

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

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

X

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: January 29, 2008 (B of T) Date: February 7, 2008

TITLE: 129 & 143 W. St. Charles Road (The Shops at Lincoln Place LLC)

SUBMITTED BY: Department of Community Development *Bohn*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmit for your consideration a request authorizing the Village President and Clerk to sign an Assumption and Consent Agreement. (DISTRICT #1)

Staff recommends approval of this request.

Please place this item on the February 7, 2008 Board of Trustees agenda.

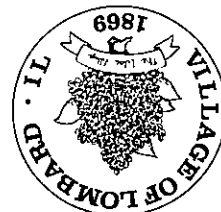
Fiscal Impact/Funding Source:
Review (as necessary):

Village Attorney X _____
Date _____
Finance Director X _____
Date _____
Village Manager X _____
Date _____

1/31/08

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 *dh*
Assistant Village Manager/Director of Community Development
DATE: February 7, 2008

SUBJECT: Assumption and Consent Agreement Associated with the Redevelopment Agreement between the Village and the Shops at Lincoln Place LLC (129 & 143 W. St. Charles Road)

Attached for the Village Board's consideration is an Assumption and Consent Agreement between the Village and The Shops at Lincoln Place LLC (SLPLLC). With the completion of the Lincoln Place development, the SLPLLC is being established as separate entity and will assume similar rights and responsibilities previously agreed to by Norwood-Lombard LLC in their Redevelopment Agreement.

The agreement states the following:

- SLPLLC will not seek any special classification for tax purposes;
- SLPLLC will not seek to lower the assessed valuation prior to 2012 (the termination date of the previously approved agreement);
- SLPLLC grants rights to the Village to enforce existing tax covenants against SLPLLC at their expense; and
- SLPLLC also agrees to a hold harmless clause.

The consent portion of the agreement will identify SLPLLC as an additional developer and its successor, pursuant to the previously approved redevelopment agreement. However, Norwood would retain responsibility for tax covenants if SLPLLC fails to do so.

ACTION REQUESTED

Staff recommends that this item be placed on the February 8, 2008 Village Board Agenda with a motion authorizing that the President and Village Clerk to sign the Assumption and Consent Agreement.

SLP LLC hereby grants the Village the right to enforce the foregoing Tax Covenants directly against SLP LLC by way of injunctive relief at the sole cost and expense of SLP LLC. SLP LLC hereby indemnifies and holds the Village, Norwood-Lombard LLC, an Illinois limited liability company ("NLLC"), and Beta Properties, LLC, an Illinois limited liability company ("Beta") and their respective members, managers, elected and appointed officials, agents, employees, successors, and assigns, all as the case may be (collectively as "Indemnitees"), each and all harmless from and

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, THE SHOPS AT LINCOLN PLACE, LLC, an Illinois limited liability company ("SLP LLC"), hereby covenants and agrees that unless it receives the prior written consent of the Village of Lombard, Illinois ("Village"), SLP LLC shall not (a) apply for, seek and/or authorize any special classification for real estate tax purposes in regard to the real estate commonly known as 141 W. St. Charles Road, Lombard, IL 60148 having PIN 06-07-209-025 ("The Shops") and/or (b) directly or indirectly seek to lower the assessed valuation of the The Shops for real estate tax purposes, for any tax year prior to tax year 2012 that commences January 1, 2012, all as prohibited by Section V.A. of the RDA as defined in the Consent set forth below (the "Tax Covenants").

Assumption

ASSUMPTION, WITH CONSENT, OF SPECIFIC OBLIGATIONS UNDER THE REDEVELOPMENT AGREEMENT FOR THE LILAC SQUARE DEVELOPMENT COMPRISING A PART OF THE DOWNTOWN T.I.F. DISTRICT OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS (Now Commonly known as "LINCOLN PLACE")

The Village hereby approves the foregoing Assumption made by SLP LLC and agrees further that, from and after the date of this Consent, the Village will treat SLP LLC as an additional "Developer" for purposes of Section V.A. of the RDA (as defined hereinbelow) and will look to SLP LLC and its successor and assigns in the first instance to comply with the foregoing Tax Covenants; provided, however, that NLLC shall remain liable therefor in the event SLP LLC or its successors and assigns fail or refuse to do so. For these purposes, the term "RDA" means that certain "Redevelopment

Consent

The Shops at Lincoln Place, LLC
1216 Hickory Trail
Addison, IL 60101

Address for Notices:

Helen Liakatas, Member

James Liakatas, Member

THE SHOPS AT LINCOLN PLACE, LLC,
an Illinois limited liability company

DATE: _____, 2008

against any and all loss, cost, liability and expense (including without limitation attorney fees and court costs) paid or incurred by the Indemnitees or any of them arising out of a breach of the foregoing Tax Covenants by SLP LLC or its members, managers, officers, agents or employees, including, without limitation, any real estate tax revenue.

Agreement For The Lilac Square Development Comprising A Part Of The Downtown T.I.F. District Of The Village Of Lombard, DuPage County, Illinois" dated March 6, 2003 (as amended by a First Amendment dated June 19, 2003 and a Second Amendment dated April 19, 2007) to the extent of Developer's obligations respecting The Shops. Except to the extent provided in this Consent, nothing in this Consent shall be interpreted by inference or otherwise, to waive any of the Village's rights under the RDA nor shall it be interpreted to waive any statutory or common law rights, privileges and/or immunities of the Village.

DATE: _____, 2008

VILLAGE OF LOMBARD, DuPage County, Illinois, an Illinois Municipal Corporation,

[SEAL]

By: _____
William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

ACCEPTED by Norwood-Lombard LLC this _____ day of _____, 2008.

NORWOOD-LOMBARD LLC
By: Norwood Construction, Inc., an Illinois limited liability company, its Manager

By: _____
Name: _____
Title: _____

expires on: _____

If not included with the impression of my official notarial seal above, my commission

Notary Public

GIVEN under my hand and Notary Seal, this _____ day of _____, 2008.

I, the undersigned, a Notary Public in and for the County and state aforesaid DO HEREBY CERTIFY that the above-named William J. Mueller and Brigitte O'Brien, personally known to me to be the Village President and Village Clerk of the VILLAGE OF LOMBARD, Illinois, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Village Clerk, respectively, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk they signed and delivered the said instrument, pursuant to authority given by said Village, as their free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth, and that said Village Clerk as custodian of the corporate seal of said Village caused said seal to be affixed to said instrument as said Village Clerk's own free and voluntary act and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

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

By: _____
D. Michael Miller, Trustee of Beta Trust,
Sole Member

BETA PROPERTIES, LLC

ACCEPTED by Beta Properties, LLC this _____ day of _____, 2008.

expires on: _____

If not included with the impression of my official notarial seal above, my commission

Notary Public

GIVEN under my hand and Notary Seal, this _____ day of _____, 2008.

I, the undersigned, a Notary Public in and for the County and state aforesaid DO HEREBY CERTIFY that _____, as _____ President of Norwood Construction, Inc., as Manager of NORWOOD-LOMBARD LLC, an Illinois limited liability company, personally known to me to be such President of such corporation as such Manager, and also known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument as such President of such corporation as such Manager, appeared before me this day in person and acknowledged that as such President of such corporation as such Manager he/she signed and delivered the said instrument, pursuant to authority given by said corporation and Company, as their free and voluntary act, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
) SS.)
) COUNTY OF _____)

Notary Public

GIVEN under my hand and Notary Seal, this _____ day of _____, 2008.

I, the undersigned, a Notary Public in and for the County and state aforesaid DO HEREBY CERTIFY that James Liakatas and Helen Liakatas, each a Member of THE SHOPS AT LINCOLN PLACE, LLC, an Illinois limited liability company, each personally known to me to be such Member, and also known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument as such Members of such Company, appeared before me this day in person and severally acknowledged that as such Members of such Company they signed and delivered the said instrument, pursuant to authority given by said Company, as their free and voluntary act, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
) SS.)
) COUNTY OF _____)

STATE OF ILLINOIS)
) SS.)
) COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and state aforesaid DO HEREBY CERTIFY that D. Michael Miller, not personally but solely as trustee of Beta Trust as sole Member of BETA PROPERTIES, LLC, an Illinois limited liability company, personally known to me to be such trustee of such sole Member of such Company, and also known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument as such trustee of such sole Member of such Company, appeared before me this day in person and acknowledged that as such trustee of such sole Member of such Company he/she signed and delivered the said instrument, pursuant to authority given by said Company, as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this _____ day of _____, 2008.

Notary Public

If not included with the impression of my official notarial seal above, my commission expires on: _____