

ORDINANCE 2017-043 PASSED: OCTOBER 30, 2017

AUTHORIZING THE PURCHASE OF 912 EDGEBROOK DRIVE, DEKALB, ILLINOIS, EMERGENCY STABILIZATION OF SAID PROPERTY, THE AMENDMENT OF THE FY2017 BUDGET IN THE AMOUNT OF \$250,000, AND THE ESTABLISHMENT OF A POSTED NO PARKING ZONE.

WHEREAS, the City of DeKalb is a home rule municipality with the power and authority conferred thereupon by virtue of the Illinois Municipal Code, the Illinois Constitution, the Illinois Liquor Control Act and the City Code of the City of DeKalb; and,

WHEREAS, the City Council has determined that it is necessary and appropriate to acquire the real property located at 912 Edgebrook Drive, as legally described within the attached Exhibit A; and,

WHEREAS, the City of DeKalb utilizes the budget process as permitted by City Code and the Illinois Municipal Code, and has determined by a 2/3 supermajority vote of the members of City Council then holding office that amendment of the budget for Fiscal year 2017 is appropriate in order to fund such purchase and stabilization expenditures;

THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

Section 1. Purchase, Stabilization and Budget Amendment Authorized.

The City Manager of the City of DeKalb or designee thereof is authorized and directed to provide notice to the owner of the property located at 912 Edgebrook Drive ("the Property") that the City Council of the City of DeKalb has authorized, approved and ratified the purchase agreement attached hereto as Exhibit A ("the Purchase Agreement"), for the property legally described therein. The City Attorney is authorized and directed to take all actions and execute all such documents as shall be required to effectuate such purchase, and to incur all costs and expenses as described in the Purchase Agreement. The City Attorney may further waive any costs, liens or encumbrances which the City has against the Property.

After acquisition, the Fire Chief of the City of DeKalb or his designee is authorized and directed to secure the Property against unauthorized access, and to undertake all measures as shall be required to conduct emergency stabilization of the Property. As a component of the stabilization of the Property, the entirety of the Property shall be posted as a no-trespass and no-parking, tow zone. Any person entering upon the Property may be properly prosecuted for said violation, and any vehicle parked upon the property may be towed and cited.

The Finance Director of the City of DeKalb is authorized and directed to amend the budget of the City of DeKalb for Fiscal Year 2017 by \$250,000 as shown below:

Fund	Account Number	Action	Increase/ (Decrease)	Revised Budget
General Fund	01-35-00-900-9032	Transfer to Capital Projects Fund	\$250,000	\$250,000
Capital Projects Fund	50-40-00-009-4701	Transfer From General Fund	\$250,000	\$250,000
Capital Projects Fund	50-40-00-650-8621	Land Acquisition	\$250,000	\$250,000

Said funding shall be utilized to cover all costs associated with the acquisition of the property and with the emergency stabilization thereof.

The City Manager or designee is directed to report to the City Council following completion of acquisition and stabilization regarding options available for the Property, for further consideration by the City Council of the City of DeKalb.

Further, the City Council directs that the budget for FY2017 and FY2018 shall not be caused to drop below a twenty-five percent (25%) general fund reserve by virtue of the acquisition and purchase of this property.


Section 2. All ordinances or portions thereof in conflict with this ordinance, including the prior versions of the ordinances included above, are hereby repealed.


Section 3. Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

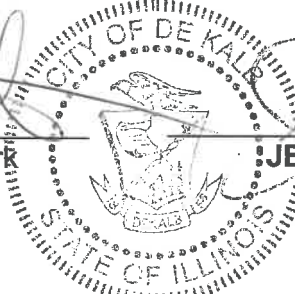
Section 4. This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: October 31, 2017. Effective date: November 9, 2017.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 30th day of October, 2017, and approved by me as Mayor on the same day. Passed on First Reading by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None. Second Reading Waived by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:


RUTH A. SCOTT, Deputy City Clerk


JERRY SMITH, Mayor



REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement (“**Agreement**”) is entered into as of the 26 day of October, 2017 (the “**Effective Date**”), by and between Patricia J. Bragg as trustee of the Patricia J. Bragg Living Trust under trust agreement dated January 6, 1994, (“**Seller**”), and CITY OF DEKALB, an Illinois Municipal Corporation (“**Purchaser**”).

1. **Purchase and Sale.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, in accordance with the terms and conditions set forth in this Agreement and for the Purchase Price set forth in Section 2: (i) that certain parcel of land located at 912 Edgebrook Drive, **DeKalb, Illinois**, as more particularly described in Exhibit A attached hereto and made a part hereof (the “**Land**”), and any and all improvements thereon (the “**Improvements**,” together, the Land and the Improvements, the “**Real Property**”); (ii) all mineral, oil and gas rights, water rights, sewer rights and other utility rights allocated to the Real Property; (iii) all appurtenances belonging to the Real Property; and, (iv) all items of personal property left at the Property as of the date of Closing as defined herein; (items (i) through (iv), collectively, the “**Property**”).

2. **Payment of Purchase Price; Downpayment.** The total purchase price (the “**Purchase Price**”) for the Property is One Hundred Ninety Two Thousand Five Hundred Dollars and 00/100 (\$192,500.00), payable in full at closing. At the time of closing of the purchase and sale of the Property (the “**Closing**”), the Purchase Price shall be due and payable in full and shall be delivered by Purchaser by federal wire transfer of immediately available funds in time for receipt by Seller not later than 11 a.m. (local time at the location of the Real Property) on the Closing Date, time being of the essence. Closing shall occur on Monday, November 6, 2017 at 1:00pm, or another date mutually acceptable to the parties.

3. **Realtor/Broker Fees.** The Seller and Purchaser expressly agree and covenant that Seller shall indemnify, defend and hold Purchaser harmless from any realtor or broker fees, and shall be solely responsible for their payment.

4. **Contingencies.** This Agreement is subject to the following contingencies:

A. Seller must demonstrate that it can provide clear title to the Property based upon the payment of the above-referenced purchase price, inclusive of the full waiver of any liens against the Property. The Purchaser agrees that it shall waive the lien that it has against the Property as a component of the purchase of the Property.

B. This Agreement has been entered into subject to specified party approval for Purchaser. Seller agrees and acknowledges that, based upon the Purchaser’s willingness to conduct a public meeting to consider the acquisition of the Property and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Seller has signed this Agreement and has irrevocably committed to selling the Property to the Purchaser on the terms and conditions described herein, provided that Purchaser gives notice of acceptance of this Agreement within seven (7) days of the date of execution (or such longer date as Seller shall agree to). During such option period, the Purchaser may accept this agreement and bind itself to this agreement by having the same be approved and/or ratified by the public action of the City Council of the City of DeKalb, at a duly noticed and lawfully convened public meeting held in

accordance with all legal requirements. Should the Purchaser fail to convene such a meeting, or should this agreement not be approved by the City Council at such meeting, then this agreement shall be of no further force or effect.

5. **Condition of Property.** Seller shall deliver the Property at Closing in materially the same condition as existed at the end of the Effective Date, ordinary wear and tear and damage caused by Purchaser or its agents excepted. The Property is being sold in “AS IS,” “WHERE IS,” “WITH ALL FAULTS” condition, without any representations and warranties of Seller whatsoever. Purchaser hereby releases Seller from and waives all claims against Seller for damages, contribution, indemnification, losses, expenses or injuries arising out of the condition of the Property, including, but not limited to claims or demands for damages, losses, expenses or injuries arising out of preexisting environmental conditions.

6. **Disclaimers and Limitations**

A. If Seller has made or makes available to Purchaser documents, files, materials, data or information in whatever form relating to the Property or the transactions contemplated by this Agreement (collectively, “**Property Information**”), Purchaser acknowledges and accepts that such Property Information may not be accurate or complete and that Seller has not made any independent investigation or verification of any such information.

B. Purchaser shall rely solely on its own investigation of the Property and any reports commissioned by or on behalf of Purchaser and not on any Property Information or opinions provided by or on behalf of Seller. Except for the representations, warranties and covenants expressly set forth in this Agreement, Seller shall not be liable or bound by any statement, representation or information made or furnished by any broker or other person representing or purporting to represent Seller.

C. For and in consideration of the payment of the funds referenced above to Seller and in exchange for the mutual promises and covenants contained herein, Seller agrees to release, compromise, settle and discharge any and all claims which it may have, which have been asserted or which are capable of assertion against Purchaser its agents, officers, attorneys, representatives, successors and assigns in any way relating to the Property, the inspection thereof, the revocation of occupancy or posting as uninhabitable, the filing of litigation relating to demolition, remediation or otherwise, or any other claims presently known or unknown whatsoever and without limitation, with respect to the Property.

D. For and in consideration of the sale of the Property and in exchange for the mutual promises and covenants contained herein, Purchaser agrees to release, compromise, settle and discharge any and all claims which they may have, which have been asserted or which are capable of assertion against Owner or its agents, officers, representatives, successors and assigns, in any way relating to the Property, or any other claims presently known or unknown whatsoever and without limitation with respect to the Property. Purchaser shall also dismiss the pending demolition litigation, with prejudice and without costs.

7. **Title and Survey.**

A. Purchaser may obtain a survey of the Property at its own cost, if desired.

B. Purchaser shall purchase from Chicago Title Insurance Company, at Purchaser's sole expense, a title commitment for the Property as soon as practical following Purchaser's receipt of a countersigned copy of this Agreement. Purchaser shall have until the date of closing (the "**Title Objection Deadline**") to deliver written notice to Seller (an "**Objection Notice**") of any objections to the title to the Property ("**Objections**") other than the Permitted Exceptions (defined below). Purchaser shall deliver or cause to be delivered to the Seller a copy of such Title Commitment, together with tax, municipal, street, and violation searches and legible copies of all instruments identified as exceptions therein and such Survey and any survey updates, modifications and supplements, together with any legal description of the Real Property prepared in connection therewith by the third (3rd) business day following Purchaser's receipt of the Title Commitment or Survey, as applicable. The Seller acknowledges that there is presently a mechanic's lien against the Property, recorded in the DeKalb County Recorder's Office as document number 2016011616, which lien is not a Permitted Exception, and which lien Seller shall be required to clear as a condition of closing.

C. If Purchaser gives written notice of its Objections on or before the Title Objection Deadline, then Seller may notify Purchaser in writing whether Seller elects to attempt to cure such Objections. If Seller fails to give such notice, Seller will be deemed to have elected not to attempt to cure such Objections. Purchaser shall have the right to terminate this Agreement by written notice given prior to the expiration of the Inspection Period. If Purchaser fails to timely notify Seller of Purchaser's termination of this Agreement, Purchaser will be deemed to have waived such Objections. If Seller elects to attempt to cure such Objections and Purchaser has not otherwise terminated this Agreement under Section 4.E., Seller shall have the right to attempt to remove, satisfy or otherwise cure each Purchaser's Objection that Seller has agreed to attempt to cure. If Seller is unable to cure such Objections prior to the Closing Date, Seller may postpone the Closing Date up to an aggregate maximum of ninety (90) days (or if such ninetieth day is not a business day, to the next following business day), for the purposes of discharging, or attempting to discharge, any Objections. Purchaser may, nevertheless, accept such title as Seller may be able to convey, either without reduction of the purchase price or any credit or allowance against the purchase price and without any liability on the part of Seller or on written terms acceptable to both parties. The acceptance of a deed by Purchaser shall be deemed to be a full performance and discharge of every agreement and obligation on the part of Seller to be performed under this Agreement, except those, if any, which are herein specifically stated to survive Closing. Unless otherwise stated, no obligation, liability, representation or warranty of Seller shall survive Closing.

D. Notwithstanding anything to the contrary contained herein, unless otherwise undertaken in writing by Seller, Seller shall have no obligation to bring any action or proceeding or otherwise to incur any expense whatsoever to eliminate or modify such Objections or to cure any of the same; provided, however, that at or before Closing Seller shall be obligated to discharge or cause to be discharged the following Objections (collectively, "**Seller's Discharge Obligations**"): (A) any Objection that constitutes a mortgage that Seller voluntarily created encumbering the Property, (B) any Objection that constitutes a consensual lien that Seller voluntarily causes to be recorded against the Property after the Effective Date and (C) any Objection that constitutes a mechanic's lien of record resulting from work that Seller has performed or caused to be performed at the Property, provided that Seller shall have the right to bond off and remove any such mechanic's lien.

8. **Closing.** The Closing shall occur during normal business hours, as soon as practical following satisfaction of all contingencies to this Agreement. Closing shall take place at the offices of Chicago Title Insurance Company in Sycamore, Illinois, or at such other place as the parties shall mutually agree. TIME SHALL BE OF THE ESSENCE with respect to Purchaser's obligation to effectuate the Closing no later than the Closing Date, except as expressly provided herein.

9. **Prorations, Apportionments and Adjustments at Closing.** All ad valorem, real estate, personal property and similar taxes ("Property Taxes") assessed against the Property which are due and payable as of the date of closing (as reflected in the title commitment) or which are subsequently payable shall be paid by the Seller. Taxes or charges for any year which are not presently ascertainable shall be pro-rated based upon the figure which is one hundred and five percent (105%) of the last known, ascertainable tax or charge.

10. **Transaction Costs.** The Purchaser shall pay the recording and title costs associated with this transaction. Seller shall be responsible for the payment of Property Taxes as referenced above, and for its own legal fees and for any escrow fees that may be associated with anything other than a 'cash at closing' transaction. Purchaser shall pay the cost of closing. Seller shall be responsible for any internal costs it incurs in handling the transaction, and also for any taxes that accrue to it as a result of the sale.

11. **Closing Documents and Deliveries.**

A. At the Closing, Seller shall deliver a general warranty deed, an affidavit of title, a bill of sale for personal property, a closing statement in form acceptable to the title company, an ALTA statement regarding liens, and all other documents as may reasonably be required by Title Company or Escrow Agent for the Closing in accordance with this Agreement.

B. At the Closing, Purchaser shall deliver the Purchase Price, in cash or immediately available funds, a closing statement, executed by Purchaser, and all other documents as may reasonably be required by Title Company or Escrow Agent for the Closing in accordance with this Agreement.

12. **Representations and Warranties.**

A. Seller represents and warrants to Purchaser as of the Effective Date that the execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller and does not require the consent of any third party and that the individual executing this Agreement on behalf of Seller has the authority to bind Seller to the terms of this Agreement.

13. **Failure of Conditions; Default.** If Seller is in default hereunder for failure to comply with any one or more of the material terms or conditions of this Agreement and such failure continues for more than ten (10) business days after Seller's receipt of written notice by Purchaser, Purchaser at its sole option may: (a) terminate this Agreement by written notice delivered to Seller on or before the Closing, (b) waive such defaults and proceed to Closing, or (c) enforce specific performance of this Agreement. Purchaser hereby knowingly waives any and all right to institute any action, claim or suit for damages against Seller with respect to any

default by Seller hereunder. If Purchaser defaults under this Agreement, and such default is not cured within ten (10) days after written notice thereof from Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement. If Purchaser closes the transaction which is the subject of this Agreement with actual knowledge that any of Seller's representations made in Section 12.A are not true as of the date that such representation was made or as of the Closing Date, Purchaser shall be deemed to have waived any claim for misrepresentation or breach of warranty arising with respect to such particular representation. Nothing contained in this Section 13 shall in any way limit any indemnification (and any related hold harmless and defense) obligation of Purchaser or Seller pursuant to this Agreement. This Section 13 shall expressly survive the termination of this Agreement.

14. Assignment. Purchaser shall not have the right to assign its interest in this Agreement without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole and unfettered discretion, and any such assignment without such consent shall be null and void and of no force and effect.

15. Notices. All notices and other communications hereunder shall be addressed to the parties as follows:

If to Seller:

With required copies to:

If to Purchaser: City of DeKalb, Attn: Legal Department
 200 S. 4th Street
 DeKalb, IL 60115

Any notice, demand or other communication (each, a "notice") that is given pursuant to this Agreement by either Seller or Purchaser to the other party, shall be (i) given in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth above, and (iii) delivered via either hand delivery, nationally recognized courier service (e.g., DHL, Federal Express, Express Mail) or certified U.S. mail postage prepaid with return receipt requested. Any such notice shall be deemed given, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its attorneys. Each party may, from time to time, designate an additional or substitute required address(es) for notices delivered to it (provided, that such designation must be made by notice given in accordance with this Section 15).

16. **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser, their respective successors and permitted assigns.

17. **Governing Law.** The laws of the State of Illinois shall govern the validity, construction, enforcement and interpretation of this Agreement.

18. **Brokers.** Both Seller and Purchaser agree that neither party is represented by a Broker. If any other broker should make a claim for a commission based upon the actions of Purchaser, Purchaser shall indemnify, defend and hold Seller harmless from such claim.

19. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Neither this Agreement nor any memorandum thereof shall be recorded.

20. **Time of the Essence.** The parties hereto expressly agree that time is of the essence with respect to this Agreement.

21. **Entire Agreement.** This Agreement embodies the entire agreement of the parties with respect to the transaction herein contemplated, superseding all prior agreements and communications whether oral or written. Any amendments hereto shall be in writing and executed by the party against whom enforcement of the modification is sought.

22. **Severability.** If any provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and be enforced to the fullest extent permitted by law.

23. **Captions.** The captions of the various Sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

24. **Construction.** The parties acknowledge that the parties and their attorneys have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

25. **Terminology.** As used in this Agreement, (i) the phrase “and/or” when applied to one or more matters or things shall be construed to apply to any one or more or all thereof as the circumstances warrant at the time in question, (ii) the terms “herein” “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular Section, unless expressly so stated, (iii) the term “including”, whenever used herein, shall mean “including without limitation”, except in those instances where it is expressly provided otherwise, (iv) the term “person” shall mean a natural person, a corporation, a limited liability company, and/or any other form of business or legal association or

entity, and (v) the term "**business day**" shall mean any day other than a Saturday or Sunday or Federal holiday or legal holiday in the State in which the Property is located.

26. Patriot Act Compliance

A. Seller shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administrated by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, or any other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, if applicable, on the transactions described in this Agreement. Seller is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this Agreement.

B. Purchaser shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administrated by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, or any other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, if applicable, on the transactions described in this Agreement. Purchaser is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Agreement as of the Effective Date.

"SELLER"

By: Patricia J. Bragg
Name: Patricia Bragg Acting Trustee
Title: Trustee

"PURCHASER"

By: Joellen Charlton
Name: Joellen Charlton
Title: Acting City Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

For APN/Parcel ID(s): 08-15-176-002 and 08-15-176-023

Lots 14, 15, 16 and 17 in Block 3 in Sixth Addition to Rolling Meadows, a subdivision of a part of Section 15, Township 40 North, Range 4, East of the Third Principal Meridian, according to the Plat thereof recorded August 28, 1964, as Document No. 323083, in Plat Book "N", Page 7, in DeKalb County, Illinois.