

REAL ESTATE OPTION AGREEMENT

*UP*  
*RWH*  
THIS AGREEMENT ("Agreement") entered into this 26<sup>th</sup> day of December, 2018, by and between REED HARRIS and CORLISS BAER ("Grantors") and the CITY OF ROCHELLE, an Illinois municipal corporation ("Grantee"):

WITNESSETH

WHEREAS, Grantors are the owners of approximately 89.33 acres of land north of Illinois Route 38 and east of Dement Road, as legally described and depicted in **Exhibit A**, attached hereto ("Option Property"); and

WHEREAS, Grantee is the owner of several parcels of property to the west of the Option Property, and currently developed as the Rochelle Business and Technology Park; and

WHEREAS, Grantee wishes to have, and Grantors wish to grant, an option to purchase the Option Property;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Option Granted.** Subject to the terms and conditions of this Agreement, Grantors hereby grant to Grantee the exclusive right and option to purchase the Option Property, including any part thereof, from time to time, during the term of the Agreement; provided, however, that: (i) no such part thereof shall be less than five (5) acres; (ii) in no event shall the remaining acreage owned by Grantors be rendered unsuitable for farming by the proposed purchase; (iii) Grantee shall advise Grantors of any proposed purchase, and Grantors shall have the right to disapprove any proposed purchase which renders the remaining acreage owned by Grantors unsuitable for farming; and (iv) the remaining acreage shall have road access.

**2. Term.** The term of this Agreement shall be for three (3) years from the date this Agreement is executed.

**3. Exercise of Option.** Grantee may exercise the option by giving Grantors written notice of its intent to exercise the option over all, or a portion as specified in the notice, of the Option Property.

**4. Purchase Price for Option Property.**

a. First Year. The purchase price for the Option Property, including any portion thereof, in the first year of this Agreement shall be Twenty-Eight Thousand Nine Hundred Forty Dollars (\$28,940.00) multiplied by the gross acres of the portion of the Option Property being purchased by Grantee.

b. Subsequent Years. Each subsequent year of the term, the per acre purchase price shall increase by Five Percent (5%), starting on the anniversary date of this Agreement.

5. **Option Closing Dates.** The closing date for the sale of any portion of the Option Property being purchased by Grantee shall be thirty (30) days from the date that Grantee mails its notice to exercise the option to Grantors.

6. **Option Property Closing.** At closing, Grantors shall convey to Grantee the portion of the Option Property being purchased by Grantee by warranty deed, free and clear of all liens, claims, encumbrances, restrictions, and reservations of rights, except those exceptions permitted by Grantee.

7. **Title and Survey.**

a. **Title.** No later than fifteen (15) days after Grantee's exercise of the option, Grantors shall, at Grantors' sole cost, furnish to Grantee a written title policy commitment, from a title insurance company acceptable to Grantee, for the Option Property, or the portion thereof being purchased by Grantee.

b. **Survey.** No later than fifteen (15) days after Grantee's exercise of the option, Grantee shall, at its cost, prepare a survey of the portion of the Option Property to be purchased by Grantee.

8. **Prorations.** At the closing, Grantors and Grantee shall prorate general real estate taxes for the year the closing occurs in and, if applicable, the prior year, to the extent not yet paid, based on 100% of the most recently ascertainable information for the Option Property. The proration shall be multiplied by the fraction of the Option Property that is being purchased by Grantee, with the number of acres being purchased as the numerator, and the total number of acres remaining within the Option Property prior to the closing of the applicable sale as the denominator.

9. **Expenses.** All title company closing fees shall be divided equally among the parties. Each party shall pay its own professional and attorneys' fees. All other costs, charges, and expenses, shall be paid as provided in this Agreement, or, in the absence of any such provision, in accordance with applicable law or local custom, as the case may be.

10. **Sellers' Representations and Warranties.** The below representations and obligations of Grantors shall survive closing on any portion of the Option Property. Grantors covenant and agree to indemnify, defend, and hold harmless Grantee from and against any and all losses, costs, claims, demands, suits, causes of action, proceedings and liabilities incurred by or asserted against Grantee as a result of: (i) the breach of any of the representations, warranties, or covenants contained in this Section, (ii) any Hazardous Material which was placed, disposed of, or located on, under or at the Option Property by Grantors or any person acting by or on their behalf, or (iii) the violation of the Option Property by Grantors or any person acting by or on their behalf, which relates to events or conditions which occurred or existed on the Option Property during Grantors' ownership of the Option Property. As of the date of this Agreement, Grantors represent and warrant the following:

a. To the best of Grantors' knowledge, Grantors are the sole owners of fee simple title to the Option Property, and the Option Property is not subject to any outstanding agreements of sale, options, leases, or other rights of third parties to acquire any interest therein; provided, however, that the parties acknowledge and agree that this Agreement is subject to a Declaration of Covenants

for Rochelle Business and Technology Park, dated November 28, 2007, and recorded in the Office of the Ogle County Recorder as document number 0712025.

b. To the best of Grantors' knowledge, Grantors have the full power and lawful authority to execute and deliver this Agreement and any and all documentation relating hereto, to consummate the transactions contemplated hereby, and to make the representations, warranties, and covenants made by Grantors hereunder.

c. To the best of Grantors' knowledge, no consent of any other person or entity is required in connection with the execution, deliver, or performance of this Agreement, and as such this Agreement represents the valid and binding obligation of Grantors enforceable against them in accordance with its terms.

d. To the best of Grantors' knowledge, no assessment for any public improvement has been received by Grantors, and to Grantors' knowledge, no work has been commenced on any public improvement being financed on an assessment basis on, adjacent to, or benefitting the Option Property, and no notice or order has been received by Grantors or its agents from any governmental authority requiring the doing of work or correction of conditions on the Option Property which has not been complied with by Grantors, including but not limited to, sewer, water or other municipal improvements.

e. With respect to environmental matters affecting the Option Property, and to Grantors' knowledge:

i. Grantors have not received any Environmental Notice from any applicable governmental authority seeking any information or alleging any violation of any Environmental Laws.

ii. Grantors have not stored any Hazardous Materials on the Option Property or generated or used any Hazardous Materials on the Option Property.

iii. No predecessor in interest to Grantors stored any Hazardous Materials on the Option Property or generated or used any Hazardous Materials on the Option Property.

iv. No underground storage tank is located at or on the Option Property and the removal of any tanks previously removed from the Option Property was carried out in compliance with all applicable laws in a manner acceptable to the applicable federal, state and local government authorities, and all applicable environmental permits were obtained in connection therewith.

v. As used herein, the term "Environmental Laws" shall mean any federal, state, or local statute, ordinance, regulation, administrative guidance or directive, or administrative or judicial decree or order pertaining to the environment.

vi. As used herein, the term "Hazardous Material" shall mean and include, without limitation: (a) those substances included within the definition of "hazardous substance" and "hazardous waste" in any Environmental Law, and (b) any material, waste, or substance which is

or contains asbestos, polychlorinated biphenyls, petroleum and its derivative by-products, and other explosive or radioactive materials.

vii. As used herein, the term "Environmental Notice" shall mean any summons, citation, directive, order, claim, litigation, pleading, investigation, proceeding, judgment, letter or any other written or oral communication from the United States Environmental Protection Agency, the State of Illinois Environmental Protection Agency, or any other federal, state, or local agency or authority, or any other entity or any individual concerning any intentional or unintentional act or omission which has resulted in or may result in the release of any Hazardous Materials into the environment, or other violation or alleged violation of Environmental Laws.

f. Grantors shall give Grantee prompt notice of the occurrence of any event or the receipt of any notice or knowledge the effect of which would be to make any representation, warranty, or covenant of Grantors untrue or misleading in any material respect.

g. Grantors are not foreign persons within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended.

**11. Grantors to Maintain.** Between the date of this Agreement and the closing date of any option exercised, and between successive closing dates:

a. Grantors will continue to maintain the Option Property in good and safe condition;

b. Grantors will not sell, transfer, convey, or encumber, or cause or permit to be sold transferred, conveyed, or encumbered, the Option Property, or any part thereof or interest therein, or alter or amend the zoning classifications of the Option Property, or otherwise perform or permit any act or deed which shall diminish, encumber, or affect the Grantors' rights in and to the Option Property or prevent it from fully performing its obligations hereunder; and

c. Grantors will permit Grantee, its agents, representatives, and consultants to inspect the Option Property at all reasonable times and to inspect and make copies of all books, records, documents, and other paperwork and information, if any, in the possession or under the control of Grantors which relate to the Option Property.

**12. Operation of Option Property.** During the term of this Agreement, Grantors are permitted to lease the Option Property or any portion thereof, and permit the use or occupancy of all or any part of the Option Property by any person or entity other than Grantors; provided, however, that any such lease shall require the express written consent of Grantee. Grantee's consent shall not be unreasonably withheld; provided, however, that any such lease shall contain a clause providing that the tenant shall vacate the Option Property, or the applicable portion thereof, on or before the date the Grantee is entitled to possession under this Agreement, including, without limitation, any such lease that may be in existence on the date of this Agreement.

During the term of this Agreement, Grantors shall not permit any grading or excavations of the Option Property, or any removal of trees therefrom, nor shall they construct any building improvements thereon.

During the term of this Agreement, Grantors shall cause the Option Property to be maintained in its present condition, ordinary wear and tear expected.

**13. Right to Broker.** Grantors hereby grant Grantee the exclusive right to market the Option Property, and to engage broker representation in order to market the Option Property. Grantors shall not be liable for any commission or fees of any broker engaged by Grantee.

**14. Notices.** All notices required to be given under this Agreement shall be in writing and shall be deemed to have been delivered if deposited in the United States mail, return receipt requested, with postage prepaid and addressed:

If to Grantors:

Mr. Reed Harris  
16003 E. Bethel Road  
Rochelle, Illinois 61068

With a copy to:

Klein, Stoddard, Buck, & Lewis, LLC  
Attn: Ronald G. Klein, Esq.  
2045 Aberdeen Court, Suite A  
Sycamore, Illinois 60178

If to Grantee:

City of Rochelle  
Attn: City Manager  
420 N. 6<sup>th</sup> Street  
Rochelle, Illinois 61068

With a copy to:

City of Rochelle  
Attn: City Attorney  
420 N. 6<sup>th</sup> Street  
Rochelle, Illinois 61068

and

Peterson, Johnson & Murray – Chicago LLC  
Attn: Dominick Lanzito  
200 West Adams – Ste. 2125  
Chicago, Illinois 60602

**15. General Provisions.**

a. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire agreement of the parties with respect to the subject matter contained herein, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto.

b. Amendment. This Agreement may be amended only by a written instrument executed by all of the parties.

c. No Waiver. No waiver of any provision of this Agreement by any party shall be valid unless in writing, signed by the waiving party. No such waiver shall be deemed or construed as a waiver of any other provision or of any future event, act, or default, whether of the same provision or any other provision.

d. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this Agreement and replaced by a valid provision as close in meaning and intent as the excised provision, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as so replaced.

e. Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns.

f. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

g. Attorneys' Fees. In the event any dispute arises as to this Agreement, and litigation or arbitration proceedings are commenced, the prevailing party shall be entitled to recover from the other party all costs and expenses incurred in connection with such proceedings, including without limitation, reasonable attorneys' fees and costs.

h. Memorandum of Option Agreement. Upon Grantee's request, the parties shall execute a Memorandum of Option Agreement to be recorded among the appropriate land records in which ownership of the Option Property is recorded. The cost of recording said Memorandum shall be borne by Grantee.

i. Grantors to Not Market. Grantors shall not market the Option Property for sale in any manner whatsoever while this Agreement is in effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

{signatures on next page}

GRANTORS:

Reed Harris

Corliss Baer

GRANTEE:

CITY OF ROCHELLE, an Illinois  
municipal corporation

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

JEFF FIEGENSCHUH, City Manager

ATTEST: \_\_\_\_\_

BRUCE MCKINNEY, City Clerk

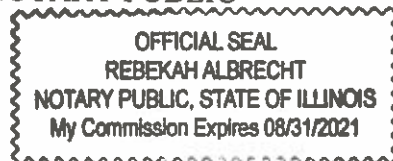
STATE OF ILLINOIS     )  
                                  )SS  
COUNTY OF OGLE     )

I, the undersigned notary public, do hereby certify that REED HARRIS, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument.

Given under my hand and official seal, this 26<sup>th</sup> day of December, ~~2018~~ <sup>2017</sup> RD RWH <sub>CB</sub>

Rebekah Albrecht  
NOTARY PUBLIC

STATE OF ILLINOIS     )  
                                  )SS  
COUNTY OF OGLE     )

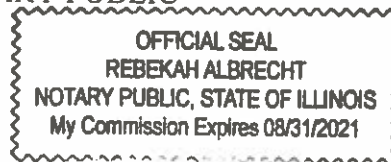


I, the undersigned notary public, do hereby certify that CORLISS BAER, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument.

Given under my hand and official seal, this 26<sup>th</sup> day of December, ~~2018~~ <sup>2017</sup> RD <sub>CB</sub>

Rebekah Albrecht  
NOTARY PUBLIC

STATE OF ILLINOIS     )  
                                  )SS  
COUNTY OF OGLE     )



I, the undersigned notary public, do hereby certify that JEFF FIEGENSCHUG and BRUCE MCKINNEY, the City Manager and City Clerk, respectively of the City of Rochelle, an Illinois municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC