

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: May 10, 2006 (B of T) Date: May 18, 2006

TITLE: Easement for Water Main at the NICOR Property on Technology Drive

SUBMITTED BY: Department of Community Development *WTL*

BACKGROUND/POLICY IMPLICATIONS:

Please find attached staff's recommendation relative to approving an agreement to accept an easement for public water main at Lot 6 of Homestead Village Subdivision. Staff recommends approval of this request. (DISTRICT #3)

Please place this item on the May 18, 2006 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X

Date

Finance Director X

Date

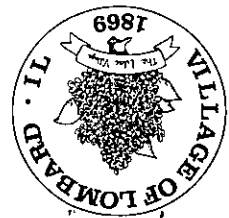
Village Manager X

Date

William T. Lichter

5/10/06

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 *DH*

DATE: May 10, 2006

SUBJECT: Motion to Accept an Easement for Water Main at the NICOR Property on Technology Drive

NICOR has submitted an agreement to grant an easement for public water main on their property on Technology Drive. The property is Lot 6 of Homestead Village Subdivision and is immediately east of the DuPage Medical Group's property at 2725 S. Technology Drive. The DuPage Medical Group installed the water main only three feet from the property line so they negotiated this twelve-foot wide easement on NICOR's property in order to avoid the need to relocate the water main. The Village Attorney has reviewed the agreement. The easement will allow the Village to accept the water main for public ownership by a resolution in the near future. Please request the Board of Trustees to accept the easement by motion at their May 18, 2006 meeting. Call Dave Gorman or myself if you have any questions.

DAH/DG:dg

1. The easement herein granted shall be exercised by Grantee in a manner that will not exceed the Approved Use and that will not in Grantor's sole judgment unreasonably interfere with the present or future installations or operations of Grantor upon the Easement Premises.

The easement herein granted by Grantor to Grantee for the Approved Use is granted in perpetuity within the Easement Premises and upon the following additional terms, covenants and conditions, which Grantee, for and on behalf of itself, expressly acknowledges, undertakes and agrees to fulfill and discharge, to-wit:

NOW, **THEREFORE**, in consideration of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual covenants and agreements hereinafter set forth, Grantor hereby grants unto Grantee, a non-exclusive perpetual easement to utilize, from time to time, for the sole purpose of marshalling construction equipment, crews and material (hereinafter referred to as the "Approved Use"), the surface only of that portion of Grantor's property that is delineated on Exhibit A (Sheet 1 of 2 and Sheet 2 of 2) attached hereto and made a part hereof (hereinafter referred to as "Easement Premises").

WHEREAS, Grantor, insofar as it has the right so to do, is willing to grant unto Grantee a non-exclusive perpetual easement for said limited use, but only upon the terms, covenants and conditions hereinafter set forth;

WHEREAS, Grantee has requested Grantor to grant unto it a non-exclusive perpetual easement to utilize the surface only of a portion of Grantor's property as needed, but not on a daily basis, for the sole purpose of marshalling construction equipment, crews and material for a public water main (hereinafter referred to as the "Facility"); and,

WITNESSETH:

THIS INDENTURE (hereinafter referred to as the "Easement Agreement"), made and entered into this _____ day of _____, 2006, by and between **NORTHERN ILLINOIS GAS COMPANY**, an Illinois corporation, doing business as **NICOR GAS COMPANY** (hereinafter sometimes referred to as "Grantor") and the **VILLAGE OF LOMBARD**, an Illinois municipal corporation (hereinafter sometimes referred to as "Grantee");

**GRANT OF EASEMENT
(SURFACE USE ONLY)**

Sec 28	T39N	R11E 3rd PM
York Twp.		DuPage Co.
Troy Grove Transmission RM		
Parcel 1-263	File #	
PIN 06-28-103-017 (part)		

2. Except for routine inspection performed by Grantee's employees or representatives, and except in an emergency, Grantee shall notify Grantor at least seventy-two (72) hours prior to the proposed entry thereon. Any Approved Use of the Easement Premises by Grantee shall be performed in the presence of a representative of Grantor and in a manner satisfactory to such representative.

