

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES  
FROM: Scott Niehaus, Village Manager  
DATE: January 31, 2017 (B of T) Date: February 16, 2017  
TITLE: License Agreement for a Portion of the Parkside Avenue Right-of-Way  
SUBMITTED BY: Carl Goldsmith, Director of Public Works *CG*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Public Works transmits for your consideration an Ordinance to enter into a License Agreement with the Union Pacific Railroad for a portion of the Parkside Avenue Right-of-Way between Stewart Avenue and Craig Place. The Ordinance requires adoption by at least a three-fourths (3/4ths) vote of the Corporate Authorities (6 of 7).

Please place this item on the February 16, 2017 Board of Trustees agenda under Items for Separate Action.

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X \_\_\_\_\_ Date \_\_\_\_\_

NOTE: Materials must be submitted to / approved by the Village Manager's Office by 12:00 pm, Wednesday, prior to the Agenda Distribution.



## MEMORANDUM

**TO:** Village President and Board of Trustees

**THROUGH:** Scott Niehaus, Village Manager

**FROM:** Carl S. Goldsmith, Director of Public Works *CS*

**DATE:** January 10, 2017

**SUBJECT:** License Agreement for a Portion of Parkside Avenue ROW

The Union Pacific Railroad (UPRR) has requested to enter into a License Agreement to construct a driveway on a portion of the Parkside Avenue Right-of-Way (ROW) between Lombard Avenue and Grace Street. The driveway would provide a safe and long-term access to their tracks. The driveway would be constructed of permeable, open-celled paving materials to minimize stormwater runoff and to visually blend in with the adjacent grass.

The Village had entered into a similar agreement in 2010 with the UPRR for an access point further to the east on Parkside. Based upon the size of the vehicles accessing the rack surface for maintenance activity, UPRR has indicated that backing of vehicles along the track surface has been difficult and poses a dangerous situation. The second access would allow UPRR to more effectively access and exit the track areas.

The License Agreement presented for consideration by the Village Board of Trustees is for a term of ten (10) years and contains language that allows the agreement to automatically renew unless terminated by either party. The License Agreement will also terminate the 2010 License Agreement and incorporate the previous location into the current agreement. Through this action, the use of the Village's approval of the use of the ROW by UPRR will run on consistent terms. The License Agreement has been reviewed by the Village Attorney.

**Recommendation:**

Staff recommends that the Village Board approve an Ordinance authorizing the Village President and Village Clerk to execute the License Agreement on behalf of the Village of Lombard. The Ordinance must be adopted by at least a three-fourths (3/4ths) vote of the Corporate Authorities (6 of 7). The Ordinance should appear as an item for separate action on the Village Board's meeting agenda.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A LICENSE AGREEMENT  
FOR THE USE OF THE PARKSIDE AVENUE RIGHT OF WAY  
BETWEEN THE VILLAGE OF LOMBARD AND  
THE UNION PACIFIC RAILROAD**

**BE IT ORDAINED** by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

**SECTION 1:** That the President and Board of Trustees hereby approve the "License Agreement for Use of the Parkside Avenue Right of Way " attached hereto as Exhibit 1 and made part hereof.

**SECTION 2:** That the Village President and Village Clerk as hereby authorized and directed to execute Exhibit 1 on behalf of the Village, as well as execute any and all additional documents necessary to carry out the terms and provisions of said Exhibit 1.

**SECTION 3:** That this Ordinance shall be in full force and effect from and after its passage and approval, by a three-fourths (3/4ths) vote of the Corporate Authorities, as provided by law.

Passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2017.

First reading waived by action of the Board of Trustees this \_\_\_\_ day of \_\_\_\_\_, 2017.

Passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2017, pursuant to a roll call vote as follows:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**APPROVED** by me this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Keith Giagnorio, Village President

**ATTEST:**

\_\_\_\_\_  
Sharon Kuderna, Village Clerk

**Exhibit 1**

**LICENSE AGREEMENT  
FOR USE OF THE PARKSIDE AVENUE RIGHT OF WAY**

(attached)

## LICENSE AGREEMENT

This License Agreement (hereinafter referred to as the "License Agreement") is entered into by and between the VILLAGE OF LOMBARD (hereinafter referred to as the "VILLAGE"), an Illinois municipal corporation, and the Union Pacific Railroad (hereinafter referred to as the "LICENSEE"), a Delaware Corporation, located in Omaha, Nebraska (the VILLAGE and the LICENSEE being sometimes collectively referred to herein as the "PARTIES").

### WITNESSETH

**WHEREAS**, the VILLAGE owns and maintains Parkside Avenue, a public right-of-way of sixty-six feet (66') in width, (hereinafter referred to as the "PARKSIDE ROW"), which is located within the corporate limits of the VILLAGE; and

**WHEREAS**, LICENSEE is the property owner of the railroad right-of-way along the North side of Parkside Avenue, as shown on the Plats of Survey attached hereto as Exhibit "A" and Exhibit "B", and made part hereof (hereinafter referred to as the "RAILROAD PROPERTY"); and

**WHEREAS**, included within the boundaries of the PARKSIDE ROW is an unimproved area between the roadway portion of the PARKSIDE ROW and the RAILROAD PROPERTY, a portion of which the LICENSEE would like to use to access the RAILROAD PROPERTY from the roadway portion of the PARKSIDE ROW; said portion being legally described on Exhibit "A" and Exhibit "B" (hereinafter referred to as the "LICENSED PREMISES"); and

**WHEREAS**, the PARTIES have determined that it is in the best interests of the PARTIES to enter into an agreement to allow the LICENSEE to utilize the LICENSED PREMISES for the use and benefit of the LICENSEE, subject to the terms of this License Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants,

representations, and promises contained herein, and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the PARTIES, the PARTIES hereto agree as follows:

**SECTION 1: LICENSE AND LIMITATIONS**

**1.1 Grant of License.** The VILLAGE hereby grants to LICENSEE a revocable license (hereinafter referred to as the "License") to occupy and use, subject to all of the terms, conditions and restrictions contained herein, the LICENSED PREMISES for driveways to access the RAILROAD PROPERTY.

**1.2 Scope and Limitations of License.** Said License shall permit LICENSEE to use and occupy the LICENSED PREMISES for access purposes, subject to the restrictions and requirements imposed by this License Agreement, the Lombard Village Code and the Lombard Traffic Code, including, but not limited to, the following restrictions and requirements:

A. LICENSEE shall not construct, build, or place, or cause to be constructed, built, or placed, any structures, permanent or otherwise, on the LICENSED PREMISES, including but not limited to buildings, houses, dwellings, garages, sheds, and/or other structures of a permanent or semi-permanent nature.

B. LICENSEE shall be permitted to install signs designating the LICENSED PREMISES as a reserved driveway area, subject to the restrictions and requirements imposed by this License Agreement, the Lombard Village Code and the Lombard Traffic Code, and subject to the prior written approval of the VILLAGE's Director of Public Works. Said signs shall set forth all time, day and user restrictions regarding the use of the LICENSED PREMISES, and any fees associated with any vehicle removal activities, along with the name, address and phone number of the towing

operator contracted by the LICENSEE to enforce any such parking restrictions.

C. LICENSEE shall also be responsible for the following construction, maintenance and repair costs and requirements within the LICENSED PREMISES:

1. All construction costs associated with the curb cut, excavation, base stone placement and driveway surface paving in the LICENSED PREMISES;
2. The driveways shall utilize a standard driveway curb cut and must be paved using open-celled paving materials that will allow grass to grow through at least thirty-five percent (35%) of the paved area in the LICENSED PREMISES;
3. All patching or repair of the curb and driveways associated with the use of the LICENSED PREMISES; and
4. Any improvements within the LICENSED PREMISES shall meet the standards established within the latest edition of the VILLAGE'S Manual of Specifications for the Design of Public Improvements or Site Improvements.

