contract with the Developer to reimburse the Developer for a portion of the cost of the New Lift Station and Force Main where said New Lift Station and Force Main will allow for the development of the Project, as well as allow for the development of properties other than the Subject Property.
- X. The projected cost of the New Lift Station and Force Main is estimated to be One Million Six Hundred Forty-Four Thousand One Hundred Twenty-Eight and No/100 Dollars (\$1,644,128.00), as more fully set forth on EXHIBIT P attached hereto and made part hereof.

- Y. The projected cost of the Disconnections/Reconnections is estimated to be Ten Thousand and No/100 Dollars (\$10,000.00). The cost of the Disconnections/Reconnections is a subset of the total projected cost of the New Lift Station and Force Main as more fully set forth on EXHIBIT P.
- Z. Developer and the Village acknowledge that Developer requires the economic assistance of the water and sanitary sewer connection fee waiver, the recapture agreement and the reservation of capacity in the Existing Lift Station and the New Lift Station and Force Main, from the Village, in order to complete the New Lift Station and Force Main and that Developer would not construct the New Lift Station and Force Main but for the economic assistance of the water and sanitary sewer connection fee waiver, the recapture agreement and the reservation of capacity in the Existing Lift Station and the New Lift Station and Force Main, as promised by the Village in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the Village and Developer hereby agree as follows:

ARTICLE I
RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate, and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II
DEVELOPER OBLIGATIONS AND UNDERTAKINGS

- 2.01 Condition Precedent. As a condition precedent to the Village's obligations set forth in this Agreement, Developer shall establish a construction escrow with Chicago Title Insurance Company and deposit funds in an amount equal to one hundred and twenty-

five percent (125%) of the Developer's engineer's estimate of the cost of the construction of the New Lift Station and Force consistent with the Final Engineering Plans (as defined in Section 2.02 below), and substantially consistent with the terms of the agreement attached hereto as EXHIBIT Q – and made a part hereof (the "Construction Escrow"). The Construction Escrow shall provide that Developer will complete construction of the New Lift Station and Force Main consistent with the Final Engineering Plans (as defined in Section 2.02 below) using the funds in the Construction Escrow, provided that in the event of a default under the Construction Escrow or this Agreement, the Village shall have the right to complete, or cause a third party to complete, the construction of the New Lift Station and Force Main consistent with the Final Engineering Plans (as defined in Section 2.02 below), and the cost thereof shall be paid utilizing Developer's funds remaining in the Construction Escrow.

2.02 Construction of the New Lift Station and Force Main and Disconnections/Reconnections.

(A) Developer's engineer shall prepare final engineering design and construction specifications for the New Lift Station and Force Main and the Disconnections/Reconnections (the "Final Engineering Plans") for review and approval by the Village. (The New Lift Station and Force Main and the Disconnections/Reconnections are collectively referred to as the "Utility Improvements.") Upon first submittal of the Final Engineering Plans the Village shall review and provide detailed written comments within forty-five (45) days from the date of submittal, and for each submittal thereafter, the Village shall review and provide detailed written comments within one (1) week from the date of submittal. The Village shall approve Final Engineering Plans that comply with the Village Public Improvements Standards. The Village's approval of the Final Engineering Plans shall be conclusive evidence that the Village and the Developer believe that the Final Engineering Plans comply with all applicable

federal, State and local laws, ordinances, rules and regulations, including, but not limited to, the Village Public Improvements Standards.

- (B) Developer shall commence construction of the Utility Improvements within one hundred twenty (120) days from the date that the Phase 1 Property, the Phase 2 Property or the Phase 4 Property is conveyed to a third-party developer, whichever occurs first, subject to the *force majeure* provisions of Section 5.01 hereof; however, construction shall not commence until the Developer has acquired the necessary permits for the construction of the Utility Improvements, including, but not limited to, all necessary Village and Illinois Environmental Protection Agency permits. In this regard, the Developer shall provide the Village with written notice of the date that the Phase 1 Property, the Phase 2 Property or the Phase 4 Property is conveyed to a third-party developer, whichever occurs first, within ten (10) days of said conveyance occurring.
- (C) Developer shall complete the Utility Improvements, and the Village shall accept the New Lift Station and Force Main and title thereto, provided the New Lift Station and Force Main and the Disconnections/Reconnections have been constructed in accordance with the Final Engineering Plans, which acceptance and approval shall not be unreasonably withheld or delayed, not later than eighteen (18) months following the commencement of construction, subject to the *force majeure* provisions of Section 5.01 hereof. The date on which the Village formally accepts title to the New Lift Station and Force Main shall be the "Completion Date."
- (D) The Utility Improvements shall be built in accordance with the terms of this Agreement and all applicable federal, State and local laws, ordinances, rules and regulations, including, but not limited to, the Village Public Improvements Standards, and in conformance with the Final Engineering Plans. Developer shall

not knowingly cause or permit the existence of any violation of any federal or State law, rule or regulation, or any Village ordinances, rules or regulations, including, but not limited to, the Village Public Improvements Standards, and all rules and regulations thereunder, applicable to the Utility Improvements. Developer's completion of construction consistent with the Final Engineering Plans, subject to any field changes or other modifications approved by the Village, shall be conclusive evidence that the Developer has complied with the provisions of this subsection.

