

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Ordinance No. 2022- **13**

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 IN THE CITY OF MIDDLEBURG HEIGHTS TO BE USED FOR THE  
PURPOSE OF MANAGING STORMWATER RUNOFF AND STREAM FLOW  
IMPROVEMENT WITHIN ABRAM CREEK  
AND DECLARING AN EMERGENCY**

WHEREAS, flooding of public and private property has been a concern throughout the City of Middleburg Heights ("City") for many years; and

WHEREAS, it is the desire of the Mayor and Council to work towards the elimination of all flooding concerns within the City and to improve stormwater management within the City; and

WHEREAS, the acquisition of seven parcels along Smith Road will allow the City to proceed with certain necessary improvements to address the proper handling of stormwater runoff and stream flow improvement within Abram Creek; and

WHEREAS, the Northeast Ohio Regional Sewer District has determined that the Regional Stormwater System would benefit from a detention basin and has agreed to provide funding toward the acquisition of the parcels subject to certain conditions.

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 enter into a purchase agreement, a copy of which is attached hereto and marked "Exhibit A", for the purchase of seven parcels along Smith Road in the City of Middleburg Heights.

Section 2: That there is hereby appropriated from the Streets/Infrastructure Improvements Fund \$ 260,000 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.

Section 4: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and welfare of said City. Wherefore, provided this Ordinance receives the affirmative vote of at least two-thirds (2/3) of the members of Council it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Passed: 2/8/22

David Bortolotto  
President of Council

Attest: M Meale  
Clerk of Council

Approved On: 2-9-22

Presented to Mayor: 2/9/22

Matthew Cusick  
Mayor

	Yea	Nay
Bortolotto	X	
Ali	X	
Sage	X	
Meany	X	
McGregor	X	
Ference	X	
Grech	X	

I, Mary Ann Meale Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2022-13 adopted by the Council of the City of Middleburg Hts., on 2/8/22 was posted for a period of fifteen days, beginning 2/10/22 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meale  
Clerk

**CERTIFICATE**

I, Mary Ann Meale Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2022-13 passed on the 8<sup>th</sup> day of February 2022 by said Council.

Mary Ann Meale  
Clerk of Council

## REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This Real Estate Purchase Agreement and Escrow Instructions (the "Agreement"), made by and between M. Sokol Building Group Ltd. and Matthew Sokol, individually, and as agent/owner of M. Sokol Building Group Ltd. who with his/her/their/its 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 or near 6699 Smith Road, Middleburg Heights, Ohio, 44130, being further known as Cuyahoga County Permanent Parcel Nos. 372-06-026, 372-06-027, 372-06-028, 372-06-029, 372-06-002, 372-06-003, 372-06-004, and as more fully described on Exhibits 1, 2, 3 which is/are attached hereto and incorporated herein by reference; and

WHEREAS, this Agreement is subject to and contingent upon the Northeast Ohio Regional Sewer District's (the "District") approval and funding of the purchase through the Regional Stormwater Management Program; and

WHEREAS, the District's provision of Regional Stormwater Management Program funding to the City is contingent upon geo-technical and environmental studies supporting the District's construction of a detention basin on the Parcels.

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 \$260,000 (Two hundred sixty thousand dollars and no cents) allocated between land and improvements (if any) 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. Contingencies

Buyer's obligation to purchase this property is subject to and contingent upon the satisfaction or waiver of the conditions and contingencies described herein (the "Contingencies") within 90 (ninety) days of the effective date (the "Contingency Period"). The Contingencies are as follows:

(a) The Buyer shall receive approval of funding for this purchase through the Northeast Ohio Regional Sewer District's Regional Stormwater Management Program, if funding is not approved prior to the expiration of this contingency period; the Buyer shall have the right to terminate this contract; and

(b) The District's geo-technical and environmental studies, review, and investigation shall determine that site conditions support the future construction of a stormwater control

measure to meaningfully reduce flooding issues supporting the District's construction of a detention basin on the Parcels. If not determined prior to the expiration of this contingency period, or if site conditions do not support the future construction of a stormwater control measure to meaningfully reduce flooding issues as determined in the sole discretion of the District and/or the Buyer, prior to the expiration of this contingency period, the Buyer shall have the right to terminate this contract; and

(c) Seller shall cooperate in making the Property reasonably available for inspection by Buyer. If Buyer is not satisfied with the condition of the Property as disclosed by any inspection prior to the expiration of the Contingency Period, then Buyer shall have the right to terminate this Contract.

**3. 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 June 1, 2022 (the "Closing" or the "Closing Date"). The Closing Date may be a later date only as mutually agreed in writing by the Parties.

(b) Maximum Title & Escrow Services, Inc., 400 W. Bagley Road, Berea, Ohio 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.

**4. 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 or deeds (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.

**5. 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.

**6. 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(s) 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 one-half (1/2) of the cost of this same to Seller and one-half (1/2) of the cost of the same to Buyer;

(ii) Pay taxes and assessments due and payable on the date of transfer and charge the cost of the same to Seller;

(iii) After prorating taxes and assessments to the date of transfer (taxes and assessments not yet due and payable shall be computed on this basis of the last certified tax rate and valuation), pay to Buyer the amount of said prorated taxes and assessments which are a lien, but not yet due and payable, and charge the cost of the same to Seller;

(iv) 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 Seller,

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

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

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

(viii) 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.

## 7. 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.

(iv) To the best of Seller's knowledge, the Property is not in violation of any Environmental Law (as defined below) and Seller has no knowledge of (i) the presence on or about the Property of any Hazardous Materials (as defined below); (ii) any release or threatened release of any Hazardous Materials on or affecting the Property; or (iii) the existence of any underground storage tanks on or about the Property. Seller has received no notice of any investigation or proceeding by any governmental agency concerning the presence or alleged presence, release or threatened release of Hazardous Materials on the Property. The term "Environmental Law" includes any federal, state or local law, ordinance or regulation pertaining to health, industrial hygiene, waste disposal, or the environment, including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976, the Federal Clean Air Act, the Federal Water Pollution Control Act and Federal Clean Air Act of 1977, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Pesticide Act of 1977, the Federal Toxic Substances Control Act, the Federal Safe Drinking Water Act, the Federal Hazardous Materials Transportation Act, and any amendments thereto and regulations adopted and publications promulgated pursuant thereto. The term "Hazardous Materials" includes oil and petroleum products, asbestos, polychlorinated biphenyl, radon and urea formaldehyde, and any other materials classified as hazardous or toxic or as pollutants or contaminants under any Environmental Law.

If Seller has received or at any time does receive notice, knowledge, or information as to the presence, alleged presence, release or threatened release of Hazardous Materials on or about the Property other than as previously disclosed by Seller to Buyer, Seller agrees to provide to Buyer all information and data as to such Hazardous Materials immediately upon receipt of same.

This representation and warranty shall survive the Closing.

8. **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.

9. **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) All notices required or permitted to be given pursuant to the terms hereof shall be in writing and shall be delivered either by hand delivery, by overnight delivery service, or by deposit in the United States mail, registered or certified mail, postage paid. All such notices shall be addressed to the applicable party at its address set forth on the signature page hereof. The foregoing addresses may be changed by written notice to the other party as provided herein. Notices shall be deemed received upon delivery if delivered by hand or by overnight delivery service or by facsimile transmission, or three (3) days after being sent by registered or certified mail (unless a signed receipt evidences earlier delivery).

(h) Time is of the essence of every provision herein contained. Whenever the date or deadline for any action to be taken is not a business day, the relevant date or deadline shall be the next business day.

(i) This Contract shall be governed by the laws of the State of Ohio.

(j) 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.

  
\_\_\_\_\_  
Matthew Sokol, Individually as Seller

Date: 2-4-22

City of Middleburg Heights, Buyer

By: \_\_\_\_\_  
Matthew J. Castelli, Mayor

Date: \_\_\_\_\_

Seller's Address:

4225 Laurel Rd  
Brunswick, Ohio 44212

Buyer's Address:

15700 Bagley Road  
Middleburg Heights, OH 44130

M Sokol Building Group Ltd., Seller

By: 

Printed Name: MATTHEW SOKOL

Its owner / pres.

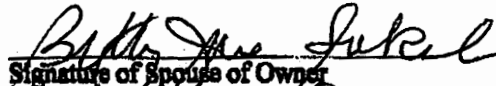
Date: 2-4-22

Seller's Address:

4225 Laurel Rd  
Brunswick, OH 44212

To release dower interest:

BETTY Jane SOKOL, spouse of Seller hereby releases all rights of dower in and to the Real Estate.

  
Signature of Spouse of Owner  
Betty Jane Sokol