

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2021-59

Introduced By: Mayor Matthew Castelli

AN ORDINANCE AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A PURCHASE AGREEMENT FOR THE PURCHASE OF CERTAIN REAL ESTATE

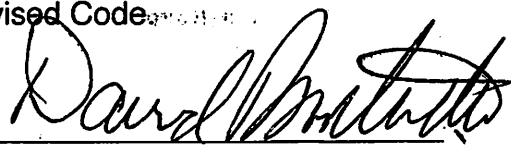
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor and finance Director are hereby authorized to execute a purchase agreement, a copy of which is attached hereto and marked "Exhibit A", for the purchase of certain real estate in the City of Middleburg Heights; and


Section 2: That there is hereby appropriated \$ 235,000.00 from the Capital Improvements Fund to implement this Ordinance.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Passed: 8/10/21


President of Council

Presented to Mayor: 8/10/21


Mayor

Attest: M. Meola
Clerk of Council

Approved On: 8-10-2021

	Yea	Nay
Bortolotto	<u>X</u>	_____
Ali	<u>ABSENT</u>	_____
Sage	<u>X</u>	_____
Meany	<u>X</u>	_____

	Yea	Nay
McGregor	<u>X</u>	_____
Ference	<u>X</u>	_____
Grech	<u>X</u>	_____

I, Mary Ann Meola Clerk of
the Council of the City of Middleburg Hts., Ohio,
hereby certify that Ord. 2021-59
adopted by the Council of the City of Middleburg
Hts., on 8/10/21 was posted for a period
of fifteen days, beginning 8/10/21
and remained so posted for fifteen days at the two
posting places as designated by Charter.

Mary Ann Meola
Clerk

CERTIFICATE

I, Mary Ann Meola, Clerk of Council of the City of Middleburg Heights, Ohio, do
hereby certify that the foregoing is a true and accurate copy of Ord. 2021-59
passed on the 10th day of August 2021 by said Council.

Mary Ann Meola
Clerk of Council

REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This Real Estate Purchase Agreement and Escrow Instructions (the "Agreement"), made by and between **Donna S. Boryk** who with her heirs, legal and estate representatives, assigns, and/or successors, is herein called "Seller," and the **City of Middleburg Heights**, an Ohio municipal corporation, which with its successors and assigns is herein called "Buyer," is to EVIDENCE THAT:

WHEREAS, Seller desires to sell certain real estate, including the land and all appurtenances, hereditaments, rights, privileges and beneficial easements appertaining thereto and all structures, improvements and flora located thereon (all of which are herein called the "Real Estate") located at **16375 Bagley Road, Middleburg Heights, Ohio, 44130**, being further known as Cuyahoga County **Permanent Parcel No. 373-25-007**, and as more fully described on Exhibit A, which is attached hereto and incorporated herein by reference; and

WHEREAS, Buyer desires to purchase the Real Estate from Seller upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, subject to the foregoing, in consideration of the mutual covenants and promises made in this Agreement and for other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), Seller and Buyer (collectively referred to herein as the "Parties") hereby agree as follows:

1. Purchase and Sale of Real Estate.

(a) Seller shall sell and convey the Real Estate to Buyer and Buyer shall purchase the Real Estate from Seller pursuant to the terms and conditions hereof.

(b) The purchase price for the Real Estate (herein called the "Purchase Price") is the sum of **Two Hundred Twenty-Five Thousand Dollars (\$225,000.00)**, allocated between land and improvements in the same ratio as allocated by the Cuyahoga County Auditor.

(c) Seller hereby agrees that Seller's spouse, if any, shall enter into and execute this Agreement, the Deed (defined below), and any other documents necessary to effectuate the purposes of this Agreement, to release his/her dower rights, if applicable, in and to the Real Estate.

2. Closing Date and Escrow Agent.

(a) Except as otherwise expressly stated herein, all transactions contemplated by this Agreement shall be made after all escrow deposits have been made, but in no event later than **September 1, 2021** (the "Closing" or the "Closing Date").

(b) Maximum Title & Escrow Services Inc., 400 W. Bagley Road, Berea, OH 44017, shall be the escrow agent (herein called the "Escrow Agent" and/or "Title Company"), subject to Escrow Agent's standard conditions for the acceptance of escrow, except as otherwise expressly provided herein.

3. Seller's Deposits in Escrow.

On or before the Closing Date, Seller shall deposit in escrow with Escrow Agent Seller's good and sufficient general warranty deed (herein called the "Deed") conveying the Real Estate to Buyer free and clear of all liens and encumbrances except taxes and assessments, which are a lien, or which have not been certified to the auditor or which have been certified but have not been placed on the duplicate or have been deferred, but not yet due and payable, except zoning restrictions, and except easements, restrictions, conditions, covenants, and limitations of record.

4. Payment of Real Estate Purchase Price and Buyer's Deposits in Escrow.

On or before the Closing Date, Buyer shall deposit in escrow with Escrow Agent in immediately available United States funds the Purchase Price, and any and all documents reasonably required by the Escrow Agent and the title insurer and reasonably necessary to provide for the establishment and closing of escrow, the issuance of the title insurance required hereunder, and the financing involved in this transaction.

5. Escrow Instructions.

(a) If and when Title Company is prepared to issue an owner's policy of title insurance (ALTA Form 2006) in the amount of the Purchase Price to Buyer insuring marketable title to the Real Estate to be in Buyer, free and clear of all liens and encumbrances, except for the exceptions to the Deed warranty covenants and all other standard Schedule B exceptions, and if and when Seller and Buyer have made all escrow deposits required, Escrow Agent shall file the Deed and mortgage (if any) for record and shall:

(i) Pay the cost of the title search and title insurance policy, based upon the Purchase Price, and charge the cost of the same to Buyer;

(ii) Pay taxes and assessments due and payable through the date of transfer and charge the cost of the same to Buyer, except that seller shall be responsible for any delinquencies. Taxes and assessments not yet due and payable shall be computed on the basis of the last certified tax rate and valuation;

(iii) Pay auditor's transfer tax and conveyance fee with respect to the transfer of the Real Estate and charge the cost of the same to Buyer;

(iv) Pay the cost of recording the Deed and the mortgage, if any, and charge the cost of the same to Buyer;

(v) Satisfy and discharge any existing mortgages and liens of record, and charge the cost of the same to Seller;

(vi) Pay balance, if any, due Buyer in accordance with Buyer's instructions and pay balance due Seller in accordance with Seller's instructions; and

(vii) Deliver to Buyer the Deed.

(b) In the event of a defect in title to the Real Estate, Escrow Agent shall promptly notify Seller and Seller shall have thirty (30) days thereafter to cure such defect, in which case the Closing Date shall be as shortly as possible after such defect is cured. If the same is not cured within such period, this Agreement, at Buyer's option, shall be null, void, and of no effect and Escrow Agent and Seller shall return to each party depositing the same all funds and documents and Seller shall pay any expenses then incurred for review of title to the Real Estate. If Buyer does not elect to rescind this transaction, it shall be closed as provided herein as if said title defect did not occur. For the purpose of this Agreement, a title defect is not any lien or encumbrance which is an exception to the warranty covenant of the Deed.

6. Representations and Warranties.

(a) Seller hereby represents and warrants that: (i) the individual, individuals, or entity, identified as "Seller" herein above is the fee simple owner of the Real Estate; and (ii) no other individuals, or entities own or have any interest in and to the Real Estate; and (iii) Seller's spouse, if any, has executed this Agreement to release his/her dower rights, if applicable, as set forth in Section 2 hereof. This representation and warranty shall survive the Closing.

(b) Buyer acknowledges that Buyer has thoroughly examined the Real Estate for such matters which Buyer deemed necessary and of a concern to Buyer, and that Buyer has had full and unimpeded access to the Real Estate. Seller makes no representations or warranties concerning the Real Estate, its condition, or its fitness for Buyer's purposes, except as expressly set forth in this Agreement, Buyer shall take the Real Estate in an "AS IS, WHERE IS, WITH ALL FAULTS" condition.

7. **Risk of Loss.** In the event of any damage or injury to the Real Estate, the risk of loss shall be borne by Seller up to the Closing Date.

8. Miscellaneous.

(a) Buyer shall have exclusive possession of the Real Estate on the date fee title transfers to Buyer.

(b) No waiver by Seller or Buyer and no refusal or neglect of Seller or Buyer to exercise any right hereunder or to insist upon strict compliance with the terms of this Agreement shall constitute a waiver of any provision of this Agreement with respect to any subsequent breach thereof.

(c) The Parties acknowledge that no real estate commission is involved in this transaction and each party shall indemnify and hold harmless the other in the event the latter party pays a commission or finder's fee as a result of any contract entered into by the former party.

(d) This Agreement constitutes the entire agreement between the Parties hereto with respect to the Real Estate and supersedes all prior and contemporaneous agreements, representations, warranties, promises and understandings. The obligations of the individuals or entities comprising Seller shall be joint and several.

(e) For purposes of this Agreement, the plural includes the singular and vice-versa and the masculine, feminine, and neuter include each other.

(f) The date of this Agreement shall be date that the last of the Parties executes same.

(g) This Agreement may not be amended or modified except by a written agreement that specifically references this Agreement and is signed by each of the parties hereto.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the date(s) set forth below.

Donna S. Boryk, "Seller"

City of Middleburg Heights, "Buyer"

Seller

By: 
Matthew J. Castelli, Mayor

Date: _____

Date: 8-10-21

Seller's Address:
16375 Bagley Road
Middleburg Heights, OH 44130

Buyer's Address:
15700 Bagley Road
Middleburg Heights, OH 44130

ADDENDUM TO PURCHASE AGREEMENT REGARDING SELLER'S POSSESSION AFTER CLOSING

Addendum to Purchase Agreement between Donna S. Boryk, Seller, and the City of Middleburg Heights, Buyer, regarding real estate located at 16375 Bagley Road, Middleburg Heights, Ohio 44130, and further known as Cuyahoga County Permanent Parcel No. 373-25-007.

Security. Seller authorizes the Escrow Agent to hold \$2,500 (Two thousand five hundred dollars and no cents) in escrow, upon closing, as security for the payment of utilities and/or other obligations as set forth in this Addendum Agreement. Seller further understands that should Seller's obligations under this Addendum Agreement exceed \$2,500, Seller's will be responsible for the additional amount. Upon proof of payment of utilities provided to Buyer by Seller, and provided Seller meets all other obligations under this Addendum Agreement, Buyer shall notify the Escrow Agent in writing to release the aforementioned funds held in escrow as security.

Seller's Possession. Seller may remain in possession of the real estate premises from the date of closing until no later than February 28, 2022, at 1:00 P.M, unless possession is terminated sooner by Seller. Time is of the essence. Should Seller remain in possession of real estate premises after February 28, 2022, without written permission of Buyer, Seller shall pay Buyer liquidated damages in the amount of \$250.00 per day, plus attorney fees and court costs, until Seller relinquishes possession of the real estate to Buyer.

Alterations to Premises. During the period of time from the closing and through the time the Seller provides possession of the real estate premises to the Buyer, the real estate premises and all structures must be secured and no alterations shall be made, other than those specifically permitted in the "Real Estate Purchase Agreement and Escrow Instructions" and this document.

Utilities. Seller shall keep all utilities registered in Seller's name and shall pay the costs of all utilities (sewer, water, gas, electricity, etc.).

Maintenance. While Seller remains in possession, Seller shall be responsible for the maintenance and repair of all systems and equipment, and maintenance of the real estate premises, including but not limited to lawn maintenance, trash removal, and snow removal related to and/or on the real estate premises.

Assignment. Seller may not assign this agreement nor sublet the real estate premises during the term of this Addendum Agreement.

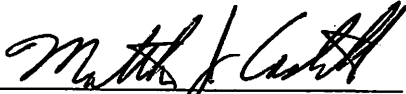
Indemnification by Seller. Seller shall maintain at Seller's expense, liability insurance in an amount not less than \$1,000,000 to insure the property that is the subject of this Addendum Agreement and shall protect, indemnify, save harmless and defend Buyer (City of Middleburg Heights, or its agents, contractors, or employees) and the Demised Premises from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, and including, without limitation, attorneys' fees and expenses imposed upon, incurred by or asserted against Buyer or the Demised Premises by reason of (i) any accident, injury to or death of persons, or loss of or damage to property occurring on or about the Demised Premises or adjoining sidewalks or any other matter or thing arising out of the use or occupation of the Demised Premises or caused by the negligence, errors, acts or omissions of Seller, or of Seller's agents, contractors or employees or (ii) any failure on the part of Seller to perform or comply with any of Seller's obligations under this Agreement. The foregoing indemnity shall specifically apply to those claims asserting negligence on the part of Buyer. In addition, Seller shall maintain Personal Property insurance on the Demised Premises at a value equal to the replacement cost of the Seller's personal property/contents within the Demised Premises. Seller shall deliver evidence of the coverage and receipts evidencing payment of the coverage to Buyer prior to closing date.

Entry by Buyer. Buyer may enter the real estate at any time for purposes of surveying, viewing, testing, inspecting, or studying the premises. Buyer must give Seller twenty-four (24) hour notice prior to entering any structure.

In the event of a conflict between this Addendum Agreement and the Real Estate Agreement and Escrow Instructions, this Addendum Agreement shall control. The representations and obligations contained in this agreement shall survive the transfer of title to the real estate.

City of Middleburg Heights

Seller

By: 
Matthew J. Castelli, Mayor

Date: _____

Date: 8-10-2021

Seller

"Buyer"

Date: _____