ORDINANCE 5690

PAMPHLET

AN ORDINANCE APPROVING A FORTY (40) YEAR LEASE AGREEMENT WITH METRA FOR COMMUTER PARKING

115 EAST ST. CHARLES ROAD

PUBLISHED IN PAMPHLET FORM THIS 25th DAY OF July, 2005
BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS.

Brigitte O'Brien
Village Clerk

ORDINANCE 5690

AN ORDINANCE APPROVING A FORTY (40) YEAR LEASE AGREEMENT WITH METRA FOR COMMUTER PARKING WITHIN THE PARKING LOT LOCATED AT 115 EAST ST. CHARLES ROAD, LOMBARD, ILLINOIS

WHEREAS, the Village of Lombard is the owner of certain real estate (hereinafter the "Subject Property"), as more fully described in the Lease Agreement attached hereto as Exhibit A and made a part hereof (hereinafter the "Lease Agreement") and the Notice attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the Subject Property has been developed by the Village as a parking lot; and

WHEREAS, Metra desires to lease the Subject Property for commuter parking purposes for a period of forty (40) years, subject to the terms and conditions as set forth in the Lease Agreement; and

WHEREAS, the Village has published a Notice of its intent to adopt this Ordinance approving the Lease Agreement in the Lombard Spectator on Wednesday June 29, 2005, a copy of said Notice being attached hereto as Exhibit B; and

WHEREAS, it is in the best interests of the Village of Lombard to enter into said Lease Agreement with Metra;

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

SECTION 1: That the Lease Agreement attached hereto as Exhibit A is hereby approved.

SECTION 2: That the Village President and Village Clerk are hereby authorized and directed to execute the Lease Agreement attached hereto as Exhibit A, on behalf of the Village,

and to execute any and all additional documents as may be necessary to carry out the terms and conditions of said Lease Agreement.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, pursuant to a three-fourths (3/4ths) vote of the Corporate Authorities as required by 65 ILCS 5/11-76-1, and approval as provided by law.

Passed on first reading this _____ day of _____, 2005.

First reading waived by action of the Board of Trustees this 21st day of July, 2005.

Passed on second reading this 21st day of July, 2005, pursuant to a roll call vote as follows:

AYES: President Mueller, Trustees Gron, Tross, O'Brien, Sebby, Florey and Soderstrom

NAYS: None

ABSENT: None

APPROVED by me this 21st day of July, 2005.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

EXHIBIT "A"

LEASE AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of this 21st day of July 2005, by and between the **Commuter Rail Division of the Regional Transportation Authority**, a division of an Illinois municipal corporation having an office at 547 West Jackson Boulevard, Chicago, Illinois 60661 (**"Lessee"**) and the **Village of Lombard**, an Illinois municipal corporation (**"Lessor"**). Lessor and Lessee are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "**Parties.**"

RECITALS

A. Lessor owns an at grade parking lot, which currently covers three (3) individual parcels, identified by permanent index numbers 06-08-110-002, 06-08-109-002 and 06-08-108-011, situated at 115 E. St Charles Rd, Lombard, Illinois, as delineated on Exhibit "A" attached to and made a part of this Agreement (**"Premises"**).

B. Lessor desires to lease the improved at grade parking lot located on the Premises (**"Facility"**) to Lessee, and Lessee desires to lease the Facility from Lessor, for the purpose of providing daily fee commuter parking for the nearby commuter train station.

C. The Parties agree that at least one hundred eight (108) parking spaces will be provided on the Premises for commuter parking during the term of this Agreement.

D. The Parties agree that the Lessor will provide for the improvements, operation and maintenance of the Facility in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement, the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, Lessee does hereby agree to lease from Lessor and Lessor does likewise agree to lease to Lessee the Facility subject to and in accordance with the following terms covenants and conditions:

1.**TERM.** Lessee's lease of the Facility shall commence on Aug. 1, 2005 and shall continue in full force and effect for a period of forty (40) years, unless sooner terminated as herein provided ("Lease Term"). Lessee shall have the option to renew the Lease Term for an additional forty (40) years (hereinafter individually referred to as a "Renewal Term") by giving Lessor notice of its intention to renew at least ninety (90) days prior to the commencement of the Renewal Term. In the event this Lease is renewed as set forth above then all references to the Lease Term as set forth hereinafter shall include the Renewal Term. Furthermore, Lessor shall have the option to increase the amount of the annual Rent for the Renewal Term by sending Lessee written notice of its intention to increase said Rent at least sixty (60) days prior to the commencement of the Renewal

Term; provided, however, that any increase in such annual rent shall be limited to the percentage increase, if any, in the Consumer Price Index during the Lease Term.

2. **RENT- ONE-TIME LUMP SUM RENTAL PAYMENT.** The annual rental under this Lease shall be Seven Thousand Three Hundred Ninety Eight and No/100 Dollars ($7,398.00) ("Rent"). Lessee shall pay the annual rental for the entire forty (40) year Lease Term in one lump sum, in the amount of Two Hundred Ninety Five Thousand Nine Hundred Twenty and No/100 Dollars ($295,920.00) upon the execution of this Agreement and adoption of any municipal ordinance required under Illinois Law.

3. **LEASED ACTIVITIES.** Lessor hereby grants to Lessee, its successors and assigns, for the benefit of Lessee and the general public, an irrevocable right-of-entry to use the Facility and any adjoining property owned by Lessor necessary to provide normal and reasonable means of access to the Facility for the provision and use of commuter parking services for the Lease Term. Lessor further agrees that Lessor and Lessor's employees and invitees in and about said Facility shall be subject to the general rules and regulations of Lessee relating to the said commuter parking facilities and to Lessee's railroad operations. Lessee reserves the nonexclusive right to regulate and control the people who enter said Facility and their conduct, and Lessee reserves the right to enter upon said Facility at any time and from time to time to eject therefrom any disorderly person or persons. Nothing set forth in the preceding sentence or elsewhere in this Agreement shall expand any liability Lessee might have for injury to persons or property occurring on the Facility.

Lessor shall use its best efforts to insure that the Facility is available to both residents of Lessor and nonresidents for parking. Parking lot fees, if any, set and collected by Lessor, shall be standardized for all patrons of the Facility, and Lessor shall under no circumstances discriminate against nonresidents of the Lessor in setting parking fees. The Facility shall be operated as a daily fee parking lot with spaces available on a first come-first serve basis. Anything set forth above which is or appears to be to the contrary notwithstanding, the amounts of any parking fees from time to time charged by Lessor with respect to the Facility shall not exceed the commuter parking rates established by Lessee from time to time for similar commuter parking lots. Metra reserves the right to review and approve the amount(s) of parking fees charged by Lessor, including any increases established from time to time. Lessor shall be entitled to keep all parking fees collected relative to the Facility; provided that such fees are retained by Lessor, are segregated from its general operating funds, and are disbursed for purposes of the repair and maintenance of the Facility as described in Paragraph 12 hereof.

4. **TAXES.** Lessor represents that the property is currently tax exempt from real property taxes. During the term of this Agreement, Lessee shall pay all real estate taxes which may become due or which may be assessed against said Facility or Lessee or in any manner arise from any activities conducted on the Facility by Lessee ("Charges"); provided, however, Lessee may contest or otherwise appeal any assessed taxes upon the Facility. In such event, Lessee shall indemnify, defend and hold Lessor

harmless from any loss, costs, expenses or damages in connection therewith.

5. **LESSOR'S TITLE.**

(a) Nothing herein contained shall empower Lessee to do any act that shall cloud or encumber Lessor's title to the Premises.

(b) Lessee accepts the Facility subject to all lawful existing liens or encumbrances and superior rights, if any, in and to the Premises.

6. **RESERVED RIGHTS.** Lessor reserves the following rights upon giving Lessee prior reasonable notice of such; provided, however, that no notice shall be necessary if, in Lessor's sole opinion, an emergency situation exists: (a) to enter upon the or any part thereof at reasonable hours to make inspections, repairs or alternations to the Facility or Lessor's adjoining property; (b) to perform any acts related to the safety, protection, preservation, sale or improvement of the Premises; or (c) to enter upon said Facility at any time to eject therefrom any disorderly person or persons. The exercise of any reserved right by Lessor shall never be deemed an eviction or disturbance of Lessee's use and possession of the Facility nor render Lessor liable in any manner to Lessee or to any other person.

7. **WAIVER OF CLAIMS.** All property or improvements on or about the Premises belonging to Lessor or any other occupant of the Premises shall be there at the risk of Lessor or other occupant only and Lessee shall not be liable for damage thereto or theft or misappropriation thereof.

8. **LIENS AND ASSIGNMENTS.** Lessee agrees not to suffer or permit any lien of mechanics or materialmen to be placed against the Premises; provided, however, in the event any mechanics or materialmen lien is filed against the Premises, Lessee may contest the filing thereof; provided, further, that Lessee obtains title or other insurance protecting the interests of Lessor.

9. **CONDITION OF THE PREMISES.** Except for any Lessor improvements not completed and accepted by Lessee as of the date hereof, Lessee has examined and inspected the Facility and knows the condition of said Facility and acknowledges that no representations as to the condition and repair thereof have been made by Lessor, its agents or employees prior to or at the execution of this Agreement that are not expressed in this Agreement.

10. **IMPROVEMENTS AND ALTERATIONS.** Lessee shall not make any alterations or additions to the Facility without Lessor's prior written consent in the form of a building permit. Such consent or denial shall not be unreasonably withheld. Lessee shall pay the cost of all such further improvements, installations, alternations and additions, if permitted by Lessor, and the expense of the maintenance and operation thereof.

11. **LESSOR'S USE OF PREMISES.** The Parties agree that the Facility shall be used as a daily fee commuter parking facility and that the Lessor shall at all times provide Metra and the general public with a means of access to and from the Facility. The Lessor reserves the right to use the Facility for general downtown parking during the weekday evening hours after 6:00 p.m. to 4:00 a.m. CST, weekends and holidays, except those "special event" holidays set forth on Exhibit A attached to and made a part of this Agreement ("Event Days") which shall be specifically included in Lessee's leasehold. The Lessor further reserves the right to operate a "French Market" on the Premises on weekends, but for no other use without the Lessee's consent. In the event of Lessor's operation of a French Market during one or more Event Days, Lessor may reserve parking stall nos. 37 to 63, as illustrated on Exhibit B attached to and made a part of this Agreement, for the operation of the French Market by providing Lessee with exclusive use of an equivalent number of parking stalls in the parking lot identified and delineated on Exhibit C attached to and made a part of this Agreement. For purposes hereof, Lessor's use of the Premises and Facility as a French Market may include: the retail sale of bakery goods, produce, seasonal crafts and soft drinks (the sale of alcoholic beverages shall be prohibited).

12. **REPAIRS AND MAINTENANCE.** During the Lease Term, Lessor shall, at Lessor's sole cost and expense, keep the Facility, or cause the Facility to be kept, in good order, condition and repair. Maintenance shall include, but shall not be limited to, snow removal, insurance, lighting upkeep, sealing and patching pavement so that it is without potholes, patrolling the Facility to provide security and payment of utility expenses associated with the operation of the Improvements. If Lessor does not make repairs, or cause the repairs to be made, promptly and adequately after ninety (90) days prior written notice of the disrepair of the Facility, Lessee may, but shall not be required to, make such repairs, and Lessor shall promptly pay Lessee the reasonable cost thereof, including overtime and other expenses, all without any liability to Lessee by reason of interference, inconvenience or annoyance. Lessee shall not be liable to Lessor for any expense, injury, loss or damage resulting to Lessor from work done in, upon or along the Facility or from Lessee's use of any adjacent or nearby land or rights-of-way.

13. **INSURANCE AND INDEMNIFICATION.** (a) Lessor, at its own cost and expense, shall obtain and keep in full force and effect during the Lease Term by either purchasing insurance or self-insuring (i) Broad Form Comprehensive General Liability Insurance with a combined single limit of liability of not less than $2,500,000 per occurrence; (ii) Property and Casualty Coverage for the full replacement cost of the Improvements; (iii) Workmen's Compensation insurance in the amount of $500,000 or the minimum statutory amount, if greater; (iv) Automobile Liability Insurance in the amount of $1,000,000.00 per occurrence; and (v) in the event of Lessor's operation of the Facility as a "French market," Product Liability Coverage with a combined single limit of liability of not less than $2,000,000.00 per occurrence. Said Product Liability Coverage, if required, can be supplied either directly by Lessor, or by naming the Lessee

as an additional insured on the Product Liability Coverage being supplied by the entity operating the French Market, if other than the Lessor. In the event Lessor engages in any construction or renovation activities at the Facility, Lessor shall also maintain (vi) Railroad Protective Liability Coverage; and (vii) Builders Risk Coverage in such amounts and form reasonably approved by Lessee. Lessee reserves the right to increase the insurance coverage requirements described herein from time to time, as Lessee, in its reasonable discretion shall require. Each policy of insurance shall name Lessee, NIRCRC, and the RTA as an additional named insured and provide that Lessee shall be given written notice of any modification or cancellation of such policies at least thirty (30) days in advance of such cancellation or modification. Lessor's contractors shall not be allowed to self- insure the required coverages. Lessor's failure to obtain or to cause its contractors to obtain proper insurance coverage or to insure Lessee as an additional insured shall not, at any time, operate as a waiver to Lessee's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement.

(b) To the fullest extent permitted by law, Lessor and its successors and assigns (hereinafter the "Indemnitors") hereby assume and agree to release, acquit and waive any rights against and forever discharge Lessee, the Northeast Illinois Regional Commuter Rail Corporation ("NIRCRC"), the Regional Transportation Authority ("RTA") and their respective shareholders, directors, officers, employees, and all those acting on their behalf or with their authority (hereinafter the "Indemnitees") from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, and on account of damage to or destruction of property, arising from any accident or incident which may occur to or be incurred by the Indemnitor, its employees, officers, agents and all other persons acting on its behalf while on the Facility except to the extent caused by the negligent or intentional acts or omissions of the Indemnitees. Notwithstanding anything in this Agreement to the contrary, the waivers contained in this paragraph shall survive termination of this Agreement.

(c) To the fullest extent permitted by law, the Lessor agrees to further indemnify, defend and hold harmless the Indemnitees from and against any and all liabilities, losses, damages, costs, payments and expenses of every kind and nature (including court costs and attorneys' fees) claims, demands, actions, suits, proceedings, judgments or settlements, arising out of or in any way relating to or occurring in connection with the use of or activities on or about the Facility by Lessor, its employees and all those acting on Lessor's behalf or with Lessor's authority or permission, except to the extent caused by the negligent or intentional acts or omissions of the Indemnitees.

(d) Lessee agrees to indemnify, defend and hold harmless the Lessor and its officers, agents and employees, from and against any and all liabilities, losses, damages, costs, payments and expenses of every kind and nature (including court costs and attorneys fees), claims, demands, actions, suits, proceedings, judgments or settlements arising out of or in any way relating to or occurring in connection with the activities of Lessee's employees, agents, or contractors on or about the Facility as provided under

Paragraphs 3 and 12 of this Lease Agreement, except to the extent caused by the negligent or intentional acts or omissions of the Lessor, its employees, contractors, agents or any invitees.

(e) The Indemnification and hold harmless provisions set forth in this Agreement shall survive termination of this Agreement.

14. REMEDIES. All rights and remedies of Lessor herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law.

(a) If Lessee defaults in the payment of Rent and fails to cure such default within ten (10) days after the date Rent is due or if Lessee defaults in the prompt and full performance of any other provision of this Agreement and such default continues and is not cured to the reasonable satisfaction of Lessor within thirty (30) days following written notice of default, (provided, that if the Lessee has commenced to cure a non-monetary default within the thirty (30) day cure period and is diligently pursuing same, said cure period shall be extended for such period of time as it is reasonably necessary to effectuate said cure) at Lessor's sole option, this Agreement and Lessee's lease of the Facility shall automatically cease and terminate without further action of or notice by Lessor.

In the event of the default by Lessee as described under this Paragraph 14 (a), Lessor shall be entitled to proceed at law or equity; provided, however, in no event shall Lessor's damages exceed the actual damages incurred by Lessor.

(b) No waiver of any obligation or default of Lessee shall be implied from omission by Lessor to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extend therein stated.

(c) Upon any termination of this Agreement, whether by lapse of time or otherwise, or upon any termination of Lessee's right to possession without termination of this Agreement, Lessee shall surrender possession and vacate the Facility immediately and deliver possession thereof to Lessor in as good or better condition, subject to the maintenance obligations of Lessor under Paragraph 12 hereof, than that which existed prior to the commencement of the Lease Terms on or Lessee's use of the Facility. If Lessee does not remove Lessee's improvements and other personal property of any kinds from the Facility prior to the end of the Agreement Term, Lessor may remove all such improvements and personal property at Lessee's sole cost and expense or, at Lessor's option, Lessee shall be conclusively presumed to have conveyed the same to Lessor under this Agreement as if by a bill of sale without further payment or credit by Lessor to Lessee. Lessee hereby grants to Lessor full and free license to enter the Facility in such event, with or without process of law, and to repossess the Facility and to remove Lessee and any others who may be within the Facility. Lessor may remove any and all property from the Facility using such force as may be necessary without being deemed guilty of

trespass, eviction or forcible entry or detainer, and without relinquishing Lessor's rights to Rent or any other right given to Lessor herein under or by operation of law. Lessee shall pay Lessor as liquidated damages and not as a penalty for forfeiture, at a rate of two times the amount of the Rent per month for each month that Lessee retains possession of the Facility or any part thereof after the termination of Lessee's Agreement of the Facility or this Agreement whether by lapse of time or otherwise as provided for in this Agreement.

Possession of the Facility shall include, without limitation, continued placement of materials, signs, debris or other articles or property owned or permitted by Lessee to be placed on or about the Facility. No termination of this Agreement shall release the Lessee from any liability or obligation that accrued under the terms of this Agreement prior to said termination.

15. NOTICES. All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid, hand delivered or sent by facsimile transmission with proof of successful transmission sent within twenty-four (24) hours of said transmission by Lessor or Lessee at the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing.

(a) Notices to Lessee shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate & Contract Management
Phone: (3 12) 322-8005
Fax: (3 12) 322-7098

(b) Notices to Lessor shall be sent to:

Village of Lombard
255 E. Wilson Avenue
Lombard, Illinois 60148
Attn: Director of Community Development
Phone: (630) 620-5756
Fax: (630) 629-2374

Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of delivery if hand delivered or on the first business day after successful transmission if sent by facsimile transmission.

16. **TERMINATION**. Lessor may terminate this Agreement and the tenancy hereby created at any time by giving Lessee sixty (60) days prior written notice of Lessor's intention to so terminate. In the event Lessor terminates this Agreement prior to the expiration of the Lease Term, then, in that event, any prepaid Rent paid to the Lessor shall be refunded to Lessee on a prorata basis. No termination of this Lease Agreement shall release the Parties from any liability or obligation that accrued prior to said termination. Lessee may terminate this Agreement by providing Lessor with sixty (60) days prior written notice of Lessee's intention to so terminate. If the Lessee initiates the termination of the Lease Agreement then the Lessee shall forfeit any remaining portion of the prepaid Rent.

17. **GENERAL**. This Agreement and the rights and obligations accruing hereunder are binding upon the respective heirs, legal representatives, successors and assigns of Lessor and Lessee. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day. This Agreement shall be governed by the internal laws of the State of Illinois. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any exhibit hereto, the terms set forth in such exhibit shall govern and control.

18. **ENTIRE AGREEMENT**. It is expressly agreed by and between the Parties hereto that all of the agreements, terms and covenants contained in this Agreement are the only and incorporate all agreements entered into between the Parties affecting the Premises. No modification, waiver or amendment of this Agreement, or any of its terms, shall be binding upon Lessor or Lessee unless it is in writing, dated subsequent to the date of this Agreement and signed by a duly authorized officer(s) of the Party to be charged. The Lessee expressly acknowledges that Lessor has made no agreements affecting the Premises except those as are expressed herein.

Signature Page Follows

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

LESSEE:
THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORTIY:

By: _____
Philip A. Pagano, Executive Director

ATTEST:

By: _____
Assistant Secretary

LESSOR:
THE VILLAGE OF LOMBARD

By: _____
William J. Mueller, Village President

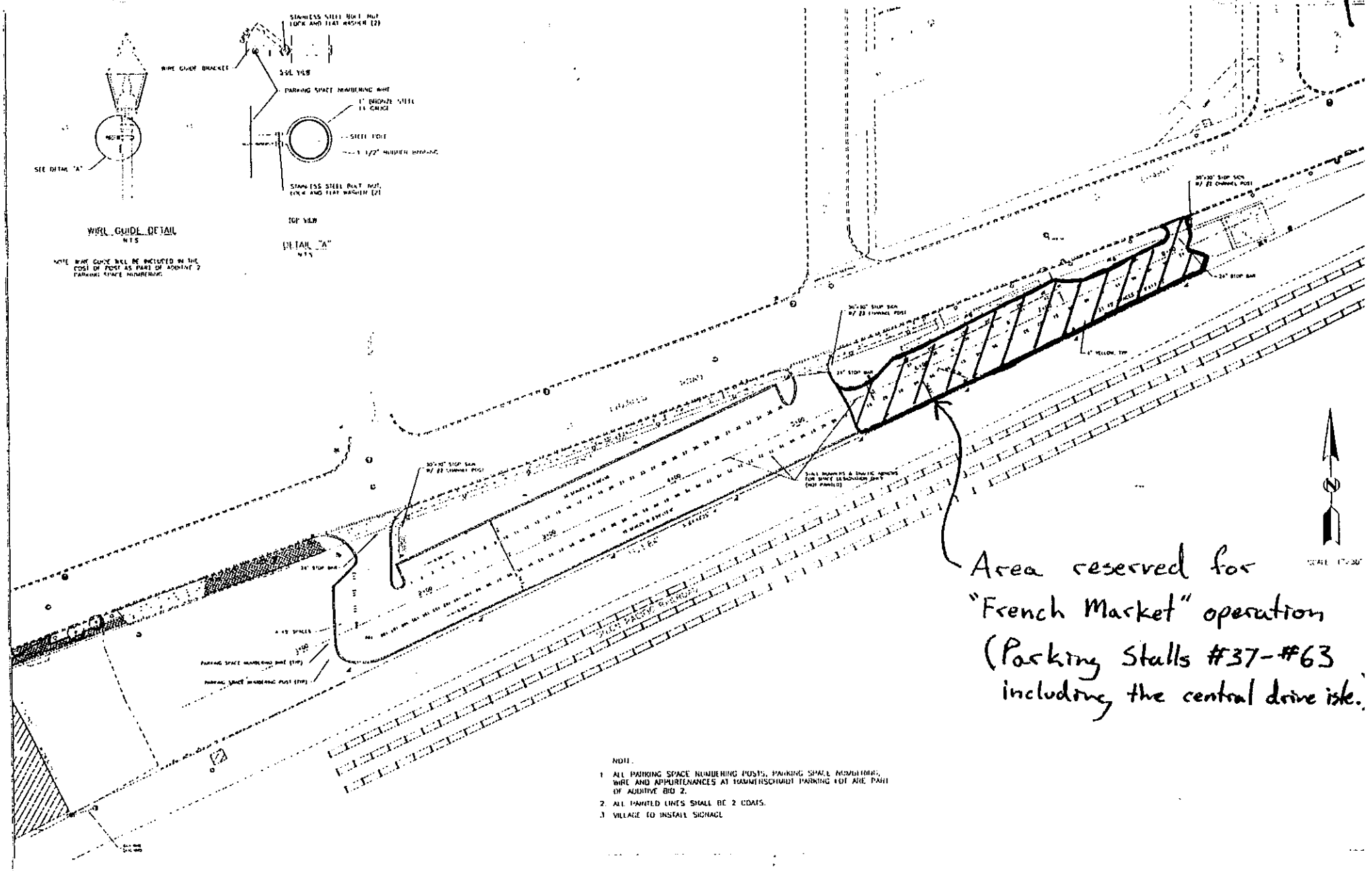
ATTEST:

By: _____
Village Clerk

EXHIBIT A

EVENT DAYS

1. Chicago St. Patrick's Day Parade
2. Chicago Blues Festival
3. The Taste of Chicago
4. Chicago July 3rd Fireworks
5. Chicago Venetian Night
6. Chicago Air and Water Show
7. Chicago Jazz Festival



NOTE:

1. ALL PARKING SPACE NUMBERING POSTS, PARKING SPACE NUMBERING WIRE AND APPURTENANCES AT HAMMERSCHMIDT PARKING LOT ARE PART OF ADDITIVE BID 2.
2. ALL PAINTED LINES SHALL BE 2 COATS.
3. VILLAGE TO INSTALL SIGNAGE

NO	DATE	REVISION	BY
1	7/15/04	8'-0" PARKING STALLS PER VILLAGE	

NO	DATE	REVISION	BY

SCALE: 1"=30'
DRAWN BY: DD DATE: 12/04/03
CHECKED BY: KB DATE: 12/04/03
APPROVED BY: SW DATE: 12/04/03

Village of Lombard
Department of Public Works
PHONE (630) 620-5740 FAX (630) 620-5883

