



FRED BUCHOLZ
DUPAGE COUNTY RECORDER
OCT.31,2006 RR 10:51 AM
OTHER 06-20-200-025
021 PAGES R2006-209817

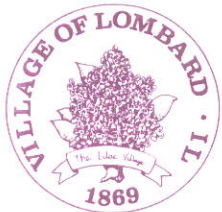
RE-RECORD
WATERMAIN CONSTRUCTION REIMBURSEMENT
AGREEMENT FOR CORRECTED
EXHIBIT A -

PIN: 06-20-200-025

Address: 19W175 Roosevelt Road, Lombard, IL

Return To:

Village of Lombard
Department of Community Development
255 E. Wilson Avenue
Lombard, IL 60148



FRED BUCHOLZ
DUPAGE COUNTY RECORDER
OCT. 13, 2006 10:35 AM
OTHER 06-20-200-025
020 PAGES R2006-198289

WATERMAIN CONSTRUCTION REIMBURSEMENT AGREEMENT

PIN: 06-20-200-025

Address: 19W175 Roosevelt Road, Lombard, IL

Return To:

**Village of Lombard
Department of Community Development
255 E. Wilson Avenue
Lombard, IL 60148**

**WATERMAIN CONSTRUCTION REIMBURSEMENT AGREEMENT FOR
19W175 ROOSEVELT ROAD**

THIS AGREEMENT is entered into on this 21st day of SEPTEMBER, 2006, by the **VILLAGE OF LOMBARD**, DuPage County, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "**Village**"); and 19WLLC, an Illinois Limited Liability Company (hereinafter referred to as "**Owner**"); (the Village and Owner are sometimes referred to herein individually as a "Party" or collectively referred to as the "**Parties**").

WITNESSETH:

Pursuant to the provisions of Article VII, Section 10 of the 1970 Illinois Constitution, and 65 ILCS 5/8-11-20, and in consideration of the Preliminary Statements, the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The Village is a municipality lawfully existing under the constitution and laws of the State of Illinois.
- B. 19WLLC, is the owner of record for certain existing property improved with a retail commercial building (the "**Subject Property**") legally described in EXHIBIT "A" attached hereto and made part hereof, and located within the boundaries of the Village.
- C. Owner intends to improve the Subject Property with a public watermain connection and water service line to service the business establishment located on the Subject Property.
- D. The Village represented as part of an annexation agreement between the Owner and the Village (said annexation agreement having been approved by the Village on July 21, 2005 pursuant to Ordinance 5679) that it owns and maintains a public watermain to serve the water needs of the Subject Property, however, this representation did not address additional watermain improvements that would be required by the Village in order to provide water service into the building located on the Subject Property.
- E. In order to accommodate the watermain connection proposed by the Owner, the Village requires a watermain extension from its current watermain termination point East of the Subject Property to an existing watermain located West of the Subject Property, as depicted on EXHIBIT "B" attached hereto and made a part hereof (the "**Watermain**

Extension”), as the service line proposed by the Owner exceeds the length requirements set forth within the Village Code for utility connections.

- F. The Village is desirous of having the business on the Subject Property operated in accordance with the Village Code in order to service the needs of the Village and its residents.
- G. The Watermain Extension, if completed, will improve water quality and service in the vicinity of the Subject Property.
- H. In light of the foregoing, a portion of the cost of the Watermain Extension should properly be paid for by the Village, and, as such, the Village contemplates certain incentives under the terms and conditions hereinafter set forth to assist in the construction of same.
- I. The parties hereto acknowledge, and Owner represents and warrants, that while the Owner will construct the Watermain Extension, the Watermain Extension requires economic assistance from the Village in order to complete the same, and, but for the economic assistance to be given by the Village, the Watermain Extension as contemplated would not be economically viable nor eligible for the financing necessary for its completion.
- J. For the purposes of this Agreement, the use of the terms "**Sales Tax**" and "**Sales Tax Revenues**" shall be construed to refer to that net portion of taxes imposed by the State of Illinois (hereinafter referred to as the "**State**") for distribution to the Village pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., and the Service Occupation Tax Act, 35 ILCS 115/1 et seq., (as said Acts maybe amended) and which are collected by the State and distributed to the Village (currently such net portion is one percent (1%) of the total amount of gross sales within the Village, which are subject to the aforementioned taxes).

II. CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE VILLAGE

All undertakings on the part of the Village pursuant to this Agreement are subject to satisfaction of the following conditions by Owner on or before the dates hereinafter specified. In the event Owner does not comply in all material respects with the conditions precedent set forth in this Article II, then all obligations on the part of the Village pursuant to this Agreement shall be cancelled, and the Village shall have no further obligations with regard to the Watermain Extension, and any right on the part of Owner to demand performance thereof shall be deemed waived and also cancelled and of no force and effect.

- A. By September 1, 2007, Owner shall have applied for a building permit with the Village for the Watermain Extension, and have supplied the Village with an engineer's cost estimate for the Watermain Extension. If the contractor's cost proposal for the watermain extension exceeds the Engineer's Cost Estimate for the work to be performed, then the Owner shall submit the costs to the Village for approval prior to authorizing the contract to perform the public watermain construction activity.
- B. By October 1, 2007, Owner must have obtained final approval of its plans from any other governmental unit or agency, which has jurisdiction or authority over any portion of the Watermain Extension and/or plans. The submitted plans (hereinafter the "**Final Plans**") associated with the permit shall be in accordance with the regulations and ordinances of the Village, it being understood that the Village in its capacity as a municipal corporation has sole discretion to approve all plans for development within the Village, and the Village shall not be deemed to have caused a default hereunder or have any liability for its failure to approve the final plan for the Watermain Extension, except for its willful misconduct. The "Final Plans" shall mean any and all documents, plans and drawings submitted to the Village in order to obtain any permit required by the Village relative to the Watermain Extension.
- C. By December 1, 2007, Owner must have completed the Watermain Extension and delivered to the Village a certified statement in regard to the total cost of the Watermain Extension along with a Bill of Sale for said Watermain Extension. Said certification shall be over the signature of the chief financial officer of Owner. Owner shall allow the Village Manager or his designee to review a breakdown of and supporting documentation for Owner's investment in the Watermain Extension.

III. UNDERTAKINGS ON THE PART OF THE VILLAGE

- A. Upon satisfaction by Owner of all the conditions hereinabove stated in Article II, delivery to the Village of a certificate from Owner that all representations and warranties contained in Article V hereof are true and correct, and acceptance of the Watermain Extension by the Village as part of the Village's water system, the Village shall begin to make the Annual Installment Payment provided for below.
- B. The Village hereby agrees to pay Owner the Annual Installment Payment (as hereafter defined), beginning the last to occur of December 31, 2007 or the date that Owner has leased the Subject Property to a tenant and the tenant has taken possession of the Subject Property, and continuing on each anniversary thereof for (i) five (5) years or (ii) until the Village has paid Owner the total cost of the Watermain Extension as certified pursuant to Article II Section C., whichever occurs first, subject to the following calculations, deductions, terms and conditions:

- 1) The "**Annual Installment Payment**" shall mean an amount equal to the Sales Tax Revenues received by the Village from the State of Illinois, which are generated from sales on the Subject Property during the twelve month period preceding the payment date as referenced above. All amounts paid to Owner will be due and payable, solely from the Sales Tax Revenues received by the Village from the Subject Property, on the dates provided herein.
 - 2) In no event shall the Village be obligated under this Agreement to make Annual Installment Payments to Owner, which, in the aggregate over the life of this Agreement, exceed the total certified costs for the Watermain Extension.
 - 3.) Prior to making each Annual Installment Payment, the Village shall mail to Owner a letter, itemizing the gross Sales Tax receipts received from the State of Illinois for the preceding year, from retail sales on the Subject Property, any deductions to be retained by the Village, and the net dollar amount to be paid to Owner pursuant to this Agreement.
- C. The Village shall provide for Annual Installment Payments required under this Agreement by appropriating an adequate amount therefor in its annual budget ordinance for the fiscal years in which such payments are due. The payments shall be the limited obligation of the Village payable solely out of the Sales Tax Revenues received from retail sales on the subject Property.
- D. In the event Owner fails to deliver to the Village all of the foregoing certifications within the time periods set forth, or otherwise materially violates any term or provision of this Agreement, then in such event, the Village shall have no obligation to make any payment to Owner until such time as any such failure or violation is corrected to the reasonable satisfaction of the Village, and all rights of Owner to demand any current or future payment from the Village shall be deemed waived until such failure or violation is so corrected.

IV. UNDERTAKINGS ON THE PART OF OWNER

- A. Owner shall complete the Watermain Extension in accordance with the schedule set forth herein and in accordance with the Final Plans, and all applicable ordinances, rules and regulations of the Village in existence as of the date of such approval, and all rules and regulations thereunder.
- B. Owner recognizes and agrees that the Village has sole discretion with regard to all approvals and permits relating to the Watermain Extension, including but not limited to approval of the Final Plans, building permit and occupancy permit, and failure on the part of the Village to grant any required approval or issue any required permit shall not be deemed as the cause of a default by the Village under this Agreement or give rise to

any claim against or liability to the Village pursuant to this Agreement, unless such failure arises out of the negligence or misconduct of the Village. Notwithstanding the foregoing the Village shall not exercise its authority under the subsection in an unreasonable manner.

- C. Owner shall provide the Village with a power of attorney letter addressed to, and in a form satisfactory to, the Illinois Department of Revenue authorizing the Illinois Department of Revenue to release to the Village Finance Director, for each calendar month, all gross revenue and Sales Tax Revenues information relating to retail sales on the Subject Property, which letter shall authorize such information to be released to the Village and shall be in the form attached hereto as EXHIBIT "C", and made part hereof, or such other or additional forms as required from time to time by the Illinois Department of Revenue in order to release such information to the Village. No payments required under this Agreement shall have to be made by the Village without receipt of satisfactory information from the Illinois Department of Revenue indicating the Sales Tax Revenues generated from retail sales on the Subject Property for the time period covered by the applicable Annual Installment Payment. All such information received by the Village shall be considered confidential proprietary information and shall not be disclosed to any other person or entity by the Village or its Finance Director without the written consent of the business entity paying the Sales Tax Revenues to the Illinois Department of Revenue. For the purposes of this subsection it is the intent of the parties that such information shall be deemed exempt from public disclosure pursuant to 5 ILCS 140/7(g), or any future recodification thereof.
- D. Owner hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that it may at any time be lawfully finally assessed with respect to the Subject Property; provided, however, that Owner may withhold any such tax payment for which it has filed a formal protest, with a certified copy forwarded to the Village, pursuant to a prescribed statutory procedure allowing for such nonpayment until the protest has been ruled upon; provided further, however, that any payment required after such protest is ruled upon shall be promptly paid.
- E. Owner shall give the Village notice regarding any defaults on the payment of any Sales Tax due to the Illinois Department of Revenue from retail sales on the Subject Property.

V. **REPRESENTATIONS AND WARRANTIES OF OWNER**

- A. Owner hereby represents and warrants that the Watermain Extension requires economic assistance from the Village in order to complete it in accordance with the approved Final Plans, and, but for the economic assistance to be given by the Village as heretofore stated, the Watermain Extension as contemplated would not be economically viable nor eligible for the financing necessary for its completion.

- B. Owner hereby represents and warrants that the Watermain Extension shall be constructed and fully completed in a good and workmanlike manner in accordance with the Final Plans approved by the Village.
- C. Owner hereby represents and warrants that it will not knowingly violate any applicable Village zoning ordinance or regulation, building or fire code regulation, or any other applicable Village ordinance, resolution or regulation as they relate to the Subject Property unless they are being contested in a lawful manner.
- D. Owner hereby represents and warrants that it will not knowingly violate any applicable law, rule or regulation of the State of Illinois, County of DuPage or the United States of America, and all agencies thereof as they relate to the Watermain Extension, unless they are being contested in a lawful manner.
- E. Owner hereby represents and warrants that it is an Illinois limited liability company in good standing.
- F. Owner will begin construction on the Watermain Extension on or before November 1 2007 except in the event Owner is unable to begin said construction due to any strike, lockout, labor dispute, construction delays, civil disorder, riot, war, casualty or act of God or other similar event beyond the reasonable control of Owner.
- G. Owner hereby represents and warrants that attached as EXHIBIT "A" is the legal description of the Subject Property and that said legal description is accurate and correct.

VI. DEFAULTS

The occurrence of any one of the following shall constitute an event of default by Owner under this Agreement:

- A. Failure to comply with any term, provision or condition of this Agreement within the times herein specified;
- B. **Failure of** a representation or warranty of Owner contained herein to be materially true and correct when made.
- C. In the event of any non-monetary default and/or breach of this Agreement or any terms or conditions by either Party hereto or bound by this Agreement, such Party shall upon written notice proceed promptly to cure or remedy such default or breach within said sixty (60) days after receipt of such notice; provided, however, that in the event such default is incapable of being cured within the sixty (60) day period and the defaulting

Party commences to cure within said sixty (60) day period and proceeds to cure with due diligence, such Party shall not be deemed to be in default under this Agreement. In case such action is not taken or not diligently pursued or the default or breach shall not be cured or remedied within the above time or in the event of a monetary default (time being of the essence with respect to the payment of any sums required hereunder), the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach including but not limited to proceedings to compel specific performance by the party in default or breach of its obligations, but not specific performance of any obligations to construct any buildings or other improvements. The rights of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it of any one or more of such remedies in relation to the same default or breach by the other Party. No waiver made by either Party with respect to any specific default by the other Party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting Party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. Notwithstanding anything contained herein to the contrary, all monetary damages resulting from a breach of this Agreement shall be limited to the non-defaulting Party's actual out of pocket costs and expenses resulting from such breach along with all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting Party in enforcing this Agreement. In the event of any litigation between the Parties hereto resulting from a breach of this Agreement, the prevailing Party in such litigation, as determined by final judgment, shall be entitled to an award of its attorneys' fees and costs incurred in such litigation.

VII. NOTICES

All notices and requests required pursuant to this Agreement shall be sent by personal delivery or certified mail, return receipt requested, and addressed as follows:

If to Owner:

19WLLC
30 N. LaSalle Street, Suite 3000
Chicago, Illinois 60602

With copies to:

Steven A. Felsenthal
Sugar, Friedberg, and Felsenthal LLP
30 N. LaSalle Street, Suite 3000
Chicago, Illinois 60602

Phil Cohen
2525 N. Elston Avenue, Suite D-230
Chicago, IL 60647

If to the Village:

Village Manager
Village of Lombard
255 E. Wilson Avenue
Lombard, IL 60148

With copies to:

Finance Director
Village of Lombard
255 East Wilson
Lombard, Illinois 60148

Director of Community Development
Village of Lombard
255 East Wilson
Lombard, Illinois 60148

Thomas P. Bayer, Village Attorney
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Dr.
Suite 1660
Chicago, IL 60606

or at such other addresses as the parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

VIII. LAW GOVERNING

This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, and for the purposes of any lawsuit between the parties concerning this Agreement, its enforcement or the subject matter thereof, venue shall be in DuPage County, Illinois.

IX. ASSIGNMENT

Owner shall not assign this Agreement to any person or entity without the prior written consent of the Village. No such assignment shall be effective, even if consented to by the Village, unless and until the assignee assumes in writing the obligations of Owner hereunder, and upon such assumption in writing, Owner shall be released from and no longer be liable for any of its obligations and the performance thereof pursuant to this Agreement.

X. TIME

Time is of the essence unless otherwise stated in this Agreement and all time limits set forth are mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

XI. BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon the Village and Owner and their respective successors and assigns, subject however to the provisions of Articles IX and XII hereof.

XII. LIMITATIONS OF LIABILITY

No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the Village, its officers, agents or employees, in any amount or in excess of any specific sum agreed by the Village to be paid to Owner hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the Village, its officers, agents or employees in excess of such amounts and all and any such rights or claims of Owner against the Village, its officers, agents or employees are hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement by the Village. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against Owner, its officers, agents or employees, in excess of their obligations to the Village hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by Owner, its officers, agents and employees in excess of their obligations hereunder.

XIII. CONTINUITY

Notwithstanding any provision of this Agreement to the contrary, including, but not limited to, the assignment by Owner of this Agreement, Owner shall at all times during the term of this Agreement remain liable to Village for the faithful performance of all obligations imposed upon it by this Agreement until such obligations have been fully performed or until the Village, at its sole option, has otherwise released Owner from any or all of such obligations.

XIV. NO WAIVER OR RELINQUISHMENT OF RIGHT TO ENFORCE AGREEMENT

Failure of any Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

XV. VILLAGE APPROVAL OR DIRECTION

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

XVI. SECTION HEADINGS AND SUBHEADINGS

All Article headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

XVII. AUTHORIZATION TO EXECUTE

The manager of Owner who has executed this Agreement warrants that he/she has lawfully authority to execute this Agreement on behalf of the Owner. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Corporate Authorities of the Village to execute this Agreement. Owner and the Village shall deliver, upon request, to each other, at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.

XVIII. AMENDMENT

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Owner and the Village relative to the subject matter thereof, and there

are no promises, agreements, conditions or understandings either oral or written, expressed or implied, between them, other than are herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

XIX. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

XX. CONFLICT BETWEEN THE TEXT AND EXHIBITS

In the event of a conflict in the provision of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

XXI. SEVERABILITY

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the Village from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves the Village of any of its monetary obligations under Section III of this Agreement, then this Agreement shall terminate.

XXII. DEFINITION OF VILLAGE

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

XXIII. EXECUTION OF AGREEMENT


This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on Page 1 hereof which date shall be the effective date of this Agreement.

IN WITNESS WHEREOF, this Agreement as of the date and year first written above.

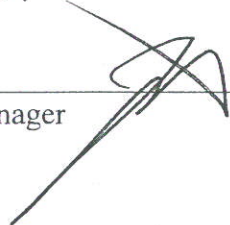
VILLAGE OF LOMBARD, an Illinois Municipal Corporation

By: 
Village President

ATTEST:

By: 
Deputy Village Clerk

OWNER
19 WEST LLC

By: 
Manager

ACKNOWLEDGMENTS

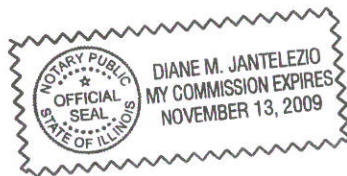
STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that William J. Mueller, personally known to me to be the President of the VILLAGE of Lombard, and Brigitte O'Brien, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 26th day of September, 2006.

Commission expires 11-13-09, ____.

Diane M. Jantelezio
Notary Public



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 John Booth, personally known to me to be the Manager of 19WLLC and also personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, and that he/she appeared before me this day in person and acknowledged that as such Manager, he/she signed and delivered the said instrument, consenting to its recordation, pursuant to authority given by said company, as his/her free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 19th day of September, 2006.

Commission expires 10-17, 2007.

