

RESOLUTION NO. 37-94

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN Brooks Crompton ON THE
16th DAY OF May, 1994.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE PURCHASE OF PROPERTY OWNED BY SHERYL L. SPIRES LOCATED IN WASHINGTON TOWNSHIP, MONTGOMERY COUNTY, OHIO.

WHEREAS, the City of Centerville desires to purchase 1.115 acres of land more or less located in Washington Township, Montgomery County, Ohio, property as described herein by Exhibit "A" attached hereto, and commonly known as the Sheryl L. Spires property for a total purchase price of \$246,600.00, 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 Sheryl L. Spires for the purchase of 1.115 acres more or less for a purchase price of \$246,600.00, property as described by Exhibit "A" attached hereto and incorporated herein.

PASSED this 16th day of May, 1994.

Shirley F. Neantz
Mayor of the City of
Centerville, Ohio

ATTEST:

Marie Ann Savelle
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. 37-94, passed by the Council of the City of Centerville, Ohio, on the 16th day of May, 1994.

Marie Ann Savelle
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

EXHIBIT "A"

(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.)



Dayton, Ohio March 18 19 94

Broker(s), on

1. OFFER: The undersigned Purchaser offers to buy through
 2. the terms and conditions set forth below, the real property (the "Property") located in Washington Township
 3. County of Montgomery State of Ohio, described as follows: 9890 Yankee Street
 4. 1.115 AC 5-2-5 Washington Township
 5. (Street and Number) (City or Township) (Legal Description)

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
 7. 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
 8. windows and doors; television antennae; curtain rods; garage door opener and control(s); all landscaping and seller's to keep wood
 9. stove insert, all blue carpeting, all curtain rods, curtains and drapes,
 10. spa, refrigerator, dishwasher and range,
 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. 2. PRICE. Purchaser agrees to pay for the Property the sum of \$ 57,000.00 ACCEPTED BY
 13. 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 SS
 14. (Conventional) (FHA) (VA) at rates and terms generally pre- NAH

15. waiving in the Dayton, Ohio, area
 16. Mortgage discount points/origination fees/Purchaser's closing costs not to exceed _____ are to be paid by Seller. Seller shall have
 17. the option to cancel this Contract if Purchaser fails either to (a) apply for a mortgage loan within _____ days after the date of acceptance of this offer, or (b) obtain
 18. mortgage loan approval within _____ 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
 20. 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,
 21. and encumbrances whatsoever, except (a) legal highways, (b) any mortgage assumed by Purchaser, (c) all installments of taxes and assessments becoming due and
 22. 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
 23. from using the Property for the following purpose: residential If title to all or part

24. 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
 25. 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. INSPECTION. Purchaser reserves the right to make the following inspections of the Property (check one): None _____ See Inspection Addendum 4
 27. If an Addendum is attached hereto, all terms of the Addendum are incorporated by reference into this Contract.

28. 5. 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
 29. 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
 30. 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
 31. Property were converted to a non-agricultural use (whether or not such conversion actually occurs), unless Purchaser has indicated in paragraph 3 that Purchaser
 32. 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
 33. 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-
 34. annual installment (June 30 or December 31) to the date of closing. If the Property is located outside of Montgomery County, the tax proration shall be made in
 35. accordance with (check one): X the Montgomery County "short proration" method or _____ the "long proration" method, in which Seller's share is
 36. 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
 37. proration method is used, any special assessments which are payable in a single annual installment shall nevertheless be prorated on the long proration method.
 38. All proration shall be based upon the most recent available tax rates, assessments and valuations.

39. 6. SELLER'S REPRESENTATIONS. Seller represents that those signing this Contract constitute all of the owners of the title to the Property, together with their
 40. respective spouses. Seller further represents that with respect to the Property (a) no orders of any public authority are pending, (b) no work has been performed or
 41. improvements constructed that may result in future assessments, (c) no notices have been received from any public agency with respect to condemnation or appropri-
 42. ation, 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
 43. or other hazardous substances having been stored, disposed of, concealed within or released on or from the Property and no other adverse environmental conditions
 44. affect the Property. These representations shall survive the closing.
 45. 7. 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
 46. closing. If the Property is owner-occupied, possession is to be given 60 days after closing at 2:00 A.M./P.M. and utilities shall not be prorated as above
 47. 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.
 48. 8. DAMAGE TO BUILDINGS. If any buildings or other improvements are substantially damaged or destroyed prior to the closing, Purchaser shall have the option
 49. (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
 50. Property adequately insured against fire and extended coverage perils prior to closing. Seller agrees to maintain the Property in its present condition until delivery
 51. of possession, subject to ordinary wear and tear and the provisions of this paragraph.

