

ORDINANCE NO. 17-3557

AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO A REAL ESTATE CONTRACT TO PURCHASE 6937 MONTGOMERY ROAD AND DECLARING AN EMERGENCY

WHEREAS, Article X, §13 of the Charter of the Village of Silverton ("Silverton") provides that real property may be sold or traded "as provided by ordinance" and R.C. 715.01, and R.C. 715.21, and home-rule authorize Silverton to acquire real property;" and

WHEREAS, Terrie P. Shearer is the owner of approximately 0.176 +/- acres of real property situated in Silverton, located at 6937 Montgomery Road, generally described as parcel numbered 602-0001-0114-00; and

WHEREAS, Silverton wishes to purchase said property owned by Terrie P. Shearer inside the corporate limits of the Village of Silverton under the terms of a Real Estate Conveyance Agreement ("Agreement"), including a payment from Silverton not to exceed \$175,000.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Silverton, Ohio, that:

SECTION I. The Village Manager is hereby authorized to execute the Agreement in a form substantially similar to Exhibit A, a purchase and sales agreement attached hereto and made a part hereof, to procure property on behalf of the Village of Silverton.

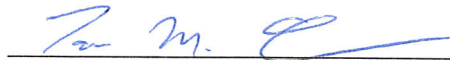
SECTION II. The purchase of this property will be beneficial to the Village as it will enable the Village to redevelop property owned by the Village of Silverton adjacent to this property to be acquired, and return underperforming property to its highest and best use.

SECTION III. This Ordinance is declared to be an emergency measure necessary to preserve the public peace, health, safety and welfare of the citizens of the Village of Silverton; the reason for the emergency being the immediate need to enter into an agreement with Terrie P. Shearer so Silverton can obtain title to the above parcel as soon as possible. Accordingly, this Ordinance shall take effect and be in force from and after its passage and approval.


*Passed this 29<sup>th</sup> day of June, 2017.*

  
\_\_\_\_\_  
John A. Smith, Mayor

ATTEST:

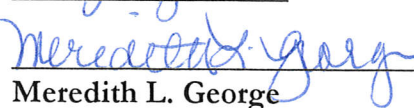
  
\_\_\_\_\_  
Thomas M. Carroll, Village Manager

Approved as to form:

  
\_\_\_\_\_  
Bryan E. Pacheco, Village Solicitor

**CERTIFICATION:**

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 17-3557 has been duly made by posting true copies in three (3) of the most public places in said municipality, as determined by Council as follows: 1) Parkview Lane at Railroad; 2) Silverton Municipal Building and 3) The Village of Silverton's Website. Said posting was for a period of fifteen days commencing July 17, 2017.

  
\_\_\_\_\_  
Meredith L. George  
Clerk of Council of Silverton, Ohio

## CONTRACT TO PURCHASE

This Contract to Purchase (“Contract”) is dated and made effective this \_\_\_\_\_ day of June, 2017 (“Effective Date”), by and between the VILLAGE OF SILVERTON, OHIO, an Ohio municipal corporation (“Buyer”), and TERRIE P. SHEARER (“Seller”). Upon the terms and conditions hereinafter stated, Buyer and Seller hereby agree as follows:

1. Real Estate. As of the Effective Date, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer the real estate located at 6937 Montgomery Road, Silverton, Ohio, Hamilton County, Ohio (tax parcel number 602-0001-0114-00) and as further described on Exhibit A attached hereto and made a part hereof, with all improvements and fixtures thereon and with all appurtenant rights, privileges, and easements (the “Real Estate”).

2. Seller’s Certifications. Seller certifies the following facts to Buyer regarding the Real Estate:

(a) Seller is the sole owner of the entire undivided fee simple interest in the Real Estate;

(b) To the best of Seller’s knowledge, no environmental contaminants are located on the Real Estate including, but not limited to, asbestos, PCB fluids, underground storage tanks, petroleum products, or other toxic, hazardous or contaminated substances or materials;

(c) The Real Estate is free from any and all city, county, state, federal, or other governmental authority orders, directives or charges;

(d) No commissions or other fees are due to any real estate broker or other third party as a result of the sale of the Real Estate; and

(e) No person has a dower interest in the Real Estate.

