



**AGENDA ITEM # 8B**

**AGENDA ITEM EXECUTIVE SUMMARY  
Village Board Meeting  
August 9, 2021**

**Item Title:** Metro 19 Development Project

**Staff Contact:** Jason M. Bielawski, Village Administrator

**VILLAGE BOARD ACTION**

**Adopt a resolution authorizing the Mayor to sign and directing the Village Clerk to attest to an “Amended Purchase and Sale Agreement for Real Estate and Dedication of a Permanent Easement” between the Village of Roselle and JEA Northpoint, LLC.”**

**Executive Summary:**

At the July 12, 2021 Village Board meeting, the Board unanimously approved a purchase and sale agreement with JEA Northpoint, LLC for the acquisition of a portion of the property currently home to Sternberg Lighting at 555 Lawrence Avenue as well as a permanent easement, which are for the construction of the Metro 19 development.

Due to a change in circumstances associated with JEA Northpoint’s attorney and associated escrow account, it’s necessary to amend the purchase and sale agreement. The only amendments to the agreement are the name of the seller’s attorney and the holder of the escrow account. All other terms remain unchanged. The Village will purchase the property and obtain a permanent easement for a total cost of \$175,000.

**Implications:**

**Is this item budgeted?** The cost of this transaction will be expensed to the General Capital Projects Fund, which will then be reimbursed by the East Irving Park Road TIF Fund. The developer will also contribute \$35,000 towards this transaction.

**Any other implications to be considered?**

**Attachments:**

- Resolution
- Purchase and Sale Agreement

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROVING AN AMENDED PURCHASE AND SALE AGREEMENT  
FOR REAL ESTATE AND DEDICATION  
OF PERMANENT EASEMENT  
BETWEEN THE VILLAGE OF ROSELLE AND JEA NORTHPOINT, LLC**

**WHEREAS**, due to a change in circumstances associated with the Seller's attorneys and the proposed escrow account, it is necessary to amend the Purchase and Sale Agreement for Real Estate and Dedication of Permanent Easement approved by Resolution No. 2021-2416.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Board of Trustees of the Village of Roselle, DuPage and Cook Counties, Illinois, that:

1. That the amended Purchase and Sale Agreement for Real Estate and Dedication of Permanent Easement attached hereto and incorporated herein as if fully set forth as EXHIBIT 1 (hereinafter "Amended Agreement"), instead of the contract approved by Resolution 2021-2416, shall be the agreement between the Village of Roselle and JEA Northpoint, LLC, for the Village's purchase of real estate and dedication of a permanent easement from JEA Northpoint, LLC; and
2. The Mayor is hereby authorized to sign and the Village Clerk is hereby directed to attest to the Amended Agreement;
3. Village staff is hereby authorized to undertake any and all acts necessary to complete effectuation of the Amended Agreement.

ADOPTED this 9th day of August, 2021

AYES:  
NAYS:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
David Pileski, Mayor

ATTEST:

\_\_\_\_\_  
Patricia Burns, Village Clerk

**AMENDED PURCHASE AND SALE AGREEMENT  
FOR REAL ESTATE AND DEDICATION OF A PERMANENT EASEMENT**

This Purchase and Sale Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”) by and between JEA Northpoint, LLC, 1400 East Touhy Avenue, Des Plaines, Illinois 60016 (“Seller”) and the Village of Roselle, an Illinois municipal corporation (“Purchaser”).

**RECITALS**

A. Whereas, Seller is the owner of the property commonly known as 555 Lawrence Avenue located in the Village of Roselle, Illinois (the “Seller’s Full Site”); and

B. Whereas, the Village is currently participating in a TIF project of redeveloping property adjacent to the Seller’s premises pursuant to the Roselle, Illinois, East Irving Park Road Tax Incremental Redevelopment Plan (hereinafter “Metro 19 Redevelopment”); and

C. Whereas, Pursuant to the terms of a Redevelopment Agreement, for the TIF project, Metro 19 Redevelopment, Purchaser has provided for the widening of Lawrence Avenue, construction of a parking garage and residential building, and right-of-way improvements (hereinafter “Redevelopment Improvements”); and

D. Whereas, the Redevelopment Improvements require acquisition of the development “Parcel” and “Easement” (as such terms are hereinafter defined) by the Purchaser for the Redevelopment Improvement necessary for the Metro 19 Redevelopment Plan; and

E. Whereas, JEA Northpoint, LLC, the Seller, is willing to sell the Parcel (as hereinafter defined) and dedicate a permanent easement to the Purchaser, pursuant to the terms and conditions of this Agreement.

**AGREEMENTS**

**NOW, THEREFORE**, for and in consideration of the premises and mutual covenants contained herein, and of other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto) Seller and Purchaser agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth as representing the intent of the parties. This Purchase Sale Agreement is made under threat of the exercise of eminent domain by the Purchaser.

2. **The Parcel.** Subject to the terms and conditions contained in this Agreement, Seller agrees to sell to Purchaser, and Purchaser hereby agrees to purchase of the real estate and all improvements thereon depicted on and attached hereto and incorporated herein as EXHIBIT A (the “Parcel”), which Parcel is a portion of Seller’s Full Site.

3. The Purchaser, pursuant to the terms of this Agreement, shall also be acquiring a permanent easement at that location and in that form consistent with the Plat of Dedication of Easement attached hereto and incorporated herein as EXHIBIT B (hereinafter “Easement”).

4. **Purchase Price.** The purchase price for the acquisition of the Parcel shall be One Hundred and Seventy Thousand Dollars (\$170,000.00) and Five Thousand Dollars (\$5,000.00) for the Easement.

5. **EARNEST MONEY.** Within five days after the Effective Date (as hereinafter defined), Purchaser shall deposit in an attorney's trust account with Walsh, Knippen and Cetina, 2150 Manchester Rd, Suite 200, Wheaton, (hereinafter "Law Firm"), Illinois, the sum of TEN THOUSAND and 00/100 Dollars (\$10,000.00) (the "Earnest Money"). The Law Firm shall deliver proof of the timely Escrow deposit to the Sellers attorney within five days of the deposit in the trust account. The Earnest Money shall be held in a non-interest bearing trust account until such time as formal closing with the title company, at which time the Earnest Money shall be delivered and applied against the Purchase Price on the Closing Date. If this Agreement is terminated as provided herein, then the Seller and Purchaser will jointly direct the law firm to return the earnest money not later than five (5) days after written notice of termination. If the closing does not occur as the result of a material breach of this Agreement by either Party the earnest money shall be paid to the non-breaching party.

6. Seller has provided Purchaser with an existing Phase 1 Environmental Report. No further representations are made by the Seller with regard to the environmental condition of the Parcel or Easement. Purchaser shall have the right to obtain an additional Phase I environmental Report certified to Purchaser after the execution of this Agreement or during the due diligence period to determine if "Hazardous Materials" exist on the Parcel or Easement. The term "Hazardous Materials" shall mean any substance, material, waste, gas or particulate matter which is regulated by any local governmental authority, the State of Illinois, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "hazardous material", hazardous substance", "extremely hazardous waste", or "restricted hazardous waste" under any provision of Illinois law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq., (33 U.S.C. §1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 (42 U.S.C. 9601). The term "Environmental Laws" shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental, health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials. In the event it is determined, prior to the end of the Due Diligence Period (as defined in the Rider attached hereto) that the Parcel or Easement contain the presence of hazardous materials as defined under either applicable, federal or state law, underneath the surface of the Parcel and/or on or about the Parcel, including, but not limited to, asbestos, PCB's, other toxic, hazardous or contaminated substances of any kind or nature, Purchaser shall have the right to terminate this contract and declare same null and void and any earnest money shall be immediately returned to the Purchaser.

7. **Soil Test/Flood Plain Conditions.** This Contract is also subject to Purchaser obtaining within twenty-eight (28) business days from the date of acceptance of the Contract by the Purchaser a soil boring test and/or Flood Plain Determination at a site or sites of Purchaser's choice on the Parcel to obtain necessary permits from the appropriate governmental authorities for the improvement contemplated by the Purchaser. Such determination and tests shall be at Purchaser's expense. In the event Flood Plain Determination and such tests are unsatisfactory, at the option of Purchaser, and upon written notice to Seller given prior to the end of the Due Diligence Period (as defined in the Rider attached hereto), this contract shall be null and void. In the event the Purchaser does not serve written notice within the time specified herein, this provision shall be deemed waived by all parties hereto and this contract shall continue in full force and effect. Purchaser shall hold Seller harmless from any loss, claim or liability of said tests.

8. **Pre-Closing Obligations.** Prior to and as conditions to Closing, Purchaser shall cause all of the conditions set forth in Sections 6 and 7 to be satisfied.

9. **Title Insurance; Survey.**

a. On or before Closing, Seller, at Purchaser's expense, shall obtain a commitment to issue an ALTA owner's policy of title insurance (the "**Commitment**") issued by Chicago Title Insurance Company or other mutually acceptable title insurance company (the "**Title Company**") showing that Seller owns fee simple title to the Parcel and the Easement subject only to: current general real estate taxes; general exceptions, building lines, covenants, conditions and restrictions of record; matters of record arising under the Redevelopment Agreement, and existing zoning. Seller shall have no obligation to provide any survey of the Parcel.

b. The Purchaser, at its sole cost and expense, shall provide the Seller with an accurate and recordable Plat of Easement no less than fourteen (14) days prior to closing. Provided such Plat of Easement is reasonably acceptable to Seller, such Plat of Easement shall be recorded at Closing.

10. **Closing and Possession.**

a. The closing of the transaction contemplated hereby (the "**Closing**") shall take place in the offices of Chicago Title Company in Lisle, Illinois or in such other place which may be mutually agreed upon by the parties. The date of Closing (the "**Closing Date**") shall be fourteen (14) days after the last day of the Due Diligence Period.

b. At Closing, Seller shall deliver to Purchaser:

(i) Possession of the Parcel; and the following documents:

A duly executed and acknowledged special warranty deed conveying to Purchaser insurable, fee simple title to the Parcel (the "**Deed**") by recordable Special Warranty Deed (or the appropriate deed if title is in trust or in an estate), and with real estate transfer stamps to be paid by Purchaser. Title when conveyed will be good and merchantable, subject only to: general real estate taxes not due and payable at the time of Closing, covenants, conditions and restrictions of record, building lines and easements, if any; and

(ii) A FIRPTA affidavit executed by Seller; and

(iii) A Closing Statement; and

(iv) An executed recordable Plat of Easement for the Easement Parcel.

(v) Such other documents as may be reasonably required to consummate the transaction contemplated herein in accordance with the provisions of this Agreement (including, without limitation, an owner's statement, and undertakings required by the Title Company.

c. At the Closing, Purchaser shall deliver to Seller (or to the Title Company, as appropriate) the following:

(i) The Purchase Price (plus or minus prorations); and

(ii) The Title Policy; and

- (iii) Such other documents as may be reasonably required to consummate the transaction contemplated herein in accordance with the obligations with the provisions of this Agreement.

d. The parties may elect to consummate the closing through an escrow pursuant to the written instructions consistent with this Agreement.

11. **Prorations and Closing Costs.** The Purchaser shall pay the following costs in connection with the Closing: (i) the cost of the Title Policy; (ii) the cost of recording the Deed; (iii) cost of Survey and Plat of Easement; (iv) Plat of Survey; (v) fifty (50%) percent of the escrow costs if the matter closes in escrow; and (vi) all recording costs. The Purchaser shall pay the cost of any title endorsements.

The Seller shall pay fifty (50%) percent of the escrow costs.

Any real estate taxes applicable to the Parcel for the year of Closing shall be prorated at Closing as of the date of the Closing. Such prorations shall be based on the last ascertainable tax bill as adjusted pursuant to this paragraph. If there is no separate tax bill for the Parcel, such prorations shall be equitably calculated based on the ratio of the square feet of land contained in the Parcel divided by the square feet of land contained in any larger tax parcel which includes the Parcel; provided, however, for purposes of tax prorations, any prior tax bill for a larger property than the Parcel shall be equitably adjusted so that the tax prorations for Closing shall be based on the assessed value of the land area only without regard to the assessed value of any improvements on any tax parcel. All other charges and prorations shall be per local custom.

12. **Notices.** All notices permitted or required pursuant to this Agreement shall be in writing and shall be deemed to have been served when sent by email, certified mail, return receipt requested, postage prepaid, or via Federal Express or other nationally recognized overnight express courier and addressed to the parties to whom such notices are intended as set forth below:

If to the Purchaser: Village of Roselle  
c/o Jason Bielawski, Village Administrator  
31 S Prospect St  
Roselle, IL 60172  
[jbielawski@roselle.il.us](mailto:jbielawski@roselle.il.us)

with copies to: Jim Knippen  
2150 Manchester Rd #200  
Wheaton, IL 60187  
[jim@wkc-lawyers.com](mailto:jim@wkc-lawyers.com)

If to the Seller: JEA Northpoint, LLC  
1400 East Touhy Avenue, Suite 400  
Des Plaines, Illinois 60018

with copies to: Tom Buranosky  
Fox, Swibel, Levin & Carroll, LLP  
200 W. Madison Street, Suite 3000  
Chicago, IL 60606  
[tburanosky@foxswibelc.om](mailto:tburanosky@foxswibelc.om)

13. **Miscellaneous.**

a. The paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language thereof.

b. All previous negotiations and agreements between the parties hereto, with respect to the transaction set forth herein, are merged in this instrument and the attached Rider which together fully and completely express the parties' rights and obligations. This Agreement and the Rider is the entire agreement between the parties hereto with respect to the Parcel and the Rider and supersedes any and all other prior agreements and understandings, whether written or oral, formal or informal.

c. In the event that any term or provision of this Agreement shall be held illegal, invalid or unenforceable as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

d. In the event of a dispute between the parties hereto with respect to the enforcement of either party's obligations contained herein, the prevailing party shall be entitled to reimbursement of reasonable attorney's fees, costs, and expenses incurred in connection therewith.

e. The provisions hereof shall inure to the benefit of, and shall be binding upon, the heirs, executors, administrators, successors and assigns of the respective parties.

14. **Counterparts; Faxed and E-Mail Signatures.** This Agreement may be executed in multiple counterparts all of which taken together shall constitute one executed original. For purposes of executing this Agreement, any signed document transmitted by facsimile machine or a PDF document transmitted by email transmission shall be considered as an original signature and shall be considered to have the same binding legal effect as an original document. At the request of any party, any document transmitted by facsimile or email shall be re-executed by the applicable parties in an original form, it being agreed that the failure by any part to so re-execute such document shall not affect the binding legal effect of such document.

15. **Notice.** All Notices shall be in writing and shall be served by one party or attorney to the other party or attorney. Notice to any one of a multiple-person party shall be sufficient Notice to all. Notice shall be given in the following manner:

a. By personal delivery of such Notice; or

b. By mailing of such Notice to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or

c. By sending facsimile transmission. Notice shall be effective as of date and time of facsimile transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event fax Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or

d. By sending e-mail transmission. Notice shall be effective as of date and time of e-mail transmission, provided that the Notice transmitted shall be sent during Business Hours, and provided further that the recipient provides written acknowledgement to the sender of receipt of the transmission (by email, facsimile, regular mail or commercial overnight delivery). In the event e-mail Notice is transmitted

during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or

e. By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

16. **Seller Representations.** Seller, to the best of Seller's knowledge, represents that Seller has not received written notice from any Governmental body or Homeowner Association regarding (a) zoning, building, fire or health code violations that have not been corrected; (b) any pending rezoning; (c) any pending condemnation or eminent domain proceeding; or (d) a proposed or confirmed special assessment and or Special Service Area affecting the Real Estate. Except as expressly set forth in this Contract, Seller is selling and Purchaser is Purchasing the Parcel and the Easement is "as-is" condition without further representation or warranty.

Seller further represents that Seller has no knowledge of boundary line disputes, easements or claims of easement not shown by the public records, any hazardous waste on the Real Estate or any improvements for which the required permits were not obtained. Seller represents that there have been no improvements to the Real Estate which are not either included in full in the determination of the most recent real estate tax assessment or which are eligible for home improvement tax exemption. The representations in this Section 16 should survive Closing.

17. **Governmental Compliance.** Parties agree to comply with the reporting requirements of the applicable sections of the Internal Revenue Code and the Real Estate Settlement Procedures Act of 1974, as amended.

18. **Facsimile.** Facsimile signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract.

19. **Business Day/Hours.** Business Days are defined as Monday through Friday, excluding Federal holidays, Business Hours are defined as 8:00 A.M. to 6:00 P.M. Chicago time.

20. **Choice of Law/Good Faith.** All terms and provisions of this Contract including, but not limited to, the Attorney Review and Professional Inspection paragraphs, shall be governed by the laws of the State of Illinois. Any and all disputes regarding this Agreement requiring litigation shall be subject to the exclusive jurisdiction and venue of the 18<sup>th</sup> Judicial Circuit Court, Wheaton, DuPage County, Illinois.

21. **Brokerage.** Seller and Purchaser hereby represent and warrant to each other that neither Seller nor Purchaser has dealt with any real estate broker with respect to this transaction contemplated by this Agreement. Seller and Purchaser shall each indemnify and hold harmless the other from any loss, cost or expense (including attorney's fees) resulting from any claim by any other broker, finder, or agent claiming to have dealt with the indemnifying party with respect to this transaction.

22. **Default by Purchaser.** In the event Purchaser defaults in its obligations to close the purchase of the Property, the Earnest Money shall be immediately tendered to Seller from Escrowee and Seller may avail itself to any remedies provided by law, including specific performance.

23. **Assignment.** The parties hereto agree that Purchaser shall have the right, prior to the Closing Date and without the consent of Seller, to assign this Agreement or to designate a designee to which the Property shall be conveyed.



24. **Attorney's Fees.** In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of a breach of any of the covenants, agreements, obligations, or provisions on the part of the other party set forth in or arising out of this Agreement, the prevailing party shall be entitled to have and recover from the other party any and all costs and expenses of the action or suit, including, without limitation, reasonable attorneys' fees.

25. **Rider.** The Rider attached to this Contract is hereby incorporated herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Contract Date.

**PURCHASER:**

Village of Roselle,  
an Illinois municipal corporation

By: \_\_\_\_\_  
David Pileski

Its: Mayor \_\_\_\_\_

**SELLER:**

JEA Northpoint, LLC

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

Its: \_\_\_\_\_

ATTESTATION:

\_\_\_\_\_  
Patricia Burns, Village Clerk

SUBSCRIBED and SWORN to before  
me this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Notary Public