

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager *DAH*

DATE: March 25, 2009 (B of T) Date: April 2, 2009

TITLE: 205 to 255 W. Roosevelt Road

SUBMITTED BY: Department of Community Development *WAL*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing signatures of Village President and Village Clerk on a Grant of Easement for Water Main for a 20' wide easement over the north-south running watermain located on the property at 205 to 255 W. Roosevelt Road. (DISTRICT #2)

Staff recommends approval of this request.

Please place this item on the April 2, 2009 Board of Trustees agenda.

Fiscal Impact/Funding Source:  
Review (as necessary):

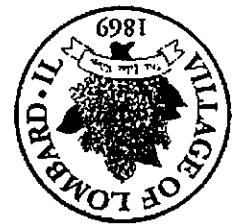
Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_

Finance Director X \_\_\_\_\_ Date \_\_\_\_\_

Village Manager X \_\_\_\_\_ Date 3/25/09

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:** David A. Hulseberg, Village Manager

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

**DATE:** March 24, 2009

**SUBJECT:** Resolution to Accept a Watermain Easement at 205 to 255 W. Roosevelt Road

An existing watermain that connects that runs from Roosevelt Road to a watermain located within an easement at 1313 Rebecca Road is currently not located within an easement. The main is located approximately 10' off of the property line at the Roosevelt Road right-of-way, but then unfortunately takes a lazy path and is partly within or under the foundation of the building addressed as 205 W. Roosevelt Road (currently X-Sport Fitness). This watermain is deemed important to the Village in that it connects the high-pressure water system with the low-pressure water system. Thus, staff pursued an easement over this watermain with the intent that the main will be relocated and that portion under the building will be abandoned. The attached easement agreement was reviewed and approved by Village counsel.

It is important to note that this easement is only for the north-south running watermain and that the private watermain that runs behind the building at 205 to 255 W. Roosevelt will remain private and not the responsibility of the Village.

Please request that the Board of Trustees accepts the attached easement agreement by resolution at their April 2, 2009 meeting.

Please call either Nick Hatfield or myself if you have any questions.

WH/NH:nh



**R**  
**RESOLUTION**  
**09**

**A RESOLUTION AUTHORIZING SIGNATURES OF VILLAGE PRESIDENT  
AND VILLAGE CLERK ON A GRANT OF EASEMENT FOR WATERMAIN  
FOR THE PROPERTY LOCATED AT 205 TO 255 W. ROOSEVELT ROAD**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Grant of Easement for Water Main from Roosevelt Associates Limited Partnership, an Illinois limited partnership, granting a 20' watermain easement for the north-south running watermain on the property located at 205 to 255 W. Roosevelt Road (PIN: part of 06-19-201-021) attached as Exhibit A; and

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

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 Easement as attached hereto.

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

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

Nays: \_\_\_\_\_

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

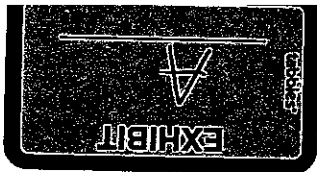
Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

ATTEST:

\_\_\_\_\_  
Brigitte O'Brien  
Village Clerk





2. Grant of Easement. Grantor does hereby grant and convey to Grantee, its successors and assigns, a non-exclusive, perpetual easement ("*Easement*") to survey, construct, reconstruct, lay, use, own, operate, maintain, test, inspect, repair, replace, enlarge, renew, alter and remove (collectively, "*Installation*") the existing water main located within the Easement Parcel, and with such equipment, attachments and appurtenances thereto as Grantee may deem necessary or desirable for its needs ("*Facilities*"), subject to the terms and conditions of this Grant, in, upon, over, under, through, along, and across the Easement Parcel, together with all reasonable rights of ingress and egress in, upon, over, through, along, and across the Easement Parcel.

1. Recitals. The foregoing recitals are hereby incorporated into, and made a part of, this Grant.

NOW, THEREFORE, in consideration of one dollar, the mutual covenants hereinafter contained, and for other good and valuable consideration, Grantor and Grantee agree as follows:

AGREEMENT

B. Grantor has agreed to grant Grantee an easement in, upon, over, under, through, along, and across the Easement Parcel for the purpose of maintaining, replacing and using an existing water main, as depicted on EXHIBIT B, pursuant to the terms of this Grant.

A. Grantor owns a tract of real property ("*Easement Parcel*") in DuPage County, Illinois, more particularly described on EXHIBIT A and depicted on EXHIBIT B, which are attached to this Grant and by this reference incorporated herein.

RECITALS

THIS GRANT OF EASEMENT FOR WATER MAIN ("*Grant*") is made by ROOSEVELT ASSOCIATES LIMITED PARTNERSHIP, an Illinois limited partnership ("*Grantor*") and the VILLAGE OF LOMBARD, an Illinois municipal corporation ("*Grantee*"), as of \_\_\_\_\_, 2009.

GRANT OF EASEMENT FOR WATER MAIN

Peter M. Friedman  
Holland & Knight LLP  
131 South Dearborn Street  
30<sup>th</sup> Floor  
Chicago, IL 60603

Prepared by and after  
recording return to:

3. Use of the Easement Parcel.

(a) Grantee shall at all times prosecute its work within the Easement Parcel with reasonable care, skill and diligence and upon completion thereof shall promptly restore all grounds to the condition which existed prior to the commencement of such work.

(b) Except as provided in Section 4 below, Grantor agrees not to erect or construct any building or other structure on the Easement Parcel without the prior written approval of Grantee; provided, however, that no approval will be necessary with regard to any above- or below-ground structures that exist on and adjacent to the Easement Parcel as of the effective date of the Easement, and such existing structures shall not be considered encroachments in violation of the Easement.

4. Reservation of Rights. Grantor hereby reserves the right to use the Easement Parcel in any manner that will not prevent or interfere with the exercise of the rights granted hereunder. Grantor shall have the right to grant other non-exclusive easements over, along, upon, or across the Easement Parcel; provided, however, that (i) any such other easements shall be subject and subordinate to this Grant and the rights granted hereby; and (ii) except for parking facilities, streets, highways, sidewalks, and public utilities, Grantee shall have first consented in writing to the terms, nature, and location of any such other easements.

5. Further Assurances. Except with regard to mortgages and other security agreements recorded on the Easement Parcel as of the effective date of this Easement, Grantor hereby represents that it shall take all necessary action so that the Easement Parcel shall be released from all future liens, including but not limited to, the lien of all future mortgages, mechanics' lien claims, security agreements, assignments of rents and leases, and, with respect to such future documents, shall execute all such documents as may be reasonably necessary to perfect Grantee's right, title, and interest in the Easement Parcel.

6. Covenants Running with the Land. The easements and rights granted in this Grant, the restrictions imposed by this Grant, and the agreements and covenants contained in this Grant shall be easements, rights, restrictions, agreements, and covenants running with the land, shall be recorded against the Easement Parcel and shall be binding upon and inure to the benefit of Grantor and Grantee and their respective heirs, devisees, executors, administrators, personal representatives, agents, grantees, successors, assigns, licensees, and invitees, including, without limitation, all subsequent owners of the Easement Parcel, or any portion thereof, and all persons claiming under any of them. If any of the easements, rights, restrictions, agreements, or covenants created by this Grant would otherwise be unlawful or void for violation of (a) the rule against perpetuities or any analogous statutory provision, (b) the rule restriction restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements, or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current President of the United States.

7. Indemnification; Insurance. Grantee agrees that it will indemnify and hold Grantor harmless from all damages, costs, or liabilities suffered because of injury to or death of any person or persons, or damage to property, that may arise out of or as a consequence of the willful or wanton acts or omissions of Grantee or its authorized agents, servants, or employees in the installation of the Facilities or Grantee's use of the Easement. Notwithstanding the foregoing, it is hereby agreed that the foregoing indemnification and hold harmless shall not apply in the event of a water main break or a break in service.



8. Amendments. This Grant may only be amended in writing by an amendment approved and executed by Grantor and Grantee.

9. Notices. All notices sent for purposes of this Grant shall be in writing and sent to the following addresses:

If to the Grantee:

Village of Lombard  
Attention: Village Manager  
255 E. Wilson Avenue  
Lombard, Illinois 60148

With a copy to:

George A. Wagner  
Klein, Thorpe & Jenkins, LTD  
20 North Wacker Drive, Suite 1660  
Chicago, IL 60606  
312-984-6400

If to Grantor:

Andrew Hochberg  
Roosevelt Associates Limited Partnership  
c/o Next Property Management, Inc.  
400 Skokie Blvd, Suite 800  
Northbrook IL 60062

With a copy to:

Peter M. Friedman  
Holland & Knight LLP  
131 South Dearborn Street, 30<sup>th</sup> Floor  
Chicago, IL 60603

Notice shall be sent via messenger delivery, over-night express delivery or U.S. Mail return receipt requested. A party is deemed to have received a notice as follows: (a) the same day if the notice is sent by messenger delivery; (b) one business day after a notice is sent by Overnight Express Delivery; or (c) three business days after a notice is sent by U.S. Mail return receipt requested. Any 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 parties hereto in the same manner, as all other notices are required to be delivered hereunder.

10. Miscellaneous.

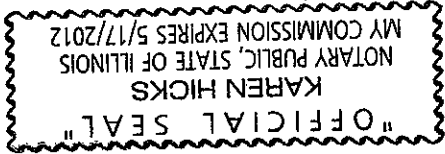
(a) This Grant may be executed in counterparts, each of which shall be deemed an original. Such counterparts shall together constitute one agreement.

(b) If any controversy, claim, or dispute relating to this Grant or the breach thereof arises, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs. This Grant shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

(d) A waiver of a breach or default under this Grant shall not constitute a continuing or further waiver of the same or any other breach or default hereunder.

(c) This Grant and the Exhibits hereto contain the entire agreement of record between the parties relating to the easement and rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Grant that are not expressly set forth herein shall be of no force and effect.



My Commission Expires: 5-17-2012

Karen Hicks  
Notary Public

Given under my hand and notarial seal this March 30, 2009.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Andrew Hochberg, personally known to me to be the VP of ROOSEVELT ASSOCIATES LIMITED PARTNERSHIP, an Illinois limited partnership, and personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as said VP of said limited partnership, he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, for the uses or purposes therein set forth.

STATE OF ILLINOIS )  
COUNTY OF DUPAGE )  
SS. )

BY: Andrew Hochberg  
Name: Andrew Hochberg  
As its: VP  
ROOSEVELT ASSOCIATES LIMITED  
PARTNERSHIP, an Illinois Limited Partnership

GRANTOR:

IN WITNESS WHEREOF, the parties have executed this Grant as of the day and year first above written.



PERMANENT INDEX NUMBER: PART OF 06-19-201-021-0000

ADDRESS:

THE EAST 20 FEET OF LOT 1 IN ROOSEVELT PLAZA, BEING A SUBDIVISION IN THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 6, 1966 AS DOCUMENT NUMBER R66-26777, IN DUPAGE COUNTY, ILLINOIS

LEGAL DESCRIPTION OF EASEMENT

GRANT OF EASEMENT FOR WATER MAIN

TO  
EXHIBIT A

*SEE ATTACHED*

**EXHIBIT B**  
**TO**  
**GRANT OF EASEMENT FOR WATER MAIN**

