



## CITY OF WASHINGTON, ILLINOIS City Council Agenda Communication

**Meeting Date:** February 19, 2024

**Prepared By:** Jon Oliphant, AICP, Planning & Development Director

**Agenda Item:** Second Reading Ordinance – Square Parking Lot Acquisitions

**Explanation:** **Update: The attached agreement includes additional language in the easement to specifically identify it as “non-exclusive” and to clarify the requirement for Cana Lutheran Church and its successors and assigns to name the City as an additional insured under its Commercial General Liability Insurance for the 105 S. High parcel.** Attached is an agreement for the purchase of the 104 S. Elm Street (commonly referred to as 105 S. High Street) and roughly the rear half of the 107 S. High properties. Each is currently owned by Francis D. Boley. The 105 S. High property is an existing parking lot comprising about 12,284 square feet while the rear half of 107 S. High is undeveloped and located behind a single-family house. The 107 S. High lot would be subdivided to create two parcels and Mr. Boley would retain ownership of the front part of the lot that contains the house. The City’s parcel would contain about 6,400 square feet.

The 105 S. High lot would be purchased with the intention of using it for public parking. It currently has a rough capacity of about 40 spaces, though this would figure to be reduced slightly once the individual spaces are better delineated to accommodate property turning radii and the possible inclusion of one-way ingress/egress. The 107 S. High lot could accommodate about 15 parking spaces, though staff recommends not immediately constructing a parking lot to give time to determine any additional parking demand.

In a separate transaction, Mr. Boley intends to sell the property at the southwest corner of Walnut Street and Elm (104 S. Elm) to Cana Lutheran Church. The City’s agreement would be contingent on Mr. Boley selling that property to Cana and would allow Mr. Boley to terminate the City’s purchase agreement should the Cana closing not be consummated. The church currently utilizes the building for its services. The church has requested the allowance for its members and guests to use the 105 S. High parking lot on Sundays from 8:00 am to 1:00 pm. An easement has been drafted and is included as an Exhibit to the attached purchase and sale agreement. The easement would allow the church to place signage on the parcel, at the church’s expense, to memorialize the church’s non-exclusive right to use the parking during those hours. Mr. Boley is identified as the Grantor given his current ownership of the 105 S. High parcel. The easement would run with the land in perpetuity until such time that the church building property is no longer used for purposes of holding religious services, at which time the easement would terminate.

**Fiscal Impact:** The City would pay Mr. Boley \$72,000 for the 105 S. High parcel. Payment in that amount would come from the TIF Fund. The City would pay Mr. Boley \$23,000 for the rear portion of the 107 S. High parcel. Payment in that amount would come from the general fund.

**Action Requested:** Approval of the attached purchase agreement. A second reading ordinance will be scheduled for the February 19 meeting.



# Location Map

105 & 107 S High Street

(Approximately 6,400 sq. ft of 107 S High)

## Legend

- Properties
- Parcels



Date: 1/16/2024

This map indicates approximate data locations and may not be 100% accurate. Parcels are provided and maintained by Tazewell County.



**ORDINANCE NO. \_\_\_\_\_**

(Adoption of this ordinance would approve the purchase of real estate commonly known as 105 S. High Street and a portion of the real estate commonly known as 107 S. High Street in the total amount of \$95,000 to be used for future public parking opportunities.)

**AN ORDINANCE AUTHORIZING AN AGREEMENT  
FOR THE PURCHASE OF THE 105 S. HIGH LOT AND A PORTION OF THE 107 S.  
HIGH LOT**

**WHEREAS**, the City of Washington (the “City”) is an Illinois home-rule municipality pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

**WHEREAS**, pursuant to its home-rule power, the City may exercise any power and perform any function relating to its government and affairs; and

**WHEREAS**, the City Council of the City of Washington hereby determines that it is in the best interest that the City purchase certain real property that is legally described in Exhibit “A” attached hereto (the “Property”); and

**WHEREAS**, the Parcel 1 of the Property is located within the Downtown Square Redevelopment Project Area (the “Area”), which was duly established by the City pursuant to its home-rule powers and the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended from time to time (the “Act”),

**WHEREAS**, pursuant to Section 11-74.4-4(c) of the Act, the City may:

Within a redevelopment project area, acquire by purchase, donation, lease or eminent domain; own, convey, lease, mortgage or dispose of land and other property, real or personal, or rights or interests therein, and grant or acquire licenses, easements and options with respect thereto, all in the manner and at such price the municipality determines is reasonably necessary to achieve the objectives of the redevelopment plan and project. No conveyance, lease, mortgage, disposition of land or other property owned by a municipality, or agreement relating to the development of such municipal property shall be made except upon the adoption of an ordinance by the corporate authorities of the municipality. Furthermore, no conveyance, lease, mortgage, or other disposition of land owned by a municipality or agreement relating to the development of such municipal property shall be made without making public disclosure of the terms of the disposition and all bids and proposals made in response to the municipality's request. The procedures for obtaining such bids and proposals shall provide reasonable opportunity for any person to submit alternative proposals or bids.

**WHEREAS**, the City hereby determines that Parcel 1 of the Property will be purchased using tax increment allocation financing funds for the Area (the “TIF Funds”), pursuant to its home-rule powers and powers granted to it pursuant to Section 11-74.4-4 of the Act; and

**WHEREAS**, the City hereby determines that Parcel 2 of the Property will be purchased using its General Fund; and

**WHEREAS**, the Seller, Francis D. Boley, has agreed to furnish the Property and has agreed to sell it to the City for the purchase price of Ninety-Five Thousand and No/100 Dollars (\$95,000.00). Of that amount, Seventy-Two Thousand and No/100 Dollars (\$72,000.00) is due and payable from the TIF Funds on the closing date and Twenty-Three Thousand and No/100 Dollars (\$23,000.00) is due and payable from the General Fund on the closing date; and

**WHEREAS**, pursuant to its home-rule powers, the City Council of the City of Washington hereby determines that it is advisable, necessary, and in the best interests of the public health, safety, and welfare of the City and its citizens that the City purchase the Property.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Washington, Illinois as follows:

**Section 1.** The foregoing recitals are incorporated herein as findings of the City Council.

**Section 2.** The Agreement for Purchase and Sale of Real Property attached hereto as Exhibit "B" is by reference expressly made a part hereof (the "Agreement"), and the City Council hereby approves the purchase of the Property as set forth in the Agreement. The Mayor, City Clerk, and the City Administrator of the City are hereby authorized and empowered to make, execute and deliver any and all documents necessary to effectuate the purchase of the Property pursuant to the Agreement.

**Section 3.** If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

**Section 4.** That all ordinances or parts thereof in conflict herewith are hereby expressly repealed.

**Section 5.** This Ordinance shall be in full force from and after its passage, approval, and notification as provided by law and shall take effect upon its passage as required by law.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2024.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

\_\_\_\_\_  
Gary W. Manier, Mayor

ATTEST:

\_\_\_\_\_  
Valeri L. Brod, City Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION**

**Parcel 1:**

Lot 57, except 6 feet of even width off of the North side thereof, of the Original Town, now City of Washington, situated in the County of Tazewell and State of Illinois.

Commonly Known As: 104 S. Elm Street, Washington, IL 61571

PIN: 02-02-24-109-005

**Parcel 2:**

The East half of the follow-described real property:

Lots 58 and 59, EXCEPT the South 56 feet of said Lot 59, all in the Original Town, now City of Washington, TAZEWELL COUNTY, ILLINOIS.

Commonly Known As: 107 S. High Street, Washington, IL 61571

PIN: Part of 02-02-24-109-006

**EXHIBIT B**

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

---

## AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

---

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (“**Agreement**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”), by and between the City of Washington, an Illinois home-rule municipality (“**Purchaser**”), and Francis D. Boley (“**Seller**”).

### RECITAL

WHEREAS, Purchaser desires to purchase real property described in Section 1 below and in connection therewith Seller and Purchaser desire to enter into this Agreement to set forth the terms and conditions of such purchase and sale.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. Sale Agreement. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, subject to all of the terms and conditions of this Agreement, the real estate legally described in Exhibit A, together with all privileges, rights, easements, hereditaments and appurtenances (the “**Real Property**”). Seller shall convey merchantable title to the Real Property to Purchaser by general warranty deed free and clear of all liens and encumbrances, and not subject to any easements, covenants, restrictions, dedications or rights of way, or other matters affecting title to the Real Property or use of the Real Property, except for those title exceptions accepted by Purchaser pursuant to Section 3.1.1 and the Parking Lot Easement and Declaration of Covenants and Restrictions that is attached as Exhibit B (the “**Church Easement**”) that will be executed and recorded between the Effective Date and the Closing Date (collectively, the “**Permitted Objections**”).

2. Purchase Price. The agreed purchase price of the Real Property (“**Purchase Price**”) shall be Ninety-Five Thousand and No/100 Dollars (\$95,000.00) to be paid by Purchaser at Closing (as defined in Section 4.1), plus or minus credits and prorations provided for in this Agreement, by bank wire transfer of collected federal funds.

3. Conditions Precedent. Purchaser’s obligations under this Agreement shall be subject to the following conditions precedent being satisfied to the satisfaction of Purchaser (or waived by Purchaser in writing) during the applicable time periods set forth in this Section:



3.1 Title Commitment and Policy. Within ten (10) days from the Effective Date, Seller, at Seller's sole cost and expense, shall provide Purchaser with a 2006 ALTA form title commitment (the "**Title Commitment**") for a 2006 ALTA form owner's title insurance policy with extended coverage (the "**Title Policy**") issued by Chicago Title Insurance Company or such other reputable title insurance company as the parties agree (the "**Title Insurer**"), covering the Real Property in the amount of the Purchase Price showing merchantable record title to the Real Property to be in Seller. At Closing, Seller shall cause the Title Insurer to issue the Title Policy to Purchaser (in accordance with the Title Commitment provided for in this Section), subject only to the Permitted Objections and other matters approved or waived in writing by Purchaser.

