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MEMORANDUM

To: Robert Kosin, Village Administrator
Board of Trustees
Village of Barrington Hills

From: Dan Strahan, P.E.
Gewalt Hamilton Associates

Date: February 18, 2011

Re: Church Road Reconstruction
St. John's Cemetery- ROW Dedication

At the January meeting of the Board of Trustees the Roads & Bridges report included discussion of a potential right-of-way agreement with St. John's Nepomucene Catholic Cemetery Association. This right-of-way agreement has now been drafted by the Village Attorney and will be presented to the Board at the meeting of Wednesday, February 23, 2011.

Our office had requested the dedication of right-of-way at this location to facilitate improvements to the north end of Church Road at Algonquin Road, planned for construction this summer. This would include dedication of right-of-way on the west side of Church Road and both sides of Algonquin Road; currently the cemetery property extends to the north side of Algonquin Road. Village staff met with the Cemetery's attorney, who communicated that the Association would be agreeable to the dedication of right-of-way as part of an agreement regarding the extension of certain services currently provided by the Village. Specifically, the terms of the agreement would be as follows:

- The Village would continue to provide snow plowing services for the Cemetery driveway.
- The Village would continue to provide power to the chapel on site at the existing service level.
- The right-of-way would be included as part of the Village's annual roadside mowing program.

Upon approval of the agreement by the Village Board it will be forwarded to the Cemetery Association for execution.

**RESOLUTION AUTHORIZING THE EXECUTION OF
ST. JOHN NEPOMUCENE CATHOLIC CEMETERY ASSOCIATION LEASE**

WHEREAS, the Village of Barrington Hills (the "Village") and St. John Nepomucene Catholic Cemetery Association ("Nepomucene") desire to enter into a lease agreement ("Lease") (a copy of the Lease is attached as Exhibit A), to lease that portion of the St. John Nepomucene Catholic Cemetery located at Algonquin/River Road and Church Road in McHenry County, Illinois necessary to support the existing radio communications system consisting of radio cabinets, antennae, support structures, cables and lines (together, the "Radio Communications Network");

WHEREAS, pursuant to 65 ILCS 5/2-2-12, the Village may enter into contracts; and

WHEREAS, there has been the presentation and examination of the Lease by the Village Board of Trustees at its regularly scheduled meeting on February 23, 2011, which was scheduled to address the regular business of the Board of Trustees.

NOW, THEREFORE BE IT RESOLVED by the President and the Board of Trustees of the Village of Barrington Hills, Cook, Kane, Lake, and McHenry Counties, Illinois, as a home rule municipality the following:

Section One. The Village President is hereby authorized to execute the Lease, substantially on the terms set forth in the copy attached hereto and made a part hereof as Exhibit A with such modifications as may be deemed necessary or desirable by the Village President and the Village Attorney.

Section Two. If any part or provision of this Resolution shall be held or deemed to be invalid, such invalidity shall not have the affect of rendering another part or provision of this Resolution invalid.

Section Three. This Resolution shall be in full force and affect from and after its passage and approval as provided by law.

APPROVED THIS _____ day of _____, 2011.

AYES: _____; NAYS: _____; ABSENT: _____.

Village President

ATTEST:

Village Clerk

EXHIBIT A

LEASE AGREEMENT

THIS LEASE (this "Lease") is made and entered into as of the _____ day of _____, 2011, by and between St. John Nepomucene Catholic Cemetery Association, a _____ ("Lessor") and The Village of Barrington Hills, an Illinois municipal corporation ("Lessee"). Lessor and Lessee are sometimes referred to herein as the "Parties".

1. **Definitions.** The following terms when used in this Lease shall have the meaning set opposite each.

(a) **Rent:** As set forth in Paragraph 3 of this Lease.

(b) **Demised Premises:** Only that portion of the St. John Nepomucene Catholic Cemetery located at Algonquin/River Road and Church Road in McHenry County, Illinois necessary to support the existing radio communications system consisting of radio cabinets, antennae, support structures, cables and lines (together, the "Radio Communications Network").

(c) **Commencement Date:** The date first above written.

(d) **Real Property Taxes:** All real estate taxes, including general or special assessments, if any, which may be levied or assessed by any lawful authority against the Demised Premises.

(e) **Term:** The period beginning on the Commencement Date and ending on the earlier of (i) the twentieth (20th) anniversary of the Commencement Date or (ii) such date of termination that is mutually agreed by the Parties.

2. **Expiration Date.** This Lease and the tenancy hereby created shall cease on the last day of the Term without the necessity of any notice from either Lessor or Lessee. If the Lessee remains in possession of the Demised Premises after the expiration date of the Term, with or without the Lessor's consent and without any written agreement governing the holding over, the Term shall be automatically renewed for successive one (1) year terms (each a "Renewal Term") subject to all of the terms, covenants and conditions of this Lease, provided, however, either Party may terminate this Lease as of the last day of the Term or of any Renewal Term upon not less than sixty (60) days written notice to the other Party.

3. **Rent.** Rent shall consist of services to be performed by Lessee during the Term and Lessee hereby covenants and agrees to perform the following services at Lessee's cost: (i) plow and salt the internal service roadway and path within the St. John Nepomucene Catholic Cemetery as necessitated by weather conditions; (ii) provide single phase 120/240 volt electrical service to the chapel located within the St. John Nepomucene Catholic Cemetery; and (iii) maintain the right-of-way along the south side of Algonquin/River Road and the west side of

Church Road, which shall consist of mowing the grass within the right-of-way at least two (2) times per year as part of Lessee's roadside mowing program.

4. Taxes. Lessor shall pay all Real Property Taxes relating to the Demised Premises directly to the appropriate governmental authorities, on or before the date due and payable. Lessee shall pay any personal property taxes assessed on or attributable to the Radio Communications Network.

5. Insurance. Lessee shall maintain commercial general liability insurance insuring against liability for bodily injury, death or damage to personal property with combined single limits of One Million and No/100 Dollars (\$1,000,000). In addition, Lessee shall maintain property insurance covering all personal property of Lessee in the Demised Premises for full replacement value.

6. Use of Demised Premises. The Demised Premises shall be used by Lessee solely for Radio Communications Network.

7. Default. If Lessee shall default in the performance of any of the provisions of this Lease and any such default of the Lessee shall continue uncorrected for thirty (30) days after notice thereof from the Lessor, then the Lessor, by giving notice to the Lessee at any time thereafter during the continuance of such default, may (a) continue this Lease in full force and effect without terminating Lessee's right to possession of the Demised Premises, in which event Lessor shall have the right to perform any service constituting Rent on Lessee's behalf and Lessee shall promptly reimburse Lessor for the cost thereof, (b) peaceably re-enter the Demised Premises, but without such re-entry being deemed a termination of the Lease or an acceptance by Lessor of a surrender thereof, or (c) terminate this Lease by written notice to Lessee specifying a date therefore, which shall be no sooner than thirty (30) days following notice to Lessee, and this Lease shall then terminate on the date so specified as if such date had been originally fixed as the expiration date of the Term.

8. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

9. Successors and Assigns. This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Lessor and Lessee, and their respective successors and assigns. Any liability or obligation of either party existing under this Lease as of the expiration or earlier termination of the Term shall survive such expiration or earlier termination.

10. Notices. All notices hereunder must be in writing and shall be deemed to have been given if addressed to the last address provided by one Party to the other Party and deposited in the United States Mail, postage prepaid, Registered or Certified, return receipt requested, or delivered in person.

11. Alterations. Lessee may make alterations to the Radio Communications Network, at the sole cost and expense of Lessee, without the consent of Lessor, provided, however, such alterations shall not increase the impact of the Radio Communications Network on the Demised Premises.

12. Indemnification. Lessee shall defend and indemnify Lessor against any and all liability, loss or damage, including reasonable attorneys fees and court costs, that the Lessor, its employees, agents, or assigns may suffer as a result of loss, damage, judgment or expense that arise from or in any manner are caused by the erection, maintenance or use of the Radio Communications Network.

13. Termination. Either Party may terminate this Lease upon not less than ninety (90) days written notice to the other Party.

14. Permits, Approvals and Licenses. Lessee shall be obligated to obtain all applicable permits, approvals and licenses and pay all fees, if any, in connection with same, required by federal, state and local laws, rules and regulations now in force or hereafter enacted, for the Radio Communications Network.

15. Right of Lessor to Use Demised Premises. Lessor shall have at all times the right to use the Demised Premises to the extent such use does not interfere with the operation of or damage the Radio Communications Network. Lessor represents and Lessee acknowledges that Lessor's property is presently in use as a cemetery; that members of Lessor's association, guests and the general public are allowed reasonable access to the cemetery; and that Lessor does not presently and will not in the future have any agent, servant or employee regularly at the cemetery. The Parties agree that Lessor shall have no responsibility under this Lease to protect the Radio Communications Network against damage by third persons. Lessee may post signs or otherwise give warning, as it deems necessary in its sole discretion, of the existence of the Radio Communications Network.

[signature page follows]

IN WITNESS WHEREOF, this Lease is hereby executed effective as of the date first above written.

LESSOR:

ST. JOHN NEPOMUCENE CATHOLIC
CEMETERY ASSOCIATION

By: _____
Name: _____
Title: _____

LESSEE:

VILLAGE OF BARRINGTON HILLS, an
Illinois municipal corporation

By: _____

Printed: _____

Its: President

ATTEST: _____

Printed: _____

Its: Village Clerk