

**VILLAGE OF YELLOW SPRINGS, OHIO
RESOLUTION 2024-70**

**APPROVING AN OPTION TO PURCHASE AGREEMENT WITH YELLOW SPRINGS
EXEMPTED VILLAGE SCHOOL DISTRICT**

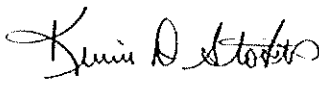
WHEREAS, Yellow Springs Village Council is committed to the provision and nurturance of a welcoming community, as highlighted in our Village Values; and,

WHEREAS, Council's formally enacted Village Goals include facilitating the development of affordable and market-rate housing for a diverse and healthy community; and,

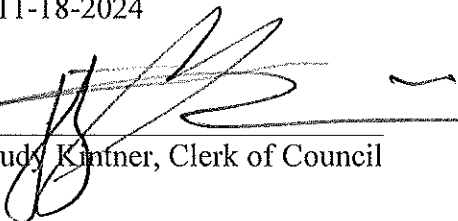
WHEREAS, Council hereby finds that entering into a Purchase Option Agreement with Yellow Springs Exempted School District for 3.6 acres located at 420 East Enon Road for the express purpose of engaging a developer to secure LIHTC funds for the construction of low-income housing is in the best interest of the Village as a whole and fulfills the public purpose of the development of affordable and market-rate housing in the Village,

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO
HEREBY RESOLVES THAT:**

Section 1. Council hereby authorizes the Village Manager to enter into a Purchase Option Agreement in a form substantially similar to the attached Exhibit A.

Signed: 
Kevin Stokes, President of Council

Passed: 11-18-2024

Attest: 
Judy Kintner, Clerk of Council

ROLL CALL:

Kevin Stokes __Y__ Gavin DeVore Leonard __Y__ Brian Housh __Y__
Carmen Brown __Y__ Trish Gustafson __N__

Exhibit A to Resolution 2024-70

OPTION TO PURCHASE AGREEMENT

This **OPTION TO PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of November ____, 2024 (the "Effective Date"), by and between **Yellow Springs Exempted Village School District** ("Seller") and **The Village of Yellow Springs, Greene County, Ohio**, an Ohio municipal corporation whose address is 100 Dayton St, Yellow Springs, OH 45387 ("Buyer").

RECITALS

A. Seller is the owner in fee simple of the real property located in Yellow Springs, Ohio 45387, identified more particularly in Exhibit A and known currently as a portion of Greene County Parcel Number # F1900010020000100.

B. Seller desires to grant Buyer an option to purchase said real property and all improvements thereon, and Buyer desires to obtain an option to purchase said real property and all improvements thereon pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of Five Hundred and no/100 Dollars (\$500.00) and the mutual representations, benefits and covenants contained herein and other good and valuable consideration the receipt and sufficiency of which are acknowledged, Seller and Buyer covenant and agree as follows:

TERMS AND CONDITIONS

1. The Property. The "Property" consists of the real property consisting of 3.6 acres and located in the Village of Yellow Springs, Ohio identified on the attached Exhibit A and known currently as a portion of Greene County Parcel Number #F1900010020000100, together with any and all improvements now existing or hereafter located thereon, and all rights, privileges, improvements, easements, rights-of-way and appurtenances belonging or in any way appertaining thereto, and all rights, licenses, privileges and benefits which relate thereto, of every kind, character and description, now existing or existing at the Closing (as defined below), whether tangible or intangible, real, personal or mixed.

2.Option.

(a) Grant of Option. In exchange for the mutual covenants set forth herein, Seller grants to Buyer the exclusive and irrevocable right, privilege and option (the "Option") to purchase the Property upon the terms and conditions set forth herein. Seller shall not sell, offer to sell, lease, offer to lease, or otherwise encumber the Property in any way during the Option Period without the written consent of Buyer.

(b) Option Money. Within five (5) business days after the complete execution and delivery of this Agreement, Buyer shall deposit with Seller the sum of Five Hundred and No/100 Dollars (\$500.00) (the "Option Money"). The Option Money shall be non-refundable to Buyer (except as set forth in Section 12(b)), but shall be credited to Buyer against the Purchase Price at Closing.

(c) Term of Option. The term of the Option (the "Option Period") shall commence on the Effective Date and shall continue through June 30, 2026.

