

Exhibit A

**AN AGREEMENT RELATING TO THE APPROVAL
OF A MAJOR DEVELOPMENT,
THE MAKING OF REQUIRED IMPROVEMENTS,
AND PROVIDING FUNDS, THEREFOR, FOR
1301 NORTH LOMBARD ROAD, LOMBARD, IL**

This Agreement, made and entered into this ___ day of _____, 2005 by and between **ICE REALTY GROUP, LLC** (hereinafter referred to as the "Developer"), **U.S. BANK N.A.**, Successor to **FIRST COLONIAL TRUST COMPANY**, as Trustee under a Trust Agreement dated December 22, 1972 and known as Trust No. 228-4 (hereinafter referred to as the "Owner"), and the **VILLAGE OF LOMBARD**, an Illinois municipal corporation, (hereinafter referred to as the "Village").

WITNESSETH:

WHEREAS:

- A.** The Developer is the contract purchaser of real estate situated within the corporate limits of the Village, legally described in Exhibit 1 attached hereto and made a part hereof (hereinafter referred to as the "Grant Property"); and
- B.** The Developer also requests to be the beneficiary of vacation of portions of the Lombard Road public rights-of-way, legally described in Exhibit 2 and 3 attached hereto and made a part hereof (hereinafter cumulatively referred to as the "Vacation Properties" or the "Subject Vacation")(the Grant Property and the Vacation Properties cumulatively referred to as the "Subject Property"); and
- C.** The Developer is also the contract beneficiary of easements for motor vehicle parking and outside storage as further described herein for real estate situated within the corporate limits of the Village, legally described in Exhibit 4 attached hereto and made a part hereof (hereinafter referred to as the "Commonwealth Edison Property"); and
- D.** Developer has also petitioned the Village for, among other things, approval of a planned development with deviations to facilitate the proposed development of the Subject Property and the Commonwealth Edison Property; and
- E.** Developer desires and proposes to develop the Subject Property and the Commonwealth Edison Property, which is located within the I Limited Industrial

District, pursuant to and in accordance with this Agreement and to make certain subdivision improvements for the Subject Property; and

- F.** Public hearings were held by the Village Plan Commission on June 20, 2005 for the purpose of considering, among other things, whether the I Limited Industrial Property should be granted a conditional use for a I Limited Industrial Planned Development under the Lombard Zoning Ordinance, with certain deviations and variations allowed; and the Plan Commission has submitted to the Corporate Authorities (as hereinafter defined) of the Village its findings and recommendations with respect to said applications; and
- G.** The Corporate Authorities (as hereinafter defined) have carefully reviewed and considered the application of the Developer and have determined that the Planned Development should be approved, but only in accordance with this Agreement; and
- H.** Conditional upon the execution of this Agreement, the Village has granted a conditional use for a Planned Development on the I Limited Industrial Property, with certain variations and deviations allowed, in accordance with the provisions of the Lombard Zoning Ordinance; and
- I.** A final plan of planned development/planned development plat will be recorded upon: (a) approval by the Village; (b) receipt by the Village of an Irrevocable Letter of Credit for an amount specified as security for Public Improvements and for such other purpose or purposes as herein mentioned, if any; and (c) execution of this Agreement; and
- J.** The planned development shall not be considered approved until final engineering for off-site public improvements as set forth herein has been submitted to and approved by the Village; and
- K.** Various plans and specifications for the making of required public and private improvements, landscaping, sidewalks, streetlights, parkway trees, and storm drainage facilities, on-site or off-site, have been or are to be approved by the Corporate Authorities of the Village; and
- L.** Developer has or will enter into all necessary contracts for the Public and Private Improvements (as hereinafter defined) required to be made for the Property pursuant to the Planned Development Ordinance, the final planned development plan, this Agreement or otherwise; and
- M.** This Agreement shall provide the Owner and the Developer's obligations as to the development of the Subject Property, the Commonwealth Edison Property and for off-site improvements as set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing, the premises and the mutual covenants and agreements hereinafter set forth and other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereto agree as follows:

SECTION 1. - Zoning.

A. I Limited Industrial District Planned Development.

The Corporate Authorities have approved a conditional use for a Planned Development for the I Limited Industrial Property. All regulations of the I Limited Industrial District shall apply except as modified by the Planned Development Ordinance or this Agreement.

B. Plan Approval and Reference.

The Subject Property shall be developed as a I Limited Industrial Planned Development in accordance with this Agreement and the Planned Development Ordinance and in compliance (or in the case of preliminary plans, substantial compliance) with the following plans and exhibits which the Village has approved or hereby approves herein and in accordance with Exhibit 5 (Concept Site Plans) and subject to a Site Plan Approval from the Village.

In the event, and to the extent, the Planned Development Ordinance, which is hereby incorporated by reference, by its terms and conditions requires that the Property development proceed in a manner inconsistent with or per terms and conditions in addition to the terms of this Agreement, the Planned Development Ordinance shall control.

C. Permitted, Conditional, and Prohibited Uses.

1. The Village acknowledges that the Planned Development Ordinance grants a conditional use to permit more than one principal building on the Subject Property. For purposes of this Agreement, multiple principal buildings on or over such lots shall be deemed permitted uses.
2. Uses on the I Limited Industrial Property shall be permitted, allowed as a conditional use only, or prohibited, all in accordance with the use listings set forth on the Use Chart attached hereto as Exhibit 6_. The Lombard Director of Community Development may determine zoning compliance for land uses which, although not identified by name on Exhibit 6, are deemed to be similar in nature and clearly compatible with the uses on Exhibit 6.
3. Approval of any principal buildings or structures consistent with the Concept Site Plans shall be submitted to the Lombard Plan Commission for Site Plan Approval. Same shall not require a public hearing or approval by the Village Corporate Authorities.

4. Any outside storage of motor vehicles, equipment or product associated with a legally permitted business establishment operating on the Subject Property, shall be permitted to be located on the Commonwealth Edison Property or on the Subject Property provided that said storage is ancillary to a permitted use established on the Subject Property. However, storage of bulk landscape material on the Commonwealth Edison Property shall be prohibited. The final design of the Commonwealth Edison storage area must meet full provisions of Village Code, except as varied by this Agreement or the Planned Development Ordinance. Owner and Developer shall submit final plans any improvements on the Commonwealth Edison Property as part of a Site Plan Approval application to the Village.
5. Off-street parking facilities for different buildings, structures or uses, or for a mixed-use building or structure, may be provided collectively and permitted for two or more users. In the event two or more users with complementary parking demand apply for site plan approval which includes a total number of parking spaces less than cumulatively required for all uses on such sites, or where the parking on any one of the sites proposed for a shared parking arrangement is less than required by the Lombard Zoning Ordinance, site plan approval may be denied on such grounds unless the applicants provide satisfactory evidence to the Director of Community Development that (a) the cumulative parking proposed to be provided will be sufficient for all proposed uses, and (b) that appropriate agreements and protections, subject to approval as to form and content by the Director of Community Development and the Village attorney, will be made to ensure the continued availability of adequate parking for all proposed and future users of all such Sites.

