



COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

1420 Miner Street
Des Plaines, IL 60016
P: 847.391.5380
desplaines.org

MEMORANDUM

Date: July 10, 2023

To: Michael G. Bartholomew, City Manager

From: John T. Carlisle, AICP, Director of Community and Economic Development *JTC*

Cc: Peter Friedman, Elrod Friedman, General Counsel for City of Des Plaines
Stewart Weiss, Partner, Elrod Friedman, General Counsel for City of Des Plaines
Megan Cawley, Attorney, Elrod Friedman, General Counsel for City of Des Plaines

Subject: Resolution Approving First Amendment to Purchase and Sale Agreement (PSA) for
1332 Webford Avenue (Related to Graceland-Webford Mixed-Use Development)

Issue: Mylo Residential Graceland Property, LLC (formerly 622 Graceland Apartments, LLC; Joe Taylor of Compasspoint Development as Manager) (“**Developer**”) is under contract with the City to purchase the property at 1332 Webford Avenue (“**City Parcel**”), which is a City-owned public parking lot. The City Council approved this sale through Ordinance M-22-22 on September 6, 2022, and the PSA was executed October 7, 2022. The City Parcel will be combined with parcels located to the east for a proposed mixed-use residential, commercial, and parking development, alongside a publicly accessible park immediately west at 1330 Webford. The sale of the City Parcel is currently scheduled for late July. The sale price would be \$10. However, the current agreement requires that for the closing to occur, the Developer must simultaneously purchase both the Journal & Topics parcels located to the east as well as the 1330 Webford parcel located to the west.

The City Manager received a request (attached) from counsel for the Developer to amend the PSA and extend the time to close on the adjacent parcels by 90 days, while allowing the closing for the City-owned parcel to proceed in as planned later this month.

Analysis: 1332 Webford is a 13,500-square-foot property directly west of the 622 Graceland Avenue-1368 Webford property (the “**Journal and Topics Parcels**”) and east of a small mixed-use commercial-residential building at 1330 Webford (“**West Parcel**”). As a public parking lot, the City Parcel has been used historically by a mix of permit-holders, who have obtained a monthly permit from the City’s Finance Department, and those seeking time-limited free public parking. Based on observations of current and prior years, the parking lot has been only partially utilized, with ample spaces available at a given time.

The Developer’s proposed mixed-use development (the “**Graceland-Webford Project**”) will include 131 residential apartments, approximately 2,800 square feet of restaurant-lounge/commercial space, an approximately 3,000-square-foot publicly available open green space adjacent to Webford Avenue, and a

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parking garage with 179 covered spaces. Of these 179 spaces, 25 would be allocated for public use, intended to partially replace the 38 spaces currently at 1332 Webford. The remaining 154 would fulfill the off-street parking requirements of the Zoning Ordinance for the residential units (137 spaces) and proposed restaurant-lounge (17 spaces). The completion of the Graceland-Webford Project relies upon the acquisition of the City Parcel.

The Graceland-Webford Project required a zoning map amendment (rezoning) from the C-3 General Commercial District to the C-5 Central Business District. The City Council approved the rezoning on August 1, 2022 (Ordinance Z-23-22). This approving ordinance has not become effective, however, because it is conditioned upon the Developer acquiring title to the City Parcel. This obligation was required to be satisfied within one year of the Council's original approval of the ordinance.

Attached Resolution R-139-23 would approve a First Amendment to the PSA for 1332 Webford. The First Amendment (i) requires that the Developer close on the City Parcel no later than *July 31, 2023* and (ii) extends the deadline for the Developer to acquire both the Journal & Topics Parcels and the West Parcel to no later than *October 31, 2023*. Attachment 1 explains that the Developer is awaiting approval of their construction loan.

Protections

Because of implications of the amended terms at this juncture, the First Amendment is prepared with these considerations intended to protect the City.

- **Reverter:** If the Developer is unable to acquire the Journal & Topics Parcels and the West Parcel on or before October 31, 2023, title to the City Parcel will automatically revert to the City.
- **Earnest money:** Although the final sale price is \$10, the agreement requires a \$60,000 deposit of earnest money. If title to the City Parcel reverts to the City, the City will also be entitled to keep the full \$60,000. *(Note: The Council's approval of selling the Subject Property for only \$10, after an initial offer of \$300,000, was to contribute toward the feasibility of the Developer acquiring 1330 Webford and developing it into a park.)*
- **Future downzoning (if necessary):** In the event the City sells 1332 Webford to the Developer but the Developer is not able to acquire the Journal & Topics Parcels – which are part of the property that would be rezoned to C-5 pursuant to Ordinance Z-23-22 – the owner of the Journal & Topics Parcels must pledge not to object to a City-initiated rezoning of the parcels back to C-3. This pledge will require a separate document submission to the City or General Counsel, which must be provided on or before the 1332 Webford closing date.

Unchanged Terms

The following key terms, which have been reinforced through a development agreement (approved by Resolution R-76-23), would **not** change if the Council approves the first amendment to the PSA:

- The Developer will be responsible for paying for demolition of the existing building at 1330 Webford, as well as all site preparation, programming, and landscaping of the property with placemaking or recreational elements desired by the City.
- The Developer, as the new owner of 1330 Webford, will record a covenants and easement agreement that will establish the park as public open space. Developer or any successors in title would be

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responsible for property maintenance, including maintenance of any recreational improvements. Further, the Developer or any successors would be responsible for any real estate taxes as may be levied on 1330 Webford.

- The redevelopment agreement contains exhibits to ensure the development is “constructed, maintained, and operated in accordance with plans approved” by the City.
- Through the development agreement and as contemplated by both Ordinance Z-23-22 (zoning approval) and the original PSA, the Developer would not object to a rezoning from C-5 back to C-3 if, even upon completion of all land acquisition, the Developer does not fulfill other benchmarks in the Development Permitting and Construction Schedule. These benchmarks include but are not limited to application for demolition and building permits by January 15, 2024, and construction commencement by April 30, 2024.

City Council Action: If the Council wishes to agree to the alternate timeline proposed by the Developer, it may vote to approve Resolution R-139-23, which is attached.

Attachments

Attachment 1: Written request to City Manager from counsel for Developer

Attachment 2: Executed PSA for 1332 Webford

Resolution

R-139-23

Exhibits

Exhibit A: First Amendment

Bernard I. Citron
312 580 2209 direct
bcitron@thompsoncoburn.com

July 7, 2023

VIA ELECTRONIC MAIL

Michael Bartholomew
City Manager
City of Des Plaines
1420 Miner Street
Des Plaines, IL 60016

Re: Development by Mylo Graceland Residential Properties LLC
1330 to 1334 W. Webford

Dear Mr. Bartholomew:

On behalf of Mylo Graceland Residential Properties LLC, we are requesting to appear before the Des Plaines City Council on July 17, 2023 in order to request an extension of the closings on all three Webford properties that are the subject to Zoning Ordinance, Purchase Sales Agreement and Development Agreement heretofore approved by the City.

Two of the documents call for a closing on the Public Parcel (as defined) and the City Parcel on or before August 1, 2023 (Development Agreement, Exhibit D) and the Zoning Ordinance (which requires a closing within 1 year of its approval in order for the zoning to remain in effect). We are requesting a 90 day extension of the August 1 date in order to complete our process with HUD. Because of the location of the properties adjacent to the Metra rail lines, HUD must grant a noise waiver in order to finance the construction of the building. We have designed the building in such a way to mitigate any effects from the trains. Unfortunately HUD has not completed this process. Without this waiver, our lender, Merchants Capital cannot issue a formal loan commitment. Hence the Project would not be able to go ahead. We estimate that within 90 days the waiver will be granted and a commitment issued.

The Development Agreement allows for the City Manager to grant extensions to the Exhibit E dates (which include the date for closing on the properties). However the Zoning Ordinance, Z-23-22 will fail to be effective if the closing does not occur by August 1, 2023. Therefore we are requesting to appear before the City Council on July 17th to request that this date be extended. We have been working diligently on all other aspects of the Project, including resolving Plat and Engineering Issues. Attorneys for both parties (City and Developer) have been drafting the other required documents that would be executed at the closing.

July 7, 2023
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Very truly yours,

Thompson Coburn LLP

A handwritten signature in black ink, appearing to read "BIC", with a long horizontal flourish extending to the right.

By
Bernard I. Citron
Partner

BIC/mse

cc: John Carlisle
Steward Weiss
Peter Friedman
Joe Taylor
Gary Plotnick

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("**Agreement**") is made and entered into as of October 7, 2022 (the "**Effective Date**") by and between the CITY OF DES PLAINES, an Illinois home-rule municipal corporation ("**Seller**"), and 622 GRACELAND APARTMENTS LLC, an Illinois limited liability company. ("**Purchaser**"). In consideration of the recitals and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser (collectively, the "**Parties**") agree as follows:

Section 1. Recitals.

A. Seller currently owns fee simple title to that certain real property consisting of approximately 0.3100 acres commonly known as 1332 Webford Avenue, Des Plaines, Illinois, 60016 which is legally described on **Exhibit A** attached hereto ("**Property**").

B. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Property.

C. On September 6, 2022, the City Council of the City of Des Plaines approved Ordinance No. M-22-22 preliminarily authorizing Seller's sale and the redevelopment of the Property.

