

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: January 26, 2005 (BOT) Date: February 3, 2005
TITLE: 1400 S. Fairfield Avenue (Fairfield Place Townhomes)
SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development submits for your consideration a resolution authorizing signatures of President and Deputy Village Clerk on a License Agreement for a temporary sales and construction trailer to be located within the Fairfield Avenue public right-of-way. (DISTRICT #6)

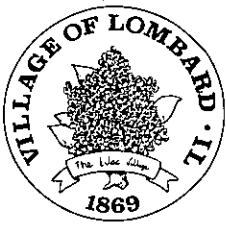
Staff recommends approval of this request.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X *William T. Lichter* _____ Date *1/27/05*

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: February 3, 2005

SUBJECT: 1400 S. Fairfield Avenue (Fairfield Place Townhomes) – License Agreement

Attached please find a copy of a resolution and a draft license agreement between the Mitroff Group Ltd. and the Village that would allow the Mitroff Group to install and operate a construction trailer along their east property line and within the Fairfield Avenue public right-of-way. The trailer will be used during the construction of the Fairfield Place Townhome development, which was approved by the Village Board last year.

Staff does not have any objections to the location of the construction trailer within the public right-of-way as it will minimize conflict with infrastructure and site improvements associated with the project. Staff also notes that the trailer will be located at the terminus of Fairfield Avenue where there will be no through traffic. The agreement will expire after one year, at which point the agreement can be extended with approval from the Village Board. The agreement also includes provisions for removal that would allow the Village to revoke the license upon sixty (60) days written notice.

Planning, Private Engineering and Building Inspection Services have reviewed the plans and found it acceptable. Lastly, this agreement was reviewed by Counsel and they find it acceptable.

ACTION REQUESTED:

Please place this item on the February 3, 2005 Village Board agenda. Staff recommends approval of the resolution and agreement.

RESOLUTION

R _____ 05

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON A LICENSE AGREEMENT
FOR 1400 S. FAIRFIELD AVENUE
(FAIRFIELD PLACE TOWNHOME DEVELOPMENT)**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a License Agreement for the use of portions of the Fairfield Road right-of-way for a temporary sales trailer, as attached hereto and marked as Exhibit "A": and,

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to authorize the license 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 documents as attached hereto.

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

Adopted this _____ day of _____, 2005.

Ayes: _____

Nayes: _____

Absent: _____

Approved this _____ day of _____, 2005.

Resolution No. _____
Re: Fairfield Place License Agreement
Page 2

William J. Mueller, Village President

ATTEST:

Barbara A. Johnson, Deputy Village Clerk

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**THIS DOCUMENT WAS PREPARED
BY:**

AFTER RECORDING RETURN TO:
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: _____

[Above space for Recorder's Office]

**PUBLIC RIGHT-OF-WAY LICENSE
FOR
TEMPORARY SALES AND CONSTRUCTION TRAILER**

THIS PUBLIC RIGHT OF WAY LICENSE FOR TEMPORARY SALES AND CONSTRUCTION TRAILER is dated as of the date set forth on the signature page hereof (the "**License Agreement**") and is entered into between the **MITROFF GROUP LTD.**, an Illinois corporation, (the "**Licensee**"), and the **VILLAGE OF LOMBARD**, an Illinois municipal corporation (the "**Licensor**"), on the date set forth below.

RECITALS:

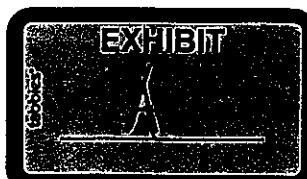
WHEREAS, the Licensee is the owner of record of the townhouse development commonly known as Fairfield Place Townhouses located southeast of where the extension of 14th Street would intersect Fairfield Avenue in Lombard, Illinois; the legal description of which is attached hereto and incorporated herein as Exhibit A; (the "**Townhouse Development**"); and

WHEREAS, the Licensor holds title to certain public right-of-way known as Fairfield Avenue, located East of and adjacent to the boundaries of the Townhouse Development; and

WHEREAS, it is the policy of the Licensor to prohibit sales and construction trailers on the public rights-of-way of Licensor; and

WHEREAS, the Licensee has requested that the Licensor issue a building permit for a sales and construction trailer, in relation to which Licensee has submitted, among other things, plans for the sales and construction trailer (the "**Trailer**"), which plans propose to install the Trailer on certain areas of the Licensor's public right-of-way; and

WHEREAS, the Licensor recognizes a public benefit to be derived from the installation of the Trailer on certain areas of its public right-of-way adjacent to the Townhouse Development, and is willing to grant Licensee a license for the Licensee's temporary installation of the Trailer on a portion of the Licensor's Right-of-Way (as hereinafter defined), subject to the terms of this License Agreement;



NOW, THEREFORE, in consideration of the mutual covenants expressed herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged by the parties here to, Licensor and Licensee agree as follows:

1. **Recitals**: The Recitals to this License Agreement are incorporated herein as if fully set forth.

2. **Right-of-Way**: Licensor hereby grants a license to Licensee, its officers, agents and employees to install, operate out of, repair and maintain the Trailer in the Fairfield Avenue public right-of-way, which lies East of and adjacent to the Townhouse Development, with said right-of-way and the Trailer being depicted on the plans submitted by Haeger Engineering with a submittal date of January 5, 2005 (the "**Plans**"). The Trailer shall be located in that portion of the Licensor's right-of-way (the "**Right-of-Way**") shown on the reduced copy of the Plans which is attached hereto as Exhibit B and made part of hereof.

3. **Term**: The term of this License Agreement (the "**Term**") shall commence upon the latter of (a) the execution of this License Agreement, or (b) Licensor's approval of a building permit to construct, among other things, the Trailer, and shall terminate one (1) year thereafter. After the expiration of the Term, the Term shall automatically renew in one (1) year increments ("Renewal Term") unless either party has given the other party at least ninety (90) days prior written notice of its intent not to renew at the expiration of the original Term or an Renewal Term.

Notwithstanding the foregoing, this License Agreement is subject to Licensor's right to revoke without cause upon sixty (60) days written notice to Licensee, and Licensor's right to revoke upon Licensee's breach of any of its covenants, conditions, duties and responsibilities under this License Agreement upon ten (10) days written notice to Licensee.

4. **Ownership of the Trailer**: Licensee acknowledges that it is the owner of the Trailer and in the event this License Agreement is terminated as provided herein, Licensee shall remove the Trailer from the Right-of-Way and shall restore the Right-of-Way to its condition prior to such removal.

5. **Notices**: All notices required to be delivered hereunder shall be in writing and shall be deemed sufficient if (a) personally delivered, (b) sent by facsimile, (c) sent by a nationally recognized overnight courier, or (d) sent by certified mail, return receipt requested, postage prepaid and addressed to the party to this License Agreement at the addresses set forth below or at such other addresses as may be designated in writing. Notices personally delivered or sent by overnight courier shall be deemed delivered on the date of receipt. Notices mailed by certified mail shall be deemed received on the date of receipt or refusal to accept delivery as evidenced by the return receipt. Notices served by facsimile machine shall also require that copies of the notice and proof of transmission be sent by regular mail on the date of transmission, and notice shall be deemed received on the actual date of receipt of the facsimile. Either party hereto may change the name(s) and address(es) of the designee to whom notice shall be sent by

giving written notice of such change to the other party hereto in the same manner, as all other notices are required to be delivered hereunder. Notices shall be sent to:

IF TO LICENSEE: Mitroff Group LTD
1655 N. Arlington Heights Rd.
Arlington Heights, IL 60004
Tel: (847) 398-3636
Fax: (847) 398-8190

IF TO LICENSOR: Village of Lombard
Attn: William Lichter, Village Manager
255 East Wilson Avenue
Lombard, Illinois 60148
Tel: (630) 620-5700
Fax: (630) 620-8222

with a copy to: Klein, Thorpe and Jenkins, Ltd.
Attention: George A. Wagner
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606-2903
Tel: (312) 984-6468
Fax: (312) 984-6444

5. Intended Use of Right-of-Way: Licensee will only use the Right-of-Way for the purpose of installation, maintenance and operation of the Trailer and for no other use or purpose, all in accordance with the Plans and all applicable state and local laws and regulations.

6. Indemnity/Hold Harmless: Licensee agrees to indemnify and hold Licensor, its officers, employees and agents harmless against any and all claims, losses, lawsuits, damages, liability or expenses that are in any way related to the use of the Right-of-Way or the Trailer by Licensee, its officers, agents and employees, under this License Agreement, unless those claims, losses, lawsuits, damages, liability or expenses are the result of the acts or omissions of Licensor, its officers, employees or agents.

7. Insurance: Licensee shall procure and maintain in full force and effect throughout the Term of this License Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage in any way related to Licensee's use of the Right-of-Way under this License Agreement in the amount of \$1,000,000.00 (one million dollars). Licensor and its officers, agents, and employees shall be named as additional insured, on said insurance policy. In addition, said insurance policy shall be primary to any insurance coverage the Licensor has obtained. Licensee shall provide or cause to be provided to Licensor annually, certificates of such insurance evidencing that such insurance is in full force and effect and cannot be canceled without thirty (30) days written notice to

Licensors, covers the Licensor and its offices, agents and employees as additional insured and is primary to any coverages obtained by the Licensor.

8. **Maintenance of the Right-of-Way:** Licensee hereby accepts the Right-of-Way in its "AS IS" condition as of the date hereof. Licensee acknowledges that prior to Licensee's installation of the Trailer, the Right-of-Way was in good order, condition and repair. Licensee shall, at its sole cost and expense, be responsible for any and all repairs or damage to the Right-of-Way arising from its use or damage to the Right-of-Way by Licensee, its officers, agents, employees, successors, and assigns. Licensee further agrees to maintain the Right-of-Way in a safe condition at all times.

9. **Maintenance of the Trailer:** Licensee shall, during the Term, keep the Trailer in good order, condition and repair, all at Licensee's sole cost and expense. Licensee shall maintain the Trailer to avoid any damage or repair to the Right-of-Way from its use or damage to the Trailer by Licensee, its officers, agents, employees, successors, and assigns.

In the event that the Licensee ceases to use the Trailer, and notifies the Village of same, this License Agreement shall terminate, except that Licensee's removal and restoration obligations, as set forth in Section 4 above, shall survive said termination.

10. **Licensee's Failure to Maintain:** In the event that Licensee fails to repair the Right-of-Way as provided in Section 8 above, or the Trailer as provided in Section 9 above, Licensor has the right, but not the obligation, to repair the Right-of-Way or Trailer upon fifteen (15) days prior written notice to Licensee, or without notice in the event that an emergency exists in the sole discretion of the Licensor. Licensee shall immediately upon demand reimburse Licensor for all reasonable expenses incurred by the Licensor in regard to any such repair, and if such expenses are not paid promptly, Licensor shall have the right to record a lien for any such unpaid expenses against the Townhouse Development and to foreclose on any such lien in accordance with applicable state law.

11. **Breach:** In addition to any other provision in this License Agreement, Licensor and Licensee shall have all remedies, at law or in equity, in order to enforce the terms of this License Agreement.

12. **Assignment or Transfer:** Licensee shall not assign or transfer this License Agreement without the express prior written consent of Licensor. In the event Licensor shall consent to an assignment or transfer, any and all rights, benefits and responsibilities of Licensor and Licensee shall inure to their respective successors and assigns.

13. **Licensor's Activity on the Right-of-Way:** Licensee acknowledges and agrees that the Licensor may perform any public services on the Right-of-way and Licensee hereby releases Licensor from any liability for damages that may result from such public service, including, but not limited to, damage to any portion of or all of the Trailer.

14. **State Law:** Interpretation of the terms of this License Agreement is subject to the laws of the State of Illinois, and any litigation in relation hereto shall take place in DuPage County, Illinois.

15. **Recordation:** This License Agreement shall be recorded against the Townhouse Development at Licensee's sole cost and expense.

[TEXT CONTINUED ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on this __, day of _____, 20__.

LICENSOR:

LICENSEE:

VILLAGE OF LOMBARD,

MITROFF GROUP LTD

**AN ILLINOIS MUNICIPAL
CORPORATION**

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

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: Barbara A. Johnson, Deputy Village
Clerk

[Place Village Seal Here]

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 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's 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 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 _____, 20__.

Notary Public

STATE OF ILLINOIS)
) ss.
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY, that _____ and _____
_____, are personally known to me be the _
_____ and _____ of _____
_____, a _____ corporation (the "**Corporation**"), and are the same persons
whose names are subscribed to the foregoing instrument, appeared before me this day in person
and severally acknowledged that as such _____ and _____
_____, respectively of the Corporation, they signed and delivered the said instrument and
caused the seal of the Corporation to be affixed thereto, pursuant to authority given by the Board
of Directors of the Corporation, and as their free and voluntary act, and as the free and voluntary
act and deed of the Corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 200__.

Notary Public

My Commission Expires:

EXHIBIT A
Legal Description of Townhouse Development

PARCEL 1:

THAT PART OF LOTS 42-A AND 42-B OF YORK TOWNSHIP SUPERVISORS' ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS HIGHLAND ROAD FARMS) OF THE EAST 1/2 OF THE SOUTHWEST 1/4, THE WEST 1/2 OF THE SOUTHEAST 1/4 AND THE SOUTH 1332 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT 452575, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 42-A; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 42-A, A DISTANCE OF 255.09 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID NORTH LINE OF LOTS 42-A, A DISTANCE OF 160.14 FEET; THENCE SOUTHERLY AT AN ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED, ALONG A LINE PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 82.67 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 55.83 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 134.58 FEET; THENCE WESTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 88.92 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 94.56 FEET TO A POINT 187.50 FEET NORTH OF THE SOUTH LINE OF SAID LOT 42-C; THENCE WESTERLY ALONG A LINE PARALLEL WITH AND 187.50 FEET NORTH OF, AS MEASURED PERPENDICULAR TO, THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 93.97 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 94.56 FEET; THENCE WESTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 88.92 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 134.58 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE A DISTANCE OF 55.83 FEET; THENCE NORTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 82.67 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PART OF LOTS 42-A AND 42-B, OF YORK TOWNSHIP SUPERVISORS' ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS HIGHLAND ROAD FARMS) OF THE EAST 1/2 OF THE SOUTHWEST 1/4, THE WEST 1/2 OF THE SOUTHEAST 1/4 AND THE SOUTH 1332 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT NO. 462575, IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 42-A; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 42-A, A DISTANCE OF 415.23 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY AT AN ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED, ALONG A LINE PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 82.67 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 55.83 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 134.58 FEET; THENCE WESTERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 88.92 FEET; THENCE SOUTHERLY ALONG A LINE PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 94.56 FEET TO A POINT 187.50 FEET NORTH OF THE SOUTH LINE OF SAID LOT 42-C; THENCE EASTERLY ALONG A LINE PARALLEL WITH AND 187.50 FEET NORTH OF, AS MEASURED PERPENDICULAR TO, THE SOUTH LINE OF SAID LOT 42-C, A DISTANCE OF 288.19 FEET TO A POINT ON THE EAST LINE OF SAID LOT 42-B; THENCE NORTHERLY ALONG THE EAST LINES OF SAID LOTS 42-B AND 42-A, A DISTANCE OF 311.82 FEET TO THE NORTHEAST CORNER OF SAID LOT 42-A; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 42-A, A DISTANCE OF 254.35 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PART DEDICATED FOR PUBLIC HIGHWAY.

PARCEL 3:

LOT 42 OF YORK TOWNSHIP SUPERVISORS' ASSESSMENT PLAT NO. 1 (ALSO KNOWN AS HIGHLAND ROAD FARMS) OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 AND THE SOUTH 1332 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1943 AS DOCUMENT 452575, IN DUPAGE COUNTY, ILLINOIS.

Parcel Numbers: 06-20-201-001 and 008

