SECOND AMENDMENT TO LEASE/OPTION TO PURCHASE AGREEMENT

This Second Amendment to Lease/Option to Purchase Agreement ("Second Amendment") shall be made effective as of January 1, 2025, by and between THE CONSERVATION FOUNDATION, an Illinois not-for-profit corporation ("Lessor") and the WHEATON PARK DISTRICT, a body corporate and politic ("Lessee"). Lessor and Lessee are hereafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Lessor and Lessee previously entered into a Lease/Option to Purchase Agreement dated April 14, 2022 (the "Lease") which was set to run for a term of two (2) years, unless extended by the agreement of Lessor and Lessee, for the 0.78-acre vacant real estate located at 906 West Union Avenue, Wheaton, DuPage County, Illinois 60187 (permanent index number 05-17-110-006 (partial) (the "Property"); and

WHEREAS, on September 4, 2024, Lessor and Lessee entered into and executed a First Amendment to Lease/Option to Purchase Agreement ("First Amendment") to extend the Lease up through December 31, 2024 at the request of Lessee, under the same Lease terms and at the same rent of $295.00/month, because Lessee had not yet received the grant funding it requires to purchase the Property from Lessor; and

WHEREAS, Lessor and Lessee have agreed to again extend the Term of the Lease up through June 30, 2025 at the request of Lessee, under the same Lease terms and at the same rent of $295.00/month, because Lessee has still not yet received the grant funding it requires to purchase the Propety from Lessor; and

WHEREAS, Lessor and Lessee desire to document their mutual agreement to the foregoing extension of the Term of the Lease up through June 30, 2025 in accordance with the terms and conditions set forth in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by both Lessor and Lessee, and in further consideration of the covenants herein set forth, Lessor and Lessee do hereby mutually agree as follows:

1. The recitals set forth above are incorporated into this Second Amendment and this Second Amendment shall be guided and construed in accordance with said recitals.

2. Section Three (A) of the Lease is hereby modified so that the Term of the Lease shall run through June 30, 2025, unless terminated earlier pursuant to the provisions of the Lease. Throughout the extended term, the terms of the Lease shall remain in full force and effect and the Rent shall remain at $295.00/month.

3. This Second Amendment is hereby incorporated into the Lease, and together with the Lease and the First Amendment, contains the entire agreement between the Parties with respect

to the subject matter herein, and incorporates all prior negotiations and understandings. There are no agreements, promises, conditions, covenants or understandings, either oral or written, between Lessor and Lessee relating to the subject of this Second Amendment except those set forth herein. All terms used as defined terms herein that are not specifically defined by this Second Amendment shall have the same meanings as set forth in the Lease.

4. Except as amended herein, all other terms and conditions of the Lease and First Amendment shall remain in full force and effect. If there is any conflict between the terms within this Second Amendment and the terms within the Lease and First Amendment, this Second Amendment shall supersede and control.

5. This Second Amendment may be executed in multiple counterparts, each of which shall constitute an original for all purposes, but, collectively, constitute one and the same Second Amendment.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Second Amendment to be executed by their duly authorized representatives as set forth below.

LESSOR:

THE CONSERVATION FOUNDATION,
an Illinois not-for-profit corporation

BY: Dan Lebbes

ITS: Dir. of Land Protection

1/22/25
Date

LESSEE:

WHEATON PARK DISTRICT,
a body corporate and politic

BY:

ITS: Executive Director

1/21/2025
Date

FIRST AMENDMENT TO LEASE/OPTION TO PURCHASE AGREEMENT

This First Amendment to Lease/Option to Purchase Agreement ("First Amendment") is made effective this 4th day of September 2024 by and between THE CONSERVATION FOUNDATION, an Illinois not-for-profit corporation ("Lessor") and the WHEATON PARK DISTRICT, a body corporate and politic ("Lessee"). Lessor and Lessee are hereafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Lessor and Lessee previously entered into a Lease/Option to Purchase Agreement dated April 14, 2022 (the "Lease") which was set to run for a term of two (2) years, unless extended by the agreement of Lessor and Lessee, for the 0.78-acre vacant real estate located at 906 West Union Avenue, Wheaton, DuPage County, Illinois 60187 (permanent index number 05-17-110-006 (partial) (the "Property"); and

WHEREAS, Lessor and Lessee have agreed to extend the Term of the Lease beyond two (2) years, up through December 31, 2024, under the same Lease terms and at the same rent of $295.00/month, because Lessee has not yet received the grant funding it needs to purchase the Property from Lessor; and

WHEREAS, Lessor and Lessee desire to document their mutual agreement to the foregoing extension of the Term of the Lease in accordance with the terms and conditions set forth in this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by both Lessor and Lessee, and in further consideration of the covenants herein set forth, Lessor and Lessee do hereby mutually agree as follows:

1. The recitals set forth above are incorporated into this First Amendment and this First Amendment shall be guided and construed in accordance with said recitals.

2. Section Three (A) of the Lease is hereby modified so that the Term of the Lease shall run through December 31, 2024, unless terminated earlier pursuant to the provisions of the Lease. Throughout the extended term, the terms of the Lease shall remain in full force and effect and the Rent shall remain at $295.00/month.

3. This First Amendment is hereby incorporated into the Lease, and together with the Lease, contains the entire agreement between the Parties with respect to the subject matter herein, and incorporates all prior negotiations and understandings. There are no agreements, promises, conditions, covenants or understandings, either oral or written, between Lessor and Lessee relating to the subject of this First Amendment except those set forth herein. All terms used as defined terms herein that are not specifically defined by this First Amendment shall have the same meanings as set forth in the Lease.

4. Except as amended herein, all other terms and conditions of the Lease shall remain in full force and effect. If there is any conflict between the terms within this First Amendment and the terms within the Lease, this First Amendment shall supersede and control.

5. This First Amendment may be executed in multiple counterparts, each of which shall constitute an original for all purposes, but, collectively, constitute one and the same First Amendment.

IN WITNESS WHEREOF, the Lessor and Lessee have caused this First Amendment to be executed by their duly authorized representatives the day and year first above written.

LESSOR:

THE CONSERVATION FOUNDATION,
an Illinois not-for-profit corporation

BY: David P. Tobias

ITS: Dir. of Land Preservation

11 July 2024
Date

LESSEE:

WHEATON PARK DISTRICT,
a body corporate and politic

BY:

ITS: Executive Director

4 Sept 2024
Date

LEASE/OPTION TO PURCHASE AGREEMENT

This LEASE/OPTION TO PURCHASE AGREEMENT ("Agreement") made between THE CONSERVATION FOUNDATION, an Illinois not-for-profit corporation organized and existing under and by virtue of the laws of the State of Illinois, and duly authorized to do business by the statutes of the State of Illinois ("Lessor"), having its principal address at 10S404 Knoch Knolls Road, Naperville, Illinois, 60565, and the WHEATON PARK DISTRICT, a body corporate and politic ("Lessee"), having its principal address at 102 East Wesley Street, Wheaton, Illinois 60187. Lessor and Lessee are hereafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

I. RECITALS

A. Lessor is in the process of pursuing the acquisition of the Property (as defined and described hereafter), and once Lessor becomes the owner of the Property, Lessee desires to immediately lease and potentially acquire the Property by way of an option to purchase the Property from Lessor for those uses and purposes consistent with the DuPage Natural Areas and Open Space Plan, and to expand and connect to the open space and trails within the adjacent Lincoln Marsh.

B. Lessor and Lessee are both dedicated to the conservation and preservation of land, natural areas and open space, and believe that the Property possesses natural and scenic values of great importance to Lessor, Lessee and the public, and functional environmental value related to open space creation and preservation.

C. Lessor and Lessee desire to enter into this Agreement to define their rights, duties and liabilities relating to the Property.

II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION ONE
Adoption of Recitals

The Parties hereby adopt the foregoing Recitals and affirm that the construction of this Agreement shall be guided thereby.

SECTION TWO
Subject and Purpose

Upon the date Lessor becomes the owner thereof, Lessor hereby leases the approximate 0.78 acre vacant real estate located at 906 West Union Avenue, Wheaton, DuPage County, Illinois 60187 (permanent index number 05-17-110-006 (partial)), and more particularly described and

depicted on **Exhibit A** attached hereto and incorporated herein (the "Property"), to Lessee for Lessee's use as follows: To promote open space preservation of the Property, to expand adjacent open space owned by Lessee and to connect to trails within Lincoln Marsh to further the uses conducted thereon. This Agreement shall become effective on the date on which Lessor becomes sole owner of the Property. In the event Lessor does not become the owner thereof, this Agreement shall have no force and effect. Lessor agrees to use its best efforts to acquire and become the sole owner of the Property.

SECTION THREE
Term, Rent and Additional Consideration

A. Lessor leases the Property for a term of two (2) years, commencing on the date on which Lessor closes on its acquisition of the Property (the "Commencement Date"), and terminating on a date that is two (2) calendar years after the Commencement Date at 12:00 p.m. (the "Term"). Lessee shall pay rent in the amount of $295.00/month during the Term.

B. As consideration for Lessor acquiring and holding the Property, on or within fourteen (14) days after the Commencement Date, Lessee shall pay or reimburse to Lessor, as the case may be, the following charges: (i) Lessor's soft costs incurred in completing the acquisition of the Property, including any and all closing, survey, title, environmental due diligence costs, attorney fees and Lessor's staff time; and (ii) the additional sum of Five Thousand Dollars ($5,000) which represents one-half Lessor's Project Fee. In the event Lessee thereafter purchases the Property from Lessor, Lessee also agrees to pay all closing, survey, title and all other costs associated with Lessor's conveyance of the Property to Lessee, including Lessor's attorney fees, staff time and the sum of Five Thousand Dollars ($5,000) which represents the balance of Lessor's Project Fee.

C. The Term of this Agreement may be shortened or extended without penalty by the written mutual agreement of Lessor and Lessee.

SECTION FOUR
Possession and Management

During the Term, Lessee shall be entitled to the exclusive possession and use of the Property and shall also be responsible for all management responsibilities on the Property. During the Term, Lessee shall be allowed to install public recreational trails, interpretive signage and other related trail amenities on the Property.

SECTION FIVE
Unlawful or Dangerous Activity

Lessee shall not use or occupy the Property, or any part of the Property, for any unlawful, disreputable or hazardous purpose, nor shall Lessee operate or conduct business in a manner constituting a nuisance of any kind. Lessee shall immediately, upon the discovery of any unlawful, disreputable or hazardous use, take action to halt such activity.

SECTION SIX
Taxes and Other Charges Against the Property

A. Lessor shall apply for an exemption from real estate taxes on the Property as of the Commencement Date, and Lessor and Lessee agree to cooperate to obtain an exemption from real estate taxes on the Property upon Lessor becoming owner, including but not limited to, executing an application therefor and supporting documents in connection therewith. In the event an exemption is not obtained, Lessee shall be solely responsible to pay, as additional rent, on or before the last day on which payment may be made without penalty or interest, any and all real estate or other taxes, assessments or other governmental charges that shall or may during the Term be imposed on, or arise in connection with the Property, except that Lessor shall pay or reimburse to Lessee, as the case may be, any prorated credit for real estate taxes received by Lessor at the closing on Lessor's acquisition of the Property.

B. Lessee shall pay all taxes assessed in lieu of, or in addition to, the foregoing under all present or future laws of all governmental authorities whatsoever.

C. Lessee shall, within thirty (30) days after the time provided for the payment of any tax or other charge due under this Section, produce to Lessor satisfactory evidence of the timely payment. If not so timely paid, Lessee shall be solely responsible for the payment of any and all late fees and/or penalties.

SECTION SEVEN
Insurance

A. During the Term of this Agreement and for any further time that Lessee shall hold the Property, Lessee shall obtain and maintain at its expense the following types and amounts of insurance:

1. Personal injury and property damage insurance. (a) Commercial general liability insurance for bodily injury and property damage insurance in the amount of Two Million Dollars ($2,000,000) per occurrence; (b) Worker's compensation insurance in an amount not less than the required statutory limits and including employer's liability insurance with limits of not less than Five Hundred Thousand Dollars ($500,000) per occurrence; (c) Comprehensive automobile liability insurance covering owned automobiles, automobiles under long-term lease, hired automobiles, employer's non-ownership liability, medical payments and uninsured and underinsured motorist coverage for limits not more than limits that are customary and reasonable for owners of similar automobiles with similar uses in DuPage County as reasonably determined from time to time by Lessor and specified by notice from Lessor to Lessee, but in no event less than Five Hundred Thousand Dollars ($500,000) (with a special limit of Five Thousand Dollars ($5,000) with respect to medical payments) as the combined single limit per occurrence, in forms of insurance policies as may from time to time be reasonably required by Lessor, shall be provided by Lessee. Should Lessee be self-insured, a member of an intergovernmental pool or provide for its risk financing by means other than commercial

insurance, Lessee shall provide and keep in force the amount and scope of liability coverage specified in this paragraph (1).

2. Other insurance. Lessee shall provide and keep in force such other insurance in amounts that may from time to time be reasonably required by Lessor against other insurable hazards as are commonly insured against for the type of business activity that Lessee conducts.

B. Lessor shall be designated as an Additional Insured on all of Lessee's liability coverages. Lessee's coverage to Lessor, as an Additional Insured, will be primary and answer first for any claims or allegations made against Lessor that arise out of the rights granted under this Agreement, except for claims that solely arise out of the acts or omissions of Lessor or anyone acting on Lessor's behalf. Notwithstanding the foregoing, the parties hereto acknowledge that Lessee, as of the date of this Agreement, may obtain liability coverage through the Park District Risk Management Agency ("PDRMA"). Lessor and Lessee agree that PDRMA's underwriting of liability coverage for Lessee is acceptable for the purposes of this Agreement and Lessee shall, from time-to-time as requested by Lessor, provide Lessor of a summary of the coverage(s) then in effect with PDRMA.

SECTION EIGHT
Indemnity

A. Lessee shall indemnify, defend and hold harmless Lessor and its representatives, attorneys, employees, Board members, directors, officers and agents (the "Lessor Released Parties"), from and against any and all expenses, damages, liabilities and claims of every kind, including reasonable attorney fees and costs, by or on behalf of any person or entity arising out of either: (a) a failure by Lessee or any of its employees, agents, representatives, assigns or invitees to perform any of the terms or conditions of this Agreement; (b) any bodily or other injury or damage happening on or about the Property, except to the extent such injury or damage is caused solely by Lessor or anyone acting on Lessor's behalf; (c) Lessee's failure to comply with any law of any governmental authority that is applicable to the Property; and (d) any mechanic's lien or other security interest filed against the Property to the extent such filing is caused by any act or failure to act by Lessee or anyone acting on Lessee's behalf.

B. In addition to, and without limiting any other indemnity provided for in paragraph (A) above, and except to the extent caused in whole or in part by the Lessor Released Parties or anyone acting on their behalf, Lessee shall also indemnify, hold harmless and defend the Lessor Released Parties from any liabilities, claims, costs, expenses resulting directly or indirectly from any "Environmental Claims," the presence of any "Hazardous Substances" on the Property or the violation or claimed violation of any "Environmental Laws" hereafter defined as follows:

1. "Environmental Claims" shall be defined as all losses, damages, liabilities, claims, penalties, liens, costs and reasonable attorney fees and expenses imposed on the Lessor Released Parties in connection with injury to or death of any person, or with respect to loss, or loss of the use of, any property, or breach, violation of, or liability relating to, any Environmental Laws arising from or account of the presence or alleged presence of

Hazardous Substances on, under, about or emanating from, the Property, including, without limitation, any claims for cost recovery, contribution and natural resources damages.

2. "Hazardous Substances" shall be defined as any substance, material, matter or waste, or the breakdown product derived from any such substance, material or waste, which is or becomes subject to regulation or reporting under any Environmental Laws, or which is identified, classified, defined or designated as hazardous, toxic or solid waste, hazardous or toxic materials, a hazardous or toxic substance, a pollution control waste, or other similar term by any Environmental Laws; or petroleum, or asbestos in any form or polychlorinated biphenyls.

3. "Environmental Laws" shall be defined as: (a) the Resources Conservation Recovery Act (RCRA), 42 USC Sections 6901, *et seq.*; (b) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601, *et seq.*; (c) the Illinois Environmental Protection Act (IEPA), 415 ILCS 5/1, *et seq.*; (d) the Toxic Substances Control Act, 15 USC Section 2601 *et seq.*; and (e) any other federal, state or local statute, regulation, ordinance, order or common law relating to Hazardous Substances presently in effect, or that may be promulgated in the future as such statutes, regulations, ordinances or common law may be amended from time to time.

C. Lessor shall indemnify and hold harmless Lessee and its representatives, attorneys, employees, Board members, directors, officers and agents (the "Lessee Released Parties"), from and against any and all expenses, damages liabilities, and claims of every kind, including reasonable attorney fees, by or on behalf of any person or entity arising out of either: (a) a failure by Lessor to perform any of the terms or conditions of this Agreement; (b) any bodily or other injury or damage happening on or about the Property to the extent such injury or damage is caused solely by any negligent or intentional act or failure to act of Lessor, its agents, representatives, assigns or invitees; (c) Lessor's failure to comply with any law of any governmental authority applicable to the Property; or (d) any mechanic's lien or other security interest filed against the Property to the extent such filing is caused by any act or failure to act of Lessor or anyone acting on Lessor's behalf.

D. For purposes of this Section, in determining if Lessor has been negligent, it is expressly agreed and acknowledged by Lessee that Lessor shall have no duty to supervise, manage, maintain, repair, secure, protect or monitor the condition of the Property or any improvements on the Property, as these are the sole responsibility of Lessee.

E. The indemnities provided for under this Section Eight shall survive expiration of the Term of this Agreement.

SECTION NINE
Default or Breach

Each of the following events shall constitute a default or breach of this Agreement by Lessee:

A. If Lessee shall fail to perform or comply with any of the conditions or obligations imposed upon Lessee under this Agreement, and if the nonperformance shall continue for a period of thirty (30) days after notice of nonperformance given by Lessor to Lessee, or if the performance cannot be reasonably had within the thirty (30) day period, Lessee shall not in good faith have commenced performance within the thirty (30) day period and shall not diligently proceed to completion of performance.

B. If Lessee shall vacate or abandon the Property.

C. If this Agreement shall be transferred, pass or devolve to any other person or party other than Lessee, except in the manner permitted under this Agreement.

SECTION TEN
Effect of Default

In the event of any default under this Agreement as set forth in Section Nine, the rights of Lessor shall be as follows:

A. Lessor shall have the right to terminate this Agreement, as well as all of the rights, title and interest of Lessee under this Agreement, by giving to Lessee not less than thirty (30) days' notice of the termination. Upon expiration of the time fixed in the notice, this Agreement and the rights, title and interest of Lessee under this Agreement shall terminate, except as to any Lessee liability under this Agreement. Upon termination, all rent, additional rent and any other sums due for the balance of the Term from the date of termination shall be accelerated and become immediately due. Lessor shall also be entitled to recover all damages proximately resulting from the breach, including Lessor's reasonable attorney fees and costs.

B. Lessor may also elect, but shall not be obligated, to make any payment required of Lessee in this Agreement or comply with any agreement, term, or condition required by this Agreement to be performed by Lessee. Lessor shall have the right to enter the Property for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied. Any expenditure for any correction made by Lessor shall be immediately payable and recoverable from Lessee to Lessor as damages and shall not be deemed to waive or release the default of Lessee or the right of Lessor to take any action as may be otherwise permissible under this Agreement in the case of any default.

C. Upon giving Lessee fourteen (14) days written notice, Lessor may re-enter the Property and remove any property or personalty of Lessee and store the property in a public warehouse or at a place selected by Lessor, at the expense of Lessee. After re-entry, Lessor may terminate this Agreement on giving thirty (30) days' written notice of termination to Lessee whereupon the provisions of subparagraph A of this Section Ten shall control. Without such notice, reentry will not terminate this Agreement.

SECTION ELEVEN
Remedies of Lessor

A. In additional to the relief afforded to Lessor under Section Ten of this Agreement, in the event of a breach or a threatened breach by Lessee of any of the terms or conditions of this Agreement, Lessor shall have the right of injunction to restrain Lessee and the right to invoke any other remedy provided for in law or in equity.

B. The rights and remedies given to Lessor in this Agreement are distinct, separate and cumulative, and no one of them, whether or not exercised by Lessor, shall be deemed to be in exclusion of any of the other remedy available under this Agreement, by law or in equity.

C. In all instances under this Agreement, and in any suit, action, or proceeding of any kind between the Parties, it shall be presumptive evidence of the fact of the existence of a charge being due if Lessor shall produce a bill, notice or certificate of any public official entitled to give notice to the effect that such charge appears of record on the books in his or her office and has not been paid.

D. No receipt of money by Lessor from Lessee after default or termination of this Agreement in any lawful manner shall: (a) reinstate, continue or extend the Term or affect any notice given to Lessee; (b) operate as a waiver of the right of Lessor to enforce the payment of rent, additional rent or any additional sums owed by Lessee then due or falling due; or (c) operate as a waiver of the right of Lessor to recover possession of the Property by property suit, action, proceeding or other remedy.

SECTION TWELVE
Condemnation

The rights and duties of Lessor and Lessee in the event of condemnation are as follows:

A. Except as otherwise provided in this Section, in the event of any taking or condemnation in whole or in part, the entire resulting award of just compensation shall belong to Lessor without any deduction from such award for the value of the unexpired Term of this Agreement or for any other estate or interest in the Property now or later vesting in Lessee. Lessee assigns to Lessor all its right, title, and interest in any and all such awards, including any award of just compensation paid for any claim of damages to the remainder. Unless the taking encompasses more than half of the Property, this Agreement shall remain in full force and effect, with the rent reduced proportionately to the amount of real estate so taken. If the taking is for more than half of the Property, Lessee shall have the option to terminate this Agreement.

B. For the purposes hereof, all amounts payable pursuant to any agreement with any condemning authority that has been made in settlement of or under threat of any condemnation or other eminent domain proceeding affecting the Property shall be deemed to constitute an award of just compensation made in such proceeding.

C. In case any governmental action does not result in the taking or condemnation of any portion of the Property but creates a right to an award of compensation for such action, or if less than a fee title to all or any portion of the Property is taken or condemned by any governmental authority for temporary use or occupancy, all compensation awarded shall belong to Lessor and this Agreement shall remain in full force and effect.

SECTION THIRTEEN
Access to Property; Signage; Press Releases

A. Upon twenty-four (24) hours' written or verbal notice, Lessee shall permit Lessor or its agents to enter or inspect the Property at all reasonable hours to ensure Lessee's compliance with this Agreement.

B. Lessor and Lessee agree that no signage shall be posted on or within the Property unless the content and form of the signage is mutually agreed to by Lessor and Lessee.

C. Lessor and Lessee agree that no press release or other formal written dissemination concerning the Property shall be made unless the content of any such press release or formal written dissemination is mutually agreed to by Lessor and Lessee.

SECTION FOURTEEN
Easements, Agreements, Encumbrances or Improvements

Lessor and Lessee agree that they shall be bound by all existing easements, agreements, and encumbrances of record relating to the Property. Neither Lessor nor Lessee shall place or allow any further encumbrance, restriction, lien, improvement or easement on the Property during the Term of this Agreement without the prior written consent of the other Party.

SECTION FIFTEEN
Quiet Enjoyment

Lessor agrees that Lessee shall be granted peaceable and quiet enjoyment of the Property free from any interference by Lessor if Lessee fully and punctually performs the terms and conditions imposed on Lessee under this Agreement.

SECTION SIXTEEN
Liability of Lessor

It is expressly acknowledged and agreed that Lessee shall be deemed to be in full and exclusive control and possession of the Property throughout the Term of this Agreement, and Lessor shall not be liable for any injury or damages to any property or to any person on or about the Property or for any injury or damage to any property of Lessee, except to the extent such injury or damage is caused solely by any intentional or negligent act or failure to act by Lessor. The provisions of this Agreement permitting Lessor to enter and inspect the Property are solely made to ensure that Lessee is in compliance with the terms and conditions of this Agreement and to ensure that Lessee maintains the Property. Lessor shall not be liable to Lessee for any entry on

the Property for inspection purposes, except with respect to any damage or injury resulting from said entry as caused by Lessor's negligence or intentional act.

SECTION SEVENTEEN
Representations by Lessee

At the Commencement Date, Lessee represents to Lessor that: (a) Lessee expressly acknowledges that it is accepting the Property in its "AS IS-WHERE IS" existing condition and state of repair; (b) no representations, statements or warranties, express or implied, have been made by or on behalf of Lessor in respect to the Property except as contained in the provisions of this Agreement; (c) Lessor shall in no event be liable for any latent defects in the Property; and (d) Lessee has the full legal authority to enter into this Agreement and fulfill all duties and obligations imposed under this Agreement.

SECTION EIGHTEEN
Waivers

The failure of Lessor or Lessee to insist on strict performance of any term or condition of this Agreement on a specific instance shall not be deemed a waiver of the rights or remedies that Lessor or Lessee may have except as to that specific instance only, and shall not be deemed a waiver of any subsequent breach or default of any term or condition.

SECTION NINETEEN
Lessee's Option to Purchase the Property

Lessor agrees that upon the expiration of the Term, as may be shortened or extended by the mutual written agreement of the Parties, Lessee shall have the option to purchase the Property from Lessor in accordance with the terms and conditions set forth in the Real Estate Sale and Purchase Agreement attached hereto and incorporated herein as **Exhibit B**, as may be modified by the mutual written agreement of Lessor and Lessee.

SECTION TWENTY
Assignment, Mortgage or Sublease

Neither Lessee nor its successors and assigns shall assign, mortgage, pledge or encumber this Agreement or the Property in whole or in part, nor permit the Property to be used or occupied by others, nor shall this Agreement be assigned or transferred by operation of law, without the prior express and written consent of Lessor, which shall be granted or denied at Lessor's sole and exclusive discretion. In the absence of the written consent of Lessor: (a) any such assignment, subletting, occupancy or collection shall not be deemed a waiver of any agreement or condition of this Agreement, or the acceptance of the assignee, transferee, subtenant or occupant as Lessee; and (b) Lessee shall continue to be fully liable under this Agreement and shall not be released from the performance of the terms and conditions of this Agreement. During the Term of this Agreement, Lessor shall not sell or mortgage the Property, nor assign this Agreement, without the prior express written consent of Lessee, which consent shall not be unreasonably withheld.

SECTION TWENTY-ONE
Notices

A. Each notice provided for under this Agreement shall comply with the requirements of this Section. Each notice shall be in writing by email, and shall also be sent by (a) depositing it with the U.S. Postal Service via certified or registered mail, return receipt requested, with adequate postage prepaid; or (b) via messenger or other courier properly addressed. Each notice shall be effective upon being transmitted by email and either deposited in the mail or delivered to courier service, but the time period in which a response from any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the notice by the addressee thereof, as evidenced by confirmation of the email or the return receipt or other written acknowledgment of delivery. The addresses are as follows:

TO LESSOR:

The Conservation Foundation
Attn: Daniel P. Lobbes
Vice President, Land & Watershed Programs
10S404 Knoch Knolls Road
Naperville, Illinois 60565
(630) 428-4500 ext. 104
(630) 428-4599 fax
dlobbes@theconservationfoundation.org

WITH A COPY TO:

Day & Robert, P.C.
Attn: Scott M. Day/Rachel K. Robert
300 East 5th Avenue
Suite 365
Naperville, Illinois 60563
(630) 637-9811
(630) 637-9814 fax
smd@drm.law / rkr@drm.law

TO LESSEE:

Wheaton Park District
Attn: Michael J. Benard
102 East Wesley Street
Wheaton, Illinois 60187
(630) 510-4945
mbenard@wheatonparks.org

WITH A COPY TO:

Tressler LLP
Attn: Andrew S. Paine
233 South Wacker Drive, 61st Floor
Chicago, Illinois 60606
(312) 627-4154
apaine@tresslerllp.com

B. The address to which any notice, demand or other writing may be given or made or sent to any Party as above provided may be changed by written notice given by such Party as above provided.

SECTION TWENTY-TWO
Entire Agreement

This Agreement and all exhibits attached and incorporated herein shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent reflected or incorporated in this Agreement.

SECTION TWENTY-THREE
Recording of Agreement

On or within thirty (30) days after the Commencement Date, Lessee agrees that it shall record a memorandum of this Agreement with the DuPage County Recorder, at Lessee's sole expense. Lessee shall promptly deliver a recorded copy to Lessor thereafter.

SECTION TWENTY-FOUR
Modification of Agreement

Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a writing signed by each Party or an authorized representative of each Party.

SECTION TWENTY-FIVE
Binding Effect

This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the Parties.

SECTION TWENTY-SIX
Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, with the exclusive court venue for any dispute being the Eighteenth Judicial Circuit, DuPage County, Illinois. In any action to enforce the terms of this Agreement, the prevailing Party shall be entitled to recovery of its reasonable attorney fees and costs.

SECTION TWENTY-SEVEN
Time of the Essence

It is specifically declared that time is of the essence in all provisions of this Agreement.

SECTION TWENTY-EIGHT
Paragraph Headings

The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

SECTION TWENTY-NINE
Pronouns

Whenever the context herein requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

SECTION THIRTY
Counterpart Execution

It is agreed that this Agreement may be executed in counterparts, and each such counterpart shall be deemed an original. It shall be fully executed when each Party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the Parties. The Parties executing this Agreement are doing so only in their official capacity, and shall incur no personal obligation or liability.

SECTION THIRTY-ONE
Approval

This Agreement is subject to the approval of both Lessor's Board of Trustees and Lessee's Board of Commissioners.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, each Party to this Lease/Option to Purchase Agreement has caused it to be executed by the authorized signatures on the date indicated below.

LESSOR:

THE CONSERVATION FOUNDATION,
an Illinois not-for-profit corporation

BY: David P. Taylor

ITS: V.P. Land + Watershed Programs

April 14, 2022
Date

LESSEE:

WHEATON PARK DISTRICT,
a body corporate and politic

BY: _____

ITS: Executive Director

ATTEST: _____

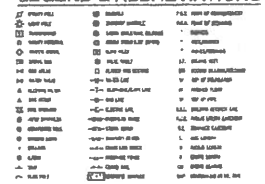
ITS: _____

April 12, 2022
Date

EXHIBIT A
Legal Description and Depiction

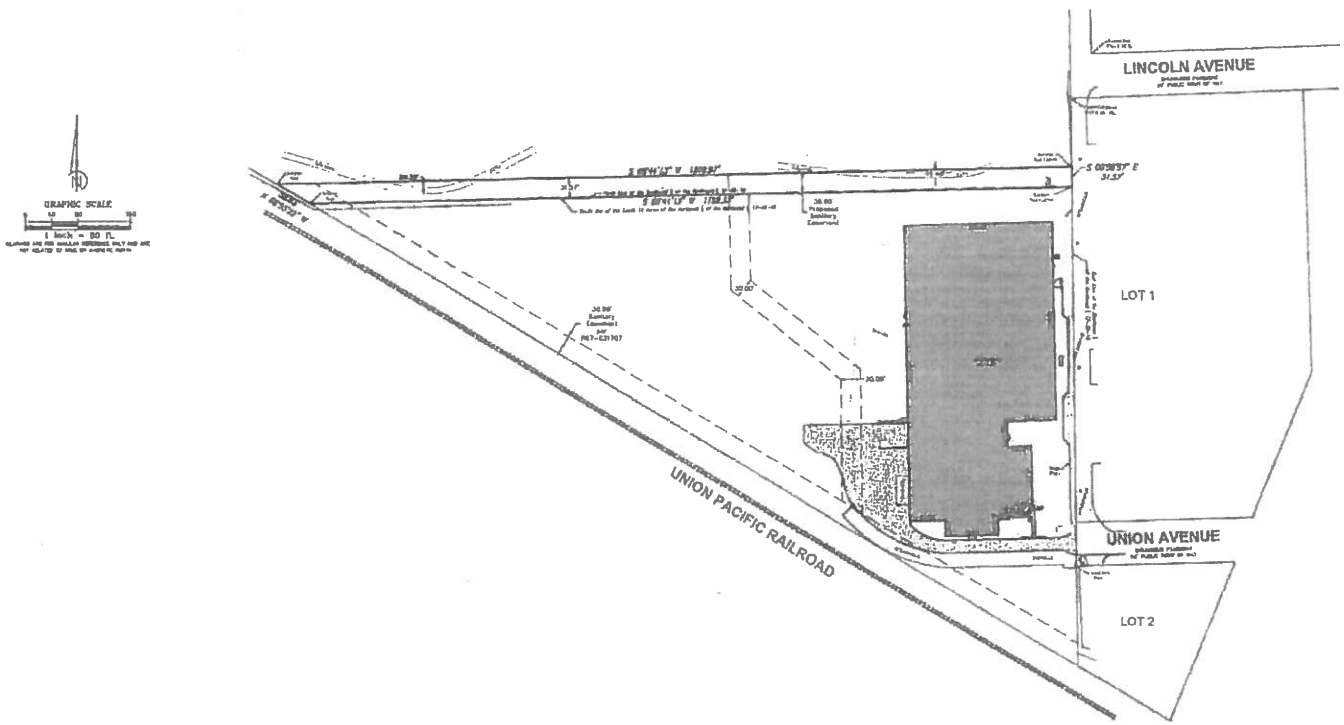
PLAT OF SURVEY

LEGEND & ABBREVIATIONS



RECORD DESCRIPTION

THE SOUTH 31.57 FEET OF THE SOUTH 13 ACRES OF THE NORTH-EAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH AND EAST OF THE CHICAGO AND NORTHWESTERN RAILROAD, IN DUPAGE COUNTY ILLINOIS.



LAND AREA:

37,167.48 SFs OR 0.85 ACRES±

James L. Harpole, PLS
Illinois Professional Land Surveyor No. 3100
in the State of Illinois, Expires 11-30-2022

JLH LAND SURVEYING INC.
Illinois Professional Design Firm No. 184.007130
910 Geneva Street, Glenwood, Illinois 60404
815.729.4000 www.jlhsurvey.com

SURVEY PREPARED FOR:
ROCHE FAMILY L.P.
P.O.BOX 1235
WHEATON, IL 60187-1235
PHONE: 630.263.2000

PLAT OF SURVEY
1201 W. UNION AVENUE
WHEATON, ILLINOIS

SHEET 1 OF 1

22-972-100

EXHIBIT B
Real Estate Sale and Purchase Agreement

REAL ESTATE SALE AND PURCHASE AGREEMENT

This REAL ESTATE SALE AND PURCHASE AGREEMENT ("Agreement") made between THE CONSERVATION FOUNDATION, an Illinois not-for-profit corporation organized and existing under and by virtue of the laws of the State of Illinois, and duly authorized to do business by the statutes of the State of Illinois ("TCF"), having its principal address at 10S404 Knoch Knolls Road, Naperville, Illinois, 60565, and the WHEATON PARK DISTRICT, a body corporate and politic (the "District"), having its principal address at 102 East Wesley Street, Wheaton, Illinois 60187. TCF and the District are hereafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

1. **Sale/Purchase**. TCF agrees that it shall sell to the District at a price of One Hundred Eighteen Thousand Dollars ($118,000) ("Purchase Price"), on the terms set forth herein, the approximate 0.78-acre vacant parcel of real estate located at 906 West Union Avenue, Wheaton, DuPage County, Illinois 60187 (permanent index number 05-17-110-006 (partial)), and more particularly described and depicted on **Exhibit A** attached hereto and incorporated herein (the "Property").

2. **Conditions on Conveyance**. TCF agrees to sell the Property on the terms set forth herein, and to convey to the District title thereto by Quit Claim Deed in a form acceptable to the District and the DuPage County Recorder, subject only to: (a) covenants, conditions and restrictions of record; (b) public and utility easements and roads and highways, if any; and (c) such other title exceptions that existed at the time TCF closed on its purchase of the Property.

3. **Prorations**. Recognizing that the District has been leasing the Property from TCF in accordance with the terms of a Lease/Option to Purchase Agreement executed between the Parties, no prorations for water or any other utility charges, prepaid service contracts or other similar items are being given at Closing. In the event the Property is deemed exempt from real estate taxes, no proration for same shall be given at Closing. If any real estate taxes are due and owing on the Property at Closing, they shall be the sole responsibility of the District.

