

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: May 12, 2015 (B of T) Date: May 21, 2015

TITLE: 1 E. Roosevelt Road – Environmental Indemnity Agreement

SUBMITTED BY: Department of Public Works *af*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Public Works transmits for your consideration a resolution authorizing signatures of President and Clerk on an Environmental Indemnity Agreement for the property located at 1 E. Roosevelt Road.

Staff recommends that this request be approved.

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.

RESOLUTION

R _____

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

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Environmental Indemnity Agreement between the Village of Lombard and 1 East Roosevelt, LLC, 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 21st day of May, 2015.

Ayes: _____

Nays: _____

Absent: _____

Approved this 21st day of May, 2015.

**Keith Giagnorio
Village President**

ATTEST:

**Sharon Kuderna
Village Clerk**

APPROVAL AS TO FORM:

**Thomas P. Bayer
Village Attorney**

This document prepared by:
Dennis G. Walsh
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive – Suite 1660
Chicago, Illinois 60606

For Recorder's Use Only

ENVIRONMENTAL INDEMNITY AGREEMENT

This ENVIRONMENTAL INDEMNITY AGREEMENT is entered into as of the _____ day of _____, 2015, by 1 EAST ROOSEVELT, LLC ("Indemnitor") and the VILLAGE OF LOMBARD, DuPage County, Illinois (the "Village").

RECITALS

A. **WHEREAS**, Indemnitor is the owner of certain real property located at 1 E. Roosevelt Road, Lombard, Illinois ("Indemnitor's Property") and legally described in Exhibit A; and

B. **WHEREAS**, a release to the environment of petroleum hydrocarbons, including gasoline additives, has occurred in the past at the Indemnitor's Property. Used/waste oil and hydraulic oil may be present on Indemnitor's Property. (All of the previously mentioned compounds, which shall include Benzene, Ethylbenzene, Toluene, Xylene and Methyl Tertiary Butyl Ether (MTBE) and/or any other Hazardous Material released into the environment at Indemnitor's Property, including but not limited to those compounds identified in TACO modeling calculations for the groundwater contamination identified at Indemnitor's Property are hereby collectively referred to as "Compounds of Concern"). As a result of said release, the soil and groundwater at the Indemnitor's Property contains detectable concentrations of Compounds of Concern. The groundwater and soil impacted by Compounds of Concern extend beyond the Indemnitor's Property. The Illinois Emergency Management Agency has assigned incident number 20030352 to the release at the Indemnitor's Property; and

C. **WHEREAS**, the Indemnitor has requested that the Village enter into a Highway Authority Agreement with respect to certain public highways adjacent to the Indemnitor's Property as identified in Exhibit B (the "Right-of-Way").

D. **WHEREAS**, Indemnitor desires to limit any potential threat to human health from groundwater impacted with the contaminants and has requested that the Village enact a groundwater ordinance ("Groundwater Ordinance") that prohibits the installation of new

groundwater wells for potable water supply in an area adjacent to and including the Indemnitor's Property. The proposed Groundwater Ordinance is attached hereto as Exhibit C.

NOW, THEREFORE, in consideration of the terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. This Limited Environmental Indemnity Agreement ("Agreement") is not binding upon the Village until it is executed by the undersigned representative of the Village of Lombard and, prior to execution, this Agreement constitutes an offer by Indemnitor. The duly authorized representative of Indemnitor has signed this Agreement, and this Agreement is binding upon Indemnitor, its successors and assigns.

2. The Village agrees that it will adopt the Groundwater Ordinance provided, however, that if the Village does not adopt the Groundwater Ordinance or rescinds the Groundwater Ordinance, this Agreement shall be deemed null and void, and Indemnitor shall have no other remedy against the Village. No breach by the Village, its agents, trustees, employees and its successors in interest of a provision of this Agreement is actionable in law or equity by Indemnitor against the Village, and Indemnitor hereby releases the Village and Village Affiliates (as defined below) from any cause of action it may have against them arising under this Agreement or Environmental Laws (as defined below), regulations or common law.

3. The Village agrees that it will enter into a Highway Authority Agreement in the form attached as Exhibit B, and this Environmental Indemnity Agreement is intended to supplement the parties' rights and obligations provided for in the Highway Authority Agreement provided, however, that if the Village does not enter into a Highway Authority Agreement, this Agreement shall be deemed null and void, and Indemnitor shall have no other remedy against the Village. No breach by the Village, its agents, trustees, employees and its successors in interest of a provision of this Agreement is actionable in law or equity by Indemnitor against the Village, and Indemnitor hereby releases the Village and Village Affiliates (as defined below) from any cause of action it may have against them arising under this Agreement or Environmental Laws (as defined below), regulations or common law.

Specifically, Indemnitor knowingly waives and releases the Village and/or Village Affiliates from any and all claims, debts, dues and obligations of every kind and nature under the Illinois and United States Constitutions as well as under any federal or state statutes or laws, including but not limited to environmental laws related to the subject matter of this Agreement. Indemnitor further waives all remedies (including those which may be available under the Civil Rights Act) which are available to it for the violations of any of the terms of this Agreement, including but not limited to the equitable remedy of specific performance, and agrees not to seek injunctive relief of any sort. Indemnitor covenants not to sue the Village and/or Village Affiliates for a violation of any provision or terms of this Agreement.

As the pavement in the Right-of-Way may be considered an engineered barrier, the Indemnitor agrees to reimburse the Village for maintenance activities requested by Indemnitor in

writing in order to maintain it as a barrier. The Village does not agree to perform maintenance of the Right-of-Way, nor does it agree that the Right-of-Way will always remain a Village highway or that it will maintain the Right-of-Way as an engineered barrier. In the event that the Right-of-Way will no longer remain a Village highway Right-of-Way, Indemnitor shall take all steps necessary to have the IEPA issue a new no further remediation determination to reflect there is no longer a need for the Highway Authority Agreement. This Environmental Indemnity Agreement does not limit the Village's ability to construct, reconstruct, demolish, improve, grade, excavate, repair, maintain and operate the Right-of-Way for any lawful purpose, nor to allow others to use or do work within the Right-of-Way boundaries.

4. Indemnitor on behalf of itself, its successors and assigns does hereby covenant and agree, at its sole cost and expense, to indemnify, defend and hold the Village and the Village's former, current and future officials, trustees, officers, servants, employees, agents, successors and assigns (collectively "Village Affiliates"), both in their capacities as Village representatives and as individuals, harmless from and against any loss, actions, responsibilities, obligations, liability, damage (whether direct or consequential), expenses, claims (whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future), penalties, fines, injunctions, suits (including but not limited to suits alleging or related to personal injury and/or death), proceedings, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements and court costs) (collectively, the "Liabilities"), arising under or relating to any Environmental Laws (as defined below), or any other Liabilities which may be incurred by or asserted against any of the Village Affiliates resulting or arising from, alleged to arise from, or caused by, in whole or in part, from the presence of Hazardous Material (as defined below) on, in or from the Indemnitor's Property (including the groundwater thereunder) and/or any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release or threatened release of Hazardous Materials on or from the Indemnitor's Property.

Indemnitor shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. In the event that the Village or any of the Village Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Agreement, the Village and/or any of the Village Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the reasonable costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by Indemnitor pursuant to the indemnification provisions herein. Indemnitor shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Agreement and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Agreement. In the event that such payment is not made, the Village or any Village Affiliate, at their sole discretion, may proceed to file suit against the Indemnitor to compel such payment. Indemnitor also agrees that it will not settle or compromise any action, suit or proceeding with the Village's prior written consent, which consent shall not be unreasonably withheld.

For purposes of this Agreement, "Hazardous Materials" means and includes contaminants, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials, and any items defined as hazardous, special or toxic materials, substances or waste under any Environmental Law, or any material which shall be removed from property located within the Village of Lombard pursuant to any administrative order or enforcement proceeding or in order to place said property in a condition that is suitable for ordinary use. Hazardous Materials shall include each and every element, compound, chemical mixture, contaminant, pollutant, material waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Law or the release of which is regulated under Environmental Laws. "Environmental Laws" collectively means and includes any present and future local, state, federal or international law, statute, ordinance, order, decree, rule, regulation or treaty relating to public health, safety or the environment (including those laws relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage, disposal, treatment, transportation or management of Hazardous Materials) including, without limitation, the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. §655, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136, et seq., the National Environmental Policy Act, 42 U.S.C. §4321, et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001, et seq., and the Illinois Environmental Protection Act, and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

In addition to the indemnity provided above, if the Village or Village Affiliates encounter Hazardous Materials while working in, on or under or near the Indemnitor's Property (including but not limited to such areas as within municipal easements and/or Right-of-Ways) or encounter Hazardous Materials migrating from Indemnitor's Property, the Village has the right to remove contaminated soil or groundwater from the area it is working and intends to do work and to dispose of them as it deems appropriate not inconsistent with applicable Environmental Laws so as to avoid causing a further release of the Hazardous Materials and to protect human health and the environment. If Hazardous Materials are found anywhere within the boundaries of the proposed Groundwater Ordinance and/or Highway Authority Agreement, there is a presumption that the Hazardous Materials migrated from and are attributable to the Indemnitor's Property.

The removal or disposal shall be based upon the site investigation (which may be modified by field conditions during excavation), which Indemnitor may review or may perform, if requested to do so by the Village. If practicable, as determined by the Village, the Village may request Indemnitor to remove and dispose of the contaminated soil and/or groundwater necessary for the Village's work in advance of that work. In any event, Indemnitor shall reimburse the reasonable costs incurred by the Village to perform the site investigation and to dispose of any

contaminated soil or groundwater. The parties understand and agree that the Village's soil and groundwater removal will be in conjunction and/or associated with other work being done by the Village in, on, under or near the Indemnitor's Property, and part of the purpose of this paragraph is that if the Village encounters contaminated soil and/or groundwater while working on its utilities, or on a municipal project or otherwise, it will not be responsible in any way for the cost associated with encountering, removing and/or disposing of the contaminated soil and/or groundwater. In addition, it is specifically understood and agreed between the parties that the Village will not be identified at any time, in any place, document or manifest as the owner, generator or transporter of contaminated soil or groundwater taken from Indemnitor's Property. If asked, Indemnitor will cooperate with the Village in the removal and disposal of such soil and groundwater and will sign all necessary documents and manifests for the proper transportation and disposal of the soil and/or groundwater.

4. If requested by the Village, Indemnitor shall immediately deliver to the Village any and all records, documents (including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form), or reports of any kind (including all written, printed, recorded or graphic matter however produced or reproduced and all copies, drafts and versions thereof not identical in each respect to the original) which relate or refer (which means, in addition to their customary and usual meaning, assess or assessing, concern or concerning, constitute or constituting, describe or describing, discuss or discussing, embody or embodying, evidence or evidencing, mention or mentioning and reflect or reflecting) environmental matters and/or conditions associated directly or indirectly with the Indemnitor's Property (including the groundwater thereunder), including but not limited to written reports or a site assessment, environmental audits, soil test reports, water test reports, laboratory analysis and documents, reports or writings relating or referring to the Indemnitor's Property provided, however, that nothing in this paragraph shall require the Indemnitor to deliver to the Village those communications and documents that are encompassed by the attorney-client privilege and/or the attorney work product doctrine.

5. Any notice required or permitted to be given to either party shall be deemed to be received by such party (i) three (3) days after deposit in the United States Registered or Certified Mail, Return Receipt Requested, or (ii) one (1) business day after deposit with a nationally recognized overnight delivery service guaranteeing next business day delivery, or (iii) upon personal delivery to the party to whom addressed provided that a receipt of such delivery is obtained, or (iv) on the same business day as transmitted and confirmed by telecopy provided that a confirmation copy is concurrently deposited in United States Certified or Registered Mail, Return Receipt Requested. Such notices shall be addressed to the parties at the following addresses:

If to Indemnitor:

1 EAST ROOSEVELT, LLC
1259 S. Main Street
Lombard, Illinois 60148

If to the Village:

VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: Scott Niehaus, Village Manager

and with a copy to:

Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive - Suite 1660
Chicago, Illinois 60606-2903
Attn: Dennis G. Walsh
Facsimile No.: (312) 984-6444

or to the parties at such other addresses or telecopy numbers as they may designate by notice to the other party as herein provided.

6. This Agreement has been made and delivered in Illinois and shall be construed according to and governed by the internal laws of the State of Illinois without regard to its conflict of law rules. If any provision hereof shall be held invalid, prohibited or unenforceable under any applicable laws of any applicable jurisdiction, such invalidity, prohibition or unenforceability shall be limited to such provision and shall not affect or invalidate the other provisions hereof or affect the validity or enforceability of such provision in any other jurisdiction, and to that extent, the provisions hereof are severable. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law.

7. Failure of the Village to require performance of any provision of this Agreement shall not affect the Village's right to require full performance thereof at any time thereafter, and the waiver by the Village of a breach of any provision of this Agreement shall not constitute or be deemed a waiver of a similar breach in the future, or any other breach, or nullify the effectiveness of such provisions of this Agreement. The rights and remedies of the Village of this Agreement are cumulative. The exercise or use of any one or more thereof shall not bar the Village from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by the Village waive any other right or remedy. The parties are aware of 42 U.S.C. §9607(e), and waive any rights they may otherwise have to assert that such statute does not permit, or renders invalid, the waivers or indemnity provisions contained in this Agreement.

8. This Agreement shall be binding upon the Indemnitor and the successors and assigns. No transfer of Indemnitor's rights or obligations hereunder shall be made without the prior written approval of the Village's Board of Trustees, which approval shall be with their reasonable discretion.

9. The parties shall record a certified (by the Village Clerk) copy of this Environmental Indemnity Agreement in the office of the DuPage County Recorder of Deeds and upon recordation thereof, the covenants, conditions and obligations of the Indemnitor hereto shall be binding upon its successors in title and shall be deemed covenants which shall run with the land

until the termination of this Agreement. In addition, this Environmental Indemnity Agreement shall constitute a lien on the Indemnitor's Property for the payment of all sums due the Village under the terms hereof as well as for the performance of all other covenants, conditions and obligations required of the Indemnitor. In the event the Indemnitor or the current or any subsequent owner of the Indemnitor's Property fails to pay the amounts owed to the Village under this Agreement in its entirety or fails to meet its/their other covenants, conditions and obligations hereunder, any such unpaid amount or expenses incurred by the Village shall accrue interest at the rate of nine percent (9%) annually until paid, and the Village shall be entitled to foreclose this lien against the Indemnitor's Property, for said unpaid amount in the same manner as provided by law for the foreclosure of mortgages. The lien of this Agreement shall be superior to any subsequent liens or encumbrances which may attach to the Indemnitor's Property, except real estate taxes, and the lien of any future mortgage, encumbrance or evidence of indebtedness shall be subject and subordinate to the lien of this Agreement. The Village shall be entitled to all fees (including reasonable attorney's fees) and expenses incurred in connection with recording this lien and foreclosing on the same. The payment of said sums of money to be paid hereunder shall be the obligation of Indemnitor and any successors in title to the Indemnitor's Property, and no conveyance of the aforesaid Indemnitor's Property shall relieve Indemnitor, or any subsequent owner, of said obligation. In the event of a default in any payment to the Village, in addition to the remedy of foreclosure of this lien, the Village shall have all other rights and remedies against Indemnitor or any subsequent owner of the Property for the collection of said monies. Indemnitor specifically represents and warrants it is the legal titleholder of the Indemnitor's Property and that title to the Indemnitor's Property will not be transferred to any other persons or entity until this Environmental Indemnity Agreement has been first recorded in the office of the DuPage County Recorder of Deeds.

10. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may not be amended, modified, revised, supplemented or restated except by a writing signed by each of the parties hereto. In construing this Agreement or determining the rights of the parties hereunder, no party shall be deemed to have drafted or created this Agreement or any portion thereof.

11. Indemnitor will pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by the Village in enforcing the covenants and agreements of this Agreement.

12. The executing representatives of the parties to this Agreement represent and certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.

13. As additional consideration for and assurance of performance of this Agreement, Indemnitor tenders to the Village, and the Village accepts the Guaranty of Performance and Payment attached to this Agreement as Exhibit D.

IN WITNESS WHEREOF, the parties have executed this Limited Environmental Indemnity Agreement as of the day, month and year first above written.

VILLAGE OF LOMBARD

1 EAST ROOSEVELT, LLC

By: _____ By: George Apostolou

Printed Name: GEORGE APOSTOLOU Printed Name: GEORGE APOSTOLOU

Title: PRESIDENT. Title: Manager/Member

Subscribed and Sworn to before me this 10 day of March, 2015.



Linda M. Dibruto
Notary Public

Vicki Apostolou

By: VICKI APOSTOLOU

Printed Name: VICKI APOSTOLOU

Title: Member

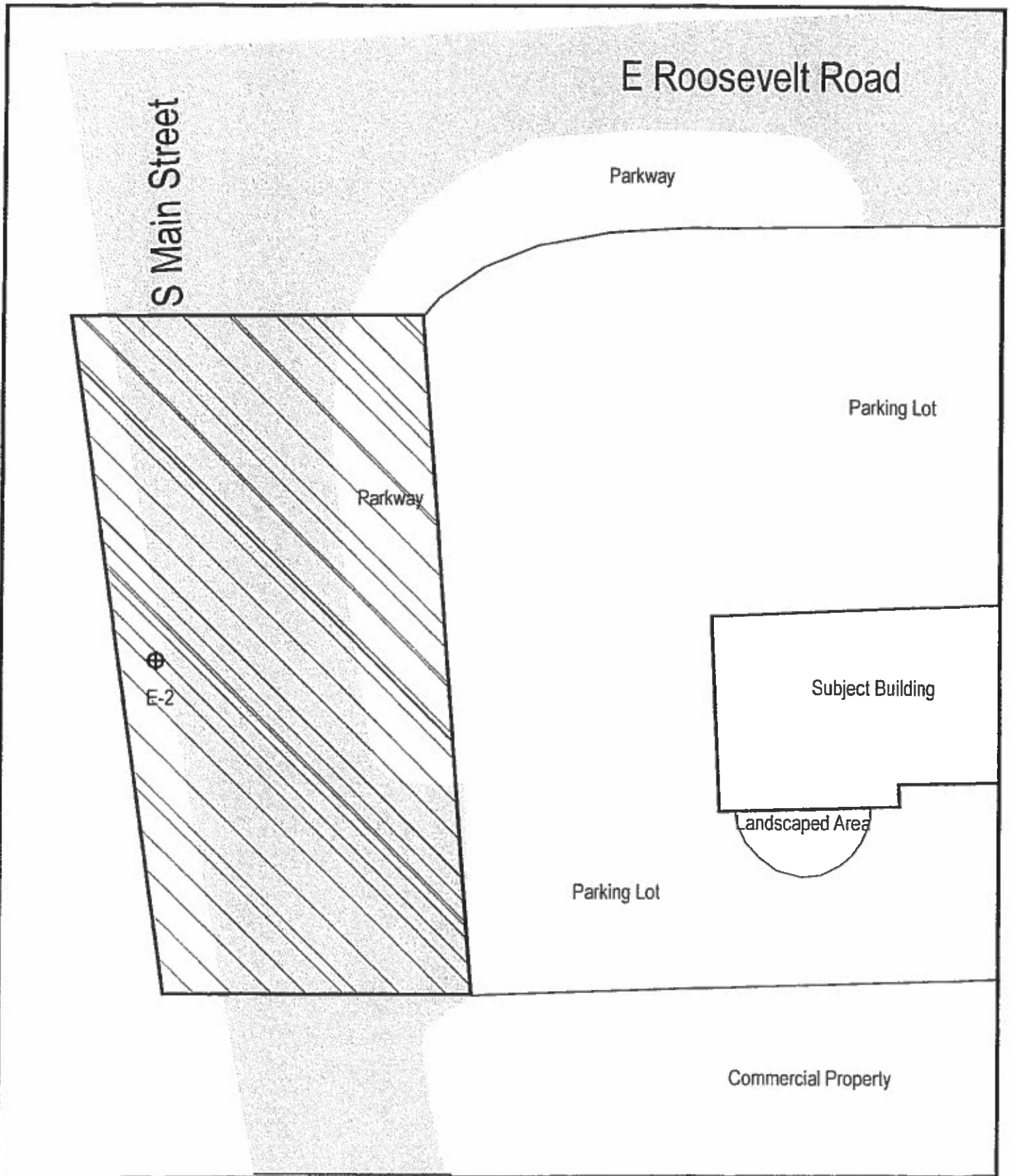
Subscribed and Sworn to before me this 10 day of March, 2015.



Linda M. Dibruto
Notary Public

THE WEST 150 FEET OF THE NORTH 190 FEET OF THE NORTHWEST
¼ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE
THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

Exhibit A



Highway Authority Agreement Map
 Client: Northwest Property Management
 Site location: 1 E Roosevelt Rd, Lombard

Project # 0601134
 Drawn by: PB
 Date: 12/19/13

Proposed area of Highway
 Authority Agreement

Gabriel Environmental Services

1421 N. Elston Ave. phone (773) 486-2123
 Chicago, IL 60622 fax (773) 486-0004



1 in. = 20 ft.

ORDINANCE NO. _____

AN ORDINANCE PROHIBITING THE USE OF GROUNDWATER AS A POTABLE WATER SUPPLY BY THE INSTALLATION OR USE OF POTABLE WATER SUPPLY WELLS OR BY ANY OTHER METHOD

WHEREAS, a certain property located within the Village of Lombard, Illinois, located at 1 East Roosevelt Road, has been used over a period of time for industrial/commercial purposes; and

WHEREAS, because of said use, concentrations of certain chemical constituents in the groundwater beneath the Village of Lombard may exceed Class I groundwater quality standards for potable resource groundwater as set forth in 35 Illinois Administrative Code 620 or Tier 1 remediation objectives as set forth in 35 Illinois Administrative Code 742; and

WHEREAS, the Village of Lombard desires to limit potential threats to human health from groundwater contamination while facilitating the redevelopment and productive use of properties that are the source of said chemical constituents;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, Du Page County, Illinois, as follows:

SECTION 1: Use of groundwater as a potable water supply prohibited.

The use of, or attempted use of, groundwater, as a potable water supply, from within the property boundaries of the property located at 1 East Roosevelt Road, Lombard, Illinois, and the properties identified in the attached map (Exhibit A) by the installation or drilling of wells or by any other method is hereby prohibited. The limits of the proposed ordinance will be bounded south of the contamination plume by the intersection of southbound Main Street and Rebecca Road. This limit will extend west to the intersection of Lynne Lane and Elizabeth Street. The boundary limit will continue north from this point, intersecting Roosevelt Road and reaching Morris Avenue. The boundary limit will extend east from this point until reaching the intersection of Morris Avenue and Main Street. The boundary limit will extend east from this point until intersecting with the road running north and south directly parallel to the storefront properties. The boundary limit will continue south from this point until the previous road intersects Roosevelt Road. The limit will extend east from this point to the intersection of Roosevelt Road and southbound Highland Avenue. The limit will continue south from this point to the intersection of Highland Avenue and 13th Place. The limit will extend west to the intersection of 13th Place and southbound Main Street. The boundary limit will continue north from this point to the intersection of southbound Main Street and Rebecca Road. This prohibition applies to governmental bodies, including the Village of Lombard.

Exhibit C

SECTION 2: Penalties.

Any person violating the provisions of this ordinance shall be subject to a fine of up to \$750.00 for each violation.

SECTION 3: Definitions.

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or their legal representatives, agents or assigns.

"Potable water" is any water used for human or domestic consumption, including, but not limited to, water used for drinking, bathing, swimming, washing dishes, or preparing foods.

SECTION 4: Repealer.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

SECTION 5: Severability.

If any provision of this ordinance or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

SECTION 6: Effective date.

This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

SECTION 7: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as provided by law.

Passed on first reading this ____ day of _____, 2015.

First reading waived by action of the Board of Trustees this ____ day of _____, 2015.

Passed on second reading this ____ day of _____, 2015, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2015.

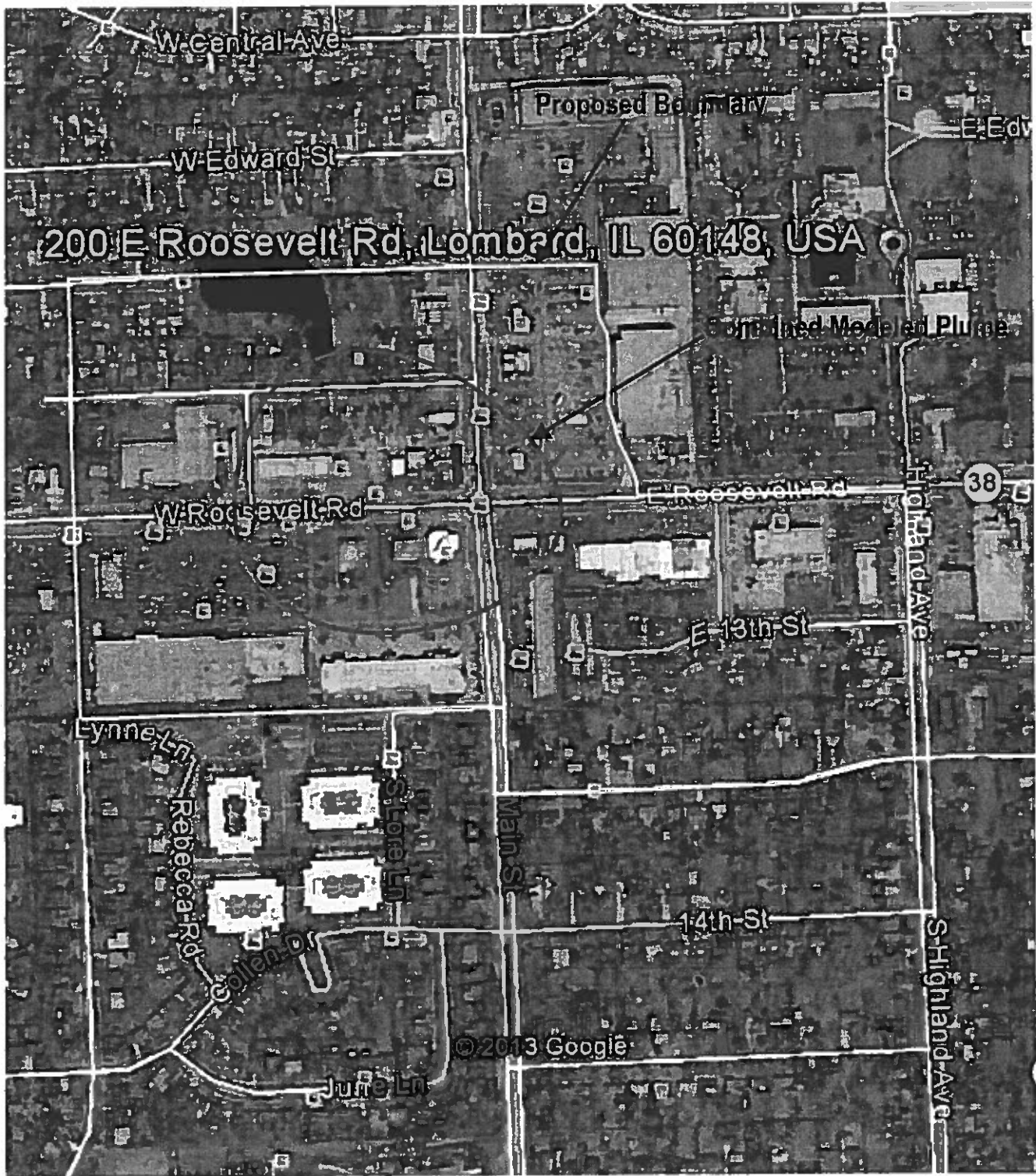
Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published by me in pamphlet form this _____ day of _____,
2015.

Sharon Kuderna, Village Clerk



Proposed Ordinance Boundary Map
 Client: Northwest Property Management
 Site location: 1 E Roosevelt Rd, Lombard

Project # 0601315
 Drawn by: ML
 Date: 12/04/13



Soil Borings Performed:
 B & C = 11/29/10 & 11/30/10
 D = 6/18/13



Gabriel Environmental Services

1421 N. Elston Ave.
 Chicago, IL 60642

phone (773) 486-2123
 fax (773) 486-0004

1 in. = 510 ft.

GUARANTY OF PERFORMANCE AND PAYMENT

In consideration of, and as an inducement for the adoption of the Groundwater Ordinance and to enter into the Highway Authority Agreement as set forth in the Limited Environmental Indemnity Agreement dated March 10,, 2015 (hereinafter called the "**Indemnity Agreement**"), by the Village of Lombard, Illinois, the municipality therein named (hereinafter called the "**Village**") to **1 EAST ROOSEVELT, LLC**, the Indemnitor therein named (hereinafter called the "**Indemnitor**"), the undersigned, (hereinafter called the "**Guarantors**"), hereby unconditionally, absolutely, irrevocably, jointly and severally guarantee as to the Village, its successors and assigns, the full and prompt payment of all the sums and charges payable by the Indemnitor, its successors and assigns, under the Indemnity Agreement, and full performance and observance of all covenants, terms, obligations, conditions and agreements therein provided to be performed and observed by Indemnitor, its successors and assigns; and the Guarantors hereby covenant and agree to act with Village, its successors and assigns, that if default shall at any time be made by the Indemnitor, its successors and assigns, in the payment of any sums due and owing to the Village, payable by the Indemnitor under said Indemnity Agreement, or in the performance of any of the terms, covenants, obligations, provisions, agreements or conditions contained in said Indemnity Agreement, the Guarantors will forthwith pay such sums to the Village, its successors and assigns, and any arrearage thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, obligations, conditions, agreements and provisions and will forthwith pay to the Village all damages that may arise in consequence of any default by the Indemnitor, its successors and assigns, under the Indemnity Agreement including, without limitation, all reasonable attorney's fees incurred by the Village or caused by any such default and by the enforcement of this Guaranty.

This Guaranty is an absolute, continuing and unconditional Guaranty of payment and of performance of suretyship. It shall be enforceable against the Guarantors, jointly and severally,

their respective representatives, successors and assigns and heirs, without the necessity for any suit or proceedings on the Village's part of any kind of nature whatsoever against the Indemnitor, its successors and assigns, and without the necessity of any notice of non-payment, non-performance, or non-observance on any notice of acceptance of this Guaranty or any other notice or demand to which the Guarantors might otherwise be entitled, all of which the Guarantors hereby expressly waive; and the Guarantors hereby expressly agree that the validity of this Guaranty and the obligations of the Guarantors hereunder shall in no way be terminated, affected or impaired by reason of the assertion or the failure to assert by the Village against the Indemnitor, or the Indemnitor's successors and assigns, of any of the rights and remedies reserved to the Village pursuant to the provisions of the Indemnity Agreement.

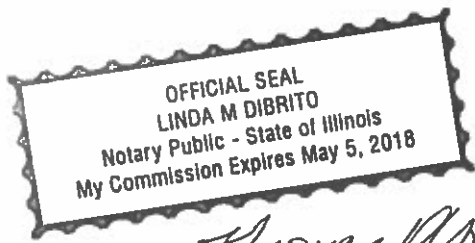
The Guaranty shall be a continuing Guaranty, and the liability of the Guarantors hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Indemnity Agreement or by reason of any modification or waiver of or change in any of the terms, covenants, conditions, obligations, agreements or provisions of the Indemnity Agreement, or by reason of any extension of time that may be granted by the Village to the Indemnitor, its successors and assigns, or by reason of any dealings or transactions or matter or things occurring between the Village and the Indemnitor, its successors and assigns whether or not notice thereof is given to the Guarantors. This Guaranty cannot be assigned, transferred, modified, changed, altered or terminated in any manner whatsoever without the express written consent of the Village.

The Guarantors agree that this Guaranty Agreement shall not be discharged, limited, impaired or affected by (1) either the existence or non-existence of **1 EAST ROOSEVELT, LLC** as a legal entity; (2) the power or authority of the Indemnitor to enter into the Indemnity Agreement; or (3) the operations of any present or future provision of the United States Bankruptcy

Code or similar statute, or from the decision of any court, including without limitation, any proceedings with respect to the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, imposition or readjustment of, or similar proceedings affecting Indemnitor or the Guarantors hereunder or any of their assets, it being expressly understood and agreed that no such proceeding shall affect, modify, limit or discharge the liability or obligation of the Guarantors hereunder in any manner whatsoever, and that said Guarantors shall continue to remain absolutely liable under this Guaranty to the same extent, and in the same manner as if such proceedings had not been instituted.

The Guarantors agree that no provision of the Guaranty or right of the Village can be waived, nor can the Guarantors be released from any obligation hereunder, except by a written document executed by the Village.

Dated: March 10, 2015



SUBSCRIBED and SWORN TO before me this 10 day of March, 2015
Linda M. DiBrito
Notary Public

George Apostolou
GEORGE APOSTOLOU



SUBSCRIBED and SWORN TO before me this 10 day of March, 2015
Linda M. DiBrito
Notary Public

Vicki Apostolou
VICKI APOSTOLOU