

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: Scott R. Niehaus, Village Manager

DATE: November 25, 2014 (B of T) Date: December 4, 2014

TITLE: Acquisition of Property 7 E. St. Charles Road

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development transmits for your consideration an Ordinance authorizing the acquisition of the property commonly known as 7 East St. Charles Road to facilitate additional parking opportunities in the downtown area. (DISTRICT #4)

Staff recommends a waiver of first reading of the Ordinance.

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:** Scott R. Niehaus, Village Manager

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

**DATE:** December 4, 2014

**RE:** **Executive Session - Acquisition of Property 7 E. St. Charles Road (PIN 06-08-108-008)**

Following up from the Village Board Strategic Planning Session in 2013, staff explored options to facilitate additional parking opportunities in the downtown area. The Commuter Parking Strategies Report identified the Village owned East Hammerschmidt lot as such an opportunity. With the East Hammerschmidt commuter parking lot slated for construction in the 2015, staff also sought the possibility of acquiring the adjacent tract at 7 E. St. Charles Road (the Subject Property). Staff is bringing forward a purchase and sale agreement for the Subject Property.

### **BACKGROUND/HISTORY**

The Subject Property is located between the existing Marathon Gas Station and the existing vacant lot acquired by the Village in 2008 for \$750,000. The subject property is irregularly shaped, with a width of 38 feet and a depth of approximately 123 feet (4,978 sq. ft. in total). It is currently improved with a 484 square foot brick garage, which functioned as an ancillary storage building. Since the Bartel's sale of the gas station in the mid-2000s, the property has been unutilized. The Subject Property also has an asphalt parking area to the north of the garage.

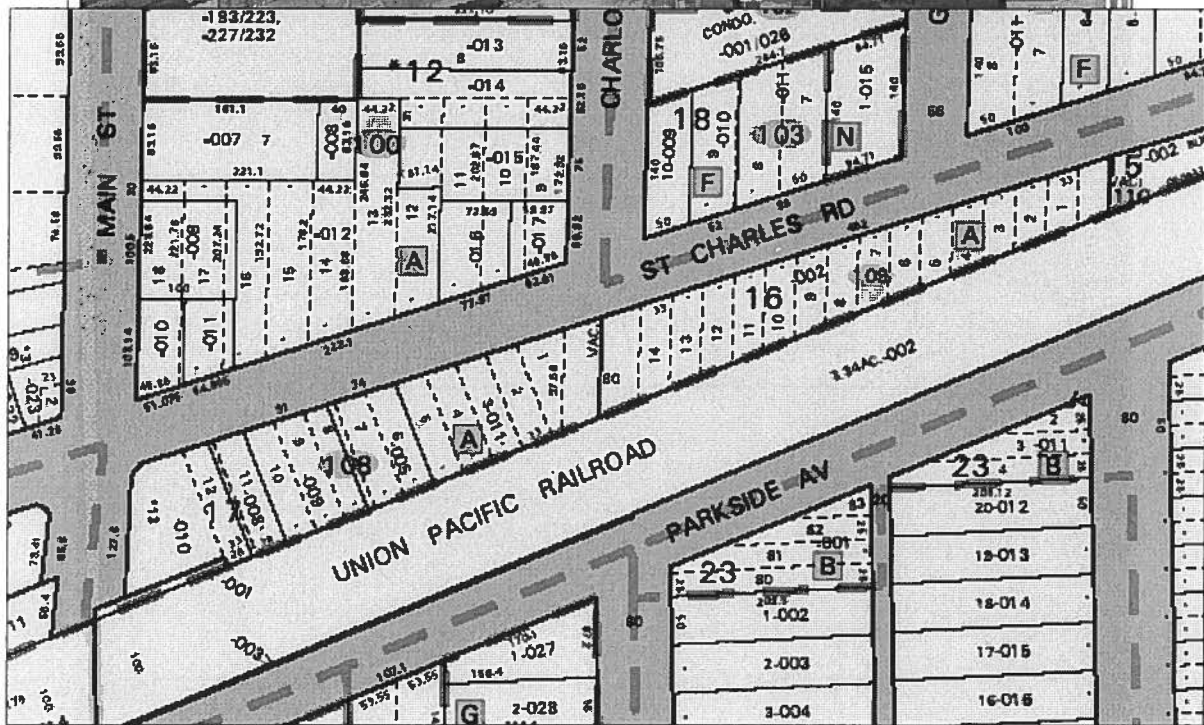
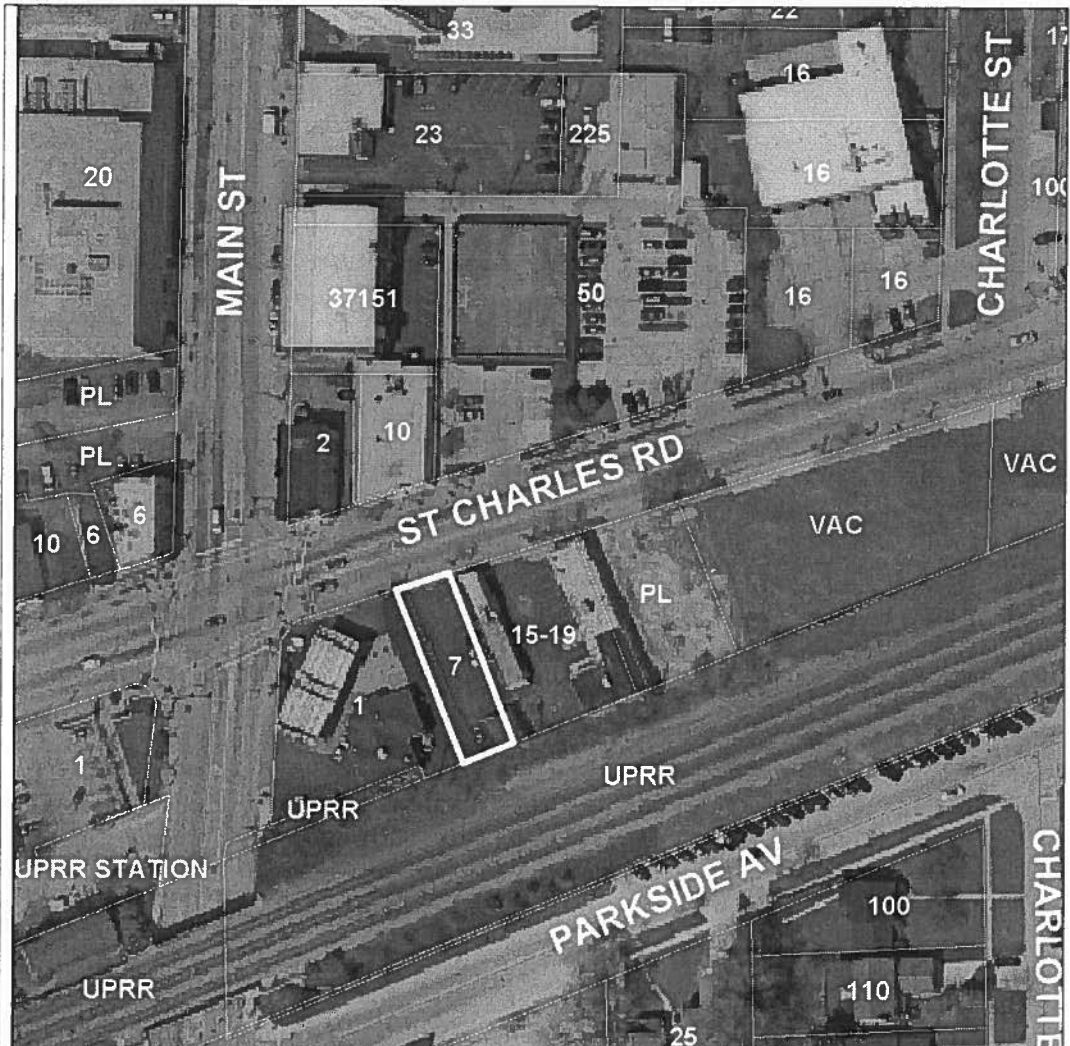
With the pending commuter parking lot construction by the Village, staff inquired about the acquisition of the Subject Property and the owner represented that they are willing to sell the property. It is anticipated that an additional approximate nine parking spaces could be made available as part of the expanded lot design. Acquisition for parking would also remove a deleterious structure and nonconforming use.

The Subject Property was acquired by the current owner in 1998 for \$44,900. The Village had an appraisal completed that offered a value of \$70,000. Through negotiations, the owner represented that they would accept a sale price in the amount of \$37,500 for the property as an as-is transaction. The costs were lowered below the appraisal estimate as the existing garage will need to be razed and the property does have elevated levels of contamination in the soil; likely attributable to the adjacent gas station underground fuel tanks.

**ACTION REQUESTED**

Acquisition of real property must be approved by the Village Board. Staff has attached an Ordinance and purchase and sale agreement drafted by Village Counsel and which been accepted by the owner of the 7 E. St. Charles Road property. Please place this item on the December 4, 2014 Village Board agenda for consideration and approval. In order to facilitate the closing on the subject property, staff recommends a waiver of first reading of the Ordinance of approval.

7 E. St. Charles Road, Lombard, Illinois  
PIN 06-08-108-008



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

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY  
COMMONLY KNOWN AS 7 EAST ST. CHARLES ROAD**

**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 commuter parking lot improvements, or such other improvements as deemed necessary by the President and Board of Trustees, 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 7 East St. Charles Road, Lombard, Illinois, DuPage County, to accomplish the aforesaid purpose; said property being legally described as follows:

LOTS 11 AND 12 (EXCEPT THE WEST 28 FEET OF LOT 12) IN BLOCK 17 OF THE ORIGINAL TOWN OF LOMBARD, A SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1868, AS DOCUMENT 9483, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: 06-08-108-008;

(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 THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$37,500.00), plus survey 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 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 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 \_\_\_\_\_, 2014.

First reading waived by action of the Board of Trustees this \_\_\_ day of \_\_\_\_\_, 2014.

Passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

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

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

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

**ATTEST:**

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

Published by me in pamphlet form this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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

**Exhibit A**

**REAL ESTATE PURCHASE AND SALES CONTRACT**

(see attached)

# REAL ESTATE PURCHASE AND SALES CONTRACT

(7 East St. Charles Road, Lombard, Illinois)

**THIS REAL ESTATE PURCHASE AND SALES CONTRACT** (the "**Contract**") is made as of the Effective Date (as defined in Paragraph 24 hereof) between **PATRICK J. BARTEL**, as Trustee of the Patrick J. Bartel Descendant's Trust, dated October 10, 2012 (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 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 7 East St. Charles Road, Lombard, Illinois, with PIN 06-08-108-008, 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 **THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$37,500.00)** (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, 2015 (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.

6. **ENVIRONMENTAL INSPECTION DEMOLITION OF GARAGE AND ENVIRONMENTAL CLEAN UP.** 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**"). The Buyer shall also have the right, at any time prior to the closing, to enter upon the Property, and demolish the garage located thereon, including hauling away the debris from said demolition (the "**Demolition**"), and to engage in the clean up of the environmental conditions on the Property as identified in the Phase I and Phase II environmental reports that Seller had done relative to the Property (the "**Environmental Clean Up**"). 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 Assessment, the Demolition and the



Environmental Clean Up. Seller shall provide to the Buyer and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder) for purposes of Buyer proceeding with the Environmental Assessment, the Demolition and the Environmental Clean Up. In the event that Buyer elects to proceed with the Environmental Assessment, the Demolition and/or the Environmental Clean Up, Buyer shall do so at Buyer's sole cost and expense. Buyer agrees to protect, indemnify, defend (with counsel acceptable to Seller) and hold Seller, harmless from and against any claim for liabilities, losses, costs, expenses (including reasonable attorneys' fees), damages or injuries suffered or incurred by Seller arising out of, resulting from, relating to or connected with: (i) any Environmental Assessment, the Demolition, and/or the Environmental Clean Up performed at the Property by Buyer or any of Buyer's employees, agents, representatives, contractors and consultants; and/or (ii) the willful misconduct of, or other acts or omissions of, Buyer or its employees, agents, representatives, contractors and consultants at the Property. Buyer's indemnification obligations under this paragraph 6 shall survive the Closing. Notwithstanding the foregoing, the physical destruction of the garage pursuant to the Demolition shall not be considered to be "damage" suffered or incurred by the Seller.

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, if any, shall be immediately returned to the Buyer.

