

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: William T. Lichter, Village Manager

DATE: April 2, 2004 (B of T) Date: April 15, 2004

TITLE: Water Main Easement at 995 S. Columbine Avenue

SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

Please find attached staff's recommendation relative to approving an easement for a public water main at 995 S. Columbine Avenue. This resolution would authorize the Village President and Clerk to sign the enclosed Water Main Easement Agreement and the plat of easement mylar. The mylar will be submitted for signatures after the Agreement is signed. Staff recommends approval of this request.

(DISTRICT #2)

Please place this item on the April 15, 2004 Board of Trustees agenda.

Fiscal Impact/Funding Source:

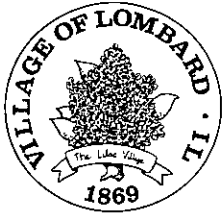
Review (as necessary):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X *W. T. Lichter* _____ Date *4/7/04*

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Hulseberg, AICP, Director of Community Development *DAH*

DATE: April 2, 2004

SUBJECT: **Resolution Accepting a Public Water Main Easement at 995 S. Columbine Avenue**

The property owner at 995 S. Columbine Avenue, the Lombard Park District, has submitted a Water Main Easement Agreement to dedicate a public water main easement. The Agreement has been reviewed and approved by Tom Bayer. The Park District is granting the easement to accommodate a water main that was installed as part of the maintenance building construction. The easement will allow the Village to accept the watermain for public ownership upon completion of the project punchlist. The Park District has also prepared a plat of easement that will be submitted for signatures after the Agreement is signed.

Please request the Board of Trustees to accept the easement by resolution at their April 15, 2004 meeting. The resolution will authorize the Village President and Clerk to sign the Water Main Easement Agreement and the Plat of Easement. Call Dave Gorman or myself if you have any questions.

DAH/DG:dg

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RESOLUTION
R _____ 04

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND DEPUTY CLERK ON A WATER MAIN EASEMENT
AGREEMENT AND PLAT OF EASEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Water Main Easement Agreement for the property located at 995 S. Columbine Avenue, as attached hereto and marked Exhibit "A" and a Plat of Easement, as attached hereto and marked Exhibit "B", and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to authorize the Water Main Easement Agreement and Plat of Easement.

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 documents as attached hereto.

SECTION 2: That the Deputy Village Clerk be and hereby is authorized to attest said Agreement and Plat as attached hereto.

Adopted this _____ day of _____, 2003.

Ayes: _____

Nayes: _____

Absent: _____

Approved this _____ day of _____, 2003.

William J. Mueller, Village President

ATTEST:

Barbara A. Johnson, Deputy Village Clerk

WATER MAIN EASEMENT AGREEMENT

This Water Main Easement Agreement (this "Agreement") is made by and between the Lombard Park District (the "Park District") and the Village of Lombard (the "Village"), Park District and Village being hereinafter individually referred to as a "Party" and collectively as the "Parties."

WHEREAS, Park District is the owner of certain land located in the Village of Lombard, DuPage County, Illinois, and legally described and depicted on **Exhibit A** attached hereto (the "Easement Parcel");

WHEREAS, the Easement Parcel is part of a larger tract of land owned by the Park District, on which is located the Park District's maintenance facility building (the "Maintenance Building");

WHEREAS, Village has placed an underground water main pipe and related structures (the "Water Main") under the Easement Parcel, for the purpose of servicing the Maintenance Building;

WHEREAS, the Parties desire that the Park District grant an easement to the Village, for the purpose of construction, operation, inspection, maintenance, reconstruction and repair of the Water Main;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, and other good and valuable consideration, the Parties hereby agree to the following grants, covenants and restrictions:

1. Grant of Easement; Permitted Activities. Subject to the further terms and conditions of this Agreement, the Park District hereby grants to the Village an easement (the "Water Main Easement") under and through the Easement Parcel, for the sole purposes of:
 - 1.1 operating the Water Main and related structures as may be necessary to provide water service to the Maintenance Building; and
 - 1.2 constructing, inspecting, maintaining, reconstructing and repairing, at Village's cost and expense, such Water Main and related structures;



such purposes being hereinafter referred to as the "Permitted Activities." All Permitted Activities shall be performed in a good, safe and workmanlike manner, and in accordance with all applicable federal, state and local laws, rules, codes and regulations. Village shall repair, at its expense, any damage to the Easement Parcel or Park District's property caused by Village's use of same. Village shall provide prior reasonable notice to Park District of any construction, inspection, maintenance, reconstruction or repair work to be performed on the Easement Parcel by Village, except where the emergency nature of the work prevents the giving of prior notice, and shall place such barriers and warning signs as may be requested by Park District to minimize disruption of Park District activities and to protect users of Park District's property, including the Easement Parcel.

