

## **AGREEMENT OF PURCHASE AND SALE**

THIS AGREEMENT OF PURCHASE AND SALE ("**Agreement**") is made and entered into as of the Effective Date (as hereinafter defined) between MSK Meacham Property Holding LLC, an Illinois limited liability company ("**Seller**"), and The Village of Schaumburg, an Illinois municipal corporation ("**Purchaser**").

In consideration of the mutual covenants, undertakings and agreements contained below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser covenant, undertake and agree as follows:

**Section 1. Agreement to Sell.** Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, for the Purchase Price (as hereinafter defined), on and subject to the terms and conditions set forth in this Agreement, all of Seller's right, title and interest in and to the following:

A. The real property ("**Real Property**") located at 1925 N. Meacham Road, Schaumburg, Illinois (more particularly described on **Exhibit "A"** attached hereto and made a part hereof,) together with all structures and improvements thereon, all fixtures therein or thereto and all privileges, easements and appurtenances pertaining thereto, including all of Seller's right, title and interest in and to any adjacent or adjoining streets, alleys, or rights-of-ways and any strips or gores;

B. All roads, streets, alleys, water privileges, association rights and easements belonging or appurtenant to the Real Property;

C. All other improvements ("**Improvements**") located on the Real Property;

D. All licenses, permits, approvals, warranties, variances and similar documents, plans, drawings, specifications and surveys in Seller's or Seller's representatives' possession or control with respect to the Real Property, to the extent assignable without expense to Seller (the "**Permits**"), subject to the provisions of applicable legal requirements; and

All of the above-described property interests are collectively referred to herein as the "**Property**".

### **Section 2. Purchase Price and Earnest Money.**

A. The aggregate purchase price ("**Purchase Price**") to be paid by Purchaser to Seller for the Property is Two Million Dollars (\$2,000,000).

B. The Purchase Price shall be payable in cash or wire transfer at the Closing (as hereinafter defined).

C. Within three (3) business days after the Effective Date (as hereinafter defined), Purchaser shall deliver to Near North National Title a signed copy of this Agreement and a wire transfer to the Escrow Agent in the amount of Sixty Thousand and No/100 Dollars (\$60,000.00) (the "**Earnest Money**"). The Earnest Money shall be held in escrow in an interest-bearing account in accordance with the provisions hereof. Interest accruing on the Earnest Money shall be for the benefit of the Purchaser. By not later than the thirty (30) days after the Effective Date, Purchaser shall either (i) notify Seller in writing that Purchaser no longer wishes to purchase the Property in accordance with the terms and provisions of this

Agreement, in which event the Escrow Agent shall return the Earnest Money to Purchaser and Purchaser and Seller shall have no further obligations under this Agreement other than obligations which expressly survive termination of this Agreement (collectively, the “**Surviving Obligations**”), or (ii) should Purchaser fail to notify Seller in writing that Purchaser no longer wishes to purchase the Property, Purchaser shall be deemed to have elected to purchase the Property in accordance with the terms of this Agreement and the Earnest Money and any interest thereon shall become nonrefundable to Purchaser except as expressly provided in this Agreement. If the transaction contemplated hereby is consummated in accordance with the terms and provisions hereof, the Earnest Money shall be applied to the Purchase Price at the Closing. If the transaction is not so consummated, the Earnest Money shall be held and delivered by the Escrow Agent as herein provided. If Purchaser fails to timely deliver the Earnest Money as specified in the first sentence of this Section 2.C., Seller shall have the unilateral right, to be exercised by Seller in its sole discretion, to terminate this Agreement by providing written notice thereof to Purchaser, whereupon neither party shall have any further obligations under this Agreement except the Surviving Obligations.

### **Section 3. Title Commitment.**

A. Within ten (10) business days of the Effective Date, Seller shall deliver to Purchaser:

1. An Owner’s Commitment for Title Insurance (the “**Title Commitment**”) from the Title Company through the Escrow Agent which Title Commitment shall bind the Title Company to issue at Closing an Owner’s Policy of Title Insurance on the standard form of policy prescribed for use in the state where the Real Property is located in the full amount of the Purchase Price, except that (i) the exception as to areas and boundaries may, at the option and sole expense of Purchaser, be limited to “shortages in area”; (ii) the exception relating to restrictive covenants shall be deleted, or modified to reflect any applicable restrictive covenants; and (iii) the exception as to taxes shall be modified to refer to taxes for the year in which the Closing occurs (the “**Owner’s Policy**”); and

2. A legible copy of all documents referred to in the Title Commitment, including but not limited to plats, reservations, restrictions, and easements (“**Title Documents**”).

3. A current survey of the Property (the “Survey”) in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (effective 2/23/2011) prepared pursuant to the accuracy standards of an “Urban Survey,” (including Table A items 1-5, 6(a), 7(a), 7(c), 8, 9, 11(a), 17, 18, 19, 20(a) and 21), certified to the Purchaser and the Title Company, which Survey shall be in such form and detail as to enable the Title Company to issue an extended coverage ALTA owner’s policy of title insurance with the survey exception deleted.

B. Purchaser may evaluate the status of title as reflected in the Title Commitment, the Title Documents and the Survey. On or before the twentieth (20th) business day after the Effective Date, Purchaser will deliver to Seller a listing of those exceptions in the Title Commitment which are not acceptable to Purchaser (an “**Objection Letter**”). Although Seller may elect in its sole and absolute discretion to cure or attempt to cure any one or more of Purchaser’s objections specified in the Objection Letter, Purchaser acknowledges and agrees that Seller has no obligation to cure any such objections. If Purchaser timely provides an Objection Letter to Seller, Seller shall, within five (5) business days after receipt of such Objection Letter, notify Purchaser which objections, if any, that Seller has elected to cure or

cause to be cured before Closing. Failure of Seller to timely provide such notice shall be deemed confirmation that Seller has elected not to cure such objections. If Seller chooses not to cure any of the objections set forth in the Objection Letter then Purchaser shall have the option, of either (i) terminating this Agreement by giving a written termination notice to Seller, at which time the Escrow Agent shall promptly return the Earnest Money to Purchaser and the parties shall have no further rights or obligations hereunder except as otherwise expressly provided herein, or (ii) waiving the uncured objections by proceeding to Closing and thereby be deemed to have approved Purchaser's title as shown in the Title Commitment, Title Documents and the Survey, if any, and any such uncured objections shall become Permitted Encumbrances (as hereinafter defined) for all purposes hereunder.

C. During the term of this Agreement, Seller shall not cause title to the Real Property to differ materially from the condition of title as approved by Purchaser pursuant to the foregoing. If, after the end of the Effective Date through the Closing, the Title Company issues an updated Title Commitment that contains any bona fide new exception to title of the Real Property which is not otherwise a Permitted Encumbrance ("**New Encumbrance**"), then Purchaser shall have five (5) business days after its receipt of such updated Title Commitment to object to such New Encumbrance by delivering written notice thereof to Seller ("**New Encumbrance Objection Letter**"). If Purchaser timely delivers a New Encumbrance Objection Letter to Seller, Seller shall, within two (2) business days after its receipt of same, notify Purchaser if Seller has elected to cure or cause to be cured such New Encumbrance before Closing. Failure of Seller to timely provide such notice shall be deemed confirmation that Seller has elected not to cure such New Encumbrance. If Seller chooses not to cure any New Encumbrance specified in the New Encumbrance Objection Letter, then Purchaser shall have the option, to be exercised within two (2) business days following Purchaser's receipt of the Seller's notice (or deemed notice), of either (i) terminating this Agreement by giving a written termination notice to Seller, at which time the Escrow Agent shall promptly return the Earnest Money to Purchaser and the parties shall have no further rights or obligations hereunder except as otherwise expressly provided herein, or (ii) waiving the uncured objections by proceeding to Closing, and the New Encumbrance shall thereafter be a "Permitted Encumbrance".

#### **Section 4. Closing.**

A. The Closing ("**Closing**") of the sale of the Property by Seller to Purchaser shall occur in the office of the Escrow Agent no later than sixty (60) days following the expiration of the Effective Date (the "**Initial Closing Date**"). The Initial Closing Date may be extended by mutual agreement of the Parties.

B. Closing will be conducted through a "New York style" deed and money escrow, the terms of which shall be established through a written escrow agreement entered into by the Parties (through their respective attorneys and the Escrow Agent. At the Closing, all of the following shall occur, all of which shall be deemed concurrent conditions:

1. Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Escrow Agent the following:

a. A Special Warranty Deed ("**Deed**"), in substantially the form attached hereto as **Exhibit "B"** and made a part hereof, fully executed and acknowledged by Seller, conveying to Purchaser title to the Real Property, subject to any municipal or other

governmental zoning laws, regulations and ordinances, if any, affecting the herein-described Property and the Permitted Encumbrances, as defined in Section 5 hereof;

b. A Bill of Sale duly executed by Seller, in form satisfactory to Purchaser and Seller;

c. Evidence reasonably satisfactory to the Title Company that the person executing the closing documents on behalf of Seller has full right, power, and authority to do so;

d. A proper affidavit by Seller, providing Seller's U.S. taxpayer identification number and stating that Seller is not a "foreign person" as defined in 26 U.S.C. Section 1445;

e. A Seller's Affidavit duly executed by Seller;

f. Such information as Escrow Agent may reasonably require in order to prepare a closing statement showing the Purchase Price and any adjustments thereto (the "**Settlement Statement**");

g. Documentation required by the Title Company in connection with the issuance of the Owner's Policy, including, but not limited to, an ALTA statement and personal gap undertaking;

h. Such other documents and agreements as may be reasonably required to consummate the transaction contemplated hereby; and

2. Purchaser, at Purchaser's sole cost and expense, shall deliver or cause to be delivered to Escrow Agent the following:

a. A wire transfer, payable to the order of the Escrow Agent in an amount of money equal to the Purchase Price less the Earnest Money, subject to adjustments as provided in this Section 4;

b. Evidence reasonably satisfactory to Seller and the Title Company that the person executing the closing documents on behalf of Purchaser has full right, power, and authority to do so;

c. The Bill of Sale duly executed by Purchaser;

d. Documentation required by the Title Company in connection with the issuance of the Owner's Policy, including, but not limited to, an ALTA statement;

e. Such information as Escrow Agent may reasonably require in order to prepare the Settlement Statement; and

f. Such other documents and agreements as may be reasonably required to consummate the transaction contemplated hereby.

3. Seller and Purchaser shall each pay their respective attorneys' fees and one half of the escrow fees. Seller shall pay for the Owner's Policy for standard ALTA coverage

in the amount of the base premium of the Owner Policy in the amount of the Purchase Price (excluding the cost of any endorsements), the cost of the Survey, all local, county, and state transfer taxes, if any, which are imposed by ordinance or statute on the Seller of real property. Purchaser shall pay all recording fees associated with the recordation of the Deed, tax certificates, the premiums for endorsements to the Owner, costs associated with survey certification, and city transfer taxes, if any, which are imposed by ordinance on the buyer of real property.

C. All prorations for the Settlement Statement shall be calculated as of the Closing Date (with Seller's portion covering the period through the day immediately prior to the Closing Date and Purchaser's portion commencing on and including the Closing Date), except as Seller and Purchaser may otherwise agree in writing (which agreement may take the form of Seller's and Purchaser's written approval of the Settlement Statement).

D. Real estate taxes, installments of governmental assessments, and personal property taxes, relating to the Property shall be prorated between the parties on a "cash" basis as of the Closing Date (with the Closing Date deemed the first day of ownership by Purchaser) (the "**Property Taxes**"). If the amount of such Property Taxes cannot be determined at the Closing, they shall be apportioned on the basis of the most recently attainable tax bill (the "**Most Recent Tax Bill**"). As to Property Taxes that have not been paid before Closing, Seller will either (i) give Purchaser a credit at closing for an amount equal to that portion of the Property Taxes which relates to the period before Closing (taking into account any previous payments for the period in question) or (ii) pay to the applicable taxing authorities an amount equal to that portion of the Property Taxes which relates to the period before Closing (taking into account any previous payments for the period in question), and Purchaser shall then pay the remaining portion of the Property Taxes prior to their becoming delinquent. There shall be no re-proration of the Property Taxes after the Closing.

E. In the event that an application for a real estate tax abatement or reduction is not filed by Seller prior to the Closing for the tax year in which Closing occurs, then Purchaser shall have the exclusive right, following Closing, to file and prosecute such application with respect to the year in which Closing occurs.

F. All amounts paid in respect of common area maintenance costs and other operating expenses of the Property shall be prorated through the Settlement Statement as of the Closing Date. Except as Seller and Purchaser may otherwise agree in writing (which agreement may take the form of Seller's and Purchaser's written approval of the Settlement Statement), such prorations shall be calculated using the information available to Seller's property manager as of 11:59 p.m. on that day which is two (2) business days before the Closing Date (the "**Calculation Date**"). Purchaser shall be responsible for any pending special assessments or any special assessments levied prior to Closing.

G. Amounts owing, prepaid or received by Seller on all (i) Contracts expressly assumed by Purchaser and assigned to Purchaser hereunder, and (ii) contracts and service agreements which provide services to the Purchaser and/or Property post-Closing, shall be apportioned as of the Closing. Notwithstanding the foregoing, all leasing and/or property management contracts shall be expressly excluded from the foregoing prorations.

H. Charges for utilities serving the Property shall be determined and prorated as of the Closing Date. Purchaser shall be responsible for all utility charges for the period on or after the Closing Date. Seller shall be responsible for all utility charges for the period through

and including the day preceding the Closing Date. **Purchaser shall be responsible to ensure that all such utilities are switched over into the name of Purchaser as of the Closing Date, or as soon as possible thereafter, provided that Seller shall, at no cost to Seller, take all commercially reasonable actions necessary to assist Purchaser in accomplishing same. However, after the lapse of forty-eight (48) hours following the Closing, Seller may terminate any utility service that Purchaser has not transferred out of Seller's name into Purchaser's name. Purchaser hereby indemnifies Seller for, and holds Seller harmless from, any resulting consequence of such utility service termination.**

I. All utility deposits for the benefit of Seller (power, water, sewer, etc.) shall at all times remain the property of Seller and shall be refunded to Seller by the deposit holder upon the Closing (or within a reasonable time thereafter), and Purchaser shall take all commercially reasonable actions necessary to ensure the prompt release of all such deposits to Seller.

J. Upon Closing, Seller shall deliver to Purchaser at the Real Property (i) exclusive possession of the Property (including all keys to the Property in Seller's possession or control), subject to the Permitted Encumbrances; (ii) all original Contracts and amendments thereto to the extent they are in Seller's or Seller's representatives' possession, and (iii) all documents comprising the Records that are in Seller's possession.

K. In the event of mathematical error on the Settlement Statement or in the calculation of pro rations within the Settlement Statement, the same shall be promptly adjusted when determined and the appropriate party paid any monies owed, provided that on the thirtieth (30<sup>th</sup>) day after Closing, such amounts shall be considered final except as otherwise specifically set forth herein.

L. Except for the provision set forth in 'K' above, this Section 4 shall survive Closing.

#### **Section 5. Conditions to Performance.**

A. Purchaser's obligation to consummate the transaction contemplated hereunder is expressly subject to the satisfaction (or written waiver by Purchaser) of the following conditions as of the Closing Date ("**Purchaser's Closing Conditions**"):

1. Seller's representations and warranties set forth herein continue to be true and accurate in all material respects;

2. There is no material breach of Seller's covenants as set forth herein that has not been cured prior to Closing;

3. There is no material change in the matters reflected by the Survey and the Title Commitment after expiration of the Effective Date which Seller is unable or unwilling to cure except as consented to in writing by Purchaser; and

4. Seller has materially performed all of its obligations hereunder, including, but not limited to, the closing documents/deliveries.

B. Notwithstanding Purchaser's Closing Conditions above, Seller's obligation to consummate the transaction contemplated hereunder is expressly subject to the satisfaction

by Purchaser (or waiver by Seller) of the following conditions as of the date of Closing ("**Seller's Closing Conditions**"):

1. Purchaser's representations and warranties set forth herein continue to be true and accurate in all material respects;
2. There is no material breach of Purchaser's covenants as set forth herein;  
and
3. Purchaser has materially performed all of its obligations hereunder, including, but not limited to, the closing documents/deliveries.

The above conditions precedent may be waived only by the party in whose favor they run, which waiver may be granted or withheld by such party in its sole discretion. If any condition precedent under this Agreement has not been satisfied as of the date of Closing or waived by the party in whose favor the condition precedent runs, such party shall be entitled, in its sole discretion, to terminate this Agreement by giving the other party and the Escrow Agent written notice to such effect, whereupon the Escrow Agent shall release the Earnest Money to (a) Seller, in the event of a failure of Seller's Closing Conditions and a corresponding termination by Seller, or to (b) Purchaser, in the event of a failure of Purchaser's Closing Conditions and a corresponding termination by Purchaser. Upon a termination pursuant to the immediately preceding sentence, the parties shall have no further rights or liabilities under this Agreement except with respect to the Surviving Obligations.

**Section 6. AS IS Sale.**

A. Purchaser expressly acknowledges that, except as expressly provided herein, the Property is being sold and accepted **AS IS, WHERE-IS, WITH ALL FAULTS**, and Seller makes no representations or warranties, express or implied, with respect to the physical condition or any other aspect of the Real Property, including, without limitation, (i) the conformity of the Property or its intended use to past, current or future applicable zoning or building code requirements or restrictive covenants, or the compliance with any other laws, rules, ordinances, or regulations of any government or other body, (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, restriction, condition, or otherwise, (iii) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, susceptibility to landslides, sufficiency of undershoring, sufficiency of drainage, (iv) whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (v) the existence or non-existence of asbestos, underground or above ground storage tanks, hazardous waste or other toxic or hazardous materials of any kind or any other environmental condition or whether the Property is in compliance with applicable laws, rules and regulations, (vi) the Property's investment potential or resale at any future date, at a profit or otherwise, (vii) any tax consequences of ownership of the Property or (viii) any other matter whatsoever affecting the stability, integrity, fitness for use or other condition or status of the land or any buildings or improvements situated on all or part of the Property or any other aspect of the Property or any part thereof (collectively, the "**Property Conditions**"), and except for warranties and representations expressly provided herein, **PURCHASER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS PURCHASER MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**

relating to the Property, its improvements or the Property Conditions, such waiver being absolute, complete, total and unlimited in any way.

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Purchaser's Initials

B. If and to the extent that Seller delivers or makes available documents, reports (including any environmental reports) or other writings concerning the Property (the "**Review Items**") to Purchaser, all such Review Items shall be delivered or made available without any representation or warranty as to the completeness or accuracy of the data or information contained therein, and all such Review Items are furnished to Purchaser solely as a courtesy, and Seller has neither verified the accuracy of any statements or other information therein contained, the method used to compile such information nor the qualifications of the persons preparing such information. The Review Items are provided on an **AS-IS-WHERE-IS BASIS, AND PURCHASER EXPRESSLY ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE REVIEW ITEMS.** Without Seller's prior written consent, Purchaser: (i) shall not divulge to any third party any of the Review Items and shall not use the Review Items in Purchaser's business prior to the Closing, except in connection with the evaluation of the acquisition of the Property; (ii) shall ensure that the Review Items are disclosed only to such of Purchaser's officers, directors, employees, consultants, investors and lenders, as have actual need for the information in evaluating the Property and that prior to Closing all such parties shall treat the Review Items as confidential and proprietary to Seller; (iii) shall act diligently to prevent any further disclosure of the information; and (iv) shall, if the Closing does not occur for any reason, promptly return to Seller (without keeping copies) all Review Items. This Section 6.B. shall survive the termination of this Agreement.

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Purchaser's Initials

C. Except as expressly represented by Seller herein, Purchaser will rely solely on its own investigation of the Property and not on any information provided by Seller, its agents, or its contractors. Seller will not be liable or bound in any way by any oral or written statements, representations or information about the Property or its operation furnished by any party purporting to act on Seller's behalf.

D. Purchaser **acknowledges that** the Property may not be in compliance with all regulations, rules, laws and ordinances that may apply to the Property or any part thereof and to the continued ownership, maintenance, management and repair of the Property ("**Requirements**"). After the Closing, Purchaser shall be solely responsible for any and all Requirements, Property Conditions, and all other aspects of the Property, whether the same shall be existing as of the Closing Date or not. Except as expressly provided herein, to the fullest extent permitted by law, Purchaser hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it by virtue of any applicable state, federal, or local law, rule, or regulation as a result of any alleged inaccuracy or incompleteness of the information or the purchase of the Property, including, without limitation, (i) the provisions of the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510), and (ii) any environmental law, rule, or regulation whether federal, state or local,



including, without limitation, the Comprehensive Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 et seq.) as amended by the Superfund Amendments and Reauthorization Act of 1986, and any analogous federal or state laws. With respect to Purchaser's waiver of the above and the other waivers by Purchaser contained in this Agreement, the Purchaser represents and warrants to Seller that: (a) Purchaser is not in a significantly disparate bargaining position; (b) Purchaser is represented by legal counsel in connection with the sale contemplated by this Agreement and (c) Purchaser is knowledgeable and experienced in the purchase, and sale of real estate, and is fully able to evaluate the merits and risks of this transaction. As part of the provisions of this Section 6.D., but not as a limitation thereon, Purchaser hereby agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed. In this connection, to the extent permitted by law, Purchaser hereby agrees, represents, and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Purchaser further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Purchaser nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included in the waivers and matters released as set forth in this Section 6.D. above.

E. The foregoing waivers and releases will be given full force and effect according to each of their express terms and provisions, including those relating to unknown and unsuspected claims, damages and causes of action and strict liability claims. The foregoing waivers and releases include claims of which Purchaser is presently unaware or which Purchaser does not presently suspect to exist which, if known by Purchaser, would materially affect Purchaser's waiver or release to Seller.

F. Notwithstanding anything herein to the contrary, all of the terms and provisions of this Section 6 shall survive the Closing or a termination of this Agreement.

**Section 7. Brokers.** Purchaser and Seller hereby agree that no brokers have represented either party in connection with this transaction. To the extent any broker is utilized, any commissions shall be paid at closing pursuant to a separate agreement. Seller agrees that if any claims should be made for commissions allegedly arising from the execution of this Agreement or any sale of the Property to Purchaser, Seller will protect, defend, indemnify and hold Purchaser harmless from and against any and all loss, liabilities and expenses in connection therewith. This Section 7 shall survive Closing.

**Section 8. Purchaser's Inspection.**

A. During the term of this Agreement, upon reasonable prior notice to Seller and subject to the provisions herein, Purchaser shall have the right to diligently and thoroughly inspect the Property, and to hire such experts as Purchaser may deem necessary to thoroughly evaluate and analyze the Property and Property Conditions, including contractors, engineers, soils analysts, pest control specialists and the like, all at Purchaser's expense so long as such activities do not unreasonably interfere with Seller's or any tenant's use of the Property.

B. During the term of this Agreement, upon reasonable prior notice to Seller and subject to the provisions herein, Purchaser and its agents and employees, at Purchaser's sole risk and expense, shall have the right to enter upon the Property during normal business hours for testing, surveying, engineering and other reasonable inspection purposes, including inspections related to preparation of a Phase I or Phase II Environmental Site Assessment ("**Tests**"). All such activities shall be conducted in such a fashion so as not to unreasonably interfere with the rights or property of those with any possessory interest in any part of any portion of the Property. Seller reserves the right to accompany Purchaser, or have a representative of Seller accompany Purchaser, prior to entering upon the Property in connection with any test or inspection. Seller agrees to make its manager or other representative reasonably available during normal business hours. Purchaser will not alter the physical condition of the Property without notifying Seller of its requested tests and obtaining the written consent of Seller to any physical alteration of the Property, including, without limitation, borings, drillings or other invasive testing. Purchaser will promptly restore the Property to its original condition if damaged or changed due to the tests and inspections performed by Purchaser, free of any mechanics' or materialmen's liens or other encumbrances arising out of any of the inspections or tests, and will provide Seller, at no cost to Seller, with a copy of the results of any tests and inspections made by Purchaser, excluding any market and economic feasibility studies. **PURCHASER HEREBY AGREES TO AND SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD SELLER HARMLESS OF, FROM AND AGAINST ANY AND ALL LIABILITIES, SUITS, CLAIMS, LOSSES, CAUSES OF ACTION, LIENS, FINES, PENALTIES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS, AND DAMAGES SUSTAINED BY OR ASSERTED AGAINST SELLER OR THE PROPERTY (COLLECTIVELY "**CLAIMS**"), INCLUDING, BUT NOT LIMITED TO, INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR THEFT OF ANY PROPERTY, OR MECHANICS' AND MATERIALMEN'S LIENS, CAUSED AS A RESULT OF OR ARISING OUT OF OR SOLELY IN CONNECTION WITH ANY INSPECTIONS, EXAMINATIONS OR TESTS CONDUCTED BY PURCHASER OR ITS CONTRACTORS OR AGENTS, EVEN IF THE INDEMNIFIED PARTY WOULD BE STRICTLY LIABLE UNDER APPLICABLE LAW, BUT NOT TO THE EXTENT SUCH CLAIMS ARE CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF SELLER.** The provisions of this Section 8.B. shall survive Closing or termination of this Agreement.

