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## CITY COUNCIL AGENDA

Monday, October 17, 2022

Closed Session – 6:30 p.m.

Regular Session – 7:00 p.m.

Room 102

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### CALL TO ORDER

#### CLOSED SESSION

PROBABLE OR IMMINENT LITIGATION

PERSONNEL

SALE OF PROPERTY

PURCHASE OR LEASE OF PROPERTY

LITIGATION

SEMI-ANNUAL REVIEW OF CLOSED SESSION MEETING MINUTES

### REGULAR SESSION

ROLL CALL

PRAYER

PLEDGE OF ALLEGIANCE

### PUBLIC COMMENT

(matters not on the agenda)

### ALDERMEN ANNOUNCEMENTS/COMMENTS

### MAYORAL ANNOUNCEMENTS/COMMENTS

Motion to Extend Declaration of Civil Emergency

### CITY CLERK ANNOUNCEMENTS/COMMENTS

### MANAGER'S REPORT

### CITY ATTORNEY/GENERAL COUNSEL REPORT

**CONSENT AGENDA**

1. **RESOLUTION R-160-22:** Approving the Purchase of Radio Headsets for the Police Tactical Response Team (TRT) in the Amount of \$27,003.50 from Lowest Bidder Envirosafety, Visalia, California. Funded by Federal Asset Forfeiture Funds.
2. **RESOLUTION R-161-22:** Approving Task Order No. 10 with Dixon Engineering, Inc., Lake Odessa, Michigan, in the Amount of \$103,450.00 for Professional Engineering Services Related to Modifications Required by the Illinois Environmental Protection Agency (IEPA) and Painting of the Dulles Water Tower. Budgeted Funds – Water/Professional Services.
3. **RESOLUTION R-162-22:** Approving and Awarding the Bid for the 2023 Purchase of Unleaded Gasoline and Diesel Fuel to Avalon Petroleum Company, Inc. Kankakee, Illinois in the Amount of \$569,000. Budgeted Funds – General/Vehicle Maintenance, Water, and Sewer Funds -- \$360,000 for Gasoline; \$209,000 for Diesel.
4. **RESOLUTION R-163-22:** Approving an Agreement with Key Code Media, Inc. for Council Chambers Camera Replacement in the Amount of \$39,842. Budgeted Funds – Media Services/Contractual Services and Media Services/Equipment.
5. **RESOLUTION R-164-22:** Approving the Purchase of a Three-Year Site Pollution Incident Legal Liability Policy for a Storm Sewer Easement at the Metropolitan Water Reclamation District (MWRD) on Marshall Drive from Oakton Street to Wille Road in the Not-to-Exceed Amount of \$20,715. Budgeted Funds – Risk Management.
6. **RESOLUTION R-165-22:** Approving and Awarding the Bid for the 2023-2025 Fertilizer and Weed Control Application Contract to Beary Landscape Management in the Three-Year Amount of \$97,963.63. Budgeted Funds – Facilities Maintenance/Miscellaneous Contractual Services.
7. **RESOLUTION R-166-22:** Approving and Awarding the Bid for the 2023 Downtown Landscape Maintenance Contract to Beary Landscape Management in the Amount of \$112,984, plus Supplemental Maintenance at a Rate of \$31.84 Per Hour, for a Total Not-to-Exceed Amount of \$136,862 for the First Year. Budgeted Funds – Street Maintenance/Miscellaneous Contractual Services.
8. Minutes/Regular Meeting – October 3, 2022
9. Minutes/Special Meeting of the City Council – 2023 Budget Hearing #1 – October 5, 2022
10. Minutes/Closed Session – October 3, 2022
11. **RESOLUTION R-168-22:** Approving the Purchase of 1374 East Oakton Street and 1384 East Oakton Street, Des Plaines, Illinois

**UNFINISHED BUSINESS**

1. a. Consideration of Amendments to Chapter 2 of Title 13 Regarding Processes in Applying for and Receiving Plat Approval – **FIRST READING – ORDINANCE M-29-22** (*deferred from the 9/19/22 and 10/3/22 City Council Meetings*)
- b. Consideration of Amendments to Chapter 2 of Title 13 Regarding Receiving Reductions of Performance Security Bonds for Required Public Improvements – **FIRST READING – ORDINANCE M-30-22** (*deferred from the 9/19/22 and 10/3/22 City Council Meetings*)

**NEW BUSINESS**

1. **FINANCE & ADMINISTRATION** – Alderman Artur Zadrozny, Chair
  - a. Warrant Register in the Amount of \$4,296,393.53 – **RESOLUTION R-167-22**
2. **COMMUNITY DEVELOPMENT** – Alderman Malcolm Chester, Chair
  - a. Consideration of Text Amendments to the Des Plaines Zoning Ordinance Regarding Permitted Number of Principal Buildings on a Zoning Lot for Select Institutional Uses and Properties in the C-2 and C-3 Zoning Districts – **FIRST READING – ORDINANCE Z-32-22**
  - b. Consideration of Text Amendments to the Des Plaines Zoning Ordinance Regarding Drive-Through Menu Board Signs – **FIRST READING – ORDINANCE Z-33-22**

**OTHER MAYOR/ALDERMEN COMMENTS FOR THE GOOD OF THE ORDER**

**ADJOURNMENT**

ORDINANCES ON THE AGENDA FOR FIRST READING APPROVAL MAY ALSO, AT THE COUNCIL’S DISCRETION, BE ADOPTED FOR FINAL PASSAGE AT THE SAME MEETING.

**City of Des Plaines, in compliance with the Americans With Disabilities Act, requests that persons with disabilities, who require certain accommodations to allow them to observe and/or participate in the meeting(s) or have questions about the accessibility of the meeting(s) or facilities, contact the ADA Coordinator at 391-5486 to allow the City to make reasonable accommodations for these persons.**



CITY MANAGER'S OFFICE

1420 Miner Street  
Des Plaines, IL 60016  
P: 847.391.5488  
desplaines.org

MEMORANDUM

**Date:** October 12, 2022  
**To:** Mayor Goczkowski and Aldermen of the City Council  
**From:** Michael G. Bartholomew, City Manager *MB*  
**Subject:** Purchase of Property – 1374 E. Oakton Street and 1384 E. Oakton Street, Des Plaines, Illinois

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**Issue:** The City of Des Plaines wishes to purchase vacant land commonly known as 1374 and 1384 East Oakton Street, Des Plaines, Illinois 60018.

**Analysis:** The City believes it is in the best interest of its residents to purchase said land from Trust No. 159 (“Land Trust”) and Linda Romano, Charles Romano, III, Tracy Philabaun, Addie Romano, Joseph L. Romano, Jr., Katie L. Stenstrom, Melissa A. Swanson, Cynthia A. Romano, Dawn R. Kleiner, JoAnne Romano, Thomas M. Romano, Cheryl Lynn Romano, and Paul A. Romano, Jr. being all beneficiaries of the Land Trust (collectively, “Beneficiaries”) (collectively, Land Trust and the Beneficiaries are the “Seller”).

**Recommendation:** I recommend City Council approve the resolution and purchase and sale agreement as presented for the purchase of 1374 and 1384 East Oakton Street, Des Plaines, Illinois in the amount of \$290,000.00 to be funded from contingency TIF #8 funds.

