

## REAL ESTATE SALE AGREEMENT

THIS REAL ESTATE SALE AGREEMENT ("**Agreement**") is entered into as of the \_\_\_\_\_ day of August, 2018, by and between the VILLAGE OF WESTMONT, an Illinois municipal corporation ("**Seller**"), and HOLLADAY PROPERTIES LLC, an Illinois limited liability corporation ("**Purchaser**") (the Seller and the Purchaser are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**").

### RECITALS:

A. Seller is the fee title owner of certain land located at 1 West Quincy Street, Village of Westmont, in the County of DuPage, State of Illinois, as legally described on Exhibit "A" attached hereto and made a part hereof ("**Land**"). The Land consists of approximately .22 acres, is improved and used as a municipal park, and is commonly known as Mary Egan Park.

B. Seller is agreeable to selling the Land, together with all improvements located thereon and all rights, privileges, easements, and appurtenances thereto owned by Seller (collectively the "**Premises**"), but excluding certain of Seller's improvements and items of personal property as set forth in Section 21 of this Agreement, pursuant to the terms contained herein, and Purchaser is agreeable to purchasing the Premises pursuant to the terms contained herein.

C. It is the intention of Purchaser to develop the Premises with a five (5) story mixed use development with approximately ninety-four (94) residential units, and associated parking and improvements ("**Purchaser's intended use**").

NOW, THEREFORE, in consideration of the mutual undertakings and valuable consideration hereinafter set forth, the sufficiency of which is hereby acknowledged, the Parties hereto agree to be bound upon the following terms and conditions:

#### **1. PURCHASE AND SALE.**

- a. Purchase and Sale. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, the Premises strictly in accordance with the terms, conditions, and provisions hereinafter set forth.
- b. The Premises. The dimensions and legal description of the Premises shall be confirmed by the Survey (as hereinafter defined).

**2. PURCHASE PRICE.** The purchase price ("**Purchase Price**") for the Premises shall be Three Hundred Thirty Five and No/100's Dollars (\$335,000.00).

#### **3. PAYMENT TERMS.**

**3.01. Earnest Money:** Seller is not requiring an earnest money deposit from Purchaser

for this transaction.

**3.02. Payment of Purchase Price.** Provided that all conditions precedent to Purchaser's obligations set forth herein are satisfied and Seller has performed all of its obligations hereunder, the Purchase Price, plus or minus prorations and credits, shall be paid to Seller in United States funds, in cash, by cashier's check, or wire transfer of immediately available funds at Closing.

**4. TITLE AND DEED.** Notwithstanding anything contained herein to the contrary, Seller shall convey marketable title to the Premises to Purchaser at Closing by delivering a recordable warranty deed ("**Deed**") granting, conveying and warranting to Purchaser good and indefeasible, absolute title to the Premises to Purchaser, or Purchaser's nominee as directed by Purchaser by written notice to Seller no later than three (3) days prior to the Closing, in fee simple, free and clear of all liens, encumbrances, easements, restrictions or other matters affecting title to the Premises, except for permitted exceptions to title defined as those title exceptions and survey matters that Purchaser accepts (or is deemed to accept by its failure to object to the same)("Permitted Exceptions").

**5. EVIDENCE OF TITLE.** Within twenty (20) business days following the Effective Date of this Agreement, Seller shall deliver to Purchaser, at Seller's expense, a current commitment for ALTA title insurance with extended coverage, Form B-1992 ("**Commitment**"), in the amount of the Purchase Price issued by Chicago Title Insurance Company ("**Title Company**"), together with pro forma access, comprehensive, survey, zoning and other endorsements reasonably requested by Purchaser (provided Purchaser shall pay the cost of said endorsements which exceed \$500.00 in the aggregate), together with legible copies of all instruments referred to in the Commitment, covering the Premises and showing title in fee simple in Seller subject only to the Permitted Exceptions and liens or encumbrances of a definite and ascertainable amount ("**Removable Exceptions**"), which Removable Exceptions to title shall be removed at the Closing. Not less than five (5) business days prior to the Closing Date, as hereinafter defined, Seller shall furnish to Purchaser a current date down of the Commitment in the amount of the Purchase Price showing title in fee simple in Seller and subject only to the Permitted Exceptions and the Removable Exceptions, the latter of which shall be removed by Seller at the Closing, with an endorsement for extended coverage over Schedule B general exceptions 1 through 5. If the date down Commitment, or the survey to be provided pursuant to Section 11 hereof, indicates that title to all or any part of the Premises is subject to defects other than the Permitted Exceptions, Seller shall have a reasonable period of time (the "**Cure Period**"), not to exceed thirty (30) days after delivery to Purchaser of the Commitment date down, or the survey, as the case may be, during which to remedy, in a manner reasonably satisfactory to Purchaser, or remove such defect(s). In such event the Closing Date shall be extended for a period of forty-five (45) days to allow Seller to attempt to remedy the defects. Seller shall deliver to Purchaser not later than four (4) days following the expiration of the Cure Period, a further date down of the Commitment to verify the removal of such defects. If Seller is unable or, with respect to matters not resulting from Seller's acts or omissions, unwilling to remove such defects or remedy the same in a manner reasonably satisfactory to Purchaser within the Cure Period, Purchaser shall have the option of (a) proceeding with this Agreement and adding such title defects to the Permitted Exceptions, or (b) declaring this Agreement null and

void. Seller shall at all times during this Agreement act in good faith and shall not negligently or willfully cause or allow any unpermitted exceptions to be brought against title to the Premises which cannot be cured at Closing, and the failure of Seller to comply with this provision shall constitute a material default by Seller under this Agreement. The Commitment shall be conclusive evidence of good title as to all matters insured by the policy, subject to the Permitted Exceptions as therein stated. Seller shall pay the Commitment fee, title examination fee, Owner's title policy and recording fees for any mortgage release deeds. All loan policy premiums and recording fees for the Deed of conveyance and any documents required for Purchaser's mortgage, if any, shall be paid by Purchaser.

**6. PERFORMANCE CONTINGENCIES.** Notwithstanding anything herein to the contrary, Purchaser's obligation to close this transaction and purchase the Premises shall be contingent upon the satisfaction or waiver by Purchaser of those contingencies set forth in Exhibit "B", attached hereto and made a part hereof ("**Performance Contingencies**"). All Performance Contingencies set forth in Exhibit "B" shall remain in force and effect for the respective specific periods of time ("**Performance Contingency Periods**") identified in Exhibit "B." In the event a Performance Contingency is not satisfied in the manner and within the Performance Contingency Period set forth in Exhibit "B", Purchaser may, within five (5) business days following the expiration of the Performance Contingency Period, give written notice to Seller identifying Purchaser's inability to satisfy such condition and expressly terminating this Agreement as a result thereof ("**Contingency Termination Notice**"). In the event either party serves a Contingency Termination Notice upon the other party in a timely fashion this Agreement shall thereupon terminate and be of no further force or effect on the date of the Termination Notice ("**Termination Date**"). Failure of either party to serve the other party with a Contingency Termination Notice prior to the expiration of the Performance Contingency Period shall constitute the irrevocable waiver of such Performance Contingency by said party.

## **7. CLOSING.**

**7.01. Closing Date:** The date on which the transaction herein described shall be consummated is herein referred to as the "**Closing Date**" and the transaction in which Purchaser, or its nominee, acquires title to the Premises is referred to herein as the "**Closing.**" Subject to the provisions of Section 5 (Evidence of Title), Section 6 (Performance Contingencies) and other applicable sections of this Agreement, the Closing of this transaction shall occur no later than thirty (30) days after the Purchaser satisfies the last of its Performance Contingencies. The Closing shall take place at the Lisle, Illinois office of the Escrowee, through a Deed and Money Escrow ("**Closing Escrow**") with the Title Company serving as the escrow agent ("**Escrow Agent**"). At or prior to Closing, legal counsel for the Parties shall execute Deed and Money Escrow Instructions mutually satisfactory to Purchaser and Seller, in their reasonable discretion, including provisions for a so-called "New York style" closing to facilitate delivery to Purchaser of the Title Policy and possession of the Premises on the Closing Date. Upon the opening of the Closing Escrow, anything herein to the contrary notwithstanding, payment of the Purchase Price and delivery of the Deed required under Section 4 hereof shall be made through the Closing Escrow, and the Closing Documents shall be deposited into the Closing Escrow pursuant to joint written direction given by Purchaser and Seller to the Escrow Agent.

## **7.02. Closing Documents:**

**7.02.1.** In addition to any other required deliveries required of Seller elsewhere in this Agreement, Seller shall deliver to the Escrow Agent at Closing for the benefit of Purchaser the following (collectively, together with the items described in Sections 7.02.2 and 7.02.3, the "**Closing Documents**"):

- (i) Seller shall cause the Title Company to issue the title policy to Purchaser on the Closing Date, in the amount of the Purchase Price, subject to no exceptions other than the Permitted Exceptions, and containing the endorsements required by this Agreement.
- (ii) The recordable warranty Deed, duly executed and acknowledged by Seller, conveying marketable fee simple title to the Premises to Purchaser or Purchaser's nominee;
- (iii) Pay off letters or release deed(s) sufficient to release mortgages and other liens of record as to the Premises, including, without limitation, all Removable Exceptions, if any, together with any other evidence that Purchaser may reasonably request relating to the removal of exceptions to title that are not Permitted Exceptions;
- (iv) An affidavit of title in standard form;
- (v) ALTA statements in duplicate;
- (vi) FIRPTA Statement certifying that Seller is not a "foreign person", "foreign corporation", "foreign partnership", or "foreign estate", as those terms are defined in Section 1445 of the Internal Revenue Code and the income tax regulations promulgated thereunder;
- (vii) Personal Undertaking (GAP) as required by the Title Company;
- (viii) All other affidavits, certifications and other documents required by the Title Company in connection with its issuance of the Title Policy;
- (ix) Such evidence that may be reasonably required by Purchaser or the Escrow Agent to evidence the status and capacity of Seller and the authority of the persons who are executing the various documents on behalf of the Seller;
- (x) Such other customary documents as reasonably may be required by Purchaser's attorney to consummate the transaction contemplated by this Agreement;
- (xii) A certificate executed by Seller confirming that the representations and warranties

made by Seller in this Agreement remain true and correct as of the Closing Date; and

- (xiv) Opinion of Seller's counsel, addressed to Purchaser, in form and content reasonably acceptable to Purchaser, concerning due authorization and execution, validity, and compliance with all laws, this Agreement and all Seller's governmental approvals and other agreements in connection with the Premises.

**7.02.2.** Purchaser shall deliver to the Escrow Agent at Closing the following documents:

- (i) ALTA statements in duplicate;
- (ii) Purchase Price by cash, cashier's check, or wire transfer of immediately available funds;
- (iii) Such other customary documents as reasonably may be required by Seller's attorney to consummate the transaction contemplated by this Agreement.

**7.02.3.** Purchaser and Seller shall jointly deliver to the Escrow Agent at Closing the following documents:

- (i) Closing Statement;
- (ii) Real estate transfer declarations for state, county and local authorities; and
- (iii) Joint Direction to joint order escrowee to pay the Earnest Money into the Closing Escrow.

## **8. APPORTIONMENTS.**

**8.01. Real Estate Taxes:** The Premises is currently exempt from real estate taxes, and there shall be no proration of real estate taxes at Closing. In the event the Premises is found not to be exempt from real estate taxes, the parties shall prorate general real estate taxes as of the Closing Date on the basis of 105% of the tax assessor's latest assessed valuation and the latest known tax rate.

**8.02. Escrow Fees:** Escrow fees for the Closing Escrow shall be paid by Seller and Purchaser in equal shares. Purchaser shall pay all fees pertaining to Purchaser's money lender's escrow, if any.

**8.03. Costs of Document Preparation and Attorney's Fees:** Each Party shall pay the fees of its attorney and the cost of preparing all documents which this Agreement requires such Party to furnish.

**9. POSSESSION.** Exclusive possession of the Premises shall be given to Purchaser at the time of Closing and delivery of the Deed.

**10. TRANSFER TAXES.** The expense and cost of all federal, state, and county documentary stamps and transfer taxes, if any, relating to the sale and conveyance of the Premises shall be borne and remitted by Seller at Closing. The Village of Westmont does not impose a municipal documentary stamp or transfer tax

**11. SURVEY.** Within forty-five (45) business days after the Effective Date, Purchaser shall, at its initial expense, deliver a current survey of the Premises (the "**Survey**") prepared by a licensed Surveyor (the "**Surveyor**"), at Purchaser's expense. The Survey shall (i) be in accordance with all the requirements for ALTA/ASCM Premises Title Surveys as adopted by American Land Title Association and American Congress on Surveying & Mapping 2011 (pursuant to the accuracy standards of an Urban Survey) and the Title Company for extended coverage; (ii) set forth the gross acreage, gross square feet, net acreage and net square feet of the Premises; (iii) locate and show any portion of the Premises which is currently located in a flood plain or flood way, and show the size thereof; (iv) locate all existing improvements, easements and rights-of-way, encroachments, conflicts and protrusions appurtenant to or encumbering the Premises and significant matters observed by the Surveyor, whether or not of record; (v) reflect the location of all gas, electrical, water and sewer lines, wires and cable crossings and anchors or guy wires located on the Premises; (vi) show the location of all required building set back lines; (vii) show the location of abutting dedicated public streets providing access to the Premises and all sidewalks, curbs and driveways; (viii) show the location and type of fences and other improvements along the boundaries; and (ix) indicate the zoning classification of the Premises. The surveyor's certificate shall be in a form reasonably acceptable to Purchaser, any lender that will advance all or a portion of the Purchase Price to Purchaser and the Escrow Agent. The legal description of the Premises contained in the Survey or the Final Survey (as hereinafter defined), as the case may be, if different from the description contained in Exhibit A, shall be substituted for the description of the Premises contained in Exhibit A, and this Agreement shall be deemed amended by the substitution of the legal description of the Premises contained in the Survey or the Final Survey, as the case may be, for the description of the Premises contained in Exhibit A. The "Final Survey" shall mean the Survey as it may be amended and accepted in writing by Purchaser.