#### **Section 9. Notices.**

A. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given when (i) delivered in person to the address set forth hereinbelow for the party to whom the notice is given, (ii) placed in the United States mail, certified and return receipt requested, addressed to such party at the address hereinafter specified, (iii) deposited into the custody of FedEx Corporation to be sent by FedEx Overnight Delivery or other reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter specified, or (iv) telecopied by facsimile transmission to such party at the telecopy number listed below, provided that such transmission is electronically confirmed on the date of such transmission. In addition, notice may be given by email at the email address set forth hereinbelow for the party to whom notice is given, and such notice shall be deemed given and served upon transmission so long as such notice is also given on the same day via a method provided for in (i) through (iv) above.

B. The address of Seller for all purposes under this Agreement and for all notices hereunder shall be:

Matthew D. Means  
MSK PROPERTY HOLDINGS LLC  
180 North Stetson Avenue, Suite 4500  
Chicago, Illinois 60601  
Telephone:  
Email: mdmeans@mskholdings.com

cc:  
Kenneth W. Bosworth  
PLUYMERT, MACDONALD, HARGROVE & LEE, LTD.  
2300 Barrington Road, Suite 220  
Hoffman Estates, Illinois 60169  
Telephone: 847-310-0025  
Kbosworth@lawpmh.com

C. The address of Purchaser for all purposes under this Agreement and for all notices hereunder shall be:

The Village of Schaumburg  
101 Schaumburg Court  
Schaumburg, Illinois 60193-1878  
Attention: Brian A. Townsend  
Telephone: (847) 923-4705  
Fax:  
Email: btownsend@ci.schaumburg.il.us

with a copy to:

Howard C. Jablecki  
Klein, Thorpe, & Jenkins, Ltd.  
20 N. Wacker Drive, Suite 1660  
Chicago, Illinois 60606-2903  
Telephone: (312) 984-6451  
Fax: (312) 984-6444  
Email: hcjablecki@ktjlaw.com

D. From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Agreement by giving the other party not less than thirty (30) days' advance written notice of such change of address in accordance with the provisions hereof.

**Section 10. Entire Agreement.** This Agreement (including the exhibits hereto) contains the entire agreement between Seller and Purchaser and fully supersedes all prior agreements and understandings between the parties. No oral statements or prior written matter not specifically incorporated herein shall be of any force and effect. No variation, modification, or changes hereof shall be binding on either party hereto unless set forth in a document executed by such parties or a duly authorized agent, officer or representative thereof.

**Section 11. Representations.**

A. Seller hereby warrants and represents to Purchaser that this Agreement and all documents to be executed and delivered by Seller at Closing are and at the Closing will be duly authorized, executed, and delivered, and are and at the Closing will be legal, valid, and binding obligations of Seller, and do not and at the Closing will not violate any provisions of any agreement to which Seller is a party or to which Seller is subject.

B. Seller makes the following representations and warranties to Purchaser, which representations and warranties shall be deemed to be repeated by Seller as of the Closing Date and which shall survive the Closing for a period of six (6) months:

1. To Seller's current actual knowledge, there are no parties in possession of any portion of the Real Property and there are no leases.

2. Seller has full power to enter into and perform this Agreement and perform its obligations hereunder;

3. Seller is a limited liability company which has been duly organized and is validly existing and in good standing. The execution, delivery and performance of this Agreement by Seller has been duly and validly authorized by all necessary action and proceedings and no further action or authorization is necessary on the part of Seller in order to consummate the transaction contemplated herein; and

4. Seller has full right, power and authority to own the Property, to execute and deliver this Agreement, to consummate the transactions, to comply with and fulfill the terms and conditions hereof and to sell the Property to Purchaser.

5. To Seller's current and actual knowledge, there is no pending (nor has Seller received any written notice of any threatened) action, litigation, condemnation, or other legal proceedings against the Property or against Seller in respect to the Property.

6. To Seller's current and actual knowledge, Seller has not received a written notice from any Governmental Entity having jurisdiction over the Property to the effect that the Property is not in compliance with applicable Laws.

7. Seller has not entered into any service, maintenance, or equipment contracts relating to the property that will be binding on the Purchaser after the Closing.

8. To Seller's current and actual knowledge, no person or entity has the right to park on the Property.

9. There are no unsatisfied requests for repairs, restorations or improvements from any person, entity, or authority, including, but not limited to, any tenant, lender, insurance carrier, or government authority.

10. On the Closing Date, there will be no outstanding contracts made by Seller for any improvements to the Property that have not been fully paid for, and Seller will cause to be discharged all mechanics or material supplier's liens arising from any labor or materials furnished to the Property prior to the Closing Date.

11. Seller has not received any notice from any insurance carrier of, nor, to Seller's current actual knowledge, is Seller aware of, defects or inadequacies in the Property that if not corrected would result in termination of insurance coverage, increase its costs, or otherwise affect the insurability of the Property.

As used in this Agreement, the words "Seller's current actual knowledge" (or any other words regarding the knowledge or awareness of Seller) mean and refer to the current actual knowledge of Matthew Means, not in his individual or personal capacity but solely in his capacity as Manager of the title holding LLC., limited to his current consciousness, without any due diligence, inquiry or investigation of any kind or duty of inquiry or investigation by him and do not include any constructive, imputed or implied knowledge.

If, prior to Closing, Purchaser shall obtain knowledge of any information that is contradictory to, and would constitute the basis of a breach of, any representation or warranty or failure to satisfy any condition to Purchaser's obligation to close then Purchaser acknowledges that once Closing occurs, such representation, warranty or condition will not be deemed breached and Purchaser shall not be entitled to bring any action after the Closing Date based on such representation, warranty or condition.

By executing and delivering the documents listed in Section 4, Seller shall be deemed to have made all of the foregoing representations and warranties as of Closing. Should any of the foregoing representations and warranties be found to be incorrect in any material respect prior to Closing, Seller may cure same by Closing. If Seller is unable or otherwise does not cure same by Closing, Purchaser shall be entitled either to (i) waive same and close this transaction in accordance with the terms of this Agreement without adjustment of the Purchase Price by reason of such breach, or (ii) terminate this Agreement by written notice to Seller. In the event Purchaser elects to terminate this Agreement pursuant to the foregoing sentence, the Escrow Agent shall return the Earnest Money to Purchaser and neither party to this Agreement shall thereafter have any further rights or obligations hereunder, except the Surviving Obligations.

C. Purchaser makes the following representations and warranties to Seller, which representations and warranties shall be deemed to be repeated by Purchaser as of the Closing Date and which shall survive the Closing for a period of six (6) months:

1. This Agreement is, and all documents to be executed and delivered by Purchaser at the Closing are or at the Closing will be, (i) duly authorized, executed, and delivered, and (ii) the legal, valid, and binding obligations of Purchaser, and do not and at the Closing will not violate any provisions of any agreement to which Purchaser is a party or to which Purchaser is subject;

2. Purchaser has full right, power and authority to execute and deliver this Agreement, to consummate the transactions contemplated herein, to comply with and fulfill the terms and conditions hereof and to purchase the Property from Seller, and no further action or authorization is necessary on the part of Purchaser in order to consummate the transaction contemplated herein;

3. Purchaser is an Illinois municipal corporation, has been duly incorporated, and is validly existing and in good standing in the State of Illinois;

4. Purchaser (or its representatives) will have fully examined and inspected the Property prior to the Closing, and Purchaser will know and be satisfied with all conditions of the Property;

5. Purchaser is not acquiring the Property with the assets of an employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")), or, if plan assets will be used to acquire the Property, Purchaser will deliver to Seller at Closing a certificate containing such factual representations as shall permit Seller and its counsel to conclude that no prohibited transaction would result from the consummation of the transactions contemplated by this Agreement. Purchaser is not a "party in interest" within the meaning of Section 3(3) of ERISA with respect to any beneficial owner of Seller;

6. Purchaser is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities;

7. Neither Purchaser, nor any party providing funds to Purchaser: (A) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities, any crimes which in the United States would be predicate crimes to money laundering, or any violation of any Anti-Money Laundering Laws (as hereinafter defined); (B) has been assessed civil or criminal penalties under any Anti-Money Laundering Laws; or (C) has had any of its funds seized or forfeited in any action under any Anti-Money Laundering Laws. The term "Anti-Money Laundering Laws" shall mean laws, regulations and sanctions, state and federal, criminal and civil, that: (w) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (x) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; (y) require identification and documentation of the parties with whom a Financial Institution conducts business; or (z) are designed to disrupt the flow of funds to terrorist organizations. Such laws, regulations and sanctions shall be deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the "**Patriot Act**"), the Bank Secrecy Act, 31 U.S.C. Section 5311 et. Seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. Seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. Seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957; and

8. Purchaser is in compliance with any and all applicable provisions of the Patriot Act.

**Section 12. Seller's Covenants.** Seller covenants and agrees with Purchaser that between the Effective Date and the Closing Date:

A. As soon as reasonably possible after Seller's receipt of written notice from any governmental authority of the institution of any proceedings for the condemnation of the Real Property, or any portion thereof, or any other proceedings arising out of injury or damage to the

Real Property, or any portion thereof, Seller will notify Purchaser of the pendency of such proceedings.

B. Prior to closing, Seller will, unless otherwise agreed to between the Parties, give appropriate notice and terminate all service and Maintenance Contracts and Equipment Leases, if any, relating to the Property.

C. Seller shall maintain in effect all current insurance policies (the "Insurance Policies") relating to the Property, including general commercial liability. The Insurance Policies shall remain continuously in force through and including the Closing Date.

D. Seller shall operate and manage the Property in the same manner in which it is being operated as of the Effective Date, maintaining present services, and shall maintain the Property in its same repair and working order, and shall perform all of Seller's obligations under any agreements relating to the Property and otherwise in accordance with applicable laws, ordinances, rules and regulations affecting the Property. None of the Personal Property shall be removed from the Property unless replaced by Personal Property of equal or greater utility and value.

E. Purchaser expressly acknowledges and agrees that Seller has no obligations with respect to the Property that survive Closing except as specifically set forth herein. The provisions of this Section 12.E. shall survive Closing.

**Section 13. Assigns.** This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives, successors, and permitted assigns. Purchaser may not assign its rights under this Agreement without the prior written consent of Seller, which may be granted or denied in Seller's sole and absolute discretion. A permitted assignment or transfer of this Agreement shall not relieve the Purchaser named herein of any of Purchaser's obligations under this Agreement (whether the same accrued prior to the date of such assignment or accrues on or after such date). The preceding sentence shall survive Closing.

**Section 14. Effective Date.** The date on which this Agreement is executed by the last to sign of Seller and Purchaser shall be the "**Effective Date**" of this Agreement.

**Section 15. Time of the Essence.** Time is of the essence of this Agreement.

**Section 16. Termination, Default and Remedies.**

A. If Purchaser fails or refuses to consummate the purchase of the Property pursuant to this Agreement at the Closing for any reason other than the termination of this Agreement by Purchaser pursuant to a right so to terminate expressly set forth in this Agreement, then Seller, as Seller's sole and exclusive remedy, shall have the right to terminate this Agreement by giving written notice thereof to Purchaser prior to or at the Closing, whereupon neither party hereto shall have any further rights or obligations hereunder except the Surviving Obligations, and the Escrow Agent shall deliver the Earnest Money to Seller as liquidated damages, free of any claims by Purchaser or any other person with respect thereto. It is agreed that the Earnest Money to which Seller is entitled under a termination above is a reasonable forecast of just compensation for the harm that would be

caused by Purchaser's breach, and that the harm that would be caused by such breach is one that is incapable or very difficult of accurate estimation.

B. If Seller fails or refuses to consummate the sale of the Property pursuant to this Agreement at the Closing or following two (2) business days written notice from Purchaser, fails to perform any of Seller's other obligations hereunder either prior to or at the Closing for any reason other than the termination of this Agreement by Seller pursuant to a right so to terminate expressly set forth in this Agreement or Purchaser's failure to perform Purchaser's obligations under this Agreement, then Purchaser, as Purchaser's **SOLE AND EXCLUSIVE** remedy, shall have the right to either (i) terminate this Agreement by giving written notice thereof to Seller prior to or at the Closing whereupon neither party hereto shall have any further rights or obligations hereunder, except the Surviving Obligations, and the Escrow Agent shall deliver the Earnest Money to Purchaser, free of any claims by Seller or any other person with respect thereto and, provided Purchaser is not in default hereunder, Seller shall reimburse Purchaser for not more than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) of actual documented out-of-pocket expenses, if any, that Purchaser paid from and after the Effective Date to third parties in conjunction with Purchaser's review of the Property, or (ii) enforce specific performance (but not recover damages) of the Seller's obligations under this Agreement, but if and only if: (A) Purchaser has delivered to Seller written notice of such default and has delivered reasonable evidence (e.g., loan commitment, proof of funds, etc.) of Purchaser's ability to fund the Purchase Price and other proceeds and has tendered such documents required to be delivered by Purchaser at Closing to the Escrow Agent to hold for a period of up to five (5) business days to enable Seller the opportunity to deliver the documents to be delivered by Seller and Seller has failed to cure said default within such five (5) business day period, (B) Purchaser has furnished ten (10) days prior written notice to Seller of its intent and election to seek specific enforcement of this Agreement (the "Election Notice"), (C) a suit for specific performance is filed within thirty (30) days after the later of (x) the expiration of Seller's cure period, or (y) Seller's receipt of the Election Notice, and (D) Purchaser is not in default under this Agreement at the time of filing such suit for specific performance and is ready, willing and able to fund the Purchase Price and to close escrow as and when required by the provisions of this Agreement (but for the breach of this Agreement by Seller). Failure to file suit for specific performance within such thirty (30) day period constitutes a waiver of the remedy of specific performance hereunder. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Seller be liable for actual, consequential or punitive damages.

C. In the event either Seller or Purchaser becomes entitled to the Earnest Money upon cancellation or termination of this Agreement in accordance with its terms, such party shall deliver notice to the Escrow Agent and the other party simultaneously with such termination notice. In the event the other party objects to such disbursement of the Earnest Money, such party shall have five (5) business days to give the terminating party and the Escrow Agent written notice of its objection to disbursement of the Earnest Money. In the event of such dispute, the losing party shall pay, upon the final order of a court with appropriate jurisdiction, all reasonable attorneys' fees incurred by the party so entitled to the Earnest Money in connection with the recovery thereof.

**Section 17. Terminology.** The captions beside the section numbers of this Agreement are for reference only and shall not modify or affect this Agreement in any manner whatsoever. Wherever required by the context, any gender shall include any other gender, the singular shall include the plural, and the plural shall include the singular.



**Section 18. Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.

**Section 19. Performance of Contract.** The obligations under the terms of the Agreement are performable in Cook County, Illinois, and any and all payments under the terms of the Agreement are to be made in Cook County, Illinois.

**Section 20. Venue.** The parties hereto hereby consent that venue of any action brought under this Agreement shall be in Cook County, Illinois, or the federal courts for and in the state in which the Real Property is located.

**Section 21. Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**Section 22. Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**Section 23. Attorney's Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

**Section 24. Business Days.** References to "business days" herein shall mean means any day except Saturday, Sunday or day on which commercial banks located in New York, New York, are authorized or required by law to be closed for business. If the Closing Date or the day for performance of any act required under this Agreement falls on day which is not a business day, then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day.

**Section 25. Counterparts.** This Agreement may be executed in multiple counterparts and via facsimile and/or PDF signature, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.

**Section 26. Waiver.** The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.

**Section 27. No Joint Venture.** Purchaser acknowledges and agrees that Seller is not a venture, co-venturer, insurer, guarantor or partner of Purchaser in Purchaser's development of, construction upon or resale of the Property, and that Seller shall bear no liability whatsoever resulting from or arising out of Purchaser's ownership, development of, construction upon and/or sale of the Property. The provisions of this Section 30 shall survive Closing.

**Section 28. Modifications.** This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

**Section 29. Exhibits.** The Exhibits that are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

**Section 30. Further Assurances.** Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Purchaser shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Purchaser with respect to the Property.

**Section 31. No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

**Section 32. No Memorandum.** Purchaser will not record either this Agreement, any memorandum hereof, or any affidavit pertaining hereto. Any such recordation by Purchaser will constitute a default hereunder by Purchaser. In addition to any other remedies of Seller, Purchaser will be obligated to execute an instrument in recordable form releasing this Agreement or memorandum or affidavit. Purchaser's obligations pursuant to this Section 34 will survive any termination of this Agreement.

**Section 33. Confidentiality.** The Parties agree to keep confidential each of the provisions of this Agreement and information provided to the other party hereunder or in connection with this Agreement, except such disclosures as may be necessary to each party's broker, lender, attorneys, accountants or engineering professionals, or such disclosures as are required by law (including as required by the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* or the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*) or governmental agencies.

**Section 34. Limited Liability.** The liability of Seller, its agents, representatives or employees arising by virtue of this Agreement shall be limited to the interest of Seller in the Property and no recourse shall be had to any other assets of Seller, its agents, representatives or employees.

**Section 35. Escrow Agent.** Seller and Purchaser covenant and agree that in performing any of its duties under this Agreement, Escrow Agent shall not be liable for any loss, costs or damage which it may incur as a result of serving as escrow agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence. Accordingly, Escrow Agent shall not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to its escrow duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which Escrow Agent shall in good

faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement. In the event of a dispute between any of the parties hereto sufficient in the sole discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Agreement, together with such legal pleading as it deems appropriate, and thereupon Escrow Agent will be discharged from any claims relating to the right of ownership or possession by any party as to such interpleaded money or property.

**Section 36. WAIVER OF JURY TRIAL.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONNECTION HERewith OR RELATED HERETO, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

**Section 37. Like Kind Exchanges.** The parties acknowledge that Seller may desire that this transaction constitute a tax deferred exchange within the meaning of Section 1031 of the Internal Revenue Code. Provided there is no cost, expense or liability imposed upon the Purchaser, and the Purchaser is not required to take title to any other property, then Purchaser agrees to execute any and all additional documentation that may be reasonably necessary to assist the Seller in concluding this transaction as part of a tax deferred exchange. Purchaser agrees that Seller may assign its rights and obligations under the Purchase and Sale Agreement to Seller's §1031 exchange agent in order to complete an exchange, at no additional expense or liability to Purchaser. In no event shall any such tax deferred exchange result in any unreasonable delay in the Closing.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the Effective Date.

**PURCHASER:**

Date: \_\_\_\_\_

The Village of Schaumburg, an Illinois municipal corporation

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

Name: Brian A. Townsend

Title: Village Manager

**SELLER:**

Date: \_\_\_\_\_

MSK Meacham Holding, LLC, an Illinois Limited Liability Company

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

Name: Matthew Means

Title: Manager

**EXHIBIT "A"**

**LAND DESCRIPTION**

**1925 NORTH MEACHAM ROAD, SCHAUMBURG, ILLINOIS**

PARCEL 1: LOT 6 IN WELDEN INTERNATIONAL SUBDIVISION OF PART OF FRACTIONAL SECTION 1 AND PART OF THE NORTH HALF OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 30, 1980 AS DOCUMENT 25342431, EXCEPTING THEREFROM THAT PART CONVEYED TO THE VILLAGE OF SCHAUMBURG FOR HIGHWAY PURPOSES BY WARRANTY DEED DATED JANUARY 18, 2005 AND RECORDED JANUARY 27, 2005 AS DOCUMENT NUMBER 0502703001, IN COOK COUNTY, ILLINOIS.

PARCEL 2: EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR STORM WATER DRAINAGE, INGRESS AND EGRESS, AND UTILITIES AS ESTABLISHED BY THE DECLARATION PROTECTIVE COVENANTS DATED MARCH 17, 1980 AND RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS ON MARCH 28, 1980 AS DOCUMENT NUMBER 25406331, IN COOK COUNTY, ILLINOIS.

PINS: 07-12-101-019-0000

**EXHIBIT "B"**

**SPECIAL WARRANTY DEED**

MSK Property Holdings, LLC, an Illinois limited liability company ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable consideration to it paid by The Village Of Schaumburg, an Illinois municipal corporation ("**Grantee**"), whose mailing address is 101 Schaumburg Court, Schaumburg, Illinois 60193-1878, the receipt and sufficiency of which are hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto the Grantee that certain tract of land ("**Land**") described on **Exhibit A** attached hereto and incorporated herein, together with all improvements thereon and all rights and appurtenances appertaining thereto (herein collectively called the "**Property**").

This conveyance is given and accepted subject to (i) the permitted exceptions set forth in \_\_\_\_\_ Title Order \_\_\_\_\_ and incorporated herein, (ii) discrepancies, conflicts in boundary lines, shortages in area, encroachments and any state of facts which an accurate survey of the Property would disclose or which are shown on the public records, (iii) rights of tenants as tenants only, and (iv) laws, regulations, resolutions or ordinances, including, without limitation, building, zoning and environmental protection, as to the use, occupancy, subdivision, development, conversion or redevelopment of the Property imposed by any governmental authority (herein called the "**Permitted Encumbrances**").

Grantee, by its acceptance hereof, agrees to assume and be solely responsible for payment of all ad valorem taxes pertaining to the Property for the calendar year 201\_\_ and subsequent years; there having been a proper proration of same between Grantor and Grantee.

TO HAVE AND TO HOLD the Property and all improvements located thereon, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its legal representatives, successors, and assigns forever; and Grantor does hereby bind itself, its legal representatives, successors, and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Encumbrances, unto Grantee, its legal representatives, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor, but not otherwise.

OTHER THAN THE SPECIAL WARRANTY OF TITLE SET FORTH IN THIS DEED AND AS EXPRESSLY STATED IN THE AGREEMENT OF PURCHASE AND SALE WHEREBY GRANTEE AGREED TO PURCHASE FROM GRANTOR (THE "**AGREEMENT**"), AND GRANTOR AGREED TO SELL TO GRANTEE, THE PROPERTY, GRANTOR CONVEYS THE PROPERTY TO GRANTEE AND BY ACCEPTING THIS DEED, GRANTEE ACCEPTS THE PROPERTY **AS-IS, WHERE-IS, WITH ALL FAULTS** AND GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (I) THE STRUCTURAL INTEGRITY OF ANY IMPROVEMENTS ON THE PROPERTY, (II) THE MANNER, CONSTRUCTION, CONDITION, AND STATE OF REPAIR OR LACK OF REPAIR OF ANY OF SUCH IMPROVEMENTS, (III) THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR WHICH MAY BE PROVIDED TO GRANTEE, (IV) THE CONFORMITY OF THE

PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING CODE REQUIREMENTS OR THE COMPLIANCE WITH ANY OTHER LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY, (V) THE FINANCIAL EARNING CAPACITY OR HISTORY OR EXPENSE HISTORY OF THE OPERATION OF THE PROPERTY, (VI) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION, OR OTHERWISE, (VII) THE EXISTENCE OF SOIL INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, SUSCEPTIBILITY TO LANDSLIDES, SUFFICIENCY OF UNDERSHORING, SUFFICIENCY OF DRAINAGE, (VIII) WHETHER THE PROPERTY IS LOCATED WHOLLY OR PARTIALLY IN A FLOOD PLAIN OR A FLOOD HAZARD BOUNDARY OR SIMILAR AREA, (IX) THE EXISTENCE OR NON-EXISTENCE OF ASBESTOS, UNDERGROUND OR ABOVE GROUND STORAGE TANKS, HAZARDOUS WASTE OR OTHER TOXIC OR HAZARDOUS MATERIALS OF ANY KIND OR ANY OTHER ENVIRONMENTAL CONDITION OR WHETHER THE PROPERTY IS IN COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS, (X) THE PROPERTY'S INVESTMENT POTENTIAL OR RESALE POTENTIAL AT ANY FUTURE DATE, AT A PROFIT OR OTHERWISE, (XI) ANY TAX CONSEQUENCES OF OWNERSHIP OF THE PROPERTY OR (XII) ANY OTHER MATTER WHATSOEVER AFFECTING THE STABILITY, INTEGRITY, FITNESS FOR USE OR OTHER CONDITION OR STATUS OF THE LAND OR ANY BUILDINGS OR IMPROVEMENTS SITUATED ON ALL OR PART OF THE PROPERTY (COLLECTIVELY, THE "**PROPERTY CONDITIONS**"), AND BY ACCEPTING THIS DEED, **GRANTEE HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS GRANTEE MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE** RELATING TO THE PROPERTY, ITS IMPROVEMENTS OR THE PROPERTY CONDITIONS, SUCH WAIVER BEING ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE AGREEMENT.

*[Signature Page Follows]*

WITNESS THE EXECUTION HEREOF as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**GRANTOR:**

MSK Property Holdings, LLC  
An Illinois limited liability company

BY: \_\_\_\_\_

NAME: MATTHEW MEANS  
TITLE: MANAGER

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK        )

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by Matthew Means,  
\_\_\_\_\_.

[seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_