

**FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT  
FOR THE EAST ST. CHARLES ROAD CONDOMINIUMS DEVELOPMENT  
COMPRISING A PART OF THE DOWNTOWN LOMBARD T.I.F. DISTRICT  
OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS**

This First Amendment to the Redevelopment Agreement For The East St. Charles Road Condominiums Development, Comprising A Part Of The Downtown Lombard T.I.F. District Of The Village Of Lombard, Dupage County, Illinois (hereinafter referred to as the “**First Amendment**”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2006, by and between New Urban Lombard, an Illinois limited liability company (hereinafter referred to as the “**Developer**”), and the Village of Lombard, a municipal corporation, located in DuPage County, Illinois, (hereinafter referred to as the “**Village**”)(The Village and Developer are also referred to herein collectively as the “Parties”).

**WITNESSETH**

**WHEREAS**, the Village is the fee simple title holder of the property legally described on EXHIBIT 1 attached hereto and made a part hereof (hereinafter referred to as the “**Village Parcel**”); and

**WHEREAS**, the Developer desires to acquire fee simple title to the Village Parcel; and

**WHEREAS**, the Developer also intends to acquire a parcel of real estate immediately adjacent to and west of the Village Parcel consisting of approximately 0.11 acres, more or less, legally described in EXHIBIT 2 attached hereto and made a part hereof (hereinafter referred to as the “**Adjacent Parcel**”)(the Village Parcel and the Adjacent Parcel shall be collectively referred to as the “**Subject Property**”); and

**WHEREAS**, on June 2, 2005, the Corporate Authorities of the Village adopted Ordinance 5666 authorizing the execution of a Redevelopment Agreement for the Village Parcel and the Adjacent Parcel (hereinafter referred to as the “**Original Agreement**”); and

**WHEREAS**, the Parties are desirous of amending the Original Agreement to include environmental remediation provisions as set forth herein; and

**WHEREAS**, the Parties are also desirous of amending the Original Agreement to include additional site enhancements and modifications to the final site plan and provisions associated with the completion of public improvements and site improvements as forth herein; and

**WHEREAS**, the Corporate Authorities of the Village and the Developer deem it to be in the mutual advantage of the Parties and in the public interest that the Original Agreement be amended as hereinafter provided;

**NOW, THEREFORE**, in consideration of the premises, the mutual promises herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

**Section 1. Incorporation of Recitals/Defined Terms:** The Parties agree that the foregoing recitals are incorporated into this First Amendment as if fully recited herein. All defined terms contained in the Original Agreement shall have the same meaning when utilized in this First Amendment, unless otherwise expressly provided herein.

**Section 2. Environmental Conditions:** That Section III of the Original Agreement is hereby amended to include the following additional provisions:

E. The parties acknowledge that an environmental assessment of the Village Parcel has revealed contaminated soil and/or fill material on the Village Parcel in excess of Tier 1 residential clean-up objectives under 35 Ill. Adm. Code 742 (“Contamination”). Subject to the following provisions of this Agreement, after the closing, the Developer shall cause to be performed certain remediation and handling activities with respect to the contamination on, in and under the Village Parcel (the “Site Remediation”) and shall enroll the Village Parcel in the Illinois Site Remediation Program (“SRP”) and will take all steps necessary to obtain a valid, comprehensive no further remediation letter (“NFR Letter”) issued by the Illinois Environmental Protection Agency (“IEPA”) with respect to the Village Parcel and in recordable form reflecting that the remediation work with respect to the Village Parcel satisfies Tier 1 residential objectives (as set forth in the Tiered Approach to Cleanup Objectives, 35 Ill. Adm. Code 742), and is subject to no restrictions other than those restrictions or conditions satisfactory to the Developer in its sole and absolute discretion. The Site Remediation and the procurement of the NFR Letter are sometimes hereinafter referred to collectively as the “Remediation.” It is also expressly understood and agreed between the parties that:

- (1) In order to meet its Remediation obligations hereunder, Developer shall contract with Testing Services Corporation (the “Environmental Contractor”), pursuant to terms (the “Environmental Remediation Contract”) reasonably acceptable to the Village and the Developer.
- (2) Notwithstanding the foregoing provisions of this Paragraph III.E., to the contrary, Village and Developer acknowledge and agree that with respect to: the hard and soft costs of the Remediation work, including without limitation the Environmental Remediation Contract; the fees and charges of the Environmental Contractor; the fees of obtaining the NFR Letter, any fees and/or charges related to the disposal of the Contamination or the disposal generally of Contaminants

located on or about the Village Parcel and/or, the fees and/or charges of any other environmental contractor (or of any subcontractor retained by an environmental contractor) or of any other consultant or third party contractor or attorney retained by Developer to assist in the Remediation (collectively the "Remediation Costs"), the Village shall be responsible only to reimburse the Developer up to a maximum amount of Eighty-Five Thousand and No/100 Dollars (\$85,000.00) of the Remediation Costs (the "Village's Contribution") in a manner as set forth below:

- (a) Upon completion of the Project and issuance of a certificate of occupancy for the Project and upon acceptance of the public improvements for the Project, the Village agrees to reimburse the Developer for the Remediation Costs up to a limit of the Village's Contribution. The Village's reimbursement shall be limited to Tax Increment Financing (TIF) revenues generated as a result of the Project, in the maximum amount set forth in subparagraph (b) below.
- (b) The Developer shall submit to the Village receipts with waiver of lien certificates, as appropriate, for the Remediation Costs. The Village agrees to reimburse the Developer for Remediation Costs not to exceed Eighty-Five Thousand and No/100 Dollars (\$85,000).
- (c) The Village's Contribution shall come solely from TIF incremental revenues generated collectively by the Village Parcel and the Adjacent Parcel prior to December 31, 2011. In addition to the Village's Contribution, the Village agrees to interest reimbursement payments in regard to said reimbursement at a rate of four-and-one-half percent (4.5%) annually on the outstanding remaining amount of the reimbursement, with said interest reimbursement to be paid solely from the TIF incremental revenues generated by the Project, as described hereinabove.

The remediation of the Contamination shall proceed and be effectuated pursuant to Developer's application for a comprehensive no further remediation letter under the Illinois Environmental Protection Agency's Site Remediation Program. In connection with the remediation of the Contamination and in the event that the Remediation Costs thereof exceed the amount of the Village's Contribution, Developer acknowledges and agrees that the Village shall not be responsible for or be required to pay any sums in excess of Village's Contribution, all such additional sums being the sole responsibility of Developer, and Developer agrees to continue remediation to obtain a comprehensive NFR under IEPA's SRP.

Developer further acknowledges and agrees that Developer has been given, pursuant to the terms hereof, full and complete access to the Village Parcel to perform any and all environmental testing or investigation it deems necessary

or appropriate. At closing, Developer expressly assumes all liability with respect to the Contamination located on or about the Village Parcel and Developer waives any claim or rights it may have against Village with respect to the Contamination, including but not limited to any claim or right of contribution, indemnity or cost recovery under the Illinois Environmental Protection Act, as amended, the Comprehensive Environmental Response Compensation and Liabilities Act of 1980, as amended, and under any other federal, state or local environmental law, rule, regulation or statute. Developer agrees that it is purchasing the Village Parcel "AS-IS, WHERE-IS" with regard to the Contamination and other environmental matters now or hereafter located on or about the Village Parcel and covenants not to sue Village or its officers, Trustees, employees or affiliates under any common law or statutory cause of action whether now existing or available in the future for any cost, expenses, fees, liabilities or obligations in any way relating to the Contamination and other environmental matters located on or about the Village Parcel or Developer's efforts to investigate, cleanup, remove, contain, treat or in any other way address the presence of the Contamination and other environmental matters in, on, at, under or about the Village Parcel.

F. Paragraph 11(e) of the RIDER, which is attached to the Real Estate Sales Contract, is hereby deleted in its entirety.

**Section 3: Fence Installation:** That Section IV of the Original Agreement is hereby amended to include the following additional provision:

G. The Developer shall install a six-foot (6') high fence along the South boundary of the Subject Property. The fence shall be identical in style to the existing fence located on the adjacent Village-owned property at 115 East St. Charles Road. The final location for placement of the fence shall be determined by the Village Director of Community Development.

**Section 4: Village Garage Construction:** That Section IV of the Original Agreement is hereby amended to include the following additional provision:

H. The Developer shall construct a storage garage for the use and benefit of the Village on the Village-owned property at 115 East St. Charles Road at a cost not to exceed (insert words) (\$\_\_\_\_\_). Said garage construction shall be in accordance with the plans prepared by Randy Pruyne and attached hereto as EXHIBIT 4 and made a part hereof. The Village agrees to reimburse the Developer for the cost of said garage from the same limited source, and under the same terms and conditions, as in regard to the Reimbursement as referenced in Section III.E. above.

**Section 5: Public Improvements:** That Section IV of the Original Agreement is hereby amended to include the following additional provision:

I. Commencement of construction of the public improvements detailed in the Approved Development Plans may begin only after the Developer has delivered one or more irrevocable letters of credit in a form satisfactory to the Village and issued by a bank or financial institution approved by the Village in an amount equal to one hundred fifteen percent (115%) of the Developer's engineer's estimate of cost (hereinafter the "Letter of Credit") of construction as approved by the Village's engineer or one hundred fifteen percent (115%) of actual construction cost for the following improvements, as defined per Section 154.703 of the Village Code as public improvements, pertaining to the development as shown on the Approved Development Plans and as further required by the Village as conditions of approval for the Project:

(i) any stormwater detention vault and related facilities to be constructed on the Subject Property;

(ii) public sidewalks, parkway trees and sod along the South side of the St. Charles Road adjacent to the Subject Property;

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

(iv) parking lot pavement, curb and gutter, signage, pavement parking, fencing and lighting

(hereinafter the "Public Improvements").

The Developer agrees to cause the Public Improvements to be made and constructed with due dispatch and diligence. The Developer will, when required to bring about progress in the Public Improvements work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said Public Improvements, to the end that said Public Improvements will be duly and satisfactorily completed within the time or times herein mentioned. The Developer agrees that all work in the construction of said Public Improvements shall be done in a good, substantial and professional manner, that all manufactured materials used therein shall be new and of good quality, that same shall at all times be subject to inspection by the Village, shall all be satisfactory to the Village and shall be subject to the Village's approval. The Developer will, at its sole cost and expense, furnish all necessary engineering services for said Public Improvements.

The Public Improvements, subject to the Letter of Credit and included within the Approved Development Plans, shall be completed within twenty-four (24) months following the recording of the First Amendment unless otherwise extended by amendment to the Agreement, consented to by the Corporate Authorities of the Village, with said consent not to be unreasonable withheld. The Letters of Credit and all

assurances, guarantees, acceptances, and related matters shall comply with the Lombard Village Code. In the event that the Village shall be forced to complete the Public Improvements, the Developer hereby grants a temporary easement to the Village to facilitate the necessary construction activity. The construction of Public Improvements by the Developer and issuance of approvals by the Village for the development shall comply with the following schedule:

(a) Sediment and Erosion Control

Sediment and erosion control measures shall be implemented as per Chapter 154 of the Lombard Village Code prior to the issuance of building permits or authorization to proceed with mass grading or other improvements to the Subject Property. Said measures shall be maintained during the entire construction process and shall be inspected and repaired as necessary after each significant rainfall. Failure to do so may result in the issuance of a stop work order for any outstanding Public Improvements or building permits.

(b) Tree preservation measures

All necessary tree preservation measures including tagging of trees to be preserved and fencing around the tree drip lines, shall be implemented prior to issuance of building permits, authorization to proceed with mass grading, or any other improvements to the Subject Property.

(c) Authorization to proceed with Public Improvements

Upon approval of the final engineering plans, receipt of all required fees, approval of the Letter of Credit, recording of the First Amendment, and completion of items (a) and (b) above, authorization to begin Public Improvements will be given by the Village.

(d) Construction of Storm Water Control System

The storm water detention vault(s) and a storm water management system for that portion of the Subject Property upon which construction activities have begun is to be operational prior to any paving or building construction. An operational storm water detention vault(s) and storm water management system means that the volume of the storm water detention is adequate for the flow being directed to it and the restrictor outlet is in place and that the system has been reviewed and approved by the Village's Director of Community Development.

(e) Issuance of Building Permits

(1) Foundation-Only Permits

Foundation-only permits may be issued upon completion of adequate construction access to the corresponding building sites and the completion of underground utility work across the street frontage of the subject building site. Adequate access shall mean a maintained gravel access road.