D. Purchaser desires to acquire the Property for the purpose of redeveloping it, together with the adjacent properties commonly known as 1368 Webford Avenue and 622 Graceland Avenue, Des Plaines, Illinois 60016 (collectively the "**Assembly Parcels**") as a multi-family apartment building with commercial and amenity space on the lower floors, as well as a 179-space covered parking garage (collectively the "**Redevelopment**") in accordance with a redevelopment agreement to be negotiated between the Parties ("**Redevelopment Agreement**"). Such Redevelopment Agreement will require that the Assembly Parcels be constructed, maintained, and operated in accordance with plans approved by Seller and will be a covenant upon the Assembly Parcels.

E. Purchaser also agrees that, as a condition of and prior to or simultaneous with closing on the Property, Purchaser will, at its sole cost and expense, acquire fee simple title to the parcel located directly to the west of the Property, commonly known as 1330 Webford Avenue and corresponding to the P.I.N. 09-17-306-039 ("**Adjacent Parcel**") and will, as a condition of and prior to or simultaneous with the closing on the Property, covenant to (i) demolish all existing structures and improvements on the Adjacent Parcel at Purchaser's sole cost and expense; (ii) install or construct such improvements and landscaping as the City may direct to allow use of the Adjacent Parcel as recreational open space; (iii) record a permanent and perpetual easement on the Adjacent Parcel requiring that it be maintained as public open space; and (iv) maintain the Adjacent Parcel and the recreational improvements installed on the Adjacent Parcel in perpetuity, including paying such real estate taxes as may be levied on the Adjacent Parcel, all in the manner set forth in the Redevelopment Agreement and in a restrictive covenant attached as an exhibit to the Redevelopment Agreement to be recorded against the Property and the Assembly Parcels providing that these requirements will run with and bind all future owners of the Property, the Assembly Parcels and the Adjacent Parcels.

F. Purchaser agrees it will, as more fully specified in the Redevelopment Agreement, maintain within the Redevelopment, in perpetuity, or until released by Seller, a

minimum of 25 parking spaces, of which two spaces will be designated disabled parking spaces, for the use and benefit of the general public ("**Public Parking Spaces**"). Purchaser will prohibit residents of the Redevelopment from using the Public Parking Spaces as long-term unit parking. Purchaser will also release Seller from any future responsibility for administration, maintenance, enforcement, or sharing in any costs related to these Public Parking Spaces. Purchaser agrees, on behalf of all future assigns, heirs, or transferees, that no fee may be charged to the general public for use of the Public Parking Spaces, unless specifically authorized by the City Council of the City of Des Plaines by resolution duly adopted.

G. Purchaser further agrees to include an approximately 3,400 square foot landscaped passive use area just north of the public sidewalk on the Webford Avenue frontage of the Redevelopment ("**Open Space Area**"), which will be reserved for such use via an easement or covenant on the Plat of Subdivision for the Subject Property.

H. The Parties agree that an Operation and Reciprocal Easement Agreement ("**OREA**") will be drafted and executed by Purchaser in a form acceptable to Seller's General Counsel, and will be recorded against the Property and the Assembly Parcels at the time of the approval of the Final Plat of Subdivision/Consolidation or the Closing whichever is later. The OREA will memorialize the Developer's, or its successor's, long-term operational obligations as set forth in the Redevelopment Agreement, including all obligations related to the Public Parking Spaces and the Open Space Area.

Section 2. Incorporation of Recitals. The Recitals are incorporated into this Agreement.

Section 3. Purchase and Sale; Purchase Price.

A. **Purchase Price.** In consideration of the covenants and conditions contained in this Agreement and the Redevelopment Agreement, including specifically, but without limitation, Purchaser's obligation, at its sole cost and expense, to acquire fee simple title to the Adjacent Parcel prior to or simultaneous with the closing on the Property, Seller shall sell the Property to Purchaser, and Purchaser shall purchase the Property from Seller, subject to the terms of this Agreement and the Redevelopment Agreement. The purchase price for the Property is \$10.00 ("**Purchase Price**").

B. **Earnest Money.** Purchaser will deliver \$60,000.00 ("**Earnest Money**") to Chicago Title Insurance Company ("**Title Company**"), [c/o Ruby Rodriguez, 10 S. LaSalle St., Suite 3100 Chicago, Illinois, 60603, Tel: 312-223-2125, Cell: 312-489-9210, email: Ruby.rodriguez@ctt.com referencing Order No. CCH12104614LD as escrowee] ("**Escrowee**"), by the wire of immediate available funds the Earnest Money. Seller will cooperate with Purchaser in the funding of the Earnest Money with the Escrowee. Escrowee will hold the Earnest Money pursuant to the form strict joint order escrow agreement then in use by the Escrowee with such changes as may be necessary to conform to this Agreement.

C. **Balance of Purchase Price.** Purchaser shall pay the Purchase Price, less the Earnest Money, provided Purchaser has instructed the Escrowee to release the Earnest Money to Seller, plus or minus prorations, credits, and adjustments as provided in this Agreement, at the Closing through a Closing Escrow (defined in Section 8 below) by wire transfer in accordance with wire instructions proved by the Title Company.

D. **Interest on Earnest Money.** Purchaser will pay any fee charged by the Escrowee for placement of the Earnest Money in an interest-bearing account and will sign such

documents as required by Escrowee. Any interest earned on the Earnest Money shall be credited to Purchaser at the Closing. Purchaser may decline to hold the Earnest Money in an interest-bearing account.

Section 4. Parties' Preliminary Obligations and Rights.

A. **Seller's Deliveries.** Purchaser acknowledges receipt of copies of all of the following documents: (i) Title Commitment for the Property issued by the Title Company dated June 25, 2021 and identified as Order No. CCHI2104614LD ("**Title Commitment**"); and (ii) survey by Haeger Engineering dated August 5, 2021 (collectively "**Seller's Deliveries**").

B. **Title Commitment.** Seller has obtained a preliminary commitment from the Title Company to issue to Purchaser at Closing an ALTA Owner's Title Insurance Policy (i) in the amount of the Purchase Price, (ii) with an extended coverage endorsement over all standard exceptions, (iii) insuring good, marketable, and insurable title to the Property, and (iv) with coverage over any "gap" period, all subject only to the Permitted Exceptions (defined in Section 5.B (ii)) (the "**Title Policy**"). Purchaser shall pay the cost for the Title Policy with an extended coverage endorsement over standard exceptions and for any other endorsements it requests.

C. **Surveys and Plats.**

(i) **ALTA/NSPS Survey.** Seller has obtained an ALTA/NSPS standard survey of the Property, that (a) is prepared by Haeger Engineering, (b) will be certified in favor of Seller, Purchaser and the Title Company, (c) complies with all requirements of the Title Company that are conditions to the removal of the survey exception from the standard printed exceptions in the Title Commitment, and (d) contains a certification as to the total acreage of the Property. Purchaser shall pay the cost for the ALTA/NSPS Survey.

(ii) **Plat of Subdivision/Consolidation.** Purchaser will provide to Seller no later than 60 days after the Effective Date a Tentative Plat of Subdivision/Consolidation of the Property and the Assembly Parcels. Purchaser will provide Seller, no later than 180 days after the Effective Date, with a Final Plat of Subdivision/Consolidation that complies with the requirements of the subdivision regulations of Seller ("**Subdivision Regulations**") and includes accurate depictions of:

(a) the Property and the Assembly Parcels; and

(b) all other elements required by the Subdivision Regulations and the Illinois Plat Act (765 ILCS 205/0.01 *et seq.*)

("Plat of Subdivision/Consolidation"). Purchaser will deliver the Final Plat of Subdivision/Consolidation to Seller within 180 days from the Effective Date. Purchaser will submit any documents necessary for the approval of the Final Plat of Subdivision/Consolidation by Seller. Purchaser will pay all costs associated with both the Tentative and the Final Plat of Subdivision/Consolidation. Nothing in this Section 4.C prohibits or limits Purchaser's ability to submit a combined Tentative and Final Plat of Subdivision/Consolidation for the Property.

D. **Environmental Assessment.** Beginning on the Effective Date, Purchaser may cause to be performed one or more (i) environmental assessments, reviews, or audits, including without limitation a Phase I site assessment, of or related to the Property, and (ii) other investigations or analyses concerning the environmental and physical condition of the Property (collectively, the “**Environmental Assessments**”). At Seller’s request, Purchaser shall provide a copy of any completed Environmental Assessment to Seller.

Section 5. Due Diligence Period.

A. **Period and License.** During the period that begins on the Effective Date and ends on the one hundred eightieth (180th) day after the Effective Date (“**Due Diligence Period**”), Purchaser may conduct such investigations, inspections, reviews, and analyses of or with respect to the Property as Purchaser desires (“**Due Diligence Activities**”). The Due Diligence Activities may include, without limitation, reviews of Seller’s Deliveries, and the Environmental Assessments. Seller hereby grants to Purchaser a license during the Due Diligence Period, for the use of Purchaser and its agents and contractors, to conduct Due Diligence Activities on the Property at any time upon 1 day’s prior notice to Seller.

B. Review of Title Commitments and Surveys.

The Parties agree that the review of the Title Commitment attached as **Exhibit C** and the Survey have been completed.

- (i) **Identification of Unpermitted Exceptions and Commitment to Cure.** Seller commits to cure exceptions N, B, A, I, and K, in the Title Commitment (“Unpermitted Exceptions”), provided, however, that if the unpermitted Exceptions, including the Must Cure Exceptions as identified below, exceed \$50,000 to cure or insure over, Seller shall have the additional option of terminating this Agreement and the Redevelopment Agreement with no further obligation to Purchaser. The following are Unpermitted Exceptions, that Seller must cure, and not merely insure over, prior to or at the Closing, and that Seller will be deemed to commit to cure in the Commitment to Clear Exceptions, (collectively, the “**Must Cure Exceptions**”): (i) each mechanics’, materialmen’s, repairmen’s, contractors’ or other similar lien that encumbers the Premises, unless the lien arises from the acts of Purchaser, (ii) each mortgage, security deed, and other security instrument that encumbers the Premises unless arising from the acts of Purchaser, and (iii) any past due Real Estate Taxes (defined in Section 8.F) applicable to the Premises.

- (ii) **Permitted Exceptions.** The following exceptions identified in the Title Commitment are Permitted Exceptions (“**Permitted Exceptions**”):

Schedule B Part 1: Purchaser will comply with Exceptions 1, 2, 3, 4, 5, 6, 7, and 8.

Schedule B Part 2: Seller and Purchaser will cooperate to ensure

that General Exceptions 1, 2, 3, 4, 5, 6, and 7 and E 18 are waived at the Closing, except that the encroachments and easements, as shown on the ALTA/NSPS Survey and identified as Exception Q and M will remain. Purchaser will comply with Exceptions C, D, H, O, and R. Seller will comply with Exception C-8.

Purchaser accepts as Permitted Exceptions the following:

Exceptions G, M and Q and zoning and building ordinances/laws; any requirements by the Metropolitan Water and Reclamation District and all land use regulations that apply to the Property, the lien of taxes not yet due and payable and the standard exclusions and exceptions coverage in the jacket of the Title Policy (except for the general exception 1 through 5 noticed in the Title Commitment) and any encroachment, encumbrance or adverse circumstance affecting the title that is disclosed by the survey or required by the Title Company due to the identification of Purchaser and under Exceptions H.

C. Review of Environmental Assessments; Environmental Work.

- (i) **Remediation Notice.** If Purchaser determines through its review of an Environmental Assessment, that there exists within the Property a condition that (a) may require environmental clean-up, remediation, or (in the case of underground and above ground storage tanks (collectively, "**Storage Tanks**") removal, and (b) was caused by Seller or is confined solely to the Property and did not migrate from an adjacent property and (c) may adversely affect Purchaser's intended redevelopment of the Property (an "**Environmental Condition**"), then, before the end of the Due Diligence Period, Purchaser may send Seller either (a) a written notice terminating this Agreement, in which event neither party shall have any further liability to the other and the Earnest Money will be released to Purchaser or (b) a written notice describing all clean-up work, remediation work, and removal of Storage Tanks that is required with respect to the Property (collectively, the "**Environmental Work**") in reasonable detail and requesting that Seller provide Purchaser with a credit at Closing (the "**Remediation Credit**") for the costs and expenses of the Environmental Work (a "**Remediation Notice**"); provided, however, that if the cost of the Environmental Work is projected to exceed \$10,000, Seller shall have the additional option of terminating this Agreement with no further obligation to Purchaser.
- (ii) **Seller's Obligation to Re Remediation Notice Response.** With respect to a Remediation Notice timely submitted during the Due Diligence Period, then within 10 business days after receiving the Remediation Notice, Seller shall provide Purchaser with a written notice (a "**Remediation Notice Response**") stating whether Seller (a) will provide a Remediation Credit at the Closing or (b) declines to provide the Remediation Credit at the Closing. If Seller does not timely provide a Remediation Notice Response, it will be deemed to have declined to

provide a Remediation Credit. If Seller declines to provide the requested Remediation Credit, then Purchaser may terminate this Agreement.

D. Restoration and Insurance and Indemnity.

- (i) **Restoration.** If Due Diligence Activity damages the Property, Purchaser shall restore the Property to a condition that is substantially the same as its condition prior to the performance of such Due Diligence Activity.
- (ii) **Insurance.** Purchaser agrees that it will cause it and any person accessing the Property hereunder to be covered by not less than \$2,000,000 commercial general liability insurance (with, in the case of Purchaser's coverage, a contractual liability endorsement, insuring its indemnity obligation under this Agreement), insuring all activity and conduct of such person while exercising such right of access and naming Seller as an insured, issued by a licensed insurance company qualified to do business in Illinois and otherwise reasonably acceptable to Seller.
- (iii) **Indemnity.** Purchaser agrees to indemnify, defend and hold harmless Seller and its officials, employees, contractors, and agents from any loss, injury, damage, cause of action, liability, claim, lien, cost or expense, including reasonable attorneys' fees and costs, caused directly, or indirectly by any act or omission of Purchaser or its employees, agents, representatives, contractors or consultants conducting this Due Diligence. The indemnity in this Section 5.D (iii) shall survive the Closing or any termination of this Agreement.

E. Purchaser's Right to Terminate. Purchaser has the right to terminate this agreement in its sole discretion by or before the end of the Due Diligence Period. In the event of a termination pursuant to this Section 5.E neither party shall have any claims or obligation under this Agreement, except for those rights, liability and obligations that expressly survive the termination of this Agreement, including , but not limited to, Purchaser's obligations to restore the Property pursuant to Section 5D, Purchaser's obligations to pay Seller's costs and fees pursuant to that Escrow Agreement dated November 3, 2021 ("**Escrow Agreement**") and the Redevelopment Agreement. The Earnest Money will be returned to Purchaser less any funds due to Seller under this Agreement, the Escrow Agreement or the Redevelopment Agreement.

Section 6. Representations and Warranties.

A. Seller's Representations and Warranties. The matters set forth in this Section 6.A constitute representations and warranties by Seller which are now and (subject to matters contained in any notice given pursuant to the next succeeding sentence) shall, in all material respects, at the Closing be true and correct. As soon as reasonably practicable after Seller obtains actual knowledge of any material inaccuracy of any of the representations and warranties contained in this Agreement, Seller shall notify Purchaser in writing (which notice shall include copies of the instrument, correspondence, or document, if any, upon which Seller's notice is based) (a "**Correction Notice**") of such material inaccuracy of any of Seller's representations and warranties set forth in this Agreement. If Purchaser receives any Correction Notice after expiration of the Due Diligence Period, Purchaser shall have a period of five (5) business days after receipt of such Correction Notice during which, in Purchaser's sole

discretion, Purchaser may terminate this Agreement by written notice to Seller, whereupon the Earnest Money and accrued interest thereon, if any, less and of Seller's costs and fees under the Escrow Agreement, if any, shall promptly be returned to Purchaser. As used in this Agreement, the phrase "to the extent of Seller's actual knowledge" shall mean the actual knowledge of the City Manager of the City of Des Plaines. There shall be no duty imposed or implied to investigate, inquire, inspect, or audit any such matters, and there shall be no personal liability on the part of such person. To the extent Purchaser has or acquires actual knowledge prior to the expiration of the Due Diligence Period that these representations and warranties are inaccurate, untrue or incorrect in any way, such representations and warranties shall be deemed modified to reflect Purchaser's knowledge or deemed knowledge. Seller represents and warrants to Purchaser that as of the date hereof and as of the date of the Closing:

- (i) it has, or will have as of the date of Closing, the authority under statute and with the approval of its Corporate Authorities, to sell the Property to Purchaser;
- (ii) it has not entered into any agreements or granted any options pursuant to which any third party has the right to acquire all or any portion of the Property or any interest therein;
- (iii) there will not be at the Closing, any leases, tenancies, licenses, franchises, options or rights of occupancy or purchase, which will be binding upon Purchaser or the Property after the Closing except if entered into between the Parties;
- (iv) the Property is not affected by or subject to: (a) any pending or, to the best of its knowledge, threatened condemnation suits or similar proceedings or (b) other pending or, to the best of its knowledge, threatened claims, by or before any administrative agency or court;
- (v) to the best of its knowledge, there are no pending, scheduled, or noticed, requests, applications or proceedings to alter or restrict the zoning applicable to the Property beyond those contemplated by Purchaser necessary to construct and operate the Redevelopment;
- (vi) it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986; and

B. Purchaser's Representations and Warranties. The matters set forth in this Section 6.B constitute representations and warranties by Purchaser which are now and shall, at the Closing, be true and correct. Purchaser represents and warrants to Seller that as of the date hereof and as of the date of the Closing:

- (i) Purchaser has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby.
- (ii) The consummation of this transaction shall constitute Purchaser's acknowledgment that it has independently inspected and investigated the Property and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of the Property.

- (iii) Purchaser is experienced in and knowledgeable about the ownership, development and management of real estate, and it has relied and will rely exclusively on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Property, its condition, value and potential. Purchaser agrees that, notwithstanding the fact that it has received certain information from Seller or its agents or consultants, Purchaser has relied solely upon and will continue to rely solely upon its own analysis and will not rely on any information provided by Seller or its agents or consultants, except as expressly set forth in Section 6.A.
- (iv) Purchaser has the financial ability and resources to perform under this Agreement and the Redevelopment Agreement.
- (v) Thirty (30) days prior to the Closing Date (as defined in Section 8.B (i)), Purchaser will provide to Seller a non-conditional commitment for financing adequate to complete the redevelopment of the Property pursuant to the Redevelopment Agreement.

C. **No Other Warranties and Representations.** Except as specifically set forth in this Agreement, Seller has not made, does not make and has not authorized anyone to make, any warranty or representation as to any written materials delivered to Purchaser, the persons preparing such materials, the truth, accuracy or completeness of such materials, the present or future physical condition, development potential, zoning, building or land use law or compliance therewith, the operation, income generated by, or any other matter or thing affecting or relating to the Property or any matter or thing pertaining to this Agreement. Purchaser expressly acknowledges that no such warranty or representation has been made and that Purchaser is not relying on any warranty or representation whatsoever other than as is expressly set forth in this Agreement or in the documents delivered by Seller pursuant to Section 4.A. Purchaser shall accept the Property "as is" and in its condition on the date of Closing subject only to the express provisions of this Agreement and hereby acknowledges and agrees that except as otherwise set forth in this Agreement or the documents to be delivered pursuant to Section 4.A, **SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, FUTURE OR OTHERWISE, OF, AS TO, CONCERNING OR WITH RESPECT TO, THE PROPERTY.**

- (i) **No Environmental Representations.** Seller makes no representations or warranties as to whether the Property contains asbestos, radon or any hazardous materials or harmful or toxic substances, or pertaining to the extent, location or nature of same, if any. Further, to the extent that Seller has provided to Purchaser information from any inspection, engineering or environmental reports concerning asbestos, radon or any hazardous materials or harmful or toxic substances, Seller makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports.
- (ii) **Release of Claims.** Subject to the express provisions hereof, Purchaser acknowledges and agrees that Seller makes no representation or warranty as to, and Purchaser, for itself, its successors and assigns, waives and releases Seller from any present or future claims, at law or in

equity, whether known or unknown, foreseeable or otherwise, arising from or relating to, the Property, this Agreement or the transactions contemplated hereby, including without limitation the presence or alleged presence of asbestos, radon or any hazardous materials or harmful or toxic substances in, on, under or about the Property, including without limitation any claims under or on account of (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may have been or may be amended from time to time, and similar state statutes, and any regulations promulgated thereunder, (ii) any other federal, state or local law, ordinance, rule or regulation, now or hereafter in effect, that deals with or otherwise in any manner relates to, environmental matters of any kind, (iii) this Agreement, or (iv) the common law. Purchaser hereby specifically acknowledges that Purchaser has carefully reviewed this Section 6 and has discussed its import with legal counsel and that the provisions of this Section 6 are a material part of this Agreement. This Section 6 shall survive the Closing forever.

Section 7. Covenants and Agreements.

A. Seller's Covenants and Agreements. Seller covenants and agrees with Purchaser that:

- (i) Seller shall not make, enter into, grant, amend, extend, renew or grant any waiver or consent under any lease, tenancy, easement, license or other agreement allowing the use or occupancy after the Closing of all or any portion of the Property, without Purchaser's prior written consent.
- (ii) Seller shall not enter into or amend any contracts, agreements or undertakings that will be binding upon Purchaser or the Property after the Closing, without Purchaser's prior written consent.
- (iii) Seller shall not create, or allow the creation of, any encumbrance on the title of the Property, without Purchaser's prior written consent (except for any Permitted Exceptions).
- (iv) Seller shall not take any action, directly or indirectly, to encourage, initiate, or engage or participate in discussions or negotiations with any third party concerning a potential sale of all or any portion of, or any interest in, the Property.
- (v) Seller shall promptly inform Purchaser of any developments which would cause any of its representations or warranties contained in this Agreement to be no longer materially accurate.

B. Purchaser's Covenants and Agreements. Purchaser covenants and agrees with Seller that:

- (i) Purchaser shall not take any action, directly or indirectly, to encourage, initiate, or engage or participate in discussions or negotiations with any third party concerning a potential sale of all or any portion of, or any interest in, the Property, except as allowed by the Redevelopment

Agreement.

- (ii) Purchaser shall promptly inform Seller of any developments which would cause any of its representations or warranties contained in this Agreement to be no longer materially accurate.
- (iii) Purchaser will use its best efforts to complete all of its requirements under this Agreement and the Redevelopment Agreement on a timely basis.
- (iv) Purchaser will take any and all actions necessary to obtain financing for it to perform its obligations under this Agreement and the Redevelopment Agreement.
- (v) Purchaser will not object to the repeal of Des Plaines Ordinance No. Z-23-22 and/or the rezoning of the Assembly Parcels to the C-3 District in the event that Purchaser, or its successors in interest to the Assembly Parcels, abandon the Redevelopment prior to acquiring the Property or applying for building permits for the Redevelopment and shall execute and deliver to Seller a legal instrument acceptable to Seller's General Counsel memorializing this obligation ("**Rezoning Covenant**") prior to closing.

C. Conditions Precedent to Closing.

Purchaser's obligation to close is subject to each and all of the following conditions being satisfied by Seller, or waived in writing by Purchaser (the "**Closing Contingencies**"):

- (i) all of Seller's representation and warranties contained in this Agreement must be materially true and correct as of the Closing Date,
- (ii) Seller must have timely performed all of its obligations under this Agreement,
- (iii) all Conditions precedent to Purchaser's obligation to close on the transaction contemplated in this Agreement must have been satisfied or waived as of the Closing Date,
- (iv) Seller must have delivered all items required to be delivered by Seller pursuant to Section 8.C including the Rezoning Covenant,
- (v) the Title Company is committed to issuing the Title Policy, subject only to Permitted Exceptions and any requirements Purchaser must meet for issuance of the Title Policy, and
- (vi) any and all lease or tenancies of any kind have been terminated and all service contracts have been terminated as of the Closing Date,

Seller's obligation to close is subject to each and all of the following conditions being satisfied by Purchaser, or waived in writing by Seller (the "**Closing Contingencies**"):

- (vii) All of Purchaser's representation and warranties contained in this Agreement must be materially true and correct as of the Closing Date,
- (viii) Purchaser must have timely performed all of its obligations under this Agreement,
- (ix) all Conditions precedent to Seller's obligation to close on the transaction

contemplated in this Agreement must have been satisfied or waived as of the Closing Date,

(x) Purchaser must have delivered all items required to be delivered by Purchaser pursuant to Section 8.B (iv) and Section 8.D.C,

(xi) Purchaser has complied with all requirements of the Title Company for it to issue its Title Policy, and

Purchaser may inspect the Property within twenty-four (24) hours prior to the Closing Date to determine whether the Closing Contingencies have been satisfied. If a Closing Contingency is not satisfied because of a default by the other party, the non-defaulting party will have all of its rights under Section 12.E of this Agreement.

Section 8. Closing.

A. **Conveyance and Possession.** Seller shall convey title to Purchaser to the Property by delivery of a Quit Claim Deed with Deed Restriction ("***Seller's Deed***"). Seller shall cause Seller's Deed to be in recordable form, subject to Permitted Exceptions. Seller shall deliver possession of the Property to Purchaser upon the Closing.

B. Time, Place; Closing Escrow.

- (i) **Time.** The Closing will occur (i) no later than the 30th day following the later of (a) the expiration of the Due Diligence Period; and (b) ten (10) business days after the City Council of the City of Des Plaines's approval of the Final Plat of Subdivision/Consolidation and Redevelopment Agreement, Seller's approval of all final Engineering Drawings, and the License Agreement and the OREA or (ii) on another date mutually agreed to in writing by the Parties (the "***Closing Date***").
- (ii) **Place.** The Closing will be at the office of the Title Company at [500 Skokie Blvd Suite 290 Northbrook, Illinois]. The Parties need not physically attend a Closing.
- (iii) **Closing Escrow.** On or before the Closing, Purchaser and Seller shall establish an escrow in the usual form of deed and money escrow agreement then in use by Title Company with such changes made as may be necessary to conform with the provisions of this Agreement (a "***Closing Escrow***"). The Closing will be a "New York" style closing.

C. **Seller Closing Deliveries.** At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following, in each case, fully executed (as applicable):

- (i) evidence reasonably satisfactory to the Title Company of the authority of Seller to consummate the Closing, to the extent such authority is not apparent in the documents recorded when Seller acquired title to the Property,
- (ii) Seller's Deed and other instruments of transfer and conveyance transferring the Property, free of all liens other than the Permitted Exceptions,

- (iii) to the extent required by the Title Company, a "gap" undertaking in customary form and substance for the "gap" period" through the applicable Closing Date or the date of recording, as the case may be,
- (iv) a current form of ALTA Statement (including a statement there is no Property Manager) in customary form and substance as required by the Title Company,
- (v) a counterpart to the closing statement,
- (vi) real estate transfer declarations or exemptions required by Applicable Laws (as defined in Section 12.D (ii)),
- (vii) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction, including any instrument, assurance or deposit required for the Title Company to insure over Unpermitted Exceptions in such form, terms, conditions and amount as may be required by the Title Company,
- (viii) a non-foreign affidavit under Section 1445 of the Internal Revenue Code,
- (ix) Certified copies of the ordinance/resolution, authorizing this conveyance of the Property, and
- (x) a marked-up signed Title Commitment or signed Pro Forma title policy.

D. Purchaser's Closing Deliveries. At Closing, Purchaser shall deliver or cause to be delivered to Seller the following, in each case, fully executed (as applicable) and in form and substance reasonably satisfactory to Seller:

- (i) the Purchase Price, subject to the credits and other adjustments contemplated herein,
- (ii) proof that Purchaser has acquired fee title to the Adjacent Parcel in the form of a recorded deed or a final closing statement issued by a recognized title company demonstrating that the transaction has been completed,
- (iii) fully executed copies of the Redevelopment Agreement in a form and substance acceptable to the City Manager and the City Attorney and incorporating those conditions and requirements set forth in Section 1.D and E of this Agreement,
- (iv) a counterpart to the closing statement,
- (v) a "gap" undertaking in customary form and substance for the "gap" period" through the applicable Closing Date or the date of recording, as the case may be,
- (vi) a current form of ALTA Statement in customary form and substance as required by the Title Company,

- (vii) real estate transfer declarations or exemptions required by Applicable Laws (as defined in Section 12.D (ii),
- (viii) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction,
- (ix) Certified, approved and recordable copies of the Plat of Subdivision/Consolidation, the License Agreement, the OREA and the Redevelopment Agreement, as signed by the Parties, which shall be recorded against the Property at Closing,
- (x) such additional information and materials as the Title Company and Seller reasonably request to evidence Purchaser's compliance with its obligations under this Agreement or as otherwise required to be delivered by Applicable Laws,

E. **Closing Costs.** At Closing, Seller shall pay the Remediation Credit, if any, applicable to Environmental Work completed prior to such Closing. Purchaser shall pay (i) 100% of the Title Company's closing fees related to such Closing, (ii) 100% of the costs incurred in recording Seller's Deed, the Plat of Subdivision/Consolidation and the Redevelopment Agreement and any other document required to be recorded by any entity providing funding to Purchaser, (iii) any costs incurred in connection with Purchaser's Due Diligence Activities related to the Due Diligence Period, (iv) the cost of the Plat of Subdivision/Consolidation, (v) the cost of the Title Policy and extended coverage over general exceptions and the cost of any additional endorsements to the Title Policy requested by Purchaser, and (vi) the cost of the ALTA/NSPS Survey.

F. **Prorations.** All ad valorem, special tax roll, or other real estate taxes, charges, and assessments, including special assessments and special service area taxes, affecting the Property (collectively, "**Real Estate Taxes**") shall be prorated on an accrual basis and on a per diem basis, disregarding any discount or penalty and on the basis of the fiscal year of the authority levying the same. If any Real Estate Taxes are assessed against the Property as of Closing Date, then Seller shall give to Purchaser a credit at the Closing based on 100% of the last tax bill and the Parties agree that when the actual Real Estate Tax bill is issued that they will re-prorate the amount due. All water, sewer, and other utility charges, if any, shall be prorated as of Closing. Notwithstanding the foregoing, and as indicated in the Title Commitment, the Property has exempt status for Real Estate Taxes and therefore there will not be any credit for Real Estate Taxes at Closing unless Seller loses its tax-exempt status from the Cook County Assessor. The Parties agree to cooperate with each other to maintain the tax-exempt status of the Property including but not limited to the Purchaser's Agreement to refrain from filing any documents with any entity of Cook County (including but not limited to the Assessor, Treasurer, Board of Review, Maps Department and Transportation Department). In the event the Property loses its tax-exempt status, the Parties agree to cooperate to regain tax exempt status for the time period Seller owned the Property. The Obligations of this Section 8.F will survive Closing and the recording of Seller's Deed.

Section 9. Casualty; Condemnation. Promptly upon learning thereof, Seller shall give Purchaser written notice of any condemnation, damage or destruction of the Property occurring prior to the Closing. If prior to the Closing all or a material portion of the Property is condemned, damaged or destroyed by an insured casualty, Purchaser shall have the option of either (i) applying the proceeds of any condemnation award or payment under any insurance policies

(other than business interruption or rental loss insurance) toward the payment of the Purchase Price to the extent such condemnation awards or insurance payments have been received by Seller, receiving from Seller an amount equal to any applicable deductible under any such insurance policy and receiving an assignment from Seller of Seller's right, title and interest in any such awards or payments not theretofore received by Seller, or (ii) terminating this Agreement by delivering written notice of such termination to Seller and Escrowee within ten (10) days after Purchaser has received written notice from Seller of such material condemnation, damage or destruction. If, prior to the Closing, a portion of the Property is condemned, damaged or destroyed and such portion is not a material portion of the Property, the proceeds of any condemnation award or payment and any applicable deductible under any insurance policies shall be applied toward the payment of the Purchase Price to the extent such condemnation awards or insurance payments have been received by Seller and Seller shall assign to Purchaser all of Seller's right, title and interest in any unpaid awards or payments. For purposes of this Section 9, the term "material portion" shall mean greater than ten percent (10%) of the value of the Property or an absence of reasonable access to the Property. If the damage or destruction arises out of an uninsured risk, the Parties agree to proceed to Closing as this Property is essentially vacant.

Section 10. Brokers. Seller and Purchaser each represents and warrants to the other that it knows of no broker or other person or entity who has been instrumental in submitting or showing the Property to Purchaser. If any broker or other person asserts a claim for a broker's commission, finder's fee, or similar payment in connection with the transactions contemplated in this Agreement, then Purchaser shall indemnify and hold harmless Seller from and against any damage, liability or expense, including costs and reasonable attorneys' fees that Seller incurs because of such claim.

Section 11. Patriot Act.

A. **Definitions.** All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) ("***Patriot Act***") and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001, are collectively referred to as the "Patriot Rules" and are incorporated into this Section.

B. **Representations and Warranties.** Purchaser and Seller hereby represent and warrant, each to the other, that each and every "person" or "entity" affiliated with each respective party or that has an economic interest in each respective party or that has or will have an interest in the transaction contemplated by this Agreement or in any property that is the subject matter of this Agreement or will participate, in any manner whatsoever, in the purchase and sale of the Property is, to the best of Purchaser's or Seller's knowledge:

- (i) not a "blocked" person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224,
- (ii) in full compliance with the requirements of the Patriot Rules and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("***OFAC***"),
- (iii) operated under policies, procedures and practices, if any, that are in compliance with the Patriot Rules and available to each other for review and

inspection during normal business hours and upon reasonable prior notice,

- (iv) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Rules,
- (v) not listed as a Specially Designated Terrorist or as a blocked person on any lists maintained by the OFAC pursuant to the Patriot Rules or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Rules or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Rules,
- (vi) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Rules, and
- (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any person or entity named in the Annex or any other list promulgated under the Patriot Rules or any other person who has been determined to be subject to the prohibitions contained in the Patriot Rules.

C. **Mutual Notice; Termination.** Each party covenants and agrees that in the event it receives any notice that it or any of its beneficial owners or affiliates or participants become listed on the Annex or any other list promulgated under the Patriot Rules or indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, the party that receives such notice shall immediately notify the other (the "Non-Blocked Party") and the effect of the issuance of a notice pursuant to the Patriot Rules is that the Non-Blocked Party may elect to either: (i) obtain permission from OFAC to proceed with the Closing, in which case, the Closing Date shall be delayed until such permission is obtained, or (ii) send written notice to the other party terminating this Agreement, in which event the Parties shall have no further rights or obligations under this Agreement, except for those rights, liabilities or obligations that survive a termination of this Agreement.

Section 12 . General Provisions.

A. **Integration; Modification.** This Agreement and the Redevelopment Agreement constitute the entire agreement between the Parties pertaining to the Property and supersedes all prior agreements, understandings, and negotiations pertaining thereto. This Agreement may be modified only by a written amendment or other agreement that is lawfully approved and executed by the Parties.

B. **Further Actions.** The Parties shall execute all documents and take all other actions consistent with this Agreement that are reasonably necessary to consummate the transactions contemplated in this Agreement.

C. **Deliberately Omitted.**

D. **Interpretation.**

- (i) Presumption. There is no presumption that this Agreement is to be

construed for or against Seller or Purchaser, or either party as the principal author of the Agreement. Instead, this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

- (ii) Compliance with Applicable Laws; Governing Law. In performing their obligations under this Agreement, the Parties shall comply with all applicable federal, state, and local statutes, regulations, requirements, ordinances, and other laws ("**Applicable Laws**"). The internal laws of the State of Illinois, without regard to its conflict of laws rules, shall govern the interpretation of this Agreement.
- (iii) Headings and Exhibits. The Section headings in this Agreement are used as a matter of convenience and do not define, limit, construe or describe the scope or intent of the text within such headings. The following Exhibits attached hereto are incorporated herein as an integral part of this Agreement:

Exhibit A: Legal Description of Property

Exhibit B: Redevelopment Agreement – [**TO BE ATTACHED AND INCORPORATED INTO THIS AGREEMENT UPON APPROVAL AND EXECUTION BY ALL PARTIES**]

Exhibit C: Title Commitment

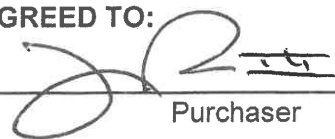
- (iv) Non-Waiver. Except as expressly provided in this Agreement, the mere failure by a party to insist upon the strict performance of any obligation of this Agreement or to exercise any right or remedy related to a default thereof shall not constitute a waiver of its rights. If a party waives a right under this Agreement, that waiver shall not be deemed a waiver of any other right.
- (v) Severability. If any provision of this Agreement is invalid or unenforceable against any party under certain circumstances, then this Agreement will be deemed to be amended by deleting such provision. This Agreement will be enforceable, as amended, to the fullest extent allowed by Applicable Laws and so long as the amendment does not result in a failure of consideration.
- (vi) Time. Time is of the essence in the performance of this Agreement. If any date upon which action is required under this Agreement is a Saturday, Sunday, or legal holiday, the date will be extended to the first business day after such date that is not a Saturday, Sunday or legal holiday.

E. **Enforcement.**

- (i) **Default.**

- (a) Seller's Remedies. In the event Purchaser shall default in its obligations under this Agreement, including its obligation to purchase the Property from Seller pursuant to this Agreement for any reason, except by reason of a material default by Seller or the permitted termination of this

Agreement by Purchaser or Seller as herein expressly provided, Purchaser shall be in breach of its obligations hereunder and Seller shall be released from any further obligations hereunder. BY INITIALING BELOW, PURCHASER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY PURCHASER WOULD BE EXTREMELY DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE EARNEST MONEY DEPOSIT IS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES SELLER WOULD SUFFER IN THE EVENT THE TRANSACTION PROVIDED FOR IN THIS AGREEMENT FAILS TO CLOSE, AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT. PURCHASER AND SELLER AGREE THAT SELLER'S RIGHT TO RETAIN THE EARNEST MONEY DEPOSIT SHALL BE THE SOLE REMEDY OF SELLER AT LAW IN THE EVENT OF SUCH A BREACH OF THIS AGREEMENT BY PURCHASER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION, IF PURCHASER BRINGS AN ACTION AGAINST SELLER FOR AN ALLEGED BREACH OR DEFAULT BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT, RECORDS A LIS PENDENS OR OTHERWISE ENJOINS OR RESTRICTS SELLER'S ABILITY TO SELL AND TRANSFER THE PROPERTY OR REFUSES TO CONSENT TO OR INSTRUCT RELEASE OF THE EARNEST MONEY DEPOSIT TO SELLER IF REQUIRED BY ESCROW AGENT (EACH A "**PURCHASER'S ACTION**"), SELLER SHALL NOT BE RESTRICTED BY THE PROVISIONS OF THIS SECTION FROM BRINGING AN ACTION AGAINST PURCHASER SEEKING EXPUNGEMENT OR RELIEF FROM ANY IMPROPERLY FILED LIS PENDENS, INJUNCTION OR OTHER RESTRAINT, AND/OR RECOVERING FEES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) WHICH SELLER MAY SUFFER OR INCUR AS A RESULT OF ANY PURCHASER'S ACTION; AND THE AMOUNT OF ANY SUCH FEES, COSTS AND EXPENSES AWARDED TO SELLER SHALL BE IN ADDITION TO THE LIQUIDATED DAMAGES SET FORTH HEREIN. NOTHING IN THIS AGREEMENT SHALL, HOWEVER, BE DEEMED TO LIMIT PURCHASER'S LIABILITY TO SELLER FOR DAMAGES OR INJUNCTIVE RELIEF FOR BREACH OF PURCHASER'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR THE REDEVELOPMENT AGREEMENT.

 **ACCEPTED AND AGREED TO:** 

Seller Purchaser

(b) **Purchaser's Remedies.** In the event Seller shall default in its obligation to convey the Property to Purchaser pursuant to this Agreement for any reason, except Purchaser's default or the permitted termination of this Agreement by Seller or Purchaser as herein expressly provided, Purchaser shall be entitled, as its sole and exclusive remedy, to either (i) (a) terminate this Agreement (by delivering notice to Seller which

includes a waiver of any right, title or interest of Purchaser in the Property) or (b) if Purchaser so elects, pursue an action at law for recovery of Purchaser's actual out-of-pocket third-party costs incurred as part of Purchaser's due diligence efforts hereunder, subject to the Maximum Liability Cap (as defined below in Section 12.E (v)), which action must be commenced, if at all, within the sixty (60) day period following the occurrence of such default of Seller (the "**Limitation Period**"); provided, however, that if, within the Limitation Period, Purchaser gives Seller written notice of such a breach and Seller commences to cure and thereafter terminates such cure effort, Purchaser shall have an additional thirty (30) days from the date of such termination within which to commence an action at law for third-party costs, as aforesaid, as a consequence of Seller's failure to cure or (ii) treat this Agreement as being in full force and effect and pursue only the specific performance of this Agreement, provided that Purchaser must commence any action for specific performance within sixty (60) days after the scheduled Final Closing Date. Purchaser waives any right to pursue any other remedy at law or equity for such default of Seller, including, without limitation, any right to seek, claim or obtain damages, punitive damages or consequential damages. In no case shall Seller ever be liable to Purchaser under any statutory, common law, equitable or other theory of law, either prior to or following the Closing, for any lost rents, profits, "benefit of the bargain," business opportunities or any form of consequential damage in connection with any claim, liability, demand or cause of action in any way or manner relating to the Property, the condition of the Property, this Agreement, or any transaction or matter between the parties contemplated hereunder. Purchaser's remedies hereunder are in addition to the right to receive the return of the Earnest Money to the extent it is not applied to the Purchase Price in connection with Purchaser's action for specific performance.

- (ii) Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and assigns, if any.
- (iii) Attorney Fees. In any litigation filed to enforce this Agreement, the Parties will be responsible to pay its own attorney's fees, except as noted above in Section 12.E (i)(a).
- (iv) Venue. Venue for any litigation concerning the enforcement of this Agreement shall be in the Circuit Court of Cook County, Illinois, or the federal district court for the Northern District of Illinois.
- (v) Limitation on Liability. In any action or actions brought to enforce the obligations of Seller under this Agreement or any other document delivered in connection herewith, the judgment(s) or decree(s) shall be subject to the provisions of this Section and shall, otherwise in any event, be enforceable against Seller only up to an aggregate maximum amount of \$50,000 ("Maximum Liability Cap").

F. Execution of Agreement.

(i) Corporate Authority Approval Required.

(a) Effectiveness; Irrevocable Offer. Purchaser acknowledges that (1) this Agreement is not effective until it is approved by Seller's City Council in accordance with Applicable Laws and executed by Seller's Mayor, (2) by executing this Agreement and delivering it to Seller, Purchaser has made an offer to Seller to enter into this Agreement, (3) such offer may be accepted by the lawful approval of the Agreement by Seller's City Council, and (4) that such offer is irrevocable until 30 days after approval by the City Council and execution by the Mayor.

(b) Consideration. Purchaser acknowledges that Seller's good faith consideration of this Agreement and Purchaser's irrevocable offer, is adequate consideration for Seller's agreements in this Section.

(ii) Counterparts and Effectiveness. The Parties may execute this Agreement in multiple counterparts, all of which taken together will constitute a single Agreement binding on the Parties, notwithstanding that the Parties are not signatories to the same counterpart. This Agreement will be deemed fully executed, and effective as of the Effective Date, when each party has executed at least one counterpart. Any signature of a party to this Agreement that is sent by that party to the other party via a telefax transmission or via an email transmission in a PDF format shall be deemed a binding signature hereto. Each party shall deliver an original signature to the other party upon the other party's request.

(iii) Representations and Warranties. Purchaser and Seller, represents and warrants to each other that (i) it has the requisite power and authority to enter into and perform the terms of this Agreement, (ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (a) have been duly authorized by all necessary action and authority and (b) do not violate any agreement to which it is a party, and (iii) no other proceedings on its part, other than as noted in this Agreement, are necessary in order to permit him, her, or it to consummate the transactions contemplated hereby, and (iv) the person executing this Agreement on its behalf, is fully authorized to execute this Agreement, and, by doing so, to bind or it to the obligations under this Agreement.

G. Notices. Notices under this Agreement must be delivered (i) personally, (ii) by overnight delivery by a nationally recognized courier service, or (iii) by email, with the notice also being sent personally, by overnight delivery as set forth above, or by regular U.S. mail. Notices under this agreement must be sent to the following addresses or to such other or further addresses as a party may hereafter designate by notice:

if to Seller:	CITY OF DES PLAINES 1420 Miner St. Des Plaines, IL 60016 Attn.: Michael Bartholomew, City Manager
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Email: mbartholomew@desplaines.org

with a copy to: Elrod Friedman LLP
325 North LaSalle St. Suite 450
Chicago, Illinois 60603
Attn: Peter Friedman
Stew Weiss
Email: peter.friedman@elrodfriedman.com
Email: stewart.weiss@elrodfriedman.com

if to Purchaser: 622 GRACELAND APARTMENTS LLC
546 S. Summit St.
Barrington, IL 60010
Attn: Joseph Z. Taylor III
Email: jztaylor@compasspointdevelopment.com

with a copy to: Latimer LeVay Fyock LLC
55 W. Monroe St., Suite 1100
Chicago, IL 60603
Attn: Cary R. Latimer
Email: clatimer@llflegal.com

Any notice shall be deemed given upon actual receipt. Nothing in this Section will be deemed to invalidate a notice that is actually received, even if it is not given in strict accordance with this Section.

H. **Time of Essence.** Time is of the essence to this Agreement and to all dates and time periods set forth herein.

I. **Deliberately Omitted.**

J. **Assignment by Purchaser.** Purchaser may not assign its rights under this Agreement except as provided in the Redevelopment Agreement.

K. **Recordation.** This Agreement may not be recorded and any attempt to do so shall be of no effect whatsoever.

[SIGNATURE PAGE FOLLOWS]

The undersigned execute this Agreement on the dates next to their signatures and acknowledge that this Agreement will become effective as of the Effective Date.

SELLER:

CITY OF DES PLAINES, an Illinois home rule municipality

By: 
Name: Andrew Goczowski
Title: Mayor

ATTEST:

By: 
Name: Jessica M. Mastalski
Title: City Clerk

PURCHASER:

622 GRACELAND APARTMENTS LLC, an Illinois limited liability company

COMPASSPOINT DEVELOPMENT LLC,
an Illinois limited liability company

By: 
Name: Joseph Taylor III
Title: Manager

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE SOUTHEASTERLY 40 FEET OF LOT 32 AND LOT 33 IN BLOCK 1 IN DES PLAINES MANOR TRACT NO. 1, A SUBDIVISION OF PART OF SECTIONS 17 AND 20, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JULY 14, 1911 AS DOCUMENT 4793563, IN COOK COUNTY, ILLINOIS.

PIN 09-17-306-040-0000

Commonly known as 1332 Webford Ave, Des Plaines, Illinois.

EXHIBIT B

REDEVELOPMENT AGREEMENT

(to be attached by the Parties by or before the end of Due Diligence)

EXHIBIT C
TITLE COMMITMENT

Section 1. - ALTA COMMITMENT FOR TITLE INSURANCE

Issued By:

Commitment Number:



**CHICAGO TITLE
INSURANCE COMPANY**

614LD

CCHI2104

Section 2. - NOTICE

IMPORTANT - READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

Section 3. - COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment Conditions, Chicago Title Insurance Company, a Florida corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within one hundred eighty (180) days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

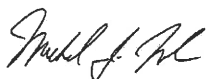
**Section 4. - Chicago Title Insurance
Company**

By:

Countersigned By:

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Michael J. Nolan Authorized Officer or Agent

Attest:

Randy Quirk, President

Marjorie Nemzura, Secretary



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ALTA Commitment for Title Insurance (08/01/2016)

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT NO. CCHI2104614LD

Transaction Identification Data for reference only:

ORIGINATING OFFICE:	FOR SETTLEMENT INQUIRIES, CONTACT:
Chicago Title Insurance Company 10 South LaSalle Street, Suite 3100 Chicago, IL 60603 Main Phone: (312)223-4627 Email: chicagocommercial@ctt.com	Chicago Title and Trust Company 10 South LaSalle Street, Suite 3100 Chicago, IL 60603 Main Phone: (312)223-4627 Main Fax: (312)223-3018

Section 5. - Order Number: CCHI2104614LD

Property Ref.: DP - 1332 Webford Avenue, Des Plaines, IL

Section 6. - SCHEDULE A

- Commitment Date: June 25, 2021
- Policy to be issued:
 - ALTA Owner's Policy 2006
Proposed Insured: Compasspoint Development LLC, an Illinois limited liability company
Proposed Policy Amount: \$300,000.00
 - ALTA Loan Policy 2006
Proposed Insured: Lender with a contractual obligation under a loan agreement with the Proposed Insured for an Owner's Policy
Proposed Policy Amount: \$10,000.00
- The estate or interest in the Land described or referred to in this Commitment is: Fee Simple

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4. The Title is, at the Commitment Date, vested in:

The City of Des Plaines, a Municipal corporation of the State of Illinois

5. The Land is described as follows:

THE SOUTHEASTERLY 40 FEET OF LOT 32 AND LOT 33 IN BLOCK 1 IN DES PLAINES MANOR TRACT NO. 1, A SUBDIVISION OF PART OF SECTIONS 17 AND 20, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JULY 14, 1911 AS DOCUMENT 4793563, IN COOK COUNTY ILLINOIS.

Section 7. - END OF SCHEDULE A

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT NO. CCHI2104614LD

Section 8. - SCHEDULE B, PART I REQUIREMENTS

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
6. Be advised that the "good funds" of the title insurance act (215 ILCS 155/26) became effective 1-1-2010. This act places limitations upon the settlement agent's ability to accept certain types of deposits into escrow. Please contact your local Chicago Title office regarding the application of this new law to your transaction.
7. Effective June 1, 2009, pursuant to Public Act 95-988, satisfactory evidence of identification must be presented for the notarization of any and all documents notarized by an Illinois notary public. Satisfactory identification documents are documents that are valid at the time of the notarial act; are issued by a state or federal government agency; bear the photographic image of the individual's face; and bear the individual's signature.

8. **The Proposed Policy Amount(s) must be increased to the full value of the estate or interest being insured, and any additional premium must be paid at that time. An Owner's Policy should reflect the purchase price or full value of the Land. A Loan Policy should reflect the loan amount or value of the property as collateral. Proposed Policy Amount(s) will be revised and premiums charged consistent therewith when the final amounts are approved.**

Section 9. - END OF SCHEDULE B, PART I

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT NO. CCHI2104614LD

**Section 10. - S
CHEDULE B, PART II
EXCEPTIONS**

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

General Exceptions

Section 11. - 1. Rights or claims of parties in possession not shown by Public Records.

Section 12. - 2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.

Section 13. - 3. Easements, or claims of easements, not shown by the Public Records.

Section 14. - 4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

Section 15. - 5. Taxes or special assessments which are not shown as existing liens by the Public Records.

Section 16. - 6. We should be furnished a properly executed ALTA statement and, unless the land insured is a condominium unit, a survey if available. Matters disclosed by the above documentation will be shown specifically

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7. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.

- C 8. Note for additional information: the County Recorder requires that any documents presented for recording contain the following information:
- A. The name and address of the party who prepared the document;
 - B. The name and address of the party to whom the document should be mailed after recording;
 - C. All permanent real estate tax index numbers of any property legally described in the document;
 - D. The address of any property legally described in the document;
 - E. All deeds should contain the address of the grantee and should also note the name and address of the party to whom the tax bills should be sent.
 - F. Any deeds conveying unsubdivided land, or, portions of subdivided and, may need to be accompanied by a properly executed "plat act affidavit."

In addition, please note that the certain municipalities located in the County have enacted transfer tax ordinances. To record a conveyance of land located in these municipalities, the requirements of the transfer tax ordinances must be met. A conveyance of property in these cities may need to have the

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT NO. CCHI2104614LD

Section 17. - S
SCHEDULE B, PART II
EXCEPTIONS
(continued)

appropriate transfer tax stamps affixed before it can be
recorded. This exception will not appear on the policy when
issued.

G 9.

1. Taxes for the year(s) 2020 and 2021 2021 taxes are not yet due or payable.

- 1A. Note: 2020 first installment was due March 2, 2021 Note: 2020 final installment not yet due or payable

Perm tax#	Pcl	Year	1st Inst	Stat
09-17-306-040-0000	1 of 1	2020	Not Billed	

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3A The general taxes as shown below are marked exempt on the collector's warrants.

Year(s): 2019 and prior

Unless satisfactory evidence is submitted to substantiate said exemption our policy, if and when issued, will be subject to said taxes.

- D 10. Note: The land lies within a county which is subject to the Predatory Lending Database Act (765 ILCS 77/70 et seq. as amended). A Certificate of Compliance with the act or a Certificate of Exemption therefrom must be obtained at time of closing in order for the Company to record any insured mortgage. If the closing is not conducted by the company, a certificate of compliance or a certificate of exemption must be attached to any mortgage to be recorded.

Note: for Cook, Kane, Will and Peoria counties, the act applies to mortgages recorded on or after July 1, 2010.

- N 11. Please be advised that our search did not disclose any open mortgages of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

- B 12. Existing unrecorded leases and all rights thereunder of the lessees and of any person or party claiming by, through or under the lessees.

- A 13. The Company should be furnished a statement that there is no property manager employed to manage the Land, or, in the alternative, a final lien waiver from any such property manager.

- H 14. For each policy to be issued as identified in Schedule A, Item 2; the Company shall not be liable under this commitment until it receives a designation for a Proposed Insured, acceptable to the Company. As provided in Commitment Condition 4, the Company may amend this commitment to add, among other

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT NO. CCHI2104614LD

Section 18. - S
SCHEDULE B, PART II
EXCEPTIONS
(continued)

things, additional exceptions or requirements after the designation of the Proposed Insured.

- I 15. Municipal Real Estate Transfer Tax Stamps (or proof of exemption) must accompany any conveyance and certain other transfers or property located in Des Plaines. Please contact said municipality prior to closing for its specific requirements, which may include the payment of fees, an inspection or other approvals.

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- K 16. Since a governmental entity holds title to the Land, any conveyance or mortgage of the land is subject to the limitations and conditions imposed by law. Proof of compliance with the same should be furnished.
- M 17. Easement(s) for the purpose(s) and rights incidental thereto as reserved in a document; reserved by the grantors, for purpose perpetual use an enjoyment of water pipes, sewer pipes, mains, catch basin, gas pipes, etc. , recorded on October 21, 1952 as Document No. LR1429065, affects part of the Land therein described.
- E 18. Effective June 1, 2009, if any document of conveyance for Cook County Residential Real Property is to be notarized by an Illinois notary public, Public Act 95-988 requires the completion of a Notarial Record for each grantor whose signature is notarized. The Notarial Record will include the thumbprint or fingerprint of the grantor. The grantor must present identification documents that are valid; are issued by a state or federal government agency, or consulate; bear the photographic image of the individual's face; and bear the individual's signature. The Company will charge a fee of \$25.00 per Notarial Record.
- O 19. Note for information (Endorsement Requests):
- All endorsement requests should be made prior to closing to allow ample time for the company to examine required Documentation.
- Note: before any endorsements can be approved, we should be informed as to the land use and as to what type of structure is on the land.
- (This note will be waived for the policy,)
- P 20. Informational Note:
- To schedule any closings in the Chicago Commercial Center, please call (312)223-2707.
- Q 21. Rights of the public and quasi public utilities to maintain overhead wires as shown on the plat of survey by Haeger Engineering dated August 5, 2021, number 21-162.
- R 22. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance from the entity named below.

Limited Liability Company: Compasspoint Development LLC, an Illinois limited liability company

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT NO. CCHI2104614LD

Section 19. - S
SCHEDULE B, PART II
EXCEPTIONS
(continued)

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- a. A copy of its operating agreement, if any, and any and all amendments, supplements and/or modifications thereto, certified by the appropriate manager or member.
- b. If a domestic Limited Liability Company, a copy of its Articles of Organization and all amendment thereto with the appropriate filing stamps.
- c. If the Limited Liability Company is member-managed a full and complete current list of members certified by the appropriate manager or member.
- d. A current dated certificate of good standing from the proper governmental authority of the state in which the entity was created
- e. If less than all members, or managers, as appropriate, will be executing the closing documents, furnish evidence of the authority of those signing.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

Section 20. - END OF SCHEDULE B, PART II

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CHICAGO TITLE INSURANCE COMPANY

COMMITMENT NO. CCHI2104614LD

Section 21. - COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
 - (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
 - (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
 - (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
 - (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
 - (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
 - (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
 - (h) "Title": The estate or interest described in Schedule A.
2. If all of the Schedule B, Part I-Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
 3. The Company's liability and obligation is limited by and this Commitment is not valid without:
 - (a) the Notice;
 - (b) the Commitment to Issue Policy;
 - (c) the Commitment Conditions;
 - (d) Schedule A;

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- (e) Schedule B, Part I-Requirements;
- (f) Schedule B, Part II-Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I-Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II-Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I-Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.

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(continued)

- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
 - (d) The deletion or modification of any Schedule B, Part II-Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
 - (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
 - (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.
7. **IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**
The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.
8. **PRO-FORMA POLICY**
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.
9. **ARBITRATION**
The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is Two Million And No/100 Dollars (\$2,000,000.00) or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

Section 22. - END OF CONDITIONS

1031 EXCHANGE SERVICES

Section 23. - If your transaction involves a tax deferred exchange, we offer this service through our 1031 division, IPX1031. As the nation's largest 1031 company, IPX1031 offers guidance and expertise. Security for Exchange funds includes segregated bank accounts and a 100 million dollar Fidelity Bond. Fidelity National Title Group also provides a 50 million dollar Performance Guaranty for each Exchange. For additional information, or to set-up an Exchange, please call Scott Nathanson at (312)223-2178 or Anna Barsky at (312)223-2169.

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CITY OF DES PLAINES

RESOLUTION R - 139 - 23

**A RESOLUTION APPROVING A FIRST AMENDMENT TO A
REAL ESTATE PURCHASE AND SALE AGREEMENT.**

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the City entered into that certain Real Estate Purchase and Sale Agreement dated October 7, 2022 (“**Agreement**”) with 622 Graceland Apartments, LLC (subsequently renamed Mylo Residential Graceland Property, LLC) (“**Purchaser**”) pursuant to which the City agreed to sell and the Purchaser agreed to buy the property located at 1332 Webford Avenue, Des Plaines, Illinois (“**Property**”); and

WHEREAS, in addition to setting the terms of the Purchaser’s acquisition of the Property, the Agreement included conditions requiring the Purchaser to simultaneously acquire title to parcels located to the east (“**Assembly Parcels**”) and west (“**Adjacent Parcel**”) of the Property; and

WHEREAS, the City and the Purchaser now desire to amend the Agreement to extend the time periods by which the Purchaser must obtain title to the Assembly Parcels and the Adjacent Parcel (“**First Amendment**”); and

WHEREAS, the City Council has determined that is in the best interest of the City to approve and enter into the First Amendment to the Agreement with the Purchaser;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DES PLAINES, COOK COUNTY, ILLINOIS, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF FIRST AMENDMENT. The First Amendment to the Agreement with Purchaser is hereby approved in substantially the form attached to this Resolution as Exhibit A, and in a final form approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE FIRST AMENDMENT. The City Manager and the City Clerk are hereby authorized to execute and seal, on behalf of the City, the final First Amendment.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect upon its passage and approval by a majority of the members of the City Council.

PASSED this ____ day of _____, 2023.

APPROVED this ____ day of _____, 2023.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT (the “**First Amendment**”), is made and entered into effective as of July __, 2023 (the “**Effective Date**”), by and between the **CITY OF DES PLAINES**, an Illinois home-rule municipal corporation (the “**Seller**”) and **MYLO RESIDENTIAL GRACELAND PROPERTY LLC**, an Illinois limited liability company, formerly known as 622 Graceland Apartments LLC, an Illinois limited liability company (“**Purchaser**”).

WHEREAS, Seller and Purchaser entered into that certain Real Estate Purchase and Sale Agreement dated October 7, 2022 (the “**Agreement**”) pursuant to which Seller agreed to sell, and Purchaser agreed to buy, the parcel of real property located at 1332 Webford Avenue, Des Plaines, Illinois (“**Property**”); and

WHEREAS, Purchaser and Seller have agreed to modify the Agreement as provided for in this First Amendment. Capitalized terms as set forth in this First Amendment shall have the same meaning as defined in the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Purchaser and the Seller agree to amend and modify the Agreement as follows:

1. Property Closing. The Parties intend to close on the purchase and sale of the Property no later than July 27, 2023. Notwithstanding anything contained in the Agreement to the contrary, Purchaser must acquire the Property from Seller in accordance with the terms and conditions of this Agreement (except as modified by this Amendment) on or before July 31, 2023 (“**Property Closing Date**”).
2. Adjacent Parcel Closing. Notwithstanding anything contained in the Agreement to the contrary, Purchaser hereby agrees to acquire the Adjacent Parcel on or before October 31, 2023.
3. Assembly Parcels Closing. Notwithstanding anything contained in the Agreement to the contrary, Purchaser hereby agrees to acquire the Assembly Parcels on or before October 31, 2023.
4. Earnest Money. Notwithstanding anything contained in the Agreement to the contrary, Purchaser shall deposit the Earnest Money in the full amount of \$60,000.00 with the Title Company on or before the Property Closing Date. Upon Purchaser acquiring title to the Property, the Adjacent Parcel, and the Assembly Parcels, Seller shall immediately cause the Title Company to release the Earnest Money to Purchaser. If the Purchaser does not acquire title to either the Assembly Parcels or the Adjacent Parcel within the time limits set forth in this First Amendment, the Seller will have the uncontested right to receive and retain the Earnest Money. The Title Company will be required to release the Earnest Money to the Seller anytime after October 31, 2023 if the conditions set forth in Sections 2 and 3 of this First Amendment have not been satisfied.
5. Right of Reverter. In the event Purchaser is unable to acquire ownership of either the Adjacent Parcel or the Assembly Parcels on or before October 31, 2023, title to the Property will revert to the City via a deed executed by Purchaser that will be placed in escrow with the Title Company at closing (“**Reverter Deed**”). The Title Company will be instructed to release and record the Reverter Deed if the Seller’s obligations set forth in

Sections 2 and 3 of this First Amendment have not been satisfied. Seller will also incorporate a reverter clause memorializing this obligation into the deed for the Property. Seller's rights under the reverter clause will immediately terminate and be of no further force and effect if Purchaser acquires the Assembly Parcels and the Adjacent Parcel on or before October 31, 2023 and the Title Company will be instructed to release the Reverter Deed back to Seller.

6. Parking Lease Agreement. In the event Purchaser is unable to acquire the Adjacent Parcel and the Assembly Parcels within the time limits set forth in this First Amendment, the Parking Lease Agreement described in the Redevelopment Agreement will automatically terminate and be of no further force or effect.
7. OREA. Notwithstanding anything contained in the Agreement to the contrary, the parties hereto acknowledge and agree that upon Purchaser's acquisition of both the Adjacent Parcel and the Assembly Parcels, the OREA will be executed and recorded against title to the Property, the Assembly Parcels, and the Adjacent Parcel in the office of the Clerk of Cook County, Illinois.
8. Open Space Area. In the event Purchaser is unable to acquire the Adjacent Parcel and the Assembly Parcels within the time limits set forth in this First Amendment, Purchaser will have no further obligation to maintain the Open Space Area as set forth in the Agreement.
9. Waiver of Downzoning of Assembly Parcels. On or before the Property Closing Date, Purchaser must deliver to Seller a binding and notarized instrument executed by the owner of the Assembly Parcels, waiving any and all rights to contest or object to the downzoning by Seller of the Assembly Parcels from the C-5 to the C-3 district in event Purchaser fails to acquire either the Adjacent Parcel or the Assembly Parcels within the time limits set forth in this First Amendment ("**Downzoning Waiver**"). The Downzoning Waiver is hereby incorporated into the list of Purchaser's Closing Deliveries. Purchaser's failure to provide an executed Downzoning Waiver will release Seller's obligation to close.
10. Counterparts. This First Amendment may be executed in any number of counterparts and by any combination of the parties hereto in separate counterparts, each of which counterparts shall be an original and all of which taken together shall constitute one and the same First Amendment.
11. Contract Remains Effective. Except as specifically amended and modified as set forth herein, all terms, conditions, covenants, representations and warranties contained in the Agreement, and all rights of the parties therein, shall remain in full force and effect. Each of the parties hereby confirms that the Agreement is in full force and effect in accordance with its terms.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to Real Estate Purchase Agreement effective as of the date first written above.

SELLER:

CITY OF DES PLAINES, a Illinois home-rule municipal corporation

By: _____

Name: _____

Its: _____

PURCHASER:

MYLO RESIDENTIAL GRACELAND PROPERTY LLC, an Illinois limited liability company

By: _____

Its: Manager

By: _____

Name: _____

Title: Manager