

ORDINANCE NO. 2024-11

AN ORDINANCE OF THE VILLAGE OF CHERRY VALLEY, ILLINOIS APPROVING REAL ESTATE CONTRACT FOR PURCHASE AND SALE OF LAND WITH THOMAS CHURCHILL

WHEREAS, the property commonly known as 3XX Elgin Street, Cherry Valley, IL 61016 and with PIN 16-01-133-009, situated in Cherry Valley, Illinois (referred to herein as the "Property") is for sale; and

WHEREAS, the Village of Cherry Valley, Illinois ("Village") desires to purchase the Property to be utilized for public purposes, including, but not limited to, as a public parking lot; and

WHEREAS, the Village and the Seller of the Property (Thomas Churchill) have reached an accord as to the terms and conditions upon which the Property will be sold; and

WHEREAS, the Village and Seller have memorialized such terms and conditions in the agreement attached hereto as Exhibit A and incorporated herein; and

WHEREAS, the Village has determined it is in the best interest of the Village and its citizens to purchase the Property.

NOW THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CHERRY VALLEY, ILLINOIS, AS FOLLOWS:

1. The Village Board finds and determines that all of the recitals contained in the preambles to this ordinance are true, correct and complete and incorporates them into this Ordinance by this reference.
2. By the adoption of this Ordinance, the Board of Trustees approves the Village of Cherry Valley entering into the Real Estate Contract for Purchase and Sale of Land attached hereto as Exhibit A, or one in substantially similar form, with regards to the property commonly known as 3XX Elgin Street, Cherry Valley, IL 61016 and with PIN 16-01-133-009, situated in Cherry Valley, Illinois and authorizes the Village President to execute the same along with any other documents necessary to effectuate the acquisition contemplated herein.
3. The Village Clerk shall attest the same after the signature of the Village President.
4. Upon full approval and execution of this Ordinance, the Village Clerk is hereby directed to publish a copy of this ordinance at least twice within 30 days after its passage in a newspaper with general circulation within the Village.

5. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provision of this ordinance.
6. All other ordinances of the Village shall remain in effect as previously enacted except that those ordinances, or parts thereof, in conflict are hereby repealed to the extent of such conflict.
7. This Ordinance shall be in full force and effect from after its passage, approval and publication in pamphlet form as required by law.

PASSED UPON MOTION BY: NANCY BELT

SECONDED BY: SALLY HOLLEMBEAK

BY ROLL CALL VOTE THIS 21ST DAY OF MAY, 2024

AS FOLLOWS:

VOTING "AYE": NANCY BELT, JEFF FUSTIN, SALLY HOLLEMBEAK,
MIKE NEVILLE, BRANDI PEARSE, CARL WEDIG

VOTING "NAY": NONE

ABSENT, ABSTAIN, OTHER: NONE

APPROVED: MAY 21, 2024

ATTEST:



Kathy Trimble Village Clerk



David Schroeder, Village President

EXHIBIT A-REAL ESTATE CONTRACT

**REAL ESTATE CONTRACT FOR PURCHASE AND SALE
OF LAND BETWEEN
THOMAS CHURCHILL
AND
THE VILLAGE OF CHERRY VALLEY, ILLINOIS**

This REAL ESTATE CONTRACT FOR PURCHASE AND SALE (“Contract”) is made and entered into this 21st day of May, 2024, (“Effective Date”) by and between THOMAS CHURCHILL (“Seller”) and the VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation (“Purchaser”). Seller and Purchaser are at times referred to herein collectively as the “Parties” or individually as a “Party”.

RECITALS:

- A. Seller is the owner of approximately 0.14 acres of real property, commonly known as 3XX Elgin Street, Cherry Valley, Illinois 61016, with PIN: 16-01-133-009 and which real property is legally described on Exhibit A, attached hereto and incorporated herein (“Real Estate”).
- B. Purchaser desires to purchase and Seller desires to sell the Real Estate for the Purchase Price (as defined below) and on the terms hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and in reliance upon the recitals set forth above, which are incorporated herein by reference, and other good and valuable consideration the receipt and sufficiency of which is acknowledged, it is hereby agreed between the parties hereto as follows:

1. Purchase Price.

The purchase price for the Real Estate shall be Thirty Thousand and No/100 Dollars (\$30,000.00) (“Purchase Price”). The Purchase Price shall be paid as follows: One Thousand and No/100 Dollars (\$1,000.00) as Earnest Money (to be paid within 5 days of the full execution of this Contract and applied towards the Purchase Price at Closing) with the balance, plus or minus costs and prorations as set forth in Paragraph 7 below, to be paid in cash at the time of Closing, as hereinafter defined.

2. Due Diligence and Financing.

Notwithstanding any provision of the Contract to the contrary, Purchaser, its agents, contractors, and consultants, shall have from the Effective Date through and continuing for a period of forty-five (45) days (“Contingency Period”) in which to undertake, at Purchaser’s expense, any and all inspection, studies, investigations, and other evaluations of and concerning the Real Estate and its intended use as Purchaser, in Purchaser’s sole and absolute discretion, deems appropriate. Seller agrees to cooperate with Purchaser in connection with Purchaser’s efforts, and for those purposes, Seller hereby grants to Purchaser, its consultants, contractors, agents, and assigns, a license and full right of entry upon the Real Estate during the Contingency Period. Purchaser agrees if it shall cause any physical damage to the Real Estate occasioned as a result of any soil borings or any physical test or examination, that such damage shall be repaired

to substantially similar condition as existed prior to the damage promptly upon completion of any such test or examination. In the event that Purchaser, in its sole discretion, is not satisfied with the results of the investigations, studies, examinations, evaluations, or the survey or title to be provided under this Agreement, for any reason whatsoever, and Purchaser notifies Seller no later than the last day of the Contingency Period, then this Contract shall be terminated and the Earnest Money, together with any and all interest accrued thereon shall be returned to the Purchaser.

3. Closing.

The parties shall close within ten (10) days following the expiration of the Contingency Period ("Closing") unless otherwise agreed upon in writing by the Parties. Closing shall be at Title Underwriters Agency located in Rockford, Illinois ("Title Company") and at a time and place mutually convenient to the parties. Possession shall be delivered at Closing free and clear of all leases and tenancies, in substantially the same condition as existed on the Effective Date, except same shall be left in broom clean condition with all personalty removed. Any personalty and fixtures remaining at Closing shall, in Purchaser's sole discretion, be removed by Purchaser or deemed abandoned, as determined in Purchaser's sole discretion. Notwithstanding anything to the contrary contained herein, Purchaser's obligation to close shall be conditioned upon, as of Closing, all of the covenants in this Contract to be performed by Seller, at or prior to Closing, having been duly performed and all of Seller's representations and warranties set forth herein remaining true and correct.

- a. At Closing, Seller shall deliver to Purchaser the following, each in a form reasonably satisfactory to Purchaser's counsel: recordable general warranty deed executed by Seller ("Deed") conveying the Real Estate to Purchaser, subject only to Permitted Exceptions; an affidavit of Seller certifying that Seller is not a "foreign" person for purposes of Section 14.45 of the Internal Revenue Code of 1986; a Real Estate Transfer Tax Declaration; ALTA statement, and such further documents as the Title Company shall reasonably request to consummate this transaction.

4. Deliveries.

Within five (5) days of the Effective Date, Seller shall provide to Purchaser such of the following as are in Seller's possession, or the possession of its agents or contractors, if any: Existing ALTA survey; soil borings; Phase I or II or other environmental assessments; existing title work and copies of all easements, covenants and restrictions; construction drawings; and copies of any agreements related to the use or occupancy of the Real Estate.

5. Title Insurance.

Within ten (10) days of the Effective Date, Seller shall furnish Purchaser with a title insurance commitment for an owner's title insurance policy in the amount of the Purchase Price ("Title Commitment"), covering title to the Real Estate on or after the Effective Date and with a final policy to be issued thereafter, at Purchaser's expense, from the Title Company showing merchantable title subject only to the following permitted exceptions: all accrued taxes, fees and

special assessments credited to Purchaser at Closing; building setbacks, use and occupancy restrictions, conditions and covenants of record; zoning laws and ordinances; easements for the use of public utilities; and roads and highways ("Permitted Exceptions").

If the Title Commitment or any survey discloses unpermitted exceptions, Seller shall have seven (7) days from the date of delivery thereof to have the exceptions removed from the Title Commitment or survey, or to have the Title Company commit to insure against loss of damage that may be occasioned by such exceptions. If Seller fails to have such exceptions removed or insured over, Purchaser, in its sole discretion, may terminate this Contract with a return of its Earnest Money or elect to take title as it then is with the right to deduct from the Purchase Price liens or encumbrances of a definite or ascertainable amount with a claim against the Seller for any deficiency.

6. Representations, Warranties and Covenants of Seller; Indemnification.

All representations, warranties and covenants of Seller set forth in this Contract shall survive the Closing and delivery of deed:

General Representations, Warranties and Covenants. Seller represents, warrants and covenants that:

(a) To the best of their knowledge, the Real Estate does not violate any zoning laws and Sellers have not received any written notice of any such violation.

(b) There are no pending (or to the best of Seller's knowledge, threatened) matters of litigation, administrative actions, or arbitration against the Real Estate or against the Sellers with respect to the Real Estate, or any pending (or to the best of Sellers' knowledge, threatened) eminent domain, condemnation proceeding or other governmental taking of the Real Estate or any party thereof.

(c) Seller knows of no fact or condition that exists which would result in the termination or impairment of access to the Real Estate, or discontinuation of necessary sewer, water, electric, gas, telephone or other utilities or services, and such utilities are in full compliance with all governmental rules and regulations.

(d) All documents being delivered by Seller pursuant to the terms hereof are, to the best of Seller's knowledge, true, accurate and complete and fairly present the information set forth in a manner which is not misleading.

(e) Seller is not a party to, and the Real Estate is not subject to, any contract, lease, license or other contract, written or oral, that cannot be terminated at Closing. Purchaser shall not become subject to or bound by any contract, lease or license which it shall not have specifically agreed in writing to accept.

(f) Between the date hereof and the Closing, no part of the Real Estate will be alienated, encumbered or transferred in favor of or to any party whatsoever.

(g) Seller is the owner of the Real Estate and has the authority to enter into this Contract and is transferring good and marketable title to Purchaser.

(h) Prior to the Closing, Seller shall obtain a full release by payment in full of any mortgage which Seller may have granted and which serves as a lien against the Real Estate.

(i) Seller further covenants and agrees that it will refrain from any and all action from now until Closing which might or could cloud title to the real estate.

7. Prorations/Real Estate Taxes/Closing Costs.

All real estate taxes shall be prorated to the Closing Date. Seller shall be responsible for all 2023 (payable in 2024) general real estate taxes and assessments. At Closing, Purchaser shall receive a pro rata credit for the 2024 (payable in 2025) general real estate taxes, to the extent not paid, based on one hundred five percent (105%) of the amount of the most recent ascertainable general real estate tax bill.

Utilities, if any, and other similar items shall be prorated through the date of Closing.

Purchaser shall pay for the cost of the Title Commitment and Purchaser shall pay the cost of any additional endorsements it may require, if any.

Seller shall pay the cost of releasing its mortgages and liens, if any; Purchaser shall be responsible for payment of recording the Deed and any mortgage it may require, if any.

Purchaser shall pay all title company closing costs.

8. Default.

If Seller fails to timely close, or otherwise is in default for failure to comply with the terms, covenants and conditions of this Contract, Purchaser shall be entitled to pursue any and all remedies that it may have at law or in equity, including, but not limited to, a return of any Earnest Money and to a cancellation of this Contract which shall be rendered null and void.

If Purchaser fails to perform this Contract promptly on its part at the time and in the manner herein specified, or is otherwise in default for failure to comply with the terms, covenants and conditions of this Contract, the Earnest Money shall be forfeited by Purchaser as liquidated damages as Seller's exclusive remedy and this Contract shall be null and void.


In any action to enforce the terms of this Contract, the prevailing party shall be entitled to reasonable attorneys fees and costs.

9. Miscellaneous

10.1 Notice. Any and all notices shall be deemed adequately given only if in writing and personally delivered, or sent first class registered or certified mail, postage prepaid, or by facsimile, to the party for whom such notices are intended, or sent by other means at least as fast and reliable

as first class mail. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it shall be delivered to the address required by this Contract; or (b) the date delivery shall have been refused at the address required by this Contract; or (c) with respect to notices sent by mail, the date as of which the postal service shall have indicated such notice to be undeliverable at the address required by this Contract. Any and all such notices referred by this Contract, or which either party desires to give to the other shall be addressed as follows:

If to Seller to:

Thomas Churchill


With a copy to:

If to Purchaser to:

Village of Cherry Valley
Attn: Village Administrator
806 E. State Street
Cherry Valley, IL 61016
Facsimile: 815-332-3414

With a copy to:

Sosnowski Szeto, LLP
Attn: Aaron N. Szeto
6725 Vistagreen Way, Suite 300
Rockford, IL 61107
Facsimile: 815-900-7444

The above addresses may be changed by notice of such change, mailed as provided herein, to the last address designated.

10.2 Binding Agreement. This Contract represents the entirety of the agreement between the parties and shall be binding upon the parties, their heirs, executors, administrators, personal representatives, successors and assigns.

10.3 Agreement Execution. This Contract may be executed in multiple counterparts, each of which shall be regarded as an original hereof, but all of which together shall constitute one and the same instrument. Facsimile versions of signatures shall be deemed to be originals.

10.4 Time of the Essence. Time shall be of the essence of this Contract.

10.5 Governing Law. This Contract shall be construed and enforced in accordance with the laws of the State of Illinois.

10.6 Entire Agreement. This Contract shall constitute the entire agreement and understanding of the parties and shall not be altered, modified or changed unless in writing and executed by all parties hereto.

10.7 Headings. The article headings are inserted only for convenience and in no way define, limit or describe the scope or intent of any article in this Contract.

10. Broker.

The parties warrant to each other that there are no brokers involved in this transaction. The parties agree to indemnify and hold each other harmless from any broker or other agent claiming commission through them.

11. Other Documents.

The parties agree that they will execute any and all other documents necessary to give effect to the transaction contemplated herein.

12. Formal Board Approval.

This Contract is subject to formal approval by the corporate authorities of the Village of Cherry Valley, Illinois.

IN WITNESS WHEREOF, the parties to this Contract have hereunto set their hands the day and year first above written.

SELLER:

Thomas Churchill

BY: _____

ITS: owner

PURCHASER:

Village of Cherry Valley, Illinois

BY: _____

ITS: president

EXHIBIT A

LEGAL DESCRIPTION

PIN:16-01-133-009

Commonly known as 3XX Elgin Street, Cherry Valley, IL 61016