3.1.1 Objections to Title of Record. Within ten (10) days after Purchaser's receipt of the Title Commitment, Purchaser shall furnish to Seller written notification of any objections to or defects in title of record set forth in the Title Commitment. If Purchaser fails to give said notice within said ten (10) day period, Purchaser shall be deemed to have accepted all matters then affecting title to the Real Property set forth in the Title Commitment. If Purchaser does give said notice, Purchaser shall be deemed to have accepted all matters set forth in the Title Commitment not set forth in the notice. After receipt of said notice, Seller shall have the right, at its election, to endeavor to cure such objections to or defects in title set forth therein and shall notify Purchaser of such election within five (5) days. If Seller does elect to endeavor to cure such objections to or defects in title, it shall promptly commence and diligently pursue efforts to cure such objections.

3.1.2 Failure to Cure Objections. In the event Seller fails to cure Purchaser's objections to or defects in title within twenty (20) days of receiving notice of such objections to or defects in title, or if Seller shall determine that its efforts to cure will not be successful, Purchaser may either (i) waive such title objections to or defects in title and proceed with Closing; or (ii) terminate this Agreement.

3.2 ALTA Survey. Within forty-five (45) days following the Effective Date, Purchaser shall be permitted to obtain a current ALTA survey of the Real Property ("**ALTA Survey**"), to be certified by a professional surveyor licensed by the State of Illinois to Purchaser and Title Insurer (and other parties designated by Purchaser) and prepared in accordance with the standard for Land Title Surveys and the American Congress of Surveying and Mapping Class A survey, setting forth the legal description and street address of the Real Property and showing all buildings and other improvements (including fences) located on the Real Property, the number of stories in such buildings, easements (visible or recorded), building lines, curb cuts, party walls (if any), parking, sewage, water, electricity, gas and other utility facilities (together with recording information concerning the documents creating any such easements and building lines), roads and other rights-of-way and means of physical and record ingress and egress to and from the Real Property by public roads (including the dimension of abutting streets) and the net (after deduction of land dedicated or used or subject to easements for roads, highways, fire lanes, utilities, storm drains or any other public purpose) and gross area of the land included in the Real Property, and spotting improvements on adjoining property which are within five (5) feet of the property lines of the Real Property. In exercising this right, Purchaser, its surveyor or other agents shall be permitted to enter the Real Property in accordance with the provisions of Section 3.4 of this



Agreement to conduct such survey as Purchaser, in its discretion, determines to be necessary. Seller and Purchaser shall share equally the cost of the ALTA Survey up to a total cost of Five Thousand Three Hundred and No/100 Dollars (\$5,300.00) (up to \$2,650 each) to be paid directly to the professional surveyor.

3.2.1 Objections to Title of Record. Within fifteen (15) days after Purchaser's receipt of the ALTA Survey, Purchaser shall furnish to Seller written notification of any objections to or defects in title of record set forth in the ALTA Survey. If Purchaser fails to give said notice within said fifteen (15) day period, Purchaser shall be deemed to have accepted all matters then affecting title to the Real Property set forth in the ALTA Survey (except those matters that were also identified in the Title Commitment and to which to which Purchaser has previously objected). If Purchaser does give said notice, Purchaser shall be deemed to have accepted all matters set forth in the ALTA Survey not set forth in the notice (except those matters that were also identified in the Title Commitment and to which to which Purchaser has previously objected). After receipt of said notice, Seller shall have the right, at its election, to endeavor to cure such objections to or defects in title set forth therein and shall notify Purchaser of such election within five (5) days. If Seller does elect to endeavor to cure such objections to or defects in title, it shall promptly commence and diligently pursue efforts to cure such objections.

3.2.2 Failure to Cure Objections. In the event Seller fails to cure Purchaser's objections to or defects in title set forth in the ALTA Survey within fifteen (15) days of receiving notice of such objections to or defects in title, or if Seller shall determine that its efforts to cure will not be successful, Purchaser may either (i) waive such title objections to or defects in title set forth in the ALTA Survey and proceed with closing under this Agreement or (ii) terminate this Agreement.

3.2.3 Discrepancy in Description. At Purchaser's request, if the description of the Real Property on Exhibit A attached to this Agreement does not correctly describe the Real Property, as legally described in the ALTA Survey that may be obtained by Purchaser under this Agreement, the description of the Real Property on Exhibit A shall be modified to correctly describe the same in accordance with the ALTA Survey.

3.3 Environmental Inspections. Within forty-five (45) days following the Effective Date, Purchaser shall be permitted to conduct environmental audits of the Real Property. Purchaser or its engineer or other agents shall be permitted to enter the Real Property in accordance with the provisions of Section 3.4 of this Agreement to conduct such samplings and tests of the surface, subsurface and improvements as Purchaser, in its discretion, determines to be necessary. If the result of such audit is not satisfactory to Purchaser, in Purchaser's sole discretion, Purchaser shall have the right to terminate this Agreement.

3.4 General Inspections. Within forty-five (45) days following the Effective Date, Purchaser, or Purchaser's employees, agents, representatives, and independent contractors shall have the right, after giving no less than twenty-four (24) hours' notice to Seller, to enter upon the Real Property at any reasonable time and make all tests or inspections of the Real Property

(whether within or without the building or improvements) that they desire to make at Purchaser's sole cost and expense. If Purchaser determines that the Real Property is not acceptable to Purchaser in Purchaser's sole discretion, then Purchaser shall have the right to terminate this Agreement. Purchaser's satisfaction of itself of the matters set forth in this Section 3.4 shall be done for Purchaser's own account and not as a representative or agent of the Seller. Further, Purchaser shall forever fully protect, defend and hold the Seller harmless from all reasonable losses, costs, damages, attorneys' fees and expenses of every kind and nature whatsoever which Seller may suffer, expend or incur and which arise out of, relate to, or are in any way connected with Purchaser's due diligence activities pursuant to this Section 3.4. Further, Purchaser shall, within seven (7) days of recordation, pay and discharge of record or bond over all mechanics' and materialmen's liens which arise out of, relate to, or are in any way connected with Purchaser's due diligence activities.

3.5 Previous Due Diligence. Within ten (10) days from the Effective Date, Seller shall deliver to Purchaser via electronic format or otherwise make available for inspection and copying, copies of the following documents relating to the Real Property:

3.5.1 All leases and files and correspondence relating to any tenants on the Real Property (the "**Leases**");

3.5.2 All service contracts and other agreements affecting the Real Property;

3.5.3 Copies of all warranties, permits and government-related documents;

3.5.4 Any prior physical inspections, engineering reports, appraisals, grading plans, etc.;

3.5.5 Any prior environmental audits, soil tests and/or inspections;

3.5.6 Real estate tax bills (and personal property tax bills, if applicable), for the years 2021 and 2022; and

3.5.7 Copies of any pending litigation involving the Real Property.

3.6 Subdivision. Purchaser being satisfied, in its sole judgment, that it all approval for subdivision of the Real Property, as may be required to convey the Real Property as described on Exhibit A; provided that the parcel described as Parcel 2 on Exhibit A shall not exceed 6,400 square feet. Seller shall provide all such consents and assistance as may be reasonably required for the submission and approval of any such subdivision. If Purchaser determines that it will be unable to obtain such approvals, in Purchaser's sole discretion, then Purchaser shall have the right to terminate this Agreement.

3.7 Representations. The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date (as defined in Section 4.1) with the same force and effect as if such representations and warranties had

been made on and as of the Closing Date. Seller, by having closed the sale of the Real Property, shall be deemed conclusively to have certified at Closing that all such representations and warranties were true in all material respects on and as of the Closing Date.

4. Closing. The purchase of the Real Property shall be consummated as follows:

4.1 Closing Date. The closing (the “**Closing**”) shall be within ninety (90) days of the Effective Date, or such earlier date as may be agreed upon by Purchaser and Seller in advance (the “**Closing Date**”) and shall be held at the office of the Title Insurer, unless the parties agree otherwise.

4.2 Seller’s Deliveries. At Closing, Seller shall deliver to Purchaser the following:

4.2.1 Deed. An executed general warranty deed to the Real Property prepared by Seller and in a form reasonably acceptable to Purchaser.

4.2.2 Title Policy. The Title Policy provided for in Section 3.1.

4.2.3 Affidavit of Seller. An executed Affidavit of Seller in a form reasonably acceptable to Purchaser.

4.2.4 Other Documents. Such other documents, instruments, certifications and confirmations as may be reasonably required by Purchaser or the Title Insurer to fully effect and consummate the transactions contemplated hereby.

4.3 Purchaser’s Deliveries. At Closing, Purchaser shall deliver to Seller the following:

4.3.1 Purchase Price. The Purchase Price in the form as set forth in Section 2.

4.3.2 Other Documents. Such other documents, instruments, certifications and confirmations as may reasonably be required by Seller or the Title Insurer to fully effect and consummate the transactions contemplated hereby.

4.4 Joint Deliveries. At Closing, Seller and Purchaser shall jointly deliver to each other the following:

4.4.1 Closing Statement: An agreed upon closing statement.

4.4.2 ALTA Statement. An executed ALTA Statement in the form required by the Title Insurer.

4.4.3 Transfer Tax Filings. Executed documents complying with the provisions of all federal, state, county and local law applicable to the determination of transfer taxes.

4.4.4 Other Documents. Such other documents, instruments, certifications and confirmations as may reasonably be required by the Title Insurer to fully effect and consummate the transactions contemplated hereby.

4.5 Possession. Sole and exclusive possession of the Real Property shall be delivered to Purchaser on the Closing Date.

4.6 Property Taxes.

4.6.1 Payments by Seller. All installments of real property taxes on the Real Property which are due and owing on or prior to the Closing Date shall be paid by Seller prior to or at Closing.

4.6.2 Credits to Purchaser. Purchaser shall receive a credit against the Purchase Price for all installments of real property taxes on the Real Property for the calendar year immediately preceding the Closing Date which are not yet due and owing as of the Closing Date. Real property taxes for the calendar year of the Closing shall be prorated from January 1 of such calendar year to the Closing Date based on the latest available assessment and tax rate, and Purchaser shall receive an additional credit against the Purchase Price for the amount so calculated.

4.7 Closing Costs. Seller shall pay the following costs: Seller's attorneys' fees, the insurance premium for the Title Policy, any transfer taxes or documentary stamps. Purchaser shall pay the following costs: Purchaser's attorneys' fees, the insurance premium for the title policy issued to Purchaser's lender, if any, and recording fees for recording the deed.

4.8 Brokerage Commissions. Seller represents to Purchaser that Seller has not engaged any broker in connection with the sale of the Real Property. Likewise, Purchaser has not engaged any broker in connection with the purchase of the Real Property. Each party (the "**Indemnifying Party**") agrees to indemnify and hold the other harmless against any fees due to any transaction coordinator, real estate broker or similar person or entity claiming to have been engaged by the Indemnifying Party with regard to this transaction.

4.9 Special Assessments. Seller will pay any unpaid special assessments confirmed prior to the Closing Date. Seller knows of no proceeding for special assessments against the Real Property.

5. Condition of the Real Property. In addition to all other representations, covenants and warranties made by Seller in this Agreement, Seller hereby represents, covenants and warrants, to the best of Seller's knowledge, as of the Effective Date and as of the Closing Date, as follows:

5.1 Ownership and Authority. As of the Closing Date only, Seller will be the sole owner of, and will have good and merchantable fee simple title to, the Real Property, free and clear of all liens, encumbrances, easements, covenants, restrictions, dedications or rights-of-way,

or other matters affecting title to the Real Property or use of the Real Property, except the Permitted Objections and other matters approved in writing by Purchaser.

5.2 Liens and Liabilities. As of the Closing Date only, except for the Permitted Objections, the Real Property is not subject to any liens, encumbrances, security interests, liabilities, easements, covenants, restrictions, dedications, rights-of-way, leases or judgments of any kind whatsoever. Seller shall be responsible for all debts, claims, contracts and liabilities in any way connected solely with the conduct of its operations on the Real Property, and Purchaser shall have no liability for Seller's operations conducted on the Real Property or otherwise or for any liabilities, known, unknown, contingent or otherwise, of Seller.

5.3 Notice of Litigation or Violation. Seller has received no notice, nor has Seller any knowledge, of any actions or claims filed or threatened by anyone against the Real Property or Seller in connection with any injury or damage sustained incidental to the use or occupancy of the Real Property. Seller shall promptly notify Purchaser of any such notice received between the Effective Date and the Closing Date. Seller knows of no violation of any federal, state, county or municipal law, ordinance, order, rule or regulation affecting the Real Property, and Seller has received no notice of any such violation issued by any governmental authority.

5.4 Leases and Other Rights. There are no leases (oral or written), options, purchase contracts, or other agreements of any kind or nature, written or oral, whereunder or whereby any party could claim or assert any right, title or interest in the Real Property.

5.5 Governmental Regulation. To the best of Seller's knowledge, the Real Property complies in all respects with all statutes, ordinances, regulations and administrative or judicial orders or holdings, whether or not appearing in public records, and the consummation of the transactions contemplated by this Agreement shall not violate any such statutes, ordinances, regulations and administrative or judicial orders or holdings or any other agreement or indenture by which Seller is bound.

5.6 Mechanic's Liens. Seller has fully paid all bills, claims and obligations for labor performed and materials furnished for or on behalf of Seller in and about the improvement of the Real Property, and no such bills, claims or obligations are outstanding or unpaid.

5.7 Encroachments. No improvements upon the Real Property encroach upon adjoining real estate, nor do any improvements upon adjoining real estate encroach upon the Real Property.

5.8 Special Assessments. There are no special assessments against the Real Property, and to the best of Seller's knowledge; there are no proceedings for special assessments against the Real Property.

5.9 Mechanical Systems. Except as disclosed by Seller to Purchaser in writing, Seller warrants the plumbing, well and septic systems (if any), heating, electrical and air conditioning systems, all appliances included as part of the Purchase Price.

5.10 Flood Plain. The Real Property is not located in a flood plain.

5.11 Casualty Insurance. Until Closing, Seller shall, at its expense, keep the Real Property and any improvements on the Real Property constantly insured with an insurance company against loss by fire and other casualties with extended coverage in the same amounts as currently carried by Seller as of the Effective Date.

6. Default. If either Seller or Purchaser wrongfully refuses to close the sale of the Real Property or is unable to close the sale of the Real Property under the terms of this Agreement, the same shall constitute a breach of this Agreement and the non-breaching party shall be entitled to all remedies under Illinois law at the time of the breach and the right to recover as an element of its damages, reasonable attorneys' fees and court costs and all other damages suffered as a result of the breach or default under this Agreement.

7. Assignment. Purchaser may assign its rights under this Agreement with prior written notice to Seller; provided, however, Purchaser shall remain liable for the obligations of Purchaser under this Agreement.

8. Casualty. If the buildings and improvements forming a part of the Real Property are damaged or destroyed by fire or other casualty after the Effective Date, Seller, at its option, may repair such damage or destruction, and Purchaser may either (i) accept such repairs and this Agreement shall close according to its terms, or (ii) terminate this Agreement by providing written notice of such termination to Seller.

9. Condemnation. If any portion or portions of the Real Property shall be taken by condemnation or any other proceeding in the nature of eminent domain after the Effective Date, Purchaser, within fifteen (15) days after Purchaser receives notice of such taking, shall be entitled to terminate this Agreement by providing written notice of such termination to Seller. If Purchaser has not notified Seller of its election to terminate within fifteen (15) days after Purchaser receives notice of the taking, this Agreement shall continue in full force and effect, and there shall be no abatement of the Purchase Price. Seller shall be relieved, however, of the duty to convey title to the portion or portions of the Real Property so taken, but Seller shall, at Closing, assign to Purchaser all of Seller's rights and claims in and to any unpaid awards arising from such taking and credit to Purchaser on account of the Purchase Price all awards therefore collected by Seller (less all reasonable costs and expenses, including, without limitation, attorneys fees, expenses and court costs incurred by Seller to collect such awards).

10. Miscellaneous. It is further understood and agreed as follows:

10.1 Severability. If any provision of this Agreement shall be held to be void or unenforceable for any reason, the remaining terms and provisions of this Agreement shall not be affected thereby.

10.2 Time. Time is of the essence of this Agreement.

10.3 Binding Effect. The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the parties to this Agreement.

10.4 Amendment and Waiver. This Agreement may be amended at any time in any respect only by an instrument in writing executed by Seller and Purchaser. Either party may waive any requirement to be performed by the other hereunder, provided that said waiver shall be in writing and executed by the party waiving the requirement.

10.5 Integrated Agreement. This Agreement, and all exhibits attached to this Agreement, constitutes the entire agreement between Purchaser and Seller relating to the purchase of the Real Property, and there are no agreements, understandings, restrictions, warranties or representations between Purchaser and Seller other than those set forth herein.

10.6 Choice of Law. It is the intention of Seller and Purchaser that the internal laws of Illinois, and not its law of conflicts, shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of Purchaser and Seller.

10.7 Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including email) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to Purchaser: City of Washington  
c/o Jon Oliphant  
301 Walnut St.  
Washington, IL 61571  
Email: joliphant@ci.washington.il.us

With a copy to: Jay H. Scholl  
Davis & Campbell L.L.C.  
401 Main Street, Suite 1600  
Peoria, IL 61602  
Email: jhscholl@dcamplaw.com



or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date of transmission with a sent confirmation if by email; and (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

10.8 Waiver of Tender. Formal tender of an executed deed and the Purchase Price each is hereby waived.

10.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, taken together, shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or pdf electronic mail shall be as effective as delivery of a manually executed counterpart of this Lease. The parties expressly agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this Agreement in a court of law based solely on the absence of an original signature.

10.10 Seller's Condition Precedent. Purchaser acknowledges that certain real property that is owned by Seller adjoining the Real Property, such real property being legally described and defined in the Church Easement as the "Property," is under contract to be sold to Cana Lutheran Church, an Illinois not-for-profit corporation (the "**Church**"). In the event the closing of said sale of the Property to the Church is not consummated on or before the Closing Date, then Seller shall have the right to terminate this Agreement by delivering written notice of termination to Purchaser. In the event of delivery of such notice of termination, then this Agreement shall be terminated, and Seller and Purchaser shall have no further rights or obligations under this Agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the Effective Date.

**SELLER:**

\_\_\_\_\_  
Francis D. Boley

**PURCHASER:**

City of Washington

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF**  
**THE REAL PROPERTY**

**Parcel 1:**

Lot 57, except 6 feet of even width off of the North side thereof, of the Original Town, now City of Washington, situated in the County of Tazewell and State of Illinois.

Commonly Known As: 104 S. Elm Street, Washington, IL 61571

PIN: 02-02-24-109-005

**Parcel 2:**

The East half of the follow-described real property:

Lots 58 and 59, EXCEPT the South 56 feet of said Lot 59, all in the Original Town, now City of Washington, TAZEWELL COUNTY, ILLINOIS.

