

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Caterpillar Inc., a Delaware corporation (“Seller”), and the City of Peoria, Illinois, an Illinois municipal corporation (“Buyer”).

### RECITALS:

**WHEREAS**, Seller owns the real property described on Exhibit A attached hereto (the “Property”); and

**WHEREAS**, Buyer desires to purchase the Property, and Seller desires to sell and convey the Property to Buyer all pursuant to the terms and conditions contained herein.

### AGREEMENTS:

**NOW, THEREFORE**, in consideration of these recitals and the mutual covenants, representations, warranties and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I. DEFINITIONS

For purposes of this Agreement, each of the following capitalized terms shall have the meaning given such terms below:

“**Agreement**” shall mean this Purchase and Sale Agreement.

“**Buyer**” shall mean the City of Peoria, Illinois, an Illinois municipal corporation.

“**Claims**” shall mean, as applicable, all claims, charges, liens, contracts, leases, licenses, rights, options, security interests, mortgages, encumbrances and restrictions whatsoever.

“**Closing**” shall mean the consummation of the transactions contemplated by this Agreement pursuant to the terms and conditions herein.

“**Closing Date**” shall mean August 30, 2019.

“**Documents**” shall mean the exhibits and the other documents and instruments contemplated hereby.

“**Due Diligence Period**” shall mean the period commencing on the Effective Date and ending five (5) days prior to the Closing Date, as the same may be extended pursuant to the terms of this Agreement.

“**Effective Date**” shall mean the date first above mentioned.

“**Environmental Audit**” shall mean a Phase I environmental site assessment and, if indicated and consented to in writing by Seller, a Phase II environmental site assessment of the Property performed by a licensed environmental consultant selected by Buyer, and in accordance with the applicable ASTM Standards.

**“Environmental Laws”** shall mean any federal, state, provincial or local law, statute, ordinance, regulation, or order, or other pronouncement now in effect or as hereafter amended, which have the force or effect of law, relating to human health or safety and the protection, preservation, or remediation of the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., the Federal Hazardous Substances Act, 15 U.S.C. Section 1261 et seq., and the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11011 et seq., and analogous state, provincial or local laws.

**“Escrow Agent”** shall mean Chicago Title Company, 6901 N. Knoxville, Peoria, Illinois.

**“Hazardous Materials”** shall mean any substance, waste or material that is regulated, defined or classified as a hazardous or toxic, or as a threat or potential threat to human health, safety or the environment by any Environmental Laws.

**“Legal Requirements”** shall mean all federal, state, local, municipal, foreign, international, laws, statutes, ordinances, legal requirements, rules, codes, regulations and orders.

**“Monetary Obligations”** shall mean (a) any mortgage, deed to secure debt, deed of trust or similar security instrument encumbering all or any part of the Property, (b) any mechanic’s, materialman’s or similar lien, (c) the lien of ad valorem real or personal property taxes, assessments and governmental charges affecting all or any portion of the Property which are due and payable or delinquent, and (d) any judgment of record against Seller in the county or other applicable jurisdiction in which the Property is located.

**“Parking Deck Escrow Agreement”** shall mean that certain Escrow Agreement by and among the Buyer, Seller and National City Bank of Michigan/Illinois dated August 20, 2001.

**“Permitted Encumbrances”** shall mean all (i) liens for taxes, assessments and other governmental charges not yet due and payable; (ii) those items identified in the Title Commitment or surveys which do not materially or adversely affect Buyer’s intended use of the Property, or which are otherwise waived, or deemed waived, by Buyer in accordance with this Agreement or as otherwise expressly provided herein (other than Monetary Obligations); (iii) any encumbrances expressly consented to by Buyer in writing prior to the Closing Date; and (iv) encumbrances stated in deed or other instrument of conveyance of the Property to Seller.

**“Person”** shall mean and include an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and a government or other department or agency thereof.

**“Property”** shall mean the concrete enclosure consisting of levels seven (7), eight (8), and nine (9) of the building complex, together with the two (2) ramps connecting the Sixth (6th) level with the seventh (7th) level of the building complex, and a certain ramp landing area within the easterly portion of the sixth (6th) level of the building complex including, without limitation, (a) all interior bearing walls therein supporting said building complex, (b) all columns therein supporting said building complex, and (c) a roofing structure above level nine (9) of the building complex (but excluding therefrom all stairwell areas and elevator areas), all as more particularly described on Exhibit A attached hereto and made a part hereof, together with all improvements and fixtures located within such space and all privileges, rights, easements, hereditaments and appurtenances thereto belonging, including without limitation all rights of

Seller with respect to (i) the Reciprocal Easement Agreement by and among Buyer, Seller and Riverfront Development, L.L.C. (“Developer”) dated as of September 7, 1999 and recorded with the Peoria County, Illinois Recorder on September 15, 1999 as Document No. 99-34516 and (ii) the Stairwell/Elevator Easement Agreement by and among Buyer, Seller and Riverfront Development, L.L.C. (“Developer”) dated as of September 7, 1999 and recorded with the Peoria County, Illinois Recorder on September 15, 1999 as Document No. 99-34517.

“**Purchase Price**” shall mean the aggregate amount of Two Million Dollars (\$2,000,000.00), payable as provided herein and subject to adjustment in accordance herewith.

“**Seller**” shall mean Caterpillar Inc., a Delaware corporation.

“**Title Company**” shall mean Chicago Title Company, 6901 N. Knoxville, Peoria, Illinois.

“**Title Commitment**” shall mean a commitment issued by Title Company committing to issue to Buyer the Title Insurance, together with a copy of all documents referenced therein.

“**Title Insurance**” shall mean an ALTA owner’s policy of title insurance issued by the Title Company with respect to the Property with coverage in an amount equal to the Purchase Price in a form acceptable to Buyer.

“**Title Objections**” shall mean any encumbrances reflected on the Title Commitment which do not constitute Permitted Encumbrances and are not acceptable to Buyer.

## **ARTICLE II.** **PURCHASE AND SALE**

SECTION 2.1 Sale of the Property; Payment of the Purchase Price. Subject to and in accordance with the terms and conditions of this Agreement, Buyer agrees to purchase, and Seller agrees to sell, free and clear of all Claims except for Permitted Encumbrances, all of Seller’s right, title and interest in and to the Property, for the Purchase Price. Buyer shall pay the Purchase Price to Seller as follows: at Closing, Buyer shall deliver the Purchase Price to Seller subject to prorations and adjustments as set forth herein, in immediately available funds to the Title Company for further delivery to Seller.

SECTION 2.2 Taxes, Fees and Expenses Associated with Transfer of the Property. Seller shall pay for the following expenses: all applicable sales taxes, transfer taxes, grantor’s taxes, and all other similar taxes arising out of the consummation of the transactions contemplated hereby, and recordation taxes arising out of the consummation of the transactions contemplated hereby. Seller shall also pay all fees and premiums associated with the Title Commitment and Owner’s Title Insurance and any reasonable closing fee charged by the Title Company. Buyer shall be responsible for the cost of the premium for any lender’s title policy and title endorsements it may request, and for the recording of the Special Warranty Deed. Except as otherwise expressly set forth in this Section 2.2, each of Buyer and Seller shall pay its own costs incurred in connection with the transactions contemplated herein, including all attorneys’ fees and due diligence expenses.

SECTION 2.3 Expense Prorations. Except as otherwise expressly set forth herein, all expenses arising from the ownership of the Property, including, without limitation, all real estate and personal property taxes and all utility charges shall be apportioned between Buyer and Seller as of 12:01 a.m. on the Closing Date, in accordance with the principle that Seller shall be responsible for all expenses and obligations arising from the ownership of the Property before such time, and Buyer shall be responsible for all expenses and obligations arising from ownership of the Property after such time.

For purposes of the forgoing, real estate and personal property taxes for the year in which the Closing occurs shall be prorated on a calendar year basis as of the Closing Date. When Buyer receives the real estate property tax bill in 2020 for the 2019 real estate taxes for the Property, Buyer shall invoice Seller for Seller's portion of such real estate taxes. Notwithstanding the foregoing, the parties acknowledge and agree that if the Property is exempted from real estate taxes from and after the date of conveyance, Seller shall pay the entire real estate tax bill for 2019 (payable 2020) upon receipt.

**ARTICLE III.**  
REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants to Buyer as follows:

SECTION 3.1 Organization and Qualification. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is duly authorized to transact business in the state in which the Property is located.

SECTION 3.2 Corporate Power and Authority. Seller has the requisite power and authority to execute and deliver this Agreement and the Documents and to consummate the transactions contemplated hereby and thereby and has taken all necessary action to authorize and approve the execution, delivery and performance of this Agreement and the Documents and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes valid and binding obligations of Seller, enforceable against it in accordance with their terms.

SECTION 3.3 No Conflict. Neither the consummation of the transaction contemplated by this Agreement and the Documents, nor the performance of this Agreement and the Documents and such other agreements in compliance with the terms and conditions hereof and thereof by Seller will (i) violate, conflict with or result in any breach of any trust agreement, partnership agreement, judgment, decree, ordinance, order, statute or regulation applicable to Seller, (ii) violate any order, writ, injunction, decree, statute, ordinance, rule or regulation applicable to Seller or (iii) result in the creation of any Claims upon the Property (other than those created or permitted by Buyer or contemplated by this Agreement).

**ARTICLE IV.**  
REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer represents and warrants to Seller as follows:

SECTION 4.1 Organization. Buyer is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Illinois.

SECTION 4.2 Power and Authority. Buyer has the power and authority to execute and deliver this Agreement and the Documents. The execution and delivery of this Agreement and the Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by all necessary corporate action of Buyer. This Agreement has been duly executed and delivered by, and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

SECTION 4.3 Validity, Etc. Neither the execution and delivery by Buyer of this Agreement and the other Documents, the consummation by Buyer of the transactions contemplated hereby or thereby, nor the performance by Buyer of this Agreement and such other agreements in compliance with the terms and conditions hereof and thereof will (i) violate, conflict with or result in any breach of any trust agreement, certificate of incorporation, bylaws, judgment, decree, order, statute or regulation applicable to Buyer, (2) violate, conflict with or result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under any law, rule or regulation or any judgment, decree, order, governmental permit, license or order or any of the terms, conditions or provisions of any mortgage, indenture, note, license, agreement or other instrument to which Buyer is a party, or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer.

**ARTICLE V.**  
COVENANTS AND AGREEMENTS

SECTION 5.1 Cooperation. Each of the parties hereto shall use their best efforts in good faith to perform and fulfill all conditions and obligations to be fulfilled or performed by it hereunder to the end that the transactions contemplated hereby will be fully and timely consummated.

SECTION 5.2 Efforts. Seller and Buyer shall each use commercially reasonable efforts to procure upon reasonable terms and conditions all consents and approvals, completion of all filings, all registrations and certificates, and satisfaction of all other requirements prescribed by law which are necessary for the consummation of the transactions contemplated by this Agreement.

SECTION 5.3 Due Diligence Period.

(a) *Matters To Be Reviewed.* Buyer may evaluate the following matters within the Due Diligence Period:

- (i) the physical condition of the Property, including without limitation:
  - (1) soil, seismic, hydrological, geological and topographical conditions,
  - (2) the availability of adequate utilities and public access,
  - (3) the status and nature of any existing or proposed assessment districts and the amount of any assessment liability,
  - (4) the character and amount of any fee or charge which may be imposed in connection with the development or operation of the Property,
  - (5) whether or not the Property is located in a Special Flood Hazard Area,
  - (6) the status of the Property with respect to asbestos and other hazardous and toxic materials,
  - (7) compliance of the Property with all applicable laws, including Environmental Laws,
  - (8) investigation of the availability of potable waters, including, without limitation, by means of sampling of existing wells, drilling test wells, electrical resistivity tests and seismic studies,

(9) wetlands surveys and mapping, including, without limitation, identification and classification of existing flora and fauna,

(10) archeological investigation, including investigation and sampling for cemeteries or native American artifacts,

(11) structural inspections, including roof and building materials, of any structures located on the Property, and

(12) operability of electrical, heating, ventilation and air conditioning (“HVAC”), plumbing, drainage and other mechanical systems at or servicing the Property;

(ii) the legal description of the Property contained on Exhibit A;

(iii) applicable government ordinances, rules and regulations and evidence of compliance therewith, including without limitation zoning and building regulations;

(iv) all private restrictions applicable to the Property, including without limitation, declarations of covenants, conditions and restrictions, reciprocal easement and operating agreements, architectural restrictions and owners’ association governing documents;

(v) all licenses, permits, subdivision maps and conditions, improvement agreements, bonds, development agreements, and any and all other governmental approvals and/or authorizations relating to the Property, together with plans and specifications for the Property;

(vi) agreements, contracts, documents, instruments, reports, surveys, title insurance policies, current tax bills, books and records relating to the Property; and

(vii) any and all other matters concerning the current and future use, feasibility or value, or governmental permissions or entitlements pertaining to, the Property, or any other matter or circumstance relevant to Buyer in its discretion concerning the Property and its marketability.

(b) *Delivery of Copies.* Within ten (10) days following the Effective Date, Seller will provide to Buyer, or make reasonably available to Buyer for inspecting, copies of all items described in Section 5.3(a) above which are in Seller’s possession, except any information which is privileged, confidential or proprietary.

(c) *Notice of Objections.* If Buyer notifies Seller in writing of any objections to the condition of the Property or any other matters relating to the Property as referred to in Section 5.3(a) not later than the end of the Due Diligence Period, the parties shall have five (5) days to agree upon a resolution of any objections. If the parties cannot resolve Buyer’s objections within such five (5) day period, then at Buyer’s sole discretion, Buyer may terminate this Agreement by written notice to Seller, which notice must be given within three (3) days after the expiration of the five (5) day period, and this Agreement shall terminate. If Buyer fails to deliver notice of any objections during the Due Diligence Period, then the parties shall proceed to Closing.

**SECTION 5.4** Access. During the Due Diligence Period, Seller shall permit Buyer and its authorized representatives to inspect the Property, to perform due diligence and environmental investigations (including Environmental Audits), to examine the records of Seller with respect to the Property, and make copies thereof, at such times during normal business hours as Buyer or its

representatives may request. All such inspections shall be nondestructive in nature, and specifically shall not include any physically intrusive testing except with Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Unless otherwise provided in this Agreement, all inspection fees, appraisal fees, engineering fees and all other costs and expenses of any kind incurred by Buyer relating to the inspection of the Property shall be solely Buyer's expense. Seller reserves the right to have a representative present at the time of making any such inspection and tour of the Property. Buyer shall notify Seller not less than twenty-four (24) hours in advance of making any such inspection or tour. Buyer hereby indemnifies and agrees to defend and hold Seller harmless from any and all claims, losses, damages, judgments, settlements, fines, penalties, fees (including, without limitation, attorneys' fees), costs and expenses incurred by Seller and arising out of any personal injury or death of any person or any damage to property resulting from acts or omissions of Buyer or any of its agents, representatives, contractors or subcontractors relative to entry or activities upon the Property or any surrounding land as well as such inspections and tests. It is further agreed that before entry upon the Property to perform any inspections or tests or other activity, Buyer must provide to Seller a certificate of insurance in the amount of \$2,000,000 for general liability reasonably satisfactory to Seller. Buyer agrees that it will use commercially reasonable efforts not to permit to exist any dangerous or hazardous conditions upon the Property as a result of such inspections or tests and shall restore the Property in all material respects to the Property's condition prior to any tests or inspections. Notwithstanding any other provision of this Agreement to the contrary, the foregoing agreements of Buyer contained in this Section 5.4 shall survive any termination of this Agreement and or the Closing.

**SECTION 5.5**      Payment of Liabilities. Except as expressly provided otherwise in this Agreement, Seller shall pay and satisfy in full all of Seller's other obligations and liabilities, of any nature whatsoever, affecting the Property which accrue prior or subsequent to the Closing Date.

**SECTION 5.6**      Title Insurance. Buyer may order and obtain, at Seller's expense, during the Due Diligence Period the Title Commitment. Buyer shall deliver copies of the Title Commitment (as well as any revised versions or endorsements thereto) to Seller promptly after Buyer's receipt of same.

Buyer shall, within ten (10) days after Buyer's receipt of the Title Commitment, but in any event prior to the expiration of the Due Diligence Period, notify Seller in writing of any Title Objections. Seller shall have the right, but not the obligation (except as to Monetary Obligations), to attempt to remove, satisfy or otherwise cure any Title Objections. Except as to Monetary Obligations, Seller shall have a period of five (5) business days after its receipt of notice of the Title Objections within which to notify Buyer of its election either to attempt to cure such Title Objections prior to the Closing or decline to attempt to cure such Title Objections. Except as to Monetary Obligations, Seller's failure to give such notice on a timely basis shall be deemed its election not to attempt to cure such Title Objections. If Seller elects to attempt to cure one or more Title Objections, completion of such cure shall be a condition of Buyer's obligation to consummate the Closing. Except as to Monetary Obligations, if Seller elects not to, or is deemed to have elected not to, attempt to cure such Title Objections, Buyer may, prior to the expiration of the Due Diligence Period, elect to terminate this Agreement in its entirety. If Buyer fails to make such election prior to the expiration of the Due Diligence Period, such Title Objections (except Monetary Obligations) shall be deemed waived by Buyer and shall become Permitted Encumbrances hereunder. Notwithstanding anything to the contrary contained in this Agreement, Seller shall be obligated to cure or satisfy all Monetary Obligations affecting the Property at or prior to Closing.

**SECTION 5.7**      Environmental and Engineering Reviews.

If during the Due Diligence Period, Buyer elects to obtain an Environmental Audit:

(a) any report prepared as the result of the Environmental Audit will be conspicuously labeled as a draft, and Buyer will promptly give Seller a copy of the draft report. Prior to the Closing, Buyer will keep the draft report and the information contained therein confidential and will not disclose it to any person or entity without Seller's prior written consent; provided, however, that Buyer may furnish a copy of said draft report to any proposed lender in connection with prosecution of an application for a mortgage loan and to any consultant or attorney engaged in, or commenting upon the results of, said draft report; and

(b) any ground water, soil or other samples taken from the Property will be properly disposed of by Buyer at Buyer's sole cost and in accordance with all applicable laws.

SECTION 5.8      Risk of Loss; Condemnation.

(a) Each of the parties hereto acknowledges that the risk of loss, damage or destruction of the Property shall be upon Seller before the Closing and after the Closing shall pass to Buyer. In the event of any material loss, damage or destruction of the Property by fire or other cause prior to the Closing Date, Seller shall promptly notify Buyer thereof and furnish to Buyer a written statement of the name of each insurance company covering such hazard and the amount of insurance, if any, payable on account thereof. If the damage to the Property can be repaired, restored or replaced to its previous condition in all material respects prior to the Closing Date, Seller shall, to the extent of available insurance proceeds, effect such repairs, restoration or replacement in all material respects at Seller's sole cost and expense within such period. Seller shall have the right to use all insurance proceeds to effect such repair, restoration or replacement and to retain all excess proceeds. If such repair, restoration or replacement in all material respects cannot be completed before the Closing Date, then Buyer shall be entitled, at its sole option, (i) to consummate the purchase and sale contemplated herein, in which event Seller shall pay over and/or assign to Buyer all insurance proceeds payable on account of such casualty, or (ii) to terminate this Agreement in its entirety. Notwithstanding the foregoing, if in Seller's reasonable judgment, such repair, restoration or replacement costs would be less than forty percent (40%) of the Purchase Price, this Agreement shall remain in full force or effect, Buyer shall not have the option to terminate this Agreement in its entirety, and the cost of such repair, restoration, or replacement shall be deducted from the Purchase Price. Buyer will not be entitled to any insurance proceeds. If, in Seller's reasonable judgment, such repair, restoration or replacement costs would be equal to or greater than forty percent (40%) of the Purchase Price, then Seller shall have the option to terminate this Agreement in its entirety, without liability to Buyer.

(b) In the event that prior to Closing there shall occur a taking by condemnation or eminent domain of any portion of the Property or a proposed conveyance to a condemning authority in lieu of condemnation, then Buyer, at its option, may either (i) terminate this Agreement in its entirety; or (ii) proceed to Closing, in which event (A) Seller shall assign to Buyer at Closing all interest of Seller in and to any condemnation proceeds that may be payable to Seller (and not paid to Seller as of Closing) on account of such condemnation and thereupon Buyer shall control all negotiations and proceedings undertaken with the condemning authority with respect thereto, and (B) Buyer shall receive a credit against the Purchase Price otherwise payable at Closing in the amount of any condemnation proceeds actually paid to Seller with respect to the condemned property prior to Closing.

SECTION 5.9      Brokers. The parties acknowledge and agree that neither Buyer nor Seller has engaged any broker regarding the sale or purchase of the Property. Buyer shall indemnify and hold Seller harmless from and against any and all commissions, fees and expenses, and all claims therefore by any broker, salesman or other party in connection with or arising out of Buyer's action in entering

into this Agreement. Seller shall indemnify and hold Buyer harmless from and against any and all commissions, fees and expenses, and all claims therefore by any broker, salesman or other party in connection with or arising out of Seller's action in entering into this Agreement

**SECTION 5.10**     Use of Property; Condition. Without the prior written consent of Buyer, Seller will not (a) convey any interest in the Property and will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the date of this Agreement, except as may be otherwise provided for in this Agreement; or (b) enter into any contract or agreement providing for the provision of goods or services to or with respect to the Property or the operation thereof unless such contracts or agreements can be terminated without penalty on or before the Closing Date. Seller will keep and perform all of its material obligations to be performed by Seller under any contracts applicable to the Property. Seller will maintain, repair, manage and operate the Property in accordance with Seller's prior practices and will not dissipate the Property.

**ARTICLE VI.**  
CONDITIONS TO BUYER'S OBLIGATIONS

The obligation of Buyer to consummate the transactions contemplated hereby is subject to the satisfaction, on or before the Closing Date, of the following conditions each of which may be waived by Buyer in its sole discretion:

**SECTION 6.1**     Closing Documents. Seller shall have delivered all of the resolutions, certificates, Documents and instruments required by this Agreement.

**SECTION 6.2**     Title Insurance. Buyer shall have received from Title Company a marked-up Title Commitment or countersigned pro-forma policy of Title Insurance, which shall be subject only to Permitted Encumbrances. Seller shall have removed or cured any matters that are not Permitted Encumbrances to Buyer's satisfaction and shall have provided affidavits with regard to the Property as reasonably requested by the Title Company.

**ARTICLE VII.**  
CONDITIONS TO SELLER'S OBLIGATIONS

The obligation of Seller to transfer the Property to Buyer and of Seller to consummate the other transactions contemplated hereby is subject to the satisfaction, on or before the Closing Date, of the following conditions, each of which may be waived by Seller in their sole discretion:

**SECTION 7.1**     Closing Documents. Buyer shall have delivered all of the resolutions, certificates, Documents and instruments required by this Agreement.

**SECTION 7.2**     Purchase Price. Buyer shall deliver the Purchase Price in accordance with the provisions hereof.

**ARTICLE VIII.**  
THE CLOSINGS AND CERTAIN CLOSING DELIVERIES

**SECTION 8.1**     Time and Place of Closing. Upon the terms and subject to the satisfaction or waiver of the conditions contained in this Agreement, the Closing shall take place at the offices of Title Company on the Closing Date. The transactions contemplated by this Agreement shall be effective as of 12:01 a.m. on the Closing Date.

SECTION 8.2 Deliveries by Seller. At the Closing, Seller will deliver or cause to be delivered to Buyer the following:

(a) An affidavit of Seller certifying as to their non-foreign status in accordance with Section 1445(b)(2) of the Code in the form attached hereto as Exhibit B;

(b) A Special Warranty Deed substantially in the form attached hereto as Exhibit C;

(c) All keys and combinations to locks and other security devices located at the Property; all to the extent that the foregoing items are in the possession of Seller or Seller's agents; and

(d) All other Documents, instruments and writings required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

SECTION 8.3 Deliveries by Buyer. At the Closing, Buyer will deliver the following to or for the account of Seller or certain of its employees, as the case may be:

(a) The Purchase Price; and

(b) All other Documents, instruments and writings required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

SECTION 8.4 Possession. Seller shall deliver Possession of the Property to Buyer on or before the close of business on the Closing Date, free from all parties claiming rights to possession of or having Claims against any of the Property other than pursuant to contractual obligations to be assumed by Buyer.

## **ARTICLE IX.** **TERMINATION**

SECTION 9.1 Events of Termination. Prior to the Closing, this Agreement may be terminated, and the transactions contemplated hereby abandoned as follows:

(a) By the mutual written consent of the parties;

(b) by Seller upon a breach in any material respect of any covenant or agreement on the part of Buyer set forth in this Agreement, or if any representation or warranty of Buyer shall have been materially breached or shall have been or become materially untrue;

(c) by Buyer upon a breach in any material respect of any covenant or agreement on the part of Seller set forth in this Agreement, or if any representation or warranty of Seller shall have been materially breached or shall have been or become materially untrue;

(d) By Buyer pursuant to Sections 5.3(c), 5.6, 5.8(a), or 5.8(b); or

(e) By Buyer or Seller, by delivery of written notice of such termination to the other party, at any time that is one hundred eighty (180) days after the Effective Date, if the Closing has not occurred, *provided, however*, that the right to terminate this Agreement under this Section 9.1(e) shall not be available to (i) any party whose breach of its representations and warranties in this Agreement or whose failure to perform any of its covenants and agreements under this Agreement shall have been a contributing cause of, or resulted in, the failure of the Closing to occur on or before such date, or (ii) any

party whose failure to fulfill any material obligation under this Agreement or whose failure to use all good faith efforts to promptly cause the satisfaction of the conditions under Article VI or Article VII, as applicable, has been the cause of, or resulted in, the failure of the Closing to occur by such date.

**SECTION 9.2**                    Remedies and Rights Upon Termination. Except with respect to an intentional or fraudulent breach of this Agreement, prior to the Closing, (a) termination of this Agreement pursuant to Section 9.1, shall be Seller's sole remedy with respect to a breach by Buyer of its representations and warranties contained herein, and (b) termination of this Agreement pursuant to Section 9.1 or specific performance shall be Buyer's sole remedy with respect to a breach by Seller of its representations and warranties contained herein. In the event of an intentional or fraudulent breach of this Agreement, the non-breaching party shall have all remedies at law or in equity with respect to such breach.

**ARTICLE X.**  
**AS-IS; SURVIVAL**

**SECTION 10.1**                Sale "As Is, Where Is". Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey to Buyer and Buyer shall accept the Property "AS IS, WHERE IS, WITH ALL FAULTS," except to the extent expressly provided otherwise in this Agreement and any document executed by Seller and delivered to Buyer at Closing. Except as expressly set forth in this Agreement, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Due Diligence Period, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer's inspections and investigations. Buyer hereby represents and warrants to Seller that: (a) Buyer is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (b) Buyer is purchasing the Property for business, commercial, investment or other similar purpose and not for use as Buyer's residence. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from any significant disparate bargaining position in relation to Seller.

**SECTION 10.2**                Survival. Except for any representations and warranties expressly set forth in the Documents delivered at Closing pursuant to Section 8.2 of this Agreement, all representations and warranties set forth in this Agreement shall merge into the deed delivered pursuant to Section 8.2(b) of this Agreement and shall not survive Closing.

**ARTICLE XI.**  
**MISCELLANEOUS**

SECTION 11.1      Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (i) delivered by hand, (ii) sent by recognized overnight courier, (iii) made by telecopy or facsimile transmission, or (iv) sent by registered or certified mail, return receipt requested, postage prepaid.

If to Seller:

Caterpillar Inc.  
100 N. E. Adams Street  
Peoria, Illinois 61629-4260  
Attention: Manager, Corporate Real Estate  
Email: Caterpillar\_Real\_Estate@cat.com

With a copy to:

Caterpillar Inc.  
510 Lake Cook Road, Suite 100  
Deerfield, Illinois 60015  
Attention: Deputy General Counsel, Enterprise Risk

If to Buyer:

City of Peoria, Illinois  
419 Fulton Street  
Peoria, Illinois 61602  
Attn: City Clerk

With a copy to:

Elias, Meghinnes & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, Illinois 61602  
Attn: John S. Elias

All notices, requests, consents and other communications hereunder shall be deemed to have been given (i) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (ii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (iii) if sent by registered or certified mail, on the fifth (5th) business day following the day such mailing is sent. The address of any party herein may be changed at any time by written notice to the parties.

SECTION 11.2      Parking Deck Escrow Agreement. The parties acknowledge that as of July 31, 2019, the City escrow pursuant to the Parking Deck Escrow Agreement (US Bank Account No. M17833001) (the "City Escrow") has a balance \$476,260.60 and that the Caterpillar escrow pursuant to the Parking Deck Escrow Agreement (US Bank Account No. M17834009) (the "Cat Escrow") has a balance of \$570,591.29. The parties agree to the following disbursements from such escrow accounts at Closing:

- \$181,181.38 from the City Escrow to the City;
- \$115,837.27 from the Cat Escrow to Caterpillar;
- \$300,000.00 from the Cat Escrow to the City Escrow; and
- the remaining balance of the Cat Escrow after the above disbursements (\$154,754.02 plus accrued interest from August 1, 2019 to the Closing Date) to Caterpillar.

SECTION 11.3 Entire Agreement. This Agreement and the other Documents embody the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the other Documents shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

SECTION 11.4 Modifications and Amendments. The terms and provisions of this Agreement may be modified or amended only by written agreement executed by all parties hereto.

SECTION 11.5 Assignment/Binding Effect. Neither this Agreement, nor any right hereunder, may be assigned by any of the parties hereto without the prior written consent of the other party; *provided, however*, that Buyer may assign its right to receive the Property to any of its subsidiaries without the consent of Seller. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and permitted assigns.

SECTION 11.6 Parties in Interest. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be construed to create any rights or obligations except among the parties hereto, and no person or entity shall be regarded as a third-party beneficiary of this Agreement.

SECTION 11.7 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the internal laws of the State of Illinois without giving effect to the conflict of law principles thereof.

SECTION 11.8 Severability. In the event that any court of competent jurisdiction shall finally determine that any provision, or any portion thereof, contained in this Agreement shall be void or unenforceable in any respect, then such provision shall be deemed limited to the extent that such arbitral tribunal determines it enforceable, and as so limited shall remain in full force and effect. In the event that such arbitral tribunal shall determine any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

SECTION 11.9 Interpretation. The parties hereto acknowledge and agree that: (i) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, and (ii) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

SECTION 11.10 Headings and Captions. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify, or affect, or be considered in construing or interpreting the meaning or construction of any of the terms or provisions hereof.

SECTION 11.11 Expenses. Except as otherwise provided in this Agreement and the Documents, each party shall pay its own fees and expenses (including the fees of any attorneys, accountants, appraisers or others engaged by such party) incurred in connection with this Agreement and the transactions contemplated hereby whether or not the transactions contemplated hereby are consummated.

SECTION 11.12 Gender. All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or entity or the context may require.

SECTION 11.13 Confidentiality. Unless otherwise agreed to in writing by Seller and Buyer, each party will keep confidential all documents, financial statements, reports or other information provided to, or generated by the other party relating to the Property and will not disclose any such information to any person other than (i) those employees and agents of Seller or Buyer; (ii) those who are actively and directly participating in the evaluation of the Property and the negotiation and execution of this Agreement or financing of the purchase of the Property and (iii) pursuant to Legal Requirements, order or legal process of any court of competent jurisdiction or any governmental agency.

SECTION 11.14 Intentionally Omitted.

SECTION 11.15 Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 11.16 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. In the event any date for performance under this Agreement falls on a weekend or holiday, the date for such performance shall automatically be deemed to be the next business day.

SECTION 11.17 Data Privacy. During the real estate contract negotiation process, Seller may collect contact information. Any contact information collected may be used for Seller's property management activities and, is stored in a secure database. This could include name, address, phone, email and other pertinent information that Buyer has provided. For more information about Caterpillar's Data Privacy Statement, go to <http://www.caterpillar.com/dataprivacy>.

*[Signature Page Follows.]*

**IN WITNESS WHEREOF**, Buyer and Seller have each caused this Agreement to be executed by its duly authorized officer all as of the day and year first above written.

**BUYER:  
CITY OF PEORIA, ILLINOIS**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:  
CATERPILLAR INC.**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

319-1319.d4

**LIST OF EXHIBITS**

- Exhibit A Property Description
- Exhibit B FIRPTA Certificate
- Exhibit C Special Warranty Deed

**EXHIBIT A TO PURCHASE AND SALE AGREEMENT**

**Legal Description of the Property**

The Property is located at 222 SW Adams Street, Peoria, Illinois.

**LEGAL DESCRIPTION OF THE CATERPILLAR PARKING SPACE**

A CERTAIN PARKING SPACE WITHIN AN EXISTING NINE STORY BUILDING KNOWN AS ONE TECHNOLOGY PLAZA PARKING DECK LOCATED ON A PART OF BLOCK 5 IN THE ORIGINAL TOWN (NOW CITY) OF PEORIA BEING A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 8 NORTH, RANGE 8 EAST OF THE FOURTH PRINCIPAL MERIDIAN, PEORIA COUNTY, ILLINOIS, SAID PARKING SPACE EXTENDING FROM THE BOTTOM OF THE EXISTING SEVENTH FLOOR CONCRETE FLOOR SLAB GENERALLY AT ELEVATION 539 FEET 3 INCHES (NAVD-88 DATUM) TO THE TOP OF THE ROOF GENERALLY AT ELEVATION 588 FEET 0 INCHES, SAID SPACE BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 OF BLOCK 5 IN THE ORIGINAL TOWN (NOW CITY) OF PEORIA BEING A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 8 NORTH, RANGE 8 EAST OF THE 4TH PRINCIPAL MERIDIAN, PEORIA COUNTY, ILLINOIS, THENCE SOUTH 50°01'51" WEST, (BEARINGS ARE FOR DESCRIPTIVE PURPOSES ONLY) ALONG THE NORTH LINE OF SAID BLOCK 5, A DISTANCE OF 3.39 FEET TO THE POINT OF BEGINNING OF CATERPILLAR PARKING SPACE TO BE DESCRIBED:

FROM THE POINT OF BEGINNING, THENCE SOUTH 39°58'09" EAST, A DISTANCE OF 164.00 FEET; THENCE SOUTH 50°01'51" WEST, A DISTANCE OF 281.42 FEET; THENCE NORTH 39°58'09" WEST, A DISTANCE OF 164.00 FEET; THENCE NORTH 50°01'51" EAST, A DISTANCE OF 281.42 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THOSE TWO (2) SPACES WHICH ARE DIRECTLY ABOVE (AND ONLY DIRECTLY ABOVE) THE BOTTOM OF THE TWO (2) RAMPS CONNECTING THE SIXTH FLOOR CONCRETE FLOOR SLAB (THE BOTTOM OF WHICH IS GENERALLY AT ELEVATION 528 FEET 2 INCHES) AND THE SEVENTH FLOOR CONCRETE FLOOR SLAB (THE BOTTOM OF WHICH IS GENERALLY AT ELEVATION 539 FEET 3 INCHES) AND WHICH ARE BELOW ELEVATION 539 FEET 3 INCHES.

ALSO TOGETHER WITH LEVEL SIX RAMP LANDING AREA DESCRIBED AS FOLLOWS:

A CERTAIN SPACE WITHIN AN EXISTING NINE STORY BUILDING, KNOWN AS ONE TECHNOLOGY PLAZA PARKING DECK, SAID BUILDING BEING LOCATED ON A PART OF BLOCK 5 IN THE ORIGINAL TOWN (NOW CITY) OF PEORIA BEING A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 8 NORTH, RANGE 8 EAST OF THE FOURTH PRINCIPAL MERIDIAN, PEORIA COUNTY, ILLINOIS, SAID SPACE EXTENDING FROM THE BOTTOM OF THE EXISTING SEVENTH FLOOR CONCRETE FLOOR SLAB GENERALLY AT ELEVATION 539 FEET 3 INCHES (NAVD-88 DATUM) TO THE BOTTOM OF THE EXISTING SIXTH FLOOR CONCRETE FLOOR SLAB GENERALLY AT ELEVATION 528 FEET 2 INCHES, SAID SPACE BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 OF SAID BLOCK 5 IN THE ORIGINAL TOWN (NOW CITY) OF PEORIA, SAID POINT ALSO BEING THE INTERSECTION OF THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SOUTHWEST ADAMS STREET AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF FULTON STREET; THENCE SOUTH 39°24'03" EAST, (BEARINGS ARE FOR DESCRIPTIVE PURPOSES ONLY) ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF FULTON STREET, A DISTANCE OF 103.15 FEET; THENCE SOUTH 50°35'57" WEST, A DISTANCE OF 3.07 FEET TO THE POINT OF BEGINNING OF THE SIXTH FLOOR RAMP LANDING AREA TO BE DESCRIBED;

FROM THE POINT OF BEGINNING, THENCE SOUTH 39°58'09" EAST, A DISTANCE OF 47.62 FEET; THENCE SOUTH 50°01'51" WEST, A DISTANCE OF 30.63 FEET; THENCE SOUTH 39°58'09" EAST, A DISTANCE OF 13.87 FEET; THENCE SOUTH 50°01'51" WEST, A DISTANCE OF 6.86 FEET; THENCE NORTH 39°58'09" WEST, A DISTANCE OF 71.33 FEET; THENCE NORTH 50°01'51" EAST, A DISTANCE OF 16.25 FEET; THENCE NORTH 74°39'39" EAST, A DISTANCE OF 23.37 FEET TO THE POINT OF BEGINNING.

Parcel #18-09-264-008

**EXHIBIT B TO PURCHASE AND SALE AGREEMENT**

**Form of FIRPTA Certificate**

**CERTIFICATION OF NONFOREIGN STATUS**

Section 1445 of the Internal Revenue Code of 1986 provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Caterpillar Inc., a Delaware corporation ("Seller"), the undersigned hereby certifies to transferee, the City of Peoria, Illinois, an Illinois municipal corporation ("Buyer"), as follows:

1. Seller is not a nonresident alien individual, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller's U.S. tax identification number is 37-0602744; and
3. Seller's address is: 510 Lake Cook Road, Suite 100  
Deerfield, Illinois 60015

Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete.

**SELLER:**  
**CATERPILLAR INC.**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C TO PURCHASE AND SALE AGREEMENT**

**Form of Special Warranty Deed**

**SPECIAL WARRANTY DEED**

THIS INDENTURE WITNESSETH, that the Grantor, Caterpillar Inc., a Delaware corporation (hereinafter referred to as "Grantor") for an in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, grants, bargains and sells to the City of Peoria, Illinois, an Illinois municipal corporation, as Grantee, the real estate described on Exhibit A attached hereto and incorporated herein, which is also described on the Plat of Survey for One Technology Plaza Parking Deck prepared by Clark Engineers, Inc. and recorded with the Peoria County Recorder on September 7, 1999 as Document No. 99-33591.

Subject to: (a) general real estate taxes for 2019 and subsequent years; (b) easements, covenants, conditions, restrictions, dedications and reservations of record; and (c) zoning and use ordinances, rules and regulations, and matters of survey.

The Grantor hereby releases and waives all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

EXEMPT 35 ILCS 200/31-45(b)

Dated \_\_\_\_\_, 2019

IN WITNESS WHEREOF, the undersigned has executed and delivered this Special Warranty Deed on behalf of Grantor this \_\_\_\_ day of \_\_\_\_\_, 2019.

Grantor:  
**CATERPILLAR INC.**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) ss:  
COUNTY OF PEORIA         )

I, the undersigned, a Notary Public, in and for the above County and State, do hereby certify that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_, of Caterpillar Inc., a Delaware corporation, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as said officer of Caterpillar Inc., pursuant to the authority given by the Board of Directors of said corporation as his/her free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

[SEAL]

\_\_\_\_\_  
Notary Public  
My notary expires: \_\_\_\_\_

**EXHIBIT A TO SPECIAL WARRANTY DEED**

**LEGAL DESCRIPTION OF THE CATERPILLAR PARKING SPACE**

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