

RESOLUTION NO. 38-95

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN James Singer ON THE
5th DAY OF June, 1995.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE PURCHASE OF REAL PROPERTY OWNED BY THE CENTERVILLE BOARD OF EDUCATION, CENTERVILLE CITY SCHOOLS.

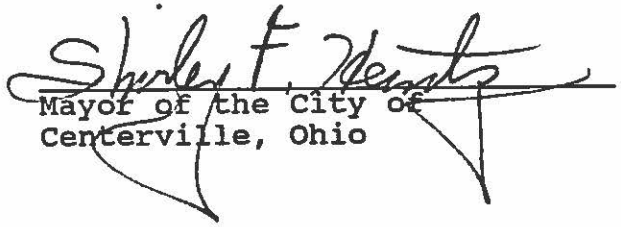
WHEREAS, the City of Centerville desires to purchase 1.091 acres of land more or less situated in the City of Centerville, Montgomery County, Ohio, being a part of the northwest quarter of Section 24, Township 3, Range 5 of the Miami River Survey from The Centerville Board of Education, Centerville City Schools as described herein by Exhibit "A" attached hereto, for a total price of \$40,000.00, 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 interests 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 real estate with The Centerville Board of Education, Centerville City Schools for the purchase of 1.091 acres more or less for a purchase price of \$40,000.00, property as described by Exhibit "A" attached hereto and incorporated herein.

PASSED this 5th day of June, 1995.


Mayor of the City of
Centerville, Ohio

ATTEST:


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. 38-95, passed by the Council of the City of Centerville, Ohio, on the 5th day of June, 1995.


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

Centerville, Ohio
May _____, 1995

1. **OFFER.** The undersigned Purchaser offers to buy on the terms and conditions set forth below, the real property (the "Property") located and as more particularly described in Exhibit A attached.

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

3. **PRICE.** (A) The Purchaser agrees to pay for the Property the sum of FORTY THOUSAND DOLLARS (\$40,000.00) payable by certified or cashier's check at the closing.

(B) In addition to the payment of the aforesaid purchase price, Purchaser agrees that if, at any time after closing, it sells the Property it will pay to Seller an amount equal to FIFTY PERCENT (50%) of the sales price therefore in excess of FORTY THOUSAND DOLLARS (\$40,000.00) after deducting therefrom the cost of improvements. "Cost of improvements" shall include any of Purchaser's expenditures for construction, engineering, grading, testing, site preparation, roadway improvements (whether on or off site if part of the improvement project) permit fees and legal expenses. Payment of this additional amount, if any, shall be made to Seller within TEN (10) days after Purchaser has received payment for the sale of the Property or within TEN (10) days after the completion of all improvements, whichever is later. This provision shall survive any closing and shall not be merged with the deed.

4. **DEED.** Seller shall furnish a transferable and recordable limited warranty deed conveying to Purchaser a marketable title to the Property (as determined with reference to the Ohio State Bar Association Standards of Title Examination) free and clear of all 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, and all other easements and restrictions of record or ascertainable by inspection, (d) any matters which an accurate survey or physical inspection of the Property would reveal. If the 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 ten (10) days after receipt of written notice from Purchaser, and if necessary the closing date shall be extended to permit Seller the full ten (10) days to clear title. Seller shall have the right at closing to pay for the removal of any encumbrances or liens out of the purchase price. If Seller is unable or unwilling to cure and/or remove any such defects or other matters (other than monetary liens) by the date of closing, as extended by this Paragraph 4, Purchaser's sole remedy shall be to terminate the Contract by

written notice to Seller, in which event the parties shall be released from all further obligations under this Contract. Purchaser's failure to make objections to title or any other condition by the date of closing shall be deemed to be and shall be an irrevocable waiver of objection.

5. **INSPECTION.** Purchaser reserves the right to make certain inspections of the Property as provided in the Inspection Addendum attached hereto as a part hereof.

6. **TAXES.** Purchaser shall pay a pro rata share of the semi-annual installment of real estate taxes and annual assessment, both general and special, becoming due and payable in June, 1995, and all such taxes and assessments becoming due and payable thereafter. The Seller's warranty that all taxes and assessments have been paid shall not include such pro-rated installment. In pro-rating, Seller shall pay 1/365th of the total taxes shown on the two (2) most recent semi-annual tax statements multiplied by the number of days from the statutory due date of the last semi-annual installment to and including the date of delivery of deed. Seller shall pay his pro-rated share of the taxes and assessments in cash to the Purchaser, or deduct the same from the purchase price at the time of closing.

7. **SELLER'S REPRESENTATIONS.** Seller represents that Seller is the sole owner of the Property. Seller further represents that with respect to the Property (a) no orders of any public authority have been received by Seller, (b) no work has been performed or improvements constructed that may result in future assessments and (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. Except to the extent expressly provided in this Paragraph 8, Seller has made no representations or warranties to Purchaser whatsoever, oral or written, express or implied, with respect to the Property or any matters pertaining thereto, including, without limitation, any environmental matters.

