

Ordinance No. 110-11

**AN ORDINANCE OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES,
ILLINOIS, AUTHORIZING THE EXECUTION OF A
REAL ESTATE PURCHASE AND SALE AGREEMENT FOR THE PURCHASE
OF 110 NORTH RIVER STREET, EAST DUNDEE, ILLINOIS**

WHEREAS, the Village of East Dundee, Cook and Kane Counties, Illinois (the “*Village*”) is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, River Street, LLC (the “*Seller*”) owns property commonly known as 110 North River Street, East Dundee, Illinois, (the “*Subject Property*”); and,

WHEREAS, pursuant to Illinois Municipal Code, the Village is authorized to purchase real property within the Village for a public purpose; and,

WHEREAS, the Village President and Board of Trustees of the Village (the “*Corporate Authorities*”) have found and determined that it is in the best interest of the Village to authorize the purchase of the Subject Property pursuant to the terms and conditions as set forth in the Real Estate Purchase and Sale Contract (the “*Sales Contract*”) attached hereto and made a part hereof.

NOW, THEREFORE, BE IT ORDAINED by the Village President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, as follows:

Section 1. That the preambles of this Ordinance are hereby incorporated into this Section as if set out herein in full.

Section 2: That the purchase of the Subject Property in accordance with the terms and conditions contained in the Sales Contract is hereby approved.

Section 3: That the Village President and Village Clerk are hereby authorized to execute, for and on behalf of the Village, the Sales Contract with the Seller.

Section 4: That the Village President, Village Clerk, and Village Administrator are hereby authorized to execute any and all additional documentation and undertake any and all actions as required to implement the terms of said Sales Contract.

Section 5: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

ADOPTED by the Village President and the Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois, this 28th day of March, A.D. 2016, pursuant to a roll call vote, as follows:


AYES: Trustees Lynam, Wood, Hall and President Miller

NAYS: Trustee Skillicorn

ABSENT: Trustee Selep

Abstain: Trustee Gorman

APPROVED by me, as Village President of the Village of East Dundee, Cook and Kane Counties, Illinois, this 28th day of March, A.D. 2016.



Village President

Attest:



Village Clerk

REAL ESTATE PURCHASE AND SALE AGREEMENT

This AGREEMENT ("Agreement") is made this 28th day March, 2016 between RIVER STREET, LLC ("Seller"), and THE VILLAGE OF EAST DUNDEE, a municipal corporation of Cook and Kane Counties, State of Illinois ("Purchaser")

RECITALS

WHEREAS, Purchaser and Seller have, negotiated the terms and provisions applicable to the Sale and Purchase of a vacant parcel of land commonly known as 110 North River Street (PIN 03-23-320-001) depicted and legally described on the attached Exhibit A; and

WHEREAS, Seller desires to sell, and Purchaser desires to buy, the real estate hereafter described, at the price and on the terms and conditions hereinafter set forth.

WITNESSETH

NOW, THEREFORE, in consideration of mutual covenants hereafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged by Seller and Purchaser it is agreed by and between the parties as follows:

1. **Purchase and Sale - Purchase Price.** Purchaser agrees to purchase, and Seller agrees to sell, on the terms and provisions set forth herein, the real estate depicted and legally described on the attached Exhibit A (the "Property"), and the aforesaid Property is sold and purchased in its present "as is" vacant, unimproved condition, for a Purchase Price of One Hundred Seventy-Five Thousand Dollars (\$175,000) ("Purchase Price"), subject and according to the terms and conditions set forth in this Agreement.

2. **Payment of Purchase Price; municipal note.** Purchaser represents and warrants to Seller that Purchaser has reserve funds on deposit to pay \$40,000.00 (the "Down Payment") upon execution of this Agreement, by certified check, and Purchaser will satisfy its obligations in relation to the balance of the Purchase Price by executing and delivering to Seller a Municipal Note substantially in the form attached hereto (the "Municipal Note"). The Municipal Note shall be in the balance of the Purchase Price plus reimbursement of site preparation as itemized on Exhibit B hereto and made a part hereof less tax proration, amortized over a period of ten (10) years with interest at the rate of three and six-tenths percent (3.6%) per cent per annum on the outstanding principal due and owing, for a term of five (5) years, payable in equal monthly installments. The Municipal Note shall contain a late charge for overdue payment. The Note shall provide, among other things, that it may be prepaid in whole or in part without penalty, that it shall be immediately due and payable upon the sale of the mortgaged premises or in the event that Purchaser enters into a land sale contract.

Title/Conveyance.

Permitted Title Exceptions. Seller agrees to convey the Property to Purchaser free and clear title thereto by recordable Warranty Deed (or Trustee's Deed if title to the Property is held by a Trustee), as of the Closing, with said Deed to be subject only to the following listed title exceptions ("Permitted Title Exceptions"):

(A) Extended, but unbilled and not due general real estate taxes to the date of Closing and subsequent years; and

(B) Liens of record caused by Seller, which lien/s shall be released via the Closing.

4. Evidence of Title.

(a) Title Commitment. Seller, at its cost shall deliver, or cause to be delivered to Purchaser or Purchaser's attorney, within ten (10) business days after the date of this Agreement, a Title Commitment for an Owner's Title Insurance Policy with extended coverage issued by Chicago Title Insurance Company, ("the Title Insurer") in the amount of the Purchase Price, covering title to the Property on or after the date hereof, showing title to the Property in the Owner/s of Record Seller, subject only to the foregoing Permitted Title Exceptions. The Title Commitment shall be conclusive evidence of good title as therein shown as to all matters to be insured by the policy, subject only to the exceptions as therein stated.

(b) Unpermitted Title Exceptions. If the Title Commitment, discloses either unpermitted exceptions or boundary overlaps, unpermitted easements, or encroachments, ("Title Defects") Seller shall have thirty-five (35) days from the date of delivery thereof to have the exceptions removed from the Commitment or to correct such Title Defects or to have the Title Insurer commit to insure against loss or damage that may be occasioned by such exceptions or Title Defects and, in such event, the time of Closing shall be thirty-five (35) days after delivery of the Commitment, or the Closing Date as specified in paragraph 6, whichever is later. If Seller fails to have the exception/s removed, or correct any Title Defects, or in the alternative, to obtain for the Commitment for Title Insurance specified above waivers as to such exceptions, within the specified time, Purchaser may terminate this Agreement or may elect, upon notice to Seller within ten (10) days after the expiration of the Thirty-five (35) day period, 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. If Purchaser does not so elect, this Agreement shall become null and void without further action of the parties.

5. Survey.

The Seller, at its own expense, shall provide the Purchaser with a survey of the Property made by an Illinois licensed surveyor. The Survey shall indicate the total square footage of the Property, including fences, walks and of all easements, building lines, set-back requirements and rights-of-way, recorded or visible. The Survey shall show no encroachments

by improvements located on the Property onto adjoining properties or by improvements located on adjoining properties nor any encroachments by improvements located on the Property over any easements or rights-of-way. The legal description of the Property as it appears on the Survey shall be consistent with the legal description of the Property as it appears on the title commitment described above.

6. **Escrow Closing.** The Closing on this transaction shall be as agreed to by the attorneys for Seller and Purchaser; or at such earlier, or later date, as agreed upon in writing by the Purchaser and Seller, or by their attorneys, provided all conditions hereof have been fulfilled, and this Agreement has not been terminated pursuant to Seller's default, or by Purchaser pursuant to the provisions hereof.

Unless agreed to by the attorneys, this transaction shall be closed through an Escrow with the Title Insurer, in accordance with the general provisions of the usual form of deed and money escrow agreement then in use by the Title Insurer, with such special provisions inserted in the Escrow Agreement as may be required to conform with this Agreement. On the creation of such escrow, anything herein to the contrary notwithstanding, the Municipal Note and delivery of Deed shall be made through the Escrow and this Agreement. The cost of the Escrow shall be divided by Purchaser and by Seller.

7. **Broker's Commission.**

- (a) Purchaser represents that Purchaser has not contacted any broker and has not engaged a real estate broker in the connection with the execution of this Agreement, or in connection with the acquisition of the Property. Purchaser represents that, as a consequence of Purchaser's execution of this Agreement, and as a consequence of the intended Purchase, no broker shall be entitled to a commission at the Closing, or otherwise, as a consequence of Purchaser's actions.
- (b) Seller represents that Seller has not contacted any broker and has not engaged a real estate broker in the connection with the execution of this Agreement, or in connection with the sale of the Property. Seller represents that, as a consequence of Seller's execution of this Agreement, and as a consequence of the intended sale, no broker shall be entitled to a commission at the Closing, or otherwise, as a consequence of Seller's actions.

8. **Representations, Warranties and Covenants of Seller.** Seller hereby makes the following representations, warranties and covenants to and with Purchaser, each of which representations, warranties and covenants are material and true as of the date hereof and which shall continue to be true at the Closing and shall where applicable survive the Closing:

- (a) There is not pending or, to the best of Seller's knowledge any threatened, litigation or proceedings before any court, tribunal or other governmental agency respecting the Property, or the ownership of the Property by Seller. Seller will advise Purchaser of any notice or summons or complaint Seller receives of the commencement of any

litigation or like proceeding respecting the Property or Seller's ownership of the Property.

- (b) Seller's execution of and performance under this Agreement is pursuant to authority validly and duly conferred upon Seller. Seller has the right and authority to perform all of his obligations hereunder without obtaining any further consents from any partners, creditors, investors, judicial bodies, administrative agencies, governmental authorities or others. Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.
- (c) There are no leases affecting any portion of the Property and there exists no contracts, verbal or written, including without limitation, service contracts or maintenance contracts, affecting the Property, which will survive the Closing.
- (d)
 - i) Seller hereby agrees that Purchaser shall have ten (10) business days after Purchaser's receipt of this Agreement, executed by Seller ("Feasibility Period") to use whatever efforts, at Purchaser's sole cost, it deems necessary to satisfy itself, by visual examination and physical inspection of the Property, that all physical aspects and conditions of the Property are acceptable to Purchaser. If Purchaser is not satisfied, in its sole and absolute discretion, with respect to the physical aspects and conditions of the Property, Purchaser shall have the right to terminate this Agreement by delivering a written notice of such termination to Seller on or before the last day of the Feasibility Period, in which event all obligations of the parties hereunder shall cease and this Agreement shall be of no further force and effect. If Purchaser fails to deliver to Seller, on or before the expiration of the Feasibility Period, such a written notice of termination, then Purchaser shall be deemed to have waived its right to terminate this Agreement and all other provisions of this Agreement shall remain in full force and effect.
 - ii) Purchaser, and Purchaser's Agents, are granted the license of access to the Property, during the Feasibility Period.
 - iii) Purchaser shall indemnify and hold the Seller harmless of any claim as a consequence of the Purchaser or the Purchaser's agent entering upon the Property for any reason during the Feasibility Period.

9. **Conditions to Purchaser's Obligation to Close.** Purchaser shall not be obligated to proceed with the Closing unless and until each of the following conditions has been either fulfilled or waived by Purchaser:

- (a) There shall have been no uncured breach of any material representation, warranty or covenant given by Seller herein which was untrue as of the date hereof or as of Closing. Seller shall have a period of fifteen (15) days to cure a breach under this

subparagraph (a), such cure period to commence upon the date of Seller's receipt of written notice from Purchaser that such breach exists.

- (b) This Agreement shall not have been previously terminated pursuant to any other provision hereof or by reason of any default by Seller.
- (c) Seller shall be prepared to deliver to Purchaser all instruments and documents to be delivered to the Title Insurer and Purchaser, at the Closing, pursuant to Paragraph 11 or any other provision of this Agreement.
- (d) There shall not exist any environmental contamination of the Property or other environmental condition of the Property unacceptable to Purchaser whereby Purchaser has terminated this Agreement.

10. Closing Deliveries.

- (a) At the Closing, Seller shall deliver or cause to be delivered to Purchaser, through the escrow each of the following:
 - (i) The Deed to the Property provided for in Paragraph 3 hereof;
 - (ii) A certificate in the form approved by the United States Internal Revenue Service relating to Seller's representation contained in Paragraph 8(c) that it is not a "foreign person;"
 - (iii) An Affidavit of Title to Purchaser, and an ALTA Statement to Purchaser and to the Title Insurer, certifying that there are no tenants or manager of the Property and that Seller has not performed any work on the Property or ordered any materials therefor which would give rise to a mechanic's lien against the Property;
 - (iv) Such other documents and instruments as may be specifically required by any other provision of this Agreement or as may reasonably be required to carry out the terms and intent of this Agreement.
- (b) At the Closing, Purchaser shall deliver or cause to be delivered to Seller, through the escrow each of the following:
 - (i) The Municipal Note in an amount equal to the balance of the Purchase Price plus the costs itemized on Exhibit B, plus or minus tax proration per the Closing Statement as approved by the Seller's and Purchaser's attorneys, which Closing Statement will contain proration for general real estate taxes not due and owing as of the date of Closing but accrued, credit for recording releases of Seller's liens, and other credits to Purchaser for the payment of Seller's Closing expenses, if any, which are to be paid at Closing; and

- (ii) Such other documents and instruments as may be specifically required by any other provision of this Agreement or as may reasonably be required to carry out the terms and intent of this Agreement.

12. **Expenses.** At the Closing the expenses shall be paid as follows:

- (a) One half (1/2) of escrow fees, all Title charges for an Owner's Policy and all other Seller's closing costs, charges and expenses, shall be borne and paid by Seller. Purchaser represents that the conveyance provided for herein is an Exempt transaction pursuant to 35ILCS 200/31-45 (B)(i) and that no real estate transfer taxes shall be payable to the State of Illinois, the Counties of Cook and Kane, or the Purchaser as a consequence of this conveyance.
- (b) One half (1/2) of escrow fees, and charges for recording fees for the Deed, shall be paid by Purchaser.
- (c) Seller shall pay any recording charges for release documentation or title clearance matters caused by Sellers lien/s or Seller's Title Defects.
- (d) Each party shall pay its own respective attorneys' fees and costs.

13. **Miscellaneous Provisions.**

- (a) This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral agreements, undertakings, promises, representations, warranties or covenants not contained herein, all of which prior agreements are hereby terminated and of no force or effect.
- (b) This Agreement may be amended only by a writing executed by both Purchaser and Seller.
- (c) This Agreement may not be assigned by Purchaser or Seller, nor shall Seller assign its interest in this Agreement or the net proceeds, unless Seller utilizes such assignments in connection with a Like-Kind Exchange pursuant to Sections 1031 of the Internal Revenue Service Code.
- (d) No waiver of any provision or condition of this Agreement by either party shall be valid unless in writing signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act, or default.
- (e) In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

- (f) In the event that any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.
- (g) Headings of paragraphs are for convenience of reference only, and shall not be construed as a part of this agreement.
- (h) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective lawful successors.
- (i) Whenever a written notice is required or permitted pursuant to this Agreement notice shall be delivered pursuant to this clause, with telecopy facsimile sent to the indicated telecopy numbers when notice is delivered to the courier, or deposited for delivery by the U.S. Postal Service. All notices required or desired to be given hereunder shall be deemed given if and when delivered personally, or on the day of being deposited with a national overnight courier service, or on the day of being deposited in the United States by certified or registered mail, return receipt requested, postage prepaid, addressed to a party at its address set forth below, or such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Purchaser: The Village of East Dundee
 120 Barrington Ave.
 East Dundee, Illinois 60118
 Telephone: 847-426-2822
 Attention: Robert Skurla, Village Administrator

With a copy to: Kathleen Field Orr
 Kathleen Field Orr & Associates
 53 West Jackson Blvd. Suite 964
 Chicago, Illinois 60604
 Telephone: 312-382-2113

If to Seller: River Street LLC
 PO Box 2272
 Crystal Lake, IL 60039-2272
 Telephone: 815-356-8000
 Facsimile: 815-356-8025

With a copy to: Robert Roth
 RothMelei
 454 W. Virginia Street
 Crystal Lake, IL 60014
 Telephone: 815-356-8000

(j) Time is of the essence of this Agreement.

SELLER:
OWNER OF RECORD,
or Owner of Record's duly authorized Agent.

By:  _____

Its: MANA _____

Date: March 28, 2016

PURCHASER:
Village of East Dundee, a
Municipal corporation of Cook and Kane Counties,
State of Illinois

By:  _____

Its: Robert Skurla, Village Administrator _____

Date: March 28, 2016

EXHIBIT A
110 North River Street
Property Index Number 03-23-230-001

Legal Description:

Lots 3 and 4 and Lot 5 (except the west 30 feet) in Block 2 of the Plat of Dundee, in the Village of East Dundee, Kane County, Illinois

EXHIBIT B

Demolition, Fencing, Equipment Costs

\$26,000.00