

**RESOLUTION NO. R-2018-29**

**A RESOLUTION APPROVING A VACANT LAND CONTRACT BETWEEN THE CITY OF WHEATON AND LIBERTY DRIVE, LLC**

**WHEREAS**, the City of Wheaton (“City”) has negotiated for the purchase of certain vacant real property (hereinafter “Acquisition Parcels”) which are a portion of the real property commonly known as 531 – 571 West Liberty Drive, Wheaton, Illinois; and

**WHEREAS**, the Acquisition Parcels have been used for public purposes for the past several decades; and

**WHEREAS**, the Corporate Authorities of the City of Wheaton have concluded that acquisition of fee title simple in the Acquisition Parcels will maximize the City’s ability to control the public use of the Acquisition Parcels; and

**WHEREAS**, the City had the Acquisition Parcels appraised by a MAI appraiser and is acquiring the property for the fair market value as determined by that appraiser.

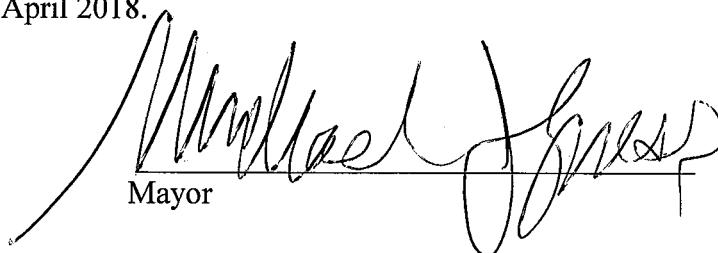
**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, that:

- 1) The Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest, to that certain Vacant Land Contract between the City of Wheaton and Liberty Drive, LLC, which attached hereto and incorporated herein as if fully set forth as Exhibit 1; and
- 2) City staff and City Attorney are hereby directed to undertake any and all steps necessary to complete acquisition of the Acquisition Parcels on behalf of the City of Wheaton in conformance with the Vacant Land Contract; and
- 3) After the City takes title to the Acquisition Parcels the City Clerk is directed to undertake all acts necessary to secure tax exempt status for them.

**ADOPTED** this 2<sup>nd</sup> day of April 2018.

ATTEST:

  
Mac Bennett-Hayen  
City Clerk

  
Michael J. Hines  
Mayor

Roll Call Vote:  
Ayes: Councilman Prendiville  
Mayor Gresk  
Councilman Rutledge  
Councilman Scalzo  
Councilman Suess  
Councilman Barbier  
Councilwoman Fitch

Nays: None  
Absent: None  
Motion Carried Unanimously

## VACANT LAND CONTRACT

**1. THE PARTIES:** Buyer and Seller are hereinafter referred to as the "Parties".

Buyer Name(s): City of Wheaton, an Illinois Home Rule Municipality  
(“City” or “Buyer”)

Seller Name(s): Liberty Drive, LLC (“Seller”)

**2. THE REAL ESTATE:** Seller is the owner of a certain parcel of real estate commonly known as 531 – 571 West Liberty Drive, Wheaton, Illinois, bearing PIN # 05-17-407-005 and referred to herein as "the Seller's Parcel". Seller agrees to convey to the City a portion of the Seller's Parcel containing approximately 0.577888 acres consisting of vacant land, containing landscaping, a contemporary concrete sculpture and two paved paths (hereinafter "Acquisition Parcel") to the City. The Seller's Parcel and the Acquisition Parcel are depicted on the Plat of Subdivision, marked Exhibit 1 and entitled "West Liberty Subdivision," which is attached hereto and incorporated herein as if fully set forth. Prior to the conveyance of the Acquisition Parcel, the City shall re-subdivide, at its sole cost and expense, the Seller's Parcel in conformance with said Plat of Subdivision. The Acquisition Parcel shall consist of re-subdivided lots 1, 2 and 3. The Seller shall retain lot 4, including all of its improvements and appurtenances, as well as an easement for the benefit of lot 4 to deposit snow from lot 4 over portions of lots 2 and 3 as illustrated on the Plat of Subdivision. The snow deposit easement shall only be for the portions of lots 2 and 3 identified on the Plat of Subdivision which, upon recording, shall exclusively control the location and the dimensions of the easements.

**3. PURCHASE PRICE:** The Purchase Price of Eighty-Six Thousand Dollars (\$86,000.00), adjusted by tax prorations, shall be paid by Buyer to Seller at Closing in "Good Funds" as defined by law.

**4. CLOSING:** Closing shall be on May 4, 2018, or at such time as mutually agreed by the Parties in writing. Closing shall take place at the office of the title company (or its issuing agent) issuing the Owner's Policy of Title Insurance, situated nearest the Real Estate, or as shall be agreed mutually by the Parties.

**5. POSSESSION:** Seller shall deliver possession Acquisition Parcel to the Buyer at Closing.

**6. PRORATIONS:** The general Real Estate taxes shall be prorated as of the date of Closing. If Closing occurs after 2017 tax bills are issued, then the proration for 2017 taxes shall be based upon the actual 2017 tax bill amount multiplied by the proportion of the total 2017 assessed value attributable to land (66.68%) multiplied by the ratio of the Acquisition Parcel size to the Seller's Parcel size (24,849 SF / 63,426 SF = 39.18%). If, by mutual agreement of the Parties, Closing occurs before 2017 tax bills are issued, then the proration for 2017 estimated taxes shall be based upon 105% of the actual 2016 tax bill multiplied by the proportion of the total 2017 assessed value

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attributable to land (66.68%) multiplied by the ratio of the Acquisition Parcel size to the Seller's Parcel size (24,849 SF / 63,426 SF = 39.18%). In either event, the proration for the 2018 tax year shall be based on 105% of the full year 2017 prorated tax amount attributable to the Acquisition Parcel, prorated through the date of Closing. All prorations shall be final as of Closing.

**7. PROFESSIONAL INSPECTIONS AND INSPECTION NOTICES:** Buyer may conduct at **Buyer's** expense, inspections of the Acquisition Parcel's environmental conditions subject to the following conditions:

- a) Buyer shall indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of negligence of Buyer or any person performing any inspection.
- b) Buyer shall serve Notice upon Seller or Seller's attorney of any defects disclosed by any inspection for which Buyer requests resolution by Seller, together with a copy of the pertinent pages of the inspection reports within ten (10) Business Days of the inspection after the Date of Acceptance. If within ten (10) Business Days thereafter written agreement is not reached by the Parties with respect to resolution of all inspection issues, either Party may terminate this Contract by serving Notice to the other Party, whereupon this Contract shall be null and void.
- c) Notwithstanding anything to the contrary set forth above in this paragraph, in the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer serves Notice to Seller within thirty-five (35) days after the Date of Acceptance, but no later than three (3) Business Days prior to Closing, this Contract shall be null and void. Said Notice shall not include any portion of the inspection reports unless requested by Seller.
- d) **Failure of Buyer to conduct said inspection(s) and notify Seller within the time specified operates as a waiver of Buyer's rights to terminate this Contract under this Paragraph 7 and this Contract shall remain in full force and effect.**

**8. THE DEED:** Seller shall convey or cause to be conveyed to Buyer good and merchantable title to the Acquisition Parcel by recordable Special Warranty Deed, subject only to: covenants, conditions and restrictions of record and building lines and easements, if any, provided they do not interfere with the current use and enjoyment of the Real Estate; and general real estate taxes not due and payable at the time of Closing.

**9. MUNICIPAL ORDINANCE, TRANSFER TAX, AND GOVERNMENTAL COMPLIANCE:** This transaction is exempt from municipal transfer taxes.

**10. TITLE:** Buyer shall deliver or cause to be delivered to Seller or Seller's attorney within customary time limitations and sufficiently in advance of Closing, as

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evidence of title in Seller or Grantor, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price with extended coverage by a title company licensed to operate in the State of Illinois, issued on or subsequent to the Date of Acceptance, subject only to items listed in Paragraph 14. The requirement to provide extended coverage shall not apply if the Real Estate is vacant land. The commitment for title insurance furnished by Buyer will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. **If the title commitment discloses any unpermitted exceptions or if the Plat of Subdivision shows any encroachments or other survey matters that are not acceptable to Buyer, then Seller shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments.** If Seller fails to have such exceptions removed, waived or insured over prior to Closing, Buyer may elect to take title as it then is with the right to deduct from the Purchase Price the value of the prior encumbrances in a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.

The Buyer shall pay all routine closing costs. Seller shall pay any closing costs resulting from the Seller's request for non-routine coverages, as well as the Seller's attorney's fees.

**11. PLAT OF SURVEY:** Not less than one (1) Business Day prior to Closing, Buyer shall, at Buyer's expense, furnish to Seller or Seller's attorney a Plat of Survey that: conforms to the current Minimum Standard of Practice for boundary surveys; is dated not more than six (6) months prior to the date of Closing; and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement placed near the professional land surveyor's seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey." A Mortgage Inspection, as defined, is not a boundary survey and is not acceptable.

**12. DAMAGE TO REAL ESTATE OR CONDEMNATION PRIOR TO CLOSING:** If prior to delivery of the deed the Acquisition Parcel is destroyed or materially damaged by fire or other casualty, or the Acquisition Parcel is taken by condemnation, then Buyer shall have the option of either terminating this Contract or accepting the Acquisition Parcel as damaged or destroyed, together with the proceeds of the condemnation award or any insurance payable as a result of the destruction or damage, which gross proceeds Seller agrees to assign to Buyer and deliver to Buyer at Closing. Seller shall not be obligated to repair or replace

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damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified by this paragraph.

**13. CONDITION OF REAL ESTATE AND INSPECTION** Buyer shall have the right to inspect the Real Estate and fixtures prior to possession to verify that the Real Estate, and fixtures are in substantially the same condition as of the Date of Acceptance, normal wear and tear excepted.

**14. SELLER REPRESENTATIONS:** Seller's representations contained in this paragraph shall survive the Closing. Seller represents, that with respect to the Real Estate Seller, it has no knowledge of nor, has Seller received any written notice, from any association or governmental entity regarding:

- a) zoning, building, fire or health code violations that have not been corrected;
- b) any pending rezoning;
- c) boundary line disputes;
- d) any pending condemnation or Eminent Domain proceeding;
- e) easements or claims of easements not shown on the public records;
- f) any hazardous waste on the Real Estate;
- g) any improvements to the Real Estate for which the required initial and final permits were not obtained;
- h) any improvements to the Real Estate which are not included in full in the determination of the most recent tax assessment; or

Seller further represents that:

All Seller representations shall be deemed re-made as of Closing. If prior to Closing Seller becomes aware of matters that require modification of the representations previously made in this Paragraph 14, Seller shall promptly notify Buyer. If the matters specified in such Notice are not resolved prior to Closing, Buyer may terminate this Contract by Notice to Seller and this Contract shall be null and void.

**15. BUSINESS DAYS/HOURS:** Business Days are defined as Monday through Friday, excluding Federal holidays. Business Hours are defined as 8:00 A.M. to 5:00 P.M. Chicago time.

**16. FACSIMILE OR DIGITAL SIGNATURES:** Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and delivery thereof by one of the following methods shall be deemed delivery of this Contract containing original signature(s). An acceptable facsimile signature may be produced by scanning an original, hand-signed document and transmitting same by facsimile. An acceptable digital signature may be produced by use of a qualified, established electronic security procedure mutually agreed upon by the Parties. Transmissions of a digitally signed copy hereof shall be by an established, mutually acceptable electronic method, such as creating a PDF

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("Portable Document Format") document incorporating the digital signature and sending same by electronic mail.

**17. NOTICE:** All Notices shall be in writing and shall be served by one Party or attorney to the other Party and its attorney. Notice to any one of the multiple person Party shall be sufficient Notice to all. Notice shall be given in the following manner:

- a) By personal delivery; or
- b) By mailing to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or
- c) By facsimile transmission. Notice shall be effective as of the date and time of the transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or
- d) By e-mail transmission if an e-mail address has been furnished by the recipient Party or the recipient Party's attorney to the sending Party or is shown in this Contract. Notice shall be effective as of date and time of e-mail transmission, provided that, in the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission. An attorney or Party may opt out of future e-mail Notice by any form of Notice provided by this Contract; or
- e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

Notice to a Party's attorney, to be given in the foregoing manner, shall be addressed as follows:

If to Buyer:

James H. Knippen  
Walsh, Knippen & Cetina  
2150 Manchester Road, Suite 200  
Wheaton, IL 60187  
Fax: (630) 462-1984  
Email: [jim@wkc-lawyers.com](mailto:jim@wkc-lawyers.com)

If to Seller:

Mark R. Sargis  
Bellande & Sargis Law Group, LLP  
129 West Wesley Street  
Wheaton, IL 60187-5118  
Fax: (312) 853-8702  
Email: [msargis@bellandesargis.com](mailto:msargis@bellandesargis.com)

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**18. PERFORMANCE: Time is of the essence of this Contract.** In any action with respect to this Contract, the Parties are free to pursue any legal remedies at law or in equity.

**19. CHOICE OF LAW AND JURISDICTION:** All terms and provisions of this Contract including, but not limited to, the attorney review shall be governed by the laws of the State of Illinois. Exclusive jurisdiction for the resolution of any disputes involving this Agreement shall be in the 18<sup>th</sup> Judicial Circuit Court, Wheaton, DuPage County, Illinois.

**20. BROKERS:** The Parties represent and warrant that neither has employed or used a real estate broker or agent in this transaction.

**21. SPECIFIED PARTY APPROVAL:** This Contract is contingent upon the approval of this Agreement by the Corporate Authorities of the City.

THIS DOCUMENT WILL BECOME A LEGALLY BINDING CONTRACT WHEN SIGNED BY ALL PARTIES AND DELIVERED TO THE PARTIES OR THEIR AGENTS.

4/5/2018

DATE OF ACCEPTANCE

Buyer Signature

April 2, 2018

Date of Offer

Debra Williams

Seller Signature

Buyer Signature

Michael J. Gresk  
Print Buyer(s) Name(s) *[Required]*

Debra Williams, Manager  
Print Seller(s) Name(s) *[Required]*

303 W. Wesley St  
Address

548 Coolidge Ave.  
Address

Wheaton IL 60187 Glen Ellyn IL 60137  
City State Zip City State Zip

630-260-2014

Phone

E-mail

(630) 643-8667

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