

11/1/07

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE LIBRARY AND THE PARK DISTRICT**

(Relates to Transfer of Property/Driveway Access)

This Intergovernmental Agreement (the "Agreement") is entered into by and between the Board of Library Trustees of the Helen M. Plum Memorial Library (the "Library") and the Lombard Park District ("District") and is effective November 1, 2007. From time to time, this Agreement may refer to the Library and the District individually as a "Party" and together as the "Parties."

PREAMBLES

WHEREAS, the Library and the District own adjacent real property; and

WHEREAS, the Library may wish to construct a new library building or an addition to the current library building on real property that the Library currently owns commonly known as 110, 126 and 130 West Maple Street, Lombard, Illinois; and

WHEREAS, the Library and the District find that the transfer of real property for which this Agreement provides would benefit the residents of the Lombard community; and

WHEREAS, Article VII Section 10 of the 1970 Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), confer upon units of local government, including the Library and the District, the authority to associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or ordinance and to enter into intergovernmental agreements to perform jointly any undertaking which either is authorized to perform individually and to pool their common resources in such joint undertakings; and

WHEREAS, the Local Government Property Transfer Act ("Property Transfer Act") (50 ILCS 605/0.01 *et seq.*) authorizes the Library and the District to transfer real property to one another.

AGREEMENT

In consideration of the promises, covenants and conditions contained in this Agreement, the Library and the District agree as follows:

1. Preambles. The Preambles to this Agreement are incorporated into and made a part of this Agreement and all covenants, terms, conditions, and provisions hereinafter contained shall be construed and enforced in accordance therewith.

2. Library Transfer to District. The Library shall convey to the District title to the Library property described as Parcel A (attached) via quit claim deed substantially in the form set forth at 765 ILCS 5/10. This conveyance is intended primarily to provide the District with driveway access to District property located north of, and adjacent to, Library property. This Parcel A property is referred to as "District Driveway Property". The driveway to be constructed on the District Driveway Property is referred to as the "District Driveway."

3. District Transfer to Library. Simultaneously with, and in consideration for, the conveyance described in Paragraph 2 above, the District shall convey to the Library title to the District property described as Parcel B (attached) via quit claim deed substantially in the form set forth at 765 ILCS 5/10. This Parcel B property is referred to as "New Library Property". This conveyance is intended to afford the Library flexibility in connection with future Library building plans by providing contiguity of Library properties commonly known as 110, 126 and 130 West Maple Street, Lombard, Illinois. The deed by which title to the New Library Property is conveyed shall:

- (a) Contain a covenant providing that no portion of any new Library building shall exceed two stories in height;
- (b) Provide that the conveyance is subject to an automatic right of reverter of title to the District in the event the Library conveys or attempts to convey all or any portion of the New Library Property to any party other than the District at any time.

4. Closing. Closing of the conveyances described in Paragraphs 2 and 3 of this Agreement shall take place at the District's office at 10:30 a.m. on Thursday, December 6, 2007. At the time of

Closing, each conveying Party shall provide to the other Party the appropriate declarations or exemption certificates in compliance with the provisions of any applicable state transfer tax act and any county or local governmental transaction tax ordinance or similar applicable laws and ordinances, appropriate and customary affidavits of title, appropriate and customary ALTA Statements, appropriate plat act affidavits, and any other documents deemed necessary for the conveyance. The conveying Party shall pay any state and county transfer tax and the other Party shall pay any municipal transfer taxes in regard to each conveyance.

5. Condition of Title. Not less than five (5) days nor more than thirty (30) days prior to the Closing, the conveying Party shall, at its sole cost and expense, cause a commitment for an owner's title insurance policy, on the District Driveway Property and the New Library Property, as applicable (the "Final Commitment"), to be issued by Chicago Title Insurance Company, or by another title insurance company agreed to by the Parties, in an amount upon which the Parties shall mutually agree. The District Driveway Property and the New Library Property are hereinafter each referred to together or respectively, as the "Subject Premises." Each Party hereby represents and warrants that it possesses fee simple title to the Subject Premises it will convey, and the Final Commitment shall show title in the conveying Party, subject only to the following exceptions, if any (hereinafter referred to as "Permitted Title Exceptions"):

- a. General real estate taxes yet due and payable;
- b. Zoning and building laws and ordinances and building lines;
- c. Rights of the public, State of Illinois or any municipality in and to any roads and highways over the Subject Premises;
- d. Covenants, conditions and restrictions of record, so long as such do not interfere with the Parties' intended use of the Subject Premises;
- e. Rights-of-way for drainage ditches, feeders, laterals and drainage tile, pipe or conduit;
- f. Easements of record as of the date hereof or easements, the existence of which are readily ascertainable from a physical inspection of the premises, so long as such easements do not interfere with the relevant Party's intended use of the Subject Premises;

- g. Acts done or suffered by or judgments against the current owner of the Subject Premises or those claimed by, through or under the current owner;
- h. This Agreement.