The Surveyor shall certify the Final Survey accurate as of the Closing Date and provide any updates or other certifications required by the lender, title company or escrow agent. In the event the Survey reflects easements, encroachments, overlaps, or other defects not contained in the Permitted Exceptions to title, Seller shall have the same rights and duties relating to the remedy of such survey defects as are provided in Section 5 pertaining to the remedy of title defects. In the event Seller is unable or, with respect to survey defects not caused by Seller's acts or omissions, unwilling to so remedy such survey defects, Purchaser shall have the same rights and options (relating to the termination of this Agreement and the right to proceed and reduce the Purchase Price for defects curable by the payment of ascertainable amounts) as provided in Section 5 hereof pertaining to Seller's failure to cure title defects.

**12. REAL ESTATE COMMISSIONS.** Each party represents to the other that it has not incurred and will not incur any liability from brokerage fees or commissions as a result of this transaction and has not engaged any person entitled to any such fee or commission, and agrees to indemnify, defend and hold the other party harmless from and against all such claims for fees or commissions purported to be due insofar as any such claim is based upon any conversation or contract with the indemnifying party.

**13. SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants to Purchaser that, based upon Seller's actual knowledge or based upon actual notice received by Seller, each of the following statements is true and accurate as of the date hereof and will be true and accurate as of the Closing Date:

**13.01.** Seller is the sole owner of fee simple title to the Premises and Seller has full and unlimited power and authority to enter into this Agreement, bind the Premises to the commitments made hereunder, and convey or cause the conveyance of the Premises to Purchaser, or Purchaser's nominee.

**13.02.** This Agreement shall not and does not constitute or cause a default or breach of any agreement or undertaking of Seller heretofore entered into concerning the Premises.

**13.03.** Seller has no actual knowledge and has received no actual notice of any claim, demand, damage, action, or cause of action of any person, entity, or governmental agency or instrumentality affecting the Premises not otherwise expressly provided for herein.

**13.04.** The Premises are located in the Village of Westmont, DuPage County, Illinois.

**13.05.** Except as otherwise expressly set forth in Exhibit "C" attached hereto, the Premises is not subject to any lease agreement, no Parties are in possession of the Premises other than Seller, and sole and exclusive possession of the Premises shall be delivered to Purchaser at Closing.

**13.06.** Except as set forth in Exhibit "C" attached hereto, Seller has no knowledge of and has received no actual notice concerning any existing or proposed special assessments, special taxing districts, or utility or governmental service moratoriums affecting the Premises.

**13.07.** Except as set forth in Exhibit "C" attached hereto or elsewhere in this Agreement, to Seller's knowledge the Premises is not subject to any annexation agreement, development agreement, recapture agreement, or other agreement or undertaking pertaining to the development and use of the Premises.

**13.08.** Seller has no knowledge of any toxic or hazardous waste, substance or material (as defined by any applicable federal, state or local law, ordinance or regulation) contained or located within the Premises, and Seller is not in possession of, nor has any knowledge of, any ground water study, soil test, environmental audit, or other soil information concerning the

Premises which Seller has not delivered to Purchaser upon the execution of this Agreement and listed in Exhibit "C" attached hereto. To Seller's knowledge the Premises has been, and will continue to be up to the date of Closing, owned, leased, used and operated in compliance with all applicable federal, state and local environmental laws as enacted, amended or reauthorized. To Seller's knowledge there exists no underground storage tank or hazardous material, as defined by any such law, within any portion of the Premises.

**13.09.** To Seller's knowledge no portion of the Premises has been condemned or otherwise taken by any public authority, and Seller has no actual knowledge that any such condemnation is threatened or contemplated.

**13.10.** Seller has no knowledge of and has received no actual notice from any governmental body claiming any violation by the Premises of any law, ordinance, code or regulation.