(d) Seller Deliverables. Within ten (10) days after Buyer's payment of the Option Money, Seller shall deliver, cause to be delivered, or make available, copies of the following documents and materials pertaining to the Property to the extent within Seller's possession or control: leases, title commitments/policies, surveys, site plans and specifications, architectural plans, inspections, environmental/hazardous material reports, soils reports, governmental permits/approvals, tax information and utility letters, and other similar materials relating to the physical and environmental condition of the Property, and any other documents relating to the Property reasonably requested by Buyer (collectively, the "Seller Deliverables"). The Option Period shall be extended by one day for each day Seller delays in making the Seller Deliverables available to Buyer.

(e) Option Contingencies. Buyer exercising the Option will be contingent upon 1. An award of Low-Income Housing Tax Credits by the Ohio Housing Finance Agency for development on the Property; and 2. Seller previously providing written confirmation to Buyer that Seller has secured land to replace the Property and has funds available to convert the replacement land into athletic fields.

(f) Exercise of Option; Termination. If Option Contingencies have been satisfied, Buyer may exercise the Option at any time prior to the end of the Option Period by delivering written notice thereof to Seller by certified mail, return receipt requested, and the exercise shall be effective upon mailing. Upon exercise of the Option, Buyer shall purchase the Property from Seller, and Seller shall sell the Property to Buyer, subject to the terms and conditions of this Agreement. If Buyer does not provide Seller with written notice of its exercise of the Option as set forth above, then Buyer shall be deemed to have waived its right to exercise the Option, the Option shall lapse, this Agreement shall terminate, and the Option Money shall be retained by Seller.

3. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be Three Hundred Thirty-Nine Thousand and No/100 Dollars (\$339,000.00) and shall be paid by Buyer to Seller on the Closing Date by wire transfer of immediately available funds to such account as Seller may designate, subject to proration and credits as provided herein.

4. Due Diligence and Approval Period. The obligation of Buyer to purchase the Property shall be conditioned upon the satisfaction of all of the following, any of which may be waived by Buyer in its sole and absolute discretion.

(a) Buyer's obligations hereunder are subject to Buyer being satisfied regarding the condition and suitability of the Property in all respects, in Buyer's sole discretion, during a period of one-hundred (120) days following the exercise of the Option set forth in this Agreement (the "Due Diligence and Approval Period"). Matters subject to Buyer's review may include, by way of example and without limitation, review of physical conditions, development costs, utility availability, sanitary and storm water facilities, soil conditions, environmental conditions, restrictive covenants, status of approvals, market conditions and economic feasibility, obtaining the necessary financing to accomplish the project intended by Buyer, and obtaining all entitlements necessary for the development and use of the Property for Buyer's intended purposes. Buyer shall be entitled, in the name of and with the cooperation of Seller, to pursue any zoning or other governmental approvals with respect to the Property during the Option Period or the Due Diligence and Approval Period. Nothing in this Agreement shall be construed as imposing any limitations upon the reasons for which Buyer may decide not to purchase the Property. Buyer shall have the right, in its sole discretion, to terminate this Agreement by providing Seller written notice of its decision to terminate prior to the expiration of the Due Diligence and Approval Period, whereupon the parties shall have no further obligation to one another.

(b) Buyer may, at its expense, obtain an accurate survey of the Property prepared by a registered land surveyor licensed by the State of Ohio which shall be satisfactory to Buyer in its sole

discretion (the "Survey"). In all other respects the Survey shall meet the requirements of any governmental agency having jurisdiction over the Property and any requirements of the title insurance company of Buyer necessary to issue Buyer's Title Policy and that of any lender.

