

CITY OF BATAVIA

DATE: August 3, 2016
TO: Committee of the Whole-CD
FROM: Chris Aiston, Economic Development Consultant

SUBJECT: CONSIDERATION OF ORDINANCE NO. 16-48, APPROVING AND AUTHORIZING THE ACQUISITION OF THE REAL PROPERTY LOCATED AT 121 E. WILSON STREET BATAVIA, IL

Please find attached Ord. No. 16-48, Approving and Authorizing the Acquisition of Real Property Located at 121 E. Wilson Street, Batavia, IL

Background

For the past several months, City Staff and City Attorney have been negotiating the purchase of the real estate at 121 E. Wilson Street (“Frydendall Property”). The City’s purchase of this property (and ultimately removing all existing structures located thereon) is required by the proposed TIF Redevelopment Agreement between the City of Batavia and 1 N. Washington, LLC and will advance the planned redevelopment of the former First Baptist Church and its surrounding properties.

After lengthy negotiations, on or about June 30th, the parties reached an agreement on the following pertinent terms:

1. Purchase Price: \$195,000.00 (One Hundred and Ninety Thousand Dollars and No Cents).
2. Earnest Money Deposit: Purchaser City will pay \$5,000.00 to Seller, JOL Joint Living Trust as non-refundable “earnest money”. This amount will be applied to the purchase price at closing.
3. Closing Date: Thirty days from “effective date” of contract (as signed on July 18, 2016). Closing Date is therefore August 17, 2016.
4. Possession Date: Six months from Closing date, or February 17, 2017. On this date, City and/or its affiliates, as designated in writing, shall possess property free and clear.
5. Other Costs to City:
 - a. Title Insurance, Escrow and related closing fees (approximately \$5600.00);
 - b. Phase I Environmental Assessment (to be conducted at City’s option);
 - c. Seller’s Attorneys Fees in the amount of \$2,500.00; and
 - d. Seller’s Moving Expenses in the amount of \$5,000.00.

Analysis

The property owner had not publicly offered his property for sale, either personally or through a real estate broker. It is generally understood when both parties are acting in their own self interest and not subject to any pressure or duress from the other party, the seller will not sell his property for less than what he believes the fair market value to be, nor would the buyer pay more than what he believes the fair market value to be. In the end, usually a compromise is met and the two parties reach an agreed price, which essentially establishes the real fair market value.

This purchase and sale, however, is not an “arm’s length transaction”. In real estate parlance, an arm's length transaction is one where the buyer and seller are acting independently, in their own self interest, are motivated to sell and buy *and are not subject to any pressure or duress from the other party*. In this case, as previously stated, the subject property was not offered for sale by ownership, and the seller was not motivated to sell. It was the City, as prospective buyer, that approached ownership to offer to buy the real estate, motivated by a need to control the real estate and thereby possibly facilitate a comprehensive redevelopment project involving this property and considerably more property surrounding it. Because of the specific location of the property in question, critical to the proposed redevelopment plan, it became apparent to both parties that the City’s motivation (and possible special legal authority) to acquire the land exceeded the seller’s motivation to sell it, if any such motivation existed at all when the City approached the seller in this matter.

The above described conditions resulted in the City agreeing to pay an amount that likely exceeds the true fair market value for an arm’s length transaction. In this case, the value of the property to the City, in the opinion of the staff, far outweighs the fair market value because this parcel is necessary for the redevelopment of the City-owned properties surrounding this property, and the property owned by the City could not be redeveloped without it. The redevelopment will accomplish many goals that will benefit the public like adding parking to the downtown, bringing additional residents into the downtown, bringing additional business and commercial activity into the downtown and exponentially increasing the tax base. These public benefits make the acquisition of the property, even at something greater than fair market value, beneficial to the City and the public.

Budget Impact

The City has sufficient funds in its General Fund Reserve Account to meet the financial obligations of the proposed purchase, as set forth above.

Recommendation

Staff recommends the Committee of the Whole move to City Council consideration with a positive recommendation for Ordinance 16-48, Authorizing Execution of a Purchase and Sale Agreement with JOL Joint Living Trust for the Purchase of Property, Common Address 121 E. Wilson Street

Attachments:

Ordinance 16-48, Approving and Authorizing the Acquisition of Real Property Located at 121 E. Wilson Street, Batavia, IL; “Purchase and Sale Agreement”.

