

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: September 28, 2004 (B of T) Date: October 7, 2004

TITLE: 16 N. Park (Vacant Lot)

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

Please find attached a resolution authorizing signature of President and Clerk on a Real Estate Sales Contract for the purchase of the property located at 16 N. Park (on Orchard Terrace and Park Avenue). (DISTRICT #1)

Staff recommends approval of this request.

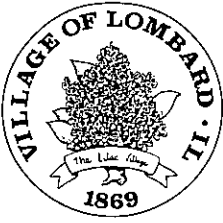
Please place this item on the October 7, 2004 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X William T. Lichter Date 9/30/04

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.



MEMORANDUM

TO: William T. Lichter, Village Manager
Village Board of Trustees

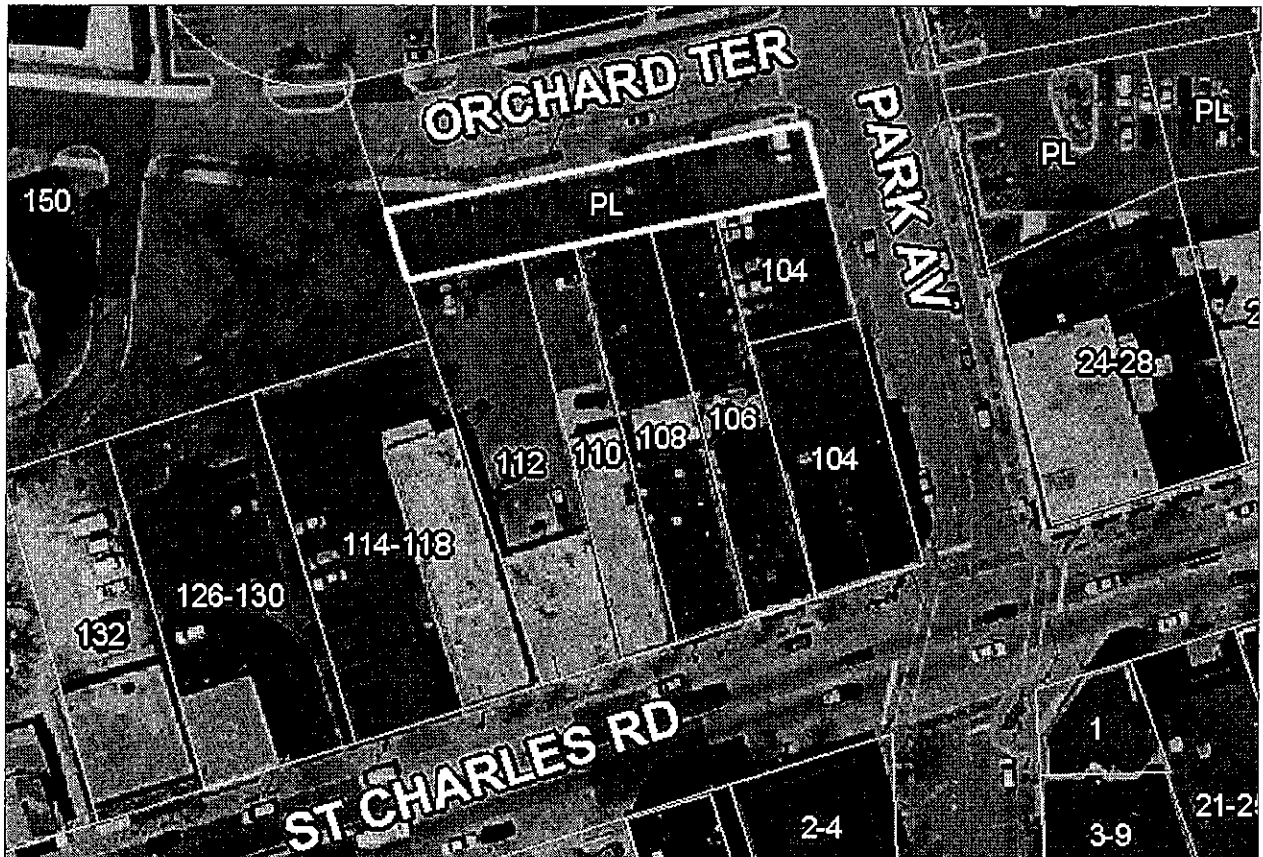
FROM: David A. Hulseberg, AICP, Director of Community Development *DAH*

DATE: September 30, 2004

SUBJECT: Parking area at 16 N. Park Avenue (behind 106-114 W. St. Charles Road, PIN 06-07-204-022)

BACKGROUND

Over the past year, staff has been working with the property owner of the above-captioned property to agree upon a purchase price for this parking lot (labeled "PL" on the aerial view, below). The owner (who also owns 106 and 108 W. St. Charles) has agreed to sell the 18-space parking area for a purchase price of \$70,000.



September 30, 2004
Page 2

By purchasing this property, the Village would be able to create additional public parking spaces for downtown shoppers and employees. Increasing the number of convenient parking spaces would be beneficial to all downtown business owners.

At a later date, this parking lot will be reconfigured to enhance the appearance of the area. The Village will be able to incorporate this lot as part of a more efficient parking design along Orchard Terrace, thereby maximizing the number of available downtown parking spaces.

ACTION REQUESTED

Staff recommends that the Village Board approve the Village President and Deputy Village Clerk to sign a Purchase and Sale Agreement for the property commonly referred to as 16 N. Park.

H:\CD\WORDUSER\PLANNER\Jennifer\Memos\LomLing2.doc

RESOLUTION
R _____ 05

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND DEPUTY CLERK ON A
REAL ESTATE SALES CONTRACT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Real Estate Sales Contract for the purchase of real property from Yan Chin Yung and Shuet Fong Mak Yung relative to the following described property:

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, ILLINOIS.

PIN: 06-07-204-022-0000

Common Address: Vacant lot located at 16 North Park Avenue (on Orchard Terrace and Park Avenue), Lombard, Illinois

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

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 Contract as attached hereto.

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

Adopted this ____ day of _____, 2004.

Ayes: _____

Nayes: _____

Absent: _____

Re: Resolution No. _____
16 N. Park Avenue – Vacant Lot
Page 2

Approved this _____ day of _____, 2004.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

REAL ESTATE SALES CONTRACT

(Parking Lot -Orchard Terrace and Park Avenue (16 North Park Avenue)

THIS REAL ESTATE SALES CONTRACT (the "Contract") is dated as of the Effective Date (as that term is defined in Paragraph 21 hereof) and is made between the **VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, AN ILLINOIS MUNICIPAL CORPORATION** (sometimes referred to as "Buyer" or "Village"), and **YAN CHIN YUNG and SHUET FONG MAK YUNG** (the "Seller").

AGREEMENT:

Seller and Buyer agree as follows:

1) **PURCHASE AND SALE.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, under the terms and conditions set forth in this Contract, fee simple title to the lot improved as a parking lot located at Orchard Terrace and Park Avenue, commonly known as 16 North Park Avenue, in the Village of Lombard, State of Illinois, as legally described in Exhibit A, and shown with diagonal lines on the aerial view in Exhibit "B", which Exhibits are attached hereto (the "Land").

2) **ENVIRONMENTAL INSPECTION.** Notwithstanding any term to the contrary in this Contract, within a period of ninety days after the Effective Date, Buyer shall have the right at any time, at its sole cost and expense, to select and retain environmental and other consultants to examine and inspect the physical condition of the Land (including the groundwater thereunder), to conduct a site assessment and environmental audit and to perform any environmental and engineering investigation or testing it deems necessary and appropriate (collectively referred to as the "**Environmental Assessment**"). Seller hereby grants to the Buyer and its consultants, employees, agents, subcontractors and representatives, an irrevocable license and authorization to enter upon the Land to conduct the Environmental Assessment and will do nothing to interfere with Buyer's Environmental Assessment of the Land (including the groundwater thereunder).

Seller shall provide to the Buyer and its employees, agents, representatives and consultants full and complete access to the Land (including the groundwater thereunder). Seller shall deliver to the Buyer within five (5) days of the Effective Date all documents, environmental Phase I and Phase II testing results, other reports and assessments, audits, surveys, correspondence, notices and any other documentation in Seller's possession, custody or control which relate or refer to the Land (including the groundwater thereunder), its present and prior uses, or to the activities at or near the Land (including the groundwater thereunder). Within five (5) days of the Effective Date, Seller shall also provide the Buyer or Buyer's consultants a list of those key people having knowledge about the Seller's environmental practices and procedures and the prior occupants of the Land, if known to Seller. If necessary, Seller will provide Buyer with all documentation and information in Seller's possession, custody or control which relate to any property adjacent to the Land.

3) **BUYER'S OPTION TO TERMINATE.** (A) The Buyer shall not be obligated to take title to the Land if, in the Buyer's sole and exclusive judgment, for any reason whatsoever (including, without limitation, information revealed by the Environmental Assessment) Buyer determines that the use or condition of the Land (including the groundwater thereunder), or any part thereof or any adjacent property, poses a material health, safety or environmental hazard, or if the Environmental Assessment reveals the existence of any environmental condition which may be dangerous and/or unacceptable to the Buyer, or in violation of any environmental law or regulation including, but not limited to, the presence of any hazardous material (the foregoing collectively referred to as an "**Assessment Defect**"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is an Assessment Defect, Buyer shall have the right to revoke its acceptance of the Contract and the adoption of the Ordinance, if any, accepting the Contract and approving the purchase of the Land contemplated herein, and to declare the Contract and Ordinance null and void and receive the immediate return of the Earnest Money Deposit.

4) **PURCHASE PRICE AND EARNEST MONEY.** Buyer shall pay the sum of SEVENTY THOUSAND AND 00/100 DOLLARS (\$70,000.00) representing the total purchase price for the Land (the "**Purchase Price**") to Seller at the closing of the contemplated purchase and sale hereunder (the "**Closing**"). The Purchase Price shall be payable as follows:

A) **Earnest Money.** Buyer shall placed with Buyer's Attorney, the sum FIVE THOUSAND 00/100 DOLLARS (\$5,000.00) as an earnest money deposit, to be deducted from the balance of the Purchase Price the Buyer must pay at Closing (the "**Earnest Money Deposit**"). The Earnest Money Deposit shall be deposited into a non-interest bearing account for the benefit of the parties.

B) **Payment at Closing.** At Closing, Buyer shall pay to Seller the balance of the Purchase Price, plus or minus prorations.

5) **CLOSING DATE.** The time of closing shall be thirty (30) days after the expiration of the Inspection Period (the "**Closing Date**"), or such other date and time as the parties mutually agree to in writing or as otherwise extended pursuant to the terms hereof. The Closing shall be held at Chicago Title Insurance Company, 1725 S. Naperville Road, Wheaton, Illinois 60187, (Phn: 630-871-3500) (Fax: 630-871-3598) (sometimes referred to as the "**Escrow**" or the "**Title Company**").

6) **POSSESSION OF LAND.** On the Closing Date, Seller shall deliver possession of the Land to Buyer free and clear of any liens, mortgages, leases, licenses, occupancies, tenants and/or occupants and subject only to the Permitted Exceptions.

7) **CLOSING DOCUMENTS.** Title to the Land shall be conveyed to Buyer by a recordable Warranty Deed (the "**Deed**"), subject only to the Permitted Exceptions as defined in Paragraph 9 hereof. At Closing, Seller shall also execute and deliver to Buyer, an Affidavit of Title, Covenant and Warranty of Title, ALTA Statement, Illinois Land Transfer Declaration and such other documents reasonably requested either

by the Buyer or the Title Company to consummate the sale and purchase provided for herein and to vest title in Buyer subject the Permitted Exceptions.

8) **SURVEY**. Within forty-five (45) days of the Effective Date, Seller, at its cost and expense shall provide Buyer with four (4) copies of a current survey of the Land (the "**Survey**"), dated not more than six (6) months prior to the Closing Date, prepared by a surveyor licensed by the State of Illinois, certified to Buyer, the Title Company and such other parties as Buyer may designate by such surveyor as being true, accurate and having been prepared in compliance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" adopted by the American Land Title Association and American Congress on Surveying and Mapping in 1992 setting forth: (i) the legal description of the Land; (ii) all boundaries, courses and dimensions of the Land; (iii) all easements, building lines, curb cuts, sewage, water, electricity, gas and other utility facilities (together with the recording information concerning the documents creating such easements and building lines); (iv) adjoining roads and rights-of-way and means of ingress and egress to and from the Land to a public road; (v) the square footage of the Land; and (vi) any improvements located on the Land. The Survey shall reveal no encroachments onto the Land from adjacent property, and no encroachments by or from the Land onto any adjacent property. The Survey shall indicate all flood zone map designations applicable to the Land.

9) **TITLE INSURANCE**. Within thirty (30) days of the Effective Date, Seller shall obtain at its expense a title commitment from the Title Company with extended coverage endorsement over all general title exceptions (the "**Title Commitment**"), in the amount of the Purchase Price covering the date hereof, showing title to the Land and, in addition, all access, ingress and egress and utility easements and rights-of-way of record relating thereto, naming Buyer as the proposed insured, with title being subject only to general real estate taxes for the year 2004 not yet due and payable; covenants, conditions and restrictions of record (that do not interfere with the Buyer's development of the Land, in Buyer's sole discretion); private, public and utility easements (that do not interfere with the Buyer's development of the Land in Buyer's sole discretion) (the foregoing collectively, the "**Permitted Exceptions**") and any other title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may and shall be removed by the payment of money by Seller or insured over in a manner reasonably satisfactory to Buyer at or prior to Closing as confirmed by Buyer with the Title Company (such other title exceptions being hereinafter referred to as the "**Removable Exceptions**"), together with copies of all underlying title documents (the "**Title Documents**"). If the Title Commitment discloses exceptions to title other than the Permitted Exceptions and Removable Exceptions, such exceptions are referred to as "**Unpermitted Exceptions**", or if the Survey discloses defects or other matters (the "**Survey Defects**") that would result in Unpermitted Exceptions, then Seller shall have thirty (30) days from the date of the delivery of the later of the Title Commitment, Survey or the Title Documents (the "**Seller's Cure Period**"), in which to have the Unpermitted Exceptions removed from the Title Commitment, or to remove the Survey Defects, or to have the Title Company commit to insure over same in a manner satisfactory to Buyer. If the Unpermitted Exceptions or Survey Defects are not removed or insured over in a manner reasonably satisfactory to Buyer on or before the Closing Date, Buyer may elect, in addition to other remedies available to Buyer as set forth herein, upon written notice to Seller made within ten (10) days after the expiration of the Seller's

Cure Period to (i) terminate the Contract; (ii) extend the Seller's Cure Period to allow Seller additional time for removing or having the Title Company insure over; or (iii) take title as it then is and deduct from the Purchase Price an amount necessary to discharge any Unpermitted Exceptions or Survey Defects. In the event Buyer elects (iii) above, then any Unpermitted Exceptions and Survey Defects shall become Permitted Exceptions hereunder, provided any Unpermitted Exceptions or Survey Defects to which the Title Company commits to insure shall be subject to Buyer's approval in its sole discretion. As a condition of the Closing, and at Seller's expense, the Title Commitment shall be later dated to cover the Closing Date and the recording of the Deed.

10) **ESCROW CLOSING.** This sale shall be closed through an escrow at the Title Company in accordance with the general provisions for such closings consistent with the terms of this Contract. Upon creation of such an escrow, anything in this Contract between the parties to the contrary notwithstanding, payment of the Purchase Price and delivery of the Deed shall be made through the escrow. The cost a New York Style closing and closing fee shall be split between the Seller and Buyer.

11) **PRORATIONS.** Real estate taxes and assessments payable with respect to the Land (including, without limitation, any assessments imposed pursuant to any covenants burdening the Land or for any improvements added prior to the Closing Date) shall be prorated through the Closing Date. If the amount of the current general real estate taxes is not ascertainable on the Closing Date, the proration will be based on 105% of the most recently available tax bill. The parties acknowledge that as the Buyer is a governmental entity, this transaction is exempt from any State, County or Local real estate transfer tax pursuant to 35 ILCS 200/31-45(b).

12) **COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER.** The covenants, representations and warranties contained in this Paragraph shall be deemed remade as of the Closing Date, and shall survive the Closing, and shall be deemed to have been relied upon by the Buyer in consummating this transaction, notwithstanding any investigation the Buyer may have made with respect thereto, or any information developed by or made available to the Buyer prior to the Closing and consummation of this transaction. Seller covenants, represents and warrants to the Buyer as to the following matters, each of which is so warranted and to be true and correct as of the Effective Date, and Seller shall reaffirm to be true and correct as of the Closing Date:

(A) **Title Matters.** Seller has good and marketable fee simple title to the Land, subject only to the Permitted Exceptions.

(B) **Violations of Zoning and Other Laws.** Seller has received no notice, written or otherwise, from any governmental agency alleging any violations of any statute, ordinance, regulation or code. The Land as conveyed to Buyer shall include all rights of the Seller to use of any off-site facilities, including, but not limited to, storm water detention facilities, necessary to

ensure compliance with all zoning, building, health, fire, water use or similar statutes, laws, regulations and orders and any instrument in the nature of a declaration running with the Land.

(C) Pending and Threatened Litigation. There are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Land.

(D) Eminent Domain, etc. There is no pending or contemplated eminent domain, condemnation or other governmental taking of the Land or any part thereof.

(E) Access to Land Utilities. No fact or condition exists which would result in the termination or impairment of access to the Land from adjoining public or private streets or ways or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.

(F) Assessments. There are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed and there are no special or general assessments pending against or affecting the Land.

(G) Authority of Signatories; No Breach of Other Agreements; etc. The execution, delivery of and performance under this Contract is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Contract do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which Seller or the Land are bound; and will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court, domestic or foreign, to which Seller or the Land are subject or bound.

(H) Executory Agreements. Seller is not a party to, and the Land is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Land, other than this Contract. Buyer shall not, by reason of entering into or Closing under this Contract, become subject to or bound by any agreement, contract, lease, license, invoice, bill, undertaking or understanding which it shall not have previously agreed in writing to accept. Seller warrants and represents that no written leases, licenses or occupancies exist in regard to the Land and further, that no person, corporation, entity, tenant, licensee, or occupant has an option or right of first refusal to purchase, lease or use the Land, or any portion thereof.

(I) Mechanic's Liens. All bills and invoices for labor and material of any kind relating to the Land have been paid in full, and there are no mechanic's liens or other claims outstanding or available to any party in connection with the Land.

(J) Governmental Obligations. There are no unperformed obligations relative to the Land outstanding to any governmental or quasi-governmental body or authority.

(K) Hazardous Material. (1) From the Effective Date to the date the Buyer obtains possession of the Land as defined in this Contract, the Seller agrees (i) to operate, maintain and manage the Land (including the groundwater thereunder) in the ordinary course of business; (ii) that the Land (including the groundwater thereunder) will comply in all respects, and will remain in compliance, with all applicable federal, state, regional, county and local laws, statutes, rules, regulations or ordinances concerning public health, safety or the environment, and all Environmental Laws (as defined below); and (iii) to maintain existing insurance on the Land.

(2) The Seller has no actual or constructive knowledge of: (i) the presence of any Hazardous Materials (as defined below) on, under or in the Land (including the groundwater thereunder); (ii) any spills, releases, discharges or disposal of Hazardous Materials that have occurred or are presently occurring on or onto the Land (including the groundwater thereunder); (iii) any spills or disposal of Hazardous Materials that have occurred or are occurring off the Land (including the groundwater thereunder) as a result of any construction on or operation and use of the Land (including the groundwater thereunder); (iv) the presence of any equipment containing polychlorinated biphenyl ("PCB"); or (v) the presence of any asbestos in use or on the Land.

