

CITY OF NOKOMIS, ILLINOIS

ORDINANCE NO. 2104

**AN ORDINANCE APPROVING AND AUTHORIZING EXECUTION OF
AN AGREEMENT TO PURCHASE 110 N. MAPLE STREET IN THE
CITY OF NOKOMIS (P.I.N. 08-23-114-013)**

**ADOPTED BY THE
CITY COUNCIL
OF THE
CITY OF NOKOMIS, ILLINOIS**

THIS 12th day of June, 2023

Published in pamphlet form by the authority of the City Council of the City
of Nokomis, Montgomery County, Illinois, this 12 day of June, 2023.

CITY OF NOKOMIS, ILLINOIS

Ordinance No. 2104

AN ORDINANCE APPROVING AND AUTHORIZING EXECUTION OF AN AGREEMENT TO PURCHASE 110 N. MAPLE STREET IN THE CITY OF NOKOMIS (P.I.N. 08-23-114-013)

WHEREAS, the City of Nokomis, Illinois (the "City") an Illinois non-home rule municipal corporation pursuant to Article VII, § 8 of the 570 Illinois Constitution, organized and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et seq.*; and

WHEREAS, "[t]he corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper" (65 ILCS 5/1-2-1); and

WHEREAS, pursuant to Section 2-2-12 of the Illinois Municipal Code, 65 ILCS 5/2-2-12, the City is authorized to acquire and hold real estate for corporate purposes; and

WHEREAS, pursuant to Section 11-61-3 of the Illinois Municipal Code, 65 ILCS 5/11-61-3, the City is authorized to purchase real and personal property for public purposes pursuant to a contract; and

WHEREAS, the City desires to purchase real estate consisting of one parcel located at 110 N. Maple Street in Nokomis, Illinois, from John W. Beach ("Seller") for the sum of \$2,750.00 (Two Thousand Seven Hundred Fifty and No/100 Dollars) pursuant to a purchase contract, the form of which is attached hereto as "Exhibit A", which has been presented to the corporate authorities for review at the meeting before which this Ordinance is adopted; and

WHEREAS, further, upon the City's purchase of said real estate and the Seller's compliance with the terms and conditions thereof, the City has agreed to dismiss certain ordinance violation proceedings, which are currently pending in the Circuit Court of the Fourth Judicial Circuit, Montgomery County, Illinois, and which pertain to Seller and the real estate to be acquired by the City; and

WHEREAS, the purchase of the above-described property will be for corporate purposes and the benefit of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NOKOMIS, MONTGOMERY COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: The above recitals are incorporated herein and made a part hereof.

SECTION 2: The agreement between Seller and the City, in substantially the form presented to the corporate authorities at which this Ordinance is adopted as “Exhibit A”, is hereby approved. The Mayor is further authorized to negotiate the final form of the agreement to be executed and effect the intentions of this Ordinance.

SECTION 3: The Mayor and the City Clerk are hereby authorized and directed to execute and deliver an agreement in substantially the form attached hereto as “Exhibit A” and to undertake any and all actions as may be required, necessary, or essential to carry out the terms of this Ordinance.

SECTION 4: The Mayor, the City Clerk, and the City’s attorneys are hereby authorized to execute any documents necessary to accomplish the transactions contemplated herein.

SECTION 5: The Mayor, the City Clerk, and the City’s attorneys are hereby authorized to do all other things and take all other actions necessary and appropriate to effectuate this Ordinance.

SECTION 6: All ordinances and parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby superseded to the extent that they may conflict.

SECTION 7: In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent

jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

SECTION 8: This Ordinance shall be in full force and effect upon its passage and publication as required by law.

Adopted this 12th day of June, 2023, by roll call votes as follows:

	<u>Ayes</u>	<u>Nays</u>	<u>Present</u>	<u>Absent</u>	<u>Abstain</u>
Commissioner Arkebauer	✓		✓		
Commissioner Morris	✓		✓		
Commissioner Glenn	✓		✓		
Commissioner Stauder	✓		✓		
Mayor Goldsmith	✓		✓		

APPROVED by the Mayor of the City of Nokomis, Illinois this 12 day of June, 2023.


MAYOR

ATTEST:


CITY CLERK

“EXHIBIT A”

AGREEMENT FOR PURCHASE OF PROPERTY BY THE CITY OF NOKOMIS, IL

THIS AGREEMENT (hereinafter, the “Agreement”) is made and entered into on the date last indicated below by and between **JOHN W. BEACH** (hereinafter, the “Seller”), and **THE CITY OF NOKOMIS, ILLINOIS**, an Illinois municipal corporation in the County of Montgomery (hereinafter, the “City”).

WITNESSETH:

WHEREAS, the corporate authorities of the City have determined that it is advisable, necessary, and in the interests of public health, safety, and welfare that the City purchase for public purposes certain real estate commonly known as 110 N. Maple Street within the City of Nokomis, which is legally described on **Exhibit 1** attached hereto and incorporated herein by reference, together with all buildings and other improvements situated thereon, and all fixtures and other property affixed thereto (hereinafter, the “Subject Property”); and

WHEREAS, Section 11-61-3 of Article 11 of the Illinois Municipal Code authorizes the Municipality to purchase real and personal property for public purposes pursuant to a contract that provides for the consideration for such purchase to be paid in annual installments during a period not exceeding 20 years; and

WHEREAS, Seller has agreed to sell and convey the Subject Property to the City;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and other valuable considerations, it is mutually agreed between Seller and the City as follows:

1. **Subject Property.** The City agrees to purchase, and Seller agrees to sell and convey to the City good and merchantable title to, subject to all the terms of this Agreement, the real estate legally described on **Exhibit 1** attached hereto and incorporated herein by reference (the “Subject Property”), together with all buildings and other improvements situated thereon, and all fixtures affixed thereto and other property located on the Subject Property at Closing (hereinafter defined).

2. **Purchase Price.** The purchase price of the Subject Property shall be Two Thousand Seven Hundred Fifty and 00/100 Dollars (\$2,750.00) (the “Purchase Price”), which shall be paid at Closing (hereinafter defined). The sum of \$10.00 earnest money is acknowledged received by Seller. All citations relating to the Subject Property shall be dismissed after Closing.

3. **Closing Date.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall occur on such other date as shall be agreed in writing by Seller and the City (the “Closing Date”), subject to the terms of this Agreement, but no later than June 30, 2023. If the Closing Date does not fall on a business day or falls on a legal holiday, the Closing Date shall be the next business day thereafter.

4. Deed. Seller shall convey the Subject Property to the City by a good and sufficient recordable Warranty Deed, subject only to covenants, conditions, restrictions, and easements apparent or of record and to all applicable zoning laws and ordinances.

5. Evidence of Title.

(a) Seller shall be responsible for paying for, at his sole expense and cost, a Commitment and Policy for Title Insurance issued by a title insurance company doing business in Montgomery County, committing a company to issue a title policy in the usual form in the amount of the Purchase Price. Buyer shall order the title insurance. Seller shall also be solely responsible for any survey(s) that may be requested or required by the Title Company.

(b) Permissible exceptions to title shall include only special assessments, zoning laws and building ordinances, easements apparent or of record, and covenants and restrictions of record which do not restrict the City's anticipated use of the Subject Property.

(c) If title evidence or any survey discloses exceptions other than those permitted, Seller shall give written notice of such exceptions to the City within 21 days. Seller shall have 21 days upon receipt of said written notice to have such title exceptions removed. If Seller is unable to cure such exceptions, then the City shall have the option to terminate this Agreement.

6. Conditions to Closing.

(a) City's (Buyer's) Conditions. The City's obligation to consummate the transactions contemplated in this Agreement and pay the Purchase Price and accept title to the Subject Property shall be subject to the following conditions precedent on and as of the Closing Date, or the waiver thereof by the City, which waiver shall be binding upon the City only to the extent made in writing and dated as of the Closing Date.

(i) A Warranty Deed in proper form for recording, duly executed and acknowledged by Seller, meeting the requirements of this Agreement and transferring the Subject Property to the City; and

(ii) Any and all documents necessary to release any mortgages or liens on the Subject Property, if any; and

(ii) Such affidavits and other documents or deliveries, if any, as may be required in connection with the conveyance of the Subject Property to the City pursuant to other provisions in this Agreement or otherwise reasonably required in order to consummate the transaction contemplated hereby and customarily required by the City's title company (hereinafter, the "Title Company") of a seller of property to enable it to issue a Commitment for Title Insurance in accordance with the terms hereof.

(iii) This contract is contingent on approval by the City of Nokomis City Council.

(iv) Either Seller will remove all mobile homes and/or manufactured homes from the Subject Property to a location outside of the City of Nokomis on or before June 30, 2023, or the Purchase Price shall be reduced by \$1,000.00.

A. If, as of the Closing Date, the Seller has failed to remove all mobile homes and/or manufactured homes from the Subject Property to a location outside of the City of Nokomis, then the Title Company shall at Closing retain the sum of \$1,000.00 until both parties agree in writing that Seller has removed all mobile

homes and/or manufactured homes from the Subject Property to a location outside of the City of Nokomis.

B. The sum of \$1,000.00 shall be distributed to Seller when both parties agree in writing that all mobile homes and/or manufactured homes have been removed from the Subject Property to a location outside of the City of Nokomis. If both parties fail to do so within 30 days of Closing, the Title Company shall refund the \$1,000.00 so held by the Title Company to the City, which shall represent the City's overpayment due to the reduced Purchase Price, subject to the provisions of paragraph 6(a)(v) of this Agreement.

(v) Seller acknowledges that, as of the date of this Agreement, there is a current balance due to the Montgomery County Treasurer in the amount of \$1,013.50, which represents unpaid mobile home privilege taxes.

A. If, as of the Closing Date, the Seller owes a balance due to the Montgomery County Treasurer for said mobile home privilege taxes, the Title Company shall withhold the sum of \$1,013.50 of Seller's net proceeds at Closing. The Title Company shall retain said sum of \$1,013.50 until the Montgomery County Treasurer or other appropriate official of the county provides written confirmation that there all mobile home privilege tax liabilities associated with the Subject Property have been satisfied or discharged.

B. The sum of \$1,013.50 shall be distributed to Seller after the Montgomery County Treasurer or other appropriate official of the county provides written confirmation that there all mobile home privilege tax liabilities associated with the Subject Property have been satisfied or discharged. Absent such written confirmation within 30 days of the Closing, the \$1,013.50 retained by the Title Company pursuant to this paragraph shall be paid to the Montgomery County Treasurer in payment of the mobile home privilege taxes that are due and owing. Further, should the Purchase Price be reduced pursuant to paragraph 6(a)(iv) of this agreement, the City's \$1,000.00 overpayment shall first be applied to any further or additional mobile home privilege tax liabilities associated with the Subject Property.

(b) Seller's Conditions. Seller's obligation to consummate the transactions contemplated in this Agreement and convey the Subject Property to the City shall be subject to the City's delivery of the Purchase Price, subject to adjustment of such prorations, adjustments, and terms set forth in this Agreement.

(c) Joint Deliveries. On the Closing Date, provided all conditions and contingencies have been satisfied, Seller and the City shall jointly deposit with the Title Company, each dated and duly executed and notarized, as appropriate, a closing statement and a completed *Illinois Real Estate Transfer Declaration* form ("PTAX-203"), as well as any other required forms, to establish that the transfer is exempt from real estate transfer taxes.

7. Closing Costs & Prorations. Each of Seller and the City agree to pay their own attorneys' fees incurred in connection with the negotiation, preparation, and consummation of the transactions contemplated hereby. The City shall bear the costs of preparing and recording the Warranty Deed to be delivered to the City at Closing, together with all other documents required

of the parties at Closing. **Any and all prior taxes due that are related to the Subject Property for any period prior to Closing, including real estate taxes or mobile home privilege taxes, if any, either shall be paid by Seller prior to or at Closing, or shall be paid from the funds held by the Title Company and described in paragraphs 6(a)(iv) and/or 6(a)(v).**

8. Brokerage Commissions. Seller and the City warrant and represent to the other that neither has used any broker, and to the best of either party's knowledge there is no entity entitled to a commission for the purchase and sale of the Subject Property.

9. Condition of Property. The City agrees to accept the Subject Property in its "as-is" condition.

10. Default. If any party defaults under this Agreement, the other party may waive the default and proceed to Closing, seek specific performance, or refuse to close and cancel this Agreement with both parties being relieved of all further obligations under this Agreement. Except for failure to close on the Closing Date, a party may not exercise its remedies until after it delivers notice of the alleged default to the other party and the other party fails to cure within ten (10) days after receipt of the default notice. The remedies provided herein shall be the sole and exclusive remedies for either party's default under this Agreement.

11. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (i) upon the delivery (or refusal to accept delivery) by messenger or overnight express delivery service (or, if such date is not on a business day, on the business day next following such date), or (ii) on the third (3rd) business day next following the date of its mailing by certified mail, postage prepaid, at a post office maintained by the United States Postal Service, or (iii) upon the receipt by facsimile transmission or e-mail as evidenced by a receipt transmission report if requested by the recipient as follows:

if to Seller:

John W. Beach
120 E. State Street
Nokomis, IL 62075

if to the City:

City of Nokomis
Attn: City Clerk
22 South Cedar Street
Nokomis, IL 62075

with a copy to:

Christopher E. Sherer
Giffin, Winning, Cohen & Bodewes, P.C.
900 Community Drive
Springfield, IL 62703

Either party may, by notice given as aforesaid, change the address or addresses, or designate an additional address or additional addresses, for its notices; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

12. Miscellaneous.

(a) Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties hereto and may not be modified or canceled except pursuant to the terms hereof or an instrument in writing signed by the parties hereto. Any schedules and exhibits annexed hereto are hereby incorporated herein by reference as fully as though set forth herein. This Agreement may not be modified or amended except in writing signed by the parties hereto. All understandings and agreements heretofore and between the parties are merged in this Agreement and all exhibits and schedules attached hereto, which alone fully and completely express the agreement of the parties hereto with respect to the subject matter hereof, and which supersede all prior negotiations, representations, or agreements pertaining to the subject matter hereof, either oral or written.

(b) Waiver. No waiver of any term, provision or condition of this Agreement, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

(c) Dispute Resolution; Attorney's Fees. The venue for any litigation involving this Agreement shall be in the Circuit Court of the Fourth Judicial Circuit, Montgomery County, Illinois. The law of this Agreement shall be the law of the State of Illinois. In any controversy arising out of the interpretation or performance of this Agreement, neither party shall be entitled to attorney's fees or costs incurred by the other party.

(d) Headings. The headings of the various Sections of this Agreement have been inserted only for the purposes of convenience, are not part of this Agreement and shall not be deemed in any manner to modify, explain, qualify or restrict any of the provisions of this Agreement.

(e) Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had executed the same document. All such counterparts shall be construed together and shall constitute one instrument.

(f) Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

(g) No Third-Party Beneficiaries. Nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any party or entity not a party to this Agreement.

(h) Further Assurances. Each of Seller and the City shall provide to the other such further assurances as may reasonably be required hereunder to effectuate the purposes of this Agreement and, without limiting the foregoing, shall execute and deliver such affidavits, certificates and other instruments as may be so required hereunder so long as the same shall not materially increase the liability of the party so executing and delivering said instrument.

(i) Severability. If any term or provision of this Agreement shall to any extent be held

invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

(j) Usage. All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require, or “any” shall mean “any and all”; “or” shall mean “and/or” “including” shall mean “including without limitation.

(k) No Strict Construction. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any of the parties hereto.

(l) 1031 Exchange. Seller may elect to structure the acquisition of the Subject Property as part of a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986 (the “Code”). Seller may assign this Agreement to a qualified intermediary selected by Seller in his sole discretion in order to facilitate Seller’s Code Section 1031 exchange transaction. The City agrees to cooperate with Seller in effecting such transaction or transactions, provided that any such exchange transaction, and the related documentation, shall: (i) not delay the Closing or the transaction contemplated by this Agreement, (ii) not relieve Seller of any obligation or liability to the City, and (iii) shall not result in the City incurring any additional costs.

(m) Uniform Vendor and Purchaser Risk Act. The provisions of the Uniform Vendor and Purchaser Risk Act of Illinois shall be applicable to this Agreement.

(n) IRS Section 1445. Each party represents that it is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code and that it is exempt from the withholding requirements of said Section. Each party will furnish to the other party at closing the Exemption Certification set forth in said Section.

(o) Interpretations. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

(p) Signatures; Execution. A facsimile or PDF copy sent via email shall be deemed an original. All the parties to this Agreement represent that they are authorized to enter into this Agreement.

(q) Time of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, Seller has hereunto set their hands and seals on the date(s)

indicated below.

SELLERS:

John W Beach
JOHN W. BEACH

Date: 6-27-23

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its Mayor and attested by its Clerk and the official seal of the City to be hereunto affixed this 27 day of June, 2023.

THE CITY (BUYER):

CITY OF NOKOMIS, ILLINOIS,
an Illinois municipal corporation

By: Dylan Solismitte
Its Mayor

ATTEST:

By: Ronald Kim
City Clerk

EXHIBIT 1

**Subject Property
Legal Description**

Lots 7 and 8 in Block 16 in the Original Town, now City of Nokomis, Montgomery County, Illinois

P.I.N.: 08-23-114-013

Property Address: 110 N. Maple St., Nokomis, IL 62075

STATE OF ILLINOIS)
COUNTY OF MONTGOMERY) ss.
CITY OF NOKOMIS)

CITY CLERK'S CERTIFICATE

I certify that I am the duly appointed and acting City Clerk of the City of Nokomis, Montgomery County, Illinois, and, as such, am the keeper of records and seal thereof; that the foregoing is a true, complete, and correct copy of Ordinance No. 2104 of said City; that said Ordinance, which is:

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NOKOMIS (P.I.N. 08-23-114-013)

was passed by the City Council of the City of Nokomis, Montgomery County, Illinois, by ye and nay vote on the 12th day of June, 2023; that said Ordinance was approved by the Mayor on the 12 day of June, 2023; and that said Ordinance was then deposited in the office of the City Clerk of said City and filed therein; and that the same was recorded in the Record of Ordinances of said City.

I further certify said Ordinance provided by its terms that it should be published in pamphlet form; that the pamphlet form of said Ordinance, including the Ordinance and a cover sheet thereof, was prepared; that a copy of such Ordinance was posted in the City Hall, commencing on the 12 day of June, 2023, to continue for at least ten (10) days thereafter; and that copies of such Ordinance were also available for public inspection upon request in the office of the City Clerk.

DATED at Nokomis, Illinois, this 12 day of June, 2023.

(SEAL)



City Clerk