- (E) Notwithstanding subsection (D) above, and the Village Public Improvements Standards referenced therein, this Agreement shall be deemed to fulfill any requirement for a Subdivision and Development Agreement (as defined in the Village Public Improvements Standards) and the Developer shall be allowed to provide the construction guaranty, relative to the construction of the New Lift Station and Force Main, through the Construction Escrow as provided for in Section 2.01 of this Agreement.
- (F) Developer shall pay, and shall require its contractors and subcontractors to pay, the prevailing rate of wages (as established under 820 ILCS 130/0.01 *et seq.* – the "Prevailing Wage Act") to all workers involved with the construction of the Utility Improvements, and shall comply with, and shall require its contractors and subcontractors to comply with, the Prevailing Wage Act, relative to the construction of the Utility Improvements, including, but not limited to, the providing of certified payrolls to the Village as required by the Prevailing Wage Act.
- (G) The Developer shall, prior to commencement of construction of the New Lift Station and Force Main, cause the Final Plat of Subdivision of Yorktown Commons Phase 1 to be recorded and thereby cause the necessary easements

to be granted for the benefit of the Village, such that the Village will be able to own, operate and maintain the New Lift Station and Force Main (subject only to Developer's conveyance per subsection (H) below).

(H) The Developer shall convey title to the New Lift Station and Force Main to the Village, upon completion, and acceptance thereof by the Village, pursuant to the Village Public Improvements Standards, by way of a properly executed bill of sale in form and substance consistent with the form attached hereto as – EXHIBIT R and made a part hereof (the "Bill of Sale"). In this regard, the Parties agree that Section 154.606 of the Village Public Improvements Standards is inapplicable to the conveyance of the New Lift Station and Force Main, and that no environmental assessment shall be required as a condition of the conveyance.

(I) The Developer shall, as of the Completion Date, provide the Village with the maintenance guaranty, as required by the Village Public Improvements Standards, relative to the New Lift Station and Force Main.

2.03 Certificates of Occupancy for the Phases of the Project. No certificate of occupancy shall be issued by the Village, for all or any portion of any Phase of the Project, until such time as the New Lift Station and Force Main is complete, and has been accepted by the Village as part of the Village's Utility System.

2.04 Village Cost Reimbursement. The Developer shall reimburse the Village for the third party costs, including, but not limited to, attorney's fees incurred by the Village in regard to the preparation of this Agreement.

2.05 Certification of New Lift Station and Force Main Costs. As a condition of the Recapture Agreement (as defined in Section 3.06 below), Developer shall supply the Village with a sworn statement of the costs of the New Lift Station and Force Main along with contractor lien waivers as reasonably requested by the Village. The Developer

represents and warrants that all such information produced pursuant to the preceding sentence shall be true and accurate, and agrees and acknowledges that the Village may rely on the truth and accuracy of said information. In the event that Developer becomes aware of any inaccuracy in information previously supplied by the Village pursuant this Section 2.05, the Developer acknowledges an affirmative obligation to update any applicable certifications, and shall provide any such update to the Village in a timely manner.

2.06 Construction of the Project. The construction of each Phase of the Project will be undertaken by third-party developers. Said Project construction may occur, in whole or in part, simultaneously with the construction of the Utility Improvements. Each third-party developer shall construct its Phase of the Project in accordance with the terms of this Agreement and all applicable federal, State and local laws, ordinances, rules and regulations, including, but not limited to, the Village Public Improvements Standards and the Ordinance, and in conformance with all applicable Village-approved documents relative to the Project. The third-party developers shall not knowingly cause or permit the existence of any violation of any federal or State law, rule or regulation, or any Village ordinances, rules or regulations, including, but not limited to, the Ordinance and the Village Public Improvements Standards, and all rules and regulations thereunder, applicable to the Project. The Parties agree that the third-party developers shall have no obligations under this Agreement except as set forth in this Section 2.06.

ARTICLE III **VILLAGE OBLIGATIONS AND UNDERTAKINGS**

3.01 Waiver of Connection Fees.

Subject only to the funding of the Developer's Construction Escrow obligations as set forth in Section 2.01, the Village hereby waives the water and sanitary sewer connection fees, solely as set forth in Section 50.100 of the Lombard Village Code. Said waiver of

water and sanitary sewer connection fees shall not include the waiver of any other Village fees or Glenbard Wastewater Authority fees, including, but not limited to, any building permit fees, any engineering review and inspection fees or any stormwater management related fees, relative to said water and sanitary sewer connections, or in regard to each Phase of the Project, if and when constructed. Notwithstanding the foregoing:

- (A) the Village shall not be obligated to waive the water and sanitary sewer connection fees, relative to any Phase of the Project, in the event that the Developer or any third-party developer does not construct said Phase of the Project in compliance with the Ordinance, as may be hereinafter be amended; and
- (B) the Village shall only be required to provide the water and sanitary sewer connection fee waiver relative to the initial development and construction of each of the Phases of the Project, and not in relation to any subsequent redevelopment of the Subject Property or any development of the Subject Property that is other than as provided for in the Ordinance, as may be amended.

3.02 Project Certificates of Occupancy. Provided that the New Lift Station and Force Main has been constructed and conveyed to the Village in accordance with Article 2 of this Agreement, the Village shall issue a certificate of occupancy for each Phase of the Project, or portion thereof, as said Phase, or portion thereof, becomes eligible for the issuance of a certificate of occupancy under the ordinances, rules and regulations of the Village, including, but not limited to, the Lombard Village Code. The Village shall have no obligation to issue a certificate of occupancy, for all or any portion of any Phase of the Project, until the Completion Date for the New Lift Station and Force Main.

3.03 Acceptance of the New Lift Station and Force Main. Upon completion of the New Lift Station and Force Main consistent with the Final Engineering Plans the Village shall

accept title to the New Lift Station and Force Main, and shall thereafter own, operate and maintain same, subject to the Developer providing the Village with the Bill of Sale therefor, and posting the required maintenance guaranty, in relation thereto, as required by the Village Public Improvements Standards.

3.04 Reservation of PE in the New Lift Station and Force Main. The Village shall, as of the Completion Date, reserve population equivalent (“PE”) capacity within the New Lift Station and Force Main for the development of the Subject Property to the maximum as allowed by the Ordinance, as may be amended. In the event that the Phases of the Project are developed in a manner that does not require the full amount of the PE capacity reserved for the Project, any reserved but unneeded PE capacity for the Project shall be released from the reservation requirement of the first sentence of this Section upon completion of all three (3) Phases of the Project.

3.05 Reservation of PE in the Existing Lift Station. The Village shall, as of the date of this Agreement, reserve PE capacity within the Existing Lift Station for: i) the Development of the Highland Parcel, so as to allow said Highland Parcel to be developed with two (2) restaurants; and ii) the development of the Phase 3 Property in accordance with the Ordinance;. as set forth in Exhibit S attached hereto and made part hereof. In the event that the Highland Parcel or the Phase 3 Property are developed in a manner that does not require the full amount of the PE capacity reserved for said parcels, any reserved but unneeded PE capacity shall be thereafter released from the reservation requirement as set forth in this Section 3.05.

3.06 Recapture Agreement. Within sixty (60) days after the Completion Date, the Village shall enter into a recapture agreement with the Developer, relative to a portion of the cost of the New Lift Station and Force Main (the “Recapture Agreement”). Said Recapture Agreement:

- (A) shall be substantially in the form as set forth in Appendix VI. to the Village Public Improvements Standards;
- (B) shall only apply to those properties which, in order to be developed, will need to be connected to the New Lift Station and Force Main, (the “Recapture I Properties”); and to those properties which, although remaining connected to the Existing Lift Station, are increasing the PE associated with the property, as a result of the redevelopment thereof, and are causing another property to be disconnected from the Existing Lift Station, and connected to the New Lift Station and Force Main, in order to facilitate the continued use of the Existing Lift Station by the redeveloping property (the “Recapture II Properties”), with said Recapture I Properties and Recapture II Properties being legally described and depicted on EXHIBIT T, attached hereto and made part hereof (the “Benefitted Properties”);
- (C) shall have a term of twenty (20) years from its approval by the Village; and
- (D) shall provide for a recapture amount relative to each of the Benefitted Properties based upon the following formula:

$$A \times \frac{B}{C} = D$$

- A = The total cost to construct the New Lift Station and Force Main, which shall include both hard costs and soft costs.
- B = For Recapture I Properties, the PE for the property that desires to connect to the New Lift Station and Force Main, based upon the actual proposed development for the property. For Recapture II Properties, the increase in the PE for the property being redeveloped, and remaining on the Existing Lift Station, or the PE of the property being disconnected from the Existing Lift Station and connected to the New Lift Station and Force Main, whichever PE is less.
- C = The total PE capacity of the New Lift Station and Force Main.
- D = For Recapture I Properties, the dollar amount of the recapture relative to the property that desires to connect to the New Lift Station and Force Main. For Recapture II Properties, the dollar amount of the recapture relative to the property being redeveloped, and remaining on the Existing Lift Station, but which required another property to be disconnected from the Existing

Lift Station and connected to the New Lift Station and Force Main, in order to redevelop.

For purposes of this Agreement, and this Section in particular, the Parties acknowledge that those properties that are currently connected to the existing Lift Station, but will be disconnected from the Existing Lift Station and reconnected to the New Lift Station and Force Main pursuant to the Disconnections/Reconnections, will not be subject to the recapture provided for by this Section upon their reconnection to the New Lift Station and Force Main. Because of the unique nature of the Recapture Agreement as it relates to the Recapture II Properties, the Developer hereby agrees to defend, indemnify and hold harmless the Village, and its elected officials, officers, employees and agents, (the "Village Parties"), from and against, and to pay on behalf of, or reimburse as and when incurred, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorney's fees) of whatever kind and nature, which may be imposed on or incurred by the Village Parties, related to this Agreement, and the Recapture Agreement as it relates to the Recapture II Properties (the "Recapture II Properties Indemnification"). Notwithstanding the foregoing, the Developer shall retain the right to waive any recapture from one or more of the Recapture II Properties, so as to avoid litigation threatened by, or terminate litigation that has been filed by, one or more of the Recapture II Properties, so as to limit the Developer's liability and obligations under the Recapture II Properties Indemnification. To further economic development within the Village, the Village reserves the right, to be exercised in its sole and absolute discretion, to pay to the Developer the then-remaining amount potentially due to the Developer under the Recapture Agreement, in exchange for the termination of the Recapture Agreement by the Developer (the "Recapture Buy-Out"). In regard to any

such Recapture Buy-Out, the amount due to the Developer in relation thereto shall be calculated based on the following formula:

$$V \times \frac{W}{Y} = Z$$

V = The total cost to construct the New Lift Station and Force Main, which shall include both hard costs and soft costs.

W = The then-available unused PE capacity for the New Lift Station and Force Main, exclusive of any PE still reserved under Section 3.04 above.

Y = The total PE capacity of the New Lift Station and Force Main.

Z = The dollar amount due the Developer for the Recapture Buy-Out.

Upon payment, by the Village to the Developer, of the dollar amount due to the Developer for the Recapture Buy-Out, the Developer and the Village shall record a document terminating the Recapture Agreement, with said document to be in a form as prepared by the Village.

3.07 Sales Tax Exemption. In regard to the construction of the New Lift Station and Force Main, as the Village will become the owner thereof upon the completion thereof by the Developer, the Village shall allow the Developer to use the Village's sales tax exemption number, and provide the Developer with a sales tax exemption letter(s), relative to the construction of the New Lift Station and Force Main.

3.08 Village Cooperation with the Construction of the Utility Improvements. In regard to the construction of the Utility Improvements in accordance with the Final Engineering Plans, the Village agrees to:

(A) upon first submittal of the Final Engineering Plans, the Village shall review and provide detailed written comments within forty-five (45) days from the date of submittal, and for each submittal thereafter, the Village shall review and provide detailed written comments within one (1) week from the date of submittal. The Village shall approve Final Engineering Plans that comply with the Village Public

Improvements Standards. The Village's approval of the Final Engineering Plans shall be conclusive evidence that the Village and the Developer believe, in good faith, that the Final Engineering Plans comply with all applicable federal, State and local laws, ordinances, rules and regulations, including, but not limited to, the Village Public Improvements Standards;

- (B) provide verification of the location of existing public utility easements in favor of the Village, and right-of-way under the jurisdiction of the Village, within the proposed location and route of the New Lift Station and Force Main prior to approval of the Final Engineering Plans;
- (C) schedule inspections of any work in relation to the Utility Improvements within two (2) business days of the date of said inspection request; and
- (D) accept ownership of said New Lift Station and Force Main, provided same is constructed in compliance with the Final Engineering Plans, within twenty-one (21) days of the date the Village engineer approves said construction, and with the conveyance of title thereto, to the Village, pursuant to the Bill of Sale and the other terms of this Agreement.

ARTICLE IV
NEW LIFT STATION AND FORCE MAIN CONSTRUCTION REQUIREMENTS

- 4.01 Pursuant to Chapter 16 of the Lombard Village Code, the Developer shall pay all "costs," as said term is defined in Section 16.02 of the Lombard Village Code, incurred by the Village relative to the construction of the Utility Improvements. The Village may withhold or issue stop work orders with respect to any permit if the Developer has failed or refused to comply in all material aspects with this Agreement or applicable law.
- 4.02 The Developer agrees that it shall repair and, if necessary, reconstruct, at its sole cost and expense, any driveway, road, parking area, sidewalk, curb, landscaping, or other property of the Village or others, which is damaged by the Developer, or its contractors,

during or as a result of the construction of the Utility Improvements, to at least the condition in which it existed prior to the start of construction, or as required by law, whichever is more restrictive.

4.03 In lieu of performance guaranties required by the Village Public Improvements Standards the Developer shall establish the Construction Escrow as set forth in this Agreement to secure completion of the New Lift Station and Force Main.

4.04 It is expressly agreed and understood by the Developer that the terms of this Agreement shall be applicable to all of Developer's contractors in relation to the construction of the Utility Improvements (a "Developer Contractor"). The Developer shall ensure that each Developer Contractor is aware of the obligations imposed under this Agreement and shall take such measures to ensure each Developer Contractor complies herewith at all times. The Developer shall be liable for non-compliance with applicable provisions of this Agreement by a Developer Contractor, and shall promptly notify the Village, in the event any Developer Contractor fails or refuses to comply herewith. It is expressly agreed and understood that in the event of a breach of the provisions of this Agreement by any Developer Contractor, the Village will look solely to the Developer, and the Developer hereby accepts responsibility on behalf of any such Developer Contractor.

4.05 The Developer shall deliver to the Village a progress report at the conclusion of each month following the commencement of the construction of the Utility Improvements, which report shall describe the status of the work on the Utility Improvements, any proposed changes to the construction schedule, and any proposed or revised completion date, if necessary, due to *force majeure*. The Developer shall meet with the Village as appropriate, and make presentations thereto as reasonably requested, in order to keep the Village apprised of the progress of the Utility Improvements. The Developer shall provide adequate information, including, without limitation, engineering analyses, as well as Village access to the appropriate Utility Improvements development

team personnel, at any such progress meetings, as may be requested by the Village, or as may be appropriate to provide an accurate progress report.

- 4.06 Following the commencement of the construction of the Utility Improvements, the Developer shall diligently pursue and prosecute the construction of the Utility Improvements to completion.
- 4.07 The Developer shall stage all construction materials, equipment and machinery on the Subject Property, except when constructing the portion of the Utility Improvements which is located other than on the Subject Property (the "Off-Site Construction"). The staging of all construction materials, equipment and machinery relative to the Off-Site Construction shall be at such locations as approved by the Village, in the reasonable exercise of its discretion.
- 4.08 The Developer agrees that the Village Engineer and the Director of Public Works, and their respective designees, shall have the right at all times during normal business hours to reasonably inspect the progress of the construction of the Utility Improvements. In the event such inspection is denied, the Developer shall be issued a stop work order, and no work shall be thereafter commence until such time as an inspection is granted, and the stop work order is rescinded.
- 4.09 The Developer hereby agrees to defend, indemnify and hold harmless the Village, and its elected officials, officers, employees and agents (the "Village Parties"), from and against, and to pay on behalf of, or reimburse as and when incurred, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorney's fees incurred in connection with defending claims or suits) of whatever kind and nature, which may be imposed on or incurred by the Village Parties, related to this Agreement and the Utility Improvements, including, without limitation, Utility Improvements construction, performed pursuant to this Agreement and the non-

compliance by the Developer, and/or the Developer's contractors and/or subcontractors, with the Prevailing Wage Act relative to the construction of the Utility Improvements, which are not the result of any willful and wanton acts or omissions of the Village Parties, and shall provide the Village with evidence of such insurance, as required by the Village Public Improvements Standards relative to the construction of the New Lift Station and Force Main. For purposes of this section, the fact that this Agreement is silent, as to the applicability of the Prevailing Wage Act to the Project, shall not be deemed to be a willful and wanton act or omission of the Village.

