

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: May 26, 2005 (B of T) Date: June 2, 2005

TITLE: 11-21 E. St. Charles Road and a portion of 29-37 E. St. Charles Road

SUBMITTED BY: Department of Community Development *[Signature]*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration an ordinance authorizing a Redevelopment Agreement for the St. Charles Road Condominiums Development comprising a part of the Downtown T.I.F. District and Authorizing the Sale of Village-Owned Property. (DISTRICT #4)

Staff recommends approval of this request.

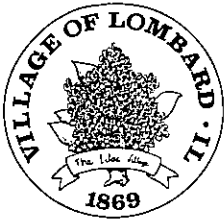
Staff is requesting waiver of first reading.

Please place this item on the June 2, 2005 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):  
Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X *W. T. Lichter* \_\_\_\_\_ Date 5/27/05

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:** William T. Lichter, Village Manager

**FROM:** David A. Hulseberg, AICP, Director of Community Development *DAH*

**DATE:** May 26, 2005

**SUBJECT:** E. St. Charles Road Redevelopment

Enclosed please find the Ordinance, Redevelopment Agreement and Real Estate Contract regarding the sale of the Village's property commonly referred to as 11-21 E. St. Charles Road and a portion of the 29-37 E. St. Charles Road property. Pursuant to direction from the Village Board Village Counsel has drafted the necessary agreements.

**Background:**

The Village of Lombard acquired three properties for redevelopment purposes and consolidated them for sale. The properties comprise nearly an acre of land area. Staff solicited developers on the sale of this property as a mixed-use development. Of the various offers we received, the high offer was from New Urban Communities for \$950,000.

**Project:**

New Urban Communities desires to create a mixed-use project by acquiring the Village property and the adjacent 38' to the west which is owned by others. New Urban Communities has a purchase and sale agreement on that property. The project calls for a 4-story masonry structure with 36 condominiums and 10,500 square feet of storefront on the first floor. The project has 34 interior and 45 exterior parking spaces.

The developer has submitted two building elevations for Village Board consideration. Scheme "A" calls for a clock tower feature to be built as part of the building. This component will require Village Board approval as part of a Planned Development to grant a height variation from the maximum height of 45' to the proposed 55'. All other aspects of the development meet code requirements. Scheme "B" removes the clock tower and thus no variation to the height requirement is necessary.

**Recommendation:**

Staff recommends that the Village Board approve an Ordinance authorizing a Redevelopment Agreement for the St. Charles Road condominiums development comprising part of the Downtown TIF District of the Village of Lombard, DuPage County, Illinois, and authorizing the sale of Village-owned property within said downtown TIF District and authorizing the Village President and Village Clerk to sign a Redevelopment Agreement and a Real Estate Sale Contract.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING A REDEVELOPMENT AGREEMENT FOR THE ST. CHARLES ROAD CONDOMINIUMS DEVELOPMENT COMPRISING A PART OF THE DOWNTOWN T.I.F. DISTRICT OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, AND AUTHORIZING THE SALE OF VILLAGE-OWNED PROPERTY WITHIN SAID DOWNTOWN T.I.F. DISTRICT IN RELATION THERETO

BE IT ORDAINED, by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village find as follows:

- A. The Village of Lombard (herein referred to as the "VILLAGE") is a nonhome rule municipality.
- B. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as from time to time amended (hereinafter referred to as the "TIF ACT").
- C. Pursuant to its powers and in accordance with the TIF ACT, on February 2, 1989, the corporate authorities of the VILLAGE adopted Ordinance Numbers 3121, 3122 and 3123, approving a tax increment redevelopment plan and project, designating a tax increment redevelopment project area and adopting tax increment financing relative to the Village's downtown area tax increment financing district (hereinafter referred to as the "DOWNTOWN TIF DISTRICT") for the redevelopment and revitalization of a portion of the corporate limits of the VILLAGE, which property is legally described on EXHIBIT A, attached hereto and made part hereof (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA.")
- D. Pursuant to and in accordance with the TIF ACT, on June 6, 2002, the corporate authorities of the VILLAGE adopted Ordinance No. 5145, entitled "An Ordinance Amending Ordinance No. 3121, Adopted February 2, 1989, and the Redevelopment Plan and Project Attached Thereto as Exhibit "B", in Regard to the Termination Date of the Village of Lombard's Downtown Tax Increment Financing District," for the VILLAGE'S DOWNTOWN TIF DISTRICT, by which the termination date for the DOWNTOWN TIF DISTRICT was extended to December 31, 2011, subject to the receipt of 2011 incremental real estate tax revenues during 2012.
- E. The VILLAGE is the fee simple title holder of a portion of the REDEVELOPMENT PROJECT AREA, said property being legally described on EXHIBIT B attached hereto and made part hereof, (hereinafter referred to as the "VILLAGE PARCEL").

- F. New Urban Communities Corporation a Florida corporation, licensed to do business in Illinois (hereinafter the "DEVELOPER"), desires to redevelop the VILLAGE PARCEL, on which the DEVELOPER intends to construct a mixed-use residential and retail development (hereinafter referred to as the 'DEVELOPMENT").
- G. In order to move forward with the DEVELOPMENT, it is necessary for the DEVELOPER to acquire the VILLAGE PARCEL.
- H. That attached hereto as EXHIBIT C and made part hereof is a Redevelopment Agreement between the DEVELOPER and the VILLAGE, which sets forth the terms and conditions pursuant to which the VILLAGE will sell the VILLAGE PARCEL to the DEVELOPER, as well as the terms and conditions pursuant to which the DEVELOPER will proceed with the DEVELOPMENT (hereinafter referred to as the "REDEVELOPMENT AGREEMENT").
- I. In accordance with the TIF ACT, it is in the best interests of the VILLAGE to approve the REDEVELOPMENT AGREEMENT, and to sell the VILLAGE PARCEL to the DEVELOPER pursuant thereto, so that redevelopment within the DOWNTOWN TIF DISTRICT can continue, said redevelopment pursuant to the TIF ACT being the VILLAGE'S purpose for selling the VILLAGE PARCEL.

SECTION 2: Based upon the foregoing and pursuant to the TIF ACT, the REDEVELOPMENT AGREEMENT, attached hereto as Exhibit C, is hereby approved, and the President and Clerk of the VILLAGE be and they are hereby authorized and directed to sell the VILLAGE PARCEL pursuant to the terms and conditions set forth in said REDEVELOPMENT AGREEMENT, on behalf of the VILLAGE, and they are further authorized and directed to execute and deliver such other instruments, including said REDEVELOPMENT AGREEMENT, as may be necessary or convenient to consummate the sale of the VILLAGE PARCEL.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

First reading waived by action of the Board of Trustees this \_\_\_\_ day of \_\_\_\_\_, 2005.

PASSED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2005, pursuant to a roll call vote as follows:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED by me this \_\_\_\_ day of \_\_\_\_\_, 2005.

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

ATTEST:

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

PUBLISHED by me in pamphlet form this \_\_\_\_ day of \_\_\_\_\_, 2005.

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

## EXHIBIT A

### REDEVELOPMENT PROJECT AREA

(Legal Description of Downtown T.I.F. District)

Lots 1 and 2 of the Resubdivision of Lot 6 of Block 27 of the Original Town of Lombard, Lots 1, 2, 3, and 4 of the Original Town of Lombard, Lots 1, 2, 3, the North 25 ft. of Lot 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 in Caverno's Subdivision, Lot 1 in Lombard Bible Church Consolidation Plat, Lots 1, 2, 3, 4, and 5 in Owner's Subdivision in Block 18 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, and 7 in Block 11 of the Original Town of Lombard, Lots 8, 9, 10, 11, and 12 in J.B. Hull's Subdivision of part of Block 11 and part of outlot 4 of the Original Town of Lombard, Lots 7, 8, 9, 12, 13, 14, 15, 16, 17 and 18 of Grove Park Subdivision, Lots 2, 3, 4, 5, 6, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 in Grove Park Subdivision, Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 in Grove Park Subdivision First Addition, Lots 11 and 12 in W.H. Maple's Subdivision, Lots 3, 4, 5, 6, 7, 8, 9, 10, and 11 in Block 10 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8 in the Subdivision of Outlot 10 in the Original Town of Lombard, Lots 1, 2, 4, and 5 of Block 19 in the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8, of J.B. Hull's Subdivision of Lot 3 of Block 19 of the Original Town of Lombard, Lot 43 excepting the North 20 feet thereof in Orchard Subdivision, Lots 1 and 2 of Timke's Resubdivision, all of Park Manor Condominium, including all Chicago & Northwestern Railroad right-of-way and all public rights-of-way adjacent to the above-described property all being in the Northeast Quarter of Section 7, Township 39 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois.

Of that part of Block 22 of the Original Town of Lombard described by beginning at a point on the East line of Main Street, 499.0 feet North of the Southwest corner of said Block 22 and running thence Easterly to a point on the center line of said Block 22 that is 386.6 feet to the Southerly line of said Parkside Avenue; thence Southwesterly along the Southerly line of said Parkside Avenue to the East line of Main Street; thence South on the East line of Main street, 291.85 feet to the place of beginning, Lots 1, 2, and 3 in James' Subdivision of Part of Block 22 of the Original Town of Lombard, Lots 28, 29, 30, and 31 of Part of Block 22 in N. Matson & Others Resubdivision, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 in Block 17 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in Block 16 of the Original Town of Lombard, Lots 1, 2, the East 1/2 of Lot 3, Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 in Block 12 of the Original Town of Lombard, Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 in Block 18 of H.O. Stone & Company's Addition to Lombard, Lombard Tower Condominiums, Charlotte-Garfield Condominiums, including all Chicago & Northwestern Railroad right-of-way and all public rights-of-way adjacent to the above-described property all being in the Northwest Quarter of Section 8, Township 39 North, Range 11, East of the Third Principal Meridian all in DuPage county, Illinois.

**EXHIBIT B**

**VILLAGE PARCEL**

Lot 1 in St. Charles Corridor Redevelopment Plat of Resubdivision of part of Sections 5, 6, 7, 8 and 18 Township 39 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois.

