

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES  
FROM: Timothy Sexton, Acting Village Manager  
DATE: November 19, 2013 (B of T) Date: November 21, 2013  
TITLE: 109-115 W. St. Charles Road - Property Acquisition  
SUBMITTED BY: Department of Community Development

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration an Ordinance, Real Estate Purchase and Sales Contract regarding the sale of the property commonly referred to as 109-115 W. St. Charles Road. (DISTRICT #1)

Staff recommends approval of this request.

Fiscal Impact/Funding Source:

Review (as necessary):  
Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X \_\_\_\_\_ Date \_\_\_\_\_

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



## MEMORANDUM

**TO:** Timothy Sexton, Acting Village Manager

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

**DATE:** November 21, 2013

**SUBJECT:** **109-115 W. St. Charles Road – Ordinance Authorizing Property Acquisition**

Enclosed please find an Ordinance and Real Estate Purchase and Sales Contract regarding the sale of the property commonly referred to as 109-115 W. St. Charles Road.

### **Background:**

The subject property is located within Downtown Lombard and is currently improved with a surface parking lot and a garage with nine indoor garage spaces. Throughout the late 1990s and early 2000s, the Village identified the subject property as an opportunity to provide for more public parking within the downtown within the existing surface parking spaces.

The site has been identified by the Illinois Environmental Protection Agency (IEPA) with soil contamination from a previous user. While the Village sought to acquire the subject property years ago, final acceptance by the Village was not desired unless and until the Village received a “No Further Remediation” letter from the IEPA to address the contamination issue. However, once the NFR letter was issued for the property, the owner at the time did not proceed with the transfer of the property and the property was eventually lost by the owner in a tax sale in 2009.

### **Current Activities**

The garage spaces have been utilized by the condominium property owners in 105 W. St. Charles Road (known as the Park West Condominium Building) since its initial construction in 2002. The surface lot has been used for general parking purposes, although any rights to the parking are not perfected. To address the ongoing parking rights issues pertaining to the subject property and to meet the desired intent of acquiring the surface parking spaces for downtown parking needs, the Village entered into discussions with the current property owner and the adjacent Park West condominium owners to facilitate a remedy the outstanding parking lot issues, for the benefit of all parties. As a first step, the Village has reached an agreement to acquire the property from the current property owner (Wayne Hummer Trust Company, N.A., Trust No. SBL3127) for a negotiated amount of \$100,000 plus a credit for credit for the amount of general real

estate taxes paid by the seller for 2012 and the Village being responsible for the taxes due in 2013. The Village would utilize Downtown Lombard TIF funds for the acquisition, with partial reimbursement through the sale of the southern portion of the subject property, as set forth further in the subsequent and companion Board actions.

**Recommendation:**

Please place this item on the November 21, 2013 Village Board agenda under Items for Separate Action. Staff recommends that the Village Board approve an Ordinance authorizing the Acquisition of the Property Commonly Known as 109-115 W. St. Charles Road and the Companion Real Estate Purchase and Sales Contract.

To facilitate the closing of this property and for approval consistency with the companion resolutions, staff recommends a waiver of first reading of the aforementioned Ordinance.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF  
THE PROPERTY COMMONLY KNOWN AS 109-115 WEST ST. CHARLES ROAD,  
LOMBARD, ILLINOIS**

**WHEREAS**, the President and Board of Trustees of the Village of Lombard deem it necessary for the health, welfare and safety of the residents to purchase real estate to enable the Village to facilitate adequate parking for downtown Lombard; and

**WHEREAS**, the President and Board of Trustees of the Village of Lombard desire to purchase the property commonly known as 109-115 W. St Charles Road, Lombard, Illinois, DuPage County, to accomplish the aforesaid purpose; said property being legally described as follows:

LOT 2 IN BLOCK 19 IN TOWN OF LOMBARD, BEING A SUBDIVISION IN SECTIONS 5, 6, 7, 8 AND 18, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1868 AS DOCUMENT NUMBER 9483, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: 06-07-209-009-0000 (hereinafter the "Real Estate"); and

**WHEREAS**, the Village has, after extensive inquiries and negotiations, agreed to purchase the Real Estate for a purchase price of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), plus a credit to the seller for the amount of general real estate taxes paid by seller for tax year 2012, and with the Village agreeing to be responsible for real estate taxes for tax year 2013, as provided for in the Real Estate Contract attached hereto as **Exhibit A**;

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

**SECTION 1:** That the Real Estate Contract attached hereto as **Exhibit A**, and incorporated herein by reference, is hereby approved, and the Village President and the Village Clerk or Deputy Village Clerk are hereby authorized and directed to execute same on behalf of the Village. The Village President and the Village Clerk or Deputy Village Clerk are hereby further authorized and directed to execute all appropriate documents and take such other action as is required of them to consummate the purchase by the Village of the Real Estate, in accordance with the terms and conditions of the Real Estate Contract.

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

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

First reading waived by action of the Board of Trustees this \_\_\_ day of \_\_\_\_\_, 2013.

Passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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

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

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

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Keith T. Giagnorio, Village President

ATTEST:

\_\_\_\_\_  
Janet Downer, Deputy Village Clerk

Published by me in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_,  
2013.

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Janet Downer, Deputy Village Clerk

**EXHIBIT A**

**REAL ESTATE CONTRACT**

(see attached)

## REAL ESTATE PURCHASE AND SALES CONTRACT

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "Contract") is made as of the Effective Date (as defined in Paragraph 24 hereof) between WAYNE HUMMER TRUST COMPANY, N.A., as Trustee under Trust Agreement dated December 1, 2009 and known as Trust No. SBL3127 (the "Seller") and the VILLAGE OF LOMBARD, an Illinois municipal corporation (the "Buyer").

### AGREEMENT:

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

2. **SALE.** The Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to a parcel of land commonly known as 109-115 W. St. Charles Road, Lombard, Illinois, with PIN 06-07-209-009-0000, located in the County of DuPage (the "Property"), which Property is legally described in Exhibit A attached hereto and made a part hereof.

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)** (the "Purchase Price"). At closing, Buyer shall pay to Seller, in good and available funds by wire transfer or cashier's check, the Purchase Price, plus the credit for general real estate taxes for tax year 2012 provided for in Paragraph 13 below.

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 December 31, 2013, (the "Closing Date") at the office of Fidelity National Title, 20 N. Clark Street, Suite 220, Chicago, Illinois (the "Title Company") or at such other time and place as mutually agreed to by the parties. The cost of the Closing fee shall be split equally between the Seller and Buyer.

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



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

8. **TITLE INSURANCE.** Prior to Closing, Seller, at Seller's expense, shall obtain a title commitment issued by the Title Company, in the amount of the Purchase Price, with extended coverage over the standard exceptions 1 through 5 (the "**Title Commitment**"), subject only to those matters described in Exhibit B, attached hereto and made a part hereof (the "**Permitted Exceptions**"), and copies of all underlying title documents listed in the Title Commitment (the "**Underlying Title Documents**") shall be available for review by Buyer. 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 ten (10) 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 **\*\*January 31, 2014** (the "**Extended Title Closing Date**"), after Buyer's receipt of a proforma title policy (the "**Proforma Title Policy**") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or, in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract, at which time the Buyer shall be entitled to have the Earnest Money Deposit returned to Buyer and this Contract shall become null and void without further action of the parties, or (ii) upon notice to Seller within ten (10) days after Buyer's receipt of Seller's intention not to cure the Unpermitted Exceptions, take title as it then is with the right to deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount which are listed in the Title Commitment. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. The Buyer shall pay the cost for any later date title commitments, and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

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

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

- A. Seller shall deliver or cause to be delivered to the Title Company:
  - i. the original executed and properly notarized Deed;
  - ii. the original executed and property notarized Affidavit of Title, Warranty and Covenant;
  - iii. the original executed and property notarized Non-Foreign Affidavit;
  - iv. counterpart originals of Seller's Closing Statement;
  - v. such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated hereby, including, without limitation, ALTA statements and GAP Undertaking, such other documentation as is reasonably required by the Title Company to issue Buyer its owners title insurance policy in accordance with the Proforma Title Policy and in the amount of the Purchase Price insuring the fee simple title to the Property in the Buyer as of the Closing Date, subject only to the Permitted Exceptions.
  
