

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village Council Meeting**  
**8/3/2021**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
Grant of Easement over Village Property to Commonwealth Edison	Andy Sikich Public Works Director

**SYNOPSIS**

A resolution has been prepared to approve the granting of an easement to Commonwealth Edison over the Fairview Train Station parking lot (Lot I) property located on Fredenhagen Place, to facilitate electrical service to 5117 Fairview Avenue.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2019-2021 include *Top Quality Infrastructure*.

**FISCAL IMPACT**

N/A

**RECOMMENDATION**

Approval on the August 3, 2021 Consent Agenda.

**BACKGROUND**

In order to serve the new apartment building at 5117 Fairview Ave, Commonwealth Edison Company (ComEd) has requested a 10-foot wide, permanent, non-exclusive easement over the western property line of the Village owned property at the Fairview Avenue Train Station Parking Lot (Lot I) located on Fredenhagen Place. A location map is attached. ComEd has existing facilities on the neighboring property within a 7' easement immediately adjacent to the proposed easement, but needs to enter onto (over) Village Property to provide the new overhead service line to the apartment building.

**ATTACHMENTS**

Resolution  
Easement  
Letter of Assurance  
Location Map

## RESOLUTION NO. \_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION  
OF AN EASEMENT AGREEMENT WITH  
COMMONWEALTH EDISON COMPANY,  
AN ILLINOIS CORPORATION  
FOR ACCESS AND UTILITY PURPOSES**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Easement Agreement (the "Agreement"), between the Village of Downers Grove (the "Grantor") and Commonwealth Edison Company (the "Grantee"), for access and utility purposes upon vacant property (PIN: 09-09-300-015) located on Fredenhagen Place, Downers Grove, IL 60515, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

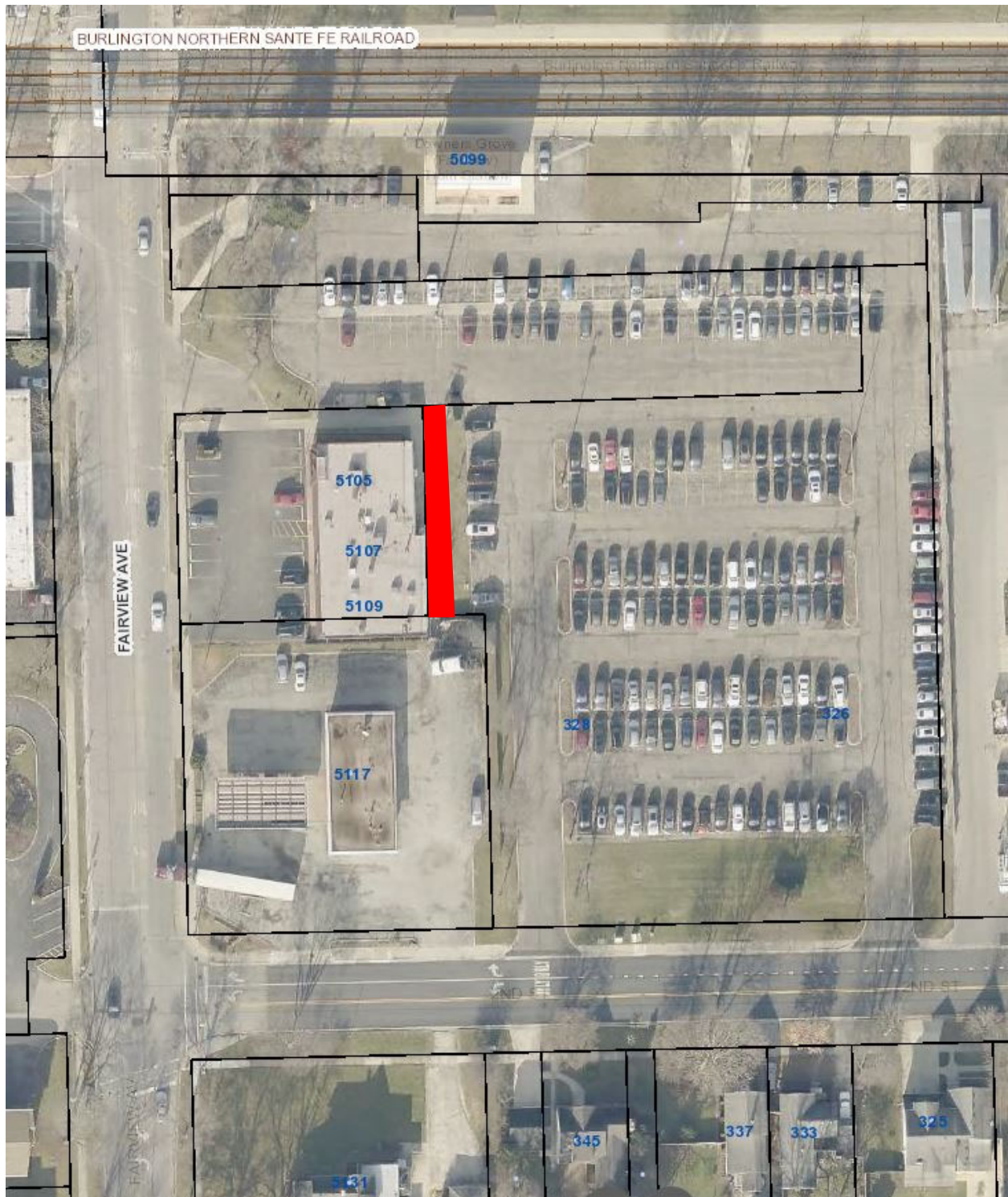
5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

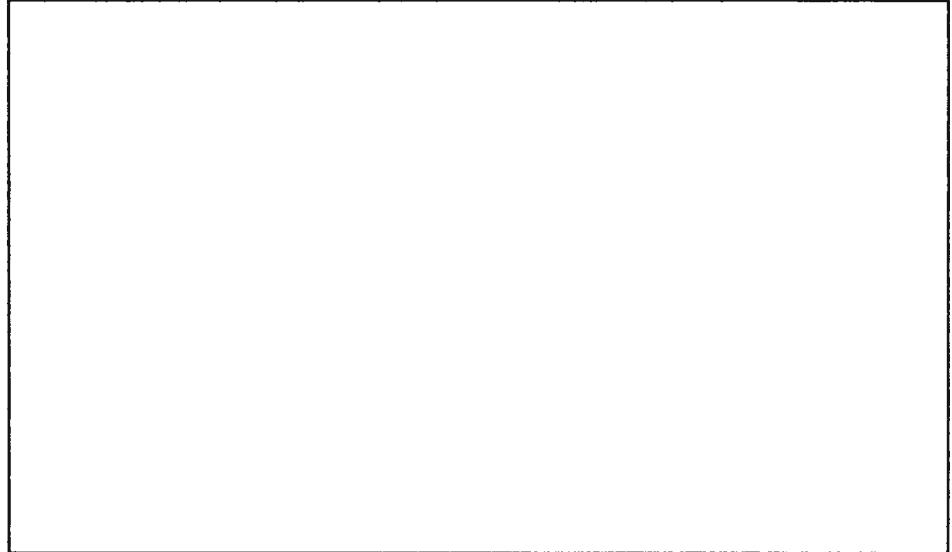
Village Clerk



Location of Proposed ComEd Easement

**EASEMENT AGREEMENT  
WITH COMMONWEALTH  
EDISON COMPANY, AN  
ILLINOIS CORPORATION  
FOR ACCESS AND  
UTILITY PURPOSES  
("AGREEMENT")**

PIN: 09-09-300-015  
Address: Fredenhagen Place  
Downers Grove, IL 60515



FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned GRANTOR, VILLAGE OF DOWNERS GROVE (the "VILLAGE"), an Illinois municipal corporation, in the County of DuPage and State of Illinois, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, grants, warrants and conveys to the GRANTEE, COMMONWEALTH EDISON COMPANY, an Illinois corporation, and its licensees, successors and assigns, a perpetual non-exclusive ten (10) foot wide easement and privilege in, over, across, along and upon the surface of the property for aerial overhang only, being five (5) feet from each side of the centerline of the Grantees electrical facilities as installed approximately along the path depicted on the Exhibit B, upon the property of the Grantor legally described on the Exhibit A, both Exhibits attached hereto and made a part hereof, with the right to construct, operate, repair, maintain, modify, reconstruct, replace, supplement, relocate and remove from time to time, wires for aerial overhang in connection with overhead transmission and distribution of electricity, communications, sounds and signals, together with right of access to the same and the right, from time to time to trim or remove trees, bushes and saplings and to clear obstructions from the surface and subsurface as may be reasonably required from the easement

upon that certain real property described as PIN: 09-09-300-015 and the common address of Fredenhagen Place, Downers Grove, IL 60515.

The facilities shall be subject to applicable laws, ordinances, rates and tariffs and shall not interfere with the proper operation of any Village utility or use and with any other previous easements granted to other entities. GRANTEE(S) agree to restore all property, including but not limited to landscaping and/or blacktop, disturbed by its activities in use of the easement to the condition existing prior to the disturbance or better. There shall be no fencing placed around this easement area.

Notwithstanding anything to the contrary herein, it is understood that the GRANTOR(S) hereby reserves the right to utilize the property which is the subject of the easement so long as it meets zoning requirements and does not unreasonably interfere with easement rights granted hereunder which use shall specifically include but not be limited to the right to ingress and egress over, upon and through the property.

This easement and all the terms, conditions, rights and obligations contained herein shall run with the land and the covenants and agreements herein contained shall be binding upon the parties hereto, their respective GRANTEES, lessees, GRANTORS, successors, assigns and all subsequent owners of the fee title to the real estate described above by parcel number and common address.

Any mortgage, deed of trust, or ground lease granted or entered into with respect to the real estate which is the subject of this easement from and after the date of this grant of easement shall be subordinate and inferior to the easements, rights, benefits and obligations created hereby, and the foreclosure under any such mortgage or deed of trust shall not extinguish or impair the easements, right, benefits, and obligations created by this grant of easement.

## GENERAL TERMS

1. The persons executing this Agreement for and on behalf of the respective parties represent and warrant that they have the full power and authority to execute this Agreement and to bind the respective parties to all the terms conditions and covenants contained herein and that their authority has been granted and approved by the appropriate authority;
2. The provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties, their legal representatives, successors and assigns, and shall run with the title of Property;
3. In case one or more of the provisions contained in this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein;
4. This Agreement shall be recorded and filed by the VILLAGE with the DuPage County Recorder of Deeds, at the GRANTEE's expense;
5. The VILLAGE shall send a recorded copy of this Agreement to GRANTEE (to the attention of GRANTEE'S Director of Real Estate) at the address for GRANTEE referenced in GRANTEE's signature block below;
6. An associated Letter of Assurance to be filed with the VILLAGE'S Clerk; and
7. Illinois law shall govern this Agreement in its performance and interpretation. Venue shall be the County of DuPage.

[The remainder of this page intentionally left blank.]

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date herein written below.

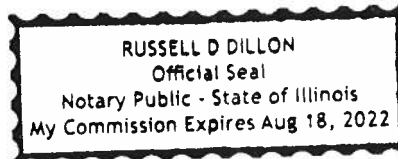
JULY 21, 2021  
Date

**GRANTEE (Commonwealth Edison Company, 3 Lincoln Centre, 4<sup>th</sup> Floor, Oakbrook Terrace, IL 60181):**

**COMMONWEALTH EDISON COMPANY,**  
an Illinois corporation

By: Mark Primm  
Name: Mark Primm  
Its: Director of Real Estate

Subscribed and sworn to this 21<sup>st</sup> day of  
JULY, 2021



Russell D Dillon  
Notary Public

**GRANTOR:**  
**VILLAGE OF DOWNERS GROVE**

David Fieldman, Village Manager

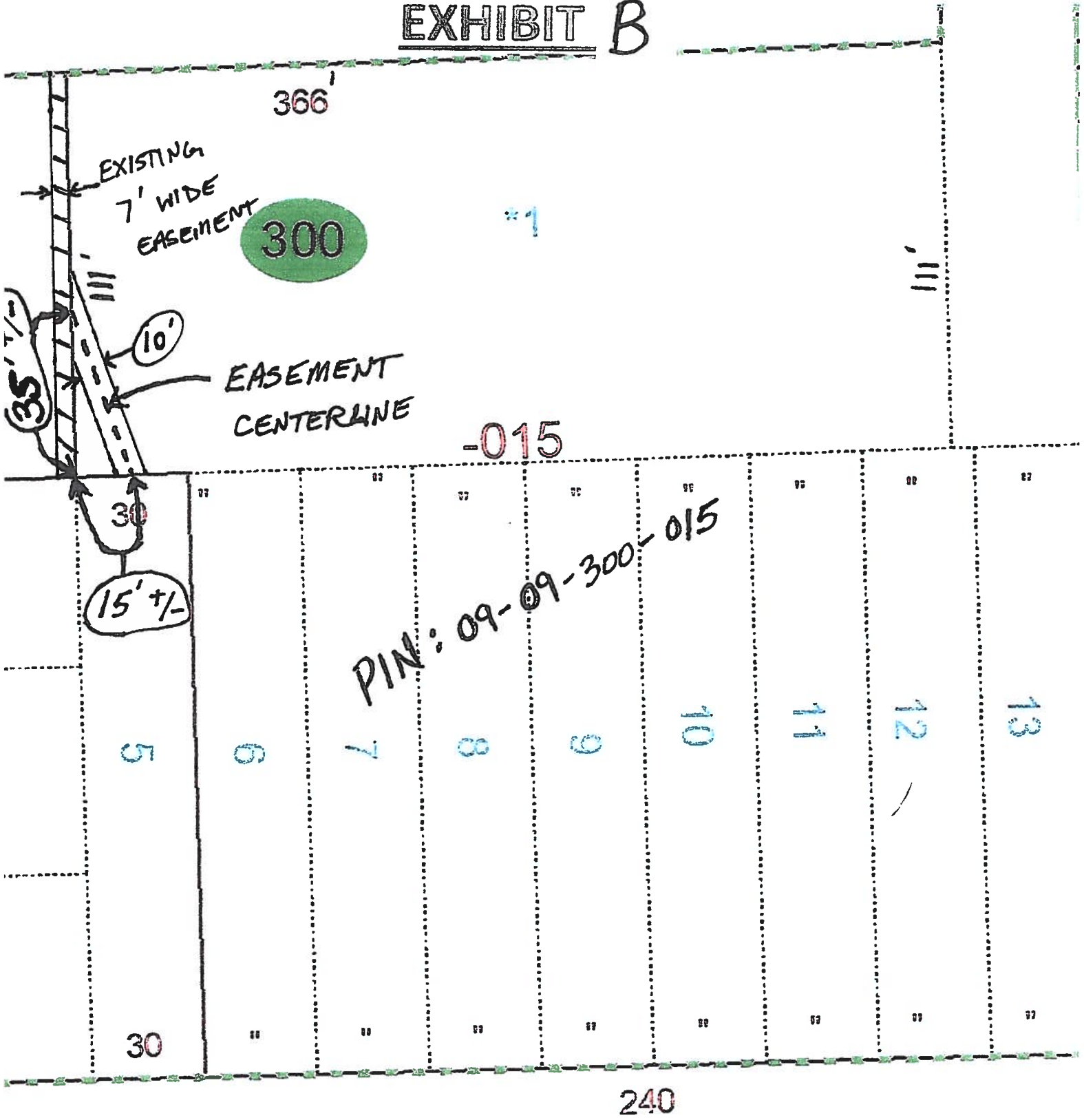
Attest: \_\_\_\_\_  
Village Clerk

Return to:  
Village Clerk  
Village of Downers Grove  
801 Burlington Ave.  
Downers Grove, IL 60515

**Exhibit A**

THAT PART OF LOT 1 LYING SOUTH OF FREDENHAGEN PLACE AND WEST OF RUDKIN ROAD AND LOTS 6, 7, 8 AND 9 (EXCEPT THE EAST 18 FEET OF SAID LOT 9) ALL IN BLOCK 2 IN THE RESUBDIVISION OF BLOCKS 2 TO 16 INCLUSIVE, IN VICTOR FREDENHAGEN JR'S SUBDIVISION AT EAST GROVE, BEING A SUBDIVISION IN THE WEST HALF OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED SEPTEMBER 8, 1886 AS DOCUMENT 36375, IN DUPAGE COUNTY, ILLINOIS.

# EXHIBIT B



## LEGEND

- - - = EASEMENT CENTERLINE
- [Hatched Box] = EXISTING 7' WIDE EASEMENT



(Not to Scale)



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Commonwealth Edison Company  
Real Estate and Facilities  
3 Lincoln Center – 4th Floor  
Oakbrook Terrace, IL 60181

July 21, 2021

**VIA E-MAIL**

Village of Downers Grove  
David Fieldman, Village Manager  
801 Burlington Ave.  
Downers Grove, IL 60515

Re: Fredenhagen Place, Downers Grove, IL 60515 PIN: 09-09-300-015  
("Grantor's Property")  
Letter of Assurance

Dear Mr. Fieldman:

In consideration of a grant of easement ("Easement") granted by the Village of Downers Grove, as Grantor, to Commonwealth Edison Company, an Illinois corporation, as Grantee ("ComEd"), for the purpose of wires for aerial overhang in connection with overhead transmission and distribution of electricity, communications, sounds and signals, Grantee hereby agrees to provide this Letter of Assurance. Enclosed for your referenced is an unsigned copy of the final form Easement.

Only to the extent permitted under applicable law, and as limited in (i), (ii), and/or (iii) below, Grantee hereby agrees to indemnify and hold Grantor harmless from any and all claims, actions, liabilities or causes of action that may be incurred by Grantor as a result of bodily injury, death or property damage arising from the negligent or willful misconduct by Grantee or any of its agents, contractors, employees and invitees, pertaining to the use of the Easement. Notwithstanding the foregoing, in no event shall any liability extend to (i) matters caused by the Grantor's negligent or willful misconduct, or (ii) damages for any failure to provide service, or for interruption of one or more phases, or reversal of such service, or interruptions in electric service, or (iii) any of the following events or circumstances: war, lightning, earthquake, fire, gas leak, landslide, avalanche, hurricanes, named storms, thunderstorms, lightning strikes, floods, wash-outs, tornadoes, explosion, civil disturbance, act of God or the public enemy, the failure of federal, state or local governmental agencies to timely issue required permits or authorizations for which Grantee has made and pursued proper and timely application and the inability to retain or obtain replacements for any labor or materials necessary to allow the placement into service or repair of the Facilities for which Grantee has entered into firm contracts which are not honored by Grantee's counterparty for reasons other than a breach by Grantee. Notwithstanding anything to the contrary contained herein, in no event shall Grantee be obligated to pay punitive or consequential damages, including without limitation damages for lost profits.

Notwithstanding anything contained herein, the parties acknowledge and agree that the Easement, as well as this Letter of Assurance shall not alter or impact the rights and obligations of the parties as a retail customer and as electric service provider under all applicable laws and

tariffs. This Letter of Assurance shall not be recorded without the prior, written consent of ComEd.

It is our intent to provide you with the requested assurances as described above. Thank you again for your understanding and cooperation in this matter.

Sincerely,



Mark Primm,  
Commonwealth Edison Company  
Director Real Estate

Enclosure

cc : Russell Dillon (via e-mail)

Acknowledged and accepted on \_\_\_\_\_, 20\_\_ by:

Village of Downers Grove

By: \_\_\_\_\_ (Authorized Representative)

Printed Name: \_\_\_\_\_