2. **Use of Land.** Village shall use the Easement Parcel solely for the Permitted Activities. Village shall not install any permanent structure on the Easement Parcel other than the Water Main and related structures as may be reasonably necessary to effectuate the purposes of providing water service to the Maintenance Building.

3. **Construction, Maintenance and Repair.**

3.1 Village shall be responsible for operating, constructing, inspecting, maintaining, reconstructing and repairing, at its expense, the Water Main and related structures, and Park District shall have no responsibility or liability with respect thereto.

3.2 Park District shall not at any time be subject to any charges, fees, taxes or assessments billed, assessed or levied by third parties in connection with Village's use of the Easement Parcel, and all such fees, taxes or assessments, if any, shall be the sole responsibility of Village.

4. **Indemnification.**

4.1 Village hereby indemnifies and holds Park District, its commissioners, officers, agents, employees, officials, successors and assigns (the "Park District Indemnitees"), harmless from and against any and all mechanics' and materialmen's liens, or claims therefor, including reasonable attorneys' fees and paralegals' fees and costs and court costs (collectively, the "Legal Expenses") for defense thereof, arising out of or in connection with the Village's use of the Easement Parcel.

4.2 Subject to the limitations set forth in this Paragraph 4.2, Village hereby indemnifies and holds harmless the Park District Indemnitees and shall defend the Park District Indemnitees from and against all liabilities, claims, demands, causes of action, costs and expenses (including, without limitation, Legal Expenses) arising out of or related to any injury to or death of any person or loss of or damage to property (the "Injuries") occurring in or about the Easement Parcel to the extent caused by Village's negligent acts or omissions which occur in consequence of its use of the Easement Parcel. In furtherance of the foregoing indemnification obligation of the Village, Village's contractors, subcontractors and material suppliers shall separately indemnify the Park District Indemnitees in their contracts with Village or other third parties. The Village shall not be obligated or responsible to indemnify, hold harmless or defend the Park District Indemnitees or any third parties, from or against any liability, claim, demand, cause of action, costs and expenses (including, without limitation, Legal Expenses) arising out of or related to any Injuries to the extent same result from or arise out of the negligent or wrongful acts or omissions of any of the Park District Indemnitees. The

indemnity contained in this paragraph shall survive the termination of the Water Main Easement and/or the termination of this Agreement. Nothing contained in this paragraph shall be interpreted to waive any statutory or common law grant of privilege or immunity.

5. **Insurance.** When working within the Easement Parcel, Village shall maintain commercial general liability insurance which includes coverage for liability assumed under an insured contract (including the tort liability of another assumed in a contract) covering occurrences on the Easement Parcel and shall name Park District, its commissioners, officers, agents, employees and officials, as additional insureds under such policies. Village shall also require all of its contractors and subcontractors performing any work for Village on or near the Easement Parcel to maintain commercial general public liability and property damage insurance, which insurance shall name Park District, its commissioners, officers, employees, officials and agents, as additional insureds thereon. All such policies of insurance shall be in the amount and form reasonably acceptable to Park District, or as may be required by the Park District's risk management pool or group or Park District's insurer, and Village shall provide proof of such insurance, in such form as may be requested by Park District or required by Park District's said pool, group or insurer. The Parties acknowledge that the insurance required from the Village may be provided by a risk management pool or group as opposed to a commercial insurance carrier, and that the Village is in part self-insured.

6. **Nature of Grant.** Park District shall have the right to enter on and use the Easement Parcel, jointly with the Village, provided such entry and use does not interfere with the rights herein granted to the Village.

7. **Title; Quiet Enjoyment.** Park District represents and acknowledges that Village is entitled to the quiet enjoyment of the Water Main Easement. The Water Main Easement is subject to all encumbrances, reservations, covenants or conditions, if any, concerning the Easement Parcel, whether recorded or unrecorded. Park District represents that it is not aware that any of said encumbrances, reservations, covenants or conditions will interfere with the rights herein granted. Should Village wish to obtain title insurance for the Water Main Easement, Park District will make available any evidence of title in its possession to Village.

8. **Binding Effect; Recordation.** All provisions of this Agreement and the Water Main Easement shall bind and inure to the benefit of the respective successors, assigns and tenants of the Parties. This Agreement may be recorded in the real estate records of DuPage County.

