

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF ROCHELLE, an Illinois municipal corporation ("Seller"), and COMMONWEALTH EDISON COMPANY, an Illinois corporation ("Purchaser"). All initially capitalized terms used in this Agreement which are not otherwise defined in this Agreement shall have the meanings ascribed to such terms as set forth in the Interconnection Agreement (as hereinafter defined).

### **Recitals**

**A.** Seller and Purchaser have entered into that certain Interconnection and Mutual Operating Agreement dated June 9, 2020 (as amended, the "Interconnection Agreement"), pursuant to which, among other things, Seller and Purchaser agreed upon certain terms and conditions relating to the interconnection of Purchaser's electric transmission system with Seller's electric distribution system, all as more particularly described therein.

**B.** Section 5.7 of the Interconnection Agreement provides, in part, that Seller may propose to add additional Points of Interconnection (as defined in the Interconnection Agreement) connecting Seller's electric transmission system with Purchaser's electric distribution system to be governed and addressed by the Interconnection Agreement, and Schedule 5.7 to the Interconnection Agreement provides that, in the event that any such Points of Interconnection are so added, Seller will be responsible for providing to Purchaser the real estate rights required in connection therewith, all as more particularly set forth in the Interconnection Agreement.

**C.** Purchaser and Seller have agreed that an additional Point of Interconnection will be added at a location in the vicinity of the northwest corner of Ritchie Road and Ritchie Court in the City of Rochelle, and the parties contemplate that, in connection therewith, a new electric switchyard of Purchaser (the "Purchaser Switchyard") will be constructed and installed at that location, which Purchaser Switchyard will interconnect to a new electric switchyard being constructed and installed by Seller adjacent thereto. For clarity, the parties acknowledge that the Property shall not include the rights of Seller as grantee under those certain easements (the "Seller Plat Easements") granted to Seller pursuant to that certain Final Plat of Electric Park Subdivision recorded with the Ogle County, Illinois Recorder's Office on September 29, 2020 as document no. 202007316 (the "Plat"), it being acknowledged that Seller's fee simple interest in the portion of the Land that is subject to the Seller Plat Easements shall be conveyed to Purchaser pursuant hereto subject to Seller's rights as holder of the grantee's interest in the Seller Plat Easements.

**D.** Seller and Purchaser have agreed that the land owned by Seller which is legally described on Exhibit A attached hereto and made a part hereof ("Land"), together with all of the improvements and fixtures thereon, and all rights, privileges and appurtenances pertaining thereto (all of the foregoing is collectively referred to as the "Property"), shall constitute the real property upon which the Purchaser Switchyard shall be located.

**E.** Seller and Purchaser desire to enter into this Agreement for the purpose of setting forth their respective rights, duties and obligations with respect to the purchase and sale of the Property, and with respect to certain other transactions related thereto.

**NOW, THEREFORE**, for and in consideration of the premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto agree as follows:

1. **Agreement to Sell and Purchase.** Subject to the terms and conditions contained herein, Seller hereby agrees to sell, transfer and convey the Property to the Purchaser, and Purchaser hereby agrees to purchase and accept the Property from Seller.

2. **Purchase Price.**

(a) The purchase price ("Purchase Price") for the Property shall be the sum of One Hundred Thirty Nine Thousand Three Hundred Eighty-Three and No/100 Dollars (\$139,383.00). The Purchase Price (plus or minus prorations and adjustments as provided herein) shall be payable by Purchaser to Seller by bank wire transfer at the closing of the transactions contemplated by this Agreement ("Closing").

(b) Seller and Purchaser acknowledge that Seller has heretofore obtained an appraisal report dated June 10, 2020 prepared by Currier Appraisal Services, LLC with respect to the Land (and certain other adjacent property), providing that the fair market value of the Land (and such adjacent property) is \$43,557.17 per acre (the "Per Acre Value"). Seller hereby represents to Purchaser that Seller paid the Per Acre Value for the Land (and the adjacent property owned by Seller) in connection with Seller's purchase thereof in 2020. Purchaser and Seller acknowledge that the Purchase Price herein has been calculated on the basis of eighty percent (80%) of the Per Acre Value of the Net Usable Acreage of the Land. For purposes hereof, the "Net Usable Acreage" of the Land means approximately 4.0 acres, such acreage being the difference between: (i) 5.697 acres (such acreage being the total acreage of the Land), minus (ii) 1.697 acres (such acreage being the approximate acreage of the Seller Plat Easements encumbering the Land). Accordingly, the Purchase Price of 139,383.00 is equal to the product (rounded to the nearest whole dollar) of: (x) \$43,557.17 (the Per Acre Value), multiplied by (y) 4.0 (the Net Usable Acreage of the Land), multiplied by (z) 0.8 (eighty percent).

3. **Grant of Easements.** Subject to the terms and provisions hereof, at Closing, Seller shall grant or cause to be granted to Purchaser the following easements: (i) a Drainage Easement in the form of Exhibit B attached hereto and made a part hereof (the "Drainage Easement"), (ii) a Transmission Easement in the form of Exhibit C attached hereto and made a part hereof (the "Progressive Park Transmission Easement") and (iii) an Access and Buffer Easement in the form of Exhibit D attached hereto and made a part hereof (the "Access Easement"). The Drainage Easement, the Progressive Park Transmission Easement and the Access Easement are sometimes collectively referred to herein as the "Easements", and individually as an "Easement". The land on which the Drainage Easement and the Access Easement shall be granted are sometimes collectively referred to herein as the "Seller Easement Property", the land on which the Progressive Park Transmission Easement shall be granted is sometimes referred to herein as the "Progressive Park Easement Property", and the Seller Easement Property and Progressive Park Easement Property are sometimes collectively referred to herein as the "Easement Property".

4. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Purchaser as follows:

(a) Seller is the legal fee simple titleholder of, and has good and marketable title to, the Property, subject only to the exceptions to title listed on Exhibit E attached hereto and made a part hereof (the "Permitted Property Exceptions"). Seller is the legal fee simple titleholder of, and has good and marketable title to, the Seller Easement Property, subject only to the exceptions to title

listed on Exhibit F attached hereto and made a part hereof (the “Permitted Easement Exceptions”). On or before the date of the Closing, Seller, at its sole cost and expense, will have obtained any required consents, releases and permissions, and will have performed any other obligations contemplated by applicable statutes, laws, ordinances and regulations of every kind and nature, to the extent necessary in order to comply with its obligations under this Agreement. Seller’s performance of its obligations under this Agreement will not violate or result in a breach of any agreement, document or instrument which is binding upon Seller or any of its assets.

(b) Intentionally omitted.

(c) Neither the terms of this Agreement nor anything provided to be done hereunder, including, but not limited to, the conveyance and transfer of the Property or the grant of the Easements, will violate any contract, agreement or instrument to which Seller is a party or which affects the Property or the Easement Property.

(d) Seller is not in breach, violation or default of any of its obligations or liabilities pertaining to the Property or Seller Easement Property. To Seller’s knowledge, Progressive Park is not in breach, violation or default of any of its obligations or liabilities pertaining to the Progressive Park Easement Property.

(e) There is no litigation or proceeding, including, but not limited to, proceedings involving any tenant, building code proceedings, condemnation proceedings or proceedings alleging the violation of any environmental, health or safety law, rule or regulation, pending or to Seller’s knowledge threatened, by third parties which affects the Property or the Easement Property.

(f) All zoning, subdivision, plat, and access licenses, permits, certificates and approvals which are required from applicable governmental authorities to permit Purchaser to lawfully use the Property for the purposes contemplated by the Interconnection Agreement have been obtained and all conditions required to give full force and effect to such permits, certificates and approvals have been satisfied. The Property consists of a legally subdivided lot for purposes of the Illinois Plat Act and any other applicable laws, rules, ordinances and regulations governing the subdivision of real estate.

(g) All zoning, subdivision, plat, and access licenses, permits, certificates and approvals which are required from applicable governmental authorities to permit Purchaser to lawfully use the Easement Property for the purposes contemplated by the Easements have been obtained and all conditions required to give full force and effect to such permits, certificates and approvals have been satisfied. The current uses of, and structures on, the Easement Property are permitted under applicable zoning laws as conforming uses and structures without requirement of variance or special or conditional use permit.

(h) Seller has received no notice and has no knowledge of any violation of any law, ordinance, order regulation or requirement, including building, zoning, environmental, safety and health ordinances, statutes, regulations, and requirements issued by any Governmental Authority or agency having jurisdiction over the Property or Easement Property. Seller has not violated any condition or agreement of record which affects or relates to the Property or Seller Easement Property, and, to the knowledge of Seller, no other party has violated any such condition or agreement of record. To Seller’s knowledge, Progressive Park has not violated any condition or agreement of record which affects or relates to the Progressive Park Easement Property, and, to the knowledge of Seller, no other party has violated any such condition or agreement of record.

(i) The execution and delivery of this Agreement by the signatories hereto on behalf of Seller, and the performance of this Agreement by Seller, have been duly authorized, and this Agreement is binding on Seller and enforceable against Seller in accordance with its terms.

(j) Access for any utilities required for the operation of the Property for the purposes contemplated by the Interconnection Agreement are available to the Property through valid easements or rights of way and all installation and connection charges therefore have been fully paid. All storm water and other drainage flowing from the Property drains through the Easement Property covered by the Drainage Easement and into a detention pond located on "Outlot D" described in the Declaration (as hereinafter defined) (the "Detention Pond"). All licenses, permits, certificates and approvals which are required from applicable governmental authorities to permit such water and drainage to flow through the Drainage Easement Area into the Detention Pond have been obtained and are in full force and effect, and all conditions required to give full force and effect to such permits, certificates and approvals have been satisfied.

(k) There are no pending, or to Seller's knowledge threatened, condemnation suits or proceedings affecting the Property or Easement Property. There are no special assessments of any kind levied against the Property or Easement Property, or any portion of either, which shall be outstanding or unpaid as of the Closing.

(l) There are no contracts, agreements options to purchase, rights of first refusal, executory sales contracts (other than this Agreement), leases, tenancies, licenses, or options affecting the Property or the Seller Easement Property, other than the Permitted Property Exceptions (in the case of the Property) and the Permitted Easement Exceptions (in the case of the Seller Easement Property).

(m) Seller's operations relating to the Property and Seller Easement Property have complied with all applicable federal, state and local environmental, health and safety laws, rules and regulations. To Seller's knowledge, Progressive Park's operations relating to the Progressive Park Easement Property have complied in all respects with all applicable federal, state and local environmental, health and safety laws, rules and regulations. To the best of Seller's knowledge, neither the Property, nor the Easement Property is the subject of any investigation by any governmental authority investigating whether remedial action is needed to respond to a release or threatened release of any waste, pollutant, hazardous or toxic substance or waste, special waste, polychlorinated biphenyls, asbestos or asbestos containing materials, petroleum, petroleum-based substance or waste, product or by-product, or any constituent of any such substance, waste or product (collectively, "Contaminant") into the indoor or outdoor environment. Neither Seller nor, to Seller's knowledge, Progressive Park, has filed any notice under any federal or state law indicating past or present treatment, storage or disposal of any Contaminant on the Property or Easement Property, or into the indoor or outdoor environment of the Property or Easement Property. Seller has not received any notice to the effect that Seller or Progressive Park may be liable as a result of a release or threatened release of a Contaminant from the Property or Easement Property, and neither Seller nor to Seller's knowledge Progressive Park, has any contingent liability in connection with any such release or threatened release.

(n) There is no lien, encumbrance or preferential arrangement of any kind in favor of any governmental entity for: (i) any liability under federal, state or local environmental laws, rules or regulations; or (ii) damages arising from, or costs incurred by such governmental entity in response to, a release or threatened release of a Contaminant from the Property or Easement Property into the indoor or outdoor environment.

(o) There are no known Contaminants in or on the Property or Seller Easement Property. To Seller's knowledge, there are no known Contaminants in or on the Progressive Park Easement Property.

(p) All of the real estate taxes for the Property and Easement Property for the year 2019 (payable in 2020) and prior years have been paid in full and are not subject to any reassessment, contest, protest, certificate of error or other proceedings. To Seller's knowledge, there is no pending reassessment, and no notice has been received by Seller of a threatened reassessment, of all or any portion of the Property.

(q) The Property will have direct vehicular access to and from publicly dedicated streets via the Access Easement and pursuant to one or more valid curb cut and/or driveway permits.

(r) All written information, including, but not limited to, all documents, plans and specifications, reports and studies, furnished by Seller or its agents to Purchaser or its agents with respect to the Property and Easement Property, is, to Seller's knowledge, true, complete and accurate in all material respects.

All of the foregoing representations and warranties shall be deemed to be remade as of the Closing Date (as hereinafter defined). Seller shall defend (with counsel reasonably acceptable to Purchaser), indemnify, save and hold harmless Purchaser, its parents, subsidiaries and affiliates, and each of their respective officers, directors, members, managers, partners, agents, representatives and employees (collectively, "Purchaser Indemnitees") from and against any and all claims, demands, causes of action, proceedings and/or suits that may be brought against Purchaser or any other Purchaser Indemnitee, and any and all losses, costs, damages, expenses and/or liabilities incurred, paid or sustained by Purchaser or any other Purchaser Indemnitee (including, but not limited to, reasonable attorneys' fees and expenses and court costs), resulting from, arising out of or caused by:

(i) the breach of any representation, warranty, agreement or covenant of Seller set forth in this Agreement or in any document or instrument executed by Seller in connection with this Agreement; and/or

(ii) the presence of any Contaminant located in or on the Property or Easement Property prior to Closing, the release or threatened release of any Contaminant into the indoor or outdoor environment at or on the Property or Easement Property prior to Closing, and/or the off-site migration of any Contaminant located in or on the Property or Easement Property prior to Closing.

The representations, warranties and indemnities set forth in this Section 4 shall survive the Closing indefinitely.

5. **Title and Survey.** Prior to the Closing Date (as hereinafter defined), Seller, at its cost, shall furnish Purchaser with a title commitment ("Title Commitment") issued by Chicago Title Insurance Company (Kenzley Title as issuing agent) ("Title Company") with respect to the Property and the Easement Property, in an amount of insurance equal to the Purchase Price, together with copies of all documents of record referenced therein, and a current as-built ALTA survey ("Survey"), of the land and improvements that make up the Property, and showing the Easement Property. The Title Commitment shall show title to the Property and Seller Easement Property being in Seller, subject only to the Permitted Property Exceptions and Permitted Easement Exceptions (respectively), and the Progressive Park Easement Property being in Progressive Park. The Title Commitment shall include the following endorsements: (i) access endorsement insuring free vehicular and pedestrian access to and from publicly dedicated streets via the

Access Easement, (ii) zoning 3.2 endorsement, (iii) subdivision endorsement, (iv) contiguity endorsements (between (1) the Property and the Easement Property covered by the Progressive Park Transmission Easement, the Drainage Easement and the Access Easement, and (2) the Easement Area covered by the Drainage Easement and the drainage easement benefitting the Property as to Outlot "D" under the Declaration (as hereinafter defined)), (v) owner's comprehensive endorsement, (vi) legal description same-as-survey endorsement, and (vii) tax parcel endorsement. The Survey shall be certified to Purchaser and the Title Company, shall contain a legal description of the land that makes up the Property and the Easement Property, and shall contain such optional Table A items as Purchaser may request. The Survey will identify all corners of the land as being staked, the location of all improvements on the land (if any) and all encumbrances of record. The Survey shall confirm that the Property is free of encroachments and that no portion of the land is located within a wetland or flood plain according to National Wetland Inventory Maps. At Closing, Seller, at its cost, shall furnish Purchaser with an ALTA owner's title policy ("Title Policy") issued pursuant to the Title Commitment in the amount of \$4,000,000; however, Seller shall only be required to pay for the Title Insurance in the amount of the Purchase Price set forth herein. The Title Policy shall show title to the Property being in Purchaser's name subject only to Permitted Property Exceptions, and identify Purchaser as the holder of the easements created pursuant to the Easements, subject (in the case of the Seller Easements) only to Permitted Easement Exceptions, and shall include extended coverage over the standard exceptions and the other endorsements required hereunder.

6. **Closing.** The Closing shall occur on the date of this Agreement (the "Closing Date"), at the offices of the Title Company, 119 South 4th Street, Oregon, Illinois, and shall be accomplished through a customary "New York Style" closing escrow, the cost of which shall be paid by Seller.

(a) Seller shall, at the Closing, at its sole cost and expense, deliver or cause to be delivered to Purchaser (through the escrow described above) the following, in form and substance acceptable to Purchaser:

(1) Duly executed and acknowledged Special Warranty Deed in recordable form ("Deed") conveying the Property to Purchaser, subject only to the Permitted Property Exceptions;

(2) Progressive Park Transmission Easement, duly executed by Progressive Park;

(3) the Title Policy (which may be in the form of a marked-up title commitment dated down to the date of recording of the Deed), together with all releases, subordination agreements (if any), ALTA statements, gap undertakings and other certificates, affidavits, documents or payments required by the Title Company to issue the Title Policy;

(4) Copies of all certificates, permits, licenses and approvals in Seller's possession, if any, from all Governmental Authorities which are necessary to permit construction, access to and use and operation of the Property for the purposes set forth in the Interconnection Agreement, and to permit construction, access to and use and operation of the Easement Property for the purposes set forth in the Easements;

(5) Copies of all plans, specifications, operating manuals, warranty materials and other documents in Seller's possession regarding the ownership, use or operation of the Property;

(6) Duly executed non-foreign transferor's affidavit (FIRPTA) sufficient in form and substance to relieve Purchaser from any withholding obligations under Section 1445 of the Internal Revenue Code; and

(7) Any other documents that may be required to convey the Property or to grant the Easements to Purchaser in accordance with this Agreement and all applicable laws.

(b) Purchaser shall, at the Closing, at its sole cost and expense, deliver or cause to be delivered to Seller (through the escrow described above) the following:

(1) The Purchase Price, plus or minus prorations as provided herein; and

(2) The Progressive Park Transmission Easement, duly executed by Purchaser.

(c) Each party shall, at or prior to the Closing, deliver to the other party the following documents:

(1) The Drainage Easement duly executed by such party;

(2) The Access Easement duly executed by such party;

(3) A Closing Statement setting forth the adjustments and prorations provided for in this Agreement in form reasonably satisfactory to the parties; and

(4) State of Illinois and (if applicable) county and municipality transfer and transaction tax declarations.

(d) Seller shall deliver possession of the Property to Purchaser at Closing free and clear of any title exceptions, licenses, tenancies or other use or possessory rights of third parties, other than Permitted Property Exceptions. Seller shall deliver (or cause to be delivered) the Easement Property for the purposes set forth in the Easements to Purchaser at Closing, free and clear of any title exceptions, licenses, tenancies or other use or possessory rights of third parties, other than the Permitted Easement Exceptions.

7. **Prorations, Adjustments and Expenses.**

(a) Seller shall pay for all transfer taxes and any costs imposed by platting, zoning, subdivision or other requirements of law related to the conveyance of the Property and Easements, all escrow charges imposed by the Title Company, all costs of recording the Deed and Easements, and all premiums and other charges related to the issuance of the title commitments and title policies specified herein.

(b) All real estate taxes and other items of income and expense relating to the Property (if any) shall be prorated between the parties as of 12:01 a.m. on the Closing Date.

8. **Title Matters, Permitting Matters**

(a) Declaration Amendment and Estoppel. Reference is made to that certain Declaration of Covenants, Restrictions and Rights dated January 9, 2009 made by Prologis Land LLC, and recorded with the Ogle County, Illinois Recorder's Office on April 16, 2009 as Document

no. 200900904505, as amended (the “Declaration”). No later than the Closing Date, Seller shall deliver to Purchaser, or cause to be delivered to Purchaser: (i) a Parcels Agreement duly executed by the current Declarant (as defined in the Declaration) thereunder, in form and substance acceptable to Purchaser, and (ii) a statement from the Declarant as to the amount of any assessments due under the Declaration with respect to the Property, in form and substance reasonably acceptable to Purchaser.

(b) Consent and Acknowledgment Under Plat. No later than the Closing Date, Seller shall deliver to Purchaser a consent and acknowledgment relating to the easements created by the Plat, duly executed by Seller, in form and substance acceptable to Purchaser.

(c) Permitting Matters. Purchaser and Seller acknowledge that, pursuant to Schedule 5.7 to the Interconnection Agreement, Seller is responsible all permitting associated with the Purchaser Switchyard and transmission and fiber facilities to be installed in connection therewith. Without in any way limiting the foregoing (or the terms of the Interconnection Agreement), Seller hereby agrees that it will obtain, after the Closing Date, the permits and approvals from the Illinois State Toll Highway Authority required in order to allow Purchaser’s fiber optic cable lines, wires and conduit to cross the I-88 Illinois Tollway, so long as Purchaser provides all information necessary to obtain such permits.

9. Default. In the event of a default by either party under the terms and provisions of this Agreement, the non-defaulting party shall be entitled to enforce any and all rights and remedies to which it may be entitled under this Agreement, at law or in equity.

10. Notices. Whenever notice is required or permitted to be given pursuant to this Agreement, the same shall be in writing, and either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, sent via United States certified mail, return receipt requested, postage prepaid, or sent via email, and shall be addressed to the parties at their respective addresses as follows:

If to Purchaser:

Commonwealth Edison Company  
Three Lincoln Centre  
Oakbrook Terrace, IL 60181  
Attn: Director of Real Estate Services  
Email: mark.primm@ComEd.com

with a copy to:

Exelon Business Services Company  
Law Department  
10 South Dearborn Street  
Chicago, IL 60603  
Attn: Corporate and Commercial – Assistant General Counsel  
Email: [Mindy.Kurlansky@exeloncorp.com](mailto:Mindy.Kurlansky@exeloncorp.com)

If to Seller:

City of Rochelle  
420 N. 6<sup>th</sup> Street

Rochelle, IL 61068  
Attn: Jeff Fiegenschuh, City Manager  
Email: jfiegenschuh@rochelleil.us

with a copy to:

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

or at such other addresses as any party, by written notice in the manner specified above to the other party hereto, may designate from time to time. Unless otherwise specified to the contrary in this Agreement, all notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

11. **Assignment.** Neither party shall assign its interests in this Agreement without the prior written consent of the other party in each instance, which consent shall not be unreasonably withheld.

12. **Brokers.** Each party represents and warrants to the other that it has dealt with no broker, finder or similar person or entity in connection with the sale of the Property. Each party shall indemnify, defend (with counsel reasonably acceptable to the other party) and hold the other party harmless from and against any and all claims and losses brought against, sustained or incurred by the non-representing party by reason of the representing party's breach of the foregoing representation and warranty.

13. **Waiver of Jury Trial.** Seller and Purchaser, by this Section, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Agreement against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of Seller and Purchaser, Purchaser's use or occupancy of the Property, or any other claims, and any emergency statutory or any other statutory remedy.

14. **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

15. **Binding Effect.** The covenants, conditions, and agreements contained in this Agreement will bind and inure to the benefit of Seller and Purchaser and their respective heirs, distributees, executors, administrators, successors and permitted assigns. In the event that Seller is comprised of more than one individual or entity, the obligations of such individuals or entities under this Agreement shall be joint and several.

16. **Entire Agreement; No Amendment of Interconnection Agreement.** This Agreement, the exhibits and addenda, if any, together with the Interconnection Agreement, contain the entire agreement between Seller and Purchaser regarding the subject matter hereof. Notwithstanding the foregoing, this Agreement shall not be deemed to amend, modify, supersede or otherwise affect the Interconnection Agreement, which the parties acknowledge remains in full force and effect.

17. **Further Assurances.** Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Agreement.

18. **No Waiver.** The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

19. **No Oral Change.** This Agreement cannot be changed orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to waive, change, modify or discharge it in whole or in part unless the same is in writing and is signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

20. **No Third Party Beneficiaries.** Seller and Purchaser agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Agreement nor any of the rights and privileges conferred herein.

21. **Severability.** If any term, provision or condition in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22. **Governing Law.** The terms and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

23. **Fees Paid by Breaching Party.** Upon the occurrence of any breach of this Agreement by either party, the breaching party shall be liable for and shall reimburse the non-breaching party upon demand for all reasonable attorney's fees and costs incurred by the non-breaching party in enforcing the breaching party's obligations under this Agreement, whether or not the non-breaching party files legal proceedings in connection therewith.

24. **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits hereto.

25. **Counterparts; Execution.** This Agreement may be executed by the parties in counterparts. Each such counterpart shall be deemed an original and all such counterparts, taken together, shall constitute one and the same agreement. This Agreement may be executed via facsimile or emailed .pdf file, and facsimile or emailed .pdf copies of any party's signature hereto shall be deemed to constitute an original.

26. **No Partnership.** None of the terms and provisions of this Agreement shall be deemed to create a partnership between or among the parties hereto in their respective businesses or otherwise, nor shall any terms or provisions of this Agreement cause them to be considered joint venturers or members of any joint enterprise.

27. **Non-Affiliated.** By signing this Agreement, Seller affirms and states that it is not an employee of Commonwealth Edison Company, Exelon Corporation, or their respective parents, subsidiaries and affiliates, nor has any affiliated interest in the Commonwealth Edison Company or Exelon Corporation, and their respective parents, subsidiaries and affiliates.

28. **Time is of the Essence.** Time is of the essence of each and every provision of this Agreement.

*[Signatures on next page(s)]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

PURCHASER:

COMMONWEALTH EDISON COMPANY,  
an Illinois corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

SELLER:

THE CITY OF ROCHELLE,  
an Illinois municipal corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit A**  
**Legal Description of the Property**

[TO BE INSERTED]

**Exhibit B**  
**Drainage Easement**

See attached.

**Exhibit C**  
**Progressive Park Transmission Easement**

See attached.

**Exhibit D**  
**Access Easement**

See attached.

**Exhibit E**  
**Permitted Property Exceptions**

[TO BE INSERTED]

**Exhibit F**  
**Permitted Easement Exceptions**

[TO BE INSERTED]