3. Grantee shall reimburse Grantor for any costs or expenses, sustained or incurred in connection with any damage or injury to Grantor or to any property of Grantor in the course of Grantee's use of the Easement Premises.

4. Grantee's use of the Easement Premises pursuant to this easement shall conform to the following rules and regulations:

- a. Unless otherwise agreed by Grantor, NO work is to be done on the Easement Premises without Grantor's representative being present, for which Grantee agrees to reimburse the reasonable cost of such Grantor's representative, if requested by Grantor.
- b. There shall be NO blasting on the Easement Premises.
- c. NO permanent facilities of any type shall be installed on the Easement Premises, and NO trees, bushes or shrubs shall be planted or nurtured on the Easement Premises.

d. NO other company, entity or utility is permitted to utilize the Easement Premises. It must be expressly understood that this easement does not create or in any way establish a public utility easement.

e. Natural drainage of Grantor's premises shall not be impaired; upon completion of said work, Grantee shall remove all unused excavated material, including rock and debris, from the Easement Premises and shall perform all restoration in a neat and workmanlike manner; Grantee shall leave the Easement Premises and any adjacent property used by it in a neat, clean and orderly condition.

f. Except as otherwise provided in Section 2, Grantee shall notify Grantor's Transmission Department, Shorewood, Illinois, by phoning Grantor at 815-725-9481, ext. 228, at least 72 hours in advance of any work that involves Grantee's use of the Easement Premises, and by phoning J.U.L.I.E. at 1-800-892-0123

This specification, including all items "a." thru "f.", is to be put on all final approved for construction" drawings.

5. Grantee shall at all times, and under all circumstances, defend, indemnify, protect and save harmless, Grantor, its successors and assigns, from and against any and all damages, losses, claims, demands, actions and causes of action whatsoever (including any reasonable costs, expenses and attorneys' fees which may be incurred in connection therewith) whether or not the claim, demand or action asserted be meritorious, and which results from or is alleged to result from, or which arises out of or in connection with, or is alleged to arise out of or in connection with, the breach of any covenant in this Easement Agreement, or the non-compliance by Grantee of any applicable law (including, without limitation, Environmental Laws) at the Easement Premises or the installation, construction, reconstruction, operation, maintenance, alteration, repair, replacement, use, removal or existence of said Facility by Grantee upon the Easement Premises, or the existence of the non-exclusive perpetual easement granted Grantee hereunder;

provided, however, that in the event any such claim, damage, loss, demand, action or cause of action is asserted against Grantor, Grantor shall furnish Grantee with written notification thereof and Grantee shall conduct the defense thereof before any court, board, commission or other governmental body exercising jurisdiction therein with counsel acceptable to Grantor and at Grantee's expense. No settlement or compromise of any such claim, damage, loss, demand, action or cause of action shall be made unless agreed to by Grantor. Grantor, its successors and assigns, shall not be liable to Grantee, or Grantee's successors and assigns, for any damages or injuries to any persons or to said Facility or any other property of Grantee situated or located in, on, about or upon the property subjected to this easement, except to the extent that injuries or damages are caused by the willful misconduct or gross negligent acts of Grantor, its successors or assigns.

Grantee hereby covenants that the use and operation of the Easement Premises by Grantee will at all times comply with any and all applicable laws, including, without limitation, Environmental Laws, and that Grantee shall not cause or permit any Hazardous Material to be introduced to or handled on the Easement Premises, except those customarily used in the installation, maintenance and repair of the Facility and in compliance with Environmental Laws and other applicable laws. As used herein, the term "Environmental Laws" shall mean and refer to all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment and the term "Hazardous Material" shall mean and refer to any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substance Control Act, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, or any other hazardous, toxic or dangerous waste, substance or material (including, without limitation, asbestos and poly-chlorinated biphenyls and petroleum and its by-products).

The foregoing indemnification, defense and hold harmless obligations shall survive any termination of this Easement Agreement. The acts of the respective employees, representatives, agents or contractors of Grantor or Grantee, as the case may be, shall be deemed to constitute the acts of Grantor and Grantee respectively for the purposes of this Section 5.

6. Grantee agrees before the commencement of any work on the Easement Premises hereunder that Grantee shall require any contractor (or contractors) to procure comprehensive general liability insurance (including Contractual Liability on a blanket broad form basis) and property damage insurance in form reasonably acceptable to Grantor which will protect and save harmless Grantor as stated therein. Limits of such comprehensive general liability insurance shall initially be not less than \$3,000,000 for each occurrence with respect to bodily injury or death and property damage. In addition, workers' compensation (with statutory limits) and employer's liability (with initial limits of not less than \$1,000,000) shall be procured. Grantor may from time to time require an increase in said minimum insurance limits if higher limits are reasonable and customary in similar situations. Such insurance shall be with a company or companies approved by Grantor and licensed by the State of Illinois and shall remain in full force and effect during the term of this easement. Copies or certificates of said policy or policies of insurance shall be delivered to Grantor in care of the Nicor Gas Company, Real Estate Department, 1844 Ferry Road, Naperville, Illinois, 60563-9600.

[SIGNATURES ON NEXT PAGE]

11. This indenture shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

10. Grantee hereby agrees it will not knowingly suffer or permit any mechanic's liens or other liens to attach to the Easement Premises by reason of any improvements or alterations to the Easement Premises or work done thereon by or upon the order of Grantee and will save Grantor harmless from any such lien or claim therefor and from any and all costs or expenses (including without limitation, attorney's fees) incurred in connection with any such lien or claim.

9. Grantee hereby agrees that, within thirty (30) days of Grantor's request therefor, Grantee will reimburse Grantor for any and all local, state or federal taxes that may be assessed against Grantor or the Easement Premises by reason of this grant of easement to Grantee and/or the use of the Easement Premises by Grantee.

or to such other persons or addresses as the parties may from time to time designate.

Director of Public Works
Village of Lombard
255 E. Wilson Avenue
Lombard, Illinois 60148-5700

or to Grantee in care of:

Manager – Real Estate
Real Estate Department
Nicor Gas Company
1844 Ferry Road
Naperville, Illinois 60563-9600

8. Any notice herein provided to be given shall be deemed properly given if in writing and delivered personally or mailed to Grantor in care of:

7. In the event Grantee shall fail to fulfill and discharge any of its obligations herein, or shall fail to comply with the terms and conditions hereof, and in the event such failure or non-compliance shall continue for a period of thirty (30) days after written notice of such failure or non-compliance for a period of thirty (30) days after written notice to it of such failure or non-compliance is given to Grantee, then and in that event, at the option of Grantor, the easement granted hereunder shall terminate and Grantee's rights hereunder shall be of no further force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this indenture to be executed by their proper officers, thereunto duly authorized and their respective corporate seals to be hereto affixed, as of the day and year first above written.

NICOR GAS COMPANY

ATTEST:

Vice President

Assistant Secretary

VILLAGE OF LOMBARD

WITNESS:

(signature)

(signature)

(print name)

(print name)

(title)

(title)

This Document Prepared By:

Nicor Gas Company
Real Estate Department
1844 Ferry Road
Naperville, Illinois 60563

Property Address:

2725 S. Technology Drive
Lombard, Illinois 60148

STATE OF ILLINOIS)
) SS)
) _____)
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the

State aforesaid, do hereby certify that _____, Vice President of

NORTHERN ILLINOIS GAS COMPANY, an Illinois corporation, doing business as NICOR GAS

COMPANY, and _____, Assistant Secretary of said

Company, personally known to me to be the same persons whose names are subscribed to the

foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared

before me this day in person, and acknowledged that they signed and delivered said instrument

as their own free and voluntary act and as the free and voluntary act of said Company, for the

uses and purposes therein set forth; and said Assistant Secretary did also then and there

acknowledge that he, as custodian of the corporate seal of said Company, did affix said corporate

seal of said Company to said instrument as his own free and voluntary act, and as the free and

voluntary act of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, A.D., 2006.

My Commission Expires:

Notary Public

SURVEY DEPICTING LIMITS OF EASEMENT PREMISES

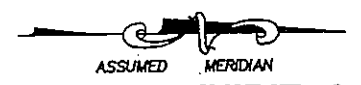
PERMANENT INDEX NUMBERS

06-28-103-016 (LOT 5)
06-28-103-017 (LOT 6)

**P.O.B.
EASEMENT
PREMISES**

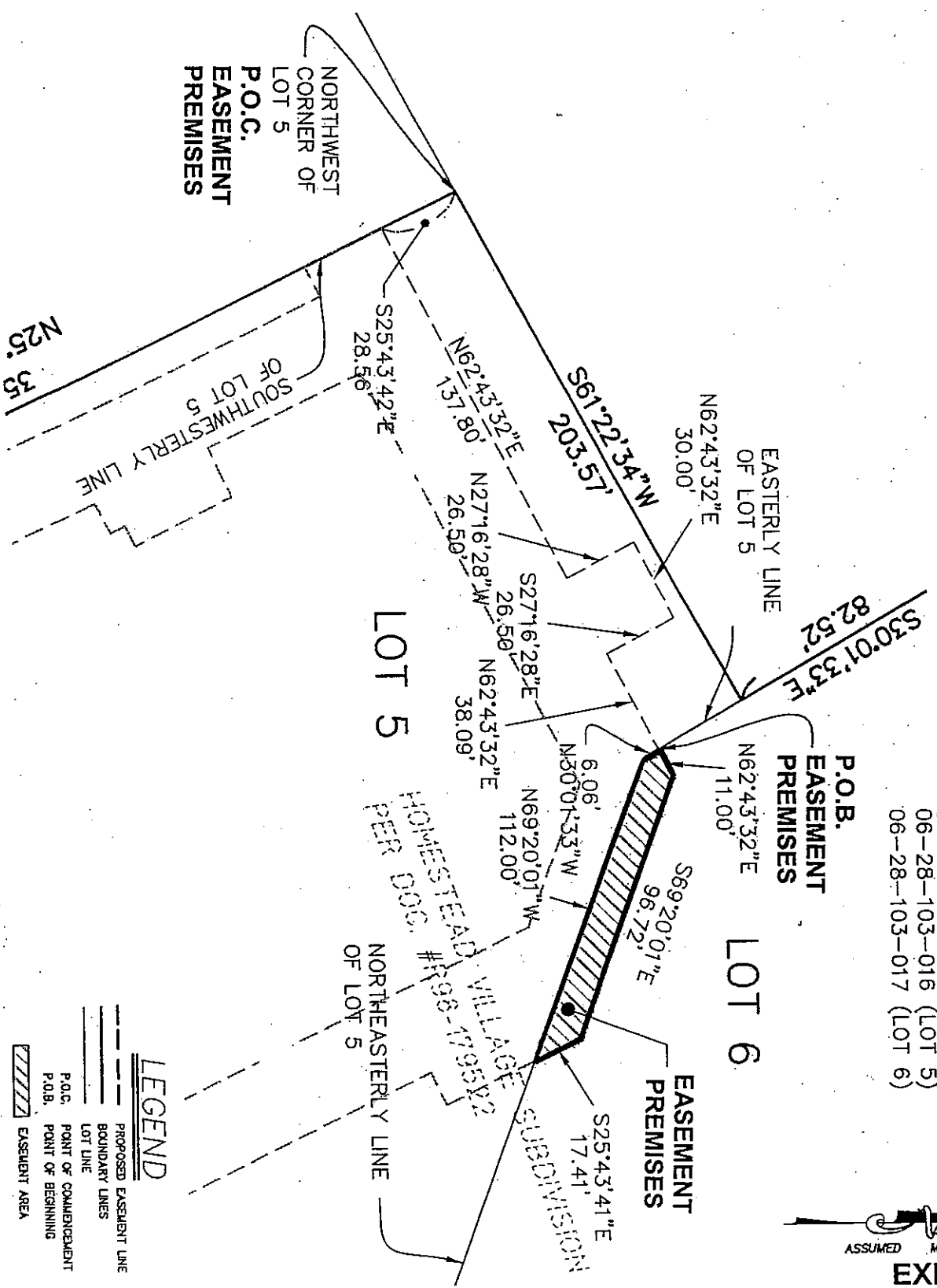
LOT 6

**EASEMENT
PREMISES**



**EXHIBIT A
(SHEET 1 OF 2)**

PROJECT 03060,DMG-V10.1
SCALE: 1" = 50'
DATE: 04-07-06



LEGEND

- PROPOSED EASEMENT LINE
- BOUNDARY LINES
- LOT LINE
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- ▨ EASEMENT AREA



**Engineers
Scientists
Surveyors**

7325 Janos Avenue, Suite 100
Woodridge, IL 60517
630.724.9200 voice
630.724.9202 fax
v3consultants.com

PREPARED FOR:
DuPage Medical Group
751 Roosevelt Rd., Suite 310
Glen Ellyn, IL 60137
630.469.9200



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PREPARED FOR:
Dupage Medical Group
 751 Roosevelt Rd., Suite 310
 Glen Ellyn, IL 60137
 630.469.9200

PROJECT 03060.DMG-V10.1
 SCALE: N/A
 DATE: 04-07-06

LEGAL DESCRIPTION OF EASEMENT PREMISES

THAT PART OF LOT 6 IN HOMESTEAD VILLAGE SUBDIVISION, BEING A RESUBDIVISION OF PART OF SECTIONS 28 AND 29, TOWNSHIP 39 NORTH, RANGE 11 EAST, OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1998 AS DOCUMENT NUMBER 198-179522, AND CERTIFICATE OF CORRECTION RECORDED SEPTEMBER 22ND, 1998 AS DOCUMENT NUMBER R98-194672, IN DUPAGE COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE NORTHWEST CORNER OF LOT 5 OF SAID HOMESTEAD VILLAGE SUBDIVISION; THENCE SOUTH 25 DEGREES 43 MINUTES 42 SECONDS EAST ALONG THE SOUTHWESTERLY LINE OF SAID LOT 5 A DISTANCE OF 28.56 FEET;
 THENCE NORTH 62 DEGREES 43 MINUTES 32 SECONDS EAST, 137.80 FEET; THENCE NORTH 27 DEGREES 16 MINUTES 28 SECONDS WEST, 26.50 FEET; THENCE NORTH 62 DEGREES 43 MINUTES 32 SECONDS EAST, 30.00 FEET; THENCE SOUTH 27 DEGREES 16 MINUTES 28 SECONDS EAST, 26.50 FEET; THENCE SOUTH 27 DEGREES 16 MINUTES 28 SECONDS EAST, 26.50 FEET TO AN EASTERLY LINE OF SAID LOT 5 FOR A POINT OF BEGINNING;
 THENCE NORTH 62 DEGREES 43 MINUTES 32 SECONDS EAST, 11.00 FEET; THENCE SOUTH 69 DEGREES 20 MINUTES 01 SECONDS EAST, 96.72 FEET; THENCE SOUTH 25 DEGREES 43 MINUTES 41 SECONDS EAST A DISTANCE OF 17.41 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 5;
 THENCE NORTH 69 DEGREES 20 MINUTES 01 SECONDS WEST ALONG SAID NORTHEASTERLY LINE OF LOT 5 A DISTANCE OF 112.00 FEET;
 THENCE NORTH 30 DEGREES 01 MINUTES 33 SECONDS WEST ALONG AN EASTERLY LINE OF SAID LOT 5 A DISTANCE OF 6.06 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT A
(SHEET 2 OF 2)