CC: Mayor Schielke; Laura Newman; Kevin Drendel; Department Heads

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 16-48**

**APPROVING AND AUTHORIZING THE ACQUISITION OF THE REAL PROPERTY
LOCATED AT 121 E. WILSON STREET BATAVIA, IL**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
___ DAY OF _____, 2016**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This ___ day of _____, 2016

Prepared by:

City of Batavia
100 N. Island Ave.
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 16-48**

**APPROVING AND AUTHORIZING THE ACQUISITION OF THE REAL PROPERTY
LOCATED AT 121 E. WILSON STREET BATAVIA, IL**

WHEREAS, the City staff has identified the property at 121 E. Wilson Street in the City of Batavia, IL, as property that is necessary for acquisition for the redevelopment of property owned by the City that is surrounding the 121 E. Wilson Street property for the purpose of public parking, for residential uses and for commercial uses, all of which will increase the tax base of the City, bring increased foot traffic to the downtown that will benefit the existing business and bring new business into the downtown area, and strengthen, conserve and revitalize the downtown area, all to the benefit of the public; and,

WHEREAS, City staff have negotiated a real estate Purchase and Sale Agreement for the property located at 121 E. Wilson Street (the “Property”), a copy of which is attached hereto and incorporated herein by reference as Exhibit “A” that is signed by the property owner on July 18, 2016 (“Agreement”); and

WHEREAS, the Mayor and City Council members have determined that the acquisition of the Property is beneficial to the City and the public.

NOW THEREFORE, BE IT HEREBY ORDAINED by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1. The Agreement attached as Exhibit A is hereby approved, and the signature of the City Administrator is hereby affirmed and ratified.

SECTION 2. The City Administrator, the City Attorney and/or their designees are hereby authorized and directed to take all actions necessary and appropriate to close the transaction and to acquire title to the Property pursuant to the terms and conditions of the Agreement.

SECTION 3. This Ordinance shall be in full force and effect upon its presentation, passage and publication according to law.

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 15th day of August, 2016.

CITY OF BATAVIA, ILLINOIS ORDINANCE 16-____

APPROVED by me as Mayor of said City of Batavia, Illinois, this 15th day of August, 2016.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Fisher				
2	Callahan					Wolff				
3	Hohmann					Chanzit				
4	Mueller					Stark				
5	Botterman					Thelin Atac				
6	Cerone					Russotto				
7	McFadden					Brown				
Mayor Schielke										
VOTE: ____ Ayes ____ Nays ____ Absent ____ Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

Christine Simkins, Deputy City Clerk

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into June 30, 2016 (or such later date that Purchaser receives a fully executed copy of this Agreement) by and between **JOL JOINT LIVING TRUST** ("Seller"), and **CITY OF BATAVIA, AN ILLINOIS MUNICIPAL CORPORATION** ("Purchaser"). The last of the dates that this Agreement is signed by the Seller or the Purchaser shall be considered the Effective Date of this Agreement.

RECITALS:

A. Seller is the fee owner of the Property (hereinafter defined), commonly referred to as 121 E. Wilson St., Batavia, Illinois and the owner of the Personal Property (hereinafter defined and, together with the Property, collectively referred to herein as the "Property" described below).

B. Seller desires to sell, and Purchaser desires to purchase, the Property upon and subject to the terms and conditions hereinafter set forth.

C. The parties agree that Purchaser is a home rule Illinois Municipal Corporation with the authority to purchase real property through the exercise of eminent domain, that the sale of the Property by Seller to Purchaser is not at arm's length, is in response to Purchaser's stated intention to exercise its eminent domain powers to acquire the Property from Seller if an Agreement such as this were not created, and that Seller is not a willing seller.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

Section 1. Purchase and Sale of the Property.

a. **Purchase Price.** Subject to and in accordance with the terms and conditions contained in this Agreement, Seller agrees to sell, assign, convey, and transfer to Purchaser all Seller's right, title, and interest in and to the "Property" (as hereinafter defined), and Purchaser hereby agrees to purchase the Property for One Hundred Ninety-Five and No/100 Dollars (\$195,000).

b. **Earnest Money Deposit.** Upon execution of this Purchase and Sale Agreement, Purchaser shall tender to Seller an earnest money deposit in the amount of Five Thousand and No/100 Dollars (\$5,000) which shall be non-refundable, except as provided in Sections 2.b, 10.d and 10.e below. In the event that Purchaser closes on its purchase of the Property, the amount of the earnest money deposit shall be applied against the purchase price.

c. **Personalty.** All personal property, if any, owned by Seller and located on or in the Property (the "Personalty") shall be removed by Seller prior to the Possession Date defined in Section 2.b.

d. **Appurtenances.** All rights, privileges and easements appurtenant to the Property, all development rights, water rights, mineral rights, and air rights relating to the Property, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Property ("Appurtenances") shall transfer to Purchaser upon Closing.

e. **Awards.** All right, title, and interest to any unpaid awards for damages to the Property resulting from any casualty, taking in eminent domain, or by reason of change of grade of any street accruing after closing of the purchase and sale pursuant to this Agreement shall transfer to Purchaser.

f. **Legal Description.** See attached Exhibit A.

Section 2. Closing Date; Possession; Termination.

a. Closing Date. The "Closing" of the transaction contemplated hereby shall occur within thirty (30) days after the Effective Date (the "Closing Date"). The Closing shall take place through escrow ("Escrow") on the Closing Date at the offices of Chicago Title Insurance Company, 1795 IL-38, Geneva, IL 60134 (the "Title Insurer"). Possession of the Property shall be delivered to Purchaser on the date that is six (6) months from the Closing Date ("Possession Date") free and clear of the rights of all third parties, excepting Purchaser and/or affiliates of Purchaser identified by Purchaser in writing.

b. Right to Retain Possession. Seller's right of possession shall terminate on the Possession Date. Seller shall not have to pay rent to Purchaser, nor be responsible for any real property taxes that might arise for the period following Closing, but shall be responsible for payment of all utilities associated with the Property. Seller shall maintain liability insurance on the Property and name the City as a co-insured under said policy in a minimum amount of \$1,000,000. Seller also agrees to indemnify and hold Purchaser harmless from any claims or damages, including costs of defense, related to the Property and arising during the period of time from the date of Closing until Sellers transfers possession to the Purchaser. Seller shall remove all personal property desired by Seller prior to the date for transfer of possession, and that any such property remaining on or within the Property after that date shall be the property of the Purchaser to do with it as it wishes. Seller shall have no claim against the City for loss due to Seller having left any personal property on or within the Property following the date for transfer of possession Seller shall take no action that will encumber the property or create any rights in any third parties that may affect the condition of title.

Section 3. Property Information / Title and Survey.

a. Current Title. Purchaser may, at Purchaser's cost and expense, secure: (i) a current title commitment from the Title Insurer for the Property, and (ii) legible copies of all documents of record affecting the Property as disclosed in the title commitment (the "Title Information"), and obtain all of same at any time, provided that if Purchaser does not obtain the title commitment, Seller shall obtain it at Seller's costs no later than thirty (30) days prior to Closing. Not later than thirty (30) days following receipt of all Title Information (the "Title Advisory Date"), Purchaser shall provide written notice to Seller of ("Purchaser's Title Notice"): (i) permitted exceptions to title (ii) the Redevelopment Agreement and easements and other obligations specified therein and (iii) any matters affecting title to the Property which are not permitted by Purchaser as to which Purchaser disapproves, and pursuant to said notice request that Seller correct such unpermitted title matters. Seller shall, in the exercise of its reasonable discretion, advise Purchaser not later than the fifth (5th) business day following its receipt of Purchaser's Title Notice (the "Title Response Date"), as to whether Seller intends to correct the unpermitted title matters or provide endorsement coverage with respect thereto prior to the Closing. If Seller elects not to correct the unpermitted title matters, or if Seller elects not to provide endorsement coverage, or if Seller provides no notice to Purchaser by 5:00pm on the Title Response Date (in which event Seller shall be deemed to have elected not to correct the unpermitted title matter), Purchaser shall have the option to either waive its objection or cancel this Agreement in writing to Seller given no later than the later of: (i) the expiration of the tenth (10th) Business Day following expiration of the Initial Due Diligence Period, and (ii) the expiration of the tenth (10th) Business Day following the Title Response Date. If Seller elects to correct an unpermitted title matter by way of endorsement coverage, Purchaser shall have the right to approve the form and content of the endorsement, which approval shall be in Purchaser's sole and absolute discretion. The cost of the title commitment and policy, the cost of any endorsements required to correct unpermitted title exceptions, and all closing fees shall be paid by Purchaser.