D. Development of Subject Property.

The development of the Subject Property shall comply with (a) the plans which are exhibits to this Agreement, (b) the Planned Development Ordinance, (c) the Lombard Municipal Code except as the provisions thereof may be inconsistent with any of the aforesaid or with the provisions of the Planned Development Ordinance, and (d) the following regulations as set forth in Sections E through J below:

E. Bulk and Open Space Requirements.

1. In lieu of Section 155.418.E of the Zoning Ordinance, the Village agrees to vary the minimum lot width of 80 feet as required in the I Limited Industrial District to 70 feet in width to provide for the consolidation of the Grant Property and the Subject Vacations to be consolidated into a single lot of record.
2. In lieu of the provisions of Section 155.418.F of the Zoning Ordinance, providing for minimum 25 foot front yards, 25 foot corner side yards, 15

foot interior side yards, and 15 foot rear yards (or 1 foot yards along railroad rights-of-way) for principal buildings and structures, the Village supports a deviation where these yards will not be at the perimeter of the proposed planned development boundaries (i.e., along the Commonwealth Edison right-of-way line or the proposed wetland outlot), or along the existing west property line of the Lombard Road right-of-way subject to the vacation.

3. In lieu of the provisions of Section 155.418.H of the Zoning Ordinance, the Village approves a deviation requiring that the minimum open space for each use be not less than 10 percent of the lot, provided that the overall percentage of open space in the entire Planned Development (including any proposed wetland outlots) is not less than 12.5 percent.
4. In the event that the Village annexes the property owned by the DuPage County Forest Preserve District abutting and immediately east of the Subject Property (hereinafter the “Forest Preserve Property”) and approves a map amendment to rezone the Forest Preserve Property to the Village’s C/R Conservation District, the 25 foot landscape yard setback requirement shall apply, in lieu of Sections 155.418.K and 155.707.A.4 of the Zoning Ordinance.
5. In lieu of Sections 155.706.B and C and 155.709 of the Zoning Ordinance requiring that lot interiors, perimeters and perimeter parking lots provide a minimum of five feet of landscaped area, a Village supports a deviation, subject to Site Plan approval, to eliminate the five foot perimeter landscape requirement for the south property line of the subject property and of the north property line of the Commonwealth Edison right-of-way. Interior parking lot landscape islands shall not be required on the Commonwealth Edison right-of-way.

F. Design Standards.

1. In the site plan approval process, the Village may consider the compatibility of the architecture, design and materials proposed for development of a site with the design and materials used or proposed to be used for other sites. Exclusive of window areas, exterior facades shall consist of stone, brick, split face block, precast concrete, glass or cedar. All buildings shall meet the full provisions of the Lombard Building Code and any adopted amendments thereto. For purposes of this Agreement, a metal pre-fabricated building with an exterior building façade comprised of the building materials noted above shall be deemed satisfactory in meeting this requirement.
2. All outdoor trash collection areas shall be screened on all four sides, with a masonry or concrete wall uniform with the principal building; such areas shall be located no closer than 15 feet to any other structure unless protected with approved automatic fire sprinklers.

3. Concurrent with a site plan approval application, the Owner and Developer shall submit a companion landscape plan for review and approval. The plan shall meet the provisions of the Zoning Ordinance, except as varied as part of this Agreement.
4. Notwithstanding any other provision of this Agreement, the lighting fixtures to be utilized for all private roadway lighting and parking lot lighting shall be uniform. The developer shall provide complete specifications and photometric plans for the proposed fixtures. Such additional information shall be reviewed and approved by the Director of Community Development and the Director of Public Works prior to installation.

G. Signage.

1. The common signage for the Subject Property shall be compatible with the Entry Feature Signage proposed for the development entrance.
2. To the extent that the Sign Ordinance bases signage rights and regulations on street frontage, any frontage on perimeter drive aisles on the Subject Property shall be considered to satisfy public street frontage criteria or requirements. Signs need not be legible from the nearest right-of-way if they are legible from a private street or perimeter drive aisle, whichever is nearer the sign.
3. Notwithstanding anything to the contrary in the Zoning Ordinance or Sign Ordinance, the Plan Commission may allow variations and deviations from the Lombard Municipal Code regarding signage on the Property as part of the site plan approval process.
4. In lieu of Section 153.507 (D) of the Sign Ordinance limiting to one (1) the number of freestanding signs on any one parcel in an I District, the Village authorizes a deviation to allow more than one freestanding signs and what combination of signs should be allowed for the Site as part of the Site Plan approval process.
5. In lieu of Section 153.507 (B)(5)(b) and (c) of the Sign Ordinance allowing for signage to exceed 6 feet in height and 30 square feet in area in the I District, the Village authorizes a deviation to allow for a height deviation for the main entrance sign proposed to be located at the entrance to the development, as part of the Site Plan approval process.
6. In lieu of Section 153.507(B)(11)(a) and (b) of the Sign Ordinance, the Village authorizes a deviation to allowing for more than one wall sign per street front exposure in the I District, as part of the site plan approval process.

7. The clear line of sight triangle at the entrance to the Subject Property shall be represented on all plans, as appropriate, and no deviations are permitted unless the Plan Commission, through the site plan approval process, determines that public safety will not be compromised.

H. Temporary Structures.

Owner and Developer, their contractors, subcontractors, suppliers and representatives shall have the right to maintain temporary offices, structures, trailers and facilities on any part of the Subject Property under development, and to use said facilities for sales purposes and for the purposes of storage of construction materials, supplies and equipment, any ordinance, regulation or rule of the Village to the contrary notwithstanding. Such facilities, other than trailers and storage facilities, shall require a permit from the Village and have a hard surface parking area approved by the Director of Community Development or his/her designee.

I. Subdivision and Site Plan Approval.

1. Upon receipt of final engineering plans for the off-site Lombard Road public improvements, the Village agrees to cause to be recorded the final plat of subdivision and any other documents which are required to be recorded by the agreements of the parties, Village ordinance, or other applicable law, as soon as practicable upon the satisfaction of all applicable conditions.
2. Owner and/or Developer shall grant or dedicate to Village and all other necessary parties all easements required by the Final Plat of Subdivision in conformance with the Subdivision and Development Ordinance or as otherwise approved by the Director of Community Development. All utility easements shall allow for a minimum 10-foot separation between utilities and shall provide no less than 15 feet from the centerline of the outermost utility to the nearest parallel boundary of the easement. All on-site public utilities owned and maintained by the Village or Glenbard Wastewater Authority shall be located within utility easements of at least 30 feet in width. The Village shall not be responsible for restoration of landscaping, parking areas or drive aisles where an easement exists.
3. Applications for site plan approval shall include the following and such other documents as the Director of Community Development may reasonably require to ensure compliance with all applicable agreements, ordinances, and regulations:
 - (a) A Site Plan of the Site;
 - (b) A Site Plan of the entire Subject Property and the Commonwealth Property;

- (c) Final engineering plans which are consistent with and conform to the final engineering plans approved for the Subject Property and which include information regarding remaining available capacity in the stormwater management facilities for the Subject Property;
 - (d) A Traffic Study, if requested by the Village;
 - (e) Elevations of proposed buildings;
 - (f) Landscape Plans for the Site; and
 - (g) Sample materials and colors of proposed buildings.
4. Site plan approval submittals shall include plans for all on-site improvements, if any, which are required by the Subdivision and Development Ordinance or Zoning Ordinance if the Village reasonably determines that such improvements should be required for the proposed use and development of the Site.

