



DocId:20227082

Tx:40597035

KATHLEEN V. CARRIER

RECORDER

DUPAGE COUNTY, IL

10/15/2024 09:12 AM

DOC NO. R2024-060505

DOCUMENT SUBMITTED WITH
LOW QUALITY / ILLEGIBLE PORTIONS

ORDINANCE 8181

AN ORDINANCE AUTHORIZING
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

PIN(s) 06-29-101-038, and a portion of 06-29-101-044

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

(Prepared by and Return To:)
Village of Lombard
255 E. Wilson Avenue
Lombard, IL 60148



I, **Sheila York**, hereby certify that I am the duly qualified Deputy Village Clerk of the **Village of Lombard**, DuPage County, Illinois, as authorized by Statute and provided by local Ordinance, and as such Deputy Village Clerk, I maintain and am safekeeper of the records and files of the President and Board of Trustees of said Village.

I further certify that attached hereto is a copy of

ORDINANCE 8181

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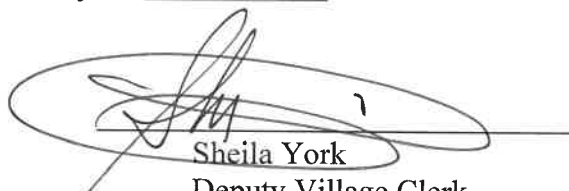
PIN(s) 06-29-101-038, and a portion of 06-29-101-044

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

of the said Village as it appears from the official records
of said Village duly approved this 20th
day of July 2023.

In Witness Whereof, I have hereunto affixed my official signature and the Corporate
Seal of said **Village of Lombard**, Du Page County, Illinois this 9th
day of October 2024.




Sheila York
Deputy Village Clerk
Village of Lombard
DuPage County, Illinois

**ORDINANCE 8181
PAMPHLET**

YORKTOWN RESERVE ECONOMIC INCENTIVE AGREEMENT



PUBLISHED IN PAMPHLET FORM THIS 21ST DAY OF JULY, 2023, BY ORDER
OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD, DUPAGE
COUNTY, ILLINOIS.

A handwritten signature in black ink, which appears to read "Elizabeth Brezinski", is written over a horizontal line.

Elizabeth Brezinski
Village Clerk

ORDINANCE NO. 8181

**AN ORDINANCE AUTHORIZING
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**

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, with said TIF District being legally described and depicted as set forth in EXHIBIT 1 and EXHIBIT 2 attached hereto and made part hereof, respectively.

- 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, with said Business District being legally described and depicted as set forth in EXHIBIT 3 and EXHIBIT 4 attached hereto and made a part hereof, respectively.
- F. There is a fifteen and 75/100 (15.75) acre parcel of real property located within the TIF District and Business District, as legally described on EXHIBIT 5, attached hereto and made a part hereof (the "Property").
- G. Lombard Development Manager, LLC (the "Developer") is the owner of a part of the Property and contract purchaser of the remaining portion of real estate which, in total will constitute the Property.
- H. The Developer desires to redevelop the Property with a project consisting of two multiple-family residential buildings with attached parking garages, surface parking, an open space/green space amenity area for use by the public and patrons of Yorktown Center, and modifications to the exterior façade of Yorktown Center (the "Project").
- I. That attached hereto as EXHIBIT 6 and made part hereof is an economic incentive agreement, between the Developer and the Village, which sets forth the terms and conditions pursuant to which the Developer will proceed with the Project on the Property (the "Economic Incentive Agreement").

- J. In accordance with the TIF Act, the Business District Law and the Economic Development Statute, it is in the best interests of the Village to approve the Economic Incentive Agreement, so that economic development and redevelopment within the TIF District and the Business District can continue, said economic development and redevelopment, pursuant to the TIF Act, the Business District Law and the Economic Development Statute, being the Village's public purpose for providing the incentive set forth in the Economic Incentive Agreement.

SECTION 2: Based upon the foregoing, and pursuant to the TIF Act, the Business District Law and the Economic Development Statute, the Economic Incentive Agreement, attached hereto as EXHIBIT 6, is hereby approved, and the Village President and Village Clerk of the Village be and they are hereby authorized and directed to execute and deliver said Economic Incentive Agreement, as well as execute and deliver such other instruments as may be necessary or convenient to carry out the terms of said Economic Incentive Agreement.

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 _____, 2023.

First reading waived by action of the Board of Trustees this 20th day of July 2023.

Passed on second reading this 20th day of July 2023, pursuant to a roll call vote as follows.

AYES: Trustee LaVaque, Puccio, Dudek, Honig, Militello and Bachner

NAYS: None

ABSENT: None

APPROVED by me this 20th day of July 2023.


Keith T. Giagnorio, Village President

ATTEST:


Elizabeth Brezinski, Village Clerk

Published by me in pamphlet form this 21st day of July 2023.

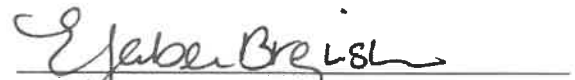

Elizabeth Brezinski, Village Clerk

EXHIBIT 1

Exhibit Omitted for Recording Purposes Only

EXHIBIT 2

Exhibit Omitted for Recording Purposes Only

EXHIBIT 3

Exhibit Omitted for Recording Purposes Only

EXHIBIT 4

Exhibit Omitted for Recording Purposes Only

EXHIBIT 5

Legal Description of the 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 6

The Economic Incentive Agreement

(attached)

**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 Economic Incentive Agreement ("**Agreement**") is made and entered into as of the _____ day of July, 2023 (the "**Effective Date**") by and between the **VILLAGE OF LOMBARD, ILLINOIS**, 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 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 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 President and Board of Trustees ("**Corporate Authorities**") 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, with said TIF District being legally described and depicted as set forth in **EXHIBIT A-1** and **EXHIBIT A-2** attached hereto and made part hereof, respectively.
- 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 Corporate Authorities 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**" or "**BD**"), 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, with said Business District being legally described and depicted as set forth in **EXHIBIT B-1** and **EXHIBIT B-2** attached hereto and made a part hereof, respectively.
- F. Within the TIF District and Business District, the Developer has acquired real property of the approximately 572,984 square feet (13.15 acres) in land area commonly known as 230 Yorktown Shopping Center (Parcel Identification Number 06-29-101-038). The Developer also intends to acquire adjacent real property of approximately 113,125 square feet (2.60 acres) of the 678,162 square feet (15.57 acre) real property commonly known as 175 Yorktown Shopping Center (Parcel Identification Number 06-29-101-044). The two aforementioned tracts of land are jointly deemed to be the "**Subject Property**," as legally described and depicted on **EXHIBIT C** attached hereto and made a part hereof. As set forth below, the Developer proposes to develop distinct portions of the Subject Property in

two (2) phases, the portions of which are labeled as the **"Phase 1 Project"** and the **"Phase 2 Project"**.

- G. The Subject Property is currently improved with a currently vacant three (3) story Carson's retail department store building ("**Carson's**") of approximately 224,322 square feet in gross floor area, along with existing surface parking for the use and benefit of any principal use on the Subject Property. The Developer shall also acquire any other necessary properties, or interests in properties, located within the Yorktown planned development, as may be required to complete the Project, including such permissions as may be needed under the **"Second Amended and Restated Reciprocal Construction, Operation and Easement Agreement"** that applies to some or all of the Subject Property (the **"REA"**). The Developer shall provide the Village with written evidence that the Developer has secured all permissions and property interests necessary to build and operate the Project (as described below).
- H. Upon acquiring ownership of the Subject Property in its entirety, the Developer agrees to redevelop it with a project consisting of the demolition of the existing Carson's building, relocation and installation of all new private infrastructure and utilities needed to support the Project as required by Village Code, and construct two (2) multiple-family dwelling buildings, each with an interior parking deck and parking lot, that may be constructed in two (2) phases, with the first phase being an approximately **two hundred and seventy-one (271) unit structure** (the **"Phase 1 Project"**) and the second phase being an approximately **three hundred eleven (311) unit structure** (the **"Phase 2 Project"**). Within the demolished Carson's site, the Developer also agrees to construct an open space / greenspace active – passive amenity area for use by the public, the residents of Yorktown Reserve, and the patrons of Yorktown Center; and to make certain peripheral building modifications to the exterior façade of the Yorktown Center (the **"Greenspace Improvements Project"**). The Phase 1 Project, the Phase 2 Project and the Greenspace Improvements Project improvements are depicted on the site plan attached hereto as **EXHIBIT D-1**, and made part hereof, and as described in further detail in **EXHIBIT D-2**, attached hereto and made part hereof (collectively the **"Project"**).
- I. The Phase 1 Project improvements consist generally of: an approximately 271-unit multi-family residential building, with an attached approximately 380 space parking garage and approximately 104 surface parking spaces. The Phase 1 Project will include building amenities such as an interior courtyard space with pool.
- J. The Phase 2 Project improvements as currently planned consist of: an approximately 311-unit multi-family residential building, with an attached approximately 475 space parking garage and approximately 21 surface

parking spaces. Phase II will include building amenities such as an interior courtyard space with pool.

- K. The Greenspace Improvements Project improvements consist generally of: Carson's anchor store demolition, asbestos removal, earthwork, fill, asphalt paving and pavers, site utility modifications, concrete, electrical and mechanicals, selected and impacted mall exterior and interior demolition site work; concrete wall construction and masonry and maintenance; doors, windows, canopies, electricals/mechanicals adjustment and finishes construction (for impacted area resulting from demolition work), and soft costs including, without limitation, general contractor contingencies, design and permit fees, taxes, insurance, interest, as well as fees, costs and expenses incurred in conjunction with the Greenspace Improvements.
- L. The collective, projected cost of the Phase 1 Project and the Phase 2 Project, inclusive of property acquisition costs, is estimated to be in excess of **Two Hundred Million and No/100 Dollars (\$200,000,000.00)**, as more fully set forth in EXHIBIT E attached hereto and made part hereof.
- M. The projected cost of the Greenspace Improvements Project is currently estimated to be **Nine Million One Hundred Ninety-Eight Thousand Ten and No/100 Dollars (\$9,198,010.00)**, as more fully set forth in EXHIBIT E attached hereto and made part hereof.
- N. The Developer is seeking an economic incentive to offset an anticipated funding gap for the Phase 1 Project in the amount of **Sixteen Million and No/100 Dollars (\$16,000,000.00)** plus accrued interest as set forth below (the "Phase 1 Funding Request"), and for the Phase 2 Project in the amount of **Nine Million Six Hundred Thirty-Nine Thousand Three-Hundred Seventy-Two and No/100 Dollars (\$9,639,372.00)** plus accrued interest as set forth below (the "Phase 2 Funding Request", which together with the Phase 1 Funding Request is the "Phase 1 Project / Phase 2 Project Funding Request"). The Phase 1 Project / Phase 2 Project Funding Request totals **Twenty-Five Million Six Hundred Thirty-Nine Thousand Three Hundred Sixty-Two and No/100 Dollars (\$25,639,372.00)** plus accrued interest as set forth below, which equates to 12.81% of the Phase 1 Project and the Phase 2 Project costs. Subject to proof of eligible TIF redevelopment costs, the Reimbursement True-Up provision, the maximum economic incentive funding cap, and the other "pay-as-you-go" limitations imposed on the economic incentive payable by the Village to the Developer, all as set forth below in this Agreement, the Incremental Property Taxes (as defined below) received by the Village as generated by the Subject Property shall be the source of funds to reimburse the Developer for those Project costs which qualify as "redevelopment project costs" under Section 3(q) of the TIF Act, 65 ILCS 5/11-74.4-3(q).

- O. The Developer also seeks an economic incentive equal to the costs of the Greenscape Improvements Project, which are estimated to be **Nine Million One Hundred Ninety-Eight Thousand Ten and No/100 Dollars (\$9,198,010.00)**, payable as follows: (a) All available dollars funds in the Village's BD Sales Tax Account upon completion of the Greenscape Improvements and satisfaction of the Reimbursement True-Up provision set forth below (which available funds are estimated to be Four Million and No/100 Dollars (\$4,000,000.00 as of the date of this Agreement); and (b) the remaining balance of the Greenscape Improvements Funding Request from all BD Sales Taxes in the Village's BD Sales Tax Account (the "**Greenscape Improvements Funding Request**") from time to time thereafter until the Greenscape Improvement Funding Request, and any and all unpaid interest accrued thereon, has been paid in full. Subject to proof of eligible BD project costs or TIF redevelopment costs, the Reimbursement True-Up provision, the maximum economic incentive funding cap and the other "pay-as-you-go" limitations imposed on the economic incentive payable by the Village to the Developer, as set forth below in this Agreement, the anticipated source of funds to pay the Greenscape Improvements Funding Request will be all BD Sales Taxes generated by the entire Business District.
- P. The Village has reviewed the Phase 1 Project/Phase 2 Project Funding Request, and the Greenscape Improvements Funding Request, and finds, after a review by the Village's consultants of relevant information and materials, including and after performing a gap analysis, that the Phase 1 Project/Phase 2 Project Funding Request and the Greenscape Improvements Funding Request are justified and reasonable. The economic incentives have also been considered and approved under the Village's adopted Economic Incentive Policy ("**EIP**"), with specific deviations per the approval provisions of the EIP.
- Q. Per the EIP, funds deemed as part of the eligible economic incentive shall be paid out on a performance ("pay-as-you-go") basis with no up-front guarantee or guaranteed reimbursement through the life of this Agreement if anticipated performance metrics are not fully realized. The economic incentives provided by the Village under this Agreement shall be limited obligations of the Village payable only from Incremental Property Taxes received by the Village from portions of the Subject Property, and all Business District Taxes in the Village's BD Sales Tax Account, and under no circumstances will these incentives be general obligations of the Village whatsoever.
- R. As supported in concept by the Village's Economic and Community Development Committee meetings on May 23, 2022, September 12, 2022, March 13, 2023 and June 26, 2023:

1. The incentive period of this Agreement is intended to be for up to a seventeen (17) year period from the date of execution of this Agreement, or the expiration of the TIF District whichever occurs first. This is an acceptable deviation from the EIP.
 2. An EIP deviation from the maximum fifty percent (50%) of the incremental property taxes attributable to the Project during the life of this Agreement. As contemplated, the Developer Incremental Property Tax Allocation shall be as follows: (a) for the Phase 1 Project: ninety-five percent (95%) of the incremental property taxes attributable to the Project during the first four (4) years of the Incentive Term, (as defined below) and seventy-five percent (75%) of the incremental property taxes attributable to the Project during the fifth year and each subsequent year thereafter; and (b) for the Phase 2 Project: fifty percent (50%) of the incremental property taxes attributable to the Project during the Incentive Term, as set forth in detail below. This is also an acceptable deviation from the EIP.
- S. The Developer shall only be entitled to the economic incentives from the Village relative to the Phase 1 Project if the Developer completes the Phase 1 Project in accordance with this Agreement. Lombard Development Manager, LLC shall only be entitled to the economic incentives from the Village relative to the Phase 2 Project if Lombard Development Manager, LLC completes the Phase 2 Project in accordance with this Agreement. The Developer shall only be entitled to the economic incentives from the Village related to the Greenscape Improvements Project if the Developer completes the Greenscape Project in accordance with this Agreement. Any material change to the Phase 1 Project, the Phase 2 Project and the Greenscape Improvements Project will require separate consideration by the Corporate Authorities, in their sole discretion, which may be denied, and may result in an adjustment of the incentives approved under this Agreement, in whole or part, which incentives may be on different terms than those originally set forth in this Agreement. If the Corporate Authorities, in their sole discretion, do not approve the material changes proposed by the Developer, the Developer shall complete the subject Phase in accordance with this Agreement, or if the Developer is unwilling or unable to complete the subject Phase in accordance with this Agreement, the Corporate Authorities may withdraw the incentives provided for in this Agreement for the subject Phase. For instance, a material change would occur if the uses proposed for the Phase 1 Project and/or the Phase 2 Project changed from residential to non-residential, if the number of residential units proposed in either Phase is increased or decreased by more than ten percent (10%), or if the proposed site plans and proposed Project improvements for any of the Phases were significantly revised as a Major Change to a Planned Development, as further set forth and defined within Section 155.504(A) of Village Code.

- T. On May 18, 2023, the Corporate Authorities adopted Ordinance No. 8151 setting forth amendments to the Yorktown Center planned development and approval of a preliminary plat of subdivision with companion variations for the Subject Property, which are referred to as the **"Development Approvals"**.
- U. The Developer has been unable and unwilling to undertake the redevelopment of the Subject Property with the Project, but for certain tax increment financing ("**TIF**") incentives and other contingent assistance to be provided by the Village in accordance with the TIF Act, 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 TIF incentives and other financial assistance to be provided by the Village, the Developer cannot successfully and economically redevelop the Subject Property with the Project. The Village has determined that it is desirable and in the Village's best interests to assist the Developer, relative to the Project, in the manner set forth herein, and as this Agreement may be supplemented and amended from time to time.
- V. It is necessary for the successful completion of the Project that the Village enter into this Agreement with the Developer to provide for the redevelopment of the Subject Property, thereby implementing the TIF Plan and the Business District Plan.
- W. In order to stimulate and induce redevelopment of the Subject Property with the Project, the Village, has agreed to finance certain TIF and Business District eligible redevelopment project costs in accordance with the terms and provisions of the TIF Act, the Business District Law and this Agreement.
- X. 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.
- Y. 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.

- Z. This Agreement has been submitted to the Developer and/or Developer's representatives for consideration and review. The Developer'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 Developer according to the terms hereof, and any and all actions of the Developer precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.
- AA. The Village is desirous of having the TIF District and the Business District rehabilitated, developed and redeveloped in accordance with the TIF Plan and 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 TIF District and 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.

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. **"Actual Construction Costs"** means the actual costs incurred and paid by Developer to construct the Phase I Project, Phase II Project, or the Greenspace Improvements as categorized and set forth on **EXHIBIT F**, attached hereto, which will be submitted by the Developer to the Village as set forth in **Section VI.B.11.** of this Agreement for Phase I, Phase II, or the Greenspace Improvements, as the case may be.
- B. **"Available Taxes"** means Developer Business District Taxes and Developer Incremental Property Taxes.
- C. **"Business District Ordinances"** means those Ordinances referenced in **Section I.E.** above.
- D. **"Business District Taxes"** means those BD Sales 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, during the Incentive Term, at the tax rate in effect as of January 1, 2020, or such rate as may be imposed during the Incentive Term.

- E. **"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).

- F. **"Corporate Authorities"** means the President and Board of Trustees of the Village of Lombard, Illinois.
- G. **"Day"** means a calendar day.
- H. **"Developer Incremental Property Tax Allocation"** shall be as follows: (a) for the Phase 1 Project: ninety-five percent (95%) during the first four (4) years of the Incentive Term, (as defined below) and seventy-five percent (75%) during the fifth year and each subsequent year of the Incentive Term; and (b) for the Phase 2 Project: fifty percent (50%) during the Incentive Term. The Developer Incremental Property Tax Allocation is subject to deductions for statutorily obligated payments from the Incremental Property Taxes (as defined below) to school districts and library districts as required by 65 ILCS 5/11-74.4-3(q)(7.5) and (7.7)).
- I. **"Developer Incremental Property Taxes"** shall be: (i) those Incremental Property Taxes which are received by the Village from the DuPage County Clerk's Office during the Incentive Term; multiplied by (ii) the Developer Incremental Property Tax Allocation.

- J. **"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.
- K. **"Eligible Redevelopment Costs"** means the costs of the Project, eligible to be reimbursed, in part, from Available Taxes by the Village, as provided in this Agreement, which qualify as both "redevelopment project costs" under both Section 3(q) of the TIF Act, 65 ILCS 5/11-74.4-3(q), and "business district project costs" under Section 5 of the Business District Law, 65 ILCS 5/11-74.3-5.
- L. **"Estimated Construction Costs"** means the costs estimated by Developer to construct the Phase I Project, Phase II Project, or the Greenscape Improvements as estimated by category as set forth on **EXHIBIT F**, attached hereto, which will be submitted to the Village prior to or simultaneously with the submission by the Developer to the Village for a vertical building permit for Phase I, Phase II, or the Greenscape Improvements, as the case may be.
- M. **"Incentive Account"** means the special account maintained by the Village relative to the tracking of and accounting for the Available Taxes, which Available Taxes shall be credited to the balance of the Incentive Account only during the Incentive Term.
- N. **"Incentive Term"** means the period from the date of the Village's receipt of the Incentive Term Notice, to the expiration of the TIF District.
- O. **"Incentive Term Notice"** means a written notice sent by the Developer to the Village setting forth the calendar date of commencement of the Incentive Term.
- P. **"Incremental Property Taxes"** means that portion of the *ad valorem* real estate taxes, if any, arising from the taxes levied upon the Subject Property, which taxes are actually collected and which are attributable to the increase in the equalized assessed valuation ("**EAV**") of the Subject Property over and above the EAV of the Subject Property at the time of the formation of the TIF District, all as determined by the County Clerk of the County of DuPage, Illinois, pursuant to and in accordance with the TIF Act, the TIF Ordinances and this Agreement, and which have been received by the Village on and after the Effective Date, after the payment, if any, of the new student reimbursements to the elementary and high school districts impacted by the TIF District, as provided for in 65 ILCS 5/11-74.4-3(q)(7.5) and after the payment, if any, of the new patrons reimbursement to the library district impacted by the TIF District, as provided for in 65 ILCS 5/11-74.4-3(q)(7.7).

- Q. **"Party/Parties"** means the Village and/or the Developer, individually/collectively, and their respective successors and/or assigns as permitted herein, as the context requires.
- R. **"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.
- S. **"State"** means the State of Illinois and/or its departments, agencies, or officials.
- T. **"TIF Ordinances"** means those Ordinances referenced in Section I.D. above.
- U. **"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;
 - e. strikes or labor disputes, or work stoppages not initiated by the Developer 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 Developer 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.

- V. **"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 Developer 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 Developer in a different manner, the Developer designates any one of Phil Domenico, Jeffrey Metz or Anthony Alessi 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 Developer and with the effect of binding the Developer in that connection (such individual being designated as an **"Authorized Developer Representative"**). The Developer shall have the right to change its Authorized Developer 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 Developer 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. DEVELOPMENT OF THE SUBJECT PROPERTY

- A. The Developer shall, subject to Uncontrollable Circumstances, diligently:
1. Prepare and submit final architectural and engineering plans for the Project, to the Village.
 2. Submit application for all necessary permits and approvals from all governmental agencies having jurisdiction over the Project, as may be necessary to commence construction of the Project, and submit building permit applications therefor, to the Village.

3. Start construction for the Project after receipt of a building permit for the Project from the Village, and develop the Project in conformity with the Development Approvals.
4. Complete construction of the Project, with completion being defined as the issuance by the Village of conditional or final certificates of occupancy for all aspects of the Project.
5. For the **Phase 1 Project and the Greenscape Project**, the Developer shall:
 - a. **On or before December 31, 2023**, provide the Village with written evidence of funding for construction.
 - b. **On or before February 28, 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 June 1, 2024**, construction shall commence.
 - d. **On or before December 31, 2026**, 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.
6. For the **Phase 2 Project**, the Village and the Developer shall agree on the following timelines, no later than three (3) years from date of issuance of the first certificate of Occupancy for Phase 1:
 - a. Provide the Village with written evidence of funding for construction.
 - b. The Developer shall: (i) apply with the Village for demolition and building permits, and (ii) 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. Construction shall commence.
 - d. 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.

- B. In addition to the Project, the Developer may undertake other capital improvements on the Subject Property; however, the Village-issued incentives shall be limited to the improvements set forth within the incentive request and the submitted plans attached to this Agreement. If there are proposed changes to the submitted plan set that are deemed to be appropriate on behalf of the Parties that result from final Village engineering or building review or as part of a public hearing zoning entitlement process, the plans may be approved by Village staff without a need to amend the incentives in this Agreement. However, the financial incentive parameters in this Agreement shall not be increased in terms of length or amount of reimbursement without separate discretionary consideration and action by the Corporate Authorities, which may be denied in their sole discretion.

VI. UNDERTAKINGS ON THE PART OF THE VILLAGE

A. Village Cooperation:

1. The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals, and/or permits from any governmental or quasi-governmental entity other than the Village and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the Village) which Developer intends to file with such other governmental agencies, quasi-governmental agencies and/or utility companies in regard to the Project.
2. The Village shall further promptly respond to, and/or process, and consider reasonable requests of Developer for applicable building approvals and/or permits necessary for the construction of the Project. The Village shall respond to each initial request for approvals or permits no later than forty-five (45) calendar days of the submission of an application therefor. If the Village does not approve such application and issue such approval or permit in such period, it shall within such forty-five (45) calendar day period provide Developer with detailed written instructions on the insufficiencies or errors in such application and why such approval or permit was not approved or issued. The failure of the Village to either approve or deliver such detailed written instructions within such forty-five (45) calendar day period shall constitute an Event of Default. Subsequent permit reviews, amended applications, or submitted certificates of occupancy submitted by the Developer shall be undertaken within thirty (30) calendar days of the re-submittal. For purposes of this subsection, a proper submittal for a permit by the Developer shall consist

of all relevant documentation and the applicable advance plan review fees as required by Village Code which are necessary to undertake a formal and complete review by the Village.

3. Approval of any building approvals and/or permit applications and/or engineering plans, subject to the applicant therefor being qualified to receive same under both State law and the Village's ordinances shall be contingent on the Developer providing all required and requested documentation including, but not limited to, building plans required to substantiate that said improvements fully conform with all applicable State statutes and also all Village ordinances and codes, as well as receipt of all required building approvals from any federal, state, regional or county agencies having applicable jurisdiction.

B. Incentives, Conditions, Process and Payments.

1. The Phase 1 Project costs eligible for reimbursement shall be capped at **Sixteen Million and No/100 Dollars (\$16,000,000.00)** plus accrued interest as set forth below, (the "**Phase 1 Incentive Cap**") subject to Village approval of the Phase 1 Project Eligible Redevelopment Costs, and subject to the "**Reimbursement True-Up**" as defined below.
2. For the Phase 1 Project, the Village shall reimburse the Developer ninety-five percent (95%) of the Incremental Property Taxes for documented Eligible Redevelopment Costs attributable to the portion of the Subject Property on which the Phase 1 Project Improvements are located for the duration of the Incentive Term, as provided for in Village-approved Reimbursement Requests, during the first four (4) years of the Incentive Term, and, thereafter, at a rate of seventy-five percent (75%) for documented Eligible Redevelopment Costs for the duration of the remainder of the Incentive Term, subject to the Phase 1 Incentive Cap. Each reimbursement is subject to deductions for statutorily obligated payments payable to school districts and library districts as required by 65 ILCS 5/11-74.4-3(q) (7.5) and (7.7). The reimbursements shall commence on the later of the date that: (i) the Village receives the Incentive Term Notice from the Developer, or (ii) the Village has approved eligible costs of the Phase 1 Project that are not in excess of the Phase 1 Incentive Cap. However, in no case shall the Phase 1 Eligible Redevelopment Costs increment reimbursement paid to the Developer generated by the Phase 1 Project exceed the Phase 1 Incentive Cap.
3. The Phase 2 Project costs eligible for a reimbursement shall be capped at **Nine Million Six Hundred Thirty-Nine Thousand Three Hundred Seventy-Two and No/100 Dollars (\$9,639,372.00)** plus

accrued interest as set forth below, (the **"Phase 2 Incentive Cap"**), subject to Village approval of the Phase II Eligible Redevelopment Costs, and subject to the Reimbursement True-Up defined below.

4. For the Phase 2 Project, the Village shall reimburse the Developer for documented eligible redevelopment project costs, as provided for in Village-approved Reimbursement Requests, at a rate of Fifty percent (50%) of the Incremental Property Taxes attributable to the portion of the Subject Property on which the Phase 2 Project Improvements are located for the duration of the Incentive Term, subject to the Phase 2 Incentive Cap. Each reimbursement is subject to deductions for statutorily obligated payments payable to school districts and library districts as required by 65 ILCS 5/11-74.4-3(q) (7.5) and (7.7). The reimbursements shall commence on the later of the date that: (i) the Village receives the Incentive Term Notice from the Developer for the Phase 2 Project; or (ii) the Village has approved eligible costs of the Phase 2 Project in an amount that are not in excess of the Phase 2 Incentive Cap. In no case shall the eligible Phase II Eligible Redevelopment Costs paid to the Developer generated by the Phase 2 Project exceed the Phase 2 Incentive Cap. The Village's obligation to make reimbursements related to Phase II Project Eligible Redevelopment Costs is expressly contingent on Developer constructing and completing the Phase II Project. Accordingly, if the Phase II Project is sold by the Developer prior to completion of the Phase II Project, the Village shall have no obligation to pay the Phase II Funding Request, or any portion thereof, to Developer or any successor in interest to the Developer without the approval by the Corporate Authorities of an amendment to this Agreement, or a separate redevelopment agreement.
5. The Greenscape Improvements Project costs eligible for a reimbursement shall be capped at **Nine Million One Hundred Ninety-Eight Thousand Ten and No/100 Dollars (\$9,198,010.00)** (the **"Greenscape Improvements Incentive Cap"**) plus interest as set forth below, subject to Village approval of Eligible Redevelopment Costs equal to or greater than the Greenscape Improvements Incentive Cap and subject to the Reimbursement True-Up.
6. For the Greenscape Improvements Project, the Village shall reimburse the Developer for documented Eligible Redevelopment Costs, as provided for in Village-approved Reimbursement Requests, payable as follows: (a) All available dollars funds in the Village's BD Sales Tax Account (which is currently estimated to be Four Million and No/100 Dollars (\$4,000,000.00) upon the issuance of a temporary or final certificate of completion by the Village for the

Greenscape Improvements and subject to the Reimbursement True-Up provision; and (b) the remaining balance of Village-approved reimbursement up to the Greenscape Improvements Incentive Cap shall be paid on a quarterly basis as BD Sales Tax funds are received by the Village, with reimbursement payments to the Developer made within forty-five (45) calendar days following the Village's receipt of its share of the BD Sales Taxes collected by the State of Illinois Department of Revenue and paid to the Village by the State Treasurer.

7. In order for the Developer to be entitled to reimbursement from the Village under this Agreement, the Developer shall submit to the Village's Finance Director requests (each a "**Reimbursement Request**") for the Village to certify Eligible Redevelopment Costs incurred through the Reimbursement Request date during the construction of the Phase 1 Project or Phase 2 Project, as the case may be, until such time as the Developer indicates it is submitting its final Reimbursement Request for the total amount of Eligible Redevelopment Costs certified by the Village meets the Phase 1 Incentive Cap or the Phase 2 Incentive Cap. Reimbursement Requests may be submitted by the Developer to the Village for the Phase 1 Project and the Phase 2 Project, respectively, at such time as: a certificate of occupancy is issued for the Phase of the Project for which reimbursement is sought. Upon receipt of a Reimbursement Request, the Village shall review said request and, within thirty (30) calendar days after receipt, determine whether or not it has all the materials and information needed to determine whether to grant or deny the Reimbursement Request, and the Developer shall provide all additional materials and information requested by the Village regarding the Reimbursement Request. If the Village grants a Reimbursement Request, it shall provide the Developer with written notice of the approval within said thirty (30) calendar day period. Once a Reimbursement Request is approved by the Village, the principal amount of the Reimbursement Request shall accrue simple interest at the rate of 6% per year from the date of approval of the Reimbursement Request until the Developer is reimbursed by the Village as set forth in this Agreement. Simple interest payable under this Agreement shall not be compounded and shall accrue only against the unpaid principal amount of the Reimbursement Request(s).
8. The submittal process, review and approval process for Reimbursement Requests, as set forth above, shall also apply to the Greenscape Improvements Project.

9. Each Reimbursement Request shall be made under oath executed by a duly authorized officer of Developer setting forth: (i) a statement identifying the total amount of expenditures requested to be certified as an Eligible Redevelopment Costs; (ii) a statement that the expenditures represent costs actually incurred by the Developer on or in pursuit of the Project; (iii) a statement that the Developer has approved all work and materials relating to such expenditures; and (iv) a statement that the supporting exhibits are accurate, true, complete and do not omit information that would render the same misleading. Each Reimbursement Request shall include supporting documentation for each expenditure to be certified as an Eligible Redevelopment Cost such as: (i) obligating document (i.e., contract, invoice, etc.); and, (j) proof of payment (i.e., cancelled check, receipt, etc.). All documentation shall demonstrate that the costs constitute bona fide expenditures actually incurred and paid by the Developer in connection with the Project.
10. The Village, in its sole and absolute discretion, and without penalty, shall have authority to prepay the Developer for certified Eligible Redevelopment Costs. Any such prepaid amounts shall correspondingly reduce the amount of principal remaining under the Phase 1 Incentive Cap or the Phase 2 Incentive Cap or the Greenscape Improvements Incentive Cap, as the case may be.
11. The Phase 1 Incentive Cap, the Phase 2 Incentive Cap and the Greenscape Improvements Incentive Cap shall be adjusted as follows, respectively, with regard to the actual construction costs (the **"Reimbursement True-Up"**):
 - a. For the Reimbursement True-Up (**"Construction Costs True-Up"**):
 - i. For the Phase 1 Incentive Cap and the Phase 2 Incentive Cap, after the Village issues a final certificate of occupancy for the Phase in question, and after ninety percent (90%) of the units therein are occupied pursuant to written leases (the **"True-Up Date"**), the Developer shall promptly give the Village written notice that it is time for the Construction Costs True-Up to be calculated. For the Greenscape Improvements Incentive Cap, after the Village issues a certificate of completion for the Greenscape Improvements, the Developer shall promptly give the Village written notice that it is time for the Greenscape Improvements Construction Costs True-Up to be calculated.

- ii. The Parties shall determine the Actual Construction Costs, as defined below and in the event that the Actual Construction Costs for Phase I, Phase II, or the Greenscape Improvements, as the case may be, is delivered at a lower cost than the Estimated Construction Costs, the Incentive Cap for the Phase I, Phase II, or the Greenscape Improvements, as the case may be, shall be reduced dollar for dollar based on the Actual Construction Costs of Phase I, Phase II, or the Greenscape Improvements, as the case may be, rather than the Estimated Phase I Project Costs, Phase II Project Costs or Greenspace Improvements.
- iii. **"Actual Construction Costs"** of each Phase shall be determined by the Parties as follows:
 - 1. On or before the True-Up Date, the Developer shall provide the Village with the following:
 - A. final Project construction plans;
 - B. a fully completed **EXHIBIT F**, completed by Developer, with the actual construction costs incurred and paid set forth therein by category.
 - C. copies of the all other final documentation as set forth in Section VI. B.7 above
 - A. through C. above are collectively the **"Final Plans and Costs Submittal."**
 - 2. Within thirty (30) calendar days after receipt of the Final Plans and Costs Submittal, the Village shall review the Final Plans and Costs Submittal.
 - 3. Through this review, if the Village determines that the Actual Construction Costs in the Final Plans and Costs Submittal are not acceptable, then within the aforesaid thirty (30) calendar day period the Village shall provide a written notice to the Developer of any objections to the Actual Construction Costs in the Final Plans and Costs Submittal, which objections shall specifically state the nature and extent of any such

objection(s). Within ten (10) days after receipt of such notice, Developer shall provide such additional information reasonably requested by the Village in order for the Village to confirm the Actual Construction Costs. The Village and the Developer shall continue to follow the procedure set forth in this Section 11.A.iii.3 in order to determine the final Actual Construction Costs for such Phase.

4. Once the Final Plans and Costs Submittal (as and if revised) is final and approved by the Parties, the amount of the Actual Project Costs for such Phase shall then become the Eligible Redevelopment Costs for such Phase. Additional improvements to the Subject Property, not included in the Final Plans and Costs Submittal, shall not be eligible for inclusion in the Actual Construction Costs.
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12. **THE PAYMENTS TO BE MADE TO THE DEVELOPER UNDER THIS AGREEMENT (THE "INCENTIVE") ARE A SPECIAL LIMITED OBLIGATION OF THE VILLAGE AND ARE PAYABLE SOLELY FROM AVAILABLE TAXES IN THE INCENTIVE ACCOUNT. AVAILABLE BUSINESS DISTRICT TAXES AND INCREMENTAL PROPERTY TAXES FROM SOURCES OTHER THAN THE DEVELOPER BUSINESS DISTRICT TAXES AND DEVELOPER INCREMENTAL PROPERTY TAXES SHALL NOT BE AVAILABLE TO PAY THE INCENTIVE. 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 DEVELOPER 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 AVAILABLE TAXES ARE THE SOLE SOURCE OF FUNDS TO BE USED TO PAY THE INCENTIVE.**
 13. The Village's obligation to reimburse Eligible Redevelopment Costs of the Developer is subject to the following conditions, in addition to those set forth elsewhere in this Agreement:
 - a. The Incentive Account has an adequate balance to pay the amounts requested for reimbursement by the Developer,

though the Village may prepay Eligible Redevelopment Costs in its sole and absolute discretion, as set forth above; and

- b. An Event of Default (defined below) by Developer has not occurred.
14. In the event that the Village ceases to receive any of the Available Taxes, as a result of a Change in the Law, and no alternate source of revenue is enacted to replace the Available Tax, or Available Taxes, that is/are no longer received by the Village, the Village shall not be obligated to make any further payments, relative to that Available Tax, or those Available Taxes, into the Incentive Account.
15. With regard to the Available Taxes:
- a. If requested by the Village, the Developer shall take all necessary actions required of Developer to cause the Illinois Department of Revenue to release the Developer Business District Taxes information/documentation, relative to Project, to the Village. In this regard, until such time as the Village obtains the information/documentation necessary to verify the Developer Business District Taxes generated by the Project, the Developer Business District Taxes and the Developer Sales Taxes shall not be Available Taxes.
 - b. The term "**Developer Business District Taxes**" shall include future revenues derived during the period of this Agreement from taxes enacted by law or ordinance by any governmental authority which are intended to replace Developer Business District Taxes generated by the Project.
 - c. For the Phase 1 Project and Phase 2 Project, as long as the Developer is in compliance with this Agreement, during the Incentive Term, the Village shall calculate and pay to the Developer the Developer Incremental Property Taxes no later than the forty-five (45) days after the Property Owner pays the real estate taxes to the DuPage County Treasurer.

For the Greenscape Improvements Phase, as long as the Developer is in compliance with this Agreement during the Incentive Term, the Village shall calculate and pay to the Developer the Developer Business District Taxes, relative to each three (3) month period commencing with the Non-Real Estate Tax Rebate Commencement Date (a "**Quarterly Payment Period**"), within forty-five (45) calendar days of the Village's receipt of Developer Business District Taxes with respect to each Quarterly Payment Period. Notwithstanding any provision in this Agreement to the contrary, the final payments by the Village to the Developer of

Developer Business District Taxes shall occur after the Sales Tax Rebate Term has ended, for the final Quarterly Payment Period, and, if not theretofore paid to Developer in full, for every preceding Quarterly Payment Period, or portion thereof, accruing during the Incentive Term. It is the intent of the Parties that the Developer shall be paid all Developer Business District Taxes accrued during the Sales Tax Rebate Term, even if received by the Village after the end of the Sales Tax Rebate Term.

VII. USE REGULATIONS PERTAINING TO THE PROJECT

During the Term of this Agreement, any use of the Subject Property that is not a permitted use as set forth within the Village Code, or as provided for in the Yorktown Planned Development approvals shall be a material breach of this Agreement and an “**Event of Default**” as defined in Section XVII.A. below.

VIII. DEVELOPER’S OBLIGATIONS

Developer 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 Developer shall acquire title to the portion of all tracts of land that comprise the Subject Property on or before December 31, 2023. In the event the Developer fails to do so, this Agreement shall terminate upon receipt of thirty (30) days written notice from the Village during which time the Developer may acquire title to the portion of all tracts of land comprising the Subject Property, in which case the Village shall no longer have the right to terminate this Agreement as set forth in this Section VIII A., and the Parties shall have no further obligations hereunder.
- B. The Developer shall construct the Project materially and substantially in conformance with the approvals therefor from the Village. The Developer shall pay or cause to be paid all building-related fees for Phase 1 and the Greenscape Improvements as required by the Village Code as of the date of this Agreement. However, payment of any requisite sanitary sewer connection fees as required by Chapter 50 of Village Code or any Village public water utility connection fees as required by Chapter 51 of Village Code, for the Phase 1 or Phase 2 residential units, is not required by the Developer at the time of permit issuance, but shall be required prior to the date on which the actual connection to the existing or reconstructed public utility network is completed by the Developer
- C. The Developer 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 Developer 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 Developer 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 Developer 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 Developer, 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 Developer 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 Developer that the terms of this Agreement shall be binding and applicable to all of Developer'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 "**Developer Contractor**"). The Developer shall ensure that each Developer Contractor is aware of the obligations imposed under this Agreement and shall take such reasonable measures necessary to ensure each Developer Contractor complies herewith at all times. The Developer shall be liable for non-compliance with applicable provisions of this Agreement by a Developer Contractor, and shall promptly notify the Village, in the event any Developer 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 Developer Contractor, the Village will look solely to the Developer,

and the Developer accepts responsibility on behalf of any such Developer Contractor.

- E. The Developer 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 Developer 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 Developer 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 Developer 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 Developer 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, Developer 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 Developer agrees that the Village's Community Development Director, Private Development Engineer, Building & Code Enforcement 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 Developer 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 Developer 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 Developer 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 initial construction of the Project as herein contemplated, the Developer shall stage its construction of the Project to avoid to the fullest extent possible any material community disruption. During construction, the Developer shall also keep all public streets used by the Developer 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 Developer, or such shorter period of time, as requested by the Village, if such clean-up cannot wait twenty-four (24) hours, the Developer 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.

The public improvements to be constructed by the Developer as part of Phase 1 of the Project are described in **EXHIBIT G** attached hereto and made a part hereof, with such public improvements to be subject to final engineering review and approval by the Village.

- L. The Developer, 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 Developer as part of the economic incentives payable under this Agreement.

- M. The Developer, at its own expense, shall be responsible for all connection fees, tap-on fees, recapture fees, permit fees, plan review fees and other payments and financial obligations of any kind set forth in any recapture agreement, including but not limited to the Recapture Agreement dated July 19, 2018 entered into between the Village and YTC Land Owner, LLC relative to the construction, operation, use and connection to and disconnection from the "New Lift Station" and the "Yorktown Lift Station". Such payments, fees, expenses and costs shall not be eligible for reimbursement by the Village to the Developer as part of the economic incentives payable under this Agreement.
- N. The Developer, 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, 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 Developer as part of the economic incentives payable under this Agreement.

X. ADDITIONAL COVENANTS OF DEVELOPER

- A. **Developer Existence.** Developer 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 Developer 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 Developer 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 Developer's sound legal discretion.
- C. **No Gifts.** Developer covenants that no director, employee or agent of Developer, or any other Person connected with Developer, 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, Developer shall disclose to the Village the names, addresses and ownership interests of all Persons that have an ownership interest in the Developer and the Subject Property, together with such supporting documentation that may be reasonably requested by the Village. Developer 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 Developer or the Subject Property.
- E. **Prevailing Wages.** The Developer shall comply with the Illinois Prevailing Wage Act, 820 ILCS 130/, as amended ("**Illinois Prevailing Wage Act**"), to the extent improvements relative to the Project, if constructed on behalf of the Village by a contractor, would be subject to the Illinois Prevailing Wage Act. The Developer agrees to assume all responsibility for such compliance with the Illinois Prevailing Wage Act in connection with the Project under this Agreement in the event of any action by any party to enforce its provisions. The Developer warrants and represents that it has reviewed the Illinois Prevailing Wage Act, that it has reviewed the regulations promulgated thereunder, and that it understands the obligations imposed on it by this Section X.E.
- F. **Employment Opportunities.** To the extent feasible, the Developer shall make reasonable efforts to notify Village residents of employment opportunities that are available relative to the Project, and, to the extent permitted by law, make reasonable efforts to employ qualified residents of the Village in relation to the Project.

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 DEVELOPER

Developer 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 Developer.** The Developer 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 Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer or the owners of the Subject Property which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement, or that would materially and adversely affect the ability of the Developer to proceed with the construction and development of the Project.
- B. **No Conflict by Developer.** Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated under this Agreement by the Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by the Developer 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 Developer (with the Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which the Developer is now a party or by which the Developer 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 Developer or the owners of the Subject Property under the terms of any instrument or agreement to which Developer or the owners of the Subject Property is now a party or by which the Developer or the owners of the Subject Property are bound.
- C. **Adequate Resources of Developer.** As of the Effective Date, the Developer and the owners of the Subject Property have sufficient financial and economic resources to implement and complete the Developer's obligations contained in this Agreement. To the extent the Developer 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 Developer 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).
- D. **No Adverse Notices to Developer.** The Developer has not received any notice from any local, State or federal official that the activities of the Developer with respect to the Subject Property or the Project may or will be in violation of any environmental law or regulation. The Developer 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 Developer 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 Developer represents and warrants to the Village that the Developer, 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 Developer further certifies that the Developer:

- 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 Developer 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 Developer 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 Developer agrees to maintain full compliance with changing government requirements that govern or apply to the construction of the Project. The Developer 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 Developer 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 Developer 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.
- C. **Litigation.** To the best of the Village's knowledge, there are no proceedings pending or threatened against or affecting the Village, the Business District or the TIF District in any court or before any governmental authority which involves the possibility of materially or adversely affecting the ability of the Village to perform its obligations under this Agreement.

XV. INSURANCE

- A. The Developer, and any successor in interest to the Developer, 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 Developer must obtain and continuously maintain, provided that the Developer 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 Developer.
- B. All insurance required in this Section XV. shall be obtained and continuously maintained through responsible insurance companies selected by the Developer 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 Developer, 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 Developer 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. Developer 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 Developer's obligations or warranties under this Agreement, including, but not limited to, the Developer'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, Developer 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 Developer (or if other Persons acting on their behalf or under its direction or control) under this Agreement, including, but not limited to, the Developer'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 Developer with respect to, the existence or nonexistence on or in the vicinity of the Subject Property, or anywhere within the TIF 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 TIF District or 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 Developer 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 TIF 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 Developer that it has not received notice, other than as already provided to the Developer by the Village in the environmental reports provided to the Developer 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 Developer 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 Developer 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. **Developer Events of Default.** The following shall be Events of Default with respect to this Agreement:
 - 1. If any material representation made by Developer 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 Developer 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 Developer 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 Developer; 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 Developer, 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 Developer 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 Developer, 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 Developer 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 Developer 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 Developer 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 Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer 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 Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others.

6. Failure to have the funds required to meet Developer'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.
7. A sale, assignment or transfer of the Greenscape Improvements or any Phase of the Project prior to the issuance of a certificate of occupancy for the Greenscape Improvements or such Phase the Project, or any portion thereof, except in accordance with this Agreement.
8. Developer 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 Developer's control, and such work is not resumed within thirty (30) calendar days of written demand by the Village.
9. Developer 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 Developer, 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 Developer 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 Developer.

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 Developer, 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 Developer, 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 Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Developer and the Village shall continue as though no such proceedings had been taken.

3. In the case of an Event of Default by the Developer, 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 Developer 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.** Developer shall comply with all federal, state and local laws relating to equal employment opportunity.
- B. **Advertisements.** Developer shall, in all solicitations or advertisements for employees placed by or on behalf of Developer, 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 Developer 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 Developer shall make reasonable efforts to incorporate language similar to that recited in Sections XVIII.A. and B. in any leases made by Developer in connection with the Project.

XIX. MISCELLANEOUS PROVISIONS

- A. **Cancellation.** In the event Developer 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 TIF Plan or the Business District Plan, including Developer'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 TIF Act, Business District Law, Rebate Statute, 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 Developer 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 Developer 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.
900 Oakmont Lane, Suite 301
Westmont, Illinois 60559
Attention: Michael Jurusik / Jason Guisinger
Email: mtjurusik@ktjlaw.com/ jaguisinger@ktjlaw.com

If to Developer: Lombard Development Manager, LLC
c/o Synergy Construction Group
2037 W Carroll Avenue
Chicago, IL 60612
Attention: Phil Domenico/Anthony Alessi
Email: phil@ssyn-grp.com/Tony@syn-grp.com

With a copy to: Firsel Ross & Weis
10 Parkway North Blvd., Suite 110
Deerfield, IL 60015
Attention: Michael D. Firsel
Email: mfirsel@firselross.com

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 Developer's sole cost. The rights and obligations of the Developer 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 Developer 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 Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and the Developer, 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 Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third parties to the Village and the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against the Village or the Developer. 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 Developer 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 Developer, 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 Developer.** 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 Developer, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the Village or the Developer 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 until December 31, 2039, if the Subject Property is not removed from the Business District, or until December 31, 2041, if the Subject Property is removed from the Business District.
- 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 Developer, owner or lessee hereunder is proprietary and valuable information and that any disclosure or unauthorized use thereof will cause irreparable harm to the Developer, 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 Developer, 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 Developer 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 Developer 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 Developer'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 Developer, that the assignee has the financial capacity together with the experience needed to effectively develop, operate, and manage a large residential development;

Notwithstanding the foregoing, but subject to compliance with subsections 2, 3. and 4. above, the following actions by the Developer of Phase I and the Greenspace Improvements, and the Lombard Development Manager, LLC as to Phase 2, relative to the sale or transfer of the Subject Property, or any portion thereof, or the assignment of its rights, duties and obligations hereunder, shall not require the approval of the Village:

5. The sale of Phase 1 or Phase 2 of the Subject Property upon the receipt of a final certificate of occupancy and zoning certificate from the Village for Phase 1 or Phase 2, as applicable.

6. assign, transfer, mortgage, pledge, hypothecate or encumber this Agreement as security for financing the construction and completion of all or any portion of the Project;
7. grant a security interest in the Subject Property, or any portion thereof, to a lender providing construction and/or term financing for the Project;
8. sell, transfer or convey the Subject Property, in whole or in part, to any corporation, limited liability company, partnership or other business or trust the majority of which is now or hereinafter owned or controlled by the Developer (a "**Developer Entity**");
9. sell, transfer or convey the Subject Property, in whole or in part, as a result of or pursuant to the sale, transfer or conveyance of any shares of stock, membership interests, partnership interests, trustee interest, beneficial interest, assets, in or to a Developer Entity, or of any shareholder, partner, member, trustee or beneficiary having or holding an interest in or to any Developer Entity, irrespective of tier, whether or not such sale, transfer or conveyance is the result of or pursuant to dilution, sale, gift, ESOP or employee vesting program, stock sale, change of control, merger, consolidation, reorganization, heirship, or otherwise, voluntarily or through operation of law, and irrespective of whether the party affected is the surviving entity; or
10. sell, transfer or convey the Subject Property, in whole or in part, to any residential unit owner, or to any homeowners association, condominium association, or any other person or entity charged with the responsibility of maintenance of the Subject Property, or applicable portion thereof.

The Developer, 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, under either subsection 5, 6, 7, 8, 9 or 10 above, together with supporting documentation reasonably acceptable to the Village within thirty (30) calendar days thereof. Notwithstanding anything contained in this Section S to the contrary, the provisions of this Section S are subject to Section VI.B.4 of this Agreement, relating to the sale of Phase 2 prior to completion.

- 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: 
Keith Giagnorio, Village President

By: 
Elizabeth Brezinski, Village Clerk

Date: July 20, 2023

Date: July 20, 2023

LOMBARD DEVELOPMENT MANAGER, LLC
an Illinois limited liability company

By: 
Name: Phil Domenico
Manager

Date: July 20, 2023

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 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 20th day of July, 2023.

Monika Reszka
Notary Public



ACKNOWLEDGMENT

State of Illinois)
) SS
County of COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that PHIL DOMENICO, 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 20th day of July, 2023.



Notary Public

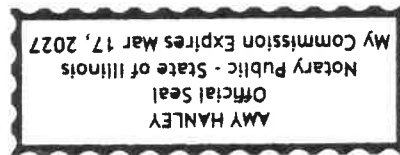


EXHIBIT A-1

Exhibit Omitted for Recording Purposes Only

EXHIBIT A-2

Exhibit Omitted for Recording Purposes Only

EXHIBIT B-1

Exhibit Omitted for Recording Purposes Only

EXHIBIT B-2

Exhibit Omitted for Recording Purposes Only

Exhibit C

Legal Description of the Subject 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

Site Plan for the Project

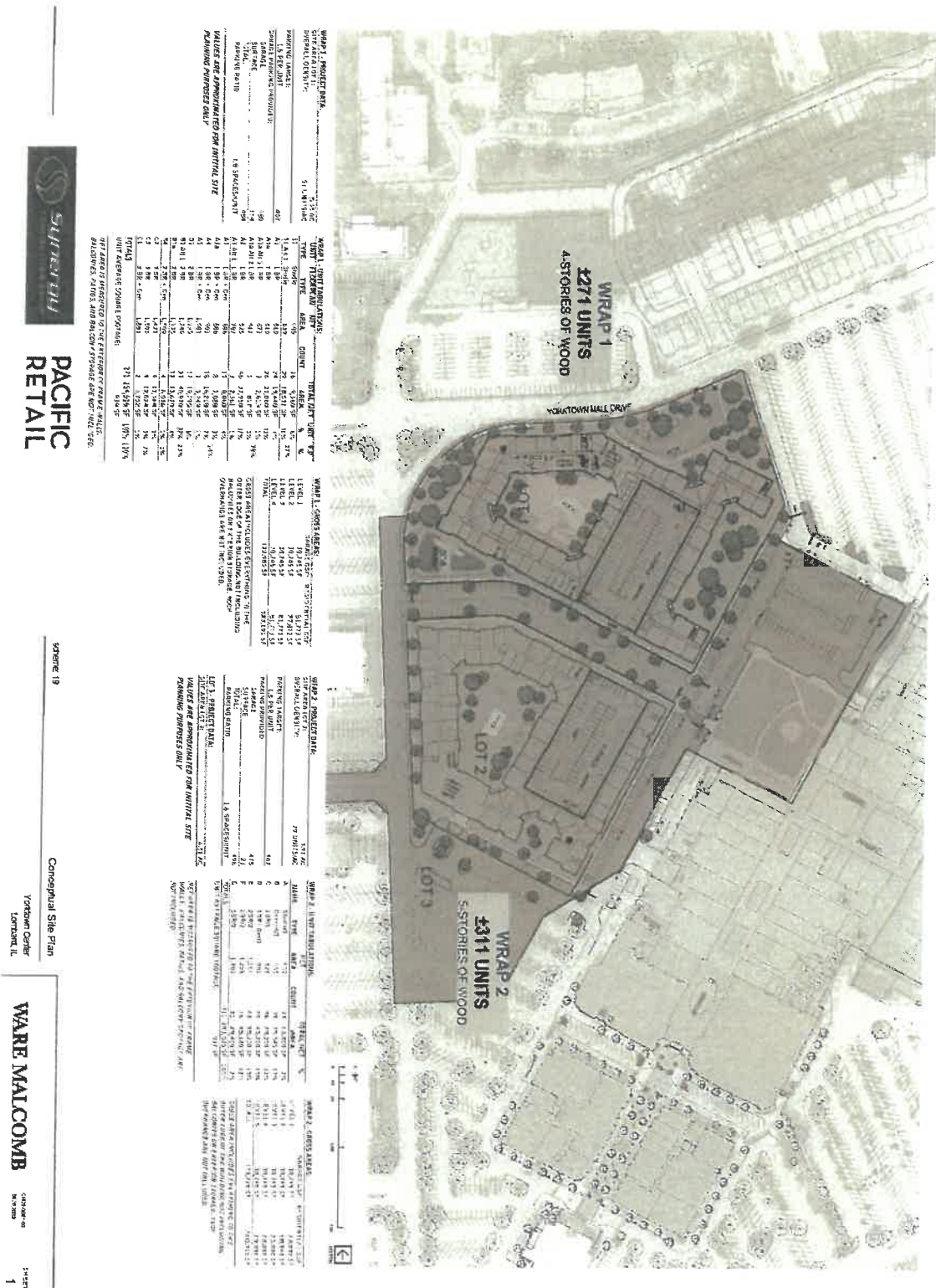


Exhibit D-2

Detailed Description of the Project

Developer is proposing to redevelop a portion of Yorktown Mall, by demolishing the existing vacant Carson, Pirie & Scott building, and constructing a luxury multi-family rental apartment development to be known as "YORKTOWN RESERVE" (the "Project"). As currently planned, the Project will consist of a total of 582-unit Class-A rental units, constructed in 2 phases.. After demolition of the former Carson's building, the 15-acre site will be redeveloped into a 3-acre public greenspace, and (2) contemporary styled residential buildings wrapped around (2) parking structures. These new luxury rental homes will not only include high-end amenities including a pool, gym facility, grills, golf-simulators and media rooms, but this Project will also anchor a new lifestyle and experiential district at Yorktown Shopping Center including Dave & Busters, a Fresh Market grocery store and many new restaurants. The residential buildings will include almost 1,000 new indoor and surface parking spaces for its residents

The Owners of the Property acquired a majority of the property in September of 2022 and will acquire the remaining portion during calendar year 2023. The Develop has been working with the Village on zoning entitlements and economic incentives. The Project was unanimously approved by the Village Plan Commission in February, 2023, and Village Board approved the project in July of 2023. Developer hopes to break ground in the fourth quarter of calendar year 2023. of this year.

As currently planned, the Project consists of primarily three phases, described as follows.

- A. Phase 1 of the Project generally consists generally of a 271-unit Class A luxury multi-family residential building, with an attached four-level parking garage and surface parking spaces. Phase I of the Project will include significant building amenities, such as an outdoor swimming pool, an exercise facility, grills, golf-simulators and media rooms. Developer plans to construct Phase 1 commencing in late 2023 with a scheduled completion date in the fall of 2025.
- B. Phase 1-A includes a Greenspace Improvements Project improvements generally consisting of: the Carson's asbestos removal and demolition; earthwork, asphalt paving and pavers, site utility modifications, electrical and mechanicals, selected and impacted mall exterior and interior demolition site work; concrete wall construction and masonry and maintenance; doors, windows, canopies, electricals/mechanicals adjustment and finishes construction (for impacted area resulting from demolition work). The Greenspace Improvements Project will be commence and completed withing the Phase I timeline referenced above.

- C. The Phase 2 Project generally consists generally of a 311-unit Class A luxury multi-family residential building, with an attached 5-level parking garage and surface parking spaces. Phase II of the Project will include significant building amenities, such as an outdoor swimming pool, an exercise facility, grills, golf-simulators and media rooms. Developer plans to construct Phase 2 upon completion of Phase 1.

Exhibit E

**Projected Cost of the Project,
inclusive of Property Acquisition Costs**

	Phase 1	Phase 2
Land Cost	\$ 5,600,000.00	\$ -
Hard Costs	\$ 81,000,000.00	\$ 92,000,000.00
Soft Costs	\$ 18,400,000.00	\$ 23,000,000.00
<i>Total</i>	\$ 105,000,000.00	\$ 115,000,000.00

Exhibit F

Construction Cost Categories

Construction Cost Categories	Estimated	Actual	Difference
Demolition			
Site Preparation			
ERS Installation			
Asphalt Paving			
Sewerage And Drainage			
Landscaping And Irrigation			
Concrete Contractor			
Concrete Placing And Finishing			
Precast Concrete			
Masonry			
Structural Framing			
Structural Steel Materials			
Metal Decking			
Ornamental Metal			
Rough Carpentry			
Finish Carpentry			
Finish Carpentry Materials			
Stone Countertops			
Waterproofing/Dampproofing			
Insulation			
Membrane Roofing & Sheet Metal			
Siding			
Frames/ Doors/ Hardware			
Metal Door & Frames Labor			
Overhead & Coiling Doors			
Entrance, Storefronts, Glazing, etc.			
Wood & Plastic Windows			
Drywall			
Drywall & taping materials			
Tile And Terrazzo			
Wood Flooring			
Soft Flooring			
Paint And Wall Coverings			
Millwork			
Fire Protection Specialties			

Postal Specialties			
Toilet & Bath Accessories			
Toilet & Bath Accessories Inst			
Wardrobe & Closet Specialties			
Residential Equipment			
Misc. Specialty Equip			
Window Treatment			
Pools			
Elevators			
Chutes			
Fire Protection			
Plumbing			
Plumbing Fixtures			
HVAC			
Electrical Contractor			
Low Voltage			
Lighting Fixtures			
Alarm Systems			
Testing			
Site Survey			
Landscape Retaining Wall			
Spoil Hauling			
General Liability Insurance			
Contingency			
Fee			
General Conditions			
Total			

Exhibit G

Detailed Description of the Project Public Improvements

2.0 SANITARY SEWER
2.01 SANITARY SEWER REMOVAL
2.02 4" SANITARY SERVICE
2.03 8" SANITARY SEWER
2.04 8" SANITARY SEWER EXTENSION THRU EX PARKING LOT
2.05 10" SANITARY SEWER
2.06 12" SANITARY SEWER
2.07 4' SANITARY MANHOLE
2.08 CLEANOUT
2.09 CONNECT TO EXISTING MANHOLE
2.10 TRENCH BACKFILL
3.0 WATER SUPPLY
3.01 WATER MAIN REMOVAL
3.02 8" D.I.P. CLASS 52
3.03 8" GATE VALVE IN 4' DIA. VAULT
3.04 FIRE HYDRANT W/ VALVE BOX
3.05 TRENCH BACKFILL
4.0 STORM SEWER SYSTEM
4.01 STORM SEWER REMOVALS
4.02 STORM SEWER, RCP (12")
4.03 STORM SEWER, RCP (18")
4.04 STORM SEWER, RCP (24")
4.05 STORM SEWER, RCP (30")
4.06 STORM SEWER, RCP (36")
4.07 STORM SEWER, RCP (48")
4.08 2' STORM INLET
4.09 4' DIA. STORM MANHOLE
4.10 5' DIA. STORM MANHOLE
4.11 6' DIA. STORM MANHOLE
4.12 7' DIA. STORM MANHOLE
4.13 9' DIA. STORM MANHOLE
4.14 CONNECT TO EXISTING MH
4.15 TRENCH BACKFILL