

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this “Agreement”) is made and entered into this _____ day of October, 2020, by and between **CITY OF ROCHELLE**, an Illinois municipal corporation (“Seller”), and **1600 RITCHIE COURT, LLC**, a Delaware limited liability company (“Purchaser”).

WHEREAS, Seller owns an approximately 6 acre parcel of real estate identified as PIN [To be assigned upon subdivision], which real estate is legally described on Exhibit A attached hereto and incorporated herein and depicted as Lot 3 in Exhibit B (the “Real Estate”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **SALE**. Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, for the Purchase Price (as hereafter defined) and on the terms and conditions set forth in this Agreement, the Real Estate, together with all rights, easements, interests and duties and obligations appurtenant thereto including, but not limited to, rights in any easements, streets or other public ways adjacent to the Real Estate.
2. **PURCHASE PRICE**. The purchase price to be paid to Seller by Purchaser for the Real Estate shall be TWO HUNDRED SIXTY ONE THOUSAND THREE HUNDRED AND FIFTY-NINE AND 71/100 DOLLARS (\$261,359.71.00) (the “Purchase Price”). The Purchase Price shall be paid on the date of Closing (as hereafter defined).
3. **CLOSING**. The purchase and sale transaction contemplated in this Agreement shall be consummated at closing (“Closing”) to take place at the offices of the Title Company on or before ten (10) days following expiration or waiver of the Due Diligence Period (as hereafter defined) or at such other time as may be mutually agreed in writing. Possession of the Real Estate shall be given to Purchaser at Closing.
4. **BROKERAGE**. Seller and Purchaser represent and warrant to each other that neither Seller nor Purchaser has dealt with any broker with respect to the transaction contemplated by this Agreement.
5. **AS-IS SALE AND DUE DILIGENCE PERIOD**.
 - (a) Except as otherwise specifically set forth in this Agreement, Seller makes no warranty, express or implied, or arising by operation of law, as to the nature and condition of the Real Estate, including, without limitation, any and all improvements located on the Real Estate, water, soil and geology, the suitability of the Real Estate for any and all activities and uses which Purchaser may elect to conduct thereon, the existence of any environmental hazards or conditions thereon, compliance of the Real Estate or its operation with all applicable laws, rules or regulations or as to the condition or state of repair of the Real Estate. Seller makes no implied warranties of habitability, merchantability or fitness for a particular purpose as to the Real Estate. Purchaser acknowledges that Seller is under no obligation to alter, repair or improve the Real Estate. Purchaser

acknowledges that delivery of the Real Estate is “AS IS,” “WHERE IS” and “WITH ALL FAULTS,” subject to the restrictive covenants for Progressive Park, a copy of which has been provided to the Purchaser, and that Seller has disclaimed any implied warranties with respect to the Real Estate.

(b) Due Diligence Period.

i. Matters to Be Reviewed. Purchaser shall complete its due diligence review and approval of the environmental condition of the Real Estate within thirty (30) days of the date of this Agreement (the “Due Diligence Period”). Purchaser’s due diligence may include, but shall not be limited to the environmental condition of the Real Estate including a Phase I environmental site assessment and, if indicated, a Phase II environmental site assessment, each performed by a licensed environmental consultant selected and paid for by Purchaser, and in accordance with the applicable ASTM Standards.

ii. Notice of Termination. If Purchaser determines to terminate this Agreement (such determination to be made in Purchaser’s sole and absolute discretion) within the Due Diligence Period, then Purchaser may terminate this Agreement by delivering written notice to Seller, which notice must be given within the Due Diligence Period. If Purchaser fails to deliver notice of the termination during the Due Diligence period, then the Due Diligence Period shall terminate and this Agreement shall continue to be binding.

iii. Early Termination of the Due Diligence Period. Purchaser may terminate the Due Diligence Period early by delivery of written notice to Seller indicating its satisfaction with the condition of the Real Estate and waiver of the unexpired term of the Due Diligence Period.

iv. Access. During the Due Diligence Period, Seller shall permit Purchaser and its authorized representatives to perform inspections and testing with respect to the condition of the Real Estate at such times during normal business hours as Purchaser or its representatives may request. All inspections and testing shall be nondestructive in nature, and specifically shall not include any physically intrusive testing except with Seller’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All costs and expenses of any kind incurred by Purchaser relating to the inspection and testing of the Real Estate shall be solely Purchaser’s expense. Seller reserves the right to have a representative present at the time of making any such inspections and testing. Purchaser shall notify Seller (or Seller’s attorney) not less than 24-hours in advance of making any such inspection or testing. Purchaser hereby indemnifies and agrees to defend and hold Seller harmless from any and all claims, losses, damages, judgments, settlements, fines, penalties, fees (including, without limitation, attorneys’ fees), costs and expenses incurred by Seller and arising out of any personal injury or death of any person or any damage to property resulting from acts or

negligent omissions of Purchaser or any of its agents, representatives, contractors or subcontractors relative to entry or activities upon the Real Estate or any surrounding land as well as such inspections and tests; provided that Purchaser will have no liability for the mere discovery of conditions existing at the Real Estate and not caused by Purchaser, its agents, employees or contractors. Purchaser agrees that it will restore the Real Estate in all material respects to the Real Estate's condition prior to any tests or inspections. Notwithstanding any other provision of this Agreement to the contrary, the foregoing agreements of Purchaser contained in this subparagraph shall survive any termination of this Agreement or the Closing.

6. **TITLE MATTERS.**

(a) **Conveyance of Title.** Seller agrees to deliver to Purchaser a warranty deed (the "Deed") executed by Seller conveying to Purchaser title to the Real Estate free and clear of all claims, liens and encumbrances, except for the Permissible Exceptions (as hereafter defined) and those acceptable to Purchaser, as well as all restrictive covenants applicable to the Real Estate. "Permissible Exceptions" shall include the lien of general taxes not yet payable; zoning and building laws and ordinances; and easements, covenants, conditions and restrictions of record that are approved or deemed approved by Purchaser pursuant to Section 6(b) (other than Seller's Monetary Encumbrances).

(b) **Title Commitment.** Seller, at Seller's sole expense, shall obtain a commitment (the "Title Commitment") for title insurance issued by Kenzley Title Company (the "Title Company"), showing merchantable title to the Real Estate in Seller, committing the Title Company to issue an ALTA Owner's Policy of Title Insurance with extended coverage over the standard or general exceptions to title (the "Owner's Policy of Title Insurance") for the amount of the Purchase Price or such other amount as Purchaser and the Title Company may agree. Buyer shall, at Buyer's expense, procure an ALTA survey and cause the same to be certified to the Title Company. Seller shall provide the Title Commitment to Purchaser or Purchaser's attorney within twenty (20) days of the execution of this Agreement. Within ten (10) days after receiving the Title Commitment, Purchaser shall provide Seller with written notice of any objections to the form and/or contents of the Title Commitment (the "Objection Notice"). If Purchaser does not provide Seller with the Objection Notice in a timely manner, the Title Commitment shall be deemed accepted by Purchaser. Further, matters not objected to by Purchaser in the Objection Notice with respect to the Title Commitment shall be deemed acceptable to Purchaser and shall be a Permissible Exception. Notwithstanding the foregoing, Seller shall be obligated to discharge and satisfy, at or prior to Closing and without the need for such items to be included in any Objection Notice, any liens, mortgages, mechanic or materialmen liens, judgment liens or any other liens evidencing monetary encumbrances against the Real Estate, which (i) are judgment, income tax, mechanic's or materialmen's liens held by persons claiming through or under Seller, (ii) are liens for delinquent real estate taxes, or (iii) were voluntarily granted by Seller as security for indebtedness, including, deeds of trust, mortgages or any other instrument securing debt of Seller or its affiliates identified in the Title Commitment (collectively, the "Seller's Monetary Encumbrances"). If Purchaser provides Seller

with the Objection Notice in a timely manner, the following procedure shall be utilized:

i. Seller, in its discretion, may elect, by providing Purchaser written notice within ten (10) days from receipt of Purchaser's Objection Notice, to either (a) decline to cure such objections, or (b) utilize good faith efforts to cure such objections to the reasonable satisfaction of Purchaser ("Seller's Election Notice").

ii. If Seller (a) fails to cure such objections to the reasonable satisfaction of Purchaser within ten (10) days after Purchaser's receipt of Seller's Election Notice, (b) declines to cure such objections or (c) does not provide Purchaser with Seller's Election Notice in a timely manner, then Purchaser may elect, as its exclusive remedies, to either (x) terminate this Agreement, in which case all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement, or (y) accept the Title Commitment and proceed to Closing. Purchaser shall provide Seller written notice of its election on or before the Closing ("Purchaser's Election Notice").

iii. If Purchaser does not provide Seller with Purchaser's Election Notice in a timely manner, this Agreement shall thereafter be considered terminated and all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement.

7. **CLOSING DELIVERIES.**

(a) **Seller.** At Closing, Seller shall deliver or cause to be delivered to Purchaser the following:

i. **Deed.** The Deed, executed by Seller, in recordable form conveying the Real Estate to Purchaser, free and clear of all liens, claims and encumbrances except the Permissible Exceptions and those acceptable to Purchaser.

ii. **Transfer Declarations.** Executed Illinois Real Property Transfer Declaration form of the State of Illinois.

iv. **Closing Statement.** A closing statement conforming to the prorations and other relevant provisions of this Agreement.

v. **FIRPTA Statement.** Seller (and each individual executing this Agreement on behalf of Seller) is not a foreign investor, nor do foreign investors have any beneficial interest in the Real Estate. Seller acknowledges that § 1445 of the Internal Revenue Code of 1986, as amended, requires that a purchaser of real estate from a "foreign person" withhold at closing and pay to the Internal Revenue Service a portion of the amount realized by the seller of such real estate. Therefore, Seller agrees to provide at Closing an affidavit of Seller, or Seller's authorized officer if Seller is not an individual, in form required by Purchaser, setting forth sufficient facts to establish

whether or not Seller is a "foreign person" within the meaning of said § 1445, including, without limitation, Seller's taxpayer identification number and principal residence or business address.

vi. **Title Policy.** Seller will cause the Title Company to deliver to Purchaser a pro forma Owner's Policy of Title Insurance, insuring Purchaser's interest in the Real Estate, subject only to the Permissible Exceptions; Seller will execute and deliver to the Title Company such customary and reasonable affidavits and evidence of organization and authority as may be required by the Title Company from the Seller to enable the Title Company to issue the Owner's Policy of Title Insurance.

vii. **Closing Certificate.** Seller will execute and deliver a written certificate that the representations and warranties of Seller contained in this Agreement are true as of the date of Closing in all material respects as though those representations and warranties were made on the date of Closing (except for representations and warranties made as of a specific date, which shall have been true as of such date in all material respects).

viii. **Other.** Such other documents and instruments as may reasonably be required by the Title Company which may be necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto and not inconsistent with the terms of this Agreement.

(b) **Purchaser.** At Closing, Purchaser shall deliver or cause to be delivered to Seller the following, in form and substance acceptable to Seller:

i. **Purchase Price.** The Purchase Price shall be paid to Seller.

ii. **Closing Statement.** A closing statement conforming to the prorations and other relevant provisions of this Agreement.

iii. **Transfer Declarations.** Executed Illinois Real Property Transfer Declaration form of the State of Illinois.

iv. **Other.** Such other documents and instruments as may reasonably be requested by the Title Company which may be necessary to consummate this transaction and to otherwise affect the agreements of the parties hereto and not inconsistent with the terms of this Agreement.

8. **PRORATIONS AND ADJUSTMENTS.** The following shall be prorated and adjusted between Seller and Purchaser as of the Closing Date, except as otherwise specified:

(a) Seller shall pay for the Title Commitment and the Owner's Policy of Title Insurance in the amount of the Purchaser Price. Purchaser shall be responsible for any additional title

insurance coverage, including any endorsements.

(b) Seller and Purchaser shall split equally any and all Title Company closing and escrow fees, except that if Purchaser is obtaining financing then Purchaser shall be responsible for such fees.

(c) All non-delinquent general real estate taxes for the Real Estate shall be prorated at the time of closing based on 100% of the most recently ascertainable tax bill (or most recent ascertainable tax rate, assessed valuation and state equalization factor, if more recent).

(d) Seller shall pay any State of Illinois and Ogle County transfer taxes.

For purposes of calculating prorations, Seller shall be deemed to be in title to the Real Estate for the date of Closing. All such prorations shall be made on the basis of the actual number of days of the year and month which shall have elapsed as of the date of Closing. If the actual real estate taxes paid by Purchaser in respect of the period of the proration exceed the credit given Purchaser at Closing for such taxes, Seller shall, upon presentation of appropriate paid tax bills, reimburse Purchaser for any amounts incurred by Purchaser for such taxes in excess of the prorated credit. Seller's obligation to reimburse Purchaser shall survive the Closing and the recording of the Deed.

9. **DEFAULT BY SELLER.** In the event of a default by Seller under the terms of this Agreement and such default continues for a period of fifteen (15) days after written notice thereof from Purchaser to Seller, Purchaser shall have the right, as its exclusive remedies, to either (i) seek specific performance requiring Seller to consummate the transaction provided that any suit for specific performance will be brought within thirty (30) days of the date on which the Closing would have occurred but for Seller's default, or (ii) terminate this Agreement, in which case all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement. In addition, in the event Purchaser shall institute legal action against Seller because of a default of this Agreement, Purchaser shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action provided Purchaser succeeds in such action.

10. **DEFAULT BY PURCHASER.** In the event of a default by Purchaser under the terms of this Agreement and such default continues for a period of fifteen (15) days after written notice thereof from Seller to Purchaser, Seller shall have the right, as its exclusive remedies, to either (i) seek specific performance requiring Purchaser to consummate the transaction provided that any suit for specific performance will be brought within thirty (30) days of the date on which the Closing would have occurred but for Purchaser's default, or (ii) terminate this Agreement, in which case all obligations of the parties hereunder shall cease, except as otherwise provided in this Agreement. In the event Seller shall institute legal action against Purchaser because of a default of this Agreement, Seller shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action provided Seller succeeds in such action.

11. **WARRANTIES AND REPRESENTATIONS OF SELLER.** Seller makes the following warranties and representations, which shall be true and correct as of the date of this Agreement and as of the date of Closing:

(a) Seller is lawfully organized and existing municipal corporation in the state of Illinois and has full power and authority to convey the Real Estate to Purchaser.

(b) Seller has good, merchantable and insurable title to the Real Estate, which are free and clear of all mortgages, liens, security interests, charges, claims, restrictions or other encumbrances of every kind except as otherwise specifically provided in this Agreement or as will be discharged at or before the date of Closing. There will be no restriction on the transfer of the Real Estate at the time of Closing.

(c) There is no pending or threatened condemnation or similar proceeding affecting the Real Estate or any part thereof.

(d) There are no claims, actions, suits or other legal or administrative proceedings, including, without limitation, bankruptcy proceedings, pending or threatened, against or involving Seller or the Real Estate which could affect the consummation of the transactions contemplated hereby, and there are no facts which might result in any action, suit or similar proceeding. There are no judgments, orders or stipulations against Seller or the Real Estate.

(e) There are no leases or other contracts to which Seller is a party which affect the Real Estate, except those which shall be terminated by Seller prior to the Closing. Seller has not entered into any purchase contracts, rights of refusal, options or other agreements of any kind whereby any person or entity other than Seller has acquired any right, title or interest in, or right to possession, use, enjoyment or proceeds of all or any portion of the Real Estate.

(f) Seller is not subject to any charter, bylaw, rule, agreement or restriction of any kind or character which would prevent the consummation of this Agreement and the transactions contemplated hereby. Seller has full power and authority to execute this Agreement and all documents necessary to accomplish the sale contemplated herein, fully perform hereunder and to consummate the transactions contemplated hereby without the consent or joinder of any other party.

(g) All bills for work done or materials furnished by or at the request of Seller to or for the improvement of the Real Estate will have been paid in full, or provision made for payment, such that no lien therefore, whether statutory or common law, may properly be filed or enforced against the Real Estate.

(h) At the time of Closing, no person or entity, other than Purchaser, will have any right of possession to any portion of the Real Estate.

(i) Seller has not received any notice and is not aware of any Hazardous Substance

(as defined herein) contained on or in the Real Estate. Seller has not received notice of and is not aware of any pending or threatened litigation or proceedings before any administrative agency in which any person or entity alleges the presence, release, threat of release, placement on or in the Real Estate, or the generation, transportation, storage, treatment, or disposal at the Real Estate, of any Hazardous Substance. Seller has not received any notice of and has no knowledge that any governmental authority or any employee or agent thereof has determined that there is a presence, release, threat of release, placement on or in the Real Estate, or that there has been any generation, transportation, storage, treatment, or disposal at the Real Estate, of any Hazardous Substance. Seller has not received notice of and is not aware of any communications or agreements with any governmental authority or agency (federal, state or local) or any private entity, including, but not limited to, any prior owners of the Real Estate, relating in any way to the presence, release, threat of release, placement on or in the Real Estate, or the generation, transportation, storage, treatment, or disposal at the Real Estate of any Hazardous Substance. Seller shall promptly give Purchaser copies of any such notices which may be received by Seller. For purposes of this paragraph, Hazardous Substance means any waste, substance, chemical, material, pollutant or containment defined as "hazardous" or "toxic" in, pursuant to or under the Resources Conservation Recovery Act, 42 U.S.C. Section 6901 et. seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq., the Clean Water Act, 33 U.S.C. Section 1251 et. seq., the Clean Air Act, 42 U.S.C. Section 7401 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et. seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et. seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq., the Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq., or any other law, statute, regulations, or common law theory dealing with environmental matters.

