

ATTACHMENT #1

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into as of this ____ day of ____ 2020 (the “**Effective Date**”) by and between 600 INDUSTRIAL DRIVE SERVICE BUILDING, LLC, an Illinois limited liability company (“**Seller**”), and the CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois (“**City**”). Together the Seller and the City shall be referenced individually herein as “**Party**” and collectively as “**Parties**”.

RECITALS

- A. WHEREAS, certain real property located at 600 Industrial Drive, Naperville, as legally described on **Exhibit A** attached hereto and made part hereof, is improved with a building of approximately 21,600 square feet containing six units and 70 associated parking spaces (“**Property**”). Said Property is located immediately adjacent, contiguous and abutting North Aurora Road; and
- B. WHEREAS, the Seller is the owner in fee simple of said Property, including but not limited to all improvements thereon; and
- C. WHEREAS, the City desires to purchase, and the Seller desires to sell, a portion of the Property which will be used by the City to undertake roadway improvements on North Aurora Road between Weston Ridge Drive and Frontenac Road in conjunction with the Naperville Township Road District (“**Project**”); and
- D. WHEREAS, the portion of the Property sought to be acquired by the City for the Project is depicted and legally described on **Exhibit B** (“**City Parcel**”);
- E. 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, for consideration of the foregoing Recitals and the mutual covenants contained herein, the Parties hereto agree as follows:

- 1. **INCORPORATION OF RECITALS.** The foregoing Recitals are hereby incorporated in this Agreement as if set forth herein in this paragraph in their entirety.
- 2. **CONSIDERATION.** The consideration to be paid to the Seller by the City for acquisition of the City Parcel for the Project, and to compensate Seller for any and all impact to the Property as a result of the Project, is one hundred and fifty-five thousand dollars (\$155,000.00) subject to the terms and conditions set forth herein. Said payment shall be due and payable in cash at Closing, as Closing is defined in paragraph 5.1 below.

3. DEED AND TITLE.

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

- 3.1.a. General real estate taxes not due and payable at time of Closing as further provided in Subsection 6.1 hereof.
- 3.1.b. Zoning laws and ordinances;
- 3.1.c. Easements for public utilities;
- 3.1.d. Public roads and highways and easements pertaining thereto.
- 3.1.e. Additional exceptions approved in writing by the City Attorney. If the Seller is unable to cure any exception objected to by the City Attorney, in such instance this Agreement shall become null and void.

4. SELLER'S REPRESENTATIONS AND COVENANTS.

4.1 The Seller represents and warrants that:

4.1.1 It has good title to the City Parcel subject to the Permitted Exceptions described in Section 3 above;

4.1.2 It has the sole authority to convey fee simple title to the City Parcel to the City subject to the Permitted Exceptions described in Section 3 above, and that the tenants or lessees on the Property do not have any rights in the City Parcel being conveyed.

4.1.3 To the best of Seller's knowledge (with no independent duty of investigation) 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; (ii) is located within a designated flood plain; or (iii) is the subject of any currently pending ordinance or building code violation, pending real estate tax special assessment, condemnation, rezoning, annexation, or any pending environmental action, inquiry or investigation;

4.1.4 The Seller shall not encumber the City Parcel, or any part of it, with any mortgage, lien, or any obligation of any kind which mortgage, lien, or obligation would affect said City Parcel after Closing. If any such encumbrance is filed on the City Parcel after the Closing relating to obligations or circumstances

occurring prior to Closing, the Seller agrees that the Seller shall immediately remove such encumbrances; and

4.1.5 The Seller 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 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 Parcel as of the Closing; and

4.1.6 The Seller 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's acquisition of the City Parcel that have arisen or exist, including known and unknown claims, prior to the Effective Date of this Agreement. The Seller further agrees to defend and indemnify the City against any claims, demands, or actions of any kind brought by any tenant or lessee of the Property resulting from Seller's conveyance of the City Parcel to the City.

4.1.7 The representations and warranties set forth in sections 4.1.1 through 4.1.5 above shall expire and be redacted and rescinded in their entirety one (1) year following the Closing hereunder. This paragraph shall in no way impact Seller's indemnification obligations set forth in paragraph 4.1.6 above.

5. TITLE AND CLOSING.

5.1 When used herein, the term "**Closing**" or "**Close**" shall mean the conveyance of the City Parcel to the City in accord with the terms of this Agreement at Wheatland Title Guaranty Company ("**Title Company**"). Such Closing may be conducted by mail by agreement of counsel for the Parties. The Parties shall Close on the City Parcel on or before July 31, 2020 , or on such other date as is mutually agreed upon by the Parties.

5.2 The City agrees to pay all closing costs, escrow costs, and title costs ("**Closing Costs**") related to Closing on the Property except that Seller 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 Seller shall be responsible for its own costs for all matters associated with the conveyance of the Property other than Closing Costs.

5.3 The City, at its sole cost, has obtained a title commitment ("**Title Commitment**") for the City Parcel from the Title Company on the current form of the American and Title Association Seller's Policy (or equivalent policy) in the amount of one hundred and fifty thousand dollars (\$150,000.00) through the date thereof.

5.4 At the Closing, the Seller shall cause the Title Company to provide the City with a marked-up Title Commitment in the amount of one hundred and fifty thousand dollars

(\$150,000.00) showing the City of Naperville in title to the City Parcel subject only to the Permitted Exceptions set forth in Subsection 3.1 above.

5.5 The Seller shall furnish the City, at Closing, an Affidavit of Title for the City 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.

5.6 The Parties shall execute a completed Real Estate Transfer Declaration signed by authorized agents 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.

5.7 Possession of the City Parcel shall be granted to the City at the time of Closing.

5.8 The City of Naperville acknowledges that upon the acquisition of the City Parcel, the existing structures on the Property may become nonconforming within the meaning of Section 6-2-19 of the Naperville Municipal Code, and agrees that to the extent they become nonconforming structures they are deemed by the City to be legal nonconforming structures which shall be permitted to remain on the Property subject to compliance with the provisions Section 6-2-19 of the Naperville Municipal Code. To evidence this, the Naperville City Council has adopted the Resolution attached hereto and made part hereof as **Exhibit C**. Further, the uses within the structures on the Property, specified by the Seller and listed on Exhibit D to the Resolution, have been determined by the City's Zoning Administrator to be permitted uses within the Industrial District Zoning classification of the Naperville Municipal Code.

The City agrees to deliver at Closing, an updated owner's title insurance policy insuring the Owner's ownership of the Property which owner's title insurance policy shall include an ALTA 3.1 zoning endorsement (with parking) from Chicago Title Insurance company insuring the Owner's buildings and structures as legally non-conforming and will remain legally non-conforming upon completion of improvements in accordance with the Site Modification Plan and this Agreement. The cost of the Owner's title insurance policy shall be paid for by the City of Naperville.

6. REAL PROPERTY TAXES.

6.1 The Seller 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 Parcel is conveyed to the City. If the City receives a real estate tax bill for the City Parcel for taxes that were due prior to the conveyance of the City Parcel to the City, or which accrued prior to the conveyance of the City Parcel to the City, the Seller shall be obligated to pay said bill within fifteen (15) calendar days of receipt thereof from the City.

7. SITE MODIFICATION PLAN.

7.1 In order to continue to utilize the Property for Seller's purposes subsequent to the sale of the City Parcel to the City, it will be necessary for Seller to construct certain improvements and to relocate a sign as reflected on the Site Modification Plan attached hereto and made part hereof as **Exhibit D** (the "**Site Modification Plan**"). The City agrees to allow Seller to construct improvements consistent with the Site Modification Plan provided the Seller complies with all submission requirements needed in order to acquire necessary permits as required by the Naperville Municipal Code. The City shall cooperate with the Seller to assist in the timely issuance of such permits. Further, the structure currently located on the Property, containing six separate units, is hereby acknowledged to be legal non-conforming structure subject to the provisions of Section 6-2-19 of the Naperville Municipal Code. The City agrees that it will not at any time in the issue code enforcement actions due to the non-conformity of the structure currently located on the Property, or due to the nonconformity of improvements constructed as depicted on the Site Modification Plan so long as the Seller complies with the Naperville Municipal Code when applying for permits and complies with the nonconforming structure provisions of Section 6-2-19 of the Naperville Municipal Code. The provisions of this Section 7.1 shall survive the conveyance of the City Parcel.

8. INTENTIONALLY OMITTED.

9. GENERAL PROVISIONS.

9.1 **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.

9.2 **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.

9.3 **Binding Nature.** This Agreement is binding on the Parties and their successors and assigns.

9.4 **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.

9.5 **Non-Assignment.** The Parties hereby warrant and represent that they have not assigned nor in any way transferred or conveyed, all or any portion of the claims covered by this Agreement. The Parties acknowledge and agree that this warranty and representation is an essential and material term of this Agreement, without which they would not have entered into this Agreement.

9.6 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. In the event of a dispute between the Parties arising out of the terms and conditions of this Agreement, the prevailing party in such dispute shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party.

9.7 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. In executing and giving this Agreement, each Party acknowledges that it has not relied on or made to the other Party or anyone purporting to act on its behalf any promise or representation that is not in this Agreement.

9.8 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.

9.10 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 SELLER

c/o Andrew E. Kolb, Esq.
Vanek, Larson & Kolb, LLC
200 W. Main Street
St. Charles, Illinois 60174

9.11 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. All disputes shall be resolved in the Circuit Court where the Property is located as the sole and exclusive jurisdiction and venue.

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

9.13 Severability. If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause or provision shall be deemed severed from this Agreement, but will not affect any other provisions of this Agreement, which shall otherwise remain in full force and effect. If any restriction or limitation in this Agreement is deemed to be unreasonable, onerous and unduly restrictive by a court of competent jurisdiction, it shall not be stricken, in its entirety and held totally void and unenforceable, but shall be deemed rewritten and shall remain effective to the maximum extent permissible under applicable law within reasonable bounds.

9.14 Further Assurance. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, agreed Orders and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement, which said purpose is acknowledges to be a full and complete resolution of the eminent domain dispute with a comprehensive release of liability.

9.15 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 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.

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

9.17 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.

[Signature pages follow.]

IN WITNESS WHEREOF, we have executed this Agreement effective as of the date above written.

600 INDUSTRIAL DRIVE SERVICE BUILDING, LLC
an Illinois limited liability company

By: _____

Printed Name: _____

Its: _____

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered said instrument as her free and voluntary act for the uses and purposes herein set forth.

Given under my hand and official seal this ____ day of _____, 2020.

Notary Public
My Commission Expires: _____

Seal

Print Name

CITY OF NAPERVILLE

By: _____
Name: Douglas A. Krieger
Its: City Manager

ATTEST

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

Date: _____