

RESOLUTION NO. 3-89
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bernard Samples ON THE
20th DAY OF FEBRUARY, 1989.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH J. MILTON ZIMMERMAN FOR THE PURCHASE OF 28.813 ACRES MORE OR LESS LOCATED IN THE CITY OF CENTERVILLE, OHIO AND AUTHORIZING THE PAYMENT OF \$374,569.00 THEREFORE TOGETHER WITH ALL CLOSING CHARGES.

WHEREAS, the City of Centerville is desirous of purchasing 28.813 acres more or less from J. Milton Zimmerman in order to expand its park area and for other municipal uses; and

WHEREAS, J. Milton Zimmerman is willing to sell said parcel for \$13,000.00 per acre for a total of \$374,569.00 exclusive of closing costs; and

WHEREAS, the Council of the City of Centerville is of the opinion that it would be in the best interests of the citizens of the City of Centerville 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 with J. Milton Zimmerman for the purchase of 28.813 acres of land more or less for a purchase price of \$374,569.00 exclusive of closing costs, all of which is in accordance with a certain purchase contract, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

Section 2. The City Manager is hereby authorized and directed to take any and every action necessary to carry out said purchase and to pay any closing costs, recording fees, transfer fees, title insurance premiums and other such charges associated with said purchase.

Section 3. This measure being a resolution, it shall become effective immediately upon passage.

PASSED THIS 20th day of February, 1989.

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

ATTEST:

Marilyn J. Saughli
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 3-89, passed by the Council of the City of Centerville, Ohio on the 20th day of February, 1989.

Marilyn J. Saughli
Clerk of the Council

Approved as to form, consistency with existing ordinances, the charter & constitutional provisions.
Department of Law
Robert N. Farquhar
Municipal Attorney

Karl M. Schab
PROFESSIONAL ENGINEER & SURVEYOR

DESCRIPTION
of a 28.813 Acre Tract of Land located in
Centerville, Ohio

Located in Section 30, Town 3, Range 5, M.R.S., City of Centerville, Washington Township, Montgomery County, Ohio; being part of the lands deeded to J. Milton Zimmerman, as recorded in Deed Book 2469, Page 354 of the deed records of Montgomery County, Ohio, and being more particularly described as follows:

Beginning at an iron pin in the west line of said Section 30, Town 3, Range 5, M.R.S., marking the northwesterly corner of said J. Milton Zimmerman - lands; said iron pin marking also the southwesterly corner of Lot 431 of the Son Development Co. Plat #3, Section 4, as recorded in Plat Book 61, Page 48.

Thence, from said point of beginning, with the northerly line of said Zimmerman - lands, coinciding with the southerly line of the Son Development Co. Plat #3, Section 4 (P.B. 61, Pg. 48) and the Son Development Co. Plat #3, Section 2 (P.B. "ZZ", Pg. 69 & 70), North $85^{\circ}-21'-10"$ East, a distance of 1420.51 feet to an iron pin in the East right-of-way line of Virginia Avenue, marking the southwest corner of Lot 289 of said Son Development Plat #3, Section 2.

Thence, on a new division line, South $0^{\circ}-30'-30"$ East, a distance of 879.96 feet to an iron pin in the east right-of-way line of Virginia Avenue, in the southerly property line of said J. Milton Zimmerman - lands, marking also the northwest corner of the lands deeded to Revere Village Limited Partnership (Microfiche #86-6A04, A09).

Thence, along the north line of the lands conveyed to the City of Centerville (Microfiche #74-136 B09), coinciding with the southerly line of said J. Milton Zimmerman lands, South $84^{\circ}-56'-30"$ West, a distance of 1423.80 feet to an iron pin marking the southwesterly corner of said Zimmerman property.

Thence, along the westerly line said Zimmerman property and with the westerly line of Section 30, Town 3, Range 5, M.R.S., North $0^{\circ}-20'-50"$ West, for a distance of 890.40 feet, to the point of beginning containing 28.813 (twenty-eight and 813 thousandths) Acres, more or less, subject, however, to all conditions, restrictions, easements and rights-of-way on record.

