

**MINUTES OF THE CHESHIRE TOWN COUNCIL SPECIAL MEETING
HELD ON THURSDAY, NOVEMBER 3, 2016 AT 7:00 P.M. IN COUNCIL CHAMBERS
84 SOUTH MAIN STREET, CHESHIRE, CT 06410**

Present

Robert Oris, Chairman; Paul Bowman, Vice Chairman; Councilors - Michael Ecke, Sylvia Nichols, Thomas Ruocco, Tim Slocum, Peter Talbot, Patti Flynn-Harris.

Absent: Liz Linehan.

Staff/Others Present: Town Manager Michael A. Milone; Town Attorney, Al Smith.

1. ROLL CALL

A quorum was determined to be present.

2. PLEDGE OF ALLEGIANCE

The assembled group Pledged Allegiance to the Flag.

3. DISCUSSION AND ACTION OF THE FINAL AMENDMENT TO THE CHAPMAN PROPERTY

MOTION by Peter Talbot; **SECONDED** by Sylvia Nichols to enter Executive Session at approximately 7:06 p.m.

Town Attorney Al Smith and Town Manager Michael Milone were invited for the entire session.

VOTE The vote was unanimous.

MOTION by Sylvia Nichols; **SECONDED** by Peter Talbot to exit Executive Session at approximately 7:45 p.m.

VOTE The vote was unanimous.

MOTION by Paul Bowman to approve Resolution #110316-1, the Second Amendment to Purchase and Sale Agreement for the Chapman property at 650 South Main Street, Cheshire, pursuant to the terms discussed at this meeting as attached; **SECONDED** by Sylvia Nichols.

VOTE In Favor: Sylvia Nichols, Paul Bowman, Rob Oris, Tim Slocum, Peter Talbot, Patti Flynn-Harris, and Michael Ecke.

Opposed: Tom Ruocco

4. ADJOURNMENT

MOTION by Paul Bowman; seconded by Sylvia Nichols.

MOVED to adjourn the special meeting at 7:50 p.m.

VOTE The motion passed unanimously.

Attest:



Michael A. Milone, Town Manager

SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

This SECOND AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT, dated as of October 31, 2016 (this "**Second Amendment**") between RICHARD CHAPMAN, an individual with a residence located at 650 South Main Street, Cheshire, Connecticut 06410 (the "**Seller**") and the TOWN OF CHESHIRE, a municipal corporation with a chief executive office located at Cheshire Town Hall, 84 South Main Street, Cheshire, Connecticut 06410 (the "**Purchaser**").

WHEREAS, Purchaser and Seller entered into that certain Real Estate Purchase Agreement dated as of May 25, 2016 (the "**Original Purchase Agreement**"), as amended by that certain First Amendment to Real Estate Purchase Agreement by and between Purchaser and Seller dated as of September 13, 2016 (the "**First Amendment**") and together with the Original Purchase Agreement, collectively the "**Purchase Agreement**") wherein the Seller agreed to sell and the Purchaser agreed to purchase the Property. Capitalized terms used but not defined herein shall have the meaning given to such terms in the Amended Purchase Agreement; and

WHEREAS, the parties desire to amend further the Purchase Agreement, *inter alia*, to revise the terms of the escrow agreement contained therein established to fund, in whole or in part, any necessary environmental remediation work, all as more particularly set forth below herein; and

WHEREAS, the Purchase Agreement may be amended provided such amendment is in writing and signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

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

1. The recitals set forth above are fully incorporated as if set forth herein.
2. The Amended Purchase Agreement is hereby amended further as follows:
 - a. Section 2 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

"2. Purchase Price. The purchase price shall be THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00), payable as follows:

Deposit paid, receipt of which is hereby acknowledged by Seller.	\$25,000.00
The Deposit shall be payable to Seller upon execution of this	

Second Amendment, which shall be utilized by Seller, at least in part, to secure the removal of all tenants on the Property prior to Closing (as defined herein).

To be paid by cash, cashier's or certified check at Closing \$1,250,000.00 (or such greater or lesser amount as may be required after credits and adjustments provided for herein)

Balance to be paid by cash, cashier's check at the expiration of the Departure Period and Seller's delivery of the Property free of all occupants, personal property, livestock and equipment. \$1,725,000.00 (or such lesser amount as may be required after credits and adjustments provided for herein and in accordance with Section 18.a.G. hereof)."

b. Section 10 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

"10. Default. If Buyer fails to close on the Closing Date, Seller shall be entitled to retain the Deposit as liquidated damages and not as a penalty. (The Seller shall not be entitled to any other remedies for failure to close.) If Buyer fails to perform any of its other obligations under this Agreement, Seller shall be entitled to the Deposit. If Seller fails to perform any of its obligations under this Agreement, Buyer shall be entitled to all remedies available at law or in equity, including the remedy of specific performance."

c. Section 18.a.G of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

"a.G. (i) Notwithstanding anything to the contrary contained in this Section 18, the parties agree that Buyer shall withhold THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) from the Second Installment (the "Environmental Escrow") for the purpose of funding the environmental remediation work as set forth in that certain report issued by Buyer's environmental inspection agent (hereinafter, the "**BETA**") dated October 19, 2016 (the "**BETA Report**"). An itemized list of the environmental remediation work and the estimated cost of same is attached hereto as Schedule "Z" and made part hereof (collectively, the "**Remediation Work**"). The aggregate cost of the Remediation Work shall not exceed \$300,000.00, shall be paid by Buyer with the Environmental Escrow funds and shall be completed by September 1, 2017 (the "**Remediation Completion Date**"). If, upon completion to the satisfaction of, and confirmed by, BETA, the cost of the Remediation Work is less than

the Environmental Escrow, Buyer shall release the remaining balance of the Environmental Escrow to Seller.

(ii) The parties further agree that Seller shall perform or cause its agents or contractors to perform, the Remediation Work; provided, however, such work shall be completed in full compliance with all applicable Federal, state and local laws and overseen by BETA, and the cost of such work shall be in accordance with the cost estimate set forth in Schedule "Z". Upon completion of the Remediation Work by Seller, at Buyer's request, Buyer shall have the right to review Seller's invoice(s) and to inspect and approve such environmental remediation work, such approval and payment of which shall not be unreasonably withheld, conditioned or delayed.

(iii) Notwithstanding anything in the foregoing to the contrary, the Buyer further agrees that, upon completion of the Remediation Work, the Buyer shall release, indemnify (to the extent permitted by law) and otherwise hold the Seller harmless from any liability, including but not limited to costs for further remediation, associated with the Remediation Work, and from any and all liabilities associated with the environmental condition of the Property upon completion of the Remediation Work.

(v) The parties further agree that any information set forth in BETA's report(s) disclosed to Seller in accordance with this Section shall be deemed confidential information until such time as the Second Installment becomes due and owing, provided, however, Buyer shall not be precluded from disclosing such information if required by law. The provisions of this Section shall survive the closing of the transaction contemplated herein."

d. The following shall be added as a new Section 21 of the Purchase Agreement:

Notwithstanding anything contained herein to the contrary, after the Departure Period and the payment of the final installment, the Seller shall be permitted, if necessary and with notice to the Buyer, to enter the Property to remove certain heirloom fruit, vegetable and flower materials in close proximity to the Seller's residence (the "Heirloom Flora"), which shall be identified, tagged and photographed prior to Closing. The Seller shall remove the Heirloom Flora by April 15, 2017, and the Buyer shall use best efforts not to disturb the Heirloom Flora until their removal.

3. The Departure Period (as that term is defined in the Purchase Agreement) and the Remediation Completion Date each may, with the mutual consent and agreement of the parties, be extended because of unforeseen circumstances, including but not limited to inclement weather, force majeure or illness. Such consent shall not be unreasonably withheld, conditioned or delayed.

4. Except as expressly stated herein, nothing contained in this Second Amendment shall be deemed to constitute a waiver of compliance with any term or condition contained in the Purchase Agreement. Except as expressly amended hereby, the Purchase Agreement remains unmodified and in full force and effect. All references to the Purchase Agreement shall be deemed to be references to the Purchase Agreement as amended hereby. Except as specifically set forth herein, the execution of this Second Amendment shall not operate as a waiver of any right, power or remedy of Seller or Purchaser pursuant to the Purchase Agreement.

5. This Second Amendment shall be governed by and construed by the laws of the State of Connecticut, without regard to conflicts of law provisions.

6. This Second Amendment may be executed in counterparts and transmitted to the parties hereto by email and/or fax. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be properly executed as of the date first written above.

SELLER:

X Richard A. Chapman
Richard Chapman

PURCHASER:

TOWN OF CHESHIRE,

By: Michael A. Malone

Its TOWN MANAGER
Nov 8, 2018