

**PINS:**  
**07-13-443-005**  
**07-13-443-010**

**ADDRESSES:**  
**419-423 S. WASHINGTON STREET**  
**NAPERVILLE, IL 60540**

**PREPARED BY:**  
**CITY OF NAPERVILLE**  
**LEGAL DEPARTMENT**  
**630/420-4170**

**RETURN TO:**  
**CITY OF NAPERVILLE**  
**CITY CLERK'S OFFICE**  
**400 SOUTH EAGLE STREET**  
**NAPERVILLE, IL 60540**

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

**[Part of 419-423 South Washington Street, Naperville]**

**THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (“Agreement”)** is entered into by and between the City of Naperville, a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, (hereinafter referred to as the **“City”**) and Willoway LLC Series 4-419 South Washington, a limited liability company authorized to transact business in the State of Illinois (hereinafter referred to as the **“Owner”**). The City and the Owner shall be referenced individually herein as **“Party”** and collectively as **“Parties”**.

**RECITALS**

- A. **WHEREAS**, the City is undertaking reconstruction of the Washington Street Bridge located in the City’s downtown (**“Project”**); and
- B. **WHEREAS**, the Owner is the fee simple owner of certain real property and all improvements located thereon located at 419-423 South Washington Street, Naperville 60540, PINs: 07-13-443-005 and 07-13-443-010; legally described on **Exhibit A** and depicted on **Exhibit B** (**“Property”**); and
- C. **WHEREAS**, the City desires to purchase, and the Owner desires to sell, approximately 0.014 acres of said Property along the frontage of the Property on Washington Street legally described on **Exhibit C** and depicted as “Proposed ROW” on **Exhibit D** (**“City ROW Parcel”**) which will be used by the City for the **Project**; and

D. **WHEREAS**, in entering into this Agreement and undertaking the obligations provided herein, the City is acting pursuant to its home rule authority under the laws and Constitution of the State of Illinois.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other valuable consideration received the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. INCORPORATION OF RECITALS.**

1.1 The foregoing Recitals are hereby incorporated in this Agreement as if set forth herein in this paragraph in their entirety.

**2. CONVEYANCE OF CITY PARCEL.**

2.1 The Owner agrees to convey the City ROW Parcel to the City at Closing as defined and provided herein. The City shall take possession of the City ROW Parcel upon completion of Closing as defined herein.

**3. MONETARY CONSIDERATION.**

3.1 Subject to the terms and conditions set forth herein, the total monetary consideration to be paid by the City to the Owner at Closing for acquisition of the City ROW Parcel is thirty-eight thousand dollars (\$38,000.00), and for any and all damage to the remainder of the Property is one hundred thirty-five thousand three hundred dollars (\$135,300.00), for a total amount of: one hundred seventy-three thousand three hundred dollars (\$173,300.00) (herein "**Total Monetary Consideration**").

The above-described Total Monetary Compensation shall be paid by the City to the Owner at Closing.

**4. DEED AND TITLE.**

4.1 At Closing Owner shall convey or cause to be conveyed to the City good title to the City ROW Parcel by a recordable Warranty Deed in a form approved by the City Attorney and free and clear all liens, encumbrances, easements, restrictions, or other matters affecting title to said property subject to the following permitted exceptions (hereinafter "Permitted Exceptions"):

- 4.1.1. General real estate taxes not due and payable at time of Closing as further provided in Subsection 9.1 hereof.
- 4.1.2. Zoning laws and ordinances;
- 4.1.3. Easements for public utilities;
- 4.1.4 Public roads and highways and easements pertaining thereto.
- 4.15 The following special exceptions listed in the Wheatland Title Insurance Commitment for the Subject Property dated August 31, 2018 under WTG File Number BEN-2018DP-4710.0: Exceptions 15-22 pertaining to special service areas (and any renewal of said

special service areas); Exception 27 pertaining to possible unrecorded easements for utilities and/or actual utilities lying within the vacated street/alley described herein, and the rights of the public or quasi-public utility companies to improve, repair or maintain said poles, conduits, pipes, sewers, etc. and; Exception 28 pertaining to any and all rights of the United States of America, the State of Illinois, the municipality and the public in and to that part of the subject property lying within the bed of the DuPage River, and the rights, if any, of the adjoining property owners in and to the free and unobstructed flow of the water thereof.