(3) To the best knowledge and belief of the Seller, the Land has never been used and from the Effective Date to the date Buyer obtains possession of the Land will not be used as a landfill, open dump or a waste dump, or for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical material substance or waste. The Land (including the groundwater thereunder) does not contain underground storage tanks or Hazardous Materials, and the Seller has received no notice of nor does the Land (including the groundwater thereunder) violate any Environmental Laws. For purposes of this Contract, the phrase "Environmental Laws" shall mean any federal, state, county or local law, statute, ordinance, order, decree, rule or regulation (including but not limited to judicial orders, administrative orders, consent contracts and permit conditions) relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde, to the treatment, storage, disposal or management of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq. ("CERCLA"), the Resource

Conservation and Recovery Act, 42 U.S.C. §6901, et seq. ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. §2601, et seq. ("TSCA"), the Occupational, Safety and Health Act, 29 U.S.C. §651, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq., the Safe Drinking Water Act, 42 U.S.C. 300f, et seq., and §3001, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq. ("HMTA"), the Clean Water Act, 33 U.S.C. §1251, et seq., the Uranium Mill Tailing Radiation Control Act, 42 U.S.C. §655, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 42 U.S.C. §136, et seq., the National Environmental Policy Act, 42 U.S.C. §4321, et seq., the Noise Control Act, 42 U.S.C. §4901, et seq., the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §4821, et seq., the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, et seq. ("EPCRA"), and the Illinois Environmental Protection Act, and other comparable federal, state, county or local laws and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder, as any or all of the foregoing may from time to time be amended, supplemented or modified. For the purposes of this Contract, the phrase "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws or the release of which is regulated under Environmental Laws. Without limiting the generality of the foregoing, the term "Hazardous Materials" will include: "hazardous substances" as defined in CERCLA; "extremely hazardous substances" as defined in EPCRA; "hazardous waste" as defined in RCRA; "hazardous materials" as defined in HMTA; "chemical substance or mixture" as defined in TSCA; crude oil, petroleum and petroleum products or any fraction thereof (including "petroleum" as that term is defined in 42 U.S.C. §6991(8)); radioactive materials including source, by-product or special nuclear materials; asbestos or asbestos-containing materials; and radon.

(4) The Seller has received no notice of and to the best of Seller's knowledge and belief the Land (including the groundwater thereunder) does not violate any law, regulation or contract applicable to the Land (including the groundwater thereunder) or its use. With respect to the Land (including the groundwater thereunder), if the Seller shall (i) receive notice that any violation of any federal, state, county or local Environmental, health or safety law or regulation may have been committed or is about to be committed with respect to the Land (including the groundwater thereunder), (ii) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed alleging violations of any federal, state, county or local Environmental law or regulation or requiring Seller to take any action in connection with the release of any Hazardous Materials into the environment, (iii) receive any notice from a federal, state, county or local governmental agency or private party alleging that the Seller may be liable or responsible for costs associated with a response to or cleanup of a release of any Hazardous Materials into the environment or any damages caused thereby, (iv) receive any notice that the Seller is

subject to federal, state, county or local investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, or (v) receive any notice that the Land or assets of the Seller are subject to a lien in favor of any governmental entity for any liability under the federal, state, county or local Environmental Laws or regulations or damages arising from or costs incurred by such governmental entity in response to a release of a hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, then the Seller shall promptly provide the Buyer with a copy of such notice, and in no event later than seven (7) days from the Seller's receipt thereof.

(5) There are no proceedings pending or, to the best knowledge and belief of the Seller, threatened against or affecting the Seller in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, would materially and adversely affect the Land. The Seller is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal, which default would materially and adversely affect the Land.

(6) To the best knowledge and belief of the Seller, the Land has not been built or used, in whole or in part, on or as a landfill and the soil is not contaminated by Hazardous Substances or Hazardous Materials. The Seller represents and warrants that the Land is not located in any flood plain or flood hazard area as designated by any local, state or federal government or governmental agency.

(7) The Seller covenants that they shall not create, store, release or allow the retention, storage or release of any Hazardous Materials on the Land.

(8) When used in this Contract, the expression "to the best knowledge and belief of Seller," or words to that effect, is deemed to mean that the Seller, after reasonable examination, investigation and inquiry is not aware of any thing, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes.

