

ITEM FOR OMINBUS VOTE CONSIDERATION

Item #3:

Resolution Approving Fence Within 100' Of ROW, 3228 IL 83

VILLAGE OF LONG GROVE

RESOLUTION NO. 2014-R-__

A RESOLUTION GRANTING APPROVAL
FOR THE INSTALLATION AND MAINTENANCE OF A FENCE ON
PROPERTY LOCATED AT 3228 ILLINOIS ROUTE 53

WHEREAS, Section 4-9-3 of the Long Grove Village Code contains restrictions on fences that front upon and are located within one hundred feet (100') of any state or county highway or scenic road within the Village, including a requirement that fences be at least 70% "open-air" (which regulation effectively prohibits stockade fences) and a restriction on the height of a fence to four foot in height; and

WHEREAS, Jose Olmos ("**Owner**"), the owners of the property located at 3228 IL Route 53, Long Grove, Illinois and legally described in Exhibit A ("**Property**"), have requested approval from the Village Board to install and maintain a six foot high stockade fence on the Property and within 100 feet of Illinois Route 53, a state highway ("**Proposed Fence**"); and

WHEREAS, pursuant to Section 4-9-4, the Village Board may, upon good cause shown, approve an exception from the maximum fence height limitation and the open-air requirement that prohibits stockade fences; and

WHEREAS, the Village Board of Trustees has reviewed the Owner's request for relief and has determined that the Owner's request to install the Proposed Fence on the Property meets the standards for granting the requested relief in Subsection 4-9-4(B), based on the following findings:

1. The existing principal residence on the Property (the "**Residence**") is not more than 30 feet from the road right-of-way.
2. Due to the proximity of Illinois Route 53 to the Residence, the Owner's use of the Property and the Residence is severely impacted by traffic noise, vehicle emission, and headlight glare.
3. The Residence was constructed in 1884 and has historic value and contributes to the character of the Village.

4. As an incentive to reinvest in the Residence, the Owner seeks to mitigate the impacts of Route 53 on the Residence and the Property.
5. Due to the proximity of the Residence to the Route 53 right-of-way, the Owner cannot install a berm in accordance with customary standards that allow for its stability and maintenance.
6. The open-air fence limitation of Section 4-9-3(A) causes a practical difficulty or particular hardship to the Owner because of the location of the Residence on the Property and vis-à-vis the Route 53 right-of-way, as well as the impracticability of an alternative solution such as a berm.
7. The Owner has installed substantial landscaping on the Property. In addition, the Owner has orally offered to provide a pathway easement adjacent to the Route 53 right-of-way, which pathway easement would be a benefit to the public.
8. The Owner has agreed to maintain the Proposed Fence and the Existing Landscaping and to authorize the Village to undertake necessary maintenance, and to record appropriate documentation against the Property in furtherance of the application for the Proposed Fence.

WHEREAS, the Village Board has further determined that it is in the best interest of the Village and its residents to grant the requested relief, subject to the conditions set forth in Section 3 of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, LAKE COUNTY, ILLINOIS, THAT:

SECTION 1: RECITALS. The recitals set forth above are incorporated as a part of this Resolution by this reference.

SECTION 2: APPROVAL. Subject to the conditions set forth in Section 3 of this Resolution, the Village hereby approves the installation and maintenance of the Proposed Fence in the location depicted on the Site Plan.

SECTION 3: CONDITIONS ON APPROVAL. The relief granted pursuant to Section 2 of this Resolution shall be, and is hereby, conditioned upon and limited by the following conditions, the violation of any of which shall, in the discretion of the President and Board of Trustees, render void the approvals granted by this Resolution:

- A. Type of Fence. The Proposed Fence shall not exceed six feet in height and shall be a red cedar privacy fence substantially similar in design to the fence depicted as Image A in the Application attached to this Resolution as Exhibit C. In addition, the Proposed Fence may only be installed in the location depicted on the Site Plan.
- B. Landscaping. The Owner shall maintain the existing landscaping on the Property.
- C. Maintenance of the Fence; Removal of Fence; Recordation. The Owner must agree (i) to maintain the Proposed Fence installed on the Property pursuant to this Resolution, (ii) to authorize the Village to undertake such maintenance in the event the Owner fails to do so, (iii) to reimburse the Village, and provide for Village recovery of, its costs in the event that the Village performs any maintenance, (iv) to remove the Proposed Fence in the event that the Residence is demolished or otherwise removed from the Property, and (v) to grant of a pathway easement in the location depicted on the Site Plan. Such agreement must be memorialized in a Declaration of Covenants and Easements substantially in the form of Exhibit D attached to this Resolution, which Owner must execute and deliver to the Village before the issuance of a building permit for the Proposed Fence.
- D. Fees and Costs. The Owner shall be responsible for paying all applicable fees relating to the granting of the approvals set forth herein in accordance with the Long Grove Village Code. In addition, the Owner shall reimburse the Village for all of its costs (including without limitation engineering, planning, and legal expenses) incurred in connection with the review, consideration, approval, implementation, or successful enforcement of this Resolution. Any amount not paid within 30 days after delivery of a demand in writing for such payment shall, along with interest and the costs of collection, become a lien upon the property, and the Village shall have the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law; provided, however, that this Resolution shall, in the discretion of the Village Board of Trustees, be of no force or effect if the Owner has not (i) executed and (ii) thereafter filed with the Village Clerk, within 30 days following the passage of this Resolution, its unconditional agreement and consent, in the form attached hereto as Exhibit E and by this reference made a part hereof, to accept and abide by each and all of the terms, conditions, and limitations set forth herein.

PASSED this 22nd day of September, 2014.

AYES: () Trustees

NAYS: ()

ABSENT: ()

APPROVED this 22nd day of September, 2014.

Angela Underwood, Village President

ATTEST:

Heidi Locker-Scheer, Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PT NW SE COM S LN AT PT 230.50' W OF SE COR FOR POB, NWLY 363.55',
S79D00'18"W 120', S07D56'42"E TO PT 20.16' NE OF X OF S LN & N LN RT53 EXTD
TO S LN, E TO POB (EX HWY) SECTION 25 TOWNSHIP 43 RANGE 10

EXHIBIT B

SITE PLAN

Lake County, Illinois



LakeCounty
Geographic Information System

Lake County Department
of Information Technology
18 N County St
Waukegan IL 60085
(847) 377-2373

Map Printed on 09/18/2014

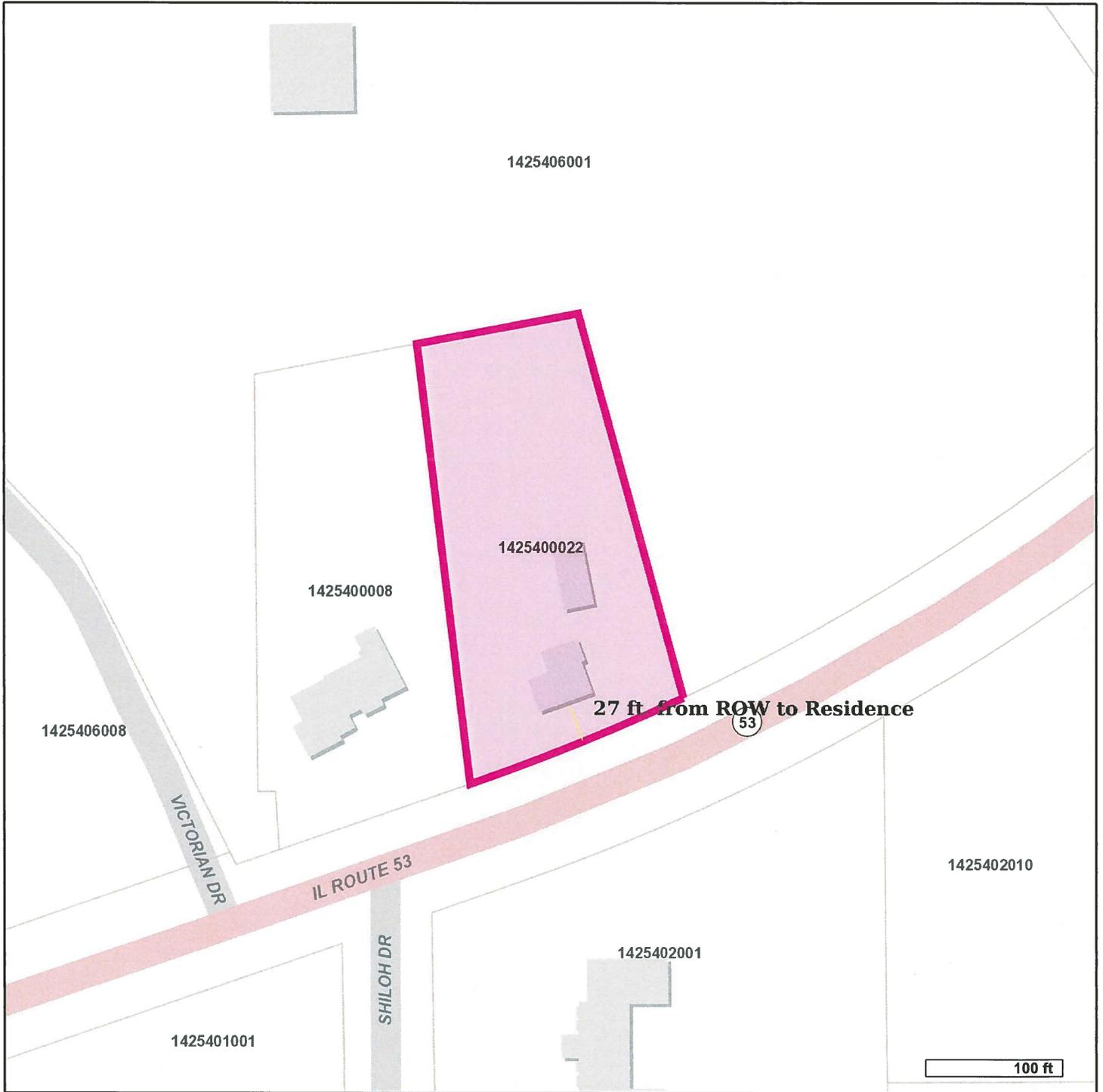


- Tax Parcels: 1425400022
- User Graphic: (various)
- Forest Preserves
- Lake County Border
- Streams
- Tax Parcels
- Trails
- 2011 Buildings

Disclaimer

The selected soil feature layer may not occur anywhere in the current map extent. A Registered Land Surveyor should be consulted to determine the precise location of property boundaries on the ground. This map does not constitute a regulatory determination and is not a base for engineering design. This map is intended to be viewed and printed in color.

Lake County, Illinois



LakeCounty
Geographic Information System

Lake County Department
of Information Technology
18 N County St
Waukegan IL 60085
(847) 377-2373

Map Printed on 09/18/2014
Parcel 14-25-400-022 is outlined.

- Tax Parcels: (various)
- User Graphic: (various)
- Forest Preserves
- Lake County Border
- Water
- Tax Parcels
- Trails
- 2011 Buildings

Disclaimer The selected soil feature layer may not occur anywhere in the current map extent. A Registered Land Surveyor should be consulted to determine the precise location of property boundaries on the ground. This map does not constitute a regulatory determination and is not a base for engineering design. This map is intended to be viewed and printed in color.

RECEIVED

AUG 11 2014

VILLAGE OF LONG GROVE

**Carlos Olmos
3228 IL Rt. 53
Long Grove IL, 60047**

July 31, 2014

To: The Village of Long Grove

RE: Permit for a fence

I am writing to inform you of the reasons for creating a fence on my property line. There are a few reasons for putting up a fence.

1. Our house is located on a very busy road where there are constant cars going back and forth, and the bright lights from the cars flash directly at our windows that come directly from the street "Shiloh" as well as the cars coming from the east and west.
2. Our home and the road are very close together by only a short distance making it very dangerous; route 53 is a busy road throughout the whole day. A fence would make our family feel safer.
3. There is no privacy due the high amount of traffic; our house is very close to the road making everything visible from or patio all year round and especially in the summer time when we are outside.
4. The noise is unbearable and with a fence from 8' to 10'; the high visibility, bright lights and noise can be greatly reduced.

The fence would be a total of 158' on the front side of the house on our property line, and it would be at the same distance from the road as our neighbor's fence on the east and our neighbor's fence on the west. The fence will extend 30' on the side of the house on the SE side alongside the fence at the house 3222 Rt. 53 that will also be on our property line. Reason being for this is due the high visibility of cars passing by which face directly at our patio.

Creating this fence will help me and my family out greatly, we have already placed many plants hoping to reduce the high visibility and bright lights however our house still remains highly visible and we would feel safer and more at ease with this fence. Please contact me for any questions at my cell phone (847) 875-3405.

Thank you,
Carlos Olmos

LEGAL NOTICE
VILLAGE OF LONG GROVE, ILLINOIS
NOTICE OF A PUBLIC HEARING FOR
CONSIDERATION OF EXCEPTIONS TO THE FENCE
REGULATIONS FOR A PRIVACY FENCE ON
PROPERTY AT 3228 ROUTE 53 AND WITHIN THE
VILLAGE OF LONG GROVE, ILLINOIS.

PUBLIC NOTICE IS HEREBY GIVEN that on Tuesday, September 9, 2014 at 7:00 p.m., The Long Grove Village Board will hold a public hearing for consideration of a proposal by Mr. Carlos Olmos for exceptions to the fence regulations of the Village Code for the Village of Long Grove, and specifically to allow a privacy fence as follows: i) a fence height of 8' to 10' feet; ii) exception of the 70% open air (non-material) requirement; and; iii) placement of the fence within 100' feet of a state, county or scenic road for property legally described as follows;

Legal Description

That part of the east 17 acres of the Northwest Quarter of the Southeast Quarter of 25, Township 43 North, Range 10 East, of the Third Principal Meridian, described as follows; commencing at a point on the south line of said Northwest Quarter of the Southeast Quarter 230.5 feet West of the Southeast Corner, thereof, thence, northerly on line forming an angle of 74 degrees, 51 minutes, 20 seconds west to north with the south line of said Northwest Quarter of the Southeast Quarter 413.55 feet; thence westerly on a line forming an angle of 94 degrees, 28 minutes from south to west with the last described line, a distance of 228.45 feet to the west line of the east 17 acres of the Northwest Quarter of the Southeast Quarter of Section 25; thence south on the west line of said east 17 acres, 356.85 feet to the south line of said Northwest Quarter of the Southeast Quarter; thence East on said south line 330.33 feet to the point of beginning excepting therefrom property used for right-of-way purposes for Illinois Route 53, all in Lake County, Illinois.
Commonly known as; 3228 Illinois Route 53
PIN 14-25-400-022

Persons attending the hearing shall have the opportunity to provide written and oral comments and questions concerning the proposed exceptions to the fence regulations. The Village Board reserve the rights to continue this matter to a later date and time should that become necessary.
James M. Hogue
Village Planner
Village of Long Grove
Published in Daily Herald August 28, 2014 (4384184)

CERTIFICATE OF PUBLICATION

Paddock Publications, Inc.

Daily Herald

Corporation organized and existing under and by virtue of the laws of the State of Illinois, DOES HEREBY CERTIFY that it is the publisher of the DAILY HERALD. That said DAILY HERALD is a secular newspaper and has been circulated daily in the Village(s) of Algonquin, Antioch, Arlington Heights, Aurora, Barrington, Barrington Hills, Lake Barrington, North Barrington, South Barrington, Bartlett, Batavia, Buffalo Grove, Burlington, Campton Hills, Carpentersville, Cary, Deer Park, Des Plaines, South Elgin, East Dundee, Elburn, Elgin, Elk Grove Village, Fox Lake, Fox River Grove, Geneva, Gilberts, Grayslake, Green Oaks, Gurnee, Hainesville, Hampshire, Hanover Park, Hawthorn Woods, Hoffman Estates, Huntley, Inverness, Island Lake, Kildeer, Lake Villa, Lake in the Hills, Lake Zurich, Libertyville, Lincolnshire, Lindenhurst, Long Grove, Mt. Prospect, Mundelein, Palatine, Prospect Heights, Rolling Meadows, Round Lake, Round Lake Beach, Round Lake Heights, Round Lake park, Schaumburg, Sleepy Hollow, St. Charles, Streamwood, Tower Lakes, Vernon Hills, Volo, Wauconda, Wheeling, West Dundee, Wildwood, Sugar Grove, North Aurora

County(ies) of Cook, Kane, Lake, McHenry and State of Illinois, continuously for more than one year prior to the date of the first publication of the notice hereinafter referred to and is of general circulation throughout said Village(s), County(ies) and State.

I further certify that the DAILY HERALD is a newspaper as defined in "an Act to revise the law in relation to notices" as amended in 1992 Illinois Compiled Statutes, Chapter 7150, Act 5, Section 1 and 5. That a notice of which the annexed printed slip is a true copy, was published August 28, 2014 in said DAILY HERALD.

IN WITNESS WHEREOF, the undersigned, the said PADDOCK PUBLICATIONS, Inc., has caused this certificate to be signed by, this authorized agent, at Arlington Heights, Illinois.

PADDOCK PUBLICATIONS, INC.
DAILY HERALD NEWSPAPERS

BY Laurel Baetz
Authorized Agent

Control # 4384184



SEP 02 2014

EXHIBIT D

DECLARATION OF COVENANTS AND EASEMENTS

Prepared by and after
Recording Return to:

Victor P. Filippini, Jr.
Holland & Knight LLP
131 South Dearborn Street
30th Floor
Chicago, Illinois 60603

DECLARATION OF COVENANTS AND EASEMENTS

THIS AGREEMENT, dated as of this ____ day of _____, 2014, by and between the **VILLAGE OF LONG GROVE**, a municipal corporation created and existing under the laws of the State of Illinois ("**Village**"), and **JOSE L. OLMOS** ("**Owner**").

RECITALS:

A. Owner is the legal owner of record of certain real property commonly known as 3228 IL Route 53, Long Grove, Lake County, Illinois, which real property is legally described in Exhibit 1 attached hereto and by this reference incorporated herein and made a part hereof ("**Property**").

B. Owner has requested relief from the Village to construct a privacy fence on the Property as further described below (the "**Fence**"), which Fence does not comply with the Village's generally applicable regulations.

C. The Village did approve Village of Long Grove Resolution No. 2014-R-____ (the "**Approval Resolution**") granting relief to the Owner for the construction of the Fence.

D. As part of the Approval Resolution, the Village established conditions for the construction of the Approved Fence, and Owner has agreed to (i) construct and maintain the Fence in accordance with the Approval Resolution, (ii) maintain existing landscaping adjacent to the Fence (the "**Required Landscaping**") in accordance with the Approval Resolution, (iii) authorize the Village to undertake maintenance work on the Fence or the Required Landscaping

in the event that Owner fails to do so, (iv) reimburse the Village for its costs associated with any such maintenance activities, and (v) grant an easement on the Property to the Village for a pathway (the "***Path Easement***") between the Fence and the Route 53 right-of-way as depicted on Exhibit 2 to this Instrument.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and the mutual covenants and agreements set forth herein and other good and valuable consideration paid by the Village to Owner, the receipt and sufficiency of which are hereby acknowledged, the parties thereto mutually agree as follows:

ARTICLE I

Recitals

The foregoing recitals are hereby incorporated into and made a part of this Instrument as if fully set forth.

ARTICLE II

Maintenance Covenants and Easements

Section 1: Owner Maintenance. Owner hereby covenants and agrees that Owner will hereafter perform all activities necessary and appropriate in order to:

- a. **Fence.** Maintain the Fence in good and attractive condition so that it presents no hazards to persons on the Property or using the Path easement or adjoining property; and
- b. **Required Landscaping.** Maintain the Required Landscaping consistent with the Landscaping Plan approved as part of the Approval Resolution and in accordance with good horticultural practices.

Section 2: Village Maintenance. Owner hereby authorizes the Village to enter upon the Property in order to ensure that the Fence and the Required Landscaping are maintained in accordance with the standards set forth in Section 1 of this Article. In the event that the Village believes that the Owner has failed to so maintain either the Fence or the Required Landscaping, the Village will notify the Owner of the deficiency or deficiencies in such maintenance and grant the Owner not less seven (7) days to address such deficiency or deficiencies (the "***Deficiency***")

Notice"). If the Owner fails to fully and satisfactorily address such deficiencies within the time prescribed in the Deficiency Notice, the Village will have the right (but not the obligation) to enter upon the Property to perform required maintenance as described in the Deficiency Notice. In the event that the Village undertakes such maintenance, the Owner must reimburse the Village its costs for such maintenance. Any amount of such maintenance costs not paid to the Village within 30 days after delivery of a demand in writing for such payment will, along with interest and the costs of collection, become a lien upon the Property, and the Village is hereby granted the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate. The Village may undertake any maintenance under this Article through its own forces or through contractors under the Village's direction.

Section 3: Fence Removal. Notwithstanding the maintenance requirements in Section 1.a of this Article II, if the existing residence on the Property (the "**Residence**") is demolished or otherwise moved on or from the Property ("**Removal of Residence**"), Owner is required to remove the Fence within 30 days after such Removal of Residence. In the event that the Owner fails to so remove the Fence, such failure will be deemed a maintenance deficiency and will be grounds for the Village to cause the removal of the Fence as a form of maintenance pursuant to the provisions of Section 2 of this Article.

ARTICLE III

Path Easement

Section 1: Grants of Easement. Owner hereby grants, conveys, warrants, and dedicates to the Village, its successors and assigns, a perpetual, non-exclusive easement and right of way to survey, construct, reconstruct, lay, use, own, operate, maintain, test, inspect, repair, replace, enlarge, renew, alter, remove, or abandon in place (collectively, "**Installation**") a portion of the Village Pathway System, for use by the public, and appurtenances thereto as the Village may deem necessary or desirable for its needs, including underground drainage facilities (collectively, "**Pathway**"), subject to the terms and conditions herein set forth, in, upon, over,

under, through, along, and across the Path Easement, together with all reasonable rights of ingress and egress over, along, upon, and across the Path Easement and any adjoining lands of Owner necessary for the exercise of the rights herein granted; provided, however, that no Pathway will be installed on the Property unless and until a Pathway then exists or is under construction, extending from the Property along Route 53 to downtown Long Grove.

Section 2: Installation. The Village agrees that any Installation of the Pathway shall be done and completed in a good and workmanlike manner, and at no expense to the Owner. Any such Installation shall be conducted in the name of, or pursuant to contracts or agreements with, the Village pursuant to plans approved by the Village.

Section 3: Restoration. Upon completion of any Installation activity on the Path Easement by the Village, its authorized agents, servants, employees, contractors, or persons acting pursuant to contracts or agreements with the Village, the Village agrees to (a) replace and grade all topsoil removed in connection with such Installation; (b) restore all fences, roads, driveways, plantings, landscaping, and improvements as nearly as practicable to the condition immediately preceding the Installation if damaged or removed as a direct result of the Installation; (c) relocate any fence of Owner which is on the Route 53 side of the Pathway onto the other side of the Pathway; and (d) replace any and all sod or any and all natural grass removed in connection with such Installation with a good quality sod.

Section 4: Hold Harmless. The Village agrees to save and hold Owner harmless from all claims, causes of action, suits, liens, damages, or demands that arise directly from the negligence of the Village or its authorized agents, servants, employees, contractors, or persons acting pursuant to contracts or agreements with the Village in the Installation of the Pathway on the Path Easement, and/or which arise from injuries or death to persons or damages to property resulting from the work related to the Installation of the Pathway on the Path Easement and/or arising from the non-payment of any contractors, subcontractors, or material suppliers performing work or providing materials in connection with such Installation on the Path