

**RESOLUTION NO. 35-22**  
**CITY OF CENTERVILLE, OHIO**

SPONSORED BY COUNCILMEMBER John Palcher ON THE 18<sup>th</sup>  
DAY OF April, 2022.

**RESOLUTION RATIFYING THE ACTIONS OF THE CITY MANAGER IN EXECUTING A PURCHASE CONTRACT AND AN ASSIGNMENT OF CONTRACT TO PURCHASE WITH HEB INVESTMENTS, LLC AND PRODIGY PROPERTIES, SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER IN POSSESSION OF CERTAIN ASSETS OF FRANK J. MATTIA, ET AL., IN CASE NO. 2021 CV 02829 OF THE COURT OF COMMON PLEAS, MONTGOMERY COUNTY, OHIO FOR THE PURCHASE OF PROPERTY LOCATED AT 7491 FAR HILLS AVENUE AND RATIFYING THE ACTIONS OF THE CITY MANAGER IN TAKING 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 Prodigy Properties, solely in its capacity as the court-appointed receiver in possession of certain assets of Frank J. Mattia, et al., in Case No. 2021 CV 02829 of the Court of Common Pleas, Montgomery County, Ohio as assigned by HEB Investments, LLC, for the purpose of future development or municipal services at 7491 Far Hills Avenue, Centerville, OH; and

WHEREAS, the City of Centerville has negotiated for the purchase of the real property 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 \$180,000; 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 and an assignment of contract to purchase with HEB Investment, LLC and Prodigy Properties, solely in its capacity as the court-appointed receiver in possession of certain

assets of Frank J. Mattia, et al., in Case No. 2021 CV 02829 of the Court of Common Pleas, Montgomery County, Ohio for the purchase of property located at 7491 Far Hills Avenue for a total price of One Hundred Eighty Thousand and no/100 Dollars (\$180,000.00) is hereby ratified. Said Purchase Agreement is marked as Exhibit "A" and the Assignment Agreement is marked as Exhibit "B" and incorporated herein.

Section 2: That the previous actions 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 Agreement and the Assignment Agreement 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** 18<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
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. 35-22, passed by the Council of the City of Centerville, Ohio on the 18<sup>th</sup> day of April, 2022.

  
\_\_\_\_\_  
Clerk of the Council

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

**AGREEMENT FOR PURCHASE AND SALE  
AND ESCROW INSTRUCTIONS**

This Agreement for Purchase and Sale and Escrow Instructions (this “Agreement”) is made as of the Effective Date (as defined below in Section 19), by and between **Prodigy Properties, solely in its capacity as the court-appointed receiver in possession of certain assets of Frank J. Mattia, et al., in Case No. 2021 CV 02829 of the Court of Common Pleas, Montgomery County, Ohio** (“Receiver”) and HEB Investments, LLC, an Ohio limited liability company (the “Buyer”).

For good and valuable consideration, the receipt and adequacy of which is acknowledged by the parties hereto, and in consideration of the premises, conditions, and covenants herein contained, Receiver and Buyer do hereby mutually agree as follows:

1. Contract to Buy and Sell. Receiver hereby agrees to sell and convey, and Buyer hereby agrees to purchase, all on the terms and at the Purchase Price as set forth hereinafter, the following (collectively, the “Purchased Assets”):

(a) the real estate and improvements commonly known as 7491 Far Hills Avenue, Centerville, Ohio, 45459, Montgomery County, Tax Parcel No. O67 03707 0032 described in the attached Exhibit A (the “Real Property”); and

(b) all fixtures located on the Real Property and used in connection with operation and maintenance of the Real Property, and any intangible property entered into and affecting the Real Property (other than property management agreements or service agreements that Receiver terminates prior to closing without any penalty) (the “Personal Property”).

2. Intentionally omitted.

3. Purchase Price. The purchase price for the Purchased Assets shall be One Hundred Eighty Thousand and NO/100 Dollars (\$180,000.00) (the “Purchase Price”).

4. Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) No later than 5:00 p.m. prevailing Eastern Time on the next business day following the contract execution, Buyer shall wire transfer to Home Services Title, LLC (the “Escrow Holder”) immediately available United States funds in an amount of Two Thousand and NO/100 Dollars (\$2,000.00) as earnest money (the “Earnest Money Deposit”) to apply toward the Purchase Price or otherwise be disposed of pursuant to the terms of this Agreement.

(b) At Closing, subject to adjustments and prorations as set forth herein, Buyer shall pay to the Escrow Holder the balance of the Purchase Price (the “Cash Balance”) by wire transfer of immediately available United States funds.

5. Title to the Purchased Assets.

(a) Fee simple title to the Real Property shall be conveyed to Buyer at Closing by a receiver's deed ("Receiver's Deed").

(b) Title to the Personal Property shall be conveyed to Buyer at Closing by a receiver's bill of sale ("Receiver's Bill of Sale").

(c) Title shall be conveyed subject all to the rights of tenants under existing leases ("Leases"), and at the Closing, Receiver and Buyer shall execute and deliver to one another an assignment and assumption of the Leases ("Assignment and Assumption of Leases"), if applicable.

6. Taxes; Utilities; Insurance; Rents; Security Deposits.

(a) All real estate taxes and assessments (including without limitation ad valorem, school, intangible, and use taxes) relating to the Purchased Assets shall be prorated based on the current year's tax bills (or to the extent the current year's tax bill is not available, then on the most recent available actual tax bill), provided that Receiver shall be entitled to the benefit of any pending tax appeals and any refund of or credit to taxes or assessments relating thereto to the extent such credit or refund relates to periods prior to the Closing Date. Buyer shall forward funds equal to any credit applied or funds received with respect to such reductions in taxes to Receiver within ten (10) business days of the credit or receipt, which obligation shall survive the Closing. Any and all such taxes which are due (whether or not then delinquent or payable) as of the Closing shall be paid at the Closing through the Escrow, other than sales taxes on the transfer to Buyer (which shall be paid at Closing by Buyer) and increases in property taxes resulting from the transfer to Buyer (which shall be Buyer's sole responsibility). Such proration shall be final and after such proration is made the Buyer shall be responsible for paying all installments of such taxes and assessments as they become due.

(b) No prorations will be made in relation to insurance premiums, and Receiver's insurance policies will not be assigned to Buyer. Final readings and final billings for utilities, if any, will be made as of the date of Closing, and all utilities consumed on the Property before the Closing shall be at Receiver's expense. Receiver will be entitled to all deposits presently in effect with the utility providers, and Buyer will be obligated to make its own arrangements for deposits with the utility providers.

(c) All revenues and expenses, including, but not limited to rents and any other amounts paid by tenants, reimbursement of maintenance and repair expenses, and normally prorated operating expenses billed or paid as of the Closing Date shall be prorated as of the 11:59 p.m. on the day prior to the Closing Date. Notwithstanding the foregoing or anything to the contrary in this Agreement, the Purchased Assets specifically excludes all bank accounts, all funds held or maintained by the Receiver for or relating to

the Receivership, all reserve funds, escrow funds, impounds, and all other funds and deposits held by Receiver, and all income or profits received from or arising out of the Property prior to the Closing Date.

(d) Receiver's interest in the Purchased Assets includes security deposits actually held by Receiver for the Leases that shall remain in effect as of Closing to the extent not previously applied toward defaults under the Leases ("Security Deposits"). Notwithstanding the foregoing, Receiver shall have no obligation to credit or reimburse the Buyer for any Security Deposits not actually received or held by the Receiver.

7. Contingencies.

(a) No Financing Contingency. Buyer acknowledges that the Buyer's obligation to consummate the transaction contemplated hereby is not contingent upon Buyer's ability to obtain financing, and that the Closing will not be deferred to allow Buyer time to obtain financing.

(b) No Due Diligence. Buyer acknowledges that the Buyer's obligation to consummate the transaction contemplated hereby is not contingent upon Buyer's ability to conduct any due diligence on the Purchased Assets, and that Closing will not be deferred to allow Buyer time to conduct due diligence.

(c) Insurable Title. Buyer's obligation to consummate this transaction is contingent on the willingness of any title insurance underwriter having