



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	Resolution Ratifying Purchase and Sale Agreement in the amount of \$475,000 for Real Property Known as 1N384 Peck Road, Geneva, IL.		
Presenter & Title:	Cathleen Tymoszenko, Economic Development Director		
Date:	September 27, 2018		
Please Check Appropriate Box:			
	Committee of the Whole Meeting		Special Committee of the Whole Meeting
x	City Council Meeting		Special City Council Meeting
	Public Hearing		Other -
Associated Strategic Plan Goal/Objective: n/a			
Estimated Cost: \$ \$475,000		Budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If "Other Funding," please explain how item will be funded: Prairie Green Capital Project Fund.			
Executive Summary:			
<p>The Prairie Green Capital Project Fund accounts for capital improvements within the Prairie Green wetlands areas. Grant revenues, farm lease revenue and sale of wetland credits provide resources.</p> <p>Recently, a property on the periphery of the Prairie Green holdings was listed for sale. The property is +/- 6.30 acres improved with a single family home and barn. Negotiations took place between parties resulting in the attached Purchase and Sale Agreement. The Agreement provides a 45-day due diligence period allowing for investigation of the property prior to closing. The Agreement requires ratification by the City Council by October 8, 2018; a Resolution is provided for consideration.</p>			
Attachments: <i>(please list)</i>			
<ul style="list-style-type: none"> • Resolution Ratifying the Agreement of Purchase and Sale • Agreement of Purchase and Sale 			
Voting Requirements:			
<p><i>This motion requires 8 affirmative votes for passage.</i></p> <p><i>The Mayor may vote on three occasions: (a) when the vote of the aldermen or trustees has resulted in a tie; (b) when one half of the aldermen or trustees elected have voted in favor of an ordinance, resolution, or motion even though there is no tie votes; or (c) when a vote greater than a majority of the corporate authorities is required by state statute or local ordinance to adopt an ordinance, resolution, or motion.</i></p>			
Recommendation / Suggested Action: <i>(how item should be listed on agenda)</i>			
Motion to Approve Resolution Ratifying Purchase and Sale Agreement in the amount of \$475,000 for Real Property known as 1N384 Peck Road, Geneva IL.			

RESOLUTION NO. 2018-98

**RESOLUTION RATIFYING THE PURCHASE AND SALE AGREEMENT
FOR THE REAL PROPERTY KNOWN AS
1N384 PECK ROAD, GENEVA, IL. IN THE AMOUNT OF \$475,000**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS, as follows:

SECTION 1: The Purchase and Sale Agreement entered into by 384 Peck Road, LLC, as Seller and the City of Geneva, as Purchaser, by the City Administrator as the City's designated nominee, for the real property commonly known as 1N384 Peck Road, Geneva IL, for a purchase price of \$475,000 in the form attached hereto at Exhibit "A", is hereby ratified; and

SECTION 2: This Resolution shall become effective from and after its passage as in accordance with law. Publication of this Resolution is permitted to be in pamphlet form.

PASSED by the City Council of the City of Geneva, Kane County, Illinois, this ____ day of _____, 2018.

AYES: __ **NAYS:** __ **ABSENT:** __ **ABSTAINING:** __ **HOLDING OFFICE:** __

Approved by me this ____ day of _____, 2018.

Mayor

ATTEST:

City Clerk

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into as of the 28 day of September 2018, by and between 384 Peck Road, LLC, an Illinois limited liability company ("Seller"), and the City of Geneva, an Illinois municipal corporation, or its designated nominee (hereinafter referred to as "Purchaser").

In consideration of the mutual promises, covenants and agreements hereinafter set forth and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

**ARTICLE 1
Sale of Property**

1.1 Sale of Property. Seller hereby agrees to sell, assign and convey to Purchaser and Purchaser agrees to purchase from Seller, all of Seller's respective right, title and interest in and to, the following:

1.2 Land and Improvements. That certain real property lying and being situated in County of Kane, State of Illinois, being more particularly described on Exhibit A attached hereto and incorporated herein by reference thereto (the "Land");

1.2.1 Real Property. All rights, privileges and easements appurtenant to Seller's interest in the Land, if any, including, without limitation, all of Seller's right, title and interest, if any, in and to all mineral and water rights and all easements, licenses, covenants and other rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land (the Land and all such easements and appurtenances are sometimes collectively referred to herein as the "Real Property").

1.2.2 Personal Property. Excluding personal property owned by Seller which is stored on the Real Property; All personal property (including equipment and the property described at Schedule "A" attached hereto), if any, owned by Seller and located on the Real Property as of the date hereof, and all fixtures, if any, owned by Seller and located on the Real Property as of the date hereof (the "Personal Property"); and

1.2.3 Intangible Property. All Seller's interest, if any, in and to all guarantees, leases, licenses, approvals, certificates, permits and warranties relating to the property, to the extent assignable (collectively the "Intangible Property"). (The Real Property, the Personal Property and the Intangible Property are sometimes collectively hereinafter referred to as the "Property").

**ARTICLE 2
Purchase Price**

2.1 Purchase Price. The purchase price for the Property shall be Four Hundred Seventy-Five Thousand (\$475,000.00) Dollars (the "Purchase Price"). The Purchase Price, as adjusted by all provisions as provided for herein, shall be paid to Seller by Purchaser at Closing, as herein defined, by wire transfer of immediately available federal funds.

ARTICLE 3 Deposit

3.1 **Deposit.** Upon the Effective Date, as defined in Section 16.4 of this Agreement and as a condition precedent to the formation of this Agreement, Purchaser shall deposit Ten Thousand and no/100 Dollars (\$10,000.00) (the "Initial Deposit") with Chicago Title and Trust Company, 1795 West State Street, Geneva, IL 60134, Attention: Sally Soderstrom (the "Escrow Agent") in immediately available federal funds. If Purchaser shall fail to deposit the Initial Deposit within the time period provided for above, Seller may at any time prior to the deposit of the Initial Deposit, terminate this Agreement, in which case this Agreement shall be null and void ~~ab initio~~ and neither party shall have any further rights or obligations to the other hereunder, except as otherwise set forth in this Agreement. The Initial Deposit, together with any interest thereon, regardless of whether the payment of interest is herein otherwise specified, is collectively referred to herein as the "Deposit." The Deposit shall be held by Escrow Agent pursuant to the Escrow Agreement attached hereto as Exhibit B.

3.2 **Application Upon Default.** If the Closing occurs, the Deposit shall be paid to Seller and credited against the Purchase Price at Closing. If the Closing does not occur in accordance with the terms hereof, the Deposit shall be held and delivered as hereinafter provided.

ARTICLE 4 Closing, Prorations and Closing Costs

4.1 **Closing.** The closing of the purchase and sale of the Property shall occur Thirty (30) calendar days following (i) the ratification of this Agreement by the City Council of the City of Geneva as provided in Section 5.1 below, and (ii) the expiration of the Feasibility Period as provided in Article 9 below. The Closing shall be held at the offices of Escrow Agent, or at such other place agreed to by Seller and Purchaser. "Closing" shall be deemed to have occurred when the Title Company has been instructed by both parties to pay the Purchase Price to Seller and to record the Deed. Time is hereby made of the essence. The date of Closing is referred to in this Agreement as the "Closing Date."

4.2 **Prorations.** All matters involving prorations or adjustments to be made in connection with Closing and not specifically provided for in some other provision of this Agreement shall be adjusted in accordance with this Section 4.2. Except as otherwise set forth herein, all items to be prorated pursuant to this Section 4.2 shall be prorated as of the Closing Date, with Purchaser to be treated as the owner of the Property, for purposes of prorations of income and expenses, on and after the Closing Date. All prorations shall be final.

4.2.1 Taxes. Real estate and personal property taxes and special assessments, if any, shall be prorated as of the Closing Date. Seller shall pay all real estate and personal property taxes and special assessments attributable to the Property to, but not including, the Closing Date. If the real estate and/or personal property tax rate and assessments have not been set for the year in which the Closing occurs or any prior year, then the proration of such taxes shall be based upon one hundred five (105%) percent the most recent ascertainable tax bills. All taxes imposed due to a change of use of the Property after the Closing Date shall be paid by the Purchaser.

4.2.2 Insurance. There shall be no proration of Seller's insurance premiums or assignment of Seller's insurance policies. Purchaser shall be obligated (at its own election) to obtain any insurance coverage deemed necessary or appropriate by Purchaser.

4.2.3 Calculations. All such proportions shall be made on the basis of the actual number of days of the month which shall have elapsed as of the day of the Closing and based upon the actual number of days in the month and a three hundred sixty five (365) day year.

4.3 Allocation of Closing Costs and Expenses. Seller shall bear the cost of the title policy to be issued and extended coverage charges, the cost to record any instruments necessary to clear Seller's title, one-half the cost of the Closing Escrow, and one-half the cost of the "New York Style" closing fee. Purchaser shall bear the cost of any recording fees with respect to the deeds, all costs incurred in connection with obtaining Purchaser's financing for this transaction, if any, the cost of any additional title endorsements, if any, one-half the cost of the Closing Escrow and one-half the cost of the "New York Style" closing fee. The cost of state, local and county transfer taxes shall be paid by the Seller.

ARTICLE 5

Contingency; Ratification by City Council

5.1 Ratification. This Agreement is subject to and contingent upon the ratification of this Agreement by the Mayor and City Council of the City of Geneva on or before ~~October 1, 2018~~ *October 8, 2018*

S.D. by B.M.

5.2 Termination Right. In the event that Purchaser's City Council does not ratify this Agreement by ~~October 1, 2018~~, Purchaser shall provide written notice to Seller before the end of the Contingency Period, and, subject to the Surviving Termination Obligations (as defined in Section 16.12 herein), this Agreement shall terminate, the Deposit shall be delivered to Purchaser and thereupon neither party shall have any further rights or obligations to the other hereunder. If Purchaser shall fail to timely notify Seller in writing of its election to terminate this Agreement on or before the expiration of the Feasibility Period, time being of the essence, the termination right described in this Section 5.2 shall be immediately null and void and of no further force or effect. Purchaser's failure to provide such notice on or before the end of the Feasibility Period shall constitute Purchaser's waiver of the herein-described termination right.

Oct. 8, 2018

S.D. by B.M.

G.L.

C.L.

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ARTICLE 6

Title and Survey Matters

6.1 Title. Purchaser hereby acknowledges receipt of the most recent title insurance commitment and/or policy covering the Property in Seller's possession. Within three (3) days from the Effective Date, Purchaser shall apply for a title insurance commitment (the "Commitment") for an Owner's Policy of Title Insurance, issued by Chicago Title Insurance Company (the "Title Company"), covering the Real Property, together with a copy of all exceptions set forth therein. Purchaser shall notify Seller within ten (10) days after the date Purchaser receives the Commitment but in no event later than the expiration of the Feasibility Period, in writing of any title exceptions identified in the Commitment which Purchaser reasonably disapproves. Any exception not disapproved in writing within said time period shall be deemed approved by Purchaser and shall constitute a "Permitted Exception" hereunder. Purchaser and Seller hereby agree that (i) all non-delinquent property taxes and assessments, (ii) all matters created by or on behalf of Purchaser, including, without limitation, any documents or instruments to be recorded as part of loan assumption or any financing for the acquisition of the Property by Purchaser and (iii) the exceptions to title identified on Exhibit D attached hereto, shall constitute "Permitted Exceptions". No less than fifteen (15) Business Days before the Closing, Seller shall notify Purchaser in writing of any disapproved title exceptions which Seller is unable or unwilling to cause to be removed or insured against prior to or at Closing and, with respect to such exceptions, Purchaser then shall elect, by giving written notice to Seller within three (3) days thereafter, (x) to terminate this Agreement, or (y) to waive its disapproval of such

exceptions, in which case such exceptions shall then be deemed to be Permitted Exceptions. Purchaser's failure to give such notice shall be deemed an election to waive the disapproval of any such exception. In the event Purchaser elects to terminate this Agreement in accordance with clause (x) above, the Deposit shall be immediately refunded to Purchaser.

6.2 Survey. No later than 21 days after the Effective Date, Seller (at its sole cost and expense) shall deliver to Purchaser a survey dated subsequent to the date hereof, prepared by a land surveyor licensed in Illinois and certified to have been prepared in accordance with 2005 ALTA/ACSM Land Survey Standards for Urban Properties and containing Table A, Nos. 1, 2, 3, 4, 6, 7(a), 7(b), 7(c), 8, 9, 10, 11(a), 11(b), 11(c), 13, 14, 16, 17, 19, 20, and 21, for the benefit of Purchaser, Purchaser's lender as identified by Purchaser, if any, and Title Company (Survey). The Survey shall show that there are no encroachments of buildings or other improvements from adjoining properties and the location of all easements affecting the Property.

ARTICLE 7

Representations and Warranties of the Seller

7.1 Seller's Representations. Seller represents and warrants that the following matters are true and correct as of the Effective Date with respect to the Property to the current, actual, conscious knowledge of Seller.

7.1.1 Authority. This Agreement has been duly authorized, executed and delivered by Seller, is the legal, valid and binding obligation of Seller, and does not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller is subject. All documents to be executed by Seller which are to be delivered at Closing, will, at the time of Closing, (i) be duly authorized, executed and delivered by Seller, (ii) be legal, valid and binding obligations of Seller, and (iii) not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller is subject.

7.1.2 Bankruptcy or Debt of Seller. Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally. Seller has received no written notice of (a) the filing of an involuntary petition by Seller's creditors, (b) the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, or (c) the attachment or other judicial seizure of all, or substantially all, of Seller's assets.

7.1.3 Foreign Person. Seller is not a foreign person within the meaning of Section 1445(f) of the Internal Revenue Code, and Seller agrees to execute any and all documents necessary or required by the Internal Revenue Service or Purchaser in connection with such declaration(s).

7.1.4 That Seller is the owner of marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, covenants, conditions, restrictions, leases, tenancies, licenses, options to purchase and any other matters affecting title, except, as of the date hereof, for the Permitted Title Exceptions and the removable Exceptions. There are no persons in possession of all or any part of the Property, nor are there any persons who have possessory rights in respect to the Property or any part thereof.

7.1.5 That there are no condemnation or judicial proceedings, including but not limited to probate proceedings, administrative actions or examinations, which have been instituted or which are pending against Seller, the Property or any part thereof. That there are no actions or proceedings

pending or to the best of Seller's knowledge threatened against Seller before any court or administrative agency which would result in any material adverse change in the condition or operation of the Property and there are no attachments, executions or assignments for the benefit of creditors or voluntary or involuntary proceedings in bankruptcy, pending or contemplated or threatened against Seller, which affects the Property, or the Property.

7.1.6 That Seller expressly agrees and warrants that any cause of action, obligation or other liabilities, except those of Purchaser, which have been incurred prior to the completion of transfer of title to the Property to Purchaser shall be Seller's sole liability and obligation and Seller shall perform any actions necessary to remove said causes of action, obligation or liability and Seller shall hold Purchaser harmless and indemnified thereon for such cause of action, obligation and liability.

7.1.7 Except as previously disclosed, to the best of Seller's knowledge without further inquiry, the Seller has no knowledge of and has not received a notice that the Property and the present operation thereof are in violation of any applicable law, ordinance, order, or regulation of any governmental or quasi-governmental agency having jurisdiction over the Property, or any portion thereof, and further, no notice of proceedings of any type (including condemnation or similar proceedings) having been instituted or contemplated against the Property or any part thereof.

7.1.8 To the best of Seller's knowledge without further inquiry, there are not presently pending any special assessments of any nature with respect to the Property or any part thereof, nor is Seller aware of any such special assessments being contemplated.

7.1.9 To the best of Seller's knowledge without further inquiry, other than the Permitted Exceptions and liens or encumbrances of a definite or ascertainable amount which may be satisfied by the payment of money at the time of closing, there are no existing special assessments, liens, encumbrances, encroachments, overlaps, claims, leases or tenancies, easements, licenses, or other adverse interests of defects upon or affecting the Property. Additionally, Seller represents and warrants that all extension, connection and recapture fees for public utilities or roads serving the Property have been fully paid.

7.1.10 Except as previously disclosed, no commitments have been or will be made by Seller to any governmental unit or agency, utility company, authority, school board, park district, church or other religious body, or to any other organization, group, or individual relating to the Property which would impose any obligations upon Purchaser to make any contributions of money or land or to install or maintain any improvements on the Property.

7.1.11 To the best of Seller's knowledge without further inquiry, there are no underground storage tanks on the Property.

7.1.12 To the best of Seller's knowledge, no notice of any violation of any of the matters referred to in this Paragraph has been received by Seller.

7.1.13 To the best of Seller's knowledge without further inquiry, the Property is not located in a flood plain or wetland area.

7.1.14 That all representations and warranties of Seller appearing in the other sections of this Contract are true and correct.

7.1.15 A breach of any of Seller's representations, warranties and covenants shall be deemed a

default by Seller. The representations, warranties and covenants contained herein shall survive the Closing for a period of one year after the date of Closing. Seller shall defend, indemnify and hold Purchaser harmless from and against any and all claims, losses, liabilities, expenses and damage (including reasonable attorney's fees and excluding consequential damages) which Purchaser may incur resulting from, arising out of or in connection with the breach of any of the representations, warranties and covenants contained herein; however, Seller shall be deemed to have breached said representations made "to the best of Seller's knowledge" only if Seller's actions are willful or made with the intent to deceive Purchaser.

7.2 Change in Representation/Waiver. Notwithstanding anything to the contrary contained herein, Purchaser acknowledges that Purchaser shall not be entitled to rely on any representation made by Seller in this Article VII to the extent, prior to or at Closing, Purchaser shall have or obtain actual knowledge of any information that was contradictory to such representation or warranty; provided, however, if Purchaser determines prior to Closing that there is a breach of any of the representations and warranties made by Seller above, then Purchaser may, at its option, by sending to Seller written notice of its election either (i) terminate this Agreement or (ii) waive such breach and/or conditions and proceed to Closing with no adjustment in the Purchase Price and Seller shall have no further liability as to such matter thereafter. In the event Purchaser terminates this Agreement for the reasons set forth above, the Deposit shall be immediately refunded to Purchaser and neither Purchaser nor Seller shall thereafter have any other rights or remedies hereunder other than under Section 7.1.15 hereof. In furtherance thereof, Seller shall have no liability with respect to any of the foregoing representations and warranties or any representations and warranties made in any other document executed and delivered by Seller to Purchaser, to the extent that, prior to the Closing, Purchaser discovers or learns of information (from whatever source, including, without limitation the property manager, as a result of Purchaser's due diligence tests, investigations and inspections of the Property, or disclosure by Seller or Seller's agents and employees) that contradicts any such representations and warranties, or renders any such representations and warranties untrue or incorrect, and Purchaser nevertheless consummates the transaction contemplated by this Agreement.

7.3 Survival. The express representations and warranties made in this Agreement shall not merge into any instrument or conveyance delivered at the Closing; provided, however, that any action, suit or proceeding with respect to the truth, accuracy or completeness of such representations and warranties shall be commenced, if at all, on or before the date which is one year after the date of the Closing and, if not commenced on or before such date, thereafter such representations and warranties shall be void and of no force or effect.

ARTICLE 8

Representations and Warranties of Purchaser

8.1 Purchaser represents and warrants to Seller that the following matters are true and correct as of the Effective Date.

8.1.1 Authority. Purchaser is an Illinois municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois. This Agreement has been duly authorized, executed and delivered by Purchaser, is the legal, valid and binding obligation of Purchaser, and does not violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject. All documents to be executed by Purchaser which are to be delivered at Closing, will, at the time of Closing, (i) be duly authorized, executed and delivered by Purchaser, (ii) be legal, valid and binding obligations of Purchaser, and (iii) not violate any provision of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject.

8.1.2 Bankruptcy or Debt of Purchaser. Purchaser has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally. Purchaser has received no written notice of (a) the filing of an involuntary petition by Purchaser's creditors, (b) the appointment of a receiver to take possession of all, or substantially all, of Purchaser's assets, or (c) the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets.

8.2 Survival. The express representations and warranties made in this Agreement by Purchaser shall not merge into any instrument of conveyance delivered at the Closing; provided, however, that any action, suit or proceeding with respect to the truth, accuracy or completeness of all such representations and warranties shall be commenced, if at all, on or before the date which is six (6) months after the date of the Closing and, if not commenced on or before such date, thereafter shall be void and of no force or effect.

ARTICLE 9
Purchaser's Right of Inspection; Feasibility Period

S.D. by B.M.

9.1 Right to Evaluate. Commencing on the Effective Date for ^{Every Five} Thirty (45) consecutive calendar days thereafter (the "Feasibility Period"), Purchaser and its agents shall have the right during business hours (with reasonable advance notice to Seller), at Purchaser's sole cost and expense and at Purchaser's and its agents' sole risk, to perform inspections and tests of the Real Property and to perform such other analyses, inquiries and investigations as Purchaser shall deem necessary or appropriate. After making such tests and inspections, Purchaser agrees to promptly restore the Real Property to its condition prior to such tests and inspections (which obligation shall survive the Closing or any termination of this Agreement). Prior to Purchaser entering the Real Property to conduct the inspections and tests described above, Purchaser shall obtain and maintain, at Purchaser's sole cost and expense, and shall deliver to Seller evidence of, the following insurance coverage, and shall cause each of its agents and contractors to obtain and maintain, and, upon request of Seller, shall deliver to Seller evidence of, the following insurance coverage: general liability insurance, from an insurer reasonably acceptable to Seller, in the amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00) combined single limit for personal injury and property damage per occurrence, such policy to name Seller as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage caused by Purchaser or its agents, employees or contractors in connection with such inspections and tests.

G.L.
C.L.
LL
(KMD)

9.2 Seller Deliveries. Seller shall use its reasonable, good faith efforts to deliver to Purchaser or make available at the Real Property all of the items specified on Exhibit C, attached hereto (the "Documents"), on the Effective Date to the extent such items are in Seller's possession.

9.3 Termination Right. If Purchaser is not satisfied with its inspections and tests of the Real Property or its analyses, inquiries or investigations, Purchaser shall provide written notice to Seller before the end of the Feasibility Period, this Agreement shall terminate, the Deposit shall be delivered to Purchaser and thereupon neither party shall have any further rights or obligations to the other hereunder. If Purchaser shall fail to timely notify Seller in writing of its election to terminate this Agreement on or before the expiration of the Feasibility Period, time being of the essence, the termination right described in this Section 9.3 shall be immediately null and void and of no further force or effect. Purchaser's failure to provide such notice on or before the end of the Feasibility Period shall constitute Purchaser's waiver of the herein-described termination right.

ARTICLE 10
Closing Conditions

10.1 Conditions to Obligations of Seller. The obligations of Seller under this Agreement to sell the Property and consummate the other transactions contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date except to the extent that any of such conditions may be waived by Seller in writing at Closing.

10.1.1 Representations, Warranties and Covenants of Purchaser. All representations and warranties of Purchaser in this Agreement shall be true and correct in all material respects.

10.1.2 No Orders. No order, writ, injunction or decree shall have been entered and be in effect by any court of competent jurisdiction or any governmental authority, and no statute, rule, regulation or other requirement shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby.

10.2 Conditions to Obligations of Purchaser. The obligations of Purchaser under this Agreement to purchase the Property and consummate the other transactions contemplated hereby shall be subject to the satisfaction of the following conditions on or before the Closing Date, except to the extent that any of such conditions may be waived by Purchaser in writing at Closing.

10.2.1 Representations, Warranties and Covenants of Seller. All representations and warranties of Seller in this Agreement shall be true and correct in all material respects.

10.2.2 No Orders. No order, writ, injunction or decree shall have been entered and be in effect by any court of competent jurisdiction or any governmental authority, and no statute, rule, regulation or other requirement shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby.

10.2.3 Title Policy. Upon recordation of the Deed and payment of the title insurance premiums, the Title Company shall be prepared to issue to Purchaser an Owner's Policy of Title Insurance.

10.2.4 Possession of the Property. Delivery by Seller of possession of the Property, subject to the Permitted Exceptions only.

ARTICLE 11
Closing

11.1 Purchaser's Closing Obligations. Purchaser, at its sole cost and expense, shall deliver or cause to be delivered to Seller at Closing the following:

11.1.1 The Purchase Price, after all adjustments are made at the Closing as herein provided, by wire transfer or other immediately available federal funds, which amount shall be received in escrow by the Title Company.

11.1.2 Evidence reasonably satisfactory to Seller and the Title Company that the person executing the Closing documents on behalf of Purchaser has full right, power and authority to do so.

11.1.3 A certificate indicating that the representations and warranties set forth in Article VIII are true and correct on the Closing Date, or, if there have been changes, describing such changes.

11.1.4 Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement.

11.2 Seller's Closing Obligations. Seller, at its sole cost and expense, shall deliver or cause to be delivered to Purchaser the following:

11.2.1 A warranty deed (the "Deed") in recordable form properly executed by Seller conveying to Purchaser the Land and Improvements described on Exhibit A in fee simple, subject only to the Permitted Exceptions, substantially in the form attached hereto as Exhibit D.

11.2.2 Evidence reasonably satisfactory to the Purchaser and the Title Company that the person executing the Closing documents on behalf of Seller has full right, power and authority to do so.

11.2.3 A certificate indicating that the representations and warranties set forth in Article VII are true and correct on the Closing Date, or, if there have been changes, describing such changes.

11.2.4 A certificate substantially in the form attached hereto as Exhibit E ("Non-foreign Entity Certification") certifying that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

11.2.5 Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement.

ARTICLE 12

Risk of Loss

12.1 Condemnation and Casualty. If, prior to the Closing Date, all or any portion of the Property is taken by condemnation or eminent domain, or is the subject of a pending taking which has not been consummated, or is destroyed or damaged by fire or other casualty, Seller shall notify Purchaser of such fact promptly after Seller obtains knowledge thereof. Purchaser shall have the option to either (a) terminate this Agreement upon notice to Seller given not later than fifteen (15) days after receipt of Seller's notice, or the Closing Date, whichever is earlier or (b) continue to closing waiving any interest in resulting insurance or judicial award. If this Agreement is terminated, the Deposit shall be returned to Purchaser and thereafter neither Seller nor Purchaser shall have any further rights or obligations to the other hereunder except with respect to the Surviving Termination Obligations.

ARTICLE 13

Default

13.1 Defaults by Seller. In the event the Closing and the transactions contemplated hereby do not occur as provided herein by reason of the default of Seller, Purchaser may elect, as the sole and exclusive remedy of Purchaser, to (i) terminate this Agreement and receive the Deposit from the Escrow Agent, and in such event Seller shall not have any liability whatsoever to Purchaser hereunder other than with respect to the Surviving Termination Obligations or (ii) enforce specific performance of this Agreement of the obligations of Seller hereunder. Purchaser shall be deemed to have elected to terminate this Agreement (as provided in subsection (i) above) if Purchaser fails to deliver to Seller written notice of its intent to file a cause of

action for specific performance against Seller on or before thirty (30) days after written notice of termination from Seller or thirty (30) days after the originally scheduled Closing Date, whichever shall occur first, or having given Seller notice, fails to file a lawsuit asserting such cause of action within sixty (60) days after the originally scheduled Closing Date. Notwithstanding the foregoing, nothing contained herein shall limit Purchaser's remedies at law or in equity, as to the Surviving Termination Obligations.

13.2 Defaults by Purchaser. In the event the Closing and the transactions contemplated hereby do not occur as provided herein by reason of any default of Purchaser, Seller may, in addition to all remedies contained elsewhere in this Agreement terminate this Agreement, without further liability on Seller's part in which event the Deposit shall be paid to Seller; the parties, recognizing the difficulty in determining the proper amount of damages in the event of default, agree that the Deposit shall be treated as liquidated damages

ARTICLE 14
Brokers

14.1 Brokers. Purchaser and Seller each represents and warrants to the other that Murray Commercial Real Estate and Koenig Rubloff are real estate agents entitled to a brokerage commission pursuant to the multiple listing agreement executed by Seller.

ARTICLE 15
Confidentiality

15.1 Post Closing Publication. Purchaser and Seller shall have the right to announce the acquisition of the Property to the Public and the media after the City Council of the City ratifies the Agreement. The provisions of this Section 15 shall survive Closing and/or any termination of this Agreement.

ARTICLE 16
Miscellaneous

16.1 Notices. All notices, requests, or other communications hereunder shall be in writing and served either by e-mail or facsimile. Said communication shall be deemed served the date transmitted, conditional upon transmission being between 9:00 AM and 5:00 PM on regular business days. If served at other times or days, notices shall be deemed delivered at 9:00 AM the next regular business day. Notices shall be served as follows:

To Purchaser:	City of Geneva City Administrator 22 S. First Street Geneva, IL 60134
With a copy to:	Charles A. Radovich Radovich Law Office, PC. Attorney at Law Attn: Charles A. Radovich 312 W. State Street, Geneva, IL 60134 Fax No.: 630/232-0189 Email Address: cradovich@geneva.il.us

To Seller: Kathleen M. Nichols-Costabile
 Lino Costabile
 Guy Lepore
 Conna Lepore
 1030 Deer Glen Ct. (address)
 Glen Ellyn, IL 60137

16.2 Governing Law. This Agreement shall be governed by and construed in accordance with the internal, substantive laws of the State of Illinois, without regard to the conflict of laws principles thereof.

16.3 Headings. The captions and headings herein are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

16.4 Effective Date. This Agreement shall be effective upon delivery of this Agreement fully executed by the Seller and Purchaser, which date shall be deemed the Effective Date hereof. Either party may request that the other party promptly execute a memorandum specifying the Effective Date.

16.5 Business Days. If any date herein set forth for the performance of any obligations of Seller or Purchaser or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or Federal holiday for which financial institutions or post offices are generally closed in the state where the Property is located.

16.6 Counterpart Copies. This Agreement may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Agreement.

16.7 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

16.8 Assignment. Purchaser shall have the right to assign the Agreement without Seller's prior written consent; provided, further, that Purchaser shall be released from any of its obligations or liabilities hereunder as a result of any such assignment. Whenever reference is made in this Agreement to Seller or Purchaser, such reference shall include the successors and assigns of such party under this Agreement. Any assignee of Purchaser shall execute such documents and cooperate fully to cause the consummation of this Agreement in accordance with its terms and shall be deemed to have received all disclosures and documents previously provided the Purchaser hereunder.

16.9 Interpretation. 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.

16.10 Entire Agreement. This Agreement and the Exhibits attached hereto contain the final and entire agreement between the parties hereto with respect to the sale and purchase of the Property and are intended to be an integration of all prior negotiations and understandings. Purchaser, Seller and their agents shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein. No change or modifications to this Agreement shall be valid unless the same is in writing

and signed by the parties hereto. Each party reserves the right to waive any of the terms or conditions of this Agreement which are for their respective benefit and to consummate the transaction contemplated by this Agreement in accordance with the terms and conditions of this Agreement which have not been so waived. Any such waiver must be in writing signed by the party for whose benefit the provision is being waived.

16.11 Severability. If any one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16.12 Survival. Except as otherwise specifically provided for herein, the provisions of this Agreement and the representations and warranties herein shall not survive after the conveyance of title and payment of the Purchase Price but be merged therein.

16.13 Exhibits. Exhibits A through F attached hereto are incorporated herein by reference.

16.14 Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

16.15 Limitation of Liability. The obligations of Seller are binding only on Seller and Seller's assets and shall not be personally binding upon, nor shall any resort be had to, the private properties of any of the partners, officers, directors, shareholders or beneficiaries of Seller, or of any partners, officers, directors, shareholders or beneficiaries of any partners of Seller, or of any of Seller's employees or agents. All documents to be executed by Seller shall also contain the foregoing exculpation.

16.16 Prevailing Party. Should either party employ an attorney to enforce any of the provisions hereof, (whether before or after Closing, and including any claims or actions involving amounts held in escrow), the non-prevailing party in any final judgment agrees to pay the other party's reasonable expenses, including reasonable attorneys' fees and expenses in or out of litigation and, if in litigation, trial, appellate, bankruptcy or other proceedings, expended or incurred in connection therewith, as determined by a court of competent jurisdiction. The provisions of this Section 16.16 shall survive Closing and/or any termination of this Agreement.

16.17 Waiver of Trial by Jury. The respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, or for the enforcement of any remedy under any statute, emergency or otherwise.

16.18 Further Assurances. The parties agree to take any actions or execute any documents reasonably required to effect the intent hereof.

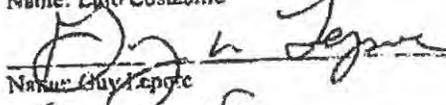
IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the date or dates set forth below.

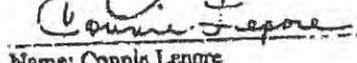
SELLER:

384 PECK ROAD, LLC

By: 
 Name: Kathleen M. Nichols-Costabile

By: 
 Name: Lino Costabile

By: 
 Name: Connie Lepore

By: 
 Name: Connie Lepore

PURCHASER:

CITY OF GENEVA, ILLINOIS

By: 
 Name: Stephanie K. Dawkins
 Title: City Administrator

Exhibits

- Exhibit A - Legal Description
- Exhibit B - Escrow Agreement
- Exhibit C - Documents
- Exhibit D - Permitted Exceptions
- Exhibit E - Intentionally deleted
- Exhibit F - Non-foreign Entity Certification

EXHIBIT A

LEGAL DESCRIPTION

THE NORTH ONE HALF OF THE SOUTHEAST QUARTER (EXCEPT THE SOUTH 15 RODS THEREOF), SECTION 6, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART CONVEYED TO THE CITY OF GENEVA BY DEED DOCUMENT 98K113630), IN GENEVA TOWNSHIP, KANE COUNTY, ILLINOIS

The legal description above is from the last deed of record; the legal description may or may not have discrepancies. Therefore, the parties agree to correct, by survey, the legal description to reflect the real property covered by the following Property Index Number: P.I.N. 12-06-400-010

EXHIBIT E

CHICAGO TITLE AND TRUST COMPANY

1795 W. State Street
Geneva, IL 60134

Refer to: _____
Phone No.: _____
Fax No.: _____

STRICT JOINT ORDER #1 ESCROW TRUST INSTRUCTIONS (EARNEST MONEY)

ESCROW TRUST NO.: _____ DATE: _____

To: Chicago Title and Trust Company, Escrow Trustee:

Customer Identification:

Seller: 384 Peck Road, LLC
Purchaser: City of Geneva, Illinois
Property Address: 1N384 Peck Road, Geneva, Illinois

Proposed Disbursement Date: Approximately October 15, 2018

Deposits:

1. The sum of \$10,000.00 by Purchaser representing earnest money.

Delivery of Deposits:

The above-referenced escrow trust deposits ("deposits") are deposited with the escrow trustee to be delivered by it only upon the receipt of a joint order of the undersigned or their respective legal representatives or assigns.

In no case shall the above-mentioned deposits be surrendered except upon the receipt of an order signed by the parties hereto, their respective legal representatives or assigns, or in obedience to the court order described below.

Billing Instructions:

Escrow trust fee will be billed as follows: 50% to Purchaser and 50% to Seller.

An annual maintenance fee, as determined by the then current rate schedule, will commence; n/a

PLEASE NOTE: The escrow trust fee for these joint order escrow trust instructions is due and payable within 30 days from the projected disbursement date (which may be amended by joint written direction of the parties hereto). In the event no projected disbursement date is ascertainable, said escrow trust fee is to be billed at acceptance and is due and payable within 30 days from the billing date. Chicago Title and Trust Company, at its sole discretion, may reduce or waive the escrow trust fee for these joint order escrow instructions in the event the funds on deposit herein are transferred to or disbursed in connection with sale escrow trust instructions or an agency closing transaction established at Chicago Title.

Investment:

Deposits made pursuant to these instructions may be invested on behalf of Purchaser; provided that any direction to escrow trustee for such investment shall be expressed in writing and contain the consent of Purchaser, and also provided that you are in receipt of the taxpayer's identification number and investment forms as required. Escrow trustee will, upon request, furnish information concerning its procedures and fee schedules for investment.

Commingling:

Except as to deposits of funds for which escrow trustee has received express written direction concerning investment or other handling, the parties hereto agree that the escrow trustee shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that escrow trustee may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under Section 2-8 of the Corporate Fiduciary Act (205 ILCS 620/2-8) and may use any part or all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish escrow trustee's obligation to apply the full amount of the deposits in accordance with the terms of these escrow instructions.

In the event the escrow trustee is requested to invest deposits hereunder, Chicago Title and Trust Company is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of these escrow trust instructions.

Compliance With Court Order:

The undersigned authorize and direct the escrow trustee to disregard any and all notices, warnings or demands given or made by the undersigned (other than jointly) or by any other person. The said undersigned also hereby authorize and direct the escrow trustee to accept, comply with, and obey any and all writs, orders, judgments or decrees entered or issued by any court with or without jurisdiction; and in case the said escrow trustee obeys or complies with any such writ, order, judgment or decree of any court, it shall not be liable to any of the parties hereto or any other person, by reason of such compliance, notwithstanding any such writ, order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated. In case the escrow trustee is made a party defendant to any suit or proceedings regarding this escrow trust, the undersigned, for themselves, their heirs, personal representatives, successors, and assigns, jointly and severally, agree to pay to said escrow trustee, upon written demand, all costs, attorney's fees, and expenses incurred with respect thereto. The escrow trustee shall have a lien on the deposit(s) herein for any and all such costs, fees and expenses. If said costs, fees and expenses are not paid, then the escrow trustee shall have the right to reimburse itself out of the said deposit(s).

Execution:

These escrow trust instructions are governed by and are to be construed under the laws of the State of Illinois. The escrow trust instructions, amendments or supplemental instructions hereto, may be executed in counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument.

For Purchaser:

Name: Radovich Law Office, P.C.
By: Charles A. Radovich
Address: 312 W. State Street, Geneva, IL

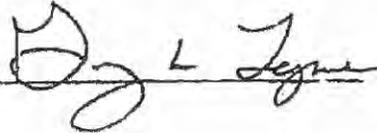
Phone: 630-232-4511
Fax: 630-232-0189

For Seller:

Name: 384 Peck Road LLC
By: Guy N. Lepore
Address: 1030 Deer Glen Ct
Glen Ellyn, IL 60137

Phone: 630-774-4860
Fax: 630-545-1022

Signature: _____

Signature:  _____

Accepted: Chicago Title and Trust Company, as Escrow Trustee

By: _____ Date: _____

EXHIBIT C

DOCUMENTS

1. Existing owner's title insurance policy, including copies of all title exception documents
2. An existing ALTA and/or non-ALTA survey and site plan, if any.
3. Copy of any existing leases in place.
4. Copy of any notices of proposed real estate tax assessment changes

EXHIBIT D

PERMITTED EXCEPTIONS

1. **General taxes for the year 2018, and yet due and payable.**
2. **Acts or matters created by Purchaser.**

EXHIBIT F

CERTIFICATION OF NONFOREIGN STATUS

Escrow File Number: _____

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by man the undersigned hereby certifies the following on behalf of 384 Peck Road, LLC.

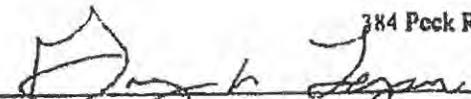
1. 384 Peck Road, LLC is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. 384 Peck Road, LLC's United States employer identification number is 26-0633857; and
1030 Deer Glen Ct.
3. 384 Peck Road, LLC's office address is Glen Ellyn, IL 60137.

384 Peck Road, LLC understands that this Certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete and I further declare that I have authority to sign this Certification on behalf of 384 Peck Road, LLC.

Dated: Sept. 20, 2018

384 Peck Road, LLC

By: 

Name: Guy N. Lepore

Its: Manager

SCHEDULE "A"

1. All attached fixtures and mechanical systems, including heating, air conditioning, plumbing, electrical, telephone system and ventilation; all other items listed in the MLS #02891697