

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: November 23, 2004 (B of T) Date: December 2, 2004

TITLE: Access Easement Agreements – 16 N. Park

SUBMITTED BY: Department of Community Development *JGH*

BACKGROUND/POLICY IMPLICATIONS:

Please find attached two resolutions authorizing signatures of President and Deputy Village Clerk on Access Easement Agreements for the purpose of granting the property owners of 106 and 108 W. St. Charles Road vehicular access to and from the Village's parking lot property at Orchard Terrace located at 16 N. Park. (DISTRICT #1)

Staff recommends approval of this request.

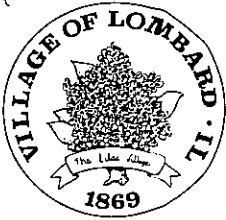
Please place this item on the December 2, 2004 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <i>W. T. Lichter</i>	Date <i>11/23/04</i>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



## MEMORANDUM

**TO:** William T. Lichter, Village Manager

**FROM:** David A. Hulseberg, AICP, Director of Community Development *DH*

**DATE:** November 23, 2004

**SUBJECT:** 16 N. Park – Orchard Terrace Parking Lot  
Access Easement Agreements  
Parcel Numbers: 06-07-204-031-0000 (106 W. St. Charles Rd.)  
06-07-204-030-0000 (108 W. St. Charles Rd.)

### **BACKGROUND:**

On October 7, 2004 the Village Board of Trustees approved a resolution authorizing the purchase of the property, improved as a parking lot for vehicles, located at Orchard Terrace and Park Avenue (16 N. Park) from the Sellers, Yan Chin Yung and Shuet Fong Mak Yung.

The Village of Lombard has now received two Access Easement Agreements which would grant the Sellers access agreement rights from their properties located at 106 and 108 W. St. Charles Road over the Village's property where a prescriptive easement currently exists.

### **RECOMMENDATION:**

Staff recommends that the Board of Trustees authorize the Village President and Deputy Village Clerk to sign the Access Easement Agreements.

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**RESOLUTION**  
R \_\_\_\_\_ 05

**A RESOLUTION AUTHORIZING SIGNATURE OF  
PRESIDENT AND DEPUTY CLERK ON A  
AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard has received an Access Easement Agreement granting vehicular access rights to the property owners of 106 W. St. Charles Road (PIN 06-07-204-031-0000), Yan Chin Yung and Shuet Fong Mak Yung, as attached hereto and marked Exhibit "A", and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve this Access Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, as follows:

**SECTION 1:** That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

**SECTION 2:** That the Deputy Village Clerk be and hereby is authorized to attest said Contract as attached hereto

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Ayes: \_\_\_\_\_

Nayes: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
William J. Mueller  
Village President

ATTEST:

\_\_\_\_\_  
Barbara A. Johnson  
Deputy Village Clerk

PREPARED BY, AND AFTER  
RECORDING RETURN TO:  
KLEIN THORPE AND JENKINS, LTD.  
20 North Wacker Drive, Suite 1660  
Chicago, IL 60606  
Attn: George A. Wagner, Esq. (DM 49-72)

(For Recorder's Office)

## ACCESS EASEMENT AGREEMENT

(106 W. St. Charles Road)

**THIS ACCESS EASEMENT AGREEMENT** (the "**Agreement**") is made as of the Effective Date (as that term is defined in Paragraph 19 hereof) by and between the **VILLAGE OF LOMBARD, AN ILLINOIS MUNICIPAL CORPORATION** (the "**Grantor**") and **YAN CHIN YUNG and SHUET FONG MAK YUNG** (the "**Grantee**").

### RECITALS:

A. The Grantor is the fee simple owner of the real property improved as a parking lot for vehicles, which parking lot is located at Orchard Terrace and Park Avenue (16 North Park Avenue, Lombard, Illinois) and is legally described in Exhibit A, attached hereto (the "**Grantor Parcel**").

B. The Grantee is the fee simple owner of the real property improved with a building commonly known as 106 West St. Charles Road, Lombard, Illinois, and legally described in Exhibit B attached hereto (the "**Grantee Parcel**").

C. As Grantee does not have access to St. Charles Road from the Grantee Parcel, Grantor and Grantee desire to enter into a formal easement agreement for, among other things, granting an easement to Grantee for vehicular access over the Grantor Parcel.

