


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

 X 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: March 27, 2006 (B of T) Date: April 6, 2006
TITLE: 300-312 S. Main Street --Highway Authority Agreement
SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration a resolution authorizing signatures of President and Clerk on a Highway Authority Agreement for the property located at 300-312 S. Main Street. (DISTRICT #1)

Staff recommends approval of this request.

Please place this item on the April 6, 2006 Board of Trustees agenda.

Fiscal Impact/Funding Source:

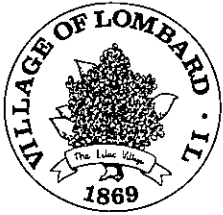
Review (as necessary):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____


acting Village Manager X  _____ Date 03/29/06

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. Hulseberg, AICP, Director of Community Development 

DATE: March 27, 2006

SUBJECT: 300-312 S. MAIN STREET – HIGHWAY AUTHORITY AGREEMENT

Gap Development has requested that the Village of Lombard enter into a Highway Authority Agreement for the affected property located at 300-312 S. Main Street.

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 has made a \$3,000 prepayment to the Village of Lombard to begin reviewing the Highway Authority Agreement. Further, Gap Development agrees to pay up to \$10,000 to review those documents. The Village desires to enter into this Agreement with Gap Development so that the property may be redeveloped as a mixed use residential/commercial project known as the Prairie Path Villas. Village Counsel has had an opportunity to review this document and finds it acceptable.

Recommendation:

Staff recommends that the Village Board of Trustees approve a resolution authorizing the Village President and Clerk to enter into a Highway Authority Agreement with Gap Development for the property located at 300-312 S. Main Street.

DAH/jd

RESOLUTION
R _____06

**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: _____

Nayes: _____

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.



f. Owner/Operator shall take all steps necessary to have the soils impacted by Contaminants in the Right of Ways above the applicable Illinois Pollution Control Board Construction Worker Objectives treated and/or removed (by a "dig and haul" method) within 12 months of the execution of this Agreement. Toward that end, Owner intends to treat the soils in the Right of Ways with a soil vapor extraction system (SVE) for a period of at least six months. Owner/Operator shall provide the Village with a letter of credit in the amount of Fifty Thousand Dollars (\$50,000.00) from a financial institution approved by the Village, to guaranty the Owner/Operator will remediate the Contaminants in the Right of Ways to below the Construction Worker Objectives within the one-year time frame. If at the end of the one-year time period, the Owner/Operator fails to demonstrate to the Village's satisfaction that the Contaminants in the Right of Ways 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/Operator'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. It is also expressly understood and agreed between the parties that:

(a) Owner/Operator shall not seek from Village payment for the monetary sums, costs and expenses it has paid or incurred or will pay or incur relating directly or indirectly to the environmental or physical condition of the Right of Ways or to the investigation of the environmental condition of the Right of Ways or the remediation work (including any environmental corrective cleanup, abatement, remediation or removal action).

(b) The Village shall not be named the "owner" (as that term is used and/or applicable as it relates to all environmental laws) of the contaminated soil and/or groundwater and as between Owner/Operator and Village, Owner/Operator shall have the sole and exclusive responsibility and liability for complying with any and all environmental laws pertaining to the contaminated soil and groundwater, including but not limited to the requirements for the excavation and off-site disposal of the contaminated soil and/or groundwater. It is the specific intention of this section that Village shall never at any time be identified or construed as being the owner (past or present), generator or transporter of the contaminated soil and/or groundwater, and that all responsibilities, obligations and liability relating to that soil and/or groundwater shall remain with the Owner/Operator.

(c) Owner/Operator shall cause the work to be performed in a workman-like manner and shall replace the space occupied by excavated soil with clean, compacted fill and shall restore the Right of Ways to their original condition. In addition, the Owner/Operator shall cause all work to be performed under this Agreement to be done in accordance and in compliance with all applicable municipal, county, state and federal laws and regulations, and with all local codes and ordinances. Upon completion of the work, Owner/Operator shall provide the Village with a sworn contractor(s) statement, including an identification of all subcontractors and material providers and final lien waivers from such contractors, subcontractors and material providers dated as of the date of the completion of the work.

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 Ill. 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 expenses, 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 voidance 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 IEPA 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 IEPA 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 IEPA has, upon written request to the IEPA 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

the reasonable costs of any consultants retained by the VILLAGE for that process. 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.

12. Written notice required by this Agreement shall be mailed to the following: if to Owner/Operator: GAP DEVELOPMENT, _____, and if to VILLAGE: Director of Community Development, Village of Lombard, 255 E. Wilson Avenue, Lombard, Illinois 60148, and Dennis G. Walsh, Esq., Klein, Thorpe and Jenkins, Ltd., 20 North Wacker Drive, Suite 1660, Chicago, Illinois 60606.

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:

“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.”

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.

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

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.

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

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: _____

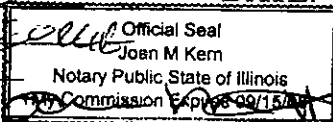
ATTEST:

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: [Signature]
(Printed) DAVID A. CUFFELLO
Its: PPRS

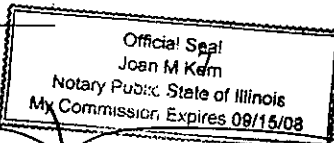
DATE: 3/21/06



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: [Signature]
(Printed) Paul Petrick
Its: Treasurer

DATE: 3/21/06



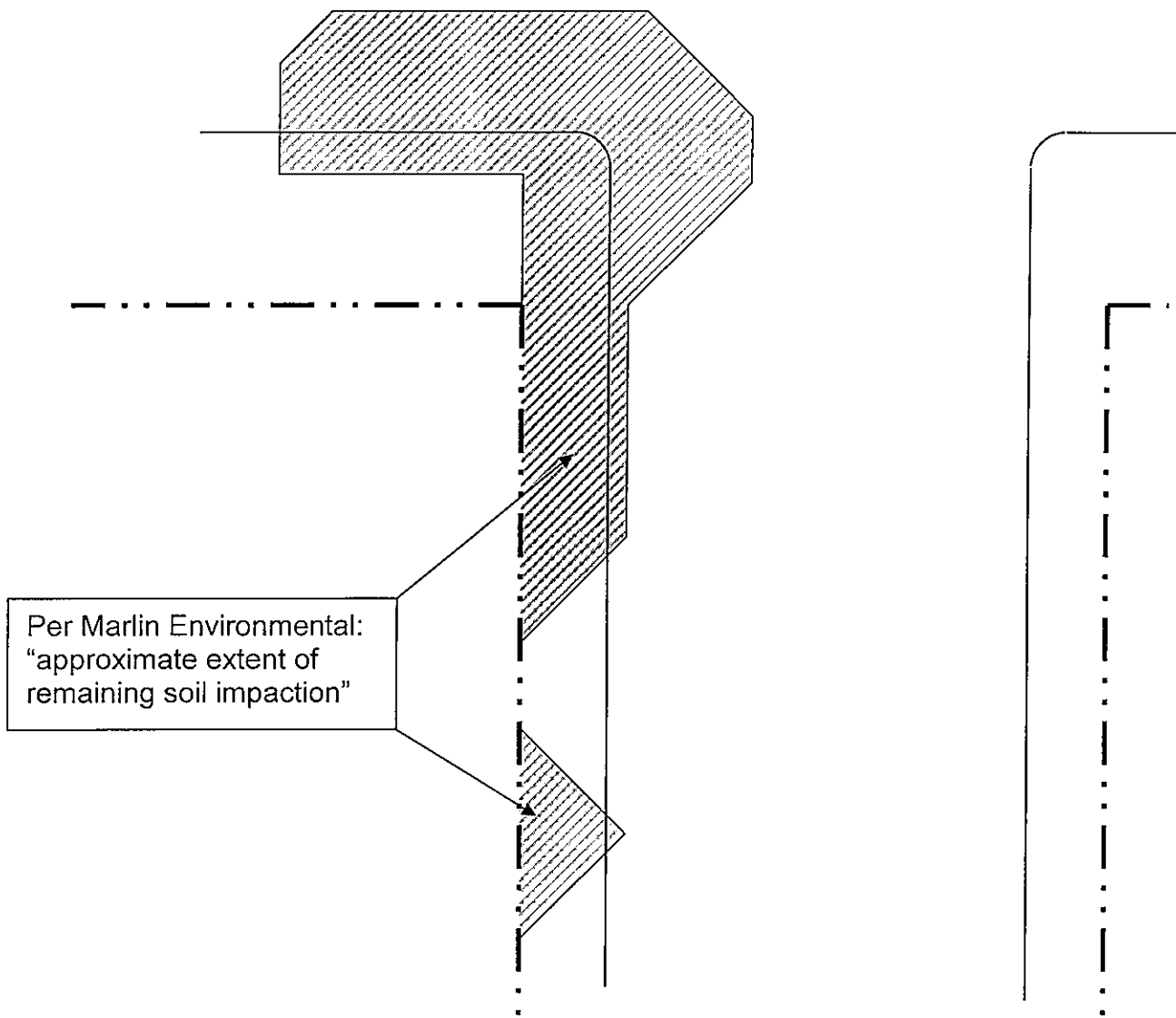
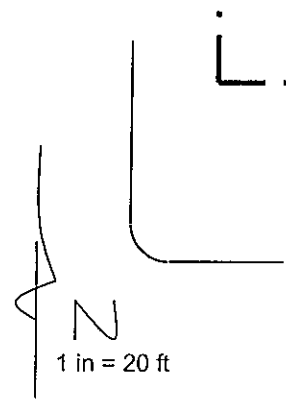
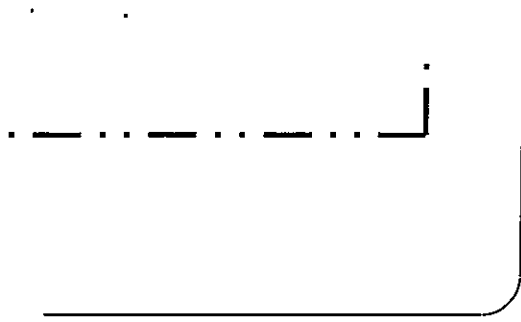
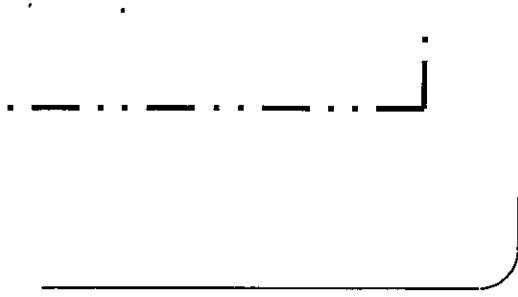


