

ORDINANCE 7881

PAMPHLET

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY
COMMONLY KNOWN AS 641 NORTH MAIN STREET, LOMBARD, IL**



PUBLISHED IN PAMPHLET FORM THIS 6TH DAY OF NOVEMBER 2020, BY ORDER
OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD, DUPAGE
COUNTY, ILLINOIS.

A handwritten signature in cursive script, reading "Sharon Kuderna".

Sharon Kuderna
Village Clerk

ORDINANCE NO. 7881

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF
THE PROPERTY COMMONLY KNOWN AS
641 NORTH MAIN STREET, 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 install stormwater management improvements, at the location set forth below; and

WHEREAS, the President and Board of Trustees of the Village of Lombard desire to purchase the property commonly known as 641 North Main Street, Lombard, Illinois, DuPage County, to accomplish the aforesaid purpose; said property being legally described as follows:

LOT 5 IN WESTERN BUILDERS OF INDUSTRY, INC. ADDITION TO LOMBARD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: 06-05-100-004;

(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 NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$950,000.00), plus title insurance, survey costs and closing costs;

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 Recitals, as set forth above, are incorporated herein by reference and made part hereof.

SECTION 2: That the Real Estate Purchase and Sales Contract, attached hereto as **Exhibit A** and incorporated herein by reference, is hereby approved, and the Village President and Village Clerk are hereby authorized and directed to execute same on behalf of the Village. 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 purchase by the Village of the Real Estate, in accordance with the terms of the Real Estate Purchase and Sales Contract.

SECTION 3: 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 _____, 2020.

First reading waived by action of the Board of Trustees this 5th day of November, 2020.

Passed on second reading this 5th day of November, pursuant to a roll call vote as follows:

AYES: Trustee Puccio, Foltyniewicz, Honig, Militello and Ware

NAYS: None

ABSENT: Trustee Whittington

APPROVED by me this 5th day of November, 2020.



Keith Giagnorio, Village President

ATTEST:



Sharon Kuderna, Village Clerk

Published by me in pamphlet form this 6th day of November, 2020.



Sharon Kuderna, Village Clerk

Exhibit A

**REAL ESTATE
PURCHASE AND SALES CONTRACT**

(attached)

REAL ESTATE PURCHASE AND SALES CONTRACT

(641 North Main Street, Lombard, Illinois)

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "Contract") is made as of the Effective Date (as defined in Paragraph 25 hereof) between HARVEY ASSOCIATES, L.P., a New York Limited Partnership (the "Seller"), and the VILLAGE OF LOMBARD, an Illinois municipal corporation (the "Buyer"). The Seller and the Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

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 PRESIDENT AND 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 641 North Main Street, Lombard, Illinois, with PIN 06-05-100-004, 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 **NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$950,000.00)** (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 or minus prorations as provided herein.
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 January 15, 2021 (the "Closing Date") at the office of Chicago Title Insurance Company, Chicago, Illinois (the "Title Company") or at such other time and place as mutually agreed to by the Parties. The costs of the Closing escrow and Closing fee shall be paid for by Buyer.
6. **ENVIRONMENTAL INSPECTION.** The Buyer shall have the right, for a period of forty-five (45) calendar days after the Effective Date (the "Inspection Period"), 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). No invasive inspections, such as soil borings, may be conducted without Seller's prior approval, which shall not be unreasonably withheld, delayed or conditioned. Testing

completed under the terms of this Contract shall be completed in such a manner so as to minimize any disruption to the Property or business operations thereon, and any damage done to the Property be restored to the condition it was in prior to the testing.

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 during the Inspection Period 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, "**Property Defect**"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is a Property Defect, Buyer shall have the right during the Inspection Period 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, 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 the amount of the Purchase Price, 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) business 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) business 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 February 15, 2021 (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 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, Buyer, at Buyer's cost and expense, shall obtain a current as-built ALTA/ACSM survey ("Survey") of the Property, prepared by a registered land surveyor or engineer, licensed in the State of Illinois, prepared in accordance with the Minimum Standard Detail Requirements of a Class A Land Title Survey jointly established by the American Land Title Association and the American Congress on Surveying and Mapping, certified to the Title Company, Buyer, and any lender of which Seller shall be notified, and in form sufficient to provide ALTA coverage and satisfy all reasonable lender requirements, if applicable. The Survey shall depict and include, without limiting the foregoing: the present location of all improvements or structures on the Property, including all encroachments of any part thereof onto adjoining land and all encroachments of any part of adjoining improvements onto the Property, parking spaces (by location and number), building lines and all easements whether recorded or visible (and, if recorded, by specific reference to recorded document numbers); access to public roads or ways; all underground and above ground utilities servicing the Property; and identification of each Permitted Exception capable of being geographically located, by locating the same on the Survey with reference to recording information. The Survey must be sufficient to cause the Title Company (as defined below) to delete the standard printed survey exception and to issue the title policy free from any survey objections or exceptions whatsoever, other than the Permitted Exceptions. Within ten (10) business days of receipt of the Survey, Buyer and Seller shall agree in writing on those Survey exceptions subject to which Buyer shall take title to the Property.

