

VILLAGE OF NORTH AURORA



VILLAGE OF NORTH AURORA
KANE COUNTY, ILLINOIS

Ordinance No. 18-01-15-02

ORDINANCE ACCEPTING A BID
FOR PURCHASE OF AND APPROVING THE CONTRACT
TO THE SELL THE PROPERTY LOCATED AT 24 S. LINCOLNWAY,
NORTH AURORA, ILLINOIS

Adopted by the
Board of Trustees and President
of the Village of North Aurora
this 15th day of January, 2018

Published in Pamphlet Form
by authority of the Board of Trustees of the
Village of North Aurora, Kane County, Illinois,
this 16 day of January, 2018
by Amy Torracco.

Signed [Signature]
Village Clerk

VILLAGE OF NORTH AURORA

ORDINANCE NO. 18-01-15-02

**AN ORDINANCE ACCEPTING A BID
FOR PURCHASE OF AND APPROVING THE CONTRACT
TO THE SELL THE PROPERTY LOCATED AT 24 S. LINCOLNWAY,
NORTH AURORA, ILLINOIS**

WHEREAS, the property owned by the Village of North Aurora ("Village") located at 24 S. Lincolnway, North, Aurora, Illinois, identified by PIN 15-04-254-018, was acquired by the Village in order to eliminate the blight of the dilapidated gas station and unkempt property, the gas station building was demolished, and the blight was eliminated; and

WHEREAS, the Property is not required for municipal use or other purposes and is no longer necessary or appropriate for the Village to retain the Property; and

WHEREAS, the Property was advertised for sale by soliciting for bids and proposals by public notice pursuant to the authority of the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-4(c)) beginning on December 11, 2017, and running through 9:00 am January 11, 2018, in the Aurora Beacon News; and

WHEREAS, the Village received only one bid in the amount of \$200,000.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of North Aurora, Kane County, Illinois, as follows:

1. The recitals set forth above are adopted and incorporated herein as the material and significant findings of the President and the Board of Trustees as if fully stated herein.

2. The Community and Economic Development Director and Village Attorney, or their designees, are authorized and directed to negotiate a contract substantially in the form attached hereto and incorporated herein by reference as Exhibit A for the bid amount and to take any all steps necessary and appropriate to consummate the transaction of selling the Property to the high bidder.

3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance, or any part thereof. The Village Board of Trustees hereby declares that it would have passed each section,

VILLAGE OF NORTH AURORA

subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that anyone or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

4. This Ordinance shall take immediate full force and effect from and after its passage, approval, publication and such other acts as required by law.

Presented to the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 15th day of January, 2018, A.D.

Passed by the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 15th day of January, 2018, A.D.

Mark Carroll	<u>yes</u>	Laura Curtis	<u>yes</u>
Mark Gaffino	<u>yes</u>	Mark Guethle	<u>yes</u>
Michael Lowery	<u>yes</u>	Tao Martinez	<u>yes</u>

Approved and signed by me as President of the Board of Trustees of the Village of North Aurora, Kane County, Illinois this 15th day of January, 2018, A.D.

Dale Berman
Dale Berman, Village President

ATTEST:

Lori Murray
Lori Murray, Village Clerk

VILLAGE OF NORTH AURORA

Exhibit A – Contract to Sell Property

REAL ESTATE CONTRACT

1. THE PARTIES:

Buyer(s): Miller Coffee Property, LLC

Address: 2S575 Deerpath Rd., Batavia, IL 60510

Seller: Village of North Aurora

Address 25 East State Street North Aurora, IL 60542

Effective Date: 1/14/18

Buyer and Seller are hereinafter collectively referred to as the "Parties".

2. THE REAL ESTATE: For the purposes of this Contract, Real Estate shall be defined to include the real property and all improvements thereon. Seller agrees to convey to Buyer or to Buyer's designated grantee, the Property with the approximate lot area of 0.5 acres and permanent index number of 15-04-254-018 commonly known as **24 S. Lincolnway North Aurora, IL** and legally described as follows:

THE SOUTH HALF OF LOT 9 AND ALL OF LOTS 10, 11 AND 12 IN BLOCK 2 OF SCHNEIDER'S ADDITION TO NORTH AURORA, IN THE VILLAGE OF NORTH AURORA, KANE COUNTY, ILLINOIS

3. FIXTURES AND PERSONAL PROPERTY: The Real Estate consists of vacant land.

4. PURCHASE PRICE of \$200,000.00 shall be paid as follows: Initial earnest money of \$2000.00 upon submittal of this contract. The earnest money and the original of this Contract (with copies to Parties) shall be held by the Village Attorney, (hereinafter referred to as "Escrowee") for the mutual benefit of Parties. Notwithstanding anything herein to the contrary in this Contract, Escrowee shall be authorized to release the earnest money **ONLY** upon receipt of a written direction executed by both Parties. The balance of the purchase price, as adjusted by prorations, shall be paid at the closing by wire transfer or certified or cashier's check or check from the title company or mortgage lender.

5. CONTINGENCIES:

(a) Financing. This contract is contingent upon Buyer obtaining a written commitment for conventional or private financing on or before the expiration of the expiration of the Municipal Approval Period defined below. In the event Buyer is unable to obtain such commitment and gives written notice thereof to Seller on or before the expiration of the Municipal Approval Period, THEN THIS CONTRACT SHALL TERMINATE AND BE OF NO FURTHER FORCE AND EFFECT, AND THE EARNEST MONEY SHALL BE REFUNDED TO BUYER. IN THE EVENT BUYER FAILS TO GIVE SUCH NOTICE, THEN THIS CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT AND THIS FINANCING CONTINGENCY SHALL BE DEEMED WAIVED BY BUYER.

(b) Municipal Approvals. This contract is contingent upon Buyer filing an application for special use with the Village of North Aurora within thirty (30) days from the date of this Contract and obtaining all necessary municipal approvals for a drive through coffee facility with outdoor patio areas that can be expanded to

include an indoor sit down area within the building, with adequate parking, stacking and turn lanes and whatever terms and conditions of the zoning approval that the Buyer is willing to accept, including but not necessarily limited to: (i) a requirement that a building permit based on plans consistent with the municipal approvals must be obtained within six (6) months from the date of closing; (ii) a requirement that construction must begin within one (1) year of the date of closing; and (iii) an option in favor of the Seller to buy back the Property if the Buyer does not meet conditions (i) or (ii) for a purchase price of \$180,000.

If, within six (6) months after the Effective Date (the "Municipal Approval Period"), Buyer is unable to obtain the municipal approvals that the Buyer is willing to accept, either Party may give notice in writing thereof to the other Party, and after such written notice is given THEN THIS CONTRACT SHALL TERMINATE AND BE OF NO FURTHER FORCE AND EFFECT, AND THE EARNEST MONEY SHALL BE REFUNDED TO BUYER. Buyer shall have the option of extending the Municipal Approval period for up to three (3) thirty (30) day periods, provided Buyer is diligently pursuing municipal approvals.

(c) Due Diligence. Buyer shall be permitted to perform such other due diligence on the Real Estate as may be reasonable or necessary to determine the suitability of the Real Estate for Buyer's intended use, including but not limited to conducting environmental investigations, soil tests and such other investigations and may be reasonable or necessary.

If, within the Municipal Approval Period, Buyer determines in its sole discretion that the Real Estate is not suitable for Buyer's intended use, Buyer may give notice in writing thereof to Seller, within such period, and after such written notice is given THEN THIS CONTRACT SHALL TERMINATE AND BE OF NO FURTHER FORCE AND EFFECT, AND THE EARNEST MONEY SHALL BE REFUNDED TO BUYER.

6. CLOSING shall take place within thirty (30) days from the date that Buyer obtains Municipal Approvals, or on another date by mutual agreement of the Parties, at Seller's title company or office of Seller's attorney in the county in which the property is located or as otherwise agreed. Possession shall be tendered at time of closing. THE CLOSING AND POSSESSION DATE IS LEGALLY SIGNIFICANT TO BUYER AND SELLER. THE PARTIES UNDERSTAND THAT WHEN THIS CONTRACT IS SIGNED BY BOTH BUYER AND SELLER THE CLOSING AND POSSESSION DATE MAY ONLY BE CHANGED BY MUTUAL AGREEMENT OF PARTIES.

7. USE AND OCCUPANCY AGREEMENT: Buyer shall take possession of the Real Estate after the closing.

8. PLAT OF SURVEY: Prior to closing, Seller shall at its expense, furnish a Plat of Survey to Buyer which is dated not more than six (6) months prior to the date of closing, by an Illinois registered land surveyor, showing all corners staked and no encroachments, measurements of all lot lines, and showing all easements, building line setbacks, fences and all buildings and other improvements on the Real Estate and distances thereof to all lot lines. In the event the Real Estate is a condominium, only a copy of the pages showing said Real Estate on the recorded survey attached to the Declaration of Condominium shall be required. If requested, Seller(s) shall provide an affidavit verifying that no changes in improvements have been made since the date of said survey.

9. NOTICE: All notices required pursuant to this Contract shall be in writing and signed by Seller or Buyer or their attorney or agent and shall be given by; (a) certified or registered mail, return receipt requested, and sent to the Parties at the addresses recited herein, which notice shall be effective on the date of post mark in the U.S. Mail or (b) personally served on the Seller or Buyer, and a receipt obtained with the date and time of service, which notice shall be effective upon the date of receipt, or (c) transmission of notice between the

parties and their attorneys via facsimile or email shall be sufficient, provided that the notice transmitted shall be sent on ordinary business days (Monday through Friday, excluding weekends and legal holidays), during ordinary business hours (9:00 a.m. to 5:00 p.m.), and the original of the document transmitted via facsimile or email shall be sent contemporaneously to the receiving party, postage prepaid first class mail or (d) personal service upon Seller or Buyer, in accordance with the Civil Practice Act of the State of Illinois. Notice to any one of a multiple person party shall be sufficient notice to all. THE FAILURE OF ANY PARTY TO PROVIDE THEIR ADDRESS HEREIN SHALL BE DEEMED A WAIVER OF THE RIGHT TO RECEIVE NOTICE.

10. THE DEED. Seller shall convey or cause to be conveyed to Buyer, or to such other grantee as Buyer shall direct in writing, the Real Estate by a recordable general Quit Claim Deed conveying good, marketable and merchantable title to the Real Estate and subject only to the following permitted exceptions described herein, if any, (none of which shall impair the use of the Real Estate as a residence): (a) general Real Estate taxes accrued, but not yet payable at the time of closing, (b) special assessments confirmed after this Contract date, (c) building set-back lines and use or occupancy restrictions, (d) covenants, conditions and restrictions of record provided they are not violated nor contain a reverter or the right of re-entry, (e) zoning laws and ordinances, (f) easements for public utilities, provided they do not underlie existing improvements except fences and portable sheds, and (g) drainage ditches, feeders, laterals and drain tile, pipe or other conduit.

11. TITLE. Prior to closing, Seller shall furnish or cause to be furnished to Buyer or Buyer's attorney, at Seller's expense, a Commitment for Title Insurance issued by a title insurance company licensed to do business in the State of Illinois, to issue an owner's title insurance policy on the current form of American Land Title Association Owner's Policy (or equivalent policy) including coverage over Schedule B General Exceptions in the amount of the purchase price covering the date hereof, subject only to the following (a) permitted exceptions as set forth in Paragraph No. 10, (b) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money at the time of closing (an amount sufficient to secure the release of such title exceptions shall be deducted from the proceeds of sale due Seller at closing, if necessary), and (c) acts done or suffered by or judgments against Buyer, or those claiming by, through or under Buyer. If the title commitment discloses unpermitted exceptions, or if the Plat of Survey shows any encroachments which are not acceptable to Buyer, then Seller shall have thirty (30) days from the date of delivery thereof to have said exceptions removed, or to have the title insurer commit to insure against loss or damage that may be caused by such exceptions or encroachments and the closing date shall be delayed, if necessary, to allow time to have said exceptions waived. If Seller fails to have unpermitted exceptions waived, or in the alternative, to obtain a commitment for insurance as specified above as to such exceptions, within the specified time, Buyer may terminate the Contract between Parties, or may elect, upon notice to Seller within ten (10) days after the expiration of the 30 day period, to take the title as it then is, with the right to deduct from the purchase price prior encumbrances of a definite or ascertainable amount. If Buyer does not elect to accept the Real Estate as provided above, THIS CONTRACT SHALL TERMINATE AND BE OF NO FURTHER FORCE AND EFFECT, AND THE EARNEST MONEY SHALL BE REFUNDED TO BUYER.

12. AFFIDAVIT OF TITLE. Seller shall furnish Buyer at closing an Affidavit of Title covering the date of closing, subject only to those permitted exceptions set forth in Paragraph No. 10, and unpermitted exceptions, if any, as to which the title insurer commits to extend insurance in a manner specified in paragraph No. 11. In the event that this Contract calls for title to be conveyed by a Land Trustee's Deed, the Affidavit of Title required to be furnished by Seller shall be signed by either the trustee or the beneficiaries of said Trust.

13. PRORATIONS. Items to be prorated, as applicable, include, without limitation: rents and deposits (if any) for tenants, utilities, homeowners or condominium association assessments, premiums for insurance policies or accrued interest on any mortgage assumed. All prorations shall be prorated as of the date of closing and shall be final unless otherwise agreed in writing between Seller and Buyer. The Seller represents that the property is tax exempt in the hands of the Seller and that no taxes are due or owing for the years the property was owned by the Seller prior to the Closing; no proration for taxes shall be given; and, if any taxes are assessed in error after the Closing against the property, the Seller shall intervene, defend the tax assessment and pay any taxes that are assessed contrary to this representation.