**Attachments:**

Resolution R-168-22  
Exhibit A – Legal Description, 1374 and 1384 East Oakton Street  
Exhibit B – Purchase and Sale Agreement

**CITY OF DES PLAINES**

**RESOLUTION R - 168 - 22**

**A RESOLUTION AUTHORIZING THE PURCHASE OF  
THE PROPERTY LOCATED AT  
1374-1384 E. OAKTON AVE, DES PLAINES, ILLINOIS.**

**WHEREAS**, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

**WHEREAS**, the City has contingency funds available for property acquisition in Tax Increment Fund #8 for the purchase of real property during the 2022 fiscal year; and

**WHEREAS**, Chicago Title Land Trust Company, as successor to First National Bank of Des Plaines, as trustee under trust agreement dated November 20, 1965, and known as Trust No. 159 (“**Land Trust**”), is the record title owner of that certain property commonly known as 1374-1384 E. Oakton Ave Des Plaines, Illinois 60018, and legally described in **Exhibit A** attached to, and by this reference made a part of, this Resolution ("**Property**"); and

**WHEREAS**, Linda Romano, Charles Romano, III, Tracy Philabaun, Addie Romano, Joseph L. Romano Jr, Katie L. Stenstrom, Melissa A. Swanson, Cynthia A. Romano, Dawn R. Kleiner, JoAnne Romano, Thomas M. Romano, Cheryl Lynn Romano, and Paul A Romano, Jr. (collectively “**Beneficiaries**”) are the beneficiaries of the Land Trust (collectively, the Land Trust and the Beneficiaries are the "**Owner**"); and

**WHEREAS**, the Property is vacant land; and

**WHEREAS**, the City desires to purchase the Property for the purchase price of \$290,000.00 (“**Purchase Price**”), which purchase is conditioned on the fulfillment of all terms, conditions, and purposes set forth in that certain Agreement of Purchase and Sale by and between the City and the Owner (“**Agreement**”); and

**WHEREAS**, the City Council has determined that it is in the best interest of the City to enter into the Agreement with the Owner for the purchase of the Property;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

**SECTION 1: RECITALS.** The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

**SECTION 2: APPROVAL OF AGREEMENT.** The City Council hereby approves the Agreement with the Owner for the purchase of the Property for the Purchase Price in

substantially the form attached to this Resolution as **Exhibit B**, and in a final form to the approved by the City Manager and General Counsel.

**SECTION 3: AUTHORIZATION TO EXECUTE DOCUMENTS.** The City Council hereby authorizes and directs the Mayor and the City Clerk to execute and seal, on behalf of the City, the final Agreement and the Mayor, City Manager, City Clerk, and City Attorney, and such other officials as may be necessary, are hereby authorized to execute all agreements, legal instruments and other documents required to effectuate the intent of this resolution.

**SECTION 4: EFFECTIVE DATE.** This Resolution shall be in full force and effect from and after its passage and approval according to law.

**PASSED** this \_\_\_ day of \_\_\_\_\_, 2022.

**APPROVED** this \_\_\_ day of \_\_\_\_\_, 2022.

**VOTE:** AYES \_\_\_\_\_ NAYS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
**MAYOR**

ATTEST:

Approved as to form:

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**Peter M. Friedman, General Counsel**

DP-Resolution Approving the Purchase of the Property Located at 1374-1384 E. Oakton Ave.

**EXHIBIT A**

**PARCEL:**

LOT 9 AND LOT 10 IN BLOCK 17 IN ARTHUR T. MCINTOSH AND COMPANY'S ADDITION TO DES PLAINES HEIGHTS BEING A SUBDIVISION OF THAT PART EAST OF RAILROAD OF THE SOUTH ½ OF THE SOUTH EAST ¼ OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THAT PART WEST OF DES PLAINES ROAD OF THE SOUTH ½ OF THE SOUTHWEST ¼ (EXCEPT 4 ACRES IN THE NORTHEAST CORNER THEREOF) OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**P.I.N.s:** 09-20-416-009-0000 and 09-20-416-010-0000

Commonly known as 1374-1384 E. Oakton Street, Des Plaines, Illinois

# REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("**Agreement**") is made and entered into as of \_\_\_\_\_, 2022 (the "**Effective Date**") by and between the CITY OF DES PLAINES, an Illinois home-rule municipal corporation ("**Purchaser**"), and Chicago Title Land Trust Company as successor to First National Bank of Des Plaines, as trustee under trust agreement dated November 20, 1965 and known as Trust No. 159 ("**Land Trust**") and Linda Romano, Charles Romano, III, Tracy Philabaun, Addie Romano, Joseph L. Romano Jr., Katie L. Stenstrom, Melissa A. Swanson, Cynthia A. Romano, Dawn R. Kleiner, JoAnne Romano, Thomas M. Romano, Cheryl Lynn Romano, and Paul A. Romano Jr., being all of the beneficiaries of the Land Trust (collectively "**Beneficiaries**") (collectively Land Trust and the Beneficiaries are the "**Seller**"). In consideration of the recitals and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser (collectively, the "**Parties**") agree as follows:

## Section 1. Recitals.

**A. Parcel.** The Seller owns fee simple title to that certain real property consisting of an approximately 23,160 square foot rectangular parcel commonly known as 1374 E. Oakton St and 1384 East Oakton St., both in Des Plaines, Illinois, and which two parcels are legally described on **Exhibit A** attached hereto (jointly, the "**Parcel**").

**B. Property Description.** Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, (i) the Parcel, (ii) the improvements thereon, (iii) all easements, tenements, riparian rights, hereditaments, privileges and appurtenances that run with or are appurtenant to the Parcel, whether or not of record, (iv) the use of all appurtenant and assignable rights-of-way, if any, abutting, adjacent to, contiguous to, or adjoining the Parcel, and (v) all licenses, permits and franchises issued by any government authority relating to the development, use, or operation of the Parcel, running to or in favor of Seller (collectively, the "**Property**"), subject to this Agreement.

**Section 2. Incorporation of Recitals.** The Recitals are incorporated into this Agreement.

## Section 3. Purchase and Sale; Purchase Price.

**A. Purchase Price.** Seller shall sell the Property to Purchaser, and Purchaser shall purchase the Property from Seller, subject to the terms of this Agreement. The purchase price for the Property is \$290,000.00 ("**Purchase Price**").

**B. Earnest Money.** There will not be any earnest money held in this transaction.

**C. Balance of Purchase Price.** Purchaser shall pay the Purchase Price, plus or minus prorations, credits, and adjustments as provided in this Agreement, at the Closing through a Closing Escrow (defined in Section 10 below) by wire transfer in accordance with wire instructions proved by the Chicago Title Insurance Company ("**Title Company**").

## Section 4. Parties' Preliminary Obligations and Rights.

**A. Seller's Deliveries.** Within 2 business days after the Effective Date, Seller shall deliver to Purchaser and Purchaser's attorney copies of all of the following pertaining to the Property in its possession or control: (i) any and all unrecorded leases, tenancies, licenses,



easements, and occupancy rights, all amendments thereto, and all correspondence and notices related thereto; (ii) existing survey(s) of the Property; (iii) any environmental reports, including Phase I and Phase II reports; (iv) any and all notices and correspondence regarding compliance with laws, including environmental and zoning laws; (v) all contracts and services agreements binding on the Property and (vi) any unrecorded easements, licenses, or other rights to occupy or use the Property (collectively "Seller's Deliveries"). Seller shall deliver a cover letter with Seller's Deliveries certifying that true, complete, and correct copies of all of Seller's Deliveries have been delivered to Purchaser and its attorneys.

**B. Title Commitment.** Purchaser has obtained a commitment from the Title Company ("**Title Commitment**") to issue to Purchaser at Closing an ALTA Owner's Title Insurance Policy (2006 version) (i) in the amount of the Purchase Price, (ii) with the following endorsements: an extended coverage endorsement over all standard exceptions, Access and Location Endorsements insuring access to the E. Oakton Street and an Encroachment Endorsement, if any encroachments are shown on the Survey, (iii) insuring good, marketable, and insurable title to the Property, and (iv) with coverage over any "gap" period, all subject only to the Permitted Exceptions (as defined in Section 5.B.4) (the "**Title Policy**"). Seller shall pay the cost for the Title Policy with the aforementioned endorsements and Purchaser will pay for any other endorsements it requests. The Title Commitment No. CCHI2004924LD is attached to and incorporated as Exhibit B to this Agreement. Seller will use this Title Commitment for clearance of title.

**C. Surveys and Plats.** Within 30 days of the Effective Date the Purchaser will obtain an ALTA/NSPS standard survey ("**Survey**") of the Property, that (a) is prepared by a surveyor approved by Purchaser, (b) will be certified in favor of Seller, Purchaser and the Title Company, (c) complies with all requirements of the Title Company that are conditions to the removal of the survey exception from the standard printed exceptions in the Title Commitment, (d) contains a certification as to the total acreage of the Property, (e) includes the Table A Items 1, 2, 3, 4, 7a, 8, 9, 11, 16, and 19 (one million), and (f) is provided to Purchaser in digital format in NAD 83 State Plane Coordinates, and six copies of the Survey to Purchaser. Purchaser shall pay the cost for the Survey.

**D. Environmental Assessment.** Beginning on the Effective Date, Purchaser may cause to be performed one or more (i) environmental assessments, reviews, or audits, including without limitation a Phase I site assessment, of or related to the Property, (ii) tests or borings of the soil on the Property, (iii) asbestos testing of any improvements located on the Parcel, and (iv) other investigations or analyses concerning the environmental and physical condition of the Parcel (collectively, "Environmental Assessments"). At Seller's request, Purchaser shall provide a copy of any completed Environmental Assessment to Seller.

## **Section 5. Due Diligence Period.**

**A. Period and License.** During the period that begins on the Effective Date and ends on the forty-fifth (45<sup>th</sup>) day after the Effective Date ("**Due Diligence Period**"), Purchaser may conduct such investigations, inspections, reviews, and analyses of or with respect to the Property as Purchaser desires ("**Due Diligence Activities**"). The Due Diligence Activities may include, without limitation, reviews of Seller's Deliveries, the Title Commitment, the Survey, and the Environmental Assessments. Seller hereby grants to Purchaser a license during the Due Diligence Period, for the use of Purchaser and its agents and contractors, to conduct Due Diligence Activities on the Property at any time.

### **B. Review of Title Commitments and Surveys.**

**1. Identification of Unpermitted Exceptions and Commitment to Cure.** Upon the later of (i) the 45<sup>th</sup> day after the Effective Date and (ii) the 10th business day following Purchaser's receipt of the Title Commitment and the Survey, Purchaser shall send written notice ("**Title Objection Notice**") identifying any matter identified in such Title Commitment or Survey that Purchaser determines, will adversely affect Purchaser's intended redevelopment of the Property, (the "**Unpermitted Exceptions**"), and the Seller commits, at Seller's cost, to (a) cure or remove the Unpermitted Exception or (b) cause the Title Company to insure over the Unpermitted Exceptions ("**Commitment to Clear Exceptions**"). Notwithstanding the process identified in this Section 5.B.1, the following are Unpermitted Exceptions, whether or not identified by Purchaser, that Seller must cure, and not merely insure over, prior to or at the Closing, and that Seller is deemed to commit to cure (collectively, the "**Must Cure Exceptions**"): (i) each mechanics', materialmen's, repairmen's, contractors' or other lien that encumbers the Property, unless the lien arises from the acts of Purchaser, (ii) each mortgage, security deed, and other security instrument that encumbers the Property, including but not limited to the mortgage to PS Romano Properties LLC ("**Lender**") identified as exception S-12 of the Title Commitment and (iii) all past due Real Estate Taxes (defined in Section 10.F) applicable to the Property including but not limited to past due taxes for tax years 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021, as well as the redemption of any tax sale noted in the Title Commitment, including but not limited to that tax sale to Corona Investments identified in exception Q-10 of the Title Commitment and the payment of the subsequent taxes paid by tax buyer Corona Investments (collectively the "**Past Due Taxes**"), these Past Due Taxes together with any proceeding related to the Past Due Taxes are a Must Cure Exception and Seller agrees to clear the Past Due Taxes together with any proceeding related to the Past Due Taxes, including but not limited to the pending Case number 19COTD4582 identified in exception Q-10 of the Title Commitment, at or before Closing; (iv) General Exceptions 1-9 and exceptions F-11, S-12, B-14, A-15, I-16, J-17 and L-18 of the Title Commitment and (v) each judgment against Seller that may constitute a lien against the Property.

**2. Purchaser's Option to Close or Terminate.** If Seller is unable to cure an Unpermitted Exception, other than the Must Cure Exceptions, and is unable to obtain a Commitment to Clear Exceptions, then Seller has five business days from receipt of Purchaser's Title Objection Notice to provide to Purchaser Seller's written notice of Seller's inability to cure such Unpermitted Exception and to obtain a Commitment to Clear Exceptions ("**Title Objection Notice Response**"), otherwise Seller is deemed to make a Commitment to Clear Exceptions with respect to all Unpermitted Exceptions. Purchaser, within 10 business days after receiving such Title Objection Notice Response, shall send Seller a written notice ( "**Closing/Termination Notice**") electing to either: (i) proceed with the Closing, in which case Purchaser will be deemed to have accepted the uncleared or uninsured Unpermitted Exceptions and shall accept Seller's Deed at Closing subject to the uncleared or uninsured Unpermitted Exceptions (except for the Must Cure Exceptions, which Seller **must cure** prior to or at Closing) and deduct from the Purchase Price the amount reasonably necessary to clear the Unpermitted Exception or (ii) terminate this Agreement. If Purchaser fails to give a Closing/Termination Notice as provided above at least one (1) day prior to Closing, Purchaser will be deemed to have elected to proceed with the Closing and shall accept the uncleared or uninsured Unpermitted Exceptions (except for the Must Cure Exceptions, which Seller must cure prior to or at Closing), as set forth in this Section 5.B.2.

**3. Seller's Compliance with Commitment to Clear Exception.** If Seller makes a Commitment to Clear Exceptions with respect to some or all Unpermitted Exceptions, then, at least 10 days prior to Closing, Seller shall deliver to Purchaser an updated Title Commitment, showing that all Unpermitted Exceptions that Seller committed to clear in the Commitment to Clear Exceptions have been cleared. If it fails to do so, then Purchaser, at any time, may either

(i) proceed with the Closing and deduct from the Purchase Price the amount reasonably necessary to clear the Unpermitted Exception that Seller committed to, but failed to, clear, in which case Purchaser will be deemed to have accepted the uncleared or uninsured Unpermitted Exception and shall accept Seller's Deed at Closing subject to the uncleared or uninsured Unpermitted Exception or (ii) terminate this Agreement.

**4. Permitted Exceptions.** Any matter of record shown in the Title Commitment that is (i) not objected to by Purchaser in a Title Objection Notice or (ii) is not a Must Cure Exception; or (iii) is an uncleared or uninsured Unpermitted Exception that is deemed accepted by Purchaser pursuant to Section 5.B.2 or Section 5.B.3, is a "Permitted Exception." The Must Cure Exceptions are never a Permitted Exception.

**5. Effect of Termination.** In the event of a termination pursuant to Section 5.B.2 or Section 5.B.3, neither party shall have any claim or obligation under this Agreement, except (i) if Seller caused an Unpermitted Exception by a willful or wrongful act or omission, then Purchaser may pursue any and all remedies available at law or in equity and (ii) for those rights, liabilities, and obligations that expressly survive the termination of this Agreement.

**C. Review of Environmental Assessments; Environmental Work.**

(i) **Remediation Notice.** If Purchaser determines through its review of an Environmental Assessment, that there exists within the Property a condition that (a) may require environmental clean-up, remediation, or (in the case of underground and above ground storage tanks (collectively, "**Storage Tanks**")) removal, and (b) may adversely affect Purchaser's intended redevelopment of the Property (an "**Environmental Condition**"), then, before the end of the Due Diligence Period, Purchaser may send Seller either (a) a written notice terminating this Agreement, in which event neither party shall have any further liability to the other or (b) a written notice describing all clean-up work, remediation work, and removal of Storage Tanks that is required with respect to the Property (collectively, the "**Environmental Work**") in reasonable detail and requesting that Seller either (1) perform or cause to be performed the described Environmental Work before the Closing or (2) provide Purchaser with a credit at Closing (the "**Remediation Credit**") for the costs and expenses of the Environmental Work (a "**Remediation Notice**").

(ii) **Seller's Obligation to Complete Environmental Work; Remediation Notice Response.** With respect to a Remediation Notice timely submitted during the Due Diligence Period, then within 5 business days after receiving the Remediation Notice, Seller shall provide Purchaser with a written notice (a "**Remediation Notice Response**") stating whether Seller (a) will comply with Purchaser's request to perform the Environmental Work before the Closing or provide a Remediation Credit at the Closing or (b) declines to perform the Environmental Work before, or provide the Remediation Credit at, the Closing. If Seller does not timely provide a Remediation Notice Response, it will be deemed to have declined to either perform the Environmental Work or provide a Remediation Credit. If Seller declines to perform the Environmental Work

before the Closing or provide the requested Remediation Credit, then Purchaser may terminate this Agreement.

- (iii) **Performance of Environmental Work.** If Seller elects to complete Environmental Work in response to a Remediation Notice, then Seller, at its own expense, shall hire a reputable and competent contractor selected by the Parties to complete the Environmental Work before the Closing.

**D. Purchaser's Right to Terminate.** In addition to its termination rights pursuant to Section 5.B and 5.C, not later than the last day of the Due Diligence Period (the "Approval Deadline"), Purchaser may deliver to Seller a written notice stating that, based on the results of the Due Diligence Activities, the Property is not suitable for Purchaser's intended uses, as determined by Purchaser in its sole and absolute discretion, and that Purchaser has elected to terminate this Agreement ("Termination Notice").

**E. Restoration.** If a Due Diligence Activity damages the Parcel, and Purchaser does not acquire the Property, then Purchaser shall restore the Parcel to a condition that is substantially the same as its condition prior to the performance of such Due Diligence Activity.

## **Section 6. Representations and Warranties.**

**A. General Representations and Warranties.** Beneficiaries, as Seller, represents and warrants to Purchaser that, as of the date hereof and as of the date of Closing:

- (i) Seller has not entered into any agreements or granted any options pursuant to which any third party has the right to acquire all or any portion of the Property or any interest therein;
- (ii) there are not now and will not be at Closing, any leases, tenancies, licenses, concessions, franchises, options or rights of occupancy or purchase, service, maintenance, or other contracts that which will be binding upon Purchaser or the Property after the Closing;
- (iii) the Property are not affected by or subject to: (a) any pending or, to the best of Seller's knowledge, threatened condemnation suits, or similar proceedings, (b) other pending or, to the best of Seller's knowledge, threatened claims, charges, complaints, petitions, or unsatisfied orders by or before any administrative agency or court, or (c) any pending or, to the best of Seller's knowledge, threatened claims, suits, actions, complaints, petitions, or unsatisfied orders by or in favor of any party whatsoever;
- (iv) to the best of Seller's knowledge, there are no threatened requests, applications, or proceedings to alter or restrict the zoning or other use restrictions applicable to the Property;
- (v) to the best of Seller's knowledge, there are no unrecorded easements, liens, or encumbrances affecting the Property;
- (vi) Seller has received no written notice of, and to the best of Seller's knowledge, there is not any violation of any law, ordinance, order, regulation, or requirement, including, but not limited to, building, zoning, environmental, safety, and health

ordinances, statutes, regulations, and requirements issued by any governmental body or agency having jurisdiction over the Property;

- (vii) to the best of Seller's knowledge and except as disclosed in the Environmental Assessments (a) any use of the Property for the generation, storage or disposal of any (1) asbestos, (2) petroleum, (3) explosives, (4) radioactive materials, wastes or substances, or (5) any substance defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq., the Hazardous Materials Transportation Act (49 U.S.C. 1802), the Resource Conservation and Recovery Act (42 U.S.C. 6901), or in any other Applicable Law (as defined in 14.D.2) governing environmental matters ("Environmental Laws") (collectively, "Hazardous Materials") has been in compliance with all Environmental Laws, (b) there are not any Hazardous Materials present on the Property, (c) the Property is currently in compliance with all Environmental Laws; and (d) there are currently no Storage Tanks on the Property and any Storage Tanks formerly located on the Property were removed in compliance with all Environmental Laws;
- (viii) except as disclosed in Seller's Deliveries, Seller has received no written notice of (a) any pending or threatened action or proceeding arising out of the presence of Hazardous Materials on the Property or (b) any alleged violation of any Environmental Laws;
- (ix) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986;
- (x) Seller has the requisite power and authority to enter into and perform the terms of this Agreement and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary trustee, executory, and individual action and authority, do not violate any agreement to which Seller is a party, and no other proceedings on Seller's part are necessary in order to permit Seller to consummate the transaction contemplated hereby; and
- (xi) Neither Seller nor any of its affiliates have (a) commenced a voluntary case, or had entered against them a petition, for relief under any applicable law relative to bankruptcy, insolvency, or other relief for debtors, (b) caused, suffered, or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator, or similar official in any federal, state, or foreign judicial or non-judicial proceeding to hold, administer, and/or liquidate all or substantially all of their respective assets, (c) had filed against them any involuntary petition seeking relief under any applicable law relative to bankruptcy, insolvency, or other relief to debtors, or (d) made a general assignment for the benefit of creditors.
- (xii) each person executing this Agreement on behalf of Seller is fully authorized to do so and, by doing so, to bind Seller to its obligations under this agreement.

At Purchaser's request, Beneficiaries individually and on behalf of the Seller, shall reconfirm all representations and warranties set forth in this Section 6 as true, accurate, and complete on and as of Closing.

**B. Survival; Indemnification.** Seller's representations and warranties shall survive Closing. Beneficiaries agrees to indemnify, hold harmless, and defend Purchaser, from and against any and all claims, demands, losses, liens, costs, expenses (including reasonable attorneys' fees and court costs), damages, liabilities, judgments, or decrees of any kind or nature which, directly or indirectly, are caused by, result from, arise out of, or occur in any manner in connection with any material inaccuracy in Seller's representations or warranties contained herein.

**Section 7. Seller's Covenants and Agreement.** Seller covenants and agrees with Purchaser from the Effective Date until the Closing:

- (i) Seller shall not make, enter into, grant, amend, extend, renew or grant any waiver or consent under any lease, tenancy, easement, license or other agreement allowing the use or occupancy of all or any portion of the Property, without Purchaser's prior written consent,
- (ii) Seller shall not enter into or amend any contracts, agreements or undertakings that will be binding upon Purchaser or the Property, without Purchaser's prior written consent,
- (iii) Seller shall not create, or allow the creation of, any encumbrance on the title of the Property, without Purchaser's prior written consent (except for any Permitted Exceptions),
- (iv) Seller shall not take any action, directly or indirectly, to encourage, initiate, or engage or participate in discussions or negotiations with any third party concerning a potential sale of all or any portion of, or any interest in, the Property,
- (v) Seller shall promptly inform Purchaser of any developments which would cause any of its representations or warranties contained in this Agreement to be no longer materially accurate,
- (vi) Seller, at its own expense, and before Closing, shall completely remove all materials, equipment, signs, personal property, garbage and debris located at or on the Property in accordance with all Applicable Laws (as defined in Section 14.D.(ii)), except for the Transferred Personal Property (defined in Section 10.C.(xiii) below),
- (vii) Seller, at its own expense, and before Closing, shall complete all Environmental Work which it has agreed to perform in accordance with Section 5.C above, and
- (viii) Seller shall continue to maintain and keep the Property in its current condition, use commercially reasonable efforts to comply with all Applicable Laws materially affecting it, and pay taxes and mortgage payments on it as they become due.

**Section 8. Bulk Sales/Illinois Income Tax Withholding.**

At least 20 days prior to the Closing, Seller will notify the Illinois Department of Revenue (the "Department") of the intended sale of the Property and request the Department to make a determination as to whether Seller has an assessed, but unpaid, amount of tax, penalties, or interest under 35 ILCS 5/902(d) or 35 ILCS 120/5j (collectively the "Bulk Sale Act"). At or prior

to the Closing, Seller shall deliver to Purchaser evidence that the sale of the Property to Purchaser hereunder is not subject to, and does not subject Purchaser to liability under the Bulk Sale Act ("Release"). At least 45 days prior to the Closing, Seller will notify the Cook County Department of Revenue ("Cook County") of the intended sale of the Property and request Cook County to make a determination as to whether Seller has an assessed, but unpaid, amount of tax, penalties, or interest under the Cook County Code Section 34.92 (collectively part of the "Bulk Sale Act"). At or prior to the Closing, Seller shall deliver to Purchaser evidence that the sale of the Property to Purchaser hereunder is not subject to, and does not subject Purchaser to liability under the Bulk Sale Act (collectively, "Release"). At least 20 days prior to the Closing, Seller will notify the Illinois Department of Employment Security (the "IDES") of the intended sale of the Property and request the IDES to make a determination as to whether Seller has an assessed, but unpaid, amount of tax, penalties, or interest under the Section 2600 of the Illinois Unemployment Insurance ACT (collectively part of the "Bulk Sale Act"). At or prior to the Closing, Seller shall deliver to Purchaser evidence that the sale of the Property to Purchaser hereunder is not subject to, and does not subject Purchaser to liability under the Bulk Sale Act (collectively, "Release"). Purchaser may, at the Closing, deduct and withhold from the proceeds that are due Seller the amount necessary to comply with the withholding requirements imposed by the Bulk Sale Act, provided that such amounts are deposited in escrow at Closing and released to Seller upon obtaining a release from the Department or otherwise satisfying any amounts due under the Bulk Sale Act. Beneficiaries shall indemnify, defend and hold harmless Purchaser, and its commissioners, officers, employees, agents, successors and assigns, harmless from any and all obligations, liabilities, claims, demands, losses, expenses, or damages arising from Seller's failure to (i) provide any required notice of its sale of the Property to the appropriate state, county, or municipal governmental authorities, (ii) pay any and all taxes and other amounts due in connection with its ownership, operation or sale of the Property, or (iii) otherwise comply with any bulk sales laws of the State of Illinois or Cook County. The foregoing indemnity shall survive the Closing Date.

#### **Section 9. Conditions Precedent to Closing.**

Purchaser's obligation to close is subject to each and all of the following conditions being satisfied by Seller, or waived in writing by Purchaser (the "Closing Contingencies"):

- (i) all of Seller's representations and warranties contained in this Agreement, must be materially true and correct on the date hereof and as of the Closing Date,
- (ii) Seller must have timely performed all of its obligations under this Agreement,
- (iii) all conditions precedent to Purchaser's obligation to close on the transaction contemplated in this Agreement must have been satisfied or waived as of the Closing Date,
- (iv) Seller must have delivered all items required to be delivered by Seller pursuant to Section 10.C, and
- (v) the Title Company has issued or is irrevocably committed to issue the Title Policy.

Purchaser may inspect the Property within forty-eight (48) hours prior to the Closing Date to determine whether the Closing Contingencies have been satisfied. If a Closing Contingency is not satisfied because of a default by Seller, Purchaser will have all of its rights under Section 14.E.1.

#### **Section 10. Closing.**

**A. Conveyance and Possession.** At Closing, Seller shall convey fee simple title to the Property to Purchaser by delivery of Seller's warranty deed ("Seller's Deed") in recordable form conveying fee simple title to the Property, subject only to Permitted Exceptions. Seller shall deliver full and complete possession of the Property to Purchaser upon Closing. Seller shall deliver the Property to Purchaser in its condition as of the Effective Date, except to the extent that Seller has agreed to perform, and has completed, Environmental Work, and except for ordinary wear and tear.

**B. Time, Place; Closing Escrow.**

- (i) Time. The Closing will occur (i) no later than the 15<sup>th</sup> day following the later of (a) the expiration of the Due Diligence Period; and (b) the completion of any Environmental Work that Seller is required, or has agreed, to complete or provide a Remediation Credit for; and (c) the Releases have been received and the Mortgage Release has been deposited in the Closing Escrow; and (d) all Past Due taxes are paid and any proceedings related to Past Due Taxes have been dismissed or (ii) on another date mutually agreed to in writing by the Parties (the "**Closing Date**").
- (iii) Place. The Closing will be at the office of the Title Company at 500 Skokie Boulevard, Suite 290 Northbrook Illinois. The Parties need not physically attend the Closing.
- (iii) Closing Escrow. On or before the Closing, Purchaser and Seller shall establish an escrow in the usual form of deed and money escrow agreement then in use by Title Company with such changes made as may be necessary to conform with the provisions of this Agreement (a "**Closing Escrow**"). The Closing will be a "New York" style closing.

