

RESOLUTION
R 39-17

**A RESOLUTION APPROVING A CONTRACT FOR
THE SALE OF EASEMENT RIGHTS FOR INSTALLATION
OF AN ADA ACCESSIBLE BUILDING ENTRANCE
(109-115 West St. Charles Road)**

WHEREAS, the Village has offered to enter into a contract for the purchase of easement rights, related to the installation and maintenance of an entrance to a restaurant that is fully compliant with the Americans with Disabilities Act (hereinafter the “ADA Entrance”), in the following-described real estate, which is improved with a paved and striped, surface parking lot for passenger vehicles (“Parking Lot”), and is zoned B5 Central Business District:

LOT 2 IN BLOCK 19 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, EXCEPT THE FOLLOWING: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 09 DEGREES 21 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 22.39 FEET TO THE NORTHERLY EDGE OF AN EXISTING ROOF EAVE OVERHANG; THENCE NORTH 78 MINUTES 54 MINUTES 58 SECONDS EAST ALONG SAID NORTHERLY EDGE, A DISTANCE OF 87.66 FEET; THENCE SOUTH 11 DEGREES 05 MINUTES 02 SECONDS EAST ALONG THE EASTERLY EDGE OF SAID ROOF EAVE OVERHANG, A DISTANCE OF 21.95 FEET TO A POINT ON THE SOUTH LINE OF LOT 2; THENCE SOUTH 78 DEGREES 38 MINUTES 11 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 2, A DISTANCE OF 88.33 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PIN: 06-07-209-026;

Common Address: A portion of 109-115 W. St. Charles Road, Lombard, Illinois; (hereinafter the “Subject Property”); and

WHEREAS, the President and Board of Trustees have determined that easement rights in the Subject Property, related to construction and installation of the ADA Entrance in a single parking space in the Parking Lot, shall be surplus property rights; and

WHEREAS, pursuant to 65 ILCS 5/11-76-4.1, the Village has had the ADA Entrance easement rights in the Subject Property appraised by a State-certified real estate appraiser, a copy of the written certified appraisal performed by Dale J. Kleszynski, MAI, SRA , of Associated Property Counselors, Ltd., dated June 3, 2016, being on file with the Village

Clerk's office, and subject to public inspection, and incorporated herein by reference (hereinafter the "Appraisal"); and

WHEREAS, said Appraisal has determined that the value of the ADA Entrance easement rights in the Subject Property is FIVE HUNDRED and No/100 Dollars (\$500.00), as the ADA Entrance will be occupying a single parking space in the Parking Lot; and

WHEREAS, the President and Board of Trustees have determined that the ADA Entrance easements rights in the Subject Property, related to a single parking space in the Parking Lot, shall, pursuant to the requirements of 65 ILCS 5/11-76-4.1, be sold for not less than eighty percent (80%) of the appraised value; and

WHEREAS, Factum LLC Series 105 W. St. Charles Road ("Factum"), the owner of the restaurant space commonly known as Unit 100 in the Park West Commercial Condominium, located at 105 W. St. Charles Road, Lombard, Illinois, has offered to purchase ADA Entrance easement rights in the Parking Lot for ONE THOUSAND FOUR HUNDRED THIRTY-TWO and No/100 Dollars (\$1,432.00), pursuant to the terms and conditions of the ADA Entrance Easement Agreement attached hereto as Exhibit A and made a part hereof (hereinafter the "Easement Agreement"); and

WHEREAS, it is in the best interests of the Village to sell the ADA Entrance easement rights in the Parking Lot to Factum, for ONE THOUSAND FOUR HUNDRED THIRTY-TWO and No/100 Dollars (\$1,432.00), pursuant to the 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 sale of, and transfer of ADA Entrance easement rights in the Parking Lot to Factum, for ONE THOUSAND FOUR HUNDRED THIRTY-TWO and No/100 Dollars (\$1,432.00), pursuant to the terms and conditions of the Easement Agreement, is hereby approved.

SECTION 2: That Village Staff is hereby directed to prepare the necessary documents to transfer easement rights for the ADA Entrance in the Parking Lot on the Subject Property to Factum, pursuant to the terms and conditions of the Easement Agreement.

SECTION 3: That the Village President, Village Clerk, Deputy Village Clerk, Village Manager and/or Village Finance Director are hereby authorized and directed to execute any

and all necessary documents to complete the transaction contemplated by the Easement Agreement.

ADOPTED pursuant to a two-thirds (2/3rds) roll call vote of the Corporate Authorities, as required by 65 ILCS 5/11-76-4.1, as follows:

Adopted this 18th day of May, 2017.

