




MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development 

MEETING DATE: February 15, 2018

RE: **115 W. Crystal Avenue – Resolutions Approving a First Amendment to an Intergovernmental Agreement and Authorizing the Sale of Real Estate the Village of Lombard (Separate Action)**

The Village of Lombard is the current owner of real estate of property at 115 W. Crystal Avenue. The property was acquired as part of the overall stormwater detention and site improvements at Terrace View Pond. Per the provisions of a 2013 Intergovernmental Agreement between the Village and the Lombard Park District, the Village was to acquire the subject property, facilitate the razing of a residence and prepare the site for conveyance to the Lombard Park District.

As part of the final conveyance due diligence to the Park District, an updated plat of survey found that Jeff & Carol Kasnick, the property owners at 111 W. Crystal Avenue (immediately to the east of the subject property) installed a six-foot high wood privacy fence in 2015 which was intended to be on their western property line. The survey found that it slightly deviated to the northwest from the origin point and onto the Village property.

At the August 17, 2017 Village Board meeting the Board approved the sale of the easterly one foot of real estate at 115 W. Crystal Avenue to the abutting property owner. With the recording of the quit claim deed (R2017-093818 on September 12, 2017) and the companion Plat of Resubdivision (R2017-110411 on October 26, 2017), the Village has been working with the Park District to amend the previously approved Intergovernmental Agreement as well as the final conveyance of the real estate. With these tasks completed, the Village can now convey the remaining 59 foot wide tract to the Park District. Per subsequent discussions with the Park District staff, they find the slightly reduced land conveyance to be acceptable.

Attached are two resolutions for Village Board consideration:

1. **Resolution Approving First Amendment to an Intergovernmental Agreement with the Lombard Park District Regarding Modifications to Terrace View Pond.** This document amends the legal description of the West Crystal Property and no other changes are proposed.

2. **A Resolution Authorizing the Conveyance of the Property Commonly Known As 115 W. Crystal to the Lombard Park District Pursuant to the Local Property Transfer Act.** This document authorizes the real estate transfer of the resubdivided land noted in the IGA.

Both of these actions were previously approved by the Park District at their January 23, 2018 Board meeting.

ACTION REQUESTED

Please place this item on the February 15, 2018 Village Board agenda for approval under “Items for Separate Action”. The Resolution approving the First Amendment can be approved by a simple majority, while the Resolution authorizing the conveyance of 115 W. Crystal to the Park District should be approved after the First Amendment to the IGA, and will require a 2/3’s vote of the Corporate Authorities.

RESOLUTION NO. _____

A RESOLUTION APPROVING A FIRST AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF LOMBARD AND THE LOMBARD PARK DISTRICT IN REGARD TO MODIFICATIONS TO TERRACE VIEW POND

WHEREAS, the Corporate Authorities of the Village of Lombard have received a First Amendment To The Intergovernmental Agreement Between The Village Of Lombard And The Lombard Park District In Regard To Modifications To Terrace View Pond , a copy of which is attached hereto as Exhibit "1" and made part hereof (the "First Amendment"); and

WHEREAS, the Corporate Authorities of the Village of Lombard deem it to be in the best interests of the Village of Lombard to approve said First Amendment;

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 First Amendment attached hereto as Exhibit "1" is hereby approved.

SECTION 2: That the Village President and Village Clerk are hereby authorized and directed to sign the First Amendment on behalf of the Village of Lombard.

SECTION 3: That this Resolution shall be in full force and effect from and after its adoption and approval as required by law.

ADOPTED this 15th day of February, 2018, pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

APPROVED by me this 15th day of February, 2018.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

**FIRST AMENDMENT TO
AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE VILLAGE OF LOMBARD AND THE LOMBARD PARK DISTRICT
IN REGARD TO MODIFICATIONS TO TERRACE VIEW POND**

This FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT IN REGARD TO MODIFICATIONS TO TERRACE VIEW POND (the "FIRST AMENDMENT") is entered into this 23 day of January, 2018, by and between the VILLAGE OF LOMBARD (the "VILLAGE") and the LOMBARD PARK DISTRICT (the "PARK DISTRICT"). The VILLAGE and the PARK DISTRICT are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, the VILLAGE and the PARK DISTRICT entered into "AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF LOMBARD AND THE LOMBARD PARK DISTRICT IN REGARD TO MODIFICATIONS TO TERRACE VIEW POND", dated April 23, 2013, (the "ORIGINAL AGREEMENT"); and

WHEREAS, the VILLAGE and the PARK DISTRICT desire to amend the ORIGINAL AGREEMENT, so as to revise the legal description of the West Crystal Property in Exhibit D of the ORIGINAL AGREEMENT, to reflect a change in said legal description caused by a resubdivision of the West Crystal Property to remove a fence encroachment from said property; and

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution and 5 ILCS 220/1 through 220/9 provide authority for intergovernmental cooperation; and

WHEREAS, it is in the best interests of the VILLAGE and the PARK DISTRICT to enter into this FIRST AMENDMENT;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements hereinafter contained, the Parties hereto agree as follows:

1. That Exhibit D of the ORIGINAL AGREEMENT is hereby amended by revising the legal description of the West Crystal Property to read in its entirety as follows:

LOT 2 IN KASNICK'S RESUBDIVISION OF LOTS 11 AND 12 IN SALVAROTI'S SUBDIVISION OF LOT "A" IN ELMORE'S NORTH VIEW, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID KASNICK'S RESUBDIVISION RECORDED OCTOBER 26, 2017, AS DOCUMENT NUMBER R2017-110411 IN DUPAGE COUNTY, ILLINOIS.

2. That all portions of the ORIGINAL AGREEMENT, not amended hereby, shall remain in full force and effect.

3. This FIRST AMENDMENT shall be executed simultaneously in two (2) counterparts, each of which shall be deemed an original, but both of which shall constitute one and the same FIRST AMENDMENT.

4. This FIRST AMENDMENT shall be deemed dated and become effective on the date the last of the Parties execute this FIRST AMENDMENT, as set forth below.

IN WITNESS WHEREOF, the VILLAGE, pursuant to authority granted by the adoption of an Ordinance by its Board of Trustees, has caused this FIRST AMENDMENT to be executed by its Village President and attested by its Village Clerk, and the PARK DISTRICT, pursuant to the authority duly granted by the adoption of a Resolution by its Board of Park Commissioners, has cause this FIRST AMENDMENT to be signed by its President and attested by its Secretary.

VILLAGE OF LOMBARD

Keith T. Giagnorio, Village President

Dated: _____

LOMBARD PARK DISTRICT



Dave Kundrot, President

Dated: January 23, 2018

ATTEST:

Sharon Kuderna, Village Clerk

ATTEST:



Paul Friedrichs, Secretary

Dated: _____

Dated: January 23, 2018

ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith T. Giagnorio and Sharon Kuderna, personally known to me to be the Village President and Village Clerk of the Village of Lombard, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Village Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2018.

Notary Public

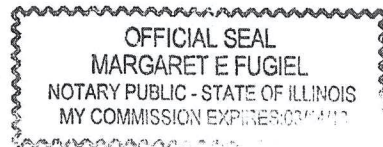
ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Dave Kundrot and Paul Friedrichs, personally known to me to be the President and Secretary of the Lombard Park District, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said park district to be affixed thereto, pursuant to authority given by the Board of Park Commissioners of said park district, as their free and voluntary act, and as the free and voluntary act and deed of said park district, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 23 day of January, 2018.

Margaret E Fugiel
Notary Public



RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE CONVEYANCE OF THE
PROPERTY COMMONLY KNOWN AS 115 WEST CRYSTAL AVENUE
PURSUANT TO THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT
(50 ILCS 605/0.01 et seq.)**

WHEREAS, the President and Board of Trustees of the Village of Lombard deem it necessary for the health, welfare and safety of the residents of the Village of Lombard to convey certain real estate to the Lombard Park District, subject to an easement allowing the Village of Lombard to continue to use and occupy portions of said real estate with two (2) stormwater relief sewers and all facilities incidental thereto; and

WHEREAS, the President and Board of Trustees of the Village of Lombard desire to convey the property commonly known as 115 West Crystal Avenue, Lombard, Illinois, DuPage County, to accomplish the aforesaid purpose; said property being legally described as follows:

LOT 2 IN KASNICK'S RESUBDIVISION OF LOTS 11 AND 12 IN SALVAROTI'S SUBDIVISION OF LOT "A" IN ELMORE'S NORTH VIEW, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID KASNICK'S RESUBDIVISION RECORDED OCTOBER 26, 2017, AS DOCUMENT NUMBER R2017-110411 IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 06-06-219-019-0000;

(hereinafter the "Real Estate"); and

WHEREAS, on April 23, 2013 and February 15, 2018, the President and Board of Trustees of the Village of Lombard entered into "An Intergovernmental Agreement Between The Village Of Lombard And The Lombard Park District In Regard To Modifications To Terrace View Pond" and a "First Amendment To An Intergovernmental Agreement Between The Village of Lombard And The Lombard Park District In Regard To Modifications To Terrace View Pond" (hereinafter collectively the "IGA"), respectively, with the Lombard Park District; and

WHEREAS, the IGA requires the Village of Lombard to, among other things, convey title to the Real Estate to the Lombard Park District, and the IGA requires the Lombard Park District to, among other things, grant the Village of Lombard an easement over the Real Estate for the use and operation by the Village of Lombard of two (2) stormwater relief sewers and all facilities incidental thereto; and

WHEREAS, pursuant to 50 ILCS 605/2, the Lombard Park District adopted Ordinance 18-499 on January 23, 2018, which Ordinance approved the acquisition of the Real Estate

from the Village of Lombard pursuant to the terms of the "Real Estate Purchase and Sales Contract," attached hereto as **Exhibit 1**, and incorporated herein by reference; and

WHEREAS, the Village of Lombard has, after extensive inquiries and negotiations, agreed to convey the Real Estate to the Lombard Park District for the price of TEN AND NO/100 DOLLARS (\$10.00), and other consideration as set forth in the Real Estate Purchase and Sales Contract; and

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 Real Estate Purchase and Sales Contract is hereby approved, and the Village President and Village Clerk are hereby authorized and directed to execute the same on behalf of the Village of Lombard. The Village President and Village Clerk are hereby further authorized and directed to execute all appropriate documents and take such other action as is required of them to consummate the conveyance by the Village of Lombard of the Real Estate to the Lombard Park District, in accordance with the terms of the Real Estate Purchase and Sales Contract.

SECTION 2: Upon passage of this Resolution, the Village Clerk shall record a certified copy of this Resolution, along with all attachments thereto, in the DuPage County Recorder's Office, as required by 50 ILCS 605/2(a).

SECTION 3: This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

ADOPTED this 15th day of February, 2018, pursuant to two-thirds (2/3) roll call vote of the Corporate Authorities, as required by 50 ILCS 605/2(a):

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this 15th day of February, 2018.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit 1

REAL ESTATE PURCHASE AND SALES CONTRACT

(see attached)

**REAL ESTATE PURCHASE AND SALES CONTRACT
PURSUANT TO THE LOCAL GOVERNMENT
PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)**

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "**Contract**") is made as of the Effective Date (as defined in Paragraph 23 hereof) between the **LOMBARD PARK DISTRICT**, an Illinois park district (the "**Buyer**") and the **VILLAGE OF LOMBARD**, an Illinois municipal corporation (the "**Seller**"), pursuant to the provisions of the Local Government Property Transfer Act (50 ILCS 605/0.01, *et seq.*). (The Seller and the Buyer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**")

A G R E E M E N T:

1. **THE SELLER AND THE BUYER ARE UNITS OF LOCAL GOVERNMENT, AND THIS CONTRACT IS SUBJECT TO THE APPROVAL OF, AND IS NOT ENFORCEABLE UNLESS APPROVED AT AN OPEN MEETING BY, THE BOARD OF COMMISSIONERS OF THE BUYER AND THE BOARD OF TRUSTEES OF THE SELLER.**

2. **SALE.** The Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to a parcel of land commonly known as 115 W. Crystal Street, Lombard, Illinois, with PIN: 06-06-219-019-0000, located in the County of Du Page (the "**Property**"), which Property is legally described in Exhibit A attached hereto and made a part hereof.

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **TEN AND NO/100 DOLLARS (\$10.00)** (the "**Purchase Price**"). At closing, Buyer shall pay to Seller, in good and available funds by wire transfer or cashier's check, the Purchase Price.

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

5. **CLOSING DATE.** The closing (the "**Closing**") of the contemplated purchase and sale of the Property shall take place through a deed and money escrow ("**Escrow**") on or before March 31, 2018 (the "**Closing Date**") at the office of Chicago Title Insurance Company, 171 North Clark Street, Third Floor, Chicago, Illinois (the "**Title Company**") or at such other time and place as mutually agreed to by the Parties. The costs of the Closing shall be paid for by Buyer, except that the Seller shall pay Five Hundred Twenty-Five Dollars (\$525.00) of the costs of Closing, and the Buyer shall paying all remaining costs of the Closing.

6. **ENVIRONMENTAL INSPECTION.**

A. The Buyer shall have the right, at its sole cost and expense, and at reasonable times mutually agreed to by the Parties prior to the Closing, to select and retain environmental and other consultants to examine and inspect the physical condition of the Property (including the groundwater thereunder), to conduct a site assessment and environmental audit, and to perform any environmental and engineering investigation or

testing it deems necessary and appropriate (the "Environmental Assessment"). At Seller's request, Buyer will promptly furnish to Seller copies of any reports or other written materials received by Buyer relating to any Environmental Assessment performed at the Property. Seller hereby grants, and will cause any tenants to grant, to the Buyer and its consultants, their employees, agents, subcontractors and representatives, authorization to enter upon the Property at reasonable, mutually agreed times to conduct the environmental and engineering investigation. Seller shall provide to the Buyer and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder).

B. Prior to any entry by Buyer contemplated by this Paragraph 6, Buyer shall deliver to Seller a certificate or other proof that such party has comprehensive and general liability insurance including premises liability, in the amount of \$1,000,000 per occurrence, \$1,000,000 aggregate all of which shall be primary as to any valid and collectible insurance available to Seller. Buyer shall also require all consultants, contractors and sub-contractors engaged by Buyer to obtain and maintain insurance of the same types and amounts as the insurance coverages set forth hereinabove. Buyer's insurance obligations under this paragraph 6 shall survive the Closing.

C. Buyer agrees to protect, indemnify, defend (with counsel acceptable to Seller) and hold Seller, its elected and appointed officials, officers, employees, agents, and volunteers (collectively, the "Seller Indemnified Parties") harmless from and against any claim for liabilities, losses, costs, expenses (including reasonable attorneys' fees), damages or injuries suffered or incurred by any of the Seller Indemnified Parties arising out of, resulting from, relating to or connected with: (i) any Environmental Assessment performed at the Property by Buyer or any of Buyer's employees, agents, representatives, contractors and consultants; and/or (ii) the willful misconduct of, or other acts or omissions of, Buyer or its employees, agents, representatives, contractors and consultants at the Property. Buyer's indemnification obligations under this paragraph 6 shall survive the Closing.

7. **BUYER'S OPTION TO TERMINATE CONTRACT**. The Buyer shall not be obligated to take title to the Property if, in the Buyer's sole and exclusive judgment, for any reason whatsoever, Buyer determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a material health, safety or environmental hazard, or if the Environmental Assessment reveals the existence of any environmental condition which may be dangerous and/or unacceptable to the Buyer, or in violation of any environmental law or regulation including, but not limited to, the presence of any hazardous material (the foregoing collectively, an "Environmental Defect"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is an Environmental Defect, Buyer shall have the right to revoke its acceptance of the Contract and the adoption of the Ordinance, if any, accepting the Contract and approving the purchase of the Property contemplated herein, and to declare the Contract and its Ordinance approving the purchase and execution of the

Contract and related closing documents null and void, in which event the Earnest Money Deposit, if any, shall be immediately returned to the Buyer.

8. **TITLE INSURANCE.** Prior to Closing, Buyer, at Buyer's expense, shall obtain a title commitment issued by the Title Company, in such amount as determined by Buyer, with extended coverage over the standard exceptions 1 through 5 (the "Title Commitment"), together with copies of all underlying title documents listed in the Title Commitment (the "Underlying Title Documents"), subject only to those matters described in Exhibit B, attached hereto and made a part hereof (the "Permitted Exceptions"). If the Title Commitment, Underlying Title Documents or the Survey (as hereinafter defined) disclose exceptions to title, which are not acceptable to Buyer (the "Unpermitted Exceptions"), Buyer shall have five (5) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter (the "Buyer's Objection Letter") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have five (5) days from the date of receipt of the Buyer's Objection Letter ("Seller's Cure Period") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, and the Closing shall be extended such additional time, but not beyond June 30, 2018 (the "Extended Title Closing Date") after Buyer's receipt of a proforma title policy (the "Proforma Title Policy") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or, in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract, at which time the Buyer shall be entitled to have the Earnest Money Deposit, if any, returned to Buyer and this Contract shall become null and void without further action of the Parties, or (ii) upon notice to Seller within ten (10) days after Buyer's receipt of Seller's intention not to cure the Unpermitted Exceptions, take title as it then is without reduction in Purchase Price. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. The Buyer shall pay the cost for any later date title commitments, and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

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

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

11. **DRAINAGE AND STORMWATER MANAGEMENT EASEMENT AGREEMENT.** At closing, the Buyer shall convey a drainage and stormwater management easement to the Seller in the form of the Drainage and Stormwater Management Easement Agreement attached hereto as Exhibit C, and made part hereof (the "Easement Agreement").

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

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

iii. ALTA Statement and such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated herein.

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

13. **POSSESSION.** Possession of the Property shall be delivered to Buyer on the Closing Date subject to the Permitted Exceptions, and in the same condition as at the time of the execution of this Contract.

14. **INTENTIONALLY OMITTED.**

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

16. **NO COVENANTS, REPRESENTATIONS OR WARRANTIES OF SELLER.** Nothing contained in this Contract shall be construed as (i) a representation of the state of title to the Property, or (ii) a requirement on Seller to bring any action or proceeding or otherwise to incur any expense to render title to the Property insurable or marketable or to cure any Unpermitted Exceptions. Any attempt by Seller to cure any Unpermitted Exceptions or other exceptions shall not be construed as an admission by Seller that such objection is a valid title objection under this Contract.

17. **DEFAULT AND CONDITIONS PRECEDENT TO CLOSING.**

A. It is a condition precedent to Closing that:

- i. fee simple title to the Property is shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and is accepted by Buyer;
- ii. intentionally omitted; and
- iii. Seller has performed under the Contract and otherwise has performed all of its covenants and obligations and fulfilled all of the conditions required of it under the Contract in order to close on the Closing Date.

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

- i. elect to enforce the terms hereof by action for specific performance; or
- ii. attempt to cure such breach or failure by Seller for a period of up to thirty (30) days following the Closing Date, and, following such attempt, to either:
 - a. terminate this Contract and receive a prompt refund of the Earnest Money Deposit, if any; or
 - b. proceed to close notwithstanding such breach or nonperformance.

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

C. Intentionally Omitted.

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

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

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

To Buyer: LOMBARD PARK DISTRICT
227 West Parkside Avenue
Lombard, Illinois 60148
Attn: Executive Director
FAX: (630) 627-1286

With a copy to: Tressler, LLP
233 South Wacker Drive
22nd Floor
Chicago, Illinois 60606
Attn: Andrew S. Paine
FAX: (312) 627-1717

To Seller: VILLAGE OF LOMBARD
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: Village Manager
FAX: (630) 620-8222

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

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

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

22. **MISCELLANEOUS.**

A. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

- B. This Contract provides for the purchase and sale of property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Contract and its enforcement, venue shall be in the Circuit Court in the county where the Property is located and the Parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.
- C. Intentionally Omitted.
- D. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.
- E. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Property Settlement Procedures Act of 1974. In the event that either Party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said Party.
- F. The Parties warrant and represent that the execution, delivery of and performance under this Contract is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.
- G. The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.
- H. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- I. Intentionally Omitted.
- J. In the event either Party elects to file any action in order to enforce the terms of this Contract, or for a declaration of rights hereunder, the prevailing Party, as determined by the court in such action, shall be entitled to recover all of its court costs and reasonable attorneys' fees as a result thereof from the losing Party.
- K. Buyer may record this Contract or any memorandum or short form of this Contract against the Property, provided that if the transaction contemplated herein does not occur and the Contract is terminated as provided herein, Buyer shall record a termination of the Contract. The recording fees for either shall be borne by the Buyer.
- L. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of

the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

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

23. **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the last of the authorized signatories of Buyer and Seller shall sign the Contract, as set forth below.

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

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

<u>Exhibit A</u>	Legal Description of the Property
<u>Exhibit B</u>	Permitted Exceptions
<u>Exhibit C</u>	Drainage and Stormwater Management Easement Agreement

* * *

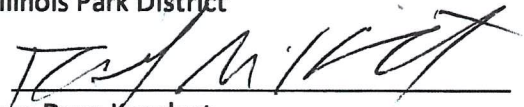
Remainder of Page Intentionally Blank

Signature Page to Follow

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

BUYER:

LOMBARD PARK DISTRICT,
an Illinois Park District

By: 
Name: Dave Kundrot
Title: Park Board President

ATTEST:

By: 
Name: Paul Friedrichs
Title: Park Board Secretary

Date Seller executed: January 23, 2018

SELLER:

VILLAGE OF LOMBARD,
an Illinois municipal corporation

By: _____
Name: Keith Giagnorio
Title: Village President

ATTEST:

By: _____
Name: Sharon Kuderna
Title: Village Clerk

Date Buyer executed: _____

Exhibit A

Legal Description of the Property

LOT 2 IN KASNICK'S RESUBDIVISION OF LOTS 11 AND 12 IN SALVAROTI'S SUBDIVISION OF LOT "A" IN ELMORE'S NORTH VIEW, BEING A SUBDIVISION IN THE NORTH HALF OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID KASNICK'S RESUBDIVISION RECORDED OCTOBER 26, 2017, AS DOCUMENT NUMBER R2017-110411 IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 06-06-219-019-0000;

Common address: 115 W. Crystal Street, Lombard, Illinois 60148

Exhibit B

Permitted Exceptions

1. 2017 real estate taxes and subsequent years, not due and payable for the Property, if any.
2. Covenants, conditions, restrictions and easements of record, which do not prevent the Buyer from maintaining and using the Property for park purposes.
3. Covenants, conditions, and restrictions of record contained in the following documents recorded against title to the Property with the Du Page County Recorder's Office: document number 232326 (recorded March 26, 1927) and document number 280626 (recorded June 1, 1929).

Exhibit C

Drainage and Stormwater Management Easement Agreement

(see attached)

#614554

DRAINAGE AND STORMWATER MANAGEMENT EASEMENT AGREEMENT

This Drainage and Stormwater Management Easement Agreement (“**Agreement**”) is made and entered into as of January 23, 2018, by and between the Lombard Park District, an Illinois park district and unit of local government (“**Grantor**”), and the Village of Lombard, an Illinois municipal corporation (“**Grantee**”). Grantor and Grantee are hereinafter sometimes individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

RECITALS

WHEREAS, Grantor is the owner of certain real property commonly known as Terrace View Park, generally located on the north side of Greenfield Avenue, between Elizabeth Street and Park Avenue (“**Park Property**”);

WHEREAS, the Parties, together with the School District #44, constructed a pond on the Park Property (“**Pond**”) for the purpose of controlling stormwater runoff in 1972; and

WHEREAS, Grantor and Grantee subsequently entered into an agreement entitled “An Intergovernmental Agreement Between the Village of Lombard and the Lombard Park District in Regard to Modifications to Terrace View Pond” (“**IGA**”) for the purpose of installing certain stormwater management facilities designed to lower the normal water level of the Pond by one (1) foot in order to reduce flood damages; and

WHEREAS, the IGA required Grantee to, among other things, obtain title to certain real property located along West Crystal Avenue and legally described in Exhibit A attached hereto and incorporated herein (“**West Crystal Parcel**”) to help facilitate Grantee’s installation of a portion of the stormwater management facilities contemplated therein; and

WHEREAS, following Grantee’s completion of the installation of the stormwater management facilities, the IGA obligated Grantee to convey title to the West Crystal Parcel to Grantor, subject to Grantee’s retention of a permanent stormwater management easement over the West Crystal Parcel; and

WHEREAS, Grantor has determined that it is in the public interest and in the interest of intergovernmental cooperation to grant such an easement to Grantee, subject to the terms and conditions of this Agreement; and

WHEREAS, Grantor has the authority to grant such an easement pursuant to Articles 8-1 and 8-11 of the Park District Code of the State of Illinois (70 ILCS 1205/8-1 and 8-11); and

WHEREAS, the Parties desire to formally establish their respective rights and obligations regarding the construction, use, maintenance, and repair of the stormwater management facilities.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated herein by reference as though fully set forth herein.

2. **Construction of Improvements.** Pursuant to the terms of the IGA and the plans and specifications agreed to by the Parties, Grantee installed certain stormwater management facilities, including two (2) relief sewers and a pump station, on portions of the Park Property, including the West Crystal Parcel ("**Stormwater Management Facilities**").

3. **Grant of Non-exclusive Easement.** Grantor hereby grants to Grantee, and any of Grantee's officers, agents, representatives, employees, licensees, successors or assigns, a non-exclusive perpetual easement over, on, under, and across the West Crystal Parcel ("**Easement Premises**") for the right, privilege and authority to enter upon the Easement Premises from time to time as Grantee, in its reasonable discretion deems necessary, or as otherwise specified pursuant to Paragraph 6 of this Agreement, in order to construct, inspect, repair, maintain and operate the Stormwater Management Facilities on the Easement Premises (collectively the "**Easement Activities**").

4. **Right of Access.** Grantee shall have the right of access across the Park Property, by vehicle or foot, for workers and equipment as necessary to perform the Easement Activities on the Easement Premises.

5. **Easement Conditions.** The grant of easement and ancillary rights given to Grantee under this Agreement shall be subject to the conditions that:

- (a) Grantor reserves the right of access to and use of the Easement Premises in any manner not inconsistent with the rights granted to Grantee under this Agreement, including but not limited to the right to install structures, landscaping, gardens, shrubs, driveways, sidewalks, parking lots, and ingress and egress roadways on the Easement Premises that do not then or later conflict with the Stormwater Management Facilities or the easement rights granted hereunder.
- (b) Grantee shall notify Grantor prior to commencement of any excavation, construction, repair, maintenance or other work or activity on the Easement Premises. The Parties shall reasonably cooperate with respect to the commencement, timing, and location of such work or activity so as to protect the public at large and to avoid any interference with Grantor's use of the Park Property or the Easement Premises.
- (c) All construction or other work or activity by any entity within the Easement Premises shall be performed in a safe and sound manner and in accordance with

all applicable federal, state and local laws, including the ordinances and regulations of the Village of Lombard.

- (d) Grantee shall be responsible for the payment of all costs associated with any work or activity performed on the Easement Premises pursuant to the grant of easement set forth in Paragraph 3 above.
- (e) Grantee shall restore the Easement Premises to the condition which existed immediately prior to the beginning of any work or activity performed on the Easement Premises pursuant to the grant of easement set forth in Paragraph 3 above. Grantee shall similarly restore any portions of the Park Property and any other real estate that are damaged or otherwise disturbed in connection with any work or activity performed on the Easement Premises pursuant to the grant of easement set forth in Paragraph 3 above.

6. Maintenance and Repair. Grantee shall maintain the Stormwater Management Facilities in such a manner so as to ensure that the Stormwater Management Facilities remain in good working order and repair at all times, and will further ensure that the Stormwater Management Facilities comply at all times with applicable federal, state and local law, including the ordinances and regulations of the Village of Lombard. In the event that Grantor reasonably determines that Grantee is not in compliance with the terms of this paragraph 6, Grantor shall provide Grantee written notice of said noncompliance. Upon receipt of said notice, Grantee shall have thirty (30) days to commence the necessary measures to cure said noncompliance. Notwithstanding the above thirty (30) day cure period, Grantee shall take immediate action to cure said noncompliance in the case of an emergency likely to cause immediate harm, damage or danger to surrounding property or to the public or private health, safety or welfare. In the event that Grantee fails to commence the necessary measures to cure said noncompliance at the expiration of the periods set forth herein, or otherwise exhibits an unwillingness to cure said non-compliance, Grantor shall have the right, but not the obligation, to take all steps necessary to bring the Stormwater Management Facilities into good working order and repair and to ensure compliance with all applicable federal, state and local laws, including the ordinances and regulations of the Village of Lombard, and Grantee shall be responsible for all reasonable costs and expenses incurred by Grantor in connection with same, including reasonable attorneys' fees.

7. Hazardous Materials. No explosives or flammable or hazardous materials of any kind shall be transported across, brought upon, or stored or deposited on, the Park Property (except as needed for vehicles or equipment for the Easement Activities provided that the Village and its contractors shall be liable for any damage to or contamination of Park Property resulting from such activity or use). As used in this Agreement, "hazardous materials" means any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments

thereto or such substances, materials, and wastes regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as "Hazardous substances" pursuant to Section 1251 *et. seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et. seq.* (42 U.S.C. Section 6903), or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et. seq.* (42 U.S.C. Section 9601) or any other applicable environmental law.

8. Indemnification.

(a) Grantee's Indemnity for Claims. Grantee agrees to indemnify, defend and save Grantor, its officers, officials, agents and employees, and all other persons or entities acting at the direction of Grantor, harmless from and against any and all liabilities, claims, losses, or demands for personal injury or property damage arising out of or caused by any act or omission of Grantee, any of its contractors or subcontractors, anyone directly or indirectly employed or engaged by any of them, or anyone for whose acts any of them may be liable, arising from Grantee's conduct of the Easement Activities or exercise or use of the easement rights granted under this Agreement.

(b) Grantor's Indemnity for Claims. Grantor agrees to indemnify, defend and save Grantee, its officers, officials, agents and employees, and all other persons or entities acting at the direction of Grantee, harmless from and against any and all liabilities, claims, losses, or demands for personal injury or property damage arising out of or caused by any act or omission of Grantor, any of its contractors or subcontractors, anyone directly or indirectly employed or engaged by any of them, or anyone for whose acts any of them may be liable, arising from Grantor's conduct of the Easement Activities or exercise or use of the easement rights granted under this Agreement.

9. Insurance. Grantee shall maintain liability insurance in reasonable amounts, and with reputable companies as are reasonably acceptable to Grantor and/or the risk management association of which it is a member, to protect Grantor and Grantee against claims arising directly or indirectly out of or in connection with Grantee's conduct of the Easement Activities or use of the Easement Premises or Park Property pursuant to this Agreement. Grantee shall name, or cause any contractor hired to perform any work on the Easement Premises to name, the Grantor, its elected and appointed officials, officers, employees and agents as an additional insured and prior to commencing any such activity, shall provide to Grantor a copy of a Certificate of Insurance evidencing same.

10. Term. This Agreement shall be in full force and effect for so long as the Stormwater Management Facilities are required for purposes of stormwater management,

unless the Parties hereto, or their successors, mutually agree in writing to terminate this Agreement.

11. Entire Agreement. This instrument contains the entire agreement between the Parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, and any modifications to this Agreement must be in writing and must be signed by all Parties to this Agreement.

12. Severability. Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.

13. Covenant Running with the Land. This easement and the promises contained in this Agreement shall be a covenant running with the land and shall be binding upon Grantor and Grantee and any of their lessees, successors in interest, heirs, devisees and assigns from and after the date of execution by the Parties hereto.

14. Law Governing. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance.

15. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

16. Notices. All notices provided for herein shall be served upon the Parties by personal delivery, email, fax or Certified United States mail, return receipt requested, at the following locations, or at such other location or locations as the Parties may from time to time designate in writing:

Notice to Grantee:

Village Manager
Village of Lombard
255 E. Wilson Avenue
Lombard, Illinois 60148

Notice to Grantor:

Executive Director
Lombard Park District
227 West Parkside Avenue
Lombard, Illinois 60148

Notices shall be deemed given when received by the Party to whom it was sent.

17. No Waiver of Tort Immunity. Nothing contained in this Agreement shall constitute a waiver by either Party of any right, privilege or defense which either Party has under statutory or common law, including but not limited to the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*, as amended.

18. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement or to acknowledge, establish, or impose any legal duty to any third party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

GRANTOR

LOMBARD PARK DISTRICT

By: [Signature]

Its: President

Attest: [Signature]

Its: Secretary

GRANTEE

VILLAGE OF LOMBARD

By: _____

Its: _____

Attest: _____

Its: _____