



DATE: August 29, 2022

MEMO TO: Terry Wilke, Chair
Planning Committee

Agenda Item# 10.6

FROM: Randall L. Seebach
Director of Planning and Land Preservation

RECOMMENDATION: Recommend approval of a Resolution to acquire an approximately 133.5-acre property in Newport Township, known as the Mill Creek WB, LLC property as an addition to Sedge Meadow Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Leadership; Conservation; Organizational Sustainability

FINANCIAL DATA: The Mill Creek WB property will be conveyed to the District at no charge. Though no cash consideration will be paid by the District to acquire the property, the District will assume responsibility for the long-term management of the property. An escrow will be created into which the seller will deposit a total of \$165,000.00, payable to the Preservation Foundation of the Lake County Forest Preserves (the "Foundation"), which will hold the funds for the benefit of the District. The District will be obligated to use those funds, or other funds, for the long-term management of the property.

BACKGROUND: The Mill Creek WB property includes two wetland mitigation banks (adjacent to each other), created by the seller's affiliate, Land and Water Resources, Inc.

A mitigation bank is a wetland, stream, or other aquatic resource that has been restored, established, enhanced, or preserved by a mitigation bank developer. The values of the restored, enhanced, or created aquatic resources (known as "compensatory mitigation credits") are then purchased by real estate developers or governmental agencies completing public works projects to mitigate, and as compensation for, the unavoidable impacts of their development projects to wetlands and other aquatic resources.

Mitigation banks are governed by Section 404 of the federal Clean Water Act, its regulations, and/or similar state or local wetland regulations. The approval and administration of mitigation banks under federal jurisdiction are administered by the Federal Mitigation Bank Interagency Review Team ("IRT"), which is a three-member team with representatives from the US Army Corps of Engineers ("ACOE"), US Fish and Wildlife Service, and US Environmental Protection Agency. In addition, the Lake County Stormwater Management Commission ("SMC") issues permits to build and operate wetland banks on Isolated Waters of Lake County (lakes, ponds, streams, farmed wetlands and wetlands that do not fall under the ACOE jurisdiction). One of the mitigation banks within the Mill Creek WB property is under the ACOE's/IRT's jurisdiction, while the other mitigation bank within the Mill Creek WB property is under SMC's jurisdiction.

The “compensatory mitigation credits” paid by purchasers/developers provide revenue to the mitigation bank developer and also fund the following costs: land value, costs of permit application and approval, costs of monitoring and management, and the funding of a long-term management account. The IRT and SMC require the mitigation bank developer to provide for the perpetual ecological management of the bank. If a third party (in this case, the District) will be responsible for long-term management, then the mitigation bank developer must pay the long-term management account (funded through the developer’s sale of compensatory mitigation credits) over to that third party.

The seller, Mill Creek WB, LLC, does not yet own the property. Rather, it will complete its purchase of the property from the current owners under an installment purchase contract, which will close after the IRT/ACOE (or SMC for a “local” mitigation bank) have finally inspected and approved the mitigation banks. Under the contract that would be approved by the attached resolution, seller will then donate the property to the District after seller’s affiliate Land and Water Resources has sold the remaining credits and the mitigation banks are “closed out” (i.e., the required maintenance and monitoring period (likely to be five years or more) has expired and the ACOE has determined that the mitigation banks satisfy all performance criteria). Land and Water Resources is awaiting the final inspection by ACOE. The expected approval by the ACOE will allow Land and Water Resources to sell the approximately 30 remaining credits. The total number of available credits will be determined by a final wetland delineation performed for the ACOE’s pending inspection.

At the direction for the Planning Committee, District staff has reviewed the property to determine its suitability for acquisition for District purposes. In staff’s opinion, the acquisition, protection and management of this property will meet the District’s adopted land acquisition goals of protecting wildlife habitat, preserving wetlands, prairies and forests, providing scenic vistas, adding to existing preserves, protecting existing Forest Preserve holdings, and will serve as a visual, topographic and ecologic extension of adjoining District properties.

A contract to acquire the property has been negotiated by District staff and signed by the seller. Pursuant to the contract, the District will accept title to the property, and seller will pay to the Foundation (for the benefit of the District) the \$165,000.00 long-term management account.

The property is located west of Route 41 and south of Wadsworth Road, partially within the Village of Wadsworth and across Interstate 94 from Old Mill Creek.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Corporate Counsel.

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR SEPTEMBER MEETING
SEPTEMBER 13, 2022**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith “A Resolution to Acquire an Approximately 133.5-acre Parcel as an Addition to Sedge Meadow Forest Preserve (Mill Creek WB, LLC Property),” and requests its approval.

PLANNING COMMITTEE:

Date: 8-29-2022 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: 0

Real Estate Purchase and Sale Agreement

This Real Estate Purchase and Sale Agreement ("Agreement") is made and entered into as of _____, 2022 (the "Effective Date") by and among **Lake County Forest Preserve District**, a body politic and corporate organized and existing under the Illinois Downstate Forest Preserve District Act, 70 ILCS 805/0.001 et seq. (the "Act") ("Purchaser") and **Mill Creek WB, LLC**, an Illinois limited liability company ("Seller"). In consideration of the recitals and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

Section 1. Recitals.

A. Seller is the contract purchaser under that certain "Installment Sale Agreement (East Wetland Bank)" dated January 2018 by and between Seller, as purchaser, and Wadsworth Investments L.L.C. and MNC Property Management LLC, collectively as seller (the "East Wetland Bank PSA"), for certain real property located in Wadsworth, Illinois, which is generally depicted and legally described on Exhibit A attached hereto (the "East Parcel").

B. Seller is also the contract purchaser under that certain "Installment Sale Agreement (West Wetland Bank)" dated January 2018 by and between Seller, as purchaser, and MNC Property Management LLC, as seller (the "West Wetland Bank PSA"), for certain real property located in Wadsworth, Illinois, which is generally depicted and legally described on Exhibit A attached hereto (the "West Parcel") (the East Parcel and the West Parcel, each, a "Parcel", and, collectively, the "Parcels").

C. Seller's affiliate, Land and Water Resources, Inc. ("Land and Water") is a wetland banking firm with experience in designing, permitting, and building wetland banks and marketing and selling wetland bank credits. Land and Water has obtained authorizations (i) from the United States Army Corps of Engineers ("ACOE") to build and operate a wetland bank on the East Parcel (the "East Bank"), including ACOE Permit # LRC-2015-294 and (ii) from the Lake County Stormwater Management Commission ("SMC") to build and operate a wetland bank on the West Parcel (the "West Bank"), including SMC Permit # 16-69-098.

D. In conjunction with such authorizations, Land and Water has also entered into (i) with the ACOE, the "Mill Creek Wetland Mitigation Bank Instrument" (July 19, 2017) governing the East Bank (the "East Bank Instrument") and (ii) with the SMC, the "Mitigation Bank Charter Mill Creek Wetland Mitigation Bank 2" (March 22, 2018) governing the West Bank (the "West Bank Charter").

E. The East Bank Instrument and the West Bank Charter require Land and Water to establish and enhance wetlands within the East Bank and the West Bank, respectively, and provide that, if such wetlands satisfy the performance standards required by the East Bank Instrument and the West Bank Charter (the "Performance Standards"), that the ACOE and SMC will establish and release wetland mitigation credits (the "Credits"), which Land and Water may sell to entities who must mitigate wetland impacts caused by their projects.

F. The East Bank Instrument requires Land and Water to establish and maintain a "Long-Term Management Fund" that, prior to Bank Closure (as defined in the East Bank Instrument) must have a balance of \$150,000 (the "East Bank Management Fund").

G. The West Bank Charter requires Land and Water to establish and maintain a "Long-Term Management Fund" that must have a balance of \$15,000 (the "West Bank Management Fund").

H. Purchaser is a unit of local government, created pursuant to the Downstate Forest Preserve District Act (70 ILCS 805/0.001, *et seq*). Its statutory powers include the power to acquire and hold forests and other lands in their natural state, or lands capable of being restored to forests or their natural state.

I. Seller desires to donate to Purchaser, and Purchaser desires to accept from Seller, (i) the East Parcel, (ii) the improvements on the East Parcel (if any), (iii) all easements, tenements, riparian rights, hereditaments, privileges and appurtenances that run with or are appurtenant to the East Parcel, whether or not of record, (iv) the use of all appurtenant and assignable rights-of-way, if any, abutting, adjacent, contiguous or adjoining the East Parcel, and (v) all licenses, permits and franchises issued by any government authority relating to the development, use, or operation of the East Parcel, running to or in favor of Seller (collectively, the "East Premises"), subject to this Agreement.

J. Seller also desires to donate to Purchaser, and Purchaser desires to accept from Seller, (i) the West Parcel, (ii) the improvements on the West Parcel (if any), (iii) all easements, tenements, riparian rights, hereditaments, privileges and appurtenances that run with or are appurtenant to the West Parcel, whether or not of record, (iv) the use of all appurtenant and assignable rights-of-way, if any, abutting, adjacent, contiguous or adjoining the West Parcel, and (v) all licenses, permits and franchises issued by any government authority relating to the development, use, or operation of the West Parcel, running to or in favor of Seller (collectively, the "West Premises"), subject to this Agreement. The East Premises and the West Premises are sometimes collectively referred to as the "Premises".

K. The Preservation Foundation of the Lake County Forest Preserves (the "Foundation") is a private, not for profit corporation organized and existing under the Illinois General Not For Profit Corporation Act of 1986 (805 ILCS 105/101.01). The Foundation's primary purpose is to provide financial assistance to benefit Purchaser's mission. The Foundation raises funds for a variety of Purchaser's purposes, including land acquisition, habitat restoration, development of trails or other amenities and educational programs.

Section 2. Purchase Price; Bargain Sale.

A. **Purchase Price.** Seller agrees to donate the East Premises to Purchaser, and Purchaser agrees to accept the East Premises from Seller, subject to the terms of this Agreement. Seller agrees to donate the West Premises to Purchaser, and Purchaser agrees to accept the West Premises from Seller, subject to the terms of this Agreement. There is no purchase price for the East Premises or the West Premises, which are being donated.

B. Bargain Sale. Seller has indicated that it wishes to sell the Premises as a bargain sale. At least ten (10) days prior to Closing, Seller shall deliver to Purchaser an appraisal of the Premises prepared by an appraiser with an MAI designation from the Appraisal Institute (the "Appraisal"). At Closing, Purchaser, as Donee, shall execute Internal Revenue Service Form 8283 (Noncash Charitable Contributions) and also execute and deliver to Seller a contemporaneous written acknowledgement to comply with IRS Regulation §1. 70A-13 (f) (collectively, the "Forms"). Purchaser makes no representation or warranty with respect to the Appraisal, the tax consequences of the sale, or any other matter with respect the bargain sale, and Purchaser's sole obligation with respect to the bargain sale shall be to execute the Forms. Purchaser 's obligation to execute the Forms is conditioned on (i) the value set forth in the Appraisal being greater than \$0 and (ii) the Forms correctly reflecting the value of the Premises as set forth in the Appraisal.

Section 3. Parties' Preliminary Obligations and Rights.

A. Seller's Deliveries. Within five (5) business days after the Effective Date, Seller shall deliver to Purchaser copies of (i) all existing plats of survey, (ii) any environmental reports, including Phase I and Phase II reports, (iii) contracts and services agreements, (iv) as-built plans/drawings, mitigation plans, permits, species inventories, and maintenance, monitoring, and management reports related to the East Bank and the West Bank, and (v) all correspondence (including with ACOE and SMC) related to the East Bank and the West Bank (including without limitation correspondence indicating compliance or non-compliance with ACOE or SMC requirements) (collectively "Seller's Deliveries"). Seller shall deliver a cover letter with Seller's Deliveries certifying that true, complete and correct copies of all of Seller's Deliveries have been delivered to Purchaser and its attorney.

B. Title Commitment. Purchaser, at Seller's cost, shall obtain a commitment or commitments from the Title Company ("Title Commitment") to issue to Purchaser at Closing an ALTA Owner's Title Insurance Policy (2016 version) (i) in the amount of the value set forth in the Appraisal, (ii) with an extended coverage endorsement over all standard exceptions, (iii) with such other endorsements as Purchaser deems appropriate, (iv) insuring good, marketable, and insurable title to the Premises, and (v) with coverage over any "gap" period, all subject only to the Permitted Exceptions (defined in Section 4.B.4) (the "Title Policy"). Within sixty (60) days after the Final Wetland Bank Conditions Deadline (as hereinafter defined), Purchaser, at its own cost, shall obtain (an) updated Title Commitment(s) (the "Updated Title Commitment").

C. Survey. Purchaser, at Seller's cost, shall obtain an ALTA/NSPS 2016 standard survey of the Premises (the "Survey"), that (i) is prepared by Peklay Surveying Co., Ltd. or another surveyor selected by Purchaser, (ii) is certified in favor of Seller, Purchaser and the Title Company, (iii) complies with all requirements of the Title Company that are conditions to the removal of the survey exception from the standard printed exceptions in the Title Commitment, (iv) is sufficient for the issuance of the Title Policy, (v) contains a certification as to the total acreage and square footage of the Premises, (vi) includes the Table A Items 1, 2, 3, 4, 7(a), 7(b)(1), 7(c), 8, 11, 16, 20 and 21(a), (vii) graphically depicts in relation to the Premises any offsite easements or servitudes benefitting the Premises and disclosed in the Title Commitment provided to the surveyor, and (viii) is provided to Purchaser in PDF formant and MicroStation design file format (or compatible AutoCad digital format that can be converted to MicroStation design file format) in NAD 83 State Plane Coordinates (the "Survey Criteria"). Purchaser and the surveyor may enter the Parcels for purposes of performing the

Survey beginning on the date on which Purchaser receives this Agreement executed by Seller (which may occur prior to the Effective Date) (the "Seller Execution Date"). At Seller's request, Purchaser shall provide a copy of the Survey to Seller. Within thirty (30) days after the Final Wetland Bank Conditions Deadline, Purchaser, at Seller's cost, shall obtain an updated Survey that satisfies (at Purchaser's discretion) the Survey Criteria (the "Updated Survey"). Purchaser and the surveyor may enter the Parcels for purposes of performing the Updated Survey beginning on the day after the Final Wetland Bank Conditions Deadline. At Seller's request, Purchaser shall provide a copy of the Survey and the Updated Survey to Seller.

D. Environmental Assessments. Beginning on the Seller Execution Date, Purchaser may cause to be performed one or more (i) environmental assessments, reviews, or audits, including without limitation a Phase I site assessment, of or related to the Parcels, (ii) tests or borings of the soil on the Parcels, (iii) asbestos testing of any vacant improvements located on the Parcels, and (iv) other investigations or analyses concerning the environmental and physical condition of the Parcels (collectively, "Environmental Assessments"). At Seller's request, Purchaser shall provide a copy of any completed Environmental Assessment to Seller.

Section 4. Initial Due Diligence Period.

A. Period and License. During the period which begins on the Seller Execution Date and ends on the sixtieth (60) day after the Effective Date (the "Initial Due Diligence Period"), Purchaser may conduct such investigations, inspections, reviews, and analyses of or with respect to the Premises as Purchaser desires, in its sole discretion (the "Due Diligence Activities") including, without limitation, reviews of Seller's Deliveries, the Title Commitment, the Survey, and the Environmental Assessments. By its execution of this Agreement Seller grants to Purchaser a license (irrevocable during the Due Diligence Period), for the use of Purchaser and its agents and contractors, to conduct Due Diligence Activities on the Parcels at any time upon one (1) day's prior notice to Seller. To the extent that any consent from or notice to the applicable owners of the Premises during the Initial Due Diligence Period, Seller shall be required to obtain such consent and/or timely deliver said notice.

B. Review of Title Commitment and Survey.

1. Identification of Unpermitted Exceptions and Commitment to Cure.

Upon the later to occur of (i) forty-five (45) days after the Effective Date and (ii) five (5) business days following Purchaser's receipt of the Title Commitment and the Survey, Purchaser shall send Seller written notice ("Title Objection Notice") identifying any matter identified in the Title Commitment or Survey that Purchaser determines, in its sole discretion, will adversely affect Purchaser's intended use of the Premises (the "Unpermitted Exceptions"). Within ten (10) days after receipt of a Title Objection Notice, Seller shall send Purchaser, with respect to each Unpermitted Exception, a written notice (the "Title Objection Notice Response") stating that Seller either: (i) commits, at Seller's cost, to (a) cure or remove the Unpermitted Exception or (b) cause the Title Company to insure over the Unpermitted Exceptions in a manner satisfactory to Purchaser (a "Commitment to Clear Exceptions") or (ii) will not cure, remove, or cause the Title Company to commit to insure over the Unpermitted Exception. Notwithstanding the process identified in this Section 4.B.1, the following are Unpermitted Exceptions, whether or not identified by

Purchaser, that Seller must cure, and not merely insure over, prior to or at Closing and that Seller will be deemed to commit to cure in the Commitment to Clear Exceptions, whether or not Seller identifies them therein: (i) each mechanics', materialmen's, repairmen's, contractors' or other similar lien that encumbers the Premises, unless the lien arises from the acts of Purchaser, (ii) all mortgages, security deeds, and other security instruments that encumber against the Premises, (iii) all past due Real Estate Taxes (defined in Section 11.F) applicable to the Premises, and (iv) all judgments against Seller which may constitute a lien against the Premises.

2. Purchaser's Option to Close or Terminate. If, in its Title Objection Notice Response, Seller does not make a Commitment to Clear Exceptions with respect to all Unpermitted Exceptions with respect to a particular Parcel, then Purchaser, within ten (10) days after receiving such Title Objection Notice Response, shall send Seller a written notice (a "Closing/Termination Notice") electing to either: (i) proceed with the Closing for such Parcel, in which case Purchaser shall be deemed to have accepted the uncleared or uninsured Unpermitted Exceptions for such Parcel and shall accept Seller's Deed at Closing for such Parcel subject to the uncleared or uninsured Unpermitted Exceptions or (ii) terminate this Agreement as to such Parcel or both Parcels. If Purchaser fails to give a Closing/Termination Notice as provided above, at least seven (7) days prior to Closing, Purchaser shall be deemed to have elected to proceed with the Closing with respect to such Parcel and accept the uncleared or uninsured Unpermitted Exceptions, as set forth in this Section 4.B.2.

3. Seller's Compliance with Commitment to Clear Exception. If Seller makes a Commitment to Clear Exceptions with respect to some or all Unpermitted Exceptions, then, at least twenty-one (21) days prior to Closing, Seller shall deliver to Purchaser the Updated Title Commitment, showing that all Unpermitted Exceptions that Seller committed to clear in the Commitment to Clear Exceptions have been cleared. If it fails to do so, then Purchaser, at any time, may either (i) proceed with the Closing as to such Parcel and require Seller to pay at Closing the amount reasonably necessary to clear the Unpermitted Exception that Seller committed to, but failed to, clear, in which case Purchaser shall be deemed to have accepted the uncleared or uninsured Unpermitted Exception for such Parcel and shall accept Seller's Deed for such Parcel at Closing subject to the uncleared or uninsured Unpermitted Exception or (ii) terminate this Agreement as to such Parcel or both Parcels.

4. Permitted Exceptions. Any matter of record shown in the Title Commitment that is (i) not objected to by Purchaser in a Title Objection Notice or (ii) is an uncleared or uninsured Unpermitted Exception that is deemed accepted by Purchaser pursuant to Section 4.B.2 or Section 4.B.3, is a "Permitted Exception."

5. Effect of Termination. In the event of a termination pursuant to Section 4.B.2 or Section 4.B.3, neither party shall have any claim or obligation under this Agreement with respect to the terminated Parcel(s), unless an Unpermitted Exception was caused by a willful or wrongful act or omission of Seller, in which case Purchaser may pursue any and all remedies available at law or in equity.

C. Review of Environmental Assessments. If Purchaser determines, in its sole discretion, through its review of an Environmental Assessment, that there exists within the East

Premises and/or the West Premises a condition that (i) may require environmental clean-up, remediation, or (in the case of underground and above ground storage tanks (collectively, "Storage Tanks")) removal, and (ii) may adversely affect Purchaser's intended use of the East Premises and/or the West Premises, then, within fifty (50) days after the Effective Date, Purchaser may send Seller either (i) a written notice terminating this Agreement with respect to either the East Premises and/or the West Premises, in which event neither party shall have any further liability to the other with respect to the applicable Premises or (ii) a written notice describing the clean-up work, remediation work, or removal of any Storage Tanks (collectively, the "Environmental Work") in reasonable detail and requesting that Seller either (a) perform or cause to be performed the described Environmental Work before Closing or (b) provide Purchaser with a credit at Closing for the costs and expenses of the Environmental Work (a "Remediation Notice"). Within five (5) days after receiving a Remediation Notice, Seller shall provide Purchaser with a written notice stating whether Seller (i) will comply with Purchaser's request to perform the Environmental Work before Closing or provide a credit at Closing or (ii) declines to perform the Environmental Work before Closing or provide the requested credit. If Seller does not timely provide a Remediation Notice Response, it will be deemed to have declined to either perform the Environmental Work or provide a credit.

D. Purchaser's Right to Terminate. Not later than the last day of the Initial Due Diligence Period (the "Approval Deadline"), Purchaser may deliver to Seller a written notice stating that, based on the results of the Due Diligence Activities, the East Premises and/or the West Premises are not suitable for Purchaser's intended uses, as determined by Purchaser in its sole and absolute discretion and that Purchaser has elected to terminate this Agreement ("Termination Notice") with respect to the East Premises and/or the West Premises. In the event of a termination pursuant to this Section 4.D with respect to both the East Premises and the West Premises, neither party shall have any claim or obligation under this Agreement. In the event of a termination pursuant to this Section 4.D with respect to only the East Premises or the West Premises, neither party shall have any claim or obligation under this Agreement with respect to the applicable Premises only, and this Agreement shall continue in full force and effect with respect to the other Premises.

E. Restoration. If a Due Diligence Activity damages a Parcel, and the transaction contemplated in this Agreement does not close with respect to such Parcel, then Purchaser shall restore the applicable Parcel to a condition that is substantially the same as its condition prior to the performance of such Due Diligence Activity.

Section 5. Memorandum of Agreement. If the Purchaser does not terminate this Agreement, as it relates to a Parcel, during the Initial Due Diligence Period, then the parties shall prepare and record against such Parcel a memorandum of this Agreement in form and substance mutually acceptable to them.

Section 6. Final Wetland Bank Conditions Deadline; Second Due Diligence Period.

A. Wetland Bank Conditions; Final Wetland Bank Conditions Deadline. As a condition to Purchaser's obligation to purchase the East Parcel and the West Parcel, not later than the date which is the fourth (4th) anniversary of the expiration of the Initial Due Diligence Period (the "Final Wetland Bank Conditions Deadline"), the following conditions must be satisfied:

- i. As to the East Bank, the following conditions (the "Final East Wetland Bank Conditions") must be satisfied:
 1. the acquisition of the East Bank by Seller;
 2. the East Bank has satisfied all Performance Standards (as defined in the East Bank Instrument);
 3. ACOE has approved Bank Closure (as defined in the East Bank Instrument);
 4. the completion of the sale of all Credits from the East Bank;
 5. the establishment of the East Bank Management Fund in accordance with the East Bank Instrument and Seller's deposit of the minimum balance of \$150,000.00 therein; and
 6. satisfaction of and compliance with all other ACOE and other governmental requirements applicable to the East Bank; and
- ii. as to the West Parcel, the following conditions (the "Final West Wetland Bank Conditions") must be satisfied:
 1. the acquisition of the West Bank by Seller;
 2. the West Bank has satisfied all Performance Standards (as defined in the West Bank Instrument);
 3. SMC has approved Bank Closure (as defined in the West Bank Instrument);
 4. the completion of the sale of all Credits from the West Bank;
 5. the establishment of the West Bank Management Fund in accordance with the West Bank Instrument and Seller's deposit of the minimum balance of \$15,000.00 therein; and
 6. satisfaction of and compliance with all other SMC and other governmental requirements of applicable to the West Bank.

The Final East Wetland Bank Conditions and the Final West Wetland Bank Conditions are collectively referred to herein as the "Final Wetland Bank Conditions". If on the Final Wetland Bank Conditions Deadline, Purchaser determines that the Final Wetland Bank Conditions have not been met, as determined in Purchaser's sole and absolute discretion, Purchaser may deliver to Seller a written notice stating that Purchaser has elected to terminate this Agreement ("Termination Notice") with respect to the East Premises and/or the West Premises. In the event of a termination pursuant to this Section 6.A with respect to both the East Premises and the West Premises, neither party shall have any claim or obligation under

this Agreement. In the event of a termination pursuant to this Section 6.A with respect to only the East Premises or the West Premises, neither party shall have any claim or obligation under this Agreement with respect to the applicable Premises only, and this Agreement shall continue in full force and effect with respect to the other Premises.

B. Period and License. During the period which begins on the Final Wetland Bank Conditions Deadline and ends on the ninetieth (90th) day after the Final Wetland Bank Conditions Deadline (the "Second Due Diligence Period"), Purchaser may conduct Due Diligence Activities, including review of the Updated Title Commitment, the Updated Survey, maintenance, monitoring and management reports, correspondence indicating compliance or non-compliance with ACOE or SMC requirements and the Updated Environmental Assessments. By its execution of this Agreement Seller grants to Purchaser a license (irrevocable during the Second Due Diligence Period), for the use of Purchaser and its agents and contractors, to conduct Due Diligence Activities on the Parcels at any time upon one (1) day's prior notice to Seller.

C. Review of Updated Title Commitment and Updated Survey.

1. Identification of New Unpermitted Exceptions and Commitment to Cure.

Upon the later to occur of (i) forty-five (45) days after the Final Wetland Bank Conditions Deadline and (ii) five (5) business days following Purchaser's receipt of the Updated Title Commitment and the Updated Survey, Purchaser shall send a Title Objection Notice any Unpermitted Exceptions that were not identified in the original Title Commitment ("New Unpermitted Exceptions"). Within ten (10) days after receipt of a Title Objection Notice, Seller shall send Purchaser, with respect to each New Unpermitted Exception, a Title Objection Notice Response stating either (i) Seller's Commitment to Clear Exception for the New Unpermitted Exception (ii) that it will not cure, remove, or cause the Title Company to commit to insure over the New Unpermitted Exception. Notwithstanding the process identified in this Section 6.C.1, the following are New Unpermitted Exceptions, whether or not identified by Purchaser, that Seller must cure, and not merely insure over, prior to or at Closing and that Seller will be deemed to commit to cure in the Commitment to Clear Exceptions, whether or not Seller identifies them therein: (i) each mechanics', materialmen's, repairmen's, contractors' or other similar lien that encumbers the Premises, unless the lien arises from the acts of Purchaser, (ii) all mortgages, security deeds, and other security instruments that encumber against the Premises, (iii) all past due Real Estate Taxes applicable to the Premises, and (iv) all judgments against Seller which may constitute a lien against the Premises.

2. Purchaser's Option to Close or Terminate. If, in its Title Objection Notice Response, Seller does not make a Commitment to Clear Exceptions with respect to all Unpermitted Exceptions with respect to a particular Parcel, then Purchaser, within ten (10) days after receiving such Title Objection Notice Response, shall send Seller a written notice (a "Closing/Termination Notice") electing to either: (i) proceed with the Closing for such Parcel, in which case Purchaser shall be deemed to have accepted the uncleared or uninsured Unpermitted Exceptions for such Parcel and shall accept Seller's Deed at Closing for such Parcel subject to the uncleared or uninsured Unpermitted Exceptions or (ii) terminate this Agreement as to such Parcel or both Parcels. If Purchaser fails to give a Closing/Termination Notice as provided above, at least seven (7) days prior to Closing, Purchaser shall be deemed to have elected to proceed with the Closing with respect to

such Parcel and accept the uncleared or uninsured Unpermitted Exceptions, as set forth in this Section 6.C.2. In the event of a termination pursuant to this Section 6.C.2, neither party shall have any claim or obligation under this Agreement, unless a New Unpermitted Exception was caused by a willful or wrongful act or omission of Seller, in which case Purchaser may pursue any and all remedies available at law or in equity.

