



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R19-430
DATE OF PASSAGE December 30, 2019

A Resolution authorizing the acquisition of the real property commonly known as 1 W Downer Pl, in the City of Aurora in an amount not to exceed \$107,000 in furtherance of the redevelopment contemplated by Resolution R19-421.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City of Aurora desires to increase the number of quality restaurant establishments in its downtown area; and

WHEREAS, Bernie Laskowski is a successful chef and restaurant owner and founder of the Craft Urban restaurant located in Geneva, Illinois and is planning a sister restaurant in the City of Aurora; and

WHEREAS, the City of Aurora desires to lend Bernie Laskowski, or a designated entity managed and operated by Bernie Laskowski, up to Six Hundred Thousand and No/100 U.S. Dollars (\$600,000.00) from existing lines of credit for the purpose of redeveloping 41 S. Stolp Avenue and the adjacent lot as a Craft Urban restaurant with second story apartments and/or reimburse certain expenses related to the closing of the contemplated transaction, and that such negotiations are still ongoing; and

WHEREAS, the expenses for 1 W Downer Place (the adjacent lot) have been identified at a not to exceed amount of \$107,000 to be paid in accordance with the attached agreement with Fitzpatrick Properties, LLC.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: that the various officers and employees of the City shall be and hereby authorized and directed to execute the attached agreement with Fitzpatrick

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Properties, LLC for the acquisition of 1 W. Downer Pl, in the City of Aurora, for the purposes set forth in this Resolution and Resolution R19-421; and further

BE IT RESOLVED, that the officers and employees of the City shall be and hereby are authorized and directed to take all actions necessary to complete the transaction contemplated by this Resolution

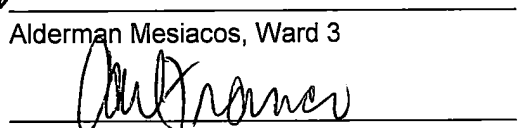
RESOLUTION NO. R19-430
DATE OF PASSAGE December 30, 2019

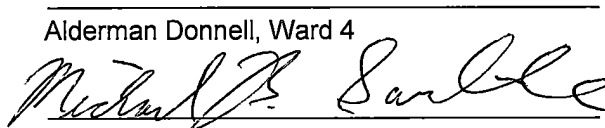
PASSED AND APPROVED ON December 30, 2019

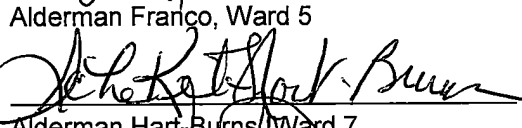
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Alderman Llamas, Ward 1


Alderman Garza, Ward 2

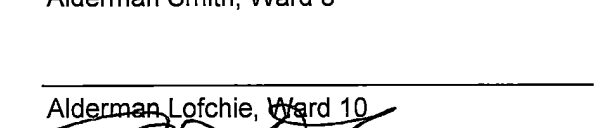

Alderman Mesiacos, Ward 3


Alderman Donnell, Ward 4

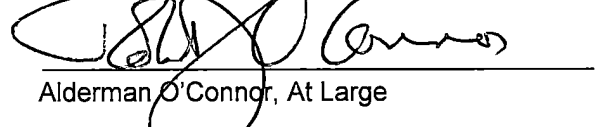

Alderman Franco, Ward 5



Alderman Saville, Ward 6


Alderman Hart-Burns, Ward 7


Alderman Smith, Ward 8

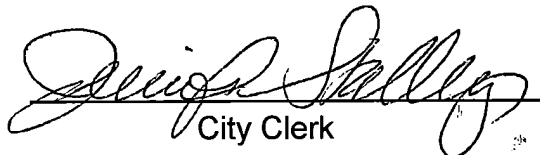

Alderman Bugg, Ward 9


Alderman Lofchie, Ward 10


Alderman Jenkins, At Large


Alderman O'Connor, At Large

ATTEST:


City Clerk


Mayor



First American Title Insurance Company

2363 Sequoia Drive, Suite 119 • Aurora, IL 60506

Office Phone:(630)907-0175 Office Fax:(866)563-7689

Final Settlement Statement

Property Address: 1 W. Downer Place, Aurora, IL 60506
 File No: 3007951
 Officer: Valerie Salzbrunn/VS
 Settlement Date: 12/31/2019
 Disbursement Date: 12/31/2019
 Print Date: 12/31/2019, 10:49 AM

Buyer: City of Aurora
 Address: 1 W. Downer Place, Aurora, IL 60506
 Seller: Fitzpatrick Properties, LLC
 Address:

Buyer Charge	Buyer Credit	Charge Description	Seller Charge	Seller Credit
		Consideration:		
105,000.00		Total Consideration		105,000.00
		Prorations:		
	1,076.06	County Taxes 01/01/19 to 12/31/19 @\$0.00/yr	1,076.06	
		Attorney:		
		Attorney Fee to Irving J. Ochenschlager	500.00	
		New Loan(s):		
		Lender: Fitzpatrick Properties, LLC		
	75,000.00	Loan Amount - Fitzpatrick Properties, LLC	75,000.00	
		Title/Escrow Charges to:		
		Closing Protection Coverage-Seller to First American Title Insurance Company	50.00	
25.00		Closing Protection Coverage-Buyer to First American Title Insurance Company		
25.00		Closing Protection Coverage-Lender to First American Title Insurance Company		
750.00		Deed and Money Escrow to First American Title Insurance Company	750.00	
150.00		Policy Update Search to First American Title Insurance Company		
		Commitment Update Search to First American Title Insurance Company	150.00	
175.00		GAP Coverage to First American Title Insurance Company	175.00	
		Owner's Policy to First American Title Insurance Company	1,680.00	
		Commercial Extended Coverage End O to First American Title Insurance Company	350.00	
62.00		Deed to Kane County Recorder		
		City Transfer Tax -Exempt	30.00	
	30,110.94	Cash (X From) (To) Buyer		
		Cash (X To) (From) Seller	25,238.94	
106,187.00	106,187.00	Totals	105,000.00	105,000.00

Initials: MM KF, JD

Final Settlement Statement

Settlement Date: 12/31/2019
Print Date: 12/31/2019

File No: 3007951
Officer: Valerie Salzbrunn/VS

BUYER(S):

City of Aurora

Michael Mether
Attorney for City of Aurora

SELLER(S):

Fitzpatrick Properties, LLC, an Illinois
limited liability company

By: *Kevin Fitzpatrick by J. O'Connell*
Name: Kevin Fitzpatrick
Title: Managing Member
its atty-in-fact

First American Title Insurance Company

Val Salzbrunn
By _____
Valerie Salzbrunn

Initials: MM KF by ISO

AMOUNT: \$75,000.00

DATE: December 31, 2019

DUE: March 31, 2022

UNSECURED PROMISSORY NOTE

FOR VALUE RECEIVED, the **CITY OF AURORA**, an Illinois municipal corporation (the **"BORROWER"**) located at 44 E. Downer Place, Aurora, Illinois 60505, promises to pay to the order of **FITZPATRICK PROPERTIES, LLC**, an Illinois limited liability company (the **"CREDITOR"**), at its offices located at 140 South River Street, #414, Aurora, Illinois 60505, the principal sum of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) (**"PRINCIPAL"**) upon the terms and conditions set forth below together with the per annum interest on the principal balance hereof from time to time unpaid at a fixed rate of interest of zero percent (0%) (the **"INTEREST RATE"**).

Principal and interest payments on this Unsecured Promissory Note (the **"NOTE"**) in the amount of Twenty-Five Thousand Dollars (**\$25,000.00**) each shall be due and payable on the following dates:

1. March 31, 2020;
2. March 31, 2021; and
3. March 31, 2022.

Borrower shall pay to the Creditor a late charge of three percent (3%) of any installment not received by the Creditor within thirty (30) days after the installment is due. Notwithstanding the foregoing, payments by Borrower on this Note are conditioned upon the Creditor fulfilling its obligations in Section 2 of that certain Real Estate Conveyance Agreement entered into between Borrower and Creditor, a copy of which is attached hereto and incorporated herein as Exhibit A.

This Note may be prepaid without premium or penalty. At any time any deposit or other indebtedness credited by or due from the holder hereof to Borrower may be set off against or applied in whole or partial payment of amounts owing hereunder or in whole or partial payment of any other liability of the Borrower to the Creditor whether now existing or hereafter arising, direct or indirect, absolute or contingent, or whether due or to become due.

An **"EVENT OF DEFAULT"** hereunder shall mean the occurrence of any of the following events:

(a) the failure of Borrower to pay any installments of principal or interest pursuant to this Note or any other obligation of Borrower to Creditor;

(b) the filing of any voluntary or involuntary petition in bankruptcy by or regarding the Borrower, or the initiation of any proceeding under bankruptcy or insolvency laws against the Borrower; or

(c) the appointment of a receiver, custodian, trustee, or similar party to take possession of the Borrower's assets or property.

Upon the occurrence of an Event of Default hereunder, then unless Creditor shall otherwise elect, the full amount due hereunder, including any interest, fees or fines, shall be immediately due and payable. However, the Borrower shall have a thirty (30) day cure period after written notice of any monetary default.

No delay on the part of the Creditor hereof in the exercise of any right or remedy shall operate as a waiver thereof, no single or partial exercise by said holder of any right or remedy shall preclude any other future exercise thereof or the exercise of any other right or remedy and no waiver or indulgence by Creditor of any default shall be effective unless in writing and signed by the Creditor, nor shall waiver by the Creditor of any right on one occasion be construed as or be a bar to or waiver of any such right on any future occasion.

Borrower waives demand, presentment, notice of dishonor and consent to: any extension or postponement of the time for its payment or the addition of any party hereto or the release or discharge of or suspension of any rights or remedies against any person who may be liable for the payment of the indebtedness evidenced hereby.

The loan evidenced hereby has been made and this Note has been delivered in Aurora, Illinois, and shall be governed by the laws of the State of Illinois. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Note shall be prohibited by or invalid under such law such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Note.

All notices required under this Note will be in writing and delivered to the addresses listed below, or such other addresses as Borrower or Creditor may specify from time to time in writing:

IF TO CREDITOR:

Fitzpatrick Properties, LLC
140 South River Street, #414
Aurora, Illinois 60505
Attention: Kevin Fitzpatrick

With copy to:

Law Office of Irv Ochsenschlager
519 West Galena Boulevard
Aurora, Illinois 60506
Attention: Irv Ochsenschlager, Esq.

IF TO BORROWER:

Richard J. Veenstra, Esq.
Corporation Counsel
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

With copy to:

David Dibo
Executive Director, Economic
Development
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

And:

Del Galdo Law Group, LLC
1441 S. Harlem Ave.
Berwyn, Illinois 60402
Attention: James M. Vasselli, Esq.

This Note shall be binding upon the successors and assigns of the Borrower. Borrower acknowledges that this Note is being accepted by the Creditor in partial consideration of the Creditor's right to enforce in the State of Illinois and the County of Kane the terms and provisions of this Note and all documents, instruments and agreements delivered to the Creditor in connection therewith. Borrower

irrevocably consent to jurisdiction in, and construction of this Note under the laws of the State of Illinois and venue in the County of Kane for such purposes; Borrower waive any and all rights to contest jurisdiction and venue of the State of Illinois and County of Kane over Borrower for the purposes of enforcing this Note and all documents, instruments and agreements delivered in connection therewith; Borrower waives any and all rights to commence any action, whether by complaint, counter-complaint or cross-complaint or counterclaim with respect to the liabilities against the Creditor in any jurisdiction other than in the State of Illinois and in the County of Kane; and Borrower waives personal service of process upon Borrower, and agree that all such service of process may be made by certified mail directed to Borrower or its registered agent and service so made will be deemed to be completed upon actual receipt.

[Remainder of page intentionally left blank; Signature page follows]

[Signature Page to Promissory Note]

IN WITNESS WHEREOF, the CITY OF AURORA has executed this Promissory Note as of the day and year first written above.

CITY OF AURORA,
an Illinois municipal corporation

By: [Signature]

Name: Richard C. Irvin

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that Richard C. Irvin, as Mayor and Authorized Representative of the City of Aurora, an Illinois municipal corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30 day of December, 2019.

[Signature]
Notary Public

My Commission Expires: 01-25-22

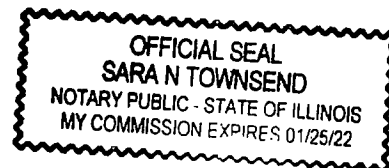


EXHIBIT A

REAL ESTATE CONVEYANCE AGREEMENT

By and Between

FITZPATRICK PROPERTIES, LLC,

an Illinois limited liability company,

Seller

and

CITY OF AURORA,

an Illinois municipal corporation,

Purchaser

Dated: December 27, 2019

* * * * *

The mailing, delivery or negotiation of this Agreement (as defined herein) by Purchaser (as defined herein) or its agent or attorney shall not be deemed an offer by Purchaser to enter into any transaction or to enter into any other relationship with Seller (as defined herein), whether on the terms contained herein or on any other terms. This Agreement shall not be binding upon Purchaser, nor shall Purchaser have any obligations or liabilities or Seller any rights with respect thereto, or with respect to the Subject Property (as defined herein), unless and until Seller has executed and delivered this Agreement to Purchaser. Until the execution and delivery of this Agreement, Purchaser may terminate all negotiations and discussions regarding the subject matter hereto, without cause and for any or no reason, without recourse or liability.

* * * * *

REAL ESTATE CONVEYANCE AGREEMENT

THIS REAL ESTATE CONVEYANCE AGREEMENT (this “**Agreement**”) is made and effective as of the Effective Date (as hereinafter defined), by and between the **City of Aurora**, an Illinois municipal corporation (“**Purchaser**”), and **Fitzpatrick Properties, LLC**, an Illinois limited liability company (“**Seller**”). Seller and Purchaser may, for convenience, be referred to collectively as the “**Parties**” and individually as a “**Party**.”

WHEREAS, Seller is the owner of that certain real property located at the address commonly known as 1 W. Downer Pl., Aurora, Illinois 60506, together with the improvements thereon, and all such interests, easements, rights-of-way and appurtenances used in connection with the beneficial use and enjoyment of the real property (collectively, the “**Subject Property**”) and which is legally described as set forth on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, Seller desires to sell and Purchaser desires to purchase the Subject Property in accordance with the terms and conditions set forth herein; and

NOW, THEREFORE, incorporating the above Recitals and in consideration of Ten and No/100 U.S. Dollars (\$10.00), the mutual covenants and promises contained herein, the respective undertakings of the Parties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Purchase and Sale; Purchase Price. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Subject Property. The purchase price of the Subject Property (the “**Purchase Price**”) shall be One Hundred Five Thousand and No/100 U.S. Dollars (\$105,000.00), plus or minus applicable prorations as set forth in Section 9. The Purchase Price shall be paid as follows:
 - a. Thirty Thousand and No/100 U.S. Dollars (\$30,000.00) at the Closing (as herein after defined);
 - b. Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00) no later than March 31, 2020;
 - c. Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00) no later than March 31, 2021; and
 - d. Twenty-Five Thousand and No/100 U.S. Dollars (\$25,000.00) no later than March 31, 2022.

The installment payment set required in this Section 1 shall be evidenced by a non-secured promissory note to be executed at the Closing (the “**Promissory Note**”).

2. Waiving of Fines and Fill In Work. Seller and Buyer are cooperating to ensure that the Fill In Work (as hereinafter defined) on the Subject Property is completed. The Buyer agrees to waive all fines assessed by the City of Aurora against the Subject Property so long as the Seller causes the basement of the demolished building on the Subject Property to be filled in by the Closing Date, as hereinafter defined, (the “**Fill In Work**”), at no cost to the Purchaser, in accordance with all applicable provisions of the City of Aurora Building Code and the

Code of Ordinances of the City of Aurora. The Seller acknowledges its intent to complete the Fill In Work. In the event the Fill In Work is not completed in accordance with all applicable provisions of the City of Aurora Building Code and the Code of Ordinances of the City of Aurora by the Closing Date, the Purchaser may, but is not be required to, elect to proceed to Closing and shall be entitled to the equitable remedy of specific performance and the right to withhold payment of the amounts due under the Promissory Note until the Fill In Work is completed in accordance with all applicable provisions of the City of Aurora Building Code and Code of Ordinances of the City of Aurora.

3. Closing. The closing of the transaction contemplated by this Agreement (the “**Closing**” or “**Closing Date**”) shall be held at the office of First American Title (the “**Title Company**”) on or before December 31, 2019, provided the Conditions Precedent to Closing have been satisfied, unless the Parties, by written, mutual agreement, agree to have the Closing on another date or another location. The transaction contemplated by this Agreement shall be closed by means of a Deed and Money “New York Style” Escrow (the “**Closing Escrow**”) to be opened with the Escrowee on or before the Closing Date. The Closing Escrow shall be in accordance with the general provisions of the usual form of Deed and Money “New York Style” Escrow Agreement (the “**Escrow Agreement**”) currently in effect and used by the Escrowee, with such special provisions inserted in the Escrow Agreement as may be required to conform to this Agreement; provided, however, in the event of a conflict between the terms of this Agreement, the Closing Escrow (or any additional or collateral escrows opened hereunder) and/or the Escrow Agreement, the terms of this Agreement shall in all instances control. The Parties agree to make all reasonable and good faith efforts to ensure that the Closing occurs by no later than 11:59 p.m. on December 31, 2019. This includes the timely response to any reasonable request by either Party.
4. Conditions Precedent to the Closing. Purchaser’s obligation to close herein shall be contingent upon the following in addition to other matters set forth in this Agreement (collectively, the “**Conditions Precedent to Closing**”):
 - A. this Agreement not being previously terminated pursuant to its terms and conditions;
 - B. the Purchaser taking all necessary steps to acquire the Property in accordance with any and all applicable provisions of a constitution, statute, regulation, ordinance, judgment, order, or other obligation, requirement, or prohibition having legally-binding effect at the relevant time (the “**Law**”, whether capitalized or not);
 - C. Seller’s delivery of good and merchantable title to the Subject Property, except as agreed to otherwise by the Parties;
 - D. Seller having satisfied all other conditions precedent to the Closing that are required to be satisfied by Seller in advance of Closing under the terms of this Agreement; and
 - E. Seller’s completion of the Fill In Work in accordance with all applicable provisions of the City of Aurora Building Code and the Code of Ordinances of the City of Aurora.

5. Seller's Deliveries at the Closing. At the Closing, Seller shall deliver to the Escrowee or Purchaser directly the following documents and items, each in a form mutually agreed to by the Parties:
- A. A general warranty deed (the "**Deed**") conveying the Subject Property from Seller to Purchaser and subject only to the Permitted Exceptions (as hereinafter defined) or such other exceptions as expressly agreed to herein;
 - B. A Certificate of Non-Foreign Status of Seller, as required by Section 1445 of the Internal Revenue Code (and any amendment thereto), which certifies that Seller is not a foreign transferor and which is in a form and substance reasonably satisfactory to Purchaser;
 - C. Any and all reasonable and customary documentation required by the Title Company in order for the Title Company to issue the Title Policy (as hereinafter defined), with an endorsement for any title endorsements required by Purchaser and any other documentation necessary to complete the transaction contemplated herein;
 - D. An ALTA Statement and a personal "Gap" undertaking, if required by the Title Company to effectuate a "New York Style" Closing;
 - E. Five (5) original closing statements prepared by Seller in a manner which reflects the terms and conditions of this Agreement, as applicable, and that is otherwise in a form reasonably acceptable to Purchaser (the "**Closing Statement**");
 - F. Such proof of Seller's authority and authorization to enter into this transaction as may be required by the Title Company; and
 - G. Possession (and use, as applicable) of the Subject Property, free of parties in possession, in the same condition as of the Effective Date (excepting normal wear and tear).
6. Purchaser's Deliveries at the Closing. At the Closing, Purchaser shall deliver to the Escrowee or Seller directly, as Purchaser may elect, the following, each in a form mutually agreed to by the Parties:
- A. The initial Thirty Thousand and No/100 U.S. Dollars (\$30,000.00) of the Purchase Price in accordance with Section 1 of this Agreement, plus or minus applicable pro rations as set forth in Section 9;
 - B. Such proof of Purchaser's authority and authorization to enter into this transaction as may be required by the Title Company including, but not limited to, legislation passed by the Purchaser to authorize the acquisition of the Property;
 - C. Any and all reasonable and customary documentation required by the Title Company in order for the Title Company to issue the Title Policy with extended

coverage to Purchaser and any other documentation necessary to complete the transaction contemplated herein;

D. Executed counterparts of the Closing Statement; and

E. Executed Promissory Note.

7. Joint Deliveries at Closing. At the Closing, the Parties shall jointly deliver the following fully-executed documents to the Escrowee:

A. State, county and municipal Transfer Tax Declarations, to the extent required by law; and

B. Any and all other documents reasonably required to effectuate the transaction contemplated herein.

C. Any and all other documents as may reasonably be requested by either Party.

All documents or other deliveries required to be made by Purchaser or Seller at the Closing, and all transactions required to be consummated concurrently with the Closing, shall be deemed to have been delivered and to have been consummated simultaneously with all other transactions and all other deliveries, and no delivery shall be deemed to have been made and no transactions shall be deemed to have been consummated, until all deliveries required by the Parties have been made and all concurrent and other transactions have been consummated.

8. Allocation of Closing Costs and Expenses. Seller shall be liable for the following expenses: (A) the cost of obtaining the Title Policy, including extended coverage charges, but excluding any other endorsements, unless Seller elects to purchase such endorsements to correct any Unpermitted Exceptions (as hereinafter defined); (B) the cost to record any instruments necessary to clear Seller's title; (C) one-half (1/2) of the total cost of the escrow services; (D) one-half (1/2) of the total cost of the Closing Escrow; (E) one-half (1/2) of the total cost of the "New York Style" closing fee; and (F) the total cost of any state, county and municipal transfer taxes applicable to this transaction. Purchaser shall bear the following expenses: (A) the cost of any recording fees with respect to the Deed; (B) one-half (1/2) of the total cost of the escrow services; (C) one-half (1/2) of the total cost of the Closing Escrow; (D) one-half (1/2) of the total cost of the "New York Style" closing fee; and (E) the charges for any additional endorsements required by Purchaser.

Notwithstanding the foregoing, the Parties acknowledge that as Purchaser is a governmental entity, this transaction is exempt from any State and County real estate transfer tax pursuant to 35 ILCS 200/31-45(b). Seller is obligated to furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois and Cook County.

9. Prorations. Any *ad valorem* real property taxes and assessments levied upon the Subject Property shall be prorated on a per diem basis between the Parties as of the Closing Date based upon one hundred five percent (105%) of the most recent ascertainable full year's tax

bill pertaining to the Subject Property, as applicable. Seller shall order a final reading on all utilities and be responsible for all costs and expenses associated with the same for all days prior to the Closing Date. Seller shall pay the utility provider the ascertainable amount due and owing regarding the utilities as of the Closing and provide a copy of all such documents to Purchaser to ensure the payment of the same is made. The Parties shall cooperate to cause the transfer of the Subject Property's utility accounts from Seller to Purchaser. All prorations shall be deemed final.

10. Title Insurance, Survey and Documentation.

- A. Title Commitment. Within two (2) calendar days after the Effective Date, Seller shall, at its sole cost and expense, deliver or cause to be delivered to Purchaser a commitment for ALTA Form 2006 Owner's Title Insurance Policy (or such more recent annual form as applicable) (the "**Preliminary Commitment**"), together with the underlying documentation supporting any proposed exception(s) to coverage (commonly referred to as the Schedule B documents), issued by Title Company in the amount of the Purchase Price showing title to the Subject Property in Seller. The Preliminary Commitment shall be subject only to: (i) the standard permitted exceptions and general exceptions contained in the Preliminary Commitment; (ii) general real estate taxes not yet due and owing; (iii) matters created by, through or under Purchaser; and (iv) all matters approved or waived by Purchaser pursuant to the applicable terms of the Agreement (collectively, the "**Permitted Exceptions**"). The Preliminary Commitment may also reflect title exceptions pertaining to liens, taxes or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money at the Closing and which, if existing, Seller shall so remove at that time by using the funds to be paid to Seller hereunder.
- B. Title Policy. As of the Closing Date, Seller, at its sole cost and expense, shall cause the Title Company to issue to Purchaser its ALTA Form 2006 Owner's Policy of Title Insurance (or such more recent annual form as applicable) covering the Subject Property in the amount of the Purchase Price and exhibiting an endorsement for extended coverage (the "**Title Policy**").
- C. Documentation. No later than two (2) calendar days after the Effective Date, Seller shall provide to Purchaser all leases, site plans and specifications, previous environmental reports, soil reports, existing governmental permits/approvals, zoning information, real property tax information, existing surveys, the current Phase I environmental study, if any, and any other documents, which are in Seller's possession relating to the Subject Property without independent search or review for the documents.

11. Title Approval. Purchaser shall have until December 30, 2019 to review the Preliminary Commitment and deliver to Seller a notice of the objections that Purchaser may have to anything contained or set forth in or disclosed by the Survey or the Preliminary Commitment ("**Unpermitted Exceptions**"). If Purchaser shall expressly waive any objection to or fail to object to any Unpermitted Exception in the manner and time frame set forth herein, said Unpermitted Exception shall be deemed a "Permitted Exception." If Purchaser timely

delivers notice of any Unpermitted Exception to Seller, Seller may within one (1) calendar day after receipt of said notice, elect to eliminate or satisfy the Unpermitted Exception(s) to the satisfaction of Purchaser. If Seller is unable or unwilling to correct any Unpermitted Exception within the one (1) calendar day period, Seller shall be deemed to have elected not to make such cure, in which event Purchaser shall have the right, at its election and as its sole and exclusive remedy to: (a) waive any and all Unpermitted Exceptions and accept title to the Subject Property subject to such Unpermitted Exceptions (in which event such Unpermitted Exceptions shall be deemed "**Permitted Exceptions**") and deduct from the Purchase Price any liens or encumbrances of a definite or ascertainable amount if Seller does not do so, unless otherwise agreed to by the Purchaser; or (b) terminate this Agreement. In the event that Purchaser elects or is deemed to have terminated this Agreement, this Agreement shall be null and void, and neither Party hereto shall have any further obligations or liability under this Agreement, except as otherwise provided to the contrary in this Agreement.

12. Environmental Matters. TO THE BEST OF ITS KNOWLEDGE, SELLER REPRESENTS AND WARRANTS TO THE FULLEST EXTENT OF THE LAW AND BENEFIT OF THE PURCHASER AND ITS SUCCESSORS AND ASSIGNS THAT THE PROPERTY IS FREE FROM ENVIRONMENTAL HAZARDS, INCLUDING BUT NOT LIMITED TO CHEMICALS, OIL, GAS, PETROLEUM, HAZARDOUS WASTES, AND HAZARDOUS SUBSTANCES, WHICH MAY BE ON, IN, OR UNDER THE PROPERTY. SELLER REPRESENTS AND WARRANTS THE COMPLIANCE OF PRIOR USES ON, IN, OR UNDER PRESENT CONDITIONS OF THE PROPERTY UNDER APPLICABLE FEDERAL, STATE, AND LOCAL ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*
13. Seller's Representations. The following constitute additional representations, warranties, and covenants of Seller:
 - A. Seller's Authority. Seller has the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated hereby and to execute and deliver all documents and instruments to be delivered by Seller hereunder. This Agreement and all agreements, instruments and documents herein provided to be executed by Seller are duly authorized, executed and delivered by and binding upon Seller in accordance with their terms. All requisite action has been taken or obtained or will be taken prior to the Closing Date by Seller or its agent(s) in connection with entering into this Agreement and the consummation of the transactions contemplated hereby.
 - B. Bankruptcy Matters; Encumbrances; Foreclosure. To the best of Seller's knowledge, neither Seller nor its shareholders have made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the

attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay debts as they come due, or made an offer of settlement, extension or composition to its creditors generally.

C. No Conflict. The execution, delivery and consummation of the transactions contemplated by this Agreement are not prohibited by, and will not conflict with, constitute grounds for termination of, or result in the breach of any of the agreements or instruments to which Seller is now a party or by which the Subject Property is bound or, to Seller's knowledge, any order, rule or regulation of any court or other governmental agency or official.

D. Government Representations & Governmental Notices. Seller makes the following warranties and representations to the best of Seller's knowledge, without independent inquiry or examination:

(i) The Subject Property is not currently subject to a levy for a special assessment for public improvements with respect to the Subject Property;

(ii) Seller is not currently named as a defendant in any administrative, civil, quasi-criminal or criminal lawsuit or prosecution (as applicable), brought by a governmental body with authority to do so, wherein it is alleged that Seller has violated any Law enacted by a governmental body with appropriate jurisdiction to regulate the Subject Property; and

(iii) Seller has no knowledge of nor has Seller received written notice of any present, threatened, pending, planned or proposed: (A) special assessment for a planned public improvement with respect to the Subject Property; (B) litigation for violation(s) of the building code or any other local ordinance, rule, regulation or law enacted by a governmental body with appropriate jurisdiction to regulate the Subject Property; (C) modification of land use controls for the Subject Property or area surrounding the Subject Property; or (D) action to condemn or otherwise acquire any of the adjacent or abutting rights of way of the Subject Property.

14. Purchaser's Representations. The following constitute the representations and warranties of Purchaser:

A. Purchaser's Authority. Purchaser has the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated hereby and to execute and deliver all documents and instruments to be delivered by Purchaser hereunder;

B. Individual Authority. The individual executing this Agreement on behalf of Purchaser has the legal power, right and actual authority to bind Purchaser to the terms and conditions of this Agreement;

C. No Conflict. The execution, delivery and consummation of the transactions contemplated by this Agreement are not prohibited by, and will not conflict with,

constitute grounds for termination of, or result in the breach of any of the agreements or instruments to which Purchaser is now a party, or to Purchaser's knowledge, any order, rule or regulation of any court or other governmental agency or official. Purchaser shall notify Seller promptly if Purchaser becomes aware of any transaction, occurrence or other matter prior to the Closing Date that would make any of the representations or warranties of Purchaser untrue in any material respect. Seller shall notify Purchaser promptly if Seller becomes aware of any transaction, occurrence or other matter prior to the Closing Date that would make any of the representations or warranties of Purchaser untrue in any material respect. All representations and warranties set forth hereunder shall survive the Closing and the delivery of the Deed for a period of six (6) months.

15. Condemnation. In the event that between the Effective Date and the Closing Date any condemnation or eminent domain proceedings are initiated that might result in the taking of any part of the Subject Property, Purchaser shall have the right to terminate this Agreement and have the Earnest Money returned to it, in which event the rights and obligations of the Parties under this Agreement shall cease with the exception of those specifically exempted therefrom pursuant to the provisions of this Agreement.

16. Brokerage. In the event Seller occurs any brokerage costs associated with this Agreement, the Seller shall be responsible for paying such costs.

17. Default.

Any of the following not cured within five (5) business days following written notice of the same will constitute an act of default hereunder by Seller:

A. Seller's failure to deliver the Deed or any of the required and material documentation at the Closing;

B. Seller's material misrepresentation or material breach of any representation or warranty (as such representations and warranties may be amended by an amendatory notice); or

C. Seller's failure to perform any of its material obligations hereunder to the extent any obligations are required to be performed before Closing.

Any one of the following not cured within five (5) business days following written notice of the same, will constitute an event of default by Purchaser:

A. Purchaser's failure to deliver the balance of the Purchase Price or any of the required documentation at the Closing;

B. Purchaser's material misrepresentation or material breach of any representation or warranty (as such representations and warranties may be amended by an amendatory notice); or

C. Purchaser's failure to perform any of its material obligations hereunder.

18. Remedies. In the event that Seller fails to comply with any of the obligations to be performed by Seller hereunder, on or prior to the Closing Date, then Purchaser shall have available to it any remedies in law or equity, including specific performance. In the event that Purchaser fails to comply with any of the obligations to be performed by Purchaser hereunder, on or prior to the Closing Date, and Seller is not otherwise in breach or default of its obligations hereunder, the Inspection Period has expired or been waived and this Agreement has not been terminated, Seller shall have the right to Five Thousand and No/100 U.S. Dollars (\$5,000.00) as liquidated damages ("**Seller's Liquidated Damages**"). The Parties agree and acknowledge that (A) Seller's Liquidated Damages is a reasonable and not punitive remedy; (B) actual damages would be difficult or impossible to determine or quantify; and (C) there is no superior remedy available to Seller in the event Purchaser breaches hereunder.
19. Notices. Any notice, termination, waiver, request, demand or other communication provided for by this Agreement shall be in writing and shall be deemed to have been duly received upon: (A) actual receipt if personally delivered and the sender received written confirmation of personal delivery; (B) receipt as indicated by the written or electronic verification of delivery when delivered by overnight courier; (C) upon receipt, or refusal, as the case may be, after the sender posts notice with the U.S. Post Office when sent by certified or registered mail, return receipt requested; or (D) upon confirmation of receipt of any facsimile sent on a business day during normal business hours between 8:00 a.m. and 6:00 p.m.; any facsimile sent after the close of business hours will be deemed to be valid on the next business day. Notice shall be sent to the addresses set forth below or to such other address as either Party may specify in writing.

To Seller: Fitzpatrick Properties, LLC
 140 South River Street, #414
 Aurora, Illinois 60505
 Attention: Kevin Fitzpatrick

With a copy to: Law Office of Irv Ochsenschlager
 519 West Galena Boulevard
 Aurora, Illinois 60506
 Attention: Irv Ochsenschlager, Esq.
 Facsimile: 630-892-6275

Purchaser: Richard J. Veenstra, Esq.
Corporation Counsel
City of Aurora, Illinois
44 East Downer Place
Aurora, Illinois 60507

With a copy to: David Dibo
Executive Director, Economic Development
City of Aurora
44 East Downer Place
Aurora, Illinois 60507

And: Del Galdo Law Group, LLC
1441 South Harlem Avenue
Berwyn, Illinois 60402
Attention: James M. Vasselli, Esq.
Facsimile: 708-222-7001

20. Attorneys' Fees. In the event that either Party shall bring an action or legal proceeding for an alleged breach of any provision, representation, warranty, covenant or agreement set forth in this Agreement or to enforce, interpret, protect, determine or establish the meaning of any term, covenant or provision of this Agreement or to establish a Party's rights or obligations hereunder, each party shall pay its own costs and expenses incurred in connection therewith.

21. Miscellaneous. The Parties agree to the following terms and provisions:

- A. This Agreement contains the entire agreement between the Parties respecting the matters herein set forth and supersedes all prior agreements between the Parties regarding such matters, if any. The Parties acknowledge that there are no additional oral or written promises, conditions, representations, understandings, warranties or terms of any kind as conditions or inducements to execute this Agreement and none have been relied upon by either Party. No representations, promises, agreements or understandings, whether written or oral, not contained herein shall be of any force or effect. No change or modification hereof shall be valid or binding unless the same is in writing and signed by both of the Parties or authorized representatives thereof.
- B. Time is of the essence of this Agreement.
- C. The headings used herein form no substantive part of this Agreement, are for the convenience of the Parties only, and shall not be used to define, enlarge or limit any term of this Agreement.
- D. Except as herein expressly provided, no waiver by a Party of any breach of this Agreement by the other Party shall be deemed to be a waiver of any other breach by such other Party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a Party after any breach by the other Party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other Party,

whether or not the first Party knows of such breach at the time it accepts such payment or performance.

- E. No failure or delay by a Party to exercise any right it may have by reason of the default of the other Party shall operate as a waiver of default or as a modification of this Agreement or shall prevent the exercise of any right by the first Party while the other Party continues to be in default.
- F. Construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Illinois, without regard to its conflicts of laws principles. Both of the Parties acknowledge that they have had an opportunity to review and revise this Agreement and have it reviewed by legal counsel, if desired, and therefore, the normal rules of construction, to the extent that any ambiguities are to be resolved against the drafting Party, shall not be employed in the interpretation of this Agreement.
- G. If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- H. No agreement, amendment, modification, understanding or waiver of or with respect to this Agreement or any term, provision, covenant or condition hereof, nor any approval or consent given under or with respect to this Agreement, shall be effective for any purpose unless contained in a writing signed by the Party against which such agreement, amendment, modification, understanding, waiver, approval or consent is asserted.
- I. Neither this Agreement, the Promissory Note, nor a memorandum thereof shall be recorded by Purchaser.
- J. If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of such performance shall be extended to the next business day. All time periods set forth herein expire at 11:59 p.m. on the date of expiration. Business day, which shall mean Monday through Friday, exclusive of holidays recognized by the State of Illinois or the federal government.
- K. The effective date of this Agreement (the “**Effective Date**”) shall be the later of the respective dates set forth next to the signatures of Seller and Purchaser contained below.
- L. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature affixed to this Agreement and transmitted by facsimile or electronic mail shall have the same effect as an original signature.

- M. The recitals set forth in the preambles to the Agreement are hereby incorporated as if fully restated herein.
- N. No representation or warranty contained herein and no statement or information contained in any certificate or other instrument furnished or to be furnished by either Party in connection with the transaction contemplated hereunder shall contain any untrue statement of a material fact or omit to state a material fact thereby making the information misleading. All representations, warranties and certifications contained herein shall be deemed restated on and as of the Closing Date.
- O. Where permitted, all documents to be delivered hereunder shall be fully executed prior to the presentation and delivery of each to ensure the enforceability and effectiveness of the same. The Parties agree to exchange all documents required for the Closing at a reasonable time prior to the Closing to allow each Party to review all relevant documentation.
- P. This Agreement shall be a valid and binding obligation of the Purchaser only after execution and the adoption of authorizing legislation by the governing board of the Purchaser.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Date: _____, 2019

PURCHASER:

The CITY OF AURORA, an Illinois
municipal corporation

By: _____

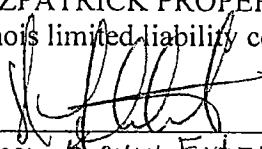
Name: _____

Title: _____

Date: 12-27, 2019

SELLER:

FITZPATRICK PROPERTIES, LLC, an
Illinois limited liability company

By:  _____

Name: Kevin Fitzpatrick

Title: sole managing member

EXHIBIT A
LEGAL DESCRIPTION OF SUBJECT PROPERTY
(TO BE ATTACHED)

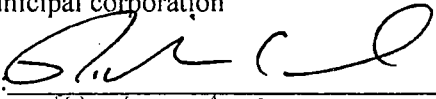
PIN: 15-22-313-012

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Date: December 30, 2019

PURCHASER:

The CITY OF AURORA, an Illinois
municipal corporation

By: 

Name: Richard C Irwin

Title: Mayor

Date: _____, 2019

SELLER:

FITZPATRICK PROPERTIES, LLC, an
Illinois limited liability company

By: _____

Name: _____

Title: _____