



## NOTICE OF SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF GENEVA

Visitors are welcome to all City meetings; however, pursuant to Governor Pritzker's Executive Order 2020-43 limiting gatherings of no more than 50 persons (or 50% of room occupancy) and a requirement to wear a face covering in public places, physical attendance at public meetings may be limited or restricted. Meetings will be livestreamed for the public to provide the ability to contemporaneously hear all discussion, testimony and roll call votes of the open meeting in real time. Please visit the City [website](#) for details on how to watch the meeting live.

As it is anticipated that there may be a large number of individuals desiring to attend this meeting, **a satellite meeting location will be located at the City of Geneva Public Works Facility at 1800 South Street. For more information please see the ["Notice Regarding Meeting and Public Comment Rule Modification Due to COVID-19"](#).**

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Geneva shall conduct a special meeting on Monday, July 13, 2020 at 7 pm. The special meeting will be held at Geneva City Hall Council Chamber, 109 James Street, Geneva, Illinois.

1. Roll Call
2. New Business/Public Comment
3. Consider approval of Resolution 2020-43 authorizing the sale of publicly-owned surplus property (parcel no. 12-08-200-073) to the Burton Foundation an Illinois not for profit corporation, at the proposed sale price of \$576,000, subject to the terms and conditions stated in the Real Estate Purchase Agreement.
4. Adjournment

Date: July 10, 2020

This notice has been posted at City Hall, City of Geneva, 22 South First Street, Geneva, Illinois and 1800 South Street, Geneva, Illinois on July 10, 2020 and has been tendered to members of the media requesting notices of public meetings.

A handwritten signature in black ink, appearing to read "Rogers", is written above a horizontal line.

City Clerk



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item:	Resolution and Real Estate Purchase Agreement to Sell Surplus Public Property (Parcel No. 12-08-200-073) Commonly Known as the Lewis Road site.		
Presenter & Title:	Stephanie K. Dawkins, City Administrator		
Date:	July 13, 2020		
<b><i>Please Check Appropriate Box:</i></b>			
<input type="checkbox"/>	Committee of the Whole Meeting	<input type="checkbox"/>	Special Committee of the Whole Meeting
<input type="checkbox"/>	City Council Meeting	<input checked="" type="checkbox"/>	Special City Council Meeting
<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>	Other -
Associated Strategic Plan Goal/Objective: EV-I; QL-III			
Estimated Cost: \$N/A		Budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Other Funding," please explain how the item will be funded:</i>			
<b>Executive Summary:</b>			
<p>The City acquired the Lewis Road property for \$222,753.00 in 1994 from the developers of the Sterling Manor Planned Unit Development as a site for a future water treatment plant. It was later determined the site was inadequate for the water treatment plant and said property was deemed to be surplus. The property was then transferred from the City's Water Fund to the City's General Fund as a possible site for affordable senior housing or other corporate purpose as may be determined and directed by the corporate authorities of the City, along with a statement of intent to reimburse the Water Fund in the amount of \$340,000 as and for the replacement value of the property once the Lewis Road property sold, or otherwise financed for purposes as determined by the corporate authorities.</p> <p>In 2013, the corporate authorities again deemed the Lewis Road property as surplus and authorized the sale. No offers were received.</p> <p>In May 2019 the City sold 0.947 acres of said property to the Union Pacific Railroad for \$261,160.00 in furtherance of the UP's Third Main Line project. The proceeds from the sale to the UP were deposited in the Water Fund.</p> <p>On November 4, 2019 the City unanimously approved Resolution 2019-97 again declaring real property (Parcel No. 12-08-200-073) as surplus and authorized conditions of sale to include proposals that proffer an "affordable housing" project were encouraged and would be evaluated as a City preference. The City Administrator obtained an MAI appraisal, and advertised the sale of the surplus property in accordance with Resolution 2019-97 and pursuant to 65 ILCS 5/11-76-1 <i>et seq.</i></p> <p>The City received one proposal for the real property, e.g. Burton Foundation. In January 2020, prior to execution of a purchase agreement, the City Council following several work sessions and recommendation by the Planning and Zoning Commission, unanimously passed Ordinance 2020-06 amending the Geneva Municipal Code related to incentives for the creation of</p>			

affordable housing including the ability for the City Council to donate property to a development containing affordable housing.

The Burton Foundation revised their initial offer based upon Ordinance 2020-06 and has submitted a final offer of \$576,000 (80% of appraised value) for the surplus property to allow for the ability to submit an application for the development of affordable townhome project on the property. The draft Real Estate Purchase Agreement for the City's consideration includes the following closing and transfer of title conditions:

1. Purchaser obtains fee title to real property or enters into an unconditional contract to purchase fee title to real property which qualifies as a parcel of real property to provide ingress and egress to the Property to a public roadway;
2. Purchaser has satisfied all of the conditions under provisions of Title 11, Chapter 9 and Chapter 16 of the Geneva City Code; and
3. The City Council of the City of Geneva has approved the final PUD plan and plat for the development of an affordable housing project compatible with the R-7 Residential District and the Sterling Manor Planned Unit Development (Ordinances 91-30 and 2013-13) on the property.

The City will not be obligated to transfer the Property to the Burton Foundation unless the above conditions are met. Further, the agreement contains a "Possibility of Reverter." The Property will revert to the City, unless at any time prior to the Reversion Date, the Purchaser has been issued all the required building and stormwater management permits from the City of Geneva or any other applicable governmental authority and has commenced physical construction of an affordable townhome building(s) on the Property pursuant to the plans approved by the City of Geneva. It should be noted that the property is currently classified as exempt from property taxes, once developed the property would be subject to property tax.

For background purposes, the City adopted the "Homes for a Changing Region Plan" in 2014 that included an affordable housing plan and a map of lands and structures appropriate for affordable housing (including subject site). Since May 2007 the City's Strategic Plan (and subsequent updates) have included a goal relating to creating affordable/attainable housing.

It should be noted that this agenda item is solely for the purpose of authorizing the City Administrator to execute a Real Estate Purchase Agreement with the Burton Foundation (subject to final legal review) and is not an endorsement or approval of any project that may be related thereto.

**Attachments:** *(please list)*

- Recent Timeline of Lewis Road Property
- Resolution No. 2020-43
- Draft Real Estate Purchase Agreement

**Voting Requirements:**

*This motion requires 8 affirmative votes for passage (including the Mayor).*

**Recommendation / Suggested Action:** *(how the item should be listed on agenda)*

Approve Resolution 2020-43 regarding the sale of surplus publicly-owned property (Parcel No 12-08-200-073) commonly known as the "Lewis Road site," for \$576,000.00, subject to the terms, conditions, apportionments, adjustments, and credits provided in the Real Estate Purchase Agreement.



## **Recent timeline of Affordable Housing and the Lewis Road Property**

**Summer 2014** – City Council unanimously approves Resolution 2014-76 (Brown absent) adopting the “Homes for a Changing Region” plan identifying lands and structures appropriate for affordable housing (including Lewis Road property).

**October 2018** – City Council holds a Special Committee of the Whole (policy discussion) on Affordable Housing, including a review of the Affordable Housing Planning and Appeals Act and an overview of various tools and incentives available to the City to create affordable housing in Geneva.

**October 2018** – City adopts a new Strategic Plan. The section on Economic Vitality recognized that a well-functioning economy needs housing options available at all income levels to support its workforce. The section on Quality of Life addresses the need to have economically diverse housing options that appeal to families and individuals at all stages of life, from all backgrounds and ethnicities.

**November 2018** – City holds a Strategic Planning and Budget Development Workshop where the City Council identified the aforementioned objectives of the Strategic Plan related to affordable housing as priorities.

**June 10, 2019** - City Council holds a Special Committee of the Whole (policy discussion) on Affordable Housing Strategies, including a discussion on property contribution.

**August 26, 2019** - City Council Committee of the Whole continued policy discussion on Affordable Housing Strategies. Council unanimously directed Staff to initiate amendments to the Geneva Municipal Code to provide incentives for the creation of affordable housing.

**Mid-Summer 2019** – Received LOI from Burton Foundation offering \$700,000  
Received LOI from MVAH Partners offering \$400,000

**August 26, 2019** – Closed Session with City Council (Marks and Burghart absent) regarding the two offers. There was no objection by any Council member that they would be unwilling to consider selling the land, selling the land at a reduced value, or using the land as an investment to encourage development, all favored that Staff begin conversations with the Burton Foundation.

**Late August/Early Sept 2019** – Legal Counsel advised needed to get an updated appraisal and go out for bid since the last time the property was appraised and offered for sale was in 2013.

**Late September 2019** – Appraisal received with assumption that easement can be used to provide access to the site (\$700,000). It was later determined that the easement could not be used for access benefitting anyone other than the City (according to Chicago Title).

**November 18, 2019** – Resolution 2019-97 unanimously passed (Burghart and Kilburg absent) by City Council to declare the property surplus and authorize the sale of the property, including in-kind considerations and a preference for affordable housing projects.

**November/December 2019** – Property publicly advertised for proposals for purchase.

**December 2019** – City received one (1) proposal from the Burton Foundation for \$700,000 (same offer they made in mid-summer 2019).

Staff began negotiating purchase agreement.

**December 12, 2019** - A public hearing was held by the City's Planning and Zoning Commission to consider proposed text amendments to the Geneva Municipal Code related to incentives for the creation of affordable housing within Geneva. The Planning and Zoning Commission unanimously (Debates absent) recommended approval of the proposed text amendments to the Geneva Municipal Code to the City Council for their consideration.

**January 6, 2020** - City Council unanimously passed Ordinance 2020-06 amending the Geneva Municipal Code related to incentives for the creation of affordable housing including the ability for the City Council to donate property to a development containing affordable housing.

**February 10, 2020** – Closed Session (All present) – Explained that originally the Burton Foundation offered \$700,000 to acquire the land. In the meantime, the City Council has been reviewing affordable housing incentive policy. Prior to executing a real estate agreement, the Burton Foundation wanted to wait and see what types of incentives may be available to them for this project.

Received an updated offer from the Burton Foundation to build an affordable housing development and requesting a waiver of the land cost and impact fees. A land donation enables Burton to score more competitively for needed subsidies under the IL Affordable Housing Tax Credit program providing more resources to put back into the project. The waiver of building and inspection fees is equal to about \$6,000 per unit or approximately \$270,000.

The resolution that unanimously passed by the City Council to offer property for sale also authorized the City Administrator to negotiate a deal with a potential purchaser including in-kind donations. However, since this was a larger ask than may have been anticipated, the City Administrator sought direction and guidance from the Council. After a discussion on the

incentives and costs likely to be incurred by the developer, there was full consensus to continue to negotiate under the parameters set in the recently passed resolution with a goal to recoup the amount owed to the Water Fund.

**February 24, 2020** – Closed Session (All present) - City Administrator Dawkins reiterated the discussion of February 10, 2020 regarding the Lewis Road property and potential land donation. She explained that in recent discussions, The Burton Group was looking for a partial land donation and waiver of permit fees. They have since determined that to get the full benefits of their tax credits they would need a full land donation. Dawkins further stated that while they are still willing to pay the City for the project, they are now looking at paying for permits or connection fees instead of for the land. Dawkins noted this scenario would still make the water fund whole. As long as the resolution states the City's intent to reimburse the water fund, she did not see any issues. Unanimous consent by the Council to allow this discussion with the developer to continue for full land donation and partial waiver of other fees.

**April 20, 2020** – Closed Session (All present) – Updated Council that Burton Foundation has executed the draft agreement to include donation of the property and City Council approval would be sought at the May 4, 2020 City Council meeting. There was clarification regarding that approval of the purchase agreement does not constitute an approval of the project—the project had to proceed through the typical zoning/land use process.

**April 27, 2020** - Conference between Burton Foundation, Ald. Marks, Ald. Clements, and Mayor regarding questions relative to the May 4, 2020 Council Meeting as requested by Ald. Marks and Clements.

**April 29, 2020** – Mayor announced that all City Council and City of Geneva standing and ad-hoc Commission and Board meetings are suspended immediately until next phase of Governor's Restore Illinois Plan.

**July 6, 2020** – Closed Session (Burghart and McGowan absent) – regarding potential litigation re Lewis Road. Issues identified via letter submitted by Greenberg Traurig.

**July 8, 2020** – Mayor contacted City Council members individually by phone regarding an updated opinion to take a conservative approach to require a  $\frac{3}{4}$  majority vote as there was no case law one way or another. The Mayor indicated to all that the City Attorney would update the Burton Foundation's attorney as to the change in vote requirement for the donation.

**July 9, 2020** – Mayor, City Attorney Sandack, CA Dawkins, and Director DeGroot participated in one-on-one phone conversations with each of the City Council (Swanson spoke with Mayor individually later) regarding an updated offer from the Burton Foundation after being advised of the voting requirement for donation. Burton foundation was now offering 80% of the appraised value or \$576,000.

**July 12, 2020** – Mayor sent email to City Council offering to connect with Mayor, Attn. Sandack, CA Dawkins, and/or Director DeGroot at answer any questions or concerns regarding process or other items related to Monday's meeting.

**RESOLUTION NO. 2020-43**

**A RESOLUTION AUTHORIZING THE SALE OF PUBLICLY-OWNED SURPLUS PROPERTY (PARCEL NO. 12-08-200-073) TO THE BURTON FOUNDATION AN ILLINOIS NOT FOR PROFIT CORPORATION**

**WHEREAS**, the corporate authorities of the City previously determined that the real estate, legally described in the attached Real Estate Purchase Agreement, including Exhibit "A", which is attached hereto and made a part hereof, is no longer necessary, appropriate, required for the use of, profitable to, or for the best interest of the City and, therefore, said real estate was declared surplus by unanimous Council action on November 4, 2019 and codified in Resolution 2019-97. The subject real estate is further described as Parcel No. 12-08-200-073; and

**WHEREAS**, pursuant to the provisions of Section 11-76-4.1 of the Illinois Municipal Code [65 ILCS 11-76-4.1(2005), "The Act"] the corporate authorities authorized the sale of the subject real estate legally described in the attached draft Real Estate Purchase Agreement; and

**WHEREAS**, the City Administrator was authorized to retain the services of a qualified and certified MAI appraiser to provide a written appraisal of the real estate legally described in the attached draft Real Estate Purchase Agreement, and made said appraisal available for public inspection; and

**WHEREAS**, the City Administrator advertised for proposals for the sale and purchase of the subject real estate by placement of Resolution 2019-97 on the City's website from November 19, 2019 through December 9, 2019; and

**WHEREAS**, the Corporate Authorities have determined that seeking to achieve compliance with all Affordable Housing mandates from the State of Illinois was desirable and attainable good public policy, and

**WHEREAS**, the Corporate Authorities encouraged proposals that proffered an "affordable housing" project and were to be evaluated as a City preference;

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL ("CORPORATE AUTHORITIES") OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS, as follows:**

**SECTION 1:** The recitals of fact hereinabove are adopted by reference.

**SECTION 2:** Acceptance of the attached Agreement shall be subject to the terms and conditions stated within said Real Estate Purchase Agreement (as approved by the City Attorney) at the proposed purchase price of \$576,000.00.

**SECTION 3:** The City Administrator for the City of Geneva is hereby authorized to enter into a Real Estate Purchase Agreement in substantially the same form as Exhibit A on behalf of the City of Geneva, Illinois subject to final review and approval by City Attorney.

**SECTION 4:** This Resolution shall become effective from and after its passage as in accordance with law. Publication of this Resolution is permitted to be in pamphlet form.

**PASSED** by the Corporate Authorities of the City of Geneva, Kane County, Illinois, this \_\_\_ day of \_\_\_\_\_, 2020.

AYES: \_\_\_ NAYS: \_\_\_ ABSENT: \_\_\_ ABSTAINING: \_\_\_ HOLDING OFFICE: 11

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Mayor

ATTEST:

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City Clerk

**REAL ESTATE PURCHASE AGREEMENT**

THIS REAL ESTATE PURCHASE AGREEMENT, (“**Agreement**”), is made and entered into by and between the City of Geneva, Illinois, an Illinois municipal corporation (“**Seller**”), and The Burton Foundation, an Illinois not for profit Corporation, (“**Purchaser**”) collectively, the “**Parties**”) as of the Effective Date, as hereafter defined.

**I. SALE AND PURCHASE OF PROPERTY.**

**1.01. Agreement of Sale and Purchase.** For and in consideration of the Purchase Price listed below and of the promises, undertakings, and mutual covenants of the Parties set forth herein, Seller hereby agrees to sell and convey unto Purchaser or its nominee, and Purchaser hereby agrees to purchase and take from Seller, the real estate property legally described on Exhibit A hereto, including Seller’s right, title and interest therein; all rights, privileges, easements and rights of way appurtenant thereto, if any; and all improvements thereon, if any, (collectively, the “**Property**”).

**1.02 Purchase Price.** At Closing (hereinafter defined), Seller shall sell and Purchaser shall purchase the Property for Five Hundred Seventy-Six Thousand Dollars (\$576,000.00), subject to the terms, conditions, apportionments, adjustments, and credits provided in this Agreement (“**Purchase Price**”). Seller understands that this sale of the property may qualify the Purchaser for an allocation of Illinois Affordable Housing Tax Credits (IAHTCs) and agrees to reasonably assist with documentation needed to transfer the benefits of the IAHTCs to Purchaser to assist in the completion of the proposed development.

**1.03 Earnest Money.** Purchaser shall, within ten (10) days after Effective Date (defined below) deposit with Chicago Title Insurance Company, or other such title company mutually acceptable to the Parties, (“Title Company”) the sum of Five Thousand Dollars (\$5,000.00) (“**Earnest Money**”). The balance of the Purchase Price shall be paid to Seller at the Closing Date.

The Title Company shall hold the Earnest Money in its usual and customary strict joint order escrow unless and until it is refunded to Purchaser hereunder, or paid to Seller as provided herein, or otherwise disbursed pursuant to an agreement of the Parties or an order of a court of competent jurisdiction. As described in Section 2.03 herein, the Earnest Money shall remain refundable to Purchaser, and Seller shall have no claim thereon, unless and until Purchaser delivers the Notice of Suitability (as defined in Section 2.03), following which the Earnest Money shall be deemed non-refundable as more specifically described in Section 2.03. Following delivery of the Notice of Suitability, the Earnest Money shall remain in escrow and only be refundable to Purchaser if this Agreement expressly authorizes the return of the Earnest Money or any portion thereof to Purchaser, after Purchaser's delivery of the Notice of Suitability. If Purchaser fails to deposit the Earnest Money as required herein, and such failure continues for a period often (10) days after written notice from Seller, then either party may terminate this Agreement by written notice to the other at any time, prior to the deposit of the Earnest Money. If this Agreement is so terminated, this Agreement shall be deemed to have been terminated as of the date that the Earnest Money was originally to have been deposited by Purchaser, and there shall be no remedy hereunder to either Seller or Purchaser other than the termination of this Agreement. However, those rights and obligations which survive the termination or Closing of this Agreement, remain in effect.

**II. SURVEY, TITLE COMMITMENT, AND FEASIBILITY PERIOD.**

**2.01. Survey.** Seller shall provide to Purchaser a Parcel Plat of the Property prepared by Christopher Burke and Associates, a copy of which is attached at Exhibit “B” (the “**Survey**”).

**2.02. Title Commitment, Documents of Record, Seller Materials, and Title Defects.**

(a) No later than thirty (30) business days following the Effective Date, Purchaser shall obtain at Purchaser’s expense a title commitment (“**Title Commitment**”) for a ALTA 2006 Form B owner’s policy of title insurance (the “**Title Policy**”) in the amount of the Purchase Price (or such other amount as may be agreed to by the parties) issued by the Title Company, together with copies of all documents of record as reflected on the Title

Commitment. Purchaser shall immediately upon receipt of same, provide a copy of the Title Commitment to Seller. At the Closing, the Seller shall, at its expense, cause the Title Company to deliver to Purchaser at Closing the Title Policy, without extended coverage over all of the general exceptions to the Title Commitment.

(b) Purchaser shall have thirty (30) days after Purchaser's receipt of the last of the Title Commitment and Survey ("**Review Period**") to examine the same and notify Seller in writing ("**Title Defect Notice**") of matters of title or survey reflected therein that are not acceptable to Purchaser (each, a "**Title Defect**"). Upon the expiration of the Review Period, Purchaser shall be deemed to have accepted all exceptions to title as shown on the Title Commitment, except for (i) Title Defects for which notification permitted herein has been given by Purchaser and (ii) liens or encumbrances of a definite and ascertainable amount (a "**Liquidated Cure Item**") which shall be deemed to be a Title Defect notwithstanding any lack of objection by Purchaser.

- (i) In the event of the issuance of a Title Defect Notice to Seller by Purchaser, Seller shall within fifteen (15) days of receipt of a Title Defect Notice (such period, the "**Response Period**") advise Purchaser which Title Defects Seller will eliminate before Closing, or have insured over by the Title Company at Closing ("**Seller's Cure Notice**"). Failure by Seller to issue a timely Seller's Cure Notice shall be deemed to be an agreement by Seller to cure all Title Defects enumerated in Purchaser's Title Defect Notice. The failure by Seller to cure, as of the Closing, any Title Defect that Seller has expressly agreed to cure in the Seller's Cure Notice (or is deemed to have agreed to cure by reason of the lack of issuance of any Seller's Cure Notice) shall be a default by Seller.
- (ii) In the event Seller does issue a Seller's Cure Notice and in same does not agree to cure all of the Title Defects on or before the Closing, Purchaser may, at its option, and as Purchaser's sole remedy, terminate this Agreement by written notice to Seller at any time prior to Closing or, in the alternative, accept title as it then is and waive all objections to any Title Defect.
- (iii) If this Agreement is terminated pursuant to this Section, then Seller shall pay all Seller's costs, fees, and expenses, if any, payable to the Title Company; and neither party shall thereafter have any further rights or obligations hereunder, except for those rights and obligations which expressly survive the termination of this Agreement.
- (iv) Any Title Defects accepted by Purchaser or not timely objected to as aforesaid shall be hereafter collectively referred to as "**Permitted Encumbrances**"; provided that a Liquidated Cure Item shall never be deemed to be a Permitted Encumbrance or any exceptions caused by Purchaser or Purchaser's agents or lender, if any.

(aa) Possibility of Reverter. Subject to the remaining provisions of this Section 2.02(b)(iv)(aa), the Property shall revert to Seller, its permitted successors, assigns or designees, on \_\_\_\_\_, 2021 (the 'Reversion Date') unless at any time prior to the Reversion Date, the Purchaser has been issued all required building and stormwater management permits from the City of Geneva or any other applicable governmental authority and has commenced physical construction of an affordable townhome building(s) on the Property pursuant to development plans approved by the City of Geneva. If prior to the Reversion Date the Purchaser has commenced physical construction of the affordable townhome project, as solely determined by the corporate authorities of the Seller, then the Possibility of Reverter shall automatically and irrevocably terminate and be of no further force or effect, and title to the Property shall be held by Purchaser, free and clear of the Possibility of Reverter. However, if the Property reverts to Seller, its successors, assigns or designees pursuant to the first sentence of this Section 2.02(b)(iv)(aa), then Purchaser's conveyance to Seller shall be free and clear of all mortgages, liens or other encumbrances. The deed conveyed the property states in pertinent part: "The Property is subject to a possibility of reverter, the specific terms and conditions of which are set forth in Section 2.02(b)(iv)(aa) of that certain Real Estate Purchase Agreement dated \_\_\_\_\_, 2020 between Grantor and Grantee ("**Sales Agreement**")"; such possibility of reverter to be hereinafter referred to in this Deed as the 'Possibility of Reverter.' Reference is hereby made to the Sale Agreement for the terms and conditions of the Possibility of Reverter,

which such terms and conditions are hereby incorporated into and made a part of this Deed by this reference."

- (v) Title shall be delivered at Closing free and clear of all matters, except the Permitted Encumbrances.
- (vi) In the event that any condition constituting a Title Defect shall first arise or become known after Purchaser's original Title Defect Notice, the same may be objected to by Purchaser within five (5) business days of Purchaser becoming aware of such Title Defect and the same shall be subject to the same process, cures, and remedies set forth above.

**2.03 Feasibility Periods. Three (3) contingency periods are granted to Purchaser as set forth under 2.03(i), 2.03(ii) and 2.03(iii) below.**

**2.03(i) Access Road Contingency Period.** The Parties acknowledge that the Property does not possess access to a public street or roadway which qualifies as sufficient public street frontage under the City's Zoning Ordinance and Subdivision Control Ordinance. During a period of one-hundred eighty (180) days following the termination of the Response Period under Paragraph 2.02 above ("**Access Road Contingency Period**"), Purchaser shall have the right to acquire real property as a means of ingress and egress from a public street or roadway to the Property which means of ingress and egress is reasonably acceptable to Seller under the aforesaid Zoning and Subdivision Control Ordinances. This Agreement shall be terminated if Purchaser, in its sole discretion, sends written notice of termination prior to the expiration of the Access Road Contingency Period. Thereafter, the Parties shall have no further rights or obligations hereunder to consummate the Agreement, except with respect to those rights and obligations, which survive the termination or Closing of this Agreement.

**2.03(ii) Governmental Contingency Period.** During a period of one-hundred eighty (180) days from the Effective Date herein ("**Governmental Contingency Period**"), Purchaser shall have the right to petition the Seller for approval of a final P.U.D plan and plat as a R-7 Residential Planned Unit Development under Title 11 Chapter 9 of the Geneva City Code and in accordance with the Sterling Manor Planned Unit Development (Ordinances 91-30 and 2013-37) (collectively, "**Governmental Approvals**") in form and substance satisfactory to Purchaser in its sole and absolute discretion, which Governmental Approvals may be "phased". The act of Seller executing this Agreement shall not constitute an agreement by Seller to approve any one or more of the Governmental Approvals that Purchaser may hereafter seek from Seller. If during the Governmental Contingency Period Purchaser determines, in its sole discretion, that it will not be able to secure the Governmental Approvals on terms acceptable to Purchaser, Purchaser shall send written notice thereof to Seller ("**Notice of Governmental Approval**") on or before the expiration of the Governmental Contingency Period, and thereafter the Parties shall have no further rights or obligations hereunder to consummate the Agreement, except with respect to those rights and obligations, which survive the termination or Closing of this Agreement.

**2.03(iii) Financing Contingency Period.** During the period from one-hundred and eighty (180) days after the Effective Date (the "**Financing Contingency Period**"), Purchaser may notify Seller in writing that Purchaser has failed to obtain a financing commitment in the minimum loan amount of \$2,500,000 with an interest rate of 4.75%, needed to purchase the property. Such notice shall be hereinafter called a "**Notice of Termination for Financing**". In the event Purchaser so delivers a Notice of Termination for Financing to Seller, this Agreement shall be terminated and the Parties shall direct that the Earnest Money Deposit (including any interest thereon) be disbursed to the Purchaser and neither party shall have any further rights or obligations hereunder. Purchaser shall in good faith use all reasonable efforts to secure all the financing for purchase of the Property contemplated herein. Purchaser shall advise Seller and Seller's counsel on at least a monthly basis of the status of obtaining financing for the purchase of the Property contemplated herein.

**III. PROVISIONS WITH RESPECT TO CLOSING.**

**3.01.** \_\_\_\_\_. Subject to the satisfaction of the closing conditions set forth at Paragraph 3.02 below, the completion of the Closing of the purchase and sale of the Property (“**Closing**”) shall take place no earlier than fifteen (15) days following the expiration of the later of the Access Road Contingency Period or Governmental Contingency Period unless notice of termination of this Agreement is given, or such other date as is agreed to by the Parties. Notwithstanding the forgoing Purchaser may elect to extend the Closing by up to ninety (90) days upon notice to the Seller requesting same. The Closing shall be in the form of an escrow closing as hereinafter described., or as otherwise agreed to by the Parties. Notwithstanding the foregoing and absent the Parties agreeing to the contrary, if the Closing falls on a Friday, Saturday, Sunday, or Monday, then the Closing is automatically extended to the next following Tuesday. The date upon which the Closing occurs as aforesaid is hereinafter referred to as the “**Closing Date**”. Purchaser and Seller, through their respective attorneys, shall establish an escrow with the Title Company pursuant to the terms of this Agreement, through which the transaction contemplated hereby shall be closed. The transaction contemplated hereby shall be closed by means of an escrow Closing, with the concurrent delivery of the documents of title, transfer of interests, delivery of the Title Policy and the payment of the Purchase Price by escrow to the Title Company, all as set forth in this Agreement. Seller shall provide any undertaking (the “GAP Undertaking”) to Title Company necessary for the escrow Closing to occur.

**3.02 Closing Conditions.** Seller shall not be obligated to transfer the Property to Purchaser unless the following events or documents are obtained and tendered to Seller:

- (a) Purchaser obtains fee title to real property or enters into an unconditional contract to purchase fee title to real property which qualifies as a parcel of real property to provide ingress and egress to the Property to a public roadway.
- (b) Purchaser has satisfied all of the conditions under the provisions of Title 11, Chapter 9 and Chapter 16 of the Geneva City Code; and
- (c) The City Council of the City of Geneva has approved the final PUD plan and plat for the development of an affordable housing project compatible with the R-7 Residential District and the Sterling Manor Planned Unit Development (Ordinances 91-30 and 2013-37) on the Property.

**3.03. Seller's Obligations at Closing.** At Closing, Seller shall do the following:

- (a) Execute and deliver to Purchaser a special warranty deed, duly executed and in recordable form, conveying to Purchaser a good and indefeasible fee simple title to the Property, subject only to the Permitted Encumbrances;
- (b) Deliver possession of the Property to Purchaser free and clear of all leases and tenancies;
- (c) Pay Seller's closing costs as hereinafter specified;
- (d) Execute and deliver to the Title Company all customary and standard documents required by the Title Company to close the transaction contemplated by this Agreement;
- (e) Cause the Title Company to issue a Title Policy in the amount of the Purchase Price, insuring fee simple, good and indefeasible title to the Property and containing no exceptions other than the General Conditions and Permitted Encumbrances; and
- (f) Deliver a usual and customary transfer declaration, an ALTA statement, a Non-Foreign Affidavit, prepared in compliance with the requirements of Internal Revenue Code section 1445(e), and a GAP undertaking as required by the Title Company.

**3.04. Purchaser's Obligations at Closing.** At Closing, Purchaser shall pay to Seller the Purchase Price in cash for the Property and pay Purchaser's closing costs as hereinafter specified. Purchaser shall also execute and deliver to the Title Company all customary and standard documents, required by the Title Company, to close the transaction contemplated by this Agreement.

**3.05. Closing Costs.**

(a) Seller shall pay the following costs and expenses in connection with the transaction contemplated by this Agreement:

- (i) Seller's portion of the prorated taxes, if any, and fees and any assessments (as provided below);
- (ii) Any and all costs incurred by Seller in connection with the preparation, review, and negotiation of this Agreement and the transaction and the Closing contemplated by this Agreement, including Seller's own attorney's and consultants' fees;
- (iii) The cost of preparing the special warranty deed;
- (iv) One-half of the cost of any Title Company escrow fee;
- (v) The cost of the Title Policy without extended coverage, or any of the other endorsements on the Title Policy desired by Purchaser;
- (vi) State and local transfer taxes, which are payable by a seller by law (to the extent not exempt from such taxes);
- (vii) The cost of preparing and recording any release of lien and/or mortgage which encumbers the Property, if any, as of the Closing Date; and
- (viii) Such other incidental costs and fees customarily paid by sellers in land transactions of this nature, in the county where the Property is situated.

(b) Purchaser shall pay the following costs and expenses in connection with the transaction contemplated by this Agreement:

- (i) Any and all costs incurred by Purchaser in connection with the preparation, review, and negotiation of this Agreement and the transaction and the Closing contemplated by this Agreement, including any expenses associated with Purchaser's review of the Title Commitment, Survey, and Seller Materials; Feasibility Study; and Purchaser's own attorney's fees and consultants' fees;
- (ii) Purchaser's portion of the prorated taxes, if any, and fees (as provided below);
- (iii) The cost of recording the special warranty deed and mortgage, if any;
- (iv) One-half of the cost of any Title Company escrow fee;
- (v) The cost of any endorsements to the Title Insurance Policy;

- (vi) Any and all costs associated with any financing Purchaser may obtain to consummate its acquisition of the Property, including the cost of Purchaser's lender's title insurance policy;
- (vii) State and local transfer taxes, which are payable by a purchaser by law (to the extent not exempt from such taxes); and
- (viii) Such other incidental costs and fees customarily paid by purchasers in land transactions of this nature, in the county where the Property is situated.

**3.06. Proration of Taxes.**

(a) Subject to Section 3.06(b) below, real estate taxes, assessments, and levies (collectively, "Taxes") assessed with respect to the Property in the year prior to the year in which Closing occurs, but due and payable in the year in which Closing occurs, shall be the responsibility of Seller and Purchaser shall receive a credit against the Purchase Price for such unpaid Taxes at Closing. All Taxes assessed in the year in which Closing occurs, but due and payable in the year following the year in which Closing occurs shall be prorated as of the date of Closing, and Purchaser shall receive a credit against the Purchase Price for such Taxes attributable to the period prior to and including the date of Closing. Notwithstanding the foregoing to the contrary, if the amount of any Taxes payable by Seller at Closing is not available at the time of Closing, then such Taxes shall be estimated and prorated based upon 105% of the amount of the last known tax bill for the Property. Seller represents and warrants that the Property is not taxed as open space and/or open land pursuant to 35 ILCS 200/10-155.

(b) To the extent that the Property is exempt from real estate taxation by reason of its ownership or use by Seller, then there shall be no real estate tax proration at Closing.

**IV. REMEDIES.**

**4.01. Seller's Remedies.** If Purchaser defaults in performing Seller's obligations hereunder for any reason other than Seller's default, Seller shall be entitled to: (i) waive the contractual obligations of Purchaser in writing; (ii) extend the time for performance by such period of time as may be mutually agreed upon in writing by the Parties; or (iii) terminate this Agreement by written notice and as Seller's sole and exclusive remedy, in which event the Parties shall be released herefrom and have no further rights or obligations hereunder, except for those rights and obligations, which survive the termination of this Agreement. Seller's extension of the time for Purchaser's performance pursuant to clause (ii) above shall not constitute an election of remedies and shall not prohibit Seller's exercise of Seller's other remedies set forth above, in the event Purchaser fails to cure such breach prior to the expiration of such extension period.

**4.02. Purchaser's Remedies.** If Seller defaults in performing Seller's obligations hereunder for any reason other than Purchaser's default, Purchaser shall be entitled to: (i) waive the contractual obligations of Seller in writing; (ii) extend the time for performance by such period of time as may be mutually agreed upon in writing by the Parties; (iii) terminate this Agreement by written notice, in which event the Parties shall be released herefrom and have no further rights or obligations hereunder, except for those obligations, which expressly survive the termination of this Agreement; or (iv) enforce specific performance of this Contract as Purchaser's sole remedy. Purchaser's extension of the time for Seller's performance pursuant to clause (ii) above shall not constitute an election of remedies and shall not prohibit Purchaser's exercise of Purchaser's other remedies set forth above, in the event Seller fails to cure such breach prior to the expiration of such extension period.

**4.03. Post-Closing Remedies.** It is the intent of Seller and Purchaser that the sole remedies of Seller and Purchaser are set out in Sections 4.01 and 4.02 above, except however, that from and after Closing, each party shall have the right to pursue its actual damages against the other party: (i) for a breach of any covenant or agreement contained herein that is performable after or that survives Closing (including Purchaser's indemnification obligations contained this Agreement); and (ii) for a breach of any representation or warranty made by the other party in this Agreement. If the Closing does not occur: (A) each party shall have its respective rights and remedies under Sections 4.01 and 4.02, as applicable; and (B) each party shall have all available remedies against the other party for a breach

of the other party's obligations contained in this Agreement, that are expressly provided herein as surviving the termination of this Agreement. In no event shall either party be liable for any speculative, consequential, or punitive damages.

**V. NOTICE AND RIGHT TO CURE.**

Each party shall be entitled to written notice of any default and shall have fifteen (15) days from receipt of such notice to cure such default, prior to the exercise of any remedy provided herein.

**VI. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.**

Except as expressly stated in this Section VI, Seller has not made and does not make any representations or warranties, including any representations or warranties as to the physical and environmental condition, layout, footage, zoning, access, or other matters with respect to the Property. All representations and warranties made by knowledge in this Agreement are made based on the actual knowledge of the Seller's City Administrator, Seller's Director of Public Works and Seller's City Engineer, without any duty to review or investigate the matters to which such knowledge, or the absence thereof, pertains and with no imputed knowledge whatsoever, whether from any elected official, employee, agent, consultant, contractor, or other representative of Seller. None of the aforesaid named appointed officials shall have any personal liability arising out of any representations or warranties made herein. Subject to the foregoing, Seller represents, warrants, and covenants the following as of the date hereof and as of the Closing Date, each of which shall survive the Closing for one hundred eighty (180) days:

**6.01.** The Property is currently vacant, and will be free of all leases and tenancies as of the Closing. There are no agreements that will survive the Closing that concern the operation, repair and maintenance of the Property and services provided to the Property, including without limitation any management agreement;

**6.02.** There is no pending nor, to Seller's knowledge, threatened condemnation or similar proceeding or special assessment affecting the Property, or any part thereof, nor, to Seller's knowledge, any such proceeding or assessment contemplated by any Governmental Agency. As used herein, the term "**Governmental Agency or Agencies**" shall mean the United States, the State of Illinois, the County and City in which the Property is located or otherwise having jurisdiction over development of the Property, any municipal utility district, water control and improvement district, or similar taxing authority in which the Property is located or otherwise having jurisdiction over development of the Property; and any agency, department, commission, board, or bureau of instrumentality of any of foregoing;

**6.03** Seller has received or given no notice of, and has no knowledge of, any violation, condition, or any action which with the passing of time or giving of notice would be deemed a violation of any and all applicable laws, ordinances, regulations, statutes, codes, rules, orders, decrees, determinations, covenants, and restrictions relating to the Property and every part thereof including, but not limited to, applicable storm water pollution prevention plans and related permits;

**6.04** There are no claims or causes of action, nor is there any litigation or proceeding pending or, to Seller's knowledge, threatened with respect to the ownership, occupancy or operation of the Property (including disputes with mortgagees, governmental authorities, utility companies, homeowner associations, contractors or adjoining land owners), nor are there any unpaid charges, debts, liabilities, claims or obligations arising from the ownership, use or operation of the Property.

**6.05** Seller has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each, a "**Broker**") in connection with this Agreement or the transactions contemplated hereby.

**6.06** This Agreement and all documents or instruments delivered by Seller in connection with the transaction contemplated by this Agreement have been or will be at the time of delivery duly authorized and all obligations of Seller under this Agreement and the aforementioned documents and instruments are or at the time of delivery thereof shall be legal, valid and binding obligations of it and, as of the time of delivery, neither this Agreement

nor any of the other aforementioned documents or instruments violates or will be in violation of the provisions of any other agreement or ordinance to which Seller is a party or to which it is subject.

**6.07.** Seller shall limit any and all City required developmental impact fees, building permit and inspection fees, water and sanitary sewer connection fees to \$150,000, collectively. Notwithstanding the foregoing limitation on fees, such waiver shall not include fees, charges and expenses incurred from third party contractors or vendors and imposed on Purchaser pursuant to Purchaser's application for certain development rights on the Property, such as but not limited to plumbing inspections, land surveys, and stormwater management plans.

If either Seller or Purchaser learns of a material error in any of the foregoing representations or warranties prior to the Closing, such party promptly shall give written notice thereof to the other party. In the event any of the foregoing representations or warranties contains a material error, Purchaser, at its option, may terminate this Agreement without further liability by giving written notice thereof to Seller.

## **VII. REPRESENTATIONS AND WARRANTIES OF PURCHASER.**

Purchaser hereby makes the following representations, warranties, and covenants as of the date hereof and as of the Closing Date, each of which shall survive the Closing for one hundred eighty (180) days:

**7.01.** Purchaser has the full right, power, and authority to purchase the Property from Seller as provided in this Agreement and to carry out its obligations hereunder; and all required action necessary to authorize Purchaser to enter into this Agreement and to carry out its obligations hereunder has been or will have been taken prior to the Closing Date.

**7.02** Purchaser has sufficient capital, assets, and resources to conduct its Feasibility Studies, to obtain the Governmental Approvals, and to pay the Purchase Price at Closing.

**7.03** Purchaser is in good standing and, to Purchaser's knowledge, there are no pending or threatened claims against Purchaser which would prevent or substantially inhibit Purchaser from performing its obligations under this Agreement.

**7.04** Except for the express representations and warranties of Seller found in Section VI, Purchaser is acquiring the Property on an "AS IS, WHERE IS" basis, without any representation or warranty of any kind or nature whatsoever, express or implied, from the Seller other than those set forth in this Agreement, and Purchaser acknowledges that no such representations or warranties have been made except as set forth in writing herein. In deciding whether to acquire the Property, Purchaser is relying solely on the express representations and warranties of Seller found in Section VI and Purchaser's investigation of the Property. Despite anything to the contrary, this Section 7.04 survives Closing. Without limiting the foregoing, Purchaser acknowledges and agrees Seller has no obligation to and Seller shall not remove any materials or debris of and kind or type from the Property.

**7.05** Purchaser is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under OFAC regulations of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions, or be otherwise associated with such persons or entities.

**7.06** Purchaser has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each, a "**Broker**") in connection with this Agreement or the transactions contemplated hereby. Despite anything to the contrary, this representation and warranty survives Closing. IN ADDITION, PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION VI, NEITHER SELLER, NOR ANY PERSON ACTING ON BEHALF OF SELLER, NOR ANY PERSON OR ENTITY WHICH PREPARED OR PROVIDED ANY OF THE MATERIALS OR INFORMATION REVIEWED BY PURCHASER IN CONDUCTING ITS DUE DILIGENCE, NOR ANY DIRECT



With a copy to:

Email: [tmanning@theburtonfoundation.org](mailto:tmanning@theburtonfoundation.org)  
Peter C. Quigley, Esq.  
53 West Jackson, Suite 601  
Chicago, Illinois 60604  
Tele: 312-386-9663  
Fax: 312-386-9664  
pquigley@pcqlaw.com

## **IX. AS-IS.**

**9.01. AS-IS, WHERE-IS.** Except as expressly set forth in this Agreement to the contrary, Purchaser is purchasing the Property in its existing condition "**AS-IS, WHERE-IS, AND WITH ALL FAULTS**" with respect to all facts, circumstances, conditions and defects, and, Seller has no obligation to determine or correct any such facts, circumstances, conditions, or defects or to compensate Purchaser for same. Seller has specifically bargained for the assumption by Purchaser of all responsibility to investigate the Property, laws and regulations, rights, facts, any legal violations, and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. Purchaser has undertaken all such investigations of the Property, laws and regulations, rights, facts, and legal violations, as Purchaser deems necessary or appropriate under the circumstances as to the status of the Property and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations, the express representations and warranties of Seller found in Section VI and the advice and counsel of its own consultants, agents, legal counsel, and managers. Purchaser is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property and, by reason of all the foregoing, Purchaser assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to the Property, subject to the express representations and warranties of Seller found in Section VI.

**9.02. No Warranty or Other Representation.** Except as expressly set forth in this Agreement to the contrary, Seller hereby disclaims all warranties of any kind or nature whatsoever (including, without limitation, warranties of habitability and fitness for purposes), whether expressed or implied including, without limitation warranties with respect to the Property. Except as is expressly set forth in this Agreement to the contrary, Purchaser acknowledges that it is not relying upon any representation of any kind or nature made by Seller, or Seller Related Parties with respect to the Property, and that, in fact, except as expressly set forth in this Agreement to the contrary, no such representations were made. To the extent required to be operative, the disclaimers and warranties contained herein are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation or order.

**9.03. Environmental Laws; Hazardous Materials.** Seller makes no warranty with respect to the presence of Hazardous Materials on, above or beneath the Property (or any parcel in proximity thereto) or in any water on or under the Property. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to cause Seller to be joined in any action brought under any Environmental Laws. As used herein, the term "**Hazardous Materials**" shall mean: (i) those substances included within the definitions of any one or more of the terms "hazardous materials", "hazardous wastes", "hazardous substances", "industrial wastes", and "toxic pollutants", as such terms are defined under the Environmental Laws, or any of them; (ii) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof; (iii) natural gas, synthetic gas, and any mixtures thereof; (iv) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite, and/or actinolite, whether friable or non-friable; (v) polychlorinated biphenyl ("**PCBs**") or PCB-containing materials or fluids; (vi) radon; (vii) any other hazardous or radioactive substance, material, pollutant, contaminant, or waste; and (viii) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. As used herein, the term "**Environmental Laws**" shall mean all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C.

§§ 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and any federal, state or local transfer of ownership notification or approval statutes.

**9.04. Seller Release.** Purchaser shall rely solely upon the express representations and warranties of Seller found in Section VI and Purchaser's own knowledge of the Property based on its investigation of the Property and its own inspection of the Property in determining the Property's physical condition. Purchaser agrees that it shall, subject to the express warranties, representations and conditions contained in this Agreement, assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions may not have been revealed by Purchaser's investigations. Except as expressly set forth in this Agreement to the contrary, or in connection with any breach on the part of the Seller hereunder, Purchaser releases Seller and the Seller Related Parties from and against any and all claims which Purchaser or any party related to or affiliated with Purchaser (each, a "**Purchaser Related Party**") has or may have arising from or related to any matter or thing related to or in connection with the Property except as expressly set forth in this Agreement to the contrary, neither Purchaser nor any Purchaser Related Party shall look to Seller or the Seller Related Parties in connection with the foregoing for any redress or relief. This release shall be given full force and effect according to each of its express terms and provisions, including those relating to unknown and unsuspected claims, damages, and causes of action. To the extent required to be operative, the disclaimers and warranties contained herein are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation, or order.

**9.05. Survival.** The provisions of this Section shall survive the termination or Closing of this Agreement.

## **X. RISK OF LOSS.**

Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property or any portion thereof, Seller will notify Purchaser of the pendency of such proceedings ("**Seller's Notice**"). Purchaser shall have the right to terminate this Agreement and obtain a return of the Earnest Money, except as provided in Section 2.03(b) by delivering written notice thereof to Seller within fifteen (15) days of Purchaser's receipt of Seller's Notice. If Purchaser does not elect to terminate and if the Closing would occur prior to the expiration of said fifteen (15) day period, then the Closing shall be automatically extended to the date which is ten (10) days after the expiration of said fifteen (15) day period. If Purchaser does not elect to terminate this Agreement and the Property or a portion thereof is taken by the condemning authority before Closing, then the proceeds of such condemnation or sale in lieu thereof shall be assigned by Seller to Purchaser at Closing or delivered to Purchaser at Closing, and the Property or portion thereof so taken or sold shall not be subject to this Agreement. In the event Purchaser does not elect to terminate this Agreement and the Property or portion thereof is taken after the Closing, all proceeds of such condemnation or sale in lieu thereof shall be the sole and exclusive property of Purchaser. While this Agreement is in effect, in no event shall Seller initiate or consent to the initiation of a condemnation action, or agree upon a condemnation offer or a negotiated settlement thereof, without first obtaining Purchaser's written consent.

## **XI. MISCELLANEOUS.**

**11.01.** This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.

**11.02.** All covenants and agreements of Seller shall be waived or merged into the instruments of the Closing, except any covenants or agreements specifically identified in this Agreement as surviving the Closing.

**11.03.** Purchaser shall not assign or otherwise transfer or encumber all or any part of its interest in this Agreement without first obtaining the prior written consent of Seller, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that Purchaser may assign this Agreement to an entity controlling, controlled by or under common control with Purchaser, however, such assignment shall not release Purchaser hereunder. Any such attempt to assign, transfer or encumber in violation of this paragraph shall be void and shall be

a breach of this Agreement. The terms, provisions, warranties, representations, covenants, and agreements contained in this Agreement shall apply to, be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.

**11.04.** Seller and Purchaser each acknowledge that: (i) they have been represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel; and (iii) this Agreement is the result of negotiations between the Parties hereto and the advice and assistance of their respective counsel.

**11.05.** EACH PARTY HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY, IN ANY ACTION BETWEEN THE PARTIES RELATED TO THIS AGREEMENT.

**11.06.** Time is of the essence in the performance of this Agreement. Should the date for the giving of any notice, the performance of any act, or the beginning or end of any period provided for herein fall on a Saturday, Sunday or other legal holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.

**11.07.** This Agreement shall be governed and interpreted under the laws of the State of Illinois, excluding its choice of law rules.

**11.08.** The paragraph headings used in this Agreement are for convenience purposes only, and shall not be used in the interpretation of this Agreement.

**11.09.** All exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

**11.10.** Any failure or delay by a party to exercise any right under this Agreement is not a waiver of that right. A waiver must be in writing and signed by the party making the waiver. A party's waiver of a breach of any provision of this Agreement is not a waiver of any subsequent breach of the same provision.

**11.11.** Purchaser acquires no real property interest in the Property by the execution of this Agreement. Purchaser's rights vest upon Closing and the payment of the sums specified in Section I.

**11.12.** This Agreement is the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreements between the Parties, regarding the same subject matter. This Agreement cannot be varied except by written agreement executed by the Parties.

**11.13.** If any items, terms, or provisions contained in this instrument are in conflict with any applicable Federal, state, or local laws, this Agreement shall be affected only as to its application to such items, terms, or provisions, and shall in all other respects remain in full force and effect.

**11.14.** In the event the Seller or Purchaser breaches any of the terms, provisions, warranties, representations, covenants, or agreements contained in this Agreement and Seller and Purchaser become involved in litigation with regard to breach hereof, the prevailing party shall be entitled to be paid its reasonable attorneys' fees.

**11.15.** The Parties are independent entities and nothing in this Agreement creates an agency, franchise, business opportunity, joint venture, partnership, employment, fiduciary, or other relationship between the Parties. A party is not entitled to contract for or bind the other party.

**11.16.** The provisions of this Agreement are severable and if any provision or part hereof or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provisions or part hereof to other persons or circumstances shall not be affected thereby.

**11.17.** The term "**Effective Date**" means the date as of which a fully executed counterpart of this Agreement has been exchanged between the Parties.

**11.18.** This Agreement may be executed in duplicate counterparts by Seller and Purchaser, the legal effect of which shall be the same as if both parties had signed the same instrument. Furthermore, facsimile signatures and signatures transmitted by electronic transmission, including electronic signatures, shall be legal and binding for all purposes.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, on the dates set forth below.

SELLER:

City of Geneva  
an Illinois municipal corporation

By: \_\_\_\_\_  
Name: Stephanie K. Dawkins  
Title: City Administrator

Date: \_\_\_\_\_, 2020

PURCHASER:

The Burton Foundation.  
an Illinois not-for-profit Corporation

By: \_\_\_\_\_  
Tracey L. Manning, President

Date: \_\_\_\_\_, 2020

Exhibits:

Exhibit A: The Property

Exhibit B: Parcel Plat

Exhibit C: IHDA Rider

**EXHIBIT "A"**

The Property

THAT PART OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SIMS' SUBDIVISION TOWN OF GENEVA, KANE COUNTY, ILLINOIS, WITH THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY THENCE SOUTHERLY ALONG SAID WEST LINE OF SIMS' SUBDIVISION, SAID LINE HAVING A BEARING OF SOUTH 00 DEGREES 16 MINUTES 24 SECONDS EAST FOR THE PURPOSE OF THIS DESCRIPTION, A DISTANCE OF 468.75 FEET; THENCE SOUTH 89 DEGREES 43 MINUTES 36 SECONDS WEST 284.39 FEET; THENCE SOUTH 48 DEGREES 12 MINUTES 32 SECONDS WEST 99.00 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 965.00 FEET, AN ARC DISTANCE OF 147.97 FEET TO A POINT OF TANGENCY, THE CHORD OF SAID ARC HAVING A LENGTH OF 147.82 FEET AND A BEARING OF NORTH 46 DEGREES 11 MINUTES 02 SECONDS WEST; THENCE NORTH 50 DEGREES 34 MINUTES 35 SECONDS WEST 58.00 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 745.00 FEET, AN ARC DISTANCE OF 383.17 FEET, THE CHORD OF SAID ARC HAVING A LENGTH OF 378.96 FEET AND A BEARING OF NORTH 65 DEGREES 18 MINUTES 38 SECONDS WEST; THENCE NORTH 09 DEGREES 57' MINUTES 19 SECONDS EAST 321.28 FEET TO THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY, AFORESAID; THENCE SOUTH 84 DEGREES 24 MINUTES 59 SECONDS EAST ALONG SAID SOUTHERLY LINE A DISTANCE OF 800.00 FEET TO THE PLACE OF BEGINNING, EXCEPTING THEREFROM THAT PART OF THE NORTHEAST QUARTER OF SECTION 8, IN TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN IN KANE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 IN THE SIM'S SUBDIVISION, BEING A SUBDIVISION IN SAID NORTHEAST QUARTER OF SECTION 8, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 14, 1964 AS DOCUMENT NO. 1031078; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID LOT 1 HAVING AN ILLINOIS COORDINATE SYSTEM, EAST ZONE, NAD83 (2011 ADJUSTMENT) GRID BEARING OF SOUTH 00 DEGREES 02 MINUTES 59 SECONDS WEST A DISTANCE OF 5.03 FEET TO A

POINT ON A LINE 5.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD (FKA AS THE CHICAGO AND NORTHWESTERN RAILROAD); THENCE NORTH 84 DEGREES 04 MINUTES 17 SECONDS WEST, 57.72 FEET ALONG SAID PARALLEL LINE; THENCE SOUTH 05 DEGREES 55 MINUTES 43 SECONDS WEST, 50.00 FEET TO A POINT ON A LINE 55.00 FEET SOUTH OF AND PARALLEL WITH SAID SOUTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 84 DEGREES 04 MINUTES 17 SECONDS WEST, 747.00 FEET ALONG SAID PARALLEL LINE TO A POINT ON THE EAST LINE OF LOT 45 IN THE STERLING MANOR TOWNHOMES UNIT 2 SUBDIVISION, BEING A SUBDIVISION IN THE NORTHEAST QUARTER AND

NORTHWEST QUARTER OF SAID SECTION 8, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 1996 AS DOCUMENT NO. 96K052860; THENCE NORTH 10 DEGREES 18 MINUTES 01 SECONDS EAST, 55.16 FEET ALONG SAID EAST LINE TO A POINT ON SAID SOUTH RIGHT- OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 84 DEGREES 04 MINUTES 17 SECONDS EAST, 800.00 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING .

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**EXHIBIT "B"**

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## EXHIBIT C

ADDENDUM TO real estate purchase AGREEMENT DATED APRIL \_\_\_\_\_, 2020 BETWEEN city of Geneva, a municipal corporation (“SELLER”) AND the burton foundation, an Illinois not for profit corporation (“PURCHASER”).

### SITE CONTROL COMPLIANCE

#### I. Environmental Review

Notwithstanding any other provision of this Agreement, Purchaser shall have no obligation to purchase the Real Estate, and no transfer of title to the Purchaser may occur, unless and until Illinois Housing Development Authority (“IHDA”) has provided Purchaser and/or Seller with a written notification that:

- 1) IHDA has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other contingencies in this Purchase and Sale Agreement,
  - a. The purchase may proceed, or
  - b. The purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the Real Estate; or
- 2) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. IHDA shall use its best efforts to conclude the environmental review of the property expeditiously.

#### II. Voluntary Acquisition

Purchaser is interested in acquiring property for a proposed project which may receive funding assistance from the U.S. Department of Housing and Urban Development (HUD).

Purchaser does not have authority to acquire property by eminent domain. In the event Purchaser and Seller cannot reach an amicable agreement for the purchase of property, Purchaser will not pursue this proposed acquisition.

Purchaser is prepared to offer the Seller \$10 Purchaser believes this amount represents the current market value of Real Estate.

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants who move as a result of a voluntary acquisition are not eligible for relocation assistance. Tenant-occupants displaced as a result of a voluntary acquisition may be entitled to URA relocation assistance and must be so informed per 49 CFR 24.2(a)(15)(iv) – Initiations of negotiations, and 49 CFR 24 Appendix A - 24.2(a)(15)(iv).

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the date hereof effective as of the Effective Date.

SELLER:

City of Geneva  
an Illinois municipal corporation

By: \_\_\_\_\_  
Name: Stephanie K. Dawkins  
Title: City Administrator

Date: \_\_\_\_\_, 2020

PURCHASER:

The Burton Foundation.  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Tracey L. Manning, President

Date: \_\_\_\_\_, 2020