

RESOLUTION NO. 5-98

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER J.V. Stone ON THE
26th DAY OF January, 1998.

A RESOLUTION AUTHORIZING AND DIRECTING THE
CITY MANAGER TO EXECUTE A CONTRACT FOR THE
PURCHASE OF REAL PROPERTY LOCATED AT 740
EAST ALEXANDERSVILLE-BELLBROOK ROAD.

WHEREAS, the City of Centerville desires to purchase 0.753 acres of land, more or less, situated in the City of Centerville, Montgomery County, Ohio, said property being located at 740 East Alexandersville-Bellbrook Road for a total price of \$54,000.00, and

WHEREAS, the Council of the City of Centerville is of the opinion that said purchase is fair in all respects to said City and that it is in the best interest of the City to make said purchase.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a contract to purchase 0.753 acres, more or less, situated at 740 East Alexandersville-Bellbrook Road for a purchase price of \$54,000.00, said Contract to Purchase Real Estate attached hereto as Exhibit "A" and incorporated herein.

PASSED this 26th day of January, 1998.

Sally D. Brub
Mayor of the City of
Centerville, Ohio

ATTEST:

Marie J. McLaughlin
Clerk of the Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 5-98, passed by the Council of the City of Centerville, Ohio, on the 26th day of January, 1998.

Mauiel J. Saughel
Clerk of Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney



CONTRACT TO PURCHASE 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. OFFER. The undersigned Purchaser offers to buy through Big Tree Realty, Dayton, Ohio Dec. 16, 1997, Broker(s), on the terms and conditions set forth below, the real property (the "Property") located in Centerville

4. County of Montgomery, State of Ohio, described as follows: 740 E. Oak - Ball Road, 2.03 ac +/- 26 ac.

6. The Property shall include the land, all appurtenant rights, privileges and easements, and all buildings, improvements and fixtures, including, but not limited to, such of the following as are now on the Property: all electrical, heating, plumbing and bathroom fixtures; all window and door shades, blinds, awnings and screens; storm windows and doors; television antennae; curtain rods; garage door opener and control(s); all landscaping; and

11. Any personal property items listed above are owned by Seller and will be free and clear of liens and security interests at closing.

12. PRICE. Purchaser agrees to pay for the Property the sum of \$ 14,000.00, payable in cash at closing. Purchaser's obligations under this Contract are conditioned upon Purchaser's ability to obtain prior to closing a mortgage loan of \$ Cash at closing (Conventional) (FHA) (VA) at rates and terms generally prevailing in the Dayton, Ohio area.

16. Mortgage discount points/origination fees/Purchaser's closing costs not to exceed 0 are to be paid by Seller. Seller shall have the option to cancel this Contract if Purchaser fails either to (a) apply for a mortgage loan within 10 days after the date of acceptance of this offer, or (b) obtain mortgage loan approval within 10 days after the date of acceptance of this offer.

19. 3. DEED. Seller 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 Standards of Title Examination) with dower rights, if any, released, free and clear of all liens, rights to take liens, and encumbrances whatsoever, except (a) legal highways, (b) any mortgage assumed by Purchaser, (c) all installments of taxes and assessments becoming due and payable after closing, (d) rights of tenants in possession, (e) zoning and other laws, and (f) easements and restrictions of record which would not prevent Purchaser from using the Property for the following purpose: Public Cemetery. If title to all or part of 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 remove such matters within 10 days after receipt of written notice from Purchaser, and if necessary the closing date may be extended to permit Seller the full 10 days to clear title.

26. 4. TAXES. 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 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 taxes and assessments becoming due and payable after the 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), unless Purchaser has indicated in paragraph 3 that Purchaser is acquiring the Property for agricultural purposes. If the Property is located in Montgomery County, the tax proration shall be made in accordance with the Montgomery County "short proration" method, in which Seller's 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 is located outside of Montgomery County, the tax proration shall be made in accordance with (check one): [X] the Montgomery County "short proration" method or [] the "long proration" method, in which Seller's share is based upon the taxes and assessments which are a lien for the year of the closing. (If neither method is checked, the short proration shall apply.) If the short proration method is used, any special assessments which are payable in a single annual installment shall nevertheless be prorated on the long proration method. All proration shall be based upon the most recent available tax rates, assessments and valuations.

35. 5. SELLER'S REPRESENTATIONS. Seller represents that those signing this Contract constitute all of the owners of the title to the Property, together with their respective spouses. Seller further represents that with respect to the Property (a) no order of any public authority are pending, (b) no work has been performed or improvements constructed that may result in future assessments, (c) no notices have been received from any public agency with respect to condemnation or appropriation, change in zoning, proposed future assessments, correction of conditions, or other similar matters, and (d) to the best of Seller's knowledge, no toxic, explosive or other hazardous substances having been stored, disposed of, concealed within or released on or from the Property and no other adverse environmental conditions affect the Property. These representations shall survive the closing.

43. 6. POSSESSION. Rentals, interest on any assumed mortgages, water and other utility bills, and any current operating expenses shall be prorated as of the date of closing. If the Property is owner-occupied, possession is to be given 10 days after closing at 12:00 P.M. and utilities shall not be prorated as above but paid for by Seller until delivery of possession. Seller shall be responsible to Purchaser for any damages caused by Seller's failure to deliver possession on the stated date.

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

50. 8. ACCEPTANCE; CLOSING. This offer shall remain open for acceptance until Dec 19, 1997 at 11:59 p.m. The closing for delivery of the deed and payment of the balance of the purchase price shall be held on or before Jan 2, 1998, at a time and place mutually agreed upon by Seller and Purchaser. In the event of a failure of both parties to agree, the closing shall be held on the last day designated in this paragraph and the Selling Broker shall designate the time and place of closing.

53. 9. EARNEST MONEY; DEFAULT. Upon presentation of this offer, Purchaser has delivered to Big Tree Realty, Broker, the sum of \$ 500.00 as earnest money, to be (1) deposited in the Broker's trust account promptly after acceptance of this offer or (2) returned to Purchaser upon request if this offer is not accepted. The earnest money shall be paid to Purchaser or 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 not satisfied or waived, Purchaser shall be entitled to the earnest money. If Purchaser defaults, Seller shall be entitled to the earnest money. The parties acknowledge, however, that the Broker will not make a determination as to which party is entitled to the earnest money. Instead, the Broker shall release the earnest money from the trust account only (a) in accordance with the joint written instructions of Seller and Purchaser, or (b) in accordance with the following procedure: if the closing does not occur for any reason (including the default of either party), the Broker holding the earnest money may notify Seller in writing that the earnest money will be returned to Purchaser unless Seller makes a written demand for the earnest money within 20 days after the date of the Broker's notice. If the Broker does not receive a written demand from the Seller within the 20-day period, the Broker shall return the earnest money to Purchaser. If a written demand from Seller is received by the Broker within the 20-day period, the Broker shall retain the earnest money until (i) Seller and Purchaser have settled the dispute; (ii) disposition has been ordered by a final court order; or (iii) the Broker deposits the earnest money with the court pursuant to applicable court procedures. Payment or refund of the earnest 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 defaulting party.

67. 10. 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 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. Purchaser has examined the Property and, except as otherwise provided in this Contract, is purchasing it "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 essence of all provisions of this Contract. Any word used in this Contract shall be construed to mean either singular or plural as indicated by the number of signatures below.

73. 11. INSPECTIONS AND OTHER ADDENDA. The following Addenda and attachments are attached to and shall be considered an integral part of this Contract: [] Inspection Addendum [] Land Contract Addendum [] Other (Describe)

75. WITNESS: Judith Michael, Purchaser

76. MAKE DEED TO (Print): Judith Michael for City of Centerville, CENTERVILLE

77. Address 100 West Spring Valley OH 45458

78. ACCEPTANCE Date: Dec 19, 1997

79. The undersigned Seller () accepts the foregoing offer; or (X) counteroffers according to the initialed changes set forth above or in the attached Addenda, 80. which counteroffers shall remain open for acceptance until Dec 23, 1997 at 11:59 P.M.

81. WITNESS Judith S. Michael, Seller; Brent C. Shaize, Print

82. Not accepted at this time. Thank you for your offer.

83. Seller, Seller

84. Seller, Print

85. DEPOSIT RECEIPT Date: 19 86. Receipt is acknowledged of \$ earnest money, to be deposited in the undersigned Broker's trust account upon acceptance of this offer and to be applied as provided in paragraph 9 above.



**CONTRACT TO PURCHASE REAL ESTATE
INSPECTION ADDENDUM**
(Form approved by the Dayton Area Board of REALTORS®)



PURCHASER: City of Centerville / Gregory Horn
PROPERTY: 740 E. Platt-Bell Road

1. Inspection Period. Purchaser shall have the right for a period of 14 days after the date of Seller's acceptance (the "Inspection Period") to obtain inspections of the Property at Purchaser's expense in each of the following areas:

- | | | | |
|--|---|--|---|
| <input checked="" type="checkbox"/> Structural | <input type="checkbox"/> Roof | <input type="checkbox"/> Heating & Furnace | <input type="checkbox"/> Septic System |
| <input checked="" type="checkbox"/> Basement | <input type="checkbox"/> Electrical | <input type="checkbox"/> Air Conditioning | <input type="checkbox"/> Radon |
| <input checked="" type="checkbox"/> Fireplace | <input checked="" type="checkbox"/> Plumbing | <input type="checkbox"/> Appliances | <input type="checkbox"/> Whole House |
| <input checked="" type="checkbox"/> Chimney | <input checked="" type="checkbox"/> Well (quality and quantity) | <input type="checkbox"/> Termite or Wood | <input checked="" type="checkbox"/> Other (specify) |
| <input checked="" type="checkbox"/> Lead-Based Paint and/or Lead-Based Paint Hazards | | <input type="checkbox"/> Boring Insects | |

Inspections shall be made by qualified contractors and inspectors (duly licensed and certified where applicable) selected by Purchaser. During the Inspection Period, Purchaser and Purchaser's inspectors and contractors shall be permitted access to the Property at reasonable times. Purchaser shall be responsible for any damage to the Property caused by Purchaser or Purchaser's inspectors or contractors.

If the inspections disclose any defects in the Property, Purchaser shall notify Seller in writing of the defects prior to the expiration of the Inspection Period. For purposes of this Addendum, "defects" do not include (i) minor, routine maintenance and repair items not affecting habitability or (ii) matters disclosed to Purchaser in writing by Seller before presentation of this offer; and Seller shall have no obligation to repair any such items unless specifically agreed in writing. FAILURE TO NOTIFY SELLER OF ANY DEFECTS BEFORE EXPIRATION OF THE INSPECTION PERIOD SHALL CONSTITUTE A WAIVER OF SUCH DEFECTS, AND PURCHASER SHALL TAKE THE PROPERTY "AS IS" WITH RESPECT TO SUCH DEFECTS.

Inspections required by FHA/VA or local municipalities do not necessarily eliminate the need for other inspections.

2. Lead-Based Paint. If the item "Lead-Based Paint and/or Lead-Based Paint Hazards" is checked in Section 1 above, the Inspection Period represents the agreed upon period for Purchaser to conduct an assessment or inspection of the Property to determine the presence of lead-based paint and/or lead-based paint hazards. Except as provided in this Inspection Addendum, Purchaser waives any right or opportunity to conduct an assessment or inspection for these purposes.

3. Repair Period. In the event Purchaser's inspections disclose any defects in the Property which are timely reported to Seller, Seller shall have the right, for a period of 10 days after expiration of the Inspection Period (the "Repair Period"), to either (a) repair the defect in a good and workmanlike manner, using contractors reasonably acceptable to Purchaser or (b) provide other assurances reasonably acceptable to Purchaser, by means of an escrow of funds at closing for the repairs or otherwise, that the defects will be repaired with due diligence and in a good and workmanlike manner.

4. Right to Cancel. If Seller is unwilling or unable to repair any defect or to provide the assurances described above during the Repair Period, Purchaser shall have the right, at Purchaser's sole option, to cancel this Contract, in which event the earnest money shall be returned to Purchaser in accordance with the procedures set forth in Paragraph 9 on the first page of this Contract and the parties shall be released from all further obligations under this Contract. This right of cancellation shall be exercised, if at all, by giving written notice to Seller within 5 days after the earlier of (a) receipt of a written notice from Seller stating that Seller is unwilling to make the repairs or provide the assurances described above or (b) expiration of the Repair Period. FAILURE BY PURCHASER TO CANCEL THIS CONTRACT WITHIN SUCH 5-DAY PERIOD SHALL CONSTITUTE A WAIVER BY PURCHASER OF ANY UNREPAIRED DEFECTS AND PURCHASER SHALL TAKE THE PROPERTY "AS IS" WITH RESPECT TO SUCH DEFECTS.

5. Release. Seller and Purchaser release the Broker(s) from any and all liability arising from (a) any action by the Broker(s) in obtaining or recommending an inspector or contractor, (b) the contents of any inspection report or the work of any contractor, (c) any advice concerning the necessity of any inspections, (d) any defect or deficiency in the Property and (e) the failure to deliver any notice within the time periods provided herein unless specifically requested to do so. This waiver shall survive the closing.

6. Homeowner's Warranty Disclosure. If a homeowner's warranty is being provided under the terms of this Contract, the party furnishing the warranty may select any reputable company to issue the warranty, unless a specific warranty company has been specified. The parties acknowledge that a fee may be paid by the warranty company to one of the Brokers involved in this transaction. The amount of this fee will be disclosed to Seller and Purchaser upon request after the warranty company has been specified.

7. Residential Property Disclosure Form. Purchaser has has not (check one) received a State of Ohio "Residential Property Disclosure Form" before signing this offer.

OTHER ADDENDA

Environmental site Review for contaminants, buried tanks

Occupancy - To be given 90 days after closing

6-27
12-11-17

Purchaser

Seller

Purchaser

Seller

Date

Date