

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: May 8, 2006 (BOT) Date: May 18, 2006

TITLE: 7-37 E. St. Charles Road (Hammerschmidt Property)

SUBMITTED BY: Department of Community Development

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development submits for your consideration an Ordinance repealing Ordinance Number 5817 and authorizing a First Amendment to the Redevelopment Agreement between the Village and New Urban Lombard, LLC in regard to the East St. Charles Road Condominiums Development. (DISTRICT #4)

Staff recommends approval of this request with a waiver of first reading.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____
Finance Director X _____
Village Manager X William T. Lichter
Date _____
Date 5/18/06

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 *DH*

DATE: May 8, 2006

SUBJECT: 7-37 E. St. Charles Road (Hammerschmidt Property)

Pursuant to Village Board direction, Village Counsel has prepared the attached documents for your reference. Staff is requesting that this item be placed on the May 18, 2006 Board of Trustees agenda with a waiver of first reading in order to effectuate a timely closing for the petitioner.

Should you have any questions, please feel free to contact me at extension 5756.

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ORDINANCE NO. _____

AN ORDINANCE REPEALING ORDINANCE NUMBER 5817 AND AUTHORIZING A FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE AND NEW URBAN LOMBARD, LLC, IN REGARD TO THE EAST ST. CHARLES ROAD CONDOMINIUMS DEVELOPMENT

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 (hereinafter referred to as the "VILLAGE") is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.

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 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 for 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. New Urban Lombard, LLC (hereinafter referred to as the "DEVELOPER") desires to redevelop a portion of the REDEVELOPMENT PROJECT AREA, said portion thereof including property owned by the Village, and property adjacent thereto

(hereinafter collectively referred to as the "SUBJECT PROPERTY"), legally described on EXHIBIT B and EXHIBIT C, respectively, attached hereto and made part hereof, on which the DEVELOPER intends to construct a mixed use residential and storefront development (hereinafter referred to as the "DEVELOPMENT").

F. In accordance with the TIF ACT, the VILLAGE, pursuant to Ordinance No. 5666, adopted on June 2, 2005, approved a Redevelopment Agreement with the DEVELOPER relative to the DEVELOPMENT (hereinafter referred to as the "REDEVELOPMENT AGREEMENT"), so that redevelopment within the DOWNTOWN TIF DISTRICT could continue.

G. On March 2, 2006, the VILLAGE adopted the following additional ordinances in furtherance of the intent of the REDEVELOPMENT AGREEMENT:

1. Ordinance No. 5817, authorizing a First Amendment to the Redevelopment Agreement, which addressed certain unforeseen environmental remediation costs, made minor clarifications, included provisions associated with the completion of public improvements and site improvements, and addressed other matters affecting Developer's proposed development plans (hereinafter referred to as the "MARCH 2, 2006, FIRST AMENDMENT");

2. Ordinance No. 5818, approving a conditional use for a planned development with a deviation from Section 15.416(G) of the Zoning Ordinance to allow for an increase in building height to fifty-six feet (56') for a clock tower, where a maximum building height of forty-five feet (45') is permitted; all located within the B45 Central Business District; and

3. Ordinance No. 5819, granting a variation of the Lombard Code of Ordinances, Chapter 50, Section 50.026, "Prohibited Connections," relative to the property located at 7-37 E. St. Charles Road; and

H. The MARCH 2, 2006, FIRST AMENDMENT has not been executed by the DEVELOPER or the VILLAGE. The DEVELOPER has determined that the DEVELOPMENT is not economically feasible to construct and market, and has requested the VILLAGE to terminate their respective rights and liabilities under the MARCH 2, 2006, FIRST AMENDMENT, and to enter into another amendment to the REDEVELOPMENT AGREEMENT which will permit a modification to the DEVELOPMENT such that it will be economically feasible to construct and market. Therefore, the DEVELOPER and VILLAGE have agreed that it is in their best interests for the VILLAGE to repeal Ordinance No. 5817, declaring void the MARCH 2, 2006, FIRST AMENDMENT, and to enter into a new amendment to the REDEVELOPMENT AGREEMENT.