14. INTERNAL REVENUE CODE REQUIREMENTS: Parties agree to furnish, execute and deliver all documentation and information to comply with the reporting requirements of Section 6045(e) and Section 1445 of the Internal Revenue Code.

15. PERFORMANCE AND DEFAULT: Time is of the essence in this Contract. If Buyer fails to perform in accordance with this Contract, then at the option of Seller, and upon the written notice to Buyer, the earnest money shall be forfeited by Buyer as liquidated damages and this Contract shall thereupon terminate, or Seller may refuse to accept the earnest money as liquidated damages, and pursue any and all legal remedies that may be available in law and equity against Buyer. If Seller fails to perform in accordance with this Contract, then the earnest money shall be refunded to Buyer and Buyer may pursue any and all legal remedies against Seller that are available in law and equity. In addition, the non-prevailing Party shall pay all reasonable attorney fees and costs incurred by the prevailing Party in enforcing the terms and provisions of this Contract, including forfeiture or specific performance or any other remedy, or in defending any proceeding to which Buyer or Seller is made a party as a result of any act or omission of the other Party.

16. DAMAGE OF REAL ESTATE PRIOR TO CLOSING: If prior to delivery of the deed hereunder, the Real Estate shall be destroyed or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of terminating this Contract and receiving a refund of earnest money or of accepting the Real Estate as damaged or destroyed, together with the proceeds of any insurance payable as a result of the destruction or damage, which proceeds Seller agrees to assign to Buyer. In no event shall Seller be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified in this paragraph.

17. SELLER REPRESENTATIONS: Seller, or its beneficiaries, or agents, warrant that no notice has been received from any state or local governmental authority of any zoning, building, fire or health code violations, or of any pending rezoning, or of any special assessment proceedings affecting the Real Estate.

18. Intentionally Omitted.

19. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974: The Buyer and Seller will comply with the Real Estate Settlement Procedures Act of 1974, as amended, and will furnish all information required for compliance therewith.

20. ESCROW CLOSING: This sale shall be closed through an escrow with the title company in accordance with the provisions of the usual form of Deed and Money Escrow Agreement with provisions inserted in the Escrow Agreement as may be required to conform to this Contract. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, the payment of the purchase price and delivery of deed and other documents required to be delivered by this Contract, shall be made through the escrow, provided that

Buyer shall, in addition, deposit in the escrow, a Quit Claim Deed to Seller reconveying the subject Real Estate. The cost of the escrow shall be paid by the Buyer if the Buyer has a lender; otherwise it will be shared equally by the parties.

21. FLOOD PLAIN: Buyer shall obtain flood insurance if the Real Estate is located within a designated flood plain as determined by the Flood Plain Maps of the Department of Housing and Urban Development, and if said insurance is required by the Buyer's lender.

22. DATE OF THE CONTRACT AND SIGNATURES: The date of the Contract shall be deemed to be the Effective Date first set forth above.

23. REVIEW BY ATTORNEY: NO ATTORNEY REVIEW OR MODIFICATION SHALL TAKE PLACE AFTER THIS CONTRACT IS SUBMITTED AS A BID BY THE BUYER, EXCEPT AS AGREED IN REGARD TO A CLOSING DATE OR OTHERWISE AGREED IN WRITING BY THE PARTIES. The Buyer shall make every reasonable effort to consult with an Attorney to review the legal rights and responsibilities of the Buyer under this Contract prior to submitting a bid with this signed Contract. Once a bid is submitted with the signed Contract, no material modifications may be allowed.

Attorneys for the respective Parties will be:

Buyer's Attorney:

Patrick M. Griffin
GRIFFIN | WILLIAMS LLC
21 N. 4th Street
Geneva, IL 60134
PH: (630) 524-2566
FAX: (630) 262-0644
Email: pgriffin@gwillplaw.com



Seller's Attorney:

Kevin G. Drendel
DRENDEL & JANSONS LAW GROUP
111 Flinn Street
Batavia, IL 60510-6808
PH: (630) 406-5440
FAX: (630) 406-6179
Email: kgd@batavialaw.com

24. Approval by Village Board. This Contract is further subject to formal approval by the North Aurora Village Board of Trustees. If the North Aurora Village Board of Trustees rejects all bids or any bids, and/or does not approve this Contract; the Contract shall be considered terminated upon notice of such rejection and/or disapproval of the Contract; and the earnest money and any bid bond shall be returned to the Buyer.

Date of Offer 1/10/18

Date of Acceptance 1/15/18

Buyer 
By its 

Seller 
By its Community Development Director

Federal Tax I.D. # 82-3635446

Federal Tax I.D. # 36 600 9508