

**OFFER TO PURCHASE REAL ESTATE**

Pursuant to the terms and conditions of this Offer to Purchase Real Estate (the "Offer"), made as of July\_\_\_\_, 2014 (the "Effective Date"),**S.E. Michigan Land Holding, LLC** (the "Buyer"), whose address is 12955 23 Mile Road, Shelby Township, Michigan, agrees to buyand **City of Rochester Hills**whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 (the "Seller"), agrees to sell the subject real property, as follows:

- A. Seller is the owner of roughly 6.74 acres of land located inthe City of Rochester Hills, Oakland County, Michigan, and is identified by Parcel ID Number 70-15-13-301-050 (the "Parent Parcel). Buyer desires to acquire from the Parent Parcel roughly 2.18 acres of land represented in the attached Exhibit A, together with all improvements and appurtenances thereto, if any (the land, improvements, appurtenances and personal property being sold, if any, being called the "Property". The remaining 4.56 acres (the "Retained Property"),which is used as a storm water detention facility, shall be retained by the Seller.
- B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller the Property upon and subject to the terms and conditions hereinafter set forth.

Now therefore, in consideration of the mutual covenants, promises, and agreements, and subject to the terms and conditions contained herein, the parties agree as follows:

**THE SALE TO BE CONSUMMATED BY:**

**Purchase Price.** The purchase price of the Property shall be paid in Cash at Closing in the amount of One Hundred Thirty Three Thousand Seven Hundred and Fifty and 00/100 (\$133,750.00.00) Dollars (the "Purchase Price") with delivery of a covenant deed conveying title to Buyer subject to existing encumbrances, easements and restrictions, if any. Payment of Purchase Price (at closing) is to be made by cashier's or certified check, wire transfer of immediately available funds or such other method of payment acceptable to Seller.

1. **Evidence of Title.** As evidence of title, Seller agrees to furnish Buyer within seven (7) days from the Effective Date a Commitment for Title Insurance issued by a title insurer selected by Seller ("Title Company") in an amount not less than the Purchase Price bearing date later than Seller's execution hereof with policy pursuant thereto to be issued insuring Buyer.

2. **Time of Closing.** If this Offer is accepted by the Seller and if title can be conveyed in the condition required hereunder, Buyer agrees to complete the purchase within five (5) days after the end of the Inspection Period referenced below. In the event of default by Buyer hereunder, the Seller may, at its option, elect to enforce the terms hereof, declare forfeiture hereunder and retain the Good Faith Deposit, as defined below, as liquidated damages, or exercise any other remedy available at law or in equity.

3. **Title Objections.**If, during the Inspection Period, as described below, objection to the title in the Commitment for Title Insurance is made based upon a written opinion of Buyer's attorney, delivered within five (5) days after Buyer's receipt of the Commitment for Title Insurance, that the title is not in the condition required for performance hereunder. If objection is not made by Buyer within five (5) days after Buyer's receipt of the Commitment for Title Insurance, Buyer shall be deemed satisfied with the Commitment for Title Insurance and the condition of title without any further action by the parties. Seller shall have fifteen (15) days from the date Seller is notified in writing of the particular defects claimed either (i) to fulfill the requirements in the said commitment or to remedy the title defects set forth in said attorney's opinion or (ii) to refund the Good Faith Deposit in full termination of this Offer. If the Seller elects to comply with such requirements or remedy such defects within the time specified as evidenced by written notification, Buyer agrees to complete the sale at the closing date. If the Seller is unable to remedy the particular defects claimed within the time specified, the Good Faith Deposit shall be refunded to Buyer forthwith in full termination of this Offer.

4. **Possession.** The Seller shall deliver and Buyer shall accept possession of the Property AT CLOSING, subject to the rights of the following tenants: NONE.

5. **Taxes and Prorated Items.** There is no assessed value on the Property therefore there will be no tax prorations at Closing. Upon the successful split/combination described below in Paragraph 11, a new tax identification number shall be assigned by the county. The Buyer shall be responsible for the payment of future taxes and tax bills. Upon Closing, the City agrees to set the 2015 Assessed Value of the Property at a value of 50% of the Purchase Price.

6. **Irrevocable Offer.** In consideration of the Seller's review of this Offer, it is agreed that this Offer is irrevocable for ten (10) days from the date of Buyer's execution of this Offer, and if not accepted by the Seller within that time, the deposit shall be returned forthwith to Buyer. If this Offer is accepted by the Seller, Buyer agrees to complete the purchase of the Property within the time indicated in Paragraph 3.

7. **Good Faith Deposit.** Accompanying this Offer submitted to Seller is Buyer's good faith deposit in the amount of Ten Thousand and 00/100 (\$10,000.00) ("Good Faith Deposit"). The Title Company shall hold the Good Faith Deposit in accordance with the terms hereof. Upon consummation of the purchase herein contemplated, the Good Faith Deposit shall be applied against the Purchase Price.

8. **Closing.** The closing of this sale shall take place at the office of the Seller or Title Company, as determined by Seller. In no event shall the Closing occur later than December 31, 2014.

9. **Inspection Period.** Buyer shall have the right within sixty (60) days after the Effective Date (such period being referred to herein as the "Inspection Period"), at Buyer's sole cost and expense, to conduct such tests, studies and examinations of the Property as Buyer deems advisable, to investigate applicable laws, ordinances and codes, and to do all other things as Buyer deems necessary, in its sole discretion, to satisfy itself that the Property is suitable for Buyer's intended use; provided, however, that Buyer shall not conduct any soil borings or other invasive testing of the Property without the prior written consent of Seller (collectively, the "Inspections"). Seller agrees that Buyer, its officers, employees, agents, invitees and contractors ("Buyer's Representatives") shall have reasonable access to the Property to conduct the Inspections, all at Buyer's sole cost, risk and expense. Buyer shall indemnify, defend and hold Seller harmless from any claim, loss, cost, expense, liability, damage, loss or injury, including reasonable attorneys' fees, arising out of or related to any Inspections. In the event any such Inspections disturb any portion of the Property the Buyer shall, at its sole cost and expense, promptly restore the Property to its prior condition. These obligations shall survive the Closing or the termination of this Offer. If Buyer is not satisfied with the results of its Inspections, Buyer shall have the right to terminate this Offer upon notice to Seller thereof within the Inspection Period, whereupon this Offer shall terminate, the Good Faith Deposit shall be returned to the Buyer, and, subject to such obligations of Buyer hereunder which expressly survive termination of this Offer, neither party shall have any further obligation to the other. If Buyer fails to submit written notification to Seller of its election to terminate this Offer within the Inspection Period, Buyer shall be deemed to be satisfied with the condition of the Property and the results of the investigation. Further, all conditions precedent to closing pertaining to the condition of the Property or other matters relating thereto shall be deemed satisfied or otherwise waived by Buyer.

10. **Acceptance "As Is", "Where Is"**

A. **No Representations; Reliance on Buyer's Investigation.** Buyer acknowledges and agrees that Seller has not, nor has any of Seller's Related Parties, made any agreements, representations or warranties, whether express or implied, or otherwise, regarding the condition of the Property, the soils in, on and about the Property, the suitability of the Property for uses and purposes contemplated by Buyer, the adequacy or availability of any utilities or roadways which may service (or may be needed to service) the Property, zoning, building code violations, building lines, boundaries, construction/use/occupancy restrictions, including violations of any of the foregoing, and/or any other fact or matter, whether pertaining to the Property or otherwise, including, without limitation, the environmental condition of the Property. Buyer has had, or will have, under the terms of this Offer, the opportunity to make its own independent inspections and investigations of the Property and, in proceeding to closing hereunder, Buyer acknowledges and agrees that it has reviewed all such matters as Buyer deems or deemed necessary or appropriate to review and that Buyer is and shall be relying solely on such inspections and investigations of the Property.

B. **Acceptance "As Is".** In the event Buyer proceeds to closing on the purchase of the Property, Buyer acknowledges and agrees that the Property is being accepted by Buyer in an "as is, where is" condition, and

that Seller shall not be responsible for making or contributing in any way to the cost of making any changes or improvements to the Property, or any other aspect of or matter pertaining to the Property including, without limitation, any environmental investigation or remediation thereof.

- C. **Assumption of Liabilities; Release of Seller.** Buyer assumes all responsibility for all liabilities and damages caused by, relating to or arising out of any condition of the Property or any liability relating thereto (including, without limitation, environmental investigation and remediation expenses), whether now existing or hereafter arising, and will hold Seller harmless therefrom. Buyer's assumption of the foregoing liabilities is an integral component of the purchase price paid by Buyer for the Property. Buyer hereby covenants and expressly waives any right of rescission and all claims for damages by reason of any statement, representation, warranty, promise, or agreement made by Seller to Buyer. Buyer hereby further releases and discharges Seller from any and all claims or causes of action, which Buyer may now or hereafter have against Seller in connection with, or arising out of the condition of the Property, including, without limitation, claims for contribution and Environmental Claims, as defined below.
- D. **Closing Certificate.** At the closing on the purchase of the Property, Buyer shall execute and deliver a certificate in form and substance satisfactory to Seller, confirming that Buyer has had the opportunity to make its own independent inspections and investigations of the Property and that it has reviewed all such matters as Buyer deems or deemed necessary or appropriate to review and that Buyer is and shall be relying solely on such inspections and investigations of the Property conducted and/or performed by Buyer. Such certificate shall also reaffirm the covenants set forth in Paragraph 15 hereof. The failure to execute and deliver such certificate shall not affect Buyer's representations, covenants and agreements in this Offer.

11. **Parcel Split/Combination.** Seller agrees at Seller's cost to a) prior to Closing, cause the division of Property from the Parent Parcel and b) the subsequent combination of this Property to an adjacent parcel owned by the Buyer with a tax ID number of 70-15-13-301-051. A new tax identification number shall be submitted to the county for processing after the Closing.

12. **Indemnification.** Buyer hereby agrees to indemnify, defend, save and hold Seller, and Seller's Related Parties, harmless from and against any and all costs, damages, expenses (including, without limitation, legal expenses and reasonable attorneys' fees), fines (both civil and criminal) and liabilities suffered or incurred by Seller and/or any of Seller's Related Parties arising out of, as a result of, or in connection with any of the following: (i) claims, demands, causes of action and actions, suits, rights asserted, liabilities and damages, whatsoever, whether in law or in equity, made or incurred by any party whatsoever in connection with the entry by Buyer or Buyer's Related Parties onto the Property or the work to be performed by Buyer or Buyer's Related Parties in connection with such entry, (ii) any Environmental Claims (as defined below), (iii) any condition of the Property, any improvements thereon or the presence (alleged or otherwise) of any contamination in, on or about the Property. Notwithstanding the foregoing, the indemnifications hereunder shall exclude any matters directly resulting and solely arising from Seller's gross negligence or willful misconduct. The provisions of Paragraph 12(i) shall survive termination of this Offer (for any reason) as well as the closing contemplated hereby. The provisions of Paragraphs 12(ii) and 12(iii) shall survive the closing contemplated hereby. The provisions of Paragraph 12 are in addition to any liquidated damages or other remedy available to Seller under Paragraph 3 above. Reference to "reasonable attorneys' fees" includes attorneys' fees and paralegal fees (whether inside or outside counsel is used) incurred by Seller by way of proceeding (whether at the trial court or appellate level, in a judicial, bankruptcy, probate, administrative or other proceeding) or otherwise.

13. **Confidential Information.** Buyer hereby agrees that all work performed and the results thereof in connection with its access to, and inspection of, the Property, including, but not limited to, any reports or test results (hereinafter collectively referred to as the "Confidential Information"), shall be considered as confidential and proprietary to Seller. Buyer further agrees that it will not, without the prior written consent of Seller, divulge or disclose, or discuss with anyone, the Confidential Information irrespective of the source of such Confidential Information, other than publications thereof to the Seller and parties designated by Seller and to Buyer's Related Parties to the extent necessary for evaluating or concluding the contemplated purchase and sale. Buyer shall take all reasonable precautions to assure that such Confidential Information is not used by or disclosed to others, directly or indirectly, other than as provided herein. Such precautions shall include, but not be limited to, the following: (i) advising all of Buyer's agents, employees and representatives, including, but not limited to, subcontractors,

laboratories, technicians, engineers and consultants retained by Buyer, of such privileged, confidential, and proprietary status, and securing verbal or written agreements to honor same, (ii)refraining from publishing or divulging any such information in breach of the intent hereof, and (iii)labeling all written communications and records of such Confidential Information as "CONFIDENTIAL". Buyer further acknowledges that the purchase price for the Property is Confidential Information until closing has occurred. Notwithstanding the above, Buyer may comply with judicial orders or governmental directives, and federal, state and local laws, rules, regulations and ordinances regarding the reporting to the appropriate public agencies of findings with respect to danger to public health, safety or the environment; provided, however, that in the event Buyer determines that it is required to disclose any Confidential Information, Buyer shall notify the Seller in writing prior to disclosure and Seller shall have the right to interpose all objections it may have to the disclosure of such information, including, but not limited to, the right to seek an appropriate protective order. The provisions of this Paragraph 13 shall survive termination of this Offer (for any reason).

14. **Receipt of Information.** In the event Seller or any of Seller's Related Parties delivers or provides Buyer or any of Buyer's Related Parties with any information or disclosures relating to the Property (collectively "Information"), Buyer hereby agrees that: (i) Seller and Seller's Related Parties have not and shall not be deemed to have made any representations or warranties as to the accuracy, completeness, truthfulness, adequacy or validity of the Information; (ii) the Buyer is not and will not be entitled to rely on the Information in connection with closing on the transaction herein contemplated, and that any reliance by Buyer or any other party on the Information, shall be done at such party's own risk without any cause of action or claim against Seller or any of Seller's Related Parties for any inaccuracy, incompleteness, misstatement or otherwise lack of truthfulness therein contained, (iii) any decision by Buyer to proceed with the purchase of the Property will be based upon Buyer's own investigation of the Property and not in reliance upon the Information, or any part thereof; (iv) the Information will be treated as Confidential Information, and (v) Buyer agrees to hold Seller and Seller's Related Parties harmless from and against any and all liability which results from (whether directly or indirectly) any inaccuracy, misstatement, incompleteness, misrepresentation, and/or untruthfulness contained, expressly or implicitly, in the Information. The provisions of this Paragraph 14 shall survive termination of this Offer (for any reason) as well as the closing contemplated hereby.

15. **Condemnation.**If, after acceptance of this Offer, the Property shall be subjected to a taking, either total or partial, by eminent domain, inverse condemnation, or otherwise, for any public or quasi-public use, of if any notice of intent of taking is received by Seller or Buyer, the parties shall nevertheless proceed to Closing and Buyer shall be entitled to participate in any such condemnation or eminent domain proceeding and to receive all of the proceeds attributable to any portion of the Property. Seller and Buyer each agree to promptly forward to the other any notice of intent received pertaining to a taking of all or any portion of the Property.

16. **Casualty.**In the event of any casualty to the Property, Buyer shall take the Property subject to the effect and consequences of that casualty, and Seller shall pay over and/or assign to Buyer at Closing all insurance proceeds and/or claims accruing to Seller's benefit with respect to that casualty.

17. **Reserved.**

18. **Definitions.**

A. As used herein, the term "Related Parties" shall mean and include all officers, directors, partners, agents, employees, licensees, invitees, consultants, contractors, and representatives thereof, as well as successors and assigns of the indicated party.

B. As used herein, the term "Environmental Claims" shall mean any claims brought under common law and/or under any federal, state or local law, ordinance or regulation, including, but not limited to, claims for contribution, claims brought under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Sections 9601 et seq., as amended ("CERCLA") and any CERCLA type claims as well as claims brought under Part 201 of the Natural Resources and Environmental Protection Act , M.C.L.A. Section 324.20101 et seq., as amended ("NREPA") and any NREPA type claims, and/or claims brought under any other federal, state or local law, statute, regulation or ordinance, the intent of which is to protect the environment or otherwise to protect the health and safety of persons, property, vegetation or wildlife.

C. All references to "days" shall mean calendar days.

19. **Miscellaneous.**

A. All notices under this Offer shall be in writing and delivered in person, by certified mail (return receipt requested, postage prepaid), by overnight courier or by facsimile. Notice shall be deemed given when delivered (if personally delivered), two business days after postmarking (if mailed), the next business day following delivery to an overnight courier or upon receipt of facsimile transmission (as evidenced by a transmission confirmation). Addresses for notice shall be as set below above or at such other address as designated by a party in accordance with this paragraph.

B. Buyer may not assign or otherwise transfer its rights under this Offer.

C. Time is of the essence under this Offer.

D. This Offer represents the entire agreement of the parties with respect to the subject matter contained herein.

E. No amendment of this Offer shall be valid unless in writing and signed and dated by the parties.

F. EACH PARTY ACKNOWLEDGES THAT THE RIGHT TO A JURY TRIAL IS CONSTITUTIONAL, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THIS OFFER.

**BUYER:**

S.E. MICHIGAN LAND HOLDING, LLC, a Michigan limited liability company

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

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

Date: \_\_\_\_\_, 2014

**SELLER:**

CITY OF ROCHESTER HILLS

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

Bryan K. Barnett, Mayor

Date: \_\_\_\_\_, 2014

**EXHIBIT A**

T3N, R11E, SEC 13 PART OF W 1/2 OF SW 1/4 BEG AT PT DIST N 1273.14 FT FROM SW SEC COR,  
TH S 89-57-06 W 346 FT TO POB TH N 89-57-06 E 316.24 FT, TH S 00-01-17 E 300 FT, TH S 89-57-06  
W-316.24 FT, TH N 300 FT TO BEG CONTAINING ROUGHLY 2.18.AC.

PART OF PARCEL 15-13-301-050