

RESOLUTION NO. 31-16
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Joanne Rau ON THE 18th
DAY OF APRIL, 2016.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO TAKE ALL STEPS AND EXECUTE ALL DOCUMENTS NECESSARY IN ORDER TO AFFECT THE PURCHASE OF REAL PROPERTY AND A RIGHT OF ENTRY AGREEMENT WITH RICHARD S. CARPER FOR PROPERTY LOCATED AT 2650 EAST WHIPP ROAD IN MONTGOMERY COUNTY.

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 Richard S. Carper, for the purpose of road and signalization improvements along Wilmington Pike and East Whipp Road; and

WHEREAS, the City initiated an Appropriation action to take the property from Richard S. Carper; and

WHEREAS, Richard S. Carper has agreed to accept the City's offer of compensation and avoid the appropriation of his property; and

WHEREAS, the City of Centerville has negotiated the purchase of this real property from Richard S. Carper, upon terms acceptable to the City; and

WHEREAS, the City Manager in prior consultation with the Council at an open meeting work session called pursuant to §121.22, Ohio Revised Code, discussed the purchase of the property and was instructed by the Council to execute a contract for the purchase of property for the amount of \$1,281.00; and

WHEREAS, it is also necessary for the City to enter upon additional property of Richard S. Carper, for the purpose of the construction project; and

WHEREAS, Council has the power to enter into such Real Property Purchase Agreement and a Right of Entry 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:

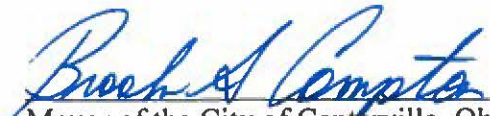
Section 1: That the City Manager is hereby authorized to execute a contract with Richard S. Carper for the purchase of property

for \$1,281.00 in a form substantially similar to the purchase Agreement marked Exhibit "A" and incorporated herein.

Section 2: That the City Manager is hereby authorized to execute a Right of Entry Agreement in a form substantially similar to Exhibit "B" with Richard S. Carper for the purpose of allowing the City to enter upon the property for the construction project. Said Agreement is attached hereto as Exhibit "B" and incorporated herein.

Section 2: That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreements.

PASSED THIS 18th day of April, 2016.



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. 31-16, passed by the Council of the City of Centerville, Ohio on the 18th day of April, 2016.



Clerk of the Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.
Department of Law
Scott A. Liberman, Municipal Attorney
Municipal Attorney

Exhibit "A"

OFFER TO PURCHASE REAL ESTATE

Centerville, Ohio
April _____, 2016

1. **OFFER.** The undersigned Purchaser offers to buy on the terms and conditions set forth below, the real property (the "Property") located in the City of Centerville, County of Montgomery and State of Ohio and more particularly described as set forth in Exhibit "A" attached hereto and incorporated herein.

2. **INCLUDED IN THE SALE.** The Property shall include the land, all appurtenant rights, privileges and easements.

3. **PRICE.** The Purchaser agrees to pay for the Property the sum of ONE THOUSAND TWO HUNDRED EIGHTY-ONE and no/100 DOLLARS (\$1,281.00) payable in full at closing.

4. **DEED.** Sellers shall furnish a transferable and recordable General Warranty Deed conveying to Purchaser, or nominee, a marketable title to the Property (as determined with reference to the Ohio State Bar Association Standard of Title Examination) with dower rights, if any, released, free and clear of liens, rights to take liens, and encumbrances whatsoever except (a) legal highways; (b) all installments of taxes and assessments becoming due and payable after closing; (c) zoning and other laws.

5. **TITLE EXAMINATION.** The securing of any title examination shall be Purchaser's obligation.

6. **GOVERNMENT NOTICES.** By acceptance of this Offer, Seller warrants that Seller has not received, nor is Seller aware of any notification from any Building, or Safety or Health Department, or any other governmental or quasi-governmental authority or official requiring any work to be done on the Property. Seller warrants and agrees that Seller will promptly furnish Purchaser copies of any and all such notices received by Seller prior to the Closing. Upon learning of any work required by any such authority or official to the Property, Purchaser shall have ten (10) days to advise the Seller of any such work that is objectionable to Purchaser, and unless Seller performs such work prior to the Closing, Purchaser may elect to terminate this Agreement or to complete the purchase of the Property. Purchaser plans to demolish the existing building so this provision does not apply to any condition of the said building.

7. **DELIVERY OF THE PROPERTY.** Seller shall deliver vacant possession of the Property to Purchaser at closing and the Property shall be free and clear of all debris, trash and foreign material.

8. **HAZARDOUS SUBSTANCES.** In order to induce Purchaser to enter into this Agreement and to Purchase the Property, Seller warrants to Purchaser that Seller has no actual notice or knowledge either (1) of the existence of "Hazardous Materials" (as

defined hereinafter) on or within the ground or groundwater of the Property, in contravention of any applicable laws or (2) that any such Hazardous Materials are now or ever have been used, stored (above or below ground) spilled, released, or disposed of on or within the Property or within any improvements thereto in contravention of any applicable laws. As used herein the term "Hazardous Material" means any "hazardous substances" or "hazardous waste," as defined in or with reference in the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. and/or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., as amended; or any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended.

9. TAXES AND OTHER EXPENSES. There shall be no conveyance fee since Purchaser is a municipality. At closing, Seller shall pay or credit on the Purchase Price (a) all real estate taxes and assessments, including penalties and interest, which became due prior to the closing, (b) a prorata share, calculated as of the Closing Date in the manner set forth below, of the taxes and assessments becoming due and payable after closing, and (c) the amount of any agricultural tax savings accrued as of the Closing Date which would be subject to recoupment if the Property were converted to a non-agricultural use (whether or not such conversion actually occurs). The tax proration shall be made in accordance with the custom of Montgomery County, Ohio "short proration" method.

10. SELLER'S REPRESENTATIONS. In addition to the representations set forth above, Seller further represents that those signing this Contract constitute all of the owners of the Property, together with their respective spouses; that no work has been performed or improvements constructed that may result in future assessments; that Seller has no actual knowledge that underground storage tanks are currently located on the Property nor have been previously removed from the Property and that Seller truly believes that none of the Property consists of wetlands nor have any former wetlands on the Property been filled in and has no actual knowledge to the contrary. All representations contained in this Contract shall survive the Closing for a period of one (1) year.

11. CLOSING. The Closing for the delivery of the Deed and payment of the Purchase Price shall be on or before May 31, 2016. In the event of a failure of the parties to agree, the Closing shall be held on the last day designated in this paragraph and Purchaser and Seller shall designate the time and place of Closing; provided, however, in the event of a failure to agreement as to the time and place for the closing, Purchaser must designate some place in Montgomery County, Ohio. Closing costs shall be borne equally by the parties.

12. GENERAL PROVISIONS. Upon acceptance, this Offer shall become a complete agreement binding upon and inuring to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors, and assigns, and shall be deemed to contain all of the terms and conditions agreed upon, there being no oral conditions, representations, warranties or agreements. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing signed by both parties. Time is of the essence of all provisions of this Contract.

13. BROKER'S COMMISSIONS. There is no real estate commission due to any real estate broker.

Witness: City of Centerville, Ohio, an Ohio municipal corporation

By: _____
Gregory B. Horn, City Manager
PURCHASER

Make Deed To: City of Centerville, Ohio

ACCEPTANCE

Date: _____, 2016

The undersigned Seller accepts the foregoing Offer.

Witness: Richard S. Carper

By: _____
SELLER

Exhibit "A"



CINCINNATI
COLUMBUS
DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone ▶ 513.779.7851
fax ▶ 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
RICHARD S. CARPER
TEMPORARY CONSTRUCTION EASEMENT**

Situated in Section 15, Town 2, Range 6, M.Rs., City of Centerville, Montgomery County, Ohio being part of Lot 2 of Archon Plaza as recorded in P.B. 162 Pg. 42 as conveyed to Richard S. Carper in IR Deed 2010-039586 of the Montgomery County Recorder's Office, the boundary of a temporary construction easement being more particularly described as follows:

Beginning at a 5/8" iron pin set in the east line of said Lot 2, said point being S04°48'49"W a distance of 8.84 feet from the northeast corner of said Lot 2;

Thence along said east line, S04°48'49"W a distance of 5.65 feet;

Thence through said Lot 2, N57°21'08"W a distance of 65.62 feet to a point in the existing south right of way line of Whipp Road;

Thence along said existing south right of way line along a curve to the left an arc distance of 25.99 feet to a point in the proposed south right of way line of Whipp Road, said curve having a radius of 821.25 feet, a delta of 1°48'49" and a chord bearing S68°26'35"E a distance of 25.99 feet;

Thence along said proposed south right of way line, S57°21'08"E a distance of 37.47 feet to the point of beginning.

Containing 0.006 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.

The above description is based upon a field survey made by The Kleingers Group under the direction of Matthew D. Habedank, Ohio Professional Surveyor No. 8611. A plat of survey is recorded in Volume _____ Page _____ of the Montgomery County Engineers Record of Land Surveys.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESIONAL SURVEYOR NO. 8611

3/30/2016

DATE





CINCINNATI
COLUMBUS
DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone ▶ 513.779.7851
fax ▶ 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
RICHARD S. CARPER
0.003 ACRES**

Situated in Section 15, Town 2, Range 6, M.Rs., City of Centerville, Montgomery County, Ohio being part of Lot 2 of Archon Plaza as recorded in P.B. 162 Pg. 42 as conveyed to Richard S. Carper in IR Deed 2010-039586 of the Montgomery County Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at a 5/8" iron pin set at the northeast corner of said Lot 2, said point being in the south right of way line of Whipp Road;

Thence along the east line of said Lot 2, S04°48'49"W a distance of 8.84 feet to a 5/8" iron pin set;


Thence along a new division line, N57°21'08"W a distance of 37.47 feet to a 5/8" iron pin set in the aforesaid south right of way line of Whipp Road;

Thence along said south right of way line along a curve to the left an arc distance of 34.25 feet to the point of beginning, said curve having a radius of 821.25 feet, a delta of 2°23'23' and a chord bearing S70°32'40"E a distance of 34.25 feet.

Containing 0.003 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.

The above description is based upon a field survey made by The Kleingers Group under the direction of Matthew D. Habedank, Ohio Professional Surveyor No. 8611. A plat of survey is recorded in Volume _____ Page _____ of the Montgomery County Engineers Record of Land Surveys.


MATTHEW D. HABEDANK, P.S.
OHIO PROFESSIONAL SURVEYOR NO. 8611

3/30/2012
DATE



Exhibit "B"

WORK AGREEMENT AND RIGHT OF ENTRY AGREEMENT

by and between

Richard S. Carper

and

The City of Centerville, Ohio

Richard S. Carper, the owner(s) ["Owner"] of the property located at 2650 Whipp Road which is further identified as parcel O68-018-13-0002 ["Property"] in consideration of there being no costs, assessments, or other expenses to Owner for the work hereinafter described and for other valuable consideration, hereby authorizes the City of Centerville ["City"], an Ohio Municipal Corporation, and its duly authorized employees, agents, and contractors to enter upon said Property within the boundaries depicted in Exhibit 1 for the purposes of performing the work related to the Wilmington Pike Phase II roadway improvement project ["Project"] attached hereto and by reference incorporated herein ["Authority to Enter"].

This Authority to Enter granted to the City shall commence on or after April ____, 2016 and will terminate on July 1, 2016, or at such time the City acquires ownership of the subject area of the property through an agreed upon sale between the Parties or by appropriation, whichever comes first. City shall be granted authority to enter after July 1, 2016, only by the express written approval of Owner, which approval shall not be unreasonably withheld. Owner shall have five (5) business days to grant said written approval to City upon submission of City's written request. In the event that Owner denies entry to City at any time after July 1, 2016, the denial of entry shall be deemed to be Owner's full acceptance of all work performed on Owner's property. City shall have no further obligation or requirement to perform any additional restoration or repair work on Owner's property and Owner shall waive all legal rights to compel further work by City.

Owner hereby grants to City, the right to enter onto Owner's property for all purposes related herein, including, but not limited to the following:

1. Have access to the Property for the purpose of construction of roads or sidewalks and related facilities;
2. Bring one or more contractors onto the Property for the construction of roads, sidewalks and related work including utility coordination;
3. Secure the Property with a fence or other control devices and to limit, but maintain, access to the Property;

4. Secure all required permits and approvals for the construction, if any; and
5. To place signs on the Property regarding the Project, if any.

All necessary work to be conducted within the project boundaries as generally depicted in Exhibit 1 shall be performed in accordance with the plans and specifications prepared by The Kliengers Group for the City of Centerville for the Project.

Owner hereby releases City and its employees from any and all damages or claims for damages resulting by reason of the above described work and operations. It is understood that any contractor engaged for the purposes described above is an *Independent Contractor*, and is solely responsible for any and all damages or claims for damages arising from any conduct not within the control of City.

It is further understood that City assumes no obligation for the maintenance of any area outside the limits of the project construction limits depicted on the plans and specifications.

This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement, and the heirs, legal representatives, successors and assigns of the parties to this Agreement.

The terms of this agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of either party to require performance of any of the provisions of this Agreement shall, in no manner, affect the right at a later date to enforce such provisions.

The rights, obligations, benefits and burdens of this Agreement may not be transferred, assigned or conveyed without the written consent of the other party to this Agreement.

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

No amendment or modification of this Agreement shall be valid or binding upon the parties unless it is made in writing, cites this Agreement, and is signed by both Owner and City.

The parties hereto, namely the City of Centerville, Ohio, and Richard S. Carper, have executed this Agreement on the date(s) indicated immediately below their respective signatures.

CITY :
CITY OF CENTERVILLE, OHIO

By: Gregory B. Horn
Its: City Manager

Approved as to Form

By: _____
Scott A. Liberman, Municipal Attorney

OWNER:

Richard S. Carper

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Gregory B. Horn, City Manager, of the City of Centerville, Ohio.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Richard S. Carper.

Notary Public