

**EXHIBIT A  
DEVELOPMENT AGREEMENT  
355 SOUTH WESTMORE-MEYERS ROAD**

**AN AGREEMENT RELATING TO THE DEVELOPMENT AT  
355 SOUTH WESTMORE-MEYERS ROAD, LOMBARD, ILLINOIS**

**THIS AGREEMENT** (hereinafter, the “Development Agreement”) is made and entered into this \_\_\_\_ day of May, 2005 by and between the **VILLAGE OF LOMBARD**, an Illinois municipal corporation (hereinafter referred to as “Village”) and **NOVAK-JANIS L.L.C.**, an Illinois limited liability company , (hereinafter referred to as “Developer”).

**WITNESSETH:**

**WHEREAS**, the Developer is the owner and developer of the real estate situated within the corporate limits of the Village, legally described in Exhibit 1 attached hereto and made a part hereof and located at 355 South Westmore-Meyers Road (hereinafter referred to as the “Subject Property”), and intends to develop the Subject Property in accordance with the terms and provisions of this Development Agreement; and

**WHEREAS**, a preliminary site plan and building elevations prepared by, prepared by Marshall Architects, dated March 5, 2006 (hereinafter referred to as the “Site Plan”) for construction of a single-family attached dwelling, consisting of two (2) units, on the Subject property has been submitted to the Village for approval (hereinafter referred to as the “Project”); and,

**WHEREAS**, to facilitate the development of the Project, the Developer has submitted a request for approval of a map amendment to rezone the Subject Property from the R2 Single-Family Residence District to the R3 Attached Single-Family Residence District; and

**WHEREAS**, the requested map amendment and the corresponding Site Plan, have been approved by the President and Board of Trustees of the Village (hereinafter, the “Corporate Authorities”), and copies thereof have been filed in the office of the Village Clerk of the said Village, which copies by reference thereto are hereby incorporated as a part hereof. A final version of the Site Plan will be submitted by the Developer to the Village for approval, which approval shall be a condition precedent to the issuance of any construction or authorization to proceed with construction as discussed hereinafter; and,

**WHEREAS**, the Developer has entered into contracts or will enter into contracts for the work and any requisite public improvements required to be made relative to the Project on the Subject Property under the Village’s Subdivision and Development Ordinance (Chapter 154 of the Village Code), this Development Agreement governing the development of the Subject Property, which is entered into between the parties hereto of even date herewith;

**NOW, THEREFORE**, for and in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

## **SECTION 1:**

### **APPROVED SITE PLAN**

Developer agrees to develop the Subject Property consistent with the Site Plan and building elevations (hereinafter collectively the "Development Plans") attached hereto as Exhibit 2 and made a part hereof. Minor alterations to the Development Plans, as determined by the Lombard Director of Community Development, shall be deemed acceptable for purposes of meeting the intent of this Section.

## **SECTION 2:**

### **COMMENCEMENT OF CONSTRUCTION**

Commencement of construction of the public improvements detailed herein may begin only after the Developer has delivered one or more Irrevocable Letter(s) 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 115% of the Developer's engineer's estimate of cost of construction as approved by the Village's engineer for underground utilities (including water distribution system, sanitary sewer system, and storm sewers with appurtenances; storm water control systems; right-of-way improvements, (streets, curbs, gutters, sidewalks, streetlights, and parkway landscaping); and all related grading improvements (hereinafter the "Public Improvements").

## **SECTION 3:**

### **CERTAIN OBLIGATIONS OF DEVELOPER**

The Developer agrees to cause to be made in relation to the Project on the Subject Property, with due dispatch and diligence, such Public Improvements as are required under the aforesaid Subdivision and Development Ordinance. The Developer will, when required to, bring about progress in the work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said Public Improvements, to the end that said Improvements will be duly and satisfactorily completed within the time or times herein mentioned. The Developer agrees that all work in the construction of said Public Improvements shall be done in a good, substantial and workmanlike manner, that all manufactured materials used therein shall be new and of good quality, that same shall at all times be subject to inspection by the Village, shall all be satisfactory to the Village and shall be subject to its approval. The Developer will at its expense furnish all necessary engineering services for said Public Improvements.

## **SECTION 4:**

### **COMPLETION OF PUBLIC IMPROVEMENTS**

The Public Improvements subject to the Irrevocable Letter(s) of Credit and included within the Development Plans shall be completed within twenty-four (24) months of the date of approval of this agreement for the Subject Property unless otherwise extended by amendment to this Development Agreement by the Corporate Authorities. All Irrevocable Letter(s) of Credit, assurances, guarantees, acceptances, and related matters shall comply with the Village's Subdivision and Development Ordinance. The construction of Public Improvements by the Developer and issuance of approvals by the Village shall comply with the following schedule:

A. Sediment and Erosion Control.

Sediment and erosion control measures shall be implemented as per the Subdivision and Development Ordinance prior to the issuance of building permits or authorization to proceed with mass grading or other public 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.

The Village will not impose a tree preservation requirement as a condition of this development. The Developer, however, will use reasonable efforts to preserve as many trees as is reasonably possible around the perimeter of the Subject Property. Any tree preservation measures may be applied toward meeting the transitional landscape requirements as set forth in Section 155.707(B)(1) of the Village Code.

C. Authorization to Proceed with Public Improvements.

Upon approval of the final plans for the proposed site improvements, receipt of all required fees, approval of the Irrevocable Letter(s) of Credit, recording of this Development Agreement and the final plat of subdivision of the Subject Property, and completion of items "A" and "B" above, authorization to construct all Public Improvements will be given by the Village in accordance with the Development Plans.

D. Issuance of Building Permits.

1) Foundation-Only Permits.

Foundation-only permits may be issued upon completion of adequate access to the corresponding building sites and the completion of underground utility work across the street frontage of the subject building site.

E. Certificates of Occupancy.

Issuance of a certificate of occupancy (hereinafter, a "Certificate of Occupancy") for a dwelling unit shall be issued upon satisfactory completion of the following:

- 1) Inspection and approval by the Village's Bureau of Inspectional Services;
- 2) Completion of the water distribution system into the proposed residences.
- 3) Completion of the sanitary sewer system to the building for which the Certificate of Occupancy is requested;
- 4) Subject to the provisions of Section 3.F.8 below, any sidewalk repair or replacements must be installed across the frontage of the Subject Property;
- 6) Subject to the provisions of Section 3.F.8 below, landscaping of the subject building site must be substantially completed, weather permitting, including parkway trees, final grading and ground cover;
- 7) Record drawings (as-builts) of the sanitary sewer and domestic water facilities required to serve the building shall be submitted and approved prior to issuance of the Certificate of Occupancy; and
- 8) A Certificate of Occupancy may be issued at the reasonable discretion of the Village's Director of Community Development during winter conditions notwithstanding the lack of 5) and/or 6) above, provided cash or its equivalent in the amount of 115% of the estimated cost to complete 5) and/or 6) above is posted to assure such completion.

F. Other Improvements.

- 1) All required landscaping and other Public Improvements shall be completed within twenty-four (24) months of the approval of this Agreement or prior to acceptance of the Public Improvements, whichever date occurs first.

H. Acceptance of Public Improvements/Easements.

- 1) Final record drawings ("as-builts"), 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.
- 2) Engineer's Certification. The Developer's engineer is to certify that the storm water management system was constructed in accordance with the Village's flood control ordinances, and that the same was constructed substantially in accordance with the Plans and Specifications.
- 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 an irrevocable letter of credit shall be submitted and approved. Said maintenance guarantee and irrevocable letter of credit shall comply with the Village's Subdivision and Development Ordinance.
- 5) The Public Improvements to be dedicated to the Village shall be accepted by the Corporate Authorities. Upon acceptance by the Corporate Authorities, the public Improvement installation guarantee (i.e., the Irrevocable Letter(s) of Credit) shall be returned to the Developer.
- 6) Upon inspection and determination that no deficiencies exist, the maintenance guarantee (irrevocable letter of credit), shall be returned at the time of its expiration.

#### **SECTION 5:**

#### **CONSTRUCTION DAMAGE TO PUBLIC IMPROVEMENTS**

Care shall be taken to avoid damage to existing public improvements, including but not limited to, utilities and curbs during construction. Any existing public improvement damaged during construction shall be repaired by the Developer at no cost to the Village and to the satisfaction of the Village and in substantial compliance with this Agreement and all relevant Village ordinances.

#### **SECTION 6:**

#### **DEDICATION OF PUBLIC IMPROVEMENTS**

Upon the Village's approval and acceptance of any new Public Improvements, same shall become the property of the Village and subject to its control. A formal dedication or conveyance of the Public Improvements to the Village shall be made by the Developer, if deemed necessary by the Corporate Authorities.

#### **SECTION 7:**

#### **IRREVOCABLE LETTER(S) OF CREDIT**

It is expressly understood that this Agreement is conditional upon and subject to (1) the delivery to the Village of the document provided for in Section 1 from a financial institution reasonably approved by the Village, (2) approval of same by the Corporate Authorities, and (3) placing same in the Village's files.

#### **SECTION 8:**

#### **NOTICES**

All notices or demands to be given hereunder shall be in writing, and the mailing of any such notice or demand by Certified or Registered Mail. Said notices shall be provided as follows:

If to the Village or  
Corporate Authorities:

President and Board of Trustees  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148

With Copies to:

Village Manager  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148

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

Thomas P. Bayer  
Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive  
Suite 1660  
Chicago, Illinois 60606

If to the Developer:

With a Copy to:

or to such other address as any party may from time to time designate in a written notice to the other parties.

## **SECTION 9:**

### **SITE ACCESS**

Developer (and its contractors) shall keep all streets which provide access to the Subject Property reasonably clean from all mud, gravel, and other debris, at all times during and after construction hours.

## **SECTION 10:**

### **TRAFFIC CONTROL**

The Developer shall install traffic signs and other devices as required by the Village for the proper control of vehicles and pedestrians in the area. These traffic control devices shall meet the specifications of the Village Engineer.

## **SECTION 11:**

### **ACCEPTANCE**

- A. Public Improvements shall be accepted by the Corporate Authorities after certification by the Village's engineer and Director of Community Development that the public improvements are in compliance with previously approved plans, specifications, and relevant ordinances.
- B. All required fees and procedures shall be provided prior to such acceptance. The Village shall not be liable for any damages that may occur on any dedicated rights of way within the Subject Property that has not been accepted by the Corporate Authorities. The Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and employees from any and all such claims, damages, judgments, costs and settlements including, but not limited to, attorneys' fees that may arise from construction, use, repair, or maintenance or said Public Improvements before they are accepted by the Corporate Authorities.

## **SECTION 12:**

### **BINDING EFFECT AND TERM AND COVENANTS RUNNING WITH THE LAND**

- A. This Development Agreement has been executed on behalf of the Village pursuant to action adopted by the Corporate Authorities at a meeting of said Corporate Authorities duly held on May 18, 2006.
- B. This Development Agreement has been executed by the Developer and shall be binding on the heirs and assigns of the Developer, but shall not be binding on a dwelling unit owner subsequent to the issuance of an occupancy permit for said dwelling unit.
- C. This Development Agreement shall automatically expire upon the expiration of the maintenance guarantee (irrevocable letter of credit) required at the time of acceptance of the Public Improvements as set forth in Section 3.H.4 herein.

## **SECTION 13:**

### **REPEAL OF R3 ZONING CLASSIFICATION**

In the event that the Developer does not commence construction of the Project consistent with the Development Plans within two (2) years from the date of approval of this Agreement, the Subject Property shall automatically be repealed and the Subject Property shall automatically be designated to be within the R2 Single-Family Residence District. However, the Village and Developer agree that the commencement date to start construction can be extended by mutual consent of the Developer and the Village



**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 date and year first above written.

**DEVELOPER:**

**ATTEST:**

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2006

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

Name:

Its: President

**VILLAGE OF LOMBARD**

**ATTEST:**

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

Name: Brigitte O'Brien

Its: Village

Clerk

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

Name: William J. Mueller

Its: President, Village of Lombard

Dated: \_\_\_\_\_, 2006

**SCHEDULE OF EXHIBITS**

EXHIBIT 1:           Legal Description

EXHIBIT 2:           Development Plans

**EXHIBIT 1**

**LEGAL DESCRIPTION**

Lot 1 in Charles Heilig's Resubdivision of Lot 8 on County Clerk's Assessment Plat in the southwest quarter of Section 9, Township 39 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded March 25, 1971 as Document R71-11263, in DuPage County, Illinois.

PERMANENT INDEX NUMBER: 06-09-309-033

PROPERTY ADDRESS: 355 South Westmore-Meyers Road, Lombard, Illinois 60148

**EXHIBIT 2**