4.10 The Village has no actual knowledge of the existence or nonexistence on or in the vicinity of the Subject Property, the areas of the Disconnections/Reconnections or the route of the force main portion of the New Lift Station and Force Main, (collectively the "Utility Improvements Areas"), of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "Hazardous Substances"). The Village makes no warranty or representation regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Utility Improvement Areas of any Hazardous Substances. The foregoing disclaimer relates to any Hazardous Substances allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Utility Improvements Areas, as well as any activity claimed to have been undertaken on or in the vicinity of the Utility Improvements Areas, that would cause or contribute to causing (A) the Utility Improvements Areas to become a treatment, storage or disposal facility within the

meaning of, or otherwise bring the Utility Improvements Areas, within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §6901, *et seq.*, or any similar State law or local ordinance, (B) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Utility Improvements Areas, within the meaning of, or otherwise bring the Utility Improvements Areas, within the ambit of, CERCLA, or any similar State law or local ordinance, or (C) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251, *et seq.*, or any similar State law or local ordinance. Further, the Village makes no warranties or representations regarding, nor does the Village indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Utility Improvements Areas, or anywhere within the Utility Improvements Areas, of any substances or conditions in or on the Utility Improvements Areas, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The Village makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Utility Improvements Areas, or whether any above or underground tanks have been located under, in or about the Utility Improvements Areas, and have subsequently been removed or filled.

- 4.11 The Developer waives any claims against the Village Parties for indemnification, contribution, reimbursement or other payments arising under federal, State and common law or relating to the environmental condition of the land comprising the Utility Improvements Areas, provided that the intentional acts of the Village Parties are not contributory.

- 4.12 No liability, right or claim at law or in equity shall attach to or shall be incurred by the Village's elected officials, officers, agents and/or employees, and any such rights or claims of the Developer against the Village's elected officials, officers, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the Village.
- 4.13 It is expressly agreed and understood by the Developer that Section 2.06 of this Agreement shall be applicable to each third-party developer who purchases any portion of the Subject Property, and, in the event of a third-party developer default, that the Village may exercise its rights consistent with Section 5.04(D) and 5.04(E) of this Agreement, subject to applicable cure rights.

ARTICLE V
GENERAL PROVISIONS

- 5.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the Village nor Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material, labor strike or shortage, dispute regarding property rights, capacity within existing easements to accommodate required infrastructure, any environmental condition, any delay caused by a governmental agency, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornados and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder.
- 5.02 Assignment of Agreement. This Agreement may be assigned by Developer, without the Village's consent, to: (i) a bonafide purchaser of Developer's business; (ii) an entity

purchasing the Phase 1 Property, the Phase 2 Property or the Phase 4 Property, or (iii) an entity that Developer owns no less than a fifty percent (50%) interest in; provided:

- (A) the assignee intends to move forward with construction of the New Lift Station and Force Main in full compliance with this Agreement;
- (B) at least thirty (30) days prior written notice of such assignment is given to the Village; and
- (C) the assignee agrees to be bound by all of the terms, conditions and provisions of this Agreement, including, but not limited to, the Village's default remedies.

In lieu of assigning this Agreement, the Developer may nominate a third party to assume the obligations of the Developer, provided, however, any such nomination of a third party shall not relieve Developer of its liability under this Agreement. All other assignments of this Agreement by the Developer shall be subject to the Village's prior written consent, which shall not be unreasonably withheld or delayed. The Parties acknowledge that the assignee, and the assignee's use of the Subject Property, shall be subject to the Ordinance and the Village's zoning approval process.

5.03 Authority. Developer hereby represents and warrants that it is a Delaware limited liability company, authorized to do business in, and in good standing with, the State of Illinois. Developer further represents and warrants that all actions necessary to make Developer's obligations hereunder enforceable against Developer have been taken, and that no further approvals or actions are required. Village hereby represents and warrants that it is an Illinois Municipal Corporation, that it has the authority under State law to perform its obligations as outlined herein and that all actions necessary to make the Village's obligations hereunder enforceable against the Village have been taken, and that no further approvals or actions are required.

5.04 Defaults; Remedies.

- (A) In the event of any default under or violation of this Agreement, the Party not in default or violation shall serve notice upon the Party in default or violation, which notice shall be in writing and shall specify the particular violation or default. Each Party shall have the right to cure any violation of this Agreement or default within thirty (30) days from written notice of such default, provided that if the event of default is not curable within thirty (30) days, the Party shall be provided such reasonable time as is necessary to effectuate said cure so long as said Party has commenced and continuously pursues said cure.
- (B) In the event of default by the Village of its obligations to Developer, as provided for in Article III hereof, Developer's sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction and Developer will not be entitled to any monetary damages from the Village, and Developer hereby expressly waives any claim for monetary damages.
- (C) In the event of a Developer default or violation of this Agreement which is not timely cured, the Village shall have the right to utilize the Construction Escrow to complete, or cause a third party to complete, construction of the New Lift Station and Force Main, in which event the Village shall honor the water and sanitary sewer connection fee waivers under this Agreement, but shall have no obligation: (1) to reserve capacity in either the New Lift Station and Force Main or the Existing Force Main, as provided for in Sections 3.04 and 3.05 above; or (2) to enter into the Recapture Agreement as provided for in Section 3.06 above.
- (D) In the event of a default under or violation by a third-party developer under Section 2.06 of this Agreement, should such default not be cured or remedied within the time period referenced above, the Village shall, subject to subsection (E) below, be entitled to cease any future water and sanitary sewer connection fee waivers for said third-party developer under this Agreement; as to the

particular Phase of the Project being developed by said third-party developer, provided, however, that any water and sanitary sewer connection fee waivers predating the date of the default shall not be affected.

- (E) Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge that a third-party developer will undertake construction of each Phase of the Project and that each Phase of the Project may have a separate third-party developer, and accordingly, it is the intent of the Parties that any third-party developer default under the terms of this Agreement, which is not timely cured, shall effect only the Phase of the Project owned and/or being developed by said defaulting third-party developer, and the Village shall be relieved of its obligation to provide the waiver of water and sanitary sewer connection fees only relative to said Phase of the Project, but not as to any other obligations of the Village under this Agreement or as to the other Phases of the Project which remain in compliance with this Agreement.

5.05 Notices. All notices and requests required pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, or by personal or overnight delivery, as follows:

If to Developer: YTC Land Owner, LLC
203 Yorktown
Lombard, Illinois 60148
Attn: Donna Blair

with a copy to: Rosanova & Whitaker, Ltd.
30 West Jefferson Avenue
Suite 200
Naperville, Illinois 60540
Attn: Russ Whitaker

If to the Village: Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3931

with copies to: Director of Public Works
 Village of Lombard
 255 East Wilson Avenue
 Lombard, Illinois 60148-3931

 Director of Community Development
 Village of Lombard
 255 East Wilson Avenue
 Lombard, Illinois 60148-3931

and: Klein, Thorpe and Jenkins, Ltd.
 20 North Wacker Drive
 Suite 1660
 Chicago, Illinois 60606-2903
 Attn: Thomas P. Bayer / Jason A. Guisinger

or at such other addresses as either Party may indicate in writing to the other Party. Service by personal delivery shall be deemed to occur at the time of delivery. Service by overnight delivery shall be deemed to occur on the date deposited with an overnight delivery service, if a copy of said correspondence is provided via email or facsimile delivery on the same date deposited with the overnight delivery service. Otherwise, service by overnight delivery shall be deemed to occur at the time of delivery. Service by certified mail, return receipt requested, shall be deemed to occur on the third day after mailing.

5.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either Party as a result of entering into the Agreement shall be in the Circuit Court of DuPage County, Illinois.

5.07 Time. Time is of the essence under this Agreement and all time limits set forth herein are mandatory, and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.

5.08 Limitation of Liability. Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the Village created by or arising out of this Agreement shall not be a general debt of the Village on, or a charge against, the Village's general credit or taxing powers, but shall be a limited obligation, solely to be

provided in the form of a waiver of the Village's water and sanitary sewer connection fees, the recapture agreement, and the reservation of capacity in the Existing Lift Station and the New Lift Station and Force Main, as provided for herein.

- 5.09 No Waiver or Relinquishment of Right to Enforce Agreement. Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a wavier or relinquishment of the Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- 5.10 Article and Section Headings. All Article and Section headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered by or relevant to such heading or not.
- 5.11 Village's Authorization to Execute. The Village President and Village Clerk of the Village hereby warrant that they have been lawfully authorized by the President and Board of Trustees of the Village to execute this Agreement.
- 5.12 Amendment; Conflict with other Agreements. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and the Village relative to the subject matter thereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced to writing and signed by them.
- 5.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.

- 5.14 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.
- 5.15 Recording. This Agreement shall be recorded with the DuPage County Recorder's Office, at the Developer's sole cost and expense.
- 5.16 Term. This Agreement shall be in full force and effect as of the Effective Date, and shall expire upon the completion of the final development of all three (3) Phases of the Project, pursuant to and as provided in the Ordinance. Notwithstanding the foregoing, the Reservation of PE in the Existing Lift Station provisions of Section 3.05 hereof, and the Recapture Agreement provisions of Section 3.06 hereof, shall survive the expiration of the Agreement pursuant to this Section.

**THE REMAINDER OF THIS PAGE
HAS INTENTIONALLY BEEN LEFT BLANK.**

IN WITNESS WHEREOF, the Parties have executed this Utility Service and Economic Development Agreement as of the date of the last signatory below, which date shall be inserted on page 1 of this Agreement.

Village of Lombard,
an Illinois municipal corporation

YTC Land Owner, LLC,
a Delaware limited liability company

By: _____
Keith Giagnorio
Village President

By: **KRE YTC Venture, LLC**
Its Manager

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Sharon Kuderna
Village Clerk

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

State of Illinois)
) SS
County of DuPage)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith Giagnorio, personally known to me to be the Village President of the Village of Lombard, and Sharon Kuderna, 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 Village 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 Corporate Authorities 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 _____ day of _____, 2016.

Notary Public

State of Illinois)
) SS
County of DuPage)

ACKNOWLEDGMENT

The undersigned Notary Public, in and for the County and State aforesaid, does hereby certify that _____, personally known to me to be the Manager of KRE YTC Venture, LLC, the Manager of YTC Land Owner, LLC, a Delaware limited liability company, acknowledged to me that he/she signed and delivered the foregoing instrument on behalf of said KRE YTC Venture, LLC, as Manager of YTC Land Owner, LLC, as his/her own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2016.

Notary Public

LIST OF EXHIBITS

- EXHIBIT A - Depiction of Yorktown Center
- EXHIBIT B - Depiction of the Four (4) Phases Covered by the Ordinance
- EXHIBIT C - Legal Description of the Phase 1 Property
- EXHIBIT D - Depiction of the Phase 1 Property
- EXHIBIT E - Legal Description of the Phase 2 Property
- EXHIBIT F - Depiction of the Phase 2 Property
- EXHIBIT G - Legal Description of the Phase 4 Property
- EXHIBIT H - Depiction of the Phase 4 Property
- EXHIBIT I - Legal Description of the Phase 3 Property
- EXHIBIT J - Depiction of the Phase 3 Property
- EXHIBIT K - Depiction of the New Lift Station and Force Main
- EXHIBIT L - Legal Description of the Highland Parcel
- EXHIBIT M - Depiction of the Highland Parcel
- EXHIBIT N - Legal Description of the Properties Subject to the Disconnections/Reconnections
- EXHIBIT O - Depiction of the Properties Subject to the Disconnections/Reconnections
- EXHIBIT P - Projected Cost of the New Lift Station and Force Main
- EXHIBIT Q - Construction Escrow Agreement Format
- EXHIBIT R – Bill of Sale Format
- EXHIBIT S - Reservation of Capacity in the Existing Lift Station
- EXHIBIT T - Legal Description and Depiction of the Benefitted Properties

EXHIBIT A

Depiction of Yorktown Center

(attached)

EXHIBIT B

**Depiction of the Four (4) Phases
Covered by the Ordinance**

(attached)

EXHIBIT C

**Legal Description of
the Phase 1 Property**

LOT 4 IN YORKTOWN PERIPHERAL/TARGET SUBDIVISION, BEING PART OF THE NORTHEAST 1/4 OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 17, 1995 AS DOCUMENT R95-162762, IN DUPAGE COUNTY, ILLINOIS.

06-29-200-050

EXHIBIT D

**Depiction of
the Phase 1 Property**

(attached)

EXHIBIT E

**Legal Description of
the Phase 2 Property**

PART OF PARCEL 3 IN HIGHLAND AVENUE ASSESSMENT PLAT OF LOT 2 IN YORKTOWN, BEING A SUBDIVISION OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO SAID HIGHLAND AVENUE ASSESSMENT PLAT RECORDED JANUARY 30, 2012 AS DOCUMENT R2012-12175, TOGETHER WITH PART OF LOT 2 IN HIGHLAND-YORKTOWN RESUBDIVISION OF LOT 4 IN YORKTOWN, BEING A SUBDIVISION OF PART OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO SAID PLAT OF HIGHLAND-YORKTOWN RESUBDIVISION RECORDED SEPTEMBER 5, 2006 AS DOCUMENT R2006-170876, AND CERTIFICATES OF CORRECTION RECORDED AS DOCUMENTS R2006-191219, R2006-219358 AND R2008-138794, ALL IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 3; THENCE THE FOLLOWING SEVEN (7) COURSES ALONG THE SOUTHERLY, WESTERLY AND NORTHERLY LINES OF SAID PARCEL 3; (1) THENCE NORTH 65 DEGREES 23 MINUTES 09 SECONDS WEST 127.04 FEET; (2) THENCE SOUTH 87 DEGREES 55 MINUTES 45 SECONDS WEST 209.84 FEET TO A POINT OF CURVATURE; (3) THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 18.00 FEET, A CHORD BEARING OF NORTH 47 DEGREES 22 MINUTES 03 SECONDS WEST 28.09 FEET TO A POINT OF TANGENCY; (4) THENCE NORTH 02 DEGREES 39 MINUTES 50 SECONDS WEST 26.41 FEET; (5) THENCE NORTH 17 DEGREES 21 MINUTES 56 SECONDS WEST 83.14 FEET TO A POINT OF CURVATURE; (6) THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 20.00 FEET, A CHORD BEARING OF NORTH 25 DEGREES 50 MINUTES 49 SECONDS EAST, 30.17 FEET TO A POINT OF TANGENCY; (7) THENCE NORTH 69 DEGREES 03 MINUTES 34 SECONDS EAST 81.51 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 310.00 FEET, A CHORD BEARING OF NORTH 88 DEGREES 10 MINUTES 51 SECONDS EAST 206.91 FEET TO A POINT OF TANGENCY; THENCE SOUTH 72 DEGREES 41 MINUTES 52 SECONDS EAST 122.87 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 472.00 FEET, A CHORD BEARING OF SOUTH 69 DEGREES 47 MINUTES 51 SECONDS EAST 47.78 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ALONG AN ARC OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 13.50 FEET, A CHORD BEARING OF SOUTH 19 DEGREES 27 MINUTES 58 SECONDS EAST 22.35 FEET TO A POINT OF TANGENCY; THENCE SOUTH 27 DEGREES 57 MINUTES 54 SECONDS WEST 171.44 FEET TO A POINT OF NON-CURVATURE; THENCE SOUTHWESTERLY ALONG AN ARC OF A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 11.37 FEET, A CHORD BEARING OF SOUTH 50 DEGREES 21 MINUTES 57 SECONDS WEST 10.02 FEET TO A POINT OF NON-TANGENCY; THENCE NORTH 65 DEGREES 23 MINUTES 09 SECONDS WEST 2.29 FEET TO THE PLACE OF BEGINNING, CONTAINING 76,095 SQUARE FEET, MORE OR LESS.

ALSO TO BE DESCRIBED AS FOLLOWS:

LOT 2 IN YORKTOWN COMMONS PHASE 1, BEING A SUBDIVISION OF PART OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____, 20____ AS DOCUMENT R20__-_____, ALL IN DUPAGE COUNTY, ILLINOIS.

