





August 21, 2015

TO: Village President and Board of Trustees  
THROUGH: Scott Niehaus, Village Manager  
FROM: Carl Goldsmith, Director of Public Works *CG*  
SUBJECT: Sale of Real Property – 19 S. Eisenhower Lane

### **Background**

The Village of Lombard purchased the .83 acre parcel in July 2003. The property is located in the Yorkbrook Industrial Park and was initially acquired for the purpose of constructing a water reservoir to support the Village of Lombard's water system. The Village acquired the property for \$397,782. The intended use of the property was to facilitate the construction of a water storage facility.

Based upon the 2014 Water Network Analysis performed by the Village, the storage facility is no longer necessary to support the system operations. A reduction in the pumpage, due to conservation efforts and more efficient fixtures, as well as the construction of the South Booster Station in 2010, have allowed the Village to meet the current and future storage demands with the current facilities. In addition to the demand being met, the property's configuration and grade issues make it a difficult site to accommodate the development of a water facility.

In August 2014, staff discussed the status of the property with the Village Board of Trustees. The Village Board directed staff to proceed with the sale of the property based upon an appraisal conducted in July 2014. Since that time, the Village Manager executed a Letter of Intent to sell the property for the fair market value established by the July 2014 appraisal.

The Village Attorney has prepared the attached resolutions and documents relative to the sale of the subject property. Pursuant to State Statutes, the Village Board of Trustees must approve the sale under separate action and the votes require a two-thirds (2/3) vote of the Corporate Authorities. The Village President is required to vote on these matters as a super-majority is required.

In order to effectuate the sale of the property, the Village Board is required to approve the following resolutions. The resolutions must be adopted in the order that they appear below.

1. A RESOLUTION AUTHORIZING THE TRANSFER OF TITLE TO SURPLUS REAL ESTATE PURSUANT TO 65 ILCS 5/11-76-4.1 (19 SOUTH EISENHOWER LANE)

2. A RESOLUTION APPROVING A CONTRACT FOR THE SALE OF SURPLUS REAL ESTATE (19 SOUTH EISENHOWER LANE)

Once the Village Board approved the resolutions, the Village Attorney will publish Resolution Authorizing the Transfer of Title as required by law. Upon execution of the Real Estate Contract, the buyer has a 90 day due diligence period. As such, it is anticipated that the closing will occur in the later part of fall of 2015.

The proceeds for the sale will be placed in the Water & Sewer Capital Fund. Should you have any question, please feel free to contact me.

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

**A RESOLUTION AUTHORIZING  
THE TRANSFER OF TITLE TO SURPLUS REAL ESTATE  
PURSUANT TO 65 ILCS 5/11-76-4.1  
(19 South Eisenhower Lane)**

**WHEREAS**, the Village is the owner of the following-described 0.8 acre parcel of vacant real estate, currently zoned I - Limited Industrial District:

LOMBARD INDUSTRIAL PARK UNIT NO. 7 (EXCEPT THE NORTH 215 THEREOF), A SUBDIVISION OF PART OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 5, 1976 AS DOCUMENT R76-53191, IN DUPAGE COUNTY, ILLINOIS;

PIN: 06-30-205-018-0000;

Common Address: 19 South Eisenhower Lane;

(hereinafter the "Subject Property"); and

**WHEREAS**, the President and Board of Trustees have determined that the Subject Property is surplus property; and

**WHEREAS**, pursuant to 65 ILCS 5/11-76-4.1, the Village had the Subject Property appraised by a State-certified real estate appraiser, a copy of the written certified appraisal performed by Dale J. Kleszynski, MAI, SRA, of Associated Property Counselors, Ltd., dated July 2, 2014, being on file with the Village Clerk's office, and subject to public inspection, and incorporated herein by reference (hereinafter the "Appraisal"); and

**WHEREAS**, said Appraisal has determined that the value of the Subject Property is \$125,000.00; and

**WHEREAS**, the President and Board of Trustees have determined that the Subject Property shall, pursuant to the requirements of 65 ILCS 5/11-76-4.1, be sold for not less than \$125,000.00; said amount being one hundred percent (100%) of the appraised value

of the Subject Property; and

**WHEREAS**, it is in the best interests of the Village to transfer title to the Subject Property pursuant to the sale thereof, for not less than \$125,000.00;

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

**SECTION 1:** That Village Staff is hereby authorized to sell the Subject Property for a sale price of not less than \$125,000.00.

**SECTION 2:** That a copy of this Resolution shall be published, upon its adoption and approval, in the *Lombardian*, pursuant to 65 ILCS 5/11-76-4.1.

**ADOPTED** this 3rd day of September, 2015, pursuant to a two-thirds (2/3rds) roll call vote of the Corporate Authorities, as required by 65 ILCS 5/11-76-4.1, as follows:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**APPROVED** by me this 3rd day of September, 2015.

\_\_\_\_\_  
Keith Giagnorio  
Village President

ATTEST:

\_\_\_\_\_  
Sharon Kuderna  
Village Clerk

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

**A RESOLUTION  
APPROVING A CONTRACT FOR  
THE SALE OF SURPLUS REAL ESTATE  
(19 South Eisenhower Lane)**

**WHEREAS**, the Village is the owner of the following-described 0.8 acre parcel of vacant real estate, currently zoned I - Limited Industrial District:

LOMBARD INDUSTRIAL PARK UNIT NO. 7 (EXCEPT THE NORTH 215 THEREOF), A SUBDIVISION OF PART OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 5, 1976 AS DOCUMENT R76-53191, IN DUPAGE COUNTY, ILLINOIS;

PIN: 06-30-205-018-0000;

Common Address: 19 South Eisenhower Lane;

(hereinafter the "Subject Property"); and

**WHEREAS**, the President and Board of Trustees have determined that the Subject Property is surplus property; and

**WHEREAS**, pursuant to 65 ILCS 5/11-76-4.1, the Village has had the Subject Property appraised by a State-certified real estate appraiser, a copy of the written certified appraisal performed by Dale J. Kleszynski, MAI, SRA, of Associated Property Counselors, Ltd., dated July 2, 2014, being on file with the Village Clerk's office, and subject to public inspection, and incorporated herein by reference (hereinafter the "Appraisal"); and

**WHEREAS**, said Appraisal has determined that the value of the Subject Property is \$125,000.00; and

**WHEREAS**, Gasaway Maintenance Company has offered to purchase the Subject Property, for \$125,000.00, pursuant to the terms and conditions of the real estate contract attached hereto as Exhibit A and made part hereof (hereinafter the “Real Estate Contract”); and

**WHEREAS**, it is in the best interests of the Village to sell the Subject Property to Gasaway Maintenance Company, for \$125,000.00, pursuant to the Real Estate Contract;

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

**SECTION 1:** That the sale of, and transfer of title to, the Subject Property to Gasaway Maintenance Company for \$125,000.00, pursuant to the terms and conditions of the Real Estate Contract, is hereby approved.

**SECTION 2:** That Village Staff is hereby directed to prepare the necessary documents to transfer title, and to thereafter transfer title, to the Subject Property to Gasaway Maintenance Company, pursuant to the terms and conditions of the Real Estate Contract.

**SECTION 3:** That the Village President, Village Clerk, Village Manager and/or Village Finance Director are hereby authorized and directed to execute any and all necessary documents to complete the transaction contemplated by Section 2 above.

**ADOPTED** this 3rd day of September, 2015, pursuant to a two-thirds (2/3rds) roll call vote of the Corporate Authorities, as required by 65 ILCS 5/11-76-4.1, as follows:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**APPROVED** by me this 3rd day of September, 2015.

\_\_\_\_\_  
Keith Giagnorio  
Village President

ATTEST:

\_\_\_\_\_  
Sharon Kuderna  
Village Clerk



**Exhibit A**

**Real Estate Contract**

(attached)

**COMMERCIAL REAL ESTATE SALES CONTRACT**  
(the "Contract")

1. **OFFER TO PURCHASE.** Gasaway Maintenance Company, An Illinois corporation licensed to do business in Illinois, ("Purchaser") agrees to purchase, at a price of One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) ("Purchase Price"), on the terms set forth herein, the following described real estate in DuPage County, Illinois ("Real Estate"):

LOMBARD INDUSTRIAL PARK UNIT NO. 7 (EXCEPT THE NORTH 215 THEREOF), A  
SUBDIVISION OF PART OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE  
THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 5,  
1976 AS DOCUMENT R76-53191, IN DU PAGE COUNTY, ILLINOIS;

Common Address: 19 South Eisenhower Lane, Lombard, IL 60148

P.I.N: 06-30-205-018-0000

2. **WARRANTY DEED.** The Village of Lombard, an Illinois non-home rule municipal corporation ("Seller") agrees to sell to the Purchaser the Real Estate in "AS-IS, WHERE-IS" condition, in consideration of the Purchase Price and the other terms set forth in this Contract, and without any representations or warranties of any kind, express or implied, either oral or written, other than as specifically set forth herein, made by the Village or any agent or representative of the Village with respect to the physical, environmental or structural condition of the Real Estate, including but not limited to layout, square footage, zoning, use and occupancy restrictions, susceptibility to flooding or with respect to the existence or absence of toxic or hazardous materials, substances or wastes in, on, under or affecting the Real Estate, including the soil conditions and the groundwater. The Village makes no warranty or representation whatsoever other than as specifically set forth herein and disclaims any implied warranty regarding the fitness for particular purpose, quality or merchantability of the Real Estate or any portion thereof.

Seller will remove all trees, mulch, shredding, limbs, and other debris from the site and confirm that there is no beetle, borer or other infestation on the site based upon the tree debris that was stored on the site.

The Purchaser agreed to accept the Real Estate in "AS-IS, WHERE-IS" condition, including any environmental conditions associated with the same, without any representations or warranties of any kind, express or implied, either oral or written, other than as specifically set forth therein, made by the Village or any agent or representative of the Village with respect to the physical, environmental or structural condition of the Real Estate, including but not limited to layout, square footage, zoning, use and occupancy restrictions, susceptibility to flooding or with respect to the existence or absence of toxic or hazardous materials, substances or wastes in, on, under or affecting the Real Estate, including the soil conditions and the groundwater. The Purchaser understands that the Village makes no warranty or representation whatsoever and disclaims any implied warranty regarding the fitness for a particular purpose, quality or merchantability of the Real estate or any portion thereof.

The sale of the Real Estate by the Seller to Purchaser under this Contract shall be subject to the terms, conditions and provisions set forth in Resolution No \_\_\_\_\_, which is incorporated by reference into this Contract, and a copy of Resolution No \_\_\_\_\_ is attached hereto as Exhibit "A", and made a part thereof. To the extent of any conflicts between the terms of this Contract and Exhibit "A," the terms of Exhibit "A" shall control.

3. **EARNEST MONEY.** Purchaser shall pay Five Thousand and 00/100 Dollars (\$5,000.00) as earnest money ("Escrow Money") within five (5) business days of the Effective Date, as defined in Section 5 below, to be applied to the Purchase Price and Purchaser agrees to pay or satisfy the balance of the Purchase Price, plus or minus prorations, at the time of closing. The Escrow Money shall be held by Chicago Title Insurance Company pursuant to escrow instructions providing for a sole order escrow at the direction of the Purchaser prior to expiration of the "Due Diligence Period" as defined in Section 5 below, and for a joint order escrow thereafter.

4. **CLOSING.** The date of closing shall be at a time and place mutually convenient to Purchaser and Seller within sixty (60) days of the "Due Diligence Period" as defined in Section 5 below, by the corporate authorities of the Village. All funds shall be paid via wire transfer at the time of the closing. All closing costs shall be split equally between Purchaser and Seller.

## CONDITIONS AND STIPULATIONS

5. **DUE DILIGENCE PERIOD.** Commencing on the date that this Contract is executed by the Village, (the "Effective Date") and continuing for a period of ninety (90) days thereafter (the "Due Diligence Period"), Purchaser shall be granted an opportunity to review any and all property condition reports of the Real Estate in Seller's possession, title report, existing surveys, environmental reports, real estate tax bills, zoning reports, any studies including the Phase I Environmental Study, and any other documents in connection with the operation of the Real Estate and in the possession of or under the control of Seller (collectively, the "Records"). In connection with such investigation, Purchaser may conduct tests on the Real Estate, provided, however, Purchaser hereby indemnifies and holds Seller, and its elected officials, officers, agents, attorneys, and employees, harmless from any personal injury or property damage caused thereby. Within five (5) business days after the Effective Date, the Village will provide all property condition reports of the Real Estate in Seller's possession, such as any title report, existing surveys, environmental reports, real estate tax, tax bills, zoning reports, any studies, including the Phase I Environmental Study, any other documents in connection with the operation of the Real Estate, leases, easements, and any documents that effect the possession of the Real Estate or are under the control of Seller.

The Seller shall present the Purchaser with a Title Commitment within forty-five (45) days of the effective date of the Contract. It shall be a condition to Closing that Buyer at Closing shall obtain an ALTA Owners Policy of Title Insurance (the "Title Policy") in the amount of the Purchase Price showing fee simple title in the Real Estate to be in Buyer, subject only to the Permitted Exceptions, with extended coverage. Seller shall pay the cost of the Title Policy with extended Coverage. After Buyer receives the title commitment, Buyer will have ten (10) business days to review the commitment and provide any objections to the items listed in the title commitment. At closing Seller will provide a title insurance policy insuring over the five (5) general exceptions. Buyer will be responsible for any title insurance with respect to a lender and the cost of any endorsements required by Buyer or lender.