9. **Duration of Easement; Right to Cure.** The Water Main Easement shall continue for so long as the Water Main and related structures are in existence; provided, however, that in the event Village shall fail to perform any of its agreements to repair and maintain the Water Main and related structures under the Easement Parcel, or shall otherwise fail to perform any of its obligations under this Agreement, Park District may give written notice of such deficiency to Village and, if Village does not cure such deficiency, or commence such cure and be diligently pursuing it to completion (if the nature of such deficiency is that it cannot be immediately cured), within thirty (30) days after the giving of such notice, Park District may either bring an action for specific performance thereof or take such action as Park District deems reasonably necessary to repair or maintain the Water Main and related structures or otherwise perform any such obligation, and Village shall pay Park District's costs therefor, immediately upon Park District's demand. Park District's right to bring an action for specific performance of Village's aforementioned obligations, or to perform said obligations and demand payment therefor from Village, shall be Park District's sole remedies for said deficiencies by Village. In the event Park District brings any such action for specific performance or for recovery of payments required to

be made to Park District under this Paragraph 9, the non-prevailing Party in said action shall be responsible for the prevailing Party's attorneys' fees paid or incurred with respect to said action.

10. Abandonment of Easement. On reasonable prior notice by Village to Park District, Village may abandon the Water Main Easement, in which case Village, at its sole cost and expense, shall remove the Water Main and related structures, and shall restore the Easement Parcel to its condition prior to the construction of such structures, within a reasonable period of time after said notice is given, and thereupon, the Water Main Easement shall terminate, and the Parties shall have no further obligations or duties under this Agreement, except as otherwise specifically stated in this Agreement.

11. Restoration. Upon completion of any of the Permitted Activities, Village shall restore the Easement Parcel, and any other affected land owned by the Park District, to the condition existing immediately prior to the commencement of any activity thereon by Village. Additionally, Village, at its sole cost and expense, shall repair all damage to the Easement Parcel, any improvements located thereon and any other affected portion(s) of any land owned by Park District, and replace all lost or destroyed items. By way of example and not limitation, all turf areas will be replaced and sodded to match the existing turf area adjacent to the Easement Parcel. Any damage to sidewalks, paths or parking lots will be repaired or replaced as reasonably deemed necessary by Park District. All restoration, repair and replacement shall be completed to the reasonable satisfaction of Park District within thirty (30) days after the conclusion of the work, or, if due to weather or other circumstances which, in Park District's opinion, would make any such restoration, repair and replacement inadvisable, then within such later time period as Park District shall reasonably request.

12. Notice. The Parties may give notice to each other at, and any notice required by the provisions of this Agreement shall be in writing and shall be mailed, United States mail, first class, postage prepaid, to the following addresses; or delivered in person to the following locations, with proof of such delivery to be evidenced by a receipt signed by the receiving Party; or transmitted by fax transmission, with hard copy and machine generated proof of transmission being mailed, the date of transmission, United States mail, first class, postage prepaid, to the receiving Party, at the following addresses:

If to Park District:
Lombard Park District
227 W. Parkside Ave.
Lombard, IL 60148
Attention: Executive Director

If to Village:
Village of Lombard
255 E. Wilson
Lombard, IL 60148
Attention: Director of Community Development

Notice sent by mail shall be deemed given the third business day after deposit in the United States mail, first class, postage prepaid. Notices delivered in person shall be deemed given the date of delivery, as evidenced by a signed receipt of the Party receiving delivery, provided such delivery is made between 9:00 AM and 5:00 PM on a regular business day, and if delivery is made after such hours, notice shall be deemed given the next regular business day. Notices transmitted by

District, and MICHAEL A. FUGIEL, as SECRETARY of Lombard Park District, known to me to be the persons who executed the foregoing Water Main Easement Agreement, and acknowledged that they executed said instrument as their free and voluntary act and as the free and voluntary act of Lombard Park District, for the uses and purposes therein set forth.

Patricia J. Rakosnik
Notary Public

"OFFICIAL SEAL"
PATRICIA J. RAKOSNIK
NOTARY PUBLIC, STATE OF ILLINOIS
DU PAGE COUNTY
MY COMMISSION EXPIRES 11/02/04

(SEAL)

My commission expires: 11/02/04

STATE OF ILLINOIS)

COUNTY OF _____)

ss

I, _____, a Notary Public in and for said county and state, hereby acknowledge that on this _____ day of _____, 20____, personally appeared before me _____, as _____ of the Village of Lombard, and _____, as _____ of the Village of Lombard, known to me to be the persons who executed the foregoing Water Main Easement Agreement, and acknowledged that they executed said instrument as their free and voluntary act and as the free and voluntary act of the Village of Lombard, for the uses and purposes therein set forth.

Notary Public

(SEAL)

My commission expires: _____

EXHIBIT A – LEGAL DESCRIPTION AND DEPICTION OF EASEMENT PARCEL

THAT PART OF LOT 1 IN LOMBARD PARK DISTRICT SUNSET KNOLL PLAT OF CONSOLIDATION, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT, THENCE NORTH 88 DEGREES 49 MINUTES 23 SECONDS EAST, 101.63 FEET; THENCE NORTH 1 DEGREE 8 MINUTES 5 SECONDS EAST, 12.55 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 12 SECONDS EAST, 90.63 FEET; THENCE NORTH 1 DEGREE 27 MINUTES 36 SECONDS WEST, 25 FEET TO THE POINT OF BEGINNING, THENCE ON THE LAST DESCRIBED COURSE 300.23 FEET; THENCE NORTH 43 DEGREES 32 MINUTES 1 SECOND EAST, 135.47 FEET; THENCE NORTH 88 DEGREES 31 MINUTES, 38 SECONDS EAST, 4.98 FEET; THENCE NORTH 1 DEGREE 28 MINUTES 2 SECONDS WEST, 18 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 12 SECONDS

EAST, 30 FEET; THENCE SOUTH 1 DEGREE 28 MINUTES 22 SECONDS EAST, 18 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 12 SECONDS EAST, 86.43 FEET; THENCE SOUTH 46 DEGREES 28 MINUTES 5 SECONDS EAST, 40.71 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 48 SECONDS WEST, 276.48 FEET; THENCE SOUTH 43 DEGREES 50 MINUTES 56 SECONDS WEST, 40.87 FEET; THENCE SOUTH 88 DEGREES 32 MINUTES 12 SECONDS WEST, 98.81 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 48 SECONDS EAST, 60.84 FEET; THENCE SOUTH 88 DEGREES 32 MINUTES 12 SECONDS WEST, 30 FEET; THENCE NORTH 1 DEGREE 27 MINUTES 48 SECONDS WEST, 73.30 FEET; THENCE NORTH 43 DEGREES 38 MINUTES 58 SECONDS EAST, 26.57 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 12 SECONDS EAST, 64.94 FEET; THENCE NORTH 1 DEGREE 27 MINUTES 48 SECONDS WEST, 11.90 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 12 SECONDS EAST, 30 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 48 SECONDS EAST, 11.90 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 12 SECONDS EAST, 3.93 FEET; THENCE NORTH 43 DEGREES 50 MINUTES 56 SECONDS EAST, 16.01 FEET; THENCE NORTH 1 DEGREE 27 MINUTES 48 SECONDS EAST, 91.99 FEET; THENCE SOUTH 88 DEGREES 32 MINUTES 12 SECONDS WEST, 8 FEET; THENCE NORTH 1 DEGREE 27 MINUTES 48 SECONDS WEST, 30 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 24 SECONDS EAST, 8 FEET; THENCE NORTH 1 DEGREE 27 MINUTES 48 SECONDS WEST, 122.47 FEET; THENCE NORTH 46 DEGREES 28 MINUTES 5 SECONDS WEST, 25.85 FEET; THENCE SOUTH 88 DEGREES 31 MINUTES 38 SECONDS WEST, 89.49 FEET; THENCE SOUTH 43 DEGREES 32 MINUTES 1 SECOND WEST, 110.63 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 36 SECONDS EAST, 2.26 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 24 SECONDS EAST, 14 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 36 SECONDS EAST, 30 FEET; THENCE SOUTH 88 DEGREES 32 MINUTES 24 SECONDS WEST, 14 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 36 SECONDS EAST, 140 FEET THENCE NORTH 88 DEGREES 32 MINUTES 24 SECONDS EAST, 9 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 36 SECONDS EAST, 30 FEET; THENCE SOUTH 88 DEGREES 32 MINUTES 24 SECONDS, 9 FEET; THENCE SOUTH 1 DEGREE 27 MINUTES 36 SECONDS EAST, 85.55 FEET THENCE SOUTH 88 DEGREES 32 MINUTES 12 SECONDS WEST, 30 FEET; TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

SEE ATTACHED DEPICTION

