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# CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2024- 3

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 ABRAM CREEK DETENTION BASINS PROJECT AND DECLARING AN EMERGENCY

WHEREAS, flooding of public and private property has been a concern throughout the City of Middleburg Heights 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 this parcel of land will allow the City to proceed with necessary improvements to increase stormwater detention capacity to reduce flooding within the City.

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 certain real estate and improvements in the City of Middleburg Heights.

Section 2: That there is hereby appropriated from the Streets/Infrastructure Improvements Fund $ 210,000.00 for the purchase of a certain parcel of real estate, closing costs and related fees, expenses, and demolition and removal improvements on said parcel.

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. Such necessity exists by reason of the fact that it is immediately necessary to acquire property to construct detention basins to control flooding and address the proper handling of stormwater runoff and stream flow improvement within Abram Creek. 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: 1/9/24

David Bortolotto
President of Council

Attest: M. Meola
Clerk of Council

Approved On: 1-10-24

Presented to Mayor: 1/10/24

Matthew Cash
Mayor

| | Yea | Nay |
|---|---|---|
| Bortolotto | X | |
| Ali | X | |
| Sage | X | |
| Meany | X | |
| McGregor | X | |
| Ference | X | |
| Grech | ABSENT | |

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2024-3 adopted by the Council of the City of Middleburg Hts., on 1/9/24 was posted for a period of fifteen days, beginning 1/11/24 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola
Clerk

**CERTIFICATE**

I, MaryAnn 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. 2024-3 passed on the 9th day of January 20 24 by said Council.

MaryAnn Meola
Clerk of Council

**REAL ESTATE PURCHASE AGREEMENT - Dated: December 17, 2023**

THIS AGREEMENT is made as of the dates shown below by and between **Athena Callas Trust** whose address for notices purposes shall be 7153 Darrow Road Hudson, OH 44236 (hereinafter "Sellers"), and , City of Middleburg Heights, an Ohio Municipal Corporation , whose address for notice purposes shall be 15700 Bagley Road Middleburg Heights, OH 44130 (herein after "Buyers").

**WITNESSETH**

WHEREAS, Sellers are the owners of certain real property located at 7056 Pearl Road, Middleburg Heights, Cuyahoga County, OH Permanent Parcel NO 372-23-026, which property is further described in the legal description which is attached hereto and made a part hereof as **Exhibit A,** together with any and all buildings, fixtures, improvements, easements, rights-of-way, and any other rights appurtenant thereto (all of the above being hereinafter referred to as the "Premises");

WHEREAS, Buyers desire to purchase the Premises from Sellers and Sellers desire to sell the Premises to Buyers on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties agree as follows:

1. **PURCHASE PRICE** The purchase price for the Premises shall be ONE HUNDRED EIGHTY Thousand Dollars and no/100 Cents ($180,000.00) (hereinafter the "Purchase Price"), to be paid as follows:

   A. Upon Sellers' execution hereof, Buyers shall deposit with **American Title Associates Agency, Inc. 4505 Stephen Circle NW Suite 200, Canton, OH 44718 (the "Title Company")**, ONE Thousand dollars ($1,000.00) (the "Deposit"). The Deposit shall be held by the Title Company in a non-interest bearing account until closing, as herein defined, at which time the Deposit will be applied toward the Purchase Price or expenses of Buyers hereunder, or otherwise in accordance with the terms hereof.

   B. At closing, Buyers shall deliver to the Title Company for delivery to Sellers in accordance herewith, by wire transfer or bank check, the remaining balance due on the Purchase Price, plus or minus the adjustments to be made thereto.

2. **INSTRUMENTS OF CONVEYANCE**

Sellers shall deliver copies of the following documents to Buyers and the originals of the following documents to the Title Company prior to closing:

A. A good and sufficient general deed (the "Deed") conveying to Buyers good and sufficient marketable and insurable fee simple title to the Premises, free and clear of all liens, clouds, encumbrances and encroachments whatsoever, except the following: (i) real estate taxes which are a lien against the Premises, but are not yet due and payable as of the closing date, which shall be pro-rated to the closing date; and (ii) easements, covenants, conditions, reservations and restrictions of record;

B. An affidavit of no liens satisfactory to the Title Company so that the mechanics lien exception can be removed from the title policy provided for hereinafter; and

3. EVIDENCE OF TITLE. Within fifteen (15) days after the execution of this Agreement by Sellers and Buyers, Sellers shall cause the Title Company to issue a current owners title insurance commitment covering the Premises in the amount of the Purchase Price. The commitment must show title to the Premises to be in Sellers, and shall name Buyers or its nominee as the proposed insured. Buyers shall have ten (10) days after receipt of such commitment and at Buyers' election after receipt of a location survey, to review the same and to advise Sellers of any objections thereto.

Upon receipt of notice from Buyers that there is a cloud upon title or other encumbrance, encroachment or interest not permitted under Section 2A above, Sellers shall have thirty (30) days in order to remove any such exception which is not acceptable to Buyers or otherwise to cure any cloud, encumbrance or matter affecting title. If Sellers do not cure or otherwise discharge such encumbrance or encroachment or if the same cannot be removed at the time of closing by the payment of proceeds out of Purchase Price, then Buyers may elect to (i) terminate this Agreement, in which case all obligations of Buyers hereunder shall be extinguished and the Deposit shall be immediately returned to Buyers by the Title Company, without the need for any consent or instruction from Sellers or any other third party; (ii) extend the permitted time in which such exceptions may be removed or cured in which case the date of closing shall be adjusted accordingly; or (iii) take title as then held by Sellers and proceed to closing hereunder.

Following the closing, Sellers shall cause the Title Company to issue a final Owners Title Insurance policy, insuring Buyers' free and clear marketable title in the Premises. Sellers and Buyers agree that marketability of title shall be determined in accordance with the standards of title examination adopted by the Ohio State Bar Association. Buyers and seller will split the cost of the above-required title insurance coverage.

4. SURVEY. Buyers may, at Buyers' sole cost and election, obtain a location survey or an ALTA survey covering the Premises.

5. CLOSING DATE. Unless the parties otherwise agree in writing, this transaction shall close on or before February 1, 2024 (the "Closing Date"). The closing will take place at the Title Company or at such other location agreed upon by Sellers and Buyers. The Closing Date will be subject to the terms and conditions of Section 10, 11 and 12 hereof. On the Closing Date, the Title Company shall cause the Deed and other documents to be recorded, to insure in Buyers good record title to the Premises, and shall disburse the Purchase Price as set forth herein, including such disbursements as may be necessary for the satisfaction of any and all mortgages, or other liens affecting the Premises.

6. POSSESSION. Full possession of the Premises shall be delivered from Sellers to Buyers upon transfer of the title.

7. PRO-RATIONS AND CHARGES.

A. The Title Company shall pro-rate and apportion, as of the Closing Date, real estate taxes and general assessments, and/or betterment assessments. Proration of taxes and assessments shall be based upon the last available tax duplicate and/or assessment.

B. At closing, Sellers shall pay: (i) 50% of the cost of the title insurance referenced above, (ii) 50% of the cost of the deed preparation, (iii) 50% of the cost of recording the Deed, (iv) 50% of Title Company's closing fee, including Title Examination and binder, and (v) 50% of the conveyance Fee (vi) All legal fees, if any, incurred by Sellers in this transaction. (vii) Sellers pay real estate taxes and general assessments, and/or betterment assessments. Proration of taxes and assessments shall be based upon the last available tax duplicate and/or assessment.

C. At closing, Buyers shall pay: (i) 50% of the cost of the title insurance referenced above, (ii) 50% of the cost of the deed preparation, (iii) 50% of the cost of recording the Deed, (iv) 50% of Title Company's closing fee, including Title Examination and binder, and (v) 50% of the conveyance Fee (vi) All legal fees, if any, incurred by Buyers in this transaction.

INSPECTION AND RIGHT OF ACCESS.

For ten (10) days from and after the execution of this agreement by both parties hereto, Buyers, and Buyers' representatives, agents, employees, consultants and/or contractors shall have the right to enter upon and inspect the Premises at reasonable times. At Buyers' sole cost and expense, Buyers shall have the right to make such inspections, studies, and examinations as are, in Buyers' reasonable judgment, necessary or desirable in order to determine the suitability of the Premises for Buyers' intended use thereof. Buyers shall, within such ten (10) day period, advice Sellers that the Property is unacceptable and provide Sellers with a copy of the inspection report showing necessary repairs in excess of five percent (5%) of purchase price, in which case, Buyers may void this Agreement and all monies paid by Buyers, including the Deposit, shall be immediately refunded to Buyers. Should Buyers fail to timely deliver such notice and report to Sellers, this

contingency shall be removed and Buyers shall proceed to purchase the Premises pursuant to the terms of this Agreement.

9. **AS-IS PROVISION. Buyers agree and acknowledge that the Premises is being conveyed AS-IS, WHERE-IS, WITH ALL FAULTS, and that, Sellers have not made any representations or warranties, either express or implied, regarding the Premises or the condition thereof, including but not limited to, the condition of the roof, structure, basement (structural or water seepage), furnace, air conditioning, sewer system, electrical, plumbing, and appliances. Buyers have read and understand this Section 9. Buyers' initials**

10. CONDEMNATION. If between the dates of this Agreement and the Closing Date any condemnation or eminent domain proceedings are initiated which might 'result in the taking of any part or all of the Premises, Buyers may either (i) terminate this Agreement, in which event Buyers' Deposit shall be returned to Buyers without the need for any instruction or consent of Sellers, and all rights and obligations of the parties hereunder shall cease; or (ii) elect to consummate this transaction, in which event Sellers shall assign to Buyers all of Sellers right, title and interest in and to any award made in connection with such condemnation or eminent domain proceeding. Sellers shall immediately notify Buyers in writing of the occurrence of any condemnation or eminent domain proceedings, and thereafter Buyers shall have three (3) days to notify Sellers of Buyers' election. Should Buyers fail to timely make such election, this contingency shall be removed and Buyers shall proceed to purchase the Premises pursuant to the terms of this Agreement. The Closing may be delayed until Buyers make such election. If Buyers elect to consummate the transaction, the date of Closing shall be adjusted accordingly.

11. INSURANCE; DESTRUCTION OF PREMISES.

Sellers shall assume the risk of loss to the Premises from fire or other casualty until Closing, and shall insure the same for the fair market value of the buildings and improvements located thereon, if any. If all or any part of the Premises is damaged or destroyed by fire or other casualty prior to the Closing of this transaction, Buyers may either (i) elect to proceed with this transaction in which event Buyers shall be entitled to all insurance monies, if any, payable to Sellers under any and all policies of insurance covering the Premises and/or any building thereon so damaged or destroyed; or (ii) elect to rescind this Agreement, in which event Buyers' Deposit shall be returned to Buyers without the need for any instruction or consent of Sellers, and all rights and obligations of the parties hereunder shall cease. Buyers shall make an election hereunder in writing within three (3) days after Sellers provide Buyers with notice specifying the damage and the total amount of all insurance proceeds available to Sellers as a result thereof. Should Buyers fail to timely make such election, this contingency shall be removed and Buyers shall proceed to purchase the Premises pursuant to the terms of this Agreement. If necessary, the Closing Date may be delayed by the time period in which Buyers has to make an election.

12 REMEDIES.

A. If Sellers should fail to perform in accordance herewith, or otherwise breach any of the terms, covenants, agreements, representations or warranties contained herein, then Buyers may terminate this Agreement and obtain an immediate return of Buyers' Deposit without the need for any instruction or consent from Sellers. Buyers may seek such other damages or remedies which may be available to Sellers at law or in equity.

B. If Buyers should fail to perform any of their obligations hereunder, or otherwise be in default hereunder, Sellers may declare this Agreement to be terminated, in which event, Buyers' Deposit shall be forfeited to Sellers and Sellers may seek such other damages or remedies which may be available to Sellers at law or in equity.

13. BROKER.

Sellers and Buyers hereby represent that neither party has retained the services of or communicated with any broker, realtor or agent in connection with the sale of the Premises. Buyers and Sellers agree that each party shall be solely responsible for fully satisfying any commission, compensation or other fees to be paid to a real estate broker in connection with or arising out of any communications which such party may have had with a broker concerning the transaction contemplated herein.

14. NOTICES

All notices to be given pursuant to this instrument shall be sufficient if given by personal service, guaranteed overnight delivery service, or if mailed postage prepaid, certified or registered mail, return receipt requested, to the parties hereto at the addresses as set forth above, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, or two (2) days after mailing certified or registered mail.

15. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. CAPTIONS. The captions in this Agreement are inserted for convenience and reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

17. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**18. TIME. Time is of the essence of this Agreement and of each and every provision hereof. In the computation of any period of time provided for in this Agreement or by**

law, the day of the act or event from which said period of time runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday.

19. ENTIRE AGREEMENT. Buyers and Sellers acknowledge that there are no covenants, representations, warranties, agreements or conditions, either expressed or implied which in any way effect, form a part of, or relate to this Agreement except for those expressly set forth herein or except for those which are set forth by separate agreement. This Agreement constitutes the entire agreement between the parties.

20. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or otherwise invalidated.

GOVERNING LAW. Buyers and Sellers agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
IN WITNESS WHEREOF, this Agreement has been duly executed by Sellers and Buyers on the dates set forth below.

City Of Middleburg Heights (Buyer):

Matthew J. Castelli 1-10-24

Matthew J. Castelli, Mayor Dated:

SELLERS

Athena Callas Trust

Richard Warfield, Trustee 12/18/2023

Richard Warfield-Trustee Dated:

Gust Callas-Trustee 12/18/23

Gust Callas-Trustee Dated:

## Exhibit A

...the following described premises, situated in the City of Middleburg Heights, , County of Cuyahoga and State of Ohio:

And known as being part of Original Middleburg Township Lot No. 14, Turnpike Tract, and bounded and described as follows: Beginning on the center line of Pearl Road, (66 feet wide), at the most Southerly corner of land conveyed to Emma D. Hutchinson, by deed dated November 25, 1924, and recorded in Volume 3018 Page 553 of Cuyahoga County Records; thence Northeasterly along the center line of Pearl Road, 138 feet to the most Southerly corner of land conveyed to Evelyn M. Morgan, by deed dated March 12, 1945 and recorded in Volume 5848, Page 483 of Cuyahoga County Records; thence Northwesterly along the Southwesterly line of land so conveyed, 600 feetto the Southeasterly line of land conveyed to Paul and Mary Lapenis, by deed dated October 30, 1951 and recorded in Volume 7426, Page 238 of Cuyahoga County Records; thence Southwesterly along the Southeasterly line of land so conveyed, and along the Southwesterly prolongation thereof, 138 feet to the Southwesterly line of land conveyed to Emma D. Hutchinson, as aforesaid; thence Southeasterly along the Southwesterly line of land so conveyed, 600 feet to the place of beginning, be the same more or less, but subject to all legal highways.

Permanent Parcel No. 372-23-26