

**RESOLUTION R-89-14**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND DIRECTING THE CITY CLERK TO ATTEST TO A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF WHEATON AND MAIN STREET PROPERTIES, LLC.**

**WHEREAS**, the City of Wheaton, owns a property located at 111/113 N. Main Street, Wheaton, Illinois; and

**WHEREAS**, the City Council of the City of Wheaton has determined that returning the property to private ownership is in the best interest of the public health, safety and welfare; and

**WHEREAS**, the City of Wheaton accepted competitive bids for the property;

**WHEREAS**, the Buyer, Main Street Properties, LLC., was the high competitive bidder; and

**WHEREAS**, the Mayor and City Council of the City of Wheaton find, based on the totality of the circumstances that the Buyer's offer is reasonable and should be accepted.

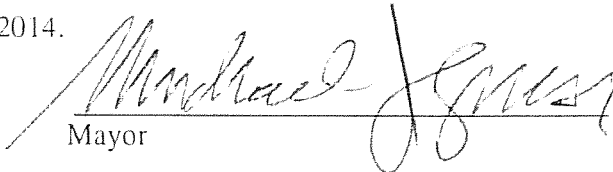
**NOW THEREFORE**, be it RESOLVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, that:

**SECTION 1:** The Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest to that certain Purchase and Sale Agreement between the City of Wheaton and Main Street Properties, LLC., a copy of which is attached hereto and incorporated herein as if fully set forth as Exhibit 1.

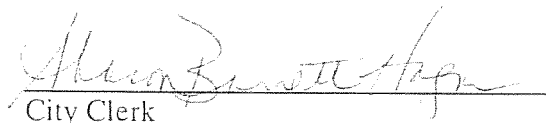
**SECTION 2:** That the City attorney, City Manager, and City staff are hereby authorized to undertake any and all necessary acts to effectuate the terms of Purchase and Sale Agreement.

**SECTION 3:** This Resolution shall become effective immediately upon its adoption and approval.

ADOPTED this 15<sup>th</sup> day of December, 2014.

  
Mayor

ATTEST:

  
City Clerk

Ayes:

Roll Call Vote:

Councilman Scalzo

Councilman Prendiville

Councilman Rutledge



MLR → PCM  
DEC 17 2014  
DEC 18 2014

## PURCHASE AND SALE AGREEMENT

Contract Date: December 17, 2014

Seller: City of Wheaton  
303 N. Wesley Street  
Wheaton, Illinois 60187-0727  
Attention: Jim Kozik, Director of Planning  
Telephone: \_\_\_\_\_  
Telefax: \_\_\_\_\_

Seller's Counsel: James Knippen, Esq.  
2150 Manchester Road, Suite 200  
Wheaton, Illinois 60187  
Attention: \_\_\_\_\_  
Telephone: 630-462-1980  
Telefax: \_\_\_\_\_

Buyer: Main St. Properties, LLC  
764 Crab Tree Lane  
Bartlett, Illinois 60103  
Attention: Jason Nguyen  
Telephone: 847-756-0551  
Telefax: \_\_\_\_\_

Buyer's Counsel: Rolewick & Gutzke, P.C.  
1776 S. Naperville Road, Suite 104A  
Wheaton, Illinois 60189  
Attention: John D. Gutzke, Esq.  
Telephone: 630-653-1577  
Telefax: 630-653-1579

Title Company: Chicago Title Insurance Company  
1725 S. Naperville Road, Suite 100  
Wheaton, Illinois 60189  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Telefax: \_\_\_\_\_

## ARTICLE I

### AGREEMENT, PROPERTY AND PRICE

1.1. Agreement. Upon the Opening of Escrow, as hereinafter defined, this Purchase and Sale Agreement (“Agreement” or “Contract”) will constitute a binding and effective agreement of Seller to sell the Property, as hereinafter defined, to Buyer free and clear of all liens and encumbrances and will constitute a binding and effective agreement of Buyer to purchase the Property. In addition to this Contract, the parties will execute the standard form joint order escrow instructions of the Escrow Agent in connection with the deposit of the Earnest Money.

1.2. Inclusions in Property. The Property that forms the subject matter of this Contract is located at 111/113 North Main Street, Wheaton, Illinois, Tax Parcel No. 05-16-303-008, 05-16-303-303-012. As used in this Contract, the term “Property” includes all of the following:

(a) The real property legally described on Exhibit “A” and as depicted on Exhibit “B” as Lot 1 (“Land”); and

(b) All easements, rights, tenements, hereditaments, privileges, and appurtenances now or in the future held by Seller that in any way benefit the Property or relate to the ownership, maintenance or operation of the Property, (collectively called the “Appurtenances”).

(c) All buildings, structures, facilities and other improvements now or hereafter situated on the Land (collectively, the “Improvements”);

(d) All of Seller’s rights and interests, if any, in and to all of the following: all fixtures and all personal and other tangible property now or hereafter located on the Land or in the Improvements and used in connection with the operation of the Improvements, including, without limitation, all mechanical, electrical, lighting and plumbing systems, fixtures, equipment, tools, supplies, decorations; all ventilating, air conditioning and heating systems, fixtures and equipment; all landscaping and sprinkler systems and equipment; all furniture, furnishings, appliances, supplies, equipment, furniture and other personal property (tangible or intangible) of every nature and description; including, without limitation, the personal property more particularly described in Exhibit B attached hereto. All Personal Property described herein is delivered in an “as-is” condition;

(e) All of Seller’s rights and interests, if any, in and to all air rights, development rights, and similar rights or entitlements relating to or affecting the Land or the Improvements;

(f) The City shall dedicate an easement to the Buyer for purposes of placing and maintaining a roll-away trash container not to exceed 7' x 3'8" (a standard 5 yard dumpster) in dimension on a property contiguous to the real property subject to: the continued existence of the trash container area and the Buyer's compliance with the requirements of a license agreement issued for other users of the trash container enclosure area. If ever the trash container area is eliminated, the City will provide to Buyer an alternative area to maintain its dumpster in convenient proximity to the Property. The easement shall be non-exclusive to the extent that other commercial businesses and offices in the area may also use the trash container enclosure for trash and refuse purposes which the City shall control subject to a license agreement. All license agreements for use of the trash container enclosure area shall be in fundamentally the same form for all commercial users. In terms of allocated space described herein the Buyer's easement shall take precedent over the other users and the Buyer shall be able to first designate which area of the trash enclosure area it wishes to place its dumpster in. Once ascertained the location of the dumpster easement shall be fixed at that location. The location of the Buyer's easement shall be designated subsequent to the identification of the "trash enclosure" on the survey attached hereto as Exhibit A and appended to this Agreement in the official records of the City. The Buyer shall remain subject to all operational conditions of any license agreement executed by any other user, authorized by the City, to use the trash container enclosure area. These operational conditions shall in no event unduly interfere with Buyer's nonexclusive use of the trash container area and access to its dumpster located therein. The trash container enclosure will be constructed at the City's expense.

(g) The City shall retain a five (5) foot easement along the south side of the building which will allow limited access in perpetuity for the City. This access will not be a public access and shall be as set forth on Exhibit B. along Main Street.

1.3. Purchase Price. The total purchase price to be paid by Buyer for the Property is One Hundred Sixty Thousand One Hundred Eleven and No/100 Dollars (\$160,111.00). The total purchase price is referred to as the "Price" (subject to adjustment below) and must be paid by Buyer as follows:

(a) Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) earnest money ("Earnest Money") will be deposited by Buyer in Good Funds with the Buyer's attorney (hereinafter "Escrow Agent"). The Escrow Agent shall hold this amount in the Escrow Agent's trust account subject to the escrow instructions referred to in Section 1.1 of this Agreement. The Earnest Money shall be deposited by Buyer upon the execution hereof.

(b) The remaining balance ("Closing Cash") due on the Price will be paid by Buyer in Good Funds to Seller through Escrow on the Closing Date. The Closing Cash due from Buyer will be an amount equal to the difference between the Price less the Earnest Money, subject to adjustments and prorations as provided herein.

1.4. Good Funds; Earnest Money. As used in this Agreement, the term "Good Funds" means a confirmed wire transfer of funds. All of Buyer's Earnest Money will be maintained by Escrow Agent in a federally-insured account. Any interest on the Earnest Money will accrue for the benefit of Buyer. If the Escrow closes, the Earnest Money will be credited and applied for the benefit of Buyer by Escrow Agent to the Price.

1.5. Opening and Close of Escrow. The term "Opening of Escrow" means the date when the Earnest Money and the Joint Order Escrow Agreement executed by the parties are delivered to the Escrow Agent. The closing of the Escrow ("Close of Escrow") will occur on or before, January 30, 2015, unless otherwise extended pursuant to the terms of the Contract of by agreement of the parties ("Closing Date").

1.6. "As-Is" Purchase. Buyer acknowledges and agrees that neither Seller nor Seller's agents, employees, attorneys or representatives (collectively, the "Seller Party") have made any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property or the transaction contemplated by this Agreement, except as may be expressly set forth in this Agreement. No representation, warranty, agreement, statement, guarantee or promise, if any, made by the Seller Party or any person acting on behalf of Seller which is not contained in this Agreement shall be valid or binding on Seller. Seller does not make and has not made and specifically disclaims any representation or warranty regarding the compliance or non-compliance of the Property with the Americans With Disabilities Act, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards concerning access and accommodation for disabled persons. Buyer shall rely solely upon Buyer's own knowledge of the Property, based on its investigation and inspection of the Property, in determining whether to purchase the Property. Buyer and anyone claiming by, through or under Buyer hereby waives its right to recover from and fully and irrevocably releases Seller, and Seller Party, from any and all claims that it may now have or hereafter acquire against any of Seller or Seller Party, for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any construction defects, errors, omissions or other physical conditions, latent or otherwise, including, without limitation, environmental matters, affecting the Property, or any portion thereof. To the extent permitted by law, the foregoing release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, could materially affect Buyer's release of Seller. To the extent permitted by law, Buyer hereby agrees, represents and warrants, which representation and warranty shall survive the Closing and not be merged with the Deed (as hereinafter defined), that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants, which representation and warranty shall survive the Closing and not be merged with the Deed, that the waivers and releases herein have been negotiated and agreed upon in light of that realization, and that Buyer nevertheless hereby intends to release, discharge and acquit hold harmless and indemnify Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to Seller by Buyer in exchange for Seller's performance hereunder.

## ARTICLE II

### DUE DILIGENCE DOCUMENTS

2.1. Documents to Buyer. Seller has delivered, or will deliver as described below, to Buyer, to the extent in Seller's possession, the following:

(a) The Seller has delivered and the Buyer has accepted all diligence documents that the Buyer requires to proceed with the transaction.

(b) Shall deliver within fourteen (14) days from the opening of the Escrow a preliminary title report or title commitment for a standard owner's policy of title insurance and complete and legible copies of all instruments and documents referred to as exceptions to title or as title requirements ("Report"). The Report shall be in the full amount of the purchase price showing fee title to the Property in the Seller, committing to insure fee simple title to the Property in the Buyer, and dated with an effective date after the Opening of Escrow.

The documents and items described in Paragraphs 2.1 (a) and (b) are called collectively the "Due Diligence Documents." The documents listed as attachments to Group Exhibit A are provided by the Seller as a courtesy only and will in no respect constitute a promise or warranty which in any way establishes any duty from the Seller to the Buyer inconsistent with paragraph 1.6.

2.2. Survey. Seller will cause to be delivered to Buyer no less than thirty (30) days prior to the Contingency Date a boundary survey (the "survey"), prepared by a surveyor duly registered in the State of Illinois. The Buyer at its own election and at its cost may have the surveyor prepare an ALTA survey in accordance with the minimum detail and classification requirements of the land survey standards of the American Land Title Association. If the Buyer elects an ATLA survey the Seller shall credit to the Buyer at closing the cost of the boundary survey and the Seller shall pay the remaining costs of the ATLA survey. The survey shall be dated as of a date on or after the Contract Date. The survey shall state the legal description of the Land, the square footage of the Land and all buildings thereon, and any all easement described in Section 1.2(f) of this Contract.

2.3. No Representations. Seller makes no representations or warranties as to the truth, accuracy or completeness of any materials, data or other information supplied to Buyer in connection with Buyer's inspection of the Property (e.g., that such materials are complete, accurate or the final version thereof, or that all such materials are in Seller's possession). It is the parties' express understanding and agreement that such materials are provided only for Buyer's convenience in making its own examination and determination as to whether it wishes to purchase the Property, and, in doing so, Buyer shall rely exclusively on its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied by Seller. Buyer expressly disclaims any intent to rely on any such materials provided to it by Seller in connection with its inspection and agrees that it shall rely solely on its own independently developed or verified information.

### ARTICLE III

#### **INTERIM OPERATION OF PROPERTY**

3.1. General Interim Operation. After the Opening of Escrow and until the Closing Date, Seller agrees to operate and maintain the Property in a manner consistent with prior practices; Seller agrees to perform all maintenance to the Property in a manner consistent with such practices and in a workmanlike manner. Without Buyer's written consent, not to be unreasonably withheld, conditioned or delayed, Seller will not enter into any (a) contract for service to the Property unless it is terminable without penalty on no more than thirty (30) days written notice (except that Seller may enter into any such contract in response to any condition or event which would endanger the safety or integrity of the Improvements; provided that Buyer shall have no obligation to assume any such contract unless Buyer agrees to assume such contract in writing), or (b) any new lease. Seller shall not remove any Personal Property from the Improvements and shall keep in force all casualty and liability insurance policies relating to the Property through Close of Escrow.

3.2. Work on Property. All work performed to the Property by Seller, Seller's agents, or any independent contractors engaged by Seller prior to the Close of Escrow will be paid in full by Seller by no later than the Close of Escrow.

### ARTICLE IV

#### **TITLE COMMITMENT AND TITLE CONTINGENCY**

4.1. Title Objections. Buyer may, not later than the Contingency Date, advise Seller in writing either that: (i) the condition of title to the Property is unacceptable; or (ii) Buyer objects to any easements, liens, encumbrances, exclusions, exceptions, or other items or requirements contained in the Report or in a survey obtained by Buyer ("Buyer Objections"). All Buyer Objections may be made in Buyer's sole discretion. The date by which Buyer Objections must be made, as determined pursuant to the first sentence of this Paragraph 4.1, will be the Contingency Date.

4.2. Title Updates. If Escrow Agent updates, adds to, or amends the Report (by endorsement, amendment, or otherwise) as a result of any new matters or facts known or revealed to Escrow Agent (including any matters or facts shown on the survey) after the Contingency Date, Buyer will have until five (5) business days following its receipt of the amended Report (including legible and complete copies of all new exceptions or requirements to title) to notify Seller in writing of Buyer Objections to any new exception or requirement.

4.3. Title Cure. If Buyer has not notified Seller and Escrow Agent of Buyer Objections within the time periods specified in Paragraphs 4.1 or 4.2, as applicable, Buyer will be deemed to have approved the condition of title as shown by the Report or amended Report, as applicable. If Buyer delivers written notice to Seller of such objections within the time period specified above, Seller shall have the right within seven (7) business days of its receipt of Buyer's notice to elect to (i) cure one (1) or more of such objections, and / or (ii) not to cure one (1) or more of the objections. Seller's failure to notify Buyer of Seller's election to cure or not to



cure any Buyer Objections within seven (7) business days after receipt of Buyer's notice of objections shall be deemed to be an election by Seller not to cure such objections. If Seller elects to cure any Buyer Objections, Seller shall use reasonable efforts to cure the objections by the Closing Date. Buyer, within three (3) business days after Buyer's receipt of written notice from Seller of its election not to cure any one or more of the Buyer Objections, may elect, by delivering written notice to Seller, to either (i) waive such objections in writing and accept such title as Seller is able to convey, without recourse against Seller at law, in equity or otherwise, or reduction in the Purchase Price or (ii) terminate this Agreement by delivering written notice to Seller of such termination, in which case the Earnest Money shall be returned to Buyer. Buyer's failure to deliver such notice shall conclusively be deemed Buyer's election to acquire the Property subject to any such objections. If Seller is unable or unwilling to cure or satisfy Buyer Objections on or before the Closing Date, or if for any reason Seller is unable to convey title to the Property to Buyer as provided in this Agreement, Buyer may either (i) waive such objections in writing and accept such title as Seller is able to convey, without recourse against Seller at law, in equity or otherwise, or reduction in the Purchase Price or (ii) terminate this Agreement by delivering written notice to Seller of such termination, in which case the Earnest Money shall be returned to Buyer and without recourse against the Seller in any manner at law, equity or otherwise. Notwithstanding the foregoing, at Closing, Seller shall be required at its sole cost and expense (A) to satisfy all mortgages or deeds of trust encumbering the Property, (B) to satisfy all liens affecting the Property created by, though, or under Seller, (C) to satisfy, insure over or bond around all mechanic's, materialmen's and supplier liens created by, through and under Seller, and (D) to pay any taxes and assessments affecting the Property that are due and payable at or prior to the Close of Escrow, regardless of whether such items described in (A), (B), (C), or (D) above are included in Buyer's Objections.

4.4. Extension to Closing for Cure. Buyer and Seller agree that, if applicable, the Closing Date will be extended automatically beyond the date established in Paragraph 1.5 to a date that is three (3) business days following the later of: (i) the time period described in Paragraph 4.2 for Buyer's review of any amended Report, if Buyer has not or does not object to any new exception or requirement contained in any amended Report; or (ii) the time period described in Paragraph 4.3 for Seller's curing of Buyer Objections, if Buyer has objected to any new exception or requirement contained in any amended Report.

## **ARTICLE V**

### **PRE-CLOSING CONDITIONS**

5.1. Contingency Date. As used in this Contract, the term "Contingency Date" means January 23, 2015.

5.2. Buyer Feasibility. Buyer will have until the Contingency Date within which to conduct and approve any feasibility studies, physical inspections (including, if any, roofs, irrigation systems, electrical systems, mechanical and structural elements, HVAC systems, and appliances), due diligence investigations, review of the Environmental Report, economic studies, marketing reports, or other tests (collectively, the "Buyer Investigations") deemed necessary by Buyer, in its sole discretion, to determine the economic, physical, and operational feasibility of Buyer's purchase of the Property. Buyer's obligation to close the Escrow and

consummate the purchase of the Property is expressly conditioned on Buyer's approval (in Buyer's sole discretion) of (i) the results of the Buyer Investigations and (ii) the Due Diligence Documents. If the Buyer Investigations or the Due Diligence Documents are not acceptable to Buyer, in Buyer's sole discretion and Buyer delivers written notice to Seller and Escrow Agent on or before the Contingency Date of their unacceptability, Buyer will be entitled to cancel this Contract in the manner established below in this Article V. Seller grants to Buyer and Buyer's agents, employees, or contractors the right to enter upon the Property, at all reasonable times during the term of this Escrow, to conduct any Buyer Investigations. Buyer represents warrants and agrees that, in making any inspections of the Property, Buyer and Buyer's agents shall carry not less than \$2,000,000 comprehensive general liability insurance with contractual liability endorsement which insures Buyer's indemnity obligations hereunder, and, upon request of Seller, shall provide Seller with written evidence of same. Seller agrees to cooperate in a reasonable manner with Buyer and its agents, employees, and contractors in the performance of the Buyer Investigations. To the extent Buyer damages or disturbs the Property, Buyer will return the Property to the condition that existed prior to the Buyer Investigations. Buyer agrees to hold Seller harmless from any and all loss or damage (including personal injury and property damage) that Seller may incur as a result of any negligent act or omission of Buyer or Buyer's agents, employees, or contractors during any of the Buyer Investigations.

5.3. Failure of Condition. Any cancellation elected by Buyer as a result of the failure of a Buyer contingency described in Article V will be made and governed by this Paragraph 5.3. If this Contract and the Escrow is canceled under Article V, the termination and cancellation will be immediate and neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under the Contract and Escrow Agent will return promptly to Buyer the Earnest Money.

5.4. Demolition Permit. Issued under separate agreement.

## ARTICLE VI

### CLOSING DOCUMENTS AND CLOSING CONDITIONS

6.1. Closing Documents. Seller, at the Close of Escrow, will deposit with Escrow Agent (for recordation, if applicable, and delivery to Buyer) the following:

(a) A special warranty deed in recordable form conveying to Buyer title to the Property, subject to no recorded or unrecorded liens, rights, interests, agreements, leases, encumbrances, reservations, easements, adverse possession rights, or other right other than those matters approved by Buyer pursuant to Article IV of this Contract ("Deed");

(b) A sworn affidavit stating, under penalty of perjury, that Seller is not a "foreign person" as defined in the Internal Revenue Code or other appropriate evidence that Buyer is not required to withhold taxes under Section 1445(a) of the Internal Revenue Code;

(c) A real estate transfer tax declaration in the form required;

(d) An "as-is" bill of sale in a commercially reasonable form, covering all fixtures and personal property being sold hereunder free and clear of all claims, liens and encumbrances whatsoever;

(e) An assignment agreement assigning to Buyer all of Seller's right, title and interest in and to the Personal Property and the Intangible Property "as-is;"

(f) An owner's affidavit or certificate as customarily required by the title company to be executed by Seller as a condition to the issuance of the Title Policy to be delivered to Buyer as set forth hereunder;

(g) Any additional documents reasonably required to complete the transfer of the Property and fulfill the Seller's obligations hereunder.

6.2. Buyer's Closing Documents. Buyer, at the Close of Escrow, will deliver to Escrow Agent (for disbursement to Seller) the Closing Cash and will execute other Buyer documents reasonably required to complete the transfer of the Property and fulfill the Buyer's obligations hereunder.

6.3. Delivery of Possession. Seller must deliver exclusive possession of the Property to Buyer at Close of Escrow, subject only to approved title matters.

## ARTICLE VII

### CLOSING PRORATIONS AND COSTS

7.1. Taxes and Assessments. Seller warrants that at the time of Closing there will be no taxes or assessments due to any entity.

7.2. Utility Expenses. The Seller shall be liable for any utility expenses up to and including the Closing Date. Buyer, within twenty-four (24) hours of closing shall change all utilities applicable to the Property into the Buyer's name and reimburse the Seller for any utility expenses incurred between closing and the changeover as a condition of receiving an occupancy permit for the Property.

7.3. Title Insurance. Seller agrees to pay the cost of issuance of a standard owner's policy of title insurance with extended coverage in the full amount of the Price based upon Escrow Agent's standard filed rate or basic rate, and Buyer agrees to pay, if applicable, any additional title policy premium necessary to issue any endorsements, or to provide title insurance to any lender(s).

7.4. Closing Costs. Each party agrees to pay its own attorneys' fees.

7.5. Transfer Taxes. The Seller warrants and represents that there will be no Transfer Taxes due on closing. If there are transfer taxes due on closing they shall be paid by the Seller.

7.6. Survival. The provision of this Article VII shall survive the Close of Escrow.

## ARTICLE VIII

### REPRESENTATIONS

8.1. By Seller. Seller to the best of its knowledge and without obligation to investigate represents to Buyer as follows:

(a) Seller is the owner of the Property. There are no parties in adverse possession of the Property, and no party uses or is in possession of the Property other than Seller and any tenants under leases (copies of which have been provided to Buyer). There is no pending or, to Seller's actual knowledge, contemplated condemnation or taking by inverse condemnation of all or any portion of the Property by any governmental authorities.

(b) The Property has not been used for the generation, transportation, treatment, storage, release, or disposal of any asbestos, asbestos containing material, petroleum, petroleum byproducts, PCB compounds, or hazardous or toxic wastes or substances (collectively, "Hazardous Substances") that are subject to regulation under any applicable federal, state, or local statutes, laws, rules, or regulations ("Environmental Laws") or under any order, decree, permit, or license issued by any applicable governmental authority having jurisdiction over the Property or the acts of Seller ("Governmental Order"). Seller has not received actual notice that the Property or any existing uses or activities on the Property do not comply in any material respect with any Environmental Laws.

(c) Seller has not received any notice from any person, authority, or agency having jurisdiction over the Property or Seller with regard to the violation of any applicable regulation, code, ordinance, requirement, covenant, condition, or restriction relating to the present use or occupancy of the Property.

(d) There are no suits, claims, foreclosure proceedings, landlord-tenant disputes, property tax protests, or zoning proceedings that are pending or, to Seller's actual knowledge, threatened with respect to or in any manner affecting the Property.

(e) The act of entering into this Contract and completing this transaction will not in any way violate any agreements to which Seller is a party or any laws to which Seller is subject, including Seller's constituent documents. This Contract has been duly authorized and executed on Seller's behalf and constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms. Seller is not prohibited from consummating this transaction by the terms of its governing document or any judicial or governmental order or stay.

(f) Neither Seller nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") 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.

(g) None of the foregoing representations shall in any way constitute a warranty or promise and shall not affect any “as-is” provision of this Agreement.

8.2. By Buyer. Buyer represents and warrants to Seller as follows:

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, has duly authorized the execution and performance of this Agreement, and such execution and performance shall not violate any material term of its organizational documents.

(b) Buyer is acting as principal in this transaction with authority to close the transaction.

(c) No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against or contemplated by Buyer or any direct or indirect member or manager of Buyer, affiliate of Buyer, or principal in Buyer (collectively, the “Buyer Parties”).

(d) Buyer has or shall have prior to the Contingency Date inspected the Property fully and completely at its expense and shall have ascertained to its satisfaction the extent to which the Property complies with applicable zoning, building, environmental, health and safety and all other laws, codes and regulations.

(e) Buyer has reviewed or shall review the Due Diligence Documents and, based upon its own investigations, inspections, tests and studies, has determined to purchase the Property and to assume Seller’s obligations under the contracts and otherwise with respect to the Property.

(f) Unless otherwise disclosed to Seller in writing, neither Buyer (nor any principal in Buyer) is other than a citizen of, or partnership, corporation or other form of legal person domesticated in the United States of America.

(g) None of the Buyer Parties is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) 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.

(h) Buyer is not and is not owned by, an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, a “plan” (as defined in

Section 4975 of the Code), that is subject to Section 4975 of the Code, or an entity deemed to hold Plan Assets of either of the foregoing.

(i) Buyer is a sophisticated investor in commercial real estate and will perform such due diligence of the Property and its condition (financial and otherwise) as Buyer deems appropriate.

## ARTICLE IX

### GENERAL PROVISIONS

9.1. Broker's Commission. Each party represents and warrants to the other that it has not engaged or dealt with any broker or other person who would be entitled to any brokerage commission concerning this purchase of the Property. Each party agrees to indemnify and hold the other entirely free and harmless for, from, and against any loss, damage, liability, or expense (including, without limitation, attorney fees) arising from any claim by any broker or any other person for brokerage commissions because of any act or omission of such party or its representatives. Each party further agrees to defend the other at its sole cost and expense from any such claims.

9.2. Assignment. This Agreement and the rights of Buyer hereunder may not be transferred or assigned in whole or in part to any other party, whether by voluntary action or by judicial order without the prior written consent of Seller, not to be unreasonably withheld, conditioned, or delayed. Upon any assignment, the assignee will be deemed the "Buyer," provided that Buyer will not be relieved, and will remain bound by the obligations under this Contract and the Escrow.

9.3. Risk of Loss. All risk of loss, damage, or taking of the Property that may occur prior to Close of Escrow will be borne by Seller. Notwithstanding the foregoing, upon any loss, damage, or taking prior to Close of Escrow, Buyer, at Buyer's sole option and by written notice to Seller and Escrow Agent, will be entitled to cancel this Contract, if such loss, damage or taking involves a value of \$25,000.00 or more. Upon Buyer's cancellation of this Contract under the preceding sentence, the cancellation will be immediate and neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under the Contract and Escrow Agent will return promptly to Buyer all Earnest Money. If Buyer waives the right to cancel this Contract because of any loss, damage, or taking and elects to close the Escrow, or if the taking or loss involves a value of less than \$25,000.00, Seller, at Close of Escrow and as a condition precedent to closing, must either: (i) pay Buyer the amount of any insurance or condemnation proceeds actually received by Seller plus the amount of any deductible under Seller's insurance policy; or (ii) if less than all insurance or condemnation proceeds have been received by Seller, assign to Buyer by proper written instrument all rights or claims to the insurance or all condemnation proceeds and pay Buyer (or direct Escrow Agent to credit Buyer against the Price for) the amount of any deductible under Seller's insurance policy.

9.4. Buyer Remedies. If Seller breaches this Contract prior to the Close of Escrow (provided there is no pre-existing default by Buyer), then Buyer may serve written notice upon Seller and if such default is not corrected within ten (10) days thereafter, then Buyer, at

Buyer's election, may elect to either: (i) cancel this Escrow and the Contract in the manner established in the Contract and receive a refund of the Earnest Money as its sole and exclusive remedy, or (ii) waive such breach and proceed to Close of Escrow subject to such breach, or (iii) enforce the specific performance of this Contract.

9.5. Seller Remedies. If Buyer breaches this Contract (provided there is no pre-existing default of Seller) then Seller may serve written notice upon Buyer and if such default is not corrected within ten (10) days thereafter, Seller may cancel this Escrow and the Contract and to retain the Earnest Money as Seller's agreed and total liquidated damages and not as a penalty; Buyer and Seller have agreed upon these liquidated damages in the event of Buyer's default because Buyer and Seller agree that actual damages suffered by Seller would be difficult or impossible to determine and prove, and Buyer and Seller agree that these liquidated damages are a reasonable estimate of the anticipated or actual damages Seller may suffer.

9.6. Attorneys' Fees. If there is any dispute between Seller and Buyer to enforce or interpret any provisions or rights of this Contract, the prevailing party, as determined by the court, will be entitled to receive from the other party, all costs, legal fees, consultant fees, expert witness fees, investigation costs, and similar expenses (through trial and appeal), including, but not limited to, attorney fees in a reasonable amount incurred by the successful party.

9.7. Notice. Except as otherwise required by law, any notice required or permitted under this Contract must be in writing and must be given either: (i) by personal delivery; (ii) by United States certified mail, return-receipt requested, postage prepaid, and properly addressed; (iii) by any private overnight, "same day," or "next-day" delivery service, delivery charges prepaid with proof of receipt or by facsimile machine or telecopier. Notice sent in any of the manners set forth above must be addressed or sent to Seller, Buyer, and/or Escrow Agent and their respective counsel at the addresses or telecopy phone numbers set forth on the first page of this Contract. Any party may change its address or telecopy number for the purposes of delivery and receipt of notices by advising all other parties in writing of the change. Notice delivered in one of the foregoing manners will be deemed to be received: (I) on the date of delivery, if personally delivered; (II) on the date that is two (2) days after deposit in the United States mail, if given by certified mail; (III) on the next business day after deposit with an express delivery service, if given by overnight, "same day," or "next-day" delivery service; or (IV) on the date of transmittal, if given on a business day by facsimile machine or telecopy. No notice will be deemed effective unless sent in one of the manners described above. Any notices may be given by the counsel for the party giving such notice.

9.8. Amendments and Waiver of Conditions. Except as otherwise provided in this Contract regarding any deemed waivers for a failure to promptly act or elect, Buyer's contingencies or conditions precedent may be waived only by Buyer, and any waiver by Buyer may be done only in a writing signed by Buyer. This Contract may be amended only in writing and may not be modified by any part performance, reliance, or course of dealing.

9.9. Additional Acts. The parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably necessary to carry out the purpose and intent of this Contract.

9.10. Governing Law. This Contract will be governed by and construed and enforced in accordance with the laws of the State of Illinois. Any action brought to interpret, enforce, or construe any provision of this Contract shall be commenced and maintained in the Circuit Court of the State of Illinois, County of DuPage. All parties irrevocably consent to this jurisdiction and venue and agree not to transfer or remove any action commenced in accordance with this Contract.

9.11. Construction. The terms and provisions of this Contract represent the results of negotiations between Seller and Buyer, neither of which have acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Contract should be interpreted and construed in accordance with their usual and customary meanings, and Seller and Buyer each waive the application of any rule of law that states that ambiguous or conflicting terms or provisions are to be interpreted or construed against the party whose attorney prepared the Contract or any earlier draft of the Contract.

9.12. Time of Essence. Time is of the essence of this Contract. The time for the performance of any obligation or the taking of any action under this Contract will be deemed to expire at 5:00 p.m. (central standard time) on the last day of the applicable time period established in this Contract, unless such last day falls on a Saturday, Sunday, federal, or Illinois legal holiday, in which case such period shall automatically extend to the next business day. In calculating any time period in this Contract that commences upon the receipt of any notice, request, demand, or document, or upon the happening of an event (e.g., the Opening of Escrow), the date that the notice, request, demand, or document is deemed received, as determined above, or the date an event occurs (or is deemed to have occurred) is not included with the applicable time period, but the applicable time period will commence on the day immediately following.

9.13. Interpretation. The terms of this Contract supersede all prior and contemporaneous oral or written agreements and understandings of Buyer and Seller, all of which will be deemed to be merged into this Contract. This Contract is a final and complete integration of the understandings of Buyer and Seller.

9.14. Incorporation by Reference. All exhibits to this Contract are fully incorporated in the text of this Contract.

9.15. Counterparts. This Contract may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which when taken together will constitute one binding contract and instrument.

9.16. Severability. If any one or more of the provisions of this Contract are held to be invalid or unenforceable or the applicability of any provision to a specific situation is held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make the subject provision or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of the invalid or unenforceable provisions will not be affected by any invalidity or unenforceability.

9.17. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of



any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

9.18. Changes in Writing. This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

9.19. Waiver of Trial by Jury. **IN ANY LAWSUIT OR OTHER PROCEEDING UNDER OR WITH RESPECT TO THIS AGREEMENT, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY.**


9.20. Facsimile Signatures. Handwritten signatures to this Agreement transmitted by telecopy or electronic transmission (for example, through use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver to the other party an executed original of this Agreement with its actual signature, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own telecopied or electronically transmitted handwritten signature and shall accept the telecopied or electronically transmitted handwritten signature of the other party to this Agreement.

9.21. Survival. This Article IX shall survive the Close of Escrow.

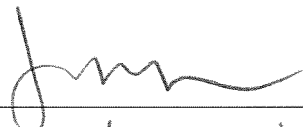
SIGNATURES ON FOLLOWING PAGE


Executed as of the Contract Date by:

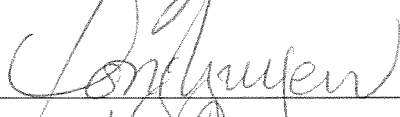
**Seller:** City of Wheaton

By:   
Print name: Michael D. Gresh  
Title: Mayor

**Buyer:** Main St. Properties, LLC

By:   
Print name: Jason Nguyen  
Title: President

By:   
Print name: Linda Nguyen  
Title: Secretary

By:   
Print name: Hong Nguyen  
Title: Secretary

**EXHIBIT "A"**

**(Legal Description of Property)**

LOT 1 IN THE 111-113 SUBDIVISION OF PART OF LOTS 2 AND 6 IN OWNER'S SECOND ASSESSMENT SUBDIVISION OF LOT 6 AND THE WEST HALF OF LOT 7 IN BLOCK 6 (EXCEPT THE NORTH 50 FEET THEREOF) OF ORIGINAL TOWN OF WHEATON AND LAND ADJOINING SAME ON THE SOUTH TO NORTH RAILROAD STREET, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID OWNER'S SECOND ASSESSMENT SUBDIVISION, RECORDED JULY 6, 1907 AS DOCUMENT 91155, IN DU PAGE COUNTY, ILLINOIS

## **EXHIBIT "B"**

### **GENERAL BILL OF SALE**

Pursuant to the provisions of that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, (the "Purchase Agreement"), by and among City of Wheaton, a municipal corporation (the "Seller"), and in consideration of the mutual covenants and agreements set forth therein, the Seller does by these presents sell, transfer and convey to Main Street Properties, LLC (the "Buyer") and its successors and assigns all of the Seller's right, title and interest in and to the Purchased Assets as defined in and more particularly described in the Purchase Agreement.

This General Bill of Sale is given pursuant to the terms of the Purchase Agreement and is subject to the terms and conditions contained therein. Any term used herein but not defined herein shall have the meaning assigned to such term in the Purchase Agreement. The Seller, for itself and its successors and assigns, hereby covenants and agrees with the Buyer and its successors and assigns to warrant and defend its good title to said Purchased Assets and its right and authority to sell, transfer and convey the same to the Buyer.

IN WITNESS WHEREOF, an authorized officer of the Seller has duly executed this General Bill of Sale effective as of \_\_\_\_\_ 2014.

**SELLER:**

City of Wheaton

By: \_\_\_\_\_  
Name: Michael Gresk  
Title: Mayor