(c) Buyer, at Buyer's expense, may obtain a title commitment in favor of Buyer (the "Title Commitment") from a national title insurance company of Buyer's choice (the "Title Company") with respect to the Property, in such amounts as may be determined by Buyer and its lender(s). The Title Policy shall insure in Buyer good and marketable fee simple title, free and clear of all liens and encumbrances and standard title policy exceptions, except as may be approved or deemed approved or accepted by Buyer hereunder. The Title Policy shall contain such affirmative coverages and endorsements as Buyer and its lender(s) deem desirable. In the event Buyer disapproves of any matter pertaining to the Title Commitment or the Survey, Buyer may request that Seller correct such defects or disapproved matters and effectuate such correction(s) within ten (10) days after receipt of written notice from Buyer. In the event that Seller is unable to or for any reason whatsoever does not satisfy any such defect or disapproved matter in a manner reasonably acceptable to Buyer, Buyer may: (1) accept the state of title subject to the defect or disapproved matter, in which event such condition shall be deemed satisfied; (2) reject the state of title, in which event this Agreement shall be terminated; (3) attempt to cause the Title Company to insure over such defect; or (4) take title "as is" and deduct from the Purchase Price the amount of any financial liens or encumbrances of a definite and ascertainable amount. Notwithstanding the foregoing, Seller shall be responsible for causing all matters of a monetary nature arising from the act or omission of Seller to be released at or prior to Closing, including, without limitation, mortgages, judgment liens, mechanic's liens, penalties, and the like; and Buyer shall have no obligation to notify Seller that any such matters are objectionable or otherwise must be released prior to Closing.

5. Closing; Closing Adjustments and Costs; Closing Documents.

(a) Closing Date. If the Option is exercised, the closing of the sale of the Property (the "Closing") shall be held on a date to be selected by Buyer and Seller (the "Closing Date"), which date shall be within thirty (30) days after expiration of the Due Diligence and Approval Period.

(b) Closing Time and Place. The Closing shall be held on the Closing Date at a time and place that is mutually agreed upon by Buyer and Seller.

(c) Closing Costs. Buyer shall pay the recording fee for the deed, any stamp or transfer tax due with respect to the transfer of the Property, any closing or escrow fee associated with the transfer of the Property and all title examination fees and title insurance premiums necessary to provide Buyer with an owner's policy of title insurance and Buyer's lender, if any, with a loan policy of title insurance. Buyer and Seller shall each be responsible for the payment of their own attorneys' fees and expenses. Buyer and Seller shall equally divide any other closing costs.

(d) Limited Warranty Deed. On the Closing Date, Seller shall convey to Buyer good and marketable fee simple title to the Property by recordable deed of Limited Warranty, with release of dower rights, if applicable, (i) subject to easements, conditions and restrictions of record, (ii) zoning, building laws, and regulations, (iii) taxes and assessments not yet due and payable, and (iv) legal highways and rights of way, such that a nationally recognized title insurance company shall insure Buyer by American Land Title Association ("ALTA") owner's policy of title insurance and Buyer's lender, if any, by ALTA Loan policy of title insurance, free and clear of all monetary liens and encumbrances; provided, however, title to the Property shall be subject to such matters as would be revealed by the Title Commitment and/or the Survey which are approved or deemed approved by Buyer hereunder.

(e) Real Property Taxes. The Parties do not expect there to be any outstanding real property taxes or assessments against the Property. Notwithstanding the foregoing, to the extent that there are any real property ad valorem taxes, and assessments against or on the Property, due and payable in the year of Closing, the same shall be prorated between Seller and Buyer as of the Closing Date on a calendar year or fiscal year basis, whichever is appropriate. All real property ad valorem taxes and assessments against or on the Property for any year prior to the year of closing shall be paid by Seller at closing.

(f) Affidavit of Title. On the Closing Date, Seller shall deliver to Buyer an affidavit of title reasonably satisfactory to Seller and Buyer's title insurance company, and any other documents that may reasonable be requested by the title insurance company to convey good title to the Buyer and provide a title insurance commitment free and clear of the so called "standard exceptions" other than those standard exceptions which the title company will only delete with an appropriate survey.

(g) Gap Indemnity. On the Closing Date, Seller shall deliver a title gap indemnity for title insurance purposes as may be required by the Title Company.

(h) FIRPTA. A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code, as amended and the regulations thereunder (collectively, the "Code"), which certification shall be signed under penalty of perjury.

