

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: Scott R. Niehaus, Village Manager

DATE: November 22, 2016 (B of T) Date: December 1, 2016

TITLE: Factum LLC - 115 W. St. Charles Road Parking Agreement (2/3 vote of
Corporate Authorities required)

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a request for approval of a Resolution approving a contract for the sale of parking easement and access easement rights at 109-115 West St. Charles Road.

Please place this request under Items for Separate Action.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____


Finance Director X _____ Date _____

Village Manager X _____ Date _____

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: Scott R. Niehaus, Village Manager

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

MEETING DATE: December 1, 2016

SUBJECT: **FACTUM LLC/115 W. ST. CHARLES ROAD PARKING AGREEMENT**

Village staff and Counsel have been working with the commercial condominium tenant space purchaser (Tom Kidwell/Factum LLC) at 105 W. St. Charles Road for a parking agreement at 115 W. St. Charles Road. The culmination of this effort is the attached Parking and Access Easement Agreement.

The agreement mirrors many of the same elements as the December, 2013 agreement with the Park West Condominium Association of Lombard at 105 W. St. Charles Road. This agreement provides, among other items, an ingress/egress easement and an easement for requisite parking for the proposed restaurant space. Such an agreement is needed in order to meet the provisions of Section 155.602 (A)(2) of the Zoning Ordinance.

Salient points of the agreement are:

1. The agreement would be associated with the 105 W. St. Charles Road commercial space. If the proposed restaurant were to close or be sold, the agreement runs with the tenant space and would be readily transferable to a future owner or occupant.
2. The Village grants an easement which provides the permanent, nonexclusive right for twenty-two (22) parking spaces within the parking lot. As with the Park West agreement, the Village made no representations regarding the availability of the parking spaces at any given time and the spaces would be unassigned.
3. The Village also grants a perpetual, nonexclusive ingress/egress easement for vehicle access, ingress and egress purposes.
4. Provisions are included to provide for a catering truck, if so desired in the future.
5. The lease would also provide for the use of the existing dumpster corral that was utilized by past restaurants.
6. In consideration of the Parking Easement and the Ingress/Egress Easement grant, they would be charged \$32,936.00, which is in line with the Park West Residential Agreement (i.e., \$1,432.00 per parking space).

7. Legal costs in preparation of the agreement are provided (with a cap at \$2,800).
8. Provisions for routine and ongoing maintenance by the Village are provided.

For reference, there are 38 surface spaces owned by the Village in the parking lot. Nine (9) spaces are already committed through the previous Park West agreement, which leaves an unassigned float of 27 spaces for general shopper parking plus two accessible spaces. Even with 22 spaces utilized by Factum LLC at a given time, there still would be seven (7) available spaces for general downtown or shopper parking.

ACTION REQUESTED

Please place this item on the December 1, 2016 Village Board for consideration and approval. Staff recommends that the Village Board approve a Resolution for the proposed parking and Access Easement Agreement between the Village of Lombard and Factum LLC. As the matter requires 2/3rds of the Corporate Authorities to approve, this item will be placed on Separate Action.

RESOLUTION NO. _____

**A RESOLUTION APPROVING A CONTRACT FOR
THE SALE OF PARKING EASEMENT AND ACCESS EASEMENT RIGHTS
(109-115 West St. Charles Road)**

WHEREAS, the Village has offered to enter into a contract for the purchase of parking easement rights and access easement rights, related to twenty-three (23) parking spaces in the following-described real estate, which is improved with a paved and striped, surface parking lot for passenger vehicles ("Parking Lot"), and is zoned B5 Central Business District:

LOT 2 IN BLOCK 19 TOWN OF "LOMBARD", BEING A SUBDIVISION IN SECTIONS 5, 6, 7, 8 AND 18, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1868 AS DOCUMENT 9483, EXCEPT THE FOLLOWING: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 09 DEGREES 21 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 22.39 FEET TO THE NORTHERLY EDGE OF AN EXISTING ROOF EAVE OVERHANG; THENCE NORTH 78 MINUTES 54 MINUTES 58 SECONDS EAST ALONG SAID NORTHERLY EDGE, A DISTANCE OF 87.66 FEET; THENCE SOUTH 11 DEGREES 05 MINUTES 02 SECONDS EAST ALONG THE EASTERLY EDGE OF SAID ROOF EAVE OVERHANG, A DISTANCE OF 21.95 FEET TO A POINT ON THE SOUTH LINE OF LOT 2; THENCE SOUTH 78 DEGREES 38 MINUTES 11 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 2, A DISTANCE OF 88.33 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PIN: 06-07-209-026;

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

WHEREAS, the President and Board of Trustees have determined that parking easement and access easement rights in the Subject Property, related to twenty-three (23) parking spaces in the Parking Lot, shall be surplus property rights; and

WHEREAS, pursuant to 65 ILCS 5/11-76-4.1, the Village has had the parking easement and access easement rights in the Subject Property appraised by a State-certified real estate appraiser, a copy of the written certified appraisal performed by Dale J. Kleszynski, MAI, SRA, of Associated Property Counselors, Ltd., dated June 3, 2016, being on file with the Village Clerk's office, and subject to public inspection, and incorporated herein by reference (hereinafter the "Appraisal"); and

WHEREAS, said Appraisal has determined that the value of the parking easement and access easement rights in the Subject Property is FIVE HUNDRED and No/100 Dollars (\$500.00) per parking space in the Parking Lot; and

WHEREAS, the President and Board of Trustees have determined that the parking easement and access easements rights in the Subject Property, related to twenty-three (23) parking spaces in the Parking Lot, shall, pursuant to the requirements of 65 ILCS 5/11-76-4.1, be sold for not less than eighty percent (80%) of the appraised value; and

WHEREAS, Factum LLC Series 105 W. St. Charles Road ("Factum"), the owner of the restaurant space commonly known as Unit 100 in the Park West Commercial Condominium, located at 105 W. St. Charles Road, Lombard, Illinois, has offered to purchase parking easement and access easement rights to twenty-three (23) parking spaces in the Parking Lot on the Subject Property, for THIRTY TWO THOUSAND NINE HUNDRED THIRTY SIX and No/100 Dollars (\$32,936.00), pursuant to the terms and conditions of the Parking and Access Easement Agreement attached hereto as Exhibit A and made a part hereof (hereinafter the "Easement Agreement"); and

WHEREAS, it is in the best interests of the Village to sell the parking easement and access easement rights to twenty-three (23) parking spaces in the Parking Lot on the

Subject Property to Factum, for THIRTY TWO THOUSAND NINE HUNDRED THIRTY SIX and No/100 Dollars (\$32,936.00), pursuant to the Easement Agreement;

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That the sale of, and transfer of parking easement and access easement rights to twenty-three (23) parking spaces in the Parking Lot on the Subject Property to Factum, for THIRTY TWO THOUSAND NINE HUNDRED THIRTY SIX and No/100 Dollars (\$32,936.00), pursuant to the terms and conditions of the Easement Agreement, is hereby approved.

SECTION 2: That Village Staff is hereby directed to prepare the necessary documents to transfer parking easement and access easement rights to twenty-three (23) parking spaces in the Parking Lot on the Subject Property to Factum, pursuant to the terms and conditions of the Easement Agreement.

SECTION 3: That the Village President, Village Clerk, Deputy Village Clerk, Village Manager and/or Village Finance Director are hereby authorized and directed to execute any and all necessary documents to complete the transaction contemplated by the Easement Agreement.

ADOPTED this ___ day of _____, 2016, pursuant to a two-thirds (2/3rds) roll call vote of the Corporate Authorities, as required by 65 ILCS 5/11-76-4.1, as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2016.

Keith T. Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk

Exhibit A

EASEMENT AGREEMENT

(attached)

THIS DOCUMENT WAS PREPARED BY:

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

AFTER RECORDING RETURN TO:

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

Record against PIN:

06-07-209-009

On behalf of the Village of Lombard

PARKING AND ACCESS EASEMENT AGREEMENT

THIS PARKING AND ACCESS EASEMENT AGREEMENT (hereinafter the "Easement Agreement") is made and entered into this ___ day of _____, 2016, by the VILLAGE OF LOMBARD, an Illinois municipal corporation, (hereinafter "Grantor"), of DuPage County, Illinois to FACTUM LLC SERIES 105 W. ST. CHARLES, an Illinois limited liability company, (hereinafter "Grantee") of DuPage County, State of Illinois.

RECITALS

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

LOT 2 IN BLOCK 19 IN TOWN OF "LOMBARD", BEING A SUBDIVISION IN SECTIONS 5, 6, 7, 8 AND 18, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1868, EXCEPT AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 09 DEGREES 21 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 22.39 FEET TO THE NORTHERLY EDGE OF AN EXISTING ROOF EAVE OVERHANG; THENCE NORTH 78 MINUTES 54 MINUTES 58 SECONDS EAST ALONG SAID NORTHERLY EDGE, A DISTANCE OF 87.66 FEET; THENCE SOUTH 11 DEGREES 05 MINUTES 02 SECONDS EAST ALONG THE EASTERLY EDGE OF SAID ROOF EAVE OVERHANG, A DISTANCE OF 21.95 FEET TO A POINT ON THE SOUTH LINE OF LOT 2; THENCE SOUTH 78 DEGREES 38 MINUTES 11 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 2, A DISTANCE OF 88.33 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

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

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

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

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

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

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

WHEREAS, the Grantee desires an easement over a portion of the Property for the sole purpose of parking for customers and employees of a sit-down restaurant to be operated on the Grantee Property; and

WHEREAS, for the consideration identified below, the Grantor has agreed to grant the Grantee a permanent, non-exclusive easement, across and upon a portion of the Property for the purpose of customer and employee parking of twenty-two (22) passenger vehicles in parking spaces within the striped parking lot on the Property, subject to availability, and locating a dumpster(s) and spent cooking oil container on the Property in a single corral area to be designated by the Grantor, and ingress to and egress from the striped parking lot on the Property, subject to certain terms and conditions herein set forth.

NOW, THEREFORE, for and in consideration of the premises and the sum of THIRTY TWO THOUSAND NINE HUNDRED THIRTY SIX and No/100 Dollars (\$32,936.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

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

2. **Consideration:** Grantee agrees to pay the Grantor THIRTY TWO THOUSAND NINE HUNDRED THIRTY SIX and No/100 Dollars (\$32,936.00) for the easement rights granted under this Easement Agreement. Said payment shall be made by the Grantee as follows:

A. Within seven (7) days of approval of this Easement Agreement by the corporate authorities of the Grantor, Grantee shall pay the Grantor \$1,432.00 for the immediate right to locate a dumpster(s) and spent cooking oil container in a single corral area to be designated by the Grantor, as provided for in Paragraph 3 below.

B. On or before March 1, 2017, the Grantee shall pay the Grantor \$31,504.00 for the parking rights provided for in Paragraph 3 below. The Grantee shall

have no parking rights under this Easement Agreement until such time as the amount owed to the Grantee under this Subparagraph is paid.

- C. In the event the Grantee fails to make any of the payments to the Grantor provided for herein, the Grantor shall have the right to revoke this Easement Agreement and declare it null and void, and the Easement Agreement shall become null and void upon such declaration by the Grantor. In the event that this Easement Agreement is revoked by the Grantor and becomes null and void, the Grantee shall immediately remove any and all of its property from the Property, at its sole cost and expense. If the Grantee fails to remove its Property within seven (7) days of revocation by the Grantor, the Grantor shall have the right to remove and dispose of Grantor's property remaining on the Property and charge the Grantee for the cost thereof.

3. Parking and Dumpster Easement. Grantor hereby grants to the Grantee, a permanent, non-exclusive easement, across and upon a portion of the Property, for the purpose of customer and employee parking of twenty-two (22) passenger vehicles in parking spaces, within the striped parking lot on the Property, subject to availability, and locating a dumpster(s) and spent cooking oil container on the Property in a single corral area to be designated by the Grantor. The Grantor makes no representations or warranties regarding the availability of twenty-two (22) parking spaces at any given time within the striped parking lot on the Property. The Parking Easement is subject to the use in common with the Grantor and in a manner which does not interfere with the use thereof by others, the general public or other easements on the Property.

4. Catering Truck. Of the twenty-two (22) parking spaces that are provided as part of this easement, no more than one (1) parking space may be utilized for the purpose of a catering truck owned or leased by the Grantor. Any catering truck parked on the Grantor's property in the easement area shall be limited to parking spaces that are at least thirty (30) feet south of the north property line of the Grantor's property. Any permissible catering trucks parking on the premises shall not exceed eighteen (18) feet in length and shall be in operable condition. No food preparation or food sales shall occur directly from the catering truck when parked on the Grantor's property.

5. Access Easement. Grantor hereby grants to Grantee, a permanent, non-exclusive ingress and egress easement over the Property for access to the striped parking lot thereon. The Grantee covenants and warrants to Grantor that the Access Easement shall only be used for ingress and egress for pedestrian and vehicular access for its customers and employees. The Access Easement is subject to the use in common with Grantor and in a manner that does not interfere with the use thereof by others, the general public or other easements on Property.

6. Maintenance. The Grantor shall have the right to deny access to the Parking Easement and/or the Access Easement as may be necessary for snow removal, repair, maintenance or reconstruction of the Property. However, such denial of access shall not persist for more than fourteen (14) consecutive days. In the event the Grantor denies access to the Parking Easement and/or Access Easement for a period in excess of fourteen (14) consecutive days for maintenance or reconstruction of the Property, the Grantor shall work with the Grantee to arrange for alternative parking for Grantor's customers and employees during the period of maintenance or reconstruction.

7. Indemnification of Grantor. Grantee shall fully indemnify, defend and hold Grantor Harmless from any liability, claim, suit, or cause of action (including reasonable attorneys' fees and cost of defense) resulting from any property damage, personal injury or death caused by Grantee's activities as contemplated by this Easement Agreement, including without limitation any such liability, claim, suit or cause of action resulting from the negligence or willful misconduct of Grantee, its successors and/or assigns in exercising its or their rights under this Easement Agreement.

8. Insurance. Grantee shall, at its expense, maintain commercial general liability insurance against claims for personal injury, death and property damage, arising out of the acts or omissions of Grantee, its officers, partners, tenants, agents and employees with respect to this Easement Agreement, with a contractual liability endorsement covering Grantee's indemnity obligations under this Agreement, and with limits of not less than \$ 2,000,000.00 combined single limit for personal injury, bodily injury or death, or property damage or destruction (including loss of use thereof) per occurrence. Grantor shall be named as an additional insured under such insurance policies. All insurance shall be with insurers rated at least A:10 in the current edition of Best's Insurance Guide. Any policy required herein may be maintained under a blanket policy insuring other parties and locations provided the amount of insurance required hereunder is not thereby diminished. Such insurance shall provide that it will not be canceled without at least ten (10) days' prior written notice to Grantor. Grantee shall deliver a certificate of insurance to Grantor on or before the date of this Agreement. Grantee shall furnish renewal certificates at least ten (10) days prior to expiration of the current insurance certificate, upon request of the Grantor.

9. Covenants Running with the Land. This Easement Agreement, and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

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

11. Termination of Easement Agreement. This Easement Agreement shall be subject to revocation by the Grantor in the event that the Grantee fails to comply with the provisions of the Easement Agreement upon delivering thirty (30) day prior written notice to the Grantee. In such event, the Grantor shall record a written notice of said revocation with the DuPage County Recorder of Deeds. In the event of revocation of the Easement Agreement, the provisions of Paragraph 3C above shall apply in regard to removal and disposal of Grantee property.

12. No Conveyance of Land. Nothing in this Easement Agreement shall be construed to constitute a conveyance of fee simple title to the above-described real property, or an acceptance thereof, by the Grantor.

13. Transfers. Grantee shall be entitled to transfer any and all easement rights contained herein to any third party that purchases or otherwise acquires fee title of the Grantee Property. Notwithstanding the foregoing sentence, Grantee shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Grantor, which consent shall not be unreasonably withheld. The assignee or transferee of any assignment or transfer consented to by the Grantor shall be bound by the terms and

conditions of this Agreement. A fully executed copy of an approved assignment or transfer shall be provided to the Grantor.

14. Liens. Grantee shall not permit any liens to attach to or become an encumbrance on the Grantor Parcel. If Grantee shall fail to cause any such lien to be discharged within ten (10) days after the filing thereof, then in addition to any other right or remedy of Grantor, Grantor may discharge same (by payment, bonding or otherwise) and the amounts incurred by Grantor in connection therewith (including, without limitation, reasonable attorneys' fees) shall be due and payable immediately by Grantee to Grantor; alternatively, Grantee shall have the right to post as security one and one-half (1.5) times the amount of said lien as an escrow, with a mutually agreeable title insurance company, should Grantee seek to litigate the merits of said lien.

15. Condemnation. In the event of condemnation, other than by Grantor, of the Property by any duly constituted authority for a public or quasi-public use, that portion of the award attributable to the value of the land so taken shall be payable to Grantor, provided, however, that Grantee may file collateral claims with the condemning authority, over and above the value of the land so taken, to the extent of any damage suffered by Grantee resulting from the severance of the easement rights granted herein.

16. Cost Reimbursement. The Grantee shall reimburse the Grantor for the Grantor's costs of preparing this Easement Agreement, up to a maximum reimbursement amount of TWO THOUSAND EIGHT HUNDRED and No/100 Dollars (\$2,800.00). For purposes of this Easement Agreement, "costs" shall be defined as attorneys' fees and recording fees.

17. Satisfaction of Village Parking Requirements. By entering into this Easement Agreement and paying the money due the Grantor hereunder, the Grantee has fully satisfied its obligations to provide parking pursuant to Title XV, Chapter 155 of the Lombard Village Code of Ordinances.

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

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

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURE PAGE TO FOLLOWS**

GRANTOR:

Village of Lombard,
an Illinois municipal corporation

By: Keith T. Giagnorio
Title: Village President

Date: _____, 2016


ATTEST:

By: Sharon Kuderna
Title: Village Clerk

Date: _____, 2016

GRANTEE:


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



By: Thomas Kidwell
Title: President

Date: November 11, 2016

ATTEST:



By: Petchavat Kidwell
Title: Secretary

Date: NOVember 11, 2016

