



THIS
TO BE BILLED
TO CV.

RECEIVED

DEC 08 2014

TRACY MORGAN
WINCO

STATE OF ILLINOIS)
COUNTIES OF) SS
WINNEBAGO & BOONE)

I, the undersign Village Clerk, Dana Ward of the Village of Cherry Valley, Winnebago & Boone Counties, State of Illinois, do hereby certify that as the Village Clerk, I am the keeper of the minutes, ordinances and other books, records, Village seal, and papers of said Village and the foregoing is true and correct copy of the report:

ORDINANCE 2014 - 23

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN
AMENDMENT TO AN ANNEXATION AGREEMENT FOR THE
VILLAGE OF CHERRY VALLEY, ILLINOIS
(GREATER ROCKFORD AUTO AUCTION)

With the original record thereof now remaining in my office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In Testimony Whereof, I have set my hand and fixed the seal of said Village of Cherry Valley, Illinois.

THIS 18TH DAY OF NOVEMBER, 2014

Dana J. Ward
VILLAGE CLERK, Dana J. Ward

(SEAL)

FILED - CO. CLERK

NOV 26 2014

MARGIE M. MULLINS

STATE OF ILLINOIS)
COUNTIES OF) SS
WINNEBAGO & BOONE)

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VILLAGE CLERK

(SEAL)

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COUNTIES OF) SS
WINNEBAGO & BOONE)

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THIS 18 TH DAY OF NOVEMBER, 2014


VILLAGE CLERK

(SEAL)

ORDINANCE NO. 2014-23

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN
AMENDMENT TO AN ANNEXATION AGREEMENT FOR THE
VILLAGE OF CHERRY VALLEY, ILLINOIS
(GREATER ROCKFORD AUTO AUCTION)

WHEREAS, on December 7, 1999 under Ordinance No. 1999-41, the Village and Annexor did enter into an Annexation Agreement affecting the approximately 130 acres herein and legally described on “Exhibit A” and recorded the same with the Recorder’s Office of Winnebago County on December 30, 1999; and

WHEREAS, the Village and the Owner now desire to amend the Annexation Agreement referenced above pursuant to the provisions of 65 ILCS 5/11-15.1-1 *et seq.* in accordance with the terms and conditions hereinafter set forth (the “Amendment”); and

WHEREAS, a public hearing was held on October 21, 2014, (date) by the Board of Trustees for the Village as required by 65 ILCS 5/11-15.1-1 *et seq.*; and

WHEREAS, this Amendment is made and entered into by the parties pursuant to the provisions of 65 ILCS 5/11-15.1-1 *et seq.*

NOW, WHEREFORE, be it ordained by the President and Board of Trustees for the Village of Cherry Valley, Illinois, as follows:

SECTION 1: The Village President is hereby authorized and directed and the Village Clerk is directed to attest the document known as “Amendment to Annexation Agreement” a copy of which is attached hereto as “Exhibit A” and made a part hereof.

SECTION 2: The Amendment to Annexation Agreement made a part of this

Ordinance shall be recorded in the Recorder's Office of Winnebago County, Illinois, and shall affect the property which is referenced in said Annexation Agreement.

SECTION 3: This Amendment to Annexation Agreement is in compliance with the terms and conditions set forth in the provisions of 65 ILCS 5/11-15.1-1 *et. seq.*, and shall be binding upon the owners of record of the land and their successors and assignees for an initial period of twenty (20) years.

SECTION 4: This Ordinance shall be in full force and effect from and after its approval by two-thirds (2/3) of the corporate authorities holding office, passage and publication in pamphlet form.

PASSED UPON MOTION BY: NANCY BELT

SECONDED BY: STEPHEN APPELL

BY ROLL CALL VOTE THIS 18th DAY OF DECEMBER, 2014

AS FOLLOWS:

VOTING "AYE": STEPHEN APPELL, NANCY BELT, SALLY HOLLEMBEAK, JOANN HUDSON, GARY MAITLAND and DAVID SCHROEDER

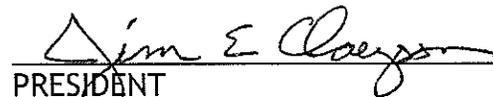
VOTING "NAY": NONE

ABSENT, ABSTAIN, OTHER: NONE

ATTEST:


CLERK

APPROVED NOVEMBER 18, 2014


PRESIDENT

L:\JES\Cherry Valley\Ordinances\Authorizing the Execution of an Amended Annexation Agreement (Greater Rockford Auto Auction).docx

AMENDMENT TO ANNEXATION AGREEMENT

This AMENDMENT TO ANNEXATION AGREEMENT (the "Amendment") is entered into as of this 18th day of November, 2014, by and between the VILLAGE OF CHERRY VALLEY, an Illinois municipal corporation ("Village"), and D.M. CLARK COMPANIES, INC., an Illinois corporation ("Owner"), and successor to DWIGHT M. CLARK ("Annexor").

RECITALS

WHEREAS, the Village is a non-home-rule municipal corporation organized under the laws of the State of Illinois, and has the power to annex territory and to enter into annexation agreements in connection with the annexation of territory, pursuant to the applicable provisions of the Illinois Municipal Code including, without limitations, 65 ILCS 5/7-1-1 and 5/7-1-8 and 65 ILCS 5/11-15.1-1 *et seq.*; and

WHEREAS, on December 7, 1999 under Ordinance No. 1999-41, the Village and Annexor did enter into an Annexation Agreement affecting the approximately 130 acres herein and legally described on "Exhibit A" and recorded the same with the Recorder's Office of Winnebago County on December 30, 1999; and

WHEREAS, on December 7, 1999 under Ordinance No. 1999-42, the Village did annex certain property consisting of parcels containing in the aggregate approximately 130 acres shown and legally described on Exhibit A (the "Subject Property"); and

WHEREAS, the Village and the Owner now desire to amend the Annexation Agreement referenced above pursuant to the provisions of 65 ILCS 5/11-15.1-1 *et seq.* in accordance with the terms and conditions hereinafter set forth (the "Amendment"); and

WHEREAS, pursuant to notice as required by statute and ordinance, public hearings were held by the Village Planning and Zoning Committee on October 16, 2013 to consider the Amendment, and the findings of fact and recommendations made by the Planning and Zoning Committee relative to the same were forwarded to the Board of Trustees for the Village of Cherry Valley; and

WHEREAS, on December 18, 2013 the Planning and Zoning Committee did recommend two (2) Variances regarding the Subject Property which allow non "sight tight" fencing with barbed wire strands along the top and a staging of the requirement that all automobiles be parked on bituminous material; and

WHEREAS, a public hearing was held on October 21, 2014 by the Board of Trustees for the Village as required by 65 ILCS 5/11-15.1-1 *et seq.*; and

WHEREAS, on May 20, 2014, the Board of Trustees for the Village of Cherry Valley, Illinois did grant a Variance to the existing Village Ordinances regarding fencing and parking on bituminous material by automobiles as Ordinance No. 2014-12 and 2014-13; and



WHEREAS, all other and further notices, publications procedures, public hearings and other matters attendant to the consideration and approval of this Amendment have been given, made, held or provided for as stated herein, and performed by the Village as required by § 11-15.1-1 *et seq.* of the Illinois Municipal Code, and all other applicable statutes, and all applicable ordinances, regulations and procedures of the Village; and

WHEREAS, the Village has duly considered the terms and provisions of this Amendment and have, by Ordinance No. 2014-23, duly adopted by a vote of two-thirds of the corporate authorities then holding office, authorized them to execute, and the Village Clerk to attest, this Amendment on behalf of the Village; and

WHEREAS, this Amendment is made and entered into by the parties pursuant to the provisions of 65 ILCS 5/11-15.1-1 *et seq.*

NOW, THEREFORE, in consideration of the terms and conditions of the proposed annexation, zoning, subdivision and development of the Subject Property and the mutual promises and covenants herein set forth, the parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The recitals set forth immediately above are hereby incorporated and made a part of the Amendment as though fully set forth herein.

2. Amendment of Annexation Agreement. Paragraph A.3. of the Annexation Agreement is hereby deleted and the provisions set forth below are substituted in its place:

A.3. Until such time as the final plat for the entire property described in "Exhibit A" has been approved by the Village, Village municipal water lines being extended to the subject property by the Annexor or his successors or assigns and the Mulford Road/Sandy Hollow Road intersection is fully improved and operational with signalization satisfactory to the Village, the Annexor or his successors and assigns shall be allowed to construct a twenty (20) acre storage lot for the storage of Annexor's late model fully operational vehicle inventory which shall be subject to Village zoning ordinances and variance ordinances numbers 2014-12 and 2014-13, and constructed pursuant to plans and specifications approved by the Village.