Seller will be responsible for any State and County transfer taxes. Any municipal taxes will be the responsibility of the party identified by the municipality.

If, at any time during the Due Diligence period, Purchaser determines that it is not satisfied with the results of such due diligence investigation, in its sole and absolute discretion, Purchaser shall give written notice of that fact to Seller within the Due Diligence Period and, thereupon, this Contract shall be terminated, and neither Seller nor Purchaser shall have any further rights or obligations hereunder and all copies of any studies, soil tests, surveys and engineering feasibility studies obtained by Purchaser shall be immediately returned to the Seller, and thereupon the Escrow Money shall immediately be returned to the Purchaser.

6. **WARRANTIES AND REPRESENTATIONS.** Seller hereby warrants and represents to Purchaser as to the following matters, each of which is so represented to be true and correct to the best of Seller's knowledge as of the date hereof:

(a) Authority of Signatories: No Breach of Other Agreements, etc.: This Contract has been, and all the documents to be delivered by Seller to Purchaser on the Closing Date shall be, duly authorized, executed and delivered by Seller, are or will be legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms, and do not and will not on the Closing Date violate any provisions of any agreement to which Seller is a party.

(b) Assessments: Seller has no knowledge of any proposed or contemplated special assessments affecting the Real Estate.

(c) Executory Agreements: Seller is not a party to, and the Real Estate is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Real Estate, other than this Contract and the permitted exceptions attached hereto as Exhibit B (“The Permitted Exceptions”) which shall be binding on Purchasers. Purchaser 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.

(d) Title Matters: Seller has good and marketable fee simple title to the Real Estate, subject only to the Permitted Exceptions. Seller shall provide access to copies of documents relating to environmental and physical condition of the Real Estate including all environmental and soil tests that are available, as well as a current survey dated within six (6) months of the Closing Date, at Seller’s cost and expense, demonstrating that the Real Estate is free of all encroachments.

(e) Pending and Threatened Litigation: There are no pending and, to the best knowledge and belief of Seller, threatened matters of litigation, administrative action of examination, claim or demand whatsoever relating to the Real Estate.

(f) Eminent Domain, etc.: There is no pending and, to the best knowledge and belief of Seller, contemplated eminent domain, condemnation or other governmental taking of the Real Estate or any part thereof.

(g) Accuracy of Information: To the best of Seller’s knowledge, the Records and all other documents being delivered by Seller do not contain any material misrepresentations.

(h) All Required Action Taken: All action required pursuant to this Contract necessary to effectuate the transaction contemplated herein has been or will be taken promptly and in good faith by Seller and its representatives and agents.

(i) Government Obligations: There are no unperformed obligations relative to the Real Estate outstanding to any governmental or quasi-governmental body or authority and that there are no licenses or permits necessary to the operation of the Real Estate except as may be necessary for any construction on the Real Estate or the operation of a business thereon.

The foregoing representations of the Seller are limited solely to the time period during which Seller was the owner of the Real Estate, and are limited to the actual knowledge of the Seller, without any requirement to do any independent or further investigation, examination or inquiry. The accuracy of the foregoing representations as of the Closing Date shall be a condition precedent to the Purchaser’s obligation to close on the purchase of the Real Estate.

7. WARRANTIES AND REPRESENTATIONS. Purchaser hereby warrants and represents to Seller as to the following matters, each of which is so represented to be true and correct to the best of Purchaser’s knowledge as of the date hereof:

(a) Authority of Signatories: Purchaser has full authority to enter into this Contract.

(b) Broker: Each party represents to the other, which representation and warranty shall survive the Closing or the earlier termination of this Contract that neither party has dealt with any real estate broker, real estate agent, finder or sales person in connection with the purchase and sale of the real estate and the transactions contemplated under this Contract. Each party shall indemnify, defend and hold the other harmless from all liabilities, losses, damages, costs, expenses, (including but not limited to reasonable attorney’s fees), judgments and lawsuits arising from or attributable to the inaccuracy of or breach of the foregoing representations and warranties.

(c) No Breach of Other Agreements, etc.: Neither the execution and delivery of this Agreement by Purchaser, the consummation of the transactions contemplated hereby by Purchaser, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Purchaser conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on

behalf of Purchaser (with Purchaser's prior written approval), any organizational documents, any restriction, agreement or instrument to which Purchaser or any of its partners, directors, or venturers is now a party or by which Purchaser or any of its partners, directors or venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Purchaser any related party or any of its partners, directors or venturers under the terms of any instrument or agreement to which Purchaser, any related party or any of its partners, directors or venturers is now a party or by which Purchaser, any related party or any of its partners, directors or venturers is bound.

8. **RISK OF LOSS.** The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract.

9. **DEFAULT.** In the event of the Purchaser's default and failure to cure such default within seven (7) days after notice from Seller, the Escrow Money shall be forfeited to the Seller as liquidated damages and not as a penalty (the Parties agreeing that the Escrow Money is a reasonable estimate of Seller's damages) as Seller's sole and exclusive remedy. In the event of the Seller's default (with respect to closing and delivery of title to the Real Estate) and failure of Seller to cure such default within seven (7) days after notice from Purchaser, Purchaser shall be entitled to (i) declare the Contract terminated and receive a return of the Escrow Money; or (ii) maintain an action for specific performance.

10. **TIME OF THE ESSENCE** Time is of the essence of this Contract.

11. **AGENCY DISCLOSURE.** Intentionally deleted.

12. **AMENDMENT.** No provision of this Contract may be waived, modified, amended, discharged or terminated except by an instrument signed by the Party against whom the enforcement thereof is sought, and then only to the extent set forth in the instrument.

13. **NOTICES.** All notices herein required shall be in writing and shall be served on the Seller and Purchaser at the addresses set forth below. The mailing or delivery of a notice by (i) registered or certified mail, return receipt requested; (ii) recognized overnight courier service; or (iii) facsimile shall be sufficient service effective as of the date of mailing, delivery or transmission. Notices to Seller shall be delivered to Scott R. Niehaus, Village Manager, Village of Lombard, 255 E. Wilson Ave., Lombard, Illinois 60148 with a copy to Klein, Thorpe & Jenkins, Ltd., 20 North Wacker Drive, Suite 1660, Chicago, Illinois 60606, Attn: Thomas Bayer. Notices to the Purchaser shall be delivered to David Gasaway, Gasaway Maintenance Company, 1290 Lakeside Drive, Romeoville, Illinois 60446.

14. **FIRPTA.** Seller represents that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section. Seller will furnish Purchaser on the Closing Date the Exemption Certification set forth in said Section.

15. **TAX-FREE EXCHANGE.** Seller and Purchaser, at no cost to the non-exchanger, agree to cooperate and execute documents reasonably required by the other Party to effectuate the purchase or sale of all or part of the Real Estate as part of a tax-free exchange.

16. **COUNTERPART EXECUTION; FACSIMILE.** This Contract may be executed in any number of identical counterparts, any or all of which may contain signatures of less than all of the Parties, and all of which shall be deemed a single contract. Facsimile signatures shall be sufficient for purposes of executing and amending this Contract.

17. **DISCLOSURE.** Concurrently with execution of this Contract, Purchaser shall disclose to the Seller the names, addresses and ownership interests of all persons/entities that have an ownership interest in the Purchaser, together with such supporting documentation that may be requested by the Seller. Purchaser further agrees to notify the Seller throughout the term of this Contract of the names, addresses and ownership interests of any new owners of the Purchaser.

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

19. **ASSIGNMENT.** Neither party may assign this Contract without the consent of the other; provided however Purchaser may assign this Contract to a related entity. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the Effective Date set forth below:

<p><b>PURCHASER:</b></p> <p><b>Gasaway Maintenance Company</b> <b>1290 Lakeside Drive, Romeoville, Illinois 60446</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Dated: _____, 2015</p>	<p><b>SELLER:</b></p> <p><b>Village of Lombard, a Municipal Corporation</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Accepted by Seller on: _____, 2015 (the "<u>Effective Date</u>")</p>
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**EXHIBIT A**

**RESOLUTION NO. \_\_\_\_\_ APPROVING A CONTRACT  
FOR THE SALE OF SURPLUS REAL ESTATE**

[SEE ATTACHED]

**EXHIBIT B**

**PERMITTED EXCEPTIONS**

[SEE ATTACHED]



## PERMITTED EXCEPTIONS

- I. Covenants, conditions, restrictions and easements of record;
- II. All applicable laws and ordinances affecting the Real Estate, including but not limited to, zoning, subdivision, public health, environmental and building;
- III. Public and private easements, recorded and unrecorded for utilities and drainage and other purposes over, under and upon the Real Estate;
- IV. The restrictions, if any, contained in the Deed;
- V. 2015 general real estate taxes not yet due and payable and subsequent years; and
- VI. Acts done or suffered by or judgments against Purchaser.