b. Current Survey. Purchaser may, at Purchaser's cost and expense, secure a current (dated subsequent to the Second Notice) ALTA/ACSM survey of the Property (the "Survey"); Not later than ten (10) days following receipt of all Survey (the "Survey Advisory Date"), Purchaser shall provide written notice to Seller of ("Purchaser's Survey Notice") of any matters affecting title to the Property which are not permitted by Purchaser as to which Purchaser disapproves, and pursuant to said notice request that Seller correct such unpermitted title matters. Seller shall, in the exercise of its reasonable discretion, advise Purchaser not later than the fifth (5th) business day following its receipt of the Survey ("Survey Response Date") as to whether Seller intends to correct any unpermitted title matters or provide endorsement coverage with respect thereto prior to the Closing. If Seller elects not to correct the unpermitted title matters, , Purchaser shall have the option to either waive its objection or cancel this Agreement in writing to Seller given no later than the expiration of the fifth (5th) Business Day following the Title Response Date, or correct the unpermitted title matter by way of endorsement coverage at Purchaser's sole expense. Purchaser shall have the right to approve the form and content of the endorsement, which approval shall be in Purchaser's sole and absolute discretion.

Section 4. Prorations. Seller agrees to provide to Purchaser at closing a credit for any unpaid real property taxes not currently due and owing. Such taxes shall be prorated at 105% of the amount indicated on most recent tax bill issued. Seller represents and warrants that all utilities associated with the Property will be paid in full as of the date of Closing and that no other utility charges or other expenses exist to be pro-rated. Purchaser acknowledges that in the event Seller retains possession under the provisions of Paragraph 2e, pending utility charges shall not have to have been paid by time of Closing.

Section 5. Conditions to Closing. Purchaser's obligation to purchase the Property shall, in addition to any other conditions set forth in this Agreement, be conditional and contingent upon satisfaction, or written waiver by Purchaser, of each and all of the below listed conditions on or before Closing Date (the "Conditions"):

a. Title Policy. On the Closing Date, Title Insurer shall be irrevocably committed to issue to Purchaser an ALTA extended coverage owner's policy of title insurance for the Property, with such endorsements requested by Purchaser (the "Title Policy") subject only to the permitted exceptions to title. Seller agrees that it will not cause any matters to affect title to the Property which would constitute further exceptions under the Title Policy.

b. Covenants, Representations and Warranties. The covenants of Seller are fully performed, and the representations and warranties of Seller are true and correct, on the Closing Date.

c. No Condemnation. The Property is not subject, in whole or in part, to any condemnation proceeding, or threat thereof, from any person other than the Purchaser on the Closing Date.

d. No Third Parties in or with right to Possession Except as Stated Herein.. No person or entity has, or claims to have, any right to possession of the Property or is in possession of the Property, whether by lease, license, or other means or claim of right except for xxxx d/b/a Batavia Insurance (Tenant). Seller represents that it has the authority to obtain possession upon no more than 60 days notice, and agrees that, within 5 days of receipt of Purchaser's Notice for Possession, Seller shall give Tenant notice to terminate the lease and/or occupancy within 60 days of Seller's Notice.

Section 6. Documents to be Delivered at Closing On the Closing Date, the following fully executed documents and/or items, acknowledged where appropriate, and in form and substance reasonably satisfactory to Purchaser shall be delivered to the Escrow (together referred to herein as the "Closing Documents"):

a. Deed. A Warranty Deed ("Deed") from Seller in form and content reasonably acceptable to Seller and Purchaser, conveying good and insurable fee simple title, subject to the permitted exceptions, and otherwise in recordable form.

b. Settlement Statement. A settlement statement prepared by the parties or the Title Insurer and acceptable to Purchaser and Seller showing all cash receipts and disbursements to be made on the Closing Date.

c. Title Policy. The Title Policy issued by the Title Insurer in the amount of the Purchase Price, insuring fee simple title to the Property as being vested in Purchaser, subject only to the permitted exceptions, and containing such endorsements as Purchaser may require. Purchaser shall be responsible to have the Title Policy delivered at the Closing (in a marked up and signed commitment or signed pro forma format so that upon closing the Title Insurer is insuring Purchaser's title to the Property, as opposed to committing to insure title), with the original Title Policy endeavored to be delivered to Purchaser within five (5) Business Days following the Closing Date. The cost of the Title Policy shall be borne by the Purchaser.

d. Non-Foreign Status Affidavit. An Affidavit of Non-Foreign Status executed by Seller in form and content reasonably acceptable to Seller and Purchaser, if necessary.

e. Other Documents. All other documents affecting title to or possession of the Property and necessary to transfer or assign the same to Purchaser as provided herein, including without limitation, documents reasonably required by the Title Insurer.

Section 7. Representations and Warranties of Seller. Seller represents and warrants, and covenants and agrees as follows for the benefit of Purchaser and Purchaser's successors and assigns:

a. Status of and Execution by Seller. Seller is now, and on the Closing Date will be duly empowered and authorized to do all things required of it under or in connection with this Agreement. All agreements, instruments, and documents herein provided to be executed or to be caused to be executed by Seller will be duly executed by and binding upon Seller and enforceable according to their terms. Seller is the fee simple owner of the Property.

b. Non-Foreign Status. Seller is not a "foreign person" as defined in, and Purchaser shall not be required to withhold any portion of the Purchase Price pursuant to Internal Revenue Code Section 1445.

c. Litigation and Condemnation. Seller has not received notice that any actions, suits, or proceedings of any kind are pending or threatened against or affecting Seller or the Property in any court of law or in equity or in arbitration or by any governmental department, commission, board, bureau, agency, or other instrumentality which might materially adversely affect the ownership or operation of the Property or the ability of Seller to timely perform its obligations under this Agreement, except from Purchaser. To Seller's knowledge, Seller has not received notice of any condemnation action threatened or pending against the Property, except from Purchaser, or any proposed or pending special assessment proceeding.

d. Violation of Laws. Seller has not received any written notice that the Property is in violation of any order, judgment, injunction, award, or decree of any court or agency of competent jurisdiction or any other requirement of any governmental authority or arbitrator or Board of Fire Underwriters applicable to the Property.

e. No Leases/Rights of Third Parties. There are no leases, licenses, or other rights of third parties to occupy or use the Property or any portion thereof, except as described in Paragraph 5d herein.

f. Special Assessments. Seller has not received any notice or information concerning any assessments for improvements (site or area) which have been or are to be installed by any public authority, the cost of which is to be assessed in whole or in part against any part of the Property.

g. Authority to Contract. Neither this Agreement nor anything provided to be done hereunder, or required to be done hereunder to effectuate the transaction contemplated hereunder, by Seller, including but not limited to the conveyance of the Property, will violate any contract, agreement or instrument to which Seller is a party to and/or which affects the Property.

h. Recapture Agreements. There are no obligations in connection with the Property for any so called "recapture agreements" involving refund, participation or payment of monies, nor any charge for work or services done, or to be done, upon or relating to or benefitting, whether now or in the future, the Property.

Seller shall be required to state in writing prior to Closing exceptions to the above listed representations, warranties, and covenants, in which case Purchaser may (i) terminate this Agreement if such exceptions are not reasonably acceptable, (ii) elect to close this transaction notwithstanding such exceptions, and/or (iii) pursue any and all other remedies available to Purchaser at law or in equity. The representations and warranties contained in this Agreement shall survive the Closing and the recordation of the Deed. Any liability of Seller arising in connection with the representations and warranties contained in this Agreement, however, shall terminate three hundred sixty five (365) days from the Closing Date, except for any claims asserted prior to the expiration of such three hundred sixty five (365) day period.

Section 8. Default. Seller shall be in default under this Agreement (i) if Seller breaches any representation or warranty of Seller contained in this Agreement, (ii) if Seller fails to timely perform any of its covenants, agreements, and/or obligations contained in this Agreement, (iii) if, as of Closing, there exists any unpermitted title and/or survey exceptions, and (iv) if any of the conditions set forth in Section 5 above or elsewhere contained in this Agreement are unsatisfied as of Closing as the result of Seller's action or inaction. Purchaser shall provide Seller with written notice of default and Seller shall be entitled to cure any such default within ten (10) days of receipt of Purchaser's notice of default. In the event of an uncured default by Seller under this Agreement, Purchaser shall, notwithstanding anything to the contrary contained in this Agreement, have all remedies specified in this Agreement

and all other remedies available to Purchaser at law or in equity, including without limitation, specific performance. The recitation of a specific remedy in this Agreement shall not exclude any and all other remedies available to Purchaser at law or in equity.

Purchaser shall be in default under this Agreement if Purchaser breaches any representation or warranty of Purchaser herein contained in this Agreement or if Purchaser fails to timely perform any of its covenants, agreements, and/or obligations contained in this Agreement. In the event of a default by Purchaser under this Agreement which is not cured within ten (10) days of written notice of default received by Purchaser from Seller, Seller's sole and exclusive remedy hereunder shall be to terminate this Agreement by notice to Purchaser, whereupon all rights, duties and obligations of the parties under this Agreement shall terminate.

Section 9. Cooperation to Effect 1031 Exchange. Seller may elect to effect its transfer and conveyance of the Property as part of an exchange under Section 1031 of the Internal Revenue Code of 1986, as amended. If Seller so elects, it shall provide notice to Purchaser of such election, and thereafter may at any time at or prior to the Closing assign its rights (but such assignment shall not relieve Seller of its obligations) under this Agreement to a "qualified intermediary" as defined in Treasury Regulation §1.1031(k)-1(g)(4), subject to all rights and obligations hereunder of Seller. Purchaser agrees to cooperate with all reasonable requests of Seller and the "qualified intermediary" in arranging and affecting the transfer of the Property in accordance with such provision so long as the same do not cause expense to Purchaser or liability and the date of the Closing hereunder is not delayed. It is the intent of the parties that Purchaser shall incur any income tax liability as a result of cooperating with Seller in consummating a tax-deferred exchange, and that Purchaser shall not incur any expenses or liability of any nature in connection with such exchange transaction. Seller, if electing to effect an exchange, agrees to and shall indemnify and hold harmless Purchaser from any and all loss, liability, costs, claims, demands, expenses, damages, actions, causes of action and suits (including, without limitation, reasonable attorney's fees and costs of litigation, if any) arising out of or related to Purchaser's participation in any such exchange transaction hereunder. Notwithstanding the foregoing, all representations, warranties, or other agreements entered into by and between Seller and Purchaser either herein or in any other document executed before or at Closing and intended to survive Closing shall continue in full force and effect and not be effected by Seller's assignment of its rights and obligations to its qualified intermediary.

Section 10. Miscellaneous.

a. Possession. Possession of the Property shall be delivered to Purchaser six (6) months from the Closing date.

b. Attorney Fees. In the event that a party hereto is in default of its obligations herein contained and the non-defaulting party sues to enforce its rights hereunder, the defaulting party shall pay all of the costs and expenses (including reasonable attorney fees) incurred by the non-defaulting party in the enforcement of the terms and provisions of this Agreement, including causing the return and disbursement of the any monies held in trust to Purchaser if same is entitled to the return thereof.

c. Offer and Acceptance. Delivery by Purchaser to Seller of a copy of this Agreement executed by Purchaser shall constitute a contingent offer to purchase the Property upon the terms and conditions herein set forth which offer shall be effective for a period of fifteen (15) full Business Days following the time of such delivery. If Seller fails to deliver a fully executed counterpart of this Agreement to Purchaser prior to expiration of such fifteen (15) full Business Day period, then at Purchaser's sole option, said offer may be revoked and rescinded in its entirety at any time thereafter, and upon such revocation and rescission, said offer and this Agreement shall have no further force or effect. The signature of the City Administrator shall be considered valid for representation of Purchaser to this Agreement, provided that the Agreement is subject to the condition subsequent of the City Council's approval at a regular or special public meeting within thirty (30) days following the Seller's acceptance.

d. Council Approval Contingency. The Contract must be approved by two thirds (2/3s) of the Batavia City Council, and, if the Batavia City Council fails to approve the Contract within thirty (30) days from the Effective Date, this Contract will deemed void, and the earnest money shall be returned.

e. Confidentiality. The Seller shall not disclose the terms of this Agreement unless and until the Council Approval Contingency has been satisfied or the Purchaser has revoked or rescinded the offer to purchase

prior to acceptance of the offer, and disclosure of the terms of this Agreement prior to those triggering events shall be grounds for default and termination of the Agreement and forfeiture of the earnest money.

f. Counterparts. This Agreement and any document or instruments executed pursuant hereto may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instruments.

g. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. In case of litigation, venue for any proceedings arising under this Agreement shall be in Kane County, Illinois

h. Time of Essence. Time is of the essence of this Agreement.

i Delivery of Property Free of Rights of Others. Seller shall deliver the Property the Possession Date, free and clear of any and all rights of third parties to occupy or use the Property other than Purchaser and/or affiliates of Purchaser, easements of record as of the date of this Agreement, or other written agreement between the parties, except for the possession as described in Section 2.b herein.

j. Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Purchaser, without the consent of Seller, may at any time on or after the date hereof assign all of its right, title, interest, and obligations in and to this Agreement to its nominee and upon such assignment, Purchaser shall be relieved of any and all obligations and liability under this Agreement.

k. Costs. The parties agree that, as Purchaser is a municipal corporation, the transaction is not subject to state and county transfer taxes, and that there are no local estate transfer taxes. Purchaser shall be liable for the premium for the extended coverage policy of title insurance and any endorsements thereto, the cost of the Survey, the cost of a Phase I environmental study, and the escrow fees. Seller and Purchaser shall each be responsible for paying their respective legal fees, consultant fees, and costs, if any, outside of escrow; except that Purchaser agrees to pay Seller \$2500 for attorney's fees and \$5000 for moving expenses.

l. Notices. All notices and demands given or required to be given by any party hereto to any other party ("notices") shall be in writing and shall be delivered in person or sent by telecopy with electronic confirmation of receipt thereof and with concurrent mailing by U.S. Postal Service delivery, or by a reputable overnight carrier that provides a receipt, such as Federal Express or UPS, or by registered or certified U.S. mail, postage prepaid, addressed as follows (or sent to such other address as any party shall specify to the other party pursuant to the provisions of this Section):

To SELLER:

Eldon P. Frydendall, Trustee
JOL Joint Living Trust
33 S Lincoln
Batavia, IL 60510
Fax 630-879-0510
Email: epfrydendall@aol.com

With a copy to:

Paul Greviskes
P.O. Box 393
Batavia, IL 60510
Fax: (630) 879-8390
Email: paulgreviskes@sbcglobal.net

To PURCHASER:

City Administrator
City of Batavia
100 North Island Avenue
Batavia, IL 60510
Fax: (630) 454-2001
Email: cityadministrator@cityofbatavia.net

With a copy to:

Kevin G. Drendel
111 Flinn St.
Batavia, IL 60510
Fax: (630) 406-6179
Email: kgd@batavialaw.com


ANY NOTICE REQUIRED FOR UNDER THIS AGREEMENT MAY ALSO BE SENT BY EMAIL. All notices delivered in the manner provided herein shall be deemed given upon actual receipt (or attempted delivery if delivery is refused).

Business Day. For purposes of this Agreement, "business day" or "Business Day" shall mean Monday through Friday, excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and other legal holidays normally observed by business offices government offices, and/or banking offices.

Section 11. Broker. Seller and Purchaser represent and warrant that they have not dealt with any broker in connection with this Agreement and/or the transaction contemplated herein, and that neither owes a commission related to this transaction.


IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

PURCHASER:
CITY OF BATAVIA, AN ILLINOIS MUNICIPAL CORPORATION

BY: 
ITS: ADMINISTRATOR
NAME: WILLIAM R. MCGRATH

DATED June 30, 2016

SELLER:
JOL JOINT LIVING TRUST

BY: 
ITS: TRUSTEE
NAME: ELDON P. FRYDENDALL

DATED 7-18-2016 2016

BY: 
ITS: TRUSTEE
NAME: JO S. FRYDENDALL

DATED 7-18-20, 2016

(THE LAST DATE THIS AGREEMENT IS SIGNED SHALL THEREAFTER BY KNOWN AS THE "EFFECTIVE DATE")

Left Blank

EXHIBIT A – LEGAL DESCRIPTION

THAT PART OF LOT 5 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF FOX RIVER, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE SOUTH LINE OF SAID LOT, 31 FEET EASTERLY FROM THE SOUTHWESTERLY CORNER THEREOF; THENCE NORTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID LOT 118 FEET; THENCE EASTERLY PARALLEL TO THE SOUTHERLY LINE OF SAID LOT 18 FEET; THENCE SOUTHERLY PARALLEL WITH THE WESTERLY LINE OF SAID LOT 118 FEET TO THE SOUTHERLY LINE THEREOF; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 5, 18 FEET TO THE POINT OF BEGINNING, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS .

Property Address: 121 E. Wilson St., Batavia, IL 60510

PIN: 12-22-276-014-0000