**NOW, THEREFORE**, in consideration of the above Recitals, which are hereby incorporated herein, the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### AGREEMENT:

1. **ACCESS EASEMENT.** Grantor hereby grants to Grantee, a non-exclusive ingress and egress easement over the driveways and parking areas (as they may exist from time to time) of the Grantor Parcel for vehicular access to Orchard Terrace (the "**Access Easement**"). The Grantee covenants and warrants to Grantor that the Access Easement shall only be used for ingress and egress for vehicular access to and from the Grantee Parcel and Orchard Terrace. The Access Easement is subject to the use

in common with Grantor and in a manner, which does not interfere with the use thereof by others including the general public. Grantee will not do or permit its customers, employees, partners, affiliates and others utilizing the Access Easement by or under Grantee to do anything, which obstructs or interferes with ingress or egress to the Grantor Parcel. Grantee hereby waives any right or interest it may have in the use of the Grantor Parcel for ingress and egress prior to the Effective Date of this Agreement.

2. **TERMINATION OF THE ACCESS EASEMENT.** In the event Grantee redevelops the Grantee Parcel to construct a new building, Grantee shall be required to construct a driveway on the Grantee Parcel for ingress and egress to on-site parking from St. Charles Road, in which event the Access Easement shall terminate and be of no further force and effect. In the event this Agreement is terminated as provided for in the preceding sentence, Grantee agrees to execute and deliver to the Grantor within ten (10) business days of Grantee's receipt of notice from the Grantor, a recordable release of this Agreement. The Grantor shall be responsible for fees for recording the release in the Office of the Recorder of Deeds of DuPage County, Illinois.

3. **MAINTENANCE AND REPAIR OF THE EASEMENTS.** Grantor, at its cost and expense, shall be responsible for maintaining, repairing, replacing, repaving, restriping and snow removal of the Access Easement.

4. **RIGHTS RESERVED BY GRANTOR.** Grantor reserve the right, without obtaining the consent of Grantee, to do any or all of the following, provided that the Access Easement is not unreasonably restricted: (i) to relocate, expand, reduce, repair, repave, re-stripe, eliminate or otherwise change any of the improvements or facilities at or on the Grantor Parcel and (ii) to construct or remove signs, landscaping and other improvements on any part of the Grantor Parcel.

5. **TRANSFERS.** Grantee shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Grantor.

6. **INSURANCE.** Grantee shall, at its expense, maintain commercial general liability insurance against claims for personal injury, death and property damage, arising out of the acts or omissions of Grantee its officers, partners, tenants, agents and employees with respect to the Access Easement, with a contractual liability endorsement covering Grantee's indemnity obligations under this Agreement, and with limits of not less than \$ 1,000,000.00 combined single limit for personal injury, bodily injury or death, or property damage or destruction (including loss of use thereof) per occurrence. Grantor shall be named as an additional insured under such insurance policies. All insurance shall be with insurers rated at least A: 10 in the current edition of Best's Insurance Guide. Any policy required herein may be maintained under a blanket policy insuring other parties and locations provided the amount of insurance required hereunder is not thereby diminished. Such insurance shall provide that it will not be canceled without at least ten (10) days' prior written notice to Grantor. Grantee shall deliver a certificate of insurance to Grantor on or before the Effective Date of this Agreement. Grantee shall furnish renewal certificates at least ten (10) days prior to expiration of the current insurance certificate.

7. **INDEMNIFICATION.** Grantee, its customers, employees, partners, affiliates and others utilizing the Access Easement by or under Grantee shall use the Access Easement at their own risk. Grantee shall indemnify and save Grantor, its officers, employees and agents from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury or damage to property or any of them arising out of the acts or omissions of Grantee, its partners, officers, tenants,

agents or employees or of third parties with respect to the use of the Access Easement. Grantee hereby waives as against Grantor, its officers, employees and agents any and all right of recovery in connection with the loss or damage to property of Grantee occurring in, on or about the Grantor Parcel with respect to the use of the Access Easement.

8. **NOTICES.** All notices or communications herein required or which a party desires to give to the other ("notice" or "notices") shall be in writing and sent by (i) registered or certified mail, postage prepaid, return receipt requested, or (ii) nationally recognized overnight courier service which provides a receipt. In either case, notices shall be sent to the following addresses (or such other addresses as the parties may give notice hereunder):

If to the Grantor:	Village of Lombard Attn: Village Manager 255 East Wilson Lombard, IL 60148
With a copy to:	Klein, Thorpe and Jenkins, Ltd. Attn: George A. Wagner, Village Attorney 20 North Wacker Drive, Suite 1660 Chicago, IL 60606
If to the Grantee:	Yan Chin Yung and Shuet Fong Mak Yung 54 West 19 <sup>th</sup> Street Lombard, IL 60148
With a copy to:	Patricia Dwyer Moy Attorney at Law 160 Burlington Avenue Clarendon Hills, IL 60514-1259

Notices sent by certified mail shall be effective three (3) business days after mailing. Notices sent by courier shall be effective one (1) business day after delivery to the courier service.

9. **DEFAULT.** If Grantee fails to pay any amount due hereunder within five (5) days after notice that such amount is not paid, interest shall accrue on the unpaid balance from the due date at a rate equal to three percent (3%) above the "prime rate" of interest as announced from time to time by the Wall Street Journal, calculated as of the due date, or if the Wall Street Journal ceases to announce a prime rate, then the prime rate as established by a similar publication reasonably selected by Grantor (or the highest rate permitted by applicable law, whichever is lower). Such interest shall not be deemed consent by Grantor to late payments, nor a waiver of Grantors remedies. Also, in the event of a default hereunder by Grantee, Grantor shall be entitled to recover from Grantee all costs and expenses reasonably incurred in enforcing this Agreement, including without limitation, reasonable attorneys' fees.

No exercise or waiver, in whole or in part, of any right or remedy provided for in this Agreement shall operate as a waiver of any other right or remedy, except as otherwise herein provided. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof.

In addition to all remedies which may be available at law, in equity, in this Agreement or otherwise, if Grantee fails to comply with any obligation under this Agreement after fifteen (15) days notice specifying the nature of such failure (or if such failure cannot be cured within fifteen (15) days, if Grantee does not commence to cure within 15 days and diligently pursue such cure to completion), Grantor may (but shall not be obligated to) perform all or any part of such obligation and charge the reasonable costs in connection therewith to Grantee, which Grantee shall pay forthwith.

10. **LIENS.** Grantee shall not permit any liens to attach to or become an encumbrance on the Grantor Parcel. If Grantee shall fail to cause any such lien to be discharged within ten (10) days after the filing thereof, then in addition to any other right or remedy of Grantor, Grantor may discharge same (by payment, bonding or otherwise) and the amounts incurred by Grantor in connection therewith (including, without limitation, reasonable attorneys' fees) shall be due and payable immediately by Grantee to Grantor.

If Grantee does not pay any sums due hereunder, Grantor shall have a lien on the Grantee Parcel for such unpaid amount, together with any interest and costs of collection thereof (including reasonable attorneys' fees). Such lien may be evidenced by an affidavit of Grantor as to the amount thereof recorded of record as a claim of lien against Grantee in the Office of the Recorder of Deeds of DuPage County. Such lien shall continue in full force until such sum of money, and any accrued interest thereof and costs, fees and expenses of collection shall have been paid in full. Such lien shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to Grantee Parcel after the time of recording such lien.

11. **CONDEMNATION.** In the event of condemnation, other than by Grantor, of the Access Easement by any duly constitute authority for a public or quasi-public use, that portion of the award attributable to the value of the land and improvements within the Access Easement so taken shall be payable to Grantor, provided, however, that Grantee may file collateral claims with the condemning authority, over and above the value of the Grantor Parcel so taken, to the extent of any damage suffered by Grantee resulting from the severance of the Access Easement.

12. **SEVERABILITY.** If any term, provision or condition contained herein shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to parties or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. **SUCCESSORS.** Except as otherwise expressly provided in this Agreement, this Agreement shall run with the land until such time as this Agreement and the Access Easement are terminated, both as respects to benefits and burdens created herein, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No other party shall be deemed to be a third party beneficiary hereunder.

14. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois.

15. **HEADINGS.** Paragraph headings are for convenience only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

16. **MODIFICATION.** This Agreement cannot be changed, modified, waived or discharged orally except by written agreement signed by the parties hereto.

17. **RECORDING.** This Agreement shall be recorded against both the Grantor Parcel and Grantee Parcel, in the Office of the Recorder of Deeds of DuPage County, Illinois and Grantor shall be responsible for the recording fees.

18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties concerning the subject matter herein contained. There are no oral promises, conditions, representations, undertakings or terms of any nature as conditions or inducement to be signing of this Agreement, which are in effect.

19. **EFFECTIVE DATE.** This Agreement shall be deemed dated and become effective on the date that the Grantor signs this Agreement.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed as of the day, month and year first above written.

**GRANTOR:**

VILLAGE OF LOMBARD,  
An Illinois municipal corporation

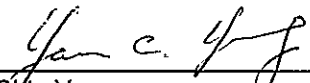
By: \_\_\_\_\_  
Name: William J. Mueller  
Title: Village President

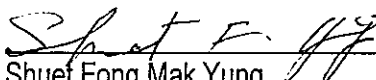
Attest:

By: \_\_\_\_\_  
Name: Barbara A. Johnson  
Title: Deputy Village Clerk

Executed on: \_\_\_\_\_

**GRANTEE**

  
\_\_\_\_\_  
Yan Chin Yung

  
\_\_\_\_\_  
Shuet Fong Mak Yung

Executed on: 11/9/2004



STATE OF ILLINOIS            )  
   )  
 COUNTY OF DUPAGE         )       ss:

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that **YAN CIN YUNG AND SHUET FONG MAK YUNG, HUSBAND AND WIFE**, are personally known to me be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 9<sup>th</sup> day of November, 2004.

*Patricia Dwyer May*  
 Notary Public

11/5/2005  
 My Commission Expires:

STATE OF ILLINOIS    )  
                                   )  
 COUNTY OF DUPAGE    )       ss.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **WILLIAM J. MUELLER** and **BARBARA A. JOHNSON**, are personally known to me to be the Village President and Deputy Village Clerk, respectively, of the Village of Lombard, an Illinois municipal corporation (the "Village") and also known to me to be the same persons whose names are subscribed to the foregoing instrument and as such Village President and Deputy Village Clerk, appeared before me this day in person and severally acknowledged that as such Village President and Deputy Village Clerk, they signed and delivered the said instrument pursuant to the authority given by the Village Board of Trustees, and as their free and voluntary act, and as the free and voluntary act and deed of the Village, for the uses and purposes therein set forth, and that the Deputy Village Clerk, as custodian of the corporate seal of the Village, has caused the seal to be affixed thereto.

GIVEN UNDER my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
 Notary Public

:

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
(Grantor Parcel)

Lot 28 in Grove Park Subdivision, being a subdivision of part of Lot 1 in Block 11 in Lombard, Sections 5, 6, 7 and 18, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded November 19, 1926, as Document 225275, in DuPage County, IL.

PIN: 06-07-204-022-0000

Address: Vacant lot located at Orchard Terrace and Park Avenue, 16 North Park Avenue, in the Village of Lombard, State of Illinois

**EXHIBIT B**  
**LEGAL DESCRIPTION**  
(Grantee Parcel)

The West 30 feet of the Easterly 80 feet of Lot 7 in Block 11 in the Town of "Lombard" being a Subdivision in Sections 5, 6, 7, 8 and 18, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded April 23, 1868, as Document 9483, in DuPage County, Illinois.

PIN: 06-07-204-031-0000

**RESOLUTION**  
**R \_\_\_\_\_ 05**

**A RESOLUTION AUTHORIZING SIGNATURE OF  
PRESIDENT AND DEPUTY CLERK ON A  
AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard has received an Access Easement Agreement granting vehicular access rights to the property owners of 108 W. St. Charles Road (PIN 06-07-204-030-0000), Yan Chin Yung and Shuet Fong Mak Yung, as attached hereto and marked Exhibit "A", and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve this Access Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, as follows:

**SECTION 1:** That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

**SECTION 2:** That the Deputy Village Clerk be and hereby is authorized to attest said Contract as attached hereto

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Ayes: \_\_\_\_\_

Nayes: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
William J. Mueller  
Village President

ATTEST:

\_\_\_\_\_  
Barbara A. Johnson  
Deputy Village Clerk

PREPARED BY, AND AFTER  
RECORDING RETURN TO:  
KLEIN THORPE AND JENKINS, LTD.  
20 North Wacker Drive, Suite 1660  
Chicago, IL 60606  
Attn: George A. Wagner, Esq. (DM 49-72)

(For Recorder's Office)

## ACCESS EASEMENT AGREEMENT

(108 W. St. Charles Road)

THIS ACCESS EASEMENT AGREEMENT (the "Agreement") is made as of the Effective Date (as that term is defined in Paragraph 19 hereof) by and between the **VILLAGE OF LOMBARD, AN ILLINOIS MUNICIPAL CORPORATION** (the "Grantor") and **YAN CHIN YUNG and SHUET FONG MAK YUNG** (the "Grantee").

### RECITALS:

A. The Grantor is the fee simple owner of the real property improved as a parking lot for vehicles, which parking lot is located at Orchard Terrace and Park Avenue (16 North Park Avenue, Lombard, Illinois) and is legally described in Exhibit A, attached hereto (the "Grantor Parcel").

B. The Grantee is the fee simple owner of the real property improved with a building commonly known as 108 West St. Charles Road, Lombard, Illinois, and legally described in Exhibit B attached hereto (the "Grantee Parcel").

C. As Grantee does not have access to St. Charles Road from the Grantee Parcel, Grantor and Grantee desire to enter into a formal easement agreement for, among other things, granting an easement to Grantee for vehicular access over the Grantor Parcel.

**NOW, THEREFORE**, in consideration of the above Recitals, which are hereby incorporated herein, the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### AGREEMENT:

1. **ACCESS EASEMENT.** Grantor hereby grants to Grantee, a non-exclusive ingress and egress easement over the driveways and parking areas (as they may exist from time to time) of the Grantor Parcel for vehicular access to Orchard Terrace (the "Access Easement"). The Grantee covenants and warrants to Grantor that the Access Easement shall only be used for ingress and egress for vehicular access to and from the Grantee Parcel and Orchard Terrace. The Access Easement is subject to the use in common with Grantor and in a manner, which does not interfere with the use thereof by others including

the general public. Grantee will not do or permit its customers, employees, partners, affiliates and others utilizing the Access Easement by or under Grantee to do anything, which obstructs or interferes with ingress or egress to the Grantor Parcel. Grantee hereby waives any right or interest it may have in the use of the Grantor Parcel for ingress and egress prior to the Effective Date of this Agreement.

2. **TERMINATION OF THE ACCESS EASEMENT.** In the event Grantee redevelops the Grantee Parcel to construct a new building, Grantee shall be required to construct a driveway on the Grantee Parcel for ingress and egress to on-site parking from St. Charles Road, in which event the Access Easement shall terminate and be of no further force and effect. In the event this Agreement is terminated as provided for in the preceding sentence, Grantee agrees to execute and deliver to the Grantor within ten (10) business days of Grantee's receipt of notice from the Grantor, a recordable release of this Agreement. The Grantor shall be responsible for fees for recording the release in the Office of the Recorder of Deeds of DuPage County, Illinois.

3. **MAINTENANCE AND REPAIR OF THE EASEMENTS.** Grantor, at its cost and expense, shall be responsible for maintaining, repairing, replacing, repaving, restriping and snow removal of the Access Easement.

4. **RIGHTS RESERVED BY GRANTOR.** Grantor reserve the right, without obtaining the consent of Grantee, to do any or all of the following, provided that the Access Easement is not unreasonably restricted: (i) to relocate, expand, reduce, repair, repave, re-stripe, eliminate or otherwise change any of the improvements or facilities at or on the Grantor Parcel and (ii) to construct or remove signs, landscaping and other improvements on any part of the Grantor Parcel.

5. **TRANSFERS.** Grantee shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Grantor.

6. **INSURANCE.** Grantee shall, at its expense, maintain commercial general liability insurance against claims for personal injury, death and property damage, arising out of the acts or omissions of Grantee its officers, partners, tenants, agents and employees with respect to the Access Easement, with a contractual liability endorsement covering Grantee's indemnity obligations under this Agreement, and with limits of not less than \$ 1,000,000.00 combined single limit for personal injury, bodily injury or death, or property damage or destruction (including loss of use thereof) per occurrence. Grantor shall be named as an additional insured under such insurance policies. All insurance shall be with insurers rated at least A:10 in the current edition of Best's Insurance Guide. Any policy required herein may be maintained under a blanket policy insuring other parties and locations provided the amount of insurance required hereunder is not thereby diminished. Such insurance shall provide that it will not be canceled without at least ten (10) days' prior written notice to Grantor. Grantee shall deliver a certificate of insurance to Grantor on or before the Effective Date of this Agreement. Grantee shall furnish renewal certificates at least ten (10) days prior to expiration of the current insurance certificate.

7. **INDEMNIFICATION.** Grantee, its customers, employees, partners, affiliates and others utilizing the Access Easement by or under Grantee shall use the Access Easement at their own risk. Grantee shall indemnify and save Grantor, its officers, employees and agents from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury or damage to property or any of them arising out of the acts or omissions of Grantee, its partners, officers, tenants, agents or employees or of third parties with respect to the use of the Access Easement. Grantee hereby

agents or employees or of third parties with respect to the use of the Access Easement. Grantee hereby waives as against Grantor, its officers, employees and agents any and all right of recovery in connection with the loss or damage to property of Grantee occurring in, on or about the Grantor Parcel with respect to the use of the Access Easement.

8. **NOTICES.** All notices or communications herein required or which a party desires to give to the other ("notice" or "notices") shall be in writing and sent by (i) registered or certified mail, postage prepaid, return receipt requested, or (ii) nationally recognized overnight courier service which provides a receipt. In either case, notices shall be sent to the following addresses (or such other addresses as the parties may give notice hereunder):

If to the Grantor:	Village of Lombard Attn: Village Manager 255 East Wilson Lombard, IL 60148
With a copy to:	Klein, Thorpe and Jenkins, Ltd. Attn: George A. Wagner, Village Attorney 20 North Wacker Drive, Suite 1660 Chicago, IL 60606
If to the Grantee:	Yan Chin Yung and Shuet Fong Mak Yung 54 West 19 <sup>th</sup> Street Lombard, IL 60148
With a copy to:	Patricia Dwyer Moy Attorney at Law 160 Burlington Avenue Clarendon Hills, IL 60514-1259

Notices sent by certified mail shall be effective three (3) business days after mailing. Notices sent by courier shall be effective one (1) business day after delivery to the courier service.

9. **DEFAULT.** If Grantee fails to pay any amount due hereunder within five (5) days after notice that such amount is not paid, interest shall accrue on the unpaid balance from the due date at a rate equal to three percent (3%) above the "prime rate" of interest as announced from time to time by the Wall Street Journal, calculated as of the due date, or if the Wall Street Journal ceases to announce a prime rate, then the prime rate as established by a similar publication reasonably selected by Grantor (or the highest rate permitted by applicable law, whichever is lower). Such interest shall not be deemed consent by Grantor to late payments, nor a waiver of Grantors remedies. Also, in the event of a default hereunder by Grantee, Grantor shall be entitled to recover from Grantee all costs and expenses reasonably incurred in enforcing this Agreement, including without limitation, reasonable attorneys' fees.

No exercise or waiver, in whole or in part, of any right or remedy provided for in this Agreement shall operate as a waiver of any other right or remedy, except as otherwise herein provided. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof.

In addition to all remedies which may be available at law, in equity, in this Agreement or otherwise, if Grantee fails to comply with any obligation under this Agreement after fifteen (15) days notice specifying the nature of such failure (or if such failure cannot be cured within fifteen (15) days, if Grantee does not commence to cure within 15 days and diligently pursue such cure to completion), Grantor may (but shall not be obligated to) perform all or any part of such obligation and charge the reasonable costs in connection therewith to Grantee, which Grantee shall pay forthwith.

10. **LIENS.** Grantee shall not permit any liens to attach to or become an encumbrance on the Grantor Parcel. If Grantee shall fail to cause any such lien to be discharged within ten (10) days after the filing thereof, then in addition to any other right or remedy of Grantor, Grantor may discharge same (by payment, bonding or otherwise) and the amounts incurred by Grantor in connection therewith (including, without limitation, reasonable attorneys' fees) shall be due and payable immediately by Grantee to Grantor.

If Grantee does not pay any sums due hereunder, Grantor shall have a lien on the Grantee Parcel for such unpaid amount, together with any interest and costs of collection thereof (including reasonable attorneys' fees). Such lien may be evidenced by an affidavit of Grantor as to the amount thereof recorded of record as a claim of lien against Grantee in the Office of the Recorder of Deeds of DuPage County. Such lien shall continue in full force until such sum of money, and any accrued interest thereof and costs, fees and expenses of collection shall have been paid in full. Such lien shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to Grantee Parcel after the time of recording such lien.

11. **CONDEMNATION.** In the event of condemnation, other than by Grantor, of the Access Easement by any duly constituted authority for a public or quasi-public use, that portion of the award attributable to the value of the land and improvements within the Access Easement so taken shall be payable to Grantor, provided, however, that Grantee may file collateral claims with the condemning authority, over and above the value of the Grantor Parcel so taken, to the extent of any damage suffered by Grantee resulting from the severance of the Access Easement.

12. **SEVERABILITY.** If any term, provision or condition contained herein shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to parties or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. **SUCCESSORS.** Except as otherwise expressly provided in this Agreement, this Agreement shall run with the land until such time as this Agreement and the Access Easement are terminated, both as respects to benefits and burdens created herein, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No other party shall be deemed to be a third party beneficiary hereunder.

14. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois.

15. **HEADINGS.** Paragraph headings are for convenience only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.



16. **MODIFICATION.** This Agreement cannot be changed, modified, waived or discharged orally except by written agreement signed by the parties hereto.

17. **RECORDING.** This Agreement shall be recorded against both the Grantor Parcel and Grantee Parcel, in the Office of the Recorder of Deeds of DuPage County, Illinois and Grantor shall be responsible for the recording fees.

18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties concerning the subject matter herein contained. There are no oral promises, conditions, representations, undertakings or terms of any nature as conditions or inducement to be signing of this Agreement which are in effect.

19. **EFFECTIVE DATE.** This Agreement shall be deemed dated and become effective on the date that the Grantor signs this Agreement.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed as of the day, month and year first above written.

**GRANTOR:**

VILLAGE OF LOMBARD,  
An Illinois municipal corporation

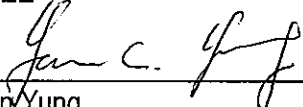
By: \_\_\_\_\_  
Name: William J. Mueller  
Title: Village President

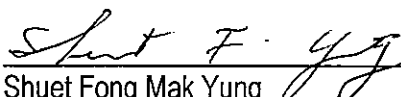
Attest:

By: \_\_\_\_\_  
Name: Barbara A. Johnson  
Title: Deputy Village Clerk

Executed on: \_\_\_\_\_

**GRANTEE**

  
\_\_\_\_\_  
Yan Chin Yung

  
\_\_\_\_\_  
Shuet Fong Mak Yung

Executed on: 11/9/2004

STATE OF ILLINOIS            )  
   )  
 COUNTY OF DUPAGE         )       ss:

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that **YAN CIN YUNG AND SHUET FONG MAK YUNG, HUSBAND AND WIFE**, are personally known to me be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 9<sup>th</sup> day of November, 2004.

Patricia Dwyer Mory  
 Notary Public

November 5, 2005  
 My Commission Expires:

STATE OF ILLINOIS        )  
   )  
 COUNTY OF DUPAGE     )       ss.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **WILLIAM J. MUELLER** and **BARBARA A. JOHNSON**, are personally known to me to be the Village President and Deputy Village Clerk, respectively, of the Village of Lombard, an Illinois municipal corporation (the "Village") and also known to me to be the same persons whose names are subscribed to the foregoing instrument and as such Village President and Deputy Village Clerk, appeared before me this day in person and severally acknowledged that as such Village President and Deputy Village Clerk, they signed and delivered the said instrument pursuant to the authority given by the Village Board of Trustees, and as their free and voluntary act, and as the free and voluntary act and deed of the Village, for the uses and purposes therein set forth, and that the Deputy Village Clerk, as custodian of the corporate seal of the Village, has caused the seal to be affixed thereto.

GIVEN UNDER my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
 Notary Public  
 :

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
(Grantor Parcel)

Lot 28 in Grove Park Subdivision, being a subdivision of part of Lot 1 in Block 11 in Lombard, Sections 5, 6, 7 and 18, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded November 19, 1926, as Document 225275, in DuPage County, IL.

PIN: 06-07-204-022-0000

Address: Vacant lot located at Orchard Terrace and Park Avenue, 16 North Park Avenue, in the Village of Lombard, State of Illinois

**EXHIBIT B**  
**LEGAL DESCRIPTION**  
(Grantee Parcel)

**Parcel 1:** The West 35 feet of the East 115 feet of Lot 7 in Block 11 in the Town of "Lombard", being a Subdivision in Sections 5, 6, 7, 8 and 18, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded April 23, 1868, as Document 9483, DuPage County, Illinois.

PIN: 06-07-204-030-0000