52. 9. ACCEPTANCE; CLOSING. This offer shall remain open for acceptance until March 25, 1994 at 4:30 p.m. The closing for delivery of the deed
 53. and payment of the balance of the purchase price shall be held on or before May 31, 1994, at a time and place mutually agreed upon by Seller and
 54. 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 Selling Broker shall designate
 55. the time and place of closing. this contract is contingent upon the Seller's ability to secure
 56. 10. EARNEST MONEY; DEFAULT. Upon presentation of this offer, Purchaser has delivered to _____ Broker,
 57. the sum of \$ _____ as earnest money, to be (i) deposited in the Broker's trust account promptly after acceptance of this offer or (2)
 58. 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
 59. 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.
 60. 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
 61. 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
 62. 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
 63. 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
 64. money within 30 days after the date of the Broker's notice. If the Broker does not receive a written demand from the Seller within the 30-day period, the Broker shall
 65. return the earnest money to Purchaser. If a written demand from Seller is received by the Broker within the 30-day period, the Broker shall retain the earnest money
 66. 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
 67. court pursuant to applicable court procedure. Payment or refund of the earnest money shall not prejudice the rights of the Broker(s) or the non-defaulting party in
 68. an action for damages or specific performance against the defaulting party.

69. 11. GENERAL PROVISIONS. Upon acceptance, this offer shall become a complete agreement binding upon and inuring to the benefit of Purchaser and Seller and
 70. 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
 71. conditions, representations, warranties or agreements. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the
 72. 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"
 73. 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
 74. 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.

75. WITNESS: Michael A. Haverland Purchaser City of Centerville
 76. MAKE DEED TO: City of Centerville Purchaser Gregory B. Horn
 77. Michael A. Haverland in acceptance 4/5/94 Address 100 W. Spring Valley Road

78. Signed by Michael A. Haverland in my presence this 5th day of April, 1994, Date: Mar 25, 1994
 79. The undersigned Seller (or _____) accepts the foregoing offer, or (✓) counteroffers according to the initialed changes set forth above or in the attached Addendum,
 80. which counteroffer shall remain open for acceptance until April 5, 1994 at 11:59 P.M.

81. WITNESS Michael Haverland Seller _____
 82. Not accepted at this time. Thank you for your offer. Seller _____
 83. Seller _____ Address 9890 Yankee St.
 84. Seller _____

85. DEPOSIT RECEIPT Date: _____, 19 _____
 86. Receipt is acknowledged of \$ _____ earnest money, to be deposited in the undersigned Broker's trust account upon acceptance
 87. of this offer and to be applied as provided in paragraph 10 above.
 88. _____ By _____ REALTOR®
 (Firm Name) (Agent's Sign)



CONTRACT TO PURCHASE REAL ESTATE INSPECTION ADDENDUM

(Form approved by the Dayton Area Board of REALTORS®)



PURCHASER: City of Centerville

PROPERTY: 9898 Yankee Road

1. Inspection Period. Purchaser shall have the right for a period of 45 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:

- | | | | |
|------------|---|--------------------------------|---|
| Structural | Roof | Heating & Furnace | <input type="checkbox"/> Septic System |
| Basement | Electrical | Air Conditioning | <input checked="" type="checkbox"/> Radon |
| Fireplace | Plumbing | Appliances | <input checked="" type="checkbox"/> Other (specify) |
| Chimney | <input checked="" type="checkbox"/> Well (quality and quantity) | Termite or Wood Boring Insects | <u>Phase I & II Environmental Assessment</u> |

Inspections shall be made by qualified contractors and inspectors (duly licensed and certified where appropriate) 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. 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 defects 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.

3. 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 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 UNCURED DEFECTS AND PURCHASER SHALL TAKE THE PROPERTY "AS IS" WITH RESPECT TO SUCH DEFECTS.

4. 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.

5. 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 warranty 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 selected.

6. 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

The City does not wish to accomplish any walk-through inspections or appraisals on the property. The attached residential appraisal report dated 7-18-91 will be used for the purposes of this real estate purchase.

Note #1: Seller is informing Purchaser that the well is not being used as water storage tank is used for water supply.

City of Centerville
Purchaser

Gregory R. Horn
Purchaser

12-6-93
Date

[Signature]
Seller

[Signature]
Seller

12-13-93
Date