

RESOLUTION NO. 42-07
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Douglas Cline ON THE
17th DAY OF September, 2007.

**RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO
TAKE ALL STEPS AND EXECUTE ALL DOCUMENTS NECESSARY IN ORDER
TO AFFECT THE SALE OF REAL PROPERTY TO OBERER COMPANIES.**

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 Oberer Companies; and

WHEREAS, The City of Centerville wishes to negotiate a sale of this real property to Oberer Companies 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 THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

Section 1: That the City Manager is hereby authorized and directed to sign a Letter of Intent, as revised, which could lead to the negotiation of a Purchase Agreement with the Oberer Companies. A copy of said revised Letter of Intent is attached hereto, marked Exhibit "A" and incorporated herein.

PASSED this 17th day of September, 2007.

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

ATTEST:

Delbra A. James
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio hereby certifies that the foregoing is a true and correct copy of Resolution Number 42-07 passed by the Council of the City of Centerville, Ohio on the 17th day of September, 2007.

Debra A. James
Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney



937-910-0851 Phone

937-531-5599 Fax

2800 East River Road

Dayton, Ohio 45439

August 28, 2007

City of Centerville, Ohio
 100 West Spring Valley Road
 Centerville, Ohio 45458
 Attention: City Manager

RE: Purchase Offer/Yankee St. and Social Row Road, Centerville, Ohio

Gentlemen:

The following is the basis upon which Shoppes at Hamilton, Ltd. or an affiliate or designee ("Buyer") proposes to acquire the real property described in this letter from the City of Centerville ("Seller").

This is a Letter of Intent only and not an offer to purchase. It is not legally binding on either party, notwithstanding anything to the contrary in this letter, except for the last paragraph of this letter. It is, however, when approved by Seller, an indication of the good faith intent of the parties to endeavor to agree to a Purchase Agreement, with no liability or obligation for the failure to do so.

The terms and conditions of this Letter of Intent are as follows:

PROPERTY: Approximately 10.375 acres of land located at the southeast corner of Yankee St. and Social Row Road in Centerville, Ohio ("Property").

PURCHASE PRICE: The purchase price will be \$2,000,000.00.

PHASED PURCHASE: The Property will be purchased in two (2) phases. The first phase ("Phase I") will consist of not less than 5 acres, and the closing will occur within thirty (30) days after the expiration of the Due Diligence Period as defined below. The purchase price for Phase I shall be \$2,000,000.00 multiplied by the percentage that the acreage of Phase I bears to the total acreage of the Property. The second phase, consisting the balance of the Property ("Phase II") will be purchased within thirty (30) days after the opening of the Austin Road interchange on Interstate 75, but no later than December 31, 2010 (the "Outside Date") ^{provided} ~~that the Outside Date shall be extended if on such date the Austin Road/75 interchange is not yet under construction.~~ The purchase price for Phase II shall be the balance of the \$2,000,000.00 total for all of the Property, plus interest thereon at the rate of ^{4%} ~~4%~~ per annum from the date of the Phase I closing to the date of the Phase II closing.

During the Due Diligence Period, Buyer shall present to Seller for its approval the proposed development plan for the Property which includes the proposed delineation of the two phases. Seller shall have the right to approve the phasing based on maintaining the value of the Phase II property, assuring that the Phase II property has sufficient access, and other relevant factors, such approval not to be unreasonably withheld. Seller shall also cooperate with Buyer in granting easements,

access rights and the like over the Phase II land in order to permit the development of the Phase I such that, upon the acquisition of Phase II, the entire Property will be a coordinated, integrated development.

The purchase price for both phases shall be payable in cash at closing. The earnest money deposit shall be applied to the purchase of the Phase II property.

CLOSING COSTS:

63A

Each party will pay the normal closing costs including deed preparation, document recording, the conveyance fee, and taxes normally allocated to Buyer and Seller in accordance with local custom or law. Any agricultural tax recoupment shall be paid by Seller. *Buyer. 63A*

CONFIDENTIALITY:

~~The existence and contents of this letter and the matters disclosed by Buyer's due diligence shall not be disclosed to third parties other than agents and contractors of Buyer and Seller, without the consent of both parties.~~ *63A*

DUE DILIGENCE/REZONING:

Buyer shall have one hundred eighty (180) days during which to complete its due diligence after acceptance and execution of a Purchase Agreement ("Due Diligence Period"). Buyer shall have the right to inspect the Property and perform any studies, at Buyer's expense, with respect to environmental, regulatory, and title issues, soil compaction, utility availability, access and all other matters which Buyer deems relevant, and to apply for and pursue all zoning, building and other permits and approvals required for Buyer's proposed development of the Property for office and retail uses. ~~Buyer shall have the right to extend the Due Diligence Period as necessary to complete the zoning process for the Property provided that the application for rezoning shall be filed no later than the expiration of the initial one hundred eighty (180) day period. Such extensions shall include the time necessary to file appeals or to obtain the results of a referendum, if required.~~ *63A* If Buyer, after such investigation, in its sole discretion determines that the Property is not satisfactory to Buyer, Buyer may terminate the contract in writing no later than the end of the Due Diligence Period.

EARNEST MONEY:

Upon execution of a Purchase Agreement, Buyer shall deliver an earnest money deposit of \$20,000.00 in an escrow account. The form of this earnest money deposit will be in cash and will be refundable at any time during the Due Diligence Period; thereafter to serve as liquidated damages in the event of default by Buyer.

DELIVERY OF DOCUMENTS:

Upon execution of a Purchase Agreement, and concurrent with the posting of the refundable deposit, Seller or its agents or contractors shall deliver to Buyer, within a reasonable period, any information in their possession pertinent to the Buyer's due diligence process including, but not limited to: preliminary title reports and survey; all physical reports pertaining to the Property; and environmental studies in Seller's possession. Seller at its expense shall provide an ALTA survey of the Property within thirty (30) days after the effective date of the Purchase Agreement.

CLOSING DATE:

The Phase I closing shall be held thirty (30) days after expiration of the Due Diligence Period. The Phase II closing shall be held on the Outside Date specified above, unless Buyer elects to close earlier by written notice to Seller.

PURCHASE AGREEMENT:

Upon approval by Seller of this Letter of Intent, Buyer will prepare a Purchase Agreement and deliver it to Seller within ten (10) business days.

~~**BROKERS:**~~

~~Seller and Buyer are represented by Oberer Realty Services, as affiliate of Buyer. Seller will be solely responsible for payment of any brokerage commission to Oberer Realty Services pursuant to separate agreement.~~ *CSH*

PROPERTY ACCESS:

Upon approval of this Letter of Intent, Seller, its agents, or contractors will provide open and reasonable access to the Property.

This Letter of Intent shall terminate and be of no further force and effect if it has not been accepted by Seller and returned to the undersigned on or before 5:00 p.m. on _____, 2007.

Upon Seller's approval of this Letter of Intent, Seller shall take the Property off the market and not solicit or accept any offers nor engage in any discussions concerning the sale of the Property other than the transaction contemplated by this Letter of Intent until such time as Seller reasonably concludes that a mutually satisfactory Purchase Agreement is not achievable, but in any event not less than ninety (90) days from the approval of this Letter of Intent.

Respectfully yours,

SHOPPES AT HAMILTON, LTD.

By: _____

[Handwritten Signature]
Name: Christopher J. Cooley
Title: Agent for owner

This non-binding Letter of Intent is approved by Seller as of this ____ day of August, 2007.

THE CITY OF CENTERVILLE, OHIO

By: _____

Name:
Title: