

RESOLUTION NO. 24-96
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER C. MARK KINGSEED ON THE
15TH DAY OF APRIL, 1996.

A RESOLUTION RATIFYING THE ACTION TAKEN
BY THE CITY MANAGER TO EXECUTE A
CONTINGENT AGREEMENT TO PURCHASE REAL
ESTATE BETWEEN THE CITY OF CENTERVILLE
AND DONALD S. WILLIAMS, EXECUTOR.

WHEREAS, Donald S. Williams, the duly appointed and acting Executor of
the estate of Joan Williams, has agreed to sell real estate located at 155 West Spring
Valley Road to the City of Centerville, and

WHEREAS, the City of Centerville has agreed to purchase said real estate
at the price and on the terms and conditions set forth in a Contingent Agreement to
Purchase Real Estate.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE
HEREBY RESOLVES:

Section 1. That the action taken by the City Manager on behalf of the City of
Centerville to execute a Contingent Agreement to Purchase Real Estate situated at 155
West Franklin Street, be and is hereby ratified, a copy of said Agreement is attached
hereto, marked as "Exhibit A", and incorporated herein.

Section 2. That this Resolution shall become effective at the earliest date
allowed by law.

PASSED this 15TH day of APRIL, 1996.

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

ATTEST:

Maile J. Saugh
Clerk of Council, 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 314-96, passed by the Council of the City of Centerville, Ohio, on the 15th day of APRIL, 1996.

Maile J. Saugh
Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

CONTINGENT AGREEMENT TO PURCHASE REAL ESTATE

The undersigned, Donald S. Williams, the duly appointed and acting Executor of the Estate of Joan Williams, deceased (hereinafter called "Seller") in consideration of the payment of FIVE THOUSAND DOLLARS (\$5,000.00) down payment, paid herewith, the receipt of which is hereby acknowledged, hereby agree to sell to the City of Centerville, Ohio (hereinafter called "Buyer") and the Buyer hereby agrees to purchase at the price and on the terms and conditions set forth below the following described premises (hereinafter called the "Property"): See attached Exhibit "A"

1. **PURCHASE PRICE.** If the option is exercised, the Buyer shall pay as the purchase price the sum of ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000.00) payable as follows:

- (a) Application of the earnest money.
- (b) The sum of ONE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$162,500.00) by cashier's check at the closing.
- (c) The balance of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) (hereinafter the "Retainage") shall be paid by cashier's check within ^{ten (10)} ~~thirty (30)~~ days following occupancy by the Buyer on the condition the Property is delivered to the Buyer in broom clean condition. In the event the Property is not so delivered, Buyer may apply so much of the Retainage as is necessary to place the Property in broom clean condition and pay the balance, if any, to the Seller within said thirty (30) day period.

2. **CONTINGENCY.** This Agreement is contingent upon the Buyer's determining

that the Property has sufficient load bearing capacity (without compaction) to allow the City to construct a city building to its specifications and designated uses and is free from hazardous environmental substances. Immediately upon acceptance, the Buyer shall cause testing of the Property to be undertaken to determine the load bearing capacity of the Property and its environmental condition. Thereafter, the Buyer shall have 60 days following the execution of this Agreement to terminate this Agreement but only for the reasons that the load bearing capacity of the Property is insufficient or that the Property is environmentally unacceptable. The parties reserve the right to negotiate those issues during the period before the expiration of said 60 day period.

3. TERMS AND CONDITIONS OF SALE. Upon expiration of the contingency period set forth in Section 2 above, the sale of the Property will be completed as follows:

(a) Conveyance. Upon receipt of payment of the balance of the purchase price, less the Retainage, Seller will convey the property in fee simple to Buyer or nominee of Buyer by General Warranty Deed free and clear of all liens, defects and encumbrances, current taxes and assessments not then due and payable and Seller will deliver possession of the property to Buyer no later than December 1, 1996. The closing shall occur on November 1, 1996 unless the parties mutually agree otherwise and the actual time and place of closing shall be set by the Buyer.

(b) Miscellaneous. The term "Property" as used herein shall include all improvements located on the above-described premises; provided, however that the Seller shall have the right to remove the swimming pool maintenance building and the home security system prior to closing. The parties agree that no real estate agent has been involved in this transaction and that no real estate commission is payable by virtue of this transaction.



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DAYTON, OHIO 45402

The Seller gives the Buyer the right to make engineering studies, surveys, core borings and drillings and do any and all acts necessary to ascertain the fitness of the land or the purpose of the Buyer provided that Buyers shall restore the property to its former condition.

In the event that Buyer determines to raze any or all of the improvements on the Property, the Buyer shall make all reasonable efforts to give written notice of said determination the Seller or his nominee and he shall have the right to bid on the razing and his bid will be considered provided Seller or his nominee can meet the bidding requirements placed on all bidders by the Buyer. This provision shall survive the closing by a period of five (5) years.

(c) **Return of Down Payment.** If the contingency set forth in Section 2 above is met and the Buyer refuses to close, the down payment shall be forfeited and retained by Seller. If this Agreement for the purchase of the Property is cancelled or terminated otherwise than by reason of Buyer's default, said down payment shall forthwith be returned to Buyer.

4. **TAXES AND OTHER EXPENSES.** 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. The tax proration shall be made in accordance with the custom of Montgomery County, Ohio, in which Seller's share is based upon the taxes and assessments which are due and payable on the next six month installment date following closing. Seller shall pay an amount equal to 1/180th of the taxes and assessments from the previous June 30th up to and including the day of closing.

5. **REPRESENTATIONS.** Seller represents that with respect to the Property (a) no orders of any public authority are pending, (b) no work has been performed or improvements



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constructed that may result in future assessments, (c) no notices have been received from any public agency with respect to condemnation or appropriation, a change in zoning, proposed future assessments, correction of conditions, or other similar matters, and (d) Seller, as Executor has no knowledge of any environmentally unsafe conditions or latent defects. These representations shall survive the closing.

6. **DAMAGE TO BUILDINGS.** If any buildings or other improvements are substantially damaged or destroyed prior to the closing, Buyer 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 Agreement. 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 section.

7. **GENERAL PROVISIONS.** Upon acceptance, this offer shall become a complete agreement binding upon and inuring to the benefit of Buyer 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. Buyer has examined the Property and, except as otherwise provided in this Agreement, 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 Agreement.



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IN WITNESS WHEREOF, this Agreement has been duly executed in duplicate by the undersigned this 21st day of MARCH, 1996.

Witness:

Linda Schmitt
Sharon P. Ertel

Buyer:

CITY OF CENTERVILLE

By

Gregory B. Horn
Gregory B. Horn, City Manager
100 West Spring Valley Road
Centerville, Ohio 45458

ACCEPTANCE:

Donald S. Williams, the duly appointed and acting Executor of the Estate of Joan Williams, deceased, hereby accepts the foregoing offer and represents to the Buyer that he has full power and authority to so act and that there are no other claimants to the title to the real estate involved in this transaction.

Witness:

Marie Jane Saugli
Constance J. Cooper

SELLER:

Donald S. Williams
Donald S. Williams, Executor

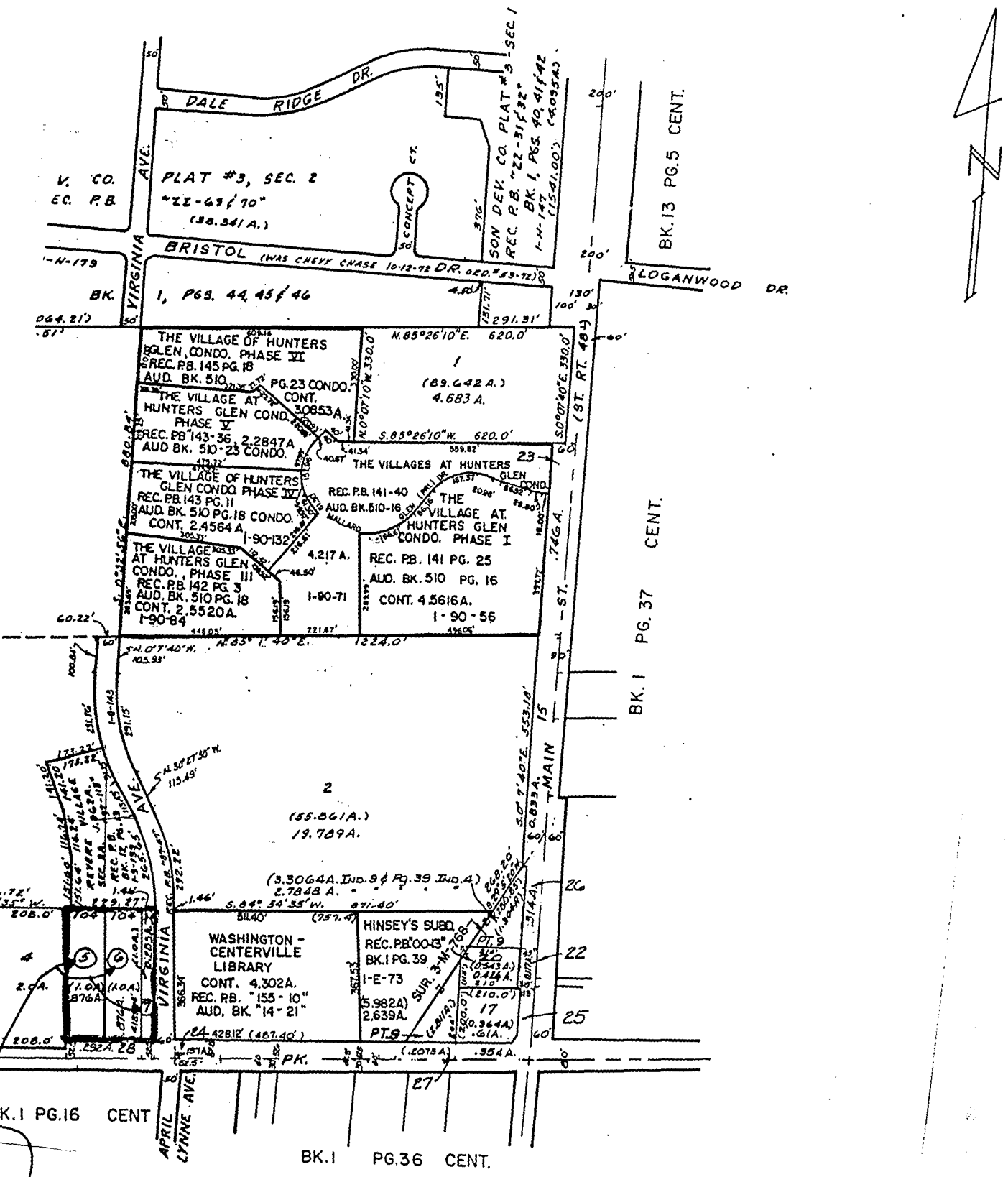
Seller's Address:
217 Monarch Road
Centerville, Ohio 45458

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Subject Property:
 Montgomery County, Ohio Auditor's Book Parcel Numbers:
 Centerville, Ohio O68-1-35-5,6,&7

13 March 1996

GEORGE A. BARNETT
 COUNTY