8. **POSSESSION.** Possession shall be given, subject to the Permitted Encumbrances, at closing.

9. **ENVIRONMENTAL CLAUSE.** Seller expressly warrants and represents that during Seller's ownership thereof and to the best of Seller's knowledge otherwise, the Property has never been used as a landfill, disposal site, or location for the generation of any hazardous waste as that term is defined by the Resource Conservation and Recovery Act of 1976, and/or the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by Superfund Amendments and Reauthorization Act of 1986, state and local statutes and ordinances governing hazardous wastes, or by regulations promulgated by any Federal, state or local agency pursuant to said Acts, statutes or ordinances; nor has said Property been used as a landfill, disposal site, or location for the generation of any hazardous substance or environmental

pollutant or contaminant; nor has said Property been used for the operation of any business that has been manufactured or used such hazardous materials; except as may otherwise be disclosed herein. Seller further has no knowledge of the Property being used in any of the foregoing manners by any prior owner.

10. **BROKERAGE.** Each party represents and warrants to the other party that there is no broker or other person entitled to a brokerage commission or similar fee or compensation in connection with this Contract.

11. **ACCEPTANCE; CLOSING.** This offer shall remain open for acceptance until at 4:59 p.m. on the _____ day of _____, 1995. The closing for delivery of the deed and payment of the balance of the purchase price shall be held within _____ business days of Seller's acceptance at a time and place mutually agreed upon by Seller and Purchaser. 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 the Broker procuring the Purchaser shall designate the time and place of closing.

12. **NOTICE.** All notices and communications required or permitted to be given or made to Seller or Purchaser under this Agreement shall be deemed to be served three (3) days after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to Seller at 111 Virginia Avenue, Centerville, Ohio 45458, Attn: Frank DePalma, with a copy to Harry G. Ebeling, Esq., 2700 Kettering Tower, Dayton, Ohio 45423, and to Purchaser at 100 West Spring Valley Road, Centerville, Ohio 45458, Attn: Gregory B. Horn, with a copy to Robert N. Farquhar, Esq., Altick & Corwin, One Dayton Centre, Suite 1700, One South Main Street, Dayton, Ohio 45402, or such other address as either party shall notify the other in writing.

13. **GENERAL PROVISIONS.** Upon acceptance, this offer and the attached Exhibits and Inspection Addendum 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. Notwithstanding the foregoing, Purchaser shall not assign this Contract or any of its rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing signed by both parties. Upon Purchaser's examination of the Property as provided herein, and except as otherwise provided in this Contract, Purchaser is accepting the Property "AS IS", "WHERE 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. All representations, warranties and agreements in this Contract shall survive the closing. Any words used in this offer and the

acceptance thereof shall be construed to mean either singular or plural as indicated by the number of signatures hereto.

14. CONTINGENCIES. This Agreement is contingent upon the Purchaser's ability to obtain adequate financing to Purchaser's satisfaction and the inspection by Purchaser of the Property, which shall be to the Purchaser's sole satisfaction including that no hazardous waste or hazardous substance is found on the Property, which inspections shall be at Purchaser's expense. The Purchaser shall have thirty (30) days from the date of execution hereof to perform its inspection of the Property. If during the Inspection Period Purchaser determines that a Phase II Environmental is required, the Inspection Period shall automatically be extended an additional thirty (30) days.

WITNESSES:

PURCHASER:

CITY OF CENTERVILLE, OHIO

By: _____
Gregory B. Horn, City Manager

Make Deed to: City of Centerville

ACCEPTANCE

CENTERVILLE BOARD OF EDUCATION
CENTERVILLE CITY SCHOOLS

By: _____

Name Printed: _____

Title: _____

INSPECTION ADDENDUM TO CONTRACT TO PURCHASE

PURCHASER:

PROPERTY:

1. Inspection Periods.

- (a) Purchaser shall have a period of twenty (20) business days after the date this Contract is fully executed (the "Physical Inspection Period") to conduct physical inspections of the structural, mechanical and utility systems, soils conditions and any other physical characteristics of the land and improvements. To the extent Purchaser cannot reasonably complete such inspections within such twenty (20) business-day period, Purchaser may extend the Inspection Period for no more than twenty (20) additional business days by written notice to Seller given no later than the last day of such twenty (20) business-day period.
- (b) Purchaser shall have a period of twenty (20) business days after the date this Contract is fully executed (the "Environmental Inspection Period") to conduct an environmental site assessment of the Property. To the extent Purchaser cannot reasonably complete such assessment within such twenty (20) business-day period, Purchaser may extend the Environmental Inspection Period for no more than twenty (20) additional business days by written notice to Seller given no later than the last day of such twenty (20) business-day period. Purchaser and Seller acknowledge that Broker has made no independent investigation to determine whether hazardous materials exist in, on or about the Property.
- (c) During each applicable Inspection Period, as extended to the extent permitted above, Purchaser and Purchaser's inspectors and contractors shall be permitted access to the Property, at Purchaser's sole risk, at all reasonable times. Purchaser shall be responsible for any damage to the Property caused by Purchaser or Purchaser's inspectors or contractors. All inspectors selected by Purchaser shall be qualified and licensed in the State of Ohio when appropriate. Unless otherwise provided in this Contract, Purchaser shall pay the costs of all inspections.

2. Notice of Objections.

If Purchaser's inspections of the Property disclose any matters to which Purchaser reasonably objects, Purchaser shall

notify Seller in writing specifying the objections prior to the expiration of the applicable Inspection Period, as extended. FAILURE TO NOTIFY SELLER OF ANY OBJECTIONS BEFORE EXPIRATION OF THE APPLICABLE INSPECTION PERIOD SHALL CONSTITUTE A WAIVER OF SUCH OBJECTIONS AND PURCHASER SHALL TAKE THE PROPERTY "AS IS" WITH RESPECT TO SUCH MATTERS. THIS WAIVER SHALL SURVIVE THE CLOSING.

3. Right to Cure.

In the event Purchaser makes timely objections as permitted in Paragraph 2, Seller shall have the right, for a period of twenty (20) business days after expiration of the applicable Inspection Period (the "Cure Period"), to either (a) make all necessary repairs or replacements, or take such other actions as may be reasonably necessary, to cure the matters objected to by Purchaser in a good and workmanlike manner or (b) provide other assurances reasonably acceptable to Purchaser, by means of an escrow of funds at closing or otherwise, that the matters to which Purchaser has objected will be repaired, replaced or otherwise cured with due diligence and in a good and workmanlike manner. A separate Cure Period shall apply to each Inspection Period. If necessary, the closing shall be adjourned to permit Seller the full twenty (20) business days to make such repairs or replacements, take such other actions or provide such other assurances.

4. Right to Cancel.

If Seller is unwilling or unable to cure the matters to which Purchaser has objected or to provide the assurances described above during the applicable Cure Period, Purchaser shall have the right, at Purchaser's sole option, to cancel the Contract, in which the Earnest Money shall be returned to Purchaser and the parties shall be released from all further obligations under the Contract. This right of cancellation shall be exercised, if at all, by giving written notice to Seller within five (5) calendar days after the expiration of the applicable Cure Period. FAILURE BY PURCHASER TO CANCEL THIS CONTRACT WITHIN SUCH FIVE (5) DAY PERIOD SHALL CONSTITUTE A WAIVER BY PURCHASER OF ANY UNCURED OBJECTIONS, AND PURCHASER SHALL TAKE THE PROPERTY "AS IS" WITH RESPECT TO SUCH MATTERS. THIS WAIVER SHALL SURVIVE THE CLOSING.

5. Indemnity.

Purchaser shall indemnify and hold harmless Seller from any loss, liability, cost or expense (including, without limitation, attorneys' fees), whether for death, personal injury or damage to property, arising out of or occurring in connection with any inspections performed by Purchaser pursuant to this Inspection Addendum and/or any work done by Purchaser on the Property as a result of such inspections. The foregoing indemnity shall cover the actions or omissions

of Purchaser, its agents, employees, contractors or other representatives.

PURCHASER:

SELLER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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South Suburban Road Connector

Description of parcel owned by Washington Township (Centerville) Board of Education

Situate in the State of Ohio, County of Montgomery, City of Centerville, being a part of the Northwest Quarter of Section 24, Township 3, Range 5 of the Miami River Survey, bounded and described as follows:

Beginning at an iron pin marking the Southeast corner of lands of the Washington Township Trustees (D. B. 1947, Page 507) and in the West right-of-way of the Pennsylvania Railroad (C. L. & N Division) said beginning point being referenced: S., 87° 40' 56" W., 629.42 ft.; thence N., 00° 02' 22" W., 1496.30 ft., to a stone in the center of Centerville-Station Road; thence, S., 88° 23' 00" W., 2097.70 ft., to the Northwest corner of aforesaid Section 24; thence, from said beginning point, leaving lands of said Washington Township Trustees and running along the West right-of-way of said Pennsylvania Railroad.

S., 01° 01' 00" E., 160.00 ft., to an iron pipe; thence, leaving the West right-of-way of said Pennsylvania Railroad and running entirely within lands of subject owner,

S., 87° 40' 56" W., 297.00 ft., to an iron pipe; thence,

N., 01° 01' 00" W., 160.00 ft., to an iron pin marking the Southwest corner of lands of said Washington Township trustees; thence, with the south line of lands of said Washington Township Trustees,

N., 87° 40' 56" E., 297.00 ft., to the place of beginning, containing 1.091 acres, more or less, subject to all existing easements and legal highways and being part of the land conveyed to subject owner by deed recorded in Deed Book 1913, page 287 of the record of Montgomery County, Ohio.

Prior Deed Reference: Deed Volume 1913, Page 287, Montgomery County Deed Records.