Commonly Known As: 107 S. High Street, Washington, IL 61571

PIN: Part of 02-02-24-109-006

---

**EXHIBIT B**

**PARKING LOT EASEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS**

---

**PARKING LOT EASEMENT**  
**Tazewell County**

**THIS DOCUMENT PREPARED  
BY AND AFTER RECORDING  
RETURN TO:**

**JEFFREY J. GASTER**  
**416 Main Street, Suite 1125**  
**Peoria, Illinois 61602**

---

**PARKING LOT EASEMENT AND  
DECLARATION OF COVENANTS AND RESTRICTIONS**

**THIS PARKING LOT EASEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS** (“Easement”) is executed on or as of this \_\_\_\_ day of \_\_\_\_\_, 2024, by Francis D. Boley (“Grantor”) and in favor of The Fellowship at Cana, Inc., d/b/a Cana Lutheran Church, an Illinois Not-for-Profit Corporation (“Grantee”). Grantor and Grantee are individually referred to as a “Party” and collectively, the “Parties”).

**WHEREAS**, Grantor is the owner of that certain parcel of real estate being more particularly described as follows (“Parking Lot Parcel”):

Lot 57, except 6 feet of even width off of the North side thereof, of the Original Town, now City of Washington, situated in the County of Tazewell and the State of Illinois.

PIN: 02-02-24-109-005

**WHEREAS**, Grantee is the owner of that certain parcel of real estate located at 104 S. Elm Street, Washington, Illinois 61571 (“the Property”), more particularly described as follows:

Lots 1, 2, 3, and 4 and the North 10 feet of Lot 5, Block 3 in Holland, Dorsey, Wathen & Robinson’s Addition;

ALSO, the vacated alley between Lot 4 and Lots 1, 2, and 3, Block 3 in Holland, Dorsey, Wathen & Robinson’s Addition as shown by Ordinance No. 729 dated December 6, 1955, and recorded in Book 525, page 526 in the Recorder’s Office; Ordinance No. 1422 dated July 2, 1984, and recorded in Book 3030, page 68 in the Recorder’s Office and Ordinance No. 1423 dated July 2, 1984, and recorded in Book 3071, page 71 in the Recorder’s Office, situated in the County of Tazewell and State of Illinois.

PIN: 02-02-24-109-013; and

**WHEREAS**, Grantor has agreed to grant to Grantee an easement over the Parking Lot Parcel for use by Grantee and its members and guests on Sunday mornings from 8:00 AM to 1:00 PM.

**NOW THEREFORE**, for good and valuable consideration the receipt of which is hereby acknowledged, Grantor and Grantee hereby agree that the Parking Lot Parcel shall be held, conveyed, encumbered, leased, rented, used, occupied and improved, subject to the following easements, covenants and restrictions.

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into and made a part of this Easement.
2. Grant of Easement. Grantor hereby declares, establishes, creates, grants, reserves and conveys to and for the benefit of Grantee and the Property, and each of their respective successors and assigns, the easements and restrictions described above and further outlined below:
  - a. Use Easement. Grantor hereby grants and conveys to Grantee a non-exclusive easement allowing the members and guests of Grantee to park motor vehicles in the Parking Lot Parcel on Sunday mornings from 8:00 AM to 1:00 PM.
  - b. Duration. The easement described in Section 2(a) shall run with the land and be binding on Grantor's successors and assigns, and shall continue in perpetuity until such time as the Property is no longer used for purposes of holding religious services, at which time this Easement shall terminate.
  - c. Signage. Grantee may place signage on the Parking Lot Parcel, at Grantee's expense, to memorialize Grantee's rights set forth in this Easement subject to Grantor's review and approval, which shall not be unreasonably withheld.
3. Construction, Maintenance and Repair. Grantor and Grantor's successors and assigns shall be solely responsible for maintaining the Parking Lot Parcel, including the removal of snow accumulations, and making all necessary constructions or repairs thereto. Grantor and Grantor's successor and assigns shall further be responsible for the maintenance, repair, operation, and other costs of the lighting in the parking areas of the Parking Lot Parcel.
4. Prior Approval of Plans. Grantor and Grantor's successors and assigns may not modify or alter the Parking Lot Parcel in a manner that materially alters the nature of the Parking Lot Parcel or the rights of Grantee under this Easement.
5. Indemnification/Insurance. To the extent permitted by law, each Party shall indemnify and hold each the other Party harmless from and against any and all loss, cost, damage, liability or expense (including reasonable attorneys' fees actually incurred and court costs) ever incurred by the other Party in connection with any the exercise of any right or omission of any obligation created herein, except to the extent caused by the negligence or willful

act of such Party, its/their employees, tenants, contractors, agents, guests or licensees. Each Party shall maintain or cause to be maintained in full force and effect commercial general liability insurance with respect to the loss of life, personal injury and/or damage to property arising from or out of any occurrence (the "Commercial General Liability Insurance"). The Commercial General Liability Insurance shall have a combined single limit of liability of not less than One Million Dollars (\$1,000,000.00) for bodily injury to or personal injury or death of any person and consequential damages arising therefrom, and for property damage arising out of any one occurrence, and with minimum excess or umbrella policy limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence insuring against personal injury, bodily injury and property damage. Grantee and Grantee's successors and assigns shall cause the Grantor or Grantor's successors and assigns to be named as an additional insured under its Commercial General Liability Insurance but only to the extent of Grantee's easement rights in the Parking Lot Parcel. Each party's Commercial General Liability Insurance shall be procured from a company licensed in the State of Illinois. The Commercial General Liability Insurance of Grantee or Grantee's successors and assigns shall provide that it shall not be cancelable without thirty (30) days prior, written notice to Grantor or Grantor's successors and assigns. Upon request, each Party shall provide a certificate of such Commercial General Liability Insurance coverage to the requesting party hereto.