Exhibit A Area of Estimated Contaminant Impacted Soil

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



W. ASH ST.



1 in = 20 ft

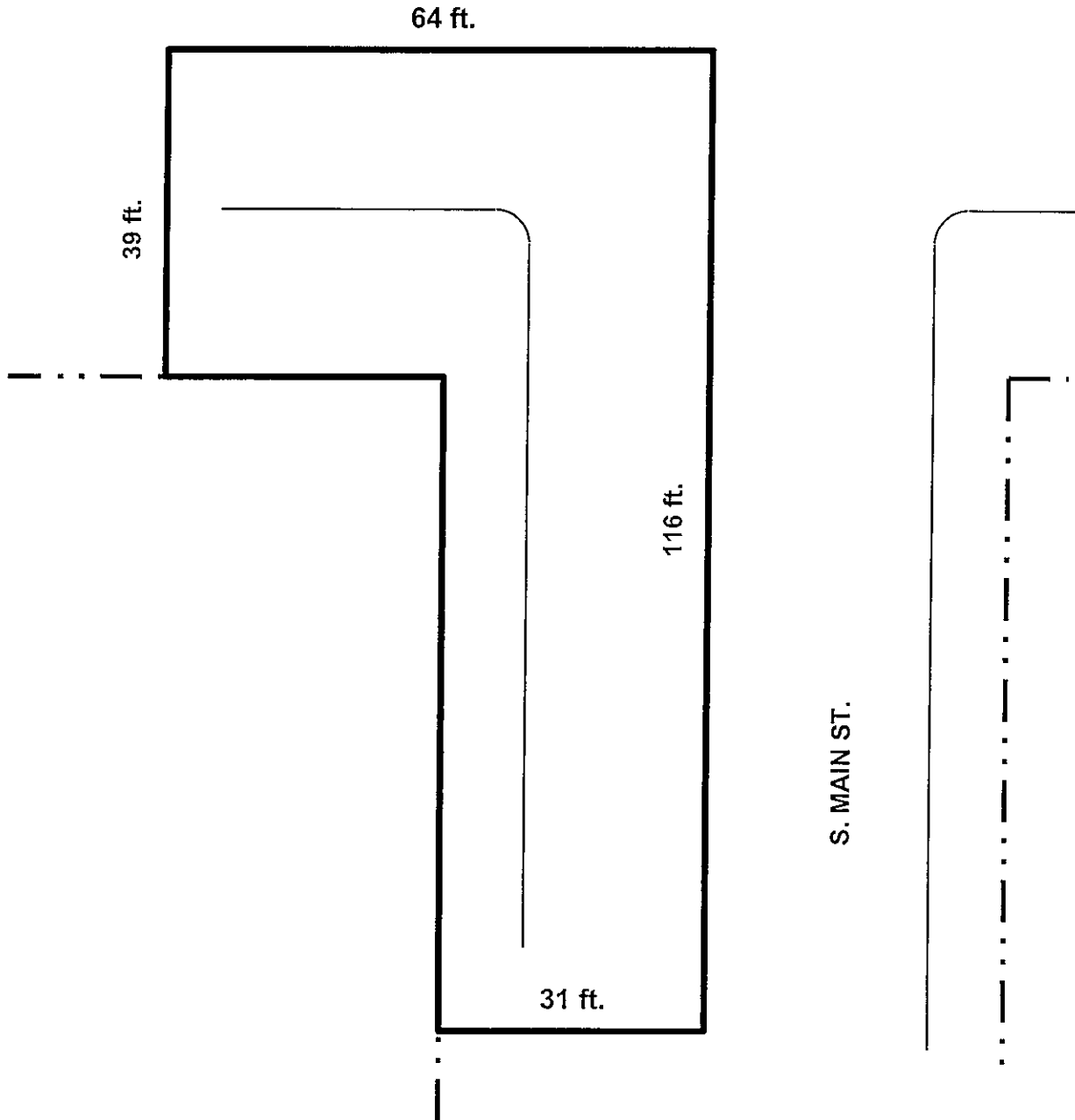
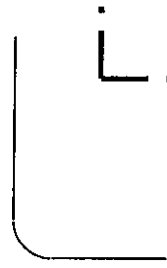


Exhibit B Right-of-Ways Subject to Highway Authority Agreement
Dimensions based on Exhibit A plus 5 feet in all directions.

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 (hereinafter called the "**TACO Agreement**"), by the **VILLAGE OF LOMBARD, ILLINOIS**, the municipality therein named (hereinafter called the "**Village**") to **GAP DEVELOPMENT** the 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 TACO Agreement, 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 said TACO Agreement, or in the performance of any of the terms, covenants, obligations, provisions, agreements or conditions contained in said TACO Agreement, the Guarantors will forthwith pay such sums to the Village, its successors and assigns, and any arrearage 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 TACO Agreement 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 assigns 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 TACO Agreement.

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 TACO Agreement or by reason of any modification or waiver of or change in any of the terms, covenants, conditions, obligations, agreements or provisions of the TACO Agreement, 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

EXHIBIT C

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 TACO Agreement; (3) the power or authority of the Owner/Operator to enter into the TACO Agreement; 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.

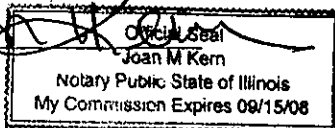
The Guarantors agree that no provision of the Guaranty or right of the Village can be waived, nor can the Guarantors be released from any obligation hereunder, except by a written document executed by the Village.

Dated: 3/21, 2006

GUARANTORS

SUBSCRIBED and SWORN TO
before me this 21st day of
March, 2006.

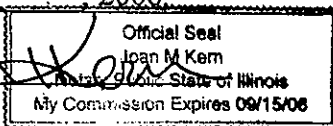
Joan M. Kern
Notary Public



A large, stylized handwritten signature in black ink, written over a horizontal line.

SUBSCRIBED and SWORN TO
before me this 21st day of
March, 2006.

Joan M. Kern
Notary Public



A large, stylized handwritten signature in black ink, written over a horizontal line.

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

Notary Public

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

Notary Public