

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (“Agreement”) is entered into between the Greater Rochelle Economic Development Corporation (“Seller”), an Illinois Not-for-Profit Corporation, of 420 N. 6th Street, Rochelle, Illinois 61068 and the City of Rochelle, an Illinois municipal corporation, of 420 N. 6th Street, Rochelle, Illinois 61068 (“Purchaser”).

In consideration of and in reliance upon the mutual covenants and agreements set forth below, the parties to this Agreement agree as follows:

1. **Agreement.** Seller agrees to sell and, subject to the terms, conditions, and contingencies set forth herein, Purchaser agrees to purchase the Subject Property defined herein.
2. **Subject Property.** The property that is the subject of this Agreement (“Subject Property”) consists of part of the following two (2) parcels: (1) part of 06-05-100-005 and (2) part of 06-05-300-005.
3. **Purchase Price and Payment(s).** The purchase price for the Subject Property (“Purchase Price”) shall be Seven Hundred Four Thousand Five Hundred Ninety-Five Dollars and 00/100 (\$704,595.00) and shall be paid at the time of closing by wire-transfer to the title company serving as the closing agent.

In addition, Purchaser shall also pay a sum of Five Thousand Four Hundred Seventy Dollars and 58/100 (\$5,470.58) to cover Seller’s obligation of the semi-annual accrued interest and late charges due and owing to Holcomb Bank (“Payoff”). Said Payoff period shall extend through October 1, 2018.

4. **Closing.** The Closing of the transaction contemplated in this Agreement (“Closing”) shall take place at the Rochelle, Illinois, office of Kenzley Title Group, Inc., on ____ __, 2018 (“Closing Date”), provided that, at Purchaser’s sole discretion, Purchaser has completed its Due Diligence and Examination or has waived the right to do so. At the Closing, Seller and Purchaser shall execute and deliver to each other and the title insurer such items as may be reasonably requested by the other or the title insurer to consummate the Closing, including but not limited, to the execution of all necessary forms from the title insurer to effectuate Closing, including without limitation, a GAP Undertaking, utility letters to obtain extended coverage, an Extended Coverage Affidavit, and an ALTA Statement. Seller shall also deliver to Purchaser at Closing an Affidavit of Title in customary form.
5. **Possession.** At the time of Closing, Seller shall provide Purchaser with possession of the Subject Property.
6. **Conveyance.** At the time of Closing, Seller shall transfer to Purchaser all of Seller’s right, title, and interest in and to all of the Subject Property, including all improvements, appurtenances, hereditaments, mineral rights, and other rights that pertain to the Subject Property by delivering to Purchaser at Closing a fully executed, recordable, stamped

Warranty Deed in form and substance satisfactory to counsel for Purchaser, subject only to the Permitted Exceptions defined below.

7. **Title.**

- a. **Title.** Within ten (10) days from the execution of this Agreement, Seller shall obtain at Purchaser's sole cost and expense, a current title commitment from Kenzley Title Group, Inc., serving as agent for Chicago Title Insurance Company for the latest ALTA Form Policy for the Subject Property in the amount of the Purchase Price ("Title Commitment"), together with copies of all documents referred to therein ("Title Documents").
- b. **Title Policy.** This Agreement is contingent upon Purchaser obtaining at the Closing, at Purchaser's sole cost and expense, an ALTA Owner's Title Policy without Purchaser being required to pay any rates, execute or fund any indemnities, or to obtain any special endorsements other than those endorsements specified in paragraph 7.a and any other endorsements requested by Purchaser (the "Title Policy"). The Title Policy shall include a standard form extended coverage endorsement over all general exceptions on terms acceptable to Purchaser.
- c. **Title Charges.** Notwithstanding anything herein to the contrary, Purchaser shall be responsible for paying the Owner's Title Policy Premium, the Title Company's search and examination fee, fees and costs attributable to clearing objections to title, Seller's closing protection letter, the Title Company's closing fee if Purchaser has no mortgage financing of the Subject Property (or none of the Title Company's closing fee if mortgage financing is involved), and the Illinois policy registration fee.
- d. **Seller Not to Provide a Survey.** While the Purchaser may obtain a Plat of Survey at its expense, the Seller will not be responsible for providing a survey of the Subject Property unless Seller has a prior survey, in which case Seller will provide a copy to Purchaser within ten (10) days from the execution of this Agreement.

8. **Real Estate Taxes.** Purchaser will be responsible for real estate taxes assessed and due and payable following the Closing.