- B. Buyer shall deliver or cause to be delivered to the Title Company:
  - i. the balance of the Purchase Price, plus the credit provided for in Paragraph 13 below;
  - ii. counterpart originals of Seller's Closing Statement;

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

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

12. **POSSESSION.** Possession of the Property shall be delivered to Buyer on the Closing Date subject to the Permitted Exceptions, and in the same condition as at the time of the execution of this Contract. Seller shall deliver possession of the land associated with the Property to Buyer on the Closing Date. Further, on the Closing Date, Seller shall deliver to Buyer possession of any structures or improvements on the Property in the possession of Seller as of the Effective Date.

13. **REAL ESTATE TAXES.** Buyer shall provide Seller with a credit at closing in the amount of \$7,687.80 in connection with the Seller's payment of general real estate taxes for tax year 2012, and Seller shall provide Buyer with proof of payment, in full, including any applicable penalties and interest, of all general real estate taxes for tax year 2012, as a condition precedent to the Buyer's obligations under this Paragraph 13. Further, Buyer agrees to be responsible for real estate taxes for tax year 2013 and subsequent years.

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

15. **COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller covenants, represents and warrants to the Buyer as to the following matters, each of which is so warranted to be true and correct as of the Effective Date and also on the Closing Date:

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

B. **Violations of Zoning and Other Laws.** Seller has received no notice, written or otherwise, from any governmental agency alleging any violations of any statute, ordinance, regulation or code. The Property as conveyed to Buyer shall include all rights of the Seller to the use of any off-site facilities, including, but not limited to, storm water detention facilities, necessary to ensure compliance with all zoning, building, health, fire, water use or similar statutes, laws, regulations and orders and any instrument in the nature of a declaration running with the Property.

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

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

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

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

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

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

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

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

K. Hazardous Materials.

i. From the Effective Date to and including the Closing Date, Seller agrees: (a) to operate, maintain and manage the Property (including the groundwater thereunder) in the ordinary course of business; (b) that the Property (including the groundwater thereunder) will comply in all respects, and will remain in compliance, with all applicable Federal, State, regional, county and local laws, statutes, rules, regulations or ordinances concerning public health, safety or the environment, and all Environmental Laws (as

defined below); and (c) to maintain existing insurance on the Property, including the building and improvements.

ii. Seller has no knowledge of: (a) the presence of any Hazardous Materials (as defined below) on, under or in the Property (including the groundwater thereunder); (b) any spills, releases, discharges or disposal of Hazardous Materials that have occurred or are presently occurring on or onto the Property (including the groundwater thereunder) which have not been fully remediated according to the standards employed by the Illinois Environmental Protection Agency; (c) any spills or disposal of Hazardous Materials that have occurred or are occurring off the Property (including the groundwater thereunder) as a result of any construction on, or operation and use of, the Property (including the groundwater thereunder) which have not been fully remediated according to the standards employed by the Illinois Environmental Protection Agency; (d) the presence of any equipment containing polychlorinated biphenyl ("PCB"); or (e) the presence of any asbestos in the use of, or on, the Property;

iii. To the best knowledge and belief of Seller, the Property has never been used and will not be used before the Closing Date as a real estate fill, open dump or a waste dump, or for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical material substance or waste. The Property (including the groundwater thereunder) does not contain underground storage tanks or Hazardous Materials, and the Seller has received no notice of nor does the Property (including the groundwater thereunder) violate any Federal, State or Local Environmental Laws. For purposes of this Contract, the phrase "Environmental Laws" shall mean any Federal, State or local law, statute, ordinance, order, decree, rule or regulation (including but not limited to judicial orders, administrative orders, consent agreements and permit conditions) relating to releases, discharges, emissions or disposals to air, water, Property or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde, to the treatment, storage, disposal or management of Hazardous Materials, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.* ("TSCA"); the Occupational, Safety and Health Act, 29 U.S.C. §651, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §3001, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.* ("HMTA"); the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §7401, *et seq.*; the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. §7901, *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 42 U.S.C. §136, *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4321, *et seq.*; the Noise Control Act, 42 U.S.C. §4901, *et seq.*; the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §4821, *et seq.*; the Department of Housing and Urban Development Act, 42 U.S.C. §3531, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.* ("EPCRA"); and the Illinois Environmental Protection Act, and other comparable Federal, State or local laws, and all rules, regulations and guidance documents promulgated pursuant thereto or published thereunder, as any or all of the foregoing may

from time to time be amended, supplemented or modified. For the purposes of this Contract, the phrase "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under Environmental Laws or the release of which is regulated under Environmental Laws. Without limiting the generality of the foregoing, the term "Hazardous Materials" will include: "hazardous substances" as defined in CERCLA; "extremely hazardous substances" as defined in EPCRA; "hazardous waste" as defined in RCRA; "hazardous materials" as defined in HMTA; "chemical substance or mixture" as defined in TSCA; crude oil, petroleum and petroleum products or any fraction thereof (including "petroleum" as that term is defined in 42 U.S.C. §6991(8)); radioactive materials including source, by-product or special nuclear materials; asbestos or asbestos-containing materials; and radon.

iv. Seller has received no notice of and to the best of Seller's knowledge and belief the Property (including the groundwater thereunder) does not violate any law, regulation or agreement applicable to the Property (including the groundwater thereunder) or its use. With respect to the Property (including the groundwater thereunder), if Seller shall (a) receive notice that any violation of any Federal, State or local Environmental, health or safety law or regulation may have been committed or is about to be committed with respect to the Property (including the groundwater thereunder), (b) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed alleging violations of any Federal, State or local Environmental law or regulation or requiring Seller to take any action in connection with the release of any Hazardous Materials into the environment, (c) receive any notice from a Federal, State or local governmental agency or private party alleging that the Seller may be liable or responsible for costs associated with a response to or cleanup of a release of any Hazardous Materials into the environment or any damages caused thereby, (d) receive any notice that the Seller is subject to Federal, State or local investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, or (e) receive any notice that the Property or assets of Seller are subject to a lien in favor of any governmental entity for any liability under the Federal, State or local Environmental Laws or regulations or damages arising from or costs incurred by such governmental entity in response to a release of a hazardous or toxic waste, substance or constituent, or other Hazardous Materials into the environment, then the Seller shall promptly provide the Buyer with a copy of such notice, and in no event later than fifteen (15) days from Seller's receipt thereof.

v. There are no proceedings pending or, to the best knowledge and belief of Seller, threatened against or affecting the Seller in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, would materially and adversely affect the Property. The Seller is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal, which default would materially and adversely affect the Property.

vi. Seller shall be responsible for any and all costs associated with any required remediation for all environmental contamination upon the Property associated

with or which was caused by the Seller's use of the Property or which occurred prior to the Closing Date.

vii. Seller hereby covenants and agrees, at Seller's sole cost and expense, to unconditionally indemnify, defend and hold the Buyer, its trustees, officers, servants, employees, agents, successors and assigns (collectively "**Buyer's Affiliates**"), both in their capacities as Buyer's representatives and as individuals, harmless from and against any loss, actions, responsibilities, obligations, liability, damage (whether direct or consequential), expenses, claims (whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future), penalties, fines, injunctions, suits, proceedings, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements and court costs) (collectively, the "**Liabilities**"), arising under or relating to any Environmental Laws, or any other Liabilities which may be incurred by or asserted against any of the Buyer's Affiliates directly or indirectly resulting from the presence of Hazardous Material on or in the Property (including the groundwater thereunder) and/or any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release or threatened release of Hazardous Materials on or from the Property (including the groundwater thereunder). Seller shall assume the expense of defending all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Contract. In the event that the Buyer or any of the Buyer's Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Contract, the Buyer and/or any of the Buyer's Affiliates shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by Seller pursuant to the indemnification provisions herein. Seller shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Contract and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Contract. In the event that such payment is not made, the Buyer or any Buyer's Affiliate, at their sole discretion, may proceed to file suit against the Seller to compel such payment. The Seller also agrees that it will not settle or compromise any action, suit or proceeding without the Buyer's prior written consent, which consent shall not be unreasonably withheld. Promptly following completion of any actions imposed upon Seller under any Environmental Laws, Seller shall obtain and deliver to the Buyer an environmental report in form and substance acceptable to the Buyer from an environmental consultant acceptable to the Buyer, stating that all required action has been taken and that, upon completion of such action, the Property is, to the knowledge of such professional, then in compliance with all applicable Environmental Laws.

viii. The duration of the indemnification hereunder shall be indefinite with respect to the existence of any environmental pollution or Hazardous Materials existing on the Property (including the groundwater thereunder) at the time of the execution of this Contract and placed there prior to Closing. Notwithstanding the foregoing, this Contract shall not be construed to impose liability on the Seller for Hazardous Materials placed,

released or disposed of on the Property (including the groundwater thereunder) through no fault of Seller or its respective agents, employees or contractors after the Closing.

ix. In any pending or threatened litigation, contest, dispute, suit or proceeding (whether instituted by Buyer, Seller or any other party, including any governmental agency charged with enforcement of any Environmental Law) in any way relating to this Contract and the indemnification described herein, or to enforce the indemnification hereunder or, if the Buyer has a reasonable basis to believe that a violation of the Environmental Laws exist in regard to the Property (including the groundwater thereunder), the Buyer shall have the right to retain counsel and environmental sciences consultants of its own choice for advice or other representation without affecting or otherwise impairing the indemnification hereunder and all Liabilities arising from such services shall be payable by Seller within thirty (30) days of demand.

x. Seller's obligations hereunder shall in no way be impaired, reduced or released by reason of the Buyer's omission or delay to exercise any right described herein or in connection with any notice, demand, warning or claim regarding violations of any Environmental Laws governing the Property (including the groundwater thereunder).

xi. Seller's liability hereunder shall not be limited by the other provisions contained in the Contract.

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

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

Seller hereby indemnifies and holds Buyer harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees) and charges which Buyer may incur or to which Buyer may become subject as a direct or indirect consequence of such breach of any of Seller's representations or warranties made hereunder, including all incidental and consequential damages.

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

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

A. It is a condition precedent to Closing that:



- i. fee simple title to the Property is shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and is accepted by Buyer;
- ii. the covenants, representations and warranties of Seller contained in Paragraph 15 hereof and elsewhere in this Contract are true and accurate on the Closing Date or waived by Buyer in writing on the Closing Date;
- 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; and

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

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

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

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

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

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

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

To Seller: Benjamin J. Bass  
600 Central Ave. #290  
Highland Park, Illinois 60035  
(847) 432-8200  
[benj23@gmail.com](mailto:benj23@gmail.com)

With a copy to: Howard I. Bass  
600 Central Ave. #290  
Highland Park, Illinois 60035  
(847) 432-8200  
[hiblaw@hotmail.com](mailto:hiblaw@hotmail.com)

To Buyer: 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: Jason A. Guisinger  
FAX: 312-984-6444  
[jaquisinger@ktjlaw.com](mailto:jaquisinger@ktjlaw.com)

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

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

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

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

23. **MISCELLANEOUS.**

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

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

C. The terms, provisions, warranties and covenants of Section 15.K. are, to the best knowledge and belief of Seller, true and correct as of the Effective Date and the Closing Date.

