

RESOLUTION NO. R_____

**RESOLUTION AUTHORIZING REAL ESTATE CONTRACT FOR PROPERTY
LOCATED IN THE 2000 BLOCK OF SOUTH IMBODEN COURT**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DECATUR,
ILLINOIS:

Section 1. That the Contract of Sale presented to the Council herewith and attached as Exhibit A between the City of Decatur, Decatur RAS LLC and MULL LLC for the Sale of Property located in the 2000 block of South Imboden Court as described in the attached Exhibit B for \$650 be, and the same is hereby, received, placed on file and accepted.

Section 2. That the Mayor and City Clerk be, and they are hereby, authorized and directed to sign said Contract of Sale on behalf of the City of Decatur, and furthermore, that the City Manager be, and he is hereby, further authorized to cause to be done that which may appear to be appropriate to cause said real estate to be sold by and on behalf of the City.

PRESENTED AND ADOPTED this 4th day of February, 2019.

JULIE MOORE-WOLFE, MAYOR

ATTEST:

CITY CLERK

EXHIBIT A

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract") is by and between the CITY OF DECATUR, an Illinois municipal corporation ("Seller"), DECATUR RAS LLC, and MULL LLC, Limited Liability Companies in good standing currently located at 680 W. Eldorado St., Decatur, IL 62522 (MULL, LLC AND DECATUR RAS LLC collectively known as the "Buyer").

WITNESSETH:

Seller agrees to sell and Buyer agrees to purchase on the terms and conditions hereinafter set forth, real estate situated in Macon County, Illinois, described on Exhibit A attached hereto and incorporated by reference (the "Property").

1. Purchase Price. The purchase price for the Property is \$650 Dollars with purchase price for the Property to be paid at closing, subject to closing adjustments.

2. No Representations. Seller has not made and does not make any representations, warranties or guarantees of any kind concerning the Property or its condition or suitability for Buyer's proposed use, whether express or implied, oral or written other than any declarations contained as part of this Contract. Buyer agrees that it is purchasing the Property "as is" with all faults and defects and based solely on Buyer's inspection, testing and investigation of the Property. Buyer acknowledges that the disclaimers, agreements and other statements set forth in this section are an integral portion of this Contract and that Seller would not agree to sell the Property to Buyer for the purchase price without the disclaimers, agreements and other statements set forth in this Paragraph 2 and that the disclaimers, agreements and other statements in this Paragraph 2 shall survive the closing of the sale under this Contract.

3. Conditions Precedent.

3.1 Seller obligations under this Contract are subject to the following conditions:

(a) Seller approving Buyer's site plan and landscape plan for Buyer's proposed development of the Property.

(b) Buyer obtaining all approvals and permits from all governmental authorities having jurisdiction over the Property which are necessary to permit Buyer's proposed development of the Property.

(c) Buyer conveying title to properties described in Exhibit B attached hereto to Central Illinois Development Consortium, LLC or other party as agreed upon in writing by Seller for construction of a parking lot for Mueller Co. LLC. Buyer shall be required to relocate any and all business operations from properties described in Exhibit B to the Property or other locations, to include the shingles recycling operation, refuse hauling and associated equipment operations, the corn product recycling operation currently being performed for Archer Daniels Midland Company. This Contract and settlement shall be contingent on the Settlement on Buyer's property located at 650 W. Eldorado St., Decatur, IL with Central Illinois Development Consortium, LLC (or assigns) at terms acceptable to Buyer.

(d) Seller agrees to rezone the properties as legally described in Exhibit A attached hereto from M-1 Intense Commercial-Light Industrial to M-2 Heavy Industrial if required by the City of Decatur Zoning Ordinance to facilitate Buyer's operations.

3.2 Buyer's obligations under this Contract are subject to the following conditions:

(a) Buyer shall at its expense and option, obtain such title reports and surveys as to the Property as Buyer may desire. Buyer shall advise Seller in writing within 60 days after the effective date of this Contract concerning any defect in the condition of title disclosed by

such reports or surveys and rendering the title unmarketable. In the event of such notice, the conveyance to Buyer shall be delayed pending Sellers efforts to resolve the same. In event Seller is unable or unwilling to cure such defects within a reasonable time after notice thereof, Buyer or Seller may elect to cancel and terminate this Contract and the rights and obligations of the parties hereunder; and in such event, Seller shall refund to Buyer all sums paid hereunder if Buyer shall so elect. Failure to notify Seller of any objectionable title defect as above said shall constitute a waiver thereof. Title may be subject only to the following exceptions:

- (i) Easements, restrictions and reservations of record on the date hereof;
- (ii) Building and use restrictions;
- (iii) Special assessments levied for local improvements;
- (iv) Zoning regulations and ordinances affecting the Property; and,
- (v) The lien of current general real estate taxes.

(b) Buyer shall have Sixty (60) day Due Diligence period from the date of this Agreement to approve the following matters at his sole and absolute discretion:

(i) Matters of Title, whereby Buyer shall be responsible to obtain any title reports or title commitments as desired. Seller agrees to provide the current policy of title insurance, if any, to Buyer immediately upon execution of this Agreement.

(ii) Matters of Survey whereby Buyer shall be responsible to perform any surveys for encroachments, boundary lines, or other matters. Seller warrants and represents it is not aware of any boundary disputes, lot line infringements, or encroachments.

(iii) Insurability of the Property and improvements thereon including review of Seller's current insurance policies, which Seller agrees to provide to Buyer immediately upon execution of this Agreement.

(iv) All Tenant Leases that affect the Property, if any, which Seller agrees

to provide to Buyer immediately upon execution of this Agreement.

(v) The last 12 months of all Utility bills for the Premises, which Seller agrees to provide to Buyer immediately upon execution of this Agreement.

(vi) Rent Rolls, Income and Expense Statements for the last 12 months, which Seller agrees to provide to Buyer immediately upon execution of this Agreement.

(vii) All Agreements for Maintenance, Property Management, if any, including those with the Community Investment Corporation of Decatur, or Business Center of Decatur, together with any Agreements for any work currently being performed on the premises, which Seller agrees to provide to Buyer immediately upon execution of this Agreement.

(viii) Environmental matters including the review of all issued "No Further Remediation" letters, environmental agreements and environmental reports whereby Buyer shall be responsible to perform any environmental inspections including as desired, along with any testing for the presence of Lead Based Paint, Radon, and other health hazards.

(ix) Buyer may have all properties and improvements thereto professionally inspected including but not limited to the structure, roof, plumbing, heating, cooling, ventilation, electrical, well, sewer, or septic systems of the subject properties. Should the inspection report indicate defects to the property which are unacceptable to Buyer, then Buyer shall have the option of declaring the Agreement null and void and all earnest money shall be returned.

(1) Buyer agrees that any inspections performed pursuant to this Agreement is signed shall not cause Seller to make any improvements, repairs or environmental remediation.

(2) Buyer agrees that if Buyer failed to inspect the Premises, such failure shall not alter or impair the understandings and agreements of the Buyer and Seller set forth in this Agreement or any addendums thereto.

(3) Buyer agrees that by closing hereunder Buyer accepts the Premises as it is on the closing date and that thereafter Seller shall have no further obligations, liabilities or responsibilities of any nature regarding the Property, nor shall Seller have any further obligations, liabilities or responsibilities under this Agreement or any addendum thereto, anything else to the contrary notwithstanding.

(4) Subject to Buyers Inspections, Buyer agrees to purchase the Property "as is" and "with all faults" and acknowledges that Seller makes no representations or warranties of any nature.

3.3 Both Seller and Buyer agree:

(a) To comply with the requirements of the Real Estate Settlement Procedures Act;

(b) At any time after the date hereof, with advanced approval of Seller, architects and engineers and representatives of Buyer shall have reasonable access to the Property for the purpose of measurement and preparation of design plans for Buyer and other work to prepare the Property for operations, provided such access cannot interfere with the usual business of Seller performed on the Property. Buyer shall indemnify and hold Seller harmless from and against all losses, costs, damages and liabilities arising out of Buyer or any of its employees, agents or contractors entering the Property. In the event that closing does not occur or this transaction is not completed, Buyer shall be responsible for any and all costs associated with remediating any changes or improvements made to Property by Buyer or its agents, successors and assigns as deemed necessary by the Seller.

3.4 Closing. The time and place of settlement on the date of closing shall be fixed by mutual agreement of the parties but in no event shall such closing take place more than 120 days from the date that this agreement is approved by the Decatur City Council or prior to the

Buyer's sale of land described in Exhibit B to Central Illinois Development Consortium, LLC. Said closing date may be extended or amended upon mutual written agreement by Seller and Buyer. At the settlement Buyer shall deliver to Seller or cause to be paid:

- (i) All documents as Seller's counsel may reasonably require.
- (ii) An amount equal to the cost of recording any release of indenture of mortgage or trust deed; and,
- (iii) An amount equal to the cost of Illinois revenue stamps if required to be affixed to Seller's quitclaim deed.
- (iv) An amount equal to any and all costs associated with the transfer of ownership to Property including but not limited to any real estate taxes unpaid and due after the date of closing prorated to the date of closing, based upon the last ascertainable real estate taxes on the Property; the fee charged by the Title Company for closing the sale; the fee for recording the deed; the cost of an survey; and the cost of the title commitment and policy.

Seller shall deliver to Buyer:

- (i) Its executed quitclaim deed to the Property, containing only those exceptions listed in subparagraphs (i) through (v), inclusive, of paragraph 3.2 above.
- (ii) A sufficient release of any indenture of mortgage or trust which may be a lien on the Property; and,
- (iii) Such other documents as Buyer's counsel may reasonably require.

3.5 Buyer shall have the right to take possession of the Property on completion of the transaction of the date of closing.

3.6 While this Contract is in effect, Seller shall (i) not enter into or amend any contracts, options, leases, easements or other agreements adversely affecting the Property, and (ii) not take any action which would adversely affect the ownership or condition of the Property.

4. Environmental Conditions and Requirements

4.1 Buyer agrees that Borg Warner, Inc ("Borg Warner") and Flow Control US Holding Corp. ("Flow Control") (collectively, the "Companies") are third party beneficiaries

of this Contract pursuant to a City Property Remediation Agreement dated _____ in which the the Companies' predecessors agreed to pay for remediation on the Property.

4.2. As a result and in addition to the Seller, Borg Warner and Flow Control are entitled to enforce the following obligations;

(a) Buyer shall comply with all of the requirements of the No Further Remediation letter ("NFR") issued by the Illinois Environmental Protection Agency on September 3, 2013 and recorded with the Macon County Recorder's Office on September 10, 2013, a copy of which is attached hereto and incorporated herein as Exhibit __. Such requirements include, but are not limited to maintenance of engineered barriers and institutional controls described in the NFR;

(b) Buyer shall not allow the release of any Contaminant at to or from the Property in violation of, or that creates any liability under any Environmental Law;

(c) Buyer shall indemnify and hold harmless Borg Warner and Flow Control as well as the Seller for any and all remediation, investigation, damages (including diminution in Property Value), losses, expenses (including attorneys' and consultants' fees and costs) costs, death or injuries that arise from any failure by Transferee to comply with the applicable requirements of the NFR letter issued with respect to the Property.

4.3 For the purposes of this Paragraph, the following definitions apply:

(a) "Contaminant" shall mean any substance, material, product, compound, liquid, solid or gas (i) that is now or is in the future defined as or included within the definition of a "pollutant," "contaminant," "toxic substance," "hazardous waste," "hazardous substance," "extremely hazardous substance," "hazardous chemical" or "hazardous material," or any other words of similar import under any Environmental Law, or (ii) exposure to which or the presence, use, generation, treatment, release, transport or storage of which is now or hereafter

prohibited, limited, restricted or regulated under any Environmental Law.

(b) "Environmental Law" shall mean any federal, state or local law, statute, ordinance, regulation, code, policy, rule, directive, order, license, permit or decree now or hereafter in effect, relating to the regulation or protection of human health, safety, natural resources or the environment (including the air, groundwater, surface water and soils), including, without limitation, the Illinois Environmental Protection Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act and the Federal Water Pollution Control Act and all regulations implementing such statutes.

5. Title Commitment. Buyer shall obtain a current title commitment for an owner's title insurance policy for the Property and provide a copy to Seller. Buyer shall pay all title examination fees or other expenses charged by the Title Company for the purpose of issuing such title commitment.

6. Seller's Closing Obligations. At the closing,

(a) Seller shall deliver to Buyer or to such person or entity as Buyer may nominate subject to Section 8 of this Contract a quitclaim deed to the Property subject to 2018 real estate taxes and assessments and subsequent years not yet due and payable, all easements, agreements, restrictions and other matters of record.

7. Seller Environmental Indemnification. Buyer releases Seller from any and all liability, costs, damages, expenses and the like arising out of or in any manner related to the environmental condition of the Property, including but not limited to the claims of third parties and governmental requirements. This release shall survive closing.

8. Business Center of Decatur Operations. The Business Center of Decatur, currently operational on the Property and located at 2121 S. Imboden Ct., shall be allowed to continue

operations for at least 12 months following the execution of this Contract unless mutually agreed upon in writing by the Buyer and Seller. Upon closing, Buyer shall assume and become responsible for any and all leases or agreements in place for Business Center of Decatur occupants.

9. Default. If the conditions precedent of this Contract are satisfied or waived by Buyer and Seller, and if Seller fails to consummate this Contract for any reason other than the default of Buyer, then Buyer may enforce specific performance or seek other legal remedies. If Buyer shall default in the performance of its obligations under this Contract, then Seller may enforce specific performance or seek other legal remedies.

10. Assignment Neither the Seller nor Buyer may assign this Contract or their interest in the Property without the prior written consent of the other. The terms of this Contract and deed conveying ownership in the Property shall be binding on the parties, their respective successors, personal representatives, heirs and assigns.

11. Survival. The conditions of Paragraphs 4 and 8 shall survive closing.

11. Miscellaneous

(a) Any notice which either party may be required to give hereunder or which either party is permitted or may desire to give to the other party shall be in writing and given either personally or by mailing the same by registered or certified mail, return receipt requested, to the party to whom notice is directed at the address of such party as follows:

Seller: City Manager
City of Decatur
#1 Gary K. Anderson Plaza
Decatur, IL 62523

Buyer: Phil Pugsley
Decatur RAS LLC

680 W. Eldorado St.
Decatur, IL 62522

Any notice served by mail shall be deemed given on the day in which the same is postmarked and deposited in the United States mail, addressed as above provided with postage thereon fully prepaid. Either party may change the party or address to which any such notice is to be addressed by giving written notice to the other party of such change. Any time limitation provided for in this Contract shall begin on the date that the party actually receives such notice, or refuses to accept delivery, and the date of postmark of any return receipt indicating the date of delivery of such notice to the addressee shall be conclusive evidence of such receipt.

(c) This Contract constitutes the entire Contract between Seller and Buyer, and there are no other covenants, agreements, or conditions, either oral or written, between them concerning the Property other than those set forth in this Contract. No subsequent change, deletion or addition to this Contract shall be binding unless in writing and signed by both parties.

(d) The headings, captions, numbering systems, etc., are inserted only as a matter of convenience and shall not be considered in interpreting the provisions of this Contract.

(e) All of the provisions of this Contract shall be binding upon the personal representatives, heirs, successors and permitted assigns of both parties.

(f) If any of the dates or time periods in this Contract fall or end on a Saturday, Sunday or U.S. bank holiday, then such date or time period shall be extended until the next business day other than a Saturday, Sunday or U.S. bank holiday.

DATED this _____ day of _____, 2019.

SELLER:

CITY OF DECATUR

BUYER:

DECATUR RAS LLC/MULL LLC

By: _____

BY: _____

Dated: _____

Dated: _____

Address: _____

Address: _____

ATTEST:

CITY CLERK

LEGAL DESCRIPTION – EXHIBIT A

Parcel Numbers:

17-12-27-126-002

Beginning at a point 2015.13 feet East of the Northwest Corner of Sector 27, T-16-N, R-2-E of the 3rd P.M.; thence South 28 21 ' 03" West, a distance of 116.10 feet; thence South 4 34' 03" West, a distance of 100.72 feet; thence South 28 53' 03" West, a distance of 1207.27 feet; thence South 82 31' 10" West, a distance of 121.67 feet; thence North 61 13' 35" West, a distance of 504.13 feet; thence North 28 40' 43" , a distance of 500.00 feet, thence North 28 07' 16" East, a distance of 1133.46 feet; thence South 60 52' East, (S60 58' 52" E), 575.10 feet; thence South 28 21' 03" West, a distance 143.72 feet to the point of beginning, containing 22.433 Acres, more or less

04-12-22-376-002

Beginning at a point 2015.13 feet East of the Northwest Corner of Section 27, T-16-N, R-2-E of the 3rd P.M.; thence South 28 21 ' 03" West, a distance of 116.10 feet; thence South 4 34' 03" West, a distance of 100.72 feet; thence North 28 53' 03" East, a distance of 351.52 feet; thence North 60 58' 52" West, a distance of 43.89 feet; thence South 28 21' 03" West, a distance of 1437.75 feet to the point of beginning, containing 0.298 Acres, more or less.

Exhibit B
RAS LLC and MULL LLC Property Legal Descriptions

The North 50 feet of the East ½ of Lot 9, EXCEPT the East 38 feet thereof; and a tract 38 feet in width off of the East side of Lots 9, 10 and 11 in Block 1 of S.K. Thompson's Second Addition to the City of Decatur, as per Plat recorded in Book U, page 623 of the Records in the Recorder's Office of Macon County, Illinois, EXCEPT 30 feet in width off of the South side of said Lot 11, and EXCEPT that part deeded to the State of Illinois in Warranty Deed recorded in Book 2174, Page 502 as Document No. 1191496. Situated in Macon County, Illinois. Tax ID#: 04-12-15-127-012

Lot Two (2) of Mueller Co., 1951 Resurvey of Factory Grounds, as per Plat recorded in Book 982, Page 26 of the Records in the Recorder's Office of Macon County, Illinois. Situated in Macon County, Illinois. Tax ID#: 04-12-15-128-001

Lot 11 and the South 127 feet of the West 81 feet of Lot 12 in Block 2 of S.K. Thompson's 2nd Addition to the City of Decatur, as per Plat recorded in Book U, Page 623 of the Records in the Recorder's Office of Macon County, Illinois, EXCEPT the West 50 feet of said Lot 11, and EXCEPT that part of Lot 11 conveyed to the Wabash Railroad Company by deed recorded in Book 381, Page 5, and EXCEPT that part deeded to the State of Illinois in Warranty Deed recorded in Book 2174, Page 502 as Document No. 1191496. Situated in Macon County, Illinois. Tax ID#: 04-12-15-128-014

LEGAL DESCRIPTION – EXHIBIT B

Parcel Numbers:

17-12-27-126-002

Beginning at a point 2015.13 feet East of the Northwest Corner of Sector 27, T-16-N, R-2-E of the 3rd P.M.; thence South 28° 21' 03" West, a distance of 116.10 feet; thence South 4° 34' 03" West, a distance of 100.72 feet; thence South 28° 53' 03" West, a distance of 1207.27 feet; thence South 82° 31' 10" West, a distance of 121.67 feet; thence North 61° 13' 35" West, a distance of 504.13 feet; thence North 28° 40' 43" , a distance of 500.00 feet, thence North 28° 07' 16" East, a distance of 1133.46 feet; thence South 60° 52' East, (S60° 58' 52" E), 575.10 feet; thence South 28° 21' 03" West, a distance 143.72 feet to the point of beginning, containing 22.433 Acres, more or less

04-12-22-376-002

Beginning at a point 2015.13 feet East of the Northwest Corner of Section 27, T-16-N, R-2-E of the 3rd P.M.; thence South 28° 21' 03" West, a distance of 116.10 feet; thence South 4° 34' 03" West, a distance of 100.72 feet; thence North 28° 53' 03" East, a distance of 351.52 feet; thence North 60° 58' 52" West, a distance of 43.89 feet; thence South 28° 21' 03" West, a distance of 1437.75 feet to the point of beginning, containing 0.298 Acres, more or less.