**C. Seller Closing Deliveries.** At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following, in each case, fully executed (as applicable), in form and substance satisfactory to Purchaser:

- (i) evidence reasonably satisfactory to the Title Company of the authority of Seller to consummate the Closing, to the extent such authority is not apparent in the documents recorded when Seller acquired title to the Property,
- (ii) Seller's Deed and other instruments of transfer and conveyance transferring the Property, free of all liens other than the Permitted Exceptions,
- (iii) to the extent required by the Title Company, a "gap" undertaking in customary form and substance for the "gap" period" through the applicable Closing Date or the date of recording, as the case may be,
- (iv) a current form of ALTA Statement in customary form and substance as required by the Title Company,
- (v) a counterpart to the closing statement,
- (vi) real estate transfer declarations or exemptions required by Applicable Laws,



- (vii) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction, including any instrument, assurance or deposit required for the Title Company to insure over Unpermitted Exceptions in such form, terms, conditions and amount as may be required by the Title Company,
- (viii) a non-foreign affidavit sufficient in form and substance to relieve Purchaser of any and all withholding obligations under Section 1445 of the Internal Revenue Code,
- (ix) a signed Pro Forma title policy.
- (x) An agreement to reproporate the real estate taxes on the Property in the form attached as Exhibit C pursuant to 10.F,
- (xi) An Affidavit of Title in a form acceptable to Purchaser,
- (xii) A bill of sale (with general warranty of title) conveying to Purchaser any the personal property noted on Exhibit D,
- (xiii) Releases from the State of Illinois and Cook County and IDES for the Bulk Sale Acts, and
- (xiv) A release of liens from all real estate brokers, finders and salespersons with respect to this Agreement.

**D. Purchaser's Closing Deliveries.** At Closing, Purchaser shall deliver or cause to be delivered to Seller the following, in each case, fully executed (as applicable) and in form and substance reasonably satisfactory to Seller:

- (i) the Purchase Price, subject to the credits and other adjustments contemplated herein,
- (ii) a counterpart to the closing statement,
- (iii) to the extent required by the Title Company, a "gap" undertaking in customary form and substance for the "gap" period" through the applicable Closing Date or the date of recording, as the case may be,
- (iv) a current form of ALTA Statement in customary form and substance as required by the Title Company,
- (v) real estate transfer declarations or exemptions required by Applicable Laws,
- (vi) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction, and

**E. Closing Costs.** At Closing, Seller shall pay (i) 50% of the Title Company's closing fees related to such Closing, (ii) Seller's attorneys' fees related to such Closing, (iii) the

Remediation Credit, if any, applicable to Environmental Work completed prior to such Closing, (iv) the cost of the Title Policy and the endorsements identified in 4.B.(ii), and (v) the cost of title clearance. Purchaser shall pay (i) 50% of the Title Company's closing fees related to such Closing, (ii) 100% of the costs incurred in recording the Seller's Deed, and any other document required to be recorded by any entity providing funding to Purchaser, (iii) any costs incurred in connection with Purchaser's Due Diligence Activities related to the Due Diligence Period, (iv) Purchaser's attorneys' fees related to such Closing, (v) the cost of the Survey, and (vi) the cost of any additional endorsements to the Title Policy requested by Purchaser.

**F. Prorations.** All ad valorem, special tax roll, or other real estate taxes, charges, and assessments, including special assessments and special service area taxes, affecting the Property (collectively, "**Real Estate Taxes**") shall be prorated on an accrual basis and on a per diem basis to and including the Closing Date, disregarding any discount or penalty and on the basis of the fiscal year of the authority levying the same. If any Real Estate Taxes are assessed against the Property as of Closing Date, then Seller shall give to Purchaser a credit at the Closing based on 130% of the last tax bill and the Parties agree that when the actual Real Estate Tax bill is issued that they will re-prorate the amount due. The Parties agree to sign the Tax Reproration Agreement attached as Exhibit B. All water, sewer, and other utility charges, if any, shall be prorated as of Closing.

**Section 11. Casualty; Condemnation.** Promptly upon learning thereof, Seller shall give Purchaser written notice of any condemnation, damage or destruction of the Property occurring prior to the Closing. If prior to the Closing all or a material portion of the Property is condemned, damaged or destroyed by an insured casualty, Purchaser shall have the option of either (i) applying the proceeds of any condemnation award or payment under any insurance policies (other than business interruption or rental loss insurance) toward the payment of the Purchase Price to the extent such condemnation awards or insurance payments have been received by Seller, receiving from Seller an amount equal to any applicable deductible under any such insurance policy and receiving an assignment from Seller of Seller's right, title and interest in any such awards or payments not theretofore received by Seller, or (ii) terminating this Agreement by delivering written notice of such termination to Seller and Escrowee within ten (10) business days after Purchaser has received written notice from Seller of such material condemnation, damage or destruction. If, prior to the Closing, a portion of the Property is condemned, damaged or destroyed and such portion is not a material portion of the Property, the proceeds of any condemnation award or payment and any applicable deductible under any insurance policies shall be applied toward the payment of the Purchase Price to the extent such condemnation awards or insurance payments have been received by Seller and Seller shall assign to Purchaser all of Seller's right, title and interest in any unpaid awards or payments. For purposes of this Section 11, the term "material portion" shall mean greater than ten percent (10%) of the value of the Property or an absence of reasonable access to the Property. If the damage or destruction arises out of an uninsured risk, Seller shall elect, by written notice within ten (10) days of the occurrence of such damage or destruction either to terminate this Agreement or to close the transaction contemplated hereby with a reduction of the Purchase Price equal to the costs of repairing the Property, as reasonably estimated by an engineer engaged by Seller and reasonably acceptable to Purchaser.

**Section 12. Brokers.** Seller and Purchaser each represents and warrants to the other that it knows of no broker or other person or entity who has been instrumental in submitting or showing the Property to Purchaser other than Berkshire Hathaway Home Services Starck Real Estate ("Broker") and Seller warrants and represents to Purchaser that Broker has no right to receive a fee or commission for this transaction and if Broker claims such fee or commission

then the Seller will pay any and all commissions and fees due to Broker so that Broker will provide a Release of Lien and if the Seller does not provide a Release of Lien from the Broker then the Beneficiaries, jointly and severally, will indemnify and hold harmless the Purchaser from and against any damage, liability or expense, including costs and reasonable attorneys' fees that Purchaser or the Title Company incurs because of such claim. If any broker or other person asserts a claim against Purchaser or the Property for a broker's commission, finder's fee, or similar payment in connection with the transactions contemplated in this Agreement, then Seller and the Beneficiaries, jointly and severally, shall indemnify and hold harmless the Purchaser from and against any damage, liability or expense, including costs and reasonable attorneys' fees that Purchaser incurs because of such claim and this indemnity and hold harmless shall survive the Closing.

### **Section 13. Patriot Act.**

A. **Definitions.** All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) ("**Patriot Act**") and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001, and the USA FREEDOM Act dated June 2, 2015 are collectively referred to as the "Patriot Rules" and are incorporated into this Section.

B. **Representations and Warranties.** Purchaser and Seller hereby represent and warrant, each to the other, that each and every "person" or "entity" affiliated with each respective party or that has an economic interest in each respective party or that has or will have an interest in the transaction contemplated by this Agreement or in any property that is the subject matter of this Agreement or will participate, in any manner whatsoever, in the purchase and sale of the Property is, to the best of Purchaser's or Seller's knowledge:

- (i) not a "blocked" person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224,
- (ii) in full compliance with the requirements of the Patriot Rules and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**"),
- (iii) operated under policies, procedures and practices, if any, that are in compliance with the Patriot Rules and available to each other for review and inspection during normal business hours and upon reasonable prior notice,
- (iv) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Rules,
- (v) not listed as a Specially Designated Terrorist or as a blocked person on any lists maintained by the OFAC pursuant to the Patriot Rules or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Rules or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Rules,

- (vi) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Rules, and
- (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any person or entity named in the Annex or any other list promulgated under the Patriot Rules or any other person who has been determined to be subject to the prohibitions contained in the Patriot Rules.

