


LEGISTAR: 120600
DISTRICT #: 1

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) X Waiver of First Requested
_____ Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES
FROM: David A. Hulseberg, Village Manager
DATE : November 15, 2012 **(BOT) Date:** December 6, 2012
SUBJECT: An Ordinance Authorizing the Acquisition of the Property Commonly
Known as 525 Phillips Court
SUBMITTED BY: Carl S. Goldsmith, Director of Public Works 

BACKGROUND/POLICY IMPLICATIONS:

Staff recommends that the Village Board of Trustees adopt the attached ordinance, which authorizes the Village to acquire the property at 525 Phillips Court for the purpose of the construction of a new stormwater pumping station.

Fiscal Impact/Funding Source:

\$200,000 Water/Sewer Capital Reserve

Review (as necessary):
Village Attorney _____ Date _____
Finance Director _____ Date _____
Village Manager _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the agenda distribution.



November 15, 2012

TO: Village President and Board of Trustees

THROUGH: David Hulseberg, Village Manager

FROM: Carl Goldsmith, Director of Public Works *CJ*

SUBJECT: Acquisition of Real Property – Route 53 Pump Station Project

Background

Following the July 23-24, 2010 storm events, the Village of Lombard undertook a significant effort to address flooding and stormwater management throughout the Village. Staff developed a number of projects designed to minimize the effect of storms on properties. These projects were incorporated into the Capital Improvement Plan and the budget, as well as serving as a primary item in the Village Board's Strategic Plan.

An area of concern to the Village was the Route 53 Pump Station and areas tributary to the pump station. The IL Route 53 Stormwater Pump Station was constructed circa 1975 and is located on a 0.55-acre parcel owned by the Village of Lombard. The site was originally located between the East Branch of the DuPage River (discharge stream) and IL Route 53, south of St. Charles Road and north of Crescent Boulevard. Subsequently in 1989, with the construction of the Illinois State Toll Highway Authority (ISTHA), I-355 Veterans Memorial Tollway, the access from IL Route 53 was eliminated and the pump station's eastern property line bordered the western Tollway Right-of-Way (ROW).

The station has several significant deficiencies that limit its effectiveness in and compromises the safety of the employees operating the station. The pump station and the majority of its equipment are approximately 36 years old and are starting to deteriorate past the point of repair. Examples of the major deficiencies is that the structural beams supporting the wet well grating are corroded to the point that the grating is unsafe to use, the pumps are original to the station and major electrical components are obsolete and beyond their service life. In addition to the age and obsolescence of the station and equipment, the station itself is located within the 100-year floodplain and both the pump station and the access road have become flooded during severe storm events restricting access to the pump station.

The Village retained Baxter & Woodman, Inc. to prepare a Project Development Report to evaluate the existing conditions and evaluate alternatives for the renovation or replacement of the Station. The Report examined existing conditions of the area(s) tributary to the Route 53 Pump Station, as well as options that were identified by Village staff and Baxter & Woodman (B&W). Among the options reviewed were the following:

1. Option 1 – Renovate the existing pump station on the existing site.
2. Option 2 West – Construct a new pump station on a new site on the west side of Route 53.
3. Option 2 East – Construct a new pump station on a new site on the east side of Route 53.

Based upon a review of the cost effectiveness and impact on the area, B&W recommended Option 2, with a preference for the east side of Route 53. This recommendation was supported by the Public Works Committee and staff. The Village Board has previously discussed the project and the acquisition process necessary to facilitate the proposed improvement.

The new pumping station will increase peak flow at the station from the current 50 cubic feet per second (cfs) to 170 cfs. The existing pump station cannot convey moderate to high intensity storms. Under the modeled conditions, a capacity of approximately 170 cfs would considerably reduce flooding occurrences at Phillips Court. The 170 cfs pump station capacity would be equivalent to a 10-year, 1-hour storm service level, which roughly equates to several, severe storm events a year. The 10-year, 1-hour design storm also coincides with the standard design storm adopted by the Village of Lombard for design of new stormwater infrastructure. The new station peak flow capacity of 170 cfs represents a **240%** increase in capacity over the existing station.

Based upon discussions with the Village Board, the Village has been working with the property owners located on the east side of IL Route 53, identified as blue in the map below.



Staff has successfully negotiated Real Estate Purchase Contracts with the two property owners within the framework provided for by the Village Board.

The table below summarizes the property owners’ expectation and the results of the appraisal.

Address	PIN	Contract Price
525 Phillips Court	0512205001	\$220,000
63 S. Columbine	0512203011	\$275,000

The Village Board approved funding for the project, including the acquisition in 2012B-2021 CIP. A breakdown of all pre-construction costs has been identified in the table below.

Task	2012B/2013 CIP Budget	PROPOSED
Land Acquisition	\$233,000	\$495,000
Design Engineering	\$515,000	\$387,317
Geotechnical Engineering	\$90,100	\$90,100
Permitting	\$52,000	0
TOTAL	\$890,100	\$972,417

The acquisition of these properties will afford the Village sufficient property to construct a new stormwater pumping station that will provide a significant improvement in the management of stormwater serving approximately 1/3 of the community.

Recommendation

The staff recommends that the Acting Village President and Board of Trustees adopt the following ordinances in regard to the IL Route 53 Stormwater Pumping Station:

- AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY COMMONLY KNOWN AS 63 SOUTH COLUMBINE AVENUE
- AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY COMMONLY KNOWN AS 525 PHILLIPS COURT

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY
COMMONLY KNOWN AS 525 PHILLIPS COURT**

WHEREAS, the President and Board of Trustees of the Village of Lombard deem it necessary for the health, welfare and safety of the residents to purchase real estate to enable the Village to install a stormwater pumping station, at the location set forth below; and

WHEREAS, the President and Board of Trustees of the Village of Lombard desire to purchase the property commonly known as 525 Phillips Court, Lombard, Illinois, DuPage County, to accomplish the aforesaid purpose; said property being legally described as follows:

LOT 1 IN KUSHMER'S DIVISION OF PART OF LOT OR BLOCK 14 IN E.W. ZANDER AND COMPANY'S ADDITION TO LOMBARD, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID KUSHMER'S DIVISION RECORDED APRIL 13, 1966 AS DOCUMENT R66-12891, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: 05-12-205-001;

(hereinafter the "Real Estate"); and

WHEREAS, the Village has, after extensive inquiries and negotiations, agreed to purchase the Real Estate for a purchase price of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00), plus title insurance and survey costs;

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 Real Estate Contract, attached hereto as **Exhibit A**, and incorporated herein by reference, is hereby approved, and the Acting Village President and Village Clerk are hereby authorized and directed to execute same on behalf of the Village. The Acting Village President and Village Clerk are hereby further authorized and directed to execute all appropriate documents and take such other action as is required of them to consummate the purchase by the Village of the Real Estate, in accordance with the terms of the Real Estate Contract.

SECTION 2: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2012.

First reading waived by action of the Board of Trustees this ____ day of _____, 2012.

Passed on second reading this _____ day of _____, 2012.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2012.

Peter Breen, Acting Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published by me in pamphlet form this _____ day of _____,
2012.

Brigitte O'Brien, Village Clerk

Exhibit A

REAL ESTATE CONTRACT

(see attached)

REAL ESTATE PURCHASE AND SALES CONTRACT

(525 Phillips Court, Lombard, Illinois)

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "Contract") is made as of the Effective Date (as defined in Paragraph 24 hereof) between WILLIAM TRIBBLE, as Trustee under the Tribble Trust dated November 1, 1999 (the "Seller") and the VILLAGE OF LOMBARD, an Illinois municipal corporation (the "Buyer").

AGREEMENT:

1. **THE BUYER IS A MUNICIPAL ENTITY AND THIS CONTRACT IS SUBJECT TO THE APPROVAL OF, AND IS NOT ENFORCEABLE UNLESS APPROVED AT AN OPEN MEETING BY, THE BOARD OF TRUSTEES OF BUYER.**

2. **SALE.** The Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to a parcel of land commonly known as 525 Phillips Court, Lombard, Illinois, with PIN 05-12-205-001, located in the County of DuPage (the "Property"), which Property is legally described in Exhibit A attached hereto and made a part hereof.

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)** (the "Purchase Price"). At closing, Buyer shall pay to Seller, in good and available funds by wire transfer or cashier's check, the Purchase Price, plus or minus prorations as provided herein.

4. **EARNEST MONEY DEPOSIT.** None required. All money will be paid at closing.

5. **CLOSING DATE.** The closing (the "Closing") of the contemplated purchase and sale of the Property shall take place through a deed and money escrow ("Escrow") on January 15, 2013 (the "Closing Date") at the office of Chicago Title Insurance Company, Chicago, Illinois (the "Title Company") or at such other time and place as mutually agreed to by the parties. The cost of the Closing fee shall be paid for by Buyer.

6. **ENVIRONMENTAL INSPECTION.** The Buyer shall have the right, any time prior to the Closing, to select and retain environmental and other consultants to examine and inspect the physical condition of the Property (including the groundwater thereunder), to conduct a site assessment and environmental audit, and to perform any environmental and engineering investigation or testing it deems necessary and appropriate (the "Environmental Assessment"). Seller hereby grants, and will cause any tenants to grant, to the Buyer and its consultants, their employees, agents, subcontractors and representatives, authorization to enter upon the Property to conduct the environmental and engineering investigation. Seller shall provide to the Buyer and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder).

7. **BUYER'S OPTION TO TERMINATE CONTRACT.** The Buyer shall not be obligated to take title to the Property if, in the Buyer's sole and exclusive judgment, for any reason whatsoever, Buyer

determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a material health, safety or environmental hazard, or if the Environmental Assessment reveals the existence of any environmental condition which may be dangerous and/or unacceptable to the Buyer, or in violation of any environmental law or regulation including, but not limited to, the presence of any hazardous material (the foregoing collectively, an "Environmental Defect"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is an Environmental Defect, Buyer shall have the right to revoke its acceptance of the Contract and the adoption of the Ordinance, if any, accepting the Contract and approving the purchase of the Property contemplated herein, and to declare the Contract and its Ordinance approving the purchase and execution of the Contract and related closing documents null and void, in which event the Earnest Money shall be immediately returned to the Buyer.

8. **TITLE INSURANCE.** Prior to Closing, Buyer, at Buyer's expense, shall obtain a title commitment issued by the Title Company, in the amount of the Purchase Price, with extended coverage over the standard exceptions 1 through 5 (the "Title Commitment"), together with copies of all underlying title documents listed in the Title Commitment (the "Underlying Title Documents"), subject only to those matters described in Exhibit B, attached hereto and made a part hereof (the "Permitted Exceptions"). If the Title Commitment, Underlying Title Documents or the Survey (as hereinafter defined) disclose exceptions to title, which are not acceptable to Buyer (the "Unpermitted Exceptions"), Buyer shall have five (5) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter (the "Buyer's Objection Letter") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have five (5) days from the date of receipt of the Buyer's Objection Letter ("Seller's Cure Period") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, and the Closing shall be extended such additional time, but not beyond February 15, 2013 (the "Extended Title Closing Date") after Buyer's receipt of a proforma title policy (the "Proforma Title Policy") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or, in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract, at which time the Buyer shall be entitled to have the Earnest Money Deposit returned to Buyer and this Contract shall become null and void without further action of the parties, or (ii) upon notice to Seller within ten (10) days after Buyer's receipt of Seller's intention not to cure the Unpermitted Exceptions, take title as it then is with the right to deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount which are listed in the Title Commitment. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. The Buyer shall pay the cost for any later date title commitments, and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

9. **SURVEY.** Prior to Closing, Buyer, at Buyer's cost and expense, shall obtain a Plat of Survey that conforms to the Minimum Standards of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners

shall also be visibly staked or flagged. The Plat of Survey shall include the following statement, placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey."

10. **DEED.** Seller shall convey fee simple title to the Property to Buyer, by a recordable Trustee's Deed (the "Deed"), subject only to the Permitted Exceptions. Seller shall also execute and deliver, at Closing, any and all documents, in addition to the Deed, including an Affidavit of Title, Covenant and Warranty, Title Company documentation including, but not limited to, an ALTA Statement, GAP Undertaking or such other documents reasonably requested either by the Buyer or the Title Company to consummate the transaction contemplated herein and to vest fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the issuance of the Buyer's Title Company owners title insurance policy. Buyer shall be responsible for the recording fee of the Deed.

11. **CLOSING DOCUMENTS.** On the Closing Date, the obligations of the Buyer and Seller shall be as follows:

- A. Seller shall deliver or cause to be delivered to the Title Company:
- i. the original executed and properly notarized Deed;
 - ii. the original executed and property notarized Affidavit of Title, Warranty and Covenant;
 - iii. the original executed and property notarized Non-Foreign Affidavit;
 - iv. counterpart originals of Seller's Closing Statement;
 - v. such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated hereby, including, without limitation, ALTA statements and GAP Undertaking, such other documentation as is reasonably required by the Title Company to issue Buyer its owners title insurance policy in accordance with the Proforma Title Policy and in the amount of the Purchase Price insuring the fee simple title to the Property in the Buyer as of the Closing Date, subject only to the Permitted Exceptions.
- B. Buyer shall deliver or cause to be delivered to the Title Company:
- i. the balance of the Purchase Price, plus or minus prorations;
 - ii. counterpart originals of Seller's Closing Statement;
 - iii. ALTA Statement and such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated herein.

C. The parties shall jointly deposit fully executed State of Illinois Transfer Declarations and County Transfer Declarations.

12. **POSSESSION.** Possession of the Property shall be delivered to Buyer on the Closing Date subject to the Permitted Exceptions, and in the same condition as at the time of the execution of this Contract. The Seller shall have the right to remove any and all items from the Property prior to the Closing.

13. **PRORATIONS.** At Closing, the following adjustments and prorations shall be computed as of the Closing Date and the balance of the Purchase Price shall be adjusted to reflect such prorations. All prorations shall be based on a 366-day year, with the Seller having the day prior to the Closing Day.

A. **Real Estate Taxes.** General real estate taxes for 2012 and subsequent years, special assessments and all other public or governmental charges against the Property which are or may be payable on an annual basis (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Closing Date) shall be adjusted and apportioned as of the Closing Date. If the exact amount of general real estate taxes is not known at Closing, the proration will be based on 105% of the most recent full year tax bill, and shall be conclusive, with no subsequent adjustment.

B. **Miscellaneous.** All other charges and fees customarily prorated and adjusted in similar transactions shall be prorated as of Closing Date. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable (as, for example, all water, sewer, gas and utility bills), the parties shall prorate on the best available information. Final readings and final billings for utilities shall be taken as of the date of Closing.

14. **CONVEYANCE TAXES.** The parties acknowledge that, as Buyer is a governmental entity, this transaction is exempt from any State, County or local real estate transfer tax pursuant to 35 ILCS 200/31-45(b). Seller is obligated to furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.

15. **COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER.** The covenants, representations and warranties contained in this Paragraph shall be deemed remade as of the Closing Date and shall survive the Closing, and shall be deemed to have been relied upon by the Buyer in consummating this transaction, notwithstanding any investigation the Buyer may have made with respect thereto, or any information developed by or made available to the Buyer prior to the Closing and consummation of this transaction. Seller covenants, represents and warrants to the Buyer as to the following matters, each of which is so warranted to be true and correct as of the Effective Date and also on the Closing Date:

A. **Title Matters.** Seller has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions.

B. **Violations of Zoning and Other Laws.** Seller has received no notice, written or otherwise, from any governmental agency alleging any violations of any statute, ordinance, regulation or code. The Property as conveyed to Buyer shall include all rights of the Seller to the use of any off-site facilities, including, but not limited to, storm water detention facilities, necessary

to ensure compliance with all zoning, building, health, fire, water use or similar statutes, laws, regulations and orders and any instrument in the nature of a declaration running with the Property.

C. Pending and Threatened Litigation. To the best knowledge and belief of Seller, there are no pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Property.

D. Eminent Domain, etc. To the best knowledge and belief of Seller, there is no pending or contemplated eminent domain, condemnation or other governmental taking of the Property or any part thereof.

E. Access to Property Utilities. No fact or condition exists which would result in the termination or impairment of access to the Property from adjoining public or private streets or ways or which could result in discontinuation of presently available or otherwise necessary sewer, water, electric, gas, telephone or other utilities or services.

F. Assessments. To the best knowledge and belief of Seller, there are no public improvements in the nature of off-site improvements, or otherwise, which have been ordered to be made and/or which have not heretofore been assessed, and there are no special or general assessments pending against or affecting the Property.

G. Authority of Signatories; No Breach of Other Agreements; etc. The execution, delivery of and performance under this Contract by Seller is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Contract do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which Seller or the Property are bound; and will not and does not, to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court, domestic or foreign, to which Seller or the Property are subject or bound.

H. Executory Agreements. Seller is not a party to, and the Property is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Property, other than this Contract. Buyer shall not, by reason of entering into or closing under this Contract, become subject to or bound by any agreement, contract, lease, license, invoice, bill, undertaking or understanding which it shall not have previously agreed in writing to accept. Seller warrants and represents that no written leases, licenses or occupancies exist in regard to the Property and, further, that no person, corporation, entity, tenant, licensee or occupant has an option or right of first refusal to purchase, lease or use the Property, or any portion thereof.

I. Mechanic's Liens. All bills and invoices for labor and material of any kind relating to the Property have been paid in full, and there are no mechanic's liens or other claims outstanding or available to any party in connection with the Property.

J. Governmental Obligations. To the best knowledge of Seller, there are no unperformed obligations relative to the Property outstanding to any governmental or quasi-governmental body or authority.

K. Easements. Seller represents that the Property is adjacent to and has full and free access on all perimeter areas to and from public streets, such that no private easements or agreements are necessary to afford access to or from the Property.

L. Section 1445 Withholding. Seller represents that he/she/it/they is/are not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is/are, therefore, exempt from the withholding requirements of said Section. At Closing, Seller shall furnish Buyer with a Non-foreign Affidavit as set forth in said Section 1445.

When used in this Paragraph, the expression "to the best knowledge and belief of Seller," or words to that effect, is deemed to mean that Seller, after reasonable examination, investigation and inquiry, is not aware of any thing, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes.

16. DEFAULT AND CONDITIONS PRECEDENT TO CLOSING.

A. It is a condition precedent to Closing that:

- i. fee simple title to the Property is shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and is accepted by Buyer;
- ii. the covenants, representations and warranties of Seller contained in Paragraph 15 hereof and elsewhere in this Contract are true and accurate on the Closing Date or waived by Buyer in writing on the Closing Date; and
- iii. Seller has performed under the Contract and otherwise has performed all of its covenants and obligations and fulfilled all of the conditions required of it under the Contract in order to Close on the Closing Date.

B. If, before the Closing Date, Buyer becomes aware of a breach of any of Seller's representations and warranties or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to Close on the Closing Date, Buyer may, at its option:

- i. elect to enforce the terms hereof by action for specific performance; or
- ii. attempt to cure such breach or failure by Seller for a period of up to thirty (30) days following the Closing Date, charging Seller for all costs and expenses incurred in doing so and, following such attempt, to either:

- (a) terminate this Contract and receive a prompt refund of the Earnest Money Deposit; or
- (b) proceed to Close notwithstanding such breach or nonperformance.

In all events, Buyer's rights and remedies under this Contract shall always be non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other, including all rights and remedies available to it at law or in equity.

C. In the event of a default by Buyer, Seller's sole and exclusive right and remedy shall be a payment by Buyer to Seller of Fifteen Thousand and No/100 Dollars (\$15,000.00) (the "Default Payment") as its sole liquidated damages, it being understood that Seller's actual damages in the event of such default are difficult to ascertain and that the Default Payment is the parties' best current estimate of such damages. Notwithstanding the foregoing, the parties agree that no default of or by either party shall be deemed to have occurred unless and until notice of any failure by the non-defaulting party has been sent to the defaulting party and the defaulting party has been given a period of ten (10) days from receipt of the notice to cure the default.

17. **BINDING EFFECT.** This Contract shall inure to the benefit of and shall be binding upon the heirs, legatees, transferees, assigns, personal representatives, owners, agents, administrators, executors and/or successors in interest of any kind whatsoever of the parties hereto.

18. **BROKERAGE.** Each party hereto hereby represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such party's actions (or claiming through such party), is entitled to compensation as a consequence of this transaction. Each party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Contract. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorneys' fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder. This provision shall survive the Closing.

19. **NOTICES.** Any and all notices, demands, consents and approvals required under this Contract shall be sent and deemed received: (A) on the third business day after mailed by certified or registered mail, postage prepaid, return receipt requested, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne) for guaranteed next business day delivery, or (C) by facsimile transmission on the day of transmission, with the original notice together with the confirmation of transmission mailed by certified or registered mail, postage prepaid, return receipt requested, or (D) by personal delivery, if addressed to the parties as follows:

To Seller: William Tribble
2894 Bond Circle
Naperville, Illinois 60563
FAX: 630-579-9406

With a copy to: Kevin LaFavour
1220 Ingois Ave, 204A
Naperville, Illinois
FAX: 630/579-9406

To Buyer: Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: David Hulseburg, Village Manager
FAX: 630-620-8222

With a copy to: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attn: Thomas P. Bayer
FAX: 312-984-6444

Any party hereto may change the name(s) and address(es) of the designee to whom notice shall be sent by giving written notice of such change to the other parties hereto in the same manner, as all other notices are required to be delivered hereunder.

20. **RIGHT OF WAIVER.** Each and every condition of the Closing, other than the Buyer's duties at Closing, is intended for and is for the sole and exclusive benefit of Buyer. Accordingly, Buyer may at any time and from time to time waive each and any condition of the Closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by Buyer shall, unless otherwise herein provided, be in a writing signed by Buyer and delivered to Seller.

21. **DISCLOSURE OF INTERESTS.** In accordance with Illinois law, 50 ILCS 105/3.1, prior to execution of this Contract by the Buyer, an Owner, authorized trustee, corporate official or managing agent must submit a sworn affidavit to the Buyer disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Property, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation having any real interest, real or personal, in the Property, or, alternatively, if a corporation's stock is publicly traded, a sworn affidavit by an officer of the corporation or its managing agent that there is no readily known individual having a greater than 7½% percent interest, real or personal, in the Property. The sworn affidavit shall be substantially similar to the one described in Exhibit C attached hereto and made a part hereof.

22. **ASSIGNMENT.** Buyer shall have the right to assign or transfer Buyer's interest in this Contract without the prior written consent of Seller. Buyer shall deliver to Seller a copy of the fully executed assignment and assumption by Purchaser, as assignor and the assignee.

23. **MISCELLANEOUS.**

A. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of

any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

B. This Contract provides for the purchase and sale of property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that, for the purpose of any litigation relative to this Contract and its enforcement, venue shall be in the Circuit Court in the county where the Property is located and the parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.

C. The terms, provisions, warranties and covenants of Section 15.K. shall survive the Closing and delivery of the Deed and other instruments of conveyance. The provisions of Section 15.K. of this Contract shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

D. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.

E. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Property Settlement Procedures Act of 1974. In the event that either party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said party.

F. The parties warrant and represent that the execution, delivery of and performance under this Contract is pursuant to authority, validly and duly conferred upon the parties and the signatories hereto.

G. The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

H. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

I. If the Seller is a Trust, this Contract is executed by the undersigned Trustee, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. Said Trustee hereby warrants that it possesses full power and authority to execute this Contract. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless each and every one of them made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding Trustee personally but are made and intended for the purpose of binding only the trust property, and this Contract is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon

it as said Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this Contract or on account of any representations, covenants, undertakings, warranties or agreements of said Trustee in this Contract contained either express or implied, all such personal liability, if any, being expressly waived and released.

In the event the Seller is a Trust as provided above, this Contract shall be signed by the Trustee and also by the person or entity holding the Power of Direction under the Trust. The person or entity signing this Contract is by his/her/their/its signature represents, warrants and covenants with Buyer that he/she/they/it has the authority to enter into this Contract and the obligations set forth herein. All references to the Seller's obligations, warranties and representations shall be interpreted to mean the Beneficiary or Beneficiaries of the Trust.

J. In the event either party elects to file any action in order to enforce the terms of this Contract, or for a declaration of rights hereunder, the prevailing party, as determined by the court in such action, shall be entitled to recover all of its court costs and reasonable attorneys' fees as a result thereof from the losing party.

K. Buyer may record this Contract or any memorandum or short form of this Contract against the Property, provided that if the transaction contemplated herein does not occur and the Contract is terminated as provided herein, Buyer shall record a termination of the Contract. The recording fees for either shall be borne by the Buyer.

L. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

M. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

24. **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the authorized signatories of Buyer shall sign the Contract, which date shall be the date stated next to the Buyer's signature.

25. **CONTRACT MODIFICATION.** This Contract and the Exhibits attached hereto and made a part hereof, or required hereby, embody the entire Contract between the parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.

26. **EXHIBITS.** The following Exhibits are attached hereto and made a part hereof by reference:

- Exhibit A Legal Description of the Property
- Exhibit B Permitted Exceptions
- Exhibit C Disclosure Affidavit

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date below their respective signatures.

SELLER:

WILLIAM TRIBBLE,
as Trustee under the Tribble Trust,
dated November 1, 1999

By: William H. Tribble

Name: William Tribble

BUYER:

VILLAGE OF LOMBARD,
an Illinois municipal corporation

By: _____

Name: Peter Breen
Title: Acting Village President

ATTEST:

By: _____

Name: Brigitte O'Brien
Title: Village Clerk

Date Seller executed: 11/19/2012

Date Buyer executed: _____

Exhibit A

Legal Description of the Property

Lot 1 IN KUSHMER'S DIVISION OF PART OF LOT OR BLOCK 14 IN E.W. ZANDER AND COMPANY'S ADDITION TO LOMBARD, A SUBDIVISION OF PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID KUSHMER'S DIVISION RECORDED APRIL 13, 1966 AS DOCUMENT R66-12891, IN DUPAGE COUNTY, ILLINOIS.

Permanent Index Number: 05-12-205-001.

Property Address: 525 Phillips Court, Lombard, Illinois.

Exhibit B

Permitted Exceptions

1. 2012 real estate taxes and subsequent years, not due and payable for the Property.
2. Improvements on land are "as-is."
3. Covenants, conditions, restrictions and easements of record, which do not prevent the Buyer from installing a stormwater pumping station on the Property.

Exhibit C
ALL SELLERS MUST SIGN AN AFFIDAVIT THAT IS
SUBSTANTIALLY SIMILAR TO THE ONE BELOW

State of Illinois)
)ss.
County of DuPage

DISCLOSURE AFFIDAVIT

I, William Tribble, (hereinafter referred to as "Affiant") reside at 2894 Bond Circle, Naperville, IL 60563, in DuPage County, State of Illinois, being first duly sworn and having personal knowledge of the matters contained in this Affidavit, swear to the following:

1. That I am over the age of eighteen and the (choose one)
 - owner or
 - authorized trustee or
 - corporate official or
 - managing agent or
 - _____ of the Real Estate (as defined herein).

2. That the Real Estate (as defined herein) being sold to the Purchaser is commonly known as 525 Phillips Court and is located in the County of DuPage, Village of Lombard, State of Illinois (herein referred to as the "Real Estate"). The Real Estate has an Assessor's Permanent Index Number of 05-12-205-001.

3. That I understand that, pursuant to 50 ILCS 105/3.1, prior to execution of a real estate purchase agreement between the record fee owner of the Real Estate and Purchaser, Illinois State Law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Purchaser disclosing the identity of every owner and beneficiary having *any* interest, real or personal, in the Real Estate, and every shareholder entitled to receive more than 7 1/2% of the total distributable income of any corporation having any interest, real or personal, in the Real Estate.

4. As the
 - owner or
 - authorized trustee or
 - corporate official or
 - managing agent or
 - _____ of the Real Estate, I declare under oath that (choose one):
 - The owners or beneficiaries of the trust are: William Tribble, Deborah Tribble or _____
 - The shareholders with more than 7 1/2% interest are: _____ or _____
 - The corporation is publicly traded and there is no readily known individual having greater than a 7 1/2% interest in the corporation.

This Disclosure Affidavit is made to induce the Purchaser to accept title to the Real Estate in accordance with 50 ILCS 105/3.1.

AFFIANT
William H. Tribble

SUBSCRIBED AND SWORN to before me
this 19th day of November, 2012.

Lawrence Cassano NOTARY PUBLIC