4.1.6 Additional exceptions approved in writing by the City Attorney.

## **5. OWNER REPRESENTATIONS AND COVENANTS.**

5.1 The Owner represents and warrants that:

5.1.1 As of Closing it has good title to the City ROW Parcel subject only to the Permitted Exceptions described in Section 4.1 above; and

5.1.2 As of Closing it has the sole authority to convey fee simple title to the City ROW Parcel to the City subject to the Permitted Exceptions described in Section 3 above.

5.1.3 To Owner's actual knowledge, no part of the Property (i) has been designated or classified as wetlands by any entity or body having jurisdiction over such classification or designation; or (ii) is the subject of any currently pending ordinance or building code violation, pending real estate tax special assessment, condemnation, annexation, or any pending environmental action, inquiry or investigation;

5.1.4 The Owner shall not encumber the City ROW Parcel with any mortgage, lien or any obligation of any kind which mortgage, lien, or obligation would affect said City ROW Parcel after Closing. If any such encumbrance is filed on the City ROW Parcel after the Closing relating to obligations or circumstances occurring prior to Closing, the Owner agrees that it shall immediately remove such encumbrances;

5.1.5 The Owner represents that as of the Closing there will be no management, maintenance, or service agreements in effect which apply to or affect any portion of the City ROW Parcel and that there will be no outstanding obligations or commitments of any kind relative to any management, maintenance or service agreement(s) affecting the City ROW Parcel as of the Closing; and

5.1.6 The Owner represents that as of the Closing there will be no tenants, lessees, or other occupants of the Property who have rights to any aspect of the City ROW Parcel.

5.2 The Owner releases the City from and against any and all claims, demands, costs, liabilities and expenses, attorneys' fees and compensation whatsoever arising in whole or in

part out of or relating to the City ROW Parcel that have arisen or exist, including known and unknown claims, prior to the Effective Date of this Agreement (hereinafter "Claims").

### 5.3 Estoppel Certificates

The Owner has provided the City with Estoppel Certificates approved by the City Attorney. The Owner hereby represents and warrants that Owner has not granted any lease or other occupancy rights to any individual or entity other than Mobile Telecommunications, LTD., ST. Bilter 1 LLC, Bond Drug Company of Illinois, and JC Licht, LLC.

## 6. TITLE AND CLOSING.

6.1 When used herein, the term "**Closing**" or "**Close**" shall mean the conveyance of the City ROW Parcel to the City in accord with the terms of this Agreement. The Parties shall Close on a date that is mutually agreed upon by the Parties. Such Closing may be conducted by mail by agreement of counsel for the Parties. However, if it is agreed that Closing should be conducted at a title company, such Closing shall be held at the offices of the Wheatland Title Company ("**Title Company**").

6.2 The City agrees to pay all applicable closing costs, escrow costs, and title costs ("**Closing Costs**") related to Closing on the Property except that Owner shall be responsible for its attorneys' fees for all matters associated with the conveyance of the Property to the City, including but not limited to the Closing. The Owner shall be responsible for its own costs for all matters associated with the conveyance of the Property other than Closing Costs.

6.3 The City, at its sole cost, has obtained a title commitment ("**Title Commitment**") for the City ROW Parcel from the Title Company on the current form of the American and Title Association Owner's Policy (or equivalent policy) in the amount of thirty-eight thousand dollars (\$38,000) through the date thereof.

6.4 At the Closing, the Owner shall cause the Title Company to provide the City with a marked-up Title Commitment in the amount of thirty-eight thousand dollars (\$38,000) showing the City of Naperville in title to the City ROW Parcel subject only to the Permitted Exceptions set forth in Subsection 4.1 above.

6.5 The Owner shall furnish the City, at Closing, an Affidavit of Title for the City ROW Parcel covering the date of Closing subject only to the Permitted Exceptions or as to those exceptions, if any, as to which the title insurer commits to extend insurance.

6.6 The Seller shall prepare a MyDec Online Real Estate Transfer Declaration and provide it to the Title Company in the form required by the Illinois Real Estate Transfer Act. This transaction is exempt from any city, county or State transfer stamps. The City shall be responsible for obtaining an exempt stamp for the City of Naperville Transfer Tax.

6.7 Possession of the City ROW Parcel shall be granted to the City at the time of Closing and upon payment of the Total Monetary Compensation unless otherwise agreed in writing by the Parties.

**7. REAL PROPERTY TAXES.**

7.1 The Owner shall be solely obligated to pay all real estate taxes which are due on the Property prior to Closing or which accrue on the Property up to the date the City ROW Parcel is conveyed to the City. If the City receives a real estate tax bill for the City ROW Parcel for taxes accruing prior to the conveyance of the City ROW Parcel to the City, the City shall promptly send a copy of the bill to Owner, and in such case, the Owner shall then timely pay or contest said bill together with any interest and penalties.

**8. GENERAL PROVISIONS.**

8.1 Entire Agreement. This Agreement sets forth and constitutes the entire agreement between the Parties with respect to the subject matter described herein and supersedes any and all prior agreements, understandings, promises, warranties, and representations made by each Party to the other concerning the subject matter. This Agreement may be modified only by a written document signed by all Parties.

8.2 Counterparts. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Original signatures transmitted by facsimile or email will be effective to create such counterparts and will have the same effect as if signed in person.

8.3 Binding Nature. This Agreement is binding on the Parties and their respective grantees, successors, assigns, and transferees, including all legal or beneficial owners of all or any portion of the Property.

8.4 Invalidity. If any part or any provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions of this Agreement.

8.5 Fees and Expenses. The Parties agree to bear their own costs, attorneys' fees and related expenses associated with this Agreement and any dispute between the Parties.

8.6 Legal Counsel. The Parties acknowledge that they have consulted with legal counsel of their choosing or were given the opportunity to consult with legal counsel, before entering into this Agreement, that they have read this Agreement, that they know and understand its contents, and that they execute this Agreement freely and voluntarily.

8.7 Joint Preparation. The Parties cooperated in the drafting of this Agreement, and if it is finally determined that any provision herein is ambiguous, that provision shall not be presumptively construed against any Party.

8.8 Notices. All notices required under this Agreement shall be served on the Parties via First Class U.S. Mail as follows:

**NOTICES TO THE CITY OF NAPERVILLE**

Mike DiSanto, City Attorney  
City of Naperville Municipal Center  
400 South Eagle Street  
Naperville, IL 60540

With a copy to:

William Novack  
Director of T.E.D.  
City of Naperville Municipal Center  
400 South Eagle Street  
Naperville, IL 60540

**NOTICES TO THE OWNER**

Willoway LLC Series 4-419 South Washington  
1021 Aurora Avenue  
Naperville, IL 60540

With a copy to:

Patti A. Bernhard, Esq.  
Rosanova & Whitaker, Ltd.  
127 Aurora Avenue  
Naperville, IL 60540

8.9 Choice of Law. This Agreement shall be governed, in all respects, by the laws of the State of Illinois, irrespective of its choice of law rules. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

8.10 Cooperation. The Parties agree to cooperate in good faith and execute any documents necessary to effectuate and/or consummate the terms of this Agreement.

8.11 No Broker. Each Party warrants and represents to the other that it has not retained a broker in connection with the purchase and sale of the City ROW Parcel. Each Party agrees to defend, indemnify, and hold harmless the other against any claim for brokers' fees and/or similar commissions claimed by any party claiming through them.

8.12 Exhibits Incorporated. All exhibits referenced herein are incorporated herein and made part hereof.

8.13 Authorizations. Each of the signatories to this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of his or her respective Party and by such signature to bind that Party to this Agreement.

8.14 Survival. The following Sections and Subsections shall survive the conveyance of the City ROW Parcel to the City: 5 and each subsection thereof, 7.1, 8.1, and 8.3 through 8.14.

8.15 Effective Date. The effective date ("**Effective Date**") of this Agreement shall be the date upon which it has been fully executed by both Parties hereto.

**IN WITNESS WHEREOF**, we have executed this Agreement effective as of the Effective Date as defined above.

**WILLOWAY LLC SERIES 4-419 SOUTH WASHINGTON**

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

Printed Name:

Its [Title]:Manager

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by \_\_\_\_\_, the Manager of WILLOWAY LLC SERIES 4-419 SOUTH WASHINGTON, an Illinois limited liability company.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

Seal

\_\_\_\_\_  
Print Name

My Commission Expires: \_\_\_\_\_

**CITY OF NAPERVILLE**

By: \_\_\_\_\_  
Douglas A. Krieger  
City Manager

**ATTEST**

By: \_\_\_\_\_  
Name: Pam Gallahue, Ph.D.  
Its: City Clerk

State of Illinois                    )  
  )SS  
County of DuPage                )

The foregoing instrument was acknowledged before me by Douglas A. Krieger, City Manager, and Pam Gallahue, City Clerk this \_\_\_\_ day of \_\_\_\_\_, 2022.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

Seal

\_\_\_\_\_  
Print Name

My Commission Expires: \_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 1, 10, 11 AND 12 IN BLOCK 5, TOGETHER WITH THAT PART OF THE VACATED ALLEY LYING SOUTH OF AND ADJOINING TO SAID LOT 1, IN MARTIN'S ADDITION TO NAPERVILLE, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 6, 1847 AS DOCUMENT 2584 (EXCEPT THAT PART OF LOTS 11 AND 12, AFORESAID, DESCRIBED BY BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 12; THENCE NORTH 2 DEGREES 04 MINUTES EAST, ALONG THE EAST LINE OF SAID LOT, 82.50 FEET; THENCE SOUTH 10 DEGREES 23 MINUTES WEST, PARALLEL WITH THE CENTER LINE OF THE PROPOSED NEW BRIDGE OVER THE DUPAGE RIVER 4.80 FEET; THENCE ON A CURVE TO THE RIGHT (THE RADIUS OF WHICH IS 91.97 FEET) 131 FEET TO THE SOUTH LINE OF SAID LOT 11; THENCE EAST, ALONG THE SOUTH LINE OF SAID LOTS 11 AND 12, 91.70 FEET TO THE POINT OF BEGINNING)

AND EXCEPTING THEREFROM

THAT PART OF SAID LOT 1 LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 1, 128.45 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 1; THENCE SOUTHEASTERLY ALONG A STRAIGHT LINE MAKING AN INCLUDED ANGLE OF 61 DEGREES 32 MINUTES 39 SECONDS TO THE WEST LINE OF SAID LOT 1, 99.72 FEET; THENCE SOUTHEASTERLY ALONG A STRAIGHT LINE MAKING AN ANGLE OF 10 DEGREES 29 MINUTES 04 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE 80.95 FEET TO A POINT IN THE EAST LINE OF SAID LOT 1, SAID POINT BEING 29.90 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 1 IN DUPAGE COUNTY, ILLINOIS.

PERMANENT TAX NUMBER(S): 07-13-443-005; 07-13-443-010

COMMON ADDRESSES:  
419-423 S. WASHINGTON STREET  
NAPERVILLE, IL 60540



**EXHIBIT C**

**LEGAL DESCRIPTION**

**(RIGHT-OF-WAY)**

ROUTE: Washington St  
SECTION:  
COUNTY: DuPage  
JOB NUMBER:  
PARCEL: 0008  
STATION:  
OWNER: Willoway, LLC  
Series 4 419 South  
Washington  
INDEX: 07-13-443-005  
07-13-443-010

**0008**

Those parts of Lots 1, 10, 11, 12, and the vacated alley adjoining Lot 1 in Block 5 of Martin's Addition to Naperville, recorded February 6, 1847 in DuPage County as document number R1847-002584, in the Southeast Quarter of Section 13, Township 38 North, Range 9, East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD 83 (2011 Adjustment), with a combined factor of 0.99995095,, more particularly described as follows:

Beginning at a point on the east line of said Lot 1 which is 28.47 feet northeasterly of the southeast corner of said Lot 1 as measured along said east line, being also the southeastern most corner of the Riverwalk Assessment Plat, recorded September 21, 1987 in DuPage County as document number R1987-138984; thence South 4 degrees 16 minutes 0 seconds West, 45.05 feet along said east line to the northeast corner of said Lot 12; thence South 4 degrees 41 minutes 13 seconds West, 75.07 feet along the east line of said Lot 12; thence South 13 degrees 0 minutes 36 seconds West, 4.80 feet; thence southeasterly 26.23 feet along a curve to the right, having a radius of 91.97 feet, the chord of said curve bears South 19 degrees 15 minutes 32 seconds West, 26.14 feet; thence North 6 degrees 42 minutes 49 seconds East, 151.45 feet to the southerly line of said Riverwalk Assessment Plat; thence South 48 degrees 53 minutes 40 seconds East, 1.97 feet along said south line to the Point of Beginning, all lying within DuPage County, Illinois.

Said part contains 0.014 acres, more or less.

COMMON ADDRESSES:  
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[part of]

