

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2022- 27

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 \$105,000 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: 3-22-22

David Bortolotto
President of Council

Attest: M Meala
Clerk of Council

Approved On: 3-23-22

Presented to Mayor: 3-23-22

Matthew Castelli
Mayor

Table with 2 columns: Name, Yea, Nay. Rows include Bortolotto, Ali, Sage, Meany, McGregor, Ference, Grech.

I, Mary Ann Meek Clerk of  
the Council of the City of Middleburg Hts., Ohio,  
hereby certify that Ord. 2022-27  
adopted by the Council of the City of Middleburg  
Hts., on 3/22/22 was posted for a period  
of fifteen days, beginning 3/25/22  
and remained so posted for fifteen days at the two  
posting places as designated by Charter.

Mary Ann Meek  
Clerk

**CERTIFICATE**

I, Mary Ann Meek Clerk of Council of the City of Middleburg Heights, Ohio, do  
hereby certify that the foregoing is a true and accurate copy of Ord. 2022-27  
passed on the 22<sup>nd</sup> day of March 2022 by said Council.

Mary Ann Meek  
Clerk of Council

## **REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS**

This Real Estate Purchase Agreement and Escrow Instructions (the "Agreement"), made by and between **Gary G. Lesny and Bonnie L. Lesny, Trustees of The Lesny Family Revocable Living Trust, UAD December 5, 2003**, 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 Bagley Road and Big Creek Parkway, Middleburg Heights, Ohio, 44130, being further known as a portion of Cuyahoga County Permanent Parcel No. 373-26-006, formerly a portion of Cuyahoga County Permanent Parcel No. 373-25-010 prior to a lot split and consolidation, and as more fully shown and/or described on Exhibit(s) A, which is/are attached hereto and incorporated herein by reference; and

WHEREAS, this Agreement is subject to and contingent upon the Buyer's review and approval of the legal description of the subject property, an approved lot split, and inspection and acceptance of the site.

WHEREAS, the Buyer presently intends to use the subject property as a passive park, and/or greenspace, similar to the manner in which the Cleveland Metroparks uses nearby parkland.

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 \$100,000.00 (One hundred thousand dollars and no cents) allocated between land and improvements (if any) in the same ratio as allocated by the Cuyahoga County Auditor.

### **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 May 24, 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.

**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 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.

**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(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 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 the 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 Buyer;

(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.

## **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.

## **7. Risk of Loss.**

In the event of any damage or injury to 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.

**9. 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 55 (fifty-five) days of the effective date or May 20, 2022, whichever occurs first (the "Contingency Period"). The Contingencies are as follows:

- (a) Contingent upon the Buyer receiving and approving the legal description of the subject property; and
- (b) Contingent upon the approval of the lot split of the subject property from the balance of permanent parcel no. 373-26-006
- (c) Contingent upon the Buyer's inspection and acceptance of the subject property.

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

**The Lesny Family Revocable Living Trust, UAD December 5, 2003, Seller**

*Gary G. Lesny, Trustee*  
Gary G. Lesny, Trustee

Date: 3/18/22

**The Lesny Family Revocable Living Trust, UAD December 5, 2003, Seller**

*Bonnie L. Lesny, Trustee*  
Bonnie L. Lesny, Trustee

Date: 3-18-2022

**City of Middleburg Heights, Buyer**

By: *Matthew J. Castelli*  
Matthew J. Castelli, Mayor

Date: 3-23-22