D. Review of Updated Environmental Assessments. If Purchaser determines, through its review of an Updated Environmental Assessment, that there exists within the East Premises and/or the West Premises a condition that (i) may require environmental clean-up, remediation, or removal of Storage Tanks, (ii) may adversely affect Purchaser's intended use of the East Premises and/or the West Premises, and (iii) was not identified in the initial Environmental Assessments, then, within fifty (50) days after the Final Wetland Bank Conditions Deadline, Purchaser may send Seller either (i) a written notice terminating this Agreement with respect to either the East Premises and/or the West Premises, in which event neither party shall have any further liability to the other with respect to the applicable Premises or (ii) a Remediation Notice with respect to such condition. Within five (5) days after receiving a Remediation Notice, Seller shall provide Purchaser with a written notice stating whether Seller (i) will comply with Purchaser's request to perform the Environmental Work before Closing or provide a credit at Closing or (ii) declines to perform the Environmental Work before Closing or provide the requested credit. If Seller does not timely provide a Remediation Notice Response, it will be deemed to have declined to either perform the Environmental Work or provide a credit.

E. Restoration. If a Due Diligence Activity damages a Parcel, and the transaction contemplated in this Agreement does not close, then Purchaser shall restore the Parcel(s) to a condition that is substantially the same as its condition prior to the performance of such Due Diligence Activity.

F. Seller's Compliance with Commitment to Clear Exception. If Seller makes a Commitment to Clear Exceptions with respect to some or all Unpermitted Exceptions or New Unpermitted Exceptions, then the Updated Title Commitment shall show that Unpermitted Exceptions and New Unpermitted Exceptions that Seller committed to clear in the Commitments to Clear Exceptions have been cleared. If it fails to do so, then Purchaser, at any time, may either (i) proceed with the Closing as to such Parcel and require Seller to pay at Closing the amount reasonably necessary to clear the Unpermitted Exception that Seller committed to, but failed to, clear, in which case Purchaser shall be deemed to have accepted the uncleared or uninsured Unpermitted Exception for such Parcel and shall accept Seller's Deed for such Parcel at Closing subject to the uncleared or uninsured Unpermitted Exception or (ii) terminate all this Agreement as to such Parcel or both Parcels.

G. Permitted Exceptions. Any matter of record that is (i) shown in the Title Commitment that is (a) not objected to by Purchaser in a Title Objection Notice or (b) is an uncleared or uninsured Unpermitted Exception that is deemed accepted by Purchaser pursuant to Section 4.B.2 or Section 6.F or (ii) shown in the Updated Title Commitment that is (a) not objected to by Purchaser in a Title Objection Notice or (b) is an uncleared or uninsured New Unpermitted Exception that is deemed accepted by Purchaser pursuant to Section 6.C.2 or Section 6.F is a "Permitted Exception".

Section 7. Seller's Representations and Warranties.

A. General Representations and Warranties. Seller, and the person executing this Agreement on Seller's behalf, represent and warrant to Purchaser that as of the date hereof and as of the date of Closing:

- (i) Seller has not entered into any agreements or granted any options pursuant to which any third party has the right to acquire all or any portion of the Premises or any interest therein;
- (ii) there are not now and will not be at Closing, any leases, tenancies, licenses, concessions, franchises, options or rights of occupancy or purchase, service or maintenance contracts or other contracts which will be binding upon Purchaser or the Premises after the Closing;
- (iii) the Premises are not affected by or subject to: (a) any pending or, to the best of Seller's knowledge, threatened condemnation suits or similar proceedings, (b) other pending or, to the best of Seller's knowledge, threatened claims, charges, complaints, petitions or unsatisfied orders by or before any administrative agency or court, or (c) any pending or, to the best of Seller's knowledge, threatened claims, suits, actions, complaints, petitions or unsatisfied orders by or in favor of any party whatsoever;
- (iv) to the best of Seller's knowledge, there are no threatened requests, applications or proceedings to alter or restrict the zoning or other use restrictions applicable to the Premises;
- (v) to the best of Seller's knowledge, there are no unrecorded easements, liens or encumbrances affecting the Premises;
- (vi) Seller has received no written notice of, and to the best of Seller's knowledge, there is not any violation of any law, ordinance, order, regulation or requirement, including, but not limited to, building, zoning, environmental, safety and health ordinances, statutes, regulations and requirements issued by any governmental or municipal body or agency having jurisdiction over the Premises;
- (vii) to the best of Seller's knowledge and except as disclosed in the Environmental Assessments: (a) any use of the Parcels for the generation, storage or disposal of any (1) asbestos, (2) petroleum, (3) explosives, (4) radioactive materials, wastes or substances, or (5) any substance defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq., the Hazardous Materials Transportation Act (49 U.S.C. 1802), the Resource Conservation and Recovery Act (42 U.S.C. 6901), or in any other Applicable Law (as defined in Section 15.D.2) governing environmental matters ("Environmental Laws") (collectively, "Hazardous Materials") has been in compliance with all Environmental Laws, (b) there are not

any Hazardous Materials present on the Parcels, (c) the Parcels are currently in compliance with all Environmental Laws; and (d) there are currently no Storage Tanks on the Parcels and any Storage Tanks formerly located on the Parcels were removed in compliance with all Environmental Laws;

- (viii) except as disclosed in Seller's Deliveries, Seller has received no written notice of:
(a) any pending or threatened action or proceeding arising out of the presence of Hazardous Materials on the Real Estate or (b) any alleged violation of any Environmental Laws;
- (ix) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986;
- (x) Seller has the requisite power and authority to enter into and perform the terms of this Agreement and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary trustee, executory, and individual action and authority, do not violate any agreement to which Seller is a party, and other than Seller's acquisition of the Parcels pursuant to the East Wetland Bank PSA and the West Wetland Bank PSA, and except as otherwise expressly set forth in this Agreement, no other proceedings on Seller's part are necessary in order to permit Seller to consummate the transaction contemplated hereby; and
- (xi) Neither Seller nor any of its affiliates have (i) commenced a voluntary case or had entered against them a petition for relief under any applicable law relative to bankruptcy, insolvency, or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator, or similar official in any federal, state or foreign judicial or non-judicial proceeding to hold, administer, and/or liquidate all or substantially all of their respective assets, (iii) had filed against them any involuntary petition seeking relief under any applicable law relative to bankruptcy, insolvency, or other relief to debtors which involuntary petition is not dismissed within 60 days, or (iv) made a general assignment for the benefit of creditors.
- (xii) the person executing this Agreement on behalf of Seller is fully authorized to do so and, by doing so, to bind Seller to its obligations under this agreement.

At Purchaser's request, Seller shall reconfirm all representations and warranties set forth in this Section 7 as true, accurate, and complete on and as of Closing.

B. Survival; Indemnification. Seller's representations and warranties shall survive Closing. Seller agrees to indemnify, hold harmless, and defend Purchaser and its successors and assigns, from and against any and all claims, demands, losses, liens, costs, expenses (including reasonable attorneys' fees and court costs), damages, liabilities, judgments or decrees of whatsoever kind or nature which, directly or indirectly, are caused by, result from, arise out of, or occur in any manner in connection with any material inaccuracy in the representations or

warranties contained herein. The preceding indemnity and hold harmless shall not apply to matters attributable to acts or omissions of the Purchaser or third parties, or which arise after Closing.

Section 8. Seller's Covenants and Agreement.

Seller covenants and agrees with Purchaser from the Effective Date until the Closing:

- (i) Seller shall not make, enter into, grant, amend, extend, renew or grant any waiver or consent under any lease, tenancy, easement, license or other agreement allowing the use or occupancy of all or any portion of the Parcels, without Purchaser's prior written consent,
- (ii) Seller shall not enter into or amend any contracts, agreements or undertakings that will be binding upon Purchaser or the Parcels, without Purchaser's prior written consent,
- (iii) Seller shall not create, or allow the creation of, any encumbrance on the title of the Premises, without Purchaser's prior written consent (except for any Permitted Exceptions),
- (iv) Seller shall not take any action, directly or indirectly, to encourage, initiate, or engage or participate in discussions or negotiations with any third party concerning a potential sale of all or any portion of, or any interest in, the Premises,
- (v) Seller shall promptly inform Purchaser of any developments which would cause any of its representations or warranties contained in this Agreement to be no longer materially accurate,
- (vi) Seller, at its own expense, and before Closing, shall completely remove all materials, equipment, signs, personal property, garbage and debris located at or on the Premises in accordance with all Applicable Laws, and
- (viii) Seller shall use commercially reasonable efforts to comply with all Applicable Laws materially affecting the Parcels, and will pay taxes and mortgage payments on it as they become due.

Section 9. Bulk Sales/Illinois Income Tax Withholding.

At least thirty (30) days prior to the Closing, Seller shall notify the Illinois Department of Revenue (the "Department") of the intended sale of the Premises and request the Department to make a determination as to whether Seller has an assessed, but unpaid, amount of tax, penalties, or interest under 35 ILCS 5/902(d) or 35 ILCS 120/5j (the "Act"). At or prior to the Closing, Seller shall deliver to Purchaser evidence that the sale of the Premises to Purchaser hereunder is not subject to, and does not subject Purchaser to liability under the Act. Purchaser may, at the Closing, deduct and withhold from the proceeds that are due Seller the amount necessary to comply with the withholding requirements imposed by the Act, provided that such amounts are deposited in the Closing Escrow (defined in Section 11.B) at Closing and released to Seller upon obtaining a release from the Department or otherwise satisfying any amounts due under the Act. Seller shall

indemnify, defend and hold harmless Purchaser, and its commissioners, officers, employees, agents, successors and assigns, harmless from any and all obligations, liabilities, claims, demands, losses, expenses or damages arising from Seller's failure to (i) provide any required notice of its sale of the Premises to the appropriate state, county or municipal governmental authorities, (ii) pay any and all taxes and other amounts due in connection with its ownership, operation or sale of the Premises, or (iii) otherwise comply with any bulk sales laws of the State of Illinois or County of Lake. The foregoing indemnity shall survive the Closing Date.

Section 10. Conditions Precedent to Closing.

Purchaser's obligation to close is subject to each and all of the following conditions being satisfied by Seller or waived by Purchaser, in writing (the "Purchaser Closing Contingencies"):

- (i) all of Seller's representations and warranties contained in this Agreement, must be materially true and correct on the date hereof and as of the Closing Date;
- (ii) Seller must have timely performed all of its obligations under this Agreement;
- (iii) all conditions precedent to Purchaser's obligation to close on the transaction contemplated in this Agreement must have been satisfied or waived as of the Closing Date;
- (iv) Seller must have delivered all items required to be delivered by Seller pursuant to Section 11.C;
- (v) the Title Company has issued or is irrevocably committed to issue the Title Policy;
- (vi) as to the East Parcel, the East Bank Management Fund shall have been established in accordance with the East Bank Instrument and have a minimum balance of \$150,000.00, and all conditions required under the East Bank Instrument for the transfer of the East Bank to Purchaser, as long-term manager, shall have been satisfied;
- (vii) as to the West Parcel, the West Bank Management Fund shall have been established in accordance with the West Bank Instrument and have a minimum balance of \$15,000.00, and all conditions required under the West Bank Instrument for the transfer of the West Bank to Purchaser, as long-term manager, shall have been satisfied;
- (viii) as to the East Parcel, all of the Final East Wetland Bank Conditions shall have been satisfied; and
- (ix) as to the West Parcel, all of the Final West Wetland Bank Conditions shall have been satisfied.

If a Purchaser Closing Contingency is not satisfied because of a default by Seller, Purchaser will have all of its rights under Section 15.E.1.b.

Section 11. Closing.

A. Conveyance and Possession. At Closing, Seller shall convey fee simple title to the Premises to Purchaser by delivery of Seller's general warranty deed ("Seller's Deed") in recordable form conveying fee simple title to the Premises, subject only to Permitted Exceptions. Seller shall deliver full and complete possession of the Premises to Purchaser upon Closing.

B. Time, Place; Closing Escrow. The consummation of the transaction contemplated hereunder ("Closing") shall occur on (i) the 30th day following the expiration of the Second Due Diligence Period or (ii) another date mutually agreed to in writing by the parties (the "Closing Date"). The Closing shall be at the office of the Title Company. The parties need not physically attend the Closing. On or before Closing, an escrow shall be established by the respective counsel for Purchaser and Seller in the usual form of deed and money escrow agreement then in use by Title Company with such changes made as may be necessary to conform with the provisions of this Agreement ("Closing Escrow"). The Closing shall be a "New York" style closing.

C. Seller Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following, in each case, fully executed (as applicable) and in the form provided by Purchaser or the Title Company, except for items (i) and (ii) below which shall be prepared by Seller:

- (i) transfer or payment of all funds in the East Bank Management Fund to (a) Purchaser or (b) at Purchaser's direction, to the Foundation, for the benefit of Purchaser,
- (ii) transfer or payment of all funds in the West Bank Management Fund to (a) Purchaser or (b) at Purchaser's direction, to the Foundation, for the benefit of Purchaser,
- (iii) evidence reasonably satisfactory to the Title Company of the authority of Seller to consummate the transaction set forth in this Agreement, to the extent such authority is not apparent in the documents recorded when Seller acquired title to the Premises,
- (iv) Seller's Deed and a bill of sale (with general warranty of title) and other instruments of transfer and conveyance transferring the Premises to Purchaser free of all liens other than the Permitted Exceptions,
- (v) to the extent required by the Title Company, a "gap" undertaking in customary form and substance for the "gap" period" through the Closing Date or the date of recording, as the case may be,
- (iv) a current form of ALTA Statement in customary form and substance as required by the Title Company,
- (v) a counterpart to the closing statement,

- (vi) real estate transfer declarations or exemptions required by Applicable Laws,
- (vii) at Purchaser's request, a certification that all representations or warranties contained in Section 7 are true, accurate, and complete as of the Closing Date,
- (viii) at Purchaser's request, a title affidavit in the form required by the Illinois Department of Natural Resources (the "IDNR") covering the Closing Date; notwithstanding the foregoing, in the event that the IDNR requires such title affidavit prior to the Closing Date, Seller agrees to execute and deliver such title affidavit to Purchaser within 5 business days following written notice from Purchaser,
- (ix) at Purchaser's request, a Certification of Voluntary Transaction Involving Land Sale in the form required by the IDNR; notwithstanding the foregoing, in the event that the IDNR requires such Certification prior to the Closing Date, Seller agrees to execute and deliver such Certification to Purchaser within 5 business days following written notice from Purchaser,
- (x) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction, including any instrument, assurance or deposit required for the Title Company to insure over Unpermitted Exceptions in such form, terms, conditions and amount as may be required by the Title Company,
- (xi) such additional information, materials, affidavits, including a plat act affidavit, and certificates as Purchaser or the Title Company reasonably requests to evidence Seller's compliance with its obligations under this Agreement, including without limitation, evidence that all consents and approvals required as a condition to Purchaser's obligation to close hereunder have been obtained, title affidavits, such affidavits and indemnities as the Title Company may reasonably require to issue the Title Policy, the "gap" coverage and all endorsements and any other documents expressly required by this Agreement to be delivered by Seller at Closing, or as may be reasonably required by the Title Company or by law,
- (xii) a non-foreign affidavit sufficient in form and substance to relieve Purchaser of any and all withholding obligations under Section 1445 of the Internal Revenue Code,
- (xiii) a marked-up signed Title Commitment or Title Policy, and
- (xiv) a release of liens from all real estate brokers, finders and salespersons with respect to this Agreement.

D. Purchaser's Deliveries. At the Closing, Purchaser shall deliver or cause to be delivered to Seller the following, in each case, fully executed (as applicable) and in form and substance reasonably satisfactory to Seller:

- (i) a counterpart to the closing statement,

- (ii) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction, and
- (iii) such additional information and materials as the Title Company and Seller reasonably request to evidence Purchaser's compliance with its obligations under this Agreement or as otherwise required to be delivered by Applicable Laws.

E. Closing Costs. Seller shall pay (i) 50% of the Title Company's closing fees, (ii) the premium for the Title Policy, (iii) Seller's own attorneys' fees, and (iv) the cost of the Survey. Purchaser shall pay (i) 50% of the Title Company's closing fees, (ii) 100% of the costs incurred in recording Seller's Deed, (iii) the cost of all title insurance endorsements, (iv) any costs incurred in connection with Purchaser's Due Diligence Activities (specifically excluding, however, the cost of any Environmental Work, which shall be a Seller expense), (v) Purchaser's own attorneys' fees and (vi) any transfer taxes (or exempt stamp fee) imposed by the State of Illinois or Lake County.

F. Prorations. All ad valorem, special tax roll, or other real estate taxes, charges, and assessments, including special assessments and special service area taxes, affecting the Premises (collectively, "Real Estate Taxes") shall be prorated on an accrual basis and on a per diem basis, disregarding any discount or penalty and on the basis of the fiscal year of the authority levying the same. If any Real Estate Taxes have not been finally assessed as of the Closing Date, then they shall be prorated based upon 110% of the latest available Real Estate Tax bill for the Premises, and all such prorations shall be final. All water, sewer, and other utility charges, if any, shall also be prorated as of Closing. All Real Estate Taxes and utility charges for the day of Closing shall accrue to Seller.

Section 12. Casualty; Condemnation.

The risk of loss due to casualty or condemnation remains with Seller until after Closing. If, prior to Closing, any such loss occurs or any condemnation action is filed, then Purchaser may terminate this Agreement, in which case neither Purchaser nor Seller shall have any further liability hereunder, unless Seller's acts or omissions related to such loss or action violate its obligations under this Agreement, including the representations and warranties in Section 7.A or the covenants and agreements in Section 8.

Section 13. Brokers.

Seller and Purchaser each represents and warrants to the other that it knows of no broker or other person or entity who has been instrumental in submitting or showing the Premises to Purchaser. If any claim for a broker's commission, finder's fee, or similar payment in connection with the transaction contemplated in this Agreement is asserted against Seller by any person, Purchaser shall indemnify and hold harmless Seller from and against any damage, liability, or expense, including costs and reasonable attorneys' fees that Seller incurs because of such claim, if the claim is based upon any statement, representation, or agreement alleged to have been made or entered into by Purchaser. If any such claim is asserted against Purchaser, Seller shall indemnify and hold harmless Purchaser from and against any damage, liability or expense, including costs and reasonable attorneys' fees that Purchaser incurs because of such claim, if the same is based

upon any statement, representation, or agreement alleged to have been made or entered into by Seller.

Section 14. Patriot Act.

A. Definitions. All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) (the "Patriot Act") and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001, are collectively referred to as the "Patriot Rules" and are incorporated into this Section.

B. Representations and Warranties. Purchaser and Seller hereby represent and warrant, each to the other, that each and every "person" or "entity" affiliated with each respective party or that has an economic interest in each respective party or that has or will have an interest in the transaction contemplated by this Agreement or in any property that is the subject matter of this Agreement or will participate, in any manner whatsoever, in the purchase and sale of the Premises is, to the best of Purchaser's or Seller's knowledge:

- (i) not a "blocked" person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224,
- (ii) in full compliance with the requirements of the Patriot Rules and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC"),
- (iii) operated under policies, procedures and practices, if any, that are in compliance with the Patriot Rules and available to each other for review and inspection during normal business hours and upon reasonable prior notice,
- (iv) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Rules,
- (v) not listed as a Specially Designated Terrorist or as a blocked person on any lists maintained by the OFAC pursuant to the Patriot Rules or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Rules or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Rules,
- (vi) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Rules, and
- (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any person or entity named in the Annex or any other list promulgated under the

Patriot Rules or any other person who has been determined to be subject to the prohibitions contained in the Patriot Rules.

C. Mutual Notice; Termination. Each party covenants and agrees that in the event it receives any notice that it or any of its beneficial owners or affiliates or participants become listed on the Annex or any other list promulgated under the Patriot Rules or indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, the party that receives such notice shall immediately notify the other (the "Non-Blocked Party") and the effect of the issuance of a notice pursuant to the Patriot Rules is that the Non-Blocked Party may elect to either: (i) obtain permission from OFAC to proceed with the Closing, in which case, the Closing Date shall be delayed until such permission is obtained, or (ii) send written notice to the other party terminating this Agreement, in which event the parties shall have no further rights or obligations under this Agreement, except for those rights, liabilities or obligations that survive a termination of this Agreement.

Section 15. General Provisions.

A. Integration; Modification. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, and negotiations pertaining thereto. It may be modified only by a written amendment or other agreement that is lawfully approved and executed by both parties.

B. Further Actions. The parties shall execute all documents and take all other actions consistent with this Agreement that are reasonably necessary to consummate the transaction contemplated in this Agreement.

C. Confidentiality. In addition to Seller's confidentiality obligations pursuant to Section 15.F.1.b, Seller shall keep all negotiations, information, and documents related to this Agreement (including without limitation any appraisals or financial information) (collectively, "Negotiation Information"), strictly confidential and shall not disclose (and shall cause their attorneys consultants, and agents not to disclose) Negotiation Information to any third party, without Purchaser's prior written consent, which consent may be granted or withheld in Purchaser's sole discretion. Seller acknowledges that such disclosure may negatively impact Purchaser's ability to fulfill its statutory mission to acquire, and negotiate for the acquisition of, other lands. The obligations of this Section will survive Closing or the termination of this Agreement. Nothing in this Section will be deemed to prohibit disclosure of any information that is generally available to the public.

D. Interpretation.

1. Presumption. There is no presumption that this Agreement is to be construed for or against Seller or Purchaser, or either party as the principal author of the Agreement. Instead, this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

2. Compliance with Applicable Laws; Governing Law. In performing their obligations under this Agreement, the parties shall comply with all applicable federal, state, and local statutes, regulations, requirements, ordinances, and other laws ("Applicable Laws"). The internal laws of the State of Illinois, without regard to its conflict of laws rules, shall govern the interpretation of this Agreement.

3. Headings and Exhibits. The Section headings in this Agreement are used as a matter of convenience and do not define, limit, construe or describe the scope or intent of the text within such headings. The following Exhibits attached hereto are incorporated herein as an integral part of this Agreement:

Exhibit A: Legal Description and General Depiction of East Parcel and West Parcel

4. Non-Waiver. Except as expressly provided in this Agreement, the mere failure by a party to insist upon the strict performance of any obligation of this Agreement or to exercise any right or remedy related to a default thereof shall not constitute a waiver of its rights. If a party does waive a right under this Agreement, that waiver shall not be deemed a waiver of any other right.

5. Severability. If any provision of this Agreement is invalid or unenforceable against any party under certain circumstances, then this Agreement will be deemed to be amended by deleting such provision. This Agreement will be enforceable, as amended, to the fullest extent allowed by Applicable Laws and so long as the amendment does not result in a failure of consideration.

6. Time. Time is of the essence in the performance of this Agreement. If any date upon which action is required under this Agreement is a Saturday, Sunday, or legal holiday, the date will be extended to the first business day after such date that is not a Saturday, Sunday or legal holiday.

E. Enforcement.

1. Default.

a. Purchaser Default. If Purchaser fails to perform an obligation under this Agreement, and does not, within 5 days after receiving written notice from Seller of such failure, either (i) cure such failure or (ii) if such failure cannot reasonably be cured within 5 days, commence and diligently pursue a cure for such failure, then Seller may terminate this Agreement as its sole and exclusive remedy.

b. Seller Default. If (i) Seller fails to perform an obligation under this agreement or (ii) any representation or warranty made by Seller hereunder is or becomes materially untrue as the result of an act or omission of Seller, and Seller does not, within 5 days after receiving written notice from Seller of such failure, either (i) cure such failure or take action to cause such representation or warranty to become materially true or (ii) if such failure cannot reasonably be cured within 5 days or if such action cannot reasonably be completed within 5 days, commence and diligently pursue a cure for such failure or such action, then, Purchaser may terminate this Agreement

or pursue any other remedy available at law or equity, including without limitation an action for specific performance.

2. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

3. Prevailing Party Attorney Fees. In any litigation filed to enforce this Agreement, the prevailing party will be entitled to recover from the other party its reasonable attorney's fees, litigation expenses, and court costs at trial and on appeal that are incurred in such litigation.

4. Venue. Venue for any litigation concerning the enforcement of this Agreement shall be in the Circuit Court of Lake County, Illinois, or the federal district court for the Northern District of Illinois.

F. Execution of Agreement.

1. Board Approval Required.

a. Effectiveness; Irrevocable Offer. Seller acknowledges that (i) even after it has executed this Agreement and Purchaser's Planning Committee has recommended approval of this Agreement, this Agreement is not effective until it is approved by Purchaser's Board of Commissioners in accordance with Applicable Laws, (ii) by executing this Agreement and delivering it to Purchaser, Seller has made an offer to Purchaser to enter into this Agreement, (iii) such offer may be accepted by the lawful approval of the Agreement by Purchaser's Board of Commissioners, and (iv) that such offer is irrevocable until September 14, 2022

b. Confidentiality. Seller acknowledges that, even after it executes this Agreement, this Agreement will be a public document only on the earlier of (i) the date that Purchaser makes this Agreement available for public review on its website as an attachment to a posted meeting agenda and (ii) the date that Purchaser's Board of Commissioners approves this Agreement or its Planning Committee recommends approval of this Agreement at an open meeting (the "Agreement Disclosure Date"). Until the Agreement Disclosure Date, and as a condition precedent to such Committee and such Board considering this Agreement, Seller shall (and shall cause its attorneys, consultants, and agent to) keep this Agreement and all Negotiation Information strictly confidential and shall not (and shall cause its attorneys, consultants, and agents not to) disclose this Agreement and Negotiation Information to any third party.

c. Consideration. Seller acknowledges that Purchaser's good faith consideration of this Agreement, including the consideration thereof by Purchaser's Planning Committee, is adequate consideration for Seller's agreements in this Section.

2. Counterparts and Effectiveness. The parties may execute this Agreement in multiple counterparts, all of which taken together will constitute a single Agreement binding on the parties, notwithstanding that the parties are not signatories to the same counterpart. This Agreement will be deemed fully executed, and effective as of the Effective Date, when each party

has executed at least one counterpart. Any signature of a party to this Agreement that is sent by that party to the other party via a telefax transmission or via an email transmission in a PDF format shall be deemed a binding signature hereto. Each party shall deliver an original signature to the other party upon the other party's request.

G. Notices. Notices under this Agreement must be delivered (i) personally, (ii) by overnight delivery by a nationally recognized courier service, or (iii) by email, with the notice also being sent personally, by overnight delivery as set forth above, or by regular U.S. mail. Notices under this agreement must be sent to the following addresses or to such other or further addresses as a party may hereafter designate by notice:

if to Seller:	Mill Creek WB, LLC c/o Land and Water Resources, Inc. 9575 W. Higgins Road Suite 801 Rosemont, Illinois 60018 Attn.: John Ryan Email: jryan@lawrinc.com
with a copy to:	Brennan Steil S.C. 1 E. Milwaukee Street Janesville, WI 53545 Attn: William F. Springer Email: WSpringer@brennansteil.com
if to Purchaser:	Lake County Forest Preserve District 1899 West Winchester Road Libertyville, IL 60048 Attn.: Ken Jones Email: kjones@lcfpd.org
with a copy to:	Burke, Warren, MacKay & Serritella, P.C. 330 North Wabash, 21 st Floor Chicago, IL 60611 Attn: Matthew Norton, Esq. Email: mnorton@burkelaw.com

Any notice shall be deemed given upon actual receipt. Nothing in this Section will be deemed to invalidate a notice that is actually received, even if it is not given in strict accordance with this Section.

[Signature Page Follows]

The undersigned execute this Agreement on the dates next to their signatures and acknowledge that this Agreement will become effective as of the Effective Date.

Purchaser:

Lake County Forest Preserve District

By: _____

Name: Angelo D. Kyle

Title: President

Attest:

By: _____

Name: Julie Gragnani

Title: Board Secretary

Seller:

Mill Creek WB, LLC

By: _____

Name: John Ryan

Title: Manager

Exhibit A

Legal Description and General Depiction of East Parcel and the West Parcel

Legal Description:

[to be inserted]

Exhibit A

Legend



East Parcel



West Parcel



Lake County Forest Preserve District
Land Preservation and Special Projects
1895 W. Winchester Rd
Libertyville, Illinois 60048
847-968-3351

Courtesy Copy Only.
Property boundaries indicated are provided
for general location purposes. Wetland
and flood limits shown are approximate and
should not be used to determine setbacks for
structure or as a basis for purchasing property.

Prepared using information from:
Lake County Department of Information
& Technology: GIS/Mapping Division
18 North County Street
Waukegan, Illinois 60085-4357
847-377-2373



2022 Aerial Photo

Map Prepared 8 July 2022

