

RESOLUTION NO. 44-19
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serv ON THE 1st DAY
OF July, 2019.

RESOLUTION RATIFYING THE ACTION OF THE CITY MANAGER IN EXECUTING A PURCHASE CONTRACT WITH HEB INVESTMENTS, LLC FOR THE PURCHASE OF PROPERTY LOCATED AT 39-41 NORTH MAIN STREET AND RATIFYING THE ACTIONS OF THE CITY MANAGER TO TAKE ALL STEPS NECESSARY TO EXECUTE DOCUMENTS TO EFFECT THE PURCHASE OF SAID REAL PROPERTY.

WHEREAS, Council has determined that it would be in the best interest of its citizens to purchase property located in the City of Centerville from HEB Investments, LLC for the purpose of future development or municipal services at 39-41 North Main Street, Centerville, OH; and

WHEREAS, the City of Centerville has negotiated for the purchase of the real property from HEB Investments, LLC upon terms acceptable to the City; and

WHEREAS, the City Manager, in prior consultation with the City Council at open meeting work sessions called pursuant to Section 121.22 of the Ohio Revised Code, discussed the purchase of the property and was instructed by Council to execute a contract for the purchase of the property for a total amount of up to \$340,000; and

WHEREAS, Council has the power to enter into such real property purchase agreement by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution;

NOW, THEREFORE, BE IT RESOLVED:

Section 1: That the previous action of the City Manager in executing a purchase contract with HEB Investments, LLC for the purchase of property located at 39-41 North Main Street for a total price of Three Hundred Forty Thousand and no/100 Dollars (\$340,000.00) is hereby ratified. Said Purchase Agreement is marked as Exhibit "A" and incorporated herein.

Section 2: That the previous action of the City Manager in exercising all necessary documents to facilitate a closing for said properties be hereby ratified.

Section 3:

That the City Manager is hereby authorized and directed to do any and every thing further necessary to carry out the terms of the Purchase Agreement and/or the closing on said Property.

PASSED THIS 1st day of July, 2019.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 44-19, passed by the Council of the City of Centerville, Ohio on the 1st day of July, 2019.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney



CONTRACT TO PURCHASE REAL ESTATE
Commercial/Industrial/Investment Real Estate



(Form approved by the Dayton Area Board of Realtors®. This is a legally binding contract.
If the provisions are not understood, legal advice should be obtained.)