4. **Closing and Closing Documents**. The Closing of the transaction contemplated by this Agreement shall be held at Chicago Title Insurance Company (Lisle Office) (the "Title Company") during regular business hours at a time that is mutually agreeable to the District and TCF. The date of Closing shall be the date on which the Lease/Option to Purchase Agreement executed between the Parties expires, unless extended or shortened by the mutual written agreement of the District and TCF. The District agrees that it shall pay for any and all closing costs and charges. At Closing, TCF shall furnish the District with the customary closing documents needed to close on the sale of the Property in the customary form covering the date of Closing and showing title in TCF subject only to the exceptions set forth herein. In the event any transfer taxes are required by any federal, state or local ordinance, they shall be paid by the District.

5. **Title**. The District shall obtain a title commitment for an owner's title insurance policy issued by Title Company, covering title to the Property on or after the date hereof, subject only to the standard exceptions and those exceptions set forth in paragraph 2 above. The title commitment shall be conclusive evidence of good title as shown therein as to all matters insured

by the policy, subject only to the exceptions stated therein. The District agrees to pay for all title fees and charges.

6. **Survey**. The District shall obtain a survey, if the District so elects, at its sole expense. TCF agrees to cooperate with the District's surveyor in the event a survey is desired by the District.

7. **The District Payment of TCF Costs.** At Closing, the District shall pay or reimburse, as the case may be, the following costs associated with the conveyance and Closing on the sale of the Property to the District: (i) the costs of TCF's staff time and attorney fees incurred in the conveyance and Closing; (ii) the balance of TCF's Project Fee in the amount of Five Thousand Dollars ($5,000); and (iii) any other soft costs incurred and documented by TCF associated with the conveyance and Closing on the Property.

8. **Brokers**. TCF and the District represent and agree that no broker has been involved in the formation of this Agreement and no commission shall be due to any broker upon the Closing of the conveyance.

9. **Default**. If the District refuses to purchase the Property in accordance with the terms of this Agreement, TCF may seek all remedies available under Illinois law, including specific performance of this Agreement, together with recovery of TCF's reasonable attorney fees and costs. If TCF refuses sell the Property in accordance with the terms of this Agreement, the District may seek all remedies available under Illinois law, including specific performance of this Agreement, together with recovery of the District's reasonable attorney fees and costs.

10. **Indemnity**.

A. Recognizing that the District has, and will continue to, exclusively control and maintain exclusive possession of the Property from the Commencement Date through the Closing date of this transaction as defined and detailed in the Lease/Option to Purchase Agreement executed between the District and TCF, the District hereby reaffirms and ratifies that it shall indemnify, defend and hold TCF and its representatives, attorneys, employees, Board members, directors, officers and agents (the "TCF Released Parties"), from and against any and all expenses, damages, liabilities and claims of every kind, including reasonable attorney fees and costs, by or on behalf of any person or entity arising out of either: (a) any bodily or other injury or damage happening on or about the Property after the Commencement Date up through the Closing date of this transaction, unless such injury or damage is caused solely by TCF or anyone acting on TCF's behalf; (b) the District's failure to comply with any law of any governmental authority that is applicable to the Property; and (c) any mechanic's lien or other security interest filed against the Property to the extent such filing is caused by any act or failure to act by the District or anyone acting on the District's behalf.

B. In addition to, and without limiting any other indemnity provided for in paragraph (A) above, from the Commencement Date up through the Closing date of this transaction the District shall also indemnify, hold harmless and defend the TCF Released Parties from any liabilities, claims, costs, expenses resulting directly or indirectly from any "Environmental

Claims," the presence of any "Hazardous Substances" on the Property or the violation or claimed violation of any "Environmental Laws" hereafter defined as follows:

1. "Environmental Claims" shall be defined as all losses, damages, liabilities, claims, penalties, liens, costs and reasonable attorney fees and expenses imposed on the TCF Released Parties in connection with injury to or death of any person, or with respect to loss, or loss of the use of, any property, or breach, violation of, or liability relating to, any Environmental Laws arising from or account of the presence or alleged presence of Hazardous Substances on, under, about or emanating from, the Property, including, without limitation, any claims for cost recovery, contribution and natural resources damages.

2. "Hazardous Substances" shall be defined as any substance, material, matter or waste, or the breakdown product derived from any such substance, material or waste, which is or becomes subject to regulation or reporting under any Environmental Laws, or which is identified, classified, defined or designated as hazardous, toxic or solid waste, hazardous or toxic materials, a hazardous or toxic substance, a pollution control waste, or other similar term by any Environmental Laws; or petroleum, or asbestos in any form or polychlorinated biphenyls.

3. "Environmental Laws" shall be defined as: (a) the Resources Conservation Recovery Act (RCRA), 42 USC Sections 6901, *et seq.*; (b) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Sections 9601, *et seq.*; (c) the Illinois Environmental Protection Act (IEPA), 415 ILCS 5/1, *et seq.*; (d) the Toxic Substances Control Act, 15 USC Section 2601 *et seq.*; and (e) any other federal, state or local statute, regulation, ordinance, order or common law relating to Hazardous Substances presently in effect, or that may be promulgated in the future as such statutes, regulations, ordinances or common law may be amended from time to time.

C. It is agreed that in analyzing the indemnities granted under this paragraph 10, TCF has not had any duty to supervise, manage, maintain, repair, secure, protect or monitor the condition of the Property or any improvements thereon from the Commencement Date through the Closing of this transaction.

D. The indemnities provided for under this paragraph 10 shall survive the Closing of this transaction and shall not merge with the deed of conveyance from TCF to the District.

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

12. **Notices**. Each notice provided for under this Agreement shall comply with the requirements of this paragraph. Each notice shall be in writing by email, and shall also be sent by (a) depositing it with the U.S. Postal Service via certified or registered mail, return receipt requested, with adequate postage prepaid; or (b) via messenger or other courier properly addressed. Each notice shall be effective upon being transmitted by email and either deposited in the mail or delivered to courier service, but the time period in which a response from any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the notice by the addressee thereof, as evidenced by confirmation of the email transmission or the return receipt or other written acknowledgment of delivery. The addresses are as follows:

TCF:

The Conservation Foundation
Attn: Daniel P. Lobbes
Vice President, Land & Watershed Programs
10S404 Knoch Knolls Road
Naperville, Illinois 60565
(630) 428-4500 ext. 104
(630) 428-4599 fax
dlobbes@theconservationfoundation.org

WITH A COPY TO:

Day & Robert, P.C.
Attn: Scott M. Day/Rachel K. Robert
300 East 5th Avenue
Suite 365
Naperville, Illinois 60563
(630) 637-9811
(630) 637-9814 fax
smd@drm.law / rkr@drm.law

TO DISTRICT:

Wheaton Park District
Attn: Michael J. Benard
102 East Wesley Street
Wheaton, Illinois 60187
(630) 510-4945
mbenard@wheatonparks.org

WITH A COPY TO:

Tressler LLP
Attn: Andrew S. Paine
233 South Wacker Drive, 61st Floor
Chicago, Illinois 60606
(312) 627-4154
apaine@tresslerllp.com

The address to which any notice, demand or other writing may be given or made or sent to any Party as above provided may be changed by written notice given by such Party as above provided.

13. **RESPA Disclosures**. The District and TCF hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Real Estate Settlement Procedures Act of 1974. In the event that either Party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said Party.

14. **Exhibits**. Any exhibits referred to herein and attached to this Agreement are incorporated herein by reference.

15. **Agreement Execution**. This Agreement may be executed in separate counterparts. It shall be fully executed when each Party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties. The Parties executing this Agreement are doing so only in their official capacity, and shall incur no personal obligation or liability.

16. **Agreement Approval**. This Agreement is subject to the approval of the TCF Board of Trustees and the District's Board of Commissioners.

17. **Entire Agreement**. This Agreement, and all exhibits attached and incorporated herein, shall constitute the entire agreement between the Parties. All negotiations between the Parties are merged in this Agreement, and there are no understandings or agreements other than those incorporated in this Agreement.

18. **Modifications**. No addition to, or modification of, this Agreement or any additional obligation assumed by either Party in connection with this Agreement shall be effective unless fully set forth in writing and signed by both TCF and the District.

19. **Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois, and the Parties hereto hereby agree and consent to submit themselves to any court of competent jurisdiction situated in the Eighteenth Judicial Circuit, DuPage County, Illinois. In any action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

20. **Paragraph Headings**. The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, each Party to this Real Estate Sale and Purchase Agreement has caused it to be executed by the authorized signatures on the date indicated below.

TCF:

THE CONSERVATION FOUNDATION,
an Illinois not-for-profit corporation

BY: _____

ITS: _____

_____
Date

DISTRICT:

WHEATON PARK DISTRICT,
a body corporate and politic

BY: _____

ITS: _____

ATTEST: _____

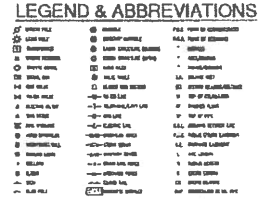
ITS: _____

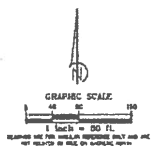
_____
Date

EXHIBIT A
Legal Description and Depiction

PLAT OF SURVEY

LEGEND & ABBREVIATIONS





RECORD DESCRIPTION

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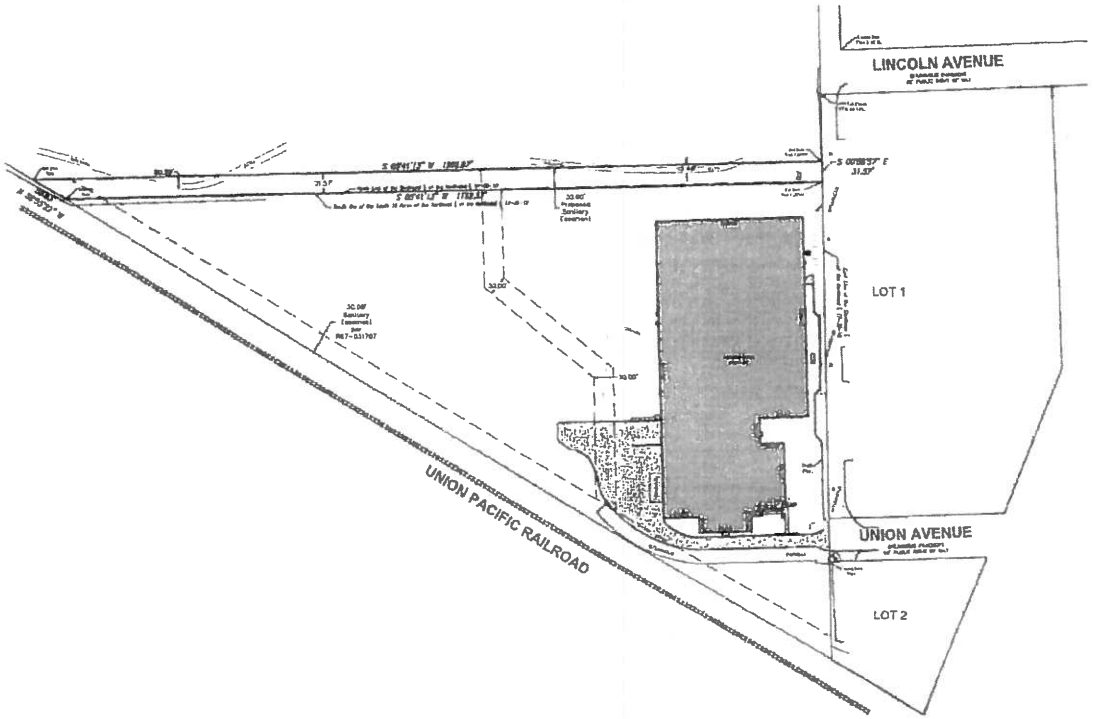

LAND AREA:

37,187.48 SF± OR 0.85 ACRES±

Jaime L. Harpole, PLS
Illinois Professional Land Surveyor No. 3160
In the State of Illinois, Expires 11-30-2022

JLH LAND SURVEYING INC.
Illinois Professional Design Firm No. 184.007130
810 Greene Street, Shorewood, Illinois 60404
815.729.4000 www.jlhsurvey.com

SURVEY PREPARED FOR:
ROCHE FAMILY L.P.
P.O.BOX 1235
WHEATON, IL 60187-1235
PHONE: 630.263.2000

PLAT OF SURVEY
1201 W. UNION AVENUE
WHEATON, ILLINOIS

SHEET 1 OF 1

22-073-100