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. This Contract is executed by the undersigned Beneficiary of the WAYNE HUMMER TRUST COMPANY, N.A., as Trustee under Trust Agreement dated December 1, 2009 and known as Trust No. SBL3127 ("Trust"), not personally but as Beneficiary, in the exercise of the power and authority conferred upon and vested in him as such Beneficiary. Said Beneficiary hereby warrants that he possesses full power and authority to execute this Contract and by his signature represents, warrants and covenants with Buyer that he has the authority to enter into this Contract and the obligations set forth herein on behalf of the Trust.

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

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

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

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

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

25. **CONTRACT MODIFICATION.** This Contract and the Exhibits attached hereto and made a part hereof, or required hereby, embody the entire Contract between the parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of

any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.

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

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

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

**SELLER:**

**WAYNE HUMMER TRUST CO., N.A., as Trustee,  
Trust No. SBL3127**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

**VILLAGE OF LOMBARD,  
an Illinois municipal corporation**

By: \_\_\_\_\_

Name: Keith T. Giagnorio

Title: Village President

**ATTEST:**

By: \_\_\_\_\_

Name: Janet Downer

Title: Deputy Village Clerk

Date Seller executed: \_\_\_\_\_

Date Buyer executed: \_\_\_\_\_

**Exhibit A**

**Legal Description of the Property**

LOT 2 IN BLOCK 19 IN TOWN OF LOMBARD, BEING A SUBDIVISION IN SECTIONS 5,6,7,8 AND 18, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1868 AS DOCUMENT NUMBER 9483, IN DUPAGE COUNTY, ILLINOIS.

Property Address: 109-115 W. St. Charles Road, Lombard, Illinois

Permanent Index Number: 06-07-209-009-0000

**Exhibit B**

**Permitted Exceptions**

1. 2013 real estate taxes and subsequent years, not due and payable for the Property.
2. Improvements on land are "as-is."
3. Covenants, conditions, restrictions and easements of record.

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

State of Illinois     )  
                                  )ss.  
County of \_\_\_\_\_ )

**DISCLOSURE AFFIDAVIT**

I, \_\_\_\_\_, (hereinafter referred to as "Affiant") reside at \_\_\_\_\_  
\_\_\_\_\_, in \_\_\_\_\_ County, State of \_\_\_\_\_, being first duly sworn and having personal  
knowledge of the matters contained in this Affidavit, swear to the following:

1. That I am over the age of eighteen and the (choose one)
  - owner or
  - authorized trustee or
  - corporate official or
  - managing agent or
  - \_\_\_\_\_ of the Real Estate (as defined herein).
  
2. That the Real Estate (as defined herein) being sold to the Purchaser is commonly known as 109-115 W. St. Charles Road, and is located in the County of DuPage, Village of Lombard, State of Illinois (herein referred to as the "**Real Estate**"). The Real Estate has an Assessor's Permanent Index Number of 06-07-209-009-0000.
  
3. That I understand that, pursuant to 50 ILCS 105/3.1, prior to execution of a real estate purchase agreement between the record fee owner of the Real Estate and Purchaser, Illinois State Law requires the owner, authorized trustee, corporate official or managing agent to submit a sworn affidavit to the Purchaser disclosing the identity of every owner and beneficiary having *any* interest, real or personal, in the Real Estate, and every shareholder entitled to receive more than 7½% of the total distributable income of any corporation having any interest, real or personal, in the Real Estate.
  
4. As the
  - owner or
  - authorized trustee or
  - corporate official or
  - managing agent or
  - \_\_\_\_\_ of the Real Estate, I declare under oath that
 (choose one):
  - The owners or beneficiaries of the trust are: \_\_\_\_\_  
\_\_\_\_\_ or
  - The shareholders with more than 7 1/2% interest are: \_\_\_\_\_  
\_\_\_\_\_ or
  - The corporation is publicly traded and there is no readily known individual having greater than a 7½% interest in the corporation.

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

AFFIANT  
  
\_\_\_\_\_

**SUBSCRIBED AND SWORN** to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
NOTARY PUBLIC