

## **REAL PROPERTY EXCHANGE AGREEMENT BETWEEN THE WINNETKA PARK DISTRICT AND THE ORCHARD 2020 REVOCABLE TRUST**

This Real Property Exchange Agreement (“Agreement”) is made and entered into this 10<sup>th</sup> day of October, 2020 (“Effective Date”), by and between Orchard 2020 Revocable Trust, (“Orchard”), 353 North Clark Street, 27th Floor, Chicago, IL 60654, c/o Peter Lee, an Illinois Revocable Trust and the Winnetka Park District, an Illinois park district (“Park District”) 540 Hibbard Road, Winnetka, Illinois 60093. The Park District and Orchard are sometimes referred to herein as a “Party” or collectively as the “Parties.”

### **RECITALS**

- A. The Park District is the owner in fee simple of the real property commonly known as a southern portion of Centennial Park, legally described and depicted in **Exhibit 1**. (the “Centennial Parcel”).
- B. The Centennial Parcel is located east of Sheridan Road and south of Elder Park.
- C. Orchard is the owner or contract purchaser of the real property and commonly known as 261 Sheridan Road, Winnetka Illinois, legally described in **Exhibit 2** (“261 Sheridan”). 261 Sheridan and the Centennial Parcel are sometimes referred to individually as a “Parcel” or collectively as the “Parcels.”
- D. The Parcels each have approximately seventy (70) lineal feet of shoreline along Lake Michigan.
- E. The Park District is governed in part by the Illinois Park District Code, 70 ILCS 1205/1-1 (et seq.) (the “Code”).
- F. The Park District and the residents of Winnetka would benefit from the Park District’s acquisition of 261 Sheridan, which would allow the Park District to consolidate and unify Centennial Park and Elder Lane Park into a single park, consistent with the Park District’s Lakefront Master Plan adopted by the Park District’s Board of Park Commissioners (“Park Board”) on March 18, 2016 (“Master Plan”).
- G. Orchard would benefit from the exchange by the acquisition of undeveloped land adjacent to other property owned by Orchard, which additional land will be consolidated with the existing single family lot to the south to create one lot and will facilitate Orchard’s use and enjoyment of a combined parcel capable of residential development consistent with applicable law.
- H. The Park District desires to convey the Centennial Parcel to Orchard and acquire 261 Sheridan from Orchard, and Orchard desires to convey 261 Sheridan to the Park District and acquire the Centennial Parcel from the Park District.

- I. Section 10-7 of the Code authorizes the Park District to convey real estate to a non-governmental entity in exchange for other real property of substantially equal or greater value and of substantially the same or greater suitability for park district purposes without additional cost to the Park District.

**NOW, THEREFORE,** in consideration of the mutual promises and undertakings herein contained, the sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**Section 1. Recitals and Exhibits.**

The Recitals set forth above are specifically incorporated into and made a part of this Agreement as though fully set forth in this Section 1. All exhibits identified herein are by this reference fully incorporated into and made an integral part of this Agreement.

**Section 2. Conveyances.**

Subject to satisfaction or waiver of each contingency as described in Section 4 of this Agreement, the Parties agree to exchange certain real property as follows (“Exchange”):

- A. The Park District agrees to convey to Orchard and Orchard agrees to accept from the Park District fee simple title in and to the Centennial Parcel located in the Village of Winnetka (“Village”), Cook County (“County”) on the terms set forth herein.
- B. Orchard agrees to convey to the Park District and the Park District agrees to accept from Orchard, fee simple title in and to 261 Sheridan, including the land, and all improvements thereon, including but not by limitation all buildings, structures, fixtures, easements, alleys, driveways, rights of way, privileges, tenements, hereditaments, uses and interests appurtenant to the land, on the terms set forth herein.
- C. Throughout this Agreement the term “Grantor” shall mean each Party in its capacity as a grantor of the parcel under its ownership and control prior to the Exchange. Throughout this Agreement the term “Grantee” shall mean each Party in its capacity as a grantee of the parcel to be conveyed to it at the Exchange Closing.

**Section 3. Parcel Values.**

The value of the real property to be exchanged is as follows:

- A. The approximate fair market value of the Centennial Parcel is \$3,075,000. The Parties have commissioned two appraisals of the Centennial Parcel to be completed prior to the Exchange Closing, defined below. The Parties acknowledge and agree that said appraisals will be attached to and incorporated into this Agreement as **Exhibit 3**.

- B. The approximate fair market value of 261 Sheridan is \$6,200,000 based on Orchard's arm's length purchase agreement for 261 Sheridan and related appraisals. The Parties have commissioned two appraisals of 261 Sheridan to be completed prior to Exchange Closing, defined below. The Parties acknowledge and agree that said appraisals will be attached to and incorporated into this Agreement as **Exhibit 3**.
- C. No earnest money for the transactions contemplated by this Agreement shall be required.
- D. At the Exchange Closing, Park District agrees to accept a charitable contribution from Orchard in an amount equal to the fair market value of 261 Sheridan less the fair market value of the Centennial Parcel. Orchard shall be solely responsible to undertake all actions and to pay all costs associated with establishing and documenting any such charitable contribution. Park District makes no representation, covenant, or warranty that the contribution will constitute a charitable donation or will be deductible for federal, state or local taxation purposes for Orchard or any other person, entity, or organization, or that any amount claimed as a charitable contribution qualifies as such or as a deductible expense. Park District will provide Orchard with a letter acknowledging a charitable donation in the amount as determined by the appraisal process described in this subsection.

**Section 4. Conditions Precedent.**

No conveyance specified herein shall occur unless and until the following conditions have been satisfied or waived by the Party benefitting from such contingency:

- A. Each Party securing such governmental approvals as such Party may reasonably deem necessary to comply with zoning, intended use, consolidation and subdivision requirements applicable to divide and combine their respective properties with other land and to build thereon for park or residential purposes (as the case may be) and any other third-party approvals that may be reasonably required ("Government Approvals"). Governmental Approvals shall be granted in such a manner that they shall not become effective unless and until the Party seeking the Government Approval takes title to the Parcel to which said Approval applies. Each Party shall diligently process such applications and petitions as may be required for the Governmental Approvals commencing after the Effective Date, and the Parties agree to reasonably work together to submit joint applications for Government Approvals. For avoidance of doubt, in the event the Village of Winnetka puts in place any conditions impacting the Centennial Parcel that are unacceptable to Orchard in its sole discretion, Orchard will have the right to terminate this Agreement.
- B. As required by the Park Code, the Park District has completed the following procedures which were a condition precedent to an exchange of real estate with Orchard:
  - 1. Determination of the recreational suitability of 261 Sheridan and the Centennial Parcel.

2. Publication of a notice of public meeting in a newspaper of general circulation within the Park District's boundaries on three (3) separate dates, with first and last publication not less than ten (10) days apart, and with the last publication of the notice not less than ten (10) days prior to the public meeting. A copy of the form of notice to be published is attached hereto as **Exhibit 4**.
3. The Park District's conduct of the public meeting to consider the appraisals described above, determine the recreational suitability of the parcels, and consider the terms and conditions of the Exchange.
4. The Park Board's determination that 261 Sheridan is of greater monetary value, and greater suitability for park purposes than the Centennial Parcel.
5. Park Board adoption of Park District Ordinance No. 580, finding that 261 Sheridan is of greater value, and greater suitability for park purposes than the Centennial Parcel, and authorizing and directing Park District officers, staff and legal counsel to proceed with the Exchange Closing.

The Parties acknowledge that four appraisals, two for each parcel have been commissioned, and will be completed and attached hereto as **Exhibit 3**. The Park District's receipt of all four (4) appraisals (two (2) appraisals of each Parcel) is a condition that must be satisfied prior to the Exchange Closing.

- C. Each Party performing or causing to be performed upon the Centennial Parcel and 261 Sheridan as applicable, such engineering tests, environmental and hazardous substance and toxicological tests, Phase I environmental studies, soil borings, or other physical tests or studies (and reviewing and inspecting all physical, legal and other matters, information and documents) as each Party, in its sole discretion, may determine necessary to verify the suitability of the Centennial Parcel for Orchard's intended use thereof or the suitability of 261 Sheridan for the Park District's intended use thereof, pursuant to the terms and conditions set forth in the Inspection Terms attached hereto as **Exhibit 5**.
- D. The representations and warranties of Grantor set forth herein will be true in all material respects on the Exchange Closing Date with the same force and effect as if such representations and warranties were made on and as of the Exchange Closing Date, and Grantor's covenants shall have been performed in all material respects in accordance with the terms of this Agreement.
- E. The Title Company is unconditionally prepared upon the Exchange Closing to issue to Grantee the Title Policy for the Parcel on the terms and conditions provided by this Agreement.
- F. The aforesaid conditions may be completed in any sequence. However, the Exchange Closing shall not occur, title to either Parcel shall not be conveyed, and no rezoning, subdivision, consolidation or other Government Approval shall be effective or recorded until all of the contingencies specified in this Section 4 are either obtained or waived by the Party holding the contingency. In the event that the conditions contained in this

Section 4 are not satisfied or waived on or before One Hundred Twenty (120) days after Effective Date ("Contingency Period"), either Party may give notice of termination to the other Party not later than fourteen (14) days after the expiration of the Contingency Period, and this Agreement shall become null and void. Notwithstanding the foregoing, either Party shall have the right to extend such deadline by an additional one hundred twenty (120) days by delivery of written notice to the other Party prior to expiration of the Contingency Period if Government Approvals have not been granted by such date.

**Section 5. Title.**

- A. Within twenty-five (25) days after the Effective Date, the Grantor, at Grantor's sole cost and expense, shall cause to be delivered to Grantee, a commitment for a 2006 ALTA Owner's Title Insurance Policy (the "Title Commitment") issued by the Chicago Title Insurance Company ("Title Company") in the amount of Six Million Two Hundred Thousand Dollars (\$6,200,000.00) for 261 Sheridan, and the amount of \$3,075,000 for the Centennial Parcel, issued on or after the Effective Date, covering title to the Parcel and naming Grantee as the proposed insured thereunder, as well as copies of all recorded documents referred to in Schedules A and B thereof.
- B. The Commitment shall include commitments to issue an extended coverage endorsement. Grantee shall be responsible for the costs of any endorsements other than the extended coverage endorsement.
- C. In the event the Commitment shall reflect encumbrances (except for encumbrances of a definite or ascertainable amount such as Grantor's mortgage that will be removed at Exchange Closing by payment from sales proceeds) or other conditions not acceptable to Grantee in its reasonable discretion ("Title Defects"), Grantee shall notify Grantor in writing of any Title Defects ("Title Defect Notice") within thirty (30) days after the Title Commitment is delivered to Grantee ("Title Defect Notice Deadline").
- D. Grantor shall have not more than thirty (30) days from the date of Grantee's Title Defect Notice within which to cure the Title Defects at Grantor's sole cost and expense or notify Grantee that Grantor elects not to cure such Title defects. ("Title Cure Period"). If Grantor fails or elects not to remove all of the Title Defects before the expiration of the Title Cure Period, Grantee may, within fourteen days after expiration of the Title Cure Period ("Title Election Period"), elect to either accept the uncured Title Defects or give notice of termination of this Agreement, in which case the Agreement shall terminate and the Parties shall be released from further obligation and liability hereunder.
- E. If Grantee does not notify Grantor of any Title Defects before the Title Defect Notice Deadline or fails to provide Grantor with written notice of termination of the Agreement within fourteen (14) days of the Title Election Period, the Commitment and/or uncured Title Defects shall be considered acceptable to Grantee and Grantee shall take title subject to the encumbrances and conditions contained therein.

**Section 6. Survey.**

- A. Within twenty-five (25) days after the Effective Date, Grantor, at Grantor's sole cost and expense, shall provide Grantee with a current ALTA survey for Grantor's Parcel (the "Survey"), certified by an Illinois licensed surveyor(s), that conforms to the current Minimum Standard of Practice for ALTA surveys, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois.
- B. The 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 (where accessible and except where the Parcel may extend into Lake Michigan).
- C. 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 ALTA standards for an ALTA survey."
- D. In the event the Survey shall reflect any matters not acceptable to Grantee in its reasonable discretion ("Survey Defects"), Grantee shall notify Grantor in writing of such Survey Defects (Survey Defect Notice") within 30 days after the later of the Effective Date or the date that the Survey is delivered to Grantee ("Survey Defect Notice Deadline").
- E. Grantor shall have thirty (30) days from the date of Grantee's Survey Defect Notice within which to cure the Survey Defects ("Survey Cure Period") or provide Grantee written notice that Grantor shall not cure such Survey Defects ("Grantor's Survey Notice"). If Grantor fails to cure the Survey Defects to Grantee's sole satisfaction prior to the end of the Survey Cure Period or provides Grantee with Grantor's Survey Notice, then Grantee may accept the Survey Defects or Grantee may give notice of termination of this Agreement, in which case the Parties shall be released from further obligation and liability hereunder and this Agreement shall terminate.
- F. If Grantee does not notify Grantor of any Survey Defects before the Survey Defect Notice Deadline or Grantee fails to terminate within fourteen (14) days of receipt of Grantor's Survey Notice, the Survey shall be considered acceptable to Grantee and Grantee shall take title subject to the encumbrances and conditions contained therein.

**Section 7. Escrow, Exchange Closing and Possession**

- A. Subject to the conditions and provisions of this Agreement that entitle either Party to terminate this Agreement, the Exchange Closing shall occur on that date which is fifteen (15) days after all contingencies specified in Section 4 herein have been satisfied or waived by the Party holding the contingency, unless otherwise mutually agreed by the Parties (the "Exchange Closing"). The conveyances specified in Section 2 (A) and (B) shall occur simultaneously at the Exchange Closing. The Exchange Closing shall occur via escrow at a mutually agreed office of the Title Company; if the Parties are unable to

agree on an office for closing, the closing shall occur in the Chicago office of the Title Company.

- B. The Exchange Closing shall be consummated through an escrow (the "Escrow") with the Title Company as escrowee, which Escrow conforms to the provisions of this Agreement. The cost of the Escrow shall be shared equally by the Parties. The Escrow shall provide that each Grantee's obligation to consummate the Exchange Closing is conditioned on the issuance by the Title Company to Grantee, a 2006 ALTA Owner's Title Insurance Policy in the amount of the Parcel Value as determined in Section 3 above, (the "Title Policy") covering the Parcel to be conveyed to Grantee and containing the general and standard exceptions, stipulations and exclusions contained in the standard form of said Title Policy, and further containing only the exceptions to title set forth in Section 5 above and such other exceptions to title subject to which Grantee agrees or shall be deemed to have agreed to accept pursuant to the provisions of this Agreement (collectively, the "Permitted Exceptions"). The Escrow shall further provide that any mortgage or lien which Grantee desires to place encumbering the Land shall be recorded by the mortgagee, lien holder or the Title Company only after the recording of the deed and all other documents to be recorded pursuant to the provisions of this Agreement. Grantor shall pay the premium to be paid to the Title Company for the "extended" Owner's Title Policy (exclusive of all endorsements other than extended coverage and those required to insure Grantee against loss or damage that may be caused by Unpermitted Exceptions (as defined in subparagraph 5 above, which Grantor elects to cure). Grantee shall pay the premium for the Lender's Policy (if any) and for all endorsements other than those required to insure Grantee against loss or damage that may be caused by Unpermitted Exceptions which Grantor elects to cure.
- C. Possession of each Parcel shall be delivered to the Grantee upon completion of the Exchange Closing unless otherwise agreed in writing by the Parties.

**Section 8. Exchange Closing Documents.** Grantor shall deliver to Escrowee the following executed documents on the Exchange Closing Date:

- A. A warranty deed ("Deed") in recordable form and conveying to Grantee title to the Parcel free and clear of all liens, encumbrances and exceptions to title, other than the Permitted Exceptions hereunder.
- B. An ALTA Statement executed by Grantor and covering the Property, and in form customarily required by the Title Company and such other affidavits as Grantee or Title Company may reasonably require, including Affidavit of Title.
- C. A GAP Undertaking in form approved by Grantor.
- D. Bill of Sale conveying personal property and fixtures in 261 Sheridan.
- E. A Certificate of Non-Foreign Status executed by Grantor.
- F. A fully paid ALTA Owner's Policy in the amounts and containing the endorsements described above, dated as of the date of Exchange Closing, insuring that title is vested in the Grantee, and subject only to the Permitted Exceptions.

- G. Transfer tax stamps and transfer tax exemption forms.
- H. Closing Statement
- I. Such other documents required by this Agreement and/or which Grantee, governmental law or regulation, or the Title Company may reasonably require.

**Section 9. Transaction Costs.** Except as otherwise expressly provided to the contrary in this Section 9, Grantor shall be responsible for all closing costs customarily paid by a seller in connection with the transactions contemplated by this Agreement and Grantee shall be responsible for all closing costs customarily paid by a purchaser, except as otherwise specified herein. Grantor shall pay State of Illinois and Cook County transfer taxes if any are due, the base premium for the Owner's Title Policy with extended coverage and the cost of any title insurance endorsements required to insure over any Unpermitted Exceptions which Grantor has agreed in writing to cure. Grantor and Grantee shall each pay one-half of the cost of the Escrow fees (including "New York Style" closing fees). Grantee shall be solely responsible for the costs of its Lender's Title Policy (if any) and its own due diligence activities, including, but not limited to, fees for engineering and environmental reports and the Governmental Approvals. Grantor and Grantee shall be responsible for the fees of their respective attorneys. Grantee shall pay the cost of all recording fees for the deeds and all fees and other charges in any way related to any mortgage loan obtained by Grantee, including, without limitation, mortgagee title policies; provided, however, that Grantor shall pay all recording fees for all documents required to remove any Unpermitted Exceptions which Grantor elects to cure.

**Section 10. Prorations.** The following items shall be prorated as of the Exchange Closing Date and shall be deducted from or added to the Purchase Price, as appropriate, payable at the Exchange Closing. The following items shall be prorated on a per diem basis as of midnight at the end of the day immediately preceding the Exchange Closing Date. The purpose and intent of the provisions set forth in this Section 10 and elsewhere in this Agreement is that Grantor shall bear all expenses of ownership and operation of the Property and shall receive all income accruing therefrom through midnight at the end of the day immediately preceding the Exchange Closing Date and Grantee shall bear all such expenses and receive all such income accruing thereafter:

- A. At or before Exchange Closing, Grantor shall be responsible for all real estate taxes, assessments, interest and penalties levied, pending or assessed against the Property for years prior to the year of the Exchange Closing, if any, and for the portion of the year in which the Exchange Closing occurs through the date of the Exchange Closing which will be billed by Cook County after the Exchange Closing. Parties acknowledge that as of the Effective Date, the Centennial Parcel is exempt from general real estate taxes and there are no general real estate taxes or special assessments applicable to the Property. Grantee shall be solely responsible for any and all general real estate taxes that accrue on the Parcel conveyed to such Grantee after the date of Exchange Closing.
- B. Grantor shall be responsible for all operating expenses of the Grantor's parcel which pertain to the period prior to and including the Exchange Closing Date.
- C. All other prepaid and accrued items which are customarily prorated in transactions



similar to the transaction contemplated by this Agreement shall be prorated in accordance with local custom in Winnetka, Illinois.

**Section 11. Grantor's Representations and Warranties.**

To induce Grantee to execute, deliver and perform this Agreement and without regard to any independent investigations made by Grantee, Grantor hereby to the best of Grantor's actual knowledge, represents and warrants to Grantee as follows, which representations shall be deemed remade at Exchange Closing:

- A. Grantor has full right, power and authority to enter into this Agreement and to perform its obligations hereunder without the necessity of obtaining any consent(s) from any party, subject only to the conditions and contingencies set forth herein including but not by limitation, Orchard's closing on its pending acquisition of 261 Sheridan.
- B. Grantor has no actual knowledge of, nor has Grantor received any written notice from any association or governmental entity regarding:
  - 1. zoning, building, fire, health code, FEMA, or US Army Corps of Engineers violations that have not been corrected;
  - 2. any pending rezoning;
  - 3. boundary line disputes (except as to previous disputes with Grantee);
  - 4. any pending condemnation or Eminent Domain proceeding;
  - 5. easements or claims of easements not shown on the public records;
  - 6. any hazardous waste on Grantor's Parcel;
  - 7. any improvements to Grantor's Parcel for which the required initial and final permits were not obtained;
  - 8. any improvements to Grantor's Parcel which are not included in full in the determination of the most recent tax assessment; or
  - 9. any improvements to Grantor's Parcel which are eligible for the home improvement tax exemption.
- C. Grantor has not received any notices from the Village, or any other governmental authority of any zoning, building, fire, health or environmental code violations with respect to Grantor's parcel.
- D. Grantor has no knowledge of any boundary line disputes or any easements or claims of easements not shown by the public records.
- E. There are no pending or unconfirmed special assessments affecting Grantor's Parcel by any association or governmental entity payable by Grantee after the date of Exchange Closing. Grantor's parcel is not located within a Special Assessment Area or Special Service Area, payments for which will not be the obligation of

Grantor after the year in which the Exchange Closing occurs.

- F. No hazard presently exists or may have previously existed on Grantor's Parcel which would be deemed a violation of any federal, state, county or local environmental protection statute, act, ordinance, regulation or code, and that to the best of Grantor's actual knowledge, no Hazardous Substance has been released or discharged on Grantor's Parcel.
- G. There is no action, suit, proceeding or governmental or administrative investigation pending or, to the best of the actual knowledge of Grantor, threatened against Grantor which might, severally or in the aggregate, materially and adversely affect Grantor's Parcel. There is no threatened litigation, condemnation or special assessment affecting Grantor's Parcel.
- H. The Real Estate will at the time of Exchange Closing be in substantially the same condition as on the Effective Date, normal wear and tear excepted, and Grantor shall commit no waste between the Effective Date and Exchange Closing.
- I. This Agreement constitutes the valid and binding agreement of Grantor and does not contain any provision which would render it unenforceable against Grantor.
- J. Grantor has (or in Orchard's case shall have after closing) good and marketable fee simple title to all of Grantor's Parcel, and Grantor has (or in Orchard's case shall have after closing) the right to sell, convey, transfer and assign to Grantee merchantable fee simple title to all of said Real Estate to Grantee, free and clear of any liens, claims, options, charges, mortgages, pledges, encumbrances, sales agreements and rights of others including homestead rights (or will have such good and marketable fee simple title and such rights at the time of the Exchange Closing if Grantor is a contract purchaser of a Parcel).
- K. There are no options or rights in any third party to purchase or acquire any ownership interest in Grantor's Parcel, and Grantor's Parcel is not subject to any executory contracts of sale, rights of first refusal, options or leases with the exception of Orchard's contract to acquire 261 Sheridan.
- L. Grantor owns (or at the time of the Exchange Closing shall own) Grantor's Parcel in fee simple, free of any liens, claims or encumbrances other than Defects disclosed in the Commitment and accepted by Grantee pursuant to Section 6 herein.
- M. That as of the date hereof, there are no leases or other agreements for occupancy in effect with respect to Grantor's Parcel, except those previously disclosed.
- N. There are no service contracts with respect to the Grantor's Parcel that will

remain in effect after Exchange Closing, with the exception of certain service contracts required to maintain the home at 261 Sheridan.

- O. Subject to satisfying the conditions set forth in this Agreement and applicable law, Grantor has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Grantor pursuant hereto.
- P. That the consummation of the transaction contemplated by this Agreement will not result in a breach of any of the terms and conditions of, or constitute a default under, any agreement to which Grantor is now a party and which affects the Property, or any part thereof, or violate or cause to be violated any judgment or decree of any court, administrative agency or governmental body or any applicable law.
- Q. To Grantor's actual knowledge, there are no actions, suits, proceedings, or investigations threatened against Grantor's Parcel or any portion thereof.
- R. To Grantor's actual knowledge, there are no parties other than Grantor in possession of any portion of Grantor's Parcel (with the exception of the contract seller of 261 Sheridan to Orchard), nor has Grantor entered into any farming or other leases (oral or written) applicable to or affecting Grantor's Parcel, except as previously disclosed.
- S. Grantor has not granted any third party an option to purchase, right of first refusal, right of first offer or other similar right with respect to all or a portion of the Grantor's Parcel and Grantor has not entered into any other contracts for the sale of all or any portion of Grantor's Parcel with any third party.
- T. Grantor agrees that it will not enter into any new leases or other agreements for occupancy, service contracts, or options to purchase, rights of first refusal, right of first offer or other similar right with respect to all or any portion of Grantor's Parcel, or contracts for the sale of Grantor's Parcel with any third party.
- U. GRANTEE SHALL ACCEPT THE PROPERTY IN AN "AS-IS" AND "WHERE-IS" CONDITION AS OF THE CLOSING, AND GRANTEE AGREES THAT EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 11 ABOVE, GRANTOR HAS NOT AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, TO GRANTEE REGARDING THE PROPERTY, THE CONDITION OF THE PROPERTY OR THE FITNESS OF THE PROPERTY FOR ANY INTENDED OR PARTICULAR USE, ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, BEING HEREBY EXPRESSLY WAIVED BY GRANTEE AND DISCLAIMED

BY GRANTOR. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS OTHERWISE SET FORTH IN SECTION 11 ABOVE, NO REPRESENTATION, WARRANTY, UNDERTAKING, AGREEMENT OR PROMISE, WHETHER EXPRESS OR IMPLIED OR OTHERWISE, HAS BEEN MADE BY GRANTOR TO GRANTEE WITH RESPECT TO THE LAND, INCLUDING BUT NOT LIMITED TO, THE SIZE, USE OR TYPE OF LAND, ANY FINANCIAL INFORMATION PERTAINING TO THE OWNERSHIP OR OPERATION OF GRANTOR'S PARCEL OR ANY OTHER MATTER. GRANTEE REPRESENTS AND WARRANTS TO GRANTOR THAT EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 11 ABOVE, GRANTEE HAS NOT BEEN INDUCED TO EXECUTE THIS CONTRACT BY ANY ACT, STATEMENT OR REPRESENTATION OF GRANTOR OR ITS AGENTS, EMPLOYEES, OFFICIALS OR REPRESENTATIVES. GRANTEE WAIVES ANY CLAIM THAT MAY EXIST FOR PATENT AND/OR LATENT DEFECTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRANTEE ACKNOWLEDGES THAT GRANTOR HAS MADE, AND HEREBY MAKES, NO REPRESENTATION OR WARRANTY PERTAINING TO GRANTOR'S PARCEL WITH RESPECT TO (I) THE TOTAL AREA OF THE LAND; (II) THE NATURE OF THE SOIL ON AND UNDERLYING THE LAND OR ITS SUITABILITY FOR DEVELOPMENT OR ANY OTHER USE THEREOF, (III) COMPLIANCE OR NON-COMPLIANCE OF GRANTOR'S PARCEL WITH ENVIRONMENTAL LAWS OR REGULATIONS AND (IV) THE PRESENCE OR ABSENCE OF HAZARDOUS OR TOXIC SUBSTANCES.

- V. As a material inducement to Grantor to execute, deliver and perform this Agreement, Grantee agrees that (i) if and only if Grantor has not delivered to Grantee a Grantor Statement of Modification (as hereinafter defined) within the time period and in the manner set forth in herein, Grantee shall have the right to assert a cause of action against Grantor for breach of any of Grantor's representations and warranties set forth above in this Section 11, only prior to the date which is twelve (12) months following the Exchange Closing Date (but not in any event after such date), (ii) the maximum amount that may be recovered by Grantee against Grantor as direct damages and costs and expenses (including reasonable attorneys' fees) under this Paragraph or any other provision of this Agreement or under applicable law for breach of Grantor's representations and warranties set forth above in this Section 11 (but only to the extent Grantee has not received a Grantor Statement of Modification with respect thereto) shall be \$310,000 in the aggregate. Notwithstanding anything to the contrary set forth in this Agreement, Grantee is prohibited from making any claims against Grantor after the Exchange Closing with respect to any breaches of Grantor's representation and warranties contained in this Agreement if Grantee had knowledge of any such breach prior to Exchange Closing.

- W. In the event that, prior to Exchange Closing, Grantor discovers or becomes aware that, as of Exchange Closing, any representation or warranty of Grantor is or will be inaccurate, untrue or incorrect, Grantor shall give Grantee one or more written notices of any modifications (each, a "Grantor Statement of Modification") to the representations and warranties of Grantor set forth in this Agreement within ten (10) business days after discovering such inaccuracy. In the event of any Grantor Statement of Modification concerning a matter which, in Grantee's reasonable determination, materially and adversely affects the title, or intended use of Grantor's Parcel, Grantee shall have the right, exercisable not more than ten (10) business days after its receipt of the Grantor Statement of Modifications to terminate this Agreement, whereupon neither Party hereto shall have any further rights or liabilities under this Agreement.
- X. Grantee is relying on each and all of the representations and warranties made herein by or on behalf of Grantor. If prior to Exchange Closing Grantor becomes aware of matters that require modification of the representations previously made in this Section 11, Grantor shall promptly notify Grantee in writing. If the matters specified in such Notice are not resolved prior to Exchange Closing, excluding and excepting therefrom any action, assessment, condemnation or other such matter brought by Grantee as a governmental body against Grantor, and concern a matter which, in Grantee's reasonable determination adversely affects the title, value, or intended use of Grantor's Parcel, Grantee may terminate this Agreement by Notice to Grantor, this Agreement shall be null and void, and Grantee may pursue its remedies pursuant to Section 14 below.

**Section 12. Grantee's Representations and Warranties.**

Grantee represents and warrants to Grantor that Grantee and Grantee's authorized signatory below have full authority to acquire Grantor's Parcel and to execute this Agreement and any and all documentation required to effectuate the full intent and purpose of this Agreement.

**Section 13. Risk of Loss**

The risk of loss shall remain with Grantor until completion of the Exchange Closing, and risk of loss shall vest in Grantee upon completion of the Exchange Closing. Grantor agrees to keep the improvements located on Grantor's Parcel, as applicable, insured through the Exchange Closing. If the improvements are destroyed prior to Exchange Closing, and Grantee desires to proceed with the Exchange Closing, Grantee shall receive a credit at Exchange Closing equal to the costs to replace the improvements or restore them to the condition that existed as of the Effective Date.

**Section 14. Grantor Default.** Except as otherwise provided in this Agreement, if Grantor fails to perform or observe in any material respect any of the covenants or agreements to be kept or performed by Grantor under this Agreement and such failure remains uncured ten (10) days after receipt of written notice thereof from Grantee (or such longer period reasonably required to

cure such failure so long as efforts to cure are commenced within said ten (10) day period), Grantee, at its election, shall be entitled either (i) to enforce specific performance of this Agreement, or (ii) to terminate this Agreement prior to the Exchange Closing, and if this Agreement is so terminated, and, except as otherwise expressly provided in this Agreement to the contrary, neither Grantee nor Grantor shall have any further rights or liabilities accruing hereunder after said termination. The failure of Grantee to exercise any of Grantee's rights and remedies under this Paragraph 14 shall not be deemed to be a waiver by Grantee of any rights or remedies available to Grantee during the continuation of Grantor's breach or default or upon any subsequent misrepresentation or breach or other default by Grantor of its obligations, covenants or agreements to be performed under this Agreement.

**Section 15. Grantee Default.** If Grantee fails to perform or observe in any material respect any of the covenants or agreements to be kept or performed by Grantee under this Agreement, and if such failure remains uncured for five (5) days after receipt of written notice thereof from Grantor, Grantor, at its election, shall be entitled, as its sole remedy, to terminate this Agreement prior to Exchange Closing, and if this Agreement is so terminated, and except as otherwise expressly provided herein to the contrary, neither Grantee nor Grantor shall have any further rights or liabilities accruing hereunder after said termination. Grantor waives all other rights and remedies including the right to recover damages and the right to seek specific performance. The failure of Grantor to exercise any of Grantor's rights and remedies under this Paragraph 15 shall not be deemed to be a waiver by Grantor of any rights or remedies available to Grantor during the continuation of Grantee's breach or default or upon any subsequent misrepresentation or breach or other default by Grantee of its obligations, covenants or agreements to be performed under this Agreement.

**Section 16. Notices**

All notices required or permitted to be delivered hereunder shall be in writing and shall be delivered in person or by overnight express carrier, by United States registered or certified mail with return receipt requested or by email. If delivered in person, such notices shall be effective on the date of delivery and, if sent by overnight express carrier, shall be effective on the next business day immediately following the day sent and, if so mailed, shall be effective at the time of deposit in any U.S. Post Office or collection box with postage prepaid and, if sent by email, shall be deemed effective on the day when sent, if transmitted before 5:00 P.M. Chicago time.

All notices shall be addressed as follows:

To Orchard: Orchard 2020 Revocable Trust  
353 North Clark Street, 27th Floor  
Chicago, IL 60654  
c/o Peter Lee

To Orchard's Attorney: David Williams  
Williams, Bax and Saltzman, P.C.

121 West Wacker Drive, Suite 3700  
Chicago, Illinois 60601  
Phone: (312) 372-3311  
Fax: (312) 372-5720  
Email: [williams@wbs-law.com](mailto:williams@wbs-law.com)

To Park District: John Peterson  
Executive Director  
Winnetka Park District  
540 Hibbard Road,  
Winnetka, Illinois 60093  
Phone: (847) 501-2074  
Fax: (847) 501-5779  
Email: [jpeterson@winpark.org](mailto:jpeterson@winpark.org)

To Park District's Attorney: Steven Adams  
Robbins Schwartz  
55 W. Monroe  
Suite 800  
Chicago, Illinois 60603  
Phone: (312) 332-7760  
Fax: (312) 332-7768  
Email: [sadams@robbins-schwartz.com](mailto:sadams@robbins-schwartz.com)

**Section 17. Survival**

All the representations and warranties contained in Sections 11 - 15 shall survive the closing of this transaction. If prior to the Exchange Closing of this transaction, the Grantee determines that there is a breach of any material representation or warranty provided by Grantor specified above, then Grantee may terminate this Agreement.

**Section 18. Mutual Assistance**

The Parties agree to do all things necessary or applicable to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement, including, without limitation, the execution of such applications and agreements and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement, and as may be necessary to give effect to the objectives of this Agreement.

**Section 19. Assignment and Binding Effect.**

- A. Neither Party shall sell, transfer or assign this Agreement or any of its rights under this Agreement (collectively, "Transfer") without in each such instance the prior written

consent of the other Party (which the other Party may grant or withhold at its sole discretion). Any such Transfer without such previous written consent shall not vest in the transferee or assignee any right, title or interest in the Property or under this Agreement, but shall render all of non-Transferring Party's duties, obligations, covenants and agreements under this Agreement null and void at the election of the non-Transferring Party, and shall constitute a default by Transferring Party under this Agreement, pursuant to Paragraphs 14 and 15 above. If the non-Transferring Party, in its discretion, consents to any such transfer or assignment of the Property or transfer or assignment of this Agreement, the transferee, assignee of Transferring Party shall assume in writing the obligations of Transferring Party under this Agreement and shall be jointly and severally liable with the Transferring Party for all obligations of Transferring Party under this Agreement. No assignment or transfer by Transferring Party of its rights under this Agreement or in or to the Property shall relieve the Transferring Party from any liability under this Agreement, past, present or future, it being understood and agreed that the Transferring Party shall remain liable for all of its obligations under this Agreement.

- B. It is expressly agreed by Grantor and Grantee that all of the provisions of this Agreement shall be binding upon the heirs, successors, legal representatives and assigns of Grantor and Grantee, and shall inure to the benefit of all heirs, successors, assigns and legal representatives of Grantor and Grantee permitted under this Section.

#### **Section 20. Confidentiality.**

The Parties acknowledge that any or all documents related to the transactions contemplated by this Agreement may be subject to disclosure by Park District under the Illinois Freedom of Information Act including documents in the sole possession of Orchard pertaining to either Parcel prior to or subsequent to, the Exchange Closing. Prior to Exchange Closing, except as may be required by law or subpoena, or in the event that Park District reasonably believes disclosure would be compelled by the office of the Illinois Attorney General's Public Access Counselor or a circuit court with jurisdiction over a demand or claim for such records, neither Party shall disclose to any third party any records containing any term or condition hereof without the prior written consent of the non-disclosing Party. Unless and until the Exchange Closing occurs, the results of any inspections or studies undertaken in connection herewith shall not be disclosed except as may be required by law or subpoena, or in the event that Grantor reasonably believes disclosure would be compelled by the office of the Illinois Attorney General's Public Access Counselor or a circuit court with jurisdiction over a demand or claim for such records. Unless and until the Exchange Closing occurs, each Party agrees to keep confidential and not to use, other than in connection with its determination whether to proceed with the Exchange Closing in accordance with the provisions of this Agreement, any of the documents, material or information regarding the either parcel supplied to such Party by the other Party or by any third party at the request of such Party, except each Party may share such documents, material and information with its consultants and attorneys on a "need to know" basis. In the event that the Exchange Closing does not occur, Grantee shall promptly return to the Grantor all of the documents, materials and information regarding the Property supplied to Grantee by Grantor. The Park District, subject to the requirements of applicable law, agrees to



use commercially reasonable efforts to maintain the confidentiality of the identity of Orchard's beneficiaries.

**Section 21. Miscellaneous.**

- A. Commissions. Grantor and Grantee each represents and warrants to the other that no real estate broker, finder or sales person performed any services for Grantor or Grantee in connection with the negotiation of this Agreement or the transactions hereby contemplated. Each Party hereto agrees to indemnify the other from and against any and all claims for brokerage commissions and finder's fees arising from and attributable to the acts or omissions of the indemnifying Party or any party or entity acting on behalf of the indemnifying Party.
- B. Entire Agreement. Both Parties hereto hereby acknowledge that this Agreement constitutes the entire agreement between the Parties with respect to the sale and purchase of both parcels, and that this Agreement shall not be altered, modified or amended except by a written instrument duly executed by both Parties hereto.
- C. Third Party Rights. Except as otherwise set forth in Section 19 above and other than with respect to the successors and permitted assigns of Grantee and Grantor as provided in this Agreement and others who or which are expressly benefited by indemnification or other provisions of this Agreement, no person or entity shall be entitled to any of the rights or benefits accorded to Grantee and Grantor hereunder, and no person or entity shall be entitled to rely on any of the provisions hereof.
- D. Time is of the Essence. Time shall be of the essence in the performance of all covenants, agreements and obligations under this Agreement.
- E. Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to such State's choice of law rules.
- F. No Joint Venture. It is understood and agreed that Grantee and Grantor shall in no event be construed for any purpose to be partners, joint venturers, agents or associates of each other in the performance of their respective obligations hereunder or with respect to the Parcels.
- G. Captions. The captions used in connection with the paragraphs of this Agreement are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Agreement.
- H. Severability. If any provision of this Agreement, or portion thereof, is held by a court to be invalid, void or unenforceable, the remainder of such provision and the remaining provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the invalid or unenforceable provision shall be modified so as to most nearly as possible achieve the intention of this Agreement.
- I. Recording. At all times after the Effective Date, neither Party shall record or permit to be recorded this Agreement, a copy of this Agreement, or any memorandum, short form contract or other document summarizing the terms and provisions of this Agreement. In the event of any breach by either Party of the provisions contained in the immediately preceding sentence, the non-breaching Party may terminate this Agreement and pursue any and all legal and equitable remedies.

- J. Business Day. In the event that the date for performance of any of the provisions hereof is due on a day that is a Saturday, Sunday, Illinois state or United States national holiday, such due date shall be extended to the immediately succeeding business day.
- K. Proper Execution. The submission of this Agreement by Park District to Orchard in unsigned form shall be deemed to be a submission solely for Grantee's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights or impose any obligations upon Orchard or Park District, irrespective of any reliance thereon, change of position or partial performance. The submission by Park District of this Agreement for execution by Orchard and the actual execution and delivery thereof by Orchard to Park District shall similarly have no binding force and effect on Park District unless and until Park District's Board of Park Commissioners shall have approved this Agreement and authorized its execution.
- L. Construction. No provision of this Agreement shall be construed in favor of, or against, any particular Party by reason of any presumption with respect to the drafting of this Agreement; both Parties, being represented by counsel, have fully participated in the negotiation of this Agreement.
- M. Counterparts. This Agreement may be executed in several counterparts and such executed counterparts shall be considered an original and, when taken together, shall constitute one and the same instrument.
- N. Electronic Signatures. A facsimile or pdf signature of this Agreement shall be deemed to be an original and shall bind the signing Party(ies).

**ORCHARD 2020 REVOCABLE TRUST**

**WINNETKA PARK DISTRICT**

By: 
DocuSigned by:  
*Peter Lee*  
33F26FCBD40A4B9
\_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

- J. Business Day. In the event that the date for performance of any of the provisions hereof is due on a day that is a Saturday, Sunday, Illinois state or United States national holiday, such due date shall be extended to the immediately succeeding business day.
- K. Proper Execution. The submission of this Agreement by Park District to Orchard in unsigned form shall be deemed to be a submission solely for Grantee's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights or impose any obligations upon Orchard or Park District, irrespective of any reliance thereon, change of position or partial performance. The submission by Park District of this Agreement for execution by Orchard and the actual execution and delivery thereof by Orchard to Park District shall similarly have no binding force and effect on Park District unless and until Park District's Board of Park Commissioners shall have approved this Agreement and authorized its execution.
- L. Construction. No provision of this Agreement shall be construed in favor of, or against, any particular Party by reason of any presumption with respect to the drafting of this Agreement; both Parties, being represented by counsel, have fully participated in the negotiation of this Agreement.
- M. Counterparts. This Agreement may be executed in several counterparts and such executed counterparts shall be considered an original and, when taken together, shall constitute one and the same instrument.
- N. Electronic Signatures. A facsimile or pdf signature of this Agreement shall be deemed to be an original and shall bind the signing Party(ies).

**ORCHARD 2020 REVOCABLE TRUST**

**WINNETKA PARK DISTRICT**

By: \_\_\_\_\_

Attest: \_\_\_\_\_

By:  - PRESIDENT  
10/10/20

Attest:   
EXECUTIVE DIRECTOR  
10.10.2020