The VILLAGE shall retain and reserves the right to require the LICENSEE to pay all costs for repairs associated with the LICENSED PREMISES. Said determination for the need for repairs shall be based upon a review of the LICENSED PREMISES by the Director of Public Works.

D. Any improvements made to the LICENSED PREMISES by the LICENSEE shall be removed by the LICENSEE, at LICENSEE'S sole cost and expense, in the event that this License Agreement is terminated or not renewed, unless otherwise directed by the VILLAGE.

E. LICENSEE shall refrain from using the LICENSED PREMISES in any unreasonable, unsafe, and/or illegal manner, and shall at all times use the LICENSED PREMISES in full

compliance with all applicable provisions of this License Agreement, the Lombard Village Code and the Lombard Traffic Code. This provision includes, but is not limited to, a restriction that there shall be no overnight parking or storage of motor vehicles within the LICENSED PREMISES.

**1.3 Term of License.** Unless sooner terminated as set forth in Sections 3.1 or 3.2 below, this License Agreement shall be granted by the VILLAGE for an initial term of ten (10) years from the date of approval by the VILLAGE ("Initial Term"). Thereafter, this License Agreement shall renew itself automatically on a year-to-year basis until terminated as set forth in Sections 3.1 or 3.2 below.

**1.4 Nonassignability of License.** Said License is personal and shall not be assigned and/or transferred to any other person, firm, corporation or entity without the prior written consent of the VILLAGE.

**1.5 Real Estate Taxes.** LICENSEE shall pay any real estate taxes that may be assessed solely and directly against the LICENSED PREMISES.

## **SECTION 2: PAYMENTS AND APPORTIONMENT**

**2.1 Payment.** LICENSEE shall pay to the VILLAGE, upon execution of this License Agreement, a one-time non-refundable License fee of one hundred and no/100 dollars (\$100.00).

## **SECTION 3: TERMINATION AND EXPIRATION**

**3.1 Termination by LICENSEE.** At any time during the initial ten (10) year term, and thereafter during any year-to-year renewal, LICENSEE may terminate this License Agreement by giving the VILLAGE sixty (60) days prior written notice of termination, with such notice to be in accordance with the provisions of Section 3.5 below.



**3.2 Termination by VILLAGE.** The VILLAGE may terminate this License Agreement during the Initial Term, or during any year-to-year renewal, if LICENSEE defaults on any term of this License Agreement and LICENSEE fails to cure the default within thirty (30) days after receiving the VILLAGE's written notice of default specifying the nature of LICENSEE'S default, or, if the default cannot be cured within said thirty (30) day period, LICENSEE fails to cure the default in an expeditious manner. In addition to the foregoing, upon expiration of the Initial Term, the VILLAGE can terminate this Agreement without cause during any year-to-year renewal term by providing LICENSEE with the VILLAGE's written notice of termination no less than ninety (90) days prior to the start of the year-to-year renewal.

**3.3 No Property Interest Created.** Said License is for the temporary permissive use of the LICENSED PREMISES only and creates no property and/or other interest in the LICENSED PREMISES on the part of, or for the benefit of, the LICENSEE.

**3.4 Improvements Required as Part of Termination or Expiration.** Should the VILLAGE or the LICENSEE terminate this License Agreement, pursuant to the terms hereof or by agreement of the PARTIES, the LICENSEE shall be required to make all repairs to the LICENSED PREMISES, as determined to be necessary by the VILLAGE, in its sole discretion, to bring the LICENSED PREMISES into compliance with all applicable VILLAGE codes, ordinances and regulations, with the costs associated with said repairs being borne solely by the LICENSEE.

**3.5 Delivery of Notice.** Any notice relative to this License Agreement shall be deemed to have been effectively sent by the VILLAGE or LICENSEE, as the case may be, and received by LICENSEE or VILLAGE, as the case may be, in accordance with the terms and conditions of this License Agreement, when said notice is mailed by the VILLAGE or LICENSEE, as the case may be,

by certified mail, return receipt requested, to the LICENSEE or VILLAGE, as the case may be, to the address below. It shall be the sole responsibility of LICENSEE to provide the VILLAGE with written notice of any changes in address for purposes of receiving notice under this License Agreement. Any notice issued by VILLAGE or LICENSEE, as the case may be, hereunder shall be sent by certified mail, return receipt requested, and addressed as follows:

TO LICENSEE:       Assistant Vice President – Real Estate  
                          Union Pacific Railroad Company  
                          Real Estate Department, MS 1690  
                          1400 Douglas Street  
                          Omaha, NE 68179  
                          ATTN: Folder# 3027-12

TO VILLAGE:        Director of Public Works  
                          Village of Lombard  
                          255 East Wilson Avenue  
                          Lombard, Illinois 60148-1048

#### **SECTION 4: MISCELLANEOUS PROVISIONS**

4.1.     **Indemnification and Insurance.** LICENSEE hereby covenants and agrees to indemnify and hold the VILLAGE, and its officers, agents, and employees, harmless with respect to any and all claims, losses, lawsuits, actions, injuries, accidents, costs, and/or expenses (including reasonable attorney's fees) of any type, nature, and/or variety arising out of this License Agreement or relating in any way to the LICENSED PREMISES, including but not limited to any and all claims and/or causes of action incurred by persons injured on or around the LICENSED PREMISES during the effective term of this License Agreement. The LICENSEE shall provide the VILLAGE, within ten (10) days of the date of execution of this License Agreement, with written documentation evidencing that the LICENSEE is self-insured, and that the LICENSEE is self-insuring all risks under this License Agreement.

**4.2 Severability of Agreement.** The terms and conditions set forth in this License Agreement shall be severable. In the event that any of the provisions contained herein are declared by a court of competent jurisdiction to be inconsistent with federal, state, or local law, or otherwise unenforceable for any reason whatsoever, the remaining provisions shall remain in full force and effect as to the PARTIES.

**4.3. Merger Clause.** This License Agreement constitutes the entire understanding between the PARTIES and supersedes any prior understandings and/or agreements between the PARTIES. Any representations, agreements, promises, or understandings not expressly set forth herein are hereby rendered null, void, and of no legal effect.

**4.4. Choice of Law.** This License Agreement is entered into under, and shall be governed for all purposes by, the laws of the State of Illinois, and venue in relation to any court action relating in any way to this License Agreement shall be in DuPage County, Illinois.

**4.5 Termination of Prior License Agreement.** The license agreement entered into by the PARTIES, relative to the property as legally described in Exhibit "B" hereto, as approved by the VILLAGE on March 4, 2010, is hereby terminated by agreement of the PARTIES.

*(Signatures on following page.)*

IN WITNESS WHEREOF, the PARTIES have executed this License Agreement on this  
\_\_\_\_\_ date of \_\_\_\_\_, 2017.

**VILLAGE OF LOMBARD**

**LICENSEE: UNION PACIFIC RAILROAD**

By: \_\_\_\_\_  
Keith Giagnorio  
Village President

By: \_\_\_\_\_  
Name: Kris Anderson

Title: Mgr. Real Estate

Attest: \_\_\_\_\_  
Sharon Kuderna  
Village Clerk

Attest: \_\_\_\_\_  
Name: B.J. Kubat

Title: Asst. Secretary

Date: \_\_\_\_\_

Date: 2/2/17

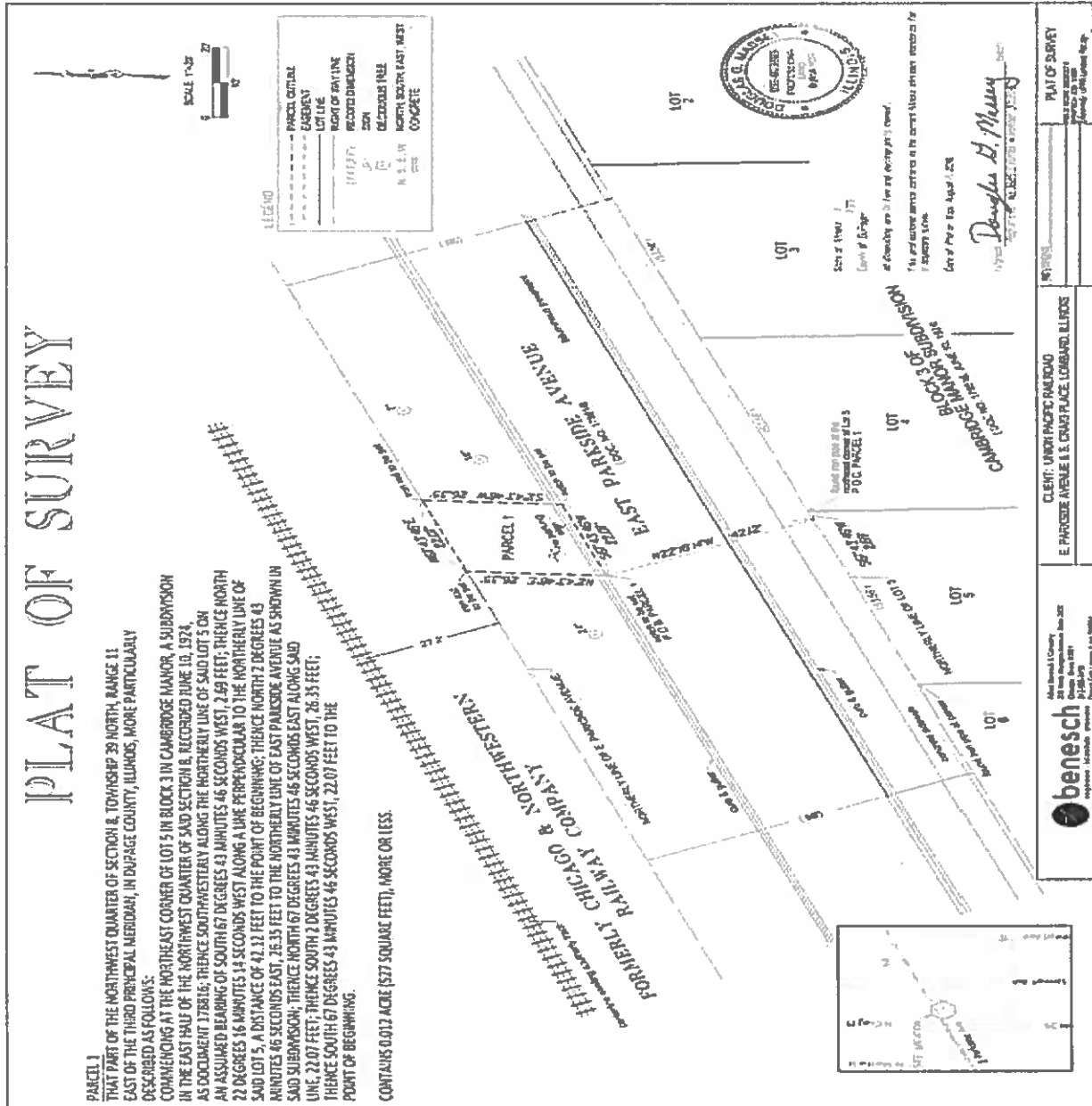


**EXHIBIT "A"**

**Plat of Survey  
and  
Legal Description**

(attached)

**EXHIBIT "A"**



**EXHIBIT "B"**

**Plat of Survey  
and  
Legal Description**

(attached)

