

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this “Agreement”) is made and entered into this _____ day of December, 2019, by and between **PROGRESSIVE PARK ROCHELLE, LLC**, an Illinois limited liability company (“Seller”), and **CITY OF ROCHELLE**, an Illinois municipal corporation (“Purchaser”).

WHEREAS, Seller owns the 16.53 acre parcel of real estate identified as PIN 25-32-201-002, which real estate is legally described on Exhibit A attached hereto and incorporated herein (the “Real Estate”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **SALE.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, for the Purchase Price (as hereafter defined) and on the terms and conditions set forth in this Agreement, the Real Estate, together with all rights, easements, interests and duties and obligations appurtenant thereto including, but not limited to, rights in any easements, streets or other public ways adjacent to the Real Estate.

2. **PURCHASE PRICE.** The purchase price to be paid to Seller by Purchaser for the Real Estate shall be SEVEN HUNDRED TWENTY THOUSAND FORTY-SIX AND 00/100 DOLLARS (\$720,046.00) (the “Purchase Price”). The Purchase Price shall be paid on the date of Closing (as hereafter defined).

3. **CLOSING.** The purchase and sale transaction contemplated in this Agreement shall be consummated at closing (“Closing”) to take place at the offices of the Title Company on or before fifteen (15) days following expiration or waiver of the Due Diligence Period (as hereafter defined) or at such other time as may be mutually agreed in writing. Possession of the Real Estate shall be given to Purchaser at Closing.

4. **BROKERAGE.** Seller and Purchaser represent and warrant to each other that neither Seller nor Purchaser has dealt with any broker with respect to the transaction contemplated by this Agreement.

5. **AS-IS SALE AND DUE DILIGENCE PERIOD.**

(a) Except as otherwise specifically set forth in this Agreement, Seller makes no warranty, express or implied, or arising by operation of law, as to the nature and condition of the Real Estate, including, without limitation, any and all improvements located on the Real Estate, water, soil and geology, the suitability of the Real Estate for any and all activities and uses which Purchaser may elect to conduct thereon, the existence of any environmental hazards or conditions thereon, compliance of the Real Estate or its operation with all applicable laws, rules or regulations or as to the condition or state of repair of the Real Estate. Seller makes no implied warranties of habitability, merchantability or fitness for a particular purpose as to the Real Estate. Purchaser acknowledges that Seller is under no obligation to alter, repair or improve the Real Estate. Purchaser acknowledges that delivery of the Real Estate is “AS IS,” “WHERE IS” and “WITH ALL FAULTS,” and that Seller has disclaimed any implied warranties with respect to the Real Estate.

(b) Due Diligence Period.

i. Matters to Be Reviewed. Purchaser shall complete its due diligence review and approval of the environmental condition of the Real Estate within thirty (30) days of the date of this Agreement (the “Due Diligence Period”). Purchaser’s due diligence shall be limited to the environmental condition of the Real Estate including a Phase I environmental site assessment and, if indicated, a Phase II environmental site assessment, each performed by a licensed environmental consultant selected and paid for by Purchaser, and in accordance with the applicable ASTM Standards.

ii. Notice of Termination. If Purchaser determines to terminate this Agreement (such determination to be made in Purchaser’s sole and absolute discretion based upon its review of the environmental condition of the Real Estate) within the Due Diligence Period, then Purchaser may terminate this Agreement by delivering written notice to Seller, which notice must be given within the Due Diligence Period. If Purchaser fails to deliver notice of the termination during the Due Diligence period, then the Due Diligence Period shall terminate and this Agreement shall continue to be binding. Upon request by Seller, Purchaser shall provide Seller or Seller’s attorney with copies of any due diligence materials relied upon by Purchaser in connection with Purchaser’s determination to terminate this Agreement.

iii. Early Termination of the Due Diligence Period. Purchaser may terminate the Due Diligence Period early by delivery of written notice to Seller indicating its satisfaction with the environmental condition of the Real Estate and waiver of the unexpired term of the Due Diligence Period.

iv. Access. During the Due Diligence Period, Seller shall permit Purchaser and its authorized representatives to perform inspections and testing with respect to the environmental condition of the Real Estate at such times during normal business hours as Purchaser or its representatives may request. All inspections and testing shall be nondestructive in nature, and specifically shall not include any physically intrusive testing except with Seller’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All costs and expenses of any kind incurred by Purchaser relating to the inspection and testing of the Real Estate shall be solely Purchaser’s expense. Seller reserves the right to have a representative present at the time of making any such inspections and testing. Purchaser shall notify Seller (or Seller’s attorney) not less than 24-hours in advance of making any such inspection or testing. Purchaser hereby indemnifies and agrees to defend and hold Seller harmless from any and all claims, losses, damages, judgments, settlements, fines, penalties, fees (including, without limitation, attorneys’ fees), costs and expenses incurred by Seller and arising out of any personal injury or death of any person or any damage to property resulting from acts or omissions of Purchaser or any of its agents, representatives, contractors or subcontractors relative to entry or activities upon the Real Estate or any surrounding land as well as such inspections and tests. Purchaser agrees that it will restore the Real Estate in all material respects to the Real Estate's condition prior to any

tests or inspections. Notwithstanding any other provision of this Agreement to the contrary, the foregoing agreements of Purchaser contained in this subparagraph shall survive any termination of this Agreement or the Closing.

6. **TITLE MATTERS.**

(a) **Conveyance of Title.** Seller agrees to deliver to Purchaser a special warranty deed (the "Deed") executed by Seller conveying to Purchaser title to the Real Estate free and clear of all claims, liens and encumbrances, except for the Permissible Exceptions (as hereafter defined) and those acceptable to Purchaser. "Permissible Exceptions" shall include the lien of general taxes not yet payable; zoning and building laws and ordinances; easements, covenants, conditions and restrictions of record; and any lien which may be removed by the payment of money from the Purchase Price at Closing.

(b) **Title Commitment.** Seller, at Seller's sole expense, shall obtain a commitment (the "Title Commitment") for title insurance issued by Kenzley Title Company (the "Title Company"), showing merchantable title to the Real Estate in Seller, committing the Title Company to issue a 2006 ALTA Owner's Policy of Title Insurance with extended coverage over the standard or general exceptions to title (the "Owner's Policy of Title Insurance") for the amount of the Purchase Price or such other amount as Purchaser and the Title Company may agree. Buyer shall, at Buyer's expense, procure an ALTA survey and cause the same to be certified to the Title Company. Seller shall provide the Title Commitment to Purchaser or Purchaser's attorney within twenty (20) days of the execution of this Agreement. Within ten (10) days after receiving the Title Commitment, Purchaser shall provide Seller with written notice of any objections (except Permissible Exceptions) to the form and/or contents of the Title Commitment (the "Objection Notice"). If Purchaser does not provide Seller with the Objection Notice in a timely manner, the Title Commitment shall be deemed accepted by Purchaser. Further, matters not objected to by Purchaser in the Objection Notice with respect to the Title Commitment shall be deemed acceptable to Purchaser. If Purchaser provides Seller with the Objection Notice in a timely manner, the following procedure shall be utilized:

i. Seller, in its discretion, may elect, by providing Purchaser written notice within ten (10) days from receipt of Purchaser's Objection Notice, to either (a) decline to cure such objections, or (b) utilize good faith efforts to cure such objections to the reasonable satisfaction of Purchaser ("Seller's Election Notice").

ii. If Seller (a) fails to cure such objections to the reasonable satisfaction of Purchaser within ten (10) days after Purchaser's receipt of Seller's Election Notice, (b) declines to cure such objections or (c) does not provide Purchaser with Seller's Election Notice in a timely manner, then Purchaser may elect, as its exclusive remedies, to either (x) terminate this Agreement, in which case all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement, or (y) accept the Title Commitment and proceed to Closing. Purchaser shall provide Seller written notice of its election on or before the Closing ("Purchaser's Election Notice").

iii. If Purchaser does not provide Seller with Purchaser's Election Notice in a

timely manner, this Agreement shall thereafter be considered terminated and all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement.

7. **CLOSING DELIVERIES.**

(a) **Seller.** At Closing, Seller shall deliver or cause to be delivered to Purchaser the following:

i. **Deed.** The Deed, executed by Seller, in recordable form conveying the Real Estate to Purchaser, free and clear of all liens, claims and encumbrances except the Permissible Exceptions and those acceptable to Purchaser.

ii. **Transfer Declarations.** Executed Illinois Real Property Transfer Declaration form of the State of Illinois.

iv. **Closing Statement.** A closing statement conforming to the prorations and other relevant provisions of this Agreement.

v. **FIRPTA Statement.** Seller (and each individual executing this Agreement on behalf of Seller) is not a foreign investor, nor do foreign investors have any beneficial interest in the Real Estate. Seller acknowledges that § 1445 of the Internal Revenue Code of 1986, as amended, requires that a purchaser of real estate from a "foreign person" withhold at closing and pay to the Internal Revenue Service a portion of the amount realized by the seller of such real estate. Therefore, Seller agrees to provide at Closing an affidavit of Seller, or Seller's authorized officer if Seller is not an individual, in form required by Purchaser, setting forth sufficient facts to establish whether or not Seller is a "foreign person" within the meaning of said § 1445, including, without limitation, Seller's taxpayer identification number and principal residence or business address.

vi. **Other.** Such other documents and instruments as may reasonably be required by the Title Company which may be necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto and not inconsistent with the terms of this Agreement.

(b) **Purchaser.** At Closing, Purchaser shall deliver or cause to be delivered to Seller the following, in form and substance acceptable to Seller:

i. **Purchase Price.** The Purchase Price shall be paid to Seller.

ii. **Closing Statement.** A closing statement conforming to the prorations and other relevant provisions of this Agreement.

iii. **Transfer Declarations.** Executed Illinois Real Property Transfer Declaration form of the State of Illinois.

iv. **Other.** Such other documents and instruments as may reasonably be requested by the Title Company which may be necessary to consummate this transaction and to otherwise affect the agreements of the parties hereto and not inconsistent with the terms of this Agreement.

8. **PRORATIONS AND ADJUSTMENTS.** The following shall be prorated and adjusted between Seller and Purchaser as of the Closing Date, except as otherwise specified:

(a) Seller shall pay for the Title Commitment and the Owner's Policy of Title Insurance in the amount of the Purchaser Price. Purchaser shall be responsible for any additional title insurance coverage, including any endorsements.

(b) Seller and Purchaser shall split equally any and all Title Company closing and escrow fees, except that if Purchaser is obtaining financing then Purchaser shall be responsible for such fees.

(c) All non-delinquent general real estate taxes for the Real Estate shall be prorated at the time of closing based on 105% of the most recently ascertainable tax bill (or most recent ascertainable tax rate, assessed valuation and state equalization factor, if more recent).

(d) Seller shall pay any State of Illinois and Ogle County transfer taxes.

For purposes of calculating prorations, Seller shall be deemed to be in title to the Real Estate for the date of Closing. All such prorations shall be made on the basis of the actual number of days of the year and month which shall have elapsed as of the date of Closing.

9. **DEFAULT BY SELLER.** In the event of a default by Seller under the terms of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from Purchaser to Seller, Purchaser shall have the right, as its exclusive remedies, to either (i) seek specific performance requiring Seller to consummate the transaction provided that any suit for specific performance will be brought within thirty (30) days of the date on which the Closing would have occurred but for Seller's default, or (ii) terminate this Agreement, in which case all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement. In the event Purchaser shall institute legal action against Seller because of a default of this Agreement, Purchaser shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action provided Purchaser succeeds in such action.

10. **DEFAULT BY PURCHASER.** In the event of a default by Purchaser under the terms of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from Seller to Purchaser, Seller shall have the right, as its exclusive remedies, to either (i) seek specific performance requiring Purchaser to consummate the transaction provided that any suit for specific performance will be brought within thirty (30) days of the date on which the Closing would have occurred but for Purchaser's default, or (ii) terminate this Agreement, in which case all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement. In the event Seller shall institute legal action against Purchaser because of a

default of this Agreement, Seller shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action provided Seller succeeds in such action.

11. **WARRANTIES AND REPRESENTATIONS OF SELLER.** Seller makes the following warranties and representations, which shall be true and correct as of the date of this Agreement and as of the date of Closing:

(a) Seller is lawfully organized and existing in its state of organization and has full power and authority to convey the Real Estate to Purchaser.

(b) Seller has good, merchantable and insurable title to the Real Estate, which are free and clear of all mortgages, liens, security interests, charges, claims, restrictions or other encumbrances of every kind except as otherwise specifically provided in this Agreement or as will be discharged at or before the date of Closing. There will be no restriction on the transfer of the Real Estate at the time of Closing.

(c) There is no pending or threatened condemnation or similar proceeding affecting the Real Estate or any part thereof.

(d) There are no claims, actions, suits or other legal or administrative proceedings, including, without limitation, bankruptcy proceedings, pending or threatened, against or involving Seller or the Real Estate which could affect the consummation of the transactions contemplated hereby, and there are no facts which might result in any action, suit or similar proceeding. There are no judgments, orders or stipulations against Seller or the Real Estate.

(e) There are no leases or other contracts to which Seller is a party which affect the Real Estate, except those which shall be terminated by Seller prior to the Closing.

(f) Seller is not subject to any charter, bylaw, rule, agreement or restriction of any kind or character which would prevent the consummation of this Agreement and the transactions contemplated hereby. Seller has full power and authority to execute this Agreement and all documents necessary to accomplish the sale contemplated herein, fully perform hereunder and to consummate the transactions contemplated hereby without the consent or joinder of any other party.

(g) All bills for work done or materials furnished by or at the request of Seller to or for the improvement of the Real Estate will have been paid in full, or provision made for payment, such that no lien therefore, whether statutory or common law, may properly be filed or enforced against the Real Estate.

(h) At the time of Closing, no person or entity, other than Purchaser, will have any right of possession to any portion of the Real Estate.

(i) Seller has not received any notice and is not aware of any Hazardous Substance (as defined herein) contained on or in the Real Estate. Seller has not received notice of and is not

aware of any pending or threatened litigation or proceedings before any administrative agency in which any person or entity alleges the presence, release, threat of release, placement on or in the Real Estate, or the generation, transportation, storage, treatment, or disposal at the Real Estate, of any Hazardous Substance. Seller has not received any notice of and has no knowledge that any governmental authority or any employee or agent thereof has determined that there is a presence, release, threat of release, placement on or in the Real Estate, or that there has been any generation, transportation, storage, treatment, or disposal at the Real Estate, of any Hazardous Substance. Seller has not received notice of and is not aware of any communications or agreements with any governmental authority or agency (federal, state or local) or any private entity, including, but not limited to, any prior owners of the Real Estate, relating in any way to the presence, release, threat of release, placement on or in the Real Estate, or the generation, transportation, storage, treatment, or disposal at the Real Estate of any Hazardous Substance. Seller shall promptly give Purchaser copies of any such notices which may be received by Seller. For purposes of this paragraph, Hazardous Substance means any waste, substance, chemical, material, pollutant or containment defined as "hazardous" or "toxic" in, pursuant to or under the Resources Conservation Recovery Act, 42 U.S.C. Section 6901 et. seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq., the Clean Water Act, 33 U.S.C. Section 1251 et. seq., the Clean Air Act, 42 U.S.C. Section 7401 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et. seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et. seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq., the Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq., or any other law, statute, regulations, or common law theory dealing with environmental matters.

12. **NOTICES**. Any notice, demand or request which may be permitted, required or desired to be given in connection therewith shall be given in writing and sent by overnight delivery directed to Seller and Purchaser as follows:

If to Seller: Progressive Park Rochelle, LLC
Attn: Tim Bruns
P.O. Box 212
Rochelle, Illinois 61068

with a copy to: Ward, Murray, Pace & Johnson, P.C.
226 West River St.
Dixon, Illinois 61021
Attn: Robert T. LeSage III

If to Purchaser: City of Rochelle
Attn: City Manager
420 North 6th Street
Rochelle, Illinois 61068

with a copy to: Dominick L. Lanzito
Peterson, Johnson & Murray – Chicago LLC
200 W. Adams – Suite 2125
Chicago, Illinois 60606

Notice by overnight delivery shall be deemed to have been received on the actual date of delivery. A time period in which a response to any notice, demand or request must be given pursuant to this Agreement shall commence to run from the date of receipt.

13. **CASUALTY PRIOR TO CLOSING.** If, prior to the Closing, a material part (as defined in this Section 13) of the Real Estate is destroyed or damaged by fire or other casualty, Seller will promptly notify Purchaser of such fact, and Purchaser will have the right to terminate this Agreement by giving notice to Seller not later than ten (10) days after notice from Seller to Purchaser. For the purposes hereof, a "material part" of the Real Estate will mean a part of the Real Estate which will cost in excess of \$10,000.00 to repair. If Purchaser does not elect to terminate this Agreement as aforesaid, or if there is damage to or destruction of less than a material part of the Real Estate by fire or other casualty, there will be no abatement of the Purchase Price.

14. **MISCELLANEOUS.**

(a) **Entire Agreement.** This Agreement and the Exhibits attached hereto and by this reference made a part hereof, constitute the entire agreement between Seller and Purchaser, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Real Estate other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon Seller or Purchaser unless in writing and signed by both Seller and Purchaser.

(b) **Headings.** The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may under no circumstances be considered in constructing or interpreting the provisions of the Agreement.

(c) **Binding Effect.** All of the provisions of this Agreement are hereby made binding upon and shall inure to the benefit of the parties hereto and personal representatives, heirs, successors and assigns of both parties hereto.

(d) **Time of Essence.** Time is of the essence of this Agreement.

(e) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

(f) **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the State of Illinois with venue for all litigation in Ogle County, Illinois.

(g) **Closing Date and Deadline Dates.** In the event that the date of Closing or any

other deadline date or date for notice described in this Agreement falls on a weekend or a holiday, the date of Closing or other deadline date or date for notice shall be deemed to be the next business day.

(h) **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, and if such provision is not essential to the effectuation of the basic purposes of this Agreement, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

(i) **No Waiver.** The waiver by either party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be construed as a waiver of any other covenant, condition or promise herein. The waiver by either party of the time for performing any act shall not constitute a waiver of the time for performing any other act or any incidental act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right, the time for the exercise of which is not specifically and expressly limited or specified in this Agreement, shall not be considered a waiver of or an estoppel against the later exercise of such remedy or right.

(j) **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Purchaser have contributed substantially and materially to the preparation of this Agreement.

(k) **Attorneys' Fees and Costs.** In the event of any dispute between the parties relative to this Agreement or any of the terms hereof, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

(l) **Merger.** Any continuing obligations or agreements of the parties set forth in this Agreement shall not merge with the recording of the Deed.

15. **Tax-Deferred Exchange.**

(a) Seller has executed this Agreement for the purpose of exchanging the Real Estate for real estate referred to herein as "Replacement Property," as that term is used in Section 1031 of the Internal Revenue Code, and does not intend to transfer the Real Estate through direct sale, but intends to assign Seller's interest as Seller under this Agreement to an exchange intermediary serving as a "Qualified Intermediary" to facilitate a tax-deferred exchange of real estate under said Section 1031. Seller therefore reserves the right to assign Seller's interest in this Agreement and to assign Seller's right to sell and exchange for Replacement Property the Real Estate to such Qualified Intermediary. Seller may, in its discretion, transfer the Real Estate to Purchaser through direct sale and not as part of a tax-deferred exchange.

(b) Purchaser agrees that Seller may assign this Agreement and the rights and

obligations of Seller hereunder to an exchange intermediary of Seller's choice, and Purchaser agrees to cooperate with Seller in such assignment and in allowing Seller to qualify this transaction as a part of such tax deferred exchange; provided, however, that Purchaser shall not be required to incur additional expense as a result of this Agreement to cooperate with Seller in the structuring of this transaction as a part of a tax-deferred exchange, and if the cooperation of Purchaser causes Purchaser to incur or pay additional expense in excess of that which would have been incurred by Purchaser if this transaction were completed as a simple sale and purchase between Seller and Purchaser, then Seller shall reimburse Purchaser for the reasonable additional expenses incurred.

(c) Subject to the requirements of Section 1031 of the Internal Revenue Code, nothing within this Section shall be construed to prohibit a direct conveyance from Seller to Purchaser (or Purchaser's nominee) at the direction of the Qualified Intermediary selected by Seller. Seller assumes all responsibility for causing to be prepared all documents and for giving of all notices required in order that the transaction may be qualified as a part of a tax-deferred exchange for benefit of Seller.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the date and year set forth above.

SELLER:

PROGRESSIVE PARK ROCHELLE, LLC, an Illinois limited liability company

By _____
Its _____

PURCHASER:

CITY OF ROCHELLE, an Illinois municipal corporation

By _____
Its _____

EXHIBIT A

(TO BE INSERTED FOLLOWING ISSUANCE
OF TITLE COMMITMENT)