February 6, 1989

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT FOR PURCHASE OF REAL ESTATE ("this Agreement") is entered into on January 18, 1989, by and between Dr. J. Milton Zimmerman and Doris Zimmerman, 4345 Delco-Dell Road, Dayton, Ohio, (Seller), and, City Of Centerville, 190 West Spring Valley Road, Centerville, Ohio (Buyer).

WITNESSETH:

Seller agrees to sell to the Buyer which agrees to purchase the real estate hereinafter described upon the following terms and conditions:

1. PROPERTY: The real estate is located in the State of Ohio, County of Montgomery and City of Centerville, consisting of approximately twenty-eight and seven-tenths acres, subject to Buyer's certified survey and being more particularly shown in EXHIBIT-A attached hereto and made part hereof ("the Property").

2. PURCHASE PRICE AND TERMS: The Purchase Price shall be THREE HUNDRED SEVENTY THREE THOUSAND ONE HUNDRED (\$373,100) DOLLARS, subject to sub-paragraph (c) herein (the "Purchase Price"), and payable as follows:

(a) Three Thousand One Hundred (\$3,100) Dollars as Buyer's earnest money upon the execution of this Agreement to be applied to the Purchase Price and to be held in escrow as provided hereinafter.

(b) Three Hundred Seventy Thousand (\$370,000) Dollars upon delivery of the deed.

(c) Seller and Buyer agree and acknowledge that the Purchase Price stated within paragraph #2 above has been determined on the basis Thirteen Thousand Dollars (\$13,000) per acre. Buyer shall have a survey made at its own cost, and if said survey finds that the Property described hereinabove consists of more or less than twenty-eight and seven-tenths (28.70) acres, the difference shall be adjusted either by addition to, or allowance against, the total Purchase Price, as the case may be, at the date of Closing.

3. ESCROW: Upon the execution of this Agreement, the Buyer shall deposit in escrow with Jeffrey B. Shulman (the "Escrow Agent") the sum of Three Thousand One Hundred (\$3100) Dollars (the "Escrow Fund") simultaneously with the execution and delivery of this Agreement. The Escrow Agent shall hold the Escrow Fund pending the Closing, at which time the principal and interest in the Escrow Fund shall be disbursed to the Seller as part of the Purchase Price. The Escrow fund shall be invested in a money market account, or another short-term investment with a bank or savings and loan association by the Escrow Agent.

In the event of Buyer's failure to carry out its obligations set forth herein, the Escrow Agent shall disburse the principal and the interest earned thereon in the Escrow Fund to the Seller, and Seller's recovery against the Buyer for damages arising as a result of such default shall be strictly limited to the Escrow Fund. In the event that the Seller fails to carry out their obligations set forth herein, or the conditions to Buyer's obligations set forth in paragraph 8 are not satisfied at or prior to the Closing, the Escrow Fund and interest earned shall be returned to the Buyer.

The Escrow Agent may act in reliance upon any writing or instrument or signature which, in good faith, he believes to be genuine. He may assume the validity and accuracy of any statements or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice or instructions in connection with the provisions of this Agreement has been authorized to do so. The Escrow Agent's duties hereunder shall be limited to the safekeeping of the Escrow fund by him and for the disposition of the Escrow Fund in accordance with the written instructions described above. If any party shall be in disagreement about the interpretation of this Agreement or about the obligations of the parties hereto, or the parties for whose benefit this Agreement is entered into, or about the propriety of any action contemplated by Escrow Agent hereunder, the Escrow Agent may, in his sole discretion, file an interpleader action to resolve the disagreement. Seller and Buyer shall indemnify and hold Escrow Agent harmless from all costs and expenses, including reasonable attorney fees, in connection with such interpleader action or otherwise in connection with the performance of this Agreement.

4. CLOSING DATE AND PLACE: Unless extended in writing by Buyer and Seller, the sale shall be closed on or before March 1, 1989 ("the Closing"). Seller shall deliver possession of the Property to Buyer on the date of the Closing. The Closing shall occur at the office of Escrow Agent or such other place mutually agreed by the parties.

5. TITLE TO BE CONVEYED: At the Closing, Seller shall execute and deliver to Buyer a recordable general warranty deed, conveying marketable and insurable title to the Property, free and clear of all liens, encumbrances, and special assessments, except normal real estate taxes for the year of closing and subsequent years and sewer, water, gas, and electric line easements, provided such easements do not interfere with the Buyer's intended use of the Property.

6. CLOSING COSTS AND PRORATIONS: Seller shall pay for the preparation of the Deed and the Transfer Fee relating to the sale. Buyer shall pay for recording the Deed. Taxes and assessments shall be prorated as of the date of the Closing on a "due and payable" basis as though such installments covered the six (6) month period immediate preceding the date of such installment. Buyer's cash payment at Closing shall be increased or decreased as may be required by the Closing costs and prorations. If the amount of taxes and assessments due for the year of closing cannot be ascertained, the prorations shall be calculated using rates and assessed valuations of the previous year, with known charges.

7. MECHANICS' LIENS, INDEMNIFICATION: Seller shall indemnify and hold Buyer harmless from any claims, liabilities, damages or expenses which Buyer may incur by reason of any mechanics' or materialmen's liens being lodged against the real estate; and at the Closing, Seller shall deliver to Buyer an affidavit to such effect.

8. PRE-CONDITION OF BUYER'S OBLIGATION:

A. Buyer's obligations under this Agreement are conditioned on each of the following:

1. Confirmation that water and gravity sanitary sewer service and such other utilities and facilities for Buyer's intended use are available to the Property in amounts and at times sufficient for Buyer's intended use of the Property.

2. Confirmation that Buyer's intended use of the Property complies with all zoning, land use, environmental and other regulations.

3. Confirmation that the Property is contiguous to a public right of way.

4. *The property shall be free of any adverse environmental conditions.*

5. At least ten (10) days prior to the Closing date, Buyer shall have received a commitment to issue title insurance policy on the Property (unqualified, except as provided in paragraph 5 and except for standard exceptions pertaining to right-of-way, easements and restrictions of record) in the full amount of the purchase price, issued by a title insurer qualified to do business in Ohio and reasonably satisfactory to Buyer. The premium for such policy of title insurance shall be paid by the Buyer.

If the title is unmarketable or if the commitment reflects exceptions not permitted in this agreement and unacceptable to Buyer, Buyer shall notify Seller in writing, prior to the Closing date, specifying the defects. Seller shall have thirty (30) days after receipt of such notice within which to cure such defects in title to the reasonable satisfaction of Buyer and to the title insurer, and this sale shall be closed within ten (10) days after written notice of such curing to Buyer. If Seller is unable to cure such defects within the thirty (30) day period, Buyer may, at its option, either close and take title subject to the defects or terminate this Agreement, whereupon Escrow Agent shall disburse the Escrow Fund and interest earned thereon to Buyer and all rights and liabilities of both parties arising hereunder shall terminate.

B. Buyer shall have a period of thirty days from the date of this agreement is executed by both parties within which to make inquiries, perform tests and obtain studies relating to the

conditions set forth in subparagraph 8A. Seller shall grant Buyer or its agent(s) access to the Property for the purpose of conducting whatever tests and inspections may be required by Buyer, including soil borings, percolation tests, surveys and the like. Buyer shall indemnify and hold Seller harmless from any claims, liability, damages or expenses incurred by Seller by reason of such tests and studies made by Buyer or its agent.

9. BUYERS RIGHT TO TERMINATE: If any of the conditions set forth in subparagraph 8A are not met, the Buyer may terminate this Agreement and so notify Seller at or before the end of the thirty day period set forth in subparagraph 8B. Upon such termination, the Escrow Agent shall disburse the Escrow Fund to Buyer, and both parties shall be relieved from further obligation under this Agreement.

10. DEFAULT: If Buyer fails to perform any of the conditions or covenants of this Agreement within the times specified herein, the Escrow Agent may disburse the Escrow Fund to Seller, as consideration for the execution of this Agreement and in full settlement of any claims under this Agreement. If Seller shall fail to perform any of his obligations under this Agreement or if warranties of Seller are incorrect, Buyer shall at its option (a) waive the non-performance and proceed to Close; or (b) be entitled to the disbursement of the Escrow Fund in full settlement of any claims under this Agreement.

11. FUTURE GOVERNMENT ACTION: All violations of municipal orders or of requirements noted or issued by any department of any governmental body having jurisdiction or action in any court on account thereof against or affecting the Property at the date of the Closing, whether disclosed by inspection requested by Buyer or not shall be complied with by Seller and the Property conveyed free thereof.

12. WARRANTIES: A. Seller warrants to Buyer that:

1. Seller has not made and will not make any commitments or representations to the applicable governmental authorities or any adjoining or surrounding property owners, which would in any manner be binding upon Buyer or interfere with Buyer's ability to develop and improve the Property as contemplated by Buyer.

2. Seller owns the Property and the right to enter into this Agreement.

3. The Property is presently zoned R1-C.

B. Buyer warrants to Seller that the execution of this Agreement has been duly authorized by the Buyer, in accordance with its Charter and relevant State and City procedure laws and ordinances.

All warranties shall survive the Closing, provided that claim for breach thereof must be made in writing by the Party making the claim within one (1) year of the Closing.

13. SURVEY: Upon its execution of this Agreement Buyer shall procure at the Buyer's expense, a certified survey of the Property by a registered surveyor showing the location of the boundaries and all improvements, easements and encroachment thereof (if any), sufficient to permit issuance of the title insurance policy showing good and insurable title for Buyer's intended use.

14. NOTICES: Whenever notice is to be given under the terms of this Agreement, such notice shall be mailed by "certified mail" ,postage prepaid, addressed to the Seller or Buyer, at their addresses set forth in the first paragraph of this Agreement, or Escrow Agent as the case may be. Either party may change the address to which notice is to be sent by giving written notice thereof to the other.

15. COMMISSIONS: All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by Seller and Buyer in such manner as not to give commission or finder's fee, except for a real estate brokerage commission due Ed Simpson & Company Realty, which Seller agrees to pay; otherwise, the parties indemnify and hold each other harmless

from and against any and all claims or demands with respect to any brokerage fee or agent's commission or other compensation asserted by any person, firm, or corporation in connection with this Agreement.


16. ASSIGNMENT: Neither Buyer nor Seller may assign this Agreement without prior written approval of the other. This Agreement shall be binding upon Buyer and Seller and their respective heirs, executors, administrators, successors and assigns.

17. SURVIVAL OF PROVISIONS: The provisions of this agreement shall survive the execution and delivery of the Deed and shall not be merged therein.

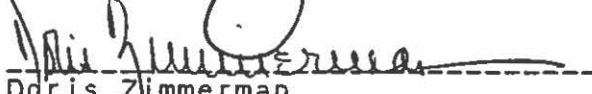
18. ENTIRE AGREEMENT: This Agreement contains the final and entire agreement between the parties hereto. Neither they nor their agents shall be bound any other terms, conditions, statements, warranties or representations, unless reduced to writing and executed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first set forth :

SELLER:



J. Milton Zimmerman



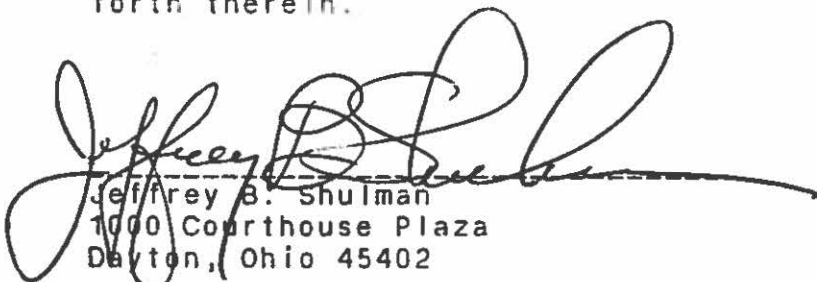
Doris Zimmerman

BUYER: CITY OF CENTERVILLE, OHIO



ITS DULY AUTHORIZED AGENT

The Escrow Agent hereby acknowledges receipt of the THREE THOUSAND ONE HUNDRED (\$3100) DOLLARS Escrow Fund provided for in paragraph (3) of this Agreement; to be held and disposed of by him as set forth therein.



Jeffrey B. Shulman
1000 Courthouse Plaza
Dayton, Ohio 45402

ESCROW AGENT

INVEXTATION TO CENTERVILLE

C 30, T 1, R 5, M 3 - WASHINGTON TWP REC P.B. "U-16 TO 19" - CONT. 3310A.

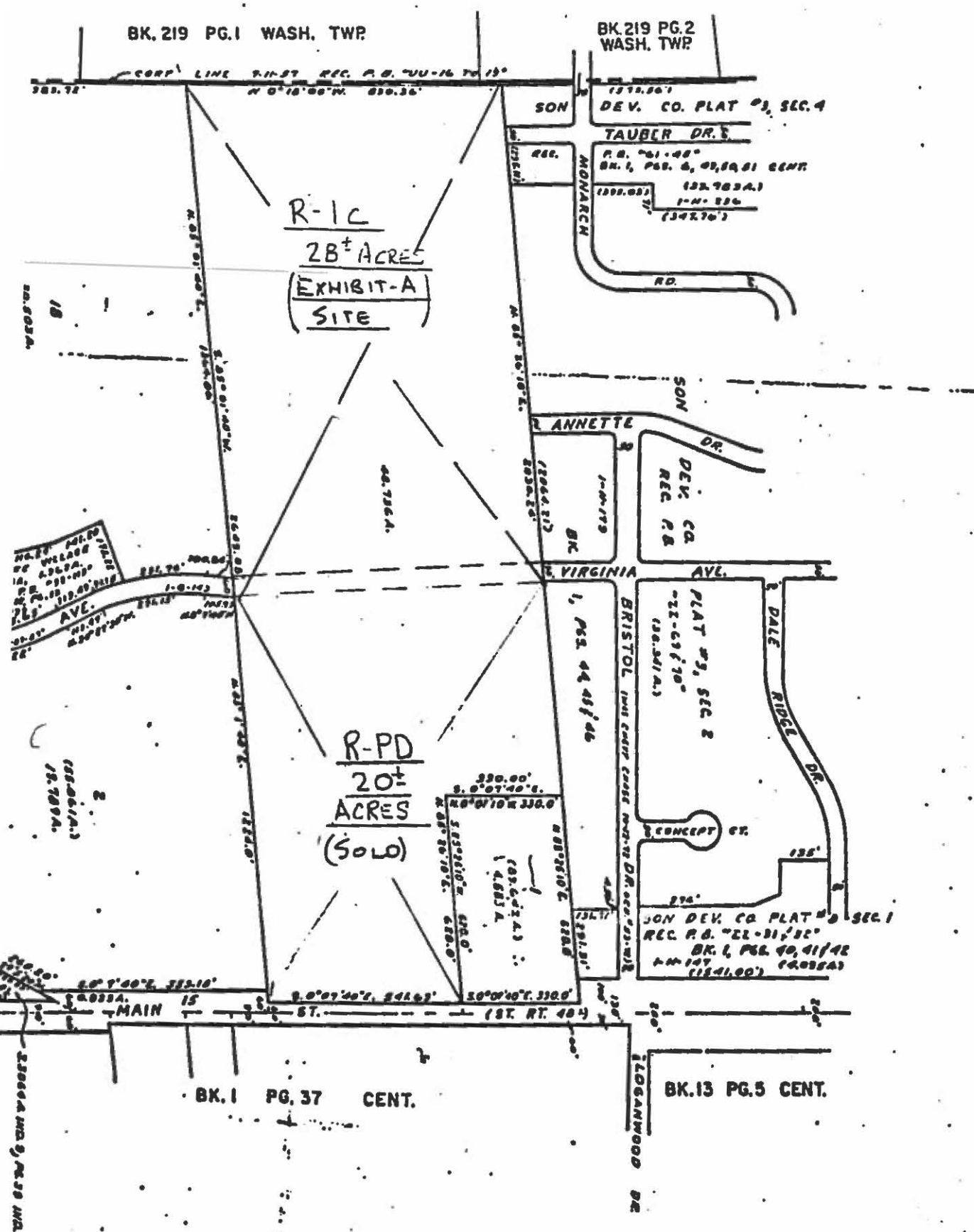


EXHIBIT - A
(28 ACRE SITE)

EO Smarini & Company REALTY
(513) 434-9785

