OPTION AND PURCHASE AGREEMENT

THIS OPTION AND PURCHASE AGREEMENT (the “Agreement”) is dated as of August 14, 2015 between James R. Simantel and Linda L. Simantel (“Seller”), and the City of Peoria, Illinois (“Purchaser”).

WITNESSETH:

WHEREAS, Seller is the owner of the real estate described on Exhibit A attached hereto and incorporated herein, and all improvements and appurtenances thereunto belonging (the “Real Property”);

WHEREAS, Seller desires to grant to Purchaser and Purchaser desires to obtain from Seller an irrevocable, exclusive option to purchase the Real Property;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Option Agreement. In consideration of the payment of the sum of Five Thousand and 00/100 Dollars ($5,000.00) to Seller by Purchaser (the “Option Payment”), Seller hereby grants to Purchaser the exclusive and irrevocable option to purchase the Real Property from Seller subject to the terms of this Agreement. The option hereby granted may be exercised at any time on or before December 31, 2015 (the “Option Term”). If the option to purchase the Real Property has not been exercised or extended within the Option Term, all of the rights of Purchaser hereunder will expire and terminate on such date and Seller shall retain the Option Payment described herein. The option hereby granted shall be exercised by written notice delivered to Seller in accordance with Section 11 of this Agreement.

1.1 Extension. Upon written notice to Seller and an additional Option Payment of Five Thousand and 00/100 Dollars ($5,000.00), the Option Term shall be extended for an additional six (6) months.

1.2 Inspections. During the Option Term, Purchaser and its agents, representatives and independent contractors shall be entitled to enter onto the Real Property, at reasonable times, upon reasonable prior notice to Seller and at Purchaser’s sole expense, to make any and all tests and inspections of the surface, subsurface and improvements of Real Property as Purchaser, in its sole discretion, determines to be necessary. Such tests and inspections may include, without limitation, environmental audits, core drillings and structural inspection of improvements. Purchaser shall restore the Real Property to its original condition after completing any such inspections. Purchaser does hereby release and forever discharge Seller, its agents, employees, officers, directors, and shareholders, its affiliated corporations, and their employees, officers, directors, and shareholders, from any and all claims, demands, and causes of action of any kind or nature which may arise as a result of Purchaser’s activities related to inspections, investigations and tests with respect to the Real Property. Purchaser shall not suffer or permit the filing of any mechanic’s liens and to the extent that such mechanic’s liens are or may be filed as a result of Purchaser’s activities pursuant to this Agreement, Purchaser shall cause same to be removed upon demand by Seller. Purchaser shall indemnify, defend, and hold Seller harmless (including with respect to all reasonable attorney’s fees, costs, and expenses) against and from any and all claims, demands, or causes of action of any kind or nature whatsoever arising out of any matter relating to tests, inspections, investigations or other activities of Purchaser, its employees, agents and contractors, with respect to the Real Property.
2. **Purchase Price of Real Property.** The purchase price of the Real Property shall be Two Hundred Thousand and 00/100 Dollars ($200,000.00) ("Purchase Price"), to be paid by Purchaser to Seller at Closing, subject to adjustment for proratable items as provided for herein. Purchaser shall receive a credit against the Purchase Price for all Option Payments paid hereunder.

3. **Conditions Precedent.** Notwithstanding Purchaser's exercise of the option described in Section 1 of this Agreement, Purchaser's obligations under this Agreement shall be subject to the following conditions precedent being satisfied to the satisfaction of the Purchaser (or waived by Purchaser in writing):

3.1 **Title Commitment and Policy.** Purchaser, at Purchaser's sole cost and expense, having received a title commitment ("Title Commitment") for an ALTA Form B Owner's Title Insurance Policy ("Title Policy"), including extended coverage, issued by Chicago Title Insurance Company ("Title Insurer"), covering the Real Property in the amount of the Purchase Price showing merchantable record title to the Real Property to be in Seller. As used herein, "merchantable" shall mean the Real Property shall be free and clear of all claims, liens and encumbrances, except for: (i) such exceptions as Purchaser may approve in writing; (ii) all building and use restrictions and easements of record or in place affecting the Real Property; (iii) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing; (iv) all zoning and building restrictions of any governmental body affecting the Real Property; and (v) lien of the real property taxes for the current year and subsequent years.

4. **Closing.** The purchase of the Real Property shall be consummated as follows:

4.1 **Closing Date.** The closing (the "Closing") shall be held on a date mutually agreed upon by Purchaser and Seller, but not later than sixty (60) days following the date of exercise of the option (the "Closing Date").

4.2 **Seller's Deliveries.** At Closing, Seller shall deliver to Purchaser the following:

4.2.1 **Deed.** An executed special warranty deed to the Real Property prepared by Seller and in a form reasonably acceptable to Purchaser, subject to all easements, covenants, restrictions, dedications, rights of way and other matters of record.

4.2.2 **Title Policy.** The Title Policy, or written evidence of the agreement of the Title Insurer to issue the Title Policy, said evidence to be in form and substance satisfactory to Purchaser.

4.2.3 **ALTA Statement.** An executed ALTA Statement in the form required by the Title Insurer.

4.2.4 **Affidavit of Title.** An Affidavit of Title in the form attached hereto and made a part hereof as Exhibit B.

4.2.5 **Other Documents.** Such other documents, instruments, certifications and confirmations as may be reasonably required by Purchaser to fully effect and consummate the transactions contemplated hereby.
4.3 **Purchaser's Deliveries.** At Closing, Purchaser shall deliver to Seller the following:

4.3.1 **Purchase Price.** The cash portion of the Purchase Price as set forth in Section 2 hereof, less all Option Payments made pursuant to Section 1 hereof, plus or minus prorations provided for herein.

4.3.2 **ALTA Statement.** An ALTA Statement in the form required by the Title Insurer.

4.3.3 **Other Documents.** Such other documents, instruments, certifications and confirmations as may reasonably be required by Seller to fully effect and consummate the transactions contemplated hereby.

4.3.4 **Evidence of Authorization.** Evidence of the authority of Purchaser to enter into this Agreement and consummate the transactions contemplated hereby.

4.4 **Joint Deliveries.** At Closing, Seller and Purchaser shall jointly deliver to each other the following:

4.4.1 **Closing Statement.** An agreed upon closing statement.

4.4.2 **Transfer Tax Filings.** Executed documents complying with the provisions of all federal, state, county and local law applicable to the determination of transfer taxes.

4.5 **Possession.** Sole and exclusive possession of the Real Property shall be delivered to Purchaser on the Closing Date.

4.6 **Property Taxes.** All real estate taxes for all calendar years prior to the year of Closing shall be paid by Seller prior to or at Closing. Real estate taxes on the Real Property for the calendar year of Closing shall be prorated from January 1 to the Closing Date based on the latest available assessment, and the Purchaser shall receive a credit against the Purchase Price for the amount so calculated.

4.7 **Closing Costs.** Seller shall pay the following costs: Seller's attorneys fees in excess of $5,000. Purchaser shall pay the following costs: Purchaser's attorneys fees, Seller's attorneys fees up to $5,000, any closing fee, transfer taxes, and recording fees for recording the warranty deed.

4.8 **Brokerage Commissions.** Seller and Purchaser respectively represent, each to the other, that no real estate broker has been dealt with in regard to this transaction. Each party (the "Indemnifying Party") agrees to indemnify and hold the other harmless against any other brokerage commissions due to any other real estate broker with whom the Indemnifying Party has dealt in regard to this transaction.

4.9 **Special Assessments.** Seller will pay any unpaid special assessments confirmed prior to the Closing Date. Seller knows of no proceeding for special assessments against the Real Property not confirmed by a court of record.
5. **Seller’s Warranties and Representations.** In addition to all other representations, covenants and warranties by Seller herein, Seller hereby represents, covenants and warrants as follows:

5.1 **Authority.** Seller has all requisite power and authority and is fully authorized to enter into this Agreement and perform the obligations under this Agreement and to carry out the transactions contemplated hereby. Neither the execution or delivery of this Agreement nor the consummation of the transactions provided for herein or the fulfillment of the terms and conditions hereof shall result in a breach of any terms, conditions or provisions or constitute a default under, with or without giving notice or lapse of time or both, or conflict with any provision of law or of any other agreement, indenture or instrument to which Seller is a party or by which it is bound.

5.2 **Ownership.** Seller is the sole owner of and has good and merchantable fee simple title to the Real Property.

5.3 **Liens and Liabilities.**

5.3.1 The Real Property is not subject to any liens, and Seller shall create no lien covering the Real Property, or any portion thereof, without the prior written consent of Purchaser. Purchaser shall not be responsible for any liabilities, known, unknown, contingent or otherwise, of Seller. The Real Property transferred pursuant to this Agreement shall be conveyed to Purchaser free and clear of all liens, security interests, liabilities, leases and judgments of any kind whatsoever.

5.3.2 Seller shall be responsible for all debts, claims, contracts and liabilities in any way connected with the conduct of its operations on the Real Property, and Purchaser shall have no liability for Seller’s operations conducted on the Real Property or otherwise.

5.4 **Notice of Litigation or Violation.** Seller has received no notice, nor has Seller any knowledge, of any actions or claims filed or threatened by anyone against the Real Property or Seller in connection with any injury or damage sustained incidental to the use or occupancy of the Real Property. Seller shall promptly notify Purchaser of any such notice received between the date hereof and the Closing Date. Seller knows of no violation of any federal, state, county or municipal law, ordinance, order, rule or regulation affecting the Real Property, and Seller has received no notice of any such violation issued by any governmental authority.

5.5 **Rights in Real Property.** There are and will on the Closing Date be no options, purchase contracts, leases or other agreements of any kind or nature, written or oral, whereunder or whereby any party could claim or assert any right, title or interest in the Real Property sold hereunder.

5.6 **Governmental Regulation.** At the present time and on the Closing Date, the Real Property shall comply in all respects with all statutes, ordinances, regulations and administrative or judicial orders or holdings, whether or not appearing in public records, and the consummation of the transactions contemplated by this Agreement shall not violate any such statutes, ordinances, regulations and administrative or judicial orders or holdings or any other agreement or indenture by which Seller is bound.
5.7 Mechanics Liens. Seller has fully paid all bills, claims and obligations for labor performed and materials furnished in and about the improvement of the Real Property, and no such bills, claims or obligations are outstanding or unpaid.

5.8 Leases. No persons are in possession of the Real Property under any oral or written lease.

5.9 Encroachments. No improvements upon adjoining real estate encroach upon the Real Property.

6. Indemnity.

6.1 Indemnification by Seller. Seller hereby agrees to indemnify, defend and hold harmless Purchaser and its officers, shareholders, directors, employees, agents and beneficiaries against any and all losses, liabilities, fines and penalties and damages (including, without limitation, amounts paid in settlement and reasonable cost of investigation, reasonable attorneys’ fees and other legal expenses) incurred by Purchaser or its officers, shareholders, directors, employees, agents and beneficiaries as a result of: (i) the inaccuracy in any respect of any representation or warranty, or a breach of any covenant of the Seller contained herein; (ii) any obligations, liabilities or charges of the Seller not expressly assumed by the Purchaser except to the extent that Purchaser receives a credit therefor on the closing statement; or (iii) any misrepresentation in, or omission of a material fact from, any opinion, certificate or instrument of transfer or conveyance to be furnished to the Purchaser by or on behalf of the Seller under this Agreement.

6.2 Indemnification by Purchaser. Purchaser hereby agrees to indemnify, defend and hold harmless Seller and its officers, shareholders, directors, employees, agents and beneficiaries against any and all losses, liabilities, fines and penalties and damages (including, without limitation, amounts paid in settlement and reasonable cost of investigation, reasonable attorneys’ fees and other legal expenses) incurred by Purchaser or its officers, shareholders, directors, employees, agents and beneficiaries as a result of the inaccuracy in any respect of any representation or warranty, or a breach of any covenant of the Purchaser contained herein.

6.3 Limitations. This Section 6 is intended to be the sole and exclusive remedy for any claim under or related to this Agreement whether asserted as a claim for indemnity, or as a claim for damages directly sustained by a party, provided that for any such direct claims, neither party may recover incidental or consequential damages. Also notwithstanding the foregoing, neither party shall have an obligation to indemnify the other party pursuant to this Section 6 until the other party has suffered claims that exceed Ten Thousand Dollars ($10,000.00) either individually or in the aggregate, without reimbursement for all such amounts up to that sum. Recovery by an indemnified party under this Section 6 shall be limited, in the aggregate, to no more than One Hundred Thousand Dollars ($100,000.00). With respect to any such indemnification claims duly and timely made, the liability of any indemnifying person hereunder with respect to such claims shall continue thereafter until the indemnifying person’s(s’) liability therefor is finally determined and satisfied.

7. Default. If Seller wrongfully refuses to close the sale of the Real Property to Purchaser or is unable to close the sale of the Real Property under the terms of this Agreement, the same shall constitute a breach of this Agreement and Purchaser shall be entitled to all remedies under Illinois law at the time of the breach, including, without limitation, termination of this Agreement and return of any Option Payment; specific performance, with the rights, but not the obligation, to perform Seller’s covenants and agreements hereunder and to deduct the cost and expense of such
performance from the Purchase Price payable hereunder; and the right to recover as an element of its damages, reasonable attorneys fees and court costs and all other damages that Purchaser will suffer as a result of Seller’s breach or default hereunder. If Purchaser wrongfully refuses to close the purchase of the Real Property and pay the Purchase Price to Seller, the same shall constitute a breach of this Agreement and Seller shall be entitled to retain any Option Payment as liquidated damages and as its sole and exclusive remedy hereunder in lieu of any and all other remedies at law or in equity.

8. **Assignment.** Purchaser may assign its rights under this Agreement at any time on written notice to Seller, provided that Purchaser shall remain liable for any claims or damages.

9. **Condemnation.** If any portion or portions of the Real Property shall be taken by condemnation or any other proceeding in the nature of eminent domain, this Agreement shall remain in effect and Seller shall be relieved of the duty to convey title to the portion or portions of the Real Property so taken, but Seller shall, at Closing, assign to Purchaser all of Sellers’ rights and claims in and to any unpaid awards arising from such taking and credit to Purchaser on account of the Purchase Price all awards therefor collected by Seller (less all reasonable costs and expenses, including, without limitation, attorneys fees, expenses and court costs incurred by Seller to collect such awards).

10. **Condition of the Real Property.** Purchaser warrants that Purchaser has fully inspected the Real Property or has had the opportunity to conduct a complete and thorough inspection to determine the condition of the Real Property for any and all defects, whether known, unknown or hidden, including, but not limited to, any such defects relating to soil conditions and toxic or other hazardous materials; and Purchaser expressly agrees to purchase the Real Property “AS IS,” irrespective of whether the Real Property contains any defects, whether known, disclosed or hidden, it being fully understood that as except as specifically set forth herein, the Seller has made no warranties or representations of any kind pertaining to the Real Property, the condition thereof, the rental thereof, or any other matter pertaining to the Real Property. Purchaser agrees that if there is any requirement by governmental authority to meet or comply with any regulation, ordinance or code section, or to improve, repair, inspect, replace and/or alter any part or portion of the Real Property prior to or as a condition of sale, any such costs shall be paid by Purchaser; and any such requirement shall be complied with promptly by Purchaser and shall not relieve Purchaser from any of the obligations imposed by this Agreement.

11. **Miscellaneous.** It is further understood and agreed as follows:

- **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument.

- **Survival.** The representations and warranties contained in this Agreement shall survive the Closing for a period of one year, and the delivery of the Warranty Deed without limitation.

- **Severability.** If any provision of this Agreement shall be held to be void or unenforceable for any reason, the remaining terms and provisions hereof shall not be affected thereby.

- **Time.** Time is of the essence of this Agreement.

- **Binding Effect.** The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the parties hereto.
• **Amendment and Waiver.** This Agreement may be amended at any time in any respect only by an instrument in writing executed by Seller and Purchaser. Either party may waive any requirement to be performed by the other hereunder, provided that said waiver shall be in writing and executed by the party waiving the requirement.

• **Integrated Agreement.** This Agreement constitutes the entire agreement between Purchaser and Seller relating to the purchase of the Real Property, and there are no agreements, understandings, restrictions, warranties or representations between Purchaser and Seller other than those set forth herein.

• **Choice of Law.** It is the intention of Seller and Purchaser that the laws of Illinois shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of Purchaser and Seller.

• **Notices.** All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service or mailed (airmail if international) by registered or certified mail (postage prepaid), return receipt requested, addressed to:

  If to the Seller:  
  
  James and Linda Simantel
  15031 Punta Rassa Rd.
  Unit 303, Bldg. 4
  Fort Myers, FL 33908

  With a copy to:

  William I. Covey
  Heyl, Royster, Voelker & Allen, P.C.
  300 Hamilton Blvd.
  P.O. Box 6199
  Peoria, IL 61601-6199

  If to the Purchaser:  
  
  City of Peoria, Illinois
  419 Fulton Street
  Peoria, IL 61602
  Attn: Chris Setti

  With a copy to:

  Michael R. Seghetti
  Elias, Meginnes & Seghetti, P.C.
  416 Main Street, Suite 1400
  Peoria, IL 61602

  Each such notice shall be deemed delivered on the date delivered if by hand delivery and on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

• **Waiver of Tender.** Formal tender of an executed deed and the purchase price each is hereby waived.

• **Recording of Notice.** Upon execution of this Agreement, a Notice of Option, in form satisfactory to Purchaser, shall be executed by Seller and Purchaser and recorded in the Recorder’s Office of Peoria County, Illinois.

(Signature Page to Follow)
IN WITNESS WHEREOF, the parties have caused this Option Agreement to be executed as of the day and year first above written.

[Signatures]

James R. Simantel

Linda L. Simantel
IN WITNESS WHEREOF, the parties have caused this Option Agreement to be executed as of the day and year first above written.

CITY OF PEORIA, ILLINOIS

By: [Signature]

Its: [Signature]

Attest: [Signature]

Its: [Signature]

By: [Signature]

Chief Deputy City Clerk
EXHIBIT A

Legal Description

Parts of Lots 1, 2, 3 and 4 in Block 1 in Gallaher's Addition to the City of Peoria, located in the Southeast Quarter of Section 3, Township 8 North, Range 8 East of the Fourth Principal Meridian, Peoria County, Illinois, more particularly bounded and described as follows, to-wit:

Commencing at the most Northerly corner of said Lot 1; thence Southeasterly along the Northeasterly line of said Lot 1 and the Southwesterly line of Spring Street, 115 feet to the Point of Beginning of the tract to be described; thence at right angles Southwesterly to the Southwesterly line of Lot 4 in said Block 1 in Gallaher's Addition; thence Southeasterly along the Southwesterly line of said Lot 4 to the Illinois River; thence Northeasterly along the Illinois River to the Northeasterly line of said Lot 1 in Block 1 of Gallaher's Addition; thence Northwesterly along said last mentioned line to the Place of Beginning, situated in Peoria County, Illinois.

PIN: 18-03-451-003

Address: 1 Spring Street, Peoria, Illinois
STATE OF ILLINOIS
COUNTY OF PEORIA

EXHIBIT B

AFFIDAVIT OF SELLER

The undersigned, James R. Simantel and Linda L. Simantel (collectively, the “Seller”) do hereby depose and say as follows:

1. The Seller owns certain real estate which is commonly known as 1 Spring Street, Peoria, Illinois (the “Property”).

2. This Affidavit is made by the Seller in connection with the sale of the Property to the City of Peoria, Illinois (hereinafter referred to as “Purchaser”), and is given to induce the Purchaser to make or complete the purchase of the Property.

3. All representations and warranties of Seller contained in the Agreement for Purchase and Sale of Real Property between Seller and Purchaser regarding the Property are true and correct.

4. No labor, services or materials have been furnished or delivered to the Property or used for improvements or repairs thereof at any time within the past four (4) months that have not been fully and completely paid for and the Seller has no debts, outstanding contracts or liabilities which could give rise to or result in a lien or claim of lien against the Property under the Illinois Mechanics’ Lien Act.

5. All fixtures now located in or upon the Property are fully paid for and are not subject to any security interests.

6. No persons are in possession of the Property except the Seller and there are no leases, oral or written, or other arrangements concerning the Property under which any person other than the Seller has any possessory rights in the Property.

7. To the knowledge of the Seller, there are no driveway agreements, overlaps, boundary lines in dispute or unrecorded easements in regards to the Property nor are there any improvements upon the Property which encroach upon adjoining properties nor are there any improvements from adjoining properties which encroach upon the Property.

8. To the knowledge of the Seller, the Property is not subject to any taxes or special assessments other than those shown as existing liens by the public records.

9. To the knowledge of the Seller, there are no presently existing violations of any restrictions or easements of record affecting the Property.

10. There is no outstanding contract, unrecorded deed, mortgage, or other conveyance affecting the Property executed by the Seller or to the knowledge of the Seller.

11. Neither the Seller nor Seller’s agent has received any notice from any city, village, or other governmental authority of any violation of any applicable dwelling or building code, or any other law or regulation.
12. To the knowledge of the Seller, the current use of the Property is permitted under the existing zoning laws.

13. There are no matters known to Seller as would otherwise affect the current assessed valuation of the Property nor any exemptions (homestead or otherwise) which affect the assessed valuation or the present tax proration made in connection with the sale of the Property.

14. There are no unpaid assessments levied by any homeowners', condominium or similar association with jurisdiction over the Property.

15. The Seller does hereby certify the following: (a) Seller is not a nonresident alien for purposes of U.S. income taxation; (b) Seller’s U.S. taxpayer identification number is __________ (JRS) and __________ (LLS); and (c) Seller’s address is 15031 Punta Rassa Rd., Unit 303, Bldg. 4, Fort Myers, FL 33908. Seller understands that this Certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement Seller has made here could be punished by fine, imprisonment, or both. Under penalty of perjury, Seller declares that Seller has examined this Certification and to the best of Seller’s knowledge and belief it is true, correct and complete.

16. All child support obligations of Seller, if any, becoming due and owing on or before the date set forth below have been paid in full.

Dated this _____ day of ________________, 2015.

________________________________________
James R. Simantel

________________________________________
Linda L. Simantel

Subscribed and sworn to
before me this _____ day
of ________________, 2015.

________________________________________
Notary Public

My Commission Expires: