

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: May 7, 2025 (COW)(B of T) May 15, 2025

TITLE: A RESOLUTION APPROVING A BUSINESS DISTRICT MASTER
REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF
LOMBARD AND YTC HIGHLAND LLC FOR THE HIGHLAND
AVENUE/BUTTERFIELD ROAD BUSINESS DISTRICT

SUBMITTED BY: Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

Attached is a draft Master Redevelopment Agreement (MRA) between the Village and PRCP, along with a memo explaining this. The actual entity for the agreement is YTC Highland LLC. While the document remains subject to final legal review and may undergo minor revisions, all substantive provisions have been agreed upon. The final version will be distributed to the Village Board in advance of the May 15 Board meeting.

Staff is recommending that the Village Board approve the resolution approving a business district master redevelopment agreement between the Village of Lombard and YTC Highland LLC for the Highland Avenue/Butterfield Road Business District.

Review (as necessary):

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

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.



To: Scott Niehaus, Village Manager

From: Timothy Sexton, Director of Finance

Date: May 7, 2025

Subject: **Business District #1 Redevelopment Agreement with YTCV Highland LLC**

Background

The Village established Business District #1 in November 2005, with a term of 23 years, set to expire in November 2028. In June 2006, the Village entered into a redevelopment agreement with Yorktown, which provided for the reimbursement of eligible redevelopment costs over an 18-year period. This agreement primarily supported the redevelopment of the former Montgomery Ward site at the southern end of the mall. That agreement expired in June 2024, leaving approximately 4.5 years of remaining Business District Sales Tax revenue available for future redevelopment efforts.

Current Status

Village staff has been in ongoing discussions with Pacific Retail Capital Partners (PRCP), the owners of Yorktown Center, regarding future redevelopment plans within Business District #1. These discussions have focused on identifying projects that would be eligible for reimbursement from remaining Business District Sales Tax revenues through the district's expiration in November 2028.

Zoran Milutinovic of Ryan, the Village's economic development consultant, has been actively involved in reviewing documentation and proposals submitted by PRCP to ensure compliance with statutory and policy requirements.

Master Redevelopment Agreement

Attached is a draft Master Redevelopment Agreement (MRA) between the Village and PRCP. The actual entity for the agreement is YTC Highland LLC. While the document remains subject to final legal review and may undergo minor revisions, all substantive provisions have been agreed upon. The final version will be distributed to the Village Board in advance of the May 15 Board meeting.



Key provisions of the agreement include:

- **Reimbursement Structure:** PRCP will be eligible for reimbursement from Business District Sales Tax revenues generated within Business District #1, for eligible improvements tied to a list of pre-approved projects.
- **Project Eligibility:** The agreement provides a mechanism for additional projects to be submitted for eligibility consideration and approval by the Village.
- **Timing of Payments:** Reimbursements will only be made following the completion of each approved project and confirmation of eligible costs, to the extent there are available Business District #1 revenues available.

ACTION REQUESTED

Please place this item on the May 15, 2025 Village Board agenda for consideration and approval of the attached Resolution approving the redevelopment agreement.

RESOLUTION NO. _____

**A RESOLUTION APPROVING A BUSINESS DISTRICT MASTER REDEVELOPMENT
AGREEMENT BETWEEN THE VILLAGE OF LOMBARD AND YTC HIGHLAND LLC
FOR THE HIGHLAND AVENUE/BUTTERFIELD ROAD BUSINESS DISTRICT**

WHEREAS, the Village is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois; and

WHEREAS, the Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village; and

WHEREAS, the Village is authorized under the provisions of the Business District Development and Redevelopment Law, 65 ILCS 5/11-74.3-1, et seq., as amended (the "Business District Law"), to finance redevelopment in accordance with the conditions and requirements set forth in the Business District Law, and is authorized under the provisions of the Illinois Municipal Code, including, but not limited to, 65 ILCS 5/8-1-2.5 (the "Economic Development Statute"), to appropriate and expend funds for economic development purposes that are deemed necessary or desirable for the promotion of economic development within the Village; and

WHEREAS, Pursuant to Ordinance Number 5776, adopted November 17, 2005, the Corporate Authorities approved a business district plan (the "Business District Plan")

and designated the boundaries of a business district relative to the Village's Highland Avenue/Butterfield Road Business District No. 1 (the "Business District" or "BD"), and, pursuant to Ordinance Number 5788, imposed a one percent (1%) business district retailers' occupation tax and a one percent (1%) business district service occupation tax (collectively the "BD Sales Taxes") within the Business District, pursuant to the Business District Law, with said Business District being legally described and depicted as set forth in Ordinance Number 5776; and

WHEREAS, the Subject Property is owned by YTC Highland LLC, an Illinois limited liability Company (the "Owner"), and is currently improved with a portion of a regional shopping center and peripheral outlot development (Yorktown Center) which include a redeveloped portion of the Yorktown Center, commonly referred to as the Shops on Butterfield; and

WHEREAS, a Business District Master Redevelopment Agreement ("Agreement") between the Village and the Owner, has been negotiated by the parties. The Agreement provides, inter alia, for the reimbursement of eligible Business-District Project Costs (as that term is defined in 65 ILCS 5/11-74.3-5) solely from BD Sales Taxes deposited in the BD Fund, in an amount not to exceed Maximum Reimbursement Amount, as defined in the Agreement; and

WHEREAS, the Corporate Authorities of the Village find and determine that:

- a. The Agreement is necessary, proper, and incidental to—and in furtherance of—the Business District Plan within the meaning of 65 ILCS 5/11-74.3-3(1).
- b. The costs to be reimbursed pursuant to the Agreement are expressly identified in, and limited by, the Business District Plan and therefore constitute

"Business-District Project Costs" eligible for payment under 65 ILCS 5/11-74.3-5.

WHEREAS, the Village Board deems it to be in the best interests of the Village to approve the Agreement, a copy of which is attached hereto as Exhibit A and made a part hereof, so that the Project can be built and the attendant public benefits be can be realized;

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

- A. The Business District Master Redevelopment Agreement between the Village and YTC Highland LLC, in substantially the form attached hereto as Exhibit A and incorporated by reference, is hereby approved. Any non-substantive, ministerial, or clerical changes, and such modifications as do not alter the material terms, may be made with the approval of the Village Attorney.
- B. The Village President and Village Clerk are hereby authorized and directed to execute said Agreement, on behalf of the Village, and to execute any additional documents, on behalf of the Village, in furtherance of said Agreement and the terms thereof.
- C. The Village Manager, Finance Director, and all other Village officials, agents, and employees are authorized to undertake any and all acts, execute any ancillary documents, and expend such Village funds as may be necessary or advisable to carry out the purposes of this Resolution and the Agreement.
- D. This Resolution shall be in full force and effect immediately upon its passage and approval in the manner provided by law.

ADOPTED this 15th day of May, 2025, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of May, 2025.

Anthony Puccio, Village President

ATTEST:

Ranya Elkhatib, Village Clerk

Exhibit A

Business District Master Redevelopment Agreement

(attached)

**BUSINESS DISTRICT MASTER REDEVELOPMENT AGREEMENT
BETWEEN THE VILLAGE OF LOMBARD AND YTC HIGHLAND LLC FOR THE
HIGHLAND AVENUE/BUTTERFIELD ROAD BUSINESS DISTRICT NUMBER 1**

This Business District Master Redevelopment Agreement ("Agreement") is made and entered into as of the _____ day of _____, 2025 (the "Effective Date") by and between the VILLAGE OF LOMBARD, ILLINOIS, an Illinois non-home rule municipal corporation (the "Village"), and YTC HIGHLAND LLC, an Illinois limited liability company (the "Owner"). The Village and the Owner are sometimes referred to herein individually as a "Party," and collectively as the "Parties".

WITNESSETH:

IN CONSIDERATION of the following preliminary statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is 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 Village is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.
- C. The Village is authorized under the provisions of the Business District Development and Redevelopment Law, 65 ILCS 5/11-74.3-1, *et seq.*, as amended (the "Business District Law"), to finance redevelopment in accordance with the conditions and requirements set forth in the Business District Law, and is authorized under the provisions of the Illinois Municipal Code, including, but not limited to, 65 ILCS 5/8-1-2.5 (the "Economic Development Statute"), to appropriate and expend funds for economic development purposes that are deemed necessary or desirable for the promotion of economic development within the Village.

- D. Pursuant to Ordinance Number 5776, adopted November 17, 2005, the Corporate Authorities approved a business district plan (the "Business District Plan") and designated the boundaries of a business district relative to the Village's Highland Avenue/Butterfield Road Business District No. 1 (the "Business District" or "BD"), and, pursuant to Ordinance Number 5788, imposed a one percent (1%) business district retailers' occupation tax and a one percent (1%) business district service occupation tax (collectively the "BD Sales Taxes") within the Business District, pursuant to the Business District Law, with said Business District being legally described and depicted as set forth in Ordinance Number 5776.
- E. Within the Business District, the Owner has acquired real property of the approximately _____ square feet (_____ acres) in land area commonly known as _____ (Parcel Identification Number(s) _____). The aforementioned tracts of land are deemed to be the "Subject Property," as legally described and depicted on **EXHIBIT A** attached hereto and made a part hereof.
- F. The Subject Property is currently improved with a portion of a regional shopping center and peripheral outlot development (Yorktown Center) which include a redeveloped portion of the Yorktown Center, commonly referred to as the Shops on Butterfield.
- G. The Project includes costs for site preparation, infrastructure improvements, tenant improvements, public utility upgrades, and other expenses deemed eligible for reimbursement under Section 5 of the Business District Law. These costs are detailed in **EXHIBIT B** attached hereto and made a part hereof.
- H. The Project has been supported in concept by the Village's Economic and Community Development Committee at its August 12, 2024 meeting.
- I. The Owner has submitted a financial analysis and funding request to the Village, detailing the anticipated project costs, potential returns, and the financial gap that exists without public assistance. Based on its analysis and consultation with economic development consultants, the Village has determined that providing financial assistance under the Business District Law is necessary to facilitate the Project.
- J. The Project is expected to generate substantial economic benefits to the Village, including the stabilization and enhancement of the local retail sector, the creation of job opportunities, and the generation of additional sales tax revenue. These benefits align with the Village's economic development goals and justify the provision of financial assistance.

- K. The Village and Owner have agreed that reimbursement of eligible redevelopment costs shall be limited to the availability of Business District Sales Taxes collected within the Highland Avenue/Butterfield Road Business District No. 1 and shall not constitute an obligation of the Village's general fund or any other revenue source.
- L. The Owner would have been unable and unwilling to undertake the redevelopment of the Subject Property with the Project, but for incentives and other contingent assistance to be provided by the Village in accordance with the Business Development Law and the Economic Development Statute, which the Village indicated it is willing to provide, under the terms and conditions contained herein. The Parties acknowledge and agree that, but for the incentives and other financial assistance to be provided by the Village, the Owner cannot successfully redevelop the Subject Property with the Project in an economically viable manner. The Village has determined that it is desirable and in the Village's best interests to assist the Owner, relative to the Project, in the manner set forth herein, and as this Agreement may be supplemented and amended from time to time.
- M. It is necessary for the successful completion of the Project that the Village enter into this Agreement with the Owner to provide for the redevelopment of the Subject Property, thereby implementing the Business District Plan.
- N. In order to stimulate and induce redevelopment of the Subject Property with the Project, the Village, has agreed to finance certain Business District eligible redevelopment project costs in accordance with the terms and provisions of the Business District Law and this Agreement.
- O. The Village finds that the Project: (1) is expected to maintain or create job opportunities within the Village; (2) will serve to stabilize the business corridor in the vicinity of the Subject Property and/or further the development of adjacent areas; (3) will stabilize and/or strengthen the tax base of the Village; and (4) without the requested incentives, the capital investment in the Subject Property would otherwise not occur.
- P. This Agreement has been submitted to the Corporate Authorities for consideration and review. The Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- Q. This Agreement has been submitted to the Owner and/or Owner's representatives for consideration and review. The Owner's manager has taken all actions required to be taken prior to the execution of this

Agreement in order to make the same binding upon the Owner according to the terms hereof, and any and all actions of the Owner precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

- R. In consideration of the Village's financial assistance, the Owner has agreed to comply with "open book" and "true-up" provisions to ensure transparency and accountability in the use of public funds. These provisions allow the Village to verify actual project costs and adjust reimbursements accordingly.
- S. The Village is desirous of having the Business District rehabilitated, developed and redeveloped in accordance with the Business District 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 Business District, increase employment opportunities, stimulate commercial growth and economic development, 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.
- T. The expenditures eligible for reimbursement under the Agreement are expressly identified in the Plan and constitute 'Business-District Project Costs' as defined in 65 ILCS 5/11-74.3-5.
- U. This Agreement is necessary and incidental to, and in furtherance of, the Plan within the meaning of 65 ILCS 5/11-74.3-3(1).
- V. The Village has the authority under the Business District Law, the Economic Development Statute and other applicable Illinois statutes to promote economic development through financial assistance. The Corporate Authorities of the Village have reviewed and approved the general terms of this Agreement and deem it to be in the Village's best interests.

II. DEFINITIONS

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, and as follows:

- A. **"Business District Ordinances"** means those Ordinances referenced in Section I.E. above.
- B. **"BD Sales Taxes"** means those taxes generated pursuant to, and in accordance with, the Business District Law and the Business District Ordinances, as amended from time to time, which have already been distributed or are distributed to and received by the Village from the State,

net of any prompt payment discount, at the tax rate in effect as of January 1, 2025, or such rate as may be imposed during the Incentive Term.

- C. **“Change in Law”** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement and such event is not caused by the Party relying thereon:

Change in Law means any of the following: (1) the enactment, adoption, promulgation or modification of any federal, State or local law, ordinance, code, rule or regulation (other than by the Village or with respect to those made by the Village, only if they violate the terms of this Agreement), including executive orders and/or rules, regulations, and guidance of agencies of the State of Illinois or the United States of America; (2) the order or judgment of any federal or State court, administrative agency or other governmental body (other than the Village); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village, or, with respect to those made by the Village, only if they violate the terms of this Agreement);. For purposes of this Agreement, Change in Law shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the Village, except as provided herein).

- D. **“Commencement Date”** means the July 1, 2024.
- E. **“Corporate Authorities”** means the President and Board of Trustees of the Village of Lombard, Illinois.
- F. **“Day”** means a calendar day.
- G. **“Effective Date”** means the day on which this Agreement is executed by the last of the signatories, as set forth below, with said date appearing on page 1 hereof.
- H. **“Eligible Project Costs”** means the costs of the Project, eligible to be reimbursed as “business district project costs” under Section 5 of the Business District Law, 65 ILCS 5/11-74.3-5.
- I. **“Incentive Account”** means the special account maintained by the Village relative to the tracking of and accounting for the BD Sales Taxes, which BD

Commented [JG1]: Added this date to correlate with the eligible projects

Sales Taxes shall be credited to the balance of the Incentive Account only to the extent such BD Sales Taxes were assessed or collected during the Incentive Term.

- J. **"Incentive Term"** means the period from the Commencement Date through and including November 17, 2028, as the same may be extended.
- K. **"Village Manager"** means the Village Manager of the Village of Lombard or his/her designee.
- L. **"Maximum Reimbursement Amount"** means the total amount of BD Sales Taxes that may be reimbursed to the Owner under this Agreement, inclusive of all Pre-Approved Projects and any new projects approved in accordance with Section VI.C.

As of the Effective Date, the Maximum Reimbursement Amount is initially established as Three Million Six Hundred Fifty-Four Thousand Five Hundred Thirty-One and 00/100 Dollars (\$3,654,531.00), reflecting the amount allocated to the Pre-Approved Projects identified in Exhibit C.

The Maximum Reimbursement Amount shall increase automatically upon the Village Manager's approval of additional projects pursuant to Section VI.C, in an amount equal to the BD Sales Taxes allocated to the approved project. Each time a new project is approved, Exhibit C shall be revised to reflect the new allocation, and the Maximum Reimbursement Amount shall be deemed increased accordingly.

The Village and Owner expressly acknowledge and agree that it is their mutual intent that 100% of BD Sales Taxes collected and deposited into the Incentive Account through the remaining term of the Business District (expiring on November 17, 2028) be made available to reimburse Eligible Project Costs incurred by the Owner, subject to the terms of this Agreement and the limitations of the Business District Law.

The Maximum Reimbursement Amount shall, at all times, be limited to the cumulative amount of BD Sales Taxes actually collected and shall not create any obligation of the Village to use any other funds or revenues.

- M. **"Party/Parties"** means the Village and/or the Owner, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.
- N. **"Person"** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

- O. **“Project”** means the redevelopment and improvement activities to be undertaken by the Owner within the boundaries of the Business District as described in in this Agreement and attached exhibits, consisting of the Pre-Approved Projects (as defined below) and new projects approved by the Village Manager in accordance with Section VI.C. of this Agreement, and shall include the following components:
1. **Construction and Redevelopment Projects:**
 - a. Development or redevelopment of commercial buildings, retail spaces, and entertainment venues, including but not limited to approximately 88,842 square feet of retail, restaurant, and entertainment uses.
 - b. Repurposing of the “Shops on Butterfield” to accommodate a national grocery tenant or another use that, in the Village’s sole discretion, is comparable in terms of economic impact, consumer accessibility, and consistency with the Village’s planning and development objectives.
 2. **Infrastructure and Site Improvements:**
 - a. Significant parking field improvements, including enhanced accessibility and convenience features for new tenants.
 - b. Upgrades to pedestrian and vehicular traffic flow, including improvements to the Ring Road and related safety measures.
 - c. Public utility upgrades, including water main replacements, electrical system enhancements, and other required infrastructure.
 3. **Capital Building Improvements:**
 - a. Structural and aesthetic improvements to existing buildings, including roof replacements, tuckpointing, and foundation wall repairs, which are associated with new tenancies and not identified with general property maintenance activities.
 4. **Other Eligible Improvements:**
 - a. Any additional construction, renovation, or capital improvement projects that meet the eligibility criteria under Section 5 of the Business District Law and are approved by the Village.
- P. **“Project Allocation Budget”** means the spreadsheet attached hereto as **Exhibit C** and made a part hereof, as may be amended from time to time in accordance with this Agreement. The Project Allocation Budget identifies the projects eligible for reimbursement under this Agreement, including Pre-Approved Projects and new projects approved pursuant to Section VI.C, along with the estimated costs for each project and the percentage of the Maximum Reimbursement Amount allocated to each.

The Project Allocation Budget shall serve as the operative "development budget" for purposes of determining eligibility, true-up, and reimbursement limits. The Project Allocation Budget may be amended from time to time by the Village Manager in accordance with Section VI.C and VI.F, without the need for a formal amendment to this Agreement.

- Q. **"Quarter"** means any period of three consecutive months ending on March 31, June 30, September 30, or December 31.
- R. **"Quarterly Payment Date"** means the date which is thirty (30) days following the Village's receipt of BD Sales Taxes from the State which include BD Sales generated in the Business District for the last month of the immediately preceding Quarter.
- S. **"Reimbursement Period"** means the period of time from the Commencement Date to the Reimbursement Termination Date.
- T. **"Reimbursement Termination Date"** means the date which is the earlier of: (i) the next Quarterly Payment Date following November 17, 2028, unless extended solely for the purpose of disbursing any BD Sales Taxes generated during the 23-year life of the Business District under the Business District Law; or (ii) the date on which the Village Manager issues the final payment to the Owner satisfying the Village's reimbursement obligations up to the Maximum Reimbursement Amount.
- U. **"State"** means the State of Illinois and/or its departments, agencies, or officials.
- V. **"Uncontrollable Circumstance"** means any event which:
1. is beyond the reasonable control of and without the fault of the Party relying thereon; and
 2. is one or more of the following events:
 - a. a Change in Law (i.e., by a governmental entity other than the Village);
 - b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
 - c. epidemic, pandemic (including the outbreak of disease) hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
 - d. governmental condemnation or taking other than by the Village;

Commented [JG2]: Confirmed this is the date that the business district stops assessing the business district taxes. The definition allows for the collection of those assessments to occur.

- e. strikes or labor disputes, or work stoppages not initiated by the Owner or the Village;
- f. unreasonable delay in the issuance of building or other permits or approvals by the Village or other governmental authorities having jurisdiction other than the Village including but not limited to IDOT, the DuPage County Stormwater Commission, and/or the IEPA;
- g. shortage or unavailability of materials to the extent it materially affects the ability of the Party relying thereon to carry out its obligations under this Agreement;
- h. unknown or unforeseeable geo-technical or environmental conditions;
- i. major environmental disturbances;
- j. vandalism; or
- k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in Section II.U.2.g. above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that the Village or the Owner is delayed in its performance under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day without penalty or damages to either Party.

W. **"Village Code"** means the Village of Lombard Village Code, as amended.

III. CONSTRUCTION OF TERMS

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.
- C. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation."
- D. Headings of Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the

context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, this Agreement shall control.

- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. Unless applicable law requires action by the Corporate Authorities, the Village Manager shall have the power and authority to make or grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. The Owner is entitled to rely on the full power and authority of the Persons executing this Agreement on behalf of the Village as having been properly and legally given by the Village.
- H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by the Owner in a different manner, the Owner designates any one of _____ as its authorized representative, who shall each individually have the power and authority to make or grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of the Owner and with the effect of binding the Owner in that connection (such individual being designated as an **"Authorized Owner Representative"**). The Owner shall have the right to change its Authorized Owner Representative by providing the Village with written notice of such change from both authorized representatives which notice shall be sent in accordance with Section XIX.B. of this Agreement.

IV. COOPERATION OF THE PARTIES

The Village and the Owner agree to cooperate in implementing the Project in accordance with the Parties' respective obligations set forth in this Agreement, and specific approvals by the Village in the future, relative to the development of the Subject Property and the Project, including zoning applications relative thereto, and Village-issued permits and approvals relative thereto.

V. REDEVELOPMENT OF THE SUBJECT PROPERTY

- A. Redevelopment Project Costs. The Village acknowledges that Owner, as of the Effective Date, has incurred and after the Effective Date will incur, costs in furtherance of the redevelopment of the Subject Property and the construction of the Projects that are eligible for reimbursement pursuant to the Redevelopment Plan. Such costs are set forth on Exhibit B attached hereto (the "Eligible Project Costs").
- B. Completion of the Projects. Subject to Owners' receipt of all governmental permits and approvals required for the construction of the Project and subject to Force Majeure, Owner shall complete the several phases of the Project in accordance with this Agreement.

VI. UNDERTAKINGS ON THE PART OF THE VILLAGE

A. Reimbursement of Eligible Project Costs:

1. Eligibility for Reimbursement. Only projects that have been approved in accordance with Section VI.B (Pre-Approved Projects) or Section VI.C (New Project Approval Process) shall be eligible for reimbursement under this Agreement.
2. Retroactive Reimbursement Prohibition. No project shall be eligible for reimbursement unless it has been expressly approved in accordance with this Agreement. Retroactive reimbursement applications for projects that have commenced or been completed prior to approval shall not be considered.
3. True-Up Adjustment. All projects, including newly approved projects, shall be subject to a true-up prior to the issuance of a certificate of occupancy. The final reimbursable amount shall be reduced dollar-for-dollar to the extent that the actual expenditures on the project do not align with the budgeted amount reflected in the approved Project Allocation Budget.
4. Incorporation of Approved New Projects. Upon approval of a new project under Section VI.C, the Owner shall submit a supplemental budget, which shall be incorporated into the Project Allocation Budget and included in the true-up calculation. The Maximum Reimbursement Amount shall be adjusted accordingly based on the approved amount of BD Sales Taxes for the new project.

B. Pre-Approved Projects:

The projects identified in **Exhibit C (Project Allocation Budget)** are hereby designated as the initial "Pre-Approved Projects" for purposes of this Agreement. Each such project is eligible for reimbursement under this

Agreement, subject to the conditions set forth herein, including but not limited to the actual collection of funds, compliance with the documentation requirements under Section VI.D (Reimbursements), and the True-Up process outlined in Section VI.E.

Reimbursement for each project listed in Exhibit C shall be limited to the amount and percentage of the Maximum Reimbursement Amount allocated to such project, as shown in Exhibit C, unless and until such allocation is modified as provided herein.

The Village Manager shall have the authority to approve the addition of new projects to Exhibit D pursuant to the procedures set forth in Section VI.C (New Project Approval Process), including corresponding increases to the Maximum Reimbursement Amount and adjustments to percentage allocations. Upon such approval, the Village Manager shall also have the authority to revise Exhibit C to reflect:

1. The addition of newly approved projects
2. Updated allocations percentages across all projects based on the revised Maximum Reimbursement Amount, which allocations shall be calculated pursuant to the terms of this Agreement; and
3. Any other technical or administrative revisions necessary to maintain consistency with the terms of this Agreement.

All changes approved by the Village Manager shall be documented in writing and attached to this Agreement as the most current version of Exhibit C. No formal amendment to this Agreement shall be required for Village Manager-approved revisions to Exhibit C, including increases to the Maximum Reimbursement Amount resulting from new project approvals.

C. New Projects – Approval Process and Delegation of Authority

1. Eligibility for New Projects: Projects not listed in **Exhibit C** may still qualify for funding under this Agreement, provided they meet the following criteria and the other approval criteria set forth in this Section:
 - a. The project is proposed, approved, completed and projected to generate sufficient BD Sales Taxes to justify the funding request before the Reimbursement Termination Date.
 - b. The project meets all eligibility requirements under the Business District Law and this Agreement.
2. Delegation of Authority to Village Manager: The Village Manager, or the Village Manager's designee, is hereby authorized to review and approve specific projects within the scope of the "Project" as defined in this Agreement. Such approvals shall include funding levels for each specific

project, subject to the Maximum Reimbursement Amount and the terms of this Agreement.

3. Submission of Application for Approval:

- a. The Owner shall submit a written application for each specific project, in a form acceptable to the Village.
- b. The application must include all of the following:
 - i. A detailed description of the proposed project, including scope, timeline, and location.
 - ii. An itemized budget for the Project and for Eligible Project Costs.
 - iii. BD Sales Tax revenue projections specifically attributable to the proposed project, supported by reasonable market analysis and anticipated sales performance.
 - iv. Proposed change in percentage allocations
 - v. Any supporting documentation requested by the Village Manager to verify eligibility and alignment with the Project.
 - vi. A revised version of Exhibit C (Project Allocation Budget), showing the Owner's proposed updates to the allocation of the Maximum Reimbursement Amount, including a proposed allocation percentage for the new project and adjusted percentage allocations for existing projects, if applicable. The proposed Exhibit C shall be subject to the Village Manager's review and approval. Upon approval, the revised Exhibit C shall become the operative version under this Agreement.

4. Review and Approval Process:

- a. The Village Manager shall review each application to ensure:
 - i. The proposed project qualifies as an Eligible Redevelopment Cost under the Business District Law.
 - ii. The project is consistent with the objectives and goals of the Business District.

- iii. The project's funding request is supported by BD Sales Tax revenue projections demonstrating the project's ability to generate sufficient revenue to justify financial assistance.
 - b. Upon approval, the Village Manager shall issue a written authorization specifying:
 - i. The approved funding level for the specific project.
 - ii. Any conditions or reporting requirements related to the approved funding.
- 5. Omitted.
- 6. **Sole Discretion of Village Manager:** The approval of specific projects and associated funding levels under this Section shall be within the sole discretion of the Village Manager. Submission of an application by the Owner does not guarantee approval, and the Village Manager may deny any application, in whole or in part, if the proposed project:
 - a. Does not meet the criteria outlined in this Agreement or the Business District Law;
 - b. Exceeds available or projected funds in the Incentive Account;
 - c. Is inconsistent with the Village's goals for the Business District or the Project as a whole; or
 - d. Is otherwise deemed not in the best interests of the Village.
 - e. The Village Manager's decision regarding approval or denial of any application shall be final and binding.
- 7. **No Funding for Unapproved Projects.** No project shall be eligible for reimbursement under this Agreement unless it is a Pre-Approved Project or the Village Manager has expressly approved the project in accordance with the requirements and procedures set forth in this Agreement. Retroactive reimbursement applications for projects that have commenced or been completed prior to approval shall not be considered.

D. Reimbursements

- 1. **Eligibility for Reimbursement.**
 - a. Only projects that have been approved in accordance with Section VI.B. (Pre-Approved Projects) or Section VI.C. (New Project Approval Process) shall be eligible for reimbursement under this Agreement.

- b. Retroactive reimbursement applications for projects shall not be considered for reimbursement.

2. Required Documentation.

- a. The Owner shall submit written reimbursement requests, including:
 - Detailed invoices and receipts.
 - Proof of actual costs incurred.
 - Lien waivers and additional documentation as may be required by the Village Manager.
 - A sworn statement under oath as to the accuracy of the documents submitted and a certification from the Owner that the costs submitted are accurate, have not been previously reimbursed, and are eligible under the terms of this Agreement and the Business District Law.

3. Review and Approval Process.

- a. The Village Manager shall review each reimbursement request within forty-five (45) days of submission.
- b. If additional documentation is required, the Owner shall provide the necessary information within fifteen (15) days of the Village's request.
- c. Upon approval, the Village shall issue reimbursement within thirty (30) days, subject to available funds in the Incentive Account.

4. Funding Limitations.

- a. All reimbursements shall be paid solely from BD Sales Taxes collected and available in the Incentive Account.
- b. If there are insufficient funds in the Incentive Account, payment shall be deferred until the account has accumulated sufficient BD Sales Tax revenue. Deferred payments shall be made in the next payment cycle following the end of the quarter in which sufficient funds become available, even if such funds do not become available until a date that is after the Reimbursement Termination Date.
- c. All funding under this Agreement is subject to the Maximum Reimbursement Amount.

5. Priority of Disbursements.

- a. Reimbursement requests shall be processed on a first-come, first-served basis.
- b. Subject to the Village's obligation to make deferred payments, the Village shall have no obligation to fund any reimbursement beyond the availability of BD Sales Taxes in the Incentive Account.

E. **True-Up.** The following true-up provisions shall apply to all projects, including newly approved projects incorporated into the Project Allocation Budget after the Effective Date.

1. True-Up Calculation Prior to the Issuance of Certificate of Occupancy

- a. Prior to the issuance of a final Certificate of Occupancy for any project funded under this Agreement, the Village shall conduct a reconciliation of the actual Eligible Project Costs incurred by the Owner.
- b. The Owner shall provide the Village with a "Final Cost Certification", detailing the total expenditures on the applicable project, including all invoices, lien waivers, and other supporting documentation necessary to verify the actual costs incurred.
- c. The Village shall compare the Final Cost Certification with the Project Allocation Budget attached as Exhibit C to determine if the actual expenditures align with the budgeted amounts.

2. Reduction in Maximum Reimbursement Amount

- a. If the actual Eligible Project Costs incurred by the Owner are less than the budgeted amount specified in the Project Allocation Budget, the Maximum Reimbursement Amount shall be reduced on a dollar-for-dollar basis to reflect the actual amount expended.
- b. The reduced Maximum Reimbursement Amount shall be the new cap on total reimbursements payable under this Agreement.

3. Final Approval & Adjusted Reimbursement Cap

- a. Upon completion of the true-up process, the Village Manager shall issue a "Final True-Up Certification", documenting the adjusted Maximum Reimbursement Amount based on verified expenditures.

- b. No reimbursement payments shall be made until the true-up process is completed, and the final adjusted Maximum Reimbursement Amount is established.

4. No Retroactive Adjustments After True-Up Completion

- a. The true-up determination shall be final and binding upon both Parties, and the Owner shall have no right to seek additional reimbursements for costs not reflected in the Final True-Up Certification.
- b. Any unclaimed reimbursement amounts resulting from a reduction in the Maximum Reimbursement Amount shall remain in the Incentive Account and shall not be reallocated to other projects without separate approval of the Village Manager.
- c. No reimbursement payments shall be due or payable after the Reimbursement Termination Date.

F. **Funding Allocation Limitations by Project.** The Village's reimbursement obligation for each Pre-Approved Project and any subsequently approved new project is limited to the percentage of the Maximum Reimbursement Amount allocated to that project as shown on **Exhibit C (Project Allocation Budget)**. The Village shall have no obligation to authorize or process reimbursement for any project in excess of the allocated amount, even if actual Eligible Project Costs exceed such allocation.

G. **Limitation of Village Liability:** All payments to be made to the Owner under this Agreement are a special and limited obligation of the Village and are payable solely from BD Sales Taxes deposited into the Incentive Account. These payments do not constitute a debt or liability of the Village, nor do they create any obligation for the Village to use its general funds or other revenues to satisfy the reimbursement obligations.

H. **Conditions Precedent:** The Village's obligation to reimburse Eligible Project Costs is subject to the following conditions:

- a. Sufficient funds are available in the Incentive Account.
- b. The Owner is in compliance with all terms and obligations under this Agreement.
- c. No Event of Default by the Owner has occurred.
- d. A final certificate of occupancy has been issued by the Village for the project related to which reimbursement is sought. For approved infrastructure projects, reimbursement can occur by the Village upon

final inspection approval of the project by the Village, commonly referenced as a certificate of completion.

I. **THE PAYMENTS TO BE MADE TO THE OWNER UNDER THIS AGREEMENT (THE "INCENTIVE") ARE A SPECIAL LIMITED OBLIGATION OF THE VILLAGE AND ARE PAYABLE SOLELY FROM BD SALES TAXES IN THE INCENTIVE ACCOUNT. THE INCENTIVE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE VILLAGE, OR MORAL OBLIGATION OF THE VILLAGE, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE OWNER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE VILLAGE, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE INCENTIVE. THE BUSINESS DISTRICT TAXES ARE THE SOLE SOURCE OF FUNDS TO BE USED TO PAY THE INCENTIVE.**

J. In the event that the Village ceases to receive any of the BD Sales Taxes, as a result of a Change in the Law, and no alternate source of revenue is enacted to replace the BD Sales Taxes that are no longer received by the Village, the Village shall not be obligated to make any further payments, relative to BD Sales Taxes, into the Incentive Account.

K. With regard to the BD Sales Taxes:

1. If requested by the Village, the Owner shall take all necessary actions required of Owner to cause the Illinois Department of Revenue to release the BD Sales Taxes information/documentation, relative to Projects, to the Village. In this regard, until such time as the Village obtains the information/documentation necessary to verify BD Sales Taxes by the Project, the BD Sales Taxes shall not be paid by the Owner.

VII. RESERVED.

VIII. OWNER'S OBLIGATIONS

Owner shall have the obligations set forth below, in addition to those set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project:

- A. The Owner shall construct, or cause to be constructed, the Projects materially and substantially in conformance with the approvals therefor from the Village. The Owner shall pay, or cause to be paid, all applicable building-related fees for the Projects in accordance with the building fee schedule adopted by the Village and in effect on the date the permit application is submitted.

- C. The Owner shall at all times acquire, install, construct, operate and maintain the Project in substantial conformance with all applicable laws, rules, ordinances, and regulations. All work with respect to the Project shall substantially conform to all applicable federal, State and local laws, regulations and ordinances, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.

IX. CONSTRUCTION REQUIREMENTS APPLICABLE TO THE PROJECT

- A. Pursuant to the Village Code, the Owner shall pay all "costs," as said term is defined in Section 16.02 of the Village Code, incurred by the Village relative to the Project, and shall pay all utility connection and permit fees in connection with the construction of the Project. The Village may withhold or issue stop work orders with respect to any permit if the Owner has failed or refused to comply in all material aspects with this Agreement or applicable law. Such costs include any third-party legal costs and economic consultant fees incurred by the Village in preparation of this Agreement.
- B. The Owner agrees that it shall repair and, if necessary, reconstruct, at its sole cost and expense, any driveway, road, parking area, sidewalk, curb, landscaping, or other property of the Village or others, which is damaged by the Owner, or its contractors, during or as a result of the construction of the Project, to at least the condition in which it existed prior to the start of construction, or as required by law, whichever is more restrictive.
- C. Prior to the commencement of work on any phase of the Project, the Owner shall post such surety bond or letter of credit, if and as required by the Village Code, in relation to the phase of the Project.
- D. It is expressly agreed and understood by the Owner that the terms of this Agreement shall be binding and applicable to all of Owner's contractors working on the Subject Property and/or adjacent public land or rights-of-way, in relation to the construction of the Project (a "**Owner Contractor**"). The Owner shall ensure that each Owner Contractor is aware of the obligations imposed under this Agreement and shall take such reasonable measures necessary to ensure each Owner Contractor complies herewith at all times. The Owner shall be liable for non-compliance with applicable provisions of this Agreement by an Owner Contractor, and shall promptly

notify the Village, in the event any Contractor fails or refuses to comply herewith. It is expressly agreed and understood that in the event of a breach of the provisions of this Agreement by any Owner Contractor, the Village will look solely to the Owner, and the Owner accepts responsibility on behalf of any such Owner Contractor.

- E. The Owner shall deliver to the Village a progress report bi-monthly following the commencement of the construction of the Project, which report shall describe the status of the work on the Project, any proposed changes to the construction schedule, and any proposed or revised completion date, if necessary, due to Uncontrollable Circumstances. The Owner shall meet with the Village as appropriate, and make presentations thereto as reasonably requested, in order to keep the Village apprised of the progress of the Project. The Owner shall provide adequate information, including, without limitation, engineering analyses and architectural analyses, as well as Village access to the appropriate development team personnel for the Project, at any such progress meetings, as may be requested by the Village, or as may be appropriate to provide an accurate progress report.
- F. Following the commencement of the construction of the Project, the Owner shall use commercially reasonable efforts to continue the construction of the Project without interruption or delay, and otherwise diligently pursue and prosecute the construction of the Project to completion, subject to Force Majeure.
- G. The Owner shall stage all construction materials, equipment and machinery on the Subject Property. No access to public areas outside the boundaries of the Subject Property shall be allowed for said activities, unless specifically authorized by the Village in writing. Prior to starting construction on the Subject Property, Owner shall submit to the Village a final staging plan denoting the proposed location of any construction activity, vehicle/contractor parking and any other construction related activities on the Subject Property, or on any other neighboring property within the Yorktown planned development. Said plan shall be subject to final review and approval of the Village
- H. The Owner agrees that the Village's Community Development Director, Private Development Engineer, Building Director, and/or their respective designees, or Village contracted third-parties, shall have the right at all times during normal business hours to reasonably inspect the progress of the construction of the Project. In the event such inspection is denied, the Owner shall be issued a stop work order, and no work shall be thereafter commenced until such time as an inspection is granted, and the stop work order is rescinded.

- I. The Owner shall be responsible, at its sole cost and expense, for the construction of any and all sanitary sewer lines, storm water management facilities, water mains, sidewalks, right-of-way improvements, parkway improvements, and all other related improvements necessary in order to construct and service the Project, in compliance with the final architectural and engineering plans to be submitted and approved by the Village, or other governmental entities with jurisdiction to review and approve any requisite permits, whichever jurisdiction is applicable. In this regard, the Owner shall have the right to tap into public sanitary sewer lines, storm water sewer lines, and water mains for use with the Project, subject to any permit fees, recapture or connection fees or obligations applicable thereto.
- J. During the construction of the Project as herein contemplated, the Owner shall stage its construction of the Project to avoid to the fullest extent possible any material community disruption. During construction, the Owner shall also keep all public streets used by the Owner clean on a daily basis, and for each day during which such public streets are not properly clean, and such condition is not remedied within twenty-four (24) hours of written notice to Owner, or such shorter period of time, as requested by the Village, if such clean-up cannot wait twenty-four (24) hours, the Owner shall pay the Village the sum of Seven Hundred Fifty and No/100 Dollars (\$750.00) for each such violation.
- K. Additional development items, as required as part of the zoning entitlements process, shall be undertaken as part of the Project, including, but not limited to:
 - 1. any traffic/non-motorized improvements to the private streets on the Subject Property, based upon the Village's traffic consultant's review;
 - 2. any stormwater/drainage infrastructure improvements; and
 - 3. providing any public easements or dedications necessary to facilitate any public improvements.
- L. The Owner, at its own expense, shall be responsible for all connection fees, tap-on fees, impact fees, special assessments, recapture fees, permit fees, plan review fees, and other payments and financial obligations of any kind set forth in the Village Code or any other ordinances or regulations of other governmental entities (e.g., state, federal, county or special districts) with regulatory oversight jurisdiction of the Project. Such payments, fees, expenses and costs shall not be eligible for reimbursement by the Village to the Owner as part of the economic incentives payable under this Agreement.

- M. The Owner, at its own expense, shall be responsible for all assessments, fees, costs and other payments and obligations of any kind set forth in the Reciprocal Construction, Operation and Easement Agreement dated August 29, 1966, as amended pursuant to that Second Amended and Restated Reciprocal Construction, Operation and Easement Agreement dated as of February 21, 2017, as further amended by that First Amendment to Second Amended and Restated Reciprocal Construction, Operation and Easement Agreement dated September 12, 2024, or any other similar or related agreement or document relative the construction, operation, maintenance, use and occupancy of Yorktown Center. Such payments, fees, expenses and costs and other payments and financial obligations shall not be eligible for reimbursement by the Village to the Owner as part of the economic incentives payable under this Agreement.

X. ADDITIONAL COVENANTS OF OWNER

- A. **Owner Existence.** Owner will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company, so long as this Agreement is in effect, and for so long as Owner maintains an interest in the Subject Property or has any other remaining obligation pursuant to the terms of this Agreement.
- B. **Further Assistance and Corrective Instruments.** The Village and Owner agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may be reasonably required for carrying out the intention of or effectuating or facilitating the performance of this Agreement to the extent legally permitted and within the Village's and the Owner's sound legal discretion.
- C. **No Gifts.** Owner covenants that no director, employee or agent of Owner, or any other Person connected with Owner, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the Village, or any other Person connected with the Village, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the Village.
- D. **Disclosure.** Concurrently with execution of this Agreement, Owner shall disclose to the Village the names, addresses and ownership interests of all Persons that have an ownership interest in the Owner and the Subject Property, together with such supporting documentation that may be reasonably requested by the Village. Owner further agrees to notify the Village throughout the term of this Agreement of the names, addresses and ownership interests of any changes of owners of the Owner or the Subject Property.

- E. **Prevailing Wages.** The Owner shall comply with the Illinois Prevailing Wage Act, 820 ILCS 130/, as amended (for purposes of this Section, the "Act"), to the extent that any improvements relative to the Project are considered public works under the Act. Specifically, the Owner acknowledges that if any improvements constructed as part of the Project are funded, in whole or in part, by BD Sales Tax revenues and are intended to be dedicated or otherwise conveyed to the Village for public ownership and maintenance, such improvements shall be subject to the Illinois Prevailing Wage Act.

Commented [JG3]: This provision accurately reflects prevailing wage obligations so needs to stay.

F. **Omitted.**

- G. **Open Book Project.** The Owner agrees that the Project shall be conducted as an open book project. The Owner shall maintain comprehensive and accurate books and records related to the Project, including but not limited to financial records, payment requisitions, construction contracts, plans, specifications, and all other relevant documents. These records shall be maintained in accordance with generally accepted accounting principles. The Village shall have the right to access, review, and copy all such books and records at any reasonable time. The Owner shall provide full transparency and cooperation in facilitating the Village's review. Furthermore, the Village may, at its own expense, engage an independent auditor to examine the Owner's books and records, and the Owner shall assist and cooperate with such audit. Any discrepancies or deficiencies identified during the audit shall be promptly corrected by the Owner. All records shall remain the property of the Owner and shall be kept at the Owner's business office or another location approved by the Owner.

XI. ADHERENCE TO VILLAGE CODES AND ORDINANCES

Except as otherwise provided for in this Agreement, all development and construction of the Project shall comply in all respects with the provisions in the building, plumbing, mechanical, electrical, storm water management, fire prevention, property maintenance, zoning and subdivision codes of the Village and all other germane codes and ordinances of the Village in effect from time to time during the course of construction of the Project.

XII. REPRESENTATIONS AND WARRANTIES OF OWNER

Owner represents, warrants and agrees as the basis for the undertakings on its part herein contained that as of the date hereof and until completion of the Project:

- A. **Existence and Authority of Owner.** The Owner is a limited liability company, duly organized and existing under the laws of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized by the owners of the Subject Property to execute, deliver and perform, this Agreement. To Owner's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Owner or the owners of the Subject Property which would result in any material and adverse change to Owner's financial condition, or which would materially and adversely affect the level of Owner's assets as of the date of this Agreement, or that would materially and adversely affect the ability of the Owner to proceed with the construction and development of the Project.
- B. **No Conflict by Owner.** Neither the execution and delivery of this Agreement by Owner, the consummation of the transactions contemplated under this Agreement by the Owner, nor the fulfillment of or compliance with the terms and conditions of this Agreement by the Owner conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of the Owner (with the Owner's prior written approval), any organizational documents, any restriction, agreement or instrument to which the Owner is now a party or by which the Owner is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Owner or the owners of the Subject Property under the terms of any instrument or agreement to which Owner or the owners of the Subject Property is now a party or by which the Owner or the owners of the Subject Property are bound.
- L. **Adequate Resources of Owner.** As of the Effective Date, the Owner and the owners of the Subject Property have sufficient financial and economic resources to implement and complete the Owner's obligations contained in this Agreement. To the extent the Owner or the owners of the Subject Property release financial records to the Village, said records shall be and constitute "confidential" records prohibited from disclosure by the Village or its officers/employee, provided the Owner or the owners of the Subject Property provide the Village with a written statement to such effect, that allows the Village to rely upon the Illinois Freedom of Information Act exemption set forth in 5 ILCS 140/7(1)(g).
- M. **No Adverse Notices to Owner.** The Owner has not received any notice from any local, State or federal official that the activities of the Owner with respect to the Subject Property or the Project may or will be in violation of any environmental law or regulation. The Owner is not aware of any State or federal claim filed or planned to be filed by any person relating to the

Subject Property or the Project and any violation of any local, State or federal environmental law, regulation or review procedure, and the Owner is not aware of any violation of any local, State or federal law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute relative to the Subject Property or the Project.

- E. **Experience, Construction and Operation.** The Owner represents and warrants to the Village that the Owner, and its respective principals, are experienced in the development of commercial projects and will provide the Project with the necessary skill, knowledge and expertise, relative to the construction and operation of the Project, through the hiring of, and/or contracting with, individuals and entities possessing such skill, knowledge and expertise.

XIII. COMPLIANCE WITH CONTRACTING LAWS

The Owner further certifies that the Owner:

- A. Is not barred from contracting with any unit of State or local government as a result of violating Section 33E-3 or 33E-4 of the Illinois Criminal Code, 720 ILCS 5/33E-3 and 33E-4, as amended;
- B. Shall comply with the Illinois Drug Free Workplace Act, 30 ILCS 580/, as amended;
- C. Shall comply with the Equal Opportunity Clause of the Illinois Human Rights Act and the Rules and Regulations of the Illinois Department of Human Rights;
- D. Shall comply with the Americans with Disabilities Act, 42 U.S.C. § 1201, *et seq.*, as amended, and Article 2 of the Illinois Human Rights Act, 775 ILCS 5/2-101, as amended;
- E. Shall make sure that any construction contracts entered into by the Owner relating to the construction of the Project shall require all contractors and subcontractors to comply with the Illinois Fair Employment Practices Act, as amended;
- F. Is not delinquent in the payment of any tax administered by the Illinois Department of Revenue nor is delinquent in the payment of any money owed to the Village; and
- G. Shall comply with all applicable federal, State and county laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors,

payment of wages due employees, and health and safety of employees. The Owner agrees to pay its employees, if any, all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and State statutes, and further agrees to make all required withholdings and deposits therefore. The Owner agrees to maintain full compliance with changing government requirements that govern or apply to the construction of the Project. The Owner understands and agrees that the most recent of such federal, State and county laws and regulations will govern the administration of this Agreement at any particular time and may be established after the date of this Agreement has been executed and may apply to this Agreement and the Project. Any lawsuit or complaint of violation of laws that is received by the Owner relative to this Agreement, or the Project shall be immediately forwarded to the Village Manager.

XIV. REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

The Village represents and warrants to the Owner as follows:

- A. **Existence.** The Village is an Illinois non-home rule municipal corporation duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.
- B. **Authority.** The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement:
 - 1. have been duly authorized by all necessary corporate action on the part of the Village; and
 - 2. shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.

XV. INSURANCE

- A. The Owner, and any successor in interest to the Owner, shall obtain and continuously maintain insurance on the Subject Property and the Project and, from time to time at the request of the Village, furnish proof to the Village evidence that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Owner must obtain and continuously maintain, provided that the Owner shall obtain the insurance described in Section XV.A.1. below prior to the commencement of construction of any portion of the Project:

1. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
 2. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy on a primary non-contributory basis naming the Village and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$2,000,000.00 for each occurrence and Five Million and no/100 Dollars (\$5,000,000.00) aggregate .
 3. Workers compensation insurance, with statutory coverage if applicable to the Owner.
- B. All insurance required in this Section XV, shall be obtained and continuously maintained through responsible insurance companies selected by the Owner or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Section XV, cancellation relative to each policy shall be as provided by the policy; however, the Village must be named as a cancellation notice recipient. Not less than fifteen (15) calendar days prior to the expiration of any policy, the Owner, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section XV. In lieu of separate policies, the Owner or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

XVI. INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS

- A. Owner releases from and covenants and agrees that the Village, its governing body members, officers, agents, including independent contractors, consultants, attorneys, servants and employees thereof (for purposes of this Section XVI, collectively the "**Village Indemnified Parties**") shall not be liable for, and agrees to indemnify and hold harmless the Village Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Subject Property or arising pursuant to the Owner's obligations or warranties under this Agreement, including, but not limited to, the Owner's obligations under Section X.E above, or actions in furtherance thereof to the extent not attributable to the negligence or willful misconduct of the Village Indemnified Parties; provided, that this waiver shall not apply to the warranties made or obligations undertaken by the

Village in this Agreement. This subsection shall survive the assignment or termination of this Agreement.

- B. Except for negligence or willful misconduct of the Village Indemnified Parties, Owner agrees to indemnify the Village Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Owner (or if other Persons acting on their behalf or under its direction or control) under this Agreement, including, but not limited to, the Owner's obligations under Section X.E. above, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project. This subsection shall survive the assignment or termination of this Agreement.
- C. Except as otherwise set forth herein, the Village makes no warranties or representations regarding, nor does it indemnify the Owner with respect to, the existence or nonexistence on or in the vicinity of the Subject Property, or anywhere within the Business District of any toxic or hazardous substances of wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §§ 9601-9657, as amended) (collectively, the "**Hazardous Substances**"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Subject Property, or within the Business District, as well as any activity claimed to have been undertaken on or in the vicinity of the Subject Property, that would cause or contribute to causing: (1) the Subject Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Subject Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. §6901 *et seq.*, as amended, or any similar State law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Subject Property, within the meaning of, or otherwise bring the Subject Property within the ambit of, CERCLA, or any similar State law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, as amended, or any similar State law or local ordinance. Further, the Village makes no warranties or representations regarding, nor does the Village indemnify the

Owner with respect to, the existence or nonexistence on or in the vicinity of the Project, or anywhere within the Subject Property, the Business District or the Business District, of any substances or conditions in or on the Subject Property, that may support a claim or cause of action under RCRA, CERCLA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The Village makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Subject Property, or whether any above or underground tanks have been located under, in or about the Subject Property have subsequently been removed or filled. The Village warrants and represents to Owner that it has not received notice, other than as already provided to the Owner by the Village in the environmental reports provided to the Owner by the Village, from any agency, individual or entity of any violation of any environmental law relating to any Hazardous Substances affecting the Subject Property.

- D. The Owner waives any claims against the Village Indemnified Parties, and their members and boards, for indemnification, contribution, reimbursement or other payments arising under federal, State and common law relating to the environmental condition of the land comprising the Subject Property.
- E. No liability, right or claim at law or inequity shall attach to or shall be incurred by the Village's Corporate Authorities, officers, officials, attorneys, agents and/or employees as a result of this Agreement, and any such rights or claims of the Owner against the Village's Corporate Authorities, officers, officials, attorneys, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

XVII. EVENTS OF DEFAULT AND REMEDIES

- A. **Owner Events of Default:** The following shall be Events of Default with respect to this Agreement:
 - 1. If any material representation made by Owner in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Owner does not remedy the default, within thirty (30) calendar days after written notice from the Village and in any event (subject to Uncontrollable Circumstances) cures such default within ninety (90) calendar days after such notice.

2. Default by Owner for a period of thirty (30) calendar days after written notice thereof in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of Owner; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) calendar days and Owner, within said thirty (30) calendar days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within ninety (90) calendar days after such notice.
 3. Default by Owner for a period of thirty (30) calendar days after written notice thereof in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if such default can be cured within said thirty (30) calendar days and the Owner, within said thirty (30) calendar days initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within ninety (90) calendar days after such notice.
 4. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Owner in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Owner for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of one hundred twenty (120) consecutive days.
 5. The commencement by Owner of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by Owner to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Owner or of any substantial part of the Subject Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Owner generally to pay such entity's debts as such debts become due or the taking of action by Owner in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.
- N. Failure to have the funds required to meet Owner's obligations, relative to each phase of the Project, so as to construct each phase of the Project within the

time frames allowed under the Village Code, upon issuance of the building permits for each phase of the Project.

- O. Owner abandons the Project. Abandonment shall be deemed to have occurred when work stops on the Subject Property for more than sixty (60) consecutive days for any reason other than Uncontrollable Circumstances or other circumstances outside of the Owner's control, and such work is not resumed within thirty (30) calendar days of written demand by the Village.
- P. Owner fails to comply with applicable governmental codes and regulations in relation to the construction and maintenance of the Project contemplated by this Agreement and such failure continues for more than thirty (30) calendar days after written notice thereof from the Village; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) calendar days and Owner, within said thirty (30) calendar days, initiates and diligently pursues appropriate measures to remedy the default and in any event (subject to Uncontrollable Circumstances) cures such default within ninety (90) calendar days after such notice. The maintenance requirement of this provision shall not be covered by and shall survive any certificate of occupancy or Estoppel Certificate (as provided for in Section XIX.Q. below) of any kind issued during the term of this Agreement.
- B. **Village Events of Default.** The following shall be Events of Default with respect to this Agreement:
1. If any material representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Owner pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default, within thirty (30) calendar days after written notice from Owner.
 2. Default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default if the Village does not, within thirty (30) calendar days after written notice from Owner, initiate and diligently pursue appropriate measures to remedy the default.
 3. Default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the Village, commences cure within thirty (30) calendar

days after written notice from Owner, and in any event cures such default within sixty (60) calendar days after such notice, subject to Uncontrollable Circumstances.

C. **Remedies for Default.** In the case of an Event of Default hereunder:

1. The defaulting Party shall, upon written notice from the non-defaulting Party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than thirty (30) additional calendar days, unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its/their opinion to cure or remedy such Event of Default, including, but not limited to, proceedings to compel specific performance of the defaulting Party's obligations under this Agreement.
2. In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, the Owner and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Owner and the Village shall continue as though no such proceedings had been taken.
3. In the case of an Event of Default by the Owner, in addition to any other remedies at law or in equity, the Village may declare this Agreement null and void, and shall be relieved of its obligations under this Agreement.
4. In no event shall either Party be liable to the other for any consequential or punitive damages suffered as a result of a default under this Agreement.

D. **Agreement to Pay Attorneys' Fees and Expenses.** In the event an Event of Default is not cured within the applicable cure periods and the Parties employ an attorney or attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement herein contained, the non-prevailing Party shall pay the prevailing Party's reasonable fees of such attorneys and such other reasonable expenses in connection with such enforcement action. Such obligation shall only be

effective upon a determination by a court of competent jurisdiction that one of the Parties constitutes a prevailing Party.

- E. **No Waiver by Delay or Otherwise.** Any delay by any Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that any Party should not be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under this Agreement shall be considered a waiver of any rights except if expressly waived in writing.
- F. **Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.
- G. **Legal and Other Fees and Expenses.** Other than for demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings covered by this Section XVII., in the event that any third party or parties institute any legal proceedings against the Owner and/or the Village, which relate to the terms of this Agreement, then, in that event, the Parties shall cooperate in the defense of any such lawsuit, with each Party assuming, fully and vigorously, its own defense of such lawsuit, and all costs and expenses of its own defense, of whatever nature (including attorney's fees).

XVIII. EQUAL EMPLOYMENT OPPORTUNITY

- A. **No Discrimination.** Owner shall comply with all federal, state and local laws relating to equal employment opportunity.
- B. **Advertisements.** Owner shall, in all solicitations or advertisements for employees placed by or on behalf of Owner, if applicable, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. **Contractors.** Any contracts made by Owner with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in Sections

XVIII.A. and B. above. The Owner shall make reasonable efforts to incorporate language similar to that recited in Sections XVIII.A. and B. in any leases made by Owner in connection with the Project.

XIX. MISCELLANEOUS PROVISIONS

- A. **Cancellation.** In the event Owner or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Business District Plan, including Owner's duty to build the Project and operate the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Business District Law, Economic Development Statute, the Development Approvals, or any ordinance adopted by the Village in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the Project or the covenants and agreements or rights and privileges of Owner or the Village, then and in any such event, the Party so materially affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other Party within sixty (60) calendar days after such final decision or amendment. Further, the cancellation or termination of this Agreement shall have no effect on the authorizations granted to Owner for buildings, or the remodeling of any building, permitted and under construction, to the extent permitted by said court order; and the cancellation or termination of this Agreement shall have no effect on perpetual easements contained in any recorded, properly executed document.
- B. **Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) electronic communications, such as by electronic mail, but only if followed up, within one (1) business day, by another method of notice, (3) overnight courier, or (4) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village: Scott Niehaus, Village Manager
 Village of Lombard
 255 East Wilson Avenue
 Lombard, Illinois 60148
 Email: niehauss@villageoflombard.org

With a copy to: Tim Sexton, Finance Director
 Village of Lombard
 255 East Wilson Avenue

Lombard, Illinois 60148
Email: sextont@villageoflombard.org

and: Klein, Thorpe and Jenkins, Ltd.
120 N. LaSalle Street, Suite 1710
Chicago, Illinois 60602
Attention: Jason Guisinger
Email: jaguisinger@ktjlaw.com

If to Owner:

With a copy to:

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (1) or (2) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (3) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (4) shall be deemed received forty-eight (48) hours following deposit in the mail.

- C. **Time is of the Essence.** Time is of the essence of this Agreement. Notwithstanding the foregoing, if the date for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the date of such performance shall be extended to the next business day.
- D. **Integration.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, but in no event less than two (2) counterparts, each of which shall be an original and each of which shall constitute but one and the same Agreement.
- F. **Recordation of Agreement.** The Parties agree to record this Agreement with the DuPage County Recorder's Office against title to the Subject Property, at the Owner's sole cost. The rights and obligations of the Owner and the owners of the Subject Property in this Agreement are covenants running with title to the Subject Property and successor owners of the Subject Property shall be and are bound by this Agreement to the same extent as Owner and the owners of the Subject Property.

- G. **Severability.** If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.
- H. **Choice of Law / Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State, and any court proceedings between the Parties hereto shall be brought in DuPage County, Illinois.
- I. **Entire Contract and Amendments.** This Agreement (together with the exhibits attached hereto) is the entire contract between the Village and the Owner relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and the Owner, and may not be modified or amended except by a written instrument executed by the Parties hereto.
- J. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other Person other than the Village and the Owner, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to the Village and the Owner, nor shall any provision give any third parties any rights of subrogation or action over or against the Village or the Owner. This Agreement is not intended to and does not create any third-party beneficiary rights whatsoever.
- K. **Waiver.** Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.
- L. **Cooperation and Further Assurances.** The Village and the Owner each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or the Owner, or other appropriate Persons, all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

- M. **No Joint Venture, Agency or Partnership Created.** Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third party to create the relationship of a partnership, agency or joint venture between or among such Parties.
- N. **No Personal Liability of Officials of the Village or the Owner.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Corporate Authorities, Village Manager, any elected official, officer, partner, member, shareholder, manager, director, agent, employee or attorney of the Village or the Owner, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the Village or the Owner shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.
- O. **Repealer.** To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.
- P. **Term.** Unless terminated earlier pursuant to the provisions hereof, this Agreement shall remain in full force and effect through the Incentive Term, except for those provisions identified as surviving termination of this Agreement.
- Q. **Estoppel Certificates.** Each of the Parties hereto agrees to provide the other, upon not less than fifteen (15) calendar days prior request, a certificate ("**Estoppel Certificate**") certifying that this Agreement is in full force and effect (unless such is not the case, in which case such Party shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, and if, after an additional seven (7) calendar days' notice there still is no compliance, then said non-complying Party shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.
- R. **Confidentiality.** The Village acknowledges and agrees that certain information to be provided by the Owner, owner or lessee hereunder is proprietary and valuable information and that any disclosure or unauthorized use thereof will cause irreparable harm to the Owner, and to the extent permitted by state or federal law, including, but not limited to,

Section 7(1)(g) of the Illinois Freedom of Information Act (5 ILCS 140/7(1)(g)), the Village agrees to hold in confidence all sales figures and other information provided by the State of Illinois, or any owner or lessee of a portion of the Subject Property, or obtained from any such owner's or lessee's records in connection with this Agreement, and in connection therewith, the Village shall not copy any such information except as necessary for dissemination to the Village's agents or employees as permitted hereinafter, provided the Owner, owner or lessee, as the case may be, provides the Village with a written statement that allows the Village to rely upon the Illinois Freedom of Information Act exemption set forth in 5 ILCS 140/7(1)(g). The Village shall be permitted to disclose such information to its agents or employees who are reasonably deemed by the Village to have a need to know such information for purposes of this Agreement; provided, that such agents and employees shall hold in confidence such information to the extent required of the Village hereunder, or to the extent required by order of court or by State or federal law. The confidentiality requirements of this Agreement shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind the Village, its successors, assigns and legal representatives for a period of five (5) years from the termination, expiration or cancellation of this Agreement. The Village shall promptly notify Owner and any affected owner or lessee as to an Illinois Freedom of Information Act request and the commencement of any legal action in regard thereto such that Owner and/or any such owner or lessee shall have a meaningful opportunity to object to the release of any such confidential information and to take such action as such owner or lessee deems necessary in order to protect against the release of such confidential information.

S. **Sale or Assignment.** In all other instances, the owner of the Subject Property may sell or transfer the Subject Property, or any portion thereof, and assign their rights, duties and obligations hereunder, with the approval of the Village, which shall not be unreasonably withheld, conditioned or delayed, provided that:

1. the Village receives a written notice of the proposed transaction no less than thirty (30) calendar days before the proposed effective date of the sale, transfer or assignment;
2. the assignee provides the Village with written confirmation of its acceptance of, and agreement to be bound by, the Owner's and the owners' of the Subject Property duties and obligations under this Agreement;
3. the transaction does not violate the Rebate Statute, as amended, or any statute enacted to amend or replace the Rebate Statute; and

4. The Village reasonably determines, based on written evidence provided by the Owner, that the assignee has the financial capacity together with the experience needed to effectively develop, operate, and manage a large residential development;

The Owner, or its successors and assigns, as the case may be, shall provide the Village with notice of any sale or transfer of the Subject Property, or any portion thereof, or the assignment of its rights, duties and obligations hereunder; together with supporting documentation reasonably acceptable to the Village within thirty (30) calendar days thereof.

- T. **Municipal Limitations.** All Village commitments hereunder are limited to the extent required by law.

(Signature page follows)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates as set forth below.

VILLAGE OF LOMBARD,
an Illinois non home rule
municipal corporation

ATTEST:

By: _____
Anthony Puccio, Village President

By: _____
Ranya Elkhatib, Village Clerk

Date: _____, 2025 Date: _____, 2025

PACIFIC SQUARE RETAIL CAPITAL PARTNERS LLC
an Illinois limited liability company

By: _____
Name: _____
 Manager

Date: _____, 2025

ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Anthony Puccio and Elizabeth Brezinski, personally known to me to be the Village President and Village 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 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 Village Council of said Illinois corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2025.

Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the Manager of YTC HIGHLAND LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that, as such Manager, he signed and delivered the said instrument, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2025.

Notary Public

Exhibit A

Legal Description and Depiction of Subject Property

Exhibit B
Eligible Project Costs

Exhibit C

Project Allocation Budget
(attached)

