

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ Waiver of First Requested
_____ Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: William T. Lichter, Village Manager
DATE: 2/25/04 (COW) (B of T) **Date:** 3/4/04
TITLE: Glen Ellyn Apartments Storm Sewer Inspection and Cleaning Agreement
SUBMITTED BY: Angela M. Podesta, Utilities Superintendent *AMP*

BACKGROUND/POLICY IMPLICATIONS:

See Attached Memo.

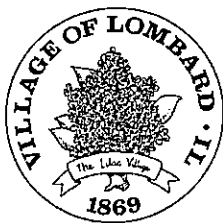
FISCAL IMPACT/FUNDING SOURCE:

None

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <i>W. Thomas T. Lichter</i>	Date <i>2/25/04</i>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

To: William T. Lichter, Village Manager

From: Angela M. Podesta, Utilities Superintendent *AMP*

Date: February 24, 2004

Subject: **Storm Sewer Inspection and Cleaning Agreement
With Glen Ellyn Apartments, Glen Ellyn, IL**

On October 13, 2001, the storm sewer system on West Morris Avenue overflowed due to a blockage in the downstream storm sewer system that is privately owned and maintained. Due to the emergency situation, the Village received verbal permission to enter private property to pump down the storm sewer and remove the blockage at the Village's expense. The Village received written permission from both Glen Ellyn Apartments and Royal Glen Condominiums in December, 2001 to televise the storm sewer system, both sewer systems are in fair to good condition.

The Village asked both Glen Ellyn Apartments and Royal Glen Condominiums to enter into an inspection and cleaning agreement that would give the Village the right, but not the duty, to enter the premises to inspect, televise and clean the private storm sewer system that is not covered by buildings. The agreement for Glen Ellyn Apartments is attached. The Board of Trustees entered into a similar agreement with the Royal Glen Condominiums on February 6, 2003.

Please present this agreement to the Board of Trustees for approval at their March 4, 2004 meeting.

AMP

RESOLUTION

R _____ 04

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard, and Glen Ellyn Apartments regarding the Storm Sewer Inspection and Cleaning Agreement as attached hereto and marked Exhibit "A"; 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, DU PAGE 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 4th day of March, 2004.

Ayes: _____

Nays: _____

Absent: _____

Approved this 4th day of March, 2004.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

LAW OFFICES
KLEIN, THORPE AND JENKINS, LTD.

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SCOTT F. UHLER
GEORGE A. WAGNER
DENNIS G. WALSH
JAMES G. WARGO
BRUCE A. ZOLNA

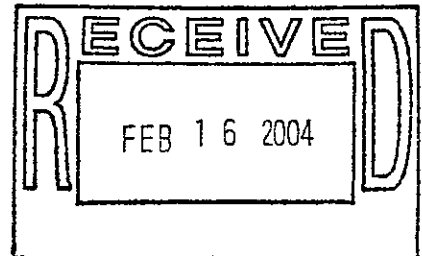
OF COUNSEL
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JENNIFER C. CHAVEZ
GERARD E. DEMPSEY
MICHAEL J. DUGGAN
JAMES V. FEROLO
SUZANNE M. FITCH
E. KENNETH FRIKER
ROBERT R. HALL, JR.
KATHLEEN T. HENN
EVERETTE M. HILL, JR.
MICHAEL T. JURUSIK
JACOB H. KARACA

WRITER'S DIRECT DIAL

WRITER'S E-MAIL

MEMORANDUM



TO: Angela Podesta, Utilities Superintendent
FROM: Tom Bayer, Village Attorney
DATE: February 12, 2004
SUBJECT: Storm Sewer Inspection and Cleaning Agreements -
Glen Ellyn Apartments and Royal Glen Condominiums

Attached please find the original Glen Ellyn Apartments Agreement for approval by the Village Board. Once approved, the Agreement should be dated, signed by the Village President and Deputy Village Clerk, notarized and then recorded along with the Royal Glen Condominiums Agreement (if same has not yet been recorded).

If there are any questions, please feel free to call.

TPB:cb

cc: William T. Lichter, Village Manager
John Burg, Acting Director of Public Works
Dave Dratnol, Village Engineer

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STORM SEWER INSPECTION AND CLEANING AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 200__, by and between the Village of Lombard, an Illinois municipal corporation (hereinafter referred to as the "VILLAGE") and Glenview State Bank, as Trustee Under Trust Agreement dated September 15, 1992 and known as Trust No. 4125, (hereinafter referred to as the "OWNER").

WITNESSETH

WHEREAS, OWNER is the record owner of the property commonly known as the Glen Ellyn Apartments located on the West side of Finley Road, just North of Roosevelt Road, and legally described as follows:

Lot 1 in Glen Terrace Plan Development Resubdivision of part of the Southwest 1/4 of Section 18, Township 39 North, Range 11, East of the Third Principal Meridian, DuPage County, Illinois;

P.I.N.: 06-18-305-004;

(hereinafter referred to as the "SUBJECT PROPERTY"); and

WHEREAS, the VILLAGE maintains a system of storm sewers to facilitate storm water management within the VILLAGE'S corporate boundaries; and

WHEREAS, there is a storm water management system located on the SUBJECT PROPERTY, consisting of a system of storm sewers on those portions of the SUBJECT

PROPERTY that are not covered by buildings (hereinafter referred to as the "PRIVATE STORM SEWER SYSTEM"); and

WHEREAS, the PRIVATE STORM SEWER SYSTEM conveys storm water from the SUBJECT PROPERTY in a Westerly direction, such that said storm water flows from the PRIVATE STORM SEWER SYSTEM into a detention pond to the West; and

WHEREAS, as a result of prior agreements, storm water from the VILLAGE'S storm sewer in Finley Road flows through the private storm water management system on the property to the East of the SUBJECT PROPERTY, then through the PRIVATE STORM SEWER SYSTEM and into the aforementioned detention pond; and

WHEREAS, in order to prevent back-ups in the VILLAGE'S storm water management system, it is necessary that the PRIVATE STORM SEWER SYSTEM be at all times maintained in a proper operating condition, free of all obstructions; and

WHEREAS, the VILLAGE desires to obtain the right to enter the SUBJECT PROPERTY from time to time, and to inspect, televise and clean the PRIVATE STORM SEWER SYSTEM so as to make sure that said PRIVATE STORM SEWER SYSTEM remains in a proper operating condition, free of all obstruction; and

WHEREAS, OWNER has no objection to the VILLAGE being granted the aforementioned rights, subject to certain terms and conditions, as more fully set forth below; and

WHEREAS, it is in the best interests of the parties hereto to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

1. The recitals set forth above are hereby incorporated herein by reference as if fully set forth herein.

2. The OWNER hereby reserves and grants to the VILLAGE an easement over that portion of the SUBJECT PROPERTY not covered by a building for the sole purpose of entering upon the SUBJECT PROPERTY to inspect, televise and clean the PRIVATE STORM SEWER SYSTEM, at the VILLAGE'S sole cost and expense. Said easement shall be perpetual and shall run with the land and shall be binding upon the OWNER and its successors, heirs, executors and assigns. Pursuant to said easement, the VILLAGE shall, upon ten (10) days prior written notice to the OWNER, have the right, but not the duty, to perform, or have performed on its behalf, any inspection, televising and/or cleaning of the PRIVATE STORM SEWER SYSTEM, including the right to remove obstructions. In the event of an emergency situation, as determined by the VILLAGE, the ten (10) days prior written notice requirement set forth above shall not apply, and the Village shall have the right, but not the duty, to proceed without notice to the OWNER.

3. Upon completion of any inspection, televising or cleaning of the PRIVATE STORM SEWER SYSTEM, the VILLAGE shall, at its sole cost and expense, restore the SUBJECT PROPERTY to the condition it was in prior to the VILLAGE'S entry and shall provide the OWNER, within ten (10) days after the completion, with a written explanation of what action was taken by the VILLAGE and the results thereof.

4. The VILLAGE shall be responsible for any damage done to the PRIVATE STORM SEWER SYSTEM as a result of any inspection, televising or cleaning of the PRIVATE STORM SEWER SYSTEM by the VILLAGE or as a result of any object which the VILLAGE intentionally places into the PRIVATE STORM SEWER SYSTEM.

5. The VILLAGE shall indemnify, defend and hold harmless the OWNER, and its officers, employees and agents, with respect to any claim or loss, including but not limited to,

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 the VILLAGE, or its officers, agents, employees or contractors, in furtherance of this Agreement. The VILLAGE further agrees to require any contractor hired by the VILLAGE to perform work in furtherance of this Agreement to include the OWNER and its officer, agents and employees as additional insured on any insurance policies required of the contractor by the VILLAGE.

6. Notice or other writing which either party is required to, or may wish to, serve upon the 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 the VILLAGE:

Director of Public Works
Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148

B. If to the OWNER:

T.J. Adam & Company
480 Eagle Drive
Elk Grove Village, Illinois 60007
Attn: Tom Ragauskis

or to such other address, or additional parties, as either party may from time to time designate in a written notice to the other party.

7. This Agreement shall be recorded with the DuPage County Recorder of Deeds at the VILLAGE'S expense.

8. This Agreement contains the entire understanding between the parties and supersedes any prior understanding or written or oral agreements between them respecting the within subject

matter. 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.

9. This Agreement shall be deemed dated and become effective on the date the last of the parties execute this Agreement as set forth below.

IN WITNESS WHEREOF, the VILLAGE, 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, and the OWNER, pursuant to the authority duly granted has caused this instrument to be signed by its Vice President and attested by its Trust Officer.

VILLAGE OF LOMBARD

**GLENVIEW STATE BANK, AS TRUSTEE
UNDER TRUST AGREEMENT DATED
SEPTEMBER 15, 2002 AND KNOWN AS
TRUST NO. 4125**

BY: _____
Village President

[See page 7 for signatures, trustees exoneration clause (which is made a part hereof) and notarization of signatures]

ATTEST:

Deputy Village Clerk

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 J. Mueller and Barbara A. Johnson, personally known to me to be the Village President and Deputy Village Clerk of the Village of Lombard, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Deputy Village Clerk, respectively, appeared before me this day in person and severally acknowledged that as such Village President and Deputy Village Clerk they signed and delivered the said instrument, pursuant to authority given by said Village, as their free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth, and that said Deputy Village Clerk as custodian of the corporate seal of said Village caused said seal to be affixed to said instrument as said Deputy Village Clerk's own free and voluntary act and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 200__.

Notary Public

My Commission Expires: _____

This Exculpatory Clause attached hereto and made a part hereof.

THIS DOCUMENT is executed by Glenview State Bank, not personally, but as Trustee under Trust No. 4125 as aforesaid, in the exercise of power and authority conferred upon and vested in said Trustee as such, and it is expressly understood and agreed that nothing in said document contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing thereunder, or to perform any covenants, either expressed or implied, including but not limited to warranties, indemnifications, and hold harmless representations in said document (all such liability if any, being expressly waived by the parties hereto and their respective successors and assigns) and that so far as said Trustee is concerned, the owner of any indebtedness or right accruing under said document shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said Trustee merely holds legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no knowledge respecting any factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said trust. In event of conflict between the terms of this rider and of the agreement to which it is attached, on any questions or apparent liability or obligation resting upon said trustee, the provisions of this rider shall be controlling.

IN WITNESS WHEREOF, Glenview State Bank, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice President, and its corporate seal to be hereunto affixed and attested by its Trust Officer, the day and year first above written.

GLENVIEW STATE BANK
As Trustee as aforesaid and not personally.

By: [Signature]
Vice President

Attest: [Signature]
Trust Officer

STATE OF ILLINOIS)
) S.S.
COUNTY OF COOK)

I, the undersigned as Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that KAREN SHADDOCK-YOUNG, Vice President of the GLENVIEW STATE BANK, and LYNETTE WALLACE Trust Officer of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Trust Officer respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and the said Trust Officer did also then and there acknowledge that she, as custodian of the corporate seal of said Bank, did affix the said corporate seal of said Bank to said instrument as her own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of January, 2004.

[Signature]
Notary Public

