

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: June 7, 2006

(B of T) Date: June 15, 2006

TITLE: 300 S. Main Street

SUBMITTED BY: Department of Community Development *QaK*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration two resolutions authorizing signatures of President and Clerk on a Authorization, Acknowledgment and Indemnification for Ground Penetration and Remediation Work and Temporary Access Agreement and a Highway Authority Agreement for the property located at 300 S. Main Street. (DISTRICT #1)

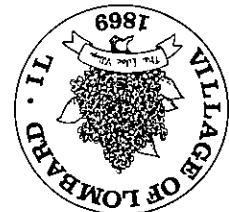
Staff recommends approval of this request.

Please place this item on the June 15, 2006 Board of Trustees agenda.

Fiscal Impact/Funding Source:
Review (as necessary):

Village Attorney X	_____	Date	_____
Finance Director X	_____	Date	_____
Village Manager X	W. Lichter	Date	6/7/06

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.



MEMORANDUM

TO: William T. Lichter, Village Manager

FROM: David A. Huliseberg, AICP, Director of Community Development *DWH*

DATE: June 7, 2006

SUBJECT: 300 S. MAIN STREET - AUTHORIZATION, ACKNOWLEDGMENT AND INDEMNIFICATION FOR GROUND PENETRATION AND REMEDIATION WORK AND TEMPORARY ACCESS AGREEMENT

Background:

The property formerly operated as a gas station/auto service/repair establishment and car wash. The underground storage tanks leaked in years past resulting in the Village right-of-way becoming contaminated. Gap Development, developer of the property, made a \$3,000 prepayment to the Village of Lombard which began the process of reviewing the Highway Authority Agreement which was subsequently approved by the Village Board of Trustees at their April 6, 2006 meeting by Resolution R60-06.

Staff has now received, for Village Board consideration, an Acknowledgment and Indemnification for Ground Penetration and Remediation Work and Temporary Access Agreement which gives the developer access and rights to the Village's property for the purpose of performing remediation as well as to take all necessary steps to have the impacted contaminated soils treated and/or removed within 12 months of the execution of this Agreement. The intent of the Agreement is to satisfy concerns raised by the Illinois Environmental Protection Agency which were originally raised in the Highway Authority Agreement and previously approved by the Village Board. The Highway Authority Agreement has now been revised to reflect those issues being addressed. Village Counsel drafted these agreements.

Recommendation:

Staff recommends that the Village Board of Trustees approve a resolution authorizing the signatures of the Village President and Clerk on an Acknowledgment and Indemnification for Ground Penetration and Remediation Work and Temporary Access Agreement as well as on a Highway Authority Agreement for the property located at 300 S. Main Street.

R E S O L U T I O N
R _____
07

**A RESOLUTION AUTHORIZING SIGNATURES OF
PRESIDENT AND CLERK ON AN AUTHORIZATION, ACKNOWLEDGMENT
AND INDEMNIFICATION FOR GROUND PENETRATION AND
REMEDIATION WORK AND TEMPORARY ACCESS AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Authorization, Acknowledgment and Indemnification for Ground Penetration and Remediation Work and Temporary Access Agreement as attached hereto and marked Exhibit "A"; and,

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to authorize the execution of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said document as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto.

Adopted this _____ day of _____, 2006.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2006.

ATTEST:
William J. Mueller, Village President

Brigitte O'Brien, Village Clerk

**AUTHORIZATION, ACKNOWLEDGMENT AND
INDEMNIFICATION FOR GROUND PENETRATION AND
REMEDICATION WORK AND TEMPORARY ACCESS AGREEMENT**

This Authorization, Acknowledgment, Indemnification For Ground Penetration and Remediation Work and Temporary Access Agreement ("Agreement") was entered into this _____ day of May, 2006, by and between GAP DEVELOPMENT ("Owner") and the VILLAGE OF LOMBARD, a municipal corporation (the "Village").

WHEREAS, Owner is pursuing corrective action of property located within the Village at the address commonly known as 300 S. Main Street, Lombard, Illinois (the "Site") and of the Right-of-Ways adjacent to the boundary of the Site; and

WHEREAS, the Village owns, operates, maintains or otherwise controls certain highways and public ways which about the Site, two of which are commonly known as Ash Street and Main Street (the "Village's Property"); and

WHEREAS, Owner has represented to the Village that there existed on the Site underground storage tanks that leaked and contaminated not only the Site but also the Village's Property; and

WHEREAS, the Village and the Owner have entered into a Tiered Approach to Corrective Action Agreement ("TACO Agreement") a copy of which is attached hereto and incorporated herein by reference as Exhibit A. All of the terms used in this Agreement with initial capital letters which are defined in the TACO Agreement shall have the same meaning in this Agreement as are ascribed to such terms in the TACO Agreement unless otherwise defined herein or the context dictates otherwise.

WHEREAS, Owner desires access to the Village's Property for the purpose of performing remediation on the Village's Property and to take all steps necessary to have the soils impacted by contamination on the Village's property above Construction Worker Objectives (as set forth in the Tiered Approach to Cleanup Objectives, 35 Ill. Adm. Code 742) ("Construction Worker Objectives") treated and/or removed within 12 months of the execution of this Agreement ("the Work").

NOW, THEREFORE, the Village grants to Owner permission to enter onto the Village's Property to perform the Work in accordance with the following terms and conditions:

1. The Recitals are incorporated herein by this reference.

2. Owner shall take all steps necessary to have the soils impacted by Contaminants on the Village's Property above the applicable Illinois Pollution Control Board Construction Worker Objectives (as set forth in the Tiered Approach to Cleanup Objectives, 35 Ill. Adm. Code 742) treated and/or removed (by a "dig and haul" method) within 12 months of the execution of this Agreement. Toward that end, Owner initially intends to treat the soils on the Village's Property with a soil vapor extraction system (SVE) for a period of at least six months. Owner

4. Owner shall consult with the local utility companies to determine the existence and location of electrical, gas, water, cable and telephone service on the Village's Property. Owner shall be solely responsible for selecting the location for the ground penetration work. Owner shall indemnify and hold the Village, its officers, Trustees, servants, employees, agents and successors and assigns both in their individual and official capacities (collectively, "Village Affiliates") harmless from any and all liability that may be incurred by damage or repair to utilities caused by the acts of Owner, its employees, servants, subcontractors and agents.