(9) In the event of the breach of any covenant, warranty or representation made herein or elsewhere in this Contract by the Seller, the Seller agrees to indemnify and hold the Buyer, its elected and appointed officials, president and trustees, officers, servants, employees, volunteers, agents, successors and assigns (collectively, the "**Buyer's Affiliates**") harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorney's fees) and charges which the Buyer's Affiliates may incur or to which the Buyer's Affiliates may become subject as a direct or indirect consequence of such breach, including all incidental and consequential damages. Further, with respect to this Contract, the Seller agrees to indemnify and hold the Buyer and the Buyer's Affiliates harmless from and against any and all claims, demands, damages, losses, liens,

liabilities, penalties, fines sought in any lawsuit, administrative action or other proceedings, including reasonable attorney's fees, costs and expenses, arising directly or indirectly from, out of, or in any way connected with: (a) the presence of any Hazardous Materials on or off the Land; or (b) any violation or alleged violation of any local, state or federal environmental law or regulation, ordinance, administrative or judicial order relating to Hazardous Materials attributable to events occurring before the closing date.

(10) The Seller's obligations hereunder shall in no way be impaired, reduced or released by reason of the Buyer's omission or delay to exercise any right described herein or in connection with any notice, demand, warning or claim regarding violations of any Environmental Laws governing the Land (including the groundwater thereunder).

(11) The Seller's liability hereunder shall not be limited by the other provisions contained in the Contract, and Seller agrees that the indemnification contained herein is separate, independent of and in addition to Seller's other undertakings under the Contract.

(12) The indemnification contained in this Contract shall be continuing, irrevocable and binding on the Seller and the Seller's respective heirs, legal representative, successors and assigns, and this Contract shall be binding upon and shall inure to the benefit of the Buyer and the Buyer's successors and assigns.

(M) Easements. The Land is adjacent to and has full and free access to and from public streets, such that no private easements or agreements are necessary to afford access to or from the Land.

(N) Section 1445 Withholding. Seller represents that they are not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is/are, therefore, exempt from the withholding requirements of said Section. Seller will furnish Buyer at closing with the Exemption Certificate set forth in said Section.

(O) No Condominium. There has never been any documentation executed, recorded or transmitted and no other actions have been taken, by Seller or others, to establish all or any portion of the Land as a condominium or cooperative property under any applicable law or ordinance.

13) **DEFAULT AND CONDITIONS PRECEDENT TO CLOSING**. In all events, the obligations of Buyer to make the payments and to close this transaction are contingent upon; (i) title to the Land being shown to be good and marketable as required by this Contract or being accepted by Buyer; (ii) the conditions precedent to Closing provided for in this Contract being satisfied or, for any non-fulfilled condition(s), waived by Buyer in writing, (iii) the representations and warranties of Seller contained in Paragraph 12 hereof and elsewhere in this Contract being true and accurate or waived by Buyer in writing

as of the Closing Date; and (iv) Seller having performed all of its covenants and otherwise having performed all of its obligations and fulfilled all of the conditions required of it in order to Close hereunder. If before the Closing Date, Buyer becomes aware of a breach of any of Seller's representations and warranties or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to Close, Buyer may, at its option: (a) elect to enforce the terms hereof by action for specific performance; or (b) attempt to cure such breach or failure by Seller for a period of up to thirty (30) days following the Closing Date, charging Seller for any costs incurred in doing so and, following such attempt, to either: (x) terminate this Contract and receive a prompt refund of the Earnest Money (if any), or (y) proceed to Close this transaction notwithstanding such breach or nonperformance. In all events, Buyer's rights and remedies under this Contract shall always be non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other, including all rights and remedies available to it at law or in equity. If Buyer is found to have defaulted under the terms of this Contract by a court of competent jurisdiction, Buyer shall pay all reasonable attorneys' fees and court costs incurred by Seller. Notwithstanding the foregoing, Buyer shall not be in default of this Contract if its actions are due to the legislative acts of local or state government and the parties agree that no default of or by either party shall be deemed to have occurred unless and until Notice of any failure by the non-defaulting party has been sent to the defaulting party and the defaulting party has been given a period of ten (10) days from receipt of the Notice to cure the default.

14) **BINDING EFFECT.** This Contract shall enure to the benefit of, and shall be binding upon the parties and their respective heirs, legatees, transferees, assigns, personal representatives, owners, agents, administrators, executors, and/or successors in interest of any kind whatsoever.

15) **BROKERAGE.** The Buyer and Seller each represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such party's actions (or claiming through such party), is entitled to compensation as a consequence of this transaction. Each party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Contract. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorney's fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder.

16) **NOTICES.** All notices ("**Notice**" or "**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 parties to this Contract at the addresses set forth below or at such other addresses as may be designated in writing. Notices personally delivered and 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 may change its address for Notice purposes by giving Notice to that effect in the manner set forth herein, provided such change of address shall not be deemed received until actual receipt thereof by the addressee. Notices sent by or to Seller's attorney or Buyer's attorney shall constitute effective notice hereunder.

If to Buyer: Village of Lombard
Attn: Village Manager
255 East Wilson
Lombard, Illinois 60148
PHN.: (630) 620-5700
FAX: (630) 629-2374

with a copy to: Klein, Thorpe and Jenkins, Ltd.
Attn: George A. Wagner, Esq.
20 North Wacker Drive, Suite 1660
Chicago, IL 60606
PHN.: (312) 984-6468
FAX: (312) 984-6444

If to Seller: Yan Chin Yung and Shuet Fong Mak Yung
54 W. 19th Street Lombard
Illinois 60148
PHN.:
FAX:

with a copy to: Patricia Dwyer Moy
160 Burlington Avenue
Clarendon Hills, Illinois 60514-1259
PHN.: 630-323-3111
FAX: _____

17) **RIGHT OF WAIVER.** Each and every condition of the Closing other than the Buyer's duties at Closing is intended for and is for the sole and exclusive benefit of Buyer. Accordingly, Buyer may at any time and from time to time waive each and any condition of closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by Buyer shall, unless otherwise herein provided, be in a writing signed by Buyer and delivered to Seller.

18) **DISCLOSURE OF INTERESTS.** In accordance with Illinois law, 50 ILCS 105/3.1, prior to execution of this Contract by the Buyer, an owner, authorized trustee, corporate official or managing agent, must submit a sworn affidavit (the "**Disclosure Affidavit**") to the Buyer, disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Land, and every shareholder entitled to receive more than 7 ½% of the total distributable income of any corporation having any real interest, real or personal, in the Land, or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the corporation or its managing agent that there is no readily known individual having a greater than 7 ½% percent interest, real or personal, in the Land. The Disclosure Affidavit shall be substantially similar to the one described in Exhibit "C" attached hereto and made a part hereof.

19) **ASSIGNMENT.** This Contract may not be assigned to any other person or entity by either party without the prior written consent of the other party.

20) **MISCELLANEOUS.**

A) Time is of the essence of this Contract.

B) Wherever under the terms and provisions of this Contract the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day.

C) This Contract may be executed in counterparts, each of which counterpart shall constitute an original, but all together shall constitute one and the same Contract.

D) This Contract provides for the purchase and sale of real property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that for the purpose of any litigation relative to this Contract and its enforcement, venue shall be in the Circuit Court of DuPage County, Illinois and the parties consent to the in personam jurisdiction of said Court for any such action or proceeding.

E) The terms, provisions, warranties and covenants made herein, shall survive the Closing and delivery of the deed and other instruments of conveyance, and this Contract shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

F) The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the context, but are not part of the context.

G) In the event any term or provision of this Contract shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Contract shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

H) The parties hereto agree that this Contract may be recorded with the DuPage County Recorder of Deeds against title to the Land at Buyer's expense.

I) The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract.

J) Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Real Estate Settlement Procedures Act of 1974. In the event that either party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said party.

K) The parties warrant and represent that the execution, delivery of, and performance under this Contract is pursuant to authority, validly and duly conferred upon the parties and the signatories hereto.

L) In construing this Contract and/or determining the rights of the parties hereunder, no party shall be deemed to have drafted or created this Contract, or any portion thereof.

M) This Contract and the Exhibit(s) attached hereto, if any, and made a part hereof, or required hereby, embody the entire contract between the parties hereto with respect to the Land and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no Notices of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.

21) **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the Village President and Village Clerk sign this Contract, which date shall be the date above their signatures.

22) **ACCESS EASEMENTS.** It shall be a condition precedent that Buyer obtain at Closing fully executed and recordable access easement agreements, as approved by the Buyer, from the fee simple title owners (individually as the "Grantee") of the real property noted on Exhibit B as 106, 108, 110 and 112 (individually as "Lot"). The access easement agreement (the "**Access Easement Agreement**") shall

provide, among other things, that (i) Grantee waives any rights Grantee may have in the use of the Land for ingress and egress or otherwise; and (ii) Grantee shall have a non-exclusive easement for vehicle access over, on and across the Land from and to Orchard Terrace to Grantee's Lot (the "Access Easement"); and (iii) in the event that Grantee redevelops its Lot to construct a new building, Grantee shall be required to construct a driveway on its Lot 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 WITNESS WHEREOF, the parties hereto have executed this Contract as of the day, month and year first above written.

Date Buyer Signed: _____

Date Seller Signed: _____

BUYER:
VILLAGE OF LOMBARD
an Illinois municipal corporation

SELLER:
Yan Chin Yung and Shuet Fong Mak Yung

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

By: _____
Name: Yan Chin Yung

Attest:
By: _____
Name: Barbara J. Johnson
Title: Deputy Village Clerk

By: _____
Name: Shuet Fong Mak Yung

EXHIBIT "A"
LEGAL DESCRIPTION

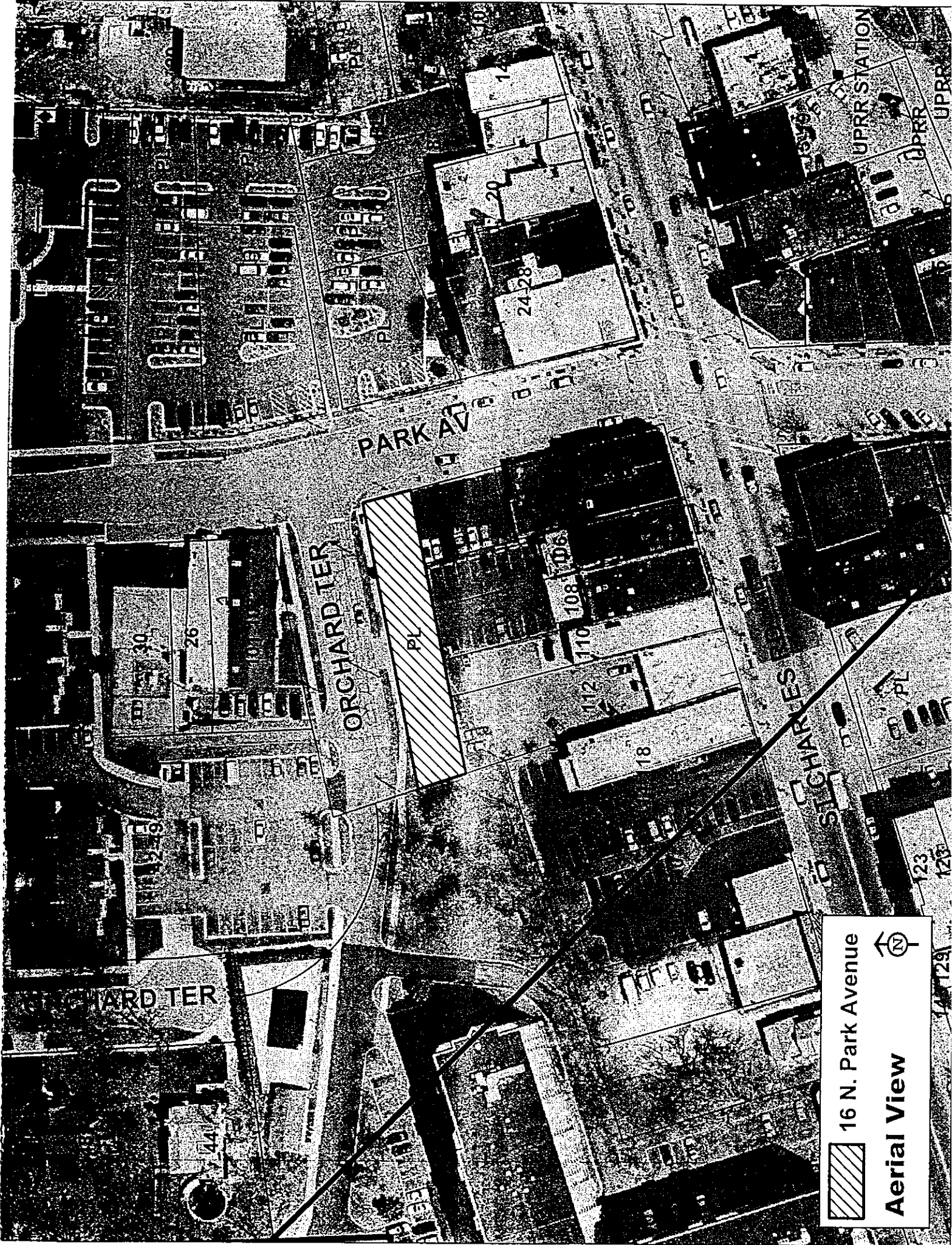
Lot 28 in Grove Park Subdivision, being a subdivision of part of Lot 1 in Block 11 in Lombard, Sections 5, 6, 7 and 18, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded November 19, 1926, as Document 225275, in DuPage County, IL.

PIN: 06-07-204-022-0000

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

EXHIBIT B
Arial View of Land

(See attached)





 16 N. Park Avenue

Aerial View

EXHIBIT C

STATE OF ILLINOIS)
) ss.
COUNTY OF _____)

DISCLOSURE AFFIDAVIT

I, _____, reside at _____ in the town of _____, County of _____, State of _____, being first duly sworn and having personal knowledge of the Property in question, swear to the following:

1. That I am over the age of eighteen and the (choose one) _____ (i.e., owner, authorized trustee, corporate official or managing agent of the real property being sold to the Village of Lombard (herein sometimes referred to as "Village").

2. That the Property in question is a vacant lot, located at 16 N. Park Avenue (on Orchard Terrace and Park Avenue), in the Village of Lombard, State of Illinois (hereinafter "Land") as legally described in Exhibit A to the Contract.

3. That I understand that pursuant to 50 ILCS 105/3.1, prior to execution of the Real Estate Contract (the "Contract") between the Owner(s) of record and the Village, state law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Village disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Land, and every shareholder entitled to receive more than 7 1/2% of the total distributable income of any corporation having any interest, real or personal, in the Land.

4. As the owner, authorized trustee, corporate official or managing agent, I declare under oath that (choose one):

(a) The owners or beneficiaries of the trust are:

_____, or

(b) The shareholders with more than 7 1/2% interest are:

_____, or

(c) The corporation is publicly traded and there is no readily known individual having greater than a 7 1/2% interest in the corporation.

5. This instrument is made to induce the Village to accept title to the Land in accordance with 50 ILCS 105/3.1.

Affiant

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200__.