10. **DUE DILIGENCE MATERIALS.** As soon as reasonably possible, but not later than ten (10) days after the Effective Date hereof, Seller shall deliver the following items to Buyer to the extent in Seller's possession:

- A. The real estate tax bill for PIN 06-05-100-004 for the year 2019;
- B. Any and all engineering reports, soil or geotechnical reports, boundary or topographical surveys, licenses, permits and any other documents pertaining to the Property;
- C. Any and all leases or occupancy agreements and amendments thereto (including a current rent roll) affecting the Property or any part thereof ("**Leases**"); and
- D. Any and all records documents which relate or refer to the environmental matters and/or conditions associated either directly or indirectly with the Property, including but not limited to all written reports of a site assessment, all environmental audits, soil test reports, water test reports, all laboratory analysis and all documents, reports or writings relating or referring to any underground storage tanks or storage facility existing on or under the Real Property (collectively referred to as the "**Seller's Environmental Reports**").

The foregoing is a condition precedent to Buyer's obligation to close this transaction.

11. **DEED.** Seller shall convey fee simple title to the Property to Buyer, by a recordable 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.

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 properly notarized Affidavit of Title, Warranty and Covenant;
 - iii. the original executed and properly notarized Non-Foreign Affidavit;
 - iv. a bill of sale relative to any personal property not removed from the Property by Seller prior to the Closing Date;
 - v. counterpart originals of Seller's Closing Statement;
 - vi. 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 or minus prorations;
 - 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 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. The Seller shall have the right to remove any and all items of personal property from the Property prior to the Closing.

14. **PRORATIONS.** At Closing, the following adjustments and prorations shall be computed as of the Closing Date and the balance of the Purchase Price shall be adjusted to reflect such prorations. All prorations shall be based on a 366-day year, with the Seller having the day prior to the Closing Day.

- A. Real Estate Taxes. General real estate taxes for 2020 and subsequent years, special assessments and all other public or governmental charges against the Property which are or may be payable on an annual basis (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the Closing Date) shall be adjusted and apportioned as of the Closing Date. If the exact amount of general real estate taxes is not known at Closing, the proration will be based on 105% of the most recent full year tax bill, and shall be conclusive, with no subsequent adjustment.
- B. Miscellaneous. All other charges and fees customarily prorated and adjusted in similar transactions shall be prorated as of Closing Date. In the event that accurate prorations and other adjustments cannot be made at Closing because current bills or statements are not obtainable (as, for example, all water, sewer, gas and utility bills), the Parties shall prorate on the best available information. Final readings and final billings for utilities shall be taken as of the date of Closing.

15. 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.

16. COVENANTS, REPRESENTATIONS AND WARRANTIES OF SELLER. The covenants, representations and warranties contained in this Paragraph shall be deemed remade as of the Closing Date and shall survive the Closing, and shall be deemed to have been relied upon by the Buyer in consummating this transaction, notwithstanding any investigation the Buyer may have made with respect thereto, or any information developed by or made available to the Buyer prior to the Closing and consummation of this transaction. 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. To the best knowledge and belief of Seller, 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 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. To the best knowledge and belief of Seller, 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) during the period of Seller's ownership of the Property. 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 non-appealable 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 during the period of Seller's ownership of the Property. 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 if the violation of Environmental Laws was alleged to have occurred during the period of Seller's ownership of the Property.
 - 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 the above representations or warranties made hereunder, including all incidental and consequential damages which are incurred within one (1) year of the Closing. These representations, warranties and Seller's indemnification shall survive the Closing for a period of one (1) year. 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.

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. the covenants, representations and warranties of Seller contained in Paragraph 16 hereof and elsewhere in this Contract are true and accurate on the Closing Date or waived by Buyer in writing on the Closing Date; 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, 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, 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. 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.

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 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. 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 original notice together with the confirmation of transmission mailed by certified or registered mail, postage prepaid, return receipt requested, or (D) by personal delivery, if addressed to the Parties as follows:

To Seller: Harvey Associates, L.P., a New York Limited Partnership
605 Locust Street
Garden City, New York 11530
Attn: Richard Rocco, Vice President & CFO
FAX: 516-745-1508

With a copy to: Robinson Payne LLC
2800 West Higgins Road, Suite 160
Hoffman Estates, Illinois 60169

Attn: Jeffrey W. Kreye
FAX: 847-882-7777

To Buyer: Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: Carl Goldsmith, Director of Public Works
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 / Jason A. Guisinger
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 parties 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. **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.

23. **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 agreement.

24. **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 16 shall survive the Closing and delivery of the Deed and other instruments of conveyance. The provisions of Section 16 of this Contract shall not be merged therein, but shall remain binding upon and for the Parties hereto until fully observed, kept or performed.
- D. The provisions of the Uniform Vendor and Purchaser 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 Real Estate 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. If the Seller is a Trust, this Contract is executed by the undersigned Trustee, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. Said Trustee hereby warrants that it possesses full power and authority to execute this Contract. It is expressly understood and agreed by and between the Parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless each and every one of them made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding Trustee personally but are made and intended for the purpose of binding only the trust property, and this Contract is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as

said Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this Contract or on account of any representations, covenants, undertakings, warranties or agreements of said Trustee in this Contract contained either express or implied, all such personal liability, if any, being expressly waived and released.

In the event the Seller is a Trust as provided above, this Contract shall be signed by the Trustee and also by the person or entity holding the Power of Direction under the Trust. The person or entity signing this Contract is by his/her/their/its signature represents, warrants and covenants with Buyer that he/she/they/it has the authority to enter into this Contract and the obligations set forth herein. All references to the Seller's obligations, warranties and representations shall be interpreted to mean the Beneficiary or Beneficiaries 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.
- N. The Buyer acknowledges that the Seller intends to reinvest the proceeds of the sale of the Property in the purchase of another parcel of real estate pursuant to a Section 1031 tax deferred exchange in accordance with the applicable provisions of the United States Internal Revenue Code. In this regard, Buyer agrees to cooperate with the Seller relative to Seller's reasonable requests of Buyer in regard to facilitating said Section 1031 tax deferred exchange by Seller.

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

26. **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.

27. **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:

HARVEY ASSOCIATES, L.P.,
a New York Limited Partnership

By Its General Partner,
Sid Harvey Industries, Inc.,
a New York Corporation
authorized to do business in Illinois.

By: *Sidney W. Harvey*
Sidney W. Harvey
President

Date: 10/9/20

Attest: *Graciela Kling*
Graciela Kling
Secretary

Date: 10/9/20

BUYER:

VILLAGE OF LOMBARD,
an Illinois municipal corporation

By: _____
Keith T. Giagnorio
Village President

Date: _____

Attest: _____
Sharon Kuderna
Village Clerk

Date: _____

Exhibit A

Legal Description of the Property

LOT 5 IN WESTERN BUILDERS OF INDUSTRY, INC. ADDITION TO LOMBARD, BEING A SUBDIVISION OF PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

Permanent Index Number: 06-05-100-004.

Property Address: 641 North Main Street, Lombard, Illinois 60148.

Exhibit B

Permitted Exceptions

1. General real estate taxes for 2020 and subsequent years, not due and payable for the Property.

2. Covenants, conditions, restrictions and easements of record, which do not prevent the Buyer from using the Property for stormwater management purposes.

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

State of NEW YORK
County of ALBANY) ss.

DISCLOSURE AFFIDAVIT

I, SIDNEY W. HARVEY (hereinafter referred to as "Affiant"), reside at 2 HEAD OF THE RIVER
SMITHTOWN, in SUFFOLK County, State of NEW YORK, being first duly sworn and having personal
knowledge of the matters contained in this Affiant, swear to the following:

1. That I am over the age of eighteen and the (choose one):
 owner, or corporate official, or
 authorized trustee, or managing agent, or
 President of the General Partner of the Limited Partnership that owns the Real Estate (as defined herein)
2. That the Real Estate (as defined herein) being sold to the Buyer is commonly known as 641 North Main Street 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 06-05-100-004.
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 Buyer, Illinois State Law requires the owner, authorized trustee, corporate official, general partner or managing agent to submit a sworn affidavit to the Buyer disclosing the identity of every owner and beneficiary having any interest, real or personal, in the Real Estate, and every member, shareholder, limited partner or general partner entitled to receive more than 7½% of the total distributable income of any limited liability company, corporation or limited partnership having any interest, real or personal, in the Real Estate.
4. As the owner, or corporate official, or
 authorized trustee, or managing agent, or
 President of the General Partner of the Limited Partnership that owns the Real Estate
I declare under oath that:

The limited and general partners entitled to receive more than 7½% of the total distributable income of the limited partnership having an interest in the Real Estate, Harvey Associates, L.P., are as follows:

MARY H. DUNN 10.445749%
ARNOLD LAWRENCE GASSON 7.583318%

The shareholders entitled to receive more than 7½% of the total distributable income of the corporation having an interest in the Real Estate, Sid Harvey Industries, Inc., are as follows:

NONE

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

AFFIANT

Sidney W. Harvey

SUBSCRIBED AND SWORN to before me
this 9 day of October, 2020.

Debra McCarthy NOTARY PUBLIC

DEBRA MCCARTHY
NOTARY PUBLIC STATE OF NEW YORK
NASSAU COUNTY
LIC. #01MC6108403
COMM. EXP. 5/1/2023