(2) Building Permits

Building construction may commence only upon provision of adequate emergency access to the building site (gravel sub base) and an operational fire hydrant within three hundred (300) feet of the subject building site. Furthermore, hydrants shall be installed every one hundred fifty (150) feet along St. Charles Road adjacent to the Subject Property.

(f). Acceptance of Public Improvements

- (1) Final record drawings (as built), including final grading and all utilities, shall be submitted for the review and approval of the Village's Director of Community Development prior to acceptance of the Public Improvements by the Village.
- (2) Engineer's Certification. The design engineer is to certify that the detention pond was constructed in accordance with Chapter 151 of the Lombard Village Code, and that the Project was constructed substantially to plan.
- (3) All deficiencies described in the final punch list shall be satisfactorily completed and approved by the Village's Directors of Public Works and Community Development
- (4) A maintenance guarantee in the form of a letter of credit shall be submitted and approved in compliance with Chapter 154 of the Lombard Village Code (hereinafter the "Maintenance LC")..
- (5) The Public Improvements to be dedicated to the Village shall require acceptance by the Corporate Authorities of the Village. Upon acceptance by the Corporate Authorities of the Village, the Letter of Credit shall be returned to the Developer.
- (6) The Maintenance LC, upon inspection and determination that no deficiencies exist, shall be returned to the Developer at the time of its expiration.

Care shall be taken to avoid damage to existing public infrastructure, including, but not limited to, utilities and curbs, during construction. Any public infrastructure damaged during construction shall be repaired to the satisfaction of the Village and in compliance with the Agreement and all relevant Village codes and ordinances.

Upon approval and acceptance of the aforesaid Public Improvements by the Village, the Public Improvements located within the St. Charles Road right-of-way shall become the property of the Village and subject to its control, and if deemed necessary or desirable by the Corporate Authorities of the Village, a formal dedication or conveyance to the Village shall be made by the Developer.

Public Improvements located within the public right-of-way will be accepted by the Corporate Authorities of the Village after certification by the Village Engineer and Village's Director of Community Development that said Public Improvements are in compliance with previously approved plans, specifications, and relevant codes and ordinances with said certification to not be unreasonably withheld or delayed. All required fees and procedures shall be provided prior to such acceptance. The Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and, employees from any and all claims, damages, judgments, costs and settlements including, but not limited to attorneys' fees that may arise from construction, use, repair, or maintenance of said Public Improvements before they are accepted by the Village.

**Section 6: Stormwater Variation:** That Section III of the Original Agreement is hereby amended to include the following additional provision:

- F. The Village agrees to approve a variation from Section \_\_\_\_\_ of the Lombard Village Code to allow for connection of the stormwater system for the Subject Property into a combined sewer line located within the St. Charles Road right-of-way.

**Section 7: Additional Conditions:** That Section IV of the Original Agreement is hereby amended to include the following additional provision:

- J. The Developer shall incorporate the following recommendations of the Plan Commission as part of the development of the Subject Property:

**Section 8: Amendment of Original Agreement:** That the Original Agreement is hereby amended by adding EXHIBITS 3 and 4 attached hereto and made part hereof as EXHIBITS 10 and 11 to the Original Agreement.

**Section 9: Continuity of Agreements:** That the Original Agreement, to the extent not amended hereby, shall remain in full force and effect, in accordance with the terms, as if fully set forth herein.

**Section 10: Recording:** That this First Amendment shall be recorded with the DuPage County Recorder's Office at the Developer's expense.

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

New Urban Lombard, an Illinois limited liability company

By: \_\_\_\_\_  
Name and Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name and Title: \_\_\_\_\_

Village of Lombard:

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

Attest: \_\_\_\_\_  
Brigitte O'Brien, Village Clerk





**SCHEDULE OF EXHIBITS**

**EXHIBIT 1: LEGAL DESCRIPTION OF THE VILLAGE PARCEL**

**EXHIBIT 2: LEGAL DESCRIPTION OF THE ADJACENT PARCEL**

**EXHIBIT 3: PHASE II ENVIRONMENTAL REPORT**

**EXHIBIT 4: PROPOSED PLANS FOR THE VILLAGE GARAGE**