8. **TITLE INSURANCE.** Prior to Closing, Buyer, 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**"), together with copies of all underlying title documents listed in the Title Commitment (the "**Underlying Title Documents**"), subject only to those matters described in Exhibit B, attached hereto and made a part hereof (the "**Permitted Exceptions**"). If the Title Commitment, Underlying Title Documents or the Survey (as hereinafter defined) disclose exceptions to title, which are not acceptable to Buyer (the "**Unpermitted Exceptions**"), Buyer shall have five (5) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter (the "**Buyer's Objection Letter**") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have five (5) days from the date of receipt of the Buyer's Objection Letter ("**Seller's Cure Period**") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, and the Closing shall be extended such additional time, but not beyond February 15, 2015 (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, Buyer, at Buyer's cost and expense, shall obtain a Plat of Survey that conforms to the Minimum Standards of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement, placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey." As Buyer is paying the cost of the Plat of Survey, Buyer may upgrade the Plat of Survey to an ALTA Survey, so as to obtain extended title insurance coverage. In this regard, Seller agrees to cooperate in the preparation of the ALTA survey, and in obtaining extended coverage, as a result thereof, relative to the title insurance policy.

10. **DEED.** Seller shall convey fee simple title to the Property to Buyer, by a recordable Trustee's 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 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 Buyer and the Seller shall jointly deposit fully executed State of Illinois Transfer Declarations and County 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, subject to the Demolition. The Seller shall have the right to remove any and all items from the Property prior to the Closing.

13. **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 365-day year, with the Seller having the day prior to the Closing Day.

A. **Real Estate Taxes.** General real estate taxes for 2014 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.

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.** 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.** 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. 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.

L. 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.

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; 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; 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 which may be satisfied by the costs incurred by the Buyer, relative to the Demolition and/or the Environmental Clean Up, prior to the breach, as said costs would have had to have been otherwise incurred by the Seller, 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. This provision shall survive the Closing.

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: Patrick J. Bartel  
1280 Champion Forest Court  
Wheaton, Illinois 60187  
FAX: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
FAX: \_\_\_\_\_

To Buyer: Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148  
Attn: Scott Niehaus, Village Manager  
FAX: 630-620-8222

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

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

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 provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.

D. 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.

E. 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.



F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 Buyer shall sign the Contract, which date shall be the date stated next to the Buyer'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.

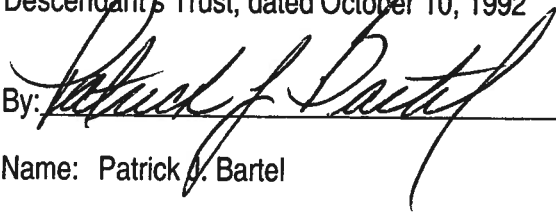
26. **EXHIBITS.** The following Exhibits are attached hereto and made a part hereof by reference:

- 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:**

**PATRICK J. BARTEL,**  
as Trustee of the Patrick J. Bartel Trustee  
Descendant's Trust, dated October 10, 1992

By:   
Name: Patrick J. Bartel

**BUYER:**

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

By: \_\_\_\_\_  
Name: Keith Giagnorio  
Title: Village President

**ATTEST:**

By: \_\_\_\_\_  
Name: Sharon Kuderna

Title: Village Clerk

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

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

**Exhibit A**

**Legal Description of the Property**

LOTS 11 AND 12 (EXCEPT THE WEST 28 FEET OF LOT 12) IN BLOCK 17 OF THE ORIGINAL TOWN OF LOMBARD, A SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 23, 1868, AS DOCUMENT 9483, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: 06-08-108-008.

Property Address: 7 East St. Charles Road, Lombard, Illinois

**Exhibit B**

**Permitted Exceptions**

1. 2014 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, which do not prevent the Buyer from constructing a parking lot on the Property.

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

State of Illinois )  
                          )ss.  
County of DUPAGE

**DISCLOSURE AFFIDAVIT**

I, PATRICK J BARTER, (hereinafter referred to as "Affiant") reside at 1280 CHAMPION FOREST WILSON, in DUPAGE County, State of ILLINOIS, 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
  - 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 7 East 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 06-08-108-008.
  
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: PATRICK J BARTER  
DEPENDANTS TRUST DTD 10/12/11 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.

SUBSCRIBED AND SWORN to before me  
 this 12 day of November, 2014.

Diane R Moyers  
 NOTARY PUBLIC  
 Official Seal  
 Diane R Moyers  
 Notary Public State of Illinois  
 My Commission Expires 08/01/2015

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AFFIANT  
Patrick J. Barter  
Patrick J. Barter