

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the “**Agreement**”) is made this day of November __, 2018 (the “**Effective Date**”), by and between _____ (the “**Purchaser**”), and the MACOMB INTERCEPTOR DRAIN DRAINAGE DISTRICT, as Seller (the “**MIDDD**”). (Sometimes the “Purchaser and “MIDDD” are singularly referred to as “Party” and jointly referred to as “Parties” in this Agreement”)

1. General Terms and Conditions. Subject to the terms and conditions of this Agreement, Purchaser hereby offers to purchase, and MIDDD agrees to sell to Purchaser, the Subject Property described in paragraph 2 of this Agreement. Purchaser acknowledges and agrees the offer to purchase real estate presented in this Agreement is being submitted to the MIDDD c/o the Macomb County Department of Public Works (“**MCPW**”).

2. Subject Real Property. The real property that is the subject of this Agreement, legally described on **Exhibit A**, is commonly known as:

Address: 45345 Garfield Road, Macomb Township, MI 48044

Parcel/Tax ID: 08-32-300-018

Legal Description: See **Exhibit A**

together with all structures, improvements, appurtenances, rights, tenements and hereditaments, now with the land, and subject to any easements, covenants and restrictions of record and zoning laws and ordinances affecting the real property (the “**Subject Property**”). Purchaser acknowledges that upon consummation of the sale contemplated by the Agreement that Purchaser will acquire whatever title to the Subject Property that is being offered by the MIDDD, “as is,” “where is,” subject to assessments, debt service fees, taxes, liens, easements, or claims of rights of others, if any.

3. Eligibility of Purchaser. The Purchaser represents and warrants that it, and/or any affiliated owners, shareholders or members are not: (a) under 18 years of age; (b) an employee of the MIDDD, MCPW or Macomb County; or (c) an agent or immediate member of the household of an employee of the MIDDD, MCPW or Macomb County. For breach of this warranty, the MIDDD shall have the right to terminate this Agreement without and further liability on the part of the MIDDD and Purchaser shall be deemed to be in default as provided in Paragraph 12 below.

4. Offer to Purchase and Sale of Real Property. Subject to the terms and conditions herein, MIDDD Agrees to sell and convey to Purchaser, and Purchaser agrees to purchase the Subject Property from the MIDDD for _____ in U.S. Dollars (the “**Purchase Price**”).

5. Terms of Payment. The Purchase Price shall be paid by Purchaser to the MIDDD as follows:

a. **Earnest Money Deposit.** In accordance with the Auction Rules and Regulations for the MIDD's auction for the Subject Property, Purchaser has deposited the amount of Three Hundred and Fifty Thousand and 00/100 Dollars (\$350,000.00) with the MCPW to be held as an earnest money deposit (the "**Deposit**"). The Deposit shall be applied to reduce the funds due at Closing or shall be refunded to Purchaser or retained by the MIDD in accordance with the terms of this Agreement and the "Escrow Agreement" (as defined in subparagraph (c) below).

b. The entire unpaid balance of the Purchase Price shall be paid by the Purchaser at closing in cash, certified funds, cashier's check or wire transfer.

- i. Certified Funds. As used in this Agreement, the term "Certified Funds" shall mean, funds that are guaranteed by bank, (cleared wire transfer, cashier's check), or paid in cash (subject to the cash limit as defined herein below).
- ii. Cash Limit. No more than Ten Thousand and 00/100 (\$10,000.00) Dollars in total may be paid in cash to MIDD to pay all, or any part of the Purchase Price.

c. **Escrow Agreement.** The Deposit shall be held in escrow by the MIDD pursuant to the signed Acknowledgment of Receipt of Deposit and Escrow Agreement in the form attached hereto as **Exhibit B**. The Deposit held in Escrow may only be returned to Purchaser if the Purchaser properly terminates this Agreement in a signed written notice submitted to the MIDD during the Due Diligence Period, as described below in Paragraph 6, requesting the Deposit be returned. In the event of Purchaser's Default under this Agreement, then Purchaser hereby expressly authorizes the MIDD in to retain Purchaser's Deposit held in escrow as Liquidated Damages, as more fully provided in Paragraph 12 below.

6. Due Diligence and Access to Property. Purchaser shall have the right to inspect and determine the feasibility of the purchase of the Property within ninety (90) days of the Effective Date (the "**Due Diligence Period**"), including, but not limited to investigations relating to zoning and municipal restrictions, easements and title encumbrances, available utilities, development potential, and conducting soil tests, structural, subsurface, environmental, wetlands, topographical analysis or any other test or analysis the Purchaser desires in order to determine the feasibility of the purchase of the Property in the Purchaser's sole discretion (the "**Due Diligence**"). During the Due Diligence Period, Purchaser, its agents and representatives, shall have reasonable access to the Property, including, the right to inspect the Property via Purchaser's employees, appraisers, agents, architects, environmental consultants and engineers. All appraisals, inspections, audits, tests, that Purchaser requests shall be at the Purchaser's sole cost and expense and shall be performed during reasonable business hours with reasonable prior advance to the MIDD. Purchaser shall, at its sole cost and expense, restore any damage to the Subject Property resulting from any of Purchaser's inspections or testing. Purchaser shall also indemnify, defend, and hold the MIDD harmless with respect to any personal liability, bodily injury, property damage, and construction and/or mechanic's liens resulting from Purchaser's entry and conduct of due diligence activities upon the Subject Property, including but not limited to all attorneys' fees and costs incurred in connection therewith. Upon the MIDD's written request, Purchaser shall provide a PDF or paper copy to the MIDD of any testing results or reports pertaining to the

Subject Property arising out of Purchaser's due diligence activities.

If the Purchaser deems that the purchase of the Subject Property is not acceptable, which shall be in Purchaser's sole, subjective, and discretionary decision, Purchaser may terminate this Agreement by written notice delivered to MIDDD on or before the expiration of the Due Diligence Period. Upon the timely termination of this Agreement, neither party shall have any further liability or obligation to the other under this Agreement. In the event Purchaser does not terminate this Agreement on or before the expiration of the Due Diligence Period, then Purchaser shall be deemed to have approved all matters relating to Property (other than the conditions to closing set forth in this Agreement), and the Purchaser shall be bound to close.

The MIDDD discloses that the Subject Property is currently used for storage and staging for the M-59 resurfacing project by the contractor with the MIDDD's permission, but the contractor will vacate and restore the Subject Property before the expiration of the Due Diligence Period.

If the Purchaser deems that the purchase of the Property is not acceptable, which shall be in Purchaser's sole, subjective, and discretionary decision, Purchaser may terminate this Agreement by written notice delivered to the MIDDD on or before the expiration of the Due Diligence Period and thereby terminate this Agreement and receive a refund of the Deposit.

7. Covenant Deed. Purchaser acknowledges that it will receive a Covenant Deed transferring whatever rights, title and interest the MIDDD had in the Subject Property at the time of the Closing. The Purchaser will also receive a Property Transfer Affidavit that must be submitted to the Macomb Township Assessor in accordance with state law.

8. "AS IS" Sale. THE PROPERTY IS BEING SOLD "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE MIDDD SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED CONCERNING THE PROPERTY. PURCHASER ACKNOWLEDGES THAT PURCHASER IS PURCHASING THE PROPERTY BASED SOLELY UPON PURCHASER'S OWN INDEPENDENT INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY THE MIDDD'S MCPW'S OR MACOMB COUNTY'S, EMPLOYEES, AGENTS, OR CONTRACTORS.

9. General Release. Purchaser releases MIDDD and its agents, employees and representatives, including the MCPW, Macomb County and the Macomb County Public Works Commissioner Candice S. Miller, from any and all claims demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including without limitation attorney's fees whether suit is instituted or not) whether known or unknown, liquidated or contingent (collectively "**Claims**") arising from or related to (a) the sale administered by the MIDDD, the MCPW or their agents, employees and contractors, or (b) any defects, errors or omissions in the design, condition or construction of the Property, whether the same are a result of negligence or otherwise, or (c) other conditions (including, but not limited to environmental conditions, wetlands, zoning and suitability) affecting the Property, whether the same are a result of negligence or otherwise, or (d) the ownership, title, possession, occupancy, use, management or leasing of the Property.

10. Environmental Release. The release set forth in Paragraph 9 above specifically includes any Claims under any Environmental Laws, or with respect to any environmental risk. “Environmental Laws” includes, but is not limited to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. §§11001 et seq.), the Clean Air Act (42 U.S.C. §§7401 et seq.), the Clean Water Act (33 U.S.C. §§1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§651 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§300f et seq.), as any of the same may be amended from time to time, and any state or local law dealing with environmental matters, and any regulations, orders, rules, procedures, guidelines and the like promulgated in connection therewith, regardless of whether the same are in existence on the date of this Agreement.

11. Claims Liability. The Purchaser acknowledges and agrees hold the MIDDD harmless from any and all losses, liabilities, actions, claims, debts, demands, judgments, liabilities, costs and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including the Purchaser, members of the general public, or to the property of any legal or political entity including State, local and interstate bodies, in any manner caused by or contributed to by the Purchaser, its agents, contractors, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site of the Subject Property during due diligence and before Closing, or while the Subject Property is in the possession of or subject to the control of the Purchaser, its agents, servants or employees after the Subject Property has been removed from the MIDDD's ownership, possession and control.

12. Default. In the event Purchaser defaults in its obligations to perform any of the covenants and agreements contained herein to be performed by Purchaser after acceptance and within the time for performance as specified herein, then MIDDD, in its sole discretion, may (i) retain the entire Deposit as liquidated damages; (ii) initiate an action for specific performance of the sale and the agreement to purchase the Subject Property expressly provided herein, including the recoupment of actual attorney fees and costs associated with the enforcement of this Agreement, as its sole remedy, or (iii) terminate this Agreement and return the Deposit to the Purchaser.

13. Closing. The closing of this transaction shall take place within seven (7) days of the close of the Due Diligence Period defined in Paragraph 6, at the offices of the MCPW, or at another mutually acceptable location agreed to by the parties (the “Closing”). At Closing, the Purchaser may obtain a title insurance policy at its own expense; however, the MIDDD will have no obligation or responsibility to issue or pay for any title insurance policy at or before Closing.

a. Closing Deliveries. At Closing (or such other times as may be specified below), MIDDD and/or Purchaser, as appropriate, shall deliver or cause to be delivered the following:

- i. Covenant Deed. A Covenant Deed transferring whatever rights, title and interest the MIDDD had in the Subject Property at the time of the sale.
- ii. Closing Statement. A closing statement conforming to the relevant provisions of this Agreement.
- iii. Property Transfer Affidavit. A property transfer affidavit to be submitted by Purchaser to the Macomb Township Assessor in accordance with state law.

Purchaser shall be responsible to pay for any and all escrow fees, closing costs and recording fees arising out of the Closing. The Purchaser shall also pay any and all state and local transfer taxes applicable to the transfer of title at Closing, if any.

14. Possession. MIDDD shall deliver possession of the Subject Property to Purchaser at Closing.

15. Headings. The headings of various Sections in this Agreement are for convenience only and are not to be utilized in construing the content or meaning of the substantive provisions hereof.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to conflicts of law principles.

17. Severability. Whenever possible, each provision of this Agreement and all related documents shall be interpreted in such a manner as to be valid under applicable law but to the extent any provision is invalid or prohibited under applicable law such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provisions of this Agreement.

18. Assignment. Purchaser shall have no right to assign this Agreement or any of its rights, title or interests without the express written consent of the MIDDD, which may be withheld in its sole discretion, except in the event that Purchaser assigns its rights to an affiliated and/or commonly controlled entity, in which case Purchaser shall not need consent from MIDDD; however, in such event the original Purchaser shall still remain bound by the terms and obligations of the auction bid and Purchase Agreement until a successful closing occurs.

19. Counter-Parts/Electronic Signatures. This Agreement may be executed in one or more counter-parts, each of which shall be deemed an original, but all which together can constitute one and the same document. All electronic copies of signatures of this Agreement shall be treated as an original for all purposes.

20. Notices. All notices and other communications hereunder shall be in writing and shall be effective if and when sent by registered or certified U.S. mail or reputable same-day or overnight courier, postage prepaid or otherwise accounted for by sender, and sent to the addresses set forth below (or at such other address for a party as shall be specified in a notice given in accordance with this Agreement):

If to MIDD:

Macomb Interceptor Drain Drainage District
c/o Macomb County Department of Public Works
Attn: Tamara Keskeny, Manager Real Property
21777 Dunham Road
Clinton Township, MI 48036
E-mail: tamara.keskeny@macombgov.org

with copy to:

Benjamin J. Aloia, Esq.
Aloia & Associates, P.C.
48 S. Main Street, Ste. 3
Mount Clemens, MI 48043
Email: aloia@aloiaandassociates.com

If to Purchaser:

with copy to:

Either party may, by written notice to the other, change the address to which notices are to be sent. Unless otherwise provided herein, all notices shall be deemed given as provided above, except that a notice of a change of address shall be deemed given when actually received. Seller's affidavit of the date and time of deposit in a mailbox or with the express mail service or the postmark, whichever is earlier shall constitute evidence of the effective date when the notice has been given.

21. Entire Agreement. This written Agreement, including all Exhibits incorporated herein, embodies the entire understanding between the parties hereto with respect to the subject matter contained herein, and supersedes any and all prior negotiations, discussions, understandings and written or oral agreements among them with respect to the subject matter. The terms of this Agreement are contractual and not merely recital and supersede and control any previous course of dealing or usage of trade. In the event there is any conflict between the terms of this Agreement and the terms of any acknowledgment or other documents relating to this Agreement, the terms of this Agreement shall control. All the documents attached to this Agreement as Exhibits are hereby integrated into this Agreement, and have been reviewed and approved by each party, and each party acknowledges its consent to sign those documents at Closing.

22. Voluntary and Knowing Ratification and Construction. Each Party acknowledges that it has retained counsel of its own choosing concerning the claims released in this Agreement; that each Party has read and fully understands the terms of this Agreement and/or has had it reviewed and approved by their counsel of choice, with adequate opportunity and time for such review; that this Agreement has been the result of negotiations; and that each Party is fully aware of its contents and of its legal effect. Accordingly, this Agreement will not be construed against any Party because such Party drafted this Agreement. Instead, this Agreement will be interpreted as though drafted equally by all Parties. Each Party enters into this Agreement freely

and voluntarily and with a full understanding of its terms. Each Party acknowledges that, except as expressly set forth in this Agreement; no representations of any kind or character have been made to it by the other to induce its execution of this document. Each Party further state that the only representations made to it to obtain its consent to this Agreement is stated in this agreement and that each Party is signing this Agreement voluntarily and without coercion, intimidation, or threat of retaliation.

23. Waiver. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be a waiver of such provision or in any way affect the validity of this Agreement or any part of this Agreement or the right of any party thereafter to enforce each and any such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach of this Agreement.

24. Amendment. This Agreement may not be amended, changed or modified in any manner except by an instrument in writing signed by each of the parties hereto and their respective representatives, agents, successors and permitted assigns.

25. Authority. The signatories of each Party below have signed this Agreement with the authority and approval of their respective governing boards, including the Drain Board for the Macomb County Interceptor Drain Drainage District. This Agreement shall be binding upon the parties, and their respective shareholders, managers, members, boards, directors, officers, agents, employees, successors and permitted assigns.

26. No Brokers. Purchaser and the MIDDD acknowledge that there are no real estate brokers or salespersons representing either Party in this sale. Each Party represents and warrants to the other party that neither party, nor anyone acting on the behalf of either party, has incurred any liability to any broker or finder in connection with the transaction contemplated by this Agreement and each Party agrees to defend and indemnify the other Party against claims of any such broker or anyone claiming by, through or under such Party. These representations, warranties and indemnities shall survive Closing and/or termination of this Agreement for any reason.

[SIGNATURES ON PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Agreement on the dates written below.

**Macomb Interceptor Drain Drainage District c/o
Macomb County Department of Public Works:**

Dated: _____, 2018

/s/ _____
By: Candice S. Miller
Its: Chairperson

PURCHASER:

Dated: _____, 2018

/s/ _____

EXHIBIT A

Subject Property Legal Description

Real property in the Township of Macomb, County of Macomb, State of Michigan, described as follows:

Part of the southwest $\frac{1}{4}$ of section 32, town 3 north, range 13 east, being described as: Commencing at the southwest corner of section 32; thence north 00 degrees 13 minutes 12 seconds west 285.77 feet along the west line of section 32 to the north line of M-59 and the point of beginning; thence continuing along the west line of section 32 north 00 degrees 13 minutes 12 seconds west 1052.66 feet; thence south 89 degrees 50 minutes 48 seconds east 171.39 feet to the west right of way line of Garfield Road (120 feet wide); thence along the west line of Garfield Road the following two courses, south 21 degrees 26 minutes 45 seconds east 659.63 feet and along a tangent curve concave to the southwest having a central angle of 14 degrees 11 minutes 38 seconds, a radius of 1840.00 feet, an arc length of 455.82 feet and whose chord is south 14 degrees 20 minutes 56 seconds east 454.66 feet to the north right of way line of M-59; thence north 89 degrees 45 minutes 15 seconds west 521.20 feet along the north right of way line of M-59 to the west line of section 32 and the point of beginning.

Commonly known as: 45345 Garfield Road, Macomb Township, MI 48044
Tax Parcel ID No. 08-32-300-018

EXHIBIT B

ACKNOWLEDGEMENT OF RECEIPT OF DEPOSIT AND ESCROW AGREEMENT

The Macomb County Department of Public Works (“MCPW”) on behalf of Macomb Interceptor Drain Drainage District (“MIDDD”) hereby acknowledges receipt of a certain signed “Real Estate Purchase Agreement” made by _____ (the “Purchaser”) dated November 14, 2018 (the “Agreement”), together with the receipt the “Deposit” to be held in escrow by the MIDDD subject to the terms and conditions of the Agreement.

The Deposit held in Escrow may only be returned to Purchaser if the Purchaser properly terminates the Real Estate Purchase Agreement in a signed written notice submitted to the MIDDD during the Due Diligence Period, as described in Paragraph 6 of the Agreement, requesting the Deposit be returned. In the event of Purchaser’s Default under the Agreement, then Purchaser hereby expressly authorizes the MIDDD to retain Purchaser’s Deposit held in escrow as Liquidated Damages, as more fully provided in paragraph 12 of the Agreement.

Purchaser expressly acknowledges and agrees that this receipt is only an acknowledgement of MCPW’s receipt of the Deposit on behalf of the MIDDD.

**Macomb Interceptor Drain Drainage District c/o
Macomb County Department of Public Works:**

Dated: _____, 2018

/s/ _____
By: Candice S. Miller
Its: Chairperson

PURCHASER:

Dated: _____, 2018

/s/ _____