3. Purchase Price and Terms. The purchase price for the Real Estate shall be \$175,000.00 (the “Purchase Price”), payable as follows:

(a) Buyer shall deposit with Mercantile Title Agency, Inc. (“Mercantile”), 255 East Fifth Street, Suite 1900, Cincinnati, Ohio 45202, the sum of \$2,500.00, which shall be applied toward or credited against the Purchase Price at closing or otherwise be disbursed in accordance with this Contract; and

(b) The balance of the Purchase Price, subject to adjustments in accordance with this Contract, shall be paid by cash, certified or cashier’s check on the date of closing. It is agreed and understood by the parties that the Buyer shall pay all closing costs other than costs chargeable to the Buyer articulated in this Contract.

4. Inspection Period. Buyer, at its sole cost and expense, shall have thirty (30) days after the Effective Date to conduct such inspections, investigations, title examinations, reviews, and verifications (collectively, the “Buyer’s Due Diligence”) regarding the Real Estate as are necessary to verify the condition of the Real Estate and to determine if the Real Estate is suitable for Buyer’s intended use.

5. Conveyance and Closing. Seller shall convey transferable and marketable title to the Real Estate to Buyer by deed of general warranty in fee simple absolute, with release of dower, if any, on or before July 21, 2017. The title to the Real Estate shall be free, clear and unencumbered, excepting those restrictions, conditions and easements of record prior approved by Buyer's attorney. At closing, Seller shall pay for the satisfaction and removal of record of any and all liens out of the Purchase Price. Closing shall occur at the Silverton Municipal Building located at 6860 Plainfield Road unless otherwise agreed to in writing by both Seller and Buyer.

6. Pro-rations. At closing, Seller shall credit to Buyer all unpaid real estate taxes and assessments which are a lien on the Real Estate through the date of closing. Buyer shall be responsible for all real estate taxes and assessments accruing after the date of closing.

7. Condition of Improvements. Until Buyer has exclusive possession of the Real Estate, Seller, at its sole cost and expense, shall maintain the Real Estate (including, but not limited to, repairs and replacements as necessary) in the same condition as of the date of this Contract, reasonable wear and tear excepted. Also, Seller shall continue to insure the improvements until the later of: (a) the date of closing; or (b) the date on which Seller completely vacates the Real Estate and possession of the Real Estate is given to Buyer. In the event of loss and if such loss is not repaired by and at the cost of Seller prior to the date of closing, Buyer, in its sole and absolute discretion, may elect to: (i) accept the Real Estate in its "as is" condition, in which case, Seller shall promptly pay all insurance proceeds to Buyer; or (ii) terminate this Contract.

Until Seller completely vacates the Real Estate and Buyer has exclusive possession of the Real Estate, Seller, at its sole cost and expense, shall maintain renter's insurance on its personal property located in the Real Estate in an amount acceptable to Buyer, and Buyer shall maintain property and casualty insurance on the Real Estate in an amount reasonably determined by Buyer. Seller shall defend, protect, indemnify and hold harmless Buyer in the event of a claim, action, loss, injury or damage relating to or associated with this Agreement and Seller's obligations hereunder, Seller's use, occupancy, and/or possession of the Real Property, Seller's failure to repair, maintain, or replace as provided for herein, or Seller's acts or omissions or negligence or willful misconduct. In the event of loss on or after closing where Seller has not completely vacated the Real Estate, Seller shall be entitled to seek compensation from Seller's rental insurance policy for the personal property located within the Real Estate and Buyer shall have no responsibility or liability to compensate Seller for any loss, damage, or claim to such personal property. Seller shall provide Buyer with evidence of renter's insurance upon Buyer's request.

Seller shall have the right to remove and retain any appliances in the Real Estate prior to the date possession is transferred to Buyer. Any items left inside the Real Estate after the date Seller vacates the Real Estate shall become the sole property of the Buyer and Buyer may dispose of such property as Buyer deems fit in its sole and absolute discretion without any claim, interest, responsibility, or liability by or to Seller.

8. Possession. Exclusive possession of the Real Estate shall be given to Buyer on or before December 31, 2017, free from any third party interest, right, or claim. Seller shall have the right to live in the Real Estate up to December 31, 2017 without paying rent to the Buyer or real estate taxes on the Real Estate. Seller shall, however, be responsible for all utility charges and other charges related to the Real Property, including but not limited to, maintenance, repair, and replacement

expenses, until and through the date Seller vacates the Real Estate. Buyer shall have no responsibility, obligation, or liability to maintain the Real Estate, fix any problems, or otherwise repair or replace any improvements, equipment, mechanics, systems, or other issues that may arise related to or associated with the Real Estate. Seller shall not lease or sub-lease the Real Estate, damage the Real Estate, commit waste, impair its value, or otherwise take any action (or fail to take action) that may adversely impact the Real Estate or degrade the value of the Real Estate before exclusive possession of the Real Estate is given to Buyer. It is agreed and understood by the parties that Seller shall vacate the Real Estate on or before December 31, 2017. On or before December 15, 2017, Seller shall provide Buyer with written notice indicating the date Seller shall vacate the Real Property and deliver possession of the Real Estate to Buyer. Buyer shall not owe any additional compensation to Seller if Seller vacates the Real Estate before December 31, 2017. If Seller fails to vacate the Real Estate on December 31, 2017, Seller shall pay Buyer a penalty equal to \$100.00 per day for every day that Seller remains on or in possession of the Real Estate beyond December 31, 2017, and, in addition thereto, Buyer may pursue any and all legal and equitable remedies available to it.

9. Contingencies. Buyer's performance under this Contract is contingent upon satisfaction of the following events, unless any such event is expressly waived by Buyer (in Buyer's sole and absolute discretion) by providing written notice to Seller:

- (a) Buyer reviewing and approving the title to the Real Estate;
- (b) Buyer's satisfactory completion of the results of Buyer's Due Diligence as determined by Buyer in its sole and absolute discretion; and
- (c) Authorization of this Contract by ordinance passed by the Village of Silverton, Ohio Council.

In the event that any contingency under this Contract is not satisfied or waived by Buyer, in Buyer's sole and absolute discretion, Buyer may terminate the Contract without further obligation, responsibility, or liability to Seller, or otherwise, and all Earnest Money shall be promptly returned to Buyer after written instruction is provided to Mercantile from Buyer.

10. Written Notice. Any notice required or permitted under this Contract shall be in writing and deemed to have been given upon (a) the date of recipient's signature if sent by certified mail, postage prepaid, return receipt requested, (b) the next day if given by Federal Express/Next Day Delivery service with proof of delivery, or (c) the date of delivery if given by hand delivery to the parties at the following addresses:

**Buyer:**

Attention: Tom Carroll  
Village Manager  
Village of Silverton, Ohio  
6860 Plainfield Road  
Silverton, OH 45236

**Seller:**

Terrie P. Shearer  
6937 Montgomery Road  
Silverton, OH 45236

11. Sole Contract. The parties agree that this Contract constitutes their entire agreement and that no oral or implied agreement exists. Any amendments to this Contract shall be made in

writing, signed by both parties, and copies shall be attached to the original Contract. This Contract shall be binding upon the parties, their respective heirs, assigns and successors. Buyer may freely assign this Contract, without limitation, to a business entity to be created or in existence prior to closing. This Contract may be executed in separate counterparts, each of which shall be deemed an original, but all of such counterparts, taken together, shall constitute one and the same agreement. This Contract shall be governed by Ohio law without regard to conflict of laws principles. Neither party shall be deemed the drafter of this Contract.

12. Expiration and Approval. This offer shall remain open for acceptance until 11:59 A.M. Cincinnati time on the 23rd day of June, 2017. A signed copy shall be returned to Seller or Buyer, as the case may be, after acceptance.

IN WITNESS WHEREOF, Buyer and Seller have hereby executed this Contract as of the Effective Date.

Approved as to form:

**Buyer:**

**VILLAGE OF SILVERTON, OHIO,**  
an Ohio municipal corporation

\_\_\_\_\_  
Bryan E. Pacheco, Village Solicitor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OHIO            )  
  )ss:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June, 2017 by Thomas M. Carroll, the Village Manager of the **VILLAGE OF SILVERTON, OHIO**, an Ohio municipal corporation, on behalf of such entity.

\_\_\_\_\_  
Notary Public – State of Ohio

Seller:

\_\_\_\_\_  
Terrie P. Shearer

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June, 2017 by  
**Terrie P. Shearer.**

\_\_\_\_\_  
Notary Public – State of Ohio

Exhibit A

Legal Description

(To be provided by the Village of Silverton)