



FRED BUCHOLZ
DUPAGE COUNTY RECORDER
APR.03,2012
03-32-301-039
035 PAGES
R2012-042951

RESOLUTION 31-12

AUTHORIZING SIGNATURE OF PRESIDENT AND CLERK ON A DEVELOPMENT AGREEMENT

Address: 240 E. Progress Road, Lombard IL 60148

PIN: 03-32-301-039

Return To: Village of Lombard 255 E. Wilson Avenue Lombard, IL 60148

RESOLUTION R 31-12

A RESOLUTION AUTHORIZING SIGNATURE OF PRESIDENT AND CLERK ON A DEVELOPMENT AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Development Agreement for Lot 1 of Terrace Lakes Subdivision, 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 authorize the development 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 document as attached hereto.

<u>SECTION 2:</u> That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto.

Adopted this 15th day of September, 2011.

Ayes: Trustees Gron, Giagnorio, Wilson, Breen, Fitzpatrick and Ware

Nayes: None

Absent: None

Approved this 15th day of September, 2011.

William J. Mueller, Village President

ATTEST:

Brigitté/O'Brien, Village Clerk

DEVELOPMENT AGREEMENT FOR LOT #1 OF TERRACE LAKES SUBDIVISION

This Development Agreement (hereinafter referred to as the "Agreement"), is made and entered into this 23 day of Accest, 2011 by and between the School of Expressive Arts and Learning, Inc., an Illinois corporation, or successor entity to be formed prior to commencement of construction activity (collectively hereinafter referred to as the "Developer") and the VILLAGE OF LOMBARD, an Illinois municipal corporation, (hereinafter referred to as the "Village") (the Developer, and the Village being sometimes referred to herein individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, the Developer is the legal owner of Lot #1 in the Terrace Lakes Subdivision, and is developing Lot #1 solely being situated within the corporate limits of the Village which is legally described in Exhibit 1 attached hereto and made a part hereof, and platted as Lot #1 of a subdivision known as Terrace Lakes Subdivision (hereinafter referred to as the "Subject Property"); and

WHEREAS, this Agreement shall provide for the Developer's obligations as to the Subject Property; and

WHEREAS, the Developer has prepared the preliminary and final plats of subdivision, architectural plans, engineering plans, site plans as referenced in this Agreement, which have all been recommended for approval by the Plan Commission and approved by the Corporate Authorities of the Village, including the deviations from Village ordinances contained therein; and

WHEREAS, the Developer has deposited/will be depositing with the Village an Irrevocable Letter of Credit or surety bond, in a form satisfactory to the Village Attorney, for an amount specified as security for the construction of the Public Improvements (as hereinafter defined) as required on the Subject Property, and for such other purpose or purposes herein mentioned; and

WHEREAS, plans and specifications for the making of the required public improvements, as prepared by RUETTIGER, TONELLI & ASSOCIATES, INC entitled "Improvement Plans for the School of Expressive Arts and Learning" and dated July 5, 2011, (attached hereto as Exhibit 2); have been approved by the Corporate Authorities of the Village, and plans for water services, sanitary sewer and storm drainage facilities for the development needs of the Subject Property have been submitted for the approval of the Corporate Authorities of the Village; copies of all the referenced documents having been filed in the office of the



Village Clerk of the Village, which copies by reference thereto are hereby incorporated as a part hereof (all of the improvements to be made pursuant to said plans being hereinafter collectively referred to as the "Public Improvements"); and

WHEREAS, plans and specifications for the making of the required site improvements within the boundaries of the Subject Property, as prepared by RUETTIGER, TONELLI & ASSOCIATES, INC entitled "Improvement Plans for the School of Expressive Arts and Learning" and dated July 5, 2011(attached hereto as Exhibit 2) and architectural plans prepared by The Pure Group, dated July 29, 2011; have been approved by the Corporate Authorities of the Village, which copies by reference thereto are hereby incorporated as a part hereof (all of the site improvements to be made pursuant to said plans being hereinafter collectively referred to as the "Site Improvements"); and

WHEREAS, the Developer has entered into contracts or will enter into contracts for the construction of the Public Improvements required to be made relative to the Subject Property.

NOW, THEREFORE, for and in consideration of the foregoing, the premises and the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties hereto agree as follows:

Section 1: Commencement of construction of the Public Improvements detailed herein may begin only after the Developer has delivered one or more Irrevocable Letters of Credit or surety bonds, in a form satisfactory to the Village, and issued by a company or institution having an office in the Chicago Metropolitan area which is insured by the Federal Deposit Insurance Corporation, and has capital resources of at least \$10,000,000, or such other amount as acceptable to the Village Engineer. The Letter of Credit or surety bond shall be in an amount equal to 115% of the Developer's engineer's estimate of cost of construction thereof as approved by the Village Engineer (the Village required surety for Public Improvements shall hereinafter referred to as the "Letter of Credit").

Section 2: The Developer agrees to cause to be made, in relation to the development of the Subject Property with due dispatch and diligence, said Public Improvements as are required under the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code), the site plan, the landscape plans, and the engineering plans therefor. The Developer will, when required to bring about progress in the work with due dispatch, take aggressive steps to enforce each contract connected with the construction of said Public Improvements, to the end that said Public Improvements will be duly and satisfactorily completed within the time or times herein mentioned. The Developer agrees that all work in the construction of said Public Improvements shall be done in a good, substantial and workmanlike manner, that all manufactured materials used therein shall be new and of good quality, that same shall at all times be subject to inspection by the Village, shall all be satisfactory to the Village and shall be subject to the Village's approval. The Developer will at its sole cost and expense furnish all necessary engineering services as set forth in this agreement for said Public Improvements.

Section 3: The Public Improvements subject to the Letter of Credit and included within the final site plan and engineering plans for the Subject Property shall be completed within two (2) years of the Village's issuance of a building permit to Developer to commence the Public Improvements, unless otherwise extended by amendment to this Agreement by the Corporate Authorities of the Village. Unless otherwise modified herein, the Letter of Credit, and all assurances, guarantees, acceptances, and related matters shall comply with the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code). The construction of the Public Improvements by the Developer and issuance of approvals by the Village relative to the Subject Property shall comply with the following schedule.

A. Sediment and Erosion Control

Sediment and Erosion control measures shall be implemented as per the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code) prior to building permits or authorization to proceed with mass grading or other improvements to the Subject Property. Said measures shall be maintained during the entire construction process and shall be inspected and repaired as necessary after each significant rainfall. Failure to do so may result in the issuance of a stop work order.

B. Authorization to proceed with Public Improvements and Site Improvements

Upon approval of the final engineering plans for the Public Improvements and Site Improvements as to the Subject Property, receipt of all required fees as to the Subject Property, approval of the Letter of Credit as to the Public Improvements, recording of this Agreement and the Final Plat of Subdivision, and completion of item "A" above, authorization to begin Public Improvements and Site Improvements will be given by the Village.

C. Construction of Stormwater Control System:

Stormwater detention facilities shall be located as per the plans and specifications, as depicted in Exhibit 2 attached hereto and made part hereof. Basins One (B) and Two (A) and (C) (per the basin Exhibit prepared by Ruettiger, Tonelli & Associates, Inc. attached as part of Exhibit 2) shall be operational prior to construction of the building foundation on the Subject Property. Basin Two (B) shall be operational prior to any paving on the Subject Property. An operational stormwater detention pond and stormwater management system means that the volume of the stormwater detention pond is adequate for the flow being directed to it and the restrictor outlet is in place and that the system has been reviewed and approved by the Director of Community Development. Final grading and

landscaping of the detention pond shall be completed in conjunction with final landscaping.

D. Issuance of Building Permits

Building permits for work beyond grading, stormwater control systems, underground utilities, and building foundation may be issued upon provision of adequate emergency access to the building site (gravel sub base) and an operational fire hydrant within 300 feet of the subject building site, provided that all proposed stormwater facilities have been installed and approved by the Village in accordance with Section 3C above.

E. Certificates of Occupancy

Issuance of a Certificate of Occupancy for the building on the Subject Property shall be issued upon satisfactory completion of the following:

- 1) Inspection and approval by the Building Division;
- 2) Completion of the water distribution system including testing and chlorination;
- 3) Completion of the sanitary sewer system to the building;
- 4) Landscaping of the Subject Property must be substantially completed. This includes final grading and ground cover. This condition shall be waived by the Department of Community Development if a hardship exists, on account of winter conditions, provided surety in the form or a letter of credit, bond in a form satisfactory to the Village Attorney or cash deposit in favor of the Village is posted by the Developer to ensure the completion of the landscaping improvements when weather permits; and
- 5) Record drawings (as builts) of the detention pond and of the sanitary sewer and domestic water facilities required to serve any buildings shall be submitted and approved prior to the issuance of a final Certificate of Occupancy.

F. Other Improvements

- 1) Final grading and soil stabilization in accordance with the approved civil and landscape plan of the detention pond must be completed within fifteen (15) days of initial disturbance.
- 2) All required Public Improvements as to the Subject Property shall be completed within two (2) years of the Village's issuance of a building permit to Developer to commence construction of the Public Improvements.

3) It is agreed that the Department of Community Development and/or the appropriate governing authority shall allow the Developer to modify the required Village specifications for the sub-grade and base course for asphalt paving and concrete flatwork to include the use of alternative base materials (including but not limited to the use of larger stone than Village specifications currently allow) provided that said alternative sub-grade and/or base materials provide a suitable compaction of the base as determined by the Village's Private Development Engineer. For purposes of this Agreement, the Village shall consider the use of a geotextile fabric with three (3) inch rock for the first ten (10) inches of base, then four (4) inches of CA-6 stone, with four (4) inches of surface asphalt and with proof roll on the sub-grade and base course as satisfactory in meeting specifications for the access drives and the loading dock area. Also for purposes of this Agreement, the Village shall consider the use of a geotextile fabric with three (3) inch rock for the first eight (8) inches of base, then four (4) inches of CA-6 stone, with three (3) inches of surface asphalt surface as satisfactory in meeting specifications for the parking lot south of the proposed building. For any of the access drives, loading dock or parking lot, improvements, nuclear density testing shall not be required.

G. Acceptance of Public Improvements

- 1) Final record drawings (as builts), including final grading and all utilities, shall be submitted for the review and approval by the Director of Community Development prior to acceptance of the Public Improvements.
- 2) Engineer's Certification. The Developer's design engineer is to certify that the detention pond was constructed in accordance with the Village's flood control ordinances, and that the Public Improvements have been constructed substantially to plan.
- 3) All deficiencies described in the final punch list shall be satisfactorily completed and approved by the Directors of Public Works and Community Development.
- 4) A maintenance guarantee in the form of a letter of credit or surety bond, in a form satisfactory to the Village Attorney, in the amount of 10% of the cost of the Public Improvements shall be submitted to the Village and approved by the Village; and said letter of credit or surety bond, in a form satisfactory to the Village Attorney, shall comply with the Village's Subdivision and Development Ordinance (Chapter 154 of the Village Code) (hereinafter referred to as the "Maintenance Letter of Credit").

- 5) The Public Improvements to be dedicated to the Village shall be accepted by the Corporate Authorities upon receipt of a recommendation to do so from Village staff, as more fully described in Section 10 below. Upon acceptance by the Corporate Authorities, the Letter of Credit that secured construction of the Public Improvements (see Section 1 above) shall be returned to the Developer.
- 6) The Maintenance Letter of Credit or bond, in a form satisfactory to the Village Attorney, upon inspection of the Public Improvements and determination that no deficiencies exist, shall be returned at the time of its expiration, which shall be two (2) years from the date of the Village's acceptance of the Public Improvements.

Section 4: Construction Damage to Existing Public Improvements

Care shall be taken to avoid damage to existing public improvements, including utilities and curbs, during construction. Any existing public improvements damaged during construction shall be repaired to the satisfaction of the Village and in substantial compliance with this Agreement and all relevant Village codes and ordinances.

Section 5: Dedication of Public Improvements

Upon approval and acceptance of the aforesaid Public Improvements by the Village, same shall become the property of the Village and subject to its control; and if deemed necessary or desirable by the Corporate Authorities of the Village, a formal dedication or conveyance to the Village shall be made by the Developer. Said conveyance shall also include a dedication of easements to the Village for utility and maintenance purposes where applicable.

Section 6: Cross-Access Easement Provisions

The Developer shall submit to the Village of Lombard for review and approval a cross-access easement across the Subject Property for the benefit of Lot 2 of the Terrace Lakes Subdivision for the exclusive purpose of access and maintenance of Lot 2 as a passive conservation area. The location and dimensions of said easement shall be reviewed and approved by the Village's Directors of Community Development and Public Works. The Developer is not responsible for construction of any roadway or access or security improvements associated with the grant of the cross-access easement. Said cross-access easement shall provide that the owner of Lot 2 shall indemnify and hold-harmless the Developer its successors and assignees from any and from any and all claims, damages, judgments, costs and settlements including, but not limited to attorneys' fees that may arise from the owner of Lot 2 or any third parties use of the cross-access easement to gain access to Lot 2 of the Terrace Lakes Subdivision.

Section 7: Letter of Credit

It is expressly understood that this Agreement is conditional upon and subject to the delivery to the Village of the document provided for in Section 1 above from the financial institution approved by the Village, and subject to the Corporate Authorities of the Village approving same and placing same on file with the Village Clerk.

Section 8: Site Access

Developer (and its contractors) shall keep all streets which provide access to the Subject Property reasonably clean from all mud, gravel and other debris at all times. If the Village determines that the streets are not kept reasonably clean, the Village reserves the right, within twenty-four (24) hours after notice to Developer, to sweep the street and will invoice the Developer for the service the Village has rendered, with Developer hereby agreeing to pay the amount due the Village within fifteen (15) days of the receipt of any such invoice. Late payments by the Developer shall accrue interest at the rate of eighteen percent (18%) per annum.

Section 9: Progress Road Right-of-Way

In lieu of public improvements along and to the Progress Road public right-of-way, the Developer has made an application to the Village for the vacation of a portion of the Progress Road right-of-way (hereinafter referred to as the "Subject Vacation") as depicted in Exhibit 3 attached hereto and made a part hereof. As part of the Subject Vacation and in consideration of development of the Subject Property, the Developer shall be responsible for the following:

A. Vacation Appraisal

Pursuant to Section 154.203 (F)(4) of the Lombard Village Code, the Developer shall reimburse the Village for all costs associated with the real estate appraisal for the Subject Vacation. The appraisal shall not exceed Five Hundred Dollars (\$500.00).

B. Plat of Vacation

The Developer shall provide the Village with a Plat of Vacation for the Subject Vacation for review and consideration of approval.

C. Utility Grants of Easement

The Developer has submitted to the Village a plat granting public utility and drainage easements to the Village for all existing and proposed water and sewer utilities within the Subject Vacation area, as depicted in Exhibit 3.

D. Cross-Access Easement Provisions

The Developer shall provide the cross-access easements for the use and benefit of the abutting property owners to the Subject Vacation as well as any subsequent owners of Lot 2 of the Terrace Lakes Subdivision. Said cross-access easements shall be included on

a separate Plat of Easement and shall be submitted to the Village for review and recording with the Office of the DuPage County Recorder.

E. Site Improvements for the Subject Vacation

In consideration of the Subject Vacation, and subject to approval by the Corporate Authorities of the Village, the Developer shall not be responsible for the full improvement of the right-of-way being vacated as part of the Subject Vacation. However, the Developer shall complete the following activities associated with the Subject Vacation, as consideration for the Village's approval of the Subject Vacation:

1. All improvements located within the Subject Vacation shall be constructed pursuant to engineering plans prepared by RUETTIGER, TONELLI & ASSOCIATES, INC entitled "Improvement Plans for the School of Expressive Arts and Learning" and dated July 5, 2011, last revised on February 28, 2012 and attached hereto as Exhibit "B".

2. Depressed Curb

The Owner and Developer shall be required to install a depressed curb/radius connecting the eastern curb line of Garfield Road with the southern curb line of Progress Road at the western terminus of the Subject Vacation. Said design and location shall be reviewed and approved by the Village Engineer.

3. Street/Driveway Lighting

Owner and Developer shall not be required to provide public street lighting, but shall have the right to install driveway lighting as deemed necessary by the Owner and Developer.

4. Walkways/Sidewalks

Owner and Developer have the right, but not the obligation, to construct a sidewalk within the area of the Subject Vacation. Any proposed walkways sidewalk shall be subject to review and approval by the Village's Department of Community Development.

5. Parking

Owner and Developer shall install "No Parking" signs along any driveways constructed within the Subject Vacation area.

Driveway Design Standard

Owner and Developer shall be obligated to maintain the pavement surface area within the area of the Subject Vacation to the standards specifically noted within the "Village of Lombard Specification Manual for the Design of Public Improvements or Site Improvements" for parking lot pavement with truck movement.

Section 10: Acceptance

Public Improvements as to the Subject Property shall be accepted by the Corporate Authorities of the Village only after certification by the Village Engineer and Director of Community Development that the Public Improvements are in compliance with previously approved plans, specifications, and relevant codes and ordinances of the Village. All required fees shall be paid and all required procedures shall be followed prior to such acceptance. The Village shall not be liable for any damages that may occur on any roadways within the Subject Property that have not been accepted by the Village, unless such damage is caused by the Village, its employees or contractors. The Developer shall hold the Village free and harmless and indemnify the Village, and its agents, officers and employees from any and all such claims, damages, judgements, costs and settlements including, but not limited to attorneys' fees that may arise from construction, use, repair, or maintenance of the Public Improvements before they are accepted by the Village.

Section 11: Notices

All notices or demands to be given hereunder shall be in writing, and delivered by personal service or Certified or Registered U.S. Mail, return receipt requested. Said notices shall be provided to the Developer at:

The School of Expressive Arts and Learning, Inc. 1110 N. Main Street

Lombard, IL 60148

With Copies to:

Vincent M. Rosanova Rosanova & Whitaker, Ltd. 23 W. Jefferson Ave., Suite 200 Naperville, Illinois 60540

The Pure Group Steve Tetens P.O. Box 264 Plainfield, Illinois 60544

Kevin Camden, Esq. 1300 W. Higgins Road, Suite 301 Park Ridge, Illinois 60068

and to the Village at:

President and Board of Trustees Village of Lombard 255 East Wilson Avenue Lombard, Illinois 60148-3926

With copies to:

Village Manager
VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148

Director of Community Development VILLAGE OF LOMBARD 255 East Wilson Avenue Lombard, Illinois 60148

Thomas P. Bayer KLEIN, THORPE AND JENKINS, LTD. Civic Opera Building 20 North Wacker Drive Suite 1660 Chicago, Illinois 60606

Section 12: Binding Effect and Term and Covenants Running with the Land

This Agreement has been executed on behalf of the Village pursuant to action adopted by the Corporate Authorities of said Village at a meeting of said Corporate Authorities duly held on September 1, 2011.

This Agreement has been executed by the Developer and shall be binding on their respective heirs, successors and assigns.

This Agreement shall automatically expire upon the expiration of the Maintenance Letter of Credit required at the time of acceptance of the Public Improvements, as set forth above.

Upon the sale or conveyance of the Subject Property, Developer shall have no further obligation under this Agreement, provided that the successor developer posts the requisite Letter of Credit required under this Agreement, at which time the Village agrees to release any Letter of Credit or other surety posted by Developer.

Section 13: In the event any Party (hereinafter referred to as the "First Party") institutes legal proceedings against another Party (hereinafter referred to as the "Second Party") for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the Second Party all expenses of such legal proceedings incurred by the First Party including, but not limited to, the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the First Party in connection therewith (and any appeal thereof). The Second Party may, in its sole discretion, appeal any such judgment rendered in favor of the First Party against the Second Party, with the costs thereof being similarly awarded to the prevailing Party.

Section 14: The Developer hereby represents that they have consulted with an attorney prior to the execution of this Agreement and have reviewed the terms hereof with said attorney.

Section 15: This Agreement shall be recorded by the Village with the DuPage County Recorder's Office at the Developer's expense.

Section 16: This Agreement shall be construed pursuant to Illinois law, and venue for purposes of any litigation between the Parties, shall be in the Circuit County for the Eighteenth Judicial Circuit, DuPage County, Illinois.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed on their behalf, respectively, and have caused their respective Corporate Seals to be affixed hereto, all as of the day and year first above written.

Developer: School of Expressive Arts and Learning, Inc., an Illinois corporation	n
By: Bang an	
Name: Marcall Area)	
Title: Druggen/ Mosessent	
Attest: Tating 17/2t	
Name: Patricia A. Hotz	
Title: Director / Secretary	

Village of Lombard:

EXHIBIT 1 LEGAL DESCRIPTION OF SUBJECT PROPERTY

LOT 1 IN TERRACE LAKES, BEING A SUBDIVISION OF PART OF THE SOUTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 21, 2003 AS DOCUMENT NUMBER R2003-485321, IN DUPAGE COUNTY, ILLINOIS.

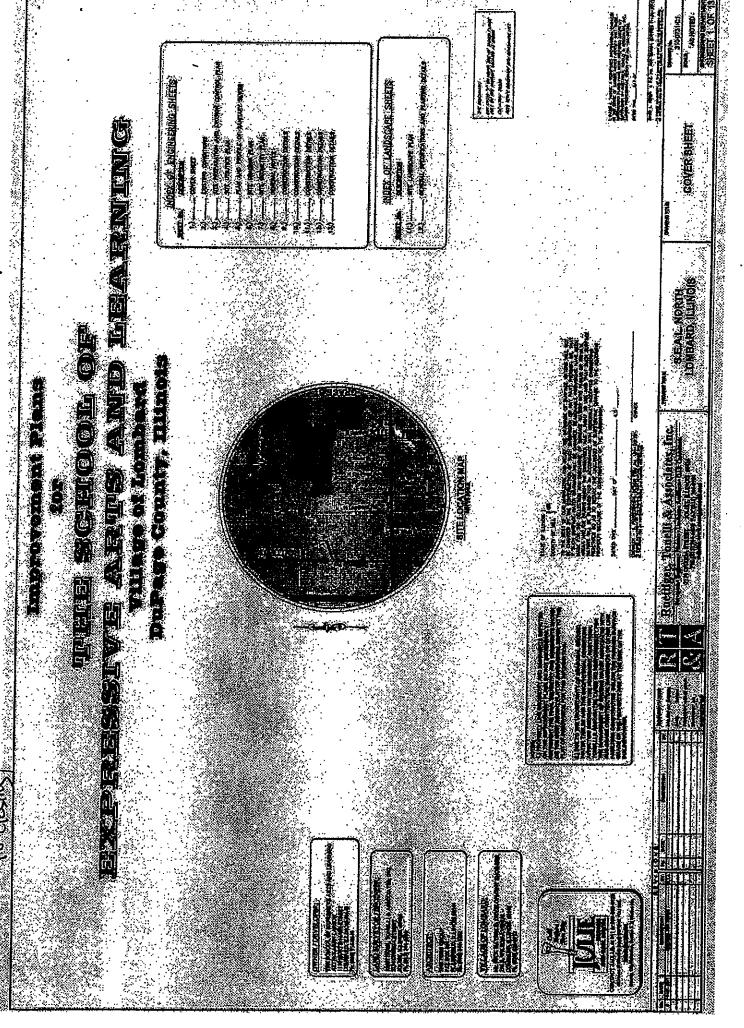
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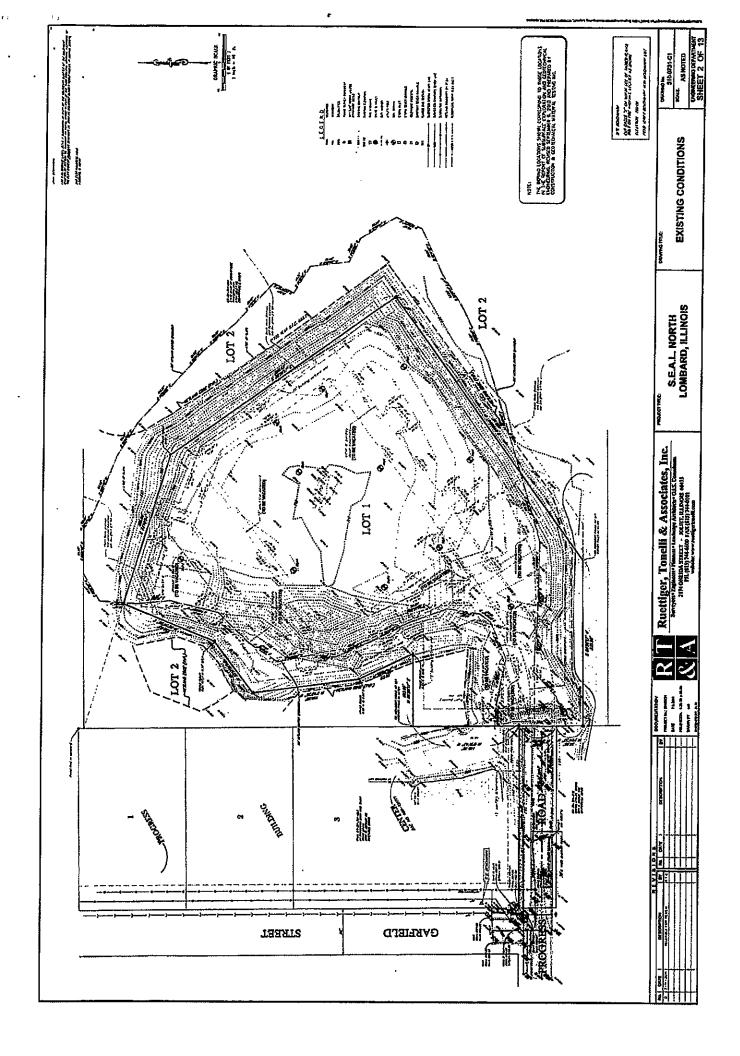
Common Address: 240 East Progress Road

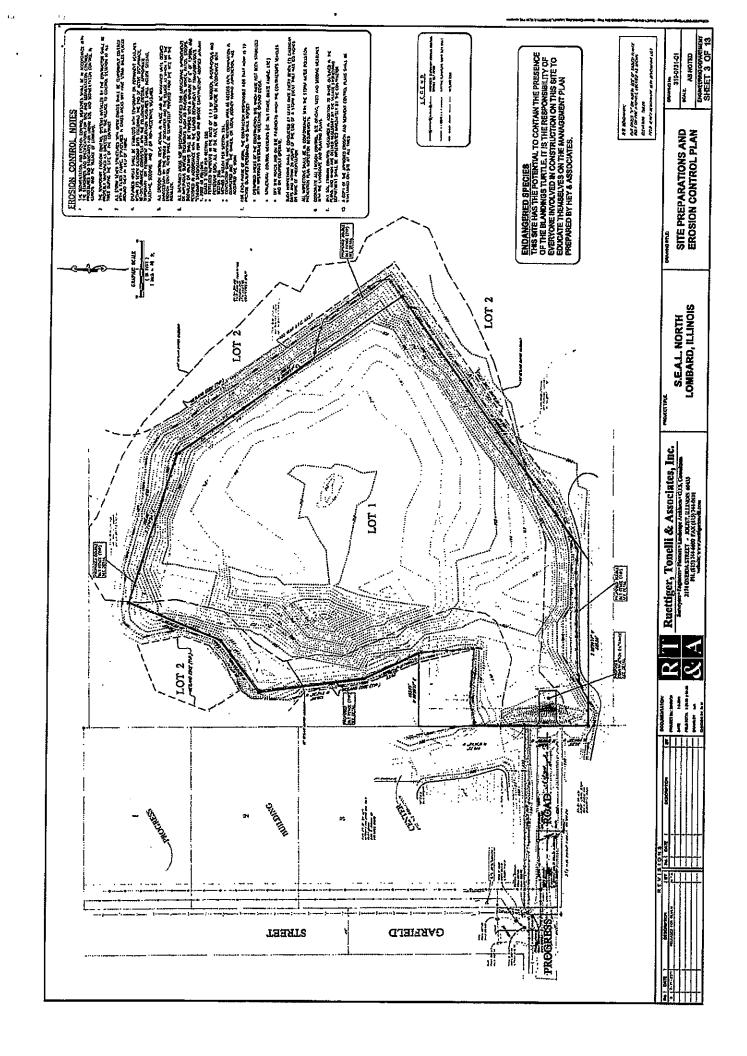
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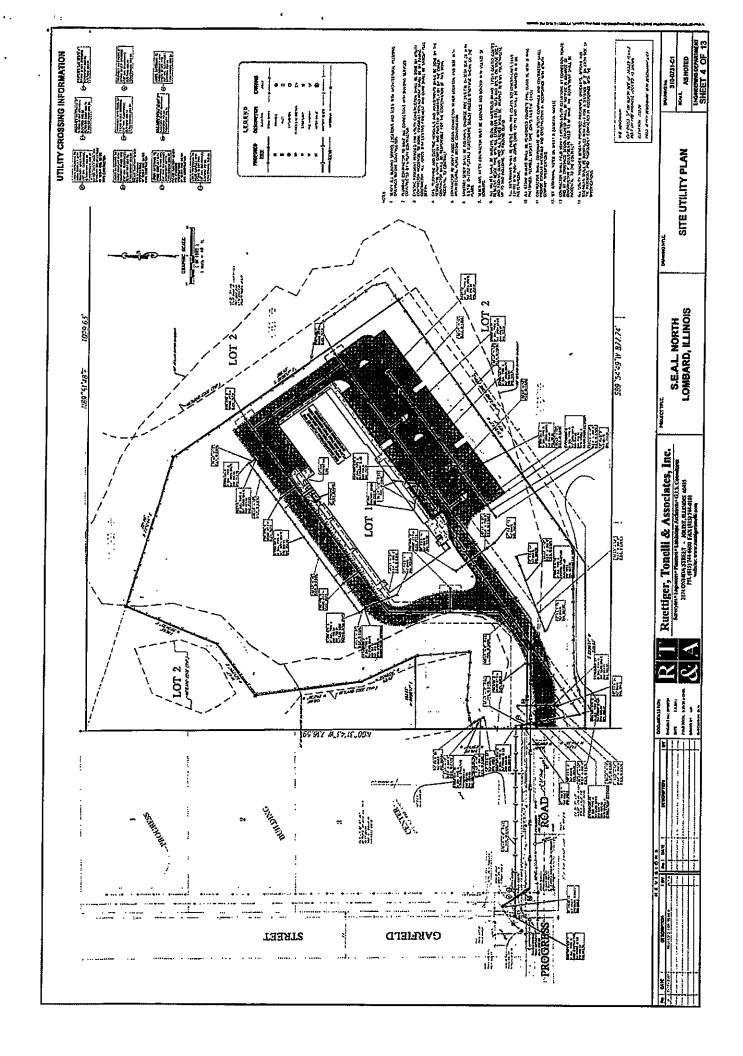
EXHIBIT 2 PLANS & SPECIFICATIONS

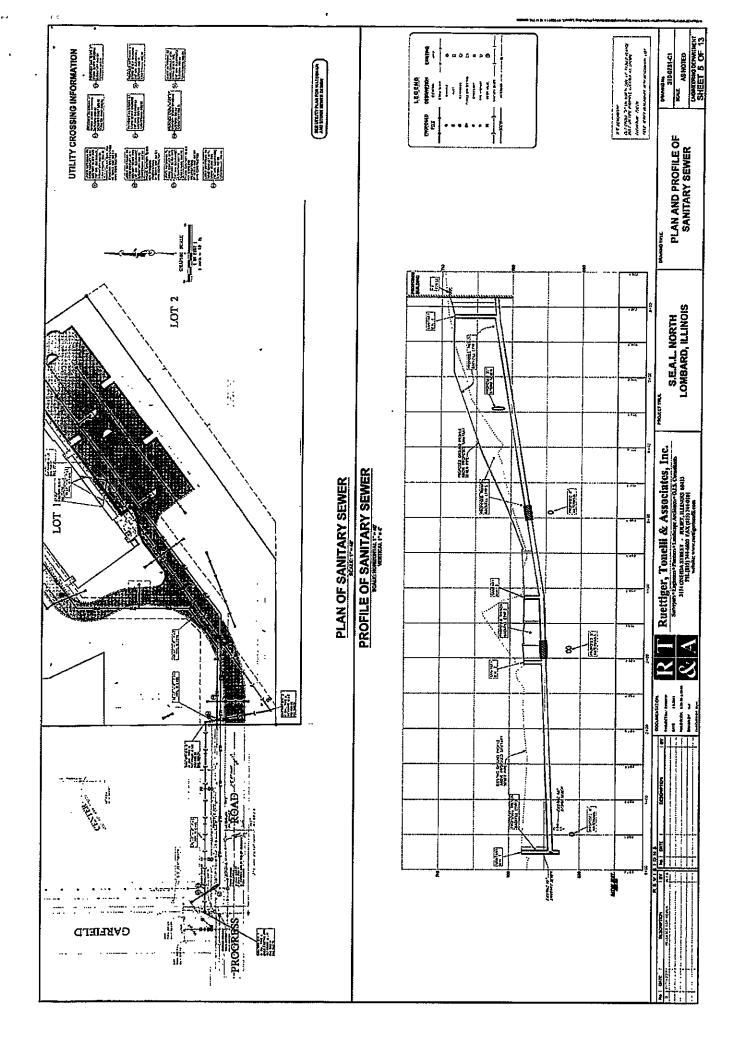
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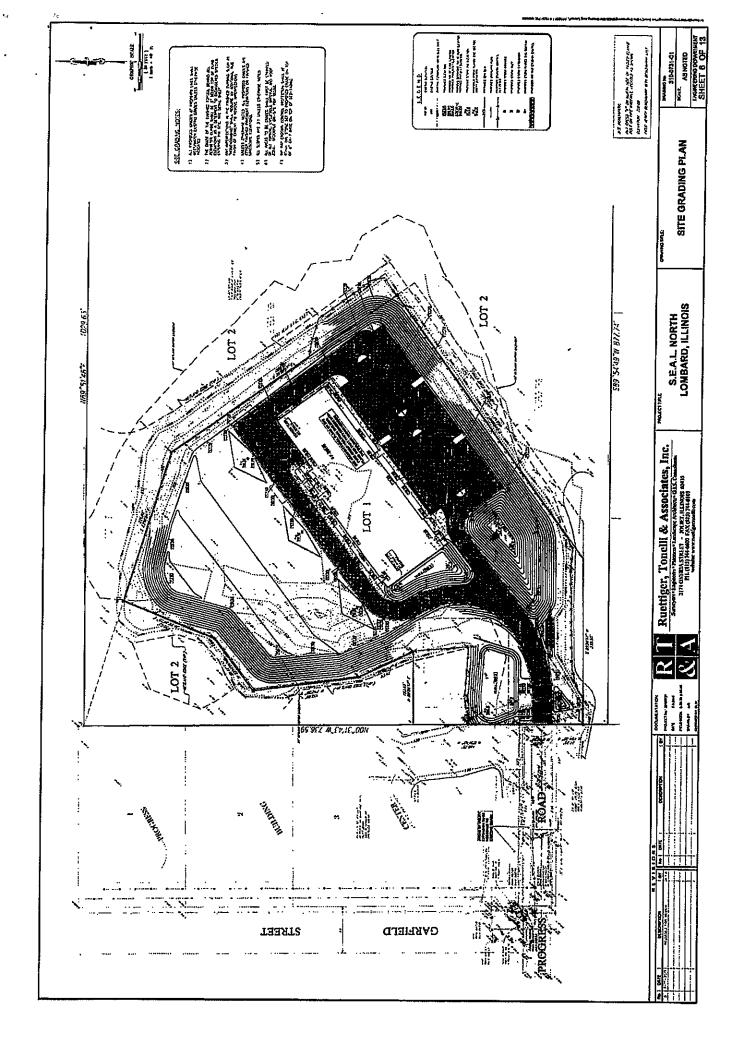


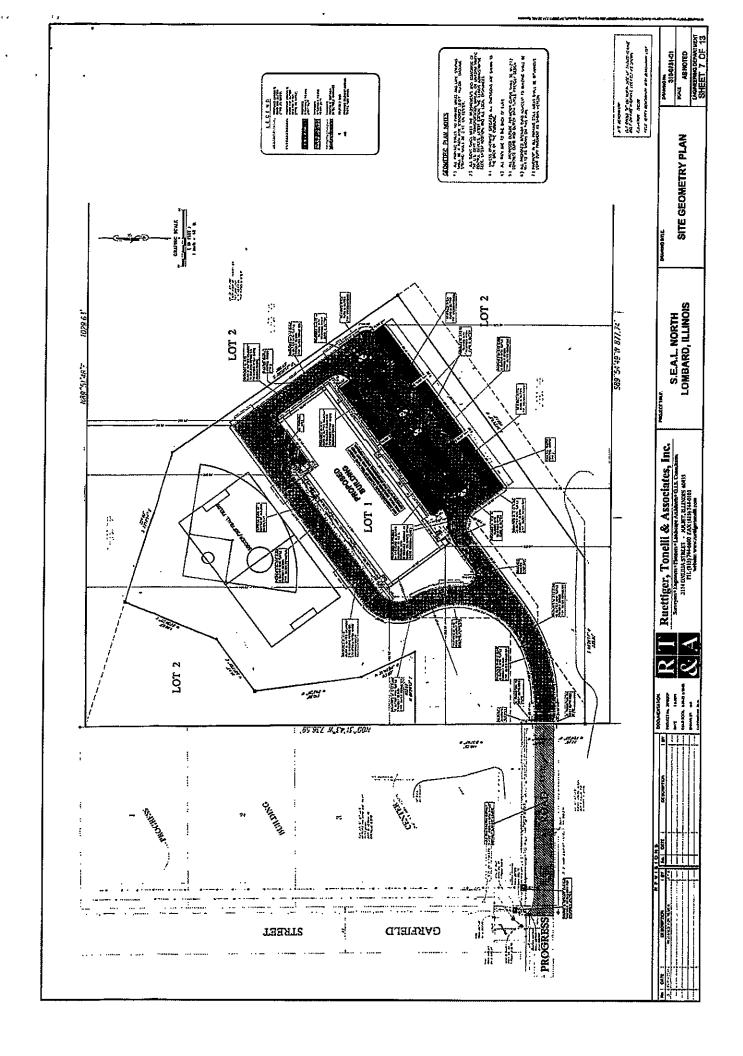












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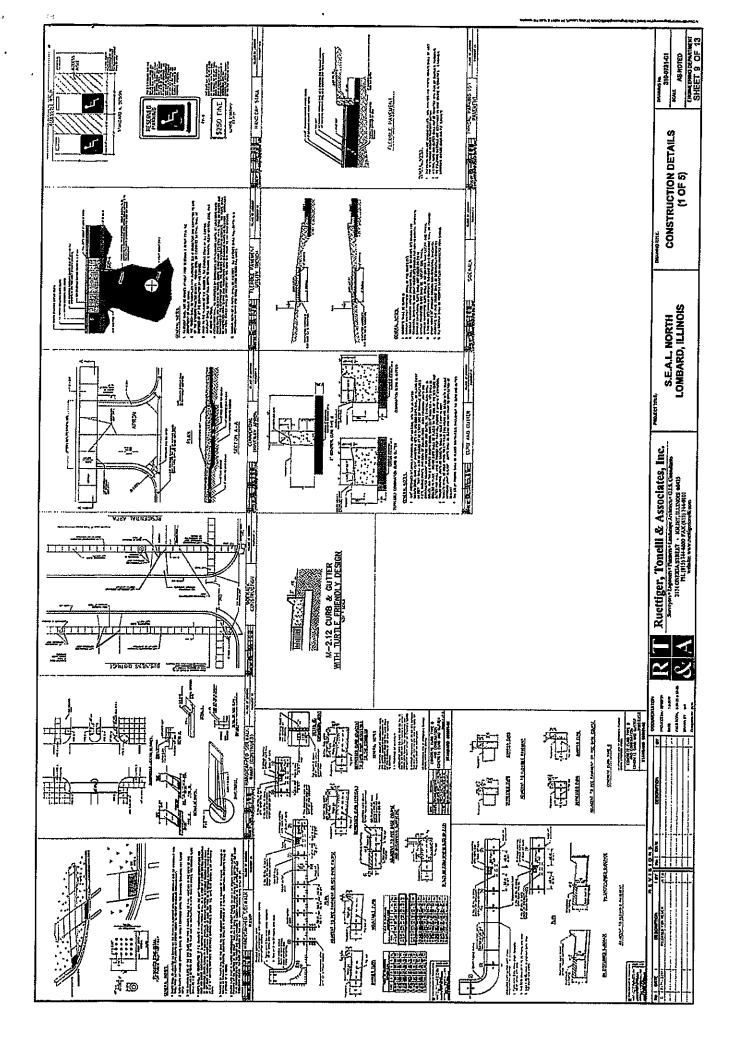
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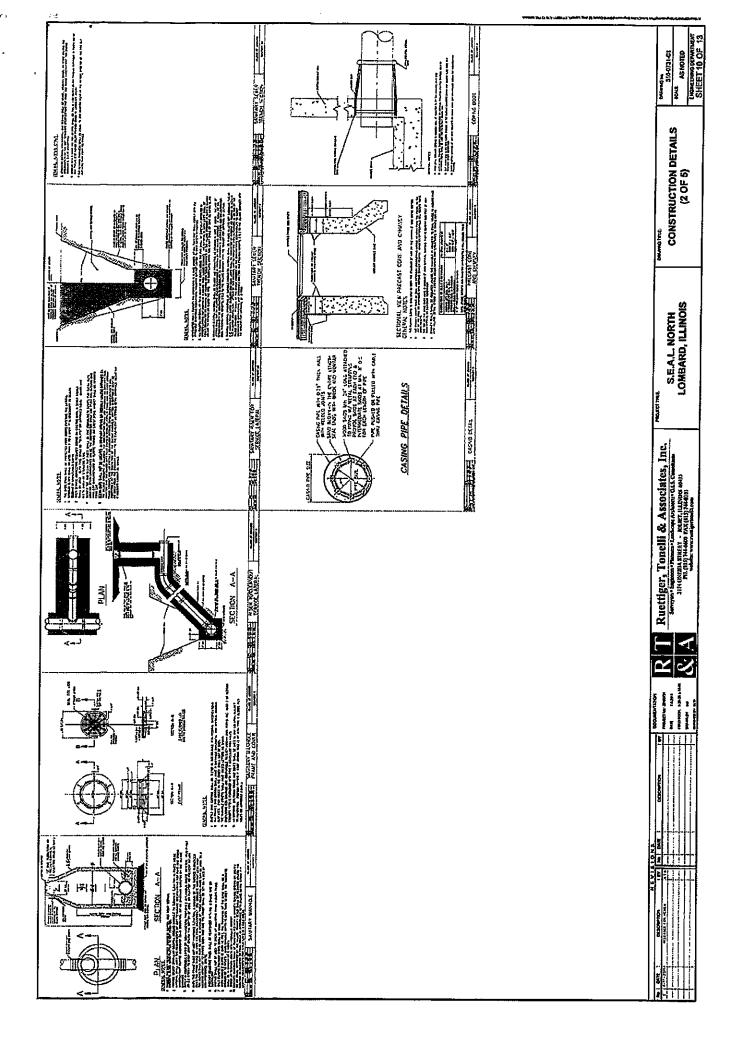
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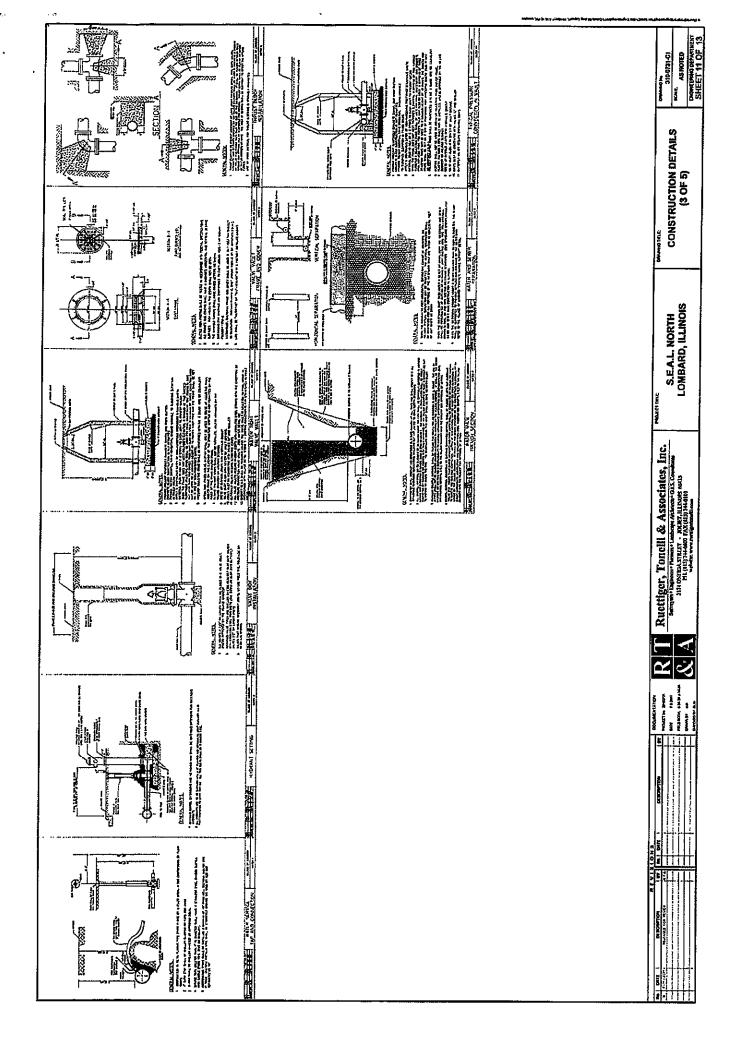
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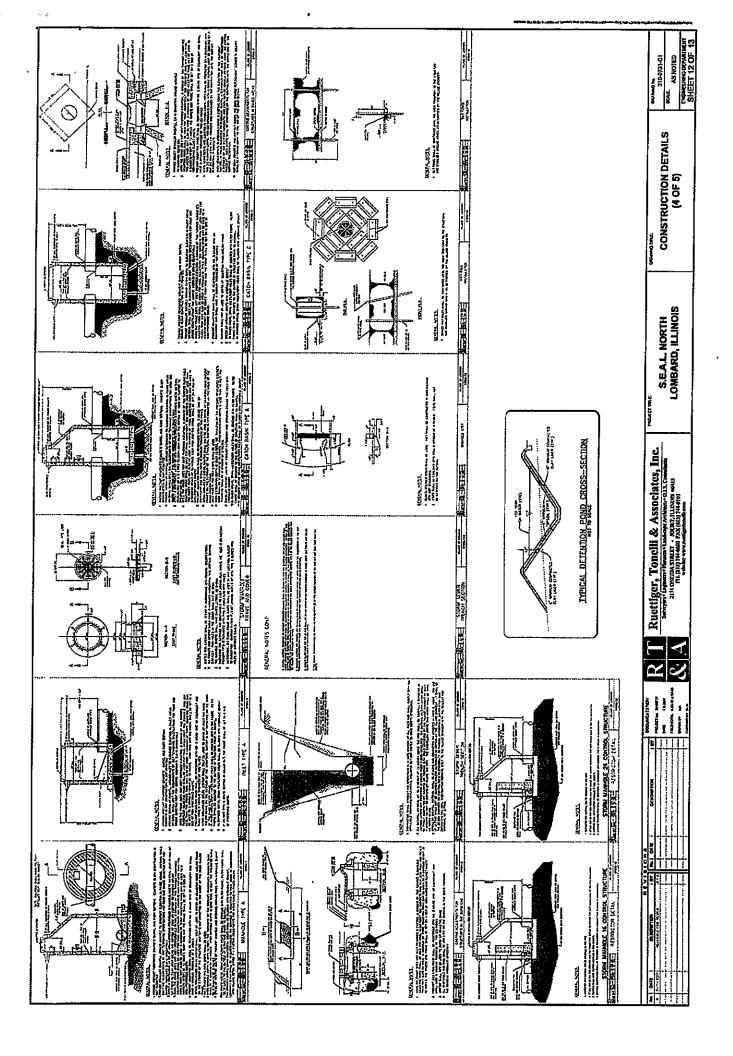
GENERAL NOTES

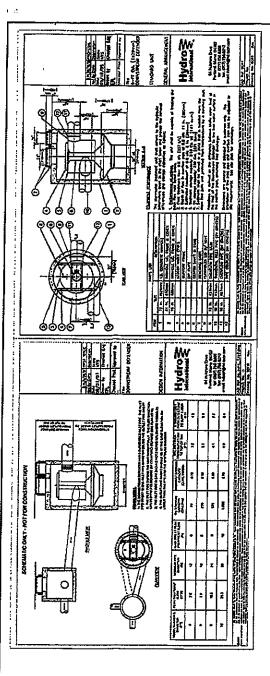
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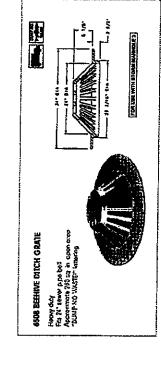