I. In order to modify the project that is to be constructed under the REDEVELOPMENT AGREEMENT, to address certain unforeseen environmental remediation costs, to make minor clarifications, and to include provisions associated with the completion of public improvements and site improvements, and other matters affecting Developer's proposed development plans for the SUBJECT PROPERTY, certain amendments now need to be made to the REDEVELOPMENT AGREEMENT.

SECTION 2: Based upon the foregoing, and pursuant to the TIF ACT, the FIRST

AMENDMENT TO THE REDEVELOPMENT AGREEMENT, attached hereto as EXHIBIT D, is

hereby approved, and the President and Clerk of the VILLAGE be and they are hereby authorized

and directed to execute on behalf of the Village of Lombard said FIRST AMENDMENT TO THE

REDEVELOPMENT AGREEMENT, attached hereto as EXHIBIT D.

SECTION 3: That Ordinance No. 5817, AN ORDINANCE AUTHORIZING A FIRST

AMENDMENT TO THE REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE AND

NEW URBAN LOMBARD, LLC, IN REGARD TO THE EAST ST. CHARLES ROAD

CONDOMINIUMS DEVELOPMENT, LOMBARD, DUPAGE COUNTY, ILLINOIS, PIN 06-08-

108-005, 06-08-108-009 AND 06-08-108-011, is hereby repealed.

SECTION 4: That this Ordinance shall be in full force and effect from and after its passage,

approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2006.

First reading waived by action of the Board of Trustees this _____ day of _____, 2006.

Passed on second reading this _____ day of _____, 2006.

AYES: _____

NAYS: _____

ABSENT: _____

Brigitte O'Brien
Village Clerk

Published by me in pamphlet form this _____ day of _____, 2006.

Brigitte O'Brien
Village Clerk

ATTEST:

William J. Mueller
Village President

APPROVED by me this _____ day of _____, 2006.

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, 11, 12, 13, 14, 15 in Block 18 of H.O. Stone & Company's Addition to Lombard Tower Condominiums, Charlotte-Garfied 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

LOT 11 AND LOT 12 (EXCEPT THE WEST 28 FEET OF LOT 12) IN BLOCK 17 OF
THE ORIGINAL TOWN OF LOMBARD, A SUBDIVISION OF SECTION 5, 6, 7, AND 18
IN TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL
MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT
NUMBER 9483, IN DU PAGE COUNTY, ILLINOIS.

ADJACENT PARCEL

EXHIBIT C

FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT

EXHIBIT D

**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 May, 2006, by and between New Urban Lombard, LLC 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").

W I T N E S S E T H

WHEREAS, the Village is the fee simple title holder of the property legally described on EXHIBIT 2 of the Original Agreement, as hereinafter described (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 3 of the Original Agreement as hereinafter described (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, on March 2, 2006, the Corporate Authorities of the Village adopted the following three additional ordinances in furtherance of the intent of the Original Agreement:

1. Ordinance No. 5817, authorizing a First Amendment to the Redevelopment Agreement (hereinafter referred to as the "March 2, 2006 First Amendment");

2. Ordinance No. 5818, approving a conditional use for a planned development with a deviation from Section 155.416(G) of the Zoning Ordinance to allow for an increase in building height to fifty-six feet (56') for a clock tower, where a maximum building height of forty-five feet (45') is permitted; all located within the B45 Central Business District; and

3. Ordinance No. 5819, granting a variation of the Lombard Code of Ordinances, Chapter 50, Section 50.026, "Prohibited Connections," relative to the property located at 7-37 E. St. Charles Road; and

WHEREAS, on May 18, 2006, the Corporate Authorities of the Village, pursuant to an agreement of the Parties, adopted Ordinance No. _____, repealing Ordinance No. 5817, in order to declare void the March 2, 2006 First Amendment, which was never executed by the Parties, and to permit the Parties to enter into this First Amendment, which will authorize, among other things, the construction of a project different from that described in the Original Agreement and the March 2, 2006 First Amendment; and