PARTS OF 06-29-200-060 AND 06-29-101-041

EXHIBIT F

**Depiction of
the Phase 2 Property**

(attached)

EXHIBIT G

**Legal Description of
the Phase 4 Property**

THOSE PARTS OF LOTS 3 AND 4 (EXCEPT THAT PART OF SAID LOT 4 DEDICATED FOR GRACE STREET PER DOCUMENT R72-57164 RECORDED SEPTEMBER 20, 1972) ALL IN THE RESUBDIVISION OF LOT 1 IN YORKTOWN, BEING A RESUBDIVISION IN SECTION 29, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION OF LOT 1 RECORDED AUGUST 4, 1971 AS DOCUMENT R71-37751, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 3; THENCE NORTH 87 DEGREES 39 MINUTES 50 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 3, A DISTANCE OF 281.24 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 02 DEGREES 16 MINUTES 35 SECONDS EAST 224.71 FEET; THENCE NORTH 87 DEGREES 42 MINUTES 49 SECONDS EAST 43.47 FEET; THENCE SOUTH 37 DEGREES 15 MINUTES 04 SECONDS EAST 44.24 FEET; THENCE SOUTH 12 DEGREES 55 MINUTES 57 SECONDS EAST 104.26 FEET TO THE SOUTHERLY LINE OF SAID LOT 3; THENCE THE FOLLOWING TWO COURSES ALONG THE SOUTHERLY LINES OF SAID LOTS 3 AND 4; (1) THENCE EASTERLY ALONG THE ARC OF A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 500.00 FEET, A CHORD BEARING OF NORTH 68 DEGREES 06 MINUTES 14 SECONDS EAST, 37.37 FEET TO A POINT OF TANGENCY; (2) THENCE NORTH 65 DEGREES 57 MINUTES 47 SECONDS EAST 609.94 FEET; THENCE NORTH 02 DEGREES 04 MINUTES 57 SECONDS WEST ALONG A LINE 7 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 4, A DISTANCE OF 400.00 FEET; THENCE SOUTH 65 DEGREES 57 MINUTES 47 SECONDS WEST ALONG THE NORTH LINES OF SAID LOTS 4 AND 3, A DISTANCE OF 742.45 FEET; THENCE SOUTH 87 DEGREES 39 MINUTES 50 SECONDS WEST ALONG SAID NORTH LINE OF LOT 3, A DISTANCE OF 1.58 FEET TO THE PLACE OF BEGINNING, CONTAINING 264,030 SQUARE FEET, MORE OR LESS.

ALSO TO BE DESCRIBED AS FOLLOWS:

LOT 4 IN YORKTOWN COMMONS PHASE 1, BEING A SUBDIVISION OF PART OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED _____, 20____ AS DOCUMENT R20____ - _____, ALL IN DUPAGE COUNTY, ILLINOIS.

PART OF 06-29-101-028

EXHIBIT H

**Depiction of
the Phase 4 Property**

(attached)

EXHIBIT I

**Legal Description of
the Phase 3 Property**

(attached)

EXHIBIT J

**Depiction of
the Phase 3 Property**

(attached)

EXHIBIT K

**Depiction of
the New Lift Station and Force Main**

(attached)

EXHIBIT L

**Legal Description of
the Highland Parcel**

(attached)

EXHIBIT M

**Depiction of
the Highland Parcel**

(attached)

EXHIBIT N

**Legal Description of
the Properties Subject to the Disconnections/Reconnections**

(attached)

EXHIBIT O

**Depiction of
the Properties Subject to the Disconnections/Reconnections**

(attached)

EXHIBIT P

**Projected Cost of
the New Lift Station and Force Main**

(attached)

EXHIBIT Q

Construction Escrow Agreement Format

(attached)

EXHIBIT R

Bill of Sale Format

(attached)

BILL OF SALE

YTC Land Owner, LLC, a Delaware limited liability company (the "**Seller**"), in consideration of TEN AND NO/100 DOLLARS (\$10.00), the receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over onto the **Village of Lombard**, an Illinois municipal corporation (the "**Buyer**"), the following described personal property, which has been installed by the Seller relative to the New Lift Station and Force Main constructed pursuant to the Yorktown Commons Utility Service and Economic Development Agreement, between the Buyer and the Seller, dated _____, 2016, and recorded with the DuPage County, Recorder's Office on _____, 2016 as document number _____ (the "Personalty"):

Seller, hereby represents and warrants to Buyer that Seller is the absolute owner of the Personalty, that the Personalty is free and clear of all liens, charges and encumbrances, and that Seller has full right, power and authority to sell the Personalty and to make this Bill of Sale.

All warranties of quality, fitness and merchantability are hereby excluded and disclaimed.

IN WITNESS WHEREOF, Seller has signed and sealed this Bill of Sale as of the _____ day of _____, 2016.

Seller: YTC Land Owner, LLC, a Delaware limited liability company

By: KRE YTC Venture, LLC, a Delaware limited liability company
Title: Manager

By: _____
Name: _____
Title: Manager

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the said County, and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the Manager of KRE YTC Venture, LLC, a Delaware limited liability company and the Manager of YTC Land Owner, LLC, a Delaware limited liability company, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she signed and delivered the said instrument on behalf of said KRE YTC Venture, LLC, as Manager of YTC Land Owner, LLC, as his/her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2016.

Notary Public

My commission expires

EXHIBIT S

**Reservation of Capacity in
the Existing Lift Station**

(attached)

EXHIBIT T

**Legal Description and Depiction of
the Benefitted Properties**

(attached)