6. Possession. Buyer shall be given exclusive possession of the Property at Closing.

7. Tests, Engineering Studies and Inspections. Upon the execution of this Agreement, Buyer and any agent or representative of Buyer shall have the right, with reasonable notice to Seller, at any reasonable time during the Option Period and, if the Option is exercised, at any reasonable time prior to the Closing Date, to enter the Property to conduct any tests and studies which Buyer deems appropriate and to otherwise examine and inspect the Property as Buyer deems appropriate, including, without limitation, making surveys, environmental studies, geotechnical studies, taking borings of the soil and inspecting or testing the real property and the physical condition of any improvements located on the Property. Any provision of this Agreement to the contrary notwithstanding and notwithstanding any expiration of the Option Period or any termination of this Agreement, Buyer shall promptly repair any damage caused by Buyer or Buyer's agents or representatives resulting from the entry onto the Property of Buyer, its agents or representatives.

8. Representations, Warranties and Covenants of Seller. In order to induce Buyer to execute, deliver and perform this Agreement, Seller represents, warrants and covenants to Buyer that:

(a) Seller possesses full right, power and authority to execute, deliver and perform this Agreement, and when executed Seller shall be lawfully bound pursuant to the terms, covenants and conditions of this Agreement.

(b) Seller has and will have on the Closing Date good and marketable fee simple title to all of the Property, and the same are or will be unencumbered at Closing, except for matters to which Purchaser has specifically approved in writing. There are no encroachments of buildings or improvements on the Property from adjacent property and there are no encroachments of improvements from the Property onto the adjacent property; to the best of Seller's actual knowledge and there are no boundary line disputes or other matters affecting title or the description of the Property.

(c) No lease or right to occupy or use the Property affects all or any part of the Property and no persons occupy all or any part of the Property, except as has been disclosed to Buyer in the Seller Deliverables.

(d) Seller has received no notice of any action, suit or proceeding that is pending or threatened before or by any judicial body or any governmental agency or authority, against or affecting all or any part of the Property.

(e) No mechanic's lien, materialman's lien or lis pendens action affects the Property, and, as of the Closing, all taxes, sewer, water and other utility bills that are then due will be paid in full.

(f) Seller has received no notice of any eminent domain or similar condemnation proceeding affecting all or any part of the Property is now pending or, threatened.

(g) No special assessment exists or is pending as to all or any part of the Property.

(h) Purchaser shall have sole possession of the Property on the date of closing except as has been disclosed in the Seller Deliverables.

(i) The Property is in material compliance with all applicable local, state and federal building code, zoning, land use and other laws.

(j) There are not now, nor shall there be on the date of the closing, any unrecorded easements, options, rights of first refusal or offer, leases, licenses, agreements relating to purchase or development of the Property, or other agreements of any kind encumbering the Property.

(k) The individual signing this Agreement on behalf of Seller has the authority to bind Seller to the terms hereof.

All representations and warranties of Seller contained in this Agreement shall be true, correct and complete as of the Closing Date as if they were made at such time and shall survive Closing. If at any time after Buyer exercises the Option and at any time on or prior to the Closing Date, any representation and warranty of Seller contained in this Agreement is untrue, incorrect or incomplete, then such shall constitute a Seller default and Buyer may exercise any of the remedies available to it at law or in equity, including any remedies contained in Section 12(b).

9. Risk of Loss. All risk of loss with respect to the Property shall remain with Seller until the closing and delivery of the deed to Buyer.

10. Non-Assumption of Liabilities. Buyer shall not assume, pay or perform any liabilities or obligations of Seller of any kind whatsoever, known or unknown, contingent or accrued, including, but not limited to, any tort liabilities of Seller or any obligations of Seller with respect to any federal, state and local income, ad valorem, occupational or other taxes, resulting from, or in any way connected with, Seller's ownership or operation of the Property prior to the Closing Date.

11. Casualty and Condemnation. If at any time prior to the Closing Date, all or any part of the Property is damaged by fire or other casualty, taken or appropriated by virtue of eminent domain or similar proceedings, or is condemned for any public or quasi-public use, then Buyer may terminate this Agreement and the Option Money in its entirety shall be returned to Buyer. If Buyer terminates this Agreement, then Seller shall be entitled to receive all insurance proceeds or condemnation proceeds paid for that portion of the Property damaged or taken. If Buyer elects to purchase the Property, then (a) Buyer shall be entitled to receive all insurance proceeds or condemnation proceeds paid for that portion of the Property damaged or taken and not expended for repairs, or (b) if the insurance proceeds or condemnation proceeds have been

paid to Seller, then Buyer shall receive a credit against the Purchase Price equal to the amount of insurance proceeds or condemnation proceeds paid to Seller and not expended for repairs.

12. Default. If, following the full execution of this Agreement, either party defaults in the performance of its duties or obligations under this Agreement, or any representation or warranty hereunder is untrue or incomplete, then:

(a) If Buyer defaults on any obligations contained in this Agreement, Seller must give Buyer written notice of the default and a thirty (30) day opportunity to cure said default. If Buyer thereafter remains in default, then Seller's sole remedy is to terminate this Agreement and retain the Option Money in its entirety as liquidated damages (and not as a penalty), and thereafter neither party will have any further obligations hereunder (other than Buyer's obligations under Paragraph 7); and

(b) If Seller is the party in default, then Buyer shall have the right to (i) to pursue specific performance against Seller; (ii) receive a refund of the Option Money; or (iii) pursue any other remedy available at law or equity.

13. Notice.

(a) Delivery. Any notice or consent authorized or required by this Agreement shall be in writing and (i) delivered personally, (ii) sent postage prepaid by certified mail or registered mail, return receipt requested, or (iii) sent by a nationally recognized overnight carrier that guarantees next business day delivery, directed to the other party at the address set forth in this Paragraph 13 or such other parties or addresses as may be designated by either Buyer or Seller by notice given from time to time in accordance with this Paragraph 13.

To Buyer: Village of Yellow Springs, Ohio
Attn: Johnnie Burns
100 Dayton Street
Yellow Springs, Ohio 45387

To Seller: Yellow Springs Exempted Village School District
Attn: Terri Holden
888 Dayton Street Suite 106
Yellow Springs, Ohio 45387

With copies of
all notices to: Amelia N. Blankenship, Esq.
David Lampe, Esq.
Bricker Graydon LLP
ablankenship@brickergraydon.com
dlampe@brickergraydon.com

A notice or consent given in accordance with this Paragraph 13 shall be considered received (i) one day after giving it to a nationally recognized overnight carrier, (ii) upon depositing it in an office of the United States Postal Service or any successor governmental agency for delivery by certified mail or registered mail, return receipt requested, or (iii) otherwise upon actual delivery (or rejection) at the address noted above or upon the addressee's (or its authorized agent's) written acknowledgement of receipt.

14. Real Estate Commission. Seller and Buyer each warrant and represent to the other that neither has engaged any real estate agent or broker in connection with the transaction contemplated by this

Agreement.

15. Benefit and Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

16. Survival of Covenants. The terms, covenants, conditions, representations and warranties contained in this Agreement shall survive the closing and delivery of the deed.

17. Time of the Essence. Time is of the essence for this Agreement.

18. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the matters to which it pertains, and may be amended only by written agreement signed by both Buyer and Seller.

19. Drafting. This Agreement was drafted by Buyer for convenience purposes only, and shall not be construed for or against Seller on such basis.

20. Assignment. Buyer may assign this Agreement and all of its rights hereunder to any third party upon the provision of written notice to Seller of such assignment.

21. Memorandum of Agreement. Either party hereto may execute and record a memorandum hereof setting forth that this Agreement has been entered into, that it relates to the Property, and setting forth the Option Period.

22. Execution of Option Agreement. This Agreement may be executed in any number of counterparts and signature to any counterpart shall constitute signature to all such counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Seller and Buyer have duly executed this Agreement as of the date first set forth above, but actually on the dates set forth below.

SELLER:

**YELLOW SPRINGS EXEMPTED VILLAGE
SCHOOL DISTRICT,**

By: _____

Print Name: _____

Its: _____

Date: _____, 2024

BUYER:

VILLAGE OF YELLOW SPRINGS, OHIO
an Ohio municipal corporation

By: _____
Johnnie Burns, Village Manager
Date: _____, 2024

Approved as to form:

Amelia N. Blankenship, Village Solicitor

STATE OF OHIO :
COUNTY OF _____: SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2024
by Johnnie Burns, Village Manager for the Village of Yellow Springs, on behalf of said Village. No oath
or affirmation was administered to the signer hereof.

Notary Public
Commission Expiration: _____

STATE OF OHIO :
COUNTY OF _____: SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2024
by Terri Holden, the Superintendent of Yellow Springs Exempted Village School District, on behalf of said
board. No oath or affirmation was administered to the signer hereof.

Notary Public
Commission Expiration: _____