3. Owner shall at all times conduct the Work in such a manner as to minimize hazards to vehicular and pedestrian traffic and to those using the Village's property. Owner agrees to assume all health and safety risks associated directly or indirectly with the Work. All signs, barricades, flaggers, etc., required for traffic control shall be furnished by Owner. No revisions or additions shall be made to the proposed Work on the Village's Property without the written permission of the Village Engineer. Owner and its contractors and agents shall not interfere with the Village's operations during the course of the testing, remediation or other operations authorized by this Agreement. Owner shall schedule the Work on days and times acceptable to the Village Engineer. Owner acknowledges and agrees that the Village may require, at any time, Owner to vacate all or part of the Village's Property. The Village shall not be held responsible in any way for any losses, damages or expenses suffered by Owner in Owner's vacating the Village's Property. All costs and expenses associated with the Work and this Agreement shall be the responsibility of and paid for by Owner. The Village is not responsible for any damage caused by the Village or otherwise to Owner, its contractor's or agent's equipment, property or Work. Owner shall bear the sole and entire risk of its property or equipment being located on the Village's Property.

Owner and its contractors and agents shall not interfere with the Village's operations during the course of conducting the Work or other operations authorized by this Agreement. Owner shall bear all costs and expenses associated with the Work and chemical analysis conducted under the Agreement.

shall provide the Village within 10 days of signing this Agreement with a letter of credit acceptable to the Village in the amount of Fifty Thousand Dollars (\$50,000.00) from a financial institution approved by the Village, to guaranty the Owner will remediate the Contaminants on the Village's Property to below the Construction Worker Objectives within the one-year time frame. If at the end of the one-year time period, the Owner fails to demonstrate to the Village's satisfaction that the Contaminants on the Village's Property does not exceed the Construction Worker Objectives, the Village shall be allowed to draw upon the letter of credit for the full amount thereof, provided, however, that the Owner's obligation to complete the corrective action by a "dig and haul" method of responding to the contamination shall not be limited, reduced or released by the letter of credit or any action taken by the Village with respect to the letter of credit. Promptly following completion of any Work imposed upon Owner under this Agreement, Owner shall obtain and deliver to the Village an environmental report in form and substance acceptable to the Village from an environmental consultant acceptable to the Village, stating that all required Work has been taken, and that upon completion of such Work, the Village Property is free of all Contamination above Construction Worker Objectives.

5. Owner shall not trim, cut or in any way disturb any trees or shrubbery on the Village's Property without the written approval of the Village Engineer or his duly authorized representative. Owner will not do or permit any act or thing which may impair the value of the Village's Property or that materially increases the dangers or poses an unreasonable risk of harm to persons on or off the Village's Property arising from activities thereon, or that constitutes a public or private nuisance or waste to the Village's Property or any part thereof. Neither Owner nor its contractors shall represent or hold themselves out as employees or agents of the Village.

6. In the course of performing the Work, Owner shall not use the Village's Property for any activities involving the use, generation, treatment, storage or disposal of any hazardous or toxic chemical, material, substance or waste. Owner shall not conduct any activity on the Village's Property or use the Village's Property in any manner (i) which would cause the Village's Property to become a hazardous waste treatment, storage or disposal facility, (ii) so as to cause a release or threat of a release of hazardous waste from the Village's Property, or (iii) so as to cause a discharge of pollutants or effluents into any water source or system.

7. In consideration for the Village's agreement to permit Owner to enter the Village's Property to perform the Work contemplated by this Agreement, Owner agrees as follows:

A. Owner, its successors and assigns shall defend, indemnify and hold harmless the Village and the Village Affiliates and each of them, from and against any and all civil liabilities, actions, responsibilities, obligations, losses, damages, and claims, and all costs and expenses, including but not limited to attorney's fees and expenses (collectively, "Losses") pursuant to any federal, state and local laws (including the common law), statutes, ordinances, rules, regulations and other requirements relating to or which the Village and/or the Village Affiliates may incur from or on account of (either directly or indirectly) the Work performed hereunder, including but not limited to any Losses incurred which are based on tort law, wrongful death, and/or a personal injury claim, suit or action and/or any Losses relating to environmental investigation, cleanup, or abatement, whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future, and in any manner whatsoever incurred relating to (i) any condition of the Village's Property (including the groundwater thereunder) or the existence of Hazardous Substances (herein defined as that term is defined in 42 U.S.C. §6903(5)) or §9601(14), Hazardous Waste (herein defined as that term is defined in 42 U.S.C. §6991(8)), or Petroleum (herein defined as that term is defined in 42 U.S.C. §6991(8)), on or emanating from the Village's Property (including the groundwater thereunder) of any environmental violation on the Village's Property (including the groundwater thereunder) or claimed law or regulation (including civil penalties sought to be imposed by governmental authorities for such violations); (iii) any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release (as defined by 42 U.S.C. §9601(22)) or threatened release (as defined by 42 U.S.C. §9601(22)) of Hazardous Substances, or Petroleum on or from the Village's Property (including the groundwater thereunder); and the imposition of any lien for the recovery of any costs related to the migration, release, or threatened release of Hazardous Substances, Hazardous Waste, or Petroleum (or allegations of the same) on or from the Village's Property (including the groundwater thereunder).

B. Owner and their successors and assigns hereby agree to release, waive, covenant not to sue and forever discharge the Village and the Village Affiliates, and each of them, for any claim, suit, or action, whether or not well founded in fact or in law, which Owner, their contractors, agents or employees have, or may have, arising out of any evaluation, examination, testing, sampling or environmental appraisal or the Work conducted by Owner, their contractors, agents or employees at or on the Village's Property. Notwithstanding any other provision of this Agreement, as between the Village and the Village Affiliates on one hand, and Owner, on the other hand, under no circumstances shall the Village and the Village Affiliates be liable for Losses arising from any condition on the Village's Property or Hazardous Substances, Hazardous Waste, or Petroleum emanating from or contained in the Village's Property (including the groundwater thereunder), and the duty to defend, hold harmless and indemnify under this Paragraph 7 shall apply to all such Losses.

C. Owner shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. In the event that the Village or any of the Village Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Agreement, the Village and/or any of the Village Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by Owner pursuant to the indemnification provisions herein.

D. In any pending or threatened litigation, contest, dispute, suit or proceeding (whether instituted by Village, Owner, or any other party, including any governmental agency charged with enforcement of any hazardous material law) in any way relating to this Agreement and the indemnification described herein, or to enforce the indemnification hereunder or, if the Village has a reasonable basis to believe that a violation of the law exists in regard to the Village Property, the Village shall have the right to retain counsel and environmental sciences consultants of its own choice for advice or other representation without affecting or otherwise impairing the indemnification hereunder and all losses arising from such services shall be payable by Owner within 30 days of demand.