WHEREAS, the Parties are desirous of amending the Original Agreement to make minor clarifications, to modify the project that is to be constructed under that Agreement, to address certain unforeseen environmental remediation costs, and to include provisions associated with the completion of public improvements and site improvements, and other matters affecting the developer's proposed development plans for the Subject Property, as forth herein; and

WHEREAS, the Corporate Authorities of the Village and the Developer deem it to 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. Preliminary Statements: That Subsection H and Subsection I of the Preliminary Statements in the Original Agreement are hereby deleted with Subsection I to remain blank and a new Subsection H to be inserted to read as follows:

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 storefront development, consisting of two (2) three-story buildings, each building containing (i) nine (9) two-story townhome condominium units located on the second and third floors of each building and (ii) approximately 5,715 square feet, more or less, of retail and/or commercial storefront

space on the first floor, (with said storefront space square footage within each building to be divided into no more than five (5) individual storefront spaces), and with associated on-site parking spaces (hereinafter referred to as the "Project"), as more fully shown on the Schematic Site Plan and Schematic Elevations dated April 13, 2006, prepared by Sullivan Goulette & Wilson, Architects, attached hereto as EXHIBIT 4, and made a part hereof (hereinafter referred to as the "Preliminary Site Plan").

Section 3. Approval Of Development Plans And Construction Schedule: That Subsection A of Section II of the Original Agreement is hereby amended to delete the phrase "the Scheme A Concept Drawing," and to delete the phrase "the Material Specification Schedule and the Interior Standards Schedule" and replace that phrase with "the Exterior Materials Specifications and the Interior Standards Specifications," to read as follows:

A. The Village hereby approves the Preliminary Site Plan, the Exterior Materials Specifications and the Interior Standards Specifications 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.

Section 4. Approval Of Development Plans And Construction Schedule: That Subsection D of Section II of the Original Agreement is hereby deleted and a new Subsection D inserted to read as follows:

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 in one (1) building the number of residential townhome condominium units by up to two (2) units and the area of the storefront area by up to 1,440 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.

Section 5. Undertakings On The Part Of The Village: That the text in Subsection A of Section III of the Original Agreement is hereby deleted in its entirety and Subsection A shall remain blank.

Section 6. 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 the presence of some contaminated soil and/or fill material on the Village Parcel. Subject to the following provisions of this Agreement, after the closing, the Developer shall cause certain additional work to be performed on the Village Parcel not originally contemplated under Developer's development plans to address the impacted

soil and/or fill material. Such work may include both capping impacted soils and excavation and disposal of impacted soils (the "Site Work"). Any excavation, transportation and disposal of impacted soils conducted as part of the Site Work and all other aspects of the Site Work shall be performed in compliance with applicable federal, state and local laws. In connection with the foregoing, it is also expressly understood and agreed between the parties that:

(1) In order to meet its obligations hereunder, Developer shall contract with Testing Services Corporation (the "Environmental Consultant") or another environmental consultant mutually agreeable to the Parties.

(2) The Village shall reimburse the Developer for its actual costs incurred in performing the Site Work in the manner set forth below, such costs to include the hard and soft costs of such work, including without limitation amounts paid to the Environmental Consultant and its contractors, any fees and/or charges related to any disposal of impacted soils, and the fees and 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 Site Work (collectively, "Costs"). Notwithstanding the foregoing, the maximum amount of the Costs that the Village shall reimburse Developer shall not exceed the sum of Eighty-Five Thousand and No/100 Dollars (\$85,000.00) (the "Village's Contribution"). The Village shall have no further responsibility for any cost, expenses, fees, liabilities or obligations in any way related 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.

(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 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 Costs. The Village agrees to reimburse the Developer for Costs up to the limit of the Village's Contribution.

(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 pay interest at a rate of four-and-one-half percent (4.5%) annually on the outstanding balance of the Costs not

Section 9: Public Improvements: That Section IV of the Original Agreement is hereby amended to include the following additional provision:

C. The townhome condominium units to be constructed as part of the Project shall include, at a minimum, the interior finishes set forth in the Interior Standards Specifications set forth in EXHIBIT 7, attached hereto and made a part hereof.

Section 8: Undertakings On The Part Of The Developer: That Subsection C of Section IV of the Original Agreement is hereby amended to delete the phrase "Interior Standards Schedule" and replace that phrase with "Interior Standards Specifications," and to insert the term "townhome" to read as follows:

F. As requested by Developer, the Village has approved a variation from Section 50.026 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. Moreover, as the Subject Property was previously developed with buildings and structures covering over eighty percent (80%) of the Subject Property prior to May 1, 2005, the Village represents that the release rate for the proposed development on the Subject Property shall be the maximum of 0.04 cfs for the 50% annual recurrence (2-yr) rainfall event as set forth in Section 151.55 of the Village Code.

Section 7: Stormwater Variation: That Section III of the Original Agreement is hereby amended to include the following additional provision:

Seller represents to Purchaser that except as may be contained within (i) that certain Impacted Soil Delineation report prepared by Testing Service Corporation dated October 20, 2005; and (ii) that certain Phase I Environmental Site Assessment report dated September 5, 2003 prepared by Mostardi Platt Environmental, its Board of Trustees, Village Manager and Department Heads have no actual present knowledge that the Property or any part thereof is in breach of any Environmental Laws (hereinafter defined), or that the Property contains 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.

(d) The first sentence of Paragraph 11(e) of the Rider to the Real Estate Sales Contract, which is attached as EXHIBIT 9 to the Original Agreement, is hereby amended as follows:

then reimbursed to Developer, up to the limit of the Village's Contribution, such interest payments to be paid solely from the TIF incremental revenues generated by the Project, as described hereinabove.

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 receipt of a building permit for the Project, unless otherwise extended by amendment to the Agreement, consented to by the Corporate Authorities of the Village, with said consent not to be unreasonably withheld. The Letters of Credit and all assurances, guarantees, acceptances, and related matters shall comply with the Lombard Village Code, except as otherwise expressly provided for herein. 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:

The Developer agrees to cause the Public Improvements to be made and constructed with due dispatch and diligence. 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 reasonably satisfactory to the Village and shall be subject to the Village's reasonable approval. The Developer will, at its sole cost and expense, furnish all reasonably necessary engineering services for said Public Improvements.

(hereinafter the "Public Improvements").

(iv) Parking lot pavement, curb and gutter, signs, parking pavement, fencing and lighting.

(iii) underground utilities (including water distribution system, sanitary sewer system, and storm sewers) with appurtenances; storm water control systems; and all related grading improvements; and

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

(i) any stormwater management facilities to be constructed on the Subject Property as required by Village Code, but subject to the variation described in Section III.F hereof;

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 (15%) of the Developer's estimate of cost (hereinafter the "Letter of Credit") of construction as reasonably approved by the Village's engineer or one hundred fifteen percent (15%) 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:

G.

- (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
- It is acknowledged by the parties that no trees are currently located on the Subject Property. Accordingly, no tree preservation measures shall be required of the Developer and same shall not be required as a condition 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 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 management system means that the volume of the storm water management system 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; Fire Hydrants

- (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 stormwater management facilities were constructed in accordance with Chapter 151 of the Lombard Village Code, subject to the variation granted under Section 7 of this Amendment, 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"); provided, however, that the Maintenance LC shall be in an amount equal to ten percent (10%) of the actual costs to construct the Public Improvements, described in Section IV(I)(f)(7)(i), and shall be maintained by Developer for two (2) years following acceptance of those Public Improvements, by the Corporate Authorities of the Village.
 - (5) The Public Improvements described in Section IV(I)(f)(7)(i) 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, which shall be two (2) years following acceptance of the Public Improvements described in Section IV(I)(f)(7)(i) by the Corporate Authorities of the Village.

(7) 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.

(i) Upon approval and acceptance of the aforesaid Public Improvements by the Village, the following Public Improvements 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:

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

(b) underground water distribution lines, fire hydrants and appurtenances located on the Subject Property and outside of the proposed building to be constructed on the Subject Property.

(ii) Public Improvements that will not be conveyed to the Village and will remain the property of the owner(s) of Subject Property include:

(a) any sanitary system and stormwater management related facilities constructed by Developer; and all related grading improvements to be constructed on the Subject Property; and

(b) parking lot pavement, curb and gutter, signage, pavement parking, fencing and lighting constructed on the Subject Property.

(8) The Public Improvements 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.

(9) For any stormwater improvements constructed on the Subject Property, the Developer shall provide the Village with an easement to convey rights to the Village or its contractors to enter onto the Subject Property to inspect the stormwater improvements to ensure compliance with Village Code. However,

the responsibility of maintaining said stormwater improvements on the Subject Property shall remain the responsibility of the owner(s) of the Subject Property.

Section 10: Exhibit 4: That EXHIBIT 4 of the Original Agreement shall be deleted and replaced with a new EXHIBIT 4 as attached hereto.

Section 11: Exhibit 5: The content of EXHIBIT 5 of the Original Agreement shall be deleted in its entirety and EXHIBIT 5 shall remain blank.

Section 12: Exhibit 6: That EXHIBIT 6 of the Original Agreement shall be deleted and replaced with a new EXHIBIT 6 as attached hereto.

Section 13: Exhibit 7: That EXHIBIT 7 of the Original Agreement shall be amended to insert "INTERIOR STANDARDS SPECIFICATIONS" below EXHIBIT 7.

Section 14: Escrow: That Section 7 of the Real Estate Contract, which is attached as EXHIBIT 9 to the Original Agreement, shall be amended to delete "Klein, Thorpe & Jenkins, Ltd, 20 N. Wacker Drive, Suite 1660" and to insert "Chicago Title and Trust Company, 171 North Clark Street" to read as follows:

7. The earnest money shall be held by Chicago Title and Trust Company, 171 North Clark Street, Chicago, Illinois, for the mutual benefit of the parties in a non interest-bearing account.

Section 15: Closing: That Section 9 of the Rider to the Real Estate Contract, which is attached as EXHIBIT 9 to the Original Agreement, shall be amended to delete the first sentence of the full paragraph and replace it with a new sentence to read as follows:

The closing on the Property (the "Closing Date") shall be within fifteen (15) days of the date that the Corporate Authorities approve the First Amendment.

Section 16: 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 17: Recording: That this First Amendment shall be recorded with the DuPage County Recorder's Office at the Developer's expense.

[Signature page follows]

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, L.L.C., 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

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

GIVEN under my hand and official seal, this _____ day of _____, 2006.

_____, _____
Commission expires _____,

Notary Public

STATE OF ILLINOIS)
) SS)
) COUNTY OF DUPAGE)

ACKNOWLEDGMENTS

STATE OF DUPAGE)
) SS)
) COUNTY OF ILLINOIS)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named _____ and _____

_____ are personally known to me to be the _____

and _____ of _____ and also personally known

to me to be the same persons whose names are subscribed to the foregoing instrument as such

and _____ respectively, and that they appeared

before me this day in person and severally acknowledged that as such _____ and

_____ they signed and delivered the said instrument, consenting to its recordation,

pursuant to authority given by said trust as their free and voluntary act, and as the free and

voluntary act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____,

2006.

_____, _____, _____ Commission expires _____,

Notary Public

EXHIBIT 4 (of the Original Agreement)
Preliminary Site Plan

EXHIBIT 5 (of the Original Agreement)
Intentionally Left Blank

EXHIBIT 6 (of the Original Agreement)
Exterior Materials Specification

- Belden Red Smooth Brick
- Buechel Country Squire Stone