

CITY OF NEWTON, ILLINOIS

ORDINANCE NO. 22-05

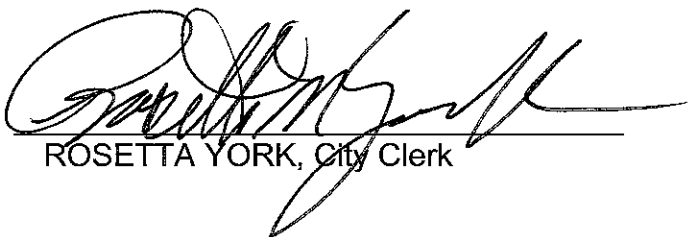
AN ORDINANCE AUTHORIZING PURCHASE OF
REAL ESTATE BY THE
CITY OF NEWTON, JASPER COUNTY, ILLINOIS

ADOPTED BY THE CITY COUNCIL
OF THE CITY OF NEWTON, ILLINOIS
THIS 19th DAY OF APRIL, 2022

PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF
THE CITY COUNCIL OF THE CITY OF NEWTON,
JASPER COUNTY, ILLINOIS
THIS 19th DAY OF APRIL, 2022

CERTIFICATE OF PUBLICATION

I, ROSETTA YORK, the duty qualified City Clerk of the City of Newton, Illinois, and the official custodian of records of said City do hereby certify that this Ordinance was published in pamphlet form by authority of the City Council on the 19th day of April, 2022.


ROSETTA YORK, City Clerk

ORDINANCE NO. 22-05

AN ORDINANCE AUTHORIZING PURCHASE OF
REAL ESTATE BY THE
CITY OF NEWTON, JASPER COUNTY, ILLINOIS

WHEREAS, the CITY OF NEWTON, ILLINOIS, is authorized pursuant to 65 ILCS 5/11-76.1-1 to purchase of real estate for public purposes; and

WHEREAS, the CITY COUNCIL has determined that the purchase of certain real property described below would serve the best interest of the citizens of the City of Newton as well be for public purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, ILLINOIS, as follows:

Section 1: That certain property located in Newton, Illinois, being described in Exhibit A attached hereto and incorporated herein by this reference, shall be purchased by the City of Newton for the sum of Thirty Thousand (\$30,000.00) Dollars and such other costs as set forth in that certain REAL ESTATE PURCHASE AGREEMENT between the INDIANA RAIL ROAD COMPANY, an Indiana Corporation, Seller and the CITY OF NEWTON, as Purchaser, as set forth in Exhibit B and incorporated herein by this reference.

Section 2: The REAL ESTATE PURCHASE AGREEMENT attached hereto as Exhibit B is hereby approved and confirmed.

Section 3: The City of Newton's Mayor, Joshua Kuhl, is hereby authorized to execute any and all documents necessary to consummate the transaction contemplated here.

Section 4: The Ordinance shall be published in a newspaper in general circulation in Jasper County twice and shall become effective 30 days after its second publication, as provided for in 65 ILCS 5/11-76.1-1-3.

BE IT FURTHER ORDAINED that the City Clerk shall record in the Office of the Recorder of Jasper County, Illinois, a duly certified copy of this Ordinance.

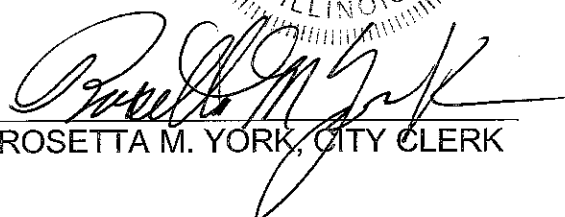
Upon roll call vote the following Alderpersons voted yea: **Marlene Harris, Gayle Glumac, David Brown and Mayor Joshua J. Kuhl**

Upon roll call vote the following Alderperson voted nay: **Eric Blake, Larry Brooks and R. J. Lindemann**

Passed, approval, published in pamphlet form and deposited and filed in the Office of the City Clerk Newton, Illinois the 19th day of April, 2022.



ATTEST:


ROSETTA M. YORK, CITY CLERK



JOSHUA KUHL, MAYOR

EXHIBIT 'A'

Thirty (30) feet in width from the center of INRD's main track originating at a point North of Decatur Street at Lots 119 and 120 of Picquets Addition, to the City of Newton and continuing along INRD's Browns' Main connection tract to a point South of Decatur Street at Lot 144 of Picquets Addition, to the City of Newton where the Browns' Main connection tract intersects with the former Browns' Main right of way.

ALSO, a parcel, which varies in width, originating on the former Browns' Main right of way, at the North public right of way of Decatur Street and continuing South along the abandoned rail road corridor terminating where the former Browns' Main intersects with North 1200th Street, Newton, Jasper County, Illinois, (hereinafter referred to as "the Real Estate").

EXHIBIT 'B'

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (hereinafter referred to as "Agreement") is executed this ____ day of April, 2022, between The Indiana Rail Road Company, an Indiana Corporation (hereinafter referred to as "Seller" or "INRD") and the City of Newton, Illinois (hereinafter referred to as "Purchaser"). The Seller agrees to convey to Purchaser, in fee simple, real estate located in the Town of Newton, Jasper County, Illinois, approximately described as follows:

Thirty (30) feet in width from the center of INRD's main track originating at a point north of Decatur Street at Lots 119 and 120 of Picquets Addition, to the City of Newton and continuing along INRD's Browns' Main connection track to a point south of Decatur Street at Lot 144 of Picquets Addition, to the City of Newton where the Browns' Main connection track intersects with the former Browns' Main right of way.

ALSO a parcel, which varies in width, originating on the former Browns' Main right of way, at the north public right of way of Decatur Street and continuing south along the abandoned rail road corridor terminating where the former Browns' Main intersects with north 1200th Street, Newton, Jasper County, Illinois (hereinafter referred to as "the Real Estate").

Article 1

Purchase Price and Manner of Payment

1.1. Purchase Price. The Purchase Price for the Real Estate shall be Thirty Thousand Dollars (\$30,000.00). The Purchase Price shall be paid on the Closing Date, by wire transfer or other immediately available funds.

1.2. Transaction Costs. Purchaser understands that Seller will incur expenses for: determining the legal description of the "Real Estate", survey expense, title search fees, and title insurance fee for issuance of a title insurance commitment in the amount of the Purchase Price. Purchaser will contribute fifty percent (50%) of the total of these expenses, up to a maximum amount of Five Thousand Dollars (\$5,000.00). Seller shall be responsible for all other transaction costs related to finalizing this transaction, notwithstanding any expenses incurred by Purchaser to comply with the provisions of Section 3.4.

Article 2

Possession and Title

2.1. Closing and Possession. Seller acknowledges that Purchaser is required to comply with 65 ILCS 5/11-76.1-1 and 65 ILCS 5/11-76.1-3 in order to approve this Purchase Agreement and finalize this transaction. As a result, closing shall occur within 30 days of Purchaser's compliance with the terms of the applicable provisions of the Illinois Compiled Statutes, and further provided Seller notifies Purchaser that all transaction contingencies have been satisfied and provides to Purchaser proof thereof at least fifteen (15) days prior to the closing date. It is anticipated that the Closing Date will be not sooner than May 25, 2022. In the transaction is not finalized on or before July 1, 2022, either party may terminate this Agreement without further recourse or obligation.

2.2. Title. Seller warrants that it shall provide good and marketable title to the Real Estate as of the Closing Date. Prior to closing Seller shall furnish, a commitment for an owner's title insurance policy in the amount of the Purchase Price. Any encumbrances or defects in title must be removed such that the final policy may be issued subject only to standard exceptions including, taxes, easements, flood restrictions, covenants and encumbrances of record and exceptions identified in the title commitment provided by Associated Capital Title (hereinafter collectively referred to as the "Permitted Exceptions"). In the event the Seller is unable to provide marketable title, this Agreement may be terminated by either party.

2.3. Limited Corporate Warranty Deed. Seller agrees to furnish a Limited Corporate Warranty Deed to the Real Estate, conveying the Real Estate in fee simple subject only to the Permitted Exceptions. Warranty of title shall be limited in scope and duration to the time INRD acquired the Real Estate from the Illinois Central Railroad Company on August 22, 1990.

Article 3

Transaction Contingencies

3.1. Inspection. Purchaser shall have the opportunity to inspect the Real Estate and have the Real Estate inspected by qualified professional(s). All inspections shall be concluded on or before May 1, 2022. In the event defects are discovered which substantially affect the value or Purchaser's intended use of the Real Estate, this Agreement may be terminated by Purchaser, upon written notice delivered to

Seller on or before May 1, 2022. After such date, all further inspections shall be waived and the Real Estate shall be accepted by Purchaser "AS IS" with all faults in the condition as existed at the time of the execution of this Agreement.

3.2. Warranties. Purchaser acknowledges that the Real Estate is being sold "AS IS" without any express or implied warranty, guarantee or promise regarding its use for any particular purpose.

3.3. Survey. Seller shall provide Purchaser with an accurate boundary survey of the Real Estate on or before May 1, 2022. Such survey shall be submitted to Purchaser for approval regarding the legal description; location; dimensions; and acreage of the Real Estate. Purchaser's approval of the survey shall not be unreasonably withheld. Purchaser may verify, at Purchaser's expense, all information contained in the survey. In the event the Seller is unable to provide an accurate legal description, Purchaser or Seller may terminate this Agreement.

3.4. Removal of Rails and Crossing Repairs. Purchaser shall, at Purchaser's sole expense, be responsible to remove and dispose of all railroad ties located upon the Real Estate. The removal and disposal of all railroad ties shall comply with all applicable federal, state and city ordinances, including regulations related to the handling and disposal of hazardous substances.

The INRD shall, at Seller's sole expense and within one hundred eighty (180) days from the Closing Date remove the track and ties and resurface the rights-of-way of Decatur, Reynolds and Wilson Streets and repair and the streetscape as necessary. All repairs to Decatur, Reynolds and Wilson Street shall be performed in accordance with applicable federal, state and city ordinances, including regulations related to maintenance and construction standards for municipal roadways and the handling and disposal of hazardous substances. Seller agrees to remove all personal property not included in the sale of the Real Estate.

Article 4

Taxes and Insurance

4.1. Taxes. Seller agrees to assume and pay all taxes assessed against the Real Estate pro-rated through the Closing Date. Purchaser shall be entitled to a credit against the Purchase Price, at closing, in an amount equal to all real estate taxes which are assessed prior to the Closing Date but not yet due and payable. Purchaser shall assume and pay all real estate taxes beginning with the next annual installment of real estate taxes, subsequent to the Closing Date and all subsequent taxes.

4.2. Insurance & Risk of Loss. Seller shall be responsible to insure against the risk of loss and/or damage until the Closing Date when the title to the Real Estate transfers to the Purchaser. In the event the Real Estate is substantially damaged prior to the Closing Date, Purchaser may terminate this Agreement.

Article 5

Representations and Warranties

5.1. Representations and Warranties of the Seller. The Seller represents, warrants and covenants to the Purchaser as follows:

5.1.1. Standing of the Seller. The Seller is an Indiana Corporation, in good standing in the State of Indiana who owns the Real Estate and is vested with all requisite power and authority to enter into this Agreement and perform all acts necessary to complete the transaction.

5.1.2. Transfer of Real Estate. The execution and performance of this Agreement will not result in any lien, charge or encumbrance upon the Real Estate.

5.1.3. Litigation and Investigations. There are no actions, suits, legal or administrative proceedings or governmental investigations existing or, to the best knowledge of the Seller, or any threatened against or affecting the Real Estate or relate in any way to the transactions contemplated by this Agreement.

5.1.4. Taxes. The Sellers have not received any notice of assessment of additional taxes and has not executed or filed with any other taxing authority any agreement extending the period for assessment of any income other taxes. The Purchaser will have no liability whatsoever for any federal, state or local taxes payments based upon the ownership of the Real Estate or the conduct of the Seller's business prior to the Closing Date or arising this of this transaction.

5.1.5. No Default. The terms of this Agreement will not violate or result in a breach or constitute a default under or result in the acceleration of any obligation or constitute a default of any contract, agreement, commitment, note, license, instrument, or order, judgment or decree to which the Seller is a party.

5.2. Representations and Warranties of the Purchaser. The Purchaser represent and warrant to the Seller, as follows:

5.2.1. Organization and Standing of Purchaser. The Purchaser represents that they are duly elected or appointed representatives of the City of Newton, Illinois and are vested with authority to enter into this Agreement and perform all acts necessary to complete the transaction.

5.2.2. Fees and Commissions. Neither the Purchaser or the Seller have agreed to pay any broker's or finder's fee or commission in connection with this Agreement.

5.2.3. Litigation and Investigations. There are no material actions, suits or proceedings or governmental investigations existing or, to the best knowledge of the Purchaser, threatened against or affecting the Purchaser, nor any judgments, decrees, orders, rulings, writs or injunctions specifically referring to the Purchaser which (either by reason of adherence or default) may adversely relate in any way to this transaction.

5.3. Survival of Warranties. Notwithstanding any other provisions of this Agreement, each and every representation and warranty of the parties shall survive the Closing Date for a period of one (1) year from the Closing Date.

5.4. Indemnification by Seller. The Seller agrees to indemnify and hold harmless the Purchaser, against any and all loss, injury, liability, claim, damage or expense (including, without limitation, reasonable attorney's fees), court costs and amounts paid in settlement of claims, incurred or sustained by the Purchaser, resulting from the following:

5.4.1. any inaccuracy in, or breach or violation of, the representations and warranties made by the Seller in the consummation of the purchase and sale of the Real Estate; and

5.4.2. any suits, actions or claims or other transactions of the Seller which arose prior to the Closing Date and which adversely affect the sale of the Real Estate to Purchaser or the value of the Real Estate as sold to Purchaser.

5.5. Indemnification by Purchaser. The Purchaser agrees to indemnify and hold harmless the Seller, and its successors and assigns, against any and all loss, injury, liability, claim, damage or expense (including, without limitation, reasonable attorneys' fees), court costs and amounts paid in settlement of claims, incurred or sustained by the Seller, or its successors or assigns resulting from the following:

5.5.1. any inaccuracy in, or breach or violation of the representations and warranties made by the Purchaser in the consummation of the purchase and sale of the Real Estate;

5.5.2. any suits, actions or claims or other transactions of the Purchaser which arises subsequent to the Closing Date and related to Purchaser's use or improvements to the Real Estate; and

5.5.3. any liability that was assumed by the Purchaser under this Agreement.

Article 6

Remedies on Default

6.1. Dispute Resolution. Disputes arising among the parties related to the performance or interpretation of this Agreement or the parties' rights, duties and obligations subsequent to the Closing Date shall first be subject to informal discussions between the parties in an effort to negotiate a mutually agreeable resolution. The parties may employ or enlist the assistance of any person or professional to provide information and consultation necessary to resolve any disputes. If any party reasonably believes such informal discussions have become futile, either party may refer the matter to non-binding mediation. Mediation hereunder shall be held in Newton, Illinois, by a mediator agreed to by all parties. Each party shall bear its own costs of mediation participation, and the cost of the mediator shall be shared equally. Participation in the mediation process shall be a condition precedent to the initiation of any formal arbitration process. In the event the mediation process is ineffective to resolve all issues, to the reasonable satisfaction of the parties, the dispute shall be submitted to binding arbitration pursuant to the procedures of the American Arbitration Association. The decision of the arbitrator or arbitration panel shall be binding upon the parties and may include all expenses incurred by the prevailing party.

If litigation is necessary to enforce rights of the parties pursuant to the arbitration decision, the Jasper Circuit Court shall retain original jurisdiction over the parties and the subject matter of any legal dispute. In any arbitration proceeding, the party prevailing in such proceeding shall be entitled to recover from the non-prevailing party their reasonable and necessary attorneys' fees, costs and expenses incurred in such proceeding, including amounts incurred prior to such action that are reasonably related to the prosecution or defense of the dispute. Each party reserves the right to pursue any legal or equitable remedies afforded by the laws of the State of Illinois in any arbitration proceeding.

Article 7

Notices

7.1. Notices to Parties. Any written notice required under this Agreement shall be tendered, via professional courier or certified mail to the parties as follows:

Purchaser

City of Newton, Illinois
Joshua Kuhl, Mayor
108 N. Van Buren
Newton, IL 62448

Seller

The Indiana Rail Road Company
c/o Micheal D. Engel, Senior VP & CFO
1500 S. Senate Avenue
Indianapolis, IN 46225

The parties may designate alternative addresses subsequent to the Closing Date.

Article 8
Miscellaneous Provisions

8.1. Time of the Essence. It is expressly agreed that time is of the essence.

8.2. Condition of Property. Seller agrees to maintain the condition of Real Estate until the Closing Date. Seller shall keep, maintain and repair the Real Estate in good condition and use their best efforts to reasonably preserve the Real Estate in its current condition. Seller shall comply with all rules and regulations affecting use of the Real Estate.

8.3. Entire Agreement. This Agreement constitutes the entire agreement between the parties and may not be altered except in writing signed by all parties. This Agreement may be executed in separate parts. No representation, inducement, agreement, promise or understanding altering, modifying, taking from or adding to the terms and conditions shall have any force and effect unless in writing, signed by all parties.

8.4. Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

8.5. Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party.

8.6. Construction and Governing Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, this Real Estate Purchase Agreement is executed on the 19th day of April, 2022.

City of Newton, Illinois


Joshua Kuhl, Mayor

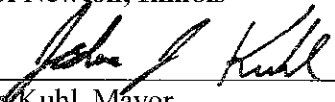
The Indiana Rail Road Company

Micheal D. Engel, Senior VP & CFO

This instrument prepared by: Thomas E. Densford, Bauer & Densford, 608 West Third Street, Post Office Box 1332, Bloomington, Indiana 47402-1332, (812) 334-0600; tom@bauerdensford.com.

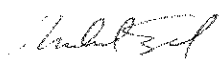
IN WITNESS WHEREOF, this *Real Estate Purchase Agreement* is executed on the _____ day of March, 2022.

City of Newton, Illinois



Joshua Kuhl, Mayor

The Indiana Rail Road Company



Micheal D. Engel, Senior VP & CFO

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