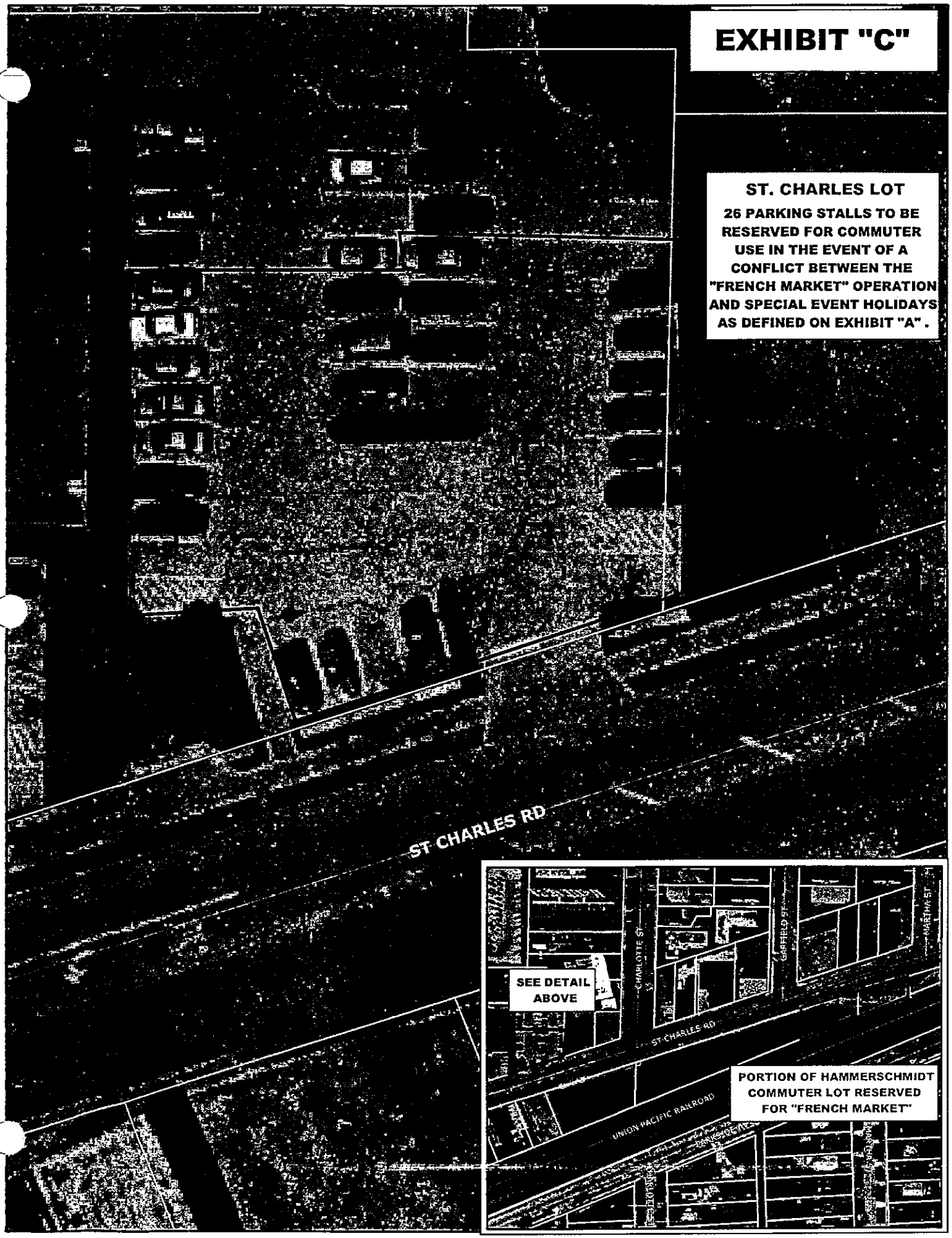
PROJECT:

TITLE: SIGNING PLAN

PROJ. NO: 23120
SHEET 7 OF 11
FILE: 23120I/PARKING.DWG

EXHIBIT B

EXHIBIT "C"

ST. CHARLES LOT

26 PARKING STALLS TO BE RESERVED FOR COMMUTER USE IN THE EVENT OF A CONFLICT BETWEEN THE "FRENCH MARKET" OPERATION AND SPECIAL EVENT HOLIDAYS AS DEFINED ON EXHIBIT "A" .