

ORDINANCE NO. 18-3588

**AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER TO ENTER
INTO A REAL ESTATE CONTRACT TO SELL 6805 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

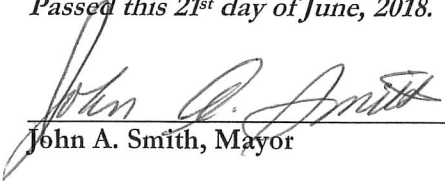
WHEREAS, Grand Vista Investments LLC wishes to purchase approximately 0.225 +/- acres of real property situated in Silverton, located at 6805 Montgomery Road, generally described as parcel numbered 602-0001-0053-00; and

WHEREAS, Silverton is the owner of 6805 Montgomery Road and wishes to sell said property to Grand Vista Investments LLC 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 \$40,000.


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 sell the property located at 6805 Montgomery Road.
- SECTION II.** The sale of this property will be beneficial to the Village as it will enable the redevelopment of the property owned by the Village of Silverton and to 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 for the Village to enter into a contract to sell the property located at 6805 Montgomery Road as soon as possible, which will then allow Grand Vista Investments LLC to commence due diligence and to apply for a conditional use permit prior to closing. Accordingly, this Ordinance shall take effect and be in force from and after its passage and approval.

Passed this 21st day of June, 2018.


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. 18-3588 has been duly made by posting true copies in two (2) places that are accessible by the public in said municipality, as determined by Council as follows: 1) Silverton Town Hall lobby area and Council Chambers foyer; and 2) Silverton's official website. Said posting was for a period of fifteen days commencing June 22, 2018.

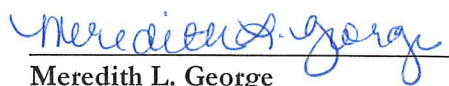

Meredith L. George
Clerk of Council of Silverton, Ohio

Exhibit A

Legal Description

[Village of Silverton to Provide at Silverton's cost by closing]

Exhibit B

Right of Entry Agreement

Exhibit A

CONTRACT TO PURCHASE

This Contract to Purchase ("**Contract**") is dated and made effective this 22nd day of June, 2018 ("**Effective Date**"), by and between the VILLAGE OF SILVERTON, OHIO, an Ohio municipal corporation ("**Seller**"), and LLC ("**Seller**"). Upon the terms and conditions hereinafter stated, Buyer and Seller hereby agree as follows:

1. Real Estate. Buyer agrees to purchase from Seller the real estate identified as 6805 Montgomery Road, Silverton, Ohio, known as Hamilton County, Ohio tax parcel numbers 602-0001-0053-00 with dimensions approximately 100 X 100 feet, 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, in an "as is" condition as of the Effective Date of this Contract (collectively, the "**Real Estate**").

2. Seller's Certifications. Seller certifies the following facts 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 person has a right to possession or is in possession of the Real Estate other than easements of public record.

3. Purchase Price and Terms. The purchase price shall be \$40,000, payable as follows:

(a) Buyer shall deposit on or before June 22, 2018 with Mercantile Title Agency, Inc. ("**Mercantile**"), 255 East Fifth Street, Suite 1900, Cincinnati, Ohio 45202, the sum of \$1,000.00, which shall apply toward the purchase price at closing or otherwise be disbursed in accordance with this Contract; and

(b) The balance of the purchase price, subject to customary closing adjustments and other adjustments per this Contract, shall be paid by cash, certified or cashier's check on the date of closing.

4. Inspection Period. Buyer, at its sole cost and expense, shall have ninety (90) days after the Effective Date to conduct such inspections, investigations, title examinations, 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 fiduciary deed in fee simple absolute, with release of dower, if any, within 10

days after completion of Buyer's due diligence. 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 Town Hall located at 6943 Montgomery Road at a mutually agreed upon time in the afternoon, unless otherwise agreed to by both Seller and Buyer. Buyer shall be solely responsible for any realtor fees as the Seller is not using a realtor for this transaction.

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 shall maintain the Real Estate 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 date of closing. 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 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. In the event of loss on or after closing where Seller has not completely vacated the Real Estate, Seller shall promptly pay all insurance proceeds to Buyer.

8. Possession. Exclusive possession of the Real Estate shall be given to Buyer upon the date of closing free from any third party interest except easement rights prior approved by Buyer's attorney. Prior to closing, Seller shall permit access to the Real Estate by Buyer, its agents, employees or contractors, for inspection and testing of the condition of the Real Estate provided that Buyer gives Seller twenty-four (24) hour prior notice of such inspection time. Seller shall be responsible for all utility charges until and through the date that Seller completely vacates the Real Estate. Seller shall provide Buyer with accurate and complete copies of any leases and any other documentation (e.g. equipment warranties) relating to the condition of the Real Estate within five (5) days of the Effective Date.

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 and survey to the Real Estate;

(b) Buyer applying for before July 1, 2018, and receiving from the Silverton Planning Commission before August 15, 2018, a conditional use permit that enables the Buyer to operate a low intensity service establishment pursuant to 153.092 (10) of the Silverton Zoning Code.

(c) Buyer completing any environmental testing or other site condition analysis investigations on or before August 1, 2018. Seller hereby grants Buyer a Right of Entry for testing as detailed in Exhibit B attached hereto and made a part hereof; and

(c) Authorization of this Contract by ordinance passed by the Village of Silverton Council of Buyer.

In the event that any contingency under this Contract is not satisfied or waived, in Buyer's sole and absolute discretion, Buyer may terminate the Contract without further obligation or liability 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 or (c) 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
6943 Montgomery Road
Silverton, OH 45236

Seller:

Grand Vista Investments LLC
Attention: Todd Redding

Cincinnati, Ohio 45213

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. Construction of Agreement. This Agreement shall be construed in accordance with the laws of the State of Ohio.

13. Expiration and Approval. This offer shall remain open for acceptance until 11:59 A.M. Cincinnati time on the 29 day of June, 2018. 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: Thomas M. Carroll
Its: Village Manager

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____, the _____ of the **VILLAGE OF SILVERTON, OHIO**, an Ohio municipal corporation, on behalf of such entity.

Notary Public – State of Ohio

Seller:

Grand Vista Investments LLC

By: _____

STATE OF OHIO)
)ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018
by _____, the _____ of **Todd Redding**.

Notary Public – State of Ohio

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this "Agreement") is made and entered into this 22nd day of June, 2018, (the "Effective Date") by and between the Village of Silverton, Ohio, an Ohio municipal corporation ("Grantor"), and Grand Vista Investments, LLC ("Grantee").

RECITALS

WHEREAS, Grantor is the owner of certain real property located at 6805 Montgomery Road, and further identified as Hamilton County, Ohio Auditor's Parcels No. 602-0001-0053-00 (the "Property");

WHEREAS, Grantee, through its contractors and employees, requires access to the Property in order to perform certain earth drilling work thereon for the purpose of collecting soil and/or groundwater samples (the "Work"); and

WHEREAS, Grantor is agreeable to such entry onto the Property by Grantee and its and its employees and contractors to complete the Work, subject to certain terms and conditions as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. RIGHT OF ENTRY. Grantor hereby grants to Grantee and its agents, representatives, employees, permittees, consultants, contractors and subcontractors (collectively, "Grantee's Agents") the temporary right to enter the Property for the purpose of performing the Work on a plan to be provided to Grantor for review and approval no later than July 9, 2018.

2. TERM. The term of this Agreement shall commence upon execution of this Agreement by both parties and shall terminate upon completion of the Work; provided, however, that Section 7 of this Agreement shall survive completion of the Work.

3. COVENANTS BY GRANTEE.

- a. Compliance with Laws. Grantee shall comply, and cause Grantee's Agents to comply with all federal, state and local laws, statutes, orders, ordinances, rules and regulations in performing the Work.
- b. Standard of Care. Grantee shall ensure that Grantee's Agents, while performing the Work, take all reasonable precautions which are consistent with the standard of care generally practiced by others who engage in similar work to protect the Property and adjacent properties.
- b. Liens. Grantee shall not permit to be placed against the Property, or any part thereof, any attachment, liens, charges or encumbrance whatsoever. Grantee

agrees to hold Grantor harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Property.

- c. Restoration of Property. Upon termination of this Agreement, Grantee shall, at its own cost and expense, restore the Property to the same condition in which it was prior to Grantee's entry.

4. INJURY OR DAMAGE. Grantor does not assume and shall not incur any liability for injury or damage to any person or property incidental to or which may arise during or in consequence of the use of the Property pursuant to this Agreement, except to the extent caused by Grantor's sole negligence or willful misconduct. In the event of any occurrences of losses or damages to Grantor's property or the Property caused by Grantee, Grantee agrees to repair such damages in a timely fashion or make appropriate settlement with Grantor in lieu thereof, exclusive of other amounts which may otherwise be payable pursuant to the terms of this Agreement.

5. INDEMNIFICATION. Grantee, on its behalf and on behalf of Grantee's Agents, agrees to indemnify and defend Grantor and hold Grantor harmless against any (i) claims, demands, liabilities, actions, costs, suits, proceedings and expenses (including reasonable attorneys' fees) asserted against or incurred by reason of Grantee's or Grantee's Agents' performance of the Work

6. INSURANCE. Prior to entry on the Property by Grantee or Grantee's Agents, Grantee shall provide appropriate insurance, in the coverages and amounts that are customary for Work in the geographic area, against any loss that might be occasioned by Grantee's or Grantee's Agents' performance of the Work on the Property, and such insurance shall name Grantor as an additional insured relative to the Work. Upon request by the Grantor, Grantee shall produce evidence of coverage in conformance with the requirements contained in this Section 6.

7. REPORT. Within thirty (30) days following completion of the Work, Grantee shall provide Grantor with complete copies of any and all documents produced in connection with the Work, including, without limitation, reports, assessments, analyses, plans, diagrams, correspondence, emails, images, notes, and data, whether in written or electronic form.

8. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties regarding the right of entry to Grantee and Grantee's Agents for the purposes herein. No modification, amendment or waiver of the terms and conditions of this Agreement shall be binding upon the parties unless approved in writing by both parties. Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

9. GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Venue for any action or proceeding arising from or relating to this Agreement shall be in the appropriate Ohio court having jurisdiction located in Hamilton County, Ohio.

10. NO THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the parties hereto and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.

11. COUNTERPARTS. This Agreement may be executed by the parties in counterparts.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper representatives there unto duly authorized.

GRANTOR

Village of Silverton, Ohio
an Ohio municipal corporation

By: _____

Name: Thomas M. Carroll

Title: Village Manager

GRANTEE

Grand Vista Investments LLC
_____ company

By: _____

Name: _____

Title: _____