CITY OF INVER GROVE HEIGHTS

A G E N D A

CITY COUNCIL SPECIAL MEETING

SEPTEMBER 4, 2018 6:00PM

INVER GROVE HEIGHTS CITY HALL
EOC ROOM DOWNSTAIRS

A. CALL TO ORDER – MAYOR TOURVILLE

1. **PROPERTY ACQUISITION OF 1805 60TH STREET EAST**

B. ADJOURN

AGENDA ITEM 1

CITY OF INVER GROVE HEIGHTS **REQUEST FOR COUNCIL ACTION**

Meeting Date:	September 4, 2018		**Fiscal/FTE Impact:**
Item Type:	Special Session		None
Contact:			Amount included in current budget
Prepared by:	Joe Lynch, City Administrator		Budget amendment requested
Reviewed by:			FTE included in current complement
			New FTE requested – N/A
		X	Other

PURPOSE/ACTION REQUESTED
Council is asked to purchase the property at 1805 60th Street East.

SUMMARY
The property is now owned by Brian Gore. It was previously owned jointly by Thomas Gore and Brian Gore. Thomas Gore recently passed away. The 2018 Dakota County Total Taxable Value is $204,849.

Over the last five years this property has been the subject of repeated Police and Code Compliance calls. We have received calls on everything from junk and trash accumulating in the driveway to illegal home occupation to sales of items out of the garage on the upper level of the property to illegal behaviors on the property. I know Council has received many emails from the adjacent neighbors imploring the Council to do something about this property. There is currently $9,100 in total assessments due from this property for Code Compliance costs incurred and street improvements as a part of the 60th Street reconstruction project. In addition, until recently the 2017 and first half of 2018 taxes were outstanding. These have now been paid. The property also owes $600 in past utility bills.

Staff has been able to negotiate the price of the sale of the home for $189,000. Mr. Gore has entered into an agreement to purchase property outside the City of Inver Grove Heights and needs the earnest money to assist in the completion of that transaction. This will be deducted from the amount we pay Gore at closing. Gore will pay the outstanding assessments due on the property for the 60th Street Improvement Project and Code Compliance charges for failure to clean the property and the city contracting to do so. He will also pay the outstanding utility bills.

The ultimate end use of this property will be a re-sale, to the highest bidder, for a single-family home. This home is currently Certified Not for Occupancy due to inability to meet the building code. It will need to be torn down and another built in its place. The current land value is $46,116 and I expect this to be the minimum price bid for the property.

Enclosed with this Memo is a Memo from the Chief Building Official explaining the code issues, one from the City Attorney outlining the legal aspects of the property acquisitions, public purpose and accompanied by a Resolution authorizing the City Attorney and City Administrator to purchase the property.

I recommend the purchase of the property and authorizing the City Attorney and City Administrator to enter into a purchase agreement with Brian Gore for the property at 1805 60th Street East.

LEVANDER,
GILLEN &
MILLER, P.A.
ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
DANIEL J. BEESON
KENNETH J. ROHLF
STEPHEN H. FOCHLER
JAY P. KARLOVICH
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
BRIDGET McCAULEY NASON
TONA T. DOVE
AARON S. PRICE
DAVID L. SIENKO
CASSANDRA C. WOLFGRAM

MEMO

TO:	**Inver Grove Heights Mayor and Councilmembers**
FROM:	**Timothy J. Kuntz, City Attorney**
DATE:	**August 29, 2018**
RE:	**Resolution Approving Purchase of Property at 1805 – 60th Street East owned by Brian Gore; September 4, 2018 Special City Council Meeting**

Section 1. Background. The City Administrator has negotiated with Brian Gore for the City purchase of the property at 1805 – 60th Street East. The matter is on the Council agenda for the special meeting on September 4, 2018. The resolution approving the purchase concludes that the property is a nuisance property and that abatement by purchase serves a public purpose and is in the public interest.

Section 2. Purchase Agreement. The salient terms of the attached Purchase Agreement are:

1. Seller. The Seller is Brian Gore, a single person.
2. Buyer. The Buyer is the City of Inver Grove Heights.
3. Property. The Property is at 1805 – 60th Street East and is identified as Tax Parcel No. 20-68200-00-072 and is legally described in Exhibit A to the Purchase Agreement.
4. Purchase Price. The purchase price is $189,000.
5. Payment Terms. The Buyer will pay $10,000 as earnest money upon approval of the Purchase Agreement and the remaining $179,000 will be paid at closing.
6. Closing Date. The closing date is on or before November 30, 2018.
7. Possession Date. The possession date is the same as the closing date.
8. Transfer Deed. The Property will be transferred by a Warranty Deed.
9. Environmental Assessments. The City, at its expense, will conduct Phase I and Phase II environmental assessments. If the City is not satisfied with the results of the environmental assessments, the City can cancel the Purchase Agreement and obtain the return of the earnest money.
10. Real Estate Taxes. Seller will pay all delinquent real estate taxes. Real estate taxes payable in 2018 will be prorated based on the closing date with the Seller responsible for the time period up to and including the closing date.

633 SOUTH CONCORD STREET • SUITE 400 • SOUTH SAINT PAUL, MINNESOTA 55075 • 651-451-1831 • FAX 651-450-7384
OFFICE ALSO LOCATED IN SPOONER, WISCONSIN

11. Special Assessments. Seller agrees to pay the principal and interest amounts owing on all special assessments levied, pending, delinquent or existing as a lien, including the installments, if any, payable in the year 2018 and thereafter; and Seller agrees to pay the principal amount relating to any pending special assessments. Seller's obligations to pay special assessments includes any special assessments that are levied or pending by the City with respect to nuisance elimination or clean up on the Property conducted prior to the Closing Date.
12. Judgments and Liens. At closing, Seller will pay off all judgments, liens, mortgages and contracts for deed. Payment will come out of the sale proceeds and satisfaction of the judgments and liens will be filed.
13. Environmental Warranties. Seller warrants that the Property does not contain pollutants or contaminants or petroleum releases or methamphetamine. If the City, through the environmental assessment process, finds that the Property does contain pollutants, contaminants, petroleum releases or methamphetamine, the City can cancel the Purchase Agreement and obtain reimbursement of the earnest money.
14. Conditions Precedent. The Buyer's obligation to close this transaction is expressly contingent upon the Buyer determining prior or upon the dates set forth below the following to be satisfactory and acceptable to Buyer, in the Buyer's sole judgment and opinion:

    (a) On or prior to November 30, 2018, any recorded easements to which the Property is subject;
    (b) On or prior to November 30, 2018, the status of any encumbrances and the marketability of title with respect to the Property;
    (c) On or prior to November 30, 2018, any physical encroachments on the Property;
    (d) On or prior to November 30, 2018, the soil, ground, environmental, engineering, structural, physical, geological and legal inspections of the Property;
    (e) On or prior to November 30, 2018, the physical condition of the Property and the buildings located thereon
    (f) On or prior to November 30, 2018, conveyance by Sterling State Bank to Brian Todd Gore of a Warranty Deed in fulfillment of that certain Contract for Deed, dated April 3, 2012, filed April 16, 2012, as Document No. 2861873 in the amount of $65,000.00; and
    (g) On or before November 30, 2018, the Property being vacant.

    In the event the Buyer determines, in Buyer's sole discretion, that any of the conditions precedent have not been met, then Buyer on or before November 30, 2018, shall give written notice to Seller that the conditions precedent have not been met and in such case, this Agreement will be null and void, and, if requested, each party will execute a standard Cancellation of Purchase Agreement form; in the alternative, Buyer shall have the right in writing to waive any of the conditions precedent. If the conditions precedent have not been met and this Agreement is cancelled, Seller shall pay back to Buyer the $10,000 earnest money previously paid by Buyer; in such case the payment by Seller shall be made within five (5) days after cancellation of the Purchase Agreement.
15. Utilities. Seller shall be responsible for all current and delinquent utilities through the Closing Date. At closing, Seller shall payoff all current and delinquent water bills for the water service through Closing Date.

16. State Deed Tax. Upon delivery of the Warranty Deed, Seller shall pay the state deed tax due on the Warranty Deed.
17. Title Insurance. Buyer shall pay all costs of the title company for obtaining the title commitment and the premium required for the issuance of the Title Policy.
18. Closing Fee. Any fee charged by the title company as a closing fee shall be paid by Buyer.
19. Recording Costs. Seller will pay the cost of recording all documents necessary to place record title in the condition warranted by Seller in this Agreement and Buyer will pay the cost of recording the Warranty Deed and all other documents.
20. Title Company. DCA Title will issue title insurance to the City for the Property.
21. Removal of Personal Property. Seller shall have the right during the three (3) consecutive day period immediately prior to Closing Date to remove the following from the Property and to keep the following:
    - Garage doors on the pole barn
    - Appliances and fixtures located within the buildings
    - Windows and doors located on the home
    - Light fixtures

    Seller shall conduct such removal in a safe manner so as not to endanger any person or any of the structures. Seller assumes all risk in making the removal.
22. Removal of Junk. Seller shall remove all junk, debris, vehicles, all items stored in the buildings and structures, all items stored outside of the buildings and structures, materials, clothing, equipment, movable appliances, household items, furniture, loose lumber and any other personal effects from the Property prior to the Closing Date. If the Seller fails to remove the items set forth in the preceding sentence prior to the Closing Date, the Buyer may do the same and charge all costs incurred by the Buyer to perform such work to the Seller and Seller shall make payment directly to the Buyer within five (5) days after invoicing by the Buyer; to assure the payment of Seller to Buyer, the Buyer, at Closing, may withhold an amount of money equal to 150% of the Buyer's reasonable estimate of the cost to remove the items. If Seller makes the required payments to Buyer, the payment amount shall be reimbursed to Seller out of the withheld funds. On the other hand, if payment is not made, Buyer shall retain that portion of the withheld funds equal to the unpaid removal amount and the remainder of the withheld funds, if any, shall be turned over to Seller.
23. Waiver of Relocation Benefits. Seller will waive any right to relocation benefits and relocation services and to moving costs.

Section 3. Council Action. The Council is to consider the attached Resolution Approving the Purchase of Property at 1805 – 60th Street East, Inver Grove Heights at the September 4, 2018 special Council meeting.

Attachments

CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. ________

A RESOLUTION APPROVING THE PURCHASE OF PROPERTY AT 1805 - 60th STREET EAST, INVER GROVE HEIGHTS

WHEREAS, Brian Gore is the owner ("Owner") of real property located at 1805 - 60th Street East, Inver Grove Heights, Minnesota ("Property").

WHEREAS, the buildings on the Property are dilapidated and are in violation of the building code and suffer from extreme neglect.

WHEREAS, the City's Chief Building Official has determined that the buildings on the Property are not fit for occupancy.

WHEREAS, the home has endured two fires in the upper garage, multiple flooding of the habitable space, and excessive interior damage by a plethora of various occupants.

WHEREAS, to restore the habitability, the City's Chief Building Official has determined that the structure will require extreme measures that are outlined below:

1. The most intrusive element is water infiltration through the concrete dome and wall assemblies that make up the exterior envelope. This problem is compounded due to the walls being buried in the earth with degrading integrity caused by excessive water intrusion from the area directly above the dome portion of the home. This may be at the wall supports intersecting with the rear dome from the home; however, this cannot be verified until the earth is removed from the top of the home to expose the areas of deterioration. This will require:
    a. Remove all dirt, soil, deleterious debris to expose the top of the dome and foundation walls on the rear (buried), portion of the home.
    b. Sand and/or soda blast all the exposed concrete that encapsulates the habitable area.
    c. Obtain the services of a structural engineer to assess the integrity of the dome, walls, and intersections in order to create an Action Plan for the restoration of the concrete dome and supporting elements.
    d. Once building permits have been obtained, periodic inspections would be performed by the Building Department to ensure compliance to the 'approved' building plans for the building. If necessary, Special Inspections may be performed by the Engineer of Record for the project.