**13.11.** Between the date of this Agreement and the Closing, Seller shall:

- (i) keep and perform all of the laws, ordinances, regulations, and restrictions affecting the Premises and its use;
- (ii) not create, incur, or suffer to exist any mortgage, lien, pledge, or other encumbrance in any way affecting the Premises which cannot be removed or released at Closing without cost to Purchaser;
- (iii) not commit any waste or nuisance upon the Premises;
- (iv) not, without first obtaining the written consent of Purchaser, enter into any leases, contracts or agreements pertaining to the Premises which cannot be terminated at Closing without cost to Purchaser;
- (v) Immediately provide Purchaser copies of any notice received regarding the items contained in Section 13; and
- (vi) Refrain from marketing the Premises for sale or otherwise accepting or negotiating any offers for sale.

**14. PURCHASER'S REPRESENTATIONS AND WARRANTIES.** Purchaser represents and warrants to Seller that each of the following statements is true and accurate as of the date hereof and will be true and accurate as of the Closing Date:

**14.01.** To the best of Purchaser's knowledge, no consent by anyone, other than Seller, to the transaction contemplated by this Agreement is required, and Purchaser has the power and authority to execute and deliver this Agreement and all other documents to be executed by it in connection herewith and to perform the obligations hereunder and under such other documents.

**14.02.** The execution of this Agreement by Purchaser is the duly authorized and legally binding action of Purchaser, and upon execution hereof, Purchaser shall be bound by and subject to the terms and provisions of this Agreement.

**15. SURVIVAL OF REPRESENTATIONS AND COVENANTS.** Unless otherwise expressly set forth to the contrary herein, the representations and warranties of the Parties contained in this Agreement or in any document executed in connection herewith shall be continuing representations and warranties up to and including the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of Closing, and shall merge with the Deed at Closing and shall not survive Closing. Notwithstanding the foregoing, any fraudulent representation or warranty of the Parties shall survive Closing and shall not merge with the Deed at Closing.

**16. EMINENT DOMAIN/CONDEMNATION.** In the event that at any time prior to Closing, proceedings are instituted or threatened for the condemnation of any part of the Premises by any governmental body or authority having the power of eminent domain, Seller agrees immediately to notify Purchaser of such action or threatened action and Purchaser shall have the option to either: (i) terminate this Agreement, in which event the Earnest Money, and all interest earned thereon, shall be returned to Purchaser and neither party shall have any further obligations or liabilities hereunder; or (ii) proceed with the Closing, in which event (A) if the taking is consummated prior to the Closing, the Purchase Price shall be reduced by the amount of the award received by Seller as a result of the taking or (B) if the taking is not consummated prior to the Closing, Seller shall assign to Purchaser all right, title and interest in and to the condemnation proceeds and awards, and Purchaser shall have the sole and exclusive right to negotiate, contest and settle all such eminent domain proceedings.

**17. NON-FOREIGN CERTIFICATE.** Seller shall provide Purchaser, on or before the Closing Date, with a non-foreign certificate sufficient in form and substance to relieve Purchaser of any and all withholding obligations under federal law, which certificate shall be reasonably satisfactory to Purchaser and the Title Company.

**18. DEFAULT/REMEDY.**

**18.01. Default by Purchaser:** In the event of a default by Purchaser of any of Purchaser's obligations under this Agreement and the failure of Purchaser to cure such default within fifteen (15) days after Seller notifies Purchaser in writing of such default (the "**Purchaser Cure Period**"), Seller may terminate this Agreement and Purchaser shall pay to Seller as damages the Seller's attorneys' fees and costs incurred in (a) drafting and negotiating this Agreement, (b) drafting and negotiating any documents required for Closing, and (c) procuring a title commitment and removing any Removable Exceptions on the Premises. Said damages shall be paid to Seller as liquidated damages and as Seller's sole and exclusive remedy against Purchaser. Within fifteen (15) days after termination of this Agreement by Seller pursuant to this Section, Seller shall provide to Purchaser a detailed invoice showing its attorneys' fees and costs incurred, and Purchaser shall pay such amount to Seller within thirty (30) days of its receipt of such invoice.

The parties acknowledge that the actual damages that might be suffered by Seller because this Agreement is terminated due to a default by Purchaser's are uncertain and difficult to prove. Accordingly, the parties intend that the liquidated damage provision of this paragraph is fair and reasonable, intended by the parties to be an agreement in advance as to the settlement of any and all damages that might arise because of a default by Purchaser's, bears a relation to the actual damages that might be sustained by Seller and is not a penalty on Purchaser for non-performance.

**18.02. Default by Seller:** In the event of a default by Seller of any of Seller's obligations under this Agreement, and the failure of Seller to cure such default within fifteen (15) days after Purchaser notifies Seller in writing of such default (the "Seller Cure Period") Purchaser may, at its option, pursue any one or more of the following remedies either separately or cumulatively:

- (a) to terminate this Agreement, in which event neither Party shall have any further rights or obligations hereunder;
- (b) to enforce specific performance of Seller's obligations hereunder, including specifically the conveyance of the Premises in the condition required hereby; and/or
- (c) to pursue the recovery of out-of-pocket expenses (including but not limited to, all tests and investigations of the Premises) incurred by Purchaser and/or pursue any other legal or equitable remedy in the event of a default by Seller.

**18.03. Costs and Expenses:** All costs and expenses, including reasonable attorney's fees, incurred by a non-defaulting Party as a result of the default of another Party shall be paid by the defaulting Party.

## 19. MISCELLANEOUS.

**19.01. Notices:** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given (a) on the same date as the date on which such notice is delivered personally or (b) on the date that is three (3) business days after the date on which such notice is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or (c) on the date that is one (1) business days after the date on which such notice is sent by overnight courier services (such as Federal Express or any other similar courier service), and, in each case, addressed as follows:

If to Seller:                      Village Manager  
   Village of Westmont  
   31 West Quincy Avenue  
   Westmont, IL 60559

Phone: (630) 981-6296

With a copy to: John R. Zemenak  
Rathje & Woodward, LLC  
300 East Roosevelt Road, Suite 300  
Wheaton, IL 60187

Phone: (630) 668-8500

If to Purchaser: Holladay Properties  
Attn: Jim Healy  
6370 Ameriplex Drive, Suite 110  
Portage, IN 46383

Phone: (219) 841-6416

with a copy to: Holladay Properties  
Attn: Michael O'Connor  
6370 Ameriplex Drive, Suite 110  
Portage, IN 46383

Phone: (219) 764-3104

The name and address of a party for receipt of notice may be changed from time to time by such party pursuant to written notice given in compliance with this paragraph.

**19.02. Assignment:** Neither party hereto shall have the right to assign this Agreement or any right or interest hereunder to any person or entity without the other party's prior written consent, except Purchaser may assign this Agreement, in whole or in part, without Seller's consent, to any "Affiliate" of Purchaser or as required to facilitate a tax-free exchange. For purposes of the prior sentence, the term "Affiliate" shall mean and include any person or entity that owns or controls, is owned or controlled by or is under common ownership or control with Purchaser, in whole or in part. Upon such assignment to an Affiliate, the assignor shall be released and discharged from all of its duties, obligations and liabilities hereunder, regardless of when accruing.

**19.03. Amendments:** Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument duly authorized and executed by Seller and Purchaser.

**19.04. Governing Law, Venue and Interpretation:** This Agreement shall be governed by the laws of the State of Illinois. Venue for any legal dispute between the Parties concerning this Agreement shall be the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois. The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore"

shall mean before, the date of this Agreement. Words of the masculine, feminine, or neuter gender shall mean and include the correlative words of other genders, and the words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, and other legal entities, including public bodies, as well as natural persons. The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

**19.05. Section Headings:** The section headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge or affect the scope or intent of this Agreement nor the meaning of any provision hereof.

**19.06. Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**19.07. Effective Date:** The effective date of this Agreement ("**Effective Date**") shall be the date upon which the last of Purchaser and Seller execute this Agreement. The parties agree to execute a written acknowledgement of the Effective Date.

**19.08. Time of Essence:** Time is of the essence of this Agreement.

**19.09. Recitals and Exhibits:** The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof. All references herein to a section or paragraph number shall mean such section or paragraph number contained in this Agreement unless otherwise expressly provided herein.

**19.10. Severability:** Each provision of this Agreement shall be interpreted, where possible, in a manner necessary to sustain its legality and enforceability. The unenforceability of any provision of this Agreement in a specific situation, or the unenforceability of any portion of any provision of this Agreement in a specific situation, shall not affect the enforceability of:

- (i) that provision or portion of provision in another situation; or
- (ii) the other provisions or portions of provisions of this Agreement and such other provisions if the remaining portions could then continue to conform with the purposes of this Agreement and the terms and requirements of applicable law.

**19.11. Binding Effect:** Subject to the provisions of Section 19.02, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective grantees, successors, and assigns.

**19.12. Complete Agreement:** This Agreement constitutes the full and complete agreement of the Parties and all prior agreements and undertakings of the Parties, whether

written or oral, shall be deemed merged into and superseded by this Agreement.

