


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

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

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott Niehaus, Village Manager
DATE: April 23, 2018 (B of T) DATE: May 5, 2018
TITLE: Amendment to the Peck House Easement Agreement
SUBMITTED BY: Carl Goldsmith, Director of Public Works 

BACKGROUND/POLICY IMPLICATIONS:
The Department of Public Works transmits for your consideration a resolution authorizing signatures of Village President and Village Clerk on a Amendment to the Peck House Easement Agreement.

FISCAL IMPACT/FUNDING SOURCE

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.



April 23, 2018

TO: Village President and Board of Trustees

THROUGH: Scott Niehaus, Village Manager

FROM: Carl Goldsmith, Director of Public Works *CG*

SUBJECT: **Amendment to the Peck House Easement and Use Agreement
(355 East Parkside Avenue)**

Attached for the Village Board consideration is an Amendment to the Peck House Easement and Use Agreement between the Village of Lombard and the Lombard Historical Society. The previous had expired and the Village, Lombard Historical Commission and Lombard Historical Society have been working on an amendment to the agreement. The Village owns the property that the Peck House is located upon; however, the Peck House is owned and operated by the Lombard Historical Society. The structure exists at that location by way of an easement granted by the Village to the Society.

The general terms and conditions of the Agreement are substantially the same as the previous Agreements. The parties worked to ensure that the roles and responsibilities of each party were clearly articulated. This Agreement represents a renewed sense of partnership between the Village and the Society. The Agreement provides that the Peck House shall continue to be located on the Easement Parcel (355 East Parkside) until May 6, 2028.

The Lombard Historical Society and Lombard Historical Commission have both agreed to the terms and conditions presented in the Agreement. I would like to thank the Lombard Historical Society and Lombard Historical Commission for their input and cooperation on this matter. This Agreement represents a continued effort to preserve the proud history of the Village of Lombard.

I respectfully request that this matter be placed on the Village Board of Trustee's agenda for the May 5, 2018 meeting. Should you have any questions, please feel free to contact me.

ACTION REQUESTED

Staff recommends that the Village Board of Trustees approve the attached resolution authorizing the signature of the President and Village Clerk on the Amendment to the Peck House Easement and Use Agreement.

RESOLUTION

R _____ - 18

A RESOLUTION AUTHORIZING THE SIGNATURE OF THE PRESIDENT AND VILLAGE CLERK ON AN AGREEMENT

WHEREAS, the President and Board of Trustees of the Village of Lombard have received an agreement between the Village of Lombard, the Lombard Historical Commission and the Lombard Historical Society in regard to the Historical Society Use Agreement for the Peck House as attached hereto; and

WHEREAS, the Corporate Authorities deem it in their 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 President be and hereby is authorized to approve on behalf of the Village of Lombard said Agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to approve said agreement as attached hereto.

Adopted this _____ day of _____, 2018.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2018.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

FURTHER AMENDED AND RESTATED PECK HOUSE EASEMENT
AND
USE AGREEMENT
(355 East Parkside Avenue)

THIS FURTHER AMENDED AND RESTATED PECK HOUSE EASEMENT AND USE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2018, by and between the Village of Lombard, an Illinois municipal corporation ("VILLAGE") and the Lombard Historical Society, an Illinois not-for-profit corporation ("SOCIETY"). (The VILLAGE and the SOCIETY are sometimes referred to herein individually as a "Party" and collectively as the "Parties".)

W I T N E S S E T H:

WHEREAS, the SOCIETY, pursuant to a Bill of Sale dated September 30, 1996, acquired title to the house located on the Southeasterly portion of the property legally described as follows:

THE NORTH 195.4 FEET OF THE EAST 198 (EXCEPT THE WEST 60 FEET THEREOF) OF BLOCK 1 OF CAMBRIDGE MANOR, A SUBDIVISION IN THE WEST 1/2 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 10, 1924 AS DOCUMENT 178816, IN DUPAGE COUNTY, ILLINOIS.

(Said house being hereinafter referred to as the "Peck House"); and

WHEREAS, subsequent to the SOCIETY acquiring title to the Peck House, the VILLAGE acquired fee title to the above-described property; and

WHEREAS, subsequent to the acquisition of the above-described property, the VILLAGE dedicated the East 29 feet thereof for right-of-way purposes; and

WHEREAS, the SOCIETY and the VILLAGE entered into that certain "Peck House Easement and Use Agreement", dated September 18, 1997, as amended, restated, supplemented, or otherwise modified from time to time, relative to the SOCIETY'S maintenance of the Peck House on the above described property, (the "Original Agreement"); and

WHEREAS, on September 6, 2007, the Peck House was designated as a Landmark Site pursuant to Section 32.079 of the Lombard Village Code; and

WHEREAS, the SOCIETY and the VILLAGE entered into that certain "Amended and Restated Peck House Easement and Use Agreement," dated October 3, 2013, relative to the SOCIETY's maintenance of the Peck House on the above-described property, with said agreement superseding the Original Agreement (the "2013 Agreement"); and

WHEREAS, the SOCIETY desires to continue to maintain the Peck House as a historic landmark at its current location; and

WHEREAS, pursuant to the 2013 Agreement, the VILLAGE agreed to allow the Peck House to remain at its current location, and desires to continue to allow the Peck House to remain at its current location, subject to certain terms and conditions as set forth herein; and

WHEREAS, the SOCIETY finds said terms and conditions to be acceptable; and

WHEREAS, the Parties now wish to amend and restate the 2013 Agreement by entering into this Agreement;

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

1. GRANT OF EASEMENT:

A. The VILLAGE hereby grants, releases, conveys, assigns and quit claims to the SOCIETY an easement, subject to subsections F and G below, for the full and free right, privilege and authority to reconstruct, repair, alter, inspect, maintain and operate the Peck House, and all facilities incidental thereto (the "Easement"), in, on, upon, over, through, across and under a parcel of land described as follows:

Legal Description:

The North 195.4 feet of the West 109 feet of the East 138 feet of Block 1 of Cambridge Manor, a subdivision in the West 1/2 of section 8, Township 39 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded June 10, 1924 as document 178816, in DuPage County, Illinois.

P.I.N. 06-08-117-005

Common address: 355 East Parkside Avenue, Lombard, Illinois 60148;

as depicted on Exhibit A attached hereto and made part hereof (the "Easement Parcel").

B. The VILLAGE hereby agrees to and with the SOCIETY that the officers, agents or employees of the SOCIETY, whenever elected, appointed or hired, may at any all times designated herein, when necessary and convenient to do so, go in, on, upon, over and across the Easement Parcel, and do and perform any and all acts necessary or convenient to carrying into effect the purposes for which this grant and the Easement created hereby are made, and that the VILLAGE shall not disturb, molest, injure or in any manner interfere with the aforesaid Peck House, and all facilities and activities incidental thereto. The VILLAGE, however, reserves the right to make any use of the Easement Parcel whether on, above or below its surface for any

lawful purpose except that any use thereof shall not interfere in any manner with the Easement and uses by the SOCIETY hereby granted and authorized.

C. The SOCIETY, its officers, agents and employees, successors, grantees, lessees and assigns shall, as soon as practicable after reconstruction, repair and alteration of said Peck House, and all subsequent maintenance, alterations and repairs thereunto, restore to its former condition any portion of the Easement Parcel which is disturbed or altered in any manner by such reconstructing, maintaining, altering, or repairing.

D. All work, labor, services, equipment, tools and materials to be performed, furnished or used directly or indirectly in, or in connection with, the reconstructing, maintaining, altering, inspecting, repairing, and operating said Peck House and all other matters and things to be performed, furnished or used, or expenses to be paid, under the term of this Agreement are to be at the sole expense of the SOCIETY, unless expressly stated otherwise herein. In the event that the funding for the work, labor, services, equipment, tools and materials, is provided by the VILLAGE, the SOCIETY shall ensure that any contractors performing said work, labor or services, or providing said equipment, tools and materials, do so in accordance with the Illinois Prevailing Wage Act.