If the Commitment discloses exceptions other than Permitted Title Exceptions or exceptions which render the title to any of the Subject Premises unmarketable, the conveying Party shall have twenty (20) days from the date of delivery thereof to have the exceptions removed from the commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions. If the conveying Party fails to have the exceptions removed or, in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, the other Party may elect, upon notice to the conveying Party no later than the day of the expiration of the twenty (20) day period, either to terminate this Agreement or, take title to the affected portion of the Subject Premises as it then is with the right to payment by the conveying Party for liens or encumbrances of a definite or ascertainable amount. The conveying Party shall also provide to the other Party all documents necessary for extended title insurance coverage, including but not limited to utility letters. The Parties shall cooperate to secure extended title insurance coverage in an amount upon which the Parties shall mutually agree, at the conveying Party's expense.

6. Survey. The conveying Party, at its expense, at least five (5) days prior to the Closing shall provide the other Party with a current ALTA survey of the Subject Premises that it is conveying, prepared by an Illinois Registered Land Surveyor and certified to the other Party and the title insurer. In the event the conveyance is not closed for reasons other than breach by the conveying Party, the cost of such survey shall be paid by the other Party, and the other Party shall hold the conveying Party harmless and indemnified in regard to same.

7. District's First Option to Buy. Prior to the Library offering for sale (or accepting an offer to purchase) the property commonly known as 126 West Maple Street, Lombard, Illinois (the "126 Lot") and/or property commonly known as 130 West Maple Street, Lombard, Illinois (the "130 Lot"), or both,

the Library shall give the District the right to purchase either or both properties (together, the "Property") for The Appraised Value. The Appraised Value is the value as determined by the appraisers following the procedure described in this Paragraph 7. The Appraised Value is the appraisers' opinion or estimation of the price a willing buyer would pay in cash and a willing seller would accept when the buyer is not compelled to buy and the seller is not compelled to sell.

The Appraised Value shall be determined by two appraisers, one appointed and compensated solely by the District and the other appointed and compensated solely by the Library. The appraisers shall meet within thirty days of such appointment and shall attempt, within forty-five days of such appointment, to agree upon and give written notice of the Appraised Value of the 126 Lot, the 130 Lot or the Property. If such written notice is not given during such period, then at any time after such period either the District or the Library, by written notice to the appraisers, may demand that the appraisers designate a third appraiser. After the appointment of the third appraiser, the Appraised Value shall be the amount included in a written notice agreed upon by at least two of the three appraisers provided that, before agreeing to an Appraised Value, the third appraiser shall meet at least once with the other two appraisers to discuss in good faith the Appraised Value of the 126 Lot, the 130 Lot, or the Property. If two of the appraisers have not given a written notice within thirty days of the appointment of the third appraiser, the Appraised Value of the 126 Lot, the 130 Lot, or the Property shall be determined solely by the third appraiser who shall give written notice of such Appraised Value within thirty days of appointment.

In the event a third appraiser is necessary, the cost of a third appraiser shall be shared equally by the District and the Library.

In the event the District elects to purchase the 126 Lot, the 130 Lot, or the Property for the Appraised Value, the Library shall convey the Property to the District in accordance with standard DuPage County real estate transactions. The District's election to purchase shall be made within 30 days

of the Appraised Value determination. Closing shall be within 90 days of the Appraised Value determination.

In the event the District elects not to purchase the 126 Lot, the 130 Lot, or the Property or fails to make an election within 30 days of the Appraised Value determination, all rights of the District to purchase the 126 Lot, the 130 Lot or the Property under this Paragraph 7 cease whereupon the Library may market and sell the 126 Lot, the 130 Lot or the Property as the Library deems prudent.

In the event the Library proposes a long term lease rather than sale of the 126 Lot, the 130 Lot or the Property, the terms of this Paragraph 7 apply to valuation of the long term lease and the District's option with respect to such lease. A long term lease is a lease having a term of 10 years or longer.

