



City of Des Plaines
Community & Economic Development Department
1420 Miner Street
Des Plaines, IL 60016
Tel: 847-391-5545
Fax: 847-827-2196

MEMORANDUM

Date: July 7, 2015

To: Michael G. Bartholomew, MCP, LEED-AP, City Manager

From: George Sakas, Director *GS*

Re: Ordinance Approving the Sale of 968 Second Avenue to the Des Plaines District

Issue: The City acquired by foreclosing on a lien for demolition costs this 7,000 square-foot single-family lot at 968 Second Avenue. On March 16, 2015, the City Council in executive session expressed consensus to sell this property to the Des Plaines Park District for \$52,000 to develop as a neighborhood park.

Analysis: Through the title process it has been discovered that there are back taxes dating from pre-condemnation. We do not yet have an exact amount, but it is no more than \$8,000. The Des Plaines Park District has requested a special warranty deed with a title policy. Reason being properties acquired in this manner carry a minimal risk that a party with a property interest appears.

With this, we estimate closing costs at \$2,000. In the interest of inter-governmental cooperation, staff for the City and Park District propose to divide these costs evenly between our two taxing bodies. The City would incur an estimated \$5,000 in costs bringing our proceeds from the sale to approximately \$47,000.

Recommendation: I recommend the City Council approve the ordinance authorizing the City Manager to execute the Purchase and Sale Agreement and close the sale of the property dividing back taxes and necessary closing costs 50%.

Attachments:

- Ordinance M-14-15 Approving the Sale of 968 Second Avenue to the Des Plaines Park District
- Exhibit A: Legal Description of Property
- Exhibit B: Purchase and Sales Agreement

CITY OF DES PLAINES

ORDINANCE M - 14 - 15

AN ORDINANCE APPROVING THE SALE OF 968 SECOND AVENUE TO THE DES PLAINES PARK DISTRICT.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, encourages cooperation between governmental entities and agencies; and

WHEREAS, the City owns the property commonly known as 968 Second Avenue in the City and legally described in **Exhibit A** attached to and, by this reference, made a part of this Ordinance ("**Property**"); and

WHEREAS, the Des Plaines Park District ("**District**") desires to purchase the Property from the City for use as a park; and

WHEREAS, the City Council has determined that the Property is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the City, in accordance with Section 1-12-5 of the City Code of the City of Des Plaines ("**City Code**"); and

WHEREAS, the City desires to enter into a purchase and sale agreement with the District under which the City will transfer title to the Property to the District by special warranty deed in consideration of payment by the District to the City of a purchase price in the amount of \$52,000 ("**Agreement**"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Agreement with the District and sell the Property to the District in accordance with the terms of the Agreement;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Ordinance as findings of the City Council.

SECTION 2: APPROVAL OF AGREEMENT. The City Council hereby approves the Agreement in substantially the form attached to this Ordinance as **Exhibit B**, and in a final form to be approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE AGREEMENT AND SELL PROPERTY. Pursuant to and in accordance with Section 1-12-5 of the City Code and the home rule powers of the City, the City Council hereby:

A. Determines that the Property is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the City;

B. Authorizes and directs the City Manager and the City Clerk to execute and seal, on behalf of the City, the final Agreement and all other documents approved by the General Counsel necessary to transfer title to the Property to the District; and

C. Authorizes and directs the City Manager to take all other actions necessary to transfer title to the Property to the District by special warranty deed in accordance with the terms of the Agreement.

SECTION 4: EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form according to law.

PASSED this ____ day of _____, 2015.

APPROVED this ____ day of _____, 2015.

VOTE: AYES _____ NAYS _____ ABSENT _____

MAYOR

ATTEST:

CITY CLERK

Published in pamphlet form this
____ day of _____, 2015.

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

DP-Ordinance Approving Sale of 968 Second Avenue to Des Plaines Park District

#36136709_v1

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 5 IN BLOCK 4 IN SUNSET GARDENS, BEING W.L. PLEW & CO.'S SUBDIVISION OF THE EAST 503 FEET, MEASURED AT RIGHT ANGLE TO THE EAST LINE OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPLE MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 968 SECOND AVENUE
 DES PLAINES, IL 60016

EXHIBIT B

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT

FOR THE PURCHASE AND SALE OF 968 SECOND AVENUE

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is entered into as of the ____ day of _____, 2015 by and between the City of Des Plaines, an Illinois home-rule municipal corporation ("**Seller**"), and the Des Plaines Park District, an Illinois park district organized and existing under the Illinois Park District Code, 70 ILCS 1205/1-1 *et seq.* ("**Purchaser**").

WHEREAS, Seller holds title to that certain real property commonly known as 968 Second Avenue, Des Plaines, Illinois, and legally described in **Exhibit A** attached to this Agreement ("**Property**"); and

WHEREAS, the Property consists of an unimproved lot that has a lot area of approximately 7,000 square feet and lot dimensions of approximately 140 feet by 50 feet; and

WHEREAS, the Property is located in the R-1 Single Family Residential Zoning District under the Des Plaines Zoning Ordinance of 1998; and

WHEREAS, parks are a permitted use within the R-1 Single Family Residential Zoning District; and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Property for use as a park in accordance with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the promises and the mutual covenants set forth in this Agreement, Seller and Purchaser agree as follows:

1. Sale and Purchase. Seller agrees to sell, convey, and transfer to Purchaser, and Purchaser agrees to purchase from Seller, the Property.

2. Purchase Price. The purchase price ("**Purchase Price**") for the Property shall be \$52,000.00, which amount shall be paid in cash at Closing, as hereinafter defined, plus or minus prorations and closing costs as provided in this Agreement.

3. No Representations or Warranties; AS IS Condition. Purchaser acknowledges and agrees as follows:

(a) Purchaser acknowledges and agrees that Purchaser is purchasing the Property in an "AS IS/WHERE IS" condition, "WITH ALL FAULTS" and with all

physical latent or patent defects, and specifically and expressly without any warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever from or on behalf of Seller. Purchaser acknowledges that Purchaser has not relied upon and is not relying upon any information, document, sales brochures or other literature, maps or sketches, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, oral or written, material or immaterial) that may have been given by or made by or on behalf of Seller.

(b) Purchaser further acknowledges that the Property is subject to the zoning, subdivision, and other regulations of the City of Des Plaines. Notwithstanding anything to the contrary in this Agreement, Seller acknowledges and agrees that the Property is in the R-1 Single Family Residential District, which, pursuant to Table 7.2-1 of the Des Plaines Zoning Ordinance of 1998, as amended, permits the Property to be used as a park.

(c) Purchaser hereby acknowledges that it shall not be entitled to, and shall not rely on Seller or its agents as to (i) the condition of the Property; (ii) the quality, nature, adequacy or physical condition of soils or ground water at the Property; (iii) the existence, quality, nature, adequacy or physical condition of any utilities serving the Property or available at its boundaries; (iv) the physical dimensions or the development potential of the Property, its merchantability, or the fitness, suitability or adequacy of the Property for any particular purpose; or (v) the condition of title to the Property or the nature, status and extent of any right of way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting title to the Property except as may be set forth in the Survey, Title Commitment, or Title Insurance Policy as defined in Section 4 below.

(d) Purchaser acknowledges and agrees that with respect to the Property, Seller has not, does not, and will not make any warranties or representations, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of condition, merchantability, habitability or fitness for a particular use, or with respect to the value, profitability or marketability of the Property. Purchaser acknowledges that Seller has not, does not and will not make any representation or warranty with regard to existence or non-existence at any time of hazardous waste or substances in the Property or on, at or under the surface of the Property or with regard to compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements including, but not limited to, those pertaining to the handling, generating, treating, storing or disposing of any hazardous waste or substance or radon.

(e) Purchaser hereby acknowledges and agrees that, notwithstanding the provisions of Subparagraph 3(a) of this Agreement, water service to the Property will be shut off as of the Closing Date, and that Purchaser may receive water service from the City at its sole cost and expense upon completing

installation of water metering equipment and complying with all applicable provisions of the City Code.

(f) Purchaser hereby acknowledges and agrees that, notwithstanding the provisions of Subparagraph 3(a) of this Agreement, the Property will be disconnected from any electricity system as of the Closing Date and Purchaser shall be solely responsible, should it desire to obtain electrical service, to obtain such electrical service at its sole cost and expense.

4. Survey; Title Insurance.

(a) Survey. Purchaser acknowledges and agrees that Seller has provided Purchaser with a survey ("**Survey**") of the Property and that Purchaser shall pay for half the cost of the Survey at Closing.

(b) Title Commitment. Purchaser acknowledges and agrees that Seller has provided Purchaser with a commitment ("**Title Commitment**") issued by Chicago Title Insurance Company ("**Title Company**") for an owner's title insurance policy in the amount of the Purchase Price showing Seller as the fee simple owner of the Property. At Closing, Seller shall deliver to Purchaser the Title Commitment showing Purchaser as the proposed insured. The Title Commitment shall be conclusive evidence of good title as shown thereon. Purchaser shall pay for the cost of the Title Commitment at Closing.

(c) No Title Objections. Purchaser represents and warrants to Seller that it has examined the Survey and the Title Commitment and has no objections to any title defects that may be listed thereon. Purchaser agrees that Purchaser will purchase the Property in accordance with this Agreement subject to any title defects set forth on the Survey or Title Commitment.

(d) Owner's Title Insurance Policy. At Closing, Seller shall, so long as Purchaser complies with all of the Title Company's requirements in connection therewith, deliver to Purchaser an ALTA 2015 owner's title insurance policy in the amount of the Purchase Price showing Purchaser in title to the Property ("**Title Insurance Policy**").

5. Prorations. Purchaser and Seller acknowledge and agree that the Property is exempt from real estate taxes for 58 percent of the 2014 assessment year and for 100 percent of subsequent assessment years. The amount of \$3,746.69 is currently due for taxes billed for the 2013 assessment year. The amount of \$415.03 is currently due for taxes billed for the first installment of the 2014 assessment year. Additional taxes may be billed for the second installment of the 2014 assessment year. Before closing, Purchaser and Seller will each pay to the Cook County Treasurer \$2,080.86, or 50 percent of the amount of unpaid taxes currently due on the Property. After closing, Purchaser and Seller will each pay 50 percent of the amount of any additional taxes that become due for the 2014 assessment year.

6. Closing Date; Location. The parties agree as follows:

(a) The closing ("**Closing**") of the sale of the Property shall occur at the offices of the Title Company in Cook County, Illinois (or at such other location on which the parties mutually agree), on a date mutually agreed to by the parties ("**Closing Date**"), but in no event later than August 31, 2015.

(b) Escrow Closing. This sale shall be closed through an escrow with the Title Company in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement then in use by the Title Company, with such special provisions inserted into the escrow agreement as may be required to conform to this Agreement. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, payment of the Purchase Price and delivery of the deed shall be made through the escrow. Each party shall pay half the cost of the escrow.

7. Deliveries at Closing. If this Agreement is accepted by Seller, the parties agree as follows:

(a) At closing, Purchaser shall deliver or cause to be delivered to Seller or the Title Company, as applicable, the following:

- (i) Wire transfer to the Title Company the amount of the Purchase Price, plus or minus prorations and closing costs; and
- (ii) ALTA Statement.

(b) At closing, Seller shall deliver or cause to be delivered to Purchaser the following:

- (i) Special Warranty Deed for the Property incorporating the terms of this Agreement, together with appropriate state and county real estate transfer declaration forms;
- (ii) The Title Commitment showing the Purchaser as the proposed insured, as provided in Section 4(b);
- (iii) The Title Insurance Policy as provided in Section 4(d);
- (iv) Possession of the Property, not subject to the rights of any tenants; and
- (v) ALTA Statement.

(c) At closing, the parties shall jointly deliver or cause to be delivered the following:

- (i) A closing statement prepared in a manner which reflects the terms and conditions, as applicable, of this Agreement and otherwise in a form reasonably acceptable to the parties; and
- (ii) State, county and, if applicable, city transfer tax declarations.

8. Closing Expenses. Purchaser and Seller will each pay half the cost of all closing expenses, including, without limitation, the cost of: the Survey, the Title Commitment, the Title Insurance Policy, any additional endorsements to the Title Insurance Policy, any closing escrow fees, the recording of the deed, and, if applicable, any mortgage, and any charges related to a money lender's escrow or mortgage title insurance policy.

9. Operations Prior to Closing. During the period from the date of this Agreement to the Closing Date, Seller shall not enter into any contracts, leases or other agreements affecting the use or occupancy of the Property, which contracts, leases or other agreements cannot be terminated on or before the Closing Date.

10. Representations by Seller. Seller represents and warrants to Purchaser as follows:

(a) Existence; Authority. Seller is the fee simple owner of the Property, has the requisite power and authority to enter into and perform this Agreement and to execute and deliver Seller's closing documents, and the person executing this Agreement on behalf of Seller has the full right, power, and authority to do so by all necessary corporate action.

(b) FIRPTA. Seller is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate", as those terms are defined in Section 1445 of the Internal Revenue Code.

11. Representation by Purchaser. Purchaser represents and warrants to Seller that Purchaser has the requisite power and authority to enter into and perform this Agreement and to execute and deliver Purchaser's closing documents.

12. Casualty; Destruction. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Agreement.

13. Default; Remedies. If either party defaults in its obligations hereunder, then, provided the other party is not in default under this Agreement, the non-defaulting party shall have the right, as its sole and exclusive remedy, to terminate this Agreement by delivering written notice thereof to the defaulting party, in which event this Agreement shall be deemed null and void and of no further force or effect, and both parties shall be released from any further obligations and liabilities hereunder.

14. Real Estate Broker. Each party hereby represents and warrants to the other party that it has not submitted this transaction to any broker, finder or other agent whatsoever, so as to cause any broker, finder or agent to be entitled to a broker's or

finder's fee or commission with respect to this transaction. As such, Seller shall not be responsible to pay any commission due to any broker, finder, or agent in connection with this Agreement. Each party hereby agrees to indemnify and hold the other free and harmless from and against all loss, cost, and injury suffered as a result of either party's breach of the foregoing representation and warranty.

15. Notices. Any notice required or permitted to be delivered under this Agreement shall be deemed to be delivered (a) whether or not actually received, three days after the date when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, (b) when received, if delivered personally or sent by a nationally recognized overnight carrier, all charges prepaid, or (c) when received, when sent by electronic transmission (and accompanied by a copy sent by United States mail, first class mail, postage prepaid) and addressed to Seller or Purchaser, as the case may be, at the addresses set forth below or at such other address as such party may designate by written notice to the other:

If to Seller:	City of Des Plaines 1420 Miner Street Des Plaines, Illinois 60016 Attention: City Manager
With a copy to:	Holland & Knight, LLP 131 S. Dearborn Street 30 th Floor Chicago, Illinois 60604 Attention: Peter M. Friedman
If to Purchaser:	_____ _____ _____ _____
With a copy to:	_____ _____ _____ _____

16. Entire Agreement. This Agreement is the entire agreement between Seller and Purchaser concerning the sale of the Property, and no statement, agreement, representation, or understanding shall be binding on either party unless it is contained in this Agreement. No modification of this Agreement shall be binding on either party unless in writing and signed by the party to be bound.

17. Attorneys' Fees. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from

the other party reasonable attorneys' fees, regardless of whether litigation is actually filed or arbitration instituted, including, but not limited to, attorneys' fees at trial, on any appeal, and on any petition for review, in addition to other sums provided by law.

18. Miscellaneous. The parties agree as follows:

(a) Assignment. Purchaser may not assign this Agreement or Purchaser's rights hereunder without the prior consent of Seller.

(b) Time. Time is of the essence of this Agreement. If a time period would expire on a weekend day or a week day that is not a full business day, the time period will be extended to the next week day that is a full business day.

(c) Amendment. No provision of this Agreement may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement thereof is sought, and then only to the extent set forth in the instrument.

(d) Governing Law. This Agreement will be governed by, and construed in accordance with, the law of the State of Illinois.

(e) Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

(f) Binding Effect. This Agreement will be binding on and will inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the dates set forth below.

SELLER:

ATTEST:

CITY OF DES PLAINES

Gloria Ludwig, City Clerk

Mike Bartholomew, City Manager

Date: _____

Date: _____

PURCHASER:

ATTEST:

DES PLAINES PARK DISTRICT

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Its: _____

Date: _____

Date: _____

EXHIBIT A TO PURCHASE AND SALE AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

LOT 5 IN BLOCK 4 IN SUNSET GARDENS, BEING W.L. PLEW & CO.'S SUBDIVISION OF THE EAST 503 FEET, MEASURED AT RIGHT ANGLE TO THE EAST LINE OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPLE MERIDIAN, IN COOK COUNTY, ILLINOIS.

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