E. Such Easement shall, subject to subsections F and G below, run with the land and the covenants, agreements, terms, conditions, obligations, rights and interest herein contained or provided for shall be likewise binding upon and shall inure to the benefit of the Parties hereto, their heirs, executors, successors, grantees, lessees and assigns.

F. Notwithstanding the foregoing, the VILLAGE shall retain the right to continue to operate and maintain the public parking lot currently located on the Easement Parcel as of the date of this Agreement and as depicted on Exhibit A hereto, and shall retain the right to dedicate any portion of the Easement Parcel along Grace Street or Parkside Avenue, for right-of-way purposes, to the extent necessary to properly construct improvements to said streets.

G. Notwithstanding the foregoing, in the event that the Peck House is destroyed by a catastrophic event, so that its demolition is required, or in the event that the SOCIETY moves the Peck House to a location other than the Easement Parcel, the Easement granted hereunder shall terminate.

2. OBLIGATIONS OF THE VILLAGE:

The VILLAGE shall, for so long as the Peck House is located on the Easement Parcel, or until May 6, 2028, whichever occurs first:

A. Provide funds on an annual basis to reimburse the SOCIETY for the cost of a fire insurance policy in applicable amounts for the Peck House. The SOCIETY shall be responsible for all fire insurance policy premiums and deductibles should a loss occur, and such policy shall name the SOCIETY as an additional insured.

B. Provide water, sanitary sewer, electrical, telephone, internet and natural gas service for the Peck House without charge.

C. Provide for the maintenance of the landscaping, including tree trimming, grass mowing, weed control and maintenance of the landscape beds, on the Easement Parcel without charge.

D. The VILLAGE shall maintain VILLAGE planted trees on the Easement Parcel to ensure trees are maintained in a healthy manner. Trees on the Easement Parcel that were not planted, or approved for planting, by the VILLAGE shall be the responsibility of the SOCIETY.

E. The VILLAGE shall perform, or cause to be performed, snow removal from the sidewalks within the public right-of-way and parking lot.

3. OBLIGATIONS OF THE SOCIETY:

In furtherance of this Agreement, the SOCIETY shall:

A. Restore, rehabilitate, reconstruct and thereafter maintain the interior and exterior of the Peck House in a manner relevant to the historical era of the first years of the existence of the VILLAGE.

B. Not make any structural changes to the Peck House, enter into any contract(s) or take any action(s) which may result in a mechanic's lien being placed against the Easement Parcel, without first obtaining the approval of the VILLAGE, and acquiring the necessary VILLAGE permits, the fees for which shall be waived by the VILLAGE. In this regard, the foundation repair project, in process as of the date of this Agreement has been properly permitted by the VILLAGE.

C. Restore, rehabilitate, reconstruct and maintain the Peck House in compliance with any and all federal, state or local laws, and acquire any governmental licenses or permits required for the proper and lawful existence of the Peck House. In complying with any and all federal, state or local laws, the SOCIETY shall make every effort to protect the historical integrity of the Peck House.

D. Perform maintenance and repairs of the following items on the Easement Parcel, including wooden fences, exterior stairs porches and railings, raised planting gardens, brick paver patios or walkways and interpretative signage.

E. Indemnify, defend and save harmless the, VILLAGE and, its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including attorney's fees), claims or liabilities of any character, including, as allowed by law, liabilities incurred due to joint negligence of the VILLAGE and SOCIETY, brought because of any injuries or damages received or sustained by any person, persons, or property on account of any act or omission, neglect or misconduct of the SOCIETY, its officers, agents, contractors and/or employees arising

out of, or in performance of any of the provisions of this Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the Illinois Worker's Compensation Act or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the VILLAGE and, its officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. The SOCIETY shall be solely liable for all costs of such defense and for all expenses, fees, judgments settlements and all other costs arising out of such claims, lawsuits, actions or liabilities where the SOCIETY is found to be negligent or at fault.

F. The, SOCIETY shall provide the following types of insurance in not less than the following specific amounts evidenced by certificates of insurance naming the VILLAGE, and its officers, agents and employees as an additional insureds, and stating that thirty (30) days written notice shall be given to the VILLAGE by the insurance carrier before any change to, or cancellation, of the policy:

- (i) Comprehensive general liability - \$2,000,000 per occurrence; and
- (ii) Workers' Compensation – Statutory; Employers' Liability - \$500,000.
- (iii) Fire Insurance in an amount sufficient to rebuild and or repair the Peck House in the event of a fire, in accordance with Federal, State and Local codes.

In addition, the SOCIETY shall require any contractor hired by the SOCIETY to do work at the Peck House or on the Easement Parcel to comply with subsections F (i) and (ii) above, in the same manner as required of the SOCIETY.

G. Procure at the SOCIETY's own expense, contents fire insurance and the appropriate type of Inland-Marine Museum Fine Arts coverage on "art objects," and other items of personal property within the Peck House.

H. Maintain in effect the "Dissolution Clause" now in force, a copy of which is attached hereto and made a part hereof as Exhibit B.

I. Maintain at all times a list of all artifacts in the Peck House or on the Easement Parcel, identifying those objects which are loaned artifacts (the "Non-Owned Property"). Such Non-Owned Property shall not be placed in the Peck House or on the Easement Parcel without execution of a Release and Liability Waiver as to the VILLAGE by the owner of such Non-Owned Property, in the form attached hereto as Exhibit C and made part hereof.

J. Devote its best efforts to fund raising for continued restoration, maintenance, displays, programming and operations at the Peck House. Any income or receipts from the use and operation of the Peck House or Easement Parcel shall be the property of the SOCIETY, but shall be expended by the SOCIETY for the maintenance, use and operation of the Peck House and no other purpose. In this regard, the VILLAGE shall have the right to audit the records of the SOCIETY at reasonable intervals.

-K. Conduct business on the Easement Parcel, including the use of the Peck House in compliance with any and all federal, state or local laws, including but not limited to, the Americans with Disabilities Act (ADA) of 1990, as amended, and the Illinois Accessibility Code (IAC), as amended, and obtain any governmental licenses or permits required for the proper and lawful operation of the SOCIETY's business.

L. The SOCIETY shall be responsible for snow and ice removal on sidewalks located on the Easement Parcel that are not within the right-of-way. This shall include ramps and the porches.

4. MUTUAL AGREEMENTS AND OBLIGATIONS OF THE PARTIES:

A. This Agreement may not be modified or amended except by written instrument approved by both the SOCIETY and the VILLAGE.

B. If any clause, phrase, provision, or portion of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable under applicable law, such event shall not affect, impair, or render invalid or unenforceable the remainder of this Agreement nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision, or portion hereof to other persons or circumstances.

C. The SOCIETY shall not assign its rights under this Agreement without the express written consent of the VILLAGE.

D. Any notice required or given under this Agreement shall be deemed given upon its mailing by certified mail, return receipt requested, or upon its personal service, addressed as follows:

If to the VILLAGE:

Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148

If to the SOCIETY:

Director
Lombard Historical Society
23 West Maple Street
Lombard, IL 60148

If to the Lombard Historic Preservation Commission:

Chairperson

Lombard Historic Preservation Commission
255 E. Wilson Avenue
Lombard, IL 60148

E. This Agreement shall be executed in three (3) counterparts each of which shall constitute an original, so that each Party retains an original signature copy.

F. This Agreement shall be recorded with the DuPage County Recorder's Office.

G. the Lombard Historic Preservation Commission shall serve as the VILLAGE'S liaison to the SOCIETY in the performance of this Agreement.

H. This Agreement supersedes and substitutes for the Original Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above at Lombard, Illinois.

VILLAGE OF LOMBARD,
AN ILLINOIS MUNICIPAL CORPORATION

BY: _____
VILLAGE PRESIDENT

ATTEST:

VILLAGE CLERK

LOMBARD HISTORICAL SOCIETY,
AN ILLINOIS NOT-FOR-PROFIT
CORPORATION

BY: Leslie A. Sulla
PRESIDENT

ATTEST:

Prigith O'Brien
SECRETARY

REVIEWED, ACCEPTED AND APPROVED
by the Lombard Historic Preservation Commission
this ____ day of _____, 2018.

BY _____
Chairperson

ATTEST:

Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named _____ and _____, personally known to me to be the President and Clerk of the Village of Lombard, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Clerk, respectively, appeared before me this day in person and severally acknowledged that as such President and Clerk they signed and delivered the signed instrument, pursuant to authority given by said Village of Lombard, as their free and voluntary act, and as the free and voluntary act and deed of said Village of Lombard, for the uses and purposes therein set forth, and that said Clerk, as custodian of the corporate seal of said Village of Lombard, caused said seal to be affixed to said instrument as said Clerk's own free and voluntary act and as the free and voluntary act of said Village of Lombard, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this _____ day of _____, 2018.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)

) SS

COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named _____ and _____, personally known to me to be the President and Secretary of the Lombard Historical Society, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person and severally acknowledged that as such President and Secretary they signed and delivered the signed instrument, pursuant to authority given by said Lombard Historical Society, as their free and voluntary act, and as the free and voluntary act and deed of said Lombard Historical Society, for the uses and purposes therein set forth, and that said Secretary, as custodian of the corporate seal of said Lombard Historical Society, caused said seal to be affixed to said instrument as said Secretary's own free and voluntary act and as the free and voluntary act of said Lombard Historical Society, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2018.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DuPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named _____ and _____, personally known to me to be the Chairperson and Secretary of the Lombard Historic Preservation Commission, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Chairperson and Secretary, respectively, appeared before me this day in person and severally acknowledged that as such Chairperson and Secretary they signed and delivered the signed instrument, pursuant to authority given by said Lombard Historical Commission, as their free and voluntary act, and as the free and voluntary act and deed of said Lombard Historic Preservation Commission, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2018.

Notary Public

My Commission Expires: _____

EXHIBIT B
DISSOLUTION CLAUSE

In the event of the dissolution of the Lombard Historical Society, the assets of the Lombard Historical Society shall be applied and distributed as follows:

1. First, all liabilities and obligations of the Lombard Historical Society shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;
2. Second, assets held by the Lombard Historical Society on condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements; and
3. Third, any remaining assets shall be transferred or conveyed to one or more not-for-profit corporations, societies, or organizations engaged in activities substantially similar to those of the Lombard Historical Society, pursuant to a plan of distribution adopted by a majority vote of the Board of Management of the Lombard Historical Society. Preference shall be given to not-for-profit entities in the Village of Lombard and its vicinity.

EXHIBIT C

RELEASE AND LIABILITY WAIVER

I/We, _____, hereby represent that I/We am/are the owner(s) of the following item(s) of personal property which I/We have tendered to the Lombard Historical Society for display at the Society's Peck House located 355 East Parkside Avenue, Lombard, Illinois:

In consideration of being allowed to display the aforementioned items of personal property at the Lombard Historical Society's Peck House, I/We hereby release and discharge the Village of Lombard, and its officers, agents, and employees from any and all claims or liability of any kind whatsoever in regard to the damage, destruction or loss of said item(s) of personal property while in the possession or under the control of the Lombard Historical Society.

I/WE HAVE READ AND FULLY UNDERSTAND THE FOREGOING RELEASE AND LIABILITY WAIVER.

Dated: _____

Dated: _____