Ayes: Village President Giagnorio, Trustee Whittington, Fugiel, Foltyniewicz, Pike and Ware

Nays: None

Absent: Johnston

Approved this 18th day of May, 2017.


Keith T. Giagnorio
Village President

ATTEST:


Sharon Kuderna
Village Clerk

Exhibit A

EASEMENT AGREEMENT

(attached)

THIS DOCUMENT WAS PREPARED BY:

Jason A. Guisinger
Klein Thorpe and Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606-2903
(49-366)

AFTER RECORDING RETURN TO:

Jason A. Guisinger
Klein Thorpe and Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606-2903

Record against PIN:

06-07-209-026

On behalf of the Village of Lombard

ADA ENTRANCE EASEMENT AGREEMENT

THIS ADA ENTRANCE EASEMENT AGREEMENT (hereinafter the "Easement Agreement") is made and entered into this 18th day of May, 2017 ("Effective Date"), by the VILLAGE OF LOMBARD, an Illinois municipal corporation, (hereinafter "Grantor"), of DuPage County, Illinois to FACTUM LLC SERIES 105 W. ST. CHARLES, an Illinois limited liability company, (hereinafter "Grantee") of DuPage County, State of Illinois.

RECITALS

WHEREAS, the Grantor is the fee simple owner of certain real estate situated in the County of DuPage, State of Illinois, legally described as:

LOT 2 IN BLOCK 19 IN 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, EXCEPT AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 09 DEGREES 21 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 22.39 FEET TO THE NORTHERLY EDGE OF AN EXISTING ROOF EAVE OVERHANG; THENCE NORTH 78 MINUTES 54 MINUTES 58 SECONDS EAST ALONG SAID NORTHERLY EDGE, A DISTANCE OF 87.66 FEET; THENCE SOUTH 11 DEGREES 05 MINUTES 02 SECONDS EAST ALONG THE EASTERLY EDGE OF SAID ROOF EAVE OVERHANG, A DISTANCE OF 21.95 FEET TO A POINT ON THE SOUTH LINE OF LOT 2; THENCE SOUTH 78 DEGREES 38 MINUTES 11 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 2, A DISTANCE OF 88.33 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

Permanent Index Number (PIN): 06-07-209-026

Address of Property: 109-115 W. St. Charles Rd., Lombard, IL 60148 (hereinafter referred to as the "Grantor Property").

WHEREAS, the Grantee is the fee simple owner of certain real estate situated in the County of DuPage, State of Illinois, legally described as:

UNIT 100 IN THE PARK WEST COMMERCIAL CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: PART OF LOT 1 IN ZITT'S RESUBDIVISION OF PART OF LOT 1 IN BLOCK 19 IN ORIGINAL TOWN OF LOMBARD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 11, ACCORDING TO THE PLAT OF SAID ZITT'S RESUBDIVISION RECORDED NOVEMBER 19, 1991 AS DOCUMENT R91-153504, IN DUPAGE COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER R2002-174696, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS,

Permanent Index Number (PIN): 06-07-226-001

Address of Property: 105 W. St. Charles, Lombard, IL 60148 (hereinafter referred to as the "Grantee Property"); and

WHEREAS, the Grantee desires an easement over a portion of the Grantor Property for the sole purpose of constructing, installing, operating, repairing and maintaining an entrance for a sit-down restaurant to be operated on the Grantee Property that is compliant with the Americans with Disabilities Act, which shall consist of an ADA accessible ramp, concrete steps and an awning, located at the northwest corner of the Grantee Property, as depicted in Exhibit A attached hereto and made a part hereof (the ADA accessible ramp, the concrete steps and the awning shall be collectively referred to herein as the "ADA Entrance"); and

WHEREAS, for the consideration identified below, the Grantor has agreed to grant the Grantee a permanent easement, across and upon a portion of the Grantor Property for the purpose of constructing, installing, operating, repairing and maintaining the ADA Entrance.

NOW, THEREFORE, for and in consideration of the premises and the sum of ONE THOUSAND FOUR HUNDRED THIRTY-TWO and No/100 Dollars (\$1,432.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Recitals. Grantor and Grantee acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement Agreement as if fully set forth herein.

2. Consideration: Grantee agrees to pay the Grantor ONE THOUSAND FOUR HUNDRED THIRTY-TWO and No/100 Dollars (\$1,432.00) for the easement rights granted under this Easement Agreement. Said payment shall be made by the Grantee within seven (7) days of the Effective Date of this Easement Agreement. In the event that the Grantee fails to make the payment to the Grantor provided for herein, the Grantor shall have the right to revoke this Easement Agreement and declare it null and void, and the Easement Agreement shall become null and void upon such declaration by the Grantor.

3. ADA Entrance Easement. Grantor hereby grants to the Grantee, a permanent, non-exclusive easement, across and upon a portion of the Grantor Property, for the purpose of constructing, installing, operating, repairing and maintaining the ADA Entrance, as depicted in Exhibit A. The easement created under this Easement Agreement shall be limited to that portion of the Grantor Property necessary for the construction, installation, operation, repair and

maintenance of the ADA Entrance, as authorized by building permits to be issued by the Village of Lombard and as depicted in Exhibit A. The easement created under this Easement Agreement is subject to the use in common with the Grantor and shall be used by the Grantee in a manner which does not interfere with the use thereof by others, the general public or other easements on the Grantor Property.

4. Maintenance. The Grantee shall be solely responsible for the construction, installation, maintenance and repair of the ADA Entrance including, without limitation, snow and ice removal from the ADA Entrance. The Grantor shall have the right to deny access to, or entirely remove the ADA Entrance, as may be necessary for repair, maintenance or reconstruction of the Grantor Property, or any underground utilities thereunder. Subject to the following sentence, such denial of access or removal shall not persist for more than fourteen (14) consecutive days. In the event that the Grantor denies access to, or removes the ADA Entrance for a period in excess of fourteen (14) consecutive days for repair, maintenance or reconstruction of the Grantor Property, or any underground utilities thereunder, the Grantor shall work with the Grantee to arrange for alternative ADA compliant access for Grantee's customers and employees during the period of maintenance or reconstruction. In the event that the Grantor removes or damages the ADA Entrance during any repair, maintenance or reconstruction work taking place on or under the Grantor Property, the Grantor shall restore the ADA Entrance at its sole cost and expense.

5. Indemnification of Grantor. Grantee shall fully indemnify, defend and hold harmless Grantor, and its officers, agents and employees, from any liability, claim, suit, or cause of action (including reasonable attorneys' fees and cost of defense) resulting from any property damage, personal injury or death caused by or alleged to be caused by a condition of the ADA Entrance, or the construction, installation, use, maintenance, repair or removal of the ADA Entrance, including, without limitation, any such liability, claim, suit or cause of action resulting from the negligence or willful misconduct of Grantee, or its officers, agents, employees, independent contractors, or its successors and/or assigns in exercising its or their rights or performing any work under this Easement Agreement.

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, employees or independent contractors with respect to this Easement Agreement, with a contractual liability endorsement covering Grantee's indemnity obligations under this Easement Agreement, and with limits of not less than TWO MILLION AND No/100 Dollars (\$2,000,000.00) 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, upon request of the Grantor.

7. Covenants Running with the Land. This Easement Agreement, and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and

shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

8. Perpetual Duration. Subject to the revocation provisions provided for herein, this Easement Agreement shall be perpetual in duration.

9. Revocation of Easement Agreement. This Easement Agreement shall be subject to revocation by the Grantor in the event that the Grantee fails to comply with the provisions of the Easement Agreement. This Easement Agreement may also be revoked by the Grantor in the event that the use of the Grantee Property changes such that the ADA Entrance is no longer required by the Americans with Disabilities Act and other federal, State, county and local laws, ordinances, rules or regulations. In the event of revocation, the Grantor shall provide the Grantee with a thirty (30)-day notice of revocation and shall record a written notice of said revocation with the DuPage County Recorder of Deeds after expiration of the thirty (30)-day notice period. In the event that this Easement Agreement is revoked by the Grantor and becomes null and void, the Grantee shall immediately remove any and all of its property from the Grantor Property, at its sole cost and expense. If the Grantee fails to remove its property within seven (7) days of revocation by the Grantor, the Grantor shall have the right to remove and dispose of Grantee's property remaining on the Grantor Property and charge the Grantee for the cost thereof.

10. No Conveyance of Land. Nothing in this Easement Agreement shall be construed to constitute a conveyance of fee simple title to the Grantor Property, or an acceptance thereof, by the Grantor.

11. Transfers. Grantee shall be entitled to transfer any and all easement rights contained herein to any third party that purchases or otherwise acquires fee title of the Grantee Property. The assignee or transferee of any assignment or transfer consented to by the Grantor shall be bound by the terms and conditions of this Easement Agreement. A fully executed copy of an approved assignment or transfer shall be provided to the Grantor, upon request.

12. Liens. Grantee shall not permit any liens to attach to or become an encumbrance on the Grantor Property. 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; alternatively, Grantee shall have the right to post as security one and one-half (1.5) times the amount of said lien as an escrow, with a mutually agreeable title insurance company, should Grantee seek to litigate the merits of said lien.

13. Condemnation. In the event of condemnation, other than by Grantor, of the Grantor Property by any duly constituted authority for a public or quasi-public use, that portion of the award attributable to the value of the land 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 land so taken, to the extent of any damage suffered by Grantee resulting from the severance of the easement rights granted herein.

14. Cost Reimbursement. The Grantee shall reimburse the Grantor for the Grantor's costs of preparing this Easement Agreement, up to a maximum reimbursement amount of ONE

THOUSAND and No/100 Dollars (\$1,000.00). For purposes of this Easement Agreement, "costs" shall be defined as attorneys' fees and recording fees.

15. Real Estate Taxes. The Grantor Property is exempt from real estate taxes due to the Grantor being an Illinois municipal corporation. In the event that that any real estate taxes are assessed against the Grantor Property as a result of the Grantee's use of the Grantor Property under this Easement Agreement, the Grantee shall be responsible for payment of the real estate taxes upon written demand from the Grantor to do so. In the event that the Grantee fails to timely pay any such real estate taxes, the Grantor may pay the real estate taxes and charge the Grantee two (2) times the amount of the real estate taxes paid by the Grantor, plus any penalties and interest due and owing.

16. Building Permits. Nothing contained in this Easement Agreement shall relieve the Grantee from applying for and obtaining all necessary permits and approvals from the Village of Lombard, or any other governmental entity, for the construction of the ADA Entrance.

17. Miscellaneous. No modifications or amendments of this Easement Agreement shall be of any force or effect unless in writing executed by both Grantor and Grantee and recorded in the Public Records of DuPage County, Illinois. If Grantor or Grantee obtains a judgment against the other party by reason of breach of this Easement Agreement, attorneys' fees and costs, at both the trial and appellate levels shall be included in such judgment. This Easement Agreement shall be interpreted in accordance with the laws of the State of Illinois, both substantive and remedial. This Easement Agreement sets forth the entire agreement between Grantor and Grantee relating to the Easement and all subject matter herein supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

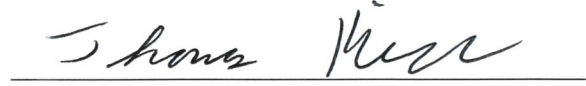

IN WITNESS WHEREOF, Grantor and Grantee have caused these presents to be executed as of the day and year first above written.

GRANTOR:

GRANTEE:

Village of Lombard,
an Illinois municipal corporation

Factum LLC Series 105 W. St. Charles,
an Illinois limited liability company



By: Keith T. Giagnorio
Title: Village President

By:
Title: President

Date: May 18, 2017

Date: June 8th, 2017

ATTEST:

ATTEST:



By:
Title: Secretary

Date: May 18, 2017

Date: _____, 2017

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

ACKNOWLEDGMENTS

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Keith T. Giagnorio personally known to me to be the President of the Village of Lombard, and Sharon Kuderna, personally known to me to be Village Clerk of the Village of Lombard and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered pursuant to the authority given by the Board of Trustees of the Village, and as their free and voluntary act, and as the free and voluntary act of the Village of Lombard for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 18th day of May, 2017.

Karen I. Ellis
Notary Public

My commission expires: 3/6/2018



STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

ACKNOWLEDGMENTS

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Thomas Kidwell and _____, personally know to be the President and the Secretary of Factum LLC Series 105 W. St. Charles, an Illinois limited liability company and personally known to me to be the same persons whose names are subscribed in 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, and as the voluntary act of Factum LLC Series 105 W. St. Charles, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 8th day of June, 2017.

William J Heniff
Notary Public

My commission expires: _____

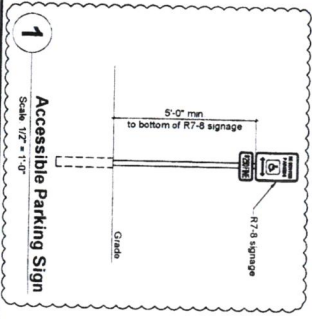
EXHIBIT A



AWNING & ADA RAMP IMPROVEMENTS

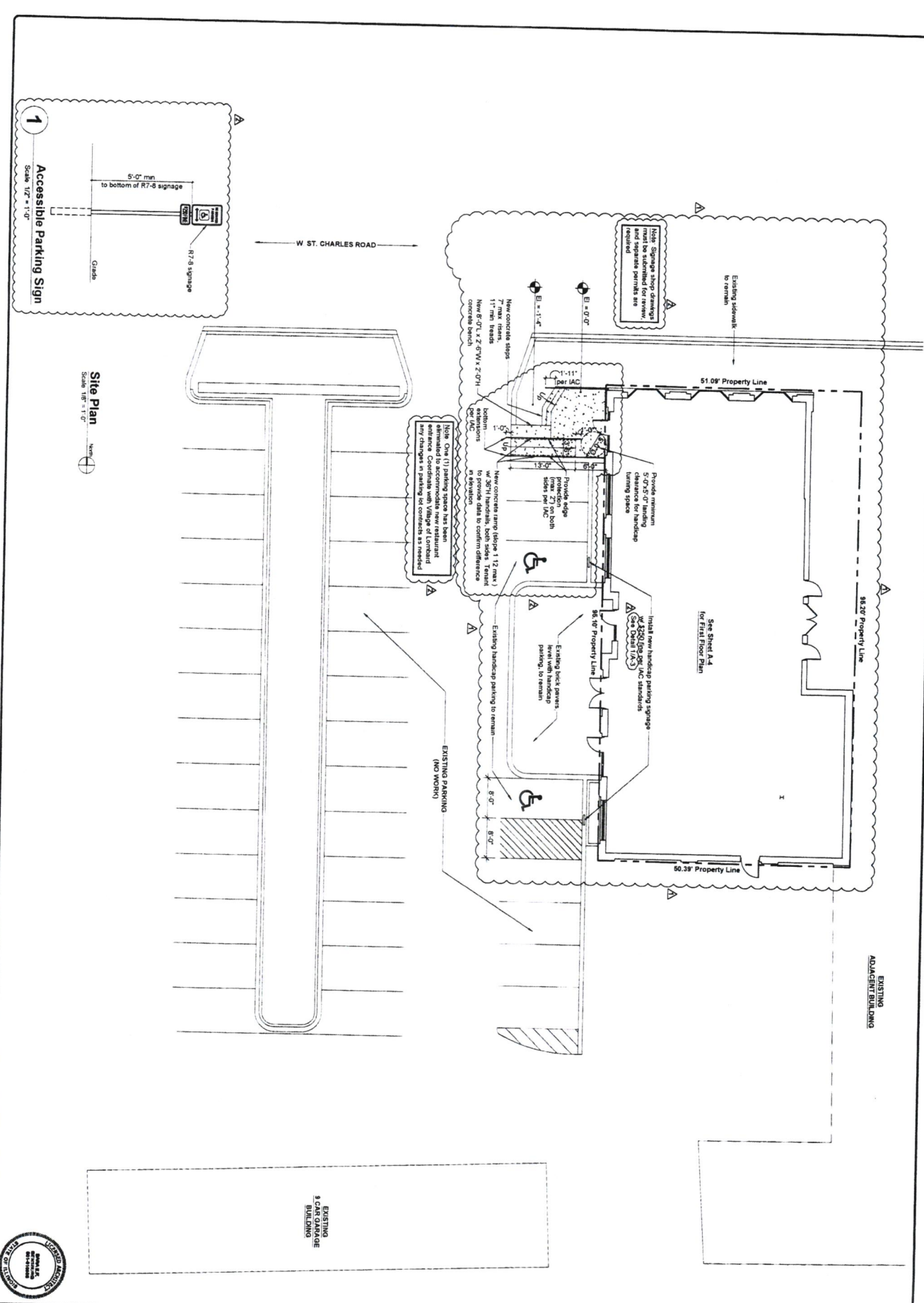
(see attached pages)





1
Accessible Parking Sign
Scale 1/2" = 1'-0"

Site Plan
Scale 1/8" = 1'-0"



NO.	DATE	REVISION
1	10-21-18	Issued for Review
2	11-01-18	Issued for Permit
3	03-02-17	Revised Per Client Review
4	02-02-17	Revised per Health Dept. Comments
5	03-02-17	Revised per Building Comments
6	03-21-17	Revised per Building Comments

INTERIOR REMODEL FOR:
CHARRED
105 W. ST. CHARLES RD.
LOMBARD, ILLINOIS

Sara E.F. Gensburg, Ltd.
Architecture/Design
105 Riverside Drive, Suite G
Northbrook, IL 60062
Fax: (847) 715-5551
Phone: (847) 715-9501