**19.13. Memorandum of Agreement:** A memorandum of this Agreement (“**Memorandum**”) may not be recorded against the Premises or the Land.

**19.14. No Third Party Beneficiaries:** Nothing contained in this Agreement shall be construed to establish any rights or entitlements to any person or entity not a signatory hereto or a successor or assignee of such signatory.

**20. DEADLINE TO COMMENCE CONSTRUCTION; RECOVEYANCE.**

**20.01.** Purchaser is obligated to commence construction upon the Premises and adjacent properties located at 7 West Quincy Street, Westmont, Illinois, 14 and 20-24 South Cass Avenue, Westmont, Illinois and a portion of the public right-of-way (alley) located immediately west of Cass Avenue, Westmont, Illinois (collectively, the “**Subject Properties**”) for a five (5) story mixed use development with approximately ninety-four (94) residential units on or before October 1, 2020. For purposes of this Agreement, mass grading of the Subject Properties and installation of required public improvements on the Subject Properties shall constitute commencement of construction. This deadline to commence construction may be extended by Seller’s Corporate Authorities upon good cause shown by Purchaser

**20.02.** In the event that Purchaser fails to commence construction on or before October 1, 2020 (or any subsequent date as may be approved by Seller’s Corporate Authorities), then Purchaser agrees to reconvey the Premises to Seller for the Purchase Price. Prior to such conveyance, Purchaser shall remove all liens or other encumbrances on title to the Premises. The conveyance shall be made by warranty deed, and shall be accompanied by a title policy showing title to the Premises in substantially the same condition as when conveyed to Purchaser by Seller. Such conveyance of the Premises by Purchaser to Seller shall occur no later than one-hundred twenty (120) days after Purchaser fails to commence construction as required by this Section. The provisions of this Section 20 shall survive Closing.

**21. REMOVAL OF SELLER’S IMPROVEMENTS / PERSONAL PROPERTY.** Within ten (10) days after Closing, Seller shall have the right to enter the Premises and remove any of Seller’s improvements and personal property on the Premises (i.e., park benches, brick pavers, flag poles, monuments, buried time capsule), but excluding trees, landscaping and utilities. Such improvements and personal property of Seller are specifically excluded from this sale of the Premises to Purchaser. Purchaser shall not remove such items during such ten (10) day period following Closing. Purchaser may use or dispose of any improvements on the Premises not removed by Seller during such ten (10) day period.

**[Signatures follow on next page]**

IN WITNESS WHEREOF, the Parties hereto have placed their hands and seals to this Agreement as of the date first above written.

<b>PURCHASER:</b>  HOLLADAY PROPERTIES LLC an Illinois limited liability company  By: _____ Printed Name: _____ Its: _____	<b>SELLER:</b>  VILLAGE OF WESTMONT  By: _____ Printed Name Ronald J. Gunter Title: Mayor
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Prepared by:  
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Rathje Woodward, LLC  
300 East Roosevelt Road, Suite 300  
Wheaton, Illinois 60187  
(630) 668-8500

**SCHEDULE OF EXHIBITS**

- EXHIBIT "A":      Legal Description of Land
- EXHIBIT "B":      Performance Contingencies
- EXHIBIT "C":      Miscellaneous Disclosures

EXHIBIT "A"

**LEGAL DESCRIPTION OF LAND**

[To be inserted by Seller upon receipt of Title Commitment]

EXHIBIT "B"

PERFORMANCE CONTINGENCIES

I. Pursuant to Section 6 of this Agreement, the obligation of Purchaser to close on the sale and purchase of the Premises shall be expressly conditioned upon the satisfaction or waiver by Purchaser following Performance Contingencies:

A. ITEMIZATION OF PERFORMANCE CONTINGENCIES:

- (1) Purchaser having obtained title documents, soil tests, soil borings, percolation tests, environmental audits, and other feasibility tests, engineering studies, location studies, financing investigation and market studies showing that the permitted title exceptions, physical aspects, location, access to public rights-of-way, and the condition of the Subject Properties are acceptable to Purchaser and suitable for Purchaser's intended use of the Subject Properties and that the intended use is economically feasible, in Purchaser's sole and absolute discretion ("**Due Diligence Contingency**").
- (2) Purchaser having obtained such comprehensive plan amendments, zoning, variances, preliminary subdivision, development agreement, site and landscaping plan, preliminary engineering, Tax Increment Financing rebate agreement, and other governmental approvals required by the Village of Westmont or otherwise deemed necessary by Purchaser from the Village of Westmont for the development of the Subject Properties with a five (5) story mixed use development with approximately ninety-four residential units ("**Westmont Approval Contingency**"). Seller shall cooperate with Purchaser in a prompt and timely manner to process, review, comment and schedule all development approval requests from Purchaser for the required public hearings by the Westmont Planning and Zoning Commission and vote by the Westmont corporate authorities. All Purchaser's costs arising from or pertaining to the Westmont Approval Contingency shall be paid by Purchaser.
- (3) Purchaser having obtained all necessary or desired approvals from DuPage County or other local, state or federal governmental entities or agencies (excluding the Village of Westmont) for roadway access, roadway improvements, wetlands mitigation, storm water engineering (to the extent approval does not exclusively rest with the Village of Westmont), environmental approvals, and satisfaction that the Premises can be serviced by adequate utilities for Purchaser's intended use ("**Governmental Approval Contingency**").
- (4) Purchaser closing on its purchase of the Subject Properties (excluding the Premises) simultaneously or prior to its purchase of the Premises ("**Closing**").

**Contingency”).**

The afore-mentioned various contingencies are collectively referred to as Performance Contingencies in Article 6 of this Agreement.

**B. CONTINGENCY PERIODS:**

- (1) Purchaser shall have ninety (90) days from the Effective Date of this Agreement to satisfy the Due Diligence Contingency (“**Due Diligence Contingency Period**”).
- (2) Purchaser shall have one hundred eighty (180) days from the Effective Date of this Agreement to satisfy the Westmont Contingency (“**Westmont Approval Contingency Period**”).
- (3) Purchaser shall have ninety (90) days from the Effective Date of this Agreement to satisfy the Governmental Approval Contingency (“**Governmental Approval Contingency Period**”).
- (4) Purchaser shall have the allotted time set forth in this Agreement for closing on the Premises to satisfy the Closing Contingency (“**Closing Contingency Period**”).
- (5) Purchaser shall have until Closing to confirm that there has been no change of any circumstances outside of Purchaser’s control that had it occurred within an above-mentioned contingency periods would have resulted in the contingency not being satisfied (the “Closing Contingency Period), such as a change of zoning of the Premises, a revocation of prior governmental approvals or permits for the Premises, or the exercise of eminent domain over all or a portion of the Premises, but excluding matters such as a change of economic circumstances, or loss of Purchaser’s financing for the Premises.

The afore-mentioned various contingency periods are collectively referred to as the Performance Contingency Periods in Article 6 of this Agreement.

**C. ENGINEERING, FEASIBILITY TESTS AND RIGHT OF ENTRY:**

From and after the Effective Date of this Agreement, and at all times during the Due Diligence Contingency Period, Purchaser, its representatives, and agents shall have the right, upon not less than one (1) business day prior notice to Seller, to enter upon the Premises to examine, inspect, and make tests as to the feasibility and adaptability of the Premises for Purchaser's intended use thereof, such tests to include, without limitation, test borings, soil tests, topographical studies, engineering analysis, and environmental audits; and (ii) for the collection

of all information that is necessary or appropriate in connection with the foregoing or for Purchaser's intended use of the Premises (all of the foregoing examinations, inspections, studies, and tests being hereinafter referred to as the "Studies"). Purchaser and its consultants shall exercise due care and caution upon and about the Premises. All Studies are to be made at Purchaser's expense. Purchaser shall repair, to the extent reasonably practicable, any damage caused to the Premises as a result of such Studies, and Purchaser shall indemnify, save, hold harmless, and defend Seller from any claim of loss, damage or injury made by any third party arising from the entry onto the Premises and/or testing of the Premises by Purchaser, its representatives, or agents. Purchaser shall not cause or allow any lien claim to be filed against the Premises as a result of said Studies, and shall remove any such lien claim so filed within ten (10) days following its filing of record. Purchaser shall at all times prior to the expiration of the Due Diligence Contingency Period carry comprehensive general liability insurance with combined single limit coverage of not less than \$1,000,000.00, naming Seller, as an additional insured, and shall deliver to Seller a certificate of insurance verifying the existence of such coverage. Purchaser shall further during said period maintain worker's compensation insurance with not less than minimum statutory limits. Purchaser's obligations under this Section C shall survive the termination of this Agreement for any reason, anything contained in this Agreement to the contrary notwithstanding. To the extent that the Studies performed by Purchaser require the securing of all or a portion of the Premises by fencing or other reasonable means to prevent interference by or injury to third parties, Seller shall reasonably cooperate with Purchaser in approving such security measures, and such security measures shall be performed at Purchaser's sole expense.

EXHIBIT "C"

MISCELLANEOUS DISCLOSURES

None.