

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 Niehaus, Village Manager

DATE: August 19, 2019 (COW) (B of T) **Date:** Septmber 19, 2019

TITLE: Harding Road License

SUBMITTED BY: David Gorman, Assistant Director of Public Works *DRG*

BACKGROUND/POLICY IMPLICATIONS:

A proposed Agreement to issue a license for use of the Harding Road right-of-way west of IL Route 53 to accommodate the development of a charitable farm at 649 W. Harding Road serving returned veterans.

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 Niehaus, Village Manager

THROUGH: Carl S. Goldsmith, Director of Public Works *g*

FROM: David P. Gorman, PE, Asst. Director of Public Works *DPG*

SUBJECT: **Harding Road License**

DATE: August 19, 2019

Attached is a proposed Agreement to issue a license for use of the Village's right-of-way for Harding Road west of IL Route 53. The right-of-way is currently underimproved pavement in poor condition.

The owner of the adjacent vacant 2.81-acre land parcel at 649 W. Harding Road, Sarah Stapp, desires to develop a charitable farm serving returned veterans on the property. The property is immediately adjacent to the Illinois State Toll Highway Authority's right-of-way. This license for use of the Village's right-of-way will allow access to the farm with minimal improvements, such as patching the existing asphalt. All on-going maintenance during the term of the Agreement will be Ms. Stapp's sole responsibility. Absent this license, annexation and full public improvements for the right-of-way (i.e., a cul-de-sac with street lighting and sidewalk) would have normally been required.

Staff recommends that the Board of Trustees approve the Agreement, which has been reviewed by the Village Attorney.

DG:dg H:\PW\Asst Director\Harding Road License\BOT Memo.doc

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A LICENSE AGREEMENT
BETWEEN THE VILLAGE OF LOMBARD AND
SARAH STAPP, RELATIVE TO A PORTION OF
THE HARDING ROAD RIGHT-OF-WAY, JUST EAST OF I-355**

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

SECTION 1: That the President and Board of Trustees hereby approve the License Agreement attached hereto as Exhibit A, and made part hereof.

SECTION 2: That the Village President and Village Clerk are hereby authorized and directed to execute said License Agreement, in the form attached hereto as Exhibit A, on behalf of the Village, as well as execute any and all additional documents necessary to carry out the terms and provisions of said License Agreement.

SECTION 3: That this Ordinance shall be in full force and effect from and after its passage by a three-fourths (3/4ths) vote of the Corporate Authorities as required by 65 ILCS 5/11-76-2, and approval as required by law.

Passed on first reading this ____ day of _____, 2019.

First reading waived by action of the Board of Trustees this ____ day of _____, 2019.

Passed on second reading this ____ day of _____, 2019, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2019.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit A

**License Agreement
Between the Village of Lombard and Sarah Stapp**

(attached)

LICENSE AGREEMENT

This License Agreement (hereinafter referred to as the "License Agreement") is entered into by and between the VILLAGE OF LOMBARD (hereinafter referred to as the "VILLAGE"), an Illinois municipal corporation, and Sarah Stapp (hereinafter referred to as "LICENSEE"), an individual citizen residing at 141 W. Madison Street, Lombard, Illinois (the VILLAGE and LICENSEE are hereinafter sometimes referred to collectively as the "PARTIES").

WITNESSETH

WHEREAS, the VILLAGE owns and maintains Harding Road, a public right-of-way of sixty-six feet (66') in width, which is located within the corporate limits of the VILLAGE (hereinafter the "HARDING ROW"); and

WHEREAS, LICENSEE is the legal owner of record of the property located at 649 West Harding Road, Lombard, Illinois; said property being 2.81 acres in area, unincorporated, and legally described as set forth on Exhibit "A" attached hereto and made part hereof (hereinafter referred to as the "FARM PROPERTY"); and

WHEREAS, LICENSEE desires to improve the FARM PROPERTY for agricultural and limited residential use for one (1) family, plus no more than ten (10) returned veterans involved with the on-site farming program; and

WHEREAS, included within the boundaries of the HARDING ROW is an underimproved pavement area serving and abutting the FARM PROPERTY along the North property line of the FARM PROPERTY, as shown on Exhibit "B" attached hereto and made part hereof (hereinafter referred to as the "LICENSED PREMISES"); and

WHEREAS, the VILLAGE has determined that it is in the best interest of the PARTIES to enter into an agreement to allow the LICENSEE to utilize the LICENSED PREMISES for the

use and benefit of the LICENSEE, without need of further improving the LICENSED PREMISES in any manner, and subject to the terms of this License Agreement;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants, representations, and promises contained herein, the PARTIES hereby agree as follows:

SECTION 1: LICENSE AND LIMITATIONS

1.1 Grant of License. The VILLAGE hereby grants to LICENSEE a non-exclusive revocable license (hereinafter referred to as the "License") to occupy and use, subject to all of the terms, conditions and restrictions contained herein, the LICENSED PREMISES for vehicular loading and unloading purposes exclusively associated with the business operations at the FARM PROPERTY.

1.2 Scope and Limitations of License. Said License shall permit LICENSEE to use and occupy the LICENSED PREMISES for ingress and egress purposes, subject to the restrictions and requirements imposed by this License Agreement, the Lombard Village Code and Lombard Traffic Code, including, but not limited to, the following restrictions and requirements:

A. LICENSEE shall not construct, build, or place, or cause to be constructed, built, or placed, any structures, permanent or otherwise, on the LICENSED PREMISES, including but not limited to buildings, houses, dwellings, garages, sheds, and/or other structures of a permanent or semi-permanent nature.

B. LICENSEE shall be permitted to install signs designating the LICENSED PREMISES as a reserved ingress and egress area, subject to the parking restrictions and

requirements imposed by this License Agreement, the Lombard Village Code and the Lombard Traffic Code, and the prior approval of the Village's Department of Public Works.

C. LICENSEE shall also be responsible for the following maintenance and repair costs within the LICENSED PREMISES:

1. All resurfacing, patching or crack-sealing of the pavement area;
2. All required reconstruction of the subbase underneath the LICENSED PREMISES;
3. All patching or repair of any curbing abutting the LICENSED PREMISES;
and
4. Any striping or other pavement markings within the LICENSED PREMISES.

The VILLAGE shall retain and reserves the right to require the LICENSEE to pay all costs for repairs associated with the LICENSED PREMISES. Said determination for the need for repairs shall be based upon a review of the LICENSED PREMISES by the VILLAGE's Director of Public Works. Any improvements within the LICENSED PREMISES shall meet the standards established within the latest edition of the VILLAGE's Manual of Specifications for the Design of Public Improvements or Site Improvements.

D. The LICENSEE shall also have the right to request pavement improvements within the LICENSED PREMISES provided that the costs for the requested improvements are paid in full by the LICENSEE. Any such improvements shall be made and maintained at the sole cost

and/or expense of the LICENSEE, and any such costs and/or expenses shall not be recoverable in the event that this License Agreement is terminated or not renewed by the VILLAGE. Any such improvements shall be removed by the LICENSEE at LICENSEE'S sole cost and expense in the event that this License Agreement is terminated or not renewed, unless otherwise directed by the VILLAGE. In the event that the LICENSEE fails to remove said improvements, and the VILLAGE is required to do so, the VILLAGE's costs associated with any such removal may be recorded as a lien against the FARM PROPERTY.

E. LICENSEE shall refrain from using the LICENSED PREMISES in any unreasonable, unsafe, and/or illegal manner, and shall at all times use the LICENSED PREMISES in full compliance with all applicable provisions of this License Agreement, the Lombard Village Code and the Lombard Traffic Code. This provision includes, but is not limited to, the following additional restrictions:

1. There shall be no overnight parking or storage of motor vehicles within the LICENSED PREMISES;
2. The parking of semi-truck tractor trailers or vehicle carrier truck trailers within the LICENSED PREMISES shall be limited to the period during which motor vehicles are being actively loaded onto or unloaded from the truck trailers; and
3. There shall be no display or sales of motor vehicles within the LICENSED PREMISES.

1.3 Term of License. Said License shall be granted by the VILLAGE for a period of

ten (10) years from the date of approval by the VILLAGE and LICENSEE.

1.4 Nonassignability of License. Said License is personal and shall not be assigned and/or transferred to any other person or entity without the expressed written consent of the VILLAGE.

SECTION 2: PAYMENTS AND APPORTIONMENT

2.1 Payment. LICENSEE shall pay to the VILLAGE, upon execution of this License Agreement, a one-time License fee of one hundred and no/100 dollars (\$100).

SECTION 3: TERMINATION AND EXPIRATION

3.1 Termination. This License Agreement shall terminate by its terms at its effective date of expiration. Prior to its expiration, the License provided herein is revocable at will at the sole option and discretion of the VILLAGE, and may be revoked for any reason whatsoever. Said License is for the temporary permissive use of the LICENSED PREMISES only and creates no property and/or other interest in the LICENSED PREMISES on the part of, or for the benefit of, the LICENSEE.

3.2 Notice of Termination. No written or other notice of termination shall be required where this License Agreement terminates as a result of expiration. Where termination is sought by the VILLAGE prior to the expiration of this License Agreement, the VILLAGE shall provide LICENSEE with written notice of such termination no less than thirty (30) days prior to the effective date of such revocation. Where termination is sought by the LICENSEE prior to the expiration of this License Agreement, the LICENSEE shall provide VILLAGE with a written

notice of such termination no less than thirty (30) days prior to the effective date of such termination.

3.3 Delivery of Notice. All notices relative to this License Agreement shall be deemed to have been effectively sent by the VILLAGE and received by LICENSEE, in accordance with the terms and conditions of this License Agreement, when said notice is mailed by the VILLAGE via certified mail, return receipt requested, to Sarah Stapp, 141 W. Madison Street, Lombard, Illinois 60148. It shall be the sole responsibility of LICENSEE to provide the VILLAGE with written notice of any changes in address for purposes of receiving notice under this License Agreement. Any notice issued by LICENSEE hereunder shall be sent via certified mail, return receipt requested, and addressed as follows:

Director of Public Works
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148

SECTION 4: MISCELLANEOUS PROVISIONS

4.1. Indemnification and Insurance. LICENSEE hereby covenants and agrees to indemnify and hold the VILLAGE, and its officers, agents, and employees, harmless with respect to any and all claims, losses, lawsuits, actions, injuries, accidents, costs, and/or expenses (including attorney's fees) of any type, nature, and/or variety arising out of this License Agreement or relating in any way to the LICENSED PREMISES, including but not limited to any and all claims and/or causes of action incurred by persons injured on or around the LICENSED PREMISES during the effective term of this License Agreement. LICENSEE shall maintain adequate liability insurance

covering the LICENSED PREMISES for the effective term of this License Agreement in coverage amounts as approved by the VILLAGE, and shall provide the VILLAGE with written proof thereof in the form of a certificate of insurance with said certificate of insurance naming the VILLAGE, and its officers, agents and employees as additional insureds on said liability insurance, and indicating that the LICENSEE's insurance shall be primary to any insurance purchased by the VILLAGE. Said certificate of insurance shall be provided to the VILLAGE within ten (10) days following the effective date of this License Agreement. LICENSEE's failure to provide a valid certificate of insurance to the VILLAGE within ten (10) days of the effective date hereof shall render this License Agreement null, void, and of no legal effect.

4.2 Severability of Agreement. The terms and conditions set forth in this License Agreement shall be severable. In the event that any of the provisions contained herein are declared by a court of competent jurisdiction to be inconsistent with federal, state, or local law, or otherwise unenforceable for any reason whatsoever, the remaining provisions shall remain in full force and effect as to the PARTIES.

4.3. Merger Clause. This License Agreement constitutes the entire understanding between the PARTIES and supersedes any prior understandings and/or agreements between the PARTIES. Any representations, agreements, promises, or understandings not expressly set forth herein are hereby rendered null, void, and of no legal effect.

4.4. Choice of Law. This License Agreement is entered into under, and shall be governed for all purposes by, the laws of the State of Illinois, and venue in relation to any court action relating in any way to this License Agreement shall be in DuPage County, Illinois.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement on this 25th
date of August, 2019.

VILLAGE OF LOMBARD

LICENSEE: Sarah Stapp

By: _____
Director of Public Works

By: Sarah E. Stapp
Title: owner

Attest: Brian
Title: Witness

Date: _____

Date: August 25, 2019

VILLAGE OF LOMBARD

Approved this _____ day of _____, 2019

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

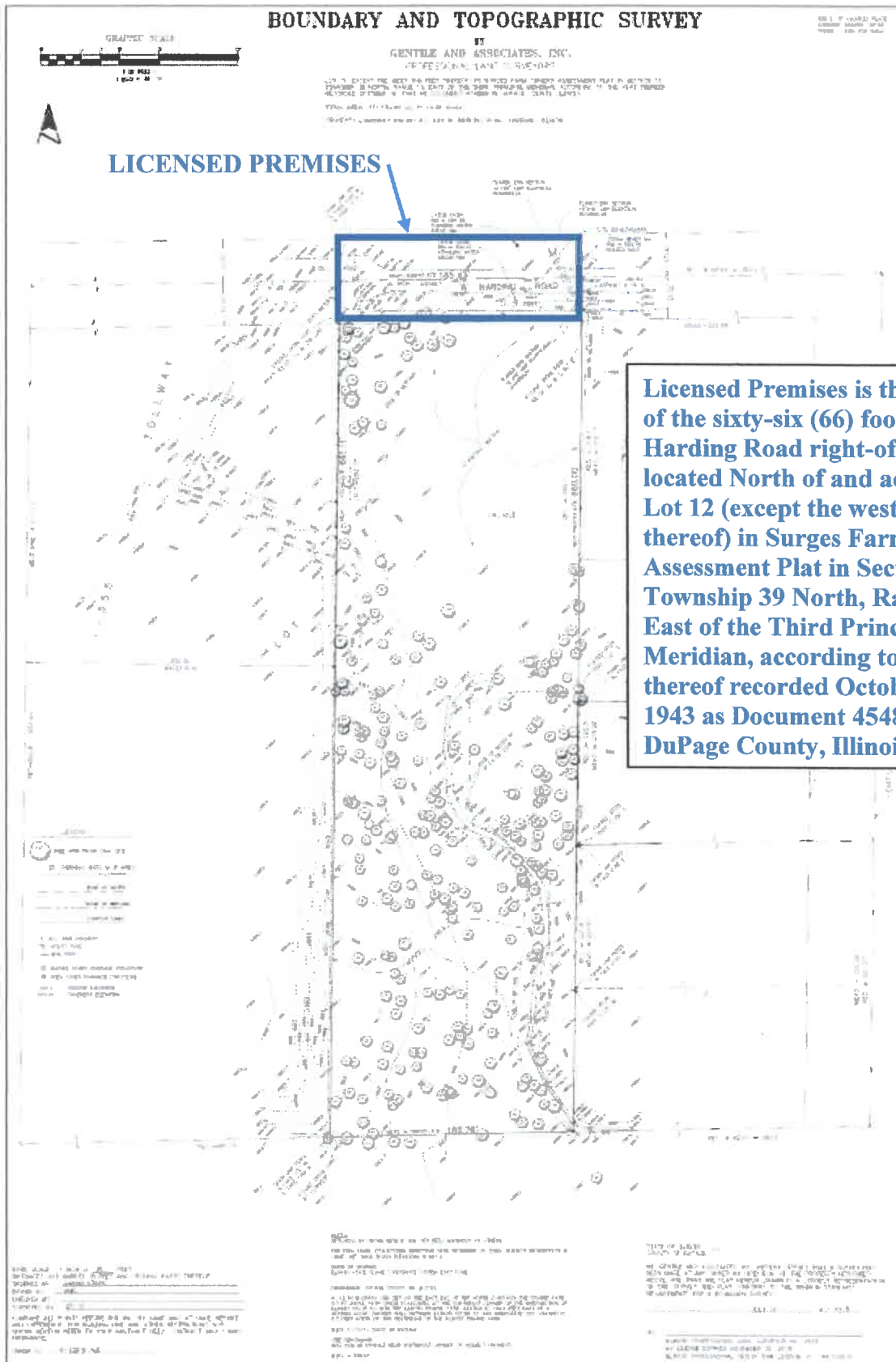
EXHIBIT A

LEGAL DESCRIPTION OF FARM PROPERTY

LOT 12 (EXCEPT THE WEST 300 FEET THEREOF) IN SURGES FARM OWNERS ASSESSMENT PLAT IN SECTION 13, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 19, 1943 AS DOCUMENT 454868 IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-13-206-007

LICENSED PREMISES



Licensed Premises is that portion of the sixty-six (66) foot wide Harding Road right-of-way located North of and adjacent to Lot 12 (except the west 300 feet thereof) in Surges Farm Owners Assessment Plat in Section 13, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded October 19, 1943 as Document 454868 in DuPage County, Illinois.