

PURCHASE AGREEMENT

THIS AGREEMENT (“Agreement”), made and entered into this ___ day of _____, 2020 (“Effective Date”), by and between THE OGLE COUNTY CIVIC CENTER AUTHORITY, ILLINOIS, an Illinois municipal corporation (“SELLER”) and the City of Rochelle, an Illinois municipal corporation (“PURCHASER”). SELLER and PURCHASER may be referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, Section 7 of Article VII of the 1970 Constitution of the State of Illinois provides that a municipality that is not a home rule unit shall only have the powers granted to them by law and as such the City of Rochelle, Ogle County, Illinois being a non-home rule unit pursuant to the provisions of said Section 7 of Article VII, and may exercise only the powers expressly granted by law; and

WHEREAS, pursuant to 65 ILCS 5/11-76.1-1 *et seq.*, the City of Rochelle is authorized to purchase certain real property for public purposes; and

WHEREAS, SELLER is the owner of certain real property legally described in Exhibit "A" attached hereto and made a part hereof and commonly known as 1123 N. 7th Street, Rochelle, Illinois 61068, PIN 24-13-377-041-0000 ("Subject Property"); and

WHEREAS, SELLER desires to sell to PURCHASER and PURCHASER desires to purchase from SELLER the Real Property, all improvements thereon, all attachments and all fixtures (collectively “Property”); and

WHEREAS, in order to consummate the sale of the Subject Property to PURCHASER, the Parties desire to enter into this Agreement; and

WHEREAS, the Mayor and City Council of the City of Rochelle have determined that entering into this Agreement towards the purchase of the Subject Property is in the best interest of the City of Rochelle; and

AGREEMENT

It is hereby agreed, by and between the Parties, subject to the terms and conditions hereinafter set forth, as follows:

1. **Recitals.** The above Recitals are incorporated herein by this reference.
2. **Purchase and Sale.** On the terms and conditions set forth herein, SELLER hereby agrees to sell and convey the Subject Property to PURCHASER and PURCHASER hereby agrees to purchase the Subject Property from SELLER at the Closing (as defined hereinafter).
3. **Purchase Price.** In consideration for the conveyance of the Subject Property, PURCHASER hereby agrees to purchase the Subject Property from SELLER for the sum of One Dollar (\$1.00) (“Purchase Price”) to be paid at Closing and assume the following liabilities from SELLER:

- a. SELLER'S Liabilities:
 - 1. City of Rochelle: \$6,600.00
 - 2. Anderson Plumbing: \$3,234.85
 - 3. Fearer, Nye & Chadwick: \$2,500.00

4. Closing. The Parties agree to make all reasonable efforts to close by _____, 2020, provided that all contingencies to close set forth herein have been met, or at any other such time and place as PURCHASER and SELLER shall mutually agree upon (the "Closing"). If PURCHASER wishes to close earlier, PURCHASER shall provide SELLER a written request to close earlier.

5. Due Diligence Period. PURCHASER shall have thirty (30) days from the full execution of this Agreement to conduct, at its sole cost and expense, any of its due diligence ("Due Diligence Period"). PURCHASER shall provide written notice to SELLER that PURCHASER is commencing its due diligence ("Due Diligence Notice").

a. Upon receipt of the Due Diligence Notice, SELLER shall provide PURCHASER with copies of the following, if available to SELLER: (i) existing deed; (ii) existing title insurance policy; (iii) existing survey, (iv) copies of title exception documents of record; (v) existing environmental, engineering and soils reports, (vi) existing engineering and/or wetland reports (if applicable), (vii) copies of existing zoning documentation, (viii) copies of tax bills and assessment history for the previous three (3) years; and (ix) all government notices, permits and licenses.

b. During the Due Diligence Period, PURCHASER shall have unlimited access to the Subject Property for the purpose of making inspections, test borings, soil analysis, and such other tests and surveys thereon as deemed necessary by PURCHASER, including a Phase I and II environmental. PURCHASER shall indemnify, defend, and hold harmless the SELLER, its officials, officers, employees, and agents from any claims or demands that may be made by any third party against the SELLER, its officials, officers, employees, and agents arising out of the access granted hereunder. PURCHASER shall, at its sole cost and expense, restore the Subject Property to its condition existing immediately prior to inspection. If the inspections, surveys, test borings or soil analysis do not show to the PURCHASER's satisfaction that the said Subject Property is suitable for PURCHASER's intended use or indicate, in PURCHASER's sole judgment, that there are hazardous substances present on the Subject Property ("Unacceptable Conditions"), PURCHASER shall notify SELLER of such Unacceptable Conditions prior to the expiration of the Due Diligence Period, and SELLER may, at its sole cost and expense, remedy and/or correct, to the PURCHASER's satisfaction, the Unacceptable Conditions prior to Closing or if SELLER fails to remedy and/or correct the Unacceptable Conditions, PURCHASER shall have the right to terminate this Agreement by written notice to the SELLER and the Deposit shall be refunded to PURCHASER. The indemnity under this subsection 5(b) shall survive any termination of this Agreement and the Closing.

6. Termination.

a. In the event that any of the conditions precedent contained in this Agreement shall not be fulfilled at the time of Closing, either party may terminate this Agreement and the Deposit shall be returned to PURCHASER pursuant to Section 13(e).

b. In the event SELLER fails to remedy and/or correct any Unacceptable Conditions on the Subject Property, PURCHASER shall have the right to terminate this Agreement and the Deposit shall be refunded to PURCHASER pursuant to Section 5(b).

c. In the event of fire, casualty or condemnation, PURCHASER shall have the right to terminate this Agreement pursuant to Section 18.

d. In the event that the sale of the Subject Property fails to close as a result SELLER's breach of its obligations under this Agreement, and such breach has not been cured by SELLER within thirty (30) days after written notice to SELLER by PURCHASER, PURCHASER shall have the right to terminate this Agreement and the Deposit shall be refunded to PURCHASER. In lieu of their termination rights, PURCHASER may seek specific performance of this transaction and damages (including attorneys' fees). PURCHASER's sole remedy in the case of termination of this Agreement shall be the return of the Deposit.

7. Prorations. All water and other utilities charges, and rents, if any, and other similar items with respect to the Subject Property shall be prorated between SELLER and PURCHASER as of the Closing. Real Estate property tax prorations shall be based upon 105% of the last ascertainable tax bill. SELLER shall pay all special assessments levied prior to Closing regardless as to when due.

8. Survey. PURCHASER, shall, at its sole cost and expense, obtain a current boundary survey prepared according to ALTA/ACSM standards within seven (7) business days from the full execution of this Agreement ("Survey"). In the event said survey discloses encroachments, these encroachments shall be insured by the Title Company for PURCHASER and PURCHASER's Lender, if any, at the SELLER's expense.

9. Title Insurance. PURCHASER, at its sole cost and expense, shall furnish not less than ten days (10) prior to the Closing, a title commitment for an owners title insurance policy issued by Kenzley Title Group, Inc., ("Title Company") in the amount of the purchase price providing standard coverage and full extended coverage over all standard and general exceptions ("Permitted Exceptions"). Any endorsement requested by PURCHASER would be at PURCHASER's expense.

10. Title and Survey Objections.

PURCHASER shall have ten (10) business days after receipt of the Title Commitment and the Survey, respectively, in which to object in writing to SELLER to any defect, encumbrance or matter appearing in the title documents or Survey, respectively. Those matters

to which the PURCHASER does not so object shall become Permitted Exceptions. If, within such applicable period, PURCHASER notifies SELLER in writing of an objection to any defect, encumbrance, or matter shown in the Title Commitment or Survey, or if at any time prior to closing PURCHASER notifies SELLER in writing of an objection to any defect, encumbrance, or matter to SELLER's title not set forth in the original Title Commitment or Survey, then SELLER shall have, at its option and without any obligation to do so, ten (10) business days after receipt of such notification of objection in which to cure or remove same to PURCHASER's satisfaction. If SELLER does not do so, then PURCHASER may at any time prior to Closing send SELLER and Title Company written notice terminating this Agreement, whereupon Title Company shall immediately release the Deposit to PURCHASER, and neither PURCHASER nor SELLER shall have any further rights or obligations pursuant to this Agreement; otherwise, PURCHASER shall be deemed to have accepted such matter, encumbrance or defect as a Permitted Exception.

11. Title. SELLER shall convey to PURCHASER the Subject Property transferred hereunder by executing and delivering to PURCHASER a general warranty deed ("Deed"), with release of marital and homestead right, if any, subject only to general taxes not yet due and payable and the Permitted Exceptions.

12. Possession. Possession of the Subject Property shall be delivered to PURCHASER at the time of Closing.

13. Conditions Precedent. This Agreement and the transactions contemplated herein are contingent upon each of the following:

a. Legal Authorization. PURCHASER obtaining, prior to the Closing, evidence satisfactory to SELLER that the Federal, State and local laws, if any, applicable to the Subject Property authorizes the erection, operation and maintenance of the intended structure on the Subject Property.

a. Government Approval. PURCHASER obtaining, prior to Closing, zoning and other necessary Governmental Approvals under applicable Federal, State and local laws ("Government Approvals"). PURCHASER shall, at its expense, prepare and submit all applications and materials required for the purpose of obtaining the Government Approvals. SELLER shall cooperate with PURCHASER with respect to obtaining the Government Approvals.

b. Failure of Conditions Precedent. In the event that any of the conditions precedent contained in this Agreement shall not be fulfilled at the time of Closing, either party PURCHASER may terminate this Agreement and the Deposit shall be returned to PURCHASER.

c. Condition of the Subject Property. Subject to Section 19, that the Subject Property at Closing is in the same condition, reasonable wear and tear excluded, as it is in on the Effective Date.

14. Representations of SELLER. SELLER represents and warrants to PURCHASER, which representations and warranties shall survive the Closing of this Agreement, as follows:

a. SELLER'S Title. SELLER, to the best of SELLER'S knowledge, warrants and represents that SELLER is the owner of the Subject Property, free and clear of all liens, security interests, charges, claims, or encumbrances, restrictions, restrictions, leases, tenancies, licenses, options, except for the Permitted Exceptions. SELLER has complete right, power and authority to enter into this Agreement and to convey title of the Subject Property to PURCHASER at the Closing by general warranty deed and SELLER represents that as of Closing these representations shall be true and correct.

b. Violations of Law. SELLER, to the best of SELLER'S knowledge, warrants and represents that there is not any violation of any law, ordinance, rule or administrative or judicial order affecting the Subject Property that will in any way affect PURCHASER'S use of, or interest in, the Subject Property, nor is there any condemnation, zoning change, or other proceedings or action pending, threatened or contemplated by any governmental body, authority or agency that will in any way affect PURCHASER'S use of, or interest in, the Subject Property.

c. Litigation. SELLER, to the best of SELLER'S knowledge, warrants and represents that there is no litigation pending, threatened or contemplated which will affect the Subject Property in any way including, without limitation, the use, ownership and operation of the Subject Property.

d. Hazardous Substances. To SELLER's Knowledge and without any obligation to investigate or inquire, the Subject Property is not contaminated with any Hazardous Substances. For purposes of this Agreement, "*Hazardous Substances*" means any substance or material which gives rise to liability under any of the Environmental Laws. For purposes of this Agreement, "*Environmental Laws*" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., and all other applicable state, county, municipal, administrative or other environmental, hazardous waste or substance, health and/or safety laws, ordinances, rules, and regulations pertaining to the environmental or ecological conditions on, under or about the Subject Property. To SELLER's knowledge, there are no underground storage tanks on the Subject Property.

d. Agreements. SELLER, to the best of SELLER'S knowledge, represents and warrants that this Agreement will not conflict with, result in a breach of the terms and conditions of, accelerate any provision of, or constitute any default under, any contract or agreement of which SELLER is now or may become a party.

e. Authorization. SELLER warrants and represents that SELLER has complete right, power and authority to enter this Agreement and to perform each of SELLER'S obligations under this Agreement.

15. Representations of the PURCHASER. PURCHASER represents and warrants to SELLER, which representations and warranties shall survive the Closing of this Agreement, as

follows:

a. Authorization. PURCHASER represents and warrants that that it has complete right, power and authority to enter this Agreement and to perform each of its obligations under this Agreement.

b. Litigation. PURCHASER, to the best of PURCHASER'S knowledge, warrants and represents that there is no litigation pending, threatened or contemplated relating to or affecting PURCHASER in which an adverse determination would have a materially adverse effect on the ability of PURCHASER to perform its obligations under this Agreement or consummate the transactions contemplated herein. PURCHASER is not subject to any judgment, order, decree or other governmental restriction specifically applicable to PURCHASER, which would have a materially adverse effect on the consummation of the transactions contemplated herein.

16. Closing Documents. At the time of the Closing, the Title Company shall prepare a Closing Statement which shall be signed by each of the Parties and shall indicate appropriate debits and credits on account of the purchase price, prorations and security as more fully described in this Agreement. The SELLER shall furnish an Affidavit of Title covering the time of closing, subject only to the Permitted Exceptions allowed for under this Agreement and shall sign all customary ALTA forms.

17. Closing Costs. SELLER shall pay for the charges for the owner's title search and title insurance policy, and ALTA survey. Any remaining closing costs shall be paid equally by the Parties. PURCHASER shall pay for the charges for recording the Deed, due diligence studies, environmental reports, or other engineering studies or updates.

18. Fire, Casualty or Condemnation. In the event that, on or prior to the Closing, all or any portion of the Subject Property is destroyed by fire or other casualty or is taken or proposed to be taken through condemnation, PURCHASER may elect, within thirty (30) days after the date of such casualty or condemnation, at its sole option, either to:

(a) Terminate this Agreement, or

(b) Proceed with the Closing of the transactions contemplated by this Agreement, in which case SELLER shall turn over to PURCHASER at the Closing, by certified funds, all insurance proceeds and/or condemnation awards theretofore paid in connection with such casualty and/or taking and shall also assign to PURCHASER, by writing in form and substance reasonably acceptable to PURCHASER, all of SELLER'S right, title and interest in and to all insurance proceeds and/or condemnation awards in connection therewith.

19. Indemnification.

a. PURCHASER shall indemnify, defend and hold harmless SELLER, its officials, officers, employees, and agents from and against any and all loss, costs, damages, injury, expenses, or claims arising out of any breach by or non-performance of PURCHASER of its

obligations, representations, warranties or covenants hereunder. PURCHASER further agrees to pay any reasonable attorneys' fees and expenses incident to the defense by PURCHASER of any such Losses.

b. SELLER shall indemnify, defend, and hold harmless PURCHASER from and against any and all loss, costs, damages, injury, expenses, or claims arising out of any breach by or non-performance of SELLER of its obligations, representations, warranties or covenants hereunder. SELLER further agrees to pay any reasonable attorneys' fees and expenses incident to the defense by SELLER of any such Losses.

20. Entire Agreement. The Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the Parties with respect to such matter, and each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding.

21. Assignment. PURCHASER shall not assign this Agreement or its rights hereunder without the written consent of SELLER, and SELLER shall not assign this Agreement or its rights hereunder without the written consent of PURCHASER.

22. Duplicate Copies. This Agreement may be executed in duplicate, each of which shall be deemed an original.

23. Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served upon any Party hereto by the other Party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the Party to whom it is directed, or in lieu of such personal service, by sending a written copy by United States certified mail-return receipt requested, postage prepaid, e-mail, or express mail (i.e. Federal Express, Purolator, etc.), addressed as follows:

To SELLER at: Ogle County Civic Center Authority

With a Copy to: Fearer, Nye & Chadwick
Attn: Paul E. Chadwick
420 Fourth Avenue
Rochelle, Illinois 61068
paul@fnclaw.com

To PURCHASER at: City of Rochelle
Attn: City Manager, Jeff Fiegenschuh
420 North 6th Street
Rochelle, Illinois 61068
jfiegenschuh@rochelleil.us

With Copy to: Peterson Johnson & Murray, LLC
Attn: Dominick Lanzito
200 W Adams, Suite 2125
Chicago, IL 60606
dlanzito@pjmchicago.com

If notice is given by certified mail or express mail, such notice shall be deemed given upon receipt or refusal of receipt. Either Party may change their address for the purposes of this section by giving written notice of such change to the other Party in the manner provided for in this section.

24. Governing Law. This Agreement shall be construed and interpreted in accordance with the law of the State of Illinois.

25. Inurement. This Agreement shall be binding on, and shall inure to the benefit of, the Parties to it, and their respective heirs, legal representative, successors and assigns.

26. Attorney Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees to and through all appellate proceedings, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

27. Captions. Captions of the Sections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

28. Survival. The warranties and representations made in this Agreement by either Party to the other shall be deemed remade by all Parties as of the Closing, and shall be true and correct at such time. The warranties, representations, indemnifications and other agreements contained in this Agreement shall survive the Closing and shall not merge into the Deed.

29. Venue. The sole and exclusive venues for any lawsuit filed and arising out of this Agreement shall be the Circuit Court of Ogle County, Illinois or the United States District Court, Northern District of Illinois.

30. Confidentiality. To the extent permitted by law, PURCHASER and SELLER shall endeavor to maintain the confidentiality of this Agreement, but SELLER shall be permitted to disclose such information and documents to officials, officers, employees, agents, attorneys and consultants as SELLER in its sole discretion, deems appropriate in order to complete the transaction contemplated by this Agreement and to comply with any and all provisions of the Illinois Open Meetings Act and the Illinois Freedom of Information Act. PURCHASER understands and agrees that the provisions of this Agreement shall be a matter of public record. SELLER shall make all disclosures in the manner and within the time required by law.

[Signature page to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement on the day and year written below.

SELLER:

PURCHASER:

THE OGLE COUNTY CIVIC
CENTER AUTHORITY

CITY OF ROCHELLE

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

LOTS 323, 324, AND 325 IN FRANK DELUGACH'S 87TH STREET HIGHLANDS, BEING A SUBDIVISION OF THE NORTH ½ OF THE NORTHEAST ¼ OF SECTION 5, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

PINs: 24-13-377-041-0000

Common Address: 1123 North 7th Street, Rochelle, Illinois 61068