(j) Seller is not in default under any applicable federal, state or local laws, statutes, ordinances, permits, licenses, orders, approvals, variances, rules or regulations or judicial or administrative decisions which would have an adverse effect upon the Real Estate. No notices or citations for the violation of any zoning, building or other law, ordinance, regulation or directive of any governmental authority or authorities having jurisdiction relating to the Real Estate or any part or parts thereof, have been received, or are known by, Seller.

12. **NOTICES**. Any notice, demand or request which may be permitted, required or desired to be given in connection therewith shall be given in writing and sent by overnight delivery directed to Seller and Purchaser as follows:

If to Seller: City of Rochelle
 Attn: City Manager
 420 North 6th Street
 Rochelle, Illinois 61068

with a copy to: Dominick L. Lanzito
Peterson, Johnson & Murray – Chicago LLC
200 W. Adams – Suite 2125
Chicago, Illinois 60606

If to Purchaser: 1600 Ritchie Court, LLC
Attn: Angela Miu
227 W. Monroe Street
Ste. 2600
Chicago, Illinois 60606

with a copy to: Baker & Hostetler LLP
127 Public Square, Suite 2000
Cleveland, OH 44114
Attn: John J. Allotta and Christopher M. Luken
Email: jallotta@bakerlaw.com; cluken@bakerlaw.com

Notice by overnight delivery shall be deemed to have been received on the actual date of delivery. A time period in which a response to any notice, demand or request must be given pursuant to this Agreement shall commence to run from the date of receipt.

13. **CASUALTY PRIOR TO CLOSING.** If, prior to the Closing, a material part (as defined in this Section 13) of the Real Estate is destroyed or damaged by fire or other casualty Seller will promptly notify Purchaser of such fact, and Purchaser will have the right to terminate this Agreement by giving notice to Seller not later than ten (10) days after notice from Seller to Purchaser. For the purposes hereof, a "material part" of the Real Estate will mean a part of the Real Estate which will cost in excess of \$10,000.00 to repair. If Purchaser does not elect to terminate this Agreement as aforesaid, or if there is damage to or destruction of less than a material part of the Real Estate by fire or other casualty or taking or condemnation, there will be no abatement of the Purchase Price.

14. **CONDITIONS TO PURCHASER'S OBLIGATIONS.** Purchaser's obligations under this Agreement are expressly conditioned upon the completion, occurrence, satisfaction and/or waiver of the following matters and Purchaser shall have no obligation under this Agreement unless and until in Purchaser's all such conditions have been satisfied, completed and/or waived:

- (a) Seller shall not have breached any covenant or obligation contained in this Agreement to be performed by Seller on or before the date of Closing in any material respect, including the covenant to maintain the Real Estate in substantially the same condition as on the date hereof.
- (b) There shall have been no material adverse change in the condition of or affecting the Real Estate not caused by Purchaser between the expiration of the Due Diligence Period and the Closing Date, specifically limited to: (i) releases of Hazardous Substances occurring between the expiration of the Due Diligence Period and the Closing Date; and (ii) the issue by any governmental authority of any written notice, citation or claim of any kind that the Real Estate is in violation, in any material respect, of any laws, rules, regulations or other binding and enforceable requirements of any governmental authority, whether state, local or federal and Seller does not agree in writing to cure such violation prior to Closing;.

15. **MISCELLANEOUS.**

(a) **Entire Agreement.** This Agreement and the Exhibits attached hereto and by this reference made a part hereof, constitute the entire agreement between Seller and Purchaser, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the Real Estate other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon Seller or Purchaser unless in writing and signed by both Seller and Purchaser.

(b) **Headings.** The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may under no circumstances be considered in constructing or interpreting the provisions of the Agreement.

(c) **Binding Effect.** All of the provisions of this Agreement are hereby made binding upon and shall inure to the benefit of the parties hereto and personal representatives, heirs, successors and assigns of both parties hereto.

(d) **Time of Essence.** Time is of the essence of this Agreement.

(e) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

(f) **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the State of Illinois with venue for all litigation in Ogle County, Illinois.

(g) **Closing Date and Deadline Dates.** In the event that the date of Closing or any other deadline date or date for notice described in this Agreement falls on a weekend or a holiday, the date of Closing or other deadline date or date for notice shall be deemed to be the next business day.

(h) **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, and if such provision is not essential to the effectuation of the basic purposes of this Agreement, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

(i) **No Waiver.** The waiver by either party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be construed as a waiver of any other covenant, condition or promise herein. The waiver by either party of the time for performing any act shall not constitute a waiver of the time for performing any other act or any incidental act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right, the time for the exercise of which is not specifically and expressly limited or specified in this Agreement, shall not be considered a waiver of or an estoppel against the later exercise of such remedy or right.

(j) **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Seller and Purchaser have contributed substantially and materially to the preparation of this Agreement.

(k) **Attorneys' Fees and Costs.** In the event of any dispute between the parties relative to this Agreement or any of the terms hereof, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

(l) **Merger.** Any continuing obligations or agreements of the parties set forth in this Agreement shall not merge with the recording of the Deed.

(m) **1031 Exchange.** Either party may consummate the sale and purchase of the Real Estate as part of a like kind exchange ("Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, provided that (i) all costs, fees and expenses attendant to such Exchange shall be the sole responsibility of the exchanging party, (ii) the Closing Date shall not be delayed or affected by reason of such Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to the exchanging parties' obligations under this Agreement, (iii) if Purchaser is the exchanging party, Seller shall not be required to acquire or hold title to, and Seller shall not be required to convey, any real property other than the Real Estate for purposes of consummating the Exchange, (iv) in the event of any such Exchange, all representations, warranties, covenants and agreements of the parties pursuant to this Agreement shall be deemed to be made by Seller and Purchaser, as applicable, shall survive any conveyance to an accommodation party, shall continue in favor of and inure to the benefit of the other party and shall be enforceable by the parties against one another, as though the Real Estate had been conveyed directly by Seller to Purchaser without an accommodation party; (v) the Exchange shall in no way reduce, abridge or modify any obligations or duties or any rights or remedies of the parties hereunder, and (vi) the non-exchanging party shall not incur any additional expenses as a result of the Exchange. Neither party shall have any liability to the other in the event an Exchange is not consummated (unless there is a default by a party hereunder), or in the event the exchanging party does not achieve the desired tax treatment. The provisions of this Paragraph 15(m) will survive the Closing.

(n) **Exclusivity.** So long as this Agreement remains in effect, Seller shall not, directly or indirectly, list the Real Estate with any broker or otherwise solicit or make or accept any offers to sell the Real Estate, engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Real Estate, enter into any contracts or agreements (whether binding or not) regarding any disposition of the Real Estate or take any action to encourage or facilitate any of the foregoing or the making of any proposals or inquiries that may reasonably be expected to lead to any of the foregoing.

(o) **COVID-19 Restrictions.** If: (a) either of Seller or Purchaser is actually prevented from performing its respective obligations under this Agreement; or (b) a condition precedent of the obligation of Purchaser or Seller to proceed with Closing cannot be satisfied, in any case, because of governmental restrictions or adherence to governmental orders, restrictions, regulations or guidance issued by any state, local or federal authority (including, without limitation, guidelines issued by the Centers for Disease Control) in connection with or as a result of Covid-19 (by way of example, but not limitation, mandatory quarantines or isolation of the population or portions thereof or the closing of courthouses and record rooms which would prevent either recording of the Deed or issue of the Owner’s Policy of Title Insurance) (collectively, the “Covid-19 Restrictions”), then the date for performance by Seller or Purchaser, including the Closing Date, will automatically be extended through the 10th calendar day following date on which the applicable Covid-19 Restrictions have all been cancelled or have expired.

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the date and year set forth above.

SELLER:

CITY OF ROCHELLE, an Illinois municipal corporation

By _____
Its _____

PURCHASER:

1600 RITCHIE COURT, LLC, a Delaware Limited Liability Company

By _____
Its _____

EXHIBIT A

(TO BE INSERTED FOLLOWING ISSUANCE
OF TITLE COMMITMENT)

