

**CITY OF MIDDLEBURG HEIGHTS, OHIO**Ordinance No. 2024- **73**

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 \$ 461,000.00 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: 9/10/24

*David Butler*  
President of Council

Attest: M. Meola  
Clerk of Council

Approved On: 9-11-24

Presented to Mayor: 9/11/24

*Matthew Casht*  
Mayor

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

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2024-73 adopted by the Council of the City of Middleburg Hts., on 9/10/24 was posted for a period of fifteen days, beginning 9/12/24 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. 2024-73 passed on the 10<sup>th</sup> day of September 2024 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 DJF Holdings, LLC, an Ohio Limited Liability Company, which with its representatives, members, officers, agents, 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 7071 Big Creek Parkway, Middleburg Heights, Ohio, 44130, being further known as Cuyahoga County Permanent Parcel No. 372-26-020, and as more fully described on Exhibit A, which is/are 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 subject to the Laws of the United States of America, the State of Ohio, and the Charter and Codified Ordinances of the City of Middleburg Heights and pursuant to the terms and conditions hereof.

(b) The purchase price for the Real Estate (herein called the "Purchase Price") is the sum of \$450,000 (Four Hundred Fifty 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, and subject to the Buyer's satisfaction or waiver of the conditions and contingencies described herein, all transactions contemplated by this Agreement shall be made after all escrow deposits have been made, but in no event later than **forty days after the date of this agreement** (the "Closing" or the "Closing Date"). The Closing Date may be a later date only as mutually agreed in writing by the Parties.

(b) Signature Title Company, 6480 Rockside Woods Boulevard, Suite 285, Independence, Ohio 44131, 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, and/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, and 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 attorney fees 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 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.

(c) As the Seller has a blanket mortgage that secures a lien against the Real Estate and other parcels, the Seller's bank may charge additional appraisal and other fees relating to Seller's mortgage release. Buyer agrees to pay the cost of any fees the Seller's mortgage holder charges for appraisals and mortgage releases associated with the Real Estate and/or other parcels associated with the mortgage. However, Buyer shall not pay any principal or interest associated with Seller's mortgage.

(d) Buyer's obligations under this section entitled, "5. Escrow Instructions, (a), (b), & (c)" of this agreement shall not exceed a collective total of \$11,000.00 (Eleven thousand dollars and no cents).

**6. Representations and Warranties.**

(a) Seller hereby represents and warrants that:

(i) the 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.

This representation and warranty shall survive the Closing. The parties acknowledge that the Seller need not provide an Ohio Real Property disclosure form as the Buyer is a governmental entity. See ORC §5302.30(B)(2)(k).

7. **Risk of Loss.** In the event of any damage or injury to the Real Estate, Seller shall bear the risk of loss 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 Seller shall indemnify and hold harmless the Buyer in the event that a commission or finder's fee is claimed as a result of any contract entered into by the Seller.

(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 the 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. Due Diligence**

Seller grants to Buyer, and its agents, licensees, employees, assigns, contractors, and subcontractors, a license, to enter upon the Property and the full right of access to the Property in order, at Buyers' sole cost and expense, to inspect the Property, to perform engineering and environmental investigations, surveys and tests, to take samples, including samples of soil and groundwater beneath the surface of the Property, and to conduct such additional engineering, environmental, and other investigations as Buyer shall deem necessary or desirable as due diligence to evaluate the Property for Buyer's intended ownership, occupancy, and use thereof.

#### **10. Contingencies**

A. In addition to the conditions and/or contingencies provided elsewhere in this agreement, Buyer's obligation to purchase this property is subject to and contingent upon the satisfaction or waiver of the conditions and contingencies described below (the "Contingencies") prior to the closing date (the "Contingency Period"):

- i. Due diligence by the Buyer, and/or its agents, licensees, employees, agencies, contractors, and subcontractors pursuant to Paragraph 9(a) shall have been performed to the satisfaction of the Buyer, in its sole discretion, and the Property shall remain in the condition described in report(s) provided (if any) in conjunction with performance of such due diligence.

#### **11. Deed Restriction**

The deed conveying title to Buyer shall include a restriction stating:

The Grantee, its successors and assigns, may use the real estate only to construct

and maintain water retention basins, storm sewer systems, landscaping, and appropriate surfaces for access to, from, and through the site. Without broadening the stated restriction, neither the Grantee nor its successors and assigns may use the property for residential or commercial purposes.

**12. 1031 Exchange**

The Buyer agrees to cooperate with Seller's attempt to engage in an IRC Section 1031 exchange at no cost or liability to Buyer. The Buyer agrees, without limitation, to the assignment of Seller's rights, but not Seller's obligations, under this contract, on or before closing, to a qualified exchange intermediary. Buyer agrees to cooperate with Seller if Seller engages in a 1031 exchange.

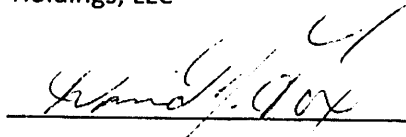
**13. David J. Fox's Licensure**

The Buyer acknowledges that the Seller's principal is an Ohio licensed real estate agent.

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

DJF Holdings, LLC

City of Middleburg Heights, Buyer

By: 

By: \_\_\_\_\_

David J. Fox is Managing Member

Matthew J. Castelli, Mayor

Date: 9-9-24

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