

**PROPERTY CONVEYANCE AND DONATION AGREEMENT FOR THE
DONATION OF VACANT REAL PROPERTY BETWEEN ASHLAND AND PARKER
ON SOUTH SPENCER STREET LOCATED IN THE CITY OF AURORA, COUNTY
OF KANE AND STATE OF ILLINOIS**

THIS AGREEMENT for the donation of real property situated in the County of Kane and the State of Illinois, Permanent Index Nos. 15-34-230-002 through and including -008 (the "Agreement") is made as of the ____ day of _____, 2023 ("Effective Date") between the Owner of Record, H. LINDEN & SONS DEVELOPMENT, INC., an Illinois business corporation (the "Owner"), and the CITY OF AURORA, an Illinois home rule municipal corporation (the "City"). Owner and City shall together be referred to as the "Parties" or individually as "Party."

RECITALS:

WHEREAS, the property subject to this Agreement, legal title to which is vested in Owner, is legally described as follows:

Lots 4,5,6,7,8,9 and 10 in Block 13 of H.H. Evans Addition to Aurora, in the City of Aurora, Kane County, Illinois; commonly known as V/L between Ashland and Parker on South Spencer Street, Aurora, Illinois

Permanent Index Numbers (PINS): 15-34-230-002; 003; 004; 005; 006; 007; 008

The said property is hereinafter referred to as the "Subject Property."

WHEREAS, the Owner has agreed to donate and convey the Subject Property to the City for use as public open/recreation space, in accordance with the terms, provisions and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the donation provided for below and the exchange of other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Incorporation. Each of the whereas paragraphs of the recitals are incorporated by reference into this Section 1.

Section 2. Donation of the Property. Subject to the terms and conditions hereof, the Owner agrees to donate to the City, and the City agrees to accept conveyance of all of the Owner's rights, title and interest in the real property, free and clear from all liabilities, liens and encumbrances. The parties shall select a mutually acceptable date to close on the Subject Property after the City completes its due diligence. Nonetheless, the closing date shall be no greater than thirty (30) days of City's completion of its due diligence, unless the City terminates this Agreement pursuant to its terms.

Section 3. Representations and Warranties of Owner. The Owner represents to the City to the best of Owner's knowledge as to the following matters. If for some reason the representations made are found by the City not to be true at closing, the City may terminate this Agreement:

A. **Pending and Threatened Litigation.** There is no pending litigation relating to the Subject Property.

B. **Authority of Signatories; No Breach of Other Agreements.** The execution, delivery of and performance under this Agreement is pursuant to authority, validly and duly conferred upon the Owner and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by the Owner with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangement, understanding, accord, document or instruction by which the Owner or the Subject Property is bound; and will not and does not, to the best knowledge and belief of the Owner, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of, or agreement with, any governmental instrumentality or court (domestic or foreign) to which the Owner or the Subject Property are subject or bound.

C. **Executory Agreements.** The Owner is not a party to, nor is the Subject Property subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Subject Property, other than this Agreement. The City shall not, by reason of entering into or closing under this Agreement, become subject to or bound by any contract, agreement, lease, license, invoice, bill, undertaking or understanding which it shall not have previously agreed in writing to accept.

D. **Mechanic's Liens.** All bills and invoices for labor and material of any kind relating to the Subject Property have been paid in full; there are no mechanic's liens or other claims outstanding or available to any party in connection with the Subject Property.

E. **Section 1445 Withholding.** The Owner represents that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is, therefore, exempt from the withholding requirements of said Section. The Owner will furnish the City at closing with the Exemption Certificate set forth in said Section.

F. **Leases.** On the date of this Agreement, there are no outstanding leases, licenses, occupancies or tenancies with respect to the Subject Property. No tenant, licensee, occupant or other person has an option or right of first refusal to purchase the Subject Property.

G. **Environmental.** The Owner represents that it has no actual of: (i) the presence of any Hazardous Materials on or under Subject Property (including the groundwater thereunder); (ii) any spills, releases, discharges or disposal of Hazardous Materials that have occurred or are presently occurring on or onto the Subject Property (including the groundwater thereunder); (iii) any spills or disposal of Hazardous Materials that have occurred or are occurring off the Subject Property (including the groundwater thereunder) as a result of any construction on or operation and use of the Subject Property (including the groundwater thereunder); or (iv) the presence of

any equipment containing polychlorinated biphenyl (PCB). That to the best knowledge and belief of the Owner, the Subject Property has never been used and from the date hereof to the date the City obtains possession of the Subject Property will not be used as a landfill, open dump or a waste dump, or for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous or toxic chemical material substance or waste. The Subject Property (including the groundwater thereunder) does not contain underground storage tanks or Hazardous Materials, and the Owner has received no notice of nor does the Subject Property (including the groundwater thereunder) violate any environmental laws. From the date hereof to the date The City obtains possession of the Subject Property, the Owner agrees that the Subject Property (including the groundwater thereunder) will comply in all respects, and will remain in compliance, with all applicable federal, state, regional, county and local laws, statutes, rules, regulations or ordinances concerning public health, safety or the environment, and all environmental laws.

H. **Survival.** These representations and warranties of the Owner shall survive the closing date for the applicable statute of limitations periods.

I. **Definition.** When used in this Section 3, unless provided otherwise, the expression "to the best knowledge of Owner," or words to that effect, is deemed to mean that the Owner is not actually (as opposed to constructively) aware of any thing, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes.

Section 4. Due Diligence. Within five (5) days of the Effective Date of this Agreement, the Owner shall provide the City with the following items in the Owner's position, if any:

- A. Real estate tax bills for the Subject Property for 2020, 2021 and 2022;
- B. any and all engineering reports, soil or geotechnical reports, boundary or topographical surveys, licenses and/or permits pertaining to the Subject Property;
- C. any and all leases or occupancy agreements and amendments thereto (including a current rent roll) affecting the Subject Property or any part thereof ("Leases");
- D. any and all records and documents which respect to the environmental matters and/or conditions associated either directly or indirectly with the Subject Property, including but not limited to all written site assessments, environmental audits, soil test reports, water test reports, all laboratory analysis and all documents, reports or writings with respect to any underground storage tanks or storage facility existing on or under the Subject Property.

From and after the Effective Date of this Agreement, the City and its agents and representatives shall be entitled to enter upon the Subject Property upon reasonable notice to Owner, to perform all such surveys, inspections, audits, assessments and tests and studies of the Property as the City shall deem necessary or appropriate (including, without limitation, inspections and tests designed to verify, among other things, the existence of any under or above ground storage tanks and the extent of any asbestos, PCB's, radon, and other toxic, hazardous or

dangerous substances, wastes or materials on any portion of the Subject Property), including, without limitation, inspections and testing of soil conditions, ground water and utility areas (collectively, "City's Tests"). Owner shall promptly supply such additional available documentation as the City or its agents may reasonably request to complete City's Tests. In the event that the City is not satisfied with the results of City's Tests, the contents of Owner's documents, and/or for any other reason or no reason, in City's sole discretion, on or before the date which is the later of sixty (60) days from (i) the Effective Date, or (ii) the date that all Owner's documents have been delivered to City (the "Inspection Contingency Period"), then, at the option of the City, this Agreement shall terminate and the Parties will be released of their obligations hereunder. City shall hold harmless and indemnify Owner for any damages or claims arising from the negligence or willful misconduct of City in connection with any City's Tests; provided, however, the foregoing indemnification shall not apply to any existing conditions of the Property unless and to the extent that City caused such condition.

Section 5. Deed. Title to the Subject Property shall be conveyed to the City by the Owner, by recordable Special Warranty Deed, with a release of any financial encumbrances and mortgage liens and rights, subject only to: (a) general real estate taxes not yet due; (b) covenants, conditions, restrictions and easements of record; and (c) all matters of public record. The Owner shall also execute and deliver, at closing, in addition to the Special Warranty Deed, Affidavit for Extended Title Insurance Coverage, and additional customary closing documents.

Section 6. Default and Conditions Precedent to Closing. In all events, the obligations of the City to close this transaction are contingent upon: (i) title to the Subject Property being shown to be good and marketable; and (ii) the representations and warranties of the Owner contained in Section 3 and elsewhere in this Agreement being true and accurate or waived by the City in writing as of the closing date. In the case of default by the Owner under (ii) above, the City may waive in writing or may, at its sole option, terminate this Agreement without any penalty or liability.

Section 7. As-Is, Where-Is Condition. Upon closing, the City agrees to accept the condition of the Subject Property on an "As-Is, Where-Is" basis, except as is otherwise expressly set forth in this Agreement, without any representations or warranties of any kind, express or implied, either oral or written, made by the Owner or any agent or representative of the Owner with respect to the physical, environmental or structural condition of the Subject Property, including but not limited to layout, square footage, zoning, use, susceptibility to flooding or with respect to the existence or absence of toxic or hazardous materials, substances or wastes in, on, under or affecting the Subject Property. Except as is otherwise expressly set forth in this Agreement, the Owner has made and hereby makes no warranty or representation whatsoever and hereby disclaims any implied warranty regarding the fitness for particular purpose, quality or merchantability of the Subject Property or any portion thereof.

Section 8. Right of Waiver. Each and every condition of the closing, other than the City's duties at closing, is intended for and is for the sole and exclusive benefit of the City. Accordingly, the City may at any time, from time to time, waive each and any condition of

closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by the City shall, unless otherwise herein provided, be in writing, signed by the City and delivered to the Owner.

Section 9. Binding Effect. This Agreement shall insure to the benefit of, and shall be binding upon, the heirs, representatives, successors and approved assigns of the Parties.

Section 10. Brokerage. Each Party represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such Party's actions (or claiming through such Party), is entitled to compensation as a consequence of this transaction. Each Party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Agreement. Each Party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorney's fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder.

Section 11. Miscellaneous Provisions.

A. Time is of the essence of this Agreement.

B. Wherever, under the terms and provisions of this Agreement, the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day.

C. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.

D. This Agreement provides for the donation and transfer of legal and equitable title of real property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Agreement and all questions of interpretation, construction and enforcement hereof and all controversies hereunder shall be governed by the applicable statutory and common law of the State of Illinois.

E. The terms, provisions, warranties and covenants made herein shall survive the closing and delivery of the deed and other instruments of conveyance, and this Agreement shall not be merged therein, but shall remain binding upon and for the Parties until fully observed, kept or performed.

F. All descriptive headings of the Sections in this Agreement are intended solely for the convenience of reference; no provision of this Agreement is to be construed by reference to the heading of any Section.

G. In the event any term or provision of this Agreement shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this

Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

H. This Agreement embodies the entire agreement between the Parties with respect to the donation and transfer of title to the Subject Property and supersedes any and all prior informal and formal agreements and understandings, whether in writing or oral. No extensions, changes, modifications or amendments to or of this Agreement, of any kind whatsoever, shall be made or claimed by the Owner or the City; no notices of any extension, change, modification or amendment made or claimed by the Owner or the City (except with respect to permitted unilateral waivers of conditions precedent by the City) shall have any force or effect whatsoever, unless the same shall be endorsed in writing and fully signed by the Owner and the City. Neither Party may assign this Agreement, or its interest herein, without the express written approval of the other Party.

I. The Owner shall have the right to remove any and all personal property and fixtures located within or on the Subject Property prior to delivering possession of the Subject Property to the City. Any personal property or fixtures not removed prior to the Owner delivering possession shall become the property of the City.

J. The Owner and the City represent to one another that each has full power and authority to enter into this Agreement and carry out their respective obligations. The Owner and the City further represent that: (i) all necessary corporate action has been duly taken to authorize the execution and delivery of this Agreement; and (ii) this Agreement has been duly executed and delivered in accordance with said authorization.

K. Whenever used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 12. Effective Date. The Effective Date of this Agreement shall be the date that the last of the Owner executes this Agreement, which date shall be inserted on the first page of this Agreement.

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, duly authorized representatives of H. LINDEN & SONS DEVELOPMENT, INC. and the CITY OF AURORA have voluntarily signed this Agreement.

H. LINDEN & SONS DEVELOPMENT, INC. CITY OF AURORA

By: _____

By: _____

Richard C. Irvin, Mayor

Date: _____

Date: _____

ATTEST:

City Clerk