3. Amendment of Annexation Agreement. Paragraph A.4. of the Annexation Agreement is hereby deleted and the provisions set forth below are substituted in its place:

A.4. The area which the Annexor may use prior to final plat approval of the entire property described in "Exhibit A" shall be situated on the westerly twenty (20) acres of the parcel identified in Exhibit "B" and shall be in conformance with the drawing attached as Exhibit "C". None of the area shall be used for anything except the parking of late model fully operational vehicles until all requirements in Paragraph A.3 above have been met.

A. Non "Sight Tight" Fence Variance.

1. The twenty (20) acre storage lot situated on the property described in "Exhibit B" and depicted on "Exhibit C" may have constructed on the perimeter thereof, a chain link fence which is not "sight tight".

2. The chain link non "sight tight" fence described in subparagraph (1) above, shall be allowed to string barbed wire across the top of said fencing.

B. Paving Requirement.

1. The obligation to pave the twenty (20) acre off-street parking facility illustrated in "Exhibit C" shall be deferred and staggered as follows:

(a) Thirty-six (36) months following the Petitioner's first use of the proposed storage lot, the Petitioner shall improve with a minimum of a six (6") inch base and an A-2 bituminous covering no less than one-third (1/3) of the storage lot surface area, i.e., along the northern 6.66 acres;

(b) Forty-eight (48) months following the Petitioner's first use of the proposed storage lot, the Petitioner shall improve with a minimum of a six (6") inch base and an A-2 bituminous covering no less than one-third (1/3) of the storage lot surface area which shall consist of the middle 6.66 acres;

(c) Sixty (60) months following the Petitioner's first use of the proposed storage lot, the Petitioner shall improve with a minimum of a six (6") inch base and an A-2 bituminous covering no less than the final one-third (1/3) or the southerly most one-third (1/3) of the off-street parking storage lot surface area.

2. Notwithstanding the foregoing, if at any time following the thirty-six (36) months, the Petitioner determines its business does not require the use of some or all of the storage lot or off-street parking, the Petitioner may de-commission that portion of the lot which it no longer requires. Within six (6) months of making such an election, the Petitioner shall restore such portion of the lot to vacant land by removal of the crushed aggregate surface and other improvements made thereon.

3. Prior to construction of the crushed aggregate off-street parking lot, the Petitioner shall deposit with the Village of Cherry Valley, Illinois a bond and/or performance bond or other security instrument satisfactory to the Village of Cherry Valley, Illinois, in an amount sufficient to

decommission that portion of the lot no longer required for use and to be returned to vacant land.

All areas of the property described in "Exhibit A" not used for parking may be used for agricultural purposes.

4. Amendment of Annexation Agreement. Paragraph A.6. of the Annexation Agreement is hereby amended to read as follows:

A.6. Annexor agrees that all property described in "Exhibit A" shall be fully improved in compliance with the Village's ordinances which shall include, but not necessarily be limited to curb, gutter and municipal water and sewer, except for the twenty (20) acres illustrated in "Exhibit C" which while it is used for the storage of late model fully operational automobiles shall not have to install curb, gutter and municipal water and sewer.

5. Amendment of Annexation Agreement. Paragraph C of the Annexation Agreement is hereby amended to read as follows:

C. Pursuant to 65 ILCS 5/11-15.1-1 *et seq.*, this Amended Agreement shall be recorded in the Recorder's Office of Winnebago County, Illinois, and both the original Agreement and the Amended Agreement shall remain in full force and effect after its execution and recording until 2034 for a period of twenty (20) years from the date of its approval and execution of this Amendment.

6. Except as amended herein, all other terms of the Annexation Agreement dated December 7, 1999 shall remain in full force and effect.

7. In the event of an inconsistency between the Annexation Agreement and this Amendment, specifically Paragraphs 2-6, the terms of this document shall control. All other paragraphs of the Annexation Agreement dated December 7, 1999 not referenced herein shall control in the event of an inconsistency with this Amendment.

8. Amendment of Annexation Agreement. Paragraph G set forth below is incorporated:

G. Any and all notices required or permitted under this Amendment may be given on behalf of either party by the party's attorney. Any notice or other communication permitted or required to be given hereunder by one party to the other shall be either hand delivered, sent by overnight delivery service (*e.g.*, Federal Express), faxed or sent via electronic mail to the party entitled or required to receive the same as follows:

Village: Village of Cherry Valley
Attn: Jim Claeysen, or presiding President
806 E. State Street
Cherry Valley, IL 61016
Ph.: (815) 332-3441
Fax: (815) 332-3414
Email: jclaeysen@cherryvalley.org

With a copy to: Barrick, Switzer, Long, Balsley & Van Evera LLP
c/o James E. Stevens, Esq., or the then duly appointed and
acting Attorney for the Village
6833 Stalter Drive
Rockford, IL 61108
Ph.: (815) 962-6611
Fax: (815) 962-0687
Email: jstevens@bslbv.com

Owner: D.M. Clark Companies, Inc.
Attn: Mark D. Clark
5937 Sandy Hollow Road
Rockford, IL 61109
Ph.: (815) 874-7800
Fax: (815) 874-1325
Email: mark@courtesyaircraft.com

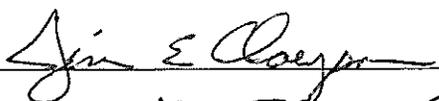
With a copy to: Reno & Zahm LLP
c/o Jack D. Ward, Esq.
2902 McFarland Road, Suite 400
Rockford, IL 61107
Ph.: (815) 987-4050
Fax: (815) 987-4092
Email: jdward@renozahm.com

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first set forth above.

VILLAGE:

VILLAGE OF CHERRY VALLEY,
an Illinois municipal corporation

By: 
Its: VILLAGE PRESIDENT

OWNER:

D.M. CLARK COMPANIES, INC.,
an Illinois corporation

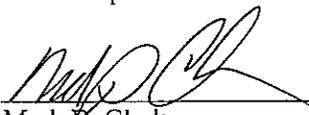
By: 
Mark D. Clark
Its: President

EXHIBIT A
Legal Description of Subject Property

Part of the South Half (½) of Section 3 and part of the North Half (½) of Section 10, all in Township 43 North, Range 2 East of the Third Principal Meridian, bounded and described as follows, to-wit: Beginning at the point of intersection of the South line of said Section 3, with the East line of County Highway No. 60 (Mulford Road), which point bears North 89°-47'-26" East, a distance of 40.0 feet from the Southwest corner of said Section 3; thence North 89°-47'-26" East, along the South line of said Section 3, a distance of 108.50 feet; thence North 00°-03'-24" East, parallel with the West line of said Section 3, a distance of 198.0 feet; thence South 89°-47'-26" West, parallel with the South line of said Section 3, a distance of 88.50 feet to the East line of said County Highway No. 60 (Mulford Road); thence North 00°-03'-24" East, along an East line of said County Highway No. 60 (Mulford Road), a distance of 675.51 feet to an angle point in said line; thence North 72°-12'-35" West, along a North line of said County Highway No. 60 (Mulford Road), a distance of 10.50 feet, to an angle point in said line; thence North 00°-03'-24" East, along an East line of said County Highway No. 60 (Mulford Road), a distance of 69.29 feet to the Southerly line of the Chicago, Central & Pacific Railroad; thence South 72°-12'-35" East, along the Southerly line of said Railroad, a distance of 730.63 feet to a point of curvature in said line; thence Southeasterly, along the curved Southerly line of said Railroad, being along a circular curve to the left, having a radius of 6300.51 feet, to a point of tangency in said line (the chord across said curved course bears South 75°-06'-20" East, a distance of 636.63 feet); thence South 78°-00'-06" East, along the Southerly line of said Railroad, a distance of 1170.04 feet to a point of curvature in said line; thence Southeasterly, along a curved Southerly line of said Railroad, being along a circular curve to the right, having a radius of 2814.93 feet, to a point of tangency in said line (the chord across said curved course bears South 67°-18'-56" East, a distance of 1043.94 feet); thence South 56°-37'-46" East, along the Southerly line of said Railroad, a distance of 446.24 feet to the curved Northerly line of premises conveyed by Raymond J. Froehlich and Zudora J. Froehlich to the State of Illinois by Warranty Deed recorded in Book 1348 of Recorder's Records on Page 633 in the Recorder's Office of Winnebago County, Illinois; thence Southwesterly, along the curved Northerly line of aforesaid premises, so conveyed, being along a circular curve to the right, having a radius of 5579.65 feet, to an angle point in said line (the chord across said curved course bears South 54°-54'-33" West, a distance of 24.31 feet); thence South 66°-47'-44" West, along the Northerly line of aforesaid premises so conveyed, a distance of 32.81 feet to an angle point in said line; thence South 17°-47'-14" West, along the Northerly line of aforesaid premises, so conveyed, a distance of 10.80 feet to an angle point in said line; thence Southwesterly, along the curved Northerly line of aforesaid premises, so conveyed, and along the Northerly line of premises conveyed by Ralph R. Froehlich and Mildred G. Froehlich as Trustees to the State of Illinois by Warranty Deed recorded in Book 1310 of Recorder's Records on Page 131 in said Recorder's Office of Winnebago County, Illinois, being along a circular curve to the right, having a radius of 5579.65 feet, to a point of tangency in said line (the chord across said curve course bears South 73°-05'-11" West, a distance of 3380.59 feet); thence North 89°-16'-45" West, along the Northerly line of aforesaid premises, a distance of 420.21 feet to the Southeast corner of premises conveyed by Ralph R. Froehlich and Mildred G. Froehlich as Trustees to the State of Illinois by Deed recorded in Micro-File No. 76-05-0512 in said Recorder's Office of Winnebago County, Illinois; thence North 03°-47'-08"

West, along the Easterly line of aforesaid premises, so conveyed, a distance of 251.51 feet, to an angle point in said line; thence North $13^{\circ}-27'-07''$ West, along the Easterly line of aforesaid premises, so conveyed, a distance of 205.97 feet to an Easterly line of aforesaid County Highway No. 60 (Mulford Road); thence North $07^{\circ}-43'-41''$ West, along an Easterly line of aforesaid County Highway No. 60 (Mulford Road), a distance of 253.41 feet to an angle point in said line; thence North $00^{\circ}-22'-55''$ East, along the East line of said County Highway No. 60 (Mulford Road), a distance of 645.11 feet to the point of beginning. Situated in the County of Winnebago and the State of Illinois. Containing 127.8775 acres.

EXHIBIT B
Legal Description of Storage Lot

Part of the Northwest Quarter (1/4) of Section 10, Township 43 North, Range 2 East of the Third Principal Meridian, bounded and described as follows, to-wit: Beginning at a point on the North line of said Quarter (1/4) Section which bears North $89^{\circ}-47'-26''$ East, 90.00 feet from the Northwest corner of said Quarter (1/4) Section; thence North $89^{\circ}-47'-26''$ East, along the North line of said Quarter (1/4) Section, 1982.21 feet to a line 2072.1 feet perpendicularly distant East of the West line of said Quarter (1/4) Section; thence South $00^{\circ}-22'-55''$ West, parallel with the West line of said Quarter (1/4) Section, 1171.73 feet to the North line of F.A. Route 194 (U.S. Route 20); thence Southwesterly, along the North line of said F.A. Route 194 (U.S. Route 20), being along a circular curve to the right, having a radius of 5579.65 feet, to a point of tangency (the chord across said curved course bears South $82^{\circ}-53'-01''$ West, 1521.63 feet); thence North $89^{\circ}-16'-45''$ West, along the North line of said F.A. Route 194 (U.S. Route 20), a distance of 420.21 feet to the East line of County Highway No. 60 (Mulford Road); thence North $03^{\circ}-47'-08''$ West, 251.51 feet; thence North $13^{\circ}-27'-07''$ West, 205.97 feet; thence North $07^{\circ}-43'-41''$ West, 40.76 feet; thence North $00^{\circ}-22'-55''$ East, 651.37 feet; thence South $89^{\circ}-37'-05''$ East, 20.00 feet; thence North $00^{\circ}-22'-55''$ East, 204.78 feet (the preceding six calls being along the East line of County Highway No. 60 (Mulford Road)) to the point of beginning. Situated in the County of Winnebago and State of Illinois. Containing 59.66 Acres.