9. **Seller's Representations.** Seller hereby covenants, represents, and warrants to Purchaser as follows:

- a. The Subject Property will be part of the Rochelle Railroad Right-of-Way. Seller agrees to work in good faith to accommodate Purchaser in conveying the Subject Property.
- b. The Subject Property is within the City of Rochelle's corporate limits.
- c. The Subject Property is serviced by City of Rochelle potable water, sanitary sewer, storm water system, and by electrical service, and NICOR natural gas.

- d. Seller has the authority and legal right to make, deliver, and perform this Agreement, and has taken all necessary actions and obtained all required consents and approvals to authorize the execution, delivery and performance of this Agreement.
- e. To the best of Seller's knowledge, the execution, deliver and performance of this Agreement is not prohibited by any requirement of law nor under any contractual obligation of Seller, will not result in a breach or default under any agreement to which Seller is a part or is bound and will not violate any restriction, court order or agreement to which Seller is subject.
- f. Seller has received no written notice of any pending or threatened litigation nor proceedings (including eminent domain or similar proceedings), with respect to the use, condition, or operation of the Subject Property, and has not received any notice respecting any proposed change to the Subject Property's zoning or land use planning classification.
- g. Seller has no knowledge of and has received no written notice of any violations of laws or claims with respect to any environmental condition of the Subject Property, which have not been heretofore fully disclosed to Purchaser in writing or cured.
- h. Seller has no knowledge of the past or present presence in, on, or under the Subject Property of any material or substance defined as a "hazardous waste" under the federal Resource Conservation and Recovery Act of 1976 ("RCRA"), as a "hazardous substance" under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), asbestos, nor any underground storage tanks.
- i. During the period from the Execution Date to, and including, the Closing Date, Seller shall not, without the prior consent of Purchaser in each instance, (i) transfer or alienate any interest in the Subject Property, (ii) enter into any lease, easement, contract, concession agreement, license agreement, or other agreement (whether oral or written) relating to the Subject Property, (iii) modify any of the Leases or agreements, or (iv) otherwise encumber or pledge the Subject Property.
- j. Seller has received no written notice of any pending, threatened, or contemplated special assessments, special taxing districts, special service areas, or other special taxes which would affect the Subject Property, including, without limitation, any pending, threatened, or contemplated increases of any currently existing special assessments nor special taxes.

The representations and warranties set forth in this Paragraph 10 shall be true and correct at the time of Closing as well as on the Execution Date. Seller shall promptly notify Purchaser in writing in the event Seller has actual knowledge that any covenant, representation, or warranty of Seller set forth above is not true and correct.

11. **Conditions Precedent to Closing.** Notwithstanding anything herein to the contrary contained in this Agreement, Purchaser shall not be obligated to close hereunder unless:
- a. Seller, at Purchaser's sole cost and expense, shall provide Purchaser or its designee the Title Policy consistent with the Title Commitment required under the terms of this Agreement from the Title Company on the Closing Date;
 - b. There is no material change in the condition of the Subject Property, including any dumping of refuse or environmental contamination after the inspection of the Subject Property by Purchaser during the Due Diligence Period;
 - c. There exists no material breach of any of Seller's covenants, representations, warranties, or obligations contained herein;
 - d. The other material conditions to Purchaser's obligation to proceed to Closing expressly set forth herein shall be and remain satisfied;
 - e. The Purchaser's Examinations and Approvals shall remain satisfied as of the Closing Date;

In the event that any one or more of the foregoing contingencies shall not be satisfied or met by the Closing Date, Purchaser, at its option, may waive the satisfaction thereof or terminate this Agreement without liability to Seller.

12. **Remedies.**

- a. In the event Purchaser fails to comply with any or all of the obligations, covenants, warranties, or agreements to be performed, honored, or observed by Purchaser under and pursuant to the terms and provisions of this Agreement, and such default is not cured within fourteen (14) days after Purchaser's receipt of written notice thereof (other than Purchaser's failure to tender the Purchase Price on the date of Closing, a default for which no notice is required), then Seller may terminate this Agreement. The remedy set forth in this subparagraph a. shall be the sole and exclusive remedy of Seller in the event Purchaser shall be in default hereunder.
- b. In the event Seller fails to comply with any or all of the obligations, covenants, warranties, or agreements to be performed, honored, or observed by Seller under and pursuant to the terms and provisions of this Agreement, and such default is not cured within fourteen (14) days after Seller's receipt of written notice thereof, then Purchaser may: (i) terminate this Agreement and both parties shall be released from any further liability hereunder, or (ii) bring an action for specified performance against Seller to enforce the terms of this Agreement. The remedies set forth in this Subparagraph b. shall be the sole and exclusive remedies of Purchaser in the event Seller shall be in default hereunder.
- c. The failure of either part to act upon a default of the other in any of the terms,

conditions, or obligations under this Agreement shall not be deemed a waiver of any subsequent breach or default under the terms, conditions, or obligations hereof by such defaulting party.

13. **Notices.**

Any notice required or desired to be given under this Agreement shall be in writing and (i) personally served, (ii) given by certified mail, return receipt requested, (iii) given by overnight express delivery, or (iv) given by electronic transmittal transmission, with any such electronic transmittal transmission confirmed by next business day overnight delivery or messenger delivery. Any notice shall be addressed to the party to receive such notice at the following address or at such other address as the party may from time to time direct in writing or give by electronic transmittal at the electronic transmittal telephone number listed below:

Seller: Greater Rochelle Economic Development Corporation
Richard Ohlinger, President
City of Rochelle
420 N. 6th Street
Rochelle, Illinois 61068

With copy to: Dominick Lanzito
Peterson, Johnson & Murray-Chicago, LLC
200 W. Adams Street, Suite 2125
Chicago, Illinois 60606
(312) 724-8035
E-mail: dlanzito@pjmchicago.com

Purchaser: Jeff Fiegenschuh, City Manager
City of Rochelle
420 N. 6th Street
Rochelle, Illinois 61068

With copy to: Dominick Lanzito
Peterson, Johnson & Murray-Chicago LLC
200 W. Adams Street, Suite 2125
Chicago, Illinois 60606
(312) 724-8035
E-mail: dlanzito@pjmchicago.com

14. **Non-Foreign Affidavit.** Seller is not a foreign entity and withholding of federal income tax from the amount realized will not be made by Purchaser. At Closing, Seller shall deliver to Purchaser a Non-Foreign Affidavit and Certification prepared in conformance with IRS regulations.

15. **No Broker.** Each of Seller and Purchaser represents that neither has retained any broker with respect to this transaction.

16. **Miscellaneous Provisions.**

- a. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- b. **Entire Agreement.** All understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely express their agreement. Neither party is relying upon any statement or representation not embodied in this Agreement, made by the other. This Agreement may not be changed except by an instrument in writing signed by both parties.
- c. **Attorneys' Fees.** If either party obtains a judgment against the other party by reason of a breach of this Agreement, reasonable attorneys' fees as fixed by the court shall be included in such judgment.
- d. **Costs.** Purchaser shall bear the fees and costs of its Due Diligence, recording the trustee's deed, and its own attorneys' fees. Seller shall be responsible for paying all costs and fees payable to the Title Company, the transfer tax, any other recording fees, lien release fees, and its own attorneys' fees.
- e. **Assignment.** Purchaser may assign its right, title, interest, or obligations under this Agreement without Seller's prior written consent.
- f. **Severability.** If any term, clause or provision of this Agreement is held to be illegal, invalid, or unenforceable, or the application thereof to any person or circumstance, shall to any extent be illegal or unenforceable under present or future laws effective during the term hereof or of any provisions hereof which survive Closing, then and in any such event, it is the express intention of Seller and Purchaser that the remainder of this Agreement, or the application of such term, clause or provision other than to those as to which it is held illegal, invalid, or unenforceable, shall not be affected thereby, and each term, clause, or provision of this Agreement and the application thereof shall be legal, valid, and enforceable to the fullest extent permitted by law.

17. **Execution in Multiple Counterparts and by Electronic transmittal.** This Agreement may be executed using counterparts and shall be fully effective and enforceable upon exchange of such executed counterparts by electronic transmittal. Immediately following the exchange of executed counterparts by electronic transmittal, the parties shall transmit signed original counterparts to each other, but the failure of either party to comply with this requirement shall not render this Agreement void or otherwise unenforceable.

18. **Execution Date.** As used herein, the "Execution Date" shall be deemed to be the _____ day of _____, 2018.

[Signatures on page to follow]

In witness whereof, the parties hereto have executed this Agreement as of the Execution Date.

Seller:

Purchaser:

CITY OF ROCHELLE, an Illinois municipality

GREATER ROCHELLE ECONOMIC DEVELOPMENT CORPORATION, an Illinois limited liability company

By: _____
Jeff Fiegenschuh, City Manager

By: _____
Richard Ohlinger, President

Dated this _____ day of _____, 2018.

Dated this _____ day of _____, 2018.

Prepared by:

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