Permanent Index Numbers of :      06-08-108-005  
                                                    06-08-108-009  
                                                    06-08-108-011

EXHIBIT C

REDEVELOPMENT AGREEMENT



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

THIS AGREEMENT is between the Village of Lombard, DuPage County, Illinois, a municipal corporation (hereinafter referred to as the “**Village**”) and New Urban Lombard, LLC, an Illinois limited liability company (hereinafter referred to as “**Developer**”), effective as of the Effective Date as defined in Article IX. (The Village and Developer are also referred to herein individually as “**Party**”, and collectively as “**Parties**”.)

WITNESSETH:

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

I. PRELIMINARY STATEMENTS

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

- A. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as from time to time amended (hereinafter referred to as the “**Act**”).
- B. Pursuant to and in accordance with the requirements of the Act, on February 2, 1989, the corporate authorities of the Village adopted Ordinance No. 3121, entitled “An Ordinance Approving the Tax Increment Redevelopment Plan and Project for the Village’s Downtown T.I.F. District, which sets forth a plan (hereinafter referred to as the “**TIF Plan**”) for the redevelopment and revitalization of the property legally described on EXHIBIT 1 attached hereto and made part hereof, being located within the corporate boundaries of the Village, which property is currently zoned commercial (hereinafter referred to as the “**Redevelopment Project Area**”).
- C. Pursuant to and in accordance with the Act, on February 2, 1989, the corporate authorities of the Village adopted Ordinance No. 3122, entitled “An Ordinance Designating the Tax Increment Redevelopment Project Area,” for the Village’s Downtown T.I.F. District, by which the property legally described on EXHIBIT 1 was designated as the Redevelopment Project Area.
- D. Pursuant to and in accordance with the Act, on February 2, 1989, the corporate authorities of the Village adopted Ordinance No. 3123, entitled “An Ordinance

Adopting Tax Increment Financing,” for the Village’s Downtown T.I.F. District, by which tax increment financing was adopted pursuant to the Act for the TIF Plan for the Redevelopment Project Area.

- E. Pursuant to and in accordance with the Act, on June 6, 2002, the corporate authorities of the Village adopted Ordinance No. 5145, entitled “An Ordinance Amending Ordinance No. 3121, Adopted February 2, 1989, and the Redevelopment Plan and Project Attached Thereto as Exhibit “B”, in Regard to the Termination Date for the Village of Lombard’s Downtown Tax Increment Financing District,” for the Village’s Downtown T.I.F. District, by which the termination date for the Downtown T.I.F. District was extended to December 31, 2011, subject to the receipt of 2011 incremental real estate tax revenues during 2012.
- F. The Village is the fee simple title holder of a portion of the Redevelopment Project Area, said property being legally described on EXHIBIT 2 attached hereto and made part hereof, (hereinafter referred to as the “**Village Parcel**”). Developer desires to acquire fee simple title to the Village Parcel.
- G. The Developer also intends to acquire a parcel of real estate located immediately adjacent to and west of the Village Parcel consisting of approximately 0.11 acres, more or less, legally described on EXHIBIT 3 attached hereto and made a part hereof (hereinafter referred to as the “**Adjacent Parcel**”).
- H. The Developer intends to redevelop the Village Parcel and the Adjacent Parcel, on which the Developer intends to construct a mixed-use residential and commercial/retail development, consisting of a single building containing thirty-six (36) condominium units and approximately 10,500 square feet, more or less, of commercial and retail space, with associated on-site parking spaces (hereinafter referred to as the “**Project**”), as more fully shown on the Preliminary Site Plan dated April 26, 2005 prepared by Sullivan Goulette Architects attached hereto as EXHIBIT 4, and made a part hereof (hereinafter referred to as the “**Preliminary Site Plan**”).
- I. Members of the Village staff and representatives of the Developer have met to consider two (2) alternate elevation renderings of the building to be constructed as a part of the Project. Copies of both elevation renderings prepared by Sullivan Goulette Architects and dated May 27, 2005 are attached hereto as EXHIBIT 5. One rendering includes a clocktower as a significant design element (hereinafter referred to as the “**Scheme A Concept Drawing**”). The other rendering (hereinafter referred to as the “**Scheme B Concept Drawing**”) does not include the clocktower, but is substantially similar to the Scheme A Concept Drawing in all other respects. It is acknowledged and agreed between the Parties that construction of the building as represented in the Scheme A Concept Drawing requires a variance from the height restrictions under the B-5 zoning classification currently in effect for the Village Parcel.

- J. In order to move forward with the Project, it is necessary for the Developer to acquire the Village Parcel. Prior to acquiring the Village Parcel, the Developer desires to obtain approval from the Village of (i) the Preliminary Site Plan, (ii) one of the concept drawings referenced in Paragraph I above, (iii) the material specifications for the exterior of the building as set forth on the material specification schedule attached hereto as EXHIBIT 6 (hereinafter referred to as the “**Exterior Materials Specifications**”); and (iv) the minimum standards for interior finishes for residential condominium units as set forth on the minimum standards for interiors schedule attached hereto as EXHIBIT 7 (hereinafter referred to as the “**Interior Standards Specifications**”).
- K. The Village is desirous of having the Redevelopment Project Area rehabilitated, developed and redeveloped in accordance with the TIF Plan, and particularly the Project as a part thereof, in order to serve the needs of the Village, arrest physical decay and decline in the Redevelopment Project Area, increase employment opportunities, stimulate commercial and residential growth and stabilize the tax base of the Village and, in furtherance thereof, the Village is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist such development.

## II. APPROVAL OF DEVELOPMENT PLANS AND CONSTRUCTION SCHEDULE.

- A. The Village hereby approves the Preliminary Site Plan, the Scheme \_\_\_\_\_ Concept Drawing, the Material Specification Schedule and the Interior Standards Schedule as the development plans for the Project (the “**Approved Development Plans**”). Subject to Section II.C below, any material change in the Approved Development Plans shall be subject to the approval of the Village.
- B. Developer has previously delivered to the Village a construction schedule, including the projected date of actual occupancy and date of opening for the Project, a copy of which is attached hereto as EXHIBIT 8 (the “**Approved Construction Schedule**”). Subject to Section IV.F below, Developers shall comply with the Approved Construction Schedule in the development and construction of the Project, subject to Force Majeure Delays (defined herein).
- C. The Village hereby approves the terms and conditions of the Real Estate Sales Contract attached hereto as EXHIBIT 9 and made part hereof (hereinafter referred to as the “**Real Estate Sales Contract**”), pursuant to which the Village shall transfer title to the Village Parcel to the Developer for a purchase price of Nine Hundred and Fifty Thousand and No/100ths Dollars (\$950,000.00). The Village hereby authorizes the Village President and Clerk to execute the Real Estate Sales Contract on the Village’s behalf and to execute all other documents in connection therewith and in connection with the transfer of the Village Parcel to the Developer.

- D. In the event that the Developer does not acquire the Adjacent Parcel, the Village agrees that the Approved Development Plans may be modified by the Developer without need of further approval by the Village (except for standard approvals required in connection with obtaining building permits, certificates of occupancy and the like), as follows: reducing the number of residential condominium units by up to six (6) units and reducing the area of the commercial and retail area by up to 3,200 square feet. Notwithstanding the foregoing reductions in the scope of the Project, the Developer shall construct the Project in substantial conformance with the design intent expressed in the Approved Development Plans, including the Scheme \_\_\_\_\_ Concept Drawing, Exterior Materials Specifications and the Interior Standards Specifications.

### III. UNDERTAKINGS ON THE PART OF THE VILLAGE

The Village shall undertake the following:

- A. In the event that the Village approves the Scheme A Concept Drawing, the Village agrees to approve such variances from the Village's codes and ordinances as may be required to allow for the construction of the clocktower, following any required public hearing(s) before the Village's Plan Commission.
- B. The Village shall issue, where appropriate, and will reasonably assist Developer to obtain, such building permits, driveway permits, curb cut permits, licenses and other permits as Developer may require to cause the construction of the Project, all within one hundred twenty (120) days after Developer's submittal of applicable plans therefor, provided the Project complies with the applicable ordinances of the Village and other governmental bodies having jurisdiction.
- C. The Village shall reasonably assist Developer in obtaining all necessary driveway permits and curb cut approvals as may be required from any and all public agencies other than the Village for the Project, all within one hundred twenty (120) days after Developer's submittal of applicable plans therefor. Developer, however, shall be primarily responsible for preparing and submitting the plans necessary for obtaining said permits and curb cut approvals.
- D. To assist in expediting construction of the Project, the Village shall issue its sitework, foundation and construction permits separately, as needed, so long as Developer has submitted all information as required for each such permit to issue separately.

### IV. UNDERTAKINGS ON THE PART OF DEVELOPER

Developer shall undertake the following:

- A. Developer shall construct the Project in accordance with the Approved Development Plans, subject to the terms and conditions of this Agreement.
- B. Developer shall submit all plans, specifications, and other information necessary for action upon and issuance of, by all applicable governmental agencies, any additional required approvals, consents, permits, licenses and authorizations reasonably necessary or required for the Project within sixty (60) days following Developer's acquisition of the Village Parcel; provided, however, that Developer shall have an additional forty-five (45) days to submit such documents and information in the event that the Developer has not acquired the Adjacent Parcel by the date that the Developer acquires the Village Parcel.
- C. The condominium units to be constructed as part of the Project shall include, at a minimum, the interior finishes set forth in the Interior Standards Schedule set forth in EXHIBIT 7, attached hereto and made a part hereof.
- D. Developer shall provide stormwater detention as required by the DuPage County Stormwater Ordinance and the Lombard Village Code.
- E. In the event that Developer acquires the Adjacent Parcel, Developer shall process through the Village a consolidation petition so that all parcels to be included in the Project (the "**Developer Parcel**") are combined as a single lot subdivision of record for zoning and real estate taxation purposes; provided that the Developer shall have the right to separate the retail components of the Project from the residential components of it for real estate taxation purposes at its sole discretion. The Parties acknowledge and agree that following construction of the Project, Developer shall record a Declaration of Condominium for the Project, the result of which shall be that separate Property Identification Numbers (PIN's) shall be issued for each condominium unit by the DuPage County Assessors Office.
- F. Developer shall commence construction of the Project within two hundred ten (210) days after Developer's acquisition of the Village Parcel, subject to Force Majeure Delays and for reasonable extensions as may be necessary to complete the acquisition of the Adjacent Parcel. Developer shall cause construction of the Project to be substantially completed in substantial compliance with the Approved Development Plans within fifteen (15) months following commencement of construction, subject to Force Majeure Delays.

V. ADDITIONAL COVENANTS, UNDERTAKINGS AND AGREEMENTS OF THE PARTIES

- A. This Agreement incorporates all agreements and understandings of the Parties hereto as of the date of its execution, concerning the Project. Each Party acknowledges that

no representations or warranties have been made which have not been set forth herein.

- B. Time is of the essence in the performance of this Agreement.
- C. For the purposes of any of the provisions of this Agreement, neither the Village, Developer nor any of their respective successors and assigns, as the case may be, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay (i) caused by acts of God; (ii) resulting from the conduct of any judicial, administrative or legislative proceedings, (iii) caused by litigation or proceedings challenging the authority or right of the Village to act under the TIF Plan, any of the ordinances referenced herein, or perform under this Agreement; or (iv) caused by the encountering of hazardous substances on the Developer Parcel, by concealed, unforeseen or subsurface conditions, adverse weather, by delay or failure to act of utility service providers, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes reasonably beyond the control of the Developer or the Village (collectively, "**Force Majeure Delays**"). The Village shall diligently contest any such proceedings challenging the authority of the Village under this Agreement or the TIF Plan, and any appeals therefrom. The Village may settle a contested proceeding at any point, so long as the settlement results in the Village's ability to perform pursuant to this Agreement and so long as any such settlement does not impose additional obligations on Developer or increase Developer's obligations under this Agreement. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Parties shall be extended for the period of the delay.
- D. The Village shall issue building permits for the Project within a reasonable time after final engineering is approved, all fees have been paid and any required bonds have been deposited with the Village. If an application is disapproved, the Village shall provide Developer with a statement in writing specifying the reasons for denial of the application, including a specification of the requirements of Village Ordinances which the application and supporting documents fail to meet. Such statement may consist in whole or part of legible and understandable notations on building plans. The Village shall thereafter issue such building permits upon Developer's compliance with those requirements of law specified by the Village, so long as the application and supporting documents comply with all other requirements of the Village.
- E. The Village agrees to permit Developer to construct, install and maintain signs on the Developer Parcel in accordance with the signage plans to be approved by the Village, which approval shall not be unreasonably withheld, conditioned or delayed. All signage shall, however, be in compliance with the applicable provisions of the Village Code.

- F. The Project shall be completed substantially in accordance with the Approved Development Plans and in accordance with all applicable ordinances, rules and regulations of the Village in existence as of the date of such approval, except to the extent expressly modified by this Agreement.
- G. All notices and requests if any, required pursuant to this Agreement shall be sent by certified mail return receipt requested, or by personal service, addressed as follows:
- If to Developer: New Urban Lombard, LLC  
502 West Campbell Street  
Arlington Heights, Illinois 60005  
Attention: Robert A. O'Neill
- with copy to: Gardner Carton & Douglas LLP  
191 North Wacker Drive, Suite 3700  
Chicago, Illinois 60606  
Attention: William L. Goldbeck
- If to the Village: Village Manager  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148
- with copies to: Director of Community Development  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148
- Klein, Thorpe & Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
Attention: Thomas P. Bayer
- H. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.
- I. Developer shall not assign this Agreement to any person or entity without the prior written consent of the Village, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, at the time of such assignment, there is no default under this Agreement by Developer.
- J. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

- K. No personal liability, right or claim at law or in equity shall attach to or shall be incurred by the Village's officers, agents and/or employees in regard to this Agreement, with all and any such rights or claims of Developer against the Village's officers, agents and/or employees being hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village.
- L. Developer hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that may at any time be lawfully assessed against the Developer Parcel or the Project.
- M. This Agreement shall be binding upon the Parties hereto and their respective grantees, heirs, successors, administrators, permitted assigns or other successors in interest. All of the terms and provisions of this Agreement shall survive the closing of the transactions contemplated herein.
- N. The Parties shall record a certified (by the Village Clerk) copy of this Agreement in the office of the Recorder of Deeds of DuPage County, Illinois, and upon recordation thereof, the covenants and conditions of the Parties hereto shall be binding upon their successors in title and shall be deemed covenants which shall run with the land until the termination of this Agreement.

VI. REPRESENTATIONS AND WARRANTIES OF DEVELOPER

- A. Developer hereby represents and warrants that it is an Illinois limited liability company in good standing, with proper authority to execute this Agreement.
- B. Developer hereby represents and warrants that the Project shall be constructed and fully completed in a good and workmanlike manner in accordance with the Approved Development Plans and all plans and specifications pertaining thereto including any amendments, as approved by the Village.
- C. Developer hereby represents and warrants that at all times it shall comply with all applicable Village zoning ordinances and regulations, the building code, fire code and all other applicable Village ordinances, resolutions and regulations in existence as of the date of approval of the Project, except to the extent modified by this Agreement.
- D. Developer hereby represents and warrants that it shall comply with all applicable laws, rules and regulations of the State of Illinois and the United States and all agencies thereof, having jurisdiction over it or the Project.
- E. Developer hereby represents and warrants that it shall comply with all terms, provisions and conditions of, and shall not default or knowingly permit a default



under any document or agreement relating to the Project or the financing of the Project to which it is a Party, including but not limited to this Agreement, and all agreements and documentation in connection with any loan to it in relation to the Project.

- F. Developer hereby covenants and agrees that, except as provided above, it will not, directly or indirectly, sell, transfer, assign or otherwise dispose of the Project (including the beneficial interest or power of direction over any land trust holding legal title thereto) without the prior written consent of the Village, which consent shall not be unreasonably withheld, conditioned or delayed.

## VII. REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

- A. The Village hereby represents and warrants to Developer that, subject to its compliance with the Act, it has the power and authority to execute, deliver and perform the terms and obligations of this Agreement.
- B. The Village hereby covenants and agrees that it shall not unreasonably withhold, condition or delay any further approvals or entitlement required for the construction of the Project under ordinances of the Village.

## VIII. DEFAULTS AND REMEDIES

In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either Party hereto or bound by this Agreement, such Party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within sixty (60) day period and the defaulting Party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such Party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default that is not cured within fifteen (15) days after receipt of written notice thereof by the defaulting Party (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the Party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements. The rights of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other Party. No waiver made by either Party with respect to any specific default by the other Party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting Party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this

Agreement shall be limited to the non-defaulting Party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting Party in enforcing this Agreement. In the event of any litigation between the Parties hereto resulting from a breach of this Agreement, the prevailing Party in such litigation, as determined by final judgment, shall be entitled to an award of its attorneys' fees and costs incurred in such litigation.

IX. AGREEMENT TERM

The term of this Agreement shall commence as of the date of its execution after approval by the corporate authorities of the Village (the “**Effective Date**”) and expire at the termination of the Village’s Downtown T.I.F. District as required by the Act. Notwithstanding the foregoing, any termination of the Real Estate Sale Contract in accordance with its terms shall also serve to terminate this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

Date: \_\_\_\_\_

VILLAGE OF LOMBARD,  
a municipal corporation

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

ATTEST:

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

NEW URBAN LOMBARD, LLC  
an Illinois limited liability company

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

Title: Its Manager

STATE OF ILLINOIS    )  
                                          ) SS  
COUNTY OF DUPAGE    )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, do hereby certify that William J. Mueller and Brigitte O'Brien, personally known to me to be, respectively, the President and the Clerk of the Village of Lombard, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary acts of the Village of Lombard, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
NOTARY PUBLIC

Commission Expires:

STATE OF \_\_\_\_\_    )  
                                          ) SS  
COUNTY OF \_\_\_\_\_    )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be, the Manager of New Urban Lombard, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary acts of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
NOTARY PUBLIC

Commission Expires:

## EXHIBIT 1

### Legal Description of Downtown T.I.F. District

Lots 1 and 2 of the Resubdivision of Lot 6 of Block 27 of the Original Town of Lombard, Lots 1, 2, 3, and 4 of the Original Town of Lombard, Lots 1, 2, 3, the North 25 ft. of Lot 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 in Caverno's Subdivision, Lot 1 in Lombard Bible Church Consolidation Plat, Lots 1, 2, 3, 4, and 5 in Owner's Subdivision in Block 18 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, and 7 in Block 11 of the Original Town of Lombard, Lots 8, 9, 10, 11, and 12 in J.B. Hull's Subdivision of part of Block 11 and part of outlot 4 of the Original Town of Lombard, Lots 7, 8, 9, 12, 13, 14, 15, 16, 17 and 18 of Grove Park Subdivision, Lots 2, 3, 4, 5, 6, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 in Grove Park Subdivision, Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 in Grove Park Subdivision First Addition, Lots 11 and 12 in W.H. Maple's Subdivision, Lots 3, 4, 5, 6, 7, 8, 9, 10, and 11 in Block 10 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8 in the Subdivision of Outlot 10 in the Original Town of Lombard, Lots 1, 2, 4, and 5 of Block 19 in the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8, of J.B. Hull's Subdivision of Lot 3 of Block 19 of the Original Town of Lombard, Lot 43 excepting the North 20 feet thereof in Orchard Subdivision, Lots 1 and 2 of Timke's Resubdivision, all of Park Manor Condominium, including all Chicago & Northwestern Railroad right-of-way and all public rights-of-way adjacent to the above-described property all being in the Northeast Quarter of Section 7, Township 39 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois.

