


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

 X Resolution or Ordinance (Blue) X *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 3, 2016 AGENDA DATE: August 18, 2016
TITLE: Ordinance for an Easement Agreement
with the DuPage Forest Preserve District
SUBMITTED BY: David Gorman, P.E. Assistant Director of Public Works 

BACKGROUND/POLICY IMPLICATIONS:

A permanent easement secured from the DuPage Forest Preserve District necessary for the operation of the new storm water pump station operation.

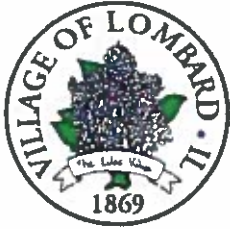
FISCAL IMPACT/FUNDING SOURCE

\$1,650 Easement Fee (Project #: SS 12-01 520.790.715.80040)
\$2,000 Restoration Deposit (Project #: SS 12-01 520.790.715.80040)

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

NOTE: Materials must be submitted to / approved by the Village Manager's Office by 12:00 pm, Wednesday, prior to the Agenda Distribution.



To: Scott Niehaus, Village Manager
Through: Carl Goldsmith, Director of Public Works *g*
From: David Gorman, P.E., Assistant Director of Public Works
Date: August 3, 2016
Subject: IL Route 53 Storm Water Pump Station Improvements
Permanent Easement

Attached, please find an Ordinance pertaining to a permanent easement to be granted from the DuPage Forest Preserve District.

BACKGROUND

As part of the IL Route 53 Storm Water Pump Station Improvements project, the Village will be installing a transducer on one of the abutments of the Crescent Avenue Bridge. The transducer will serve to monitor water levels of the East Branch of the DuPage River which correlates to the permissible pumping rate of the new storm water pump station. The transducer requires an electrical feed which will come from a ComEd service drop located near the existing wet well. The route for the electrical conduit runs thru DuPage Forest Preserve property. While the Village currently has a license for use of some Forest Preserve property, as a matter of internal policy, the Forest Preserve is converting existing licenses to permanent easement agreements.

ACTION

Pursuant to State law, the ordinance must be approved by the Village before the Forest Preserve takes action. Upon Village Board approval of the Ordinance, two original signed Easement Agreements and the associated fee and deposit will be forwarded to the Forest Preserve District for approval. After Forest Preserve District approval, Village staff will take the easement agreement to the DuPage County Recorder's Office to be formally recorded.

If approved, please return two original signed copies to Public Works-Engineering for further processing.

ORDINANCE NO. _____

**AN ORDINANCE DECLARING THE NECESSITY FOR
THE VILLAGE OF LOMBARD TO USE AND OCCUPY CERTAIN REAL ESTATE
OWNED BY THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY,
FOR STORM SEWERS AND ELECTRICAL CONDUIT, PURSUANT TO THE
LOCAL GOVERNMENT PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)**

WHEREAS, the Forest Preserve District of DuPage County (the "District") owns an approximately 32-acre property, which is part of what is commonly known as the Churchill Woods Forest Preserve and is legally described in Exhibit "A" attached hereto and made part hereof (the "Churchill Woods Property"); and

WHEREAS, in 1973 and 1975, the District granted licenses to the Village of Lombard (the "Village"), for the purpose of constructing and maintaining storm sewers within a portion of the Churchill Woods Property, which is legally described in Exhibit "B" and depicted in Exhibit "C", both of which are attached hereto and made a part hereof ("Easement Premises"); said licenses have now expired; and

WHEREAS, the Village desires to construct an electrical conduit in the Easement Premises for the installation of electrical wires that will operate a gauge for monitoring the East Branch of the DuPage River; and

WHEREAS, instead of renewing the licenses on the Easement Premises, the Village has determined that it is necessary or convenient for the Village to use, occupy or improve the Easement Premises, and to acquire an easement in the Easement Premises, for the public use of operating and maintaining the existing storm sewers and the construction, maintenance and operation of an electrical conduit for the installation of electrical wires that will operate a gauge for monitoring the East Branch of the DuPage River ; and

WHEREAS, the District and the Village are "municipalities," as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c) (the "Transfer Act"); and

WHEREAS, Section 2 of the Transfer Act authorizes municipalities, pursuant to a two-thirds (2/3rds) vote of the members of its corporate authority, to convey real estate to another municipality for any municipal or public purpose of the transferee municipality and upon such terms and conditions as may be agreed to by the municipalities; and

WHEREAS, as a condition precedent to conveyance under Section 2 of the Transfer Act, the transferee municipality must first declare, by ordinance, "that it is necessary or convenient for it to use, occupy or improve the real estate held by the transferor municipality";

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

SECTION 1: The foregoing recitals to this Ordinance are hereby determined to be true and correct, and are hereby incorporated in and made part of this Ordinance.

SECTION 2: That it is necessary or convenient for the Village to use, occupy or improve the Easement Premises, and to acquire an easement in the Easement Premises, for the public use of operating and maintaining the existing storm sewers and the construction, maintenance and operation of an electrical conduit for the installation of electrical wires that will operate a gauge for monitoring the East Branch of the DuPage River, all for the benefit of the Village.

SECTION 3: That Village Staff has negotiated an easement agreement, between the Village and the District, relative to the Village's acquisition of easement rights in the Easement Premises; the Corporate Authorities of the Village hereby approve the easement agreement attached hereto as Exhibit "D"; and authorize the Village President and Village Clerk to execute said easement agreement on behalf of the Village.

SECTION 4: That this Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed on first reading this ____ day of _____, 2016.

First reading waived by action of the Board of Trustees this ____ day of _____, 2016.

Passed on second reading this ____ day of _____, 2016, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ____ day of _____, 2016.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit "A"

Churchill Woods Property

Legal Description:

LOT 11 IN THE COUNTY CLERK'S ASSESSMENT DIVISION, BEING A SUBDIVISION OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 5, 1879 AS DOCUMENT NO. 26582 IN DUPAGE COUNTY, ILLINOIS.

PIN: 05-12-204-001

Exhibit "B"

Easement Premises

Legal Description:

THAT PART OF LOT 11 IN THE COUNTY CLERK'S ASSESSMENT DIVISION, BEING A SUBDIVISION OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 5, 1879 AS DOCUMENT NO. 26582 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 11; THENCE NORTHWESTERLY ALONG THE NORTHERLY LINE OF SAID LOT 11, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 66 DEGREES 07 MINUTES 21 SECONDS WEST, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 23 DEGREES 44 MINUTES 05 SECONDS WEST, 201.27 FEET ALONG A LINE 60.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF SAID LOT 11 TO A POINT ON THE CENTER LINE OF CRESCENT BOULEVARD (A.K.A. GLENBARD AVENUE); THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 35.52 FEET ALONG SAID CENTER LINE TO A POINT ON A LINE 90.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID EASTERLY LINE OF LOT 11; THENCE NORTH 23 DEGREES 44 MINUTES 05 SECONDS EAST, 220.36 FEET TO A POINT ON SAID NORTHERLY LINE OF SAID LOT 11; THENCE SOUTH 66 DEGREES 07 MINUTES 21 SECONDS EAST, 30.00 FEET ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

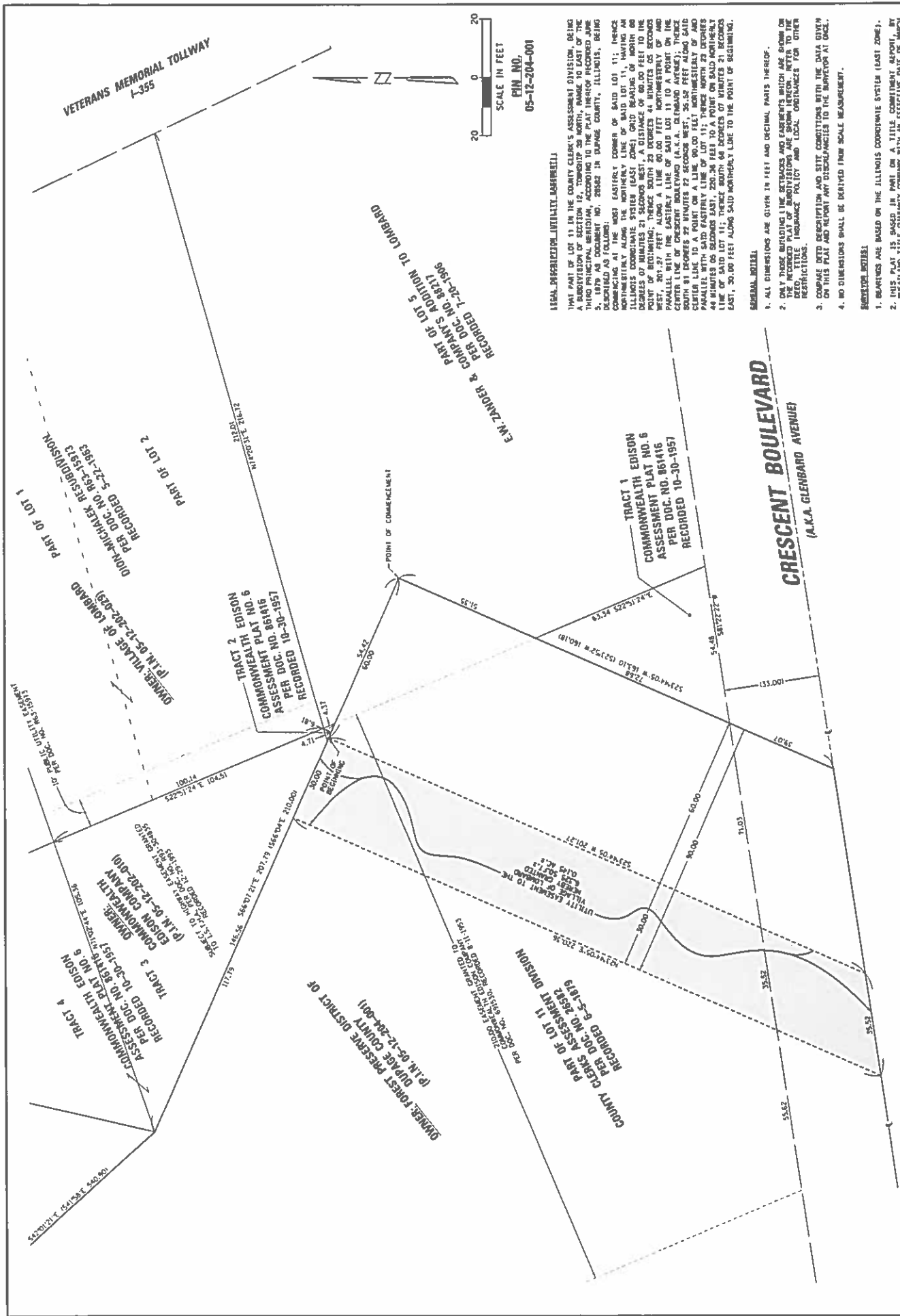
PIN: Part of 05-12-204-001

Exhibit "C"

Easement Premises

Depiction

(attached)



DATE:	05-24-2016
SCALE:	1" = 20'
DRAWING NO.	EASEL20374A
SHEET 1 OF 1	
PROJECT NO.	120374

EASEMENT EXHIBIT "A"
IN
VILLAGE OF LOMBARD, ILLINOIS
PREPARED FOR
VILLAGE OF LOMBARD

CHRISTOPHER B. BURKE
ENGINEERING, LTD.
9575 West Higgins Road, Suite 600
Rosemont, Illinois 60018
(847) 823-0500

GENERAL NOTES:

- ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMAL PARTS THEREOF.
- ONLY THOSE BUILDINGS, SETBACKS AND ENCUMBRANCES WHICH ARE SHOWN ON THIS PLAT ARE TO BE CONSIDERED. THIS PLAT IS NOT TO BE USED FOR OTHER RESTRICTIONS.
- COMPARE DATA DESCRIPTION AND SITE CONDITIONS WITH THE DATA GIVEN ON THIS PLAT AND REPORT ANY DISCREPANCIES TO THE SURVEYOR AT ONCE.
- NO DIMENSIONS SHALL BE DERIVED FROM SCALE MEASUREMENT.

SUBSECTION NOTES:

- BEARINGS ARE BASED ON THE ILLINOIS COORDINATE SYSTEM (EAST ZONE).
- THIS PLAT IS BASED IN PART ON A TITLE COMMITMENT REPORT, BY WEATLAND TITLE GUARANTEE COMPANY, INC., DATED 04-02-2013, IN AN EFFECTIVE DATE OF 04-02-2013, PER DOC. NO. 8315913, PER PLAN 05-12-202-029.
- PROPERTY IS SUBJECT TO RIGHTS OF THE PUBLIC OF ILLINOIS, AND TO THAT PART OF THE MAP, IF ANY, TAKEN ON FOR ROAD PURPOSES.
- THIS SURVEY IS BASED ON FIELD WORK PERFORMED ON 04-02-2013 THROUGH 04-08-2013.

LEGAL DESCRIPTION UTILIZED HEREIN:

THAT PART OF LOT 11 IN THE COUNTY CLERK'S ASSESSMENT DIVISION, BEING A SUBDIVISION OF SECTION 12, TOWNSHIP 20 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 5, 1979 AS DOCUMENT NO. 26912 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS: COMMENCED EASTERLY CORNER OF SAID LOT 11; THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 11, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 80 DEGREES 21 MINUTES 20 SECONDS WEST, A DISTANCE OF 90.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 20 DEGREES 44 MINUTES 05 SECONDS WEST, 90.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTHWESTERLY ALONG THE WESTERLY LINE OF SAID LOT 11 TO A POINT ON THE CENTER LINE OF CRESCENT BOULEVARD (A.K.A. GLENBARD AVENUE); THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 35.50 FEET ALONG SAID CENTER LINE TO A POINT ON A LINE 90.00 FEET NORTHERLY OF AND PARALLEL WITH SAID WESTERLY LINE OF LOT 11; THENCE NORTHERLY 23 DEGREES 05 MINUTES 10 SECONDS WEST, 30.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTHWESTERLY ALONG THE WESTERLY LINE OF SAID LOT 11; THENCE SOUTH 68 DEGREES 07 MINUTES 21 SECONDS EAST, 30.00 FEET ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

**Prepared by and return to:
Forest Preserve District of
DuPage County
C/O Executive Director
P.O. Box 5000
Wheaton, IL 60189-5000**

**AN EASEMENT AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF
DUPAGE COUNTY AND THE VILLAGE OF LOMBARD FOR STORM SEWERS
IN THE CHURCHILL WOODS FOREST PRESERVE**

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into by and between the FOREST PRESERVE DISTRICT OF DUPAGE COUNTY, a body politic and corporate, hereinafter referred to as the "FOREST PRESERVE DISTRICT," and the Village of Lombard, a body politic and corporate, hereinafter referred to as the "VILLAGE,"

WITNESSETH:

WHEREAS, the FOREST PRESERVE DISTRICT owns Churchill Woods Forest Preserve (hereinafter referred to as "Churchill Woods"); and

WHEREAS, the VILLAGE was granted licenses in 1973 and 1975 for the construction of storm sewers within Churchill Woods and such licenses have expired; and

WHEREAS, the VILLAGE desires to construct an electrical conduit adjacent to the existing storm sewers for the installation of electrical wires that will operate a gauge for monitoring the East Branch DuPage River; and

WHEREAS, the VILLAGE requests the granting of an easement within Churchill Woods for the existing storm sewers and proposed electrical conduit; and

WHEREAS, the FOREST PRESERVE DISTRICT and VILLAGE are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c), hereinafter referred to as the "Transfer Act"; and

WHEREAS, Section 2 of the Transfer Act authorizes transfers of real estate, or interests therein, between municipalities for any public purpose upon such terms as are agreed to by the corporate authorities of the respective municipalities; and

WHEREAS, in accordance with Section 2 of the Transfer Act, the VILLAGE, pursuant to a duly passed ordinance, has determined that it is necessary to acquire an easement for the existing storm sewers and electrical conduit over a portion of Churchill Woods; and

WHEREAS, the FOREST PRESERVE DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant the VILLAGE an easement for the storm sewers subject to the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, the parties agree as follows:

1.0 INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein and made a part hereof.

2.0 EASEMENT GRANTED

2.1 The FOREST PRESERVE DISTRICT hereby grants, releases, conveys, assigns and quit claims a non-exclusive easement to the VILLAGE in, on, upon, over, through, across and under that portion of Churchill Woods (hereinafter referred to as "Easement Premises") legally described and depicted on the Easement Exhibit attached hereto and incorporated herein as EXHIBIT "A" and on the terms and conditions as provided for in this Agreement.

2.3 The easement granted within the Easement Premises shall expire ninety-nine (99) years from the date of execution of this Agreement.

3.0 PURPOSE OF EASEMENT/SCOPE OF PROJECT

3.1 The easement being requested by the VILLAGE within Churchill Woods is for the existing storm sewers and to reconstruct, replace, remove, repair alter, inspect, maintain and operate the existing storm sewers, and to clear, trench for, install, construct, reconstruct, replace, remove, repair, alter, inspect, maintain and operate an electrical conduit that will serve a gauge for monitoring the East Branch of the DuPage River (the activities related to the electrical gauge shall hereinafter be referred to as the "PROJECT")

3.2 The VILLAGE shall design, permit, construct and maintain the proposed electrical conduit to be located within the Easement Premises. Implementation of the PROJECT shall be in accordance with the plan drawings, dated April 29, 2016, (hereinafter referred to as the "Final Plan") prepared by Christopher B. Burke Engineering LTD. The Final Plan shall be deemed incorporated herein by reference but without attaching said document hereto due to its size.

3.3 The VILLAGE shall pay all fees and costs necessary to design, permit, construct and implement the PROJECT and as provided for in this Agreement.

4.0 FOREST PRESERVE DISTRICT RIGHTS AND RESPONSIBILITIES

4.1 The FOREST PRESERVE DISTRICT may review and issue comments to the VILLAGE regarding the Final Plans within ten (10) days of receipt thereof.

4.2 The FOREST PRESERVE DISTRICT shall provide appropriate staff representative(s) and/or consultant(s) to attend the final inspection of the PROJECT and any annual field inspections, as scheduled and coordinated by the VILLAGE. The VILLAGE shall, in an appropriate and timely manner, properly address and correct any noted PROJECT deficiencies that are determined to exist in any part or component of the PROJECT.

4.3 The FOREST PRESERVE DISTRICT shall bear its own expenses related to the use of its employees or consultants for any review, site inspections, meeting attendance or the preparation and issuance of any comments provided for in this AGREEMENT.

5.0 FEES AND COSTS

5.1 The VILLAGE shall pay the fees and costs as provided for in this Agreement. The easement fees to be paid by the VILLAGE to the FOREST PRESERVE DISTRICT for the granting of the easement shall be based on the market value of the Easement Premises

in accordance with the FOREST PRESERVE DISTRICT's Easement and License Ordinance (No. 96-096). The market value of the Easement Premises has been determined to be \$1,650.00. There are no trees within the Easement Premises and as such, no tree removal fees. The total fee owed by the VILLAGE is \$1,650.00 and shall be paid to the FOREST PRESERVE DISTRICT prior to the FOREST PRESERVE DISTRICT's execution of this Agreement.

- 5.2 The VILLAGE acknowledges that this Agreement is contingent upon the FOREST PRESERVE DISTRICT receiving the fees and expenses outlined above and that, notwithstanding anything in this Agreement to the contrary, the failure of the VILLAGE to pay the total amount owed shall constitute grounds for the immediate suspension or termination of the rights granted by this Agreement.

6.0 PERMITS AND APPROVALS

- 6.1. The VILLAGE shall complete the design of the PROJECT, including all plan sets, drawings, specifications and cost estimates necessary to publicly solicit bids for the PROJECT. The FOREST PRESERVE DISTRICT may review and issue comments to the VILLAGE regarding the Final Plans within ten (10) business days of receipt thereof in accordance with paragraph 4.0 above. The VILLAGE agrees to cooperate with the FOREST PRESERVE DISTRICT regarding any significant proposed changes, alterations, or modifications to the Final Plans including, but not limited to any field adjustments or change orders, by providing reasonable advance notification and opportunity for review and comment.
- 6.2 The VILLAGE shall obtain all necessary permits or other approvals required for the construction of the PROJECT. The VILLAGE shall also comply with all applicable federal, state and local laws, rules and regulations (including, but not limited to, those relating to safety) whenever it performs any work on the Easement Premises or exercises any rights conferred under this Agreement.
- 6.3 The VILLAGE agrees to provide the FOREST PRESERVE DISTRICT with as-built record drawings of the PROJECT within ninety (90) days following completion of the construction.

7.0 INSURANCE

- 7.1 Before beginning construction of the PROJECT, each contractor engaged to perform any work on the Easement Premises shall obtain the following insurance coverages, which shall be maintained in force until the VILLAGE has furnished the FOREST PRESERVE DISTRICT with a letter certifying that all construction and restoration work has been completed:
- (a) Workers' Compensation Insurance with limits as required by the applicable statutes of the State of Illinois.
 - (b) Employer's Liability Insurance with limits as required by the applicable statutes of the State of Illinois
 - (c) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence bodily injury/ property damage combined single limit; \$2,000,000 aggregate bodily injury/property damage combined single limit. The Commercial General Liability policy shall include, but not be limited to, the following:
 - (i) premises/operations coverage;
 - (ii) products/completed operations coverage;
 - (iii) contractual liability coverage (specifically covering the indemnification obligations referred to in paragraph 15);

- (iv) personal injury coverage (with the employment exclusion deleted);
- (v) broad form property damage coverage;
- (vi) explosion, collapse and underground coverage; and
- (vii) independent contractor liability coverage.

The policy of Commercial General Liability Insurance shall provide "occurrence" based coverage and shall include an endorsement naming the FOREST PRESERVE DISTRICT as additional insured.

- (d) Comprehensive Motor Vehicle Liability Insurance with limits of not less than \$2,000,000 each accident bodily injury/property damage combined single limit.

7.2 The coverage limits specified in subparagraphs (c) and (d) may be satisfied through a combination of primary and excess insurance. The foregoing insurance coverages shall be provided by companies authorized to transact business in the State of Illinois and acceptable to and approved by the FOREST PRESERVE DISTRICT. The VILLAGE shall provide the FOREST PRESERVE DISTRICT with a Certificate of Insurance for each of the coverages specified above and, if requested, copies of the policies issued by the insurers prior to the commencement of any work on the Easement Premises. Each certificate and policy shall provide that no cancellation or modification of the policy will occur without at least 30 days' prior written notice to the FOREST PRESERVE DISTRICT. The VILLAGE shall not allow any contractor to commence work on the Easement Premises until all the insurance coverages required under this paragraph have been obtained and satisfactory evidence thereof has been furnished in writing to the FOREST PRESERVE DISTRICT. Each contract between the VILLAGE and a contractor performing work on the Easement Premises shall provide that the FOREST PRESERVE DISTRICT is intended as a third-party beneficiary of the insurance obligation that is required of the contractor under this paragraph.

7.3 The insurance requirements set forth in paragraph 7.0 shall apply to the initial construction of the PROJECT. Thereafter, if the VILLAGE engages the services of an independent contractor to perform any maintenance, repair or other work on the Easement Premises, the VILLAGE shall notify the FOREST PRESERVE DISTRICT in writing of the nature of the work and shall obtain from the independent contractor such insurance coverages as the FOREST PRESERVE DISTRICT deems reasonably necessary for its protection. Evidence of such insurance shall be in a form satisfactory to the FOREST PRESERVE DISTRICT. No independent contractor shall be permitted to perform any work on the Easement Premises unless the required insurance has been obtained and satisfactory evidence thereof furnished to the FOREST PRESERVE DISTRICT.

7.4 The VILLAGE shall procure and maintain during the term of this Agreement a policy of Commercial General Liability Insurance providing coverage for bodily injury and property damage claims arising on or from the use of the Easement Premises. The policy shall (a) provide "occurrence" based coverage; (b) be issued by a company authorized to transact business in this State under the Illinois Insurance Code and acceptable to the FOREST PRESERVE DISTRICT; (c) include an endorsement naming the FOREST PRESERVE DISTRICT as an additional insured; (d) include contractual liability coverage; and (e) not be subject to cancellation or modification without at least 30 days' written notice to the FOREST PRESERVE DISTRICT, unless otherwise agreed to in writing between the VILLAGE and FOREST PRESERVE DISTRICT. The VILLAGE shall provide evidence of said insurance coverage throughout the term of this Agreement by furnishing the FOREST PRESERVE DISTRICT with a current Certificate of Insurance and, if requested, a certified copy of the policy issued by the insurer. Unless otherwise agreed to in writing between the VILLAGE and FOREST PRESERVE DISTRICT during the first five years of this Agreement, the Commercial General

Liability policy shall have limits of not less than \$1,000,000 per occurrence bodily injury/property damage combined single limit; \$2,000,000 aggregate bodily injury/property damage combined single limit. Thereafter, the FOREST PRESERVE DISTRICT shall have the right every five years to require such coverages and limits as are comparable to those specified above, taking into account inflation, or to require such other coverages and limits as may be necessary to carry out the intent of this paragraph.

8.0 CONSTRUCTION ACTIVITY

- 8.1 During the construction of the PROJECT, all construction activity shall be confined within the Easement Premises, including, but not limited to, the movement and storage of equipment and materials. All trees, stumps, and other debris resulting from the work or the subsequent maintenance or repair of the storm sewers and/or the electrical conduit shall be legally disposed of off of FOREST PRESERVE DISTRICT property. No construction personnel shall be permitted outside the designated areas while engaged in construction activities. After the completion of the PROJECT, all subsequent maintenance and repair work on the storm sewers and/or the electrical conduit shall be confined to the Easement Premises.
- 8.2 The FOREST PRESERVE DISTRICT shall not be responsible for or have control over the construction means, methods, techniques or procedures with respect to the construction of the PROJECT or any subsequent maintenance or repair work performed on the Easement Premises. In no event shall the FOREST PRESERVE DISTRICT be responsible for or have any obligation with respect to the safety of any person performing work on the Easement Premises, including, but not limited to, the employees of the VILLAGE or of any contractor, subcontractor, agent or consultant.
- 8.3 The VILLAGE shall take such measures as are necessary to ensure that the Easement Premises are maintained in a reasonably safe condition during construction of the PROJECT and during any subsequent maintenance or repair work performed thereon. Such measures shall include the installation of appropriate barricades and warning signs, and the strict enforcement of all applicable safety rules and regulations.
- 8.4 In the event the VILLAGE, its employees or agents, or any contractor or subcontractor engaged to perform work on the Easement Premises causes any damage to trees, shrubs, or other vegetation or landscaping, or any improvements lying outside the boundaries thereof, the VILLAGE shall pay the cost of replacement in the case of trees, shrubs or other vegetation, and in the case of landscaping or improvements, shall pay the cost of restoration and repair. Said costs shall be calculated at current replacement costs as determined by the FOREST PRESERVE DISTRICT for all material, labor and incidentals necessary for a complete restoration and repair. In addition to paying for the cost of restoration and repair, the VILLAGE shall pay the FOREST PRESERVE DISTRICT an amount equal to 15 percent of the cost of restoration and repair for administrative and supervision expenses.

9.0 RESTORATION

- 9.1 Following the construction of the PROJECT, all areas affected or disturbed by the construction shall be restored according to the FOREST PRESERVE DISTRICT's specifications. In order to ensure that all affected areas are properly restored, the VILLAGE shall provide the FOREST PRESERVE DISTRICT with a performance/restoration deposit in the amount of \$2,000.00 in the form of a certified or cashier's check made payable to the FOREST PRESERVE DISTRICT. The performance/restoration deposit shall be submitted to the FOREST PRESERVE DISTRICT prior to the execution of this Agreement by the FOREST PRESERVE DISTRICT. All restoration work shall be subject to the FOREST PRESERVE

DISTRICT's acceptance. The performance/restoration deposit shall be refunded, without interest, upon the satisfactory performance of the restoration of all affected areas and the acceptance thereof by the FOREST PRESERVE DISTRICT.

- 9.2 If the VILLAGE fails to properly restore the Easement Premises or fails to restore any damage occurring outside the boundaries thereof as required under paragraph 8.4 within 30 days of service of the FOREST PRESERVE DISTRICT's written demand for the restoration work, the FOREST PRESERVE DISTRICT shall have the right to take such action as it deems necessary to perform the restoration or corrective work, which shall include the authority to (a) perform the work with its own personnel; (b) engage the services of an independent contractor to perform the work; and (c) utilize the performance/restoration deposit deposited with the FOREST PRESERVE DISTRICT to pay all costs and expenses for the restoration or corrective work. If the cost of the restoration or corrective work exceeds the amount of the performance/restoration deposit, the VILLAGE shall reimburse the FOREST PRESERVE DISTRICT for the excess costs within 30 days of service of the FOREST PRESERVE DISTRICT's written demand for payment.
- 9.3 The requirements of this paragraph, including the acceptance of all restoration work by the FOREST PRESERVE DISTRICT, shall also apply to any operation, maintenance, repair or replacement work performed on the Easement Premises during the term of this Agreement, except that the amount of the performance/restoration deposit shall be determined by the FOREST PRESERVE DISTRICT's Executive Director on a case-by-case basis.

10.0 INDEMNIFICATION

- 10.1 To the extent permitted by law, the VILLAGE shall defend, save, and hold harmless the FOREST PRESERVE DISTRICT, its elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected with, directly or indirectly, the work related to the construction of the PROJECT or the performance of any subsequent repair, maintenance or other work on the Easement Premises, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of the VILLAGE or its contractors, subcontractors, engineers, consultants, employees, or agents. In the event any person or entity obtains a judgment or settlement against the FOREST PRESERVE DISTRICT or any of its elected officials, officers, employees or agents, by reason of any negligent or intentional act or omission on the part of the VILLAGE or its contractors, subcontractors, consultants, employees or agents, the VILLAGE shall promptly, to the extent allowed by law, indemnify the FOREST PRESERVE DISTRICT or the elected official, officer, employee or agent, as the case may be, in the amount of said judgment or settlement and for all costs and expenses related thereto, including, without limitation, reasonable attorney and expert witness fees. The VILLAGE shall not be responsible for reimbursing the FOREST PRESERVE DISTRICT for any settlement related to this Agreement unless the VILLAGE, through its corporate authorities, agrees to all settlement terms prior to any settlement agreement being executed by the FOREST PRESERVE DISTRICT. Further, the VILLAGE shall have the sole discretion to appoint counsel of its choice to defend the FOREST PRESERVE DISTRICT pursuant to the VILLAGE'S obligations under this Agreement.
- 10.2 To the extent permitted by law, the VILLAGE shall also defend, save, hold harmless and indemnify the FOREST PRESERVE DISTRICT from any and all claims, liabilities,

causes of action, losses and damages that may arise or be claimed by any person or entity for bodily injury, sickness, death or property damage, or for any other claim or suit of any nature whatsoever, arising from or in any manner connected with, directly or indirectly, any defect in the VILLAGE caused by defective materials, workmanship or construction methods.

- 10.3 The obligation on the part of the VILLAGE to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT shall survive the expiration or termination of this Agreement.
- 10.4 The VILLAGE shall require each contractor who performs any work on the Easement Premises (whether such work is related to the initial construction of the PROJECT or any subsequent major repair, reconstruction, restoration or maintenance thereof), to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT to the same extent as required of the VILLAGE under paragraph 10.0, and the VILLAGE shall include in all of its contracts a statement expressly declaring the FOREST PRESERVE DISTRICT to be a third-party beneficiary of the indemnification provision.
- 10.5 The VILLAGE shall promptly pay all costs and expenses relating to the construction of the PROJECT or to any subsequent maintenance or repair work performed on the storm sewers and shall not allow any liens on FOREST PRESERVE DISTRICT property as a result of the work. To the extent permitted by law, the VILLAGE shall defend, indemnify and hold the FOREST PRESERVE DISTRICT harmless from any and all liens, costs and expenses arising from any work performed under this Agreement.

11.0 BREACH OF AGREEMENT

- 11.1 If a party reasonably believes that a breach of this Agreement has occurred or is occurring, the party shall serve written notice thereof upon the party committing or permitting such breach to occur, specifying in detail the breach and the facts supporting such claim. The party alleged to have committed the breach shall have 30 days within which to cure the violation. If the party in violation is the VILLAGE and the VILLAGE fails to cure the breach within the 30-day period, this Agreement shall automatically terminate 90 days from the date of service of the aforementioned written notice, provided that the 30-day cure period shall be extended for a reasonable time if the breaching party has undertaken to cure the breach within the 30-day period and continues to diligently and in good faith to complete the corrective action. If termination is by the FOREST PRESERVE DISTRICT as a result of a breach by the VILLAGE, the VILLAGE shall vacate the Easement Premises and restore the property to its original condition, provided that it shall be solely within the FOREST PRESERVE DISTRICT's discretion concerning whether the VILLAGE shall be required to remove the storm sewers.
- 11.2 Action by either party to effectuate a termination shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.
- 11.3 A waiver by either party of any breach of one or more of the terms of this Agreement on the part of the other party shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of a party to require exact, full and complete compliance with any of the terms contained herein be construed as changing the terms of this Agreement or estopping a party from enforcing full compliance with the provisions set forth herein. No delay, failure or omission of a party to exercise any right, power, privilege or option arising from a breach shall impair any right, privilege or option, or be construed as a waiver or acquiescence in such breach or as a relinquishment of any right. No option, right, power, remedy or privilege of the parties shall be construed as being exhausted by the exercise thereof in one or more

instances. The rights, power, privileges and remedies given the parties under this Agreement and by law shall be cumulative.

12.0 NOTICES

12.1 All notices required to be given under the terms of this Agreement shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. Notices served upon the FOREST PRESERVE DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County - if personally served: 3S580 Naperville Road, Wheaton, IL 60187; if sent by mail: P.O. Box 5000, Wheaton, IL 60189-5000; if sent by facsimile: 630-933-7093; if sent by e-mail: forest@forestpreserve.org. Notices served upon the VILLAGE shall be directed to the Public Works Director, Village of Lombard - if sent by mail: Public Works Department, Attention: Public Works Director, 255 East Wilson Avenue, Lombard, IL 60148, if sent by facsimile: 630-620-5982 if sent by e-mail: publicworks@villageoflombard.org. Notices served personally, by facsimile or by e-mail transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Notwithstanding anything to the contrary, any notice by a party alleging a breach of this Agreement shall be either served personally or by certified or registered mail as set forth above. Either party may designate a new location for service of notices by serving notice of the change in accordance with the requirements of this paragraph.

13.0 MISCELLANEOUS PROVISIONS

- 13.1 All rights, title and privileges herein granted for the Easement Premises, including all benefits and burdens, shall run for the term of ninety-nine (99) years and shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.
- 13.2 The FOREST PRESERVE DISTRICT hereby reserves the right to use, or permit to be used, the Easement Premises in any manner that will not prevent or materially interfere with the exercise by the VILLAGE of the rights granted herein.
- 13.3 If either party initiates any legal proceeding or action, whether at law or in equity, to enforce any provision of this Agreement, the prevailing party (as determined by the court) shall be entitled to recover its reasonable costs and expenses incurred in connection with said proceeding or action, including, but not limited to, reasonable expert witness and attorney fees.
- 13.4 The VILLAGE shall be responsible for recording this Agreement, at its expense, in the Office of the Recorder of Deeds, DuPage County, and for providing the FOREST PRESERVE DISTRICT with a recorded copy.
- 13.5 The provisions set forth herein represent the entire agreement between the parties and supersede any previous oral or written agreements, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all parties.
- 13.6 This Agreement shall be executed in duplicate, and each party shall retain a fully executed original, all of which shall be deemed to be one Agreement.
- 13.7 Nothing contained in this Agreement, including, but not limited to the indemnification provisions of Section 10.0, is intended to be, nor shall operate as, a waiver by the VILLAGE or the FOREST PRESERVE DISTRICT of the rights, defenses and

immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act.

IN WITNESS WHEREOF, the Parties have entered into this AGREEMENT as of the ____ day of _____, 2016.

**FOREST PRESERVE DISTRICT OF
DU PAGE COUNTY**

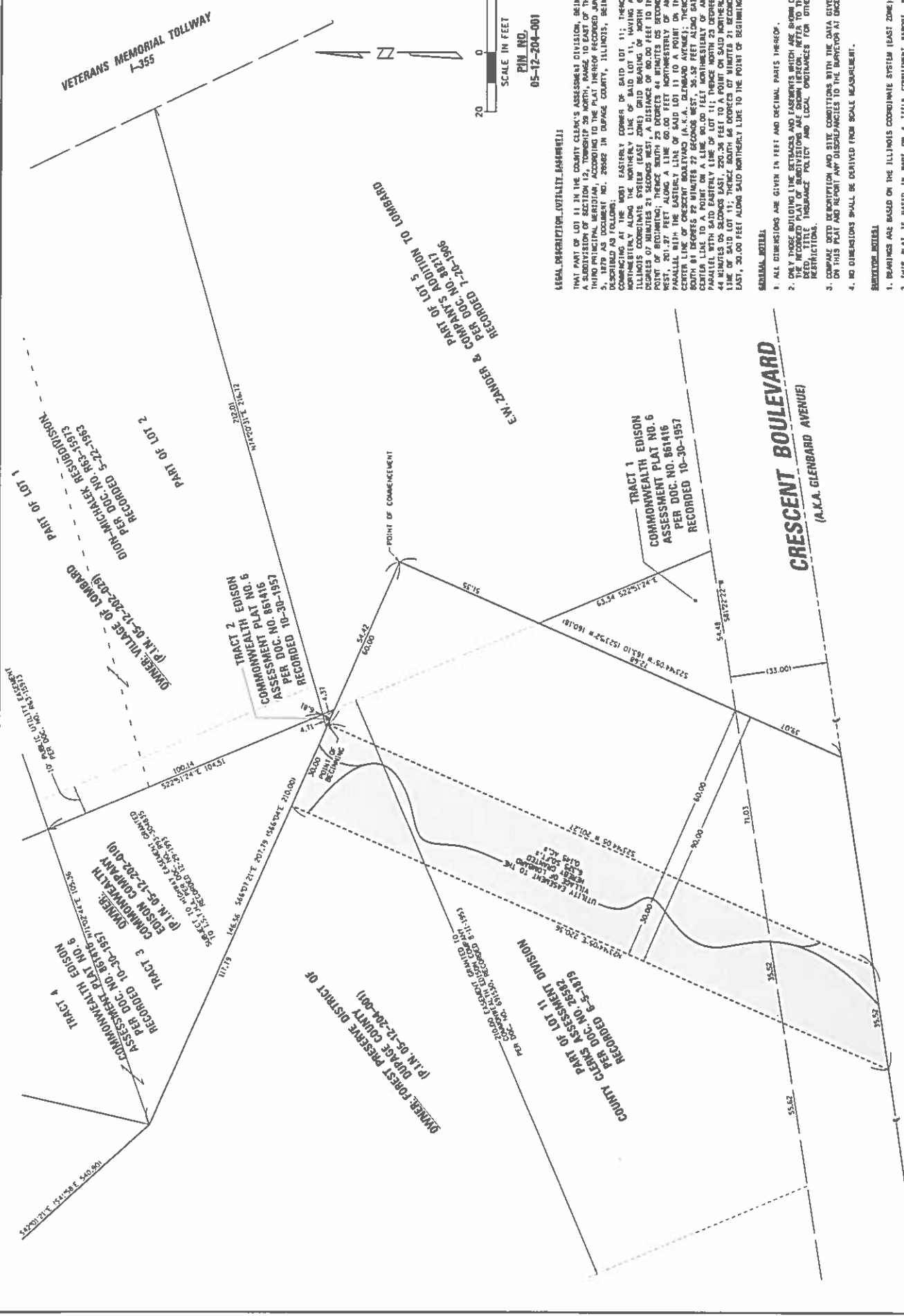
BY: _____
Joseph Cantore, President

ATTEST: _____
Judith Malahy, Secretary

VILLAGE OF LOMBARD

BY: _____
Keith Giagnorio, Village President

ATTEST: _____
Sharon Kuderna, Village Clerk



LEGAL DESCRIPTION WITH ALL ENFORCEMENTS:
 THAT PART OF LOT 11 IN THE COUNTY CLERK'S ASSESSMENT DIVISION, BEING A SUBDIVISION OF SECTION 16, TOWNSHIP 30 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED, BEING 1879 AS DOCUMENT NO. 28682 IN DEPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:
 BEGINNING AT THE WEST EASTERLY CORNER OF SAID LOT 11; THENCE CORNERING AT THE WEST EASTERLY CORNER OF SAID LOT 11; THENCE NORTH 89 DEGREES 15 MINUTES 31 SECONDS WEST, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 23 DEGREES 44 MINUTES 05 SECONDS WEST, 201.27 FEET ALONG A LINE 80.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE CENTER LINE OF CRESCENT BOULEVARD (A.K.A. GLENBARD AVENUE); THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 36.52 FEET ALONG SAID CENTER LINE TO A POINT ON A LINE 80.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID EASTERLY LINE OF LOT 11; THENCE NORTH 23 DEGREES 44 MINUTES 05 SECONDS EAST, 280.38 FEET TO A POINT ON SAID NORTHERLY LINE; THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 200.00 FEET ALONG SAID EAST, 20.00 FEET ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

- GENERAL NOTES:**
- ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMAL PARTS THEREOF.
 - ONLY THOSE BUILDING LINE SETBACKS AND EASEMENTS WHICH ARE SHOWN ON THIS PLAT AND WHICH ARE SUBDIVISIONS OF SAID LAND REFER TO THE RESTRICTIONS, EASEMENTS, POLICY AND LOCAL ORDINANCES FOR OTHER RESTRICTIONS.
 - COMPLETE UTM COORDINATE AND SITE CONDITIONS WITH THE DATA GIVEN ON THIS PLAT AND REPORT ANY DISCREPANCIES TO THE SURVEYOR AT ONCE.
 - NO DIMENSIONS SHALL BE DERIVED FROM SCALE MEASUREMENT.

- REMARKS:**
- BEARINGS ARE BASED ON THE ILLINOIS COORDINATE SYSTEM (EAST ZONE).
 - THIS PLAT IS BASED IN PART ON A TITLE COMMITMENT REPORT, BY WEALAND TITLE GUARANTY COMPANY WITH AN EFFECTIVE DATE OF MARCH 19, 2015 AS ORDER NO. 082-2015-04-3969-0.
 - PROPERTY IS SUBJECT TO: RIGHTS OF THE PUBLIC, THE STATE OF ILLINOIS, AND THE COUNTY OF DEPAGE TO THAT PART OF THE LAND, IF ANY, UNDER A ROAD EASEMENT AS SHOWN HEREON AND TO THAT PART OF THE LAND, IF ANY, UNDER A ROAD EASEMENT AS SHOWN HEREON.
 - THIS SURVEY IS BASED ON FIELD WORK PERFORMED ON 04-02-2015 THRU 04-06-2015.

EASEMENT EXHIBIT "A"
 IN
 VILLAGE OF LOMBARD, ILLINOIS
 PREPARED FOR
 VILLAGE OF LOMBARD

CALC.	KJR	PROJECT NO.	120374
DRAW.	AJK	SHEET 1 OF 1	
CHD.	JRM	DRAWING NO.	EASE120374A
SCALE:	1" = 20'	DATE:	05-24-2016

CHRISTOPHER B. BURKE
 ENGINEERING, LTD.
 9575 West Higgins Road, Suite 600
 Rosemont, Illinois 60018
 (847) 823-0500

