

# CITY OF BATAVIA

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**DATE:** September 15, 2016  
**TO:** City Council  
**FROM:** Laura Newman, City Administrator

**SUBJECT: CONSIDERATION OF ORDINANCE NO. 16-59, “APPROVING AND AUTHORIZING THE ACQUISITION OF THE REAL PROPERTY LOCATED AT 113 E. WILSON STREET BATAVIA, IL” (FISHER PROPERTY)**

Please find attached Ord. No. 16-59, “Approving and Authorizing the Acquisition of Real Property Located at 113 E. Wilson Street, Batavia, IL” (Fisher Property)

## **Background**

For the past several months, City Staff and City Attorney have been negotiating the purchase of the real estate at 113 E. Wilson Street (“Fisher Property”). The City’s purchase of this property (and ultimately removing all existing structures located thereon) is required by the recently approved TIF Redevelopment Agreement (RDA) 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 September 13<sup>th</sup>, the parties reached an agreement on the following pertinent terms:

1. Purchase Price:
  - a. \$350,000.00 (Three Hundred and Fifty Thousand Dollars and No Cents) for Property
  - b. \$250,000.00 (Two Hundred and Fifty Thousand Dollars and No Cents) for Relocation
2. Earnest Money Deposit: Purchaser City will pay \$5,000.00 to Sellers, Michael A. Fisher and Michael A. Fisher, DDS, PC, as non-refundable “earnest money”. This amount will be applied to the purchase price at closing.
3. Closing Date: January 2, 2017.
4. Possession Date: February 1, 2017. On this date, the City shall possess property free and clear. Prior to this date, Dr. Fisher, at his sole discretion, may remain in the building at no cost.
5. Termination of One Washington Place Redevelopment Agreement. If the RDA with 1 N. Washington, L.L.C., (One Washington Place project) is terminated on or before October 7, 2016, City shall have no obligation to close and Purchase Agreement between the City and Fisher and Fisher DDS, PC, shall be terminated.
  - a. Other Costs to City: Title Insurance, Escrow and related closing fees (approximately \$5600.00);

## **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.

Like the recent Frydendall property acquisition, this purchase and sale, however, is not an “arm’s length transaction”. 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, whereas the City was highly motivated to purchase the subject property, the property owner was not at all interested in selling it. Recognizing the City’s authority under TIF state statute to use eminent domain to acquire the property, Dr. Fisher retained legal counsel with specific expertise in the area of condemnation and eminent domain.

The above described conditions resulted in the City agreeing to pay an amount that may exceed the true fair market value for an arm’s length transaction. According to the Seller’s Appraiser, Roger Tibble, MAI, the property’s fair market value (as a fully-equipped, two operatory dental office) is \$350,000. Conversely, the City’s appraiser, Douglas Adams, MAI, placed a fair market value for the property at \$75,000. However, the City’s appraiser was only able to inspect the exterior of the building and therefore could not actually inspect the relative state of equipment, operatory spaces, etc. within the building. As such, Mr. Adams simply valued the building as being “suited to a variety of office uses”.

Furthermore, while the City does have eminent domain authority to acquire the Fisher property under the TIF statutes, state and federal laws require that when a governmental entity is acquiring property from an “unwilling seller”, it must pay relocation costs if such relocation becomes necessary. Obviously, under the redevelopment plan, the dental practice and office cannot remain at its current 113 E. Wilson St. location. According to Dr. Fisher’s attorney, a “specialist in dental relocation”, Mr. Henry Schein, was retained to estimate relocation costs in this case and, according to Mr. Schein’s report (presented to city staff), such relocation costs are estimated to be \$447,920. The City did not obtain a cost estimate for relocating the dental practice and office. The total of the seller’s appraised market value for the property (\$350,000) and estimated relocation costs (\$447,920) then is \$797,920.

Whether the value of the property and the cost for relocation together approximates \$800,000, as the seller believes, or the \$75,000 appraised value of the property as a generic office building and some debatable amount for the dental practice and office relocation as may be argued by the City, it is staff’s firm belief that in order to fulfill its obligation per the RDA, and short of finding a mutually agreeable purchase price between the City and Dr. Fisher, the City was going to have to file and prevail in a condemnation lawsuit to acquire it Dr. Fisher’s property.

In the final analysis, acquiring the Fisher property is necessary for the redevelopment to go forward and, as has been repeatedly affirmed by staff and City Council over the past several months, the One Washington Place redevelopment will accomplish many goals that will benefit the public, to include, 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 at the proposed \$600,000 purchase price 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 approval of Ordinance 16-59, “Authorizing Execution of a Purchase and Sale Agreement with Michael A. Fisher and Michael A. Fisher, DDS, PC for the Purchase of Property Located at 113 E. Wilson Street, Batavia, IL”.

Attachments:

Ordinance 16-59, “Approving and Authorizing the Acquisition of Real Property Located at 113 E. Wilson Street, Batavia, IL” (Fisher Property);  
Purchase and Sale Agreement”.

CC: Mayor Schielke; Kevin Drendel; Department Heads

**CITY OF BATAVIA, ILLINOIS  
ORDINANCE 16-59**

**APPROVING AND AUTHORIZING THE ACQUISITION OF REAL PROPERTY  
LOCATED AT 113 EAST WILSON STREET BATAVIA, IL (FISHER PROPERTY)**

**ADOPTED BY THE  
MAYOR AND CITY COUNCIL  
19TH DAY OF SEPTEMBER, 2016**

Published in pamphlet form  
by authority of the Mayor  
and City Council of the City of Batavia,  
Kane & DuPage Counties, Illinois,  
This 19th day of September, 2016

Prepared by:  
  
City of Batavia  
100 N. Island Ave.  
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS  
ORDINANCE 16-59**

**APPROVING AND AUTHORIZING THE ACQUISITION OF REAL PROPERTY  
LOCATED AT 113 EAST WILSON STREET BATAVIA, IL (“FISHER PROPERTY”)**

**WHEREAS**, City staff has identified the property at 113 E. Wilson Street in the City of Batavia, IL, as property that is necessary for acquisition for the redevelopment of certain City-owned properties surrounding the 113 E. Wilson Street property for the purpose of providing public parking for the downtown, and to allow for the redevelopment of the subject area for residential and commercial uses, ultimately resulting in increasing the tax base of the City, bring increased foot traffic to the downtown that will benefit 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 113 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 September 14, 2016 (“Agreement”); and

**WHEREAS**, the Mayor and City Council members have determined that the acquisition of such properties and property rights 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.

CITY OF BATAVIA, ILLINOIS ORDINANCE 16-59

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**PRESENTED** to and **PASSED** by the City Council of the City of Batavia, Illinois, this 19<sup>th</sup> day of September, 2016.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, this 19<sup>th</sup> day of September, 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										
<b>VOTE:</b> ___ Ayes   ___ Nays       ___ Absent       ___ Abstentions <b>Total holding office: Mayor and 14 aldermen</b>										

ATTEST:

\_\_\_\_\_  
Christine Simkins, Deputy City Clerk

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made and entered into September \_\_\_\_\_, 2016 (or such later date that Purchaser receives a fully executed copy of this Agreement) by and between **MICHAEL A. FISHER** ("Seller"), and **CITY OF BATAVIA**, AN ILLINOIS MUNICIPAL CORPORATION ("Purchaser"). The last of the dates that this Agreement is signed by Seller or 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 113 E. Wilson St., Batavia, Illinois and the owner of the Personalty (hereinafter defined and, together with the Property, collectively referred to herein as the "Property" described below).

**B.** This Agreement has been negotiated under the imminent threat of eminent domain by Purchaser, and an agreement has been reached by the parties in regard to the sale and purchase price of the Property and for reasonable relocation costs for the business operated by Seller in the Property to avoid condemnation proceedings by the Purchaser and in keeping with the State and Federal laws on relocation assistance, and Seller agrees to sell, and Purchaser agrees 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 forcibly acquire the 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 imminently 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, and Purchaser hereby agrees to purchase the Property for Three Hundred Fifty Thousand and No/100 Dollars (\$350,000); and, in addition to the sum for the value of the Property, Purchaser agrees to pay for estimated relocation costs, that would be necessary if the dental practice and office were relocated, as required by law when property is acquired by a governmental entity from an unwilling seller, in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) for a total Purchase Price of Six Hundred Thousand and No/100 Dollars (\$600,000).

**b. Earnest Money Deposit.** Upon execution of this Agreement, Purchaser shall tender to Seller a refundable earnest money deposit in the amount of Five Thousand and No/100 Dollars (\$5,000). The amount of the earnest money deposit shall be applied against the Purchase Price at the Closing.

**c. Personalty.** All personal property, fixtures and trade fixtures, if any, owned by Seller and located on or in the Property (the "Personalty") shall, if desired at Seller's discretion, 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 for legal description of the Property.

## **Section 2. Closing Date; Possession; Termination.**

**a. Closing Date.** The "Closing" of the transaction contemplated hereby shall be by January 2, 2017, or sooner as the parties agree (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 February 1, 2017, or such earlier date as Seller may elect, in Seller's sole discretion, ("Possession Date"), free and clear of the rights of all third parties, excepting Purchaser and/or affiliates of Purchaser identified by Purchaser in writing. In the event Seller elects to tender possession of the Property prior to February 1, 2017, Seller shall notify Purchaser in writing of same at least fourteen (14) days in advance specifying the date possession of the Property will be tendered to Purchaser.

**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 Purchaser 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 the Possession Date. Seller shall remove all Personalty desired by Seller prior to the Possession Date, and any such Personalty remaining on or within the Property as of the Possession Date shall be the property of Purchaser to do with it as it wishes. Seller shall have no claim against the Purchaser for loss due to Seller having left any Personalty on or within the Property. 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. Michael A. Fisher, DDS, PC is a party to this Agreement for the purpose of agreeing to the obligations regarding the retention of possession and transferring possession.

**c. Pre-Closing Authorizations.** Seller authorizes Purchaser to initiate the applications and process for approval of demolition, zoning, site plan, subdivision and other entitlements prior to Closing.

## **Section 3. Property Information/Title and Survey.**

**a. Title.** Seller has tendered to Purchaser a copy of the most recent title policy covering the Property. 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") no later than thirty (30) days following the effective date of this Agreement. Not later than ten (10) business 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. In the event that an unpermitted exception to title in the form of a third party claiming any interest in or lien against the Property exists under subparagraph (iii) herein, Seller shall have ten (10) days after receipt of the Purchaser's Title Notice ("Seller's Response Date") to commit to correcting and removing said exception on or before Closing. In the event Seller fails to commit to do so in writing, Purchaser shall have the option to either waive its objection or cancel this Agreement in writing by giving notice to Seller no later than the expiration of the tenth (10<sup>th</sup>) business day following Seller's Response Date. For any other unpermitted exceptions, Purchaser shall not have the right to terminate this Agreement if the unpermitted title matter can be corrected by way of endorsement coverage. The cost of the title commitment and policy, including 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 sole cost and expense, secure a current ALTA/ACSM survey of the Property (the "Survey"). Seller agrees to provide to Purchaser any existing surveys in Seller's possession.

**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 the 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 2b, 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 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 Michael A. Fisher, DDS, PC ("Tenant"). Seller represents that Seller has the authority to give Purchaser possession on the Possession Date free and clear of the Tenant's interest in the Property, and Michael A. Fisher, DDS, PC agrees that its interest as Tenant in the Property shall terminate or otherwise cease on the Possession Date, and Michael A. Fisher, DDS, PC agrees to be bound by the provisions in this Agreement to vacate the Property by the Possession Date.

**e. Non-termination of Redevelopment Agreement.** In the event that the 1 N. Washington Redevelopment Agreement approved by Purchaser on September 6, 2016 is terminated on or before October 7, 2016, or if written notice of termination has been given by or to Purchaser on or before October 7, 2016, Purchaser shall provide immediate written notice of same to Seller whereupon Purchaser shall have no obligation to close this transaction, and this Contract will terminate and become null, void and of no further force and effect. In the event that no such written notice is given to Seller by Purchaser on or before October 7, 2016, Purchaser's right to terminate shall be deemed waived and the Contract shall remain binding on both Purchaser and Seller and shall remain in full force and effect.

**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 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.** To the best of Seller's knowledge with no duty to investigate, 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.** To the best of Seller's knowledge with no duty to investigate, 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; or (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 one hundred eighty (180) days from the Closing Date, except for any claims asserted prior to the expiration of such one hundred eighty (180) 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; or (iii) 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 shall, notwithstanding anything to the contrary contained in this Agreement, have all remedies specified in this Agreement and all other remedies available to Seller 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 Seller at law or in equity.

**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 not 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. Attorney Fees.** In any action to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs of litigation. Each party shall pay their own attorney fees incurred in connection with this Agreement and the Closing.

**b. 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 ten (10) 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 ten (10) 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 of Batavia 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 by September 19, 2016, following Seller's acceptance.

**c. Council Approval Contingency.** The Agreement must be approved by two thirds (2/3s) of the Batavia City Council, and, if the Batavia City Council fails to approve the Agreement by September 19, 2016, this Agreement will be deemed void, and the earnest money shall be returned.

**d. Confidentiality.** Seller shall not disclose the terms of this Agreement unless and until the Council Approval Contingency has been satisfied or 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.

**e. 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.

**f. 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.

**g. Time of Essence.** Time is of the essence of this Agreement.

**h. Delivery of Property Free of Rights of Others.** Seller shall deliver the Property on the Possession Date, free and clear of any and all rights of third parties to occupy or use the Property other than Purchaser.

**i. Successors and Assigns.** This Agreement and all 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. In the event of a Purchaser assignment, Purchaser shall be relieved of any and all obligations and liability under this Agreement as of the Possession Date.

**j. 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:

Michael A. Fisher  
113 E. Wilson Street  
Batavia, IL 60510  
Fax:  
Email: [fishmcc@aol.com](mailto:fishmcc@aol.com)

With a copy to:

Scott M. Day or Rachel K. Robert  
Day Robert & Morrison, P.C.  
300 E. 5th Ave., Ste. 365  
Naperville, IL 60563  
Fax: (630) 637-9814  
Email: [smd@drm.law](mailto:smd@drm.law)/[rkr@drm.law](mailto:rkr@drm.law)

To PURCHASER:

Laura Newman  
City Administrator  
City of Batavia  
100 North Island Avenue  
Batavia, IL 60510  
Fax: (630) 454-2001  
Email: [lnewman@cityofbatavia.net](mailto:lnewman@cityofbatavia.net)

With a copy to:

Kevin G. Drendel  
Drendel & Jansons Law Group  
111 Flinn St.  
Batavia, IL 60510  
Fax: (630) 406-6179  
Email: [kgd@batavialaw.com](mailto: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" 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.

*[Signature Page to Follow]*

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**

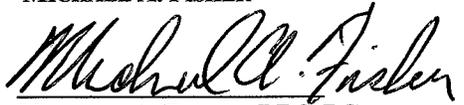
**BY:** \_\_\_\_\_  
**ITS: ADMINISTRATOR**  
**NAME: LAURA NEWMAN**

DATED \_\_\_\_\_, 2016

**SELLER:**

  
**MICHAEL A. FISHER**

DATED 9-14-2016, 2016

  
**MICHAEL A. FISHER, DDS, PC**  
(AS TO SECTIONS 2.D, 5.D AND 10.A ONLY)

DATED 9-14-2016, 2016

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

**EXHIBIT A – LEGAL DESCRIPTION**

**PARCEL ONE:**

THE WESTERLY 26 FEET OF THE EASTERLY 66 FEET OF THE SOUTNERLY 118 FEET OF LOT 4 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

**PARCEL TWO:**

EASEMENT FOR USE AS ALLEY CREATED BY INSTALLMENT AGREEMENT FOR DEED RECORDED MARCH 22, 1968, AS DOCUMENT 1110021 MADE BY PASETTI TO FITCH AND OTHERS FOR THE BENEFIT OF PARCEL 1 OVER THE SOUTHERLY 120.64 FEET (EXCEPT THE EASETERLY 66 FEET THEREOF) OF LOT 4 IN BLOCK 7 OF THE ORIGINAL TOWN OF BATAVIA, ON THE EAST SIDE OF THE FOX RIVER, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

Property Address: 113 E. Wilson St., Batavia, IL 60510

PIN: 12-22-276-010-0000