

Finance Director _____ Date _____
Village Manager _____ Date _____

MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development

MEETING DATE: June 20, 2024

RE: **Yorktown Reserve Economic Incentive Agreement – Second Amendment**

On December 21, 2023, The Village Board approved specific performance date amendments established within the Yorktown Reserve Economic Incentive Agreement (EIA) between the Village and project developer Lombard Development Manager, LLC (a tenant-in-common entity being orchestrated through Synergy Partners, a development and construction firm). The First Amendment established among other things, required demonstrated funding obligations being met by June 30, 2024.

The developer stated that they have written evidence of funding. They are currently working on companion loan documents now with the goal of closing on the construction loan by June 28, 2024. However, the developer stated that due to the potential possibility that final documents may not be fully executed until the second week of July. They also plan to close on the 2.5 acre JCPenney parcel the same day as loan closing.

Given this potential issue, the developer and staff, working with Village Counsel, have prepared a Second Amendment to the EIA which would establish the requisite funding evidence and companion acquisition of the JCPenney tract to August 31, 2024 - a two-month time extension. All of the provisions of the EIA remain in full force and effect.

ACTION REQUESTED

Please place this item on the June 20, 2024 Village Board agenda for consideration and approval. Staff also request a waiver of First Reading of the ordinance in order to meet the timing matters within the Amendment.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A SECOND AMENDMENT TO THE ECONOMIC INCENTIVE AGREEMENT FOR THE YORKTOWN RESERVE DEVELOPMENT, COMPRISING A PART OF THE BUTTERFIELD-YORKTOWN TIF DISTRICT AND A PART OF THE BUTTERFIELD ROAD/YORKTOWN BUSINESS DISTRICT NO. 2 OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS

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

SECTION 1: The President and Board of Trustees of the Village of Lombard (hereinafter referred to as the “Village”) find as follows:

- 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 Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the “TIF Act”) and 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 TIF Act and 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 Numbers 7437, 7438 and 7439, adopted November 2, 2017, as amended by Ordinance Number 7451, adopted December 7, 2017, Ordinance Number 7705, adopted September 5, 2019, Ordinance Number 7758, adopted December 5, 2019, and Ordinance Numbers 7864, 7865 and 7866, adopted October 15, 2020, the Village approved a tax increment redevelopment plan and project (the “TIF Plan”), designated the

tax increment redevelopment project area (the “Redevelopment Project Area”), and adopted tax increment financing relative to the Village’s Butterfield-Yorktown Tax Increment Financing District (the “TIF District”) pursuant to the TIF Act.

- E. Pursuant to Ordinance Number 7689, adopted July 18, 2019, and Ordinance Number 7702, adopted August 15, 2019, as amended by Ordinance Number 7757, adopted December 5, 2019, and Ordinance Number 7767, adopted January 9, 2020, the Village approved, and amended, a business district plan (the “Business District Plan”) and designated, and amended the boundaries of, a business district relative to the Village’s Butterfield Road/Yorktown Business District No. 2 (the “Business District”), and, pursuant to Ordinance Number 7703, adopted August 15, 2019, and Ordinance Number 7713, adopted September 19, 2019, 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.
- F. Pursuant to Ordinance No. 8181, adopted July 20, 2023, the Village approved an “Economic Incentive Agreement for the Yorktown Reserve Development Comprising a Part of the Butterfield-Yorktown TIF District and a Part of the Butterfield Road/Yorktown Business District No. 2 of the Village of Lombard, Illinois,” dated July 20, 2023, with the Developer, relative to the property legally described in EXHIBIT 1 attached hereto and made part hereof (the “Agreement”).
- G. Pursuant to Ordinance No. 8223, adopted December 21, 2023, the Village approved a First Amendment to the Economic Incentive Agreement for the Yorktown Reserve Development Comprising a Part of the Butterfield-Yorktown TIF District and a Part of the Butterfield Road/Yorktown Business District No. 2 of the Village of Lombard, Illinois”, dated December 22, 2023 (the “First Amendment”), relative to the timelines and milestones for development of the Phase I Project and disbursement of incentive funds related to the Greenspace Improvements Project. The Agreement, as amended by the First Amendment, is hereinafter referred to as the “Amended Agreement”.
- H. The Village and the Developer desire to further amend the Amended Agreement relative to the timelines and milestones for construction to account for the Developer’s anticipated timeline for obtaining financing for the Project; and
- I. That, attached hereto as EXHIBIT 2 and made part hereof, is a second amendment to the Amended Agreement, between the Developer and the

Village, which sets forth the revisions necessary to facilitate the changes referenced in subsection H. above (the "Second Amendment").

- J. That it is in the best interests of the Village to approve the Second Amendment, so that redevelopment within the TIF District and Business District can continue.

SECTION 2: Based upon the foregoing, the Second Amendment is hereby approved, and the Village President and Village Clerk of the Village are hereby authorized and directed to execute and deliver said Second Amendment, as well as such other instruments as may be necessary or convenient to carry out the terms of said Second Amendment, and the Amended Agreement as amended by the Second Amendment.

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

Passed on first reading this ____ day of _____, 2024.

Passed on second reading this ____ day of _____, 2024, pursuant to a roll call vote as follows.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2024.

Keith Giagnorio, Village President

ATTEST:

Elizabeth Brezinski, Village Clerk

Published by me in pamphlet form this ___ day of _____, 2024.

Elizabeth Brezinski, Village Clerk

Exhibit 1
Legal Description of Property

THAT PART OF LOT 1 IN CARSON'S ASSESSMENT PLAT OF YORKTOWN SHOPPING CENTER, RECORDED AUGUST 8, 2000 AS DOCUMENT R2000-120890, TOGETHER WITH THAT PART OF PARCEL 2 IN HIGHLAND AVENUE ASSESSMENT PLAT, RECORDED JANUARY 30, 2012 AS DOCUMENT R2012-012175, BOTH IN SECTION 29, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHWEST CORNER OF SAID LOT 1 IN IN CARSON'S ASSESSMENT PLAT; THENCE NORTH 02 DEGREES 22 MINUTES 47 SECONDS WEST, 352.27 FEET; THENCE ALONG A CURVE HAVING A CHORD BEARING OF NORTH 47 DEGREES 22 MINUTES 48 SECONDS WEST, A RADIUS OF 25.00 FEET, AND AN ARC LENGTH 39.27 FEET; THENCE SOUTH 87 DEGREES 37 MINUTES 13 SECONDS WEST, 114.00 FEET; THENCE ALONG A CURVE HAVING A CHORD BEARING OF SOUTH 66 DEGREES 52 MINUTES 57 SECONDS WEST, A RADIUS OF 77.00 FEET, AND AN ARC LENGTH OF 55.74 FEET; THENCE NORTH 02 DEGREES 22 MINUTES 47 SECONDS WEST, 89.15 FEET; THENCE ALONG A CURVE HAVING A CHORD BEARING OF SOUTH 75 DEGREES 07 MINUTES 13 SECONDS EAST, A RADIUS OF 90.00 FEET, AND AN ARC LENGTH OF 54.22 FEET; THENCE NORTH 87 DEGREES 37 MINUTES 13 SECONDS EAST, 114.00 FEET; THENCE ALONG A CURVE HAVING A CHORD BEARING OF NORTH 42 DEGREES 37 MINUTES 13 SECONDS EAST, A RADIUS OF 25.00 FEET, AND AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 02 DEGREES 22 MINUTES 47 SECONDS WEST, 448.23 FEET; THENCE NORTH 87 DEGREES 15 MINUTES 23 SECONDS EAST, 51.21 FEET; THENCE ALONG A CURVE HAVING A CHORD BEARING OF NORTH 50 DEGREES 02 MINUTES 53 SECONDS EAST, A RADIUS OF 219.00 FEET, AND AN ARC LENGTH OF 288.43 FEET; THENCE NORTH 87 DEGREES 46 MINUTES 43 SECONDS EAST, 107.83 FEET; THENCE ALONG A CURVE HAVING A CHORD BEARING OF NORTH 79 DEGREES 56 MINUTES 16 SECONDS EAST, A RADIUS OF 506.00 FEET, AND AN ARC LENGTH OF 138.49 FEET; THENCE NORTH 72 DEGREES 07 MINUTES 03 SECONDS EAST, 23.60 FEET; THENCE NORTH 66 DEGREES 11 MINUTES 57 SECONDS EAST, 155.55 FEET; THENCE SOUTH 17 DEGREES 28 MINUTES 24 SECONDS EAST, 258.76 FEET; THENCE SOUTH 28 DEGREES 01 MINUTES 44 SECONDS WEST, 62.53 FEET; THENCE SOUTH 62 DEGREES 02 MINUTES 17 SECONDS EAST, 276.72 FEET; THENCE SOUTH 27 DEGREES 57 MINUTES 43 SECONDS WEST, 419.93 FEET; THENCE NORTH 62 DEGREES 01 MINUTES 04 SECONDS WEST, 218.43 FEET; THENCE SOUTH 27 DEGREES 57 MINUTES 43 SECONDS WEST, 254.10 FEET; THENCE SOUTH 57 DEGREES 57 MINUTES 43 SECONDS WEST, 165.00 FEET; THENCE SOUTH 27 DEGREES 57 MINUTES 43 SECONDS WEST, 177.29 FEET; THENCE SOUTH 87 DEGREES 37 MINUTES 13 SECONDS WEST, 188.55 FEET, TO THE POINT OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 06-29-101-038, and a portion of 06-29-101-044

Common Address: 230 Yorktown Center and a portion of 175 Yorktown Center, Lombard, Illinois

Exhibit 2

**Second Amendment to
the Economic Incentive Agreement**

(attached)

**SECOND AMENDMENT TO THE ECONOMIC INCENTIVE AGREEMENT FOR THE
YORKTOWN RESERVE DEVELOPMENT, COMPRISING A PART OF THE
BUTTERFIELD-YORKTOWN TIF DISTRICT AND A PART OF THE
BUTTERFIELD ROAD/YORKTOWN BUSINESS DISTRICT NO. 2
OF THE VILLAGE OF LOMBARD, ILLINOIS**

This Second Amendment to Economic Incentive Agreement (the "Second Amendment") is made and entered into as of the ____ day of June, 2024, by and between the VILLAGE OF LOMBARD, an Illinois non-home rule municipal corporation (the "Village") and LOMBARD DEVELOPMENT MANAGER, LLC, an Illinois limited liability company (the "Developer"). (The Village and the Developer are sometimes referred to herein collectively as the "Parties.")

WITNESSETH

WHEREAS, pursuant to Ordinance No. 8181, adopted July 20, 2023, the Village approved an "Economic Incentive Agreement for the Yorktown Reserve Development Comprising a Part of the Butterfield-Yorktown TIF District and a Part of the Butterfield Road/Yorktown Business District No. 2 of the Village of Lombard, Illinois," dated July 20, 2023, with the Developer, relative to the property legally described in Exhibit A attached hereto and made part hereof (the "Agreement"); and

WHEREAS, pursuant to Ordinance No. 8223, adopted December 21, 2023, the Village approved a First Amendment to the Economic Incentive Agreement for the Yorktown Reserve Development Comprising a Part of the Butterfield-Yorktown TIF District and a Part of the Butterfield Road/Yorktown Business District No. 2 of the Village of Lombard, Illinois", dated December 22, 2023 (the "First Amendment"), relative to the timelines and milestones for development of the Phase I Project and disbursement of incentive funds related to the Greenspace Improvements Project (the Agreement, as

amended by the First Amendment, is hereinafter referred to as the “Amended Agreement”); and

WHEREAS, the Village and the Developer desire to amend certain provisions of the Amended Agreement pursuant to this Second Amendment relative to the timelines and milestones for construction to account for the Developer’s anticipated timeline for obtaining financing for the Project; and

WHEREAS, in accordance with the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, and the Business District Development and Redevelopment Law, 65 ILCS 5/11-74.3-1, *et seq.*, it is in the best interests of the Village and the Developer to enter into this Second Amendment;

NOW, THEREFORE, in consideration of the foregoing, other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, and the mutual covenants and agreements hereinafter contained, the Parties hereto agree as follows:

1. That Section V.A.5. of the Amended Agreement is hereby amended to read in its entirety as follows:

“5. For the **Phase 1 Project and Greenscape Project**, the Developer shall:

- a. **On or before August 31, 2024**, provide the Village with written evidence of funding for construction.
- b. **On or before August 31, 2024**, the Developer shall: (i) apply with the Village for demolition as required for Phase I, (ii) apply for building permits, and (iii) apply for all necessary permits and approvals from all governmental agencies having jurisdiction over the Subject Property, other than the Village, as may be necessary to commence construction.
- c. **On or before December 1, 2024**, construction shall commence.

- d. **On or before June 30, 2027**, subject to Force Majeure, completion of construction shall occur, meaning that the Developer has received a final certificate of occupancy and zoning certificate from the Village.”
2. That Section VIII.A. of the Amended Agreement is hereby amended by changing the date referenced therein to August 31, 2024.
3. That all portions of the Agreement, not amended hereby, shall remain in full force and effect.
4. This Second Amendment shall be executed simultaneously in two (2) counterparts, each of which shall be deemed an original, but both of which shall constitute one and the same Second Amendment.
5. The Parties agree to record this Second Amendment with the DuPage County Recorder’s Office, with the Developer paying the cost of the recording charges.
6. This Second Amendment shall be deemed dated and become effective on the day on which this Second Amendment is executed by the last of the signatories, as set forth below, with said date appearing on page 1 hereof.

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SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be executed on or as of the day and year first above written.

VILLAGE OF LOMBARD,
an Illinois non-home rule municipal corporation

ATTEST:

By: _____
Keith Giagnorio, Village President

By: _____
Elizabeth Brezinski, Village Clerk

Date: _____, 2024

Date: _____, 2024

LOMBARD DEVELOPMENT MANAGER, LLC.,
an Illinois limited liability company

By: _____
Name: _____
Title: _____

Date: _____

ATTEST:

By: _____
Name: _____
Title: _____

Date: _____

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 Keith Giagnorio and Elizabeth Brezinski, personally known to me to be the 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 _____, 2024.

Notary Public

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 _____, personally known to me to be the Manager of Lombard Development Manager, 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 _____, 2024.

Notary Public

Exhibit A

Legal Description of the Property Covered by the Agreement

THAT PART OF LOT 1 IN CARSON'S ASSESSMENT PLAT OF YORKTOWN SHOPPING CENTER, RECORDED AUGUST 8, 2000 AS DOCUMENT R2000-120890, TOGETHER WITH THAT PART OF PARCEL 2 IN HIGHLAND AVENUE ASSESSMENT PLAT, RECORDED JANUARY 30, 2012 AS DOCUMENT R2012-012175, BOTH IN SECTION 29, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

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