

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

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: February 26, 2008 (B of T) Date: March 6, 2008

TITLE: 355 E. Parkside Avenue (Sheldon Peck House)

SUBMITTED BY: Department of Community Development *DLK*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing signatures of Village President and Clerk on a Second Amendment to the Peck House Easement and Use Agreement. This Agreement will further extend the time period of the agreement for an additional five years. (DISTRICT #4)

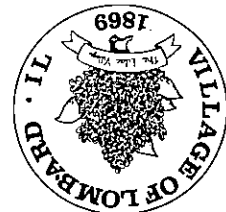
Please place this item on the March 6, 2008 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____
Finance Director X _____
Village Manager X *M. N. L. L.*
Date _____
Date *2/27/08*

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
Assistant Village Manager/Director of Community Development

DATE: March 6, 2008

SUBJECT: Second Amendment to the Easement and Use Agreement – Sheldon Peck House (355 E. Parkside Av.)

Attached for Village Board consideration is a Second Amendment to the Peck House Easement and Use Agreement. The First Amendment will expire on April 14, 2008. The Second Amendment with further extend the time period of the agreement for an additional five year period from the date of approval. The Second Amendment also recognizes that as the Village Board designated the property as a Landmark Site last year, the Historical Commission shall serve as a liaison between the Lombard Historical Society and the Village in the performance of the Agreement. All other provisions of the Original Agreement and First Amendment will remain in full force and effect.

ACTION REQUESTED

Please place this item on the March 6, 2008 Village Board agenda with a request to approve the attached resolution authorizing the signature of the President and Village Clerk on the Second Amendment.

**A RESOLUTION AUTHORIZING APPROVAL OF
PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard and the Lombard Historical Society in regard to the First Amendment to the Peck House Easement and Use Agreement as attached hereto; and

WHEREAS, the Corporate Authorities deem it to be in the 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 Village 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.

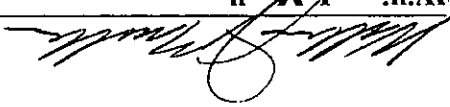
Adopted this 5th day of November, 1998.

Ayes: Trustees Borgatell, Tross, Schaffer, Jauglas, Defalco and Kurtrin

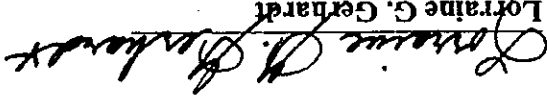
Nays: None

Absent: None

Approved this 5th day of November, 1998.


William J. Mueller
Village President

ATTEST:


Lorraine G. Gerhardt
Village Clerk

FIRST AMENDMENT TO PECK HOUSE EASEMENT
AND USE AGREEMENT

This First Amendment to Peck House Easement and Use Agreement (the "First Amendment") is made between the Village of Lombard (the "Village") and the Lombard Historical Society (the "Society") is made and entered into this 5th day of November 1998.

WITNESSETH

WHEREAS, the Village and the Society, on November 5th, 1997, entered into an easement and use agreement relative to the Peck House located on the West side of Grace Street, just South of Parkside Avenue (the "Original Agreement"); and

WHEREAS, the Original Agreement was for a term expiring on April 14, 2003; and

WHEREAS, the Society has requested that the term of the Original Agreement be extended for an additional five (5) year period; and

WHEREAS, the Village is willing to extend the Original Agreement for an additional five (5) year period.

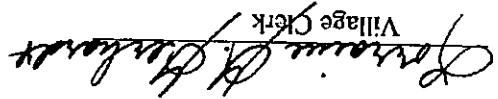
NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. That Section 2 of said Original Agreement be and hereby is amended by revising the reference to "2003" contained there to read, "2008";

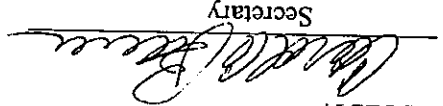
2. That all other terms and conditions of the Original Agreement shall remain in full force and effect as if set forth herein.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first written above.

