

ORDINANCE C-65-14

AN ORDINANCE TO AUTHORIZE THE PURCHASE OF 3432 GRANT AVENUE AND APPROPRIATE \$175,000.00 FROM THE GENERAL FUND FOR SAID PURCHASE AND RELATED EXPENSES AND DECLARING AN EMERGENCY

WHEREAS, on September 24, 2014 the Planning Commission recommended approval of the preliminary development plan for the new library; and

WHEREAS, on October 6, 2014 this Council passed Resolution CR-55-14 approving the Preliminary Plan; and

WHEREAS, the Preliminary Plan shows the location of the proposed building and parking for the new library; and

WHEREAS, the property located at 3432 Grant Avenue, Grove City, Ohio 43123, and known as Franklin County Auditor's Tax Parcel No. 040-000094-00, contains approximately 0.103 acres is needed for parking as shown in the Preliminary Plan; and

WHEREAS, a developer has obtained an option to the Property and the developer is willing to transfer the option, at no cost, so that the City may acquire the Property for parking for the new library; and

WHEREAS, an emergency exists for the preservation of the public peace, health and safety of the municipality and its inhabitants for the reason that the option contract requires that the closing on the Property occur before November 15, 2014 as the Property owner needs to sell the Property as soon as possible and the City needs this Property for parking as shown in the Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

SECTION 1. Council hereby authorizes the purchase of the property located at 3432 Grant Avenue as set forth in Exhibit "A".

SECTION 2. There is hereby appropriated \$175,000.00 from the unappropriated monies of the General Fund to be transferred to the Capital Improvement Fund and appropriated to account #305000.603133 for the Current Expense of said purchase and related expenses.

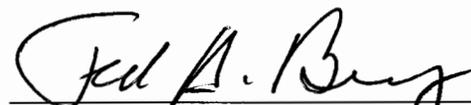
SECTION 3. For reasons stated in the preamble this ordinance is hereby declared an emergency measure and shall go into immediate effect.

Passed: 11-03-14
Effective: 11-03-14

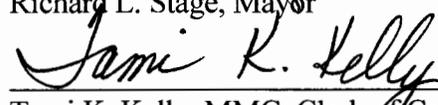
Attest:

I certify that this ordinance is correct as to form.

I certify that there is money in the treasury, or is in the process of collection to pay the within ordinance.


Ted A. Berry, President of Council


Richard L. Stage, Mayor


Tami K. Kelly, MMC, Clerk of Council


Stephen J. Smith, Director of Law


Michael A. Turner, Director of Finance

C-65-14

EXHIBIT 1

REAL ESTATE PURCHASE CONTRACT

This Real Estate Purchase Contract (the "Contract") is entered into effective as of the latest date on which it is executed by any of the signatories hereto (the "Effective Date") by and between Ciminellos Inc., an Ohio Corporation, ("Buyer"), and Estelle Stout ("Seller").

WHEREAS, Seller is the owner of certain real property consisting of approximately 0.55 acres addressed at 3432 Grant Avenue Grove City, Franklin County, Ohio being Franklin County Auditor's Tax Parcel No. 040-000094-00 (the "Premises").

WHEREAS, Seller desires to sell and convey the Premises to Buyer and Buyer desires to purchase the Premises from Seller upon the terms and conditions hereinafter set forth.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

Section 1. Covenants to Sell and Purchase. Seller hereby agrees to sell and convey the Premises to Buyer and Buyer hereby agrees to purchase the Premises from Seller, together with all appurtenant rights, easements, tenements, hereditaments, fixtures, improvements and appurtenances thereto, upon the terms and conditions hereinafter set forth.

Section 2. Purchase Price. The purchase price for the Premises ("Purchase Price") shall be **One hundred seventy five thousand dollars (\$175,000)**. Purchase Price, less adjustments, credits and proration provided for in this Contract, shall be paid by Buyer to Seller in cash or other immediately available funds at Closing.

Section 3. (a) Deposit. Buyer has paid, and Seller acknowledges the payment of **Ten Dollars (\$10.00)** and other good and valuable consideration, including but not limited to the Buyers Plan for the Premises, the receipt of which is hereby acknowledged by Seller, together with any future payment made pursuant to section 7.1 below (the "Deposit"). The Deposit shall be applied as follows; (a) if Seller fails or refuses to perform its obligations under this Contract due to an uncured Seller's Default (as defined below), the Deposit shall be returned to Buyer, which return shall not in any way prejudice the rights of Buyer in any action for specific performance; (b) if the transaction herein contemplated proceeds to Closing, the Deposit shall be applied to the Purchase Price at Closing; (c) if Buyer elects to terminate this Contract as permitted hereunder prior to the expiration of the Due Diligence Period as defined in Section 7.1, the Deposit shall be retained by Seller, or (d) if Buyer fails or refuses to perform its obligations under this Contract, the Deposit shall be retained by Seller as agreed upon liquidated damages, and thereafter neither Buyer nor Seller shall have any further obligations or liabilities hereunder, except pursuant to the indemnification provisions of Section 7.2.

Section 4. Evidence of Title; Survey.

4.1. Title Commitment. Seller shall obtain an owner's title insurance commitment (the "Title Commitment") through the Title Company in the amount of the

Purchase Price, under which the Title Company shall commit that, upon Closing, it will issue, at its usual rates, an ALTA Owner's Title Insurance Policy (Form 6/17/06) insuring fee simple title to the Premises in Buyer in the total amount of the Purchase Price. The Title Company shall deliver a copy of the Title Commitment to both Buyer and Seller. Buyer shall cause the Title Commitment to be certified to within five (5) days prior to the date on which Closing is scheduled to occur pursuant to Section 6.1 with endorsement as of 8:00 a.m. on the Closing Date (as defined in Section 6.1) in accordance with the standards of the Columbus Bar Association, and to show in Buyer marketable title in fee simple, free and clear of all liens and encumbrances except (i) those created or assumed by Buyer, (ii) zoning ordinances, (iii) legal public roadways and highways and (iv) covenants, easements, conditions and restrictions of record (collectively, the "Permitted Encumbrances").

4.2. Defects. If title to all or part of the Premises is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, leases, restrictions or encroachments other than those excepted in this Contract (collectively, the "Objections"), Buyer shall provide Seller with written notice of all such Objections within ten (10) days after receipt of the Title Commitment. Seller shall have five (5) days after the receipt of such notice to advise Buyer in writing whether Seller is able and willing to cure any or all Objections or to obtain title insurance for the benefit of Buyer providing affirmative coverage against loss to Buyer as a result of such Objections. In the event Seller is unable or unwilling to cure all Objections or obtain title insurance insuring over such Objections, Buyer shall have five (5) days after receipt of Seller's written notice to either (i) terminate this Contract by providing written notice of this intent to Seller, in which event the Deposit shall immediately be returned to Buyer and Buyer and Seller shall have no further obligations to each other except for the indemnification provisions of Section 7.2, or (ii) waive the Objections and proceed to Closing subject to all other terms and conditions of this Contract. Notwithstanding the foregoing Buyer shall not be required to object to any mortgage, lien or other monetary encumbrance on the Property and all such mortgages, liens and encumbrances, except the Permitted Encumbrances, shall be satisfied or released in full by Seller at or prior to Closing.

4.3 Survey. Buyer at its expense and discretion may provide Survey and legal description for Premises and obtain necessary approvals for lot splits in anticipation of closing. The Survey and descriptions shall be approved by Seller prior to the expiration of the Due Diligence Period as defined in section 7.1

Section 5. Covenants, Warranties and Representations.

5.1 Authority. Seller hereby warrants and represents that Seller is not under any legal disability and has full legal authority to execute this Contract, to execute the Deed (as defined in Section 6.2 below) and all other documents on behalf of Seller necessary to close on the transaction contemplated under this Contract. Buyer hereby warrants and represents that Buyer is not under any legal disability and has full legal authority to execute this Contract and all other documents on behalf of Buyer necessary to close on the transaction contemplated under this Contract

5.2. Title. Except as otherwise provided herein, Seller hereby warrants and represents that there are no rights of possession, use or otherwise, with respect to the Premises outstanding in third persons and there are no binding unrecorded leases, land contracts, options or other documents affecting the Premises. Notwithstanding the foregoing, the Buyer acknowledges that there are currently four (4) tenants leasing portions of the Premises and the Premises shall be conveyed subject to Tenants' rights.

Section 6. Closing; Possession; Tax Prorations; Costs.

6.1 Closing Date. Closing shall be through the Title Company and shall occur no later than Sixty (60) days after the completion of the Due Diligence Period (the "Closing Date"). Closing shall occur at the offices of the Title Company on a date and at a time mutually acceptable to the parties. If the parties are unable to agree upon a time and date for Closing, Closing shall occur at 10:00 a.m., EDT, on the Closing Date.

6.2 Conveyance of Deed. At Closing, Seller shall convey to Buyer good and marketable title in fee simple to the Premises free and clear of all encumbrances, except the Permitted Encumbrances, by a Limited Warranty Deed (the "Deed") and all other documents of conveyance reasonably required to effectuate the aforesaid conveyance.

6.3. Closing Fees. Seller shall pay any and all fees for recording of any mortgage, lien releases or other monetary sums necessary to convey clear title to the Premises to Buyer. Buyer shall pay for the title insurance premiums for the issuance of the ALTA Owner's Title Insurance Policy, conveyance taxes and fees, recording fees, title examination fees, title commitment fees and Title Company closing fees and expenses. Each party shall be responsible for their respective attorney's fees and expenses.

6.4. Taxes, Assessments, Rents. At Closing, Seller shall pay or credit on the Purchase Price all delinquent taxes, together with penalties and interest thereon, and all special assessments that are a lien on the property on the Closing Date both current and reassessed and whether due or to become due. At Closing, Seller shall also pay or credit on the Purchase Price all other unpaid real estate taxes and assessments not yet due for the year prior to Closing and a proration of such taxes and assessments for the year of Closing prorated through the Closing Date. The proration of undetermined taxes and assessments shall be based on a 365-day year and on the most recently available tax rate and valuation. Any rents actually received by Seller for the month of Closing shall be prorated through the Closing Date.

6.5. Real Estate Commissions. . Seller and Buyer represent to each other that there are no Real Estate commissions or Brokerage fees payable as a result of this transaction. Each party shall indemnify the other for the claim of any broker or other party claiming any fee or commission arising out of the acts of the indemnifying party.

6.6. Possession. Buyer shall receive possession of the Premises at the later of the date of Closing or December 31, 2015 free and clear of all claims or rights of possession in Seller or any third person or entity, subject to the current Tenants and Leases.

Section 7. Due Diligence/Contingencies.

7.1 During the period commencing on the Effective Date and terminating on October 31, 2014 (the "Due Diligence Period"), Buyer, its contractors, agents, professional advisors, shall be permitted to conduct such surveys, environmental inspections, soil borings and physical examinations, and such economic tests, analyses, and estimates (collectively, the "Tests") of or relating to the Premises as Buyer deems appropriate in order to determine the suitability of the Premises for Buyer's intended use.

7.2 Buyer, its employees, agents and contractors, are hereby granted a license to enter upon the Premises through the Closing Date, including access to the improvements located thereon, at reasonable times and upon reasonable notice during the Due Diligence Period to conduct the Tests. Buyer shall indemnify Seller against any and all claims for bodily injury or property damage arising from the acts of Buyer, its employees, agents or other representatives on the Premises arising from their entry upon the Premises pursuant to this Section 7. Buyer shall notify Seller at least seventy two(72) hours before any inspection to allow Seller or Seller's representative to be present

7.3 If Buyer, in Buyer's sole and absolute discretion, is not satisfied with the results of the Tests or otherwise determines that the Premises are not suitable for Buyer's intended use, or Buyer is unable to purchase or otherwise secure Buyers needed additional acreage of nearby properties, Buyer may, at any time on or prior to expiration of the Due Diligence Period or any extension thereof, terminate this Contract by providing written notice of termination to Seller. Upon any such termination neither Buyer nor Seller shall have any further obligations nor liabilities hereunder, except pursuant to the indemnification provisions of this Contract and the rents as set forth as Additional Compensation in Section 3(b).

Section 8. 1031 Exchange. Buyer agrees to cooperate should Seller elect to sell the Premises as part of a like-kind exchange under IRC Section 1031. Seller's contemplated exchange shall not impose upon Buyer any additional liability or financial obligation, and Seller agrees to hold Buyer harmless from any liability that might arise from such exchange.

Section 9. Condition of Property. Seller may remove any of the improvements from the Premises prior to Buyer taking possession. Seller agree to leave property in reasonably safe condition and agrees to be responsible for any contamination of the Premises occurring after the expiration of the Due Diligence Period. Buyer shall accept the Premises and all improvements thereon in its "AS IS" condition on the date of possession.

Section 10. Damage or Destruction of Property. Risk of loss to the Premises from fire or other casualty shall be borne by Seller until delivery of the Deed, provided that if the Premises are substantially damaged or destroyed by fire or other casualty prior to the Closing of the transaction, then in such event Buyer shall have the right to proceed with the transaction and be entitled to insurance, not exceeding the Purchase Price, if any, payable to Seller under any and all policies of insurance covering the Premises so damaged or destroyed.

Section 11. Notices. Any notice required to be given hereunder shall be given in writing by ordinary United States mail, postage prepaid, by nationally recognized overnight courier or by hand delivery addressed to the parties at their respective addresses as set forth below.

If to Seller

Estelle Stout
3432 Grant Avenue
Grove City, Ohio 43123
Phone: 614-2262770
Email: mstout@serv-success.com

If To Buyer

Joseph Ciminello
567 Lazelle Rd
Westerville, Ohio 43081
Phone: 614-207-7607
Email: ciminelloj@aol.com

Notices shall be deemed received at the earlier of (i) actual hand delivery to the address of the receiving party, (ii) when received or when receipt is refused or (iii) two business days following proper deposit in the United States mail or delivery by facsimile or email.

Section 12. Entire Contract. This Contract embodies the entire agreement among the parties in respect to the transaction herein contemplated. Any amendments hereto shall be in writing and executed by the parties hereto.

Section 13. Survival. Buyer's and Seller's warranties, agreements, covenants, conditions, representations and remedies set forth in this Agreement shall survive Closing and shall not be merged upon delivery of the Deed from Seller to Purchaser, nor upon payment of the Purchase Price by Purchaser to Seller.

Section 14. Assignment; Successors in Interest. Buyer shall have the right to assign this Contract to another party.

Section 15. Dates. If the deadline for any contingency, act or other event required or permitted by either party under this Contract falls on a Saturday, Sunday or Legal Holiday, such deadline shall be extended to the first day thereafter which is not a Saturday, Sunday or Legal Holiday.

Section 16. Fax/Electronic Signatures. This Contract may be executed by either party and delivered to the other party in electronic form (PDF Document Format) or by facsimile. Such electronic or facsimile copies of this Contract and the signatures of either party shall be binding and accepted as originals. This Contract may be executed in counterparts, each of which, when executed and delivered, shall be deemed an original, and all counterparts shall constitute one and the same instrument.

Section 17. Governing Law. This Contract shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, Buyer and Seller have executed this Contract on the dates specified below

BUYER: CIMINELLOS INC.

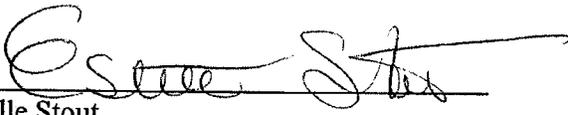
By: 

Joseph A. Ciminello, on behalf of Ciminellos Inc.

Title: Vice PRES

Date: 8/15/14, 2014

SELLER: Estelle Stout

By: 

Estelle Stout,

Title: _____

Date: 8/15, 2014

C-65-14
Exhibit "A"

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (the "Agreement") is entered into this ____ day of November, 2014, by and between Ciminello's Inc., an Ohio corporation, with address at 567 Lazelle Rd, Westerville, OH 43081 ("Assignor") and the City of Grove City, Ohio, a municipal corporation, duly organized and validly existing under the Constitution and laws of the State of Ohio and its City Charter, with address at 4035 Broadway, Grove City, Ohio 43123 (the "City").

Background

- A. Assignor is in contract to purchase approximately 0.103 acres of land, being Tax Parcel No. 040-000094, also known as 3432 Grant Avenue in Grove City, Ohio (the "Parcel").
- B. City desires to acquire the Parcel as part of the relocation of the Grove City municipal library to the Broadway and Mill Street project.
- C. Assignor is willing to assign the contract to City under the terms and conditions set forth herein.

Statement of Agreement

NOW THEREFORE, in consideration of the following terms and conditions and acknowledging the foregoing Background Information which is deemed incorporated into said terms and conditions, Assignor and City agree as follows:

- 1. Closing. Notwithstanding provisions in the contract to the contrary, City's closing on the Parcel shall be on or before November 15, 2014.
- 2. Assignment. At the Assignment Closing, Assignor shall deliver to City an executed original of the Assignment, attached hereto as Exhibit 2.

The parties have hereunto subscribed their names on the day and year set forth below.

CIMINELLO'S INC.

CITY OF GROVE CITY

by: _____

by: _____

its: _____

its: _____

Date: _____

Date: _____

Authorized by Ordinance No. _____

Passed _____, 2014

APPROVED AS TO FORM:

Stephen J. Smith, Law Director

CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that the money required to meet this proposal has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from an previous obligation or certification as required by Ohio Revised Code §5705.01 to §5705.47.

Date

Michael Turner, Director of Finance

284.86//Agreements/Assignment Agreement (10-9-14)

0127090.0607160 4832-8613-0720v1

EXHIBIT 2

ASSIGNMENT

In consideration of Ten Dollars (\$10) and other consideration paid to Ciminello's Inc., an Ohio corporation, by the City of Grove City, Ohio, Ciminello's Inc. hereby assigns to the City of Grove City the Real Estate Purchase Contract (the "Contract") attached hereto and all rights thereunder, subject to all conditions contained in said Contract.

Witness my hand this _____ day of _____, 2014.

CIMINELLO'S INC.

by: _____

its: _____