8. Release and Indemnifications. Except as otherwise provided in Paragraph 10 of this Agreement, each Party shall take all necessary action and bear all expenses and liability associated with making the property that it acquires pursuant to this Agreement suitable for that Party's intended use and complying with all applicable law. Upon assumption of possession, each Party shall bear all responsibility, liability and obligation for the physical, environmental and structural condition of any property that it acquires pursuant to this Agreement and for any development, business or operations to be located or conducted on the property, including any obligations to tenants under existing leases. Each Party waives, generally releases and covenants not to sue or make any claim whatsoever against the other Party regarding the foregoing matters and all matters within the scope of the following indemnity commitment, including, but not limited to, any claim by or against the conveying Party by the other Party resulting from a third-party claim against such other Party due to the negligent or unlawful acts or omissions of the conveying Party.

Each Party shall, at its sole cost and expense, unconditionally indemnify, defend and hold the conveying Party harmless, from and against any loss, liability, damage (whether direct or consequential), claims (whether or not ultimately successful), penalties, fines, injunctions, suits, proceedings, disbursements or expenses (including without limitation, attorneys' and experts' fees and disbursements

and court costs) arising under any present or future local, state or federal law (and the amendments, regulations, orders or decrees promulgated thereunder) which may be incurred by or against such conveying Party which arise from or in any manner grow out of any accident or occurrence on or about the Subject Premises, or which result, directly or indirectly, from the condition of such property including, but not limited to, the presence and/or removal of asbestos, except to the extent a claim is made directly against the conveying Party and is determined by the courts of competent jurisdiction to arise directly from the unlawful acts or omissions of conveying Party prior to delivery of possession to the other Party. Each Party's waiver, obligations, indemnification or risk pursuant to this Paragraph 8, shall survive the Closing.

9. Remaining Property. Except as otherwise provided in this Agreement, the conveyances described in the preceding Paragraphs 2 and 3 shall not affect use or ownership of the remaining property owned by the Library and the District.

10. Construction of District Driveway. The Library shall, at its sole cost and expense, design and construct the District Driveway, which shall be no less than ten (10) feet wide at any point, including site preparation and a gate or other entry control point. Design and construction of the District Driveway and gate or other entry control point and the timing of the construction work shall be by agreement of the Library and the District. All work will be done in accordance with applicable standards, codes, and ordinances of the Village of Lombard. The design of improvements shall be reviewed and approved by the Village of Lombard prior to starting work.

11. Maintenance of Conveyed Property: Following the conveyances described in Paragraphs 2 and 3 above, each party shall, at its sole cost and expense, repair and maintain the property that it acquires pursuant to this Agreement.

12. Use of District Driveway. Following the conveyances of the District Driveway Property (Parcel A) and the New Library Property (Parcel B):

- (a) Both the Library and the District may use the District Driveway Property for access to their respective properties. Use is intended primarily for pick-ups and deliveries. Long term parking is not allowed. Both the Library and the District will have access via the gate or other entry control point.
- (b) Until such time as the Library needs or uses the New Library Property for purposes other than vehicular access (e.g., use by the Library in connection with Library construction), the District may use the New Library Property for vehicular access to the District's property.
- (c) At no time shall the District be without access to its property, i.e., at all times the District shall have access to its property via either the District Driveway Property or the New Library Property.

13. Cooperation. The Library and the District will adopt all ordinances and resolutions, and execute all documents, reasonably necessary to effectuate the terms of this Agreement.

14. Library Indemnification. The Library shall indemnify, save, defend and hold harmless the District, its Commissioners, officers, employees, agents and volunteers, from and against any and all claims for injury or property damage, including attorney's fees and court costs, arising from or related to the Library's use of the District Driveway, except to the extent arising from any willful or wanton act or omission of any of the indemnified parties.

15. District Indemnification. The District shall indemnify, save, defend and hold harmless the Library, its Trustees, officers, employees, agents and volunteers from and against any and all claims for injury or property damage including attorneys' fees and court costs arising from or related to the District's use of the District Driveway, except to the extent arising from any willful or wanton act or omission of any of the indemnified parties.

16. Miscellaneous.

- (a) This Agreement shall be binding upon and inure to the benefit of the Library and the District and their successors.
- (b) Neither Party may assign its rights or obligations under this Agreement without the express written consent of the other Party.
- (c) This Agreement represents the entire understanding and agreement between the Library and the District regarding the subject matter hereof. No amendment, waiver or modification of any term or condition of this Agreement shall be binding or effective for any purpose unless expressed in writing and adopted by each of the Parties.
- (d) If any paragraph, subparagraph, sentence, clause or phrase of this Agreement, except Paragraphs 2 and 3, is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this Agreement.

- (e) If performance of this Agreement is prevented, restricted, or interfered with by causes beyond either Party's reasonable control ("Force Majeure"), and if the Party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the Party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, wars, supplier failures, shortages, breach, or delays. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.
- (f) Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between the Library and the District with regard to the construction or maintenance of the District Driveway or for any other purpose.
- (g) At the option of the District, the District may, at its expense, record this Intergovernmental Agreement with the DuPage County Recorder.

IN WITNESS WHEREOF, the Library and the District have executed this Agreement on the dates stated below.

BOARD OF LIBRARY TRUSTEES
HELEN M. PLUM MEMORIAL LIBRARY

By: [Signature]
President

Attest: [Signature]
Secretary

Date Signed: Nov. 13, 2007

BOARD OF PARK COMMISSIONERS
LOMBARD PARK DISTRICT

By: [Signature]
President

Attest: [Signature]
Secretary

Date Signed: Dec 4, 2007

PARCEL A

(Transfer of Library property to Park District)

Those portions of Lots 1 and 2 in Mueller's Division, being a Subdivision of Lot 4, in Block 20 in the original Town of Lombard, in Section 7, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded December 1, 1959 as Document No. 949142, more particularly described as follows:

Beginning at the Southwest corner of Lot 1 in Mueller's Division aforesaid and running thence North 08°04'33" West along the West Property line of said Lot 1 a distance of 149.25 feet to the NorthWest corner of said Lot 1; thence South 89°02'09" East along the North line of said Lot 1 and the North line of said Lot 2 aforesaid a distance of 121.61 feet; thence along the arc of a curve to the right, whose radius is 10.00 feet, whose chord bears South 45°67'51" West, a chord distance of 14.14 feet for an arc distance of 15.71 feet; thence North 89°02'09" West along a line being 10.00 feet South of and parallel with the North lines of Lots 1 and 2 aforesaid, a distance of 73.42 feet; thence along the arc of a curve to the left, whose radius is 20.00 feet, whose chord bears South 41°26'39" West for a chord distance of 30.43 feet, for an arc distance of 35.47 feet; thence South 08°04'33" East along a line 13.00 feet East of and parallel with the West line of Lot 1 aforesaid, a distance of 115.44 feet to a point on the South line of said Lot 1; thence South 89°52'47" West along the South line of said Lot 1 a distance of 13.13 feet to the point of beginning, all in DuPage County, Illinois.

Contains 2,902.71 square feet, or 0.07 acres.

Property is an "L" shaped strip of property (driveway) running north from West Maple Street thence east toward the "Coachhouse."

PERMANENT PARCEL NUMBERS: 06-07-212-024 (130 West Maple Street)
06-07-212-029 (126 West Maple Street)
06-07-212-040 (110 West Maple Street)

PARCEL B

(Transfer of Park District property to Library)

That portion of Lot 1 in Lilacia Resubdivision, being a Resubdivision of part of Block 20 in the original Town of Lombard, and Lots 1 and 2 in Lombard and Peck's Subdivision, all in the NorthEast 1/4 of Section 7, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded December 29, 1999 as Document No. R1999-265299, more particularly described as follows:

Beginning at a SouthEasterly corner of Lot 1 in Lilacia Resubdivision aforesaid (said point also being the SouthWest corner of Lot 2 in said Lilacia Resubdivision) and running thence North 00 degrees, 22 minutes, 26 seconds East along the West line of Lot 2 aforesaid (also being an Easterly line of Lot 1 aforesaid) and its Northerly prolongation, a distance of 144.93 feet, thence North 89 degrees, 02 minutes, 09 seconds West a distance of 9.92 feet; thence South 00 degrees, 40 minutes, 34 seconds West along the East line of Lot 2 in Mueller's Division, being a Subdivision of Lot 4, in Block 20 in the original Town of Lombard, in Section 7, Township 39 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded December 1, 1959 as Document No. 949142, a distance of 145.12 feet; thence South 89 degrees, 52 minutes, 47 seconds West along a South line of Lot 1 in Lilacia Resubdivision aforesaid a distance of 10.69 feet to the point of beginning, all in DuPage County, Illinois.

Contains 1,494.70 square feet, or 0.03 acres.

Property is a strip approximately 10' wide (driveway) running north from West Maple Street toward the "Coachouse."

PERMANENT PARCEL NUMBERS: 06-07-212-033
06-07-212-034