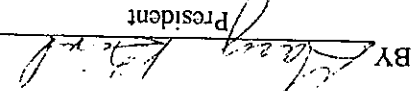
ATTEST:

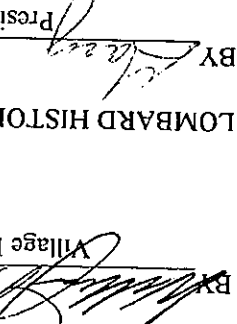

Village Clerk

ATTEST:


Secretary

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LOMBARD HISTORICAL SOCIETY
BY 
President

VILLAGE OF LOMBARD
BY 
Village President

8/14/97 - Alternate

PECK HOUSE EASEMENT

AND

USE AGREEMENT

(West side of Grace Street, just south of Parkside Avenue)

THIS AGREEMENT is made and entered into this _____ day of Sept. 1997, by and between the Village of Lombard, a municipal corporation ("Village") and the Lombard Historical Society, an Illinois not-for-profit corporation ("Society").

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 Southeastern 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, 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 desires to rehabilitate the Peck House as a historic landmark and continue to maintain same thereafter at its current location; and

WHEREAS, the Village has agreed to allow the Peck House to remain at its current location, subject to certain terms and conditions; and

WHEREAS, the Society finds said terms and conditions to be acceptable; NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises as set forth below, the parties hereto agree as follows:

1. GRANT OF EASEMENT:

A. The Village hereby grants, releases, conveys, assigns and quit claims to the Society a perpetual 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, 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, in DuPage County, Illinois.

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

Common address: West side of Grace Street, just South of Parkside Avenue, Lombard, Illinois 60148

(hereinafter 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 and 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 easements 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 easements 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 thereto, 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.

E. Such perpetual easement, subject to subsections F and G below, as is herein granted shall run with the land and that the covenants, agreements, terms, conditions, obligations, rights and

In furtherance of this Agreement, the Society shall:

3. OBLIGATIONS OF THE SOCIETY:

- A. Maintain a fire insurance policy in applicable amounts for the Peck House. The Society shall be responsible for all deductibles should a loss occur, and such policy shall name the Society as an additional insured.
- B. Provide water, sanitary sewer, electrical, telephone and natural gas service for the Peck House without charge.
- C. Provide for the maintenance of the landscaping on the Easement Parcel without charge.

2. OBLIGATIONS OF THE VILLAGE:

- F. Notwithstanding the foregoing, the Village shall retain the right to construct and maintain a public parking lot on the North fifty (50) feet of the Easement Parcel 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.

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.

A. Restore, rehabilitate, reconstruct and thereafter maintain the interior and exterior of the Peck House in keeping with the historical era of the first years of the existence of the Village of Lombard.

B. Not make any structural changes to the Peck House nor shall the Society 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 corporate authorities of the Village and the necessary Village permits, the fees for which shall be waived 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 license or permit 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. Indemnify and save harmless the Village, its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including attorney's fees), claims or liabilities of any character 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 and/or employees arising out of, or

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

Liability - \$500,000.

(ii) Workers' Compensation - Statutory; Employers'

occurrence.

(i) Comprehensive general liability - \$2,000,000 per

the insurance carrier before change or cancellation of the policy: thirty (30) days written notice shall be given to the Village by agents and employees as an additional insured and stating that by certificates of insurance naming the Village, and its officers, insurance in not less than the following specific amounts evidenced 2A above, the Society shall provide the following types of E. Except as to the insurance coverage referenced in Section

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

comply with this subsection in the same manner as required of the Society.

F. Procure at the Society's own expense, contents fire insurance and the appropriate type of Inland-Marine Museum Fine Arts coverage on "art objects," et cetera, for all personal property within the Peck House.

G. Maintain in effect the "Dissolution clause" now in force, a copy of which is attached hereto and made a part hereof as EXHIBIT A.

H. 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 (hereinafter 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 B and made part hereof.

I. 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 use. In this regard, the Village shall have the right of audit the records of the Society at reasonable intervals.

J. Conduct business on the Easement Parcel, including the use of the Peck House, in compliance with any and all federal,

Director
Lombard Historical Society
23 West Maple Street

IF to the Society:

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

IF to 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:

Agreement without the express written consent of the Village.

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

A. That 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.

4. MUTUAL AGREEMENTS AND OBLIGATIONS OF THE PARTIES:

state or local laws, including but not limited to, the Americans with Disabilities Act of 1990, and obtain any governmental license or permit required for the proper and lawful operation of the Society's business.

