

RESOLUTION NO. 115-21
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serr ON THE 6th
DAY OF December, 2021.

**RESOLUTION RATIFYING THE ACTION OF THE CITY
MANAGER IN EXECUTING A PURCHASE CONTRACT WITH
DANIEL DOEPKE AND TREVA DOEPKE FOR THE PURCHASE
OF PROPERTY LOCATED AT 98 WEST FRANKLIN STREET AND
RATIFYING THE ACTIONS OF THE CITY MANAGER TO TAKE
ALL STEPS NECESSARY TO EXECUTE DOCUMENTS TO
EFFECT THE PURCHASE OF SAID REAL PROPERTY.**

WHEREAS, Council has determined that it would be in the best interest of its citizens to purchase property located in the City of Centerville from Daniel and Treva Doepke for the purpose of future development or municipal services at 98 West Franklin Street, Centerville, OH; and

WHEREAS, the City of Centerville has negotiated for the purchase of the real property from Daniel Doepke and Treva Doepke upon terms acceptable to the City; and

WHEREAS, the City Manager, in prior consultation with the City Council at open meeting work sessions called pursuant to Section 121.22 of the Ohio Revised Code, discussed the purchase of the property and was instructed by Council to execute a contract for the purchase of the property for a total amount of up to \$235,000; and

WHEREAS, Council has the power to enter into such real property purchase agreement by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution;

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1:

That the previous action of the City Manager in executing a purchase contract with Daniel Doepke and Treva Doepke for the purchase of property located at 98 West Franklin Street for a total price of Two Hundred Thirty Five Thousand and no/100 Dollars (\$235,000.00) is hereby ratified. Said Purchase Contract is marked as Exhibit "A" and incorporated herein.

Section 2: That the previous action of the City Manager in exercising all necessary documents to facilitate a closing for said property be hereby ratified.

Section 3: That the City Manager is hereby authorized and directed to do any and every thing further necessary to carry out the terms of the Purchase Contract and/or the closing on said Property.

Section 4: That this resolutions shall go into effect at the earliest time allowed by law.

PASSED THIS 6th day of December, 2021.



Mayor of the City of Centerville, Ohio

ATTEST:



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. 115-21, passed by the Council of the City of Centerville, Ohio on the 6th day of December, 2021.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

Exhibit "A"

**CONTRACT FOR PURCHASE
AND SALE OF REAL ESTATE**

City of Centerville, an Ohio Municipal Corporation, (hereinafter called "**Buyer**"), hereby offers, subject to the terms and conditions herein contained, to purchase from **DANIEL DOEPKE and TREVA DOEPKE, husband and wife** (hereinafter called "**Seller**"), certain real estate located in the State of Ohio, County of Montgomery, and City of Centerville, at 98 West Franklin Street, Centerville, OH 45458 and more particularly described as follows:

SEE EXHIBITS "A" and "B" ATTACHED.

**Parcel Nos. O68 00106 0022; O68 00106 0035; O68 00106 0069; and
O68 00106 0070**

1. Purchase Price. The purchase price to be paid for the Premises shall be Two Hundred Thirty Five Thousand and no/100 Dollars (\$235,000.00), (the "Purchase Price"). The Purchase Price shall be paid as follows:

- (a) The sum of Five Hundred and no/100 Dollars (\$500.00) (the "Deposit"), in immediately available funds shall be deposited with First American Title Insurance Co. ("Title Company") within five (5) business days following execution and delivery of this Agreement by the last of Seller and Buyer. The Title Company shall hold the Deposit in Escrow. At Closing, the Deposit shall be paid to the Seller and, to the extent so paid to Seller, credited against the Purchase Price.
- (b) At Closing, Buyer shall pay the balance of the Purchase Price after credit for the Deposit and the Closing Extension Payments, if any, if and to the extent paid to Seller in immediately available funds.

2. Survey. Buyer shall be responsible for obtaining, at Buyer's sole cost and expense, any surveys of the Property, including, without limitation, any ALTA/ACSM survey which Buyer desires to obtain. Seller shall cooperate in allowing access to the Property for purposes of obtaining a survey.

3. Seller's Title.

- (a). Within thirty (30) days after the Effective Date of this Agreement, Buyer shall procure a preliminary title report and commitment for an owner's title insurance policy issued by a title insurance company licensed to do business in the State of Ohio in the amount of the Purchase Price covering title to the Property. If the Commitment shows that title to all or part of the Property is unmarketable, as determined with reference to the Ohio State Bar

Association Standards of Title Examination, or is subject to any defect, lien or encumbrance that would materially hinder Buyer's development of the Property for buyer's proposed use as described below (any such defect, lien or encumbrance, a "Title Defect"), Buyer shall notify Seller of its objections not later than thirty (30) days after the date of this Agreement (the "Title Notice") or the same shall be deemed to have been waived by Buyer. To the extent that the Property is subject to any consensual monetary liens (other than liens for real estate taxes and assessments not yet due and payable), and if Buyer objects to such monetary liens in the Title Notice, Seller shall take all actions necessary to satisfy and eliminate the liens at or before Closing. To the extent Buyer's objections involve any other Title Defects, Seller may, but shall have no obligation to, remedy or remove the Title Defects within twenty (20) days after receipt of Buyer's objections made in accordance with this Section. If Seller elects not to remedy or remove the Title Defects or is unable to do so within such twenty (20) day period, Buyer's sole remedy shall be to elect either to (i) waive the Title Defects and accept such title to the Property as Seller is able to convey, without adjustment to the Purchase Price, in which case such Title Defects shall be Permitted Encumbrances, or (ii) terminate this Agreement. Buyer shall so elect by delivering written notice to Seller on or before the ten (10) days after the end of such cure period. If Buyer fails to so deliver such written notice, Buyer shall be deemed to have elected the foregoing option (i). If Buyer terminates this Agreement because of a Title Defect, except as otherwise expressly provided hereby, Seller and Buyer shall be released from all further obligations under this Agreement and the Deposit and any Closing Extension Payments shall be returned to Buyer.

- (c) Buyer shall have the right to object to any new matters that are disclosed on any update to the Commitment prior to Closing that were not disclosed on the Commitment so long as such matters materially hinder Buyer's proposed use of the Property by providing written notice of such objection to Seller within three (3) business days after Buyer's receipt of such updated Commitment, but not later than the date of Closing. Upon receipt of such notice, (i) Seller shall have the same cure rights as set forth in section (a) above, (ii) Buyer shall have the same rights as set forth in section (a) above in the event a cure is not so effected; provided that, Buyer shall deliver notice of termination pursuant to this section on or before the date three (3) business days after the end of the cure period, and (iii) the closing Date shall be extended by an additional thirty (30) day period. If buyer fails to deliver such written notice within such additional cure period, Buyer shall be deemed to have

elected option (i) of this section. If Buyer elects to terminate this Agreement for such Title Defect, except as otherwise expressly provided herein, Seller and Buyer shall be released from all further obligations under this Agreement, and the Deposit and all Closing Extension Payments shall be returned to Buyer.

- (c) The cost of the Commitment and all costs of any title insurance policy issued pursuant to the Commitment shall be paid by Buyer.

4. Taxes and Assessments. At closing, Seller shall pay all delinquent taxes, special taxes, penalties and interest then a lien on the Premises and currently due, both current and reassessed. In the event the Premises has been taxed or is being taxed under a CAUV exemption, Buyer, as a municipal corporation shall be responsible for the recoupment of same. Seller shall credit on the purchase price all unpaid real estate taxes and assessments for the years prior to the closing and a portion of such taxes and assessments for the year of closing prorated through the date of closing. 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. Any special assessments which are payable in a single annual installment shall be prorated on the long proration method. All prorations shall be based upon the most recent available tax rates, assessments and valuations. Seller and Buyer shall adjust and reprorate the tax prorations determined above upon the basis of the final and unappealable real estate tax bills for such years. Such adjustment shall be made no later than 10 days after demand by the party to whom a credit is due. Since the Buyer is a political subdivision of the State of Ohio, there will be no conveyance fee. Buyer shall pay all recording fees. All utilities, if any, shall be prorated to Buyer, as of the date of closing.

5. Deed and Other Documents. Seller agrees at closing to deliver a recordable general warranty deed, with release of dower, if applicable, conveying and warranting good and marketable title in fee simple to the Premises free and clear of all liens, encumbrances, restrictions, conditions, easements and encroachments, except as otherwise herein noted. Unless provided herein to the contrary, all documents required by this Contract shall be in the customary form with the customary terms and provisions for the jurisdiction in which the Premises are located; provided, however, that all such documents shall be submitted for approval of Buyer's counsel at least 10 days before the date of closing, which approval shall not be unreasonably withheld. Seller shall execute and deliver to Buyer, at closing, the Title Company's standard form of affidavit with respect to off-record title matters.

6. Closing. Closing shall take place on or after thirty (30) days after the end of the Inspection Period, or at a time satisfactory to the Buyer and after the waiver or satisfaction of the conditions set forth in Section 6 below, or at such other time as the parties may mutually agree. Notwithstanding any of the other conditions contained in this Contract, Buyer may, at its option, elect to proceed with the purchase of the Premises

whether or not any of said conditions remain unsatisfied. This transaction shall be closed through an escrow with the Title Company in accordance with the general provisions of any usual form of escrow agreement then furnished and in use by the Title Company, with such special provisions as may be required to conform with this Contract. Seller shall deliver possession of the Premises at Closing. Buyer agrees to pay all closing costs.

7. **Conditions to Closing.** Notwithstanding anything contained herein, Buyer's obligation to purchase the Premises is subject to the following terms and conditions:

- (a) That at Closing, if Buyer so chooses at Buyer's expense, Buyer to receive a report satisfactory to Buyer as to the environmental condition of the land and improvements constituting the Property, issued by an engineering firm or other party qualified to issue such report that is acceptable to Buyer. Buyer shall not unreasonably withhold any indication of satisfaction or acceptability of said report.
- (b) That at Closing, Buyer will be furnished with or be able to obtain a policy of title insurance issued by an issuer acceptable to Buyer, which acceptance shall not be unreasonably withheld, and insuring applicable title to the Property subject only to reasonable exceptions approved by Buyer.
- (c) That utilities and access are available to the boundary line of the Property or within a reasonable and accessible distance from the Property.
- (d) Buyer shall have notified Seller and the Title Company of approval of any restrictions, conditions or easements of record encumbering the Premises as disclosed by the title insurance commitment.
- (e) Buyer securing a survey prepared by a licensed surveyor showing topography, the location of all easements and public rights of way, any encroachments and not disclosing any state of facts which would render the Premises unusable for proposed uses thereof.
- (f) Buyer being able to determine that the Premises are free from the presence of any toxic or hazardous substance or other pollutant of any nature as defined or regulated by applicable federal, state or local laws.
- (g) Buyer being able to determine that no part of the Premises is located within or in the vicinity of a wetlands area as regulated by federal, state or local laws, rules, ordinances or regulations.

- (h) The representations and warranties of Seller contained in Section 7 of this Contract shall be true on the date of closing in all material respects as though those representations and warranties were made on that date.
- (i) Buyer being satisfied that the property is free and clear of any liens or encumbrances including, but not limited to, any oral or written leases or tenant rights to the Premises.
- (j) Approval of this Contract by the Centerville City Council following Seller's acceptance of this offer.

8. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer as to the following matters, and shall be deemed to remake all of the following representations, warranties and covenants as of the date of the closing

- (a) The execution and delivery of this Contract by Seller, the execution and delivery of every other document and instrument delivered pursuant to this Contract by or on behalf of Seller, and the consummation of the transactions contemplated by this Contract have been duly authorized and validly executed and delivered by Seller, and will not (i) constitute or result in the breach of or default under any oral or written contract to which Seller is a party or which affects the Premises; (ii) constitute or result in a violation of any order, decree or injunction with respect to which Seller and or the Premises is bound; (iii) cause or entitle any party to have a right to accelerate or declare a default under any oral or written contract which affects the Premises; and/or (iv) to the best of Seller's knowledge, violate any provision of any municipal, state or federal law, statutory or otherwise, to which Seller or the Premises may be subject;
- (b) To the best of Seller's knowledge, the Premises is in material compliance with all applicable federal, state and local statutes, laws, ordinances, orders, requirements, rules and regulations (including, but not limited to, building, zoning and environmental laws).
- (c) No notice of violation of any applicable federal, state or local statute, law, ordinance, order, requirement rule or regulation, or of any covenants, condition, restriction or easement affecting the Premises, or with respect to the maintenance, use or occupancy of the Premises, has been given by any governmental authority

having jurisdiction over the Premises or by any other person entitled to enforce the same.

- (d) To the best of Seller's knowledge, all covenants, conditions, restrictions, easements and similar matters affecting the Premises have been complied with.
- (e) To the best of Seller's knowledge, no toxic, explosive or otherwise dangerous materials or hazardous substances have been disposed of on, concealed within, buried beneath, or released on or from the Premises, nor have any toxic, explosive or hazardous materials ever been removed from the Premises and stored off-site of the Premises. Seller agrees to indemnify, save harmless, and defend Buyer from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incidental to the same (including costs of defense, settlement and reasonable attorneys' fees), that it may incur, become responsible for, or pay out as a result of any damage or injury to the environment, to persons or to Premises caused by any act, occurrence, or omission on the part of Seller or its agents or employees during Seller's period of ownership of the Premises, or on the part of the prior owners of the Premises.
- (f) To the best of Seller's knowledge, there are no encroachments onto the Premises of any improvement on any adjoining property, and there are no encroachments onto any adjoining property of any improvements from the Premises.
- (g) To the best of Seller's knowledge, adequate supplies of all public utilities, including, but not limited to, water, sanitary sewer, gas, electricity, telephone, storm sewer and drainage facilities and other utilities required by law or by the normal use and operation of the Premises (i) are installed to the property lines of the Premises, (ii) are connected pursuant to valid permits, (iii) are adequate to service the Premises, (iv) are adequate to permit full compliance with all requirements of law and normal usage of the Premises by the occupants and their licensees and invitees, and (v) either enter the Premises through adjoining public streets, or if they pass through adjoining private land, do so in accordance with valid public easements or private easements that inure to the benefit of Seller and its successors in title to the Premises.

- (h) There is no pending or, to the best of Seller's knowledge, threatened litigation, arbitration, administrative action or examination, claim, or demand whatsoever relating to the Premises. No attachments, execution proceedings, liens, assignments or insolvency proceedings are pending or, to the best of Seller's knowledge, threatened against Seller or the Premises or contemplated by Seller. Seller is not contemplating the institution of insolvency proceedings.
- (i) Seller has no knowledge of any pending or contemplated eminent domain, condemnation, or other governmental or quasi-governmental taking of any part or all of the Premises.
- (j) To the best of Seller's knowledge, there are no public improvements that have been ordered to be made and/or that have not been previously assessed, and there are no special, general or other assessments pending, threatened against, or affecting the Premises.
- (k) Seller has paid or will pay in full all bills and invoices for labor and material of any kind arising from the ownership, operation, management, repair, maintenance or leasing of the Premises, and there are no actual or potential mechanic's liens or other claims outstanding or available to any party in connection with the ownership, operation, management, repair, maintenance or leasing of the Premises.
- (l) Between the date of this Contract and the date of closing, no part of the Premises will be sold, encumbered or transferred in favor of or to any party whatsoever. There are no purchase contracts, options or any other contracts of any kind, oral or written, by which any person or entity other than Seller will have acquired or will have any basis to assert any right, title or interest in, or right to possession, use, enjoyment or proceeds of, any part or all of the Premises.
- (m) No party has any claim against the Premises or against any successor in title to the Premises related to the repair, construction, improvement, operation, use, rental or enjoyment of the Premises, and neither Seller nor its agents or employees have received any notices of any claim requesting or demanding such performance or payment relative to the foregoing.

- (n) Between the date of this Contract and the date of closing, Seller will keep the Premises insured in an amount not less than the full replacement cost of the Premises against fire and other hazards by extended coverage endorsement to a policy of fire insurance.
- (o) Seller confirms that there is a written lease or other tenant rights to the Premises to John Schuler on a month to month lease and no security deposit is held by Seller or owed to Tenant.
- (p) The foregoing representations, warranties and covenants shall survive the closing for a period of one (1) year and shall not be terminated by operation of the doctrine of merger.

9. Inspection Period. Seller agrees that for a period of sixty (60) days from the date of the full execution of the Agreement, Buyer shall have the right to study the feasibility of Buyer acquiring the Property (the "Inspection Period"). During the Inspection Period, Buyer may elect to perform or may have performed, at Buyer's sole cost and expense, all Studies and investigations of the Property as Buyer deems desirable, including but not limited to a title examination of the property, surveys and soil tests of the Property, and investigations of the engineering, topographic and structural aspects of the Property. In conducting such activities, Buyer agrees not to disrupt Seller's ongoing activities on the Property. Buyer agrees to restore the Property to its condition prior to Buyer's entry thereon. In the event that Buyer, for any reason whatsoever, is dissatisfied in its sole discretion with the results of any of the Studies or investigations performed during the Inspection Period, then Buyer may terminate the Agreement by giving written notice to the Seller within thirty (30) business days after the expiration of the Inspection Period. Upon termination, the Agreement shall thereafter be null and void and of no further force and effect.

10. Condemnation. The risk of any permanent or temporary taking of any part or all of the Premises by condemnation or eminent domain (hereinafter called the "Taking") shall be borne by the parties until completion of the closing. If, prior to closing, Seller or Buyer become aware of any actual or proposed Taking, the parties shall immediately give each other written notice thereof and shall keep each party informed of and provided an opportunity to participate in any and all negotiations concerning such Taking and/or the potential settlement of claims relating thereto. In the event of any such actual or proposed Taking, Buyer shall have the right to terminate this Contract by giving written notice to that effect to Seller at any time on or prior to the closing date. In the alternative, if Buyer proceeds with the closing despite such actual or proposed Taking, (a) the purchase price for the Premises shall be reduced by the amount of any and all proceeds actually received by Seller at or prior to the closing in connection with said

Taking, (b) Buyer shall succeed to all rights of Seller to any and all such proceeds payable after the closing and (c) Seller shall execute and deliver such documents as Buyer may reasonably require to evidence the assignment of all such rights to Buyer.

11. Casualty. In the event of substantial loss or damage to the Premises prior to the closing by fire or other casualty (not resulting from the negligence of Buyer), Buyer at its option may, at any time after receipt of notice or knowledge of that event, cancel this Contract, in which event the Earnest Money (as hereinafter defined) shall be immediately refunded, this Contract shall terminate and neither party shall have any further rights or obligations under this Contract other than those rights and or obligations which are expressly stated to survive expiration or termination of this Contract. In the event that Buyer shall not elect to terminate, or if the loss or damage is not substantial, then this Contract shall remain in full force and effect and Buyer shall proceed to close and take the Premises as damaged, in which event Buyer shall be entitled to receive the insurance proceeds plus the amount of any deductible, co-insurance or self-insurance carried by Seller, so that Buyer shall receive, in effect, the full replacement cost of the loss or damage, as the cost is determined in the settlement with the insurer. Seller and Buyer shall each be entitled to participate in the settlement. As used in this paragraph, the term “substantial loss or damage” means any loss or damage resulting to the Premises which the parties reasonably estimate will cost \$10,000.00 or more to repair or restore.

12. Earnest Money/Deposit. Buyer shall deliver, within five days after Seller’s acceptance hereof, to the Title Company, the sum of Five Hundred and no/100 Dollars (\$500.00) (herein referred to as “Earnest Money”), which Earnest Money shall be later applied against the purchase price. Buyer shall have the right to specific performance of this Contract. In the event Buyer defaults hereunder and such default is not cured within 30 days after written notice, the Earnest Money shall be retained by Seller without prejudice to any rights of Seller to damages or specific performance. If the Contract is terminated for any reason other than Buyer’s default, the Earnest Money shall be returned to Buyer.

13. Brokerage Commissions. Buyer agrees to pay a \$6,000.00 commission to Seller’s real estate broker or agent at Closing.

14. Notices. Any notices required or permitted under this Contract may be delivered personally or may be sent by certified or registered mail, return receipt requested, or prepaid courier service addressed to the addressee at the address, as hereinafter set forth, or at such other address as a party may hereafter furnish in writing to the other parties to this Contract. If notices are sent by mail, the date such notices are postmarked shall be deemed the date upon which such notice was given. If a matter is sent by prepaid courier service, the delivery date thereof shall be deemed the date upon which such notice was given.

15. Nonforeign Affidavit. Seller represents and warrants to Buyer that it is not a foreign person (as defined in Section 1445(f)(3) of the Internal Revenue Code of 1954, as amended) and agrees to execute and deliver to Buyer at closing an Affidavit

stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person as so defined.

16. Assignment. Seller may assign all of their rights and obligations hereunder only with Buyer's consent. Buyer may assign all of its rights and obligations hereunder to a nominee of its choice without Seller's consent, provided that Buyer shall remain liable for performance hereunder.

17. Miscellaneous. This document including all attachments fully set forth all Contracts and understandings of the parties to this Contract with respect to the subject matter hereof. This Contract shall not be amended, except in a writing signed by both parties. All warranties, representations and covenants herein contained shall survive the closing. Whenever used herein, the singular shall include the plural, the plural the singular and any gender shall include all genders. Captions to the provisions of this Contract are intended and used solely for purposes of identification and do not limit or enlarge upon the written provisions of this Contract. Seller shall bear risk of loss until the date of closing. Unless otherwise provided herein, Buyer shall be entitled to possession of the Premises as of the date of closing.

18. Acceptance. This offer shall remain open for acceptance by Seller until 4:30 p.m. on August 26, 2021, and shall be accepted by delivering an executed copy of this Contract to Buyer.

19. Descriptive Headings. The descriptive headings used herein are for convenience only and are not intended to necessarily refer to the matter in sections which precede or follow them, and have no effect whatsoever in determining the rights or obligations of the parties.

20. Counterparts. This Agreement may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally signed signatures (including scanned signatures attached to an email) shall be acceptable to evidence complete agreement.

Buyer has caused this Contract to be executed this 31st day of August, 2021.

CITY OF CENTERVILLE

Wayne Davis
By: Wayne S. Davis
Title: City Manager

Approved as to Form:

Scott A. Liberman
Scott A. Liberman
Municipal Attorney

ACCEPTANCE

The undersigned represents that they have authority as the owners of the property and hereby accept this Contract and agree to be bound by its terms and conditions this 25th day of August, 2021.

Daniel C. Doepke
By: Daniel Doepke

Treva Doepke
By: Treva Doepke

EARNEST MONEY

Title Company, as escrow agent, hereby acknowledges the receipt of \$500.00, Earnest Money, subject to the terms and conditions of this Contract, this _____ day of _____, 2021.

TITLE COMPANY:

By: _____
Its: _____

**CERTIFICATE OF FUNDS AVAILABILITY
BY MUNICIPALITY FISCAL OFFICER**

I, Tyler Roark, Finance Director of the City of Centerville, hereby certify that the funds for payment of the contractual obligations set forth in the Purchase Agreement have been lawfully appropriated for such purpose and are in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance to the extent necessary to meet the obligations of this contract maturing in the first or current fiscal year thereof.

Tyler Roark

Tyler Roark
Finance Director