

RESOLUTION NO. 3-2015

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY
OF VALPARAISO, INDIANA, APPROVING A REAL ESTATE PURCHASE
AGREEMENT**

WHEREAS, on August 22, 2014, the Board of Public Works and Safety of the City of Valparaiso, Indiana ("City"), adopted a Resolution authorizing the City Attorney's Office to initiate eminent domain proceedings in order to acquire real estate on Joliet Road to be used to construct a traffic blister to accommodate vehicles entering the City's new public works facility;

WHEREAS, the City has initiated eminent domain proceedings to acquire the above referenced real estate which remain pending in the Porter County Superior Court under Cause No. 64D05-1503-MI-1873; and

WHEREAS, the City and the owner of the real estate have reached a settlement agreement whereby the City has agreed to purchase the real estate from the owner for appraised value. Attached hereto, incorporated herein and marked as **Exhibit "A"** is the Real Estate Purchase Agreement that has been negotiated and agreed to by the City and owner.

WHEREAS, as a result of the aforementioned settlement, the City Attorney's Office is desirous of having the City adopt this resolution to approve the Real Estate Purchase Agreement and authorize the City Administrator, Bill Oeding, to sign all necessary documentation and take all actions in order to purchase the real estate.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF VALPARAISO, INDIANA, AS FOLLOWS:

1. The Board of Public Works and Safety of the City of Valparaiso, Indiana, hereby approves the Real Estate Purchase Agreement attached hereto as **Exhibit "A."**

2. The Board of Public Works and Safety of the City of Valparaiso, Indiana, authorizes City Administrator, Bill Oeding, to execute any and all documents and to take such other actions as may be necessary in order so that the City can acquire the above-referenced real estate.

[SIGNATURE PAGE TO FOLLOW]

Passed this 8th day of May, 2015, by a vote of 2-0.

FAVOR

OPPOSED

Matthew R. Murphy

McRide

ATTEST Sharon Emma Sharkey

Clerk-Treasurer

REAL ESTATE PURCHASE AGREEMENT

THE UNDERSIGNED PARTIES, the City of Valparaiso, Indiana, by and through its Board of Public Works and Safety, a municipal corporation established and existing pursuant to Indiana law (hereinafter referred to as the "Purchaser"), does hereby agree to purchase from John Nadolski (hereinafter, referred to as "Seller"), the following described real estate being approximately 5,250 sq. ft. (.12 acres), together with all structures, fixtures and improvements thereon or affixed thereto including, but not limited to, a portion of the paved parking lot, and all tenements, hereditaments, rights, privileges, interests, easements and appurtenances now or hereafter belonging or in any way pertaining thereto (hereinafter referred to as the "Property"), located in Porter County, Indiana, and commonly known as a portion of **1950 Joliet Road, Valparaiso (Parcel No. 64-09-23-303-003.000-003)**, to-wit:

A parcel of real estate in the Southwest Quarter of Section 23, Township 35 North, Range 6 West of the Second Principal Meridian, Porter County, Indiana described as follows:

Commencing at the intersection of the West line of said Southwest Quarter with the centerline of Joliet Road; thence Easterly along said centerline 289.00 feet to the Southwest corner of a tract of land described to John Nadolski in a Warranty Deed dated 05/01/1985 and recorded 05/03/1985 as document number 75680 in Deed Record 362, page 495 in the Office of the Recorder of Porter County, Indiana; thence continuing Easterly along said centerline and on the Southerly line of said Nadolski tract 150.00 feet to the POINT OF BEGINNING; thence Northerly perpendicular to said centerline 30.00 feet; thence Easterly parallel with said centerline 139 feet more or less to the Southerly Right-of-Way line of the Norfolk Southern Railroad; thence Southeasterly along said Right-of-Way line to the centerline of said Joliet Road, said point being the Southeast corner of said Nadolski tract; thence Westerly along said centerline and on the Southerly line of said Nadolski tract 211 feet more or less to the point of beginning; said parcel containing 5250 square feet more or less and subject to all existing easements and rights-of-way.

Attached hereto and marked as ***Exhibit "A"*** to this Agreement is a drawing depicting the Property.



1. **Purchase Price.** Purchaser hereby agrees to pay to Seller and Seller hereby agrees to accept from Purchaser, the sum of **Seven Thousand Nine Hundred Fifty One Dollars (\$7,951.00)** (the "Purchase Price"), payable in the following manner:

(a) **Earnest Money Deposit:** No earnest money shall be paid by the Purchaser as part of this transaction. .

(b) **Closing:** At closing the Purchaser shall pay the Seller the total Purchase Price amount of **Seven Thousand Nine Hundred Fifty One Dollars (\$7,951.00)**.

2. **Risk of Loss.** Seller shall bear the risk of loss or damage to the Property occurring subsequent to the acceptance of this Agreement and until delivery of the deed at closing. If damage occurs and the damage cannot be repaired for an amount not to exceed ten percent (10%) of the Purchase Price provided in Section 1 of this Agreement, either party may cancel this Agreement. If the damage can be repaired for a sum less than ten percent (10%) of the Purchase Price, Seller shall pay for such repair.

3. **Title Evidence and Survey.**

(a) **Title Commitment.** Within ten (10) days after the date of this Agreement, Purchaser shall cause to be furnished to Seller and Purchaser, at Purchaser's sole cost and expense, a current Commitment for Title Insurance for the Property (the "**Title Commitment**") issued by a title insurance company of Purchaser's choosing (the "Title Company"). The Title Commitment shall set forth the state of title to the Property, including a list of conditions or exceptions to title affecting the Property that would appear in an Owner's Policy of Title Insurance, if one were issued. The Title Commitment shall contain the expressed commitment of the Title Company to issue the Title Policy (hereinafter defined) to Purchaser in the amount of the Purchase Price, insuring the title to the Property specified in the Title Commitment. At such time as the Title Commitment is furnished to Purchaser, the Title Company also shall furnish to Seller and Purchaser copies of instruments or documents (the "**Exception Documents**") that create or evidence conditions or exceptions to title affecting the Property, as described in the Title Commitment. Notwithstanding any provision contained herein to the contrary, Seller and Purchaser acknowledge and agree that in the event the purchase and sale is consummated as contemplated herein, there will be no separate charge for the Title Commitment and the parties will be responsible for the cost of the Title Policy (hereinafter defined) and any endorsements thereto in accordance with the terms of this Agreement.

(b) **Survey.** There shall be no survey of the Property as part of this transaction.

(c) **Review of Title.** Purchaser shall have until thirty (30) days after receipt of the last of the Title Commitment and Exception Documents in which to notify

Seller in writing (the "Title Objection Notice") of any objections Purchaser has to any matters shown or referred to in the Title Commitment or the Exception Documents; provided, that Purchaser shall not object to current real estate taxes and assessments or to easements, restrictions and exceptions affecting the Property which do not materially and adversely affect the value of the Property, its current use by Seller, or the proposed use by Purchaser, all of which shall be Permitted Exceptions hereunder. Any title encumbrances, exceptions or other matters which are set forth in the Title Commitment or the Exception Documents, and to which Purchaser does not object within the aforementioned thirty (30) day period, shall be deemed to be permitted exceptions to the status of Seller's title (such encumbrances, exceptions or other matters, together with such other matters included pursuant to other provisions of this Agreement, shall be referred to as the "Permitted Exceptions").

- (d) Objections to Status of Title. If Purchaser properly objects to any item shown or referred to in the Title Commitment or Exception Documents within the thirty (30) day period set forth in subsection (c), Seller shall be given until thirty (30) days after receipt of the Title Objection Notice to notify Purchaser whether or not Seller will cure, prior to closing and at Seller's option and sole discretion but without any obligation to do so, any objection to the condition of title raised by Purchaser. If Seller notifies Purchaser that it elects not to cure any such objections, then Purchaser may, at its option exercisable within five (5) days following the date of receipt by Purchaser of written notice from Seller stating that Seller is unable or unwilling to cure such objections, either (i) accept such title as Seller can deliver, in which case all exceptions to title set forth in the Title Commitment or Exception Documents which are not removed shall be deemed to be Permitted Exceptions, or (ii) terminate this Agreement by notice in writing to Seller in which event the Title Company shall return the earnest money deposit to Purchaser and neither party shall have any further rights, duties or obligations hereunder, except for provisions of this Contract which expressly survive termination of this Agreement. In the event Purchaser fails to notify Seller, within such five (5) day period, that Purchaser has elected to proceed under either subpart (i) or (ii) of the immediately preceding sentence, Purchaser shall be deemed to have elected to proceed under subpart (i), and this Agreement shall remain in full force and effect. If Seller notifies Purchaser that it elects to cure any such objections but is unable to cure same by the date of closing, or if Seller fails to notify Purchaser of its intentions with respect to such objections and fails to cure same by the date of closing, then Purchaser may, at its option, either (x) accept such title as Seller can deliver in which case the parties shall proceed with the closing and all exceptions to title set forth in the Title Commitment or Exception Documents which are not removed shall be deemed to be Permitted Exceptions, or (y) terminate this Agreement by notice in writing to Seller at the closing, in which event the Title Company shall return the earnest money deposit to Purchaser and neither party shall have any further rights, duties or obligations hereunder except for provisions of this Agreement which expressly survive

termination of this Agreement.

- (e) Other Permitted Exceptions. The Permitted Exceptions shall include those matters shown in the Title Commitment which become Permitted Exceptions pursuant to subsections (c) and (d) above and, in addition, the following: (i) taxes and assessments for the year in which closing occurs and subsequent years; (ii) liens and encumbrances arising after the date hereof to which Purchaser consents in writing; and (iii) any liens or encumbrances of a definite or ascertainable amount not exceeding \$50,000.00, provided that Seller causes such liens or encumbrances to be insured or bonded around such that same do not appear as an exception in the Title Policy issued to Purchaser pursuant to the Commitment.

4. Conveyance. Conveyance shall be by General Warranty Deed, in proper form for record, and shall be duly executed and acknowledged so as to convey to Purchaser the fee simple title of the Property.

5. Condition of Property. Purchaser shall make its own independent investigation of the Property with respect to the suitability of the Property for Purchaser's use and all other aspects of this transaction and, except as noted below, shall rely entirely upon that independent investigation. Purchaser is purchasing the Property "AS IS", ordinary wear and tear damage by the elements or casualty accepted. Seller has not made and does not make any representations as to the physical condition, expenses, operation or any other matter or thing affecting or related to the Property, except as specifically set forth in this Agreement. Purchaser acknowledges that all representations which Seller has made, and upon which Purchaser relied in making this Agreement, have been included in this Agreement.

6. Representations of Purchaser. Purchaser hereby represents and warrants to, and covenants and agrees with, Seller as of the date hereof and as of the closing as follows:

(a) Duly Qualified. Purchaser is a duly organized, validly existing municipal corporation and is duly qualified to transact business in the State of Indiana.

(b) Power. This Agreement and all other agreements, instruments and documents required to be executed or delivered by Purchaser have been or (if and when executed) will be, duly executed and delivered by Purchaser, and are or will be legal, valid and binding obligations of Purchaser. As of the execution of this Agreement, no additional consents and permissions are required to be obtained by Purchaser for the execution and performance of this Agreement and the other documents to be executed by Purchaser hereunder, unless required by law.

(c) No Proceedings. To Purchaser's knowledge, there are not now pending or threatened, any proceedings, legal, equitable or otherwise, against Purchaser which would affect its ability to perform its obligations hereunder. There is not now pending or, to the best of Purchaser's knowledge, threatened any action, suit or proceeding before any court

or governmental agency or body which might adversely affect Purchaser's ability to perform its obligations hereunder.

7. **Representation of Seller.** Seller hereby to the best of its actual knowledge and belief represents and warrants to, and covenants and agrees with, Purchaser as of the date hereof and as of the closing as follows:

(a) **Authorization.** Seller has full power and authority, and is duly authorized, to execute, enter into, deliver and perform this Agreement and its obligations hereunder.

(b) **Power.** This Agreement and all other agreements, instruments and documents required to be executed or delivered by Seller pursuant hereto have been or (if and when executed) will be, duly executed and delivered by Seller, and are or will be legal, valid and binding obligations of Seller. As of the execution of this Agreement, no additional consents and permissions are required to be obtained by Seller for the execution and performance of this Agreement and the other documents to be executed by Seller hereunder.

(c) **Title.** Seller owns good and marketable fee simple title to the Property free and clear of all liens, encumbrances, restrictions, conditions, and agreements, except for the Permitted Exceptions.

(d) **No Proceedings.** Except for the litigation commenced by the Purchaser against Seller to condemn the Property which is pending in the Porter Super Court under Cause No.: 64D05-1503-MI-1873 to Seller's knowledge there is not now pending or threatened, any action, suit or proceeding before any court or governmental agency or body against the Seller or the Property which would affect the Property. Without limiting the generality of the foregoing, Seller has not received any written notices from any governmental entities of violations or alleged violations of any laws, rules, regulations or codes, with respect to the Property which have not been corrected to the satisfaction of the governmental agency issuing such notices.

(e) **Contracts.** There are no service contracts or other agreements affecting the Property which will be binding on Purchaser after closing. There are no contracts and agreements that are in Seller's possession and materially affect the ownership, use and operation of the Property.

(f) **Tenant Leases.** There are no tenant leases or other rights of occupancy affecting the Property.

(g) **Hazardous Wastes.** To the best of Seller's knowledge, the Property is free of asbestos, PCBs, toxic wastes and other hazardous materials (except for hazardous materials used in the normal course of business), has never been used as a dumping site or storage site for toxic or hazardous wastes and is in compliance with all environmental laws. For purposes of this Agreement, "toxic wastes and other hazardous materials" shall

include any hazardous or toxic waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, and so-called "Superfund" or "Superlien" law, or any Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now in effect. Seller hereby further represent that the Property is not "property" as defined in Indiana Code 13-11-2-174 and is not, and has not been, used as a landfill or dump, and contains no underground storage tanks or toxic or hazardous waste or materials, and that no disclosure statement under Indiana Code 13-25-3-1, et seq. (Indiana Responsible Property Transfer Law), is required for this transaction.

(h) **Governmental.** There are no material commitments or agreements with any governmental authorities or agencies affecting the Property that have not been disclosed in writing to Purchaser.

(i) **Liens.** There are no claims pending or unpaid bills which would result in the creation of any lien on the Property for any improvements completed or on Property.

(j) **Actions.** Seller will not take or cause to be taken any action or fail to perform any obligation which would cause any of the representations or warranties contained in this Agreement to be untrue as of the closing. Seller shall immediately notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to the closing hereunder, which causes a change in the facts relating to, or the truth of, any of the representations or warranties.

(k) **Accurate Information.** All information given by Seller to Purchaser in this Agreement or in connection with the transactions contemplated hereunder shall be true and accurate in every material respect as of the date hereof and at closing, and Seller has not failed to disclose any fact to Purchaser necessary to make the statements herein or otherwise provided in connection with the transactions contemplated hereunder not misleading.

(l) **Use of Property.** Between the date of execution of this Agreement and the closing, Seller will maintain the Property in a commercially reasonable manner in accordance with applicable laws, codes and ordinances, and use and occupy the Property in a prudent manner, consistent with its current use. Seller will repair damage and correct problems with the Property in the normal course of business that occur prior to closing, except for reasonable wear and tear and on the date of closing shall leave the Property clean and free of debris. Purchaser shall inspect the Property immediately prior to the closing date to verify the condition of the Property.

(m) **Survival.** The representations and warranties of Seller shall survive the closing for a period of twelve (12) months.

8. Closing and Closing Costs.

(a) The transaction shall be closed within ten (10) days after (i) the date on which Purchaser is satisfied with the Title Objection Notice response (or elected or deemed elected to proceed to close) and the Permitted Exceptions are established pursuant to Section 3; and (ii) the date upon which all of the contingencies set forth herein have been satisfied or waived, whichever of such dates shall be the last to occur. However, notwithstanding the foregoing, the closing shall be automatically extended in the event that Seller shall fail to timely deliver any document or perform any obligation of this Agreement prior to closing; however, absent mutual agreement between the Parties, the closing of the transaction shall be completed no later than **May 1, 2015**.

(b) The parties shall apportion costs of closing this transaction as follows:

(i) Purchaser shall pay all costs of the title search and insurance premiums for the owner's policy required hereunder. Any special title endorsements requested by Purchaser shall be paid for by Purchaser.

(ii) Omitted.

(iii) Each party shall pay their respective attorney's fees.

(iv) Purchaser shall pay the recording fees for the general warranty deed and Seller shall pay the recording fees for the satisfaction of any existing liens and encumbrances, if any; and

(v) The Purchaser shall pay the costs and fees which may be charged by any title company to act as a closing agent for this transaction.

(c) At the closing Seller shall deliver to Purchaser:

(i) An executed General Warranty Deed in recordable form conveying marketable title to the Property subject the Permitted Exceptions.

(ii) Vendor's Affidavit of title warranting that no outstanding mechanic's lien rights exist, that the Property is not subject to any tenancies or leases, oral or written, and that all real estate taxes have been paid to the date of closing, to enable title insurer to delete the standard general exceptions to the owner's policy; except for any lease agreements with the City of Valparaiso which shall be considered a Permitted Exception.

(iii) Affidavit of Non-Foreign status of Seller.

(iv) A disclosure of sales information.

(v) Such other and further instruments, documents and other considerations as Purchaser may deem necessary or desirable, or as may be required, to consummate the transaction.

(d) At the closing Purchaser shall deliver to Seller:

(i) A signed counterpart disclosure of sales information.

(ii) Such other and further instruments, documents and other considerations as Seller may deem necessary or desirable, or as may be required, to consummate the transaction.

(e) Seller shall pay all real estate taxes due and payable during the calendar year in which the closing date occurs and prior calendar years, without proration. Real estate taxes assessed for and becoming a lien during the calendar year in which the closing occurs shall be prorated to the date of closing based upon actual days involved, with Seller allowing a credit to Purchaser against the Purchase Price in the amount of the proration. For closing purposes, the most recent tax rate available if the tax rate has not been set shall be used for the proration. Seller shall also pay all assessments for public improvements which are constructed before or in the process of construction on the closing date; provided, however, that any such assessments not due and payable on the closing date shall be allowed to Purchaser as a credit on the Purchase Price.

9. **Possession.** The parties agree that Purchaser may enter onto and take possession of the Property on the day of closing and from that date shall take and be entitled to all rents, issues and profits thereof to Purchaser's own use and benefit.

10. **Omitted.**

11. **Broker's Commission.** Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with this transaction. Seller and Purchaser each hereby agree to indemnify, protect and defend and hold the other harmless from and against all losses, claims, costs, expenses, damages (including, but not limited to, attorneys' fees of counsel selected by the indemnified party) resulting from the claims of any broker, finder, or other such party claiming by, through or under the acts or agreements of the indemnifying party. Notwithstanding any provision of this Agreement to the contrary, the obligation of the parties pursuant to this Section shall survive any termination of this Agreement.

12. **Assignment.** This Purchase Agreement shall not be assignable by either party absent the written consent of the other party.

13. **Default and Attorneys Fees.** On default by either party, the non-defaulting party shall have all legal and equitable remedies available under the law, including the right to enforce this Agreement by specific performance. In the event that any party finds it necessary to employ legal counsel to commence litigation or other proceedings against the other party, the prevailing

party shall recover from the non-prevailing party all fees, charges, costs, and expenses including, but not limited to, reasonable attorney fees, incurred by the prevailing party in connection with the enforcement of its rights and remedies under this Agreement. For purposes of this Agreement, a prevailing party shall include, without limitation, a party who brings an action against the other party by reason of the other party's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.

14. Condemnation. If, prior to the date of closing of the transaction anticipated by this Agreement, all or any significant portion of the Property is taken by eminent domain (or is the subject of a pending or contemplated taking which has not been consummated), Seller upon receiving notice of such shall notify Purchaser in writing of such fact and Purchaser shall have the option to terminate this Agreement upon notice to Seller given within twenty (20) days after the date of Purchaser's receipt of Seller's written notice aforesaid. For purposes hereof, a "significant portion" shall include any of or more of the following: (i) any portion of the building(s) comprising a part of the Property (if any); (ii) the parking areas or driveways thereon (if any); or (iii) any means of ingress or egress. If this Agreement is terminated neither party shall have any further obligation or liability to the other. If Purchaser does not exercise this option to terminate this Agreement, or if other than a significant portion of the Property is taken by eminent domain, Seller shall assign all its rights to such awards to Purchaser.

15. Notices. All notices permitted or required by this Agreement shall be given in writing and shall be considered given (i) upon receipt if hand delivered or transmitted via facsimile to the party or person intended, or (ii) one business day after deposit with a nationally recognized over night commercial courier service, airbill prepaid, or (iii) three (3) days after deposit in the United States mail postage prepaid, by certified or registered mail, return receipt requested, addressed by name and address to the party or persons intended as follows:

To Seller:

John Nadolski
4939 S. State Road 13
Pierceton, Indiana 46562

To Purchaser:

City of Valparaiso, Indiana
Attn: City Administrator
166 Lincolnway
Valparaiso, Indiana 46383

With a copy to:

Ethan S. Lowe
Blachly, Tabor, Bozik & Hartman, LLC
56 S. Washington St., Suite 401

Valparaiso, Indiana 46383

Any party may, by written notice to the other party, designate a change of address for the purpose aforesaid.

16. **Continuing Covenants and Merger.** All covenants contained herein shall survive the closing and bind and the benefits and advantages shall inure to the respective heirs, executors, and administrators and successors or assigns of the respective parties hereto. No verbal agreements have been made which alter or supplement this Agreement and this Agreement reflects the full understanding of all parties.

17. **Governing Law.** This Agreement concerns real estate located in the State of Indiana and shall be interpreted and construed according to the laws of the State of Indiana.

18. **Time.** TIME IS OF THE ESSENCE with regard to this Agreement.

19. **Full Negotiation.** This Agreement is the result of each party's mutual assent to each and every term, condition or contingency contained herein after full negotiation of the advantages and/or disadvantages of each provision. Each party's assent to this Agreement is made after consultation and advice of counsel. While one party may have been responsible for reducing the terms to writing for the mutual benefit of all parties, no party to this Agreement can be considered the drafter. Any ambiguity determined to exist in this Agreement shall be resolved by the first of the following methods capable of resolving the ambiguity (a) ascertaining the true intent of all parties; (b) course of dealing between the parties, if any; (c) common trade custom in Porter County, Indiana; (d) the most commercially reasonable interpretation in light of the circumstances existing and known by the parties at the time this Agreement was made.

20. **Dismissal of Condemnation Proceedings.** Immediately following the closing, the Purchaser shall dismiss with prejudice the Complaint for Condemnation of Real Property that it filed against Seller and remains pending in the Porter County Superior under Cause No.: 65D05-1503-MI-1873.

[SIGNATURE PAGE TO FOLLOW]

THIS REAL ESTATE PURCHASE AGREEMENT is made this _____ day of _____, 2015.

PURCHASER:

CITY OF VALPARAISO, INDIANA, by
and through its Board of Public Works and
Safety, a municipal corporation

By: _____
Name:
Title:

SELLER:

JOHN NADOLSKI

By: _____

This instrument prepared by:

Ethan S. Lowe, Esq.
Blachly, Tabor, Bozik & Hartman, LLC
56 S. Washington St., Suite 401
Valparaiso, Indiana 46383
Telephone: (219) 464-1041