2. The City's Chief Building Official has determined that the electrical system has endured non-permitted modifications and flooding; therefore, it must be replaced.

3. The City's Chief Building Official has determined that the HVAC must be replaced. If a 'green energy' source is utilized, then combustion air calculations must be provided by a Master-Level HVAC contractor or manufacturer.

4. The City's Chief Building Official has determined that the plumbing system must be replaced. This will require an air test of all drain, waste, and venting (DWV) elements.

The failure of intersecting elements has led to water intrusion of enough quantities to flood the home. This repetitive water intrusion and freeze/thaw process has degraded the interior concrete to a point where prolific mold growth can be seen in both spring and fall when rain events are more frequent.

WHEREAS, due to the physical condition of the interior and exterior of the Property, the deterioration and the condition of the mechanicals in the Property and the dilapidated condition of the structures, the Property is in violation of numerous health, safety and building code provisions.

WHEREAS, the Property, in addition to being an eyesore, poses a significant safety and health risk to the public.

WHEREAS, a substantial amount of police and code enforcement calls have occurred at the Property.

WHEREAS, despite the repeated efforts of the City that the Property be brought into compliance with City codes and health, building and safety codes, the Owner has failed to comply.

WHEREAS, a public nuisance is defined by Minnesota Statutes Section 609.74 as "a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public".

WHEREAS, based upon this definition, the City Council finds that the Property, in its present condition, is a public nuisance.

WHEREAS, Minnesota law authorizes the City to abate public nuisances.

WHEREAS, pursuant to the City's police power to abate public nuisances, the City is authorized to raze hazardous structures and remove any hazardous conditions existing on private property.

WHEREAS, Minnesota law also authorizes the City to purchase real property if such purchase is for a permitted public purpose.

WHEREAS, abating a public nuisance is a permissible public purpose.

WHEREAS, in lieu of the City abating the nuisances on the Property and assessing the costs of abatement to the Property, the Owner has offered to sell the Property to the City for \$189,000.00.

WHEREAS, \$189,000.00 is a fair and reasonable price for the Property in its present condition.

WHEREAS, once the City owns the Property, it can abate the nuisance, remove the public safety and health hazards and eventually sell it or put it to a public use.

WHEREAS, the City Council has determined that the purchase of the Property will benefit the community as a whole, will be directly related to the functions of the City government, and will, therefore, serve a public purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF INVER GROVE HEIGHTS CITY COUNCIL:

1. That the City Council of Inver Grove Heights approves the attached Purchase Agreement and approves the purchase of the real property located at 1805 - 60th Street East, Inver Grove Heights, Minnesota for \$189,000.00.

2. That the City Council approves the expenditure of public funds to purchase the Property, and to remove the nuisances and hazards present on the Property.

3. That the City Council authorizes the Mayor and City Clerk to execute the Purchase Agreement and all other documents necessary to purchase the Property from the Owner.

4. Pursuant to Minn. Stat. § 462.356, subd. 2, the Council, by at least a two-thirds vote, determines and finds that the acquisition has no relationship to or effect upon the comprehensive municipal plan and therefore, the Council dispenses with the requirement that the acquisition be reviewed by the planning commission for consistency with the comprehensive municipal plan.

Passed this 4th day of September, 2018.

____
George Tourville, Mayor

ATTEST:

____
Michelle Tesser, City Clerk

PURCHASE AGREEMENT

This Agreement is made this 4th day of September, 2018, by and between **Brian Todd Gore,** a single person, (hereinafter referred to as the "Seller") and the **City of Inver Grove Heights,** a municipal corporation organized under the laws of the State of Minnesota (hereinafter referred to as "Buyer").

1. **Purchase and Sale.** Seller shall sell to Buyer and Buyer shall purchase from Seller, subject to the terms and conditions of this Agreement, the real property located at **1805 60th Street East, Inver Grove Heights, Minnesota [Property Identification Number 20-68200-00-072]** and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, together with all improvements, tenements, hereditaments, easements, rights-of-way, privileges, appurtenances and rights to the same belonging to and inuring to the benefit of said real estate and any of the following items of personal property and fixtures to the extent owned by Seller and currently located on the Property: dishwasher, garden bulbs, plants, shrubs, trees, storm windows and inserts, storm doors, screens, awnings, window shades, curtains-traverse-drapery rods, attached lighting fixtures with bulbs, plumbing fixtures, sump pumps, water heaters, heating systems, heating stoves, fireplace inserts, fireplace doors and screens, built in humidifiers, built in electronic air filters, television antennas, water softeners, built in dishwashers, garbage disposals, built in trash compactors, built in ovens, hood fans, intercoms, installed carpeting, work benches, security systems, (said property and said improvements, rights and privileges and personal property are hereinafter referred to as the "**Property**").

2. **Purchase Price**. Subject to Section 23, at Closing, Buyer will pay Seller One Hundred Eight Nine Thousand and No/Dollars ($189,000.00) as the purchase price ("**Purchase Price**"). Buyer will pay the Purchase Price by paying $10,000.00 earnest money at the time this Purchase Agreement is executed and by paying the remainder at Closing.

3. **Relocation Benefits.** Seller is aware of Seller's rights and payments that Seller may be eligible to receive pursuant to the Uniform Relocation Assistance Act (the "Act"). Seller acknowledges that Seller has been given the opportunity to seek and receive the advice of legal counsel with respect to relocation, moving, reestablishment, and other costs, if any, that may be available to the Seller under the Act. There are no tenants on the property.

   Seller hereby acknowledges that the payment of the Purchase Price does not include a separate payment for Relocation Benefits. At closing and as a condition precedent to closing, Seller will waive any right to receive any relocation payments pursuant to the Act (or other federal or state law provisions) with respect to the Property. Seller acknowledges that Seller will make such waiver of Seller's own volition and with full knowledge of the specific relocation benefits to which Seller may be entitled.

Buyer and Seller agree that this is a voluntary sale by Seller. Buyer represents that Buyer would not acquire the Property in the event that negotiations between Buyer and Seller had failed to result in an amicable agreement. Seller has requested that the Property be acquired by Buyer and such request preceded any negotiations by Buyer to acquire the Property.

If the transaction set forth by this Agreement is not completed, Buyer has no present intent to acquire the Property by eminent domain and has not considered the use of eminent domain. If this Agreement is terminated for any reason, Seller is free to retain ownership of the Property or to sell the Property on the private market.

Buyer acknowledges that it has acquired other properties similar in nature to the Property. Buyer has not set a specific time limit to acquire the Property.

As Buyer and Seller agree that this is a voluntary sale, state and federal law permit the Buyer to request a waiver of relocation benefits from the Seller. Prior to and as a condition of closing, Seller will be required to sign a relocation waiver, the form of which is substantially the same as shown on **Exhibit B** and the final form of which will be subject to the approval of the Buyer. Buyer will arrange for a relocation consultant to meet with the Seller prior to closing. The relocation consultant will determine the amount of relocation benefits for which Seller would be eligible if this were a non-voluntary sale. If the Seller does not waive relocation benefits, this Agreement will be terminated and Seller will be free to retain ownership of the Property or to sell the Property on the private market.

4. **Date and Location of Closing.** The Date of Closing for the Property shall be on or before **November 30, 2018**. Closing shall occur at DCA Title located at 750 Main Street (The Village), Suite 208, Mendota Heights, MN 55118 (hereafter "Title Company").

5. **Possession Date.** The Possession Date shall be the Date of Closing.

6. **Payment of Purchase Price.** Subject to (i) full and timely performance by Seller and (ii) the satisfaction of all contingencies herein contained, the Purchase Price of One Hundred Eighty-Nine Thousand and No/Dollars **($189,000.00)** shall be payable by Buyer paying to Seller $10,000.00 earnest money upon the parties executing this Purchase Agreement and buy Buyer paying to Seller the remainder on the Closing Date in the form of wire transfer or certified check from the Buyer.

7. **Property and Environmental Investigation**. Seller shall provide all documents and written information available, and in Seller's possession, regarding the environmental condition of the Property. Buyer may, at Buyer's sole cost and expense, obtain a Phase I Environmental Site Assessment of the Property and a Phase II Environmental Site Assessment if Buyer so chooses. Buyer may, at Buyer's sole cost and expense, perform additional environmental investigation, if needed, with respect to the Property. Seller agrees to cooperate in providing accurate information relating to the Property and in

allowing access to the Property to generally inspect the Property and the buildings located thereon, which inspection may also include, but is not limited to, the physical inspection of the Property and the buildings located thereon, to determine the physical condition of the Property and the buildings located thereon, and the legal compliance of the Property and to review any other matter related to the Property.

8. **Moving Costs.** Seller shall not be entitled to any additional Moving Costs to move Seller's personal property or possessions as part of this transaction.

9. **Delivery of Property.** Seller hereby agrees to sell to Buyer on the Closing Date and deliver the Property to Buyer on the Possession Date free of any liens, judgments, delinquencies, special assessments and encumbrances.

10. **Warranty Deed.** Seller shall deliver title by Warranty Deed and the Warranty Deed to be executed and delivered by Seller to Buyer shall convey marketable fee title free and clear of all mortgages, contracts for deed, liens, judgments, delinquencies, special assessments and encumbrances and subject only to the following exceptions (the "**Permitted Encumbrances**"):

    a) Building, zoning and platting laws, ordinances and state and federal regulations;

    b) Reservations of any minerals or mineral rights to the State of Minnesota;

    c) The lien of current taxes not yet due and payable;

    d) Utility easements and road easements existing at the date hereof, which do not interfere with, the existing use of the Property.

11. **Real Estate Taxes.** On or before the Date of Closing, Seller hereby agrees to pay all real estate taxes that are delinquent against the Property as of the Date of Closing. Seller hereby agrees to pay all real estate taxes levied against the Property due and payable in the years prior to Closing. Any real estate taxes levied against the Property that are due and payable in the year of Closing shall be prorated between Seller and Buyer with Seller responsible for the time period up to and including the Date of Closing. Buyer shall be responsible for the payment of all real estate taxes levied against the Property and payable in the year after Closing and thereafter.

12. **Special Assessments.** On or before the Date of Closing, Seller hereby agrees to pay all assessments that are levied, pending, delinquent or that exist as a lien against the Property as of the Date of Closing. On or before the Date of Closing, Seller agrees to pay the principal and interest amounts owing on all special assessments levied, pending, delinquent or existing as a lien, including the installments, if any, payable in the year 2018 and thereafter; and Seller agrees to pay the principal amount relating to any pending special assessments.

Seller's obligations to pay special assessments includes any special assessments that are levied or pending by the City with respect to nuisance elimination or clean up on the Property conducted prior to the Closing Date.

13. **Judgments**. On or before the Date of Closing, Seller hereby agrees to pay all judgments that exist against the Property.

14. **Title.** Buyer, at Buyer's cost, shall obtain a Commitment of Title Insurance in the amount of $189,000.00 from the Title Company for the Property. Within thirty (30) days after the date set forth in the introductory clause of this Agreement the Buyer shall examine the title and make any objections thereto, said objections to be made in writing or deemed to be waived. If any objections are so made, the Seller shall be allowed 30 days to make such title marketable. Pending correction of title, payments hereunder required shall be postponed, but upon correction of title and within the twenty (20) days after written notice to the Buyer, the parties shall perform this Agreement according to its terms. If title is not marketable and is not made so within 30 days from the date of written objections thereto as above provided, this Agreement shall be null and void with neither party being liable for damages hereunder to the other party. If the title to said Property is found marketable or is so made within said time, and Buyer shall default in any of the agreements and continue in default for a period of ten (10) days, then and in that case, the Seller may terminate this Agreement, time being of the essence hereof. Seller's sole and exclusive remedy for breach of this Agreement shall be cancellation of this Agreement.

Buyer shall pay the title insurance commitment fee and the title insurance premium for the issuance of any Final Title Insurance Policy for the Property.

15. **Environmental Warranties.** Seller warrants to Buyer that no toxic or hazardous substances (including without limitation, asbestos, urea form formaldehyde, the group of organic compounds known as polychlorinated biphenyl's, and any hazardous substances, pollutants or contaminants as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601-9657, as amended or as defined by Minn. Stat. § 115B.02, as amended) have been generated, treated, stored, released or disposed of, or otherwise deposited in or located on the Property, including without limitation, the surface and subsurface waters of the Property, nor has Seller undertaken any activity on the Property which caused (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 9601 et. seq., the Minnesota Environmental Response and Liability Act ("MERLA"), or any similar state law or local ordinance or any other Environmental Law, (ii) a release or threatened release of hazardous waste from the Property within the meaning of, or otherwise bring the Property within the ambit of CERCLA, MERLA, or any similar state law or local ordinance or any other Environmental Law, or (iii) the discharge of pollutants or effluents into any water source or system, or the

discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C.. Section 1351 et seq., or the Clean Air Act, 42 U.S.C. Section 7401 et seq., MERLA, or any similar state law or local ordinance or any other Environmental Law.

Seller also warrants that there are no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, MERLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements and that there are no underground deposits which contain hazardous wastes or petroleum. Seller also warrants that there are no underground storage tanks of any kind located on the Property.

Seller also warrants that no portion of the Property is now used as a garbage or refuse dump site, landfill, waste disposal facility, waste transfer station or any other type of facility for the storage, processing, treatment or temporary or permanent disposal of waste materials of any kind, and Seller has not used, generated, stored, released or disposed of any hazardous substances, wastes, or other materials identified as hazardous or toxic in any federal, state, local or other statute, ordinance, rule, regulation or governmental requirement on the Property.

Seller also warrants that no portion of the Property contains Construction Debris (building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition of buildings and roads or as defined by Minn. Stat. § 115A.03), Demolition Debris (solid waste resulting from the demolition of buildings, roads, and other man-made structures including concrete, brick, bituminous concrete, untreated wood, masonry, glass, trees, rock, and plastic building parts), Industrial Solid Waste (all solid waste generated from an industrial or manufacturing process and solid waste generated from non-manufacturing activities such as service and commercial establishments or as defined by Minn. Stat. § 115A.03), Mixed Municipal Solid Waste (garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the generator of the waste aggregates for collection or as defined by Minn. Stat. § 115A.03), or Solid Waste (garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, including but not limited to sewer sludge, in solid, semi-solid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural, operations, and from community activities, but does not include animal waste used as fertilizer or as defined by Minn. Stat. § 115A.03).

Seller warrants that the soils and grounds of the Property are free from any release of petroleum and there has been no release of petroleum on the Property.

"Environmental Law" means any environmental, health or safety law, rule, regulation, ordinance, order or decree, including, without limitation, CERCLA, RCRA, MERLA, any

"Superfund" or "Super Lien" law or any other federal, state, county or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any petroleum, natural or synthetic gas products and/or hazardous, toxic or dangerous waste pollutant or contaminant, substance or material as may now or any time hereinafter be in effect.

16. **Labor and Materials.** Seller warrants that as of the Closing Date there will be no labor or material furnished to the Property for which payment has not been made.

17. **Governmental Notices.** The Seller warrants that, as of the Closing Date, Seller has not received any notice from any government authorities as to violations of any laws, ordinances, or regulations with respect to the Property, except for violations of the State Building Code.

18. **Seller's Disclosure Required By Minnesota Statutes § 513.52 to 513.60.** The parties acknowledge that Minnesota Statute § 513.54 states that the disclosure requirements of § 513.52 to 513.60 do not apply if the transfer is to a government. The Buyer is a government.

19. **Wells.** Seller represents that there is no unsealed water well physically located on the Property.

20. **Sewage Treatment System.** Seller represents that there is not an individual sewage treatment system, septic tank or cesspool system on or serving the Property.

21. **Lead Paint Disclosure.** Seller represents that the dwelling was constructed on the Property before 1978 and the buildings hereon may contain lead paint.

22. **Methamphetamine Disclosure.** Seller represents that methamphetamine production has not occurred at the Property.

23. **Conditions Precedent.** The Buyer's obligation to close this transaction is expressly contingent upon the Buyer determining prior or upon the dates set forth below the following to be satisfactory and acceptable to Buyer, in the Buyer's sole judgment and opinion:

(a) On or prior to November 30, 2018, any recorded easements to which the Property is subject;

(b) On or prior to November 30, 2018, the status of any encumbrances and the marketability of title with respect to the Property;

(c) On or prior to November 30, 2018, any physical encroachments on the Property;

(d) On or prior to November 30, 2018, the soil, ground, environmental, engineering, structural, physical, geological and legal inspections of the Property;

(e) On or prior to November 30, 2018, the physical condition of the Property and the buildings located thereon

(f) On or prior to November 30, 2018, conveyance by Sterling State Bank to Brian Todd Gore of a Warranty Deed in fulfillment of that certain Contract for Deed, dated April 3, 2012, filed April 16, 2012, as Document No. 2861873 in the amount of $65,000.00; and

(g) On or before November 30, 2018, the Property being vacant.

In the event the Buyer determines, in Buyer's sole discretion, that any of the conditions precedent have not been met, then Buyer on or before November 30, 2018, shall give written notice to Seller that the conditions precedent have not been met and in such case, this Agreement will be null and void, and, if requested, each party will execute a standard Cancellation of Purchase Agreement form; in the alternative, Buyer shall have the right in writing to waive any of the conditions precedent. If the conditions precedent have not been met and this Agreement is cancelled, Seller shall pay back to Buyer the $10,000 earnest money previously paid by Buyer; in such case the payment by Seller shall be made within five (5) days after cancellation of the Purchase Agreement.

24. **"<u>As Is" Condition</u>.** Subject to the conditions preceding in Section 23 hereof, the Buyer accepts the buildings and structures on the Property in their "As Is" condition. Notwithstanding the foregoing, Seller shall remove all junk, debris, vehicles, all items stored in the buildings and structures, all items stored outside of the buildings and structures, materials, clothing, equipment, movable appliances, household items, furniture, loose lumber and any other personal effects from the Property prior to the Closing Date. If the Seller fails to remove the items set forth in the preceding sentence prior to the Closing Date, the Buyer may do the same and charge all costs incurred by the Buyer to perform such work to the Seller and Seller shall make payment directly to the Buyer within five (5) days after invoicing by the Buyer; to assure the payment of Seller to Buyer, the Buyer, at Closing, may withhold an amount of money equal to 150% of the Buyer's reasonable estimate of the cost to remove the items. If Seller makes the required payments to Buyer, the payment amount shall be reimbursed to Seller out of the withheld funds. On the other hand, if payment is not made, Buyer shall retain that portion of the withheld funds equal to the unpaid removal amount and the remainder of the withheld funds, if any, shall be turned over to Seller.

Seller agrees that with respect to all items removed by Buyer, the Seller shall no longer have a right, title or interest or possessory interest in such items and the Seller shall be deemed to have abandoned such right, title and interest and Seller shall be deemed to have transferred such right, title and interest to Buyer.

25. **Indemnification.** From and after delivery to Buyer of the Warranty Deed for the Property, Seller agrees to indemnify, defend and hold Buyer harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorneys' fees, that Buyer incurs or suffers, after the Date of Closing, which arise out of, result from or relate to (i) a breach of any of Seller's warranties made in Paragraph 15 or (ii) any claim made against Buyer arising out of, relating to, or resulting from ("CERCLA"), ("RCRA"), ("MERLA"), or any similar state law or local ordinance or any other Environmental Law or a violation of ("CERCLA"), ("RCRA"), ("MERLA"), or any similar state law or local ordinance or any other Environmental Law relating to the condition of the Property prior to the Date of Closing.

26. **Negotiated Sale.** If the transaction set forth by this Agreement is not completed, the Buyer has no present intent to acquire the Property by eminent domain and has not considered the use of eminent domain to acquire the entire Property. If this Agreement is terminated for any reason, the Seller is free to retain ownership of the Property or to sell the Property on the private market.

27. **Acknowledgment of Fair Market Value**. Buyer and Seller agree that the Purchase Price listed in this Agreement represents the fair market value of the Property which has been determined by a method of valuation acceptable to Buyer and Seller.

28. **Survival of Warranties**. The representations, indemnifications, warranties, and covenants of Buyer and Seller contained in this Agreement shall survive the conveyance of the Property and shall not be merged with the Warranty Deed or other closing documents.

29. **Assignment of Agreement**. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto and the heirs, executors, personal representatives, successors and assigns, any rights or remedies under or by reason of the Agreement. No assignment of this Agreement or any rights or obligations hereunder shall be effective unless the written consent of the other party is first obtained.

30. **Amendment of Agreement**. This Agreement may be amended only by a written instrument executed by Buyer and Seller.

31. **Entire Agreement**. This Agreement embodies the entire agreement between the parties with relation to the transaction provided for herein, and there have been and are no covenants, agreements, representations, warranties, or restrictions between the parties with regard thereto other than those set forth herein.

32. **Date of Agreement**. All references in the Agreement to "the date of this Agreement" shall be deemed to refer to that date set forth in the introductory clause of this Agreement.

33. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

34. **Time of Essence**. Time is of the essence in the closing of this transaction.

35. **Severability**. In the event any one or more of the provisions of this Agreement, or any application thereof, shall be found to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provision or any application thereof shall not in any way be affected or impaired thereby.

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

37. **Closing Costs.**

37.1 **Real Estate Taxes.** On or before the Date of Closing, Seller hereby agrees to pay all real estate taxes that are delinquent against the Property as of the Date of Closing. Seller hereby agrees to pay all real estate taxes levied against the Property due and payable in the years prior to Closing. Any real estate taxes levied against the Property that are due and payable in the year of Closing shall be prorated between Seller and Buyer with Seller responsible for the time period up to and including the Date of Closing. Buyer shall be responsible for the payment of all real estate taxes levied against the Property and payable in the year after Closing and thereafter.

37.2 **Special Assessments.** On or before the Date of Closing, Seller hereby agrees to pay all assessments that are levied, pending, delinquent or that exist as a lien against the Property as of the Date of Closing. On or before the Date of Closing, Seller agrees to pay the principal and interest amounts owing on all special assessments levied, pending, delinquent or existing as a lien, including the installments, if any, payable in the year 2018 and thereafter; and Seller agrees to pay the principal amount relating to any pending special assessments. Seller's obligations to pay special assessments includes any special assessments that are levied or pending by the City with respect to nuisance elimination or clean up on the Property conducted prior to the Closing Date.

37.3 **Judgments**. On or before the Date of Closing, Seller hereby agrees to pay all judgments that exist against the Property.

37.4 **Utilities.** Seller shall be responsible for all current and delinquent utilities through the Closing Date. At closing, Seller shall payoff all current and delinquent water bills for the water service through Closing Date.

37.5 **State Deed Tax.** Upon delivery of the Warranty Deed, Seller shall pay the state deed tax due on the Warranty Deed.

37.6 **Title Insurance.** Buyer shall pay all costs of the Title Company for obtaining the title commitment and the premium required for the issuance of the Title Policy.

37.7 **Closing Fee.** Any fee, other than those fees which have been specifically addressed as set forth in this Purchase Agreement, charged by the Title Company as a closing fee shall be paid by Buyer.

37.8 **Recording Costs.** Seller will pay the cost of recording all documents necessary to place record title in the condition warranted by Seller in this Agreement and Buyer will pay the cost of recording the Warranty Deed and all other documents.

38. **Closing Documents.**

38.1. **Seller Documents At Closing.** At Closing, Seller shall execute and/or deliver to Buyer the following documents to be effective as of the Closing Date:

a.) A Warranty Deed from Sterling State Bank to Seller in fulfillment of that certain Contract for Deed, dated April 3, 2012, filed April 16, 2012, as Document No. 2861873 in the amount of $65,000.00.

b.) A Warranty Deed, in form satisfactory to Buyer, conveying the Property from Seller to Buyer, free and clear of all encumbrances.

b.) An Affidavit of Title by Seller indicating that on the Closing Date, to Seller's knowledge, there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Property; that there has been no skill, labor or material furnished to the Property for which payment has not been made or for which mechanics' liens could be filed; and that there are no other unrecorded interests in the Property, together with whatever standard owner's affidavit which may be required by Title Company to issue the title policy with the standard exceptions waived.

c.) A Certificate signed by Seller warranting that Seller does not know of any "Wells" on the Property within the meaning of Minn. Stat. § 103I.

d.) Lead Paint Disclosure.

e.) Waiver of Relocation Benefits – Exhibit B.

f.) All other documents reasonably determined by Buyer to be necessary to transfer the Property to Buyer free and clear of all encumbrances other than Permitted Encumbrances.

g.) A certificate stating that all representations and warranties contained in the Agreement are true and correct as of the Date of Closing.

38.2. **Buyer Documents At Closing.** At Closing, Buyer shall execute and deliver to Seller the following documents:

a.) Wire transfer or certified check in the sum equal to the unpaid remainder of the $189,000.00 for the Property;

b.) Standard Affidavit of Buyer.

c.) Such other closing documents which the Seller may reasonably request.

39. **Notice**. Any notice required to be given by Seller to Buyer shall be deemed to have been given on the day of delivery if personally delivered, or if by mail, three (3) days after the date that it is deposited in the United States Mail, postage prepaid, sent by certified mail and addressed as follows:

City of Inver Grove Heights
Attn: Joe Lynch, City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

Any notice required to be given by Buyer to Seller shall be deemed to have been given on the day of delivery if personally delivered, or if by mail, three (3) days after the date that it is deposited in the United States Mail, postage prepaid, sent by certified mail and addressed as follows:

Brian Todd Gore
1805 – 60th Street East
Inver Grove Heights, MN 55077

40. **No Broker Fees**. Each party represents to the other that it has not retained nor otherwise dealt with or entered into any agreement or understanding to compensate any brokers or finders in connection with this transaction. Buyer and Seller each agree to indemnify the

other against any loss, cost or expense, including attorneys' fees, as a result of any claim for a fee or commission asserted by any broker or finder with respect to this Agreement or the consummation of the transactions contemplated hereby whose claim arises through alleged dealings with him or her by such indemnifying party.

41. **Sole Occupant**. Seller represents and warrants to Buyer that, as of the date of this Agreement, the Seller is the only occupant of the Property.

42. **Removal of Items by Seller**. Notwithstanding anything to the contrary contained in Section 1 hereof, Seller shall have the right during the three (3) consecutive day period immediately prior to Closing Date to remove the following from the Property and to keep the following:

- Garage doors on the pole barn
- Appliances and fixtures located within the buildings
- Windows and doors located on the home
- Light fixtures

Seller shall conduct such removal in a safe manner so as not to endanger any person or any of the structures. Seller assumes all risk in making the removal.

OWNER:

By: ______________________
Brian Todd Gore

CITY OF INVER GROVE HEIGHTS

By: ______________________
George Tourville, Mayor

Attest: ______________________
Michelle Tesser, City Clerk

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Real property located in the City of Inver Grove Heights, County of Dakota, State of Minnesota, legally described as follows:

All of Lot Seven (7), and that part of Lot Six (6), Silver Acres Addition, described as follows: Beginning at the Northeast Corner of said Lot Six (6), thence West (assumed bearing) along the North line of said Lot Six (6) a distance of 19.21 feet; thence South 15 degrees 28 minutes 28 seconds West a distance of 186.25 feet of the Southeast corner of said Lot Six (6); thence North 21 degrees 00 minutes 00 seconds East along the East line of said Lot Six (6) a distance of 192.27 feet to the point of beginning, Dakota County, Minnesota.

Abstract Property

<u>EXHIBIT B</u>
<u>WAIVER OF RELOCATION BENEFITS FORM</u>

WAIVER OF RELOCATION BENEFITS

THIS WAIVER OF RELOCATION BENEFITS AGREEMENT ("Agreement"), dated this _____ day of ____________, 2018, is entered into between the **City of Inver Grove Heights**, a municipal corporation organized under the laws of the State of Minnesota (hereinafter referred to as "**City**") and **Brian Todd Gore**, a single person, (hereinafter referred to as the "**Owner**").

I. RECITALS

1.01 City means City of Inver Grove Heights a municipal corporation organized under the laws of the State of Minnesota, having its principal office at 8150 Barbara Avenue, in the City of Inver Grove Heights, County of Dakota, Minnesota.

1.02 Owner owns property in Inver Grove Heights, Dakota County, Minnesota identified as Dakota County Property Tax Identification Number 20-68200-00-072.

1.03 Owner has requested City to purchase certain real estate owned by Owner which is located in Inver Grove Heights, Dakota County, Minnesota identified as Dakota County Property Tax Identification Number 20-68200-00-072, which is legally described on the attached Exhibit A ("Subject Property").

1.04 Pursuant to Minnesota Statutes § 117.521, Owner desires to waive the possible claim that Owner may have for relocation benefits pursuant to Minnesota and federal law. Prior to any action by the City indicating intent to acquire the Subject Property, Owner requested that City acquire the Subject Property through negotiation. Owner clearly intended to sell the Subject Property on the public market prior to any inquiry or action by the City in this matter.

1.05 City has explained to Owner that, but for Owner's waiver herein, Owner may be or is eligible under Minnesota Statutes Chapter 117 for relocation assistance, relocation services, relocation payments, and relocation benefits as separately listed below:

	<u>Type of Relocation</u> **<u>Owner may be eligible for:</u>**	
Relocation Assistance:	Assistance in locating and moving residents to a replacement site, Coordination of the move and filing appropriate documents for relocation claim.	
Relocation Services:	Provide comparable properties for possible replacement sites, Transportation to properties if needed, performs D.S.S. inspections, calculation of relocation payments, and review of documentation and written relocation claim.	
Relocation Payments:	Estimated Price differential payment	$
	Estimated moving costs	$
	Estimated Closing costs	<u>$</u>
	Total:	$
Relocation Benefits:	Relocation benefits would include all of the above. **(Assistance, Services and Payments)**	

1.06 Owner specifically represents and agrees that he is entering into this Agreement voluntarily. Owner further agrees that prior to execution of this Agreement, Steven Carlson of Evergreen Land Services Company, representing the City, explained the contents of this Agreement and relocation guidebook.

NOW, THEREFORE, in consideration of the above recitals, the premises, and their mutual promises, the parties hereto hereby agree as follows:

II. AGREEMENT

2.01 Owner, for good and valuable consideration provided as part of the **$189,000.00** paid by City as the purchase price for the Subject Property and for relocation benefits, the receipt and sufficiency of which is hereby acknowledged, hereby waives, releases, relinquishes, and forfeits forever any other claim that Owner may otherwise have for relocation assistance, relocation services, relocation payments, and relocation benefits under Minnesota Statutes Chapter 117 and other provisions of state and federal law, including any claim for such assistance, services, payments and benefits arising by virtue of Owner holding over on the Property after the Closing Date by way of a lease. The consideration being by Owner in return for this waiver is as follows:

The purchase of the Subject Property and the Payment of Relocation Benefits for the total unallocated sum of $189,000.00.

2.02 Under Minnesota Statutes, Owner may not waive relocation assistance relating to the acquisition of properties situated wholly or in part within any district for redevelopment authorized under Laws 1971, chapters 548 or 677; or Laws 1973, chapters 196, 761, or 764; or Laws 1974, chapter 485; or Minnesota Statutes chapters 462, 458, or 458c.

2.03 City and Owner agree that the purchase agreement requiring this Agreement is a voluntary sale by Owner. City represented that City would not acquire the Subject Property in the event that negotiations between City and Owner had failed to result in an amicable purchase agreement. Owner has requested that the Subject Property be acquired by the City and such request preceded any negotiations by the City to acquire the Subject Property. The Owner clearly showed an intent to sell the Subject Property on the public market prior to any discussions, inquiries or negotiations by the City.

If the purchase agreement requiring this Agreement is not completed, the City has no present intent to acquire the property by eminent domain and has not considered the use of eminent domain. If the purchase agreement requiring this Agreement is terminated for any reason, the Owner is free to retain ownership of the Subject Property or to sell the Subject Property on the private market.

The City and Owner acknowledges that other properties similar in nature to the Subject Property have been acquired by the City. The City has not set a specific time limit to acquire the Subject Property.

The Owner and City agree that the purchase price set forth in the purchase agreement requiring this Agreement is a lump sum price which included any and all payments to which the Owner may be entitled under any applicable State or federal law or regulations providing for relocation assistance, services, payments and benefits of any kind. As City and Owner agree that this is a voluntary sale, state and federal law permit the City to request this waiver of relocation benefits Agreement from the Owner. Prior to and as a condition of closing, the Owner will be required to sign this waiver of relocation benefits Agreement. The City arranged for a relocation consultant to meet with the Owner prior to closing. The relocation consultant determined the amount of relocation benefits for which the Owner would be eligible if this were a non-voluntary sale. If the Owner did not waive relocation benefits, this purchase agreement would be terminated and the Owner would be free to retain ownership of the Subject Property or to sell the Subject Property on the private market.

2.04 The recitals contained in Section I of this Agreement are hereby incorporated as material representations and terms of this Agreement.

2.05 This Agreement is entered into pursuant to Minnesota Statutes and federal law.

[the remainder of this page has been intentionally left blank]

OWNER:

By: ______________________
Brian Todd Gore

CITY OF INVER GROVE HEIGHTS

By: ______________________
George Tourville, Mayor

Attest: ______________________
Michelle Tesser, City Clerk

By: ______________________
Timothy J. Kuntz,
Attorney for the City of
Inver Grove Heights

CERTIFICATION OF WITNESS

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

I, Steven Carlson, being duly sworn, hereby confirm the following:

1. My business address is 4131 Old Sibley Memorial Highway, Suite #201, Eagan, MN 55122

2. I witnessed the execution of the foregoing agreement by the Owner.

3. I was not personally involved in the acquisition of the Subject Property by the City of Inver Grove Heights from the Owner.

4. I did explain, on behalf of the City, the contents of the foregoing Waiver of Relocation Benefits to the Owner. The explanation was conducted in an understandable manner. The Owner appeared to understand the terms and conditions of the foregoing agreement.

5. No express or implied threats of taking the Subject Property by eminent domain were made by the City or its representatives to the Owner. Nor, to my knowledge, did the City make any other threats or its representative throughout the entire process of acquiring the property that were intended to induce the Owner to waive their relocation assistance or benefits.

6. To the best of my information and belief, the Owner entered into said agreement voluntarily.

____

Witness

Subscribed and sworn to before me
this _____ day of ______________, 2018.

____

Notary Public

EXHIBIT A (to Waiver of Relocation Benefits Form)
LEGAL DESCRIPTION OF SUBJECT PROPERTY

Real property located in the City of Inver Grove Heights, County of Dakota, State of Minnesota, legally described as follows:

All of Lot Seven (7), and that part of Lot Six (6), Silver Acres Addition, described as follows: Beginning at the Northeast Corner of said Lot Six (6), thence West (assumed bearing) along the North line of said Lot Six (6) a distance of 19.21 feet; thence South 15 degrees 28 minutes 28 seconds West a distance of 186.25 feet of the Southeast corner of said Lot Six (6); thence North 21 degrees 00 minutes 00 seconds East along the East line of said Lot Six (6) a distance of 192.27 feet to the point of beginning, Dakota County, Minnesota.

Abstract Property