Jennifer L. Sherpan
Notary Public

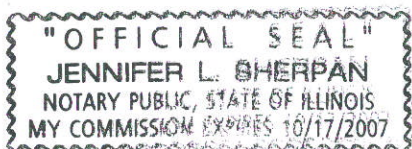
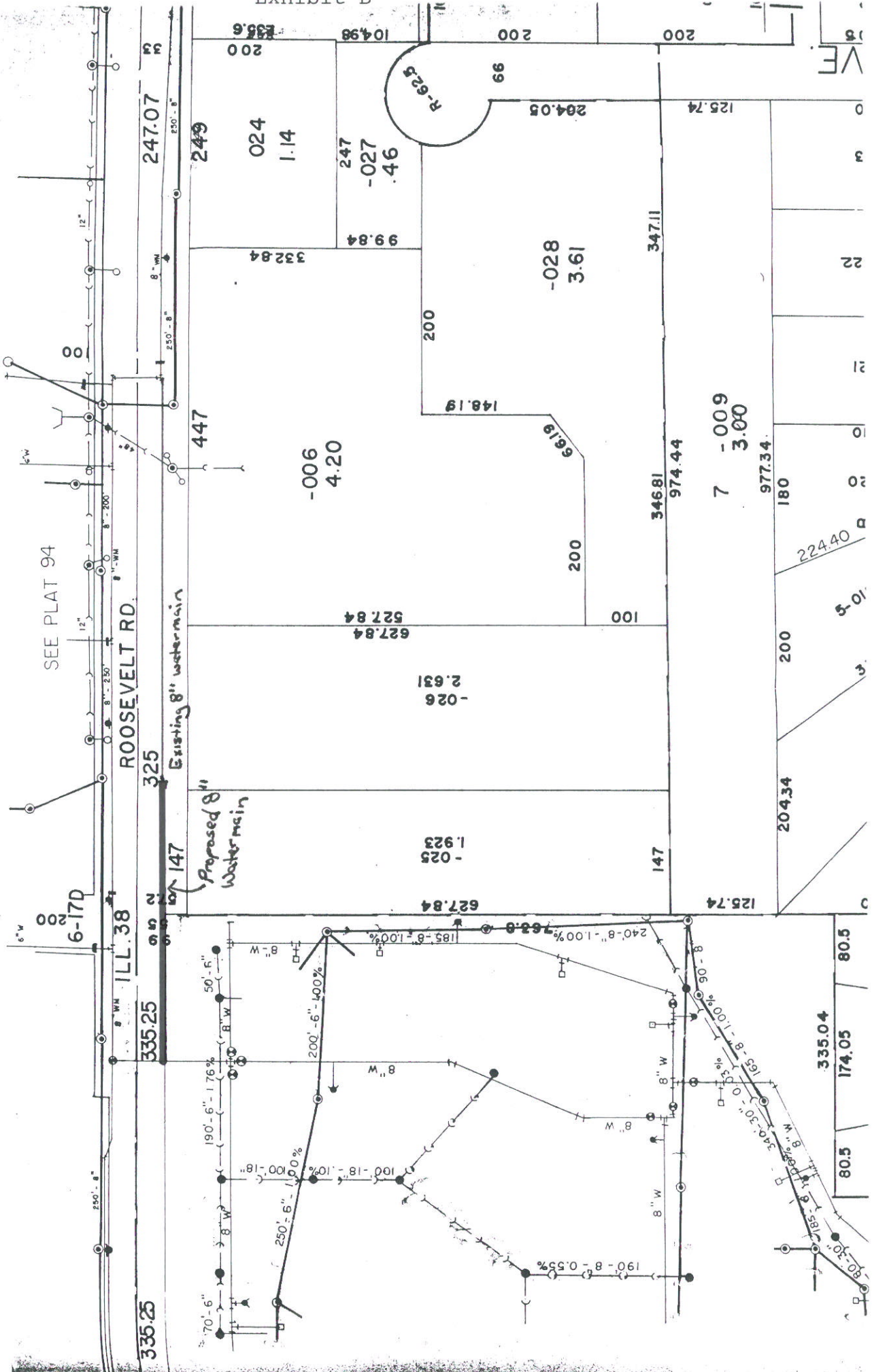


EXHIBIT A
Legal Description for Subject Property

THE WEST 147 FEET OF THE WEST THIRD OF THAT PART OF THE NORTH 627.84 FEET LYING WEST OF THE EAST 300 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

Parcel Index Number: 06-20-200-025

EXHIBIT B
Public Watermain Exhibit






I, **Brigitte O'Brien**, hereby certify that I am the duly qualified Village Clerk of the **Village of Lombard**, DuPage County, Illinois, as authorized by Statute and provided by local Ordinance, and as such 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 A WATERMAIN REIMBURSEMENT AGREEMENT FOR 19W175 ROOSEVELT ROAD PIN 06-20-200-025

of the said Village as it appears from the official records of said Village duly approved September 21, 2006.

In Witness Whereof, I have hereunto affixed my official signature and the Corporate Seal of said **Village of Lombard**, DuPage County, Illinois this 3rd day of October, 2006.



Brigitte O'Brien
Village Clerk
Village of Lombard
DuPage County, Illinois