SECTION 2: Commencement of construction of the Public Improvements (as defined below) detailed herein may begin only after the Developer has delivered one (1) or more irrevocable letters of credit, in a form satisfactory to the Village, and issued by a bank or financial institution approved by the Village in an amount equal to one hundred fifteen (115%) percent of the Developer's engineer's estimate of cost of construction of the Public Improvements (as defined below) as approved by the Village's engineer (hereinafter referred to as the "Letter of Credit I"). Public improvements, as referenced within the Agreement, shall consist of the following improvements:

- A. any street reconstruction activities (including re-grading, sub-base improvements, curbing, surface improvements, and traffic control measures) to be constructed within the Lombard Road right-of-way.
- B. public sidewalks, street lighting and parkway trees and sod within the Lombard Road right-of-way.
- C. underground utilities (including water distribution system and sanitary sewer system improvements and appurtenances) that would ultimately be accepted by the Village as Village owned public improvements; and all related grading improvements.

Commencement of construction of the following improvements (hereinafter referred to as the "Site Improvements") may begin only after the Developer has delivered one or more irrevocable letters of credit, in a form satisfactory to the Village, and issued by a bank or financial institution approved by the Village in an amount equal to one hundred fifteen (115%) percent of the Developer's engineer's estimate of cost of construction of the Site Improvements as approved by the Village's engineer (hereinafter referred to as the "Letter of Credit II"; Letter of Credit I and Letter of Credit II shall be collectively referred to as the "Letters of Credit") and one hundred

fifteen (115%) percent of actual construction cost for pertaining to the development as shown on the Development Plans as set forth below:

- D. the stormwater detention facilities to be constructed on the Subject Property or the Commonwealth Edison Property;
- E. any underground utilities not included as part of the Public Improvements noted in Section C above (including private water distribution system lines, private sanitary sewer system lines, and storm sewers) with appurtenances; storm water control systems (including retention or detention ponds, drainage ways and related facilities); and all related grading improvements, all associated with the development of the Subject Property and/or the Commonwealth Edison Property; and
- F. parking lot pavement, curb and gutter, signage, pavement parking and lighting.

Given the phased nature of the proposed development, the Village also agrees to allow the Developer to submit separate letters of credit for either the partial or complete Site Improvements and/or the Public Improvements to be constructed as part of the submitted building permit application.

SECTION 3: The Owner and Developer agree to cause to be made, in relation to the development of the Subject Property with due dispatch and diligence, said Public Improvements as are required under the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code), the site plan, the landscape plans, and the engineering plans therefor and Lombard Road right-of-way improvements as depicted in Exhibit 7 and set forth herein.

The Owner and Developer will, when required to bring about progress in the work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said Public Improvements, to the end that said Public Improvements will be duly and satisfactorily completed within the time or times herein mentioned. The Developer agrees that all work in the construction of said Public Improvements shall be done in a good, substantial and workmanlike manner, that all manufactured materials used therein shall be new and of good quality, that same shall at all times be subject to inspection by the Village, shall all be satisfactory to the Village and shall be subject to the Village's approval. The Developer will at its sole cost and expense furnish all necessary engineering services as set forth in this agreement for said Public Improvements.

For any stormwater improvements located on land not within the Corporate limits of the Village and associated with the construction of any buildings or structures on the Subject Property, the Owner and Developer shall apply for and receive requisite approvals from the appropriate governmental jurisdiction prior to receiving final approval from the Village. The Owner and Developer shall provide the Village with copies of any approved plans and corresponding documentation from the controlling jurisdiction as deemed appropriate by the Village.

SECTION 4: The Public Improvements and Site Improvements subject to the Letter of Credit and included within the final site plan and engineering plans for the Subject Property shall

be completed within two (2) years of the recording of this Agreement, unless otherwise extended by amendment to this Agreement by the Corporate Authorities of the Village. The Letter of Credit, and all assurances, guarantees, acceptances, and related matters shall comply with the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code). The construction of the Public Improvements by the Developer and issuance of approvals by the Village relative to the Subject Property shall comply with the following schedule.

A. **Sediment and Erosion Control.**

Sediment and Erosion control measures shall be implemented as per the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code) prior to building permits or authorization to proceed with mass grading or other improvements to the Subject Property. Said measures shall be maintained during the entire construction process and shall be inspected and repaired as necessary after each significant rainfall. Failure to do so may result in the issuance of a stop work order.

B. **Authorization to proceed with Public Improvements and Site Improvements.**

Upon approval of the final engineering plans for the Public Improvements and Site Improvements as to the Subject Property, receipt of all required fees as to the Subject Property, approval of the Letter of Credit as to the Public Improvements, recording of this Agreement and completion of item "A" above, authorization to begin Public Improvements will be given by the Village.

C. **Construction of Stormwater Control System, and Public Improvements.**

Concurrent with an application to the Village for site plan approval of any buildings or structures on the Subject Property or the Commonwealth Edison Property, the Developer shall also submit stormwater management plans for the proposed development. Provided that the development receives site plan approval, the Developer shall construct such detention facilities located on the Subject Property per Village Code. All stormwater detention basins shall be operational prior to construction of the building foundation on the Subject Property. An operational stormwater detention pond and stormwater management system means that the volume of the stormwater detention pond is adequate for the flow being directed to it and the restrictor outlet is in place and that the system has been reviewed and approved by the Director of Community Development. Final grading and landscaping of the detention pond shall be completed in conjunction with final landscaping.

D. **Issuance of Building Permits.**

Building permits for work beyond grading, underground utilities, and building foundation may be issued upon provision of adequate emergency access to the building site (gravel sub base) and an operational fire hydrant within three hundred (300') feet of the subject building site.

E. **Certificates of Occupancy.**

A Certificate of Occupancy for the building on the Subject Property—shall be issued upon satisfactory completion of the following:

- 1) Inspection and approval by the Bureau of Inspectional Services;
- 2) Completion of the water distribution system including testing and chlorination;
- 3) Completion of the sanitary sewer system to the building(s);
- 4) Landscaping of the Subject Property must be substantially completed. This includes final grading and ground cover. This condition shall be waived by the Department of Community Development if a hardship exists, on account of winter conditions, provided a letter of credit in favor of the Village is posted by the Developer to ensure the completion of the landscaping improvements when weather permits; and
- 5) Record drawings (as built) of the site grading, detention pond, wetland outlot parcel, storm sewer and of the sanitary sewer and domestic water facilities required to serve any buildings shall be submitted and approved by the Director of Community Development.

F. **Other Improvements.**

- 1) Final grading and soil stabilization by sodding or by hydroseeding of the detention pond must be completed within fifteen (15) days of initial disturbance.
- 2) All required Public Improvements as to the Subject Property shall be completed within three (3) years of the approval of this Agreement or prior to acceptance of the Public Improvements, whichever date occurs first.

G. **Acceptance of Public Improvements.**

- 1) Final record drawings (as built), including final grading and all utilities, shall be submitted for the review and approval by the Director of Community Development prior to acceptance of the Public Improvements.
- 2) Engineer's Certification. The Developer's design engineer shall certify that the detention pond was constructed in accordance with the Village's flood control ordinances, and that the Public Improvements have been constructed substantially to plan.

- 3) All deficiencies described in the final punch list shall be satisfactorily completed and approved by the Directors of Public Works and Community Development.
- 4) A maintenance guarantee in the form of a letter of credit in the amount of ten (10%) percent of the cost of the Public Improvements shall be submitted to the Village and approved by the Village (hereinafter referred to as the "Maintenance Letter of Credit"). Said Maintenance Letter of Credit shall comply with the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code).
- 5) The Public Improvements to be dedicated to the Village shall be accepted by the Corporate Authorities upon receipt of a recommendation relative thereto from Village staff. Upon acceptance by the Corporate Authorities, the Letter of Credit that secured construction of the Public Improvements (see Section 1 above) shall be returned to the Developer.
- 6) The Maintenance Letter of Credit, upon inspection of the Public Improvements at the end of the two (2) year maintenance period as provided for in the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code), and determination that no deficiencies exist, shall be returned.

SECTION 5: Construction Damage to Existing Public Improvements.

Care shall be taken to avoid damage to existing public improvements, including utilities and curbs, during construction. Any existing public improvements damaged during construction shall be repaired to the satisfaction of the Village and in substantial compliance with this Agreement and all relevant Village codes and ordinances.

SECTION 6: Dedication of Public Improvements.

Excluding the requisite storm water drainage facilities constructed on the Subject Property or the Commonwealth Edison Property, upon approval and acceptance of the aforesaid Public Improvements by the Village, same shall become the property of the Village and subject to its control; and if deemed necessary or desirable by the Corporate Authorities of the Village, a formal dedication or conveyance to the Village shall be made by the Owner and Developer. Said conveyance shall also include a dedication of easements to the Village for utility and maintenance purposes where applicable.

SECTION 7: Development Phasing.

The Developer and Village recognize that the development of the Subject Property may occur in phases. In the event that the Developer seeks site plan approval of a portion of the Subject Property and not the Subject Property in its entirety, the Developer shall submit to the Village with the site plan approval application plans and specifications of all site improvements that are proposed to be constructed as part of the respective development. The Village reserves the right to require necessary site improvements to provide sufficient access in and around the

Subject Property as well as any necessary sanitary sewer, stormwater and public watermain, parking lot, lighting and landscape improvements, and associated infrastructure improvements, as part of the site plan approval application.

SECTION 8: Letter of Credit.

It is expressly understood that this Agreement is conditional upon and subject to the delivery to the Village of the document provided for in Sections 2 and 4G4 above from a financial institution approved by the Village, and subject to the Corporate Authorities of the Village approving same and placing same on file with the Village Clerk.

SECTION 9: Site Access.

Developer (and its contractors) shall keep all streets which provide access to the Subject Property reasonably clean from all mud, gravel and other debris at all times. If the Village determines that the streets are not kept reasonably clean, the Village reserves the right, after twenty-four (24) hours after notice to Developer, to sweep the street and invoice the Developer for the service the Village has rendered, with Developer hereby agreeing to pay the amount due the Village within fifteen (15) days of the receipt of any such invoice. Late payments by the Developer shall accrue interest at the rate of two (2%) percent per month, with the minimum interest payment being for a one (1) month period.

SECTION 10: Lombard Road Right-of-Way.

In lieu of public improvements along the Lombard Road public right-of-way immediately West of the Subject Property, the Owner and Developer have made an application to the Village for the vacation of two (2) segments of the Lombard Road right-of-way (the Subject Vacations) as depicted in Exhibits 2 and 3 attached hereto and made a part hereof. As part of the Subject Vacations and in consideration of development of the Subject Property, the Owner shall be responsible for the following:

A. **Vacation Appraisal.**

Pursuant to Section 154.203 (F)(4) of the Lombard Village Code, the Owner and Developer shall reimburse the Village for all costs associated with the real estate appraisal for the Subject Vacations.

B. **Payment for Right-of Way to be Vacated.**

Pursuant to 65 ILCS 5/11-91-1, an Ordinance vacating a street shall not become effective until the Owner and Developer pays compensation to the Village in an amount which, in the judgment of the Corporate Authorities, shall be the fair market value of the property acquired or of the benefits which will accrue to said owner by reason of the vacation. That the fair market value of that portion of the Subject Vacations as determined by a MAI appraiser is FIFTY THOUSAND (\$50,000.00) DOLLARS. However in consideration of wetland delineation work and environmental activities to address potential REFRA and CIRCLA issues that may be present exclusively within the Subject Vacations previously completed by the Developer, the Village shall waive payment of the appraised costs, provided

that the Developer provide the Village with written documentation denoting the costs paid by the Developer for said wetland and environmental activities. Costs paid by the Developer for all off-site improvements shall also apply.

C. **Plat of Vacation.**

The Owner and Developer shall reimburse the Village for all costs associated with the surveying, platting and recording costs associated with the Subject Vacations.

D. **Utility Grants of Easement.**

The plat(s) of vacation relative to the subject vacations shall provide the Village with a public utility and drainage easement for all existing and proposed drainage, water and sewer utilities within the Subject Vacations.

E. **Site Improvements for the Subject Vacations.**

In consideration of the Subject Vacations, and subject to approval by the Corporate Authorities of the Village, the Owner and Developer shall not be responsible for street improvements within the Subject Vacations. However, in consideration of the Subject Vacations, the Owner and Developer shall complete the following activities:

1.) **Lombard Road Cul-De-Sac.**

The Owner and Developer shall fully cooperate with the Village to effectuate the acquisition of additional land for public right-of-way purposes as depicted on Exhibit 8 attached hereto and made a part hereof (hereinafter referred to as the “Haney Dedication”). If the Owner of the property at 2N700 Lombard Road (hereinafter referred to as the “Haney Property”) does not agree to the acquisition of his property for public right-of-way purposes by September 1, 2005, the Developer shall not be required to construct any improvements within the area outside of the existing Lombard Road right-of-way. However, in such case, the Developer shall be required to enter into a maintenance agreement for snow plowing activities for the Lombard Road right-of-way north of Cortland Avenue, and vehicular access will be provided on the Subject Property to accommodate the Village’s fire ladder truck.