Of that part of Block 22 of the Original Town of Lombard described by beginning at a point on the East line of Main Street, 499.0 feet North of the Southwest corner of said Block 22 and running thence Easterly to a point on the center line of said Block 22 that is 386.6 feet to the Southerly line of said Parkside Avenue; thence Southwesterly along the Southerly line of said Parkside Avenue to the East line of Main Street; thence South on the East line of Main street, 291.85 feet to the place of beginning, Lots 1, 2, and 3 in James' Subdivision of Part of Block 22 of the Original Town of Lombard, Lots 28, 29, 30, and 31 of Part of Block 22 in N. Matson & Others Resubdivision, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 in Block 17 of the Original Town of Lombard, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in Block 16 of the Original Town of Lombard, Lots 1, 2, the East 1/2 of Lot 3, Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 in Block 12 of the Original Town of Lombard, Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 in Block 18 of H.O. Stone & Company's Addition to Lombard, Lombard Tower Condominiums, Charlotte-Garfield Condominiums, including all Chicago & Northwestern Railroad right-of-way and all public rights-of-way adjacent to the above-described property all being in the Northwest Quarter of Section 8, Township 39 North, Range 11, East of the Third Principal Meridian all in DuPage county, Illinois.

EXHIBIT 2

Legal Description of the Village Parcel

Lot 1 in St. Charles Corridor Redevelopment Plat of Resubdivision of part of Sections 5, 6, 7, 8 and 18 Township 39 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois.

Permanent Index Numbers of :      06-08-108-005  
                                                  06-08-108-009  
                                                  06-08-108-011

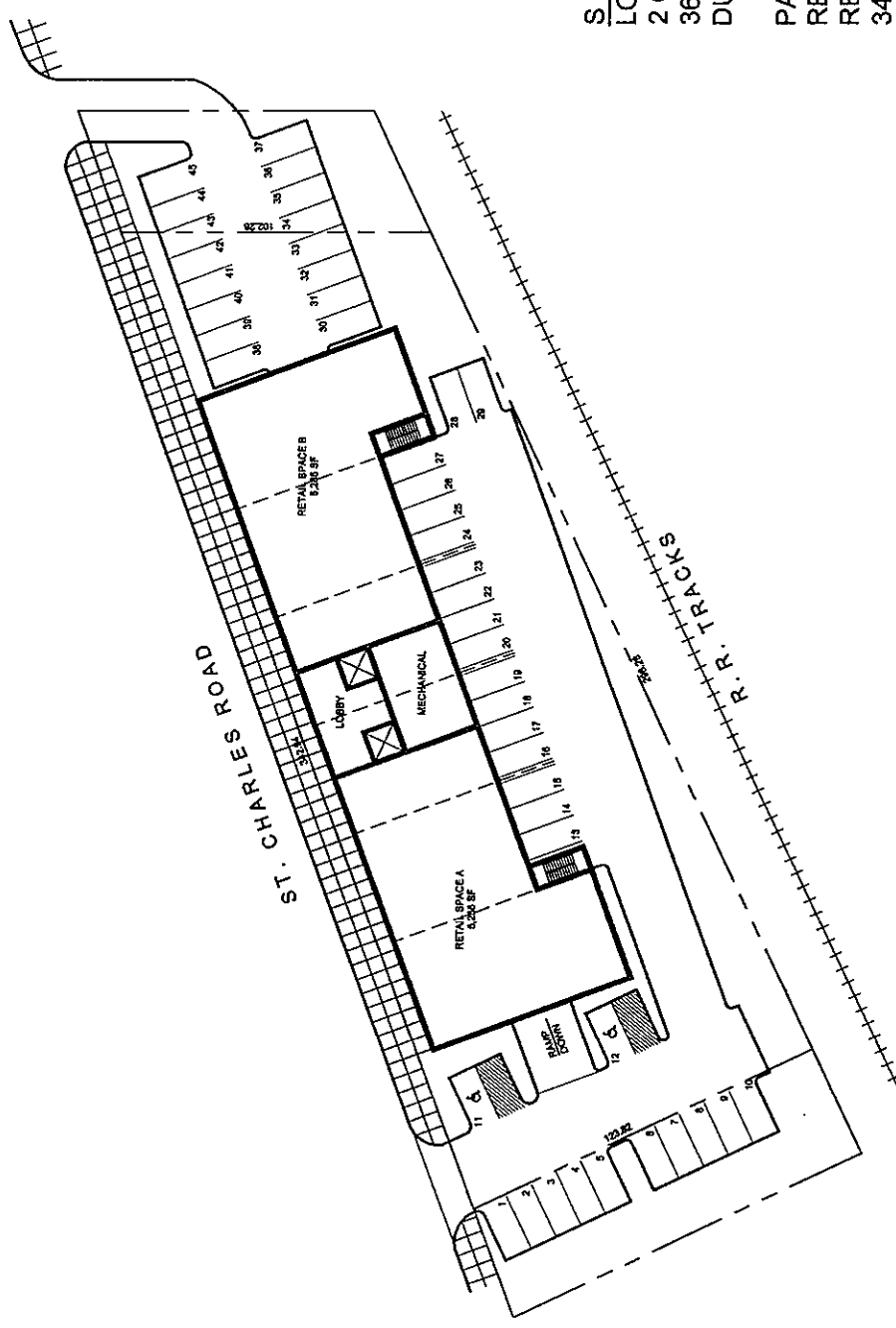
EXHIBIT 3

Legal Description of the Adjacent Parcel

EXHIBIT 4

Preliminary Site Plan

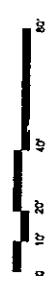




**SITE DATA**  
 LOT AREA: 39,600 SF (.91 AC)  
 2 COMMERCIAL SPACES  
 36 RESIDENTIAL UNITS  
 DU/AC: 39.6

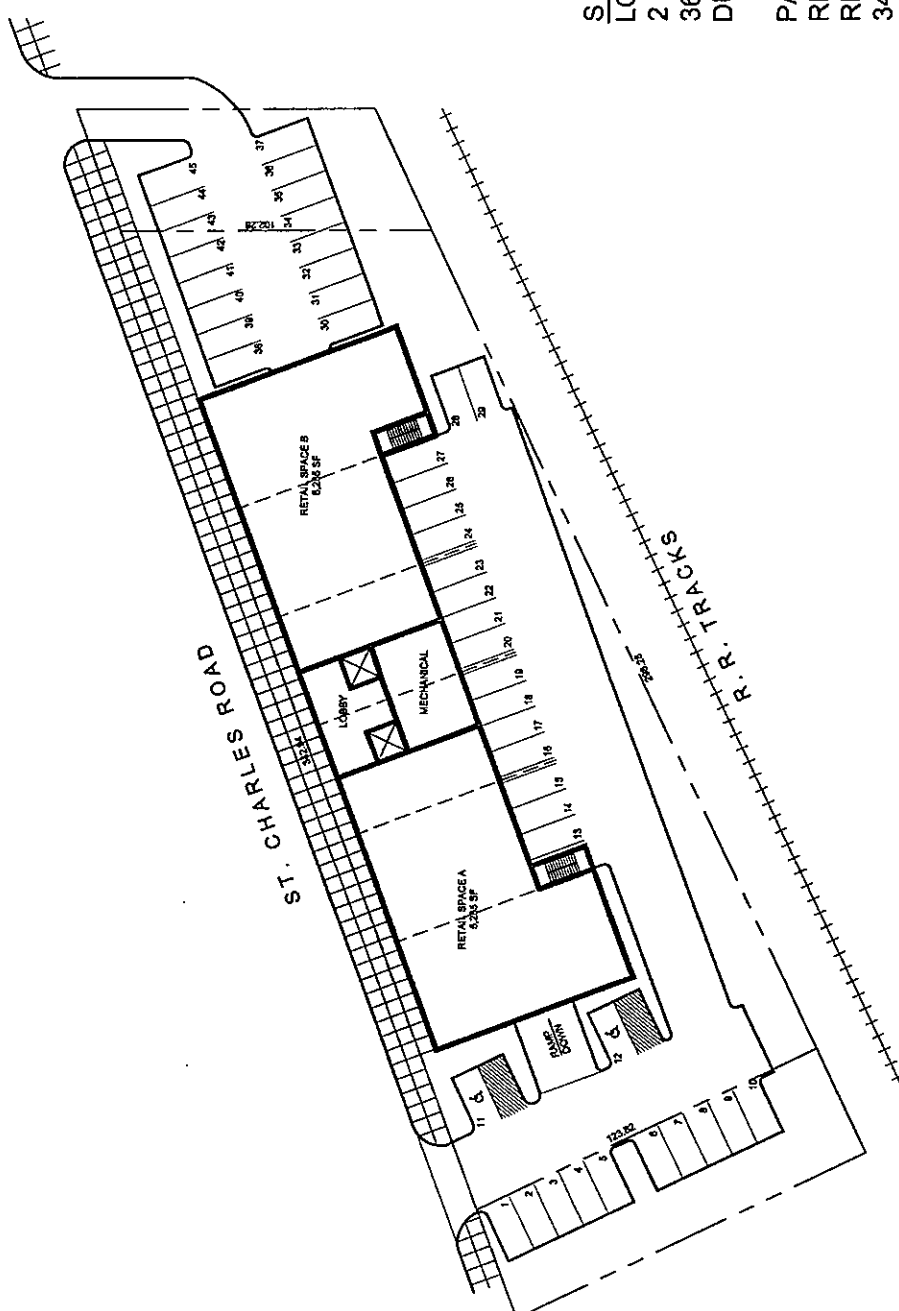
**PARKING:**  
 RESIDENTIAL: 1.5:1 (54 SPACES)  
 RETAIL: 1/500 SF (22 SPACES)  
 34 INTERIOR PARKING SPACES  
 45 EXTERIOR PARKING SPACES  
 79 TOTAL SPACES

**FIRST FLOOR PLAN**  
**PRELIMINARY SITE PLAN**  
 LOMBARD, ILLINOIS



New Urban Communities  
 DEVELOPER

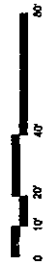
APRIL 26, 2006



**SITE DATA**  
 LOT AREA: 39,600 SF (.91 AC)  
 2 COMMERCIAL SPACES  
 36 RESIDENTIAL UNITS  
 DU/AC: 39.6

**PARKING:**  
 RESIDENTIAL: 1.5:1 (54 SPACES)  
 RETAIL: 1/500 SF (22 SPACES)  
 34 INTERIOR PARKING SPACES  
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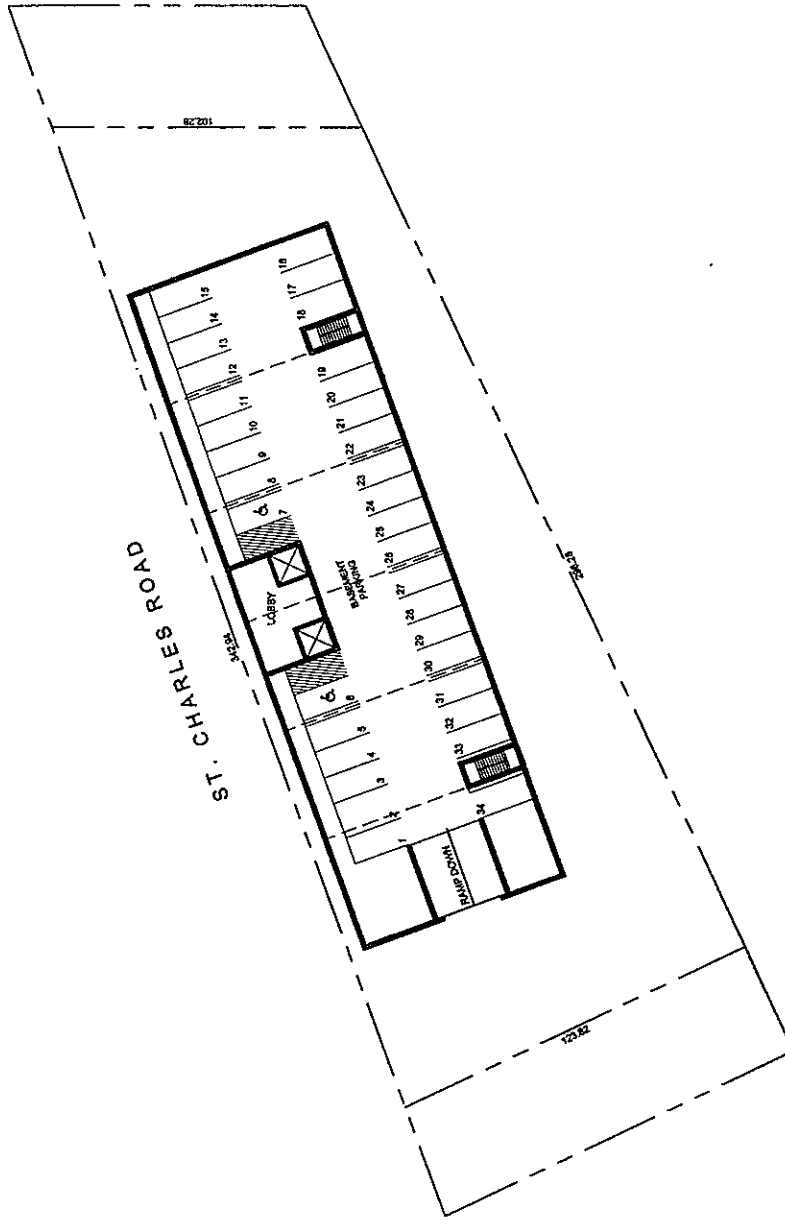
FIRST FLOOR PLAN  
 PRELIMINARY SITE PLAN  
 LOMBARD, ILLINOIS



S U L L I V A N  
 C O U L T E R  
 A R C H I T E C T S

New Urban Communities  
 DEVELOPER

APRIL 26, 2005



**BASEMENT**  
**PRELIMINARY SITE PLAN**  
 LOMBARD, ILLINOIS



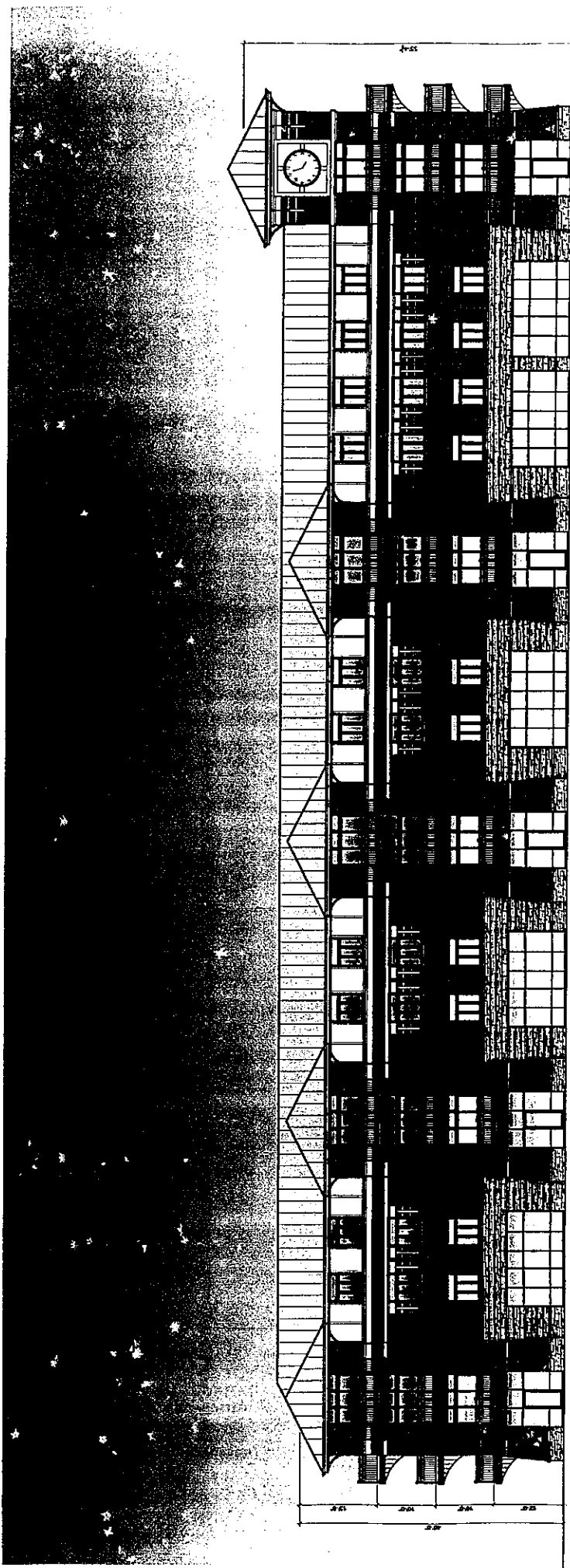
**SULLIVAN**  
**CONSTRUCTIVE**  
 ARCHITECTS

New Urban Communities  
 DEVELOPER

APRIL 26, 2006

EXHIBIT 5

Preliminary Concept Drawings for the Project



SCHEME A

PRELIMINARY  
ST. CHARLES ROAD ELEVATION

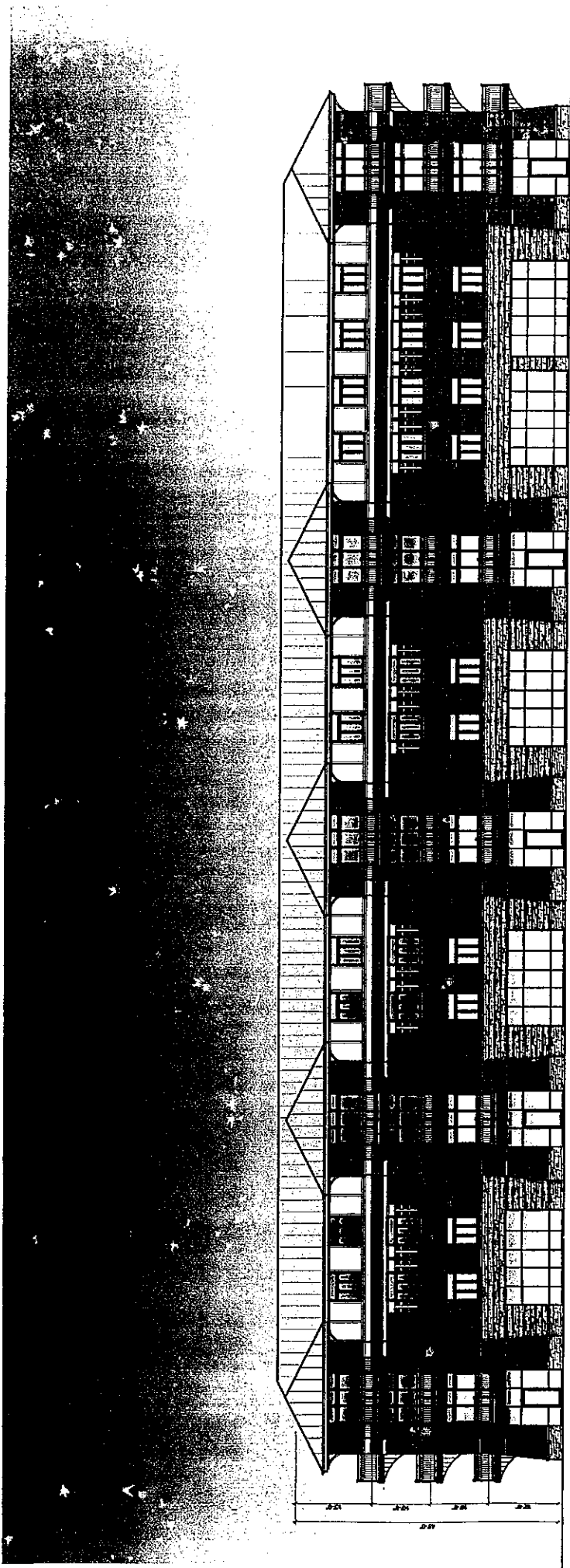


MIXED-USE BUILDING  
LOMBARD, ILLINOIS

New Urban Communities  
DEVELOPER

MAY 27, 2005

SULLIVAN  
GOULLETTE  
ARCHITECTS



SCHEME B

PRELIMINARY  
ST. CHARLES ROAD ELEVATION



MIXED-USE BUILDING  
LOMBARD, ILLINOIS

SULLIVAN  
COLLETTE  
ARCHITECTS

New Urban Communities  
DEVELOPER

MAY 27, 2005

EXHIBIT 6

Exterior Materials Specifications

## EXHIBIT 7

### Minimum Standards for Interiors

Condominium Units shall be of either a “loft” floor plan, where the ductwork and ceilings are exposed, or a more traditional interior finish with drywall ceilings.

Both types of units shall have the following features:

- Nine foot ceilings.
- General Electric kitchen appliances (upgraded appliance package available).
- Ceramic floor tile on kitchen floors.
- Designer kitchen cabinets (upgraded cabinetry available).
- Ceramic floor tile and tub surrounds in bathrooms.
- Wall-to-wall carpeting (upgrade to wood flooring available).
- Washer and dryer connections in each unit (washer and dryer optional).
- Secure underground parking and storage areas.
- Natural gas furnace, water heater and range.
- Hookups for optional gas dryer and fireplace.
- Noise-attenuating glazing in windows and patio doors.



EXHIBIT 8

Approved Construction Schedule



EXHIBIT 9

Real Estate Sales Contract

CHICAGO TITLE INSURANCE COMPANY  
**REAL ESTATE SALE CONTRACT**

ILLINOIS FORM B \*

1. New Urban Lombard, LLC, an Illinois limited liability company, (Purchaser) agrees to purchase at a price of \$ 950,000.00 on the terms set forth herein, the following described real estate in DuPage County, Illinois: commonly known as property on East St. Charles Road, Lombard, Illinois, having Property Identification Numbers of 06-08-108-005, 06-08-108-009, 06-08-108-011, the legal description of which is attached hereto and incorporated herein as *Exhibit A*, and with approximate lot dimensions of 125' x 345' x 100' x 390', together with the following property presently located thereon:

NONE – VACANT LOT

2. The Village of Lombard, an Illinois municipal corporation, (sometimes referred to herein as "Seller" or "Village") agrees to sell the real estate and the property described above, if any, at the price and terms set forth herein, and to convey or cause to be conveyed to Purchaser or nominee title thereto by a recordable warranty deed, with release of homestead rights, if any, and a proper bill of sale, subject only to: (a) covenants, conditions and restrictions of record; (b) private, public and utility easements and roads and highways, if any; (c) party wall rights and agreements, or any; (d) existing leases and tenancies (as listed in Schedule A attached); (e) special taxes or assessments for improvements not yet completed, (f) installments not due at the date hereof of any special tax or assessment for improvements heretofore completed; (g) mortgage or trust deed specified below, if any; (h) general taxes for the year 2005 and subsequent years including taxes which may accrue by reason of new or additional improvements during the year(s) \_\_\_\_\_; and to \_\_\_\_\_

3. Purchaser has paid \$ \$95,000.00 (nine-five thousand and 00/100 dollars) as earnest money to be applied on the purchase price, and agrees to pay or satisfy the balance of the purchase price, plus or minus prorations, at the time of closing as follows: *(strike language and subparagraphs not applicable)*

- (a) ~~The payment of \$ \$855,000 (eight hundred and fifty-five thousand and 00/100 dollars)~~  
(b) ~~The payment of \$ \_\_\_\_\_ and the balance payable as follows:~~

~~to be evidenced by the note of Purchaser (grantee), providing for full prepayment privileges without penalty, which shall be secured by a part-purchase-money mortgage (trust deed), the latter instrument and the note to be in the form hereto attached as Schedule B, or, in the absence of this attachment, the forms prepared by \_\_\_\_\_ and identified as Nos. \_\_\_\_\_, \*\* and by a security agreement (as to which Purchaser will execute or cause to be executed such financing statements as may be required under the Uniform Commercial Code in order to make the lien created thereunder effective), and an assignment of rents, said security agreement and assignment of rents to be in the forms appended hereto as Schedules C and D.~~

~~Purchaser shall furnish to Seller an American Land Title Association loan policy insuring the mortgage (trust deed) issued by the Chicago Title Insurance Company. (\*\*If a Schedule B is not attached and the blanks are not filled in, the note shall be secured by a trust deed, and the note and trust deed shall be in the forms used by The Chicago Trust Company.)~~

(c) ~~The acceptance of the title to the real estate by Purchaser subject to a mortgage or trust deed of record securing a principal indebtedness (which the Purchaser [does] [does not] agree to assume) aggregating \$ \_\_\_\_\_ bearing interest at the rate of \_\_\_\_\_% a year, and the payment of a sum which represents the difference between the amount due on the indebtedness at the time of closing and the balance of the purchase price.~~

4. Seller, at his own expense, agrees to furnish Purchaser a current ~~plat of~~ boundary survey of the above real estate made, and ~~so certified by the surveyor as having been made, in compliance with the Illinois Land Survey Standards.~~

5. The time of closing shall be on \_\_\_\_\_ or on the date, if any, to which such time is extended by reason of paragraphs 2 or 10 of the Conditions and Stipulations hereafter becoming operative (whichever date is later), unless subsequently mutually agreed otherwise, at the office of \_\_\_\_\_ Chicago Title Insurance Company, Wheaton, Illinois, \_\_\_\_\_ or of the mortgage lender, if any, provided title is shown to be good or is accepted by Purchaser.

6. Seller agrees to pay a broker's commission to \_\_\_\_\_ in the amount set forth in the broker's listing contract or as follows: \_\_\_\_\_

6. BROKERAGE. Each party hereto hereby represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such party's actions (or claiming through such party), is entitled to compensation as a consequence of this transaction. Each party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Agreement. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorney's fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder.

7. The earnest money shall be held by Klein, Thorpe & Jenkins, Ltd., 20 N. Wacker Drive, Suite 1660, Chicago, Illinois, for the mutual benefit of the parties in a non interest-bearing account.

8. Seller warrants that Seller, its beneficiaries or agents of Seller or of its beneficiaries have received no notices from any city, village or other governmental authority of zoning, building, fire or health code violations in respect to the real estate that have not been heretofore corrected.

9. A duplicate original of this contract, duly executed by the Seller ~~and his spouse, if any,~~ shall be delivered to the Purchaser within \_\_\_\_\_ days from the date hereof, otherwise, at the Purchaser's option, this contract shall become null and void and the earnest money shall be refunded to the Purchaser.

This contract is subject to the Conditions and Stipulations set forth on the following pages, which Conditions and Stipulations are made a part of this contract.

**Village of Lombard**

**Developer:  
New Urban Lombard, LLC**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

Attest:

Attest:

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

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 2005

Date: \_\_\_\_\_, 2005

*\*Form normally used for sale of property improved with multi-family structures of five or more units or of commercial or industrial properties.  
ADV. VI.O R2/95 K3773*

## CONDITIONS AND STIPULATIONS

1. Seller shall deliver or cause to be delivered to Purchaser or Purchaser's agent, not less than 5 days prior to the time of closing, the plat of survey (If one is required to be delivered under the terms of this contract) and a title commitment for an owner's title insurance policy issued by the Chicago Title Insurance Company in the amount of the purchase price, covering title to the real estate on or after the date hereof, showing title in the intended grantor subject only to (a) the general exceptions contained in the policy, (b) the title exceptions set forth above, and (c) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which the Seller may so remove at that time by using the funds to be paid upon the delivery of the deed (all of which are herein referred to as the permitted exceptions). The title commitment shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the exceptions as therein stated. Seller also shall furnish Purchaser an affidavit of title in customary form covering the date of closing and showing title in Seller subject only to the permitted exceptions in foregoing items (b) and (c) and unpermitted exceptions or defects in the title disclosed by the survey, if any, as to which the title insurer commits to extend insurance in the manner specified in paragraph 2 below. If Purchaser requires extended coverage it shall be at their sole cost and expense.

2. If the title commitment or plat of survey (if one is required to be delivered under the terms of this contract) discloses either unpermitted exceptions or survey matters that render the title unmarketable (herein referred to as "survey defects"), Seller shall have 30 days from the date of delivery thereof to have the exceptions removed from the commitment or to correct such survey defects or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or survey defects, and, in such event, the time of closing shall be 35 days after delivery of the commitment or the time expressly specified in paragraph 5 on the second page hereof, whichever is later. If Seller fails to have the exceptions removed or correct any survey defects, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions or survey defects within the specified time, Purchaser may terminate this contract or may elect, upon notice to Seller within 10 days after the expiration of the 30-day period, to take title as it then is with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount. If Purchaser does not so elect, this contract shall become null and void without further action of the parties.

3. ~~Rents, premiums under assignable insurance policies, water and other utility charges, fuels, prepaid service contracts, general taxes, accrued interest on mortgage indebtedness, if any, and other similar items shall be adjusted ratably as of the time of closing. The amount of the current general taxes not then ascertainable shall be adjusted on the basis of (a), (b), or (c) below (Strike subparagraphs not applicable):~~

~~(a) \_\_\_\_\_% of the most recent ascertainable taxes;~~

~~(b) The most recent ascertainable taxes and subsequent readjustment thereof pursuant to the terms of reproration letter attached hereto and incorporated herein by reference.~~

(c) [Other] Real estate taxes will not be prorated. As the Village is in the process of applying for real estate tax exemptions for tax years 2004 and 2005, and the Village has paid the 2004 real estate taxes, the Village retains a right to apply for a certificate of error for tax year 2004 and retain such refund. A tax escrow in the amount of 105% of the 2004 taxes shall be held in a non interest-bearing account by Klein Thorpe & Jenkins, Ltd., ("KTJ") for the taxes accrued over the period of January 1, 2005 through the date of closing (the "Closing Taxes").

In the event that the Village has not received a tax exemption for tax year 2005 prior to the first or second installments becoming due and payable, the tax escrow shall be used to pay the respective installment of the Closing Taxes and the Village retains the right to file a certificate of error for said Closing Taxes and retain such refund. KTJ is authorized to disburse the Closing Taxes from the escrow. Any monies remaining in the tax escrow shall be refunded to the Village.

The amount of any general taxes which may accrue by reason of new or additional improvements shall be adjusted as stated above.

All prorations are final unless otherwise provided herein. ~~Existing leases and assignable insurance policies, if any, shall then be assigned to Purchaser. Seller is exempt from the payment~~ shall pay the amount of any stamp tax imposed by State law on the transfer of the title, and shall furnish a completed Real Estate Transfer Declaration signed by the Seller or the Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois and shall furnish any declaration signed by the Seller or the Seller's agent or meet other requirements as established by any local ordinance with regard to a transfer or transaction tax; Seller is exempt from such tax required by local ordinance ~~shall be paid by the party upon whom such ordinance places responsibility~~ therefore. If such ordinance does not so place responsibility, the tax shall be paid by the ~~(Purchaser) (Seller)~~. ~~(Strike one.)~~

4. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this contract.

5. If this contract is terminated without Purchaser's fault, the earnest money shall be returned to the Purchaser, but if the termination is caused by the Purchaser's fault, then upon notice to the Purchaser, the earnest money shall be forfeited to the Seller and applied first to the payment of Seller's expenses and then to payment of broker's commission; the balance, if any, to be retained by the Seller as liquidated damages.

6. At the election of Seller or Purchaser upon notice to the other party not less than 5 days prior to the time of closing, this sale shall be closed through an escrow with Chicago Title and Trust Company, in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement then in use by Chicago Title and Trust Company, with such special provisions inserted in the escrow agreement as may be required to conform with this contract. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, payment of purchase price and delivery of deed shall be made through the escrow and this contract and the earnest money shall be deposited in the escrow. The cost of the escrow shall be divided equally between Seller and Purchaser. ~~(Strike paragraph if inapplicable.)~~

7. Time is of the essence of this contract.

8. All notices herein required shall be in writing and shall be served on the parties at the addresses following their signatures. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service.

9. Alternative 1:

Seller represents that it he is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section. Seller will furnish Purchaser at closing the Exemption Certification set forth in said Section.

~~Alternative 2:~~

~~Purchaser represents that the transaction is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code because Purchaser intends to use the subject real estate as a qualifying residence under said Section and the sales price does not exceed \$300,000.~~

~~Alternative 3:~~

~~With respect to Section 1445 of the Internal Revenue Code, the parties agree as follows: (Strike two of the three alternatives.)~~

10. (A) Purchaser and Seller agree that the disclosure requirements of the Illinois Responsible Property Transfer Act ~~(do)~~ (do not) apply to the transfer contemplated by this contract. (If requirements do not apply, strike (B) and (C) below.)

(B) ~~Seller agrees to execute and deliver to Purchaser and each mortgage lender of Purchaser such disclosure documents as may be required by the Illinois Responsible Property Transfer Act.~~

~~(C) — Purchaser agrees to notify Seller in writing of the name and post office address of each mortgage lender who has issued a commitment to finance the purchase hereunder, or any part thereof; such notice shall be furnished within 10 days after issuance of any such commitment, but in no event less than 40 days prior to delivery of the deed hereunder unless waived by such lender or lenders. Purchaser further agrees to place of record, simultaneously with the deed recorded pursuant to this contract, any disclosure statement furnished to Purchaser pursuant to paragraph 10(B) and, within 30 days after delivery of the deed hereunder, to file a true and correct copy of said disclosure document with the Illinois Environmental Protection Agency.~~

11. **DISCLOSURE OF INTERESTS.** In accordance with Illinois law, 50 ILCS 105/3.1, prior to execution of this Contract by the Village, an owner, authorized trustee, corporate official or managing agent, must submit a sworn affidavit to the Village disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Real Estate, and every shareholder entitled to receive more than 7 1/2% of the total distributable income of any corporation having any real interest, real or personal, in the Real Estate, or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the corporation or its managing agent that there is no readily known individual having a greater than 7 1/2% percent interest, real or personal, in the Real Estate. The sworn affidavit shall be substantially similar to the one described in Exhibit "B" attached hereto and made a part of this Contract.



**EXHIBIT A**

**Legal Description**

Lot 1 in St. Charles Corridor Redevelopment Plat of Resubdivision of part of Sections 5, 6, 7, 8 and 18 Township 39 North, Range 11, East of the Third Principal Meridian, in DuPage County, Illinois.

Permanent Index Numbers of :      06-08-108-005  
                                                          06-08-108-009  
                                                          06-08-108-011

**EXHIBIT "B"**

**ALL PURCHASERS MUST SIGN AN AFFIDAVIT THAT IS  
SUBSTANTIALLY SIMILAR TO THE ONE BELOW**

State of Illinois )  
 )  
County of \_\_\_\_\_ )

**DISCLOSURE AFFIDAVIT**

\_\_\_\_\_, I, \_\_\_\_\_, reside at \_\_\_\_\_ in the town  
of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, being first  
duly sworn and having personal knowledge of the Property in question, swear to the following:

1. That I am over the age of eighteen and the (choose one) \_\_\_\_\_ (i.e.,  
purchaser, authorized trustee, corporate official or managing agent having an interest in the Property  
being sold by the Village of Lombard ("Village" or "Seller").

2. That the Property in question has a common street address on East St. Charles Road, in  
the Village of Lombard, County of DuPage, State of Illinois, and with property index numbers of:  
06-08-108-005, 06-08-108-009, and 06-08-108-011 (hereinafter "Property").

3. That I understand that pursuant to 50 ILCS 105/3.1, prior to execution of the Real Estate  
Contract between the Village, as owner of record, and Purchaser, state law requires the purchaser,  
authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Village  
disclosing the identity of every owner and beneficiary having *any* interest, real or personal, in the  
Property, and every shareholder entitled to receive more than 7 1/2% of the total distributable income of  
any corporation having any interest, real or personal, in the Property.

4. As the owner, authorized trustee, corporate official or managing agent, I declare under  
oath that (choose one):

(a) The owners or beneficiaries of the trust are: \_\_\_\_\_

or

(b) The shareholders with more than 7 1/2% interest are: \_\_\_\_\_

or

(c) The corporation is publicly traded and there is no readily known individual  
having greater than a 7 1/2% interest in the corporation.

5. This instrument is made to induce the Village to transfer title to the Property in  
accordance with 50 ILCS 105/3.1.

Subscribed and Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Affiant

\_\_\_\_\_  
Notary Public

## RIDER

This Rider is made as of this \_\_\_\_ day of June, 2005 between the VILLAGE OF LOMBARD, an Illinois municipal corporation (“**Seller**”), and NEW URBAN LOMBARD, LLC, an Illinois limited liability company (“**Purchaser**”), for the sale of the property legally described on Exhibit A attached hereto and made a part hereof (the “**Property**”).

1. Effect of Rider. This Rider (the “**Rider**”) is attached to and made a part of that certain Real Estate Sale Contract dated as of \_\_\_\_\_, 2005 (the “**Original Agreement**”). This Rider and the Original Agreement are collectively referred to herein as the “**Contract**”). In the event of any conflict between the terms of the Original Agreement and this Rider, the terms of this Rider shall control and prevail.
2. Definitions. All capitalized terms not otherwise defined herein shall have the same meanings as are ascribed to such terms under the Original Agreement. The property that is the subject of the Original Agreement shall be referred to as the “**Property**” under this Rider.
3. Development Agreement. This Contract is being executed concurrently with that certain Redevelopment Agreement between Seller and Purchaser with respect to the redevelopment of the Property.
4. Feasibility Period. Purchaser shall have until 5:00 p.m. on the date that is sixty (60) days after the Effective Date, as defined in the aforementioned Redevelopment Agreement (the “**Feasibility Period**”) to (a) investigate the physical and environmental condition of the Property and the Improvements; (b) investigate and satisfy itself as to the existence or availability of all off-site sanitary and storm sewers, water mains and easements therefor to the boundaries of the Property; and (c) investigate other such matters as Purchaser deems appropriate with respect to the Property. Purchaser shall be permitted to terminate this Agreement by written notice to Seller delivered prior to the expiration of the Feasibility Period, in the event that Purchaser is not satisfied with the matters described herein, in its sole discretion, in which event the Earnest Money shall be returned to Purchaser, and the parties shall have no further obligations hereunder, except as otherwise provided herein.
5. Existing Data. Seller shall, within five (5) days after the Effective Date, provide Purchaser with any environmental reports, title reports, title policies, plats, plans, engineering studies, surveys, soil boring reports and other materials (the “**Existing Data**”) for Purchaser’s use during the Feasibility Period and afterwards. In the event this Agreement is terminated for any reason prior to the purchase of the Property by Purchaser, then Purchaser shall promptly return all of the Existing Data to Seller.
6. Inspection of the Property. From and after the date hereof, Purchaser and its employees, agents or independent contractors shall be permitted to come on to the Property to complete any physical investigations necessary for the performance of this Agreement, including soil tests and environmental studies. Purchaser agrees to indemnify and hold Seller harmless from and against any and all mechanics liens or other claims for the providing of material or services upon the Property in connection therewith and any other claims or causes of action arising out of any act, occurrence or omission of its employees, agents or independent contractors while on the Property. Prior to entry upon the Property, Purchaser shall obtain a public liability insurance

policy in normal and customary amounts providing for coverage against liability incurred or the results of the acts of Purchaser while on the Property. Such policies shall name Seller as an additional insured party and Purchaser shall deliver to Seller a Certificate of Insurance so providing prior to Purchaser's entry on to the Property.

7. Title; Survey. Sections 1 and 2 of the Conditions and Stipulations of the Original Agreement are hereby deleted in their entirety and the following are substituted in lieu thereof:

(a) Title Commitment. Seller shall deliver or cause to be delivered to Purchaser, at Seller's sole cost and expense, in form and substance satisfactory to Purchaser, not more than twenty-one (21) days after the Effective Date, (i) a preliminary title report (the "**Title Commitment**") issued by Chicago Title Insurance Company (the "**Title Company**") (which may be in nominal amount) setting forth the status of title to the Land, and showing recorded liens, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, and any other similar matters affecting the Land or Seller's title thereto, and including, copies of all documents referred to therein, including but not limited to deeds, lien instruments, plats, encumbrances, reservations, restrictions and easements; and (ii) legible copies of all title documents referred to in the Title Commitment.

(b) Survey. Within twenty-one (21) days after Seller delivers to Purchaser the Commitment for Title Insurance described in 2.A. above, Purchaser shall obtain, at Purchaser's cost, a staked 1999 ALTA/ACSM Land Title Survey of the Land.

(c) Title and Survey Defects. Within ten (10) days following the later of the delivery of the Title Commitment or the Survey, Purchaser shall provide Seller written notice (the "**Title and Survey Defect Notice**") of which items reflected on the Title Commitment are unacceptable (the remaining items being referred to herein as "**Permitted Exceptions**") and those matters disclosed by the Survey to which Purchaser objects. If the Title Commitment discloses exceptions to title other than the Permitted Exceptions, Seller shall, at Seller's expense, prior to Closing, either (i) cure such unpermitted exceptions, or (ii) cause such unpermitted exceptions to be insured over by the Title Company. Notwithstanding the foregoing, Seller will be obligated to cure any mortgages and/or liens of an ascertainable amount that affect the Land that were granted and/or caused by or on behalf of Seller and such mortgages and/or liens shall in no event be deemed to be Permitted Exceptions. If Seller does not cause such unpermitted exceptions or defects to be cured within such time period or is unable to deliver to Purchaser at Closing the Title Policy in the form required hereunder, Purchaser may elect either to take title as it then is and deduct from the purchase price such amounts which will discharge any unpermitted liens or encumbrances of a definite or ascertainable amount, or to terminate this Contract, in which event the earnest money plus all accrued interest thereon shall be promptly returned to Purchaser.

(d) Title Policy. As a condition precedent to Purchaser's obligation to close on the transaction contemplated herein, Seller shall deliver or cause the Title Company to deliver (or commit to deliver) to Purchaser, prior to the payment of the purchase price, an ALTA Form 1992 owner's title insurance policy (the "**Title Policy**") in the amount of the Purchase Price, with (at Purchaser's cost) full extended coverage over the general

exceptions issued by the Title Company, containing no exceptions other than the Permitted Exceptions, and containing, at Purchaser's cost, (i) a 3.1 zoning endorsement insuring that the Land is usable for Purchaser's intended use, (ii) survey and contiguity endorsements, (iii) an endorsement insuring access to a public right of way, (iv) an owner's comprehensive endorsement, (v) a restrictions endorsement over recorded covenants, and (vi) a tax parcel endorsement insuring that the P.I.N. covering the Parcel includes no other property, and insuring fee simple title to the Land in Purchaser or its nominee and insuring Purchaser's interest in easements of record which benefit the Land, and such other endorsements as Purchaser may require.

8. Real Estate Taxes. Notwithstanding Section 3 of the Conditions and Stipulations of the Original Agreement to the contrary, Purchaser shall have no responsibility to pay the real estate taxes for tax year 2004 or for that portion of tax year 2005 through the date of Closing. In the event that Seller does not obtain tax exemptions for tax years 2004 and 2005, Seller shall be responsible for paying all real estate taxes accrued through the date of Closing, regardless of whether there is sufficient funds in the tax escrow.

9. Closing. Section 5 of the Original Agreement is deleted and replaced with the following:

The closing on the Property (the "**Closing Date**") shall be a date specified by Purchaser upon not less than fifteen (15) days' prior written notice after expiration of the Feasibility Period, provided that this Agreement has not been previously terminated by Purchaser. The Closing shall be held at the office of the Title Company located in downtown Chicago, Illinois through an escrow with the Title Company acting as escrow ("**Escrowee**") pursuant to the Escrowee's usual form of escrow agreement by the Escrowee, modified in accordance with the terms of this Agreement. Seller and Purchaser shall share equally in the cost of the escrow. The cost of any "New York Style Closing" or "gap closing" shall be shared equally by Seller and Purchaser. All closing documents, the purchase price and possession of the Land shall be delivered on the Closing Date. On the Closing Date when the Title Company issues (or commits in writing to issue) its Title Policy pursuant to Section 7(d) above, the Escrowee shall disburse the net proceeds of sale to Seller and Seller shall deliver possession of the Land to Purchaser.

10. Seller's Covenants. Between the date of the execution of this Agreement and the Closing,

(a) Seller shall not enter into any contracts, leases, extensions or renewals of existing leases or agreements pertaining to the Property unless such contracts or agreements can be terminated, and which will be terminated, without penalty upon Closing, and shall make no alterations in the Property, without, in each case, first obtaining the written consent of Purchaser;

(b) Seller shall not perform or permit any act which will diminish or otherwise affect Purchaser's interest under this Agreement or in or to the Property or which will prevent Seller's full performance of its obligations hereunder;

(c) Seller shall maintain the Property in its present condition, free from waste and neglect, ordinary wear and tear excepted, including the performance of all necessary repairs, replacements and landscaping;

(d) Seller shall maintain all casualty, liability and hazard insurance currently in force with respect to the Property;

(e) Seller shall comply, or insure compliance with, all federal, state and local laws or regulations and court and administrative orders with respect to the Property, including with respect to environmental conditions; and

11. Representations and Warranties. Seller represents and warrants as follows, said representations and warranties to be true, correct and in effect on the date hereof and at closing and shall survive closing:

(a) Seller is the sole owner of the Property in fee simple and has full authority to enter into this Agreement and complete all of Seller's obligations hereunder.

(b) There are no parties in possession of the Property, nor are there any parties with possessory rights in the Property other than Seller, other than current tenants whose tenancies and possession of the Property shall be terminated by Seller prior to closing. Purchaser may go onto the Property pursuant to Section 6 hereof and perform its activities thereon without the requirement to obtain any consents from the current tenants.

(c) The Property is free of any liens except for the lien of general real estate taxes; and except for Seller's mortgage on the Property, if any, which will be paid off and released out of Seller's closing proceeds.

(d) Seller has received no notice nor has knowledge of any fact or condition that exists which would result in the termination of access to the Property from adjoining public or private streets or ways or which would result in discontinuation or refusal of service by any applicable utility providers of adequate sewer, water, gas, electric, telephone or other utility service to the Property.

(e) To the best of Seller's knowledge, neither the Property nor any part thereof is in breach of any Environmental Laws (hereinafter defined), and the Property is free of any Hazardous Materials (hereinafter defined) that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. As used herein, the term "**Hazardous Materials**" shall mean any substance, material, waste, gas or particulate matter which is regulated by any local governmental authority, the State of Illinois, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of Illinois law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903), or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601). The term "**Environmental Laws**" shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental health and safety statutes,

ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

12. Notices. Paragraph 8 of the Stipulations and Conditions to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“All notices, demands, requests and other communications under this Agreement shall be in writing and shall be deemed properly served (a) on the date of delivery, if delivered by hand, (b) on the second business day following mailing, if sent by registered or certified mail, return receipt requested, postage prepaid, (c) on the first business day following delivery to an overnight courier, if served by overnight courier, or (d) on the date of confirmed transmission, if sent by telephone facsimile and received not later than 4:00 p.m. or on the next business day if received after 4:00 p.m., provided that a copy of any notice sent by facsimile transmission shall be followed by a copy of such notice sent by overnight courier (except that the applicable delivery date shall be based upon the date and time of delivery of the facsimile transmission and not the time of delivery of the overnight copy). Notices shall be addressed as follows:

|                  |                                                                                                                                 |
|------------------|---------------------------------------------------------------------------------------------------------------------------------|
| If to Purchaser: | New Urban Lombard, LLC<br>502 West Campbell Street<br>Arlington Heights, Illinois 60005<br>Attention: Robert A. O’Neill         |
| with copy to:    | Gardner Carton & Douglas LLP<br>191 North Wacker Drive, Suite 3700<br>Chicago, Illinois 60606<br>Attention: William L. Goldbeck |
| If to Seller:    | Village Manager<br>Village of Lombard<br>255 East Wilson Avenue<br>Lombard, Illinois 60148                                      |
| with copies to:  | Director of Community Development<br>Village of Lombard<br>255 East Wilson Avenue<br>Lombard, Illinois 60148                    |
|                  | Klein, Thorpe & Jenkins, Ltd.<br>20 North Wacker Drive, Suite 1660<br>Chicago, Illinois 60606<br>Attention: George A. Wagner    |

Either party may change its address for purposes of receipt of any such communication by giving ten days' written notice of such change to the other party in the manner above prescribed.

13. Remedies. Section 5 of the Conditions and Stipulations of the Original Agreement is deleted in its entirety and replaced with the following:

(a) If Seller should breach any of its covenants, representations or warranties contained in this Agreement or should fail to consummate the sale contemplated herein for any reason other than either Purchaser's default hereunder or Seller's failure to cure or insure over survey or title defects, after Purchaser has given Seller not less than 10 days' written notice of such default, if such default still remains uncured after the notice period, then Purchaser shall have the right to exercise any and all of its rights at law or in equity.

(b) If Purchaser should breach any of its covenants contained in this Agreement (and Seller shall not be in default hereunder), after Seller has given Purchaser not less than 10 days' written notice of such default and if such default remains uncured after such notice period, then Seller shall have the right to retain the Earnest Money as liquidated damages as its sole remedy.

14. Counterparts. Both this Rider and the Original Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.



IN WITNESS WHEREOF, the Purchaser and the Seller have executed this Rider as of the date first above written.

SELLER:

Date: \_\_\_\_\_

VILLAGE OF LOMBARD,  
a municipal corporation

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

ATTEST:

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

PURCHASER:

NEW URBAN LOMBARD, LLC  
an Illinois limited liability company

By: \_\_\_\_\_  
Title: Its Manager

**EXHIBIT A**

**LEGAL DESCRIPTION**