

DISTRICT 3 (All)

**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: July 14, 2004 (COW) (B of T) Date: July 22, 2004
TITLE: Yorktown Water Main
Easement Agreement with Highland Yorktown LLC and Yorktown Holdings, LLC

SUBMITTED BY: David A. Dratnol, P.E., Village Engineer *DDR*

BACKGROUND/POLICY IMPLICATIONS:

See Memo

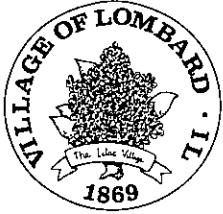
FISCAL IMPACT/FUNDING SOURCE:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *W. Thomas T. Lichter* _____ Date 7/15/04

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.

InterOffice Memo



To: William T. Lichter, Village Manager
From: David A. Dratnol, P.E., Village Engineer *DLA*
Date: July 14, 2004
Subject: Yorktown Water Main
Easement Agreement with Highland Yorktown LLC and
Yorktown Holdings, LLC

Attached is an easement agreement between the Village of Lombard and the Yorktown Shopping Mall (HIGHLAND YORKTOWN LLC, and YORKTOWN HOLDINGS, LLC.)

Specific highlights of the attached agreement include:

Water and Sewer Easements. This grants the Village permanent and exclusive easements to construct, reconstruct, repair, inspect, maintain and operate water mains and a water distribution system, sanitary sewers and a sanitary sewer distribution system.

Restoration of Easement Premises. The Village shall repair and restore disturbed pavement and landscaping with the Easement Area to the pre-construction condition.

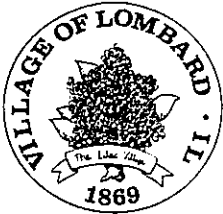
Construction Timing. The Village will proceed with the construction schedule as provided for in the construction documents and diligently work to have the former Montgomery Wards Auto Mall property ready for development within 20 calendar days of the notice to proceed

Access. The Village shall not restrict access to any portions of the Mall during normal shopping mall and restaurant business hours. The Village shall use its best efforts to minimize disruption of traffic.

Indemnity, Insurance. The Village agrees to indemnify and hold Highland Yorktown LLC, and Yorktown Holdings, LLC. harmless from and against any and all mechanics' liens, claims, damages, causes of action, injury and death of any person or for property damage resulting from the providing of material or services or repair of the improvements constructed pursuant to the terms of this Agreement.

Attorneys for both parties are in the process of finalizing minor points concerning the exact language of the agreement. Staff is requesting approval of the agreement in the form substantially attached hereto. The Public Works Department recommends approval of the easement agreement and requests this item be placed on the Board of Trustees July 22, 2004 agenda.

If approved please return two signed originals to Public Works – Engineering so it may be forwarded to the parties for the Yorktown Shopping Mall.



RESOLUTION
R _____ 05

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

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Intergovernmental Agreement between the Village of Lombard, and Highland Yorktown LLC, and Yorktown Holdings, LLC. regarding the Yorktown Water Main project as attached hereto and marked Exhibit "A" and Exhibits B-1, B-2 and B-3; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE 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 Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this _____ day of _____, 2005.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2005.

William J. Mueller
Village President

ATTEST:

Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

This Instrument Prepared by:
Julie M. Workman
Gardner, Carton & Douglas, LLP
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606

After Recording Return to:
Village of Lombard
255 E. Wilson Avenue
Lombard, Illinois 60148
Attn: David Dratnoi

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of July, 2004, by and between THE VILLAGE OF LOMBARD, an Illinois municipal corporation (hereinafter referred to as the “**Village**”), and HIGHLAND YORKTOWN LLC, an Illinois limited liability company and YORKTOWN HOLDINGS, LLC, a Delaware limited liability company (hereinafter collectively referred to as the “**Grantor**”).

WITNESSETH

WHEREAS, Grantor owns the real property legally described on Exhibit A attached hereto, in the Village of Lombard, DuPage County, Illinois (the “**Grantor’s Parcel**”); and

WHEREAS, the Village desires to obtain easements over the real property shown on the Plats of Easement prepared by Gentile and Associates, Inc., of Lombard, Illinois, dated June 3, 2004, attached hereto as Exhibits B-1, B-2 and B-3, from Grantor for the purpose of installing, constructing, operating, using, maintaining, locating, upgrading, repairing, replacing or removing water main, sewer and other utility improvements and other appurtenances related thereto over portions of the Grantor’s Parcel; and

WHEREAS, Grantor has agreed to grant such easements for such purposes pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) in hand paid to Grantor, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Water Easements. Grantor hereby grants to the Village permanent and exclusive easements (the “**Easements**”) to construct, reconstruct, repair, inspect, maintain and operate water mains and a water distribution system, sanitary sewers and a sanitary sewer distribution system, together with any and all necessary structures and appurtenances as may be deemed necessary by the Village over, upon, along, under and through those portions of Grantor’s Parcel labeled as “Public Utilities Easement” on Exhibits B-1, B-2 and B-3 attached hereto (collectively, the “**Easement Area**”), together with the right of access across such portions of

Grantor's Parcel as are reasonably necessary for purposes of ingress and egress of personnel and equipment to do any of the above work. The right is also granted to cut down and trim or remove any fences, temporary structures, trees, shrubs or other plants without need for providing compensation therefor in the event that such fences, temporary structures, trees, shrubs or other plants interfere with the operation of the water mains or sanitary sewers.

2. Restoration of Easement Premises. Following the exercise by the Village of the Easements granted herein, the Village shall promptly repair and restore the Easement Area to the same condition as existed immediately prior to the exercise of such rights including, but not limited to, the restoration of disturbed turf areas with sod and the restoration of disturbed pavement areas with full-depth pavement, and shall leave the Easement Area and surrounding premises free from debris.

3. Construction Timing.

(a) The improvements within the Easement Area depicted on Exhibit B-1 shall be substantially completed by the Village no later than _____, 2004, subject only to abnormally adverse weather or site conditions.

(b) The improvements within the Easement Area depicted on Exhibit B-2 shall be substantially completed by the Village no later than _____, 2004, subject only to abnormally adverse weather or site conditions.

(c) The improvements within the Easement Area depicted on Exhibit B-3 shall be substantially completed by the Village no later than _____, 200____, subject only to abnormally adverse weather or site conditions, such date being no more than eighty (80) days from the date of commencement of the construction depicted on Exhibit B-1.

4. Access. The Village shall not restrict access to any portions of Grantor's Parcel, including the Yorktown Mall and all other buildings and improvements on Grantor's Parcel, during normal shopping mall and restaurant business hours (of ___ a.m. to ___ p.m.). Such buildings and improvements include, but are not limited to, the restaurant at the southwest corner of Grantor's Parcel currently occupied by Buca de Beppo, the convenience center along the north boundary of Grantor's Parcel currently occupied by a variety of retail establishments, and the movie theater at the southeast corner of Grantor's Parcel. In addition, the Village shall use its best efforts to minimize disruption of traffic on Grantor's Parcel and on the roads providing access to Grantor's Parcel. For example, to the greatest extent possible, the Village shall route traffic around construction.

5. Indemnity; Insurance. The Village, for itself, its employees, agents and independent contractors, agrees to indemnify and hold Grantor and its successors and assigns harmless from and against any and all mechanics' liens, claims, damages, causes of action, injury and death of any person or for property damage resulting from the providing of material or services upon Grantor's Parcel and/or the Easement Area in connection with the exercise of the Easements granted hereby and any other claims or causes of action arising out of any act, occurrence or omission of its employees, agents or independent contractors while on the Grantor's Parcel or during any subsequent maintenance or repair of the improvements constructed pursuant to the

terms of this Agreement. The Village shall, at all times during the exercise of the Easements granted hereby, maintain policies providing such coverages in full force and effect in the same or greater amounts with respect to any activities hereunder which may take place on the Grantor's Parcel and/or the Easement Area:

- (a) Comprehensive General Liability
\$1,000,000 for bodily injury
\$1,000,000 for property damage
- (b) Commercial Umbrella Liability Policy \$10,000,000 per occurrence
- (c) Workmen's Compensation Insurance Policy
Policy limits according to Illinois law

The foregoing policies shall name both parties constituting Grantor, as well as Yorktown Joint Venture, LLC, Long Pehrson Associates, L.L.C., Carson Pirie Scott & Co., J. C. Penney Corporation, Inc. and Von Maur, Inc., as additional insured parties and the Village shall deliver to Grantor a Certificate of Insurance so providing, prior to the Village's entry on to the Grantor's Parcel and/or the Easement Area.

6. Ownership; Maintenance Obligations. The Village shall at all times remain the owner of all improvements installed pursuant to the terms of this Agreement regardless of whether such improvements are located within the Grantor's Parcel. The Village shall have sole responsibility, at its cost, to maintain, repair and replace all improvements installed pursuant to the terms of this Agreement.

7. Restrictions; Reservations. The Grantor and Grantor's successors shall not undertake any other activities on the Easement Area which unreasonably interfere with the Village's intended use of the Easement Area and shall not construct any permanent buildings on the Easement Area. Anything contained in this Agreement to the contrary notwithstanding, it is understood that the Grantor shall have (and hereby reserves) the right to (i) plant and maintain gardens, shrubs or other landscaping provided the same do not interfere with the Easements granted hereby and (ii) install utility lines over, across, upon, and under the Easement Area as reasonably required to service any development on the Grantor's Parcel, provided that such is done in a manner which does not unreasonably interfere with the Village's intended use of the Easement Area.

8. Amendment. No amendment, revision, or modification hereof shall be effective unless it is in writing and signed by all parties hereto.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and is intended as a complete and exclusive statement of the terms of the parties agreement, and it supersedes all prior and concurrent promises, representations, proposals, negotiations, discussions, and agreements that may have been made in connection with the subject matter hereof.

10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11. Contractors. It is understood and agreed that the Village may utilize the services of third party contractors, employees, and/or other agents to perform work in the Easement Area. Such contractors, employees or other agents shall deliver to Grantor a Certificate of Insurance naming Grantor and the parties listed in Section 5 above as additional insureds, prior to such contractor's, employee's and/or agent's entry on to the Grantor's Parcel and/or the Easement Area. .

12. Warranty of Title. The Grantor hereby represents and warrants to the Village that it is the fee simple title holder of the Easement Area and that it has the full power and authority to enter into and make the grant of easement as provided herein.

13. Binding. This Agreement shall be binding on the parties hereto, their successors and permitted assigns and shall run with the land.

14. Recording. This Agreement shall be recorded by the Village at the Village's cost with the Office of the DuPage County Recorder of Deeds.

15. Joint Preparation. This Agreement is and shall be deemed and construed to be the joint and collective work product of the Grantor and the Village and, as such, this Agreement shall not be construed against either party, as the otherwise purported drafter of same, by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness, or conflict, if any, in the terms or provisions contained herein.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have entered into and executed this Easement Agreement on the date and year first written above.

VILLAGE OF LOMBARD, an Illinois municipal corporation

By: _____
Name: William J. Mueller
Title: Village President

Attest:

Name: Barbara A. Johnson
Title: Deputy Village Clerk

HIGHLAND YORKTOWN LLC,
an Illinois limited liability company

By: _____
Name: Robert W. Long
Its: Authorized Representative

By: _____
Name: Joel B. Wilder
Its: Authorized Representative

YORKTOWN HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Name: Robert W. Long
Its: Authorized Representative

By: _____
Name: _____
Its: Authorized Representative

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that William J. Mueller, Village President, and Barbara A. Johnson, Deputy Village Clerk, of the Village of Lombard, Illinois, a municipal corporation, 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 acknowledged that they signed and delivered the said instrument as their free and voluntary act on behalf of such municipal corporation for the uses and purposes therein set forth.

Given under my hand an official seal, this ____ day of _____, 2004.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Robert W. Long and Joel B. Wilder, personally known to me to be authorized representatives of HIGHLAND YORKTOWN LLC, an Illinois limited liability company, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand an official seal, this _____ day of _____, 2004.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that _____ and _____, personally known to me to be authorized representatives of YORKTOWN HOLDINGS, LLC, a Delaware limited liability company, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand an official seal, this ____ day of _____, 2004.

Notary Public

EXHIBIT A

Legal Description of Grantor's Parcel

EXHIBIT B-1
(Plat of Easement to be Attached)

EXHIBIT B-2
(Plat of Easement to be Attached)

EXHIBIT B-3
(Plat of Easement to be Attached)