2.) **Lombard Road Right-of-Way Improvements South of the Commonwealth Edison Right-of-Way.**

The Owner and Developer shall be required to take all actions necessary to provide full public improvements, as would be required pursuant to the Village’s Subdivision and Development Ordinance (Chapter 154 of the Village Code), along Lombard Road and within the Haney Dedication north of the Cortland Avenue right-of-way and south of the Commonwealth Edison right-of-way, as depicted in Exhibit 7. The design

of said public improvements shall be constructed consistent with Section 154.306 (D) of the Village Subdivision and Development Ordinance, as follows:

- a) **Street:** Full improvement of the street including the entire right-of-way width is required. The Owner and Developer shall construct a cul-de-sac bulb at the new Lombard Road terminus.
- b) **Sidewalk:** A sidewalk is required on the east side and for the full length of the right-of-way abutting the Subject Property.
- c) **Street Lights:** Street lights are required along the full length of both sides of the right-of-way.
- d) **Parkway:** Trees and ground cover are required on both sides of the right-of-way.
- e) **Public Water:** The Owner and Developer shall install a water main extension from its current terminus at Cortland Avenue to a point parallel with the north property line of the Haney Dedication. The Owner and Developer also agree to provide for and construct a watermain service line from the constructed water main to the existing industrial building located at 2N700 Lombard Road (hereinafter referred to as the “Haney Building”). The design of the service line shall be determined by and reviewed and approved by the Village Engineer. The Owner/Developer shall also cap the well located within the Haney Dedication at the sole cost of the Owner/Developer. In the event that the Haney Property is not annexed into the corporate limits of the Village at the time that the final engineering improvements are approved by the Village, the Developer shall not be obligated to make the service line to the Haney Building or to cap any wells.
- f) **Public Sanitary Sewer:** The Owner and Developer shall install a sanitary sewer extension line from its current terminus at Cortland Avenue to a point parallel with the north property line of the Haney Dedication. The Owner and Developer also agree to provide for and construct a sanitary sewer service line from the constructed sanitary sewer main to the Haney Building. The design of the service line shall be determined by and reviewed and approved by the Village Engineer. The Owner and Developer shall also undertake any activities required by the DuPage County Health Department to remove the existing septic field located within the Haney Dedication, at the sole cost of the Owner/Developer. In the event that the Haney Property is not annexed into the corporate limits of the Village at the time that the final engineering improvements are approved by the Village, the Developer shall not be obligated to make the service line to the Haney Building

improvement. The Owner and Developer shall also assist the Village in effectuating a facilities planning area amendment for the Haney Property into the Glenbard Facilities Planning area.

g) **Haney Plat of Annexation/Right-of-Way Dedication.**

The Owner and Developer shall also be responsible for all of the following costs:

- i. Surveying, platting and recording costs associated with the annexation of the Haney Property into the corporate limits of the Village;
- ii. Surveying, platting and recording costs associated with the dedication of portions of the Haney Property as publicly dedicated right-of-way;
- iii. Surveying, platting and recording costs associated with the creation of a plat of resubdivision of the Haney Property, making the property a lot of record; and
- iv. Any legal costs associated with the conveyance of the Haney Property for public right-of-way purposes.
- v. The total cost of the Haney improvements provided for in this subparagraph (e) subparagraph (f) and subparagraph (g) shall not exceed FORTY THOUSAND (\$40,000.00) DOLLARS.

h) **Obligations of the Village.**

The Village agrees to cooperate with the Owner and Developer to facilitate the development of the Subject Vacations as part of the overall development, to include:

- i. Adopting an Ordinance removing the existing barricade at the northern terminus of Lombard Road;
- ii. Proceed with enforcement action, if necessary, to address any potential environmental contamination within the Subject Vacations;
- iii. Assume responsibility to either haul off or bury the concrete and stone debris existing within the Subject Vacation area on the effective date of the Agreement and upon a request of the Owner and Developer after the Developer has filled and graded the Subject Vacation area so that it is stable for truck movement.

3). **Depressed Curb.**

The Owner and Developer shall be required to install a depressed curb/radius connecting the Subject Vacations with the northern curb line of the cul-de-sac bulb at the northern terminus of Lombard Road. Said design and location shall be reviewed and approved by the Village Engineer.

4). **Street/Driveway Lighting.**

Owner and Developer shall not be required to provide public street lighting within the Subject Vacations area, but shall have the right to install driveway lighting as deemed necessary by the Owner and Developer. The Owner and Developer shall still be obligated for any parking lot and loading dock lighting as required by the Lombard Zoning Ordinance.

5). **Walkways.**

Owner and Developer have the right, but not the obligation, to construct a sidewalk within the area of the Subject Vacations. Any proposed walkways shall be subject to review and approval by the Village's Department of Community Development.

6). **Parking.**

Owner and Developer shall install "No Parking" signs along any constructed driveways within the Subject Vacations.

7). **Driveway Design Standard.**

Owner and Developer shall be obligated to maintain the pavement surface area within the area of the Subject Vacations to the standards specifically noted within the "Village of Lombard Specification Manual for the Design of Public Improvements or Site Improvements" for parking lot pavement with truck movement.

8). **Cross-Access Provisions.**

The Owner and Developer further agree to not provide any easement or approvals for access or cross-access to any properties immediately West of the Subject Vacations area depicted in Exhibits 3 and 4. This provision shall also be included on the associated plats of vacation and subdivision.

F. **Rededication of Vacated Rights of Way to the Village.**

Upon a written request to the Owner from the Village, the Owner agrees to rededicate the Subject Vacations right-of-way back to the Village, for public right-of-way purposes, at no cost to the Village (hereinafter referred to as the “Rededication”). The Owner and Developer shall do all things necessary and appropriate to cooperate with the Village to effectuate the Rededication within six (6) months from the date of receipt of the request by the Village. The Village agrees that any such Rededication request shall only be made, if at all, between the first day of the twentieth (20th) year and the first day of the twenty-fifth (25th) year immediately following the date of this Agreement. The Owner and Developer shall not be required to pay for or undertake any site improvements within the Subject Variations area as part of any such Rededication.

In the event that the Rededication takes place, any buildings and/or structures that would not meet the provisions of the Lombard Zoning Ordinance effective as of the date of this Agreement, as a direct result of the Rededication, shall be considered by the Village to be legal conforming buildings and/or structures.

SECTION 11: Creation of a Special Service Area.

Upon a request by the Owner and/or Developer, the Village agrees to establish a Special Service Area to fund public improvements within the Lombard Road right-of-way. The Special Service Area can also fund publicly dedicated watermains and sanitary sewer service lines on the Subject Property, provided that said mains and lines are dedicated to the Village upon completion of their construction. Any public and/or improvements costs subject to the Special Service Area shall be borne exclusively by the Owner of the Subject Property. Owner and Developer agree to cooperate with the Village to effectuate the Special Service Area and to pay for all administrative and legal costs associated with the Special Service Area.

SECTION 12: Commonwealth Edison Right-of-Way.

The Owner/Developer seeks to construct parking lot and stormwater detention improvements on the Commonwealth Edison Property. Said improvements are proposed to be constructed as depicted in Exhibit 9 attached hereto and made a part hereof.

SECTION 13: Railroad Protection Insurance Policy.

Concurrent with the submittal of any building permits for construction activity proposed within fifty feet (50’) of a railroad right-of-way, Owner/Developer shall furnish the Village with a copy of an executed Railroad Protection Insurance Policy, as required by law.

SECTION 14: Acceptance.

Public Improvements shall be accepted by the Corporate Authorities of the Village only after certification by the Village’s engineer and Director of Community Development that the Public Improvements are in compliance with previously approved plans, specifications, and relevant codes and ordinances of the Village and only after receipt of a two-year Maintenance

Letter of Credit.. All required fees shall be paid and all required procedures shall be followed prior to such acceptance. The Village shall not be liable for any damages that may occur with respect to any of the Public Improvements that have not been accepted by the Village. The Owner and/or Developer shall hold the Village free and harmless and indemnify the Village, its agents, officers and employees from any and all such claims, damages, judgements, costs and settlements including, but not limited to attorneys' fees that may arise from construction, use, repair, or maintenance of the Public Improvements before they are accepted by the Village.

SECTION 15: Notices.

All notices or demands to be given hereunder shall be in writing, and delivered by Certified or Registered U.S. Mail, return receipt requested, via overnight delivery service, courier, or personal service. Said notices shall be provided to the Owner/Developer at:

ICE Realty Group LLC
5600 North River Road
Suite 800
Rosemont, IL 60018

With copies to:

Joseph Ash
Ash, Anos, Freedman & Logan, L.L.C.
77 West Washington Street
Suite 1211
Chicago, IL 60602

and to the Village at:

President and Board of Trustees
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148-3926

With copies to:

- (a) Village Manager
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148
- (b) Director of Community Development
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148
- (c) Thomas P. Bayer
KLEIN, THORPE AND JENKINS, LTD.
Civic Opera Building
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606

SECTION 16: Binding Effect and Term and Covenants Running with the Land.

This Agreement has been executed on behalf of the Village pursuant to action adopted by the Corporate Authorities of said Village at a meeting of said Corporate Authorities duly held on

The provisions set forth in this Agreement shall automatically expire upon the expiration of the Maintenance Letter of Credit required at the time of acceptance of the Public Improvements. However, the provisions set forth in Sections 1, 10, 11, 12 and 13 shall remain in full force and effect, it being the intent of the parties hereto that said provisions be considered as binding covenants running with the title to the Subject Property and binding upon the successors in interest to the Owner and the Developer.

SECTION 17: In the event any party (hereinafter referred to as the “First Party”) institutes legal proceedings against another party (hereinafter referred to as the “Second Party”) for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the Second Party all expenses of such legal proceedings incurred by the First Party including, but not limited to, the court costs and reasonable attorneys’ fees, witnesses’ fees, etc., incurred by the First Party in connection therewith (and any appeal thereof). The Second Party may, in its sole discretion, appeal any such judgment rendered in favor of the First Party against the Second Party, with the costs thereof being similarly awarded to the prevailing party.

SECTION 18: Owner/Developer, concurrently with the approval of this Agreement, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (a) the costs incurred by the Village for engineering services, if any;
- (b) all reasonable attorneys' fees incurred by the Village in connection with the preparation and review of this Agreement and the zoning and development of the Subject Property; and
- (c) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

SECTION 19: The parties to the Agreement agree that this Agreement is for the mutual benefit and shall be binding upon each of the parties and their successors and assigns. Upon Owner’s conveyance of the Grant Property or Developer’s assignment of its interest, they shall be released from their obligations hereunder. Upon Owner’s conveyance of the Grant Property or Developer’s assignment of its interest, they shall be released from their obligations hereunder, provided that the respective successors in interest acknowledge in writing to the Village their obligations under this Agreement.

SECTION 20: In the event the Grant Property is not sold and conveyed to Developer or its assignee within four (4) months from the date hereof, this Agreement shall automatically

Schedule of Exhibits

- Exhibit 1: Legal Description of Grant Property
- Exhibit 2: Legal Description of Lombard Road right-of-way to be vacated (north portion)
- Exhibit 3: Legal Description of Lombard Road right-of-way to be vacated (south portion)
- Exhibit 4: Legal Description of Commonwealth Edison Property
- Exhibit 5: Concept Site Plans
- Exhibit 6: Land Use Chart
- Exhibit 7: Lombard Road Right-of-Way Improvements
- Exhibit 8: Haney Dedication
- Exhibit 9: Stormwater Detention Improvements

Exhibit 1: Legal Description of Grant Property

Lot 1 in Lombard Business Center, Unit Two, being a subdivision of that part of the east ½ of the west ½ of the northeast ¼ of Section 31, Township 40 North, Range 11 East of the Third Principal Meridian, lying south of the southerly right-of-way of the Illinois Central Railroad (except the south 210 feet thereof), according to the plat thereof recorded November 6, 1974 as Document R74-56524, in DuPage County, Illinois

Parcel Number: 03-31-204-002

Exhibit 2: Legal Description of Lombard Road right-of-way to be vacated (north portion)

That part of Lombard Road right of way lying south of the south line of the Illinois Central Railroad right of way and north of the north line of the Commonwealth Edison Company right of way, in the Northeast ¼ of Section 31, Township 40 North, Range 11 east of the Third Principal Meridian, in DuPage County, Illinois.

Exhibit 3: Legal Description of Lombard Road right-of-way to be vacated (south portion)

That part of Lombard Road right of way lying south of the north line of the Commonwealth Edison Company right of way and , north of the south line of the Commonwealth Edison Company right of way, in the Northeast $\frac{1}{4}$ of Section 31, Township 40 North, Range 11 east of the Third Principal Meridian, in DuPage County, Illinois.

Exhibit 4: Legal Description of Commonwealth Edison Property

A tract of land legally described as follows: Commencing at the southeast corner of Lot 1 in Lombard Business Center, Unit Two, being a subdivision of that part of the east ½ of the west ½ of the northeast ¼ of Section 31, Township 40 North, Range 11 East of the Third Principal Meridian, lying south of the southerly right-of-way of the Illinois Central Railroad, according to the plat thereof recorded November 6, 1974 as Document R74-56524, in DuPage County, Illinois, thence east along the south line of said Lot 1, a distance of 624.98 feet, thence south 210.0 feet to a point along the south line of the northeast ¼ of Section 31 Township 40 North, Range 11 East of the Third Principal Meridian, thence westerly along the south line of the northeast ¼ of Section 31 Township 40 North, Range 11 East of the Third Principal Meridian, a distance of 624.98 feet, thence north 210.0 feet to a point of beginning, in DuPage County, Illinois.

Parcel Number: 03-31-204-002

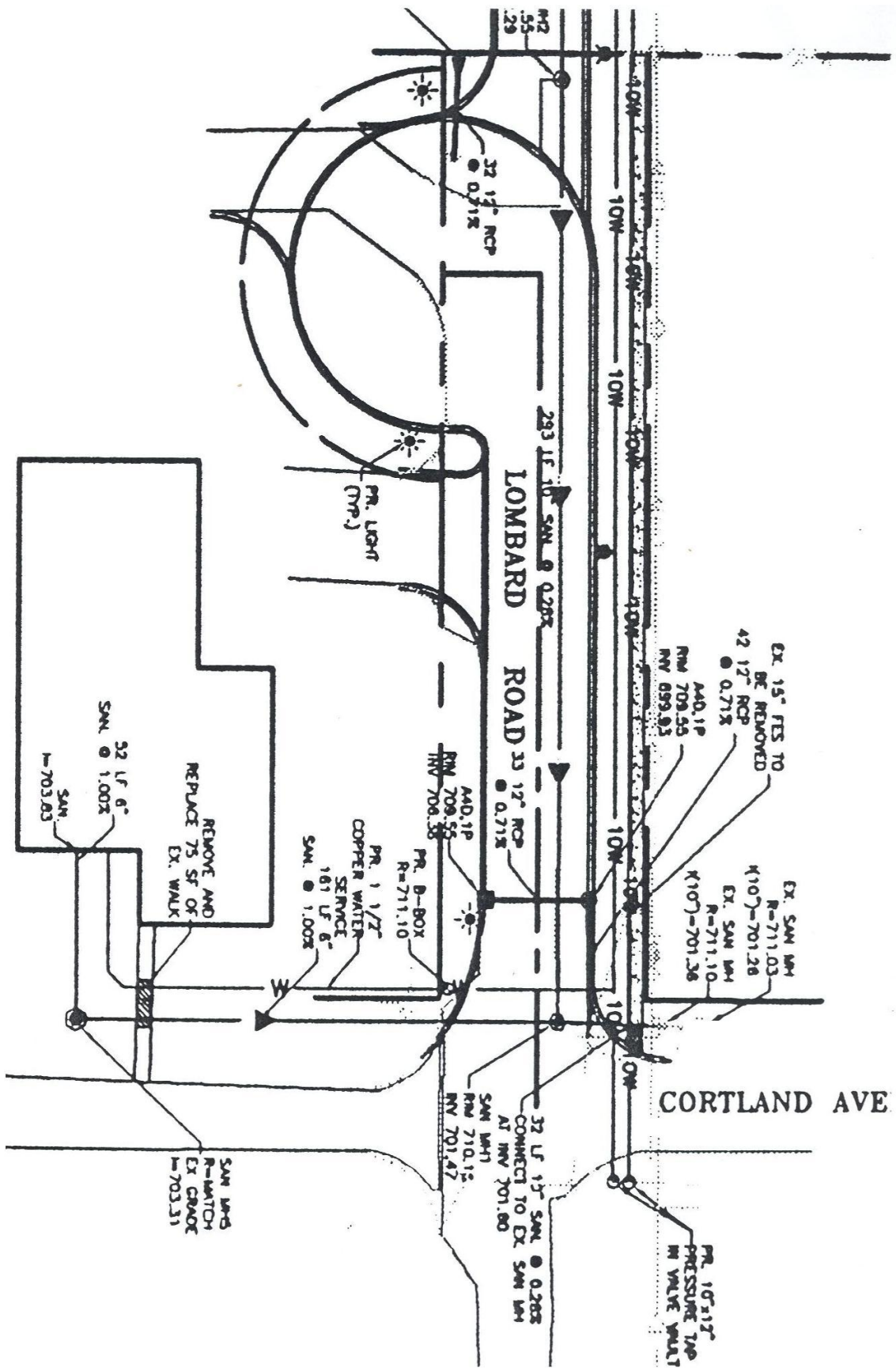
Exhibit 5: Concept Site Plans

Exhibit 6: Land Use Chart

Land Use	Permitted	Conditional	Prohibited
Accessory uses and buildings		x	
Adult uses			x
Agricultural Uses, consisting of growing of trees and landscape plant materials	x		
Automated Envelope Merging Process	x		
Automobile repair		x	
Automotive service		x	
Banks		x	
Bedding manufacturing	x		
Boot and shoe manufacturing	x		
Building material sales and storage		x	
Cabinet Making	x		
Carpet manufacturing	x		
Cartage and express facilities, also known as truck terminals, as the principal use of the property			x
Catering Services		x	
Cloth products manufacturing	x		
Clubs and lodges, nonprofit and fraternal		x	
Compost collection facility			x
Concrete and cast stone fabrication and molding	x		
Contractors, architects, and engineers equipment and material storage yards			x
Contractors, architects, and engineers offices and shops	x		
Cosmetics production	x		
Dairy products processing or manufacture	x		
Dry cleaning plants and operations primarily serving satellite drop-off dry cleaning establishments in other districts	x		
Electronic and scientific precision instruments manufacturing	x		
Exterminating services	x		
Film Processing; not including retail sales or commercial studios	x		
Food manufacture, packaging, and processing	x		
Four (4) story buildings within one hundred feet (100') of residentially-zoned property or a minor or major arterial street and buildings which are forty feet (40') to forty-five feet (45') in height and which are within one hundred (100') of a residentially-zoned property or a minor or major arterial street.		x	
Fur processing	x		
Furniture upholstery & Refinishing	x		
Gasoline sales		x	
Glass products production	x		
Heliports, private or commercial		x	
Laboratories, including research and testing laboratories	x		
Laundries, including truck route laundries, linen supply, and diaper services	x		
Light machinery production and repair e.g. household appliances & business machines etc. - appliances, business machines, etc	x		
Lithographing	x		
Mail order houses where point of sale occurs at location			
Mechanical Parts Reconditioning	x		
Metal Plating, Forging, or Casting	x		
Mini-Warehouses		x	
Mortuarial Services	x		
Musical instruments manufacturing	x		

Land Use	Permitted	Conditional	Prohibited
Offices	x		
Off-site parking, conforming to Section 155.602 (A) (3) (b) of this Ordinance			x
Orthopedic and medical appliance manufacture	x		
Other manufacturing, processing, storage, or industrial uses as determined by the Director of Community Development to be of the same general character as uses permitted in the I Limited Industrial District, and found not to be obnoxious, unhealthful, or offensive by reason of the potential emission or transmission of noise, vibration, smoke, dust, toxic or noxious matter or glare or heat		x	
Outpatient medical and dental offices and clinics	x		
Outside Storage of Motor Vehicles		x	
Packing Material Manufacturing	x		
Paper products manufacture	x		
Parking lots, commercial and lots other than accessory, and subject to the provisions of Section 155.600 of this Ordinance			x
Parks and playgrounds		x	
Planned developments in conformance with Section 155.500 of this Ordinance		x	
Plastic extruding	x		
Pottery and ceramics manufacture	x		
Printing and publishing establishments	x		
Public utility and service uses	x		
Radio and television stations and towers	x		
Recreation buildings or community centers		x	
Recycling collection centers		x	
Religious institutions		x	
Restaurants		x	
Rope, cord, and twine manufacture	x		
Schools: public and/or private elementary, middle, and high		x	
Sheet Metal Stamping and Fabrication	x		
Sign Contractors	x		
Soap manufacture	x		
Sporting goods manufacture	x		
Stadiums, auditoriums, and arenas - open or enclosed		x	
Storage Centers	x		
Tool & Die	x		
Trade school	x		
Warehousing, storage, and distribution facilities (provided that the distribution or cartage function is ancillary to the warehousing/storage function on the property)	x		
Wearing Apparel Manufacture	x		
Woodworking and wood products manufacture	x		

Exhibit 7: Lombard Road Right-of-Way Improvements



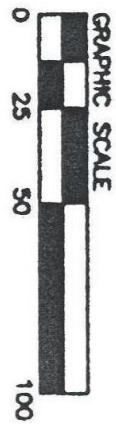
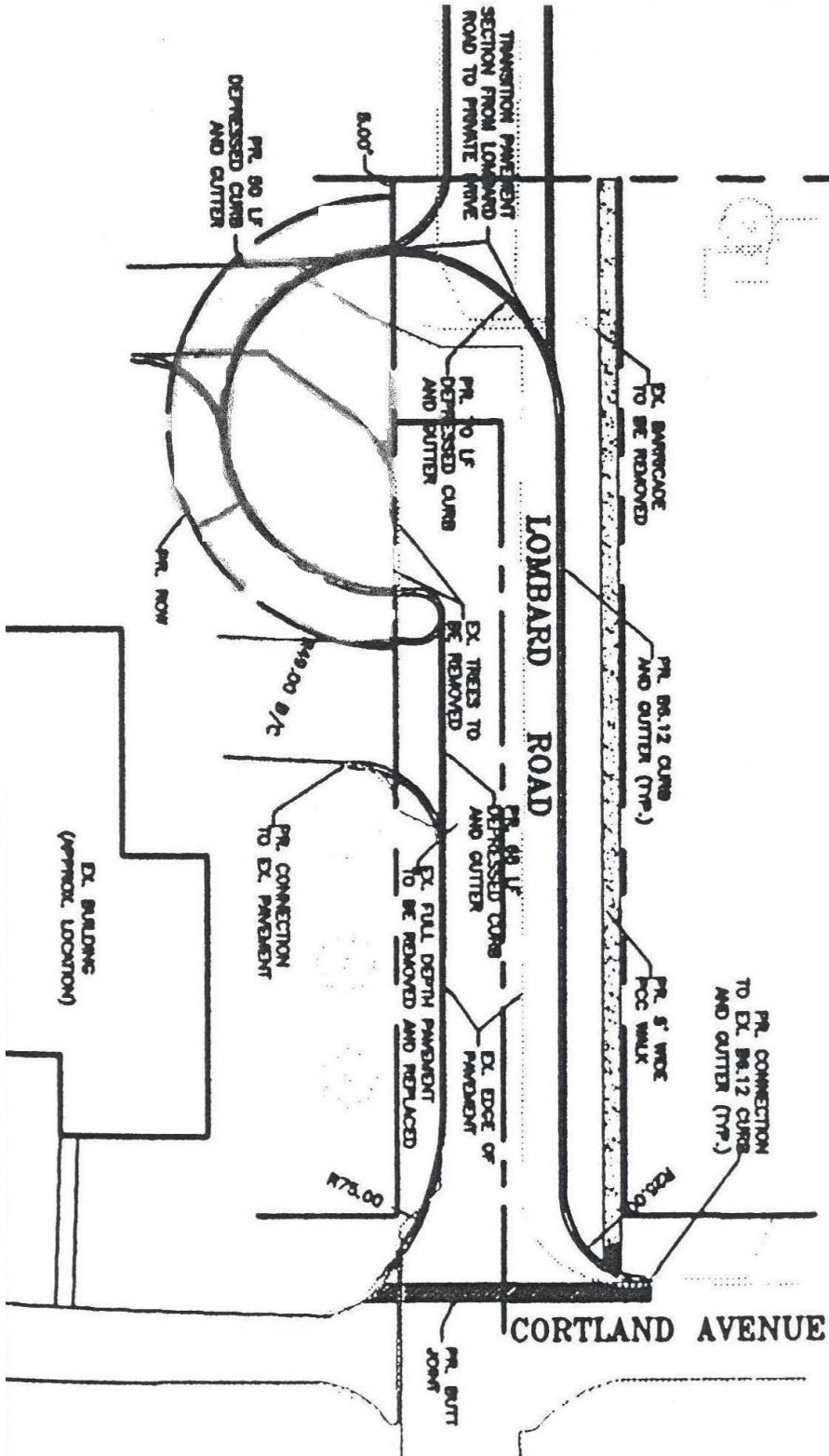


Exhibit 8: Haney Dedication (shaded)

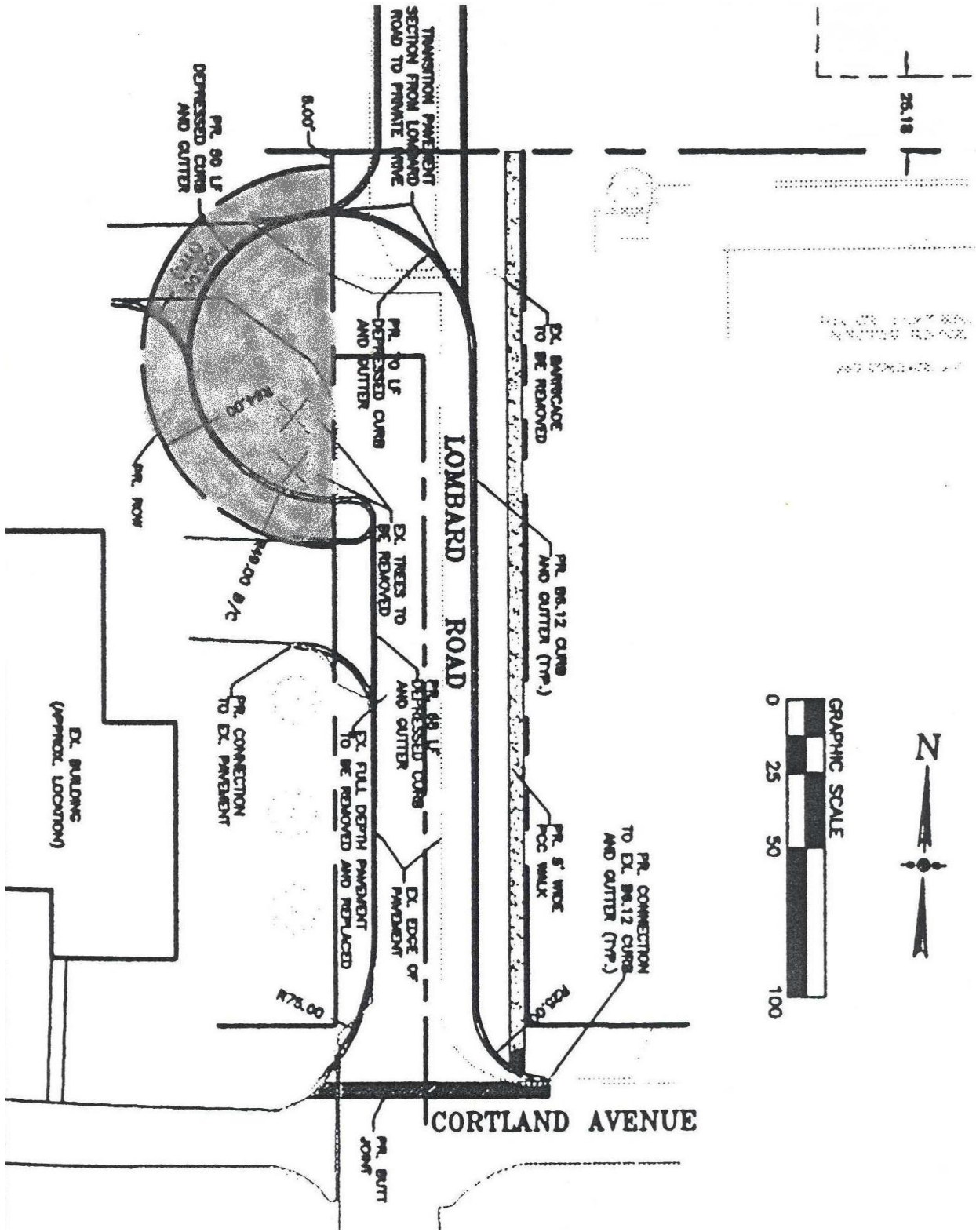


Exhibit 9: Stormwater Detention Improvements