SECRETARY

[Handwritten Signature]

ATTEST:

PRESIDENT

BY *[Handwritten Signature]*
LOMBARD HISTORICAL SOCIETY,
A NOT-FOR-PROFIT CORPORATION

VILLAGE CLERK

[Handwritten Signature]

ATTEST:

VILLAGE PRESIDENT

BY *[Handwritten Signature]*
VILLAGE OF LOMBARD,
A MUNICIPAL CORPORATION

Illinois.

Agreement as of the day and year first written above at Lombard,
IN WITNESS WHEREOF, the parties hereto have executed this
Recorder's Office.

F. This Agreement shall be recorded with the DuPage County
retains an original signature copy.
E. This Agreement shall be executed in two (2) counterparts
each of which shall constitute an original, so that each party

Lombard, IL 60148

EXHIBIT A

DISSOLUTION CLAUSE

In the event of the dissolution of the LOMBARD HISTORICAL SOCIETY, the monetary assets of the LOMBARD HISTORICAL SOCIETY are to be given to the HELEN M. PLUM LIBRARY OF LOMBARD, with the stipulation that the funds be used for materials relating to local history and genealogy. Artifacts and personal property are to be made available to the following entities in the following order:

1. THE OWNER, IF ONLY ON LOAN TO THE SOCIETY
2. VILLAGE BOARD OF LOMBARD
3. LIBRARY BOARD
4. DUPAGE COUNTY HISTORICAL MUSEUM
5. ILLINOIS STATE HISTORICAL SOCIETY

The Board of Management of the Lombard Historical Society wishes to express how important it is for the individual(s) responsible for implementing this provision to realize that these relics are the result of over twenty years devoted to the collection of items relevant to the history of Lombard. That collectors, businesses and residents in many instances have entrusted these artifacts to the Society to instill future generations of Lombardians with a sense of pride that ordinary people, like themselves, have contributed to and participated in historical events, to share in the awareness of the past both nationally and locally, and to provide a focal point for our community and its people.

Therefore, every effort should be made to preserve, intact, those things directly connected to the history of Lombard (known as the Historians Collection) and make them available to the public either on display or upon request for research.

DATED:

DATED:

LIABILITY WAIVER.

I/WE HAVE READ AND FULLY UNDERSTAND THE FOREGOING RELEASE AND

Historical Society.

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

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 on the west side of
Grace Street, just south of Parkside Avenue, Lombard, Illinois:

RELEASE AND LIABILITY WAIVER

EXHIBIT B

R E S O L U T I O N

R _____ - 08

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 and the Lombard Historical Society in regard to the Second Amendment to the Peck House Easement and Use Agreement 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 _____, 2008.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2008.

William J. Mueller, Village President

Resolution No. _____
Re: Peck House Second Amendment
Page 2

ATTEST:

Brigitte O'Brien, Village Clerk

Published by me in pamphlet from this _____ day of _____, 2008

Brigitte O'Brien, Village Clerk

**A SECOND AMENDMENT TO PECK HOUSE EASEMENT
AND USE AGREEMENT**

This Second Amendment to the Peck House Easement and Use Agreement ("the Second Amendment") between the Village of Lombard (the "Village") and the Lombard Historical Society (the "Society") (the Village and Society being sometimes collectively referred to herein as the "Parties") is made and entered into this _____ day of March, 2008.

W I T N E S S E T H

WHEREAS, the Parties on November 5, 1997 entered into an Easement and Use Agreement relative to the Peck House located on the West side of Grace Street, just south of Parkside Avenue and addressed as 355 East Parkside Avenue (the "Original Agreement"); and

WHEREAS, the Parties entered into a First Amendment to the Original Agreement on November 5, 1998 (the "First Amendment") the Original Agreement as amended by the First Amendment being hereinafter referred to as the "Amended Agreement"); and

WHEREAS, the Parties deem it in their best interests to enter into a further amendment to the Amended Agreement to extend the life of the Amended Agreement for an additional five (5) year period and to provide certain additional clarifications in relation thereto;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. That the following "Whereas Clause" shall be added to the Amended Agreement:

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

Secretary

ATTEST: