

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: David A. Hulseberg, Village Manager

DATE: August 23, 2010 (B of T) Date: September 2, 2010

TITLE: Technology Drive Four-Party Agreement

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing the signatures of Village President and Clerk on an Intergovernmental Agreement relative to certain actions to be undertaken by the parties relative to Technology Drive.

As the future actions in this agreement would require 5 of 6 favorable votes of the Village Board to approve, Counsel has recommended placing this item on the September 2, 2010 Board of Trustees agenda 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

David A. Hulseberg, Village Manager

**From:** William J. Heniff, AICP, Director of Community Development *WH*  
**Date:** March 7, 2013  
**Subject:** **Technology Drive Four-Party Intergovernmental Agreement**

Technology Drive exists as a publicly dedicated right-of-way within the corporate limits of Lombard, and is located between Butterfield Road and Interstate 88, ending in an extended cul-de-sac at the corporate boundary line between Oak Brook and Lombard. In 2010, the Village Board entered into a four-party agreement between the Villages of Lombard and Oak Brook as well as Oak Brook Promenade, LLC and DMG Real Estate Holdings, LLC pertaining to the dedication, vacation and use of portions of Technology Drive. However, the private parties did not proceed with implementation of the actions as set forth within the agreement in 2010. However, they are now requesting that the approval actions previously agreed to by the parties be taken at this time.

The two private parties have received and executed the agreement, the Village of Oak Brook will be considering the matter prior to the Lombard Village Board's consideration of the matter and the agreement awaits Lombard's approval.

### **BACKGROUND**

As noted in 2010, in 2006, the Oak Brook Promenade commercial project was reviewed and approved by the Village of Oak Brook. The original concept plans denoted a separate driveway access point onto Technology Drive for commercial deliveries and possibly shopper traffic. As Technology Drive is adjacent to the project, Lombard staff commissioned a traffic review of the site and made a number of recommendations to limit the impact of the development on Lombard streets. Ultimately, Oak Brook Promenade, LLC (owner of Oak Brook Promenade) decided not to proceed with constructing a secondary access onto Technology Drive.

In 2008, Oak Brook Promenade, LLC, expressed a desire to provide the opportunity for additional parking to serve their development. However, as the adjacent right of way and an adjacent small tract of land were located within Lombard rather than Oak Brook, Lombard approval would be required. Additional land acquisitions also introduced DMG Real Estate Holdings, LLC (owner of the adjacent DuPage Medical Group Ambulatory Surgical Center in Lombard) into the discussion. Further exploration of this request also introduced the identifying long range need for the right of way and extensive discussions resulted in the creation of an agreement that sets forth assurances and benefits for each of the parties.

Over the past year, the parties have reviewed the previous agreement that lapsed and has crafted a draft agreement that sets forth the obligations of each party. The agreement is nearly identical to the 2010 agreement. For reference purposes:

- Lombard has right of way control over those portions of Technology Drive designated as Parcels D and E. Both Tracts would be vacated to DMG and Oak Brook Promenade respectively and de-annexed. Lombard would also de-annex Parcel C.
- Oak Brook would annex Parcels B, C and E.
- Oak Brook Promenade (owner of Parcel C); would consolidate Parcels B, C and E into their development plans and provide for all of the roadway and right of way construction obligations set forth within the Agreement.
- DMG Real Estate Holdings, LLC (owner of Parcel A) would convey title to Lombard for public right of way purposes and to provide for a new cul-de-sac bulb. As owner of Parcel B, they will convey title of the tract to Oak Brook Promenade. With the vacation of Tract D by Lombard, the tract will be made available for future parking for their facility, subject to future Lombard Village Board approval through a planned development amendment process.
- A new provision to the 2013 agreement is that Lombard will require Promenade to post a letter of credit for the improvements and that if the improvements are not underway within 270 days from the approval date, then Lombard can undertake the required improvements.

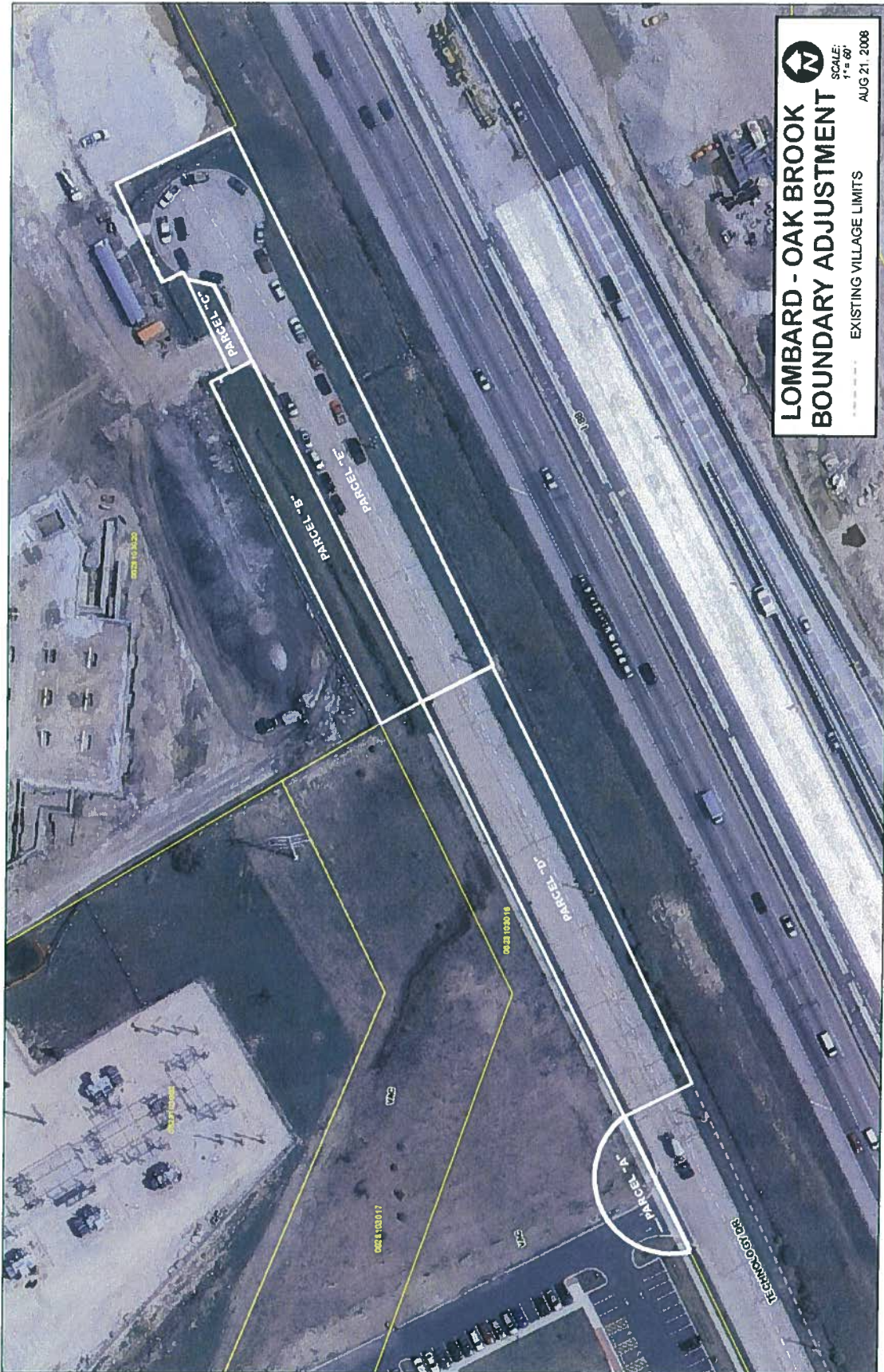
Staff still asserts that the vacation of Technology Drive and subsequent acquisition by Oak Brook Promenade and DuPage Medical Group would be beneficial to Lombard. The extended Technology Drive currently serves no roadway purpose, does not provide for private access to Lombard and vacating it would remove existing and future maintenance obligations. It would also preclude traffic from the Oak Brook Promenade from the Lombard roadway and would also allow for additional flexibility for an existing business in the community in their potential expansion plans.

**RECOMMENDATION:**

Staff recommends that the Village Board approve the attached Resolution authorizing the signature of the Lombard Village President and Clerk on the attached Intergovernmental Agreement.

As was done in 2010, please note that the Agreement only sets forth the future actions to be undertaken by Lombard and not the actions itself. Those actions will be completed in the future as set forth in the Agreement. As those future actions will require a super-majority of the Lombard Village Board to approve (5 of 6 members of the Village Board,

exclusive of the Village President) Village Counsel further recommends that the approval of the Resolution should also be approved by five members of the Village Board as well.



**LOMBARD - OAK BROOK  
BOUNDARY ADJUSTMENT**

SCALE:  
1" = 60'

AUG 21, 2008

EXISTING VILLAGE LIMITS

**RESOLUTION**  
**R \_\_\_\_\_ 13**

**A RESOLUTION AUTHORIZING SIGNATURES OF  
VILLAGE PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Intergovernmental Agreement between Oak Brook Promenade, LLC, DMG Real Estate Holdings, LLC, the Village of Oak Brook and the Village of Lombard, (hereinafter the "Parties") attached as Exhibit A, relative to Technology Drive; and

WHEREAS, the Agreement allows the Parties to undertake certain actions associated with Technology Drive that are beneficial to each party; and

WHEREAS, the Parties previously entered into an agreement to undertake the improvements in 2010, but the implementations action were not initiated prior to the expiration of the Agreement; and

WHEREAS, Oak Brook Promenade, LLC, and DMG Real Estate Holdings, LLC now represent that they desire to progress with the improvements previously set forth within the 2010 Agreement and are asking the Parties to adopt the attached amended Agreement; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such 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 Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

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

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

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

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

Approved this \_\_\_\_ day of \_\_\_\_\_, 2013.

Re: Resolution No. \_\_\_\_\_  
Re: Technology Drive Four Party Agreement - 2013  
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William Ware  
Acting Village President

ATTEST:

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Brigitte O'Brien  
Village Clerk

**AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN OAK BROOK PROMENADE, LLC,  
DMG REAL ESTATE HOLDINGS, LLC,  
THE VILLAGE OF OAK BROOK AND THE VILLAGE OF LOMBARD  
IN REGARD TO TECHNOLOGY DRIVE**

THIS AGREEMENT (hereinafter referred to as the "Agreement"), entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, (hereinafter referred to as the "Effective Date") by and between OAK BROOK PROMENADE, LLC, an Illinois limited liability company (hereinafter referred to as "PROMENADE"), DMG REAL ESTATE HOLDINGS, LLC, an Illinois limited liability company (hereinafter referred to as "DMG"), the VILLAGE OF OAK BROOK, an Illinois municipal corporation (hereinafter referred to as "OAK BROOK") and the VILLAGE OF LOMBARD, an Illinois municipal corporation (hereinafter referred to as "LOMBARD"). PROMENADE, DMG, OAK BROOK and LOMBARD are hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

**WITNESSETH**

**WHEREAS**, Technology Drive exists as a dedicated right-of-way within the corporate limits of Lombard, and is located between Butterfield Road and Interstate 88, ending in a cul-de-sac at the boundary line between the corporate limits of OAK BROOK and LOMBARD; and

**WHEREAS**, the Easterly most portion of Technology Drive, as depicted on Exhibit 1 attached hereto and made part hereof, is bounded on the North by property owned by DMG and PROMENADE; and



**WHEREAS**, DMG is the owner of Parcels A and B as shown on Exhibit 1, said Parcels A and B being legally described on Exhibits 2 and 3, respectively, attached hereto and made part hereof (hereinafter referred to as "Parcel A" and "Parcel B," respectively); and

**WHEREAS**, PROMENADE is the owner of Parcel C as shown on Exhibit 1, said Parcel C being legally described on Exhibit 4 attached hereto and made part hereof (hereinafter referred to as "Parcel C"); and

**WHEREAS**, LOMBARD has jurisdiction and control over those portions of Technology Drive designated as Parcels D and E on Exhibit 1, said Parcels D and E being legally described on Exhibits 5 and 6, respectively, attached hereto and made part hereof (hereinafter referred to as "Parcel D" and "Parcel E," respectively); and

**WHEREAS**, PROMENADE desires to acquire ownership of Parcel B and Parcel E, so that PROMENADE can, if it so chooses, construct additional parking thereon, or any other improvements as may be allowed by this Agreement, at a future date, to serve PROMENADE's commercial development, which is located immediately North of Parcels B and E, within the corporate limits of OAK BROOK; and

**WHEREAS**, DMG desires to acquire ownership of Parcel D, so that DMG can, at a future date, construct additional parking thereon to serve DMG's medical facility located to the West of Parcel D, on the North side of Technology Drive; and

**WHEREAS**, LOMBARD has agreed to vacate a portion of the right-of-way of Technology Drive, consisting of Parcel D and Parcel E, provided that:

- (i) DMG conveys title to Parcel B to PROMENADE;
- (ii) PROMENADE petitions LOMBARD to disconnect Parcel B, Parcel C and

Parcel E from LOMBARD;

(iii) PROMENADE petitions OAK BROOK to annex Parcel B, Parcel C and Parcel E after the disconnection by LOMBARD; and

(iv) DMG dedicates Parcel A for right-of-way purposes to LOMBARD;

all subject to certain additional terms and conditions as set forth below; and

**WHEREAS**, OAK BROOK has agreed to annex Parcel B, Parcel C and Parcel E in the event LOMBARD disconnects them; and

**WHEREAS**, PROMENADE and OAK BROOK are in agreement with the terms and conditions requested by LOMBARD, relative to LOMBARD's vacation of Parcel E and disconnection of Parcel B, Parcel C and Parcel E, as more fully set forth below; and

**WHEREAS**, DMG is in agreement with the terms and conditions requested by LOMBARD, relative to LOMBARD's vacation of Parcel D, as more fully set forth below, and is in agreement with dedicating Parcel A for right-of-way purposes and conveying title to Parcel B to PROMENADE; and

**WHEREAS**, Article VII, Section 10 of the 1970 Illinois Constitution and 5 ILCS 220/1 through 220/9 provide the authority for this Agreement; and

**WHEREAS**, it is in the best interests of PROMENADE, DMG, OAK BROOK and LOMBARD to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. **INCORPORATION OF PREAMBLES.** The preambles hereto, as set forth above, are incorporated herein by reference and are made part hereof.

**2. LOMBARD OBLIGATIONS.** Subject to all required actions under this Agreement occurring in the order as set forth in Section 6 below, LOMBARD agrees to take the following actions:

- A. Accept a dedication of Parcel A for right-of-way purposes
- B. Vacate Parcel D;
- C. Vacate Parcel E;
- D. Disconnect Parcel B, Parcel C and Parcel E from LOMBARD, pursuant to 65 ILCS 5/7-1-24;
- E. Allow PROMENADE, or its contractors, to enter upon Technology Drive and Parcel A, for the purpose of constructing a cul-de-sac, in full compliance with all applicable LOMBARD codes and ordinances, on Technology Drive and Parcel A; and
- F. Approve an amendment to DMG's existing planned unit development to address the real property transactions set forth in Sections 2A, 4A and 4B above.

**3. OAK BROOK OBLIGATIONS.** Subject to all required actions under this Agreement occurring in the order as set forth in Section 6 below, OAK BROOK agrees to take the following actions:

- A. Annex Parcel B, Parcel C and Parcel E, pursuant to 65 ILCS 5/7-1-24; and
- B. Prohibit PROMENADE, and its successors in interest in Parcel E, from constructing any signs (exclusive of informational direction/traffic control signs relative to the movement of motor vehicles within any parking area constructed on Parcel E or PROMENADE'S property located North/Northeast of Parcel E) or billboards on Parcel E. In regard to said restriction, a restrictive covenant shall be recorded against Parcel E, as referenced in Section 5.J. below.

**4. DMG OBLIGATIONS.** Subject to all required actions under this Agreement occurring in the order as set forth in Section 6 below, DMG agrees to take the following

actions:

- A. Convey title to Parcel B to PROMENADE, free and clear of any existing mortgages that DMG may have on Parcel B, by a recordable warranty deed;
- B. Dedicate Parcel A for right-of-way purposes, free and clear of any existing mortgages that DMG may have on Parcel A;
- C. Allow PROMENADE to enter upon Parcel D, and the property owned by DMG immediately surrounding Parcel A, on a temporary basis, for the purposes of constructing the cul-de-sac and grassed berm referenced in Section 5D below;
- D. Allow PROMENADE to enter upon Parcel D, and the property owned by DMG immediately surrounding Parcel A, for the purpose of constructing a grassed berm, as approved by LOMBARD as part of the cul-de-sac construction referenced in 5D below, along the Easterly side of the cul-de-sac, to further evidence the cul-de-sac as the Easterly end of Technology Drive;
- E. Within five (5) years of the vacation of Parcel D, or at such time as PROMENADE removes the roadway pavement from Parcel E so as to install landscaping, construct detention or construct parking improvements on Parcel E, whichever occurs first, DMG shall remove the roadway pavement and appurtenances from Parcel D and either landscape Parcel D with grass and/or other vegetation or construct a parking lot and related parking lot improvements thereon. Until such time, DMG shall maintain Parcel D in full compliance with all applicable LOMBARD property maintenance codes;
- F. Make application to amend the existing planned unit development, relative to the property owned by DMG, to reflect the real property transactions set forth in Sections 2A, 4A and 4B above;
- G. Refrain from constructing any signs (exclusive of directional/traffic control signs relative to the movement of motor vehicles within any parking area constructed on Parcel D) or billboards on Parcel D; and
- H. Not allow any connection for vehicular access, through Parcel D or any other property owned by DMG, between property located within the corporate limits of OAK BROOK and Technology Drive.

5. **PROMENADE OBLIGATIONS.** Subject to all required actions under this

Agreement occurring in the order as set forth in Section 6 below, PROMENADE agrees to take the following actions:

- A. Accept title to Parcel B from DMG, free and clear of any existing mortgages that DMG may have on Parcel B, by a recordable warranty deed;
- B. Petition LOMBARD for disconnection of Parcel B, Parcel C and Parcel E, pursuant to 65 ILCS 5/7-1-24;
- C. Petition OAK BROOK for annexation of Parcel B, Parcel C and Parcel E, pursuant to 65 ILCS 5/7-1-24;
- D. Design and construct a cul-de-sac on Technology Drive and Parcel A, and a grassed berm immediately East of the cul-de-sac on Parcel D and other property owned by DMG immediately surrounding Parcel A, in full compliance with all applicable LOMBARD codes and ordinances, at PROMENADE's sole cost and expense, subject to the additional terms and conditions as set forth in Section 7 below;
- E. Reimburse LOMBARD for reasonable legal fees, customary plan review fees and for costs, in an amount not to exceed fifteen thousand and no/100 dollars (\$15,000.00), incurred by LOMBARD in preparing and/or taking action pursuant to this Agreement, within forty-five (45) days of receipt of a bill therefor from LOMBARD, with any late payment accruing interest at the rate of two percent (2%) per month, subject to a minimum one (1) month interest period;
- F. Reimburse OAK BROOK for reasonable legal fees, customary plan review fees and for costs, in an amount not to exceed fifteen thousand and no/100 dollars (\$15,000.00), incurred by OAK BROOK in preparing and/or taking action pursuant to this Agreement, within forty-five (45) days of receipt of a bill therefor from OAK BROOK, with any late payment accruing interest at the rate of two percent (2%) per month, subject to a minimum one (1) month interest period;
- G. Within five (5) years of the vacation of Parcel E, or at such time as DMG removes the roadway pavement from Parcel D so as to install landscaping or construct parking improvements on Parcel D, whichever occurs first, PROMENADE shall remove the roadway pavement and appurtenances from Parcel E and either landscape Parcel E with grass and/or other vegetation, construct stormwater detention improvements thereon or construct a parking lot and

related parking lot improvements thereon (with it being permissible to reuse the ground up roadway pavement in constructing any such parking lot if allowed by the applicable codes and ordinances of OAK BROOK). Until such time, PROMENADE shall maintain Parcel E in full compliance with all applicable OAK BROOK property maintenance codes;

- H. Any landscaping, stormwater detention improvements or parking improvements installed/constructed on Parcel B, Parcel C and/or Parcel E shall be installed/constructed in full compliance with all applicable OAK BROOK codes and ordinances, including the provision of stormwater detention in compliance with OAK BROOK's and DuPage County's requirements, (to the extent applicable within OAK BROOK), as may be varied by OAK BROOK;
- I. Repair any damage to Technology Drive or the property owned by DMG, as a result of the construction of the cul-de-sac and grassed berm referenced in Section 5D above, to the reasonable satisfaction of LOMBARD and DMG, respectively; and
- J. Refrain from constructing any signs (exclusive of informational direction/traffic control signs relative to the movement of motor vehicles within any parking area constructed on Parcel E or PROMENADE'S property located North/Northeast of Parcel E) or billboards on Parcel E. In regard to this prohibition, within fifteen (15) days after obtaining title to Parcel E, PROMENADE shall record a restrictive covenant against Parcel E in the form attached hereto as Exhibit 7 and made part hereof.

**6. TIME SCHEDULE.** The various actions to be taken by the Parties hereunder shall occur in the following order:

- A. PROMENADE shall prepare construction drawings for the Technology Drive Improvements in full compliance with all applicable LOMBARD codes and ordinances, and submit same for approval by DMG and LOMBARD within forty-five (45) days of the Effective Date.
- B. DMG shall convey title to Parcel B to PROMENADE within sixty (60) days of the Effective Date.
- C. DMG shall dedicate Parcel A to the VILLAGE, for right-of-way purposes, within ninety (90) days of the Effective Date.

- D. Upon receipt of a plat of vacation, LOMBARD shall vacate Parcel E.
- E. PROMENADE shall record the restrictive covenant against Parcel E, as referenced in Section 5.J. above.
- F. PROMENADE shall petition LOMBARD for disconnection of Parcel B, Parcel C and Parcel E, and shall petition OAK BROOK for annexation of Parcel B, Parcel C and Parcel E, pursuant to 65 ILCS 5/7-1-24.
- G. Upon receipt of a plat of vacation, LOMBARD shall vacate Parcel D.
- H. LOMBARD shall disconnect Parcel B, Parcel C and Parcel E, pursuant to 65 ILCS 5/7-1-24.
- I. OAK BROOK shall annex Parcel B, Parcel C and Parcel E, pursuant to 65 ILCS 5/7-1-24.
- J. PROMENADE shall construct the cul-de-sac on Technology Drive and Parcel A, along with the grassed berm immediately East of the cul-de-sac as referenced in Section 5D above.
- K. DMG shall petition LOMBARD for an amendment to DMG's existing planned unit development, to address the real property transactions set forth in Sections 2A, 4A and 4B above.
- L. LOMBARD shall approve an amendment to DMG's existing planned unit development to address the real property transactions set forth in Sections 2A, 4A and 4B above.

Except as extended to allow for the timing of the construction of the Technology Drive Improvements (as defined below) as set forth in Section 7 below, or as a result of Section 8H below, the actions set forth above shall be completed within one (1) year of the Effective Date. The Parties shall proceed in an expeditious manner, relative to the actions set forth above, so that said one (1) year deadline can be met.

**7. CONSTRUCTION OF THE TECHNOLOGY DRIVE IMPROVEMENTS.**

- A. In regard to the construction of the cul-de-sac on Technology Drive and Parcel A, along with the grassed berm immediately East of the cul-de-sac as referenced in Section 5D above, (hereinafter

collectively referred to as the "Technology Drive Improvements"), PROMENADE shall comply with the following conditions and requirements:

- (1) PROMENADE shall prepare construction drawings for the Technology Drive Improvements in full compliance with all applicable LOMBARD codes and ordinances, and submit same for approval by DMG and LOMBARD within forty-five (45) days of the Effective Date.
- (2) Prior to beginning construction of the Technology Drive Improvements, PROMENADE shall provide LOMBARD with a letter of credit, in the amount of one hundred fifteen percent (115%) of the estimated cost of constructing the Technology Drive Improvements, to guaranty the construction of the Technology Drive Improvements, with said letter of credit to be in compliance with Section 154.603 of LOMBARD's Village Code.
- (3) During the construction of the Technology Drive Improvements, PROMENADE shall maintain proper access for emergency vehicles, at all times, to areas adjacent to Technology Drive, in accordance with all applicable LOMBARD codes and ordinances.
- (4) PROMENADE shall complete the construction of the Technology Drive Improvements within two hundred seventy (270) days of the later of:
  - (a) receiving the required approvals/permits for the construction from LOMBARD; or
  - (b) the dedication of Parcel A for right-of-way purposes.
- (5) Upon completion of the Technology Drive Improvements and confirmation by LOMBARD that said Technology Drive Improvements have been constructed in compliance with the plans and specifications therefor, pursuant to a review by LOMBARD of a set of "as-built" drawings for said Technology Drive Improvements to be provided by PROMENADE to LOMBARD, PROMENADE shall convey that portion of the Technology Drive Improvements located within dedicated right-of-way to LOMBARD, pursuant to a Bill of Sale, with LOMBARD thereafter having the sole ownership of and maintenance obligation relative thereto, subject to PROMENADE posting a maintenance guaranty



letter of credit with LOMBARD, relative to that portion of the Technology Drive Improvements that are constructed within the public right-of-way, in compliance with Section 154.605 of LOMBARD's Village Code.

- (6) PROMENADE shall indemnify and hold harmless LOMBARD, DMG and their respective officers, agents and employees, with respect to any claim or loss, including, but not limited to, reasonable attorney's fees, costs and expenses of litigation, claims and judgments in connection with any and all claims for damages of any kind which may arise, either directly or indirectly, out of the acts or omissions of PROMENADE, or its officers, agents, employees, consultants or contractors, in the construction of the Technology Drive Improvements pursuant to this Agreement. PROMENADE further agrees to require any contractor to include LOMBARD, DMG and their respective elected officials, officers, agents and employees, as additional insureds on the insurance policies required of the contractor relative to the construction of the Technology Drive Improvements, which insurance policies shall be written with insurers and in amounts reasonably satisfactory to LOMBARD and DMG.
  - (7) If in the event that the Technology Drive Improvements are not completed within the time period set forth in subsection (4) above, LOMBARD reserves the right, but not the obligation, to draw upon the letter of credit referenced in subsection (2) above, and complete the Technology Drive Improvements.
- B. LOMBARD hereby grants to PROMENADE, and PROMENADE's officers, agents, employees, consultants and contractors, the right to enter upon Technology Drive and Parcel A for the purpose of surveying, engineering, designing and constructing the Technology Drive Improvements contemplated by this Agreement.
  - C. DMG hereby grants to PROMENADE, and PROMENADE's officers, agents, employees, consultants and contractors, the right to enter upon Parcel D and the property owned by DMG immediately surrounding Parcel A for the purpose of surveying, engineering, designing and constructing the Technology Drive Improvements contemplated by this Agreement, as well as for the purpose of emergency vehicle access during the construction of the Technology Drive Improvements.

## **8. GENERAL CONDITIONS/REQUIREMENTS.**

- A. This Agreement is entered into for the benefit of each of the Parties, solely, and not for the benefit of any third party. Nothing contained in this Agreement shall constitute a waiver of any privileges, defenses or immunities which either LOMBARD or OAK BROOK may have under the Local Governmental and Governmental Employees Tort Immunity Act with respect to any claim brought by a third party.
- B. The obligations of the Parties hereto shall constitute covenants running with the land to the extent they impose conditions upon any Party's use of property which said Party will own, or which will come under said Party's jurisdiction after all property transactions as contemplated by this Agreement take place.
- C. Upon completion of the actions set forth in Sections 6A through 6G of this Agreement, there shall be no direct or indirect (through another property) connection from any property located within the corporate limits of OAK BROOK to Technology Drive.
- D. This Agreement shall be recorded at the expense of PROMENADE.
- E. Except as provided in Section 7.A.(6) above, upon a breach of this Agreement, any of the Parties, by an action or proceeding solely in equity brought in the Eighteenth Judicial Circuit, DuPage County, Illinois, may secure the specific performance of the covenants and agreements herein contained, for failure of performance.
- F. In the event of a default by any of the Parties, the defaulting Party, as adjudicated by a court of competent jurisdiction, shall pay to the non-defaulting Party/Parties, upon demand, all of the non-defaulting Party's/Parties' reasonable costs, charges and expenses, including, but not limited to, the costs of engineers, consultants, attorneys and others retained by the non-defaulting Party/Parties for the purpose of enforcing any of the obligations of the defaulting Party under this Agreement.
- G. The failure of any Party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, by any other Party, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

H. If the performance by any Party hereunder is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances shall only include acts of God, war, strikes or similar acts of *force majeure*), the time for such performance shall be extended by the amount of time of such delay.

9. **NOTICES.** Notice or other writings which any Party is required to, or may wish to, serve upon any other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

A. If to LOMBARD:

Village Manager  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148

B. If to OAK BROOK:

Village Manager  
Village of Oak Brook  
1200 Oak Brook Road  
Oak Brook, Illinois 60523

C. If to DMG:

DMG Real Estate Holdings, LLC  
c/o DuPage Medical Group, Ltd.  
1100 West 31<sup>st</sup> Street  
Suite 300  
Downers Grove, Illinois 60515

D. If to PROMENADE:

Oak Brook Promenade, LLC  
c/o NAI Hiffman  
720 Butterfield Road  
Unit No. 360  
Lombard, Illinois 60148

or to such other address, or additional individuals/entities, as any Party may from time to time designate in a written notice to the other Parties.

10. **COUNTERPARTS.** This Agreement shall be executed simultaneously in four (4) counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

11. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties and supersedes any prior understanding or written or oral agreements between them regarding the within subject matter, including, but not limited

to, the Intergovernmental Agreement between the Parties dated September 2, 2010, which is hereby declared to be null and void. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

**12. EFFECTIVE DATE.** This Agreement shall be deemed dated and become effective on the date the last of the Parties execute this Agreement as set forth below, which date shall be inserted on page one of this Agreement as the Effective Date.

**IN WITNESS WHEREOF,** LOMBARD, pursuant to authority granted by the adoption of a Resolution by its Board of Trustees, has caused this Agreement to be executed by its President and attested by its Clerk; OAK BROOK, pursuant to the authority granted by the adoption of a Resolution by its Board of Trustees, has caused this instrument to be signed by its President and attested by its Clerk; DMG has caused this Agreement to be executed by its Manager; and PROMENADE has caused this Agreement to be executed by its Manager.

**VILLAGE OF LOMBARD**

By: \_\_\_\_\_  
William Ware, Acting Village President

ATTEST:

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

Dated: \_\_\_\_\_

**VILLAGE OF OAK BROOK**

By: \_\_\_\_\_  
Gopal G. Lalimalani, President

ATTEST:

\_\_\_\_\_  
Charlotte K. Pruss, Clerk

Dated: \_\_\_\_\_

**OAK BROOK PROMENADE, LLC**

By: \_\_\_\_\_  
Dennis J. Hiffman,  
Its Managing Member

Dated: \_\_\_\_\_

**DMG REAL ESTATE HOLDINGS, LLC**

By: \_\_\_\_\_  
Dennis Fine  
Chief Operating Officer

Dated: \_\_\_\_\_

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DuPAGE    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named William Ware and Brigitte O'Brien, personally known to me to be the Acting Village President and Village Clerk the Village of Lombard, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Acting Village President and Village Clerk, respectively, appeared before me this day in person and severally acknowledged that as such Acting Village President and Village Clerk they signed and delivered the signed instrument, pursuant to authority given by the Village of Lombard, as their free and voluntary act, and as the free and voluntary act and deed of said Village of Lombard, for the uses and purposes therein set forth, and that said Village Clerk, as custodian of the corporate seal of said Village of Lombard, caused said seal to be affixed to said instrument as said Village Clerk's own free and voluntary act and as the free and voluntary act of said Village of Lombard, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DuPAGE    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Gopal G. Lalimalani and Charlotte K. Pruss, personally known to me to be the President and Clerk of the Village of Oak Brook, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Clerk, respectively, appeared before me this day in person and severally acknowledged that as such President and Clerk they signed and delivered the signed instrument, pursuant to authority given by said Village of Oak Brook, as their free and voluntary act, and as the free and voluntary act and deed of said Village of Oak Brook, for the uses and purposes therein set forth, and that said Clerk, as custodian of the corporate seal of said Village of Oak Brook, caused said seal to be affixed to said instrument as said Clerk's own free and voluntary act and as the free and voluntary act of said Village of Oak Brook, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_





STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DuPAGE    )

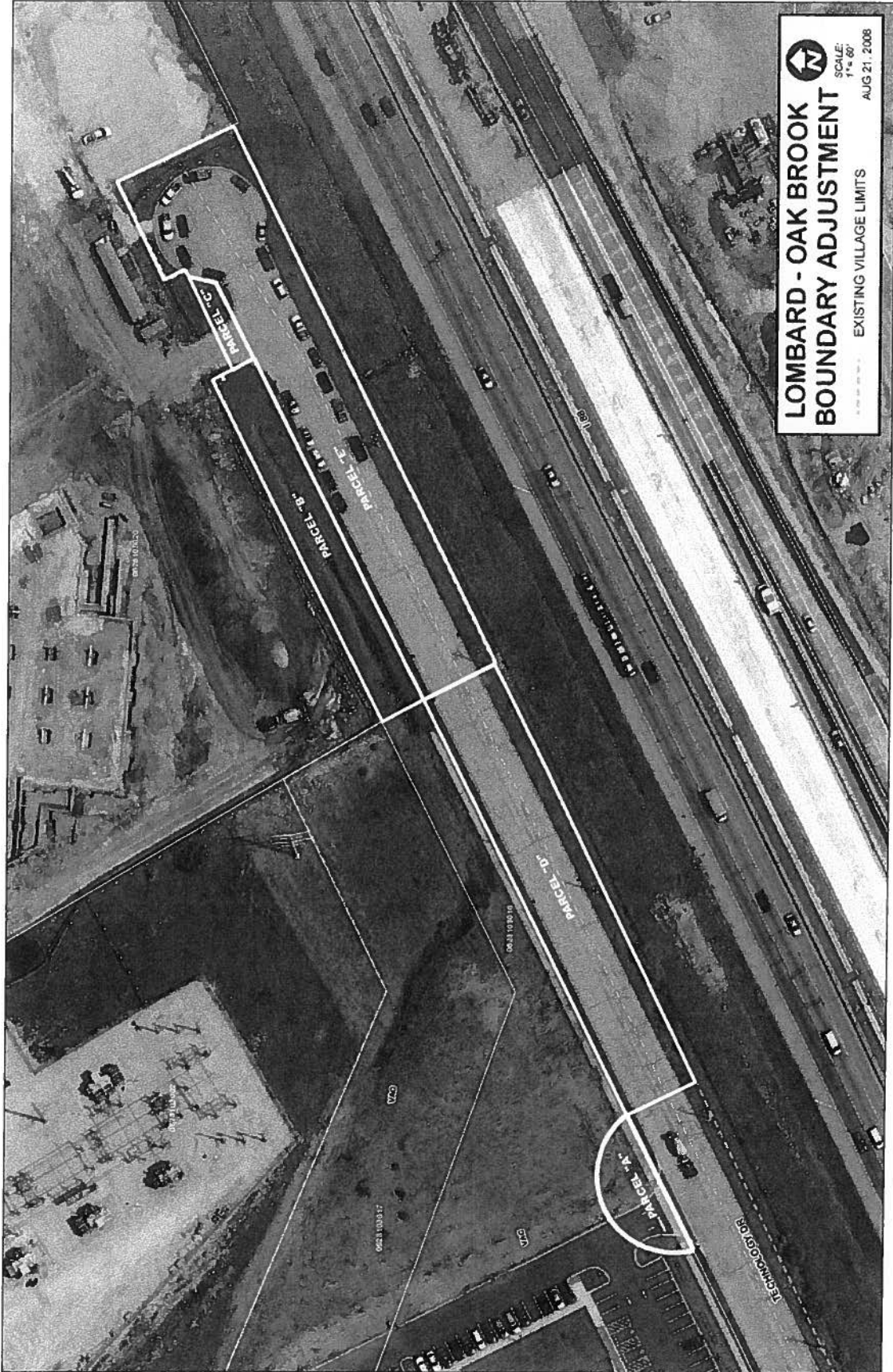
I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Dennis J. Hiffman is personally known to me to be the Managing Member of Oak Brook Promenade, LLC, and also known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member, and that he appeared before me this day in person and severally acknowledged that, as such Managing Member, he signed and delivered the signed instrument, pursuant to authority given by said limited liability company, as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Exhibit 1**  
**Technology Drive**  
**(see attached Parcel Map)**



**LOMBARD - OAK BROOK  
BOUNDARY ADJUSTMENT**

SCALE:  
1" = 60'

AUG 21, 2008

EXISTING VILLAGE LIMITS

**Exhibit 2**

**Parcel A**

PART OF LOT 5 IN HOMESTEAD VILLAGE SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTIONS 28 AND 29, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1998 AS DOCUMENT R98-179522, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID LOT 5 WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 1 IN NAI HIFFMAN BUTTERFIELD ROAD SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 2006 AS DOCUMENT NUMBER R2006-134912; THENCE SOUTH 65 DEGREES 20 MINUTES 01 SECONDS WEST ALONG SAID SOUTHERLY LINE OF LOT 5, A DISTANCE OF 328.32 FEET FOR THE PLACE OF BEGINNING; THENCE CONTINUING SOUTH 65 DEGREES 20 MINUTES 01 SECONDS WEST ALONG SAID SOUTHERLY LINE OF LOT 5, A DISTANCE OF 116.39 FEET; THENCE NORTH 07 DEGREES 35 MINUTES 09 SECONDS EAST, 22.96 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 57.00 FEET, HAVING A CHORD BEARING OF NORTH 75 DEGREES 53 MINUTES 47 SECONDS EAST, 135.92 FEET TO THE PLACE OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS

P.I.N. # 06-28-103-016

**Exhibit 3**

**Parcel B**

PART OF LOT 5 IN HOMESTEAD VILLAGE SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTIONS 28 AND 29, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1998 AS DOCUMENT R98-179522, DESCRIBED AS FOLLOWS: BEGINNING AT THE EASTERLY MOST SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 65 DEGREES 20 MINUTES 01 SECONDS WEST ALONG THE SOUTHERLY LINE OF SAID LOT 5, A DISTANCE OF 277.74 FEET TO THE INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 1 IN NAI HIFFMAN BUTTERFIELD ROAD SUBDIVISION PER PLAT OF SUBDIVISION RECORDED JULY 14, 2006 AS DOCUMENT NUMBER R2006-134912; THENCE NORTH 28 DEGREES 48 MINUTES 00 SECONDS WEST ALONG SAID SOUTHEASTERLY EXTENSION, 34.02 FEET TO THE NORTHERLY LINE OF SAID LOT 5; THENCE NORTH 65 DEGREES 20 MINUTES 01 SECONDS EAST ALONG SAID NORTHERLY LINE, 280.25 FEET TO THE WESTERLY MOST SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 24 DEGREES 34 MINUTES 27 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT 5, A DISTANCE OF 33.93 FEET TO THE PLACE OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.

P.I.N. # 06-28-103-016

**Exhibit 4**

**Parcel C**

THAT PART OF LOT 1 IN NAI HIFFMAN BUTTERFIELD ROAD SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 2006 AS DOCUMENT NUMBER R2006-134912, DESCRIBED AS FOLLOWS: BEGINNING AT THE EASTERLY MOST SOUTHEAST CORNER OF LOT 5 IN HOMESTEAD VILLAGE PER PLAT OF SUBDIVISION RECORDED SEPTEMBER 1, 1998 AS DOCUMENT R98-179522; THENCE NORTH 24 DEGREES 34 MINUTES 27 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 5, A DISTANCE OF 16.55 FEET; THENCE NORTH 65 DEGREES 25 MINUTES 33 SECONDS EAST, 75.25 FEET TO THE SOUTHERLY LINE OF SAID LOT 1 IN NAI HIFFMAN BUTTERFIELD ROAD SUBDIVISION; THENCE WESTERLY ALONG SAID SOUTHERLY LINE OF LOT 1 THE FOLLOWING TWO (2) COURSES AND DISTANCES: 1) SOUTH 13 DEGREES 07 MINUTES 04 SECONDS WEST, 20.78 FEET; 2) SOUTH 65 DEGREES 20 MINUTES 01 SECONDS WEST, 62.54 FEET TO THE PLACE OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.

P.I.N. # 06-28-103-020

**Exhibit 5**

**Parcel D**

THAT PART OF HERETOFORE DEDICATED TECHNOLOGY DRIVE, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1998 AS DOCUMENT R98-179522, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID TECHNOLOGY DRIVE WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 1 IN NAI HIFFMAN BUTTERFIELD ROAD SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 2006 AS DOCUMENT NUMBER R2006-134912; THENCE SOUTH 28 DEGREES 48 MINUTES 00 SECONDS EAST ALONG SAID SOUTHEASTERLY EXTENSION, 66.17 FEET TO THE SOUTHERLY LINE OF SAID HERETOFORE DEDICATED TECHNOLOGY DRIVE; THENCE SOUTH 65 DEGREES 20 MINUTES 01 SECONDS WEST ALONG SAID SOUTHERLY LINE OF HERETOFORE DEDICATED TECHNOLOGY DRIVE, 333.09 FEET; THENCE NORTH 24 DEGREES 39 MINUTES 59 SECONDS WEST, 66.00 FEET TO THE NORTHERLY LINE OF SAID HERETOFORE DEDICATED TECHNOLOGY DRIVE; THENCE NORTH 65 DEGREES 20 MINUTES 01 SECONDS EAST ALONG SAID NORTHERLY LINE OF TECHNOLOGY DRIVE, 328.32 FEET TO THE PLACE OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.



## **Exhibit 6**

### **Parcel E**

THAT PART OF HERETOFORE DEDICATED TECHNOLOGY DRIVE, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1998 AS DOCUMENT R98-179522, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID TECHNOLOGY DRIVE WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 1 IN NAI HIFFMAN BUTTERFIELD ROAD SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 2006 AS DOCUMENT NUMBER R2006-134912; THENCE EASTERLY, SOUTHERLY AND WESTERLY ALONG THE NORTHERLY, EASTERLY AND SOUTHERLY LINES OF SAID TECHNOLOGY DRIVE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES: 1) NORTH 65 DEGREES 20 MINUTES 01 SECONDS EAST, 340.28 FEET; 2) NORTH 13 DEGREES 07 MINUTES 04 SECONDS EAST, 20.78 FEET; 3) NORTH 65 DEGREES 25 MINUTES 33 SECONDS EAST, 4.75 FEET; 4) NORTH 24 DEGREES 34 MINUTES 27 SECONDS WEST, 15.00 FEET; 5) NORTH 65 DEGREES 25 MINUTES 33 SECONDS EAST, 80.00 FEET; 6) SOUTH 24 DEGREES 34 MINUTES 27 SECONDS EAST, 97.29 FEET; 7) SOUTH 65 DEGREES 20 MINUTES 01 SECONDS WEST, 432.87 FEET TO THE INTERSECTION WITH SAID SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 1; THENCE NORTH 28 DEGREES 48 MINUTES 00 SECONDS WEST ALONG SAID SOUTHEASTERLY EXTENSION, 66.17 FEET TO THE PLACE OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.

**Exhibit 7**  
**Restrictive Covenant for Parcel E**  
(attached)

## **DECLARATION OF SIGN RESTRICTION COVENANT**

This DECLARATION OF SIGN RESTRICTION COVENANT (the "Restrictive Covenant") is made this \_\_\_\_ day of \_\_\_\_\_, 2013 by Oak Brook Promenade, LLC, an Illinois Limited Liability Company (the "Owner").

### **WITNESSETH:**

**WHEREAS**, Owner is the owner of the Oak Brook Promenade (the "Retail Center") located in the Village of Oak Brook, and has obtained title to a certain parcel of property which is legally described in Exhibit A attached hereto and made part hereof (the "Property"); and

**WHEREAS**, Owner has entered into "An Intergovernmental Agreement Between Oak Brook Promenade, LLC, DMG Real Estate Holdings, LLC, the Village of Oak Brook and the Village of Lombard in Regard to Technology Drive" dated \_\_\_\_\_, 2013, and recorded by the DuPage County Recorder's Office on \_\_\_\_\_, 2013, as document number \_\_\_\_\_ (the "Agreement"), with Owner having become the owner of the Property pursuant to said Agreement; and

**WHEREAS**, the Agreement requires the Owner to record this Restrictive Covenant in consideration for obtaining title to the Property;

**NOW, THEREFORE**, in consideration of the foregoing premises, the covenants and agreements set forth in the Agreement and hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Owner, Owner hereby declares as follows:

### **ARTICLE I**

#### **SIGNS**

1.01 **Prohibited Signs**: Owner hereby declares that no signs or billboards shall be erected on the Property, other than as set forth in Section 1.02 below (the "Prohibited Signs").

1.02 **Permitted Signs**: Notwithstanding Section 1.01 above, informational direction/traffic control signs, relative to the movement of motor vehicles within a parking area constructed on the Property or within the Retail Center, may be erected on the Property.

1.03 **Violation of Declaration**. In the event Owner erects any Prohibited Signs, the Villages of Oak Brook and Lombard shall each have the right to remove any such Prohibited Signs from the Property at the Owner's sole cost and expense, including, but not limited to, the costs and expenses (including reasonable attorneys fees) of any litigation necessary to effectuate any such removal.

**ARTICLE II**

**MISCELLANEOUS**

2.01 Binding Effect. This Restrictive Covenant shall constitute a covenant running with the land and shall inure to the benefit of and be binding upon the Owner and the Villages of Oak Brook and Lombard and their respective successors and assigns.

2.02 Recording of Document. This Restrictive Covenant shall be recorded with the DuPage County Recorder's Office upon its execution in accordance with the Agreement.

This Declaration of Sign Restriction Covenant is hereby made by:

Oak Brook Promenade, LLC,  
an Illinois Limited Liability Company

\_\_\_\_\_  
By: Dennis J. Hiffman,  
Its Managing Member

STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF DUPAGE )

I, \_\_\_\_\_, a Notary Public in and for the said County, in the State aforesaid, do hereby certify that Dennis J. Hiffman, Managing Member of Oak Brook Promenade, LLC, appeared before me this day in person, and acknowledged that he signed, sealed and delivered this Declaration as his free and voluntary act, and as the free and voluntary act of Oak Brook Promenade, LLC, for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

## Exhibit A

### Legal Description of the Property

THAT PART OF HERETOFORE DEDICATED TECHNOLOGY DRIVE, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1998 AS DOCUMENT R98-179522, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID TECHNOLOGY DRIVE WITH THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 1 IN NAI HIFFMAN BUTTERFIELD ROAD SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JULY 14, 2006 AS DOCUMENT NUMBER R2006-134912; THENCE EASTERLY, SOUTHERLY AND WESTERLY ALONG THE NORTHERLY, EASTERLY AND SOUTHERLY LINES OF SAID TECHNOLOGY DRIVE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES: 1) NORTH 65 DEGREES 20 MINUTES 01 SECONDS EAST, 340.28 FEET; 2) NORTH 13 DEGREES 07 MINUTES 04 SECONDS EAST, 20.78 FEET; 3) NORTH 65 DEGREES 25 MINUTES 33 SECONDS EAST, 4.75 FEET; 4) NORTH 24 DEGREES 34 MINUTES 27 SECONDS WEST, 15.00 FEET; 5) NORTH 65 DEGREES 25 MINUTES 33 SECONDS EAST, 80.00 FEET; 6) SOUTH 24 DEGREES 34 MINUTES 27 SECONDS EAST, 97.29 FEET; 7) SOUTH 65 DEGREES 20 MINUTES 01 SECONDS WEST, 432.87 FEET TO THE INTERSECTION WITH SAID SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 1; THENCE NORTH 28 DEGREES 48 MINUTES 00 SECONDS WEST ALONG SAID SOUTHEASTERLY EXTENSION, 66.17 FEET TO THE PLACE OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.