6. Notices. Any and all notices, elections or demands permitted or required to be made under this Easement shall be in writing, signed by the party giving such notice, election or demand, and shall be delivered by hand delivery or by overnight delivery service (such as Airborne, Federal Express, UPS or similar service) for next day delivery, delivery charges prepaid, to the other party at the addresses below, or at such other address within the continental United States of America as such party may designate in writing by written notice to the other party sent in accordance with the terms of this section.

To Grantor: Francis D. Boley  
1044 Spring Bay Road  
East Peoria, IL, 61611-1337

To Grantee: The Fellowship at Cana  
d/b/a Cana Lutheran Church  
Attn: Senior Pastor  
104 S. Elm Street  
Washington, IL 61571

With a Copy To: Jeffrey J. Gaster  
Miller, Hall & Triggs, LLC  
416 Main St., Suite 1125  
Peoria, IL 61602

7. Force Majeure. Neither Party shall be liable for delay in delivery or nonperformance in whole or in part (other than a failure to pay any amount due hereunder), nor shall the other Party have the right to terminate this Easement, where delivery or performance has been



affected by a condition beyond such Party's reasonable control, including fires, floods, earthquakes, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not), terrorism, insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God or acts, or omissions or delays in acting by any government authority; provided, however, that the Party affected by such a condition shall, within ten (10) days of its occurrence, give notice to the other Party stating the nature of the condition, its anticipated duration and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required and the nonperforming Party shall use commercially reasonable efforts to remedy its inability to perform.

8. Further Assurances. Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such assignments, Easements, documents and instruments, as may be necessary or as the other Party may reasonably request in connection with this Easement or to carry out more effectively the provisions and purposes hereof, or to better assure and confirm unto such other Party its rights and remedies under this Easement.
9. Relationship of Parties. The relationship between the Parties is that of independent contractors. Neither Party, nor any employee or agent of a Party, shall have the authority to bind or act on behalf of the other Party without its prior written consent. No employee or agent of a Party shall be considered to be an employee of the other Party. Each Party shall be solely and entirely responsible for its acts and the acts of its affiliates, and for the acts of its and its affiliates employees, consultants and agents, during performance of this Easement. This Easement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or business organization of any kind.
10. No Benefit to Third Parties. The easements, agreements, covenants and representations contained herein are for the benefit of the Parties and are not for the benefit of any third person.
11. Amendments; Modifications. This Easement may not be amended or modified except in a writing duly executed and recorded in the Tazewell County Recorder's office by the Parties.
12. Severability. If any provision, sentence, phrase or word of this Easement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Easement, or the application of such provision, sentence, phrase or word to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. The Parties shall make a good faith effort to replace the invalid or unenforceable provision with a valid one that conforms as nearly as possible with the original intent of the Parties.
13. Waiver. Any term or condition of this Easement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by either Party of any term or condition of this Easement, in any one

or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Easement on any future occasion.

14. Governing Law; Dispute Resolution. This Easement shall be governed and construed in accordance with the laws of the State of Illinois, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Easement to the substantive law of another jurisdiction. Any action to enforce this Easement shall have venue in the courts of Tazewell County, Illinois.
15. Remedies. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies that the Party would otherwise have at law, in equity, by statute or otherwise. In the event that the owner of the Property or Parking Lot Parcel interferes with the rights created under this Easement, the owner of the other parcel may, in addition to all other remedies available to it under law, seek injunctive relief, without bond.

**[Remainder of Page Left Intentionally Blank]**



GRANTEE:

The Fellowship at Cana d/b/a  
Cana Lutheran Church,  
an Illinois not for profit corporation

\_\_\_\_\_  
Dean Heffta

\_\_\_\_\_  
Jeff Simmons

\_\_\_\_\_  
Steven Wetherell

\_\_\_\_\_  
Sarah Holst Schryer

STATE OF ILLINOIS        )  
  )  
  )        SS  
COUNTY OF TAZEWELL    )

I, a Notary Public in and for the County and State aforesaid, hereby certify that Dean Heffta, Jeff Simmons, Steven Wetherell and Sarah Holst Schryer, who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument and to be the Board of Elders of The Fellowship at Cana, d/b/a Cana Lutheran Church, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their free and voluntary act.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]