C. **Mutual Notice; Termination.** Each party covenants and agrees that in the event it receives any notice that it or any of its beneficial owners or affiliates or participants become listed on the Annex or any other list promulgated under the Patriot Rules or indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, the party that receives such notice shall immediately notify the other (the "Non-Blocked Party") and the effect of the issuance of a notice pursuant to the Patriot Rules is that the Non-Blocked Party may elect to either: (i) obtain permission from OFAC to proceed with the Closing, in which case, the Closing Date shall be delayed until such permission is obtained, or (ii) send written notice to the other party terminating this Agreement, in which event the Parties shall have no further rights or obligations under this Agreement, except for those rights, liabilities or obligations that survive a termination of this Agreement.

#### **Section 14. General Provisions.**

A. **Integration; Modification.** This Agreement constitutes the entire agreement between the Parties pertaining to the Property and supersedes all prior agreements, understandings, and negotiations pertaining thereto. This Agreement may be modified only by a written amendment or other agreement that is lawfully approved and executed by the Parties.

B. **Further Actions.** The Parties shall execute all documents and take all other actions consistent with this Agreement that are reasonably necessary to consummate the transactions contemplated in this Agreement.

C. **Confidentiality.** Parties shall keep all negotiations, information, and documents related to this Agreement (including without limitation any appraisals or financial information) (collectively, "**Negotiation Information**"), strictly confidential and shall not disclose (and shall cause its attorneys consultants, and agents not to disclose) Negotiation Information to any third party, without the other party's prior written consent, which consent may be granted or withheld. The obligations of this Section will survive Closing or the termination of this Agreement. Nothing in this Section will be deemed to prohibit disclosure of any information that is generally available to the public or is required to be disclosed pursuant to the Illinois Freedom of Information Act (140 ILCS 5/1 *et seq.*).

#### **D. Interpretation.**

- (i) Presumption. There is no presumption that this Agreement is to be construed for or against Seller or Purchaser, or either party as the principal author of the Agreement. Instead, this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.
- (ii) Compliance with Applicable Laws; Governing Law. In performing their obligations under this Agreement, the Parties shall comply will all applicable federal, state, and local statutes, regulations, requirements,

ordinances, and other laws ("**Applicable Laws**"). The internal laws of the State of Illinois, without regard to its conflict of laws rules, shall govern the interpretation of this Agreement.

- (iii) Headings and Exhibits. The Section headings in this Agreement are used as a matter of convenience and do not define, limit, construe or describe the scope or intent of the text within such headings. The following Exhibits attached hereto are incorporated herein as an integral part of this Agreement:

Exhibit A: Legal Description of Property  
Exhibit B: Title Commitment  
Exhibit C: Tax Reproration Agreement  
Exhibit D: List of Personal Property

- (iv) Non-Waiver. Except as expressly provided in this Agreement, the mere failure by a party to insist upon the strict performance of any obligation of this Agreement or to exercise any right or remedy related to a default thereof shall not constitute a waiver of its rights. If a party waives a right under this Agreement, that waiver shall not be deemed a waiver of any other right.
- (v) Severability. If any provision of this Agreement is invalid or unenforceable against any party under certain circumstances, then this Agreement will be deemed to be amended by deleting such provision. This Agreement will be enforceable, as amended, to the fullest extent allowed by Applicable Laws and so long as the amendment does not result in a failure of consideration.
- (vi) Time. Time is of the essence in the performance of this Agreement. If any date upon which action is required under this Agreement is a Saturday, Sunday, or legal holiday, the date will be extended to the first business day after such date that is not a Saturday, Sunday or legal holiday.

## **E. Enforcement.**

### **1. Default.**

**a. Purchaser Default.** If Purchaser fails to perform an obligation under this Agreement, and does not, within 5 days after receiving written notice from Seller of such failure, either (i) cure such failure or (i) if such failure cannot reasonably be cured within 5 days, commence and diligently pursue a cure for such failure, then Purchaser will be in default of this Agreement and Seller may terminate this Agreement as its sole and exclusive remedy.

**b. Seller Default.** If (i) Seller fails to perform an obligation under this agreement or (ii) any representation or warranty made by Seller hereunder is untrue when made or becomes materially untrue as the result of an act or omission of Seller, and Seller does not, within 5 days after receiving written notice from Purchaser of such failure, either (i) cure such failure or take action to cause such representation or warranty to become materially true or (ii) if such failure cannot reasonably be cured within 5 days or if such action cannot reasonably be completed within

5 days, commence and diligently pursue a cure for such failure or such action, then Seller will be in default of this Agreement and Purchaser may (i) terminate this Agreement or (ii) pursue any other remedy available at law or equity, including without limitation an action for specific performance. Without limiting Purchaser's rights under the preceding sentence, if (i) a representation or warranty made by Seller becomes materially untrue, but not as the result of an act or omission of Seller, or (ii) a Closing Contingency is not satisfied, then Purchaser may terminate this Agreement.

**2. Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

**3. Prevailing Party Attorney Fees.** In any litigation filed to enforce this Agreement, the prevailing Party will be entitled to recover from the other Party its reasonable attorney's fees, litigation expenses, and court costs at trial and on appeal that are incurred in such litigation.

**4. Venue.** Venue for any litigation concerning the enforcement of this Agreement will be in the Circuit Court of Cook County, Illinois, or the Federal District Court for the Northern District of Illinois.

**F. Execution of Agreement.**

1. Board Approval Required.

(a) Effectiveness; Irrevocable Offer. Purchaser acknowledges that (1) this Agreement is not effective until it is approved by Purchaser's City Council in accordance with Applicable Laws and executed by the Purchaser's Mayor, (2) by executing this Agreement and delivering it to Purchaser, Seller has made an offer to Purchaser to enter into this Agreement, (3) such offer may be accepted by the lawful approval of the Agreement by Purchaser's City Council, and (4) that such offer is irrevocable until December 30, 2021.

(b) Consideration. Seller acknowledges that Purchaser's good faith consideration of this Agreement and Seller's irrevocable offer, is adequate consideration for Seller's agreements in this Section.

2. Counterparts and Effectiveness. The Parties may execute this Agreement in multiple counterparts, all of which taken together will constitute a single Agreement binding on the Parties, notwithstanding that the Parties are not signatories to the same counterpart. This Agreement will be deemed fully executed, and effective as of the Effective Date, when each party has executed at least one counterpart. Any signature of a party to this Agreement that is sent by that party to the other party via a telefax transmission or via an email transmission in a PDF format shall be deemed a binding signature hereto. Each party shall deliver an original signature to the other party upon the other party's request.

3. Representations and Warranties. Purchaser and Seller its successors and assigns represents and warrants to each other that (i) or it has the requisite power and authority to enter into and perform the terms of this Agreement, (ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (a) have been

duly authorized by all necessary action and authority and (b) do not violate any agreement to which it is a party, and (iii) no other proceedings on its part are necessary in order to permit him, her, or it to consummate the transactions contemplated hereby, and (iv) the person executing this Agreement on its behalf, is fully authorized to execute this Agreement, and, by doing so, to bind or it to the obligations under this Agreement.

**G. Notices.** Notices under this Agreement must be delivered (i) personally, (ii) by overnight delivery by a nationally recognized courier service, or (iii) by email, with the notice also being sent personally, by overnight delivery as set forth above, or by regular U.S. mail. Notices under this agreement must be sent to the following addresses or to such other or further addresses as a party may hereafter designate by notice:

if to Purchaser: **CITY OF DES PLAINES**  
1420 Miner St.  
Des Plaines, Illinois 60016  
Attn.: Michael Bartholomew, City Manager  
Email: [mbartholomew@desplaines.org](mailto:mbartholomew@desplaines.org)

with a copy to: Elrod Friedman LLP  
325 N. LaSalle St Suite 450  
Chicago, Illinois 60654  
Attn: Peter Friedman and Megan Cawley  
Email: [peter.friedman@elrodfriedman.com](mailto:peter.friedman@elrodfriedman.com);  
[Megan.cawley@elrodfriedman.com](mailto:Megan.cawley@elrodfriedman.com)

if to Seller: Law Office of Frank J. Wesolowski PC  
4941 Forest Ave  
Downers Grove, IL 60515  
Attn: Frank Wesolowski  
Email: [wesolowskilaw@gmail.com](mailto:wesolowskilaw@gmail.com)

Syracuse & Syracuse PC  
2625 W. Butterfield Rd Suite 1388  
Oak Brook, IL 60523  
Attn: Russell Syracuse  
Email: [Syracuse.pc@att.net](mailto:Syracuse.pc@att.net)

Any notice shall be deemed given upon actual receipt. Nothing in this Section will be deemed to invalidate a notice that is actually received, even if it is not given in strict accordance with this Section.

**H. Time of Essence.** Time is of the essence to this Agreement and to all dates and time periods set forth herein.

**[SIGNATURE PAGES FOLLOW]**

The undersigned execute this Agreement on the dates next to their signatures and acknowledge that this Agreement will become effective as of the Effective Date.

**SELLER:**

**LAND TRUST:**

Chicago Title Land Trust Company as successor trustee to First National Bank of Des Plaines, as Trustee under Trust Agreement dated November 20, 1965 and known as Trust Number 159

\* By: *Lilli Kuzma* 10-7-22  
Name: LILLI KUZMA  
Title: ASST. VICE PRESIDENT

\* *subject to trustee excavations below*  
ATTEST:  
By: Attestation not required  
Name: Pursuant to corporate by-laws  
Title: \_\_\_\_\_

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Charles Romano, III

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Joseph L. Romano Jr.

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Addie Romano

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Katie L. Stenstrom

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Linda Romano

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Tracy Philabaun

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Cynthia A. Romano

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Dawn R. Kleiner

BENEFICIARY:  
By: \_\_\_\_\_  
Name: JoAnne Romano

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Thomas M. Romano

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Cheryl Lynn Romano

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Paul A. Romano Jr.

BENEFICIARY:  
By: \_\_\_\_\_  
Name: Melisa A. Swanson

The information contained in this certification has been furnished to the undersigned by the beneficiaries of Trust No. 159, and the certification is made solely in reliance thereon and no responsibility is assumed by the trustee in its individual capacity, for the truth or accuracy of the facts therein stated.

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.



**PURCHASER:**

**CITY OF DES PLAINES**, an Illinois home rule municipality

By: \_\_\_\_\_  
Name: Andrew Goczkowski  
Title: Mayor

**ATTEST:**

By: \_\_\_\_\_  
Name: Jessica M. Mastalski  
Title: City Clerk

The undersigned execute this Agreement on the dates next to their signatures and acknowledge that this Agreement will become effective as of the Effective Date.

**SELLER:**

**LAND TRUST:**

Chicago Title Land Trust Company as  
successor trustee to First National Bank of  
Des Plaines, as Trustee under Trust  
Agreement dated November 20, 1965 and  
known as Trust Number 159

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Charles Romano, III

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Joseph L. Romano Jr.

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Addie Romano

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Katie L. Stenstrom

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Linda Romano

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Tracy Philabaun

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Cynthia A. Romano

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Dawn R. Kleiner

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By: \_\_\_\_\_  
Name: JoAnne Romano

**BENEFICIARY:**

By:   
Name: Thomas M. Romano

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Cheryl Lynn Romano

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Paul A. Romano Jr.

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Melissa A. Swanson

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Linda Romano

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Charles Romano

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Name: Addie Romano

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Name: Katie L. Stenstrom

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By: \_\_\_\_\_  
Name: Melisa A. Swanson

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*Efrain Mendoza*

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Name: Charlene T. Stenstrom  
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Name: Linda Romano  
Title: \_\_\_\_\_

**BENEFICIARY:**

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Name Tracy Philabaun  
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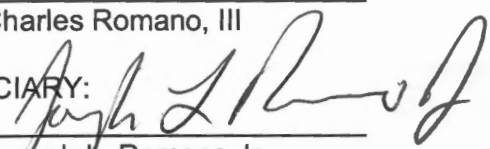
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By: \_\_\_\_\_  
Name: Paul A. Romano Jr.

**BENEFICIARY:**

By: \_\_\_\_\_  
Name: Melissa A. Swanson

**EXHIBIT A**

**LEGAL DESCRIPTION OF PARCEL**

**PARCEL 1:**

LOT 9 IN BLOCK 17 IN ARTHUR T. MCINTOSH AND COMPANY'S ADDITION TO DES PLAINES HEIGHTS BEING A SUBDIVISION OF THAT PART EAST OF RAILROAD OF THE SOUTH ½ OF THE SOUTH EAST ¼ OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THAT PART WEST OF DES PLAINES ROAD OF THE SOUTH ½ OF THE SOUTHWEST ¼ (EXCEPT 4 ACRES IN THE NORTHEAST CORNER THEREOF) OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**P.I.N.s:** 09-20-416-009-0000

Commonly known as 1374 E. Oakton Street, Des Plaines, Illinois

**PARCEL 2:**

LOT 10 IN BLOCK 17 IN ARTHUR T. MCINTOSH AND COMPANY'S ADDITION TO DES PLAINES HEIGHTS BEING A SUBDIVISION OF THAT PART EAST OF RAILROAD OF THE SOUTH ½ OF THE SOUTH EAST ¼ OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THAT PART WEST OF DES PLAINES ROAD OF THE SOUTH ½ OF THE SOUTHWEST ¼ (EXCEPT 4 ACRES IN THE NORTHEAST CORNER THEREOF) OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

(to be confirmed by the Parties)

**P.I.N.s:** 09-20-416-010-0000

Commonly known as 1384 E. Oakton Street, Des Plaines, Illinois

Combined Legal Description to be used for Seller's Deed: LOTS 9 AND 10 IN BLOCK 17 IN ARTHUR T. MCINTOSH AND COMPANY'S ADDITION TO DES PLAINES HEIGHTS BEING A SUBDIVISION OF THAT PART EAST OF RAILROAD OF THE SOUTH ½ OF THE SOUTH EAST ¼ OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THAT PART WEST OF DES PLAINES ROAD OF THE SOUTH ½ OF THE SOUTHWEST ¼ (EXCEPT 4 ACRES IN THE NORTHEAST CORNER THEREOF) OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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