

RESOLUTION NO. 41-11
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCIL MEMBER John Beals ON THE 17th
DAY OF OCTOBER, 2011.

**RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO
EXECUTE A PURCHASE AGREEMENT WITH G. DAVIS CCM, LLC FOR THE
SALE OF REAL PROPERTY LOCATED IN THE CITY OF CENTERVILLE**

WHEREAS, Council has determined that it would be in the best interest of its citizens to sell property located in the City of Centerville to G. Davis CCM, LLC; and

WHEREAS, the City of Centerville has negotiated a sale of this real property to G. Davis CCM, LLC. upon terms acceptable to the City; 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 City Manager is hereby authorized and directed to enter into a Real Property Purchase Agreement with G. Davis CCM, LLC upon the terms and conditions substantially similar to those terms set forth in the Agreement, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein, and to do any and everything necessary to carry out the terms of said Agreement.

PASSED THIS 17th day of October, 2011

C. Mark Kypreos
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
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. 41-11, passed by the Council of the City of Centerville, Ohio on the 17th day of October, 2011.

Debra A. James
Clerk of the Council

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

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is made this ___ day of October, 2011 (the "Effective Date"), by and between the CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation, whose address is 100 West Spring Valley Road, Centerville, Ohio 45458 ("Seller"), and G. DAVIS CCM, LLC, an Ohio limited liability company, whose address is _____ ("Purchaser").

1. Property. Seller agrees to sell and convey, and Purchaser agrees to purchase, on the terms and conditions contained in this Agreement, the real property consisting of approximately _____ acres located at the southeast corner of Yankee Street and Social Row Road, City of Centerville, County of Montgomery, State of Ohio, as described or depicted on Exhibit "A" (the "Property"). The Property includes the land and all appurtenant rights, privileges and easements.

2. Purchase Price. The purchase price for the Property is Four Hundred, Fifty Thousand and no/100 Dollars (\$450,000.00) (the "Purchase Price") payable as follows:

(a) Within two (2) business days after the full execution of this Agreement, Purchaser shall deposit a nonrefundable sum of Two Thousand, Five Hundred and No/100 Dollars (\$2,500.00) (the "Deposit") with the Seller to be held and applied or paid in accordance with Section 12 below.

(b) The balance of the purchase price shall be paid by cash, certified funds, attorney or title company trust account check, or by wire transfer of federal funds on the date of Closing.

3. Due Diligence Period. Purchaser's obligations under this Agreement are conditioned upon the satisfaction (or waiver by Purchaser) of the following contingencies:

(a) Purchaser shall have a period of ninety (90) days following the date of this Agreement (the "Due Diligence Period"), to (1) determine that the condition, soils, environmental and wetland status, utilities, drainage, access and all other matters for which Purchaser deems inspections to be necessary are satisfactory for Purchaser's proposed use and development of the Property ("Purchaser's Use"), (2) obtain appropriate zoning to permit Purchaser's Use, (3) obtain a building permit for Purchaser's proposed development, (4) obtain all necessary approvals for Purchaser's Use of the Property, and (5) obtain suitable financing in Purchaser's sole and absolute discretion. Purchaser agrees to use reasonable efforts to prepare and submit plans in a timely manner to allow an opportunity to obtain the necessary approvals within the Due Diligence Period. If, in Purchaser's sole judgment, the results of any of the above contingencies are not satisfactory, Purchaser shall have the right to terminate this Agreement by giving Seller written notice prior to the expiration of the Due Diligence Period.

(b) If Purchaser is diligently pursuing these inspections and contingencies set forth in Section 3(a), but has not received all of the necessary approvals required for Purchaser's intended use, Purchaser may extend the inspection period two additional sixty (60) day periods by paying the Seller a non refundable sum of Five Thousand and No/100 Dollars (\$5,000.00) to be added to the Deposit for each extension.

(c) During the Due Diligence Period specified above, Purchaser and its agents, employees and contractors shall have the right to enter the Property during reasonable business hours to conduct tests, inspections and other investigation of the Property and to develop the plans for Purchaser's Use. Purchaser shall promptly repair any resulting damage to the Property and shall hold harmless Seller against any claims for personal injury or property damage arising from the exercise of the rights granted by this Section 4(c).

(d) In the event that this Agreement is terminated by Purchaser pursuant to Section 4(a), Purchaser and Seller shall be released from all further obligations under this Agreement, and the Deposit(s) advanced by Seller shall be forfeited to and kept by Seller pursuant to Section 12 below.

5. Conveyance. At the Closing Seller shall deliver to Purchaser a transferable and recordable general warranty deed conveying to Purchaser marketable title to the Property in fee simple, free and clear of all liens, rights to take liens, assessments and encumbrances, except the following (the "Permitted Encumbrances"): (a) real estate taxes not then due and payable, (b) easements and restrictions of record and (c) the easements set forth in Section 15.

6. Prorations and Expenses. At the Closing of the Property, the real property taxes and assessments shall be prorated between Seller and Purchaser as of the date of the Closing in accordance with the short proration method customarily used in Montgomery County, Ohio. Purchaser shall pay recording charges relating to Seller's deed and any escrow and closing fees of the Escrow Agent. Seller shall be responsible for transfer taxes and conveyance fees.

7. Seller's Representations. Seller makes the following representations to Purchaser as of the date of this Agreement and the date of each Closing:

The property is zoned Commercial and is not located in the APD of the City; and is not located in a flood plain. Seller represents and warrants that to the best of the Seller's knowledge (a) no toxic or hazardous substances or wastes have been disposed upon or released in, on or from the Property including, but not limited to, asbestos, PCB's, oil and petroleum products; (b) there are not presently nor have there ever been any underground storage tanks or above ground storage tanks located in, on or under the Property; (c) no City, County, State or Federal orders have been served upon Seller requiring work to be done or improvements to be made which have not been performed and, (d) a Phase 1 Environmental audit has not been furnished to Purchaser.

8. Closing. Unless extended by agreement of the parties, closing for the delivery of Seller's deed the Property, payment of the Purchase Price and delivery of the other instruments provided for in this Agreement (the "Closing"), shall be held no later than thirty (30) days after the expiration of the Due Diligence Period, at a time and place in Dayton, Ohio mutually agreeable to Purchaser and Seller. Seller shall have the right at Closing to pay for the removal of any and all encumbrances or liens out of the proceeds.

9. Possession. Exclusive possession of the Property shall be given to Purchaser on the date of Closing.

10. Brokers. Each party represents and warrants to the other that it has dealt with no agent or broker who has in any way participated in the sale of the Property except for Nai Bergman, whose fee, if any, shall be paid by Purchaser. Any other fees or commissions that may be claimed shall be the sole responsibility of the party breaching this warranty.

11. Notices. Any notice required or permitted to be given to a party under this Agreement, shall be deemed given if (a) mailed by U.S. certified or registered mail, postage prepaid, (b) personally delivered or (c) deposited with a nationally recognized overnight courier service, addressed as follows:

To Seller: City of Centerville, Ohio
 Attn: City Manager
 100 West Spring Valley Road
 Centerville, Ohio 45458

To Purchaser: G. Davis CCM, LLC.

Either party may change its mailing address by written notice to the other party at its then current mailing address in accordance with this Section 11.

12. Deposit. The Deposit(s) shall be held by the Seller and shall be (a) applied to the Purchase Price at the Closing or (b) forfeited to Seller as liquidated damages if the contingencies set forth in this Agreement are not completed or if a Closing does not occur for any reason. Seller and Purchaser agree that Seller's damages would be difficult to ascertain and that the amount of the Deposit is a fair estimate of those damages.

13. Risk of Loss. The risk of loss, damage or destruction of any buildings or improvements on the Property shall remain with Seller until the completion of Closing.

Neither party shall have the right to terminate this Agreement on account of a casualty, and each waives any right to do so.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective heirs, personal representatives, successors and assigns.

15. Additional Terms and Conditions. Purchaser and Seller agree to the following additional terms:

- (a) Purchaser agrees to grant Seller an access easement on the Eastern and Southern side of the Property, as shown on Exhibit "A"; and
- (b) Seller agrees to grant Purchaser an access and utility easement along the Southern most Property line to Yankee Street, as shown in Exhibit "A". Seller shall retain the right, at Seller's cost, to relocate this access easement to accommodate future development of adjoining properties, but will continue to allow and provide Purchaser's Property with access to Yankee Street; and
- (c) Seller shall provide Purchaser an easement for the purpose of storm water drainage on the Northwest corner of the Property, as shown in Exhibit "A". The storm water easement on the Northwest corner of the Property will extend to a point where water will flow through the existing ditch shown on Exhibit "A".

16. Sole Contract. The parties agree that this Agreement constitutes their entire agreement, and that no oral or implied agreement exists. Any amendments to this agreement shall be made in writing, signed by both parties.

SIGNED by Purchaser and Seller as of the date first written above.

PURCHASER:

SELLER:

G. DAVIS CCM, LLC, an Ohio
limited liability company

CITY OF CENTERVILLE, OHIO,
an Ohio municipal corporation

By:
Its:

By: Gregory B. Horn
Its: City Manager