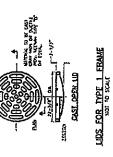


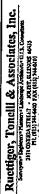








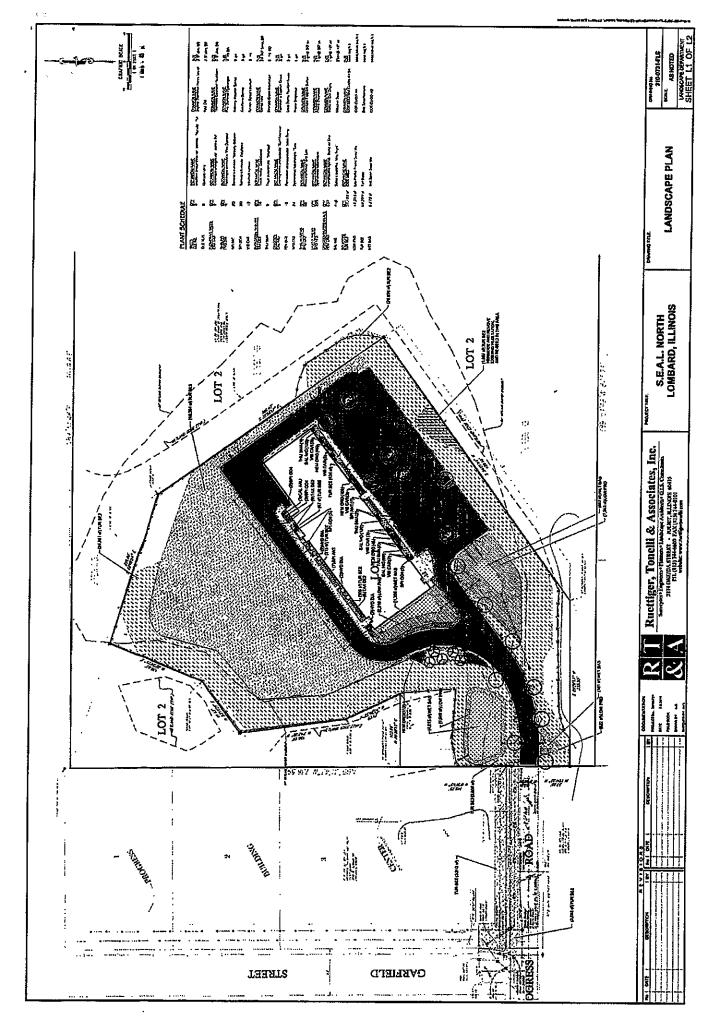




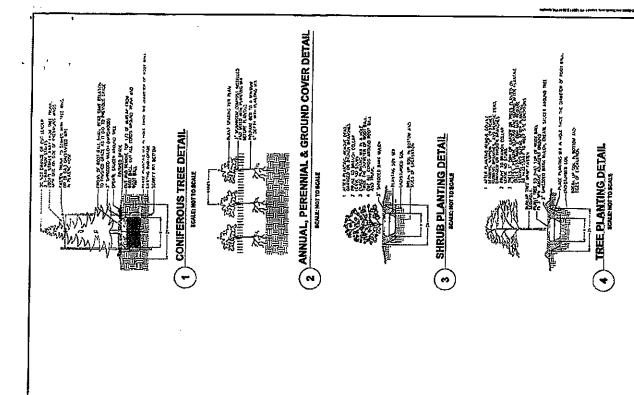
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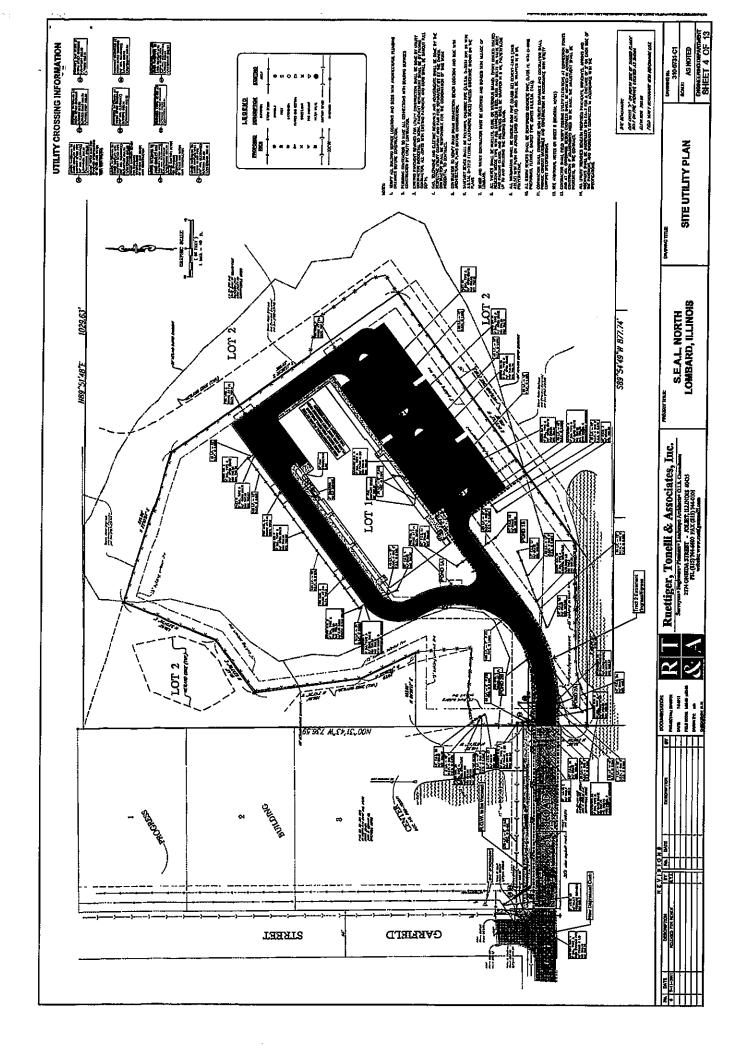


SHEET 12 OF 12

POUE. AB MOTED 310-0731-FLB

GENERAL SPECIFICATIONS AND PLANTING DETAILS

EXHIBIT 3 DEPICTION OF SUBJECT VACATION



DEVELOPMENT AGREEMENT DATED _____FOR LOT 1 OF TERRACE LAKES SUBDIVISION, LOMBARD, IL

Parcel No. 03-32-301-039

Common Address: 240 East Progress Road, Lombard, Illinois.

Prepared by and Return to: Village of Lombard 255 East Wilson Avenue Lombard, IL 60148 Attention: Community Development Department I, Denise R. Kalke, hereby certify that I am the duly qualified Deputy Village Clerk of the Village of Lombard, DuPage County, Illinois, as authorized by Statute and provided by local Ordinance, and as such Deputy Village Clerk, I maintain and am safekeeper of the records and files of the President and Board of Trustees of said Village.

I further certify that attached hereto is a copy of RESOLUTION 31-12

AUTHORIZING SIGNATURE OF PRESIDENT AND CLERK ON A DEVELOPMENT AGREEMENT

PIN: 03-32-301-039

ADDRESS: 240 E. Progress Road, Lombard IL 60148

of the said Village as it appears from the official records of said Village duly approved this 15th day of September, 2011.

In Witness Whereof, I have hereunto affixed my official signature and the Corporate Seal of said Village of Lombard, Du Page County, Illinois this 30th day of November, 2011.

Denise R. Kalke

Deputy Village Clerk Village of Lombard

DuPage County, Illinois