8. Owner shall immediately deliver to the Village any and all records, documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form), or reports of any kind (including all written, printed, recorded or graphic matter however produced or reproduced and all copies, drafts and versions thereof not identical in each respect to the original) which relate or refer to the environmental matters and/or conditions associated either directly or indirectly with the Village's Property and/or the Site (including the groundwater thereunder), including but not limited to written reports of a site assessment, environmental audits, soil test reports, water test reports, laboratory analysis and documents, reports or writings relating or referring to the Work.

9. Owner and Owner's agents, contractors, subcontractors and employees shall perform the Work in a workmen-like manner, and shall conduct all Work at the Village's Property in

12. This Agreement shall ensure to the benefit of, and shall be binding upon the heirs, legatees, transferees, assigns, personal representatives, owners, insurers, agents, servants,

11. Owner agrees to obtain and furnish at their own expense insurance policies that are acceptable to the Village, protecting the Village and the Village Affiliates from any and all damages, claims and losses on a primary and noncontributory basis. Owner further agrees to cause Contractual Liability Endorsements to be issued by the insurance companies (and attached to the policies of insurance) to include under the coverage therein extended an obligation on the part of the insurers to insure against Owner's liability hereunder and to identify the Village and the Village Affiliates against Losses, liability, costs, expenses, attorney's fees and court costs. Contractual Liability Endorsements to the policies shall include as named co-insureds the Village of Lombard and the Village Affiliates. In addition, Certificates of Insurance adding the Village and the Village Affiliates as Additional Insureds on the Owner's and Contractor's Comprehensive General Liability Policy, Pollution Liability, Worker's Compensation, Auto Liability and Professional Errors and Omissions coverages shall be submitted to the Village. All such contracts of insurance shall provide for thirty (30) days advance notice to the Village of cancellation thereof. The Certificate of Insurance and policies and endorsements required hereunder shall be submitted to and approved by the Village before Work is permitted to be started.

10. Owner shall be solely responsible for the testing, storage, treatment and disposal of Owner, generator or transporter of materials or soil taken from the Village's Property as a result of the Work. The Village will not be identified at any time, in any place, document, record or manifest as the harmless from and against any and all costs and liabilities and Losses relating to such materials. indemnify and hold the Village and the Village Affiliates, their officers, employees and agents harmless from and against any and all costs and liabilities and Losses relating to such materials. All material removed from the soil borings and/or which result from the Work, and Owner shall

10. Owner shall be solely responsible for the testing, storage, treatment and disposal of Owner, generator or transporter of materials or soil taken from the Village's Property as a result of the Work. The Village will not be identified at any time, in any place, document, record or manifest as the harmless from and against any and all costs and liabilities and Losses relating to such materials. indemnify and hold the Village and the Village Affiliates, their officers, employees and agents harmless from and against any and all costs and liabilities and Losses relating to such materials. All material removed from the soil borings and/or which result from the Work, and Owner shall

accordance with all applicable federal, state and local laws and regulations, including without limitation Illinois Environmental Protection Agency and federal laws and regulations applicable to all health and safety requirements. Owner shall not take and is not authorized to take any action in the name of or otherwise on behalf of the Village which would violate applicable laws or regulations. Owner shall promptly notify the Village upon discovery of any failure of Owner or its subcontractors to comply with any requirement of the law. The Owner shall defend the Village from all claims, suits and proceedings brought against the Village and which arise or occur by reason of any alleged violation or violations of any applicable law or regulation by Owner or its subcontractor in their performance of the Work. Owner shall indemnify and hold the Village harmless from liability or penalty imposed by reason of such violation or violations of applicable laws or regulations. Owner and Owner's agents, contractors, subcontractors and employees shall take all reasonable precautions to minimize damage to the Village's Property from the installation of any equipment and the Work on the Village's Property and shall restore the Village's Property to its original condition within twenty (20) days after completion of the Work or the termination of this Agreement. The restoration of the Village's Property and abandonment of the groundwater monitoring well and Work must be to the Village Engineer's satisfaction.

employees, administrators, executors, representatives and/or successors in interest of any kind whatsoever, of the parties hereto.

13. The obligations of Owner hereunder shall remain in full force and shall not be impaired by: (i) the TACO Agreement; (ii) any exercise or non-exercise by any person or entity or the Village of any right or privilege under the TACO Agreement or this Agreement; (iii) any other like proceeding relating to Owner or any affiliate of Owner or any guarantor, or any action taken with respect to this Agreement by any trustee or receiver or by any court in any such proceeding, whether or not Owner shall have had notice or knowledge of any of the foregoing; (iv) any release, waiver or discharge of the Owner or any endorser or guarantor from liability under the TACO Agreement or this Agreement or any Owner's grant to any person or entity of a security interest, lien or encumbrance in the Site; and (v) any acceptance of partial performance of any of the obligations of Owner under the TACO Agreement or this Agreement.

14. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.

15. This Agreement has been made and delivered in Illinois and shall be construed according to and governed by the internal laws of the State of Illinois without regard to its conflict of law rules. In the event any term or provision of this Agreement shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect and to that extent, the provisions hereof are severable. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law.

16. In performing the remediation work hereunder, it is understood that the Owner is acting as an independent contractor, that its employees, agents and representatives and those of any and all subcontractors which it retains in the Work hereunder shall not be deemed, for any purpose, to be agents, servants, and/or employees of the Village. The Owner and its subcontractors shall not represent or hold themselves out as employees or agents of the Village.

17. Owner, its employees, agents, representatives and contractors shall not discuss, offer comment, or opinions concerning any part of the Work or disclose results without the written consent of the Village or as required by law. This requirement shall apply to the Owner with regard to disclosures to members of the general public and the public and private medias.

18. Owner shall not enter into negotiations with any governmental authority or agency to develop variances or revisions to laws or regulations with respect to the Work without the Village's written approval.

19. This Agreement embodies the entire agreement between the parties hereto and supersedes any and all prior agreements and understandings, whether written or oral, and whether formal or informal. In addition, this Agreement embodies and merges the entire understanding between and among the parties hereto, and any and all prior correspondence,

conversations, or memoranda relating the subject matter stated herein are being merged herein and replaced hereby. No change hereto shall be effective without the written consent and authorization of all of the parties hereto. In construing this Agreement or determining the rights of the parties hereunder, no party shall be deemed to have drafted or created this Agreement or any portion thereof.

20. Failure of the Village to require performance of any provision of this Agreement or the TACO Agreement shall not affect the Village's right to require full performance thereof at any time thereafter, and the waiver by the Village of a breach of any provision of this Agreement shall not constitute or be deemed a waiver of a similar breach in the future, or any other breach, or nullify the effectiveness of such provisions of this Agreement. The rights and remedies of the Village of this Agreement are cumulative. The exercise or use of any one or more thereof shall not bar the Village from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by the Village waive any other right or remedy. The parties are aware of 42 U.S.C. §9607(e), and waive any rights they may otherwise have to assert that such statute does not permit, or renders invalid, the waivers or indemnity provisions contained in this Agreement.

Owner's obligations hereunder shall in no way be impaired, reduced or released by reason of the Village's omissions or delay to exercise any right described herein or in connection with any notice, demand, warning or claim regarding violations of any law governing the Site and/or the Village's Property.

21. Owner will pay and discharge all reasonable costs, attorney's fees, expenses and losses that shall be made and incurred by the Village in enforcing the covenants and agreements of this Agreement.

22. As additional consideration for and assurance of performance of this Agreement, Owner tenders to the Village, and the Village accepts the Guaranty of Performance and Payment attached to this Agreement as Exhibit B.

23. The executing representatives of the parties to this Agreement represent and certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.

IN WITNESS WHEREOF, the VILLAGE has caused this Agreement to be signed by its duly authorized representative, and be binding upon it, its successors and assigns.

VILLAGE OF LOMBARD, ILLINOIS

By _____
(Printed)
Its: _____

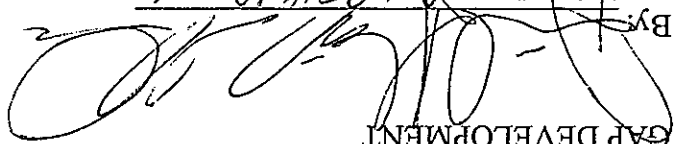
DATE: _____

IN WITNESS WHEREOF, Owner, GAP DEVELOPMENT, has caused this Agreement to be signed by its duly authorized representative, and be binding upon it, its successors and assigns.

Village Clerk

ATTEST:

GAP DEVELOPMENT

By:  (Printed) Mr. Patrick D'Amico George Its:

DATE: 6/02/06

R E S O L U T I O N
R _____
07

**A RESOLUTION AUTHORIZING SIGNATURES OF
PRESIDENT AND CLERK ON A HIGHWAY AUTHORITY AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received a Highway Authority Agreement as attached hereto and marked Exhibit "A"; and, WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to authorize the execution of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said document as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto.

Adopted this _____ day of _____, 2006.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2006.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

TIERED APPROACH TO CORRECTIVE-ACTION OBJECTIVES AGREEMENT

This Agreement is entered into this _____ day of _____, 2006, pursuant to 35 Ill. Admin. Code Section 742.1020 and by and between GAP DEVELOPMENT as owner and/or operator of underground storage tank(s) ("Owner/Operator") and the VILLAGE OF LOMBARD, Illinois ("VILLAGE") as follows:

1. This Agreement is not binding upon the VILLAGE until it is executed by the undersigned representative of the VILLAGE and prior to execution, this Agreement constitutes an offer by Owner/Operator. The duly authorized representative of Owner/Operator has signed this Agreement, and this Agreement is binding upon them, their successors and assigns.

2. Owner/Operator stipulates:

a. Owner/Operator is the owner and operator of one or more underground storage tanks and is pursuing a corrective action of a Site and of the Right-of-Ways adjacent to the boundary of the Site located at 300 S. Main Street, Lombard, Illinois (the "Site").

b. Attached as Exhibit A are site maps prepared by Owner/Operator which show the area of estimated contaminant impacted soil and groundwater at the time of this Agreement in the Right-of-Ways above Tier 1 residential levels under 35 Ill. Admin. Code Part 742. Also shown in Exhibit A are tables prepared by Owner/Operator showing the concentration of contaminants of concern, hereafter "Contaminants," in the soil and groundwater within the Site and which show the applicable Illinois Pollution Control Board ("IPCB") Tier 1 soil remediation objectives for residential property and Tier 1 objectives for groundwater of the Illinois Pollution Control Board ("IPCB") which are exceeded. The Right-of-Ways, and only the Right-of-Ways adjacent to the Site as described in Exhibit B (hereinafter the "Right-of-Ways") are subject to this Agreement. As the drawings in the Exhibits are not plats, the boundary of the Right-of-Ways in the Exhibits may be an approximation of the actual Right-of-Way lines. The Right-of-Ways are impractical to sample for Contaminants, however, the parties believe that the area of the Right-of-Ways are adequate to encompass the soil and the groundwater within the Right-of-Ways possibly impacted with Contaminants from a release at the Site. The Owner and Operator represent that Owner/Operator know of no Contaminants present upon, in, or under the Right-of-Ways, other than those identified in Exhibit A.

c. The Illinois Emergency Management Agency has assigned incident number 981370 to this release at the Site.

d. Owner/Operator intends to request risk-based, site specific soil and/or groundwater remediation objectives from Illinois Environmental Protection Agency ("IEPA") under 35 Ill. Admin. Code Part 742.

e. Under these rules, use of risk-based, site specific remediation objectives in the Right-of-Ways may require the use of a Highway Authority Agreement as defined in 35 Ill. Admin. Code Section 742.1020.

3. The VILLAGE stipulates:

The VILLAGE holds a fee simple interest or a dedication for highway purposes in the Right-of-Ways, or the Right-of-Ways are a platted street, and the VILLAGE has jurisdiction of the Right-of-Ways. As such, the VILLAGE exercises access control over the use of groundwater beneath the Right-of-Ways and over access to the soil beneath the Right-of-Ways.

4. The parties stipulate that:

a. Under 35 III. Admin. Code Section 742.1020, this Agreement is intended to be an acceptable "Highway Authority Agreement" to IEPA, as the VILLAGE is willing to agree that it will not allow the use of groundwater under the highway Right-of-Ways as a potable or other domestic supply of water and that it will limit access as described herein to soil under the highway Right-of-Ways that are contaminated from the release at levels above residential Tier 1 remediation objectives.

b. The IEPA must review and approve this Agreement, and this Agreement shall be referenced in the IEPA's "No Further Remediation" letter.

c. Unless otherwise agreed to by the parties in writing, this Agreement shall be null and void should the IEPA not approve it or should it not be referenced in the "No Further Remediation" letter. Provided, however, this Agreement shall be effective between the Owner/Operator and the VILLAGE immediately upon signature by their representatives.

5. The VILLAGE promises the IEPA and the Owner/Operator that it will prohibit the use of groundwater that is contaminated from the release at the Site at levels above Tier 1 remediation objectives beneath its Right-of-Ways as a potable or other domestic supply of water and will limit access to soil as described herein under the Right-of-Ways that is contaminated from the release at the Site at levels above Tier 1 remediation objectives. As the road surface over, and soils in, the Right-of-Ways operate to prohibit or impede the movement of rainfall and snowmelt through the soils in the Right-of-Ways, thereby benefiting Owner/Operator, the Owner/Operator agrees to reimburse the VILLAGE for its reasonable costs of maintenance, repair or replacement of the soils or road surface in the Right-of-Ways, in order to maintain the existing barrier to water infiltration presented by such surface and soils. Reimbursement of VILLAGE costs shall be made within thirty (30) days of presentation of invoices from the VILLAGE. Notwithstanding the foregoing, the VILLAGE does not agree to perform or incur the costs of maintenance, repairs or replacement of the Right-of-Ways, nor does it agree that the Right-of-Ways will always remain a highway or that it will maintain the Right-of-Ways as an engineered barrier.

6. Owner/Operator agrees, at its sole cost and expense, to indemnify and hold harmless and defend the VILLAGE and other highway authorities, if any, maintaining the highway Right-of-Ways by an agreement with the VILLAGE and other entities holding highway permits and the VILLAGE's former, current and future officials, council members, agents, contractors, and employees for and from any and all claims, demands, suits, proceedings, actions, omissions, losses, injuries, lawsuits, counterclaims, obligations, judgments, awards, demands, liens,

reasonable costs, reasonable attorneys' fees and liability for damages of any kind and causes of action of any kind and nature, whether known or unknown at this time, whether present or future or contingent, that are brought or filed against the VILLAGE, said highway authorities and permit entities, and/or the VILLAGE's former, current and future officials, council members, agents, contractors, and employees, by any person or entity arising out of, relating to, connected with, or in any way associated with the actual or threatened release or alleged release of Contaminants from the Site by the Owner/Operator or out of the breach of this Agreement by Owner/Operator. In the event that any such claim, action, cause of action or lawsuit is brought or filed, the VILLAGE, and its former, current and future officials, council members, employees, contractors, agents, and said highway authorities and permit entities sued thereunder, shall have the right to determine the attorney(s) of its, his, hers or their choice to represent and defend their interest in any such legal or administrative action at reasonable attorney rates all at the Owner's/Operator's expense pursuant to this Agreement. In this regard, the VILLAGE shall forward to the Owner/Operator, in a timely manner, any written claim, action, cause of action or lawsuit received, so that Owner/Operator is made aware of any such claim, action, cause of action or lawsuit. Failure to timely deliver notice of such written claim, action, cause of action or lawsuit shall not bar the VILLAGE'S right to indemnification, however, in the event that a meritorious defense exists to any such written claim, action, cause of action or lawsuit, and either a default judgment is entered against the VILLAGE or a settlement agreement is entered into by the VILLAGE without first having consulted and received the approval of the Owner/Operator (which approval shall not be unreasonably withheld), then the VILLAGE'S recovery hereunder shall be reduced to the extent that the Owner/Operator can demonstrate that it has incurred fees and costs hereunder that could have been avoided by tendering the aforesaid meritorious defense.

7. As an additional consideration, Owner/Operator agrees to reimburse the VILLAGE for the reasonable costs it has incurred in protecting human health and the environment, including, but not limited to, identifying, investigating, handling, storing and disposing of contaminated groundwater in the Right-of-Ways as a result of the release of Contaminants at this Site by the Owner/Operator. The VILLAGE has documented those costs for Owner. Those costs amount to \$ _____ Not Applicable. A cashier's check made payable to the "VILLAGE OF LOMBARD" shall be tendered to the VILLAGE at the time Owner/Operator furnishes a signed Agreement to the VILLAGE for its signature. That check will be deposited when this Agreement is signed by all necessary parties. In addition, the Owner/Operator acknowledges that it has requested the VILLAGE to enter into this agreement which is primarily for the benefit of the Owner Operator and that the VILLAGE has had to expend funds to have its environmental consultant (Testing Service Corporation) and counsel (Klein, Thorpe & Jenkins, Ltd.) review the related documentation and to review and revise this Agreement. Therefore, in addition to the payment of fees, expenses and costs as set forth in other sections of this Agreement, the Owner/Operator agrees to pay the VILLAGE within thirty (30) days of the effective date of this Agreement actual fees, expenses and costs the VILLAGE has incurred to date, limited to a total amount not to exceed TEN THOUSAND DOLLARS (\$10,000.00), based on the actual invoices for professional services it has received from Testing Service Corporation and Klein, Thorpe and Jenkins, Ltd. in regard to this Agreement.

8. This Agreement shall be binding upon all successors in interest to the Owner/Operator and to the VILLAGE. A successor in interest of the VILLAGE would include a highway authority to which the VILLAGE would transfer jurisdiction of the highway.

9. Violation of the terms of this Agreement by Owner/Operator, or their successors in interest, may be grounds for avoidance of this Agreement as a Highway Authority Agreement. Violation of the terms of this Agreement by the VILLAGE will not void this Agreement, unless the IBPA has determined that the violation is grounds for voiding this Agreement as a Highway Authority Agreement and the VILLAGE has not cured the violation within such time as IBPA has granted to cure the violation.

10. This Agreement shall continue in effect from the date of this Agreement until the Right-of-Ways are demonstrated to be suitable for unrestricted use and there is no longer a need for this Agreement as a Highway Authority Agreement, and the IBPA has, upon written request to the IBPA by the Owner/Operator and notice to the VILLAGE, amended the notice in the chain of title of the Site to reflect unencumbered future use of the highway Right-of-Ways.

11. This Agreement does not limit the VILLAGE's ability to construct, reconstruct, demolish, improve, grade, excavate, repair, maintain and operate (collectively "Work") the property encompassed by the Right-of-Ways, for a highway or any lawful purpose, nor to allow others to use or do Work upon the Right-of-Ways by permit. To the extent necessary for its Work, the VILLAGE reserves the right and the right of those using its property to remove contaminated soil and/or groundwater above Tier 1 residential remediation objectives from its Right-of-Ways and to dispose of them as they deem appropriate not inconsistent with applicable environmental regulations so as to avoid causing a further release of the Contaminants and to protect human health and the environment.

Prior to taking any such action, the VILLAGE will first give Owner/Operator reasonable written notice, unless there is an immediate threat to the health or safety to any individual or to the public (for example, including but not limited to a sewer or water main break), that it intends to perform Work in the Right-of-Ways which may involve site investigation, removing and disposing of contaminated soil or groundwater to the extent necessary for its Work.

Failure of the VILLAGE to give notice is not a violation of this Agreement. The removal and/or disposal shall be based upon the site investigation (which may be modified by field conditions during excavation), which Owner/Operator may review or may perform, at no cost to the VILLAGE, if requested to do so by the VILLAGE. If practicable, as determined by the VILLAGE, the VILLAGE may request Owner/Operator to remove and dispose of the contaminated soil or groundwater necessary for the VILLAGE's Work in advance of that Work.

The Owner/Operator shall reimburse the reasonable costs incurred by the VILLAGE to perform a site investigation (including, but not limited to, the performance of soil borings and groundwater well installations) of the Right-of-Ways and to monitor the removal, to transport and to dispose of any contaminated soil and/or groundwater from the Right-of-Ways. Further, Owner/Operator shall reimburse the reasonable costs incurred by the VILLAGE in providing notice to Owner/Operator and in engaging in the process provided for in this Section, including

14. Should the VILLAGE breach this Agreement, Owner/Operator's sole remedy is for an action for damages. Any and all claims for damages against the VILLAGE, its agents, contractors, employees or its successors in interest arising at any time for a breach of paragraph 5 of this Agreement are limited to an aggregate maximum of \$10,000.00. No other breach by the VILLAGE, its agents, contractors, employees and its successors in interest of a provision of this Agreement is actionable in either law or equity by Owner/Operator against the VILLAGE and Owner/Operator hereby releases the VILLAGE, its officials, council members, agents, contractors, employees and its successors in interest for any cause of action it may have against them, other than as allowed in this paragraph, arising out of a breach of this Agreement or a

Owner/Operator hereby releases the VILLAGE from liability for breach of this Agreement by others under permit and indemnifies the VILLAGE against claims that may arise from others under permit causing a breach of this Agreement. Owner/Operator also agrees that its personnel, if any, at the Site who are aware of this Agreement will notify anyone they know is excavating in the Right-of-Ways about this Agreement.

"As a condition of this permit, the permittee shall request the VILLAGE to identify sites in the Right-of-Way where access to contaminated soil or groundwater is governed by Tiered Approach to Corrective-Action Objectives ("TACO") Agreements. The permittee shall take measures before, during and after any access to these sites to protect worker safety and human health and the environment. Excavated, contaminated soil should be managed off-site in accordance with all environmental laws."

13. The VILLAGE's sole responsibility under this Agreement with respect to others using the highway Right-of-Ways under permit from the VILLAGE is to include the following, or similar language, in the future standard permit provisions and to make an effort to notify its current permit holders on its mailing list of the following:

12. Written notice required by this Agreement shall be mailed to the following: if to Owner/Operator: GAP DEVELOPMENT, _____, and if to Lombard, Illinois 60148, and Dennis G. Walsh, Esq., Klein, Thorpe and Jenkins, Ltd., 20 North Wacker Drive, Suite 1660, Chicago, Illinois 60606.

Provided, however, if notice to Owner/Operator has not been given and provided, and there was no immediate threat to health or safety, reimbursement for those costs shall be limited to actual costs not to exceed \$20,000.00. There is a rebuttable presumption that the Contaminants found in the highway Right-of-Ways arose from the release of Contaminants from the Site by Owner/Operator. Should Owner/Operator not reimburse the reasonable costs under the conditions set forth herein, this Agreement shall be null and void, at the VILLAGE's option, upon written notice to Owner/Operator by the VILLAGE that those costs have not been reimbursed. Owner/Operator may cure that problem within twenty (20) working days by making payment.

violation of environmental laws, regulations or common law governing the contaminated soil or groundwater in the highway Right-of-Ways.

15. This Agreement is entered into by the VILLAGE in recognition of laws passed by the General Assembly and regulations adopted by the IPCB, which encourages a tiered-approach to remediating environmental contamination. This Agreement is entered into by the VILLAGE in the spirit of those laws and under its rights and obligations as a property owner. Should any provisions of this Agreement be struck down as beyond the authority of the parties, the remainder of this Agreement shall survive.

IN WITNESS WHEREOF, the VILLAGE has caused this Agreement to be signed by its duly authorized representative, and be binding upon it, its successors and assigns.

VILLAGE OF LOMBARD, ILLINOIS

By _____
(Printed) _____
Its: _____
DATE: _____

ATTEST:

Village Clerk

IN WITNESS WHEREOF, Owner/Operator, GAP DEVELOPMENT, has caused this Agreement to be signed by its duly authorized representative, and be binding upon it, its successors and assigns

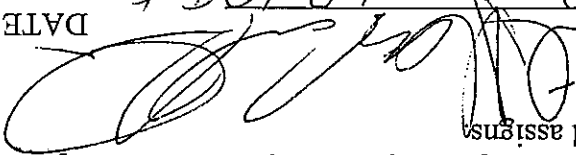
By:  _____
(Printed) Dave George / R. B. T. T. _____
Its: _____
DATE: 6/02/06 _____

Exhibit A Area of Estimated Contaminant Impacted Soil

Source: Figure 2, "Soil Remediation Extent / Soil Confirmation Sample Locations Map," Corrective Action Progress Report, 12/15/04, Marlin Environmental

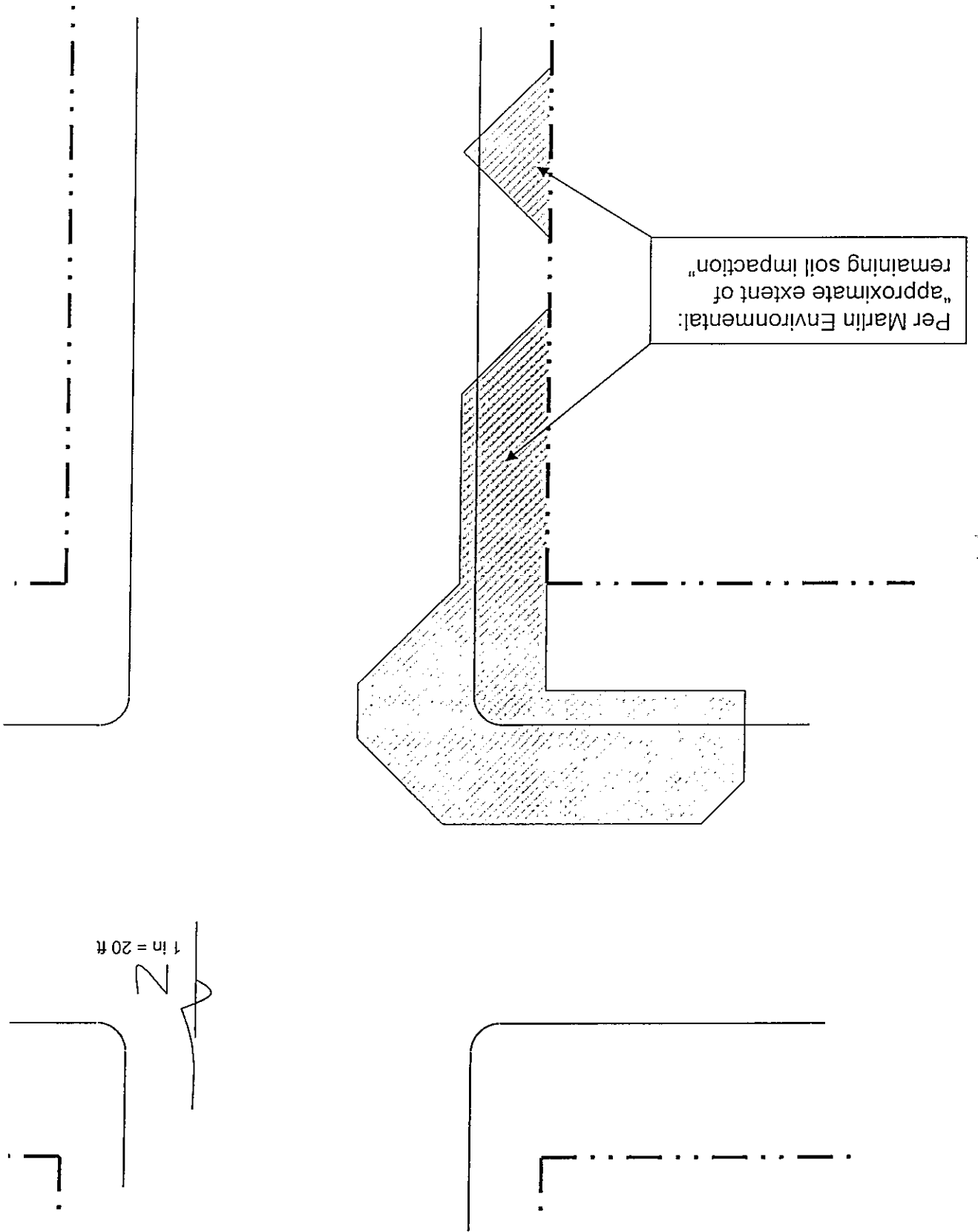
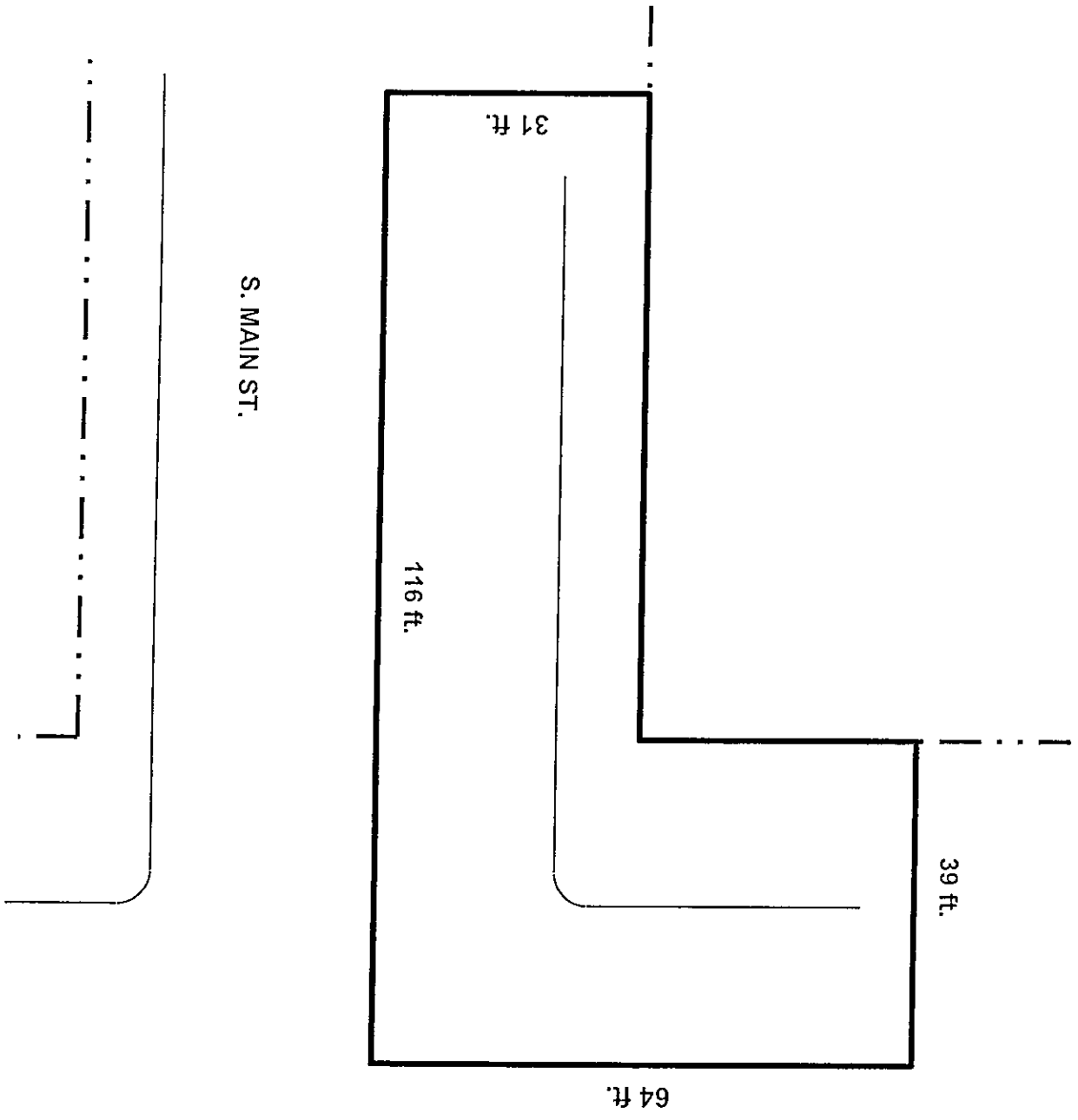
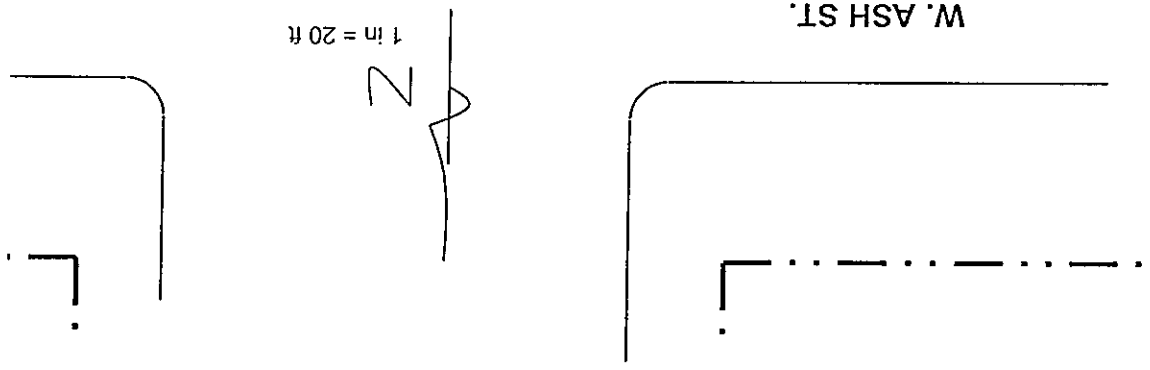


Exhibit B Right-of-Ways Subject to Highway Authority Agreement
Dimensions based on Exhibit A plus 5 feet in all directions.



1 in = 20 ft



GUARANTY OF PERFORMANCE AND PAYMENT

In consideration of, and as an inducement for the granting, execution and delivery of the Tiered Approach to Corrective-Action Objectives Agreement dated _____, 2006, and the Authorization, Acknowledgment and Indemnification For Ground Penetration and Remediation Work and Temporary Access Agreement to which this document is an exhibit (collectively referred to as the "Agreements"), by the VILLAGE OF LOMBARD, ILLINOIS, the municipality therein named (hereinafter called the "Village") to GAP DEVELOPMENT the Owner and/or Owner/Operator therein named (hereinafter called the "Owner/Operator"), the undersigned, (hereinafter called the "Guarantors"), hereby unconditionally, absolutely, irrevocably, jointly and severally guarantee as to the Village, its successors and assigns, the full and prompt payment of all the sums and charges payable by the Owner/Operator, its successors and assigns, under the Agreements, and full performance and observance of all covenants, terms, obligations, conditions and agreements therein provided to be performed and observed by Owner/Operator, its successors and assigns; and the Guarantors hereby covenant and agree to act with Village, its successors and assigns, that if default shall at any time be made by the Owner/Operator, its successors and assigns, in the payment of any sums due and owing to the Village, payable by the Owner/Operator under the Agreements, or in the performance of any of the terms, covenants, obligations, provisions, agreements or conditions contained in the Agreements, the Guarantors will forthwith pay such sums to the Village, its successors and assigns, and any arrears thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, obligations, conditions, agreements and provisions and will forthwith pay to the Village all damages that may arise in consequence of any default by the Owner/Operator, its successors and assigns, under the Agreements including, without limitation, all reasonable attorney's fees incurred by the Village or caused by any such default and by the enforcement of this Guaranty.

This Guaranty is an absolute, continuing and unconditional Guaranty of payment and of performance of suretyship. It shall be enforceable against the Guarantors, jointly and severally, their respective representatives, successors and heirs, without the necessity for any suit or proceedings on the Village's part of any kind of nature whatsoever against the Owner/Operator, its successors and assigns, and without the necessity of any notice of non-payment, non-performance, or non-observance on any notice of acceptance of this Guaranty or any other notice or demand to which the Guarantors might otherwise be entitled, all of which the Guarantors hereby expressly waive; and the Guarantors hereby expressly agree that the validity of this Guaranty and the obligations of the Guarantors hereunder shall in no way be terminated, affected or impaired by reason of the assertion or the failure to assert by the Village against the Owner/Operator, or the Owner/Operator's successors and assigns, of any of the rights and remedies reserved to the Village pursuant to the provisions of the Agreements.

The Guaranty shall be a continuing Guaranty, and the liability of the Guarantors hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Agreements or by reason of any modification or waiver of or change in any of the terms, covenants, conditions, obligations, agreements or provisions of the Agreements, or by reason of any extension of time that may be granted by the Village to the

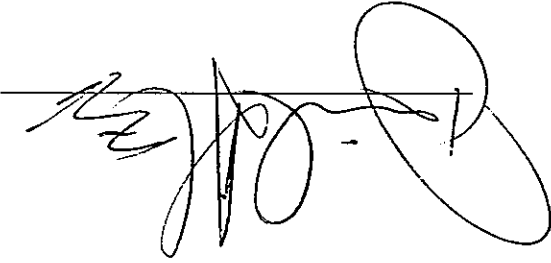
Owner/Operator, its successors and assigns, or by reason of any dealings or transactions or matter or things occurring between the Village and the Owner/Operator, its successors and assigns whether or not notice thereof is given to the Guarantors. This Guaranty cannot be assigned, transferred, modified, changed, altered or terminated in any manner whatsoever without the express written consent of the Village.

The Guarantors agree that this Guaranty Agreement shall not be discharged, limited, impaired or affected by (1) either the existence or non-existence of the Owner/Operator as a legal entity; (2) the transfer of the Owner/Operator of all or any part of the real estate or Site described in the Agreements; (3) the power or authority of the Owner/Operator to enter into the Agreements; or (4) the operations of any present or future provision of the United States Bankruptcy Code or similar statute, or from the decision of any court, including without limitation, any proceedings with respect to the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, imposition or readjustment of, or similar proceedings affecting Owner/Operator or any of the Guarantors hereunder or any of their assets, it being expressly understood and agreed that no such proceeding shall affect, modify, limit or discharge the liability or obligation of the Guarantor hereunder in any manner whatsoever, and that said Guarantor shall continue to remain absolutely liable under this Guaranty to the same extent, and in the same manner as if such proceedings had not been instituted.

The Guarantors agree that no provision of the Guaranty or right of the Village can be waived, nor can the Guarantors be released from any obligation hereunder, except by a written document executed by the Village.

Dated: _____, 2006

GUARANTORS

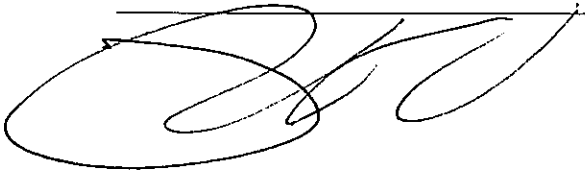


SUBSCRIBED and SWORN TO
before me this _____ day of _____, 2006.

Notary Public

SUBSCRIBED and SWORN TO
before me this _____ day of _____, 2006.

Notary Public



 Notary Public

 before me this _____ day of _____, 2006.
 SUBSCRIBED and SWORN TO

 Notary Public

 before me this _____ day of _____, 2006.
 SUBSCRIBED and SWORN TO