1.
2. 1. OFFER. The undersigned Purchaser offers to buy through Coldwell Banker Heritage Realtors Dayton, Ohio 6/26, 20 19
3. terms and conditions set forth below, the real property (the "Property") located in Centerville, County of Montgomery,
4. State of Ohio, described as follows: 39-41 North Main Street Centerville Ohio 45459
5. Parcels 068 00103 0009, 068 00103 0022, 068 00103 0044, 068 00103 0045
6. 2. INCLUDED IN THE SALE. The Property shall include the land, all appurtenant rights, privileges and easements, and all buildings,
7. improvements and fixtures, including, but not limited to, such of the following as are now on the Property: all electric, plumbing, heating and air
8. conditioning and humidifying equipment and their control apparatus; attached floor coverings and any attached wall coverings; window coverings
9. and awnings; internal wire for communication system, telecommunication wiring and cables; security systems and controls: smoke alarms: all
10. exterior landscaping; and the following items of personal property (trade fixtures, furnishings, equipment, etc.):
11.
12. 3. PRICE. Purchaser agrees to pay for the Property the sum of \$ 340,000 payable as follows: (a) EARNEST MONEY: Within
13. two (2) business days after acceptance of this offer, Purchaser shall deliver to HEB Investments LLC
14. the sum of \$ 0- ("Earnest Money") to be deposited in the trust or
15. escrow account of the party holding the Earnest Money. The Earnest Money shall be paid to Purchaser or delivered to the closing or escrow agent
16. to be applied on the purchase price at closing. If the closing does not occur because of Seller's default or because any condition of this Contract is
17. not satisfied or waived, Purchaser shall be entitled to the Earnest Money. If Purchaser defaults, Seller shall be entitled to the Earnest Money.
18. When Earnest Money is held by a licensed real estate broker, the broker must maintain the Earnest Money in its trust account until one of the
19. following occurs: (1) the transaction closes and the broker disburses the Earnest Money to the closing or escrow agent or otherwise disburses
20. money pursuant to the terms of this Agreement; (2) the parties provide the broker with written instructions that both parties have signed that specify
21. how the broker is to disburse the Earnest Money; (3) the broker receives a copy of a final court order that specifies to whom the Earnest Money is
22. to be awarded; or (4) the funds become unclaimed and the broker turns them over to the Division of Unclaimed Funds. In the event of a dispute
23. between Seller and Purchaser regarding the disbursement of the Earnest Money, the broker is required by Ohio law to maintain such funds in its
24. trust account until the broker receives (A) written instructions signed by the parties specifying how the Earnest Money is to be disbursed or (B) a
25. final court order that specifies to whom the Earnest Money is to be awarded. If within two years from the date the Earnest Money is deposited in
26. the broker's trust account, the parties have not provided the broker with such signed instructions or written notice that legal action to resolve the
27. dispute has been filed, the broker shall return the Earnest Money to Purchaser with no further notice to Seller. Payment or refund of the Earnest
28. Money shall not prejudice the rights of the Broker(s) or the non-defaulting party in an action for damages or specific performance against the
29. defaulting party. (b) BALANCE: The balance of the purchase price shall be paid by cash (certified or cashier's check) at time of closing. (c)
30. FINANCING: If Purchaser's obligations under this Contract are conditioned on obtaining financing, check here [] and describe on the
31. Financing Addendum.
32. 4. DEED. Seller shall furnish a transferable and recordable general warranty/limited warranty/fiduciary (circle as applicable; general warranty if
33. nothing circled) deed conveying to Purchaser, or nominee, a marketable title to the Property (as determined with reference to the Ohio State Bar
34. Association Standards of Title Examination) with dower rights, if any, released and free and clear of liens, rights to take liens, and encumbrances
35. whatsoever, except (a) legal highways, (b) any mortgage assumed by Purchaser, (c) all installments of taxes and assessments becoming due and
36. payable after the closing, (d) rights of tenants in possession, (e) zoning and other laws, and (f) easements and restrictions of record which would
37. not prevent Purchaser from using the Property for the following purpose: Investment. If title to all or part of
38. the Property is unmarketable or is subject to matters not excepted as provided above, Seller at Seller's sole cost shall cure any title defects and/or
39. remove such matters within 10 days after receipt of written notice from Purchaser, and if necessary the closing date shall be extended to permit
40. Seller the full 10 days to clear title. Seller shall have the right at closing to pay for the removal of any encumbrances or liens out of the purchase
41. price. The cost of any title examination and title insurance shall be borne by Purchaser.
42. 5. INSPECTION. Purchaser reserves the right to make the following inspections of the Property (check one): [] None [X] See Inspection
43. Addendum.
44. 6. TAXES. At closing, Seller shall pay or credit on the purchase price (a) all real estate taxes and assessments, including penalties and interest,
45. which became due and payable prior to the closing, (b) a pro rata share, calculated as of the closing date in the manner set forth below, of the
46. taxes and assessments becoming due and payable after the closing, and (c) the amount of any agricultural tax savings accrued as of the closing
47. date which would be subject to recoupment if the Property were converted to a non-agricultural use (whether or not such conversion actually
48. occurs), unless Purchaser has indicated in Paragraph 4 that Purchaser is acquiring the Property for agricultural purposes. If the Property is located
49. in Montgomery County, the tax proration shall be made in accordance with the Montgomery County "short proration" method, in which Seller's
50. share is based upon the number of days from the date of the immediately preceding semi-annual installment to the date of closing. If the Property
51. is located outside of Montgomery County, the tax proration shall be made in accordance with (check one): [X] the Montgomery County "short
52. proration" method or [] the "long proration" method, in which Seller's share is based upon the taxes and assessments which are a lien for
53. the year of the closing. (If neither method is checked, the short proration shall apply.) If the short proration method is used, any special
54. assessments which are payable in a single annual installment shall nevertheless be prorated on the long proration method. All prorations shall be
55. based upon the most recent available tax rates, assessments and valuations, and the payment made at closing shall be final. Note: Real estate
56. taxes and assessments are subject to retroactive change by governmental authority. The real estate taxes for the Property for the current tax year
57. may change as a result of the transfer or as a result of a change in the tax rates or values.
58. 7. PRORATIONS. Rents, utilities and other operating income and expenses shall be prorated as of the date of closing. Purchaser shall pay all
59. utilities and other operating expenses which may become due and payable following the date of closing. Any security deposits held by Seller shall
60. be transferred to Purchaser at closing.
61. 8. SELLER'S REPRESENTATIONS. Seller represents that those signing this Contract constitute all of the owners of the Property, together with
62. their respective spouses. Seller further represents that with respect to the Property (a) no orders of any public authority are pending, (b) no work
63. has been performed or improvements constructed that may result in future assessments, (c) no notices have been received from any public agency

Purchaser's Initials: [] [] Seller's Initials: [] []

DAYTON AREA BOARD OF REALTORS®
CONTRACT TO PURCHASE REAL ESTATE
COMMERCIAL/INDUSTRIAL/INVESTMENT REAL ESTATE

64. with respect to condemnation or appropriation, change in zoning, proposed future assessments, correction of conditions, or other similar matters,
 65. and (d) to the best of Seller's knowledge, except as indicated below: (1) no toxic, explosive or other hazardous substances have been stored,
 66. disposed of, concealed within or released on or from the Property in violation of applicable environmental laws, and no other adverse environmental
 67. conditions affect the Property; (2) no underground storage tanks are currently located on the Property nor have any been previously removed from
 68. the Property; (3) there is no PCB-containing equipment on the Property; (4) removal of asbestos materials from the Property is not required under
 69. any applicable governmental laws, orders or regulations; (5) none of the Property consists of wetlands, nor have any former wetlands on the
 70. Property been filled in; and (6) the Property has not been the subject of any type of environmental investigation or cleanup.

71. EXCEPTIONS: **NO EXCEPTIONS**

72. _____
 73. These representations shall survive the closing.

74. **9. POSSESSION.** Possession shall be given, subject to tenants' rights, ATC (insert "at" or number of days after) closing. If possession
 75. is to be given after closing, Seller shall vacate no later than NOON A.M./P.M. on the possession date and utilities shall not be prorated as in
 76. Paragraph 7 but paid for by Seller until the possession date. Seller shall be responsible to Purchaser for any damages caused by Seller's failure to
 77. deliver possession on the stated date.

78. **10. DAMAGE OR DESTRUCTION TO PROPERTY.** If any buildings or other improvements are substantially damaged or destroyed prior to
 79. closing, Purchaser shall have the option (a) to proceed with the closing and receive the proceeds of any insurance payable in connection therewith,
 80. or (b) to terminate this Contract. Seller shall keep the Property adequately insured against fire and extended coverage perils prior to closing. Seller
 81. agrees to maintain the Property in its present condition until delivery of possession, subject to ordinary wear and tear and the provisions of this
 82. paragraph.

83. **11. ACCEPTANCE; CLOSING.** This offer shall remain open for acceptance until _____, 20__ at 4:59 p.m. The closing for
 84. delivery of the deed and payment of the balance of the purchase shall be held on or before (complete only one, as applicable): (a) the fixed date of
 85. July 1, 2019 or (b) _____ days after the expiration (or waiver, if earlier) of the last contingency period provided in this Agreement. The
 86. closing shall be held at a time and place mutually agreed upon by Seller and Purchaser. In the event of a failure of the parties to agree, the closing
 87. shall be held on the last day designated in this paragraph and the Broker procuring the Purchaser shall designate the time and place of closing.

88. **12. PROFESSIONAL ADVICE AND ASSISTANCE.** The parties acknowledge and agree that the purchase of real property encompasses many
 89. professional disciplines. While Broker possesses considerable general knowledge, Broker is not an expert on matters of law, tax, financing,
 90. surveying, structural conditions, hazardous materials, environmental conditions, inspections, engineering, etc. Broker hereby advises the parties,
 91. and the parties acknowledge that they should seek professional expert assistance and advice in these and other areas of professional expertise. In
 92. the event Broker provides to the parties names of companies or sources for such advice and assistance, the parties additionally acknowledge and
 93. agree that Broker does not warrant, guarantee, or endorse the services and/or products of such companies or sources.

94. **13. SIGNATURES.** Only original manual signatures or facsimile signatures (which includes both faxes and PDF documents sent by e-mail) shall
 95. be valid for purposes of this Contract and any amendments or any notices to be delivered in connection with this Contract. Documents,
 96. amendments or notices given in any manner permitted by this paragraph shall be effective when delivered to a party or its authorized
 97. representative, including the broker representing that party and any of the licensees within the brokerage who have an agency relationship with that
 98. party. Only original, manually signed documents shall be valid for deeds or other documents to be delivered at closing. This Paragraph 13 cannot
 99. be waived except by a manually signed agreement of the parties.

100. **14. GENERAL PROVISIONS.** Upon acceptance, this offer and the attached addenda shall become a complete agreement binding upon and
 101. inuring to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors, and assigns, and shall be deemed to
 102. contain all of the terms and conditions agreed upon, there being no oral conditions, representations, warranties or agreements. Any subsequent
 103. conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing signed by both parties. Upon
 104. Purchaser's examination of the Property as provided herein, and except as otherwise provided in this Contract, Purchaser is accepting the Property
 105. "as is" in its present condition, relying upon such examination as to the condition, character, size, utility and zoning of the Property. Time is of the
 106. essence of all provisions of this Contract. All representations, warranties and agreements in this Contract shall survive the closing. Any word used
 107. in this offer and the acceptance thereof shall be construed to mean either singular or plural as indicated by the number of signatures hereto.

108. **15. ADDENDA.** The following Addenda and attachments are included and shall be considered an integral part of this Contract:
 109. Financing Inspection Other (Describe) _____

110. Witness: _____ Purchaser (if entity): _____

111. Make Deed To: _____ By: _____

112. Purchaser (if individual(s)) _____

113. _____

ACCEPTANCE

114. _____
 115. _____ Date: _____, 20__

116. The undersigned Seller accepts the foregoing offer; or counteroffers according to the initialed changes set forth above or in the attached
 117. Addenda, which counteroffer shall remain open for acceptance until _____, 20__ at 4:59 P.M.

119. Witness: _____ Seller (if entity): _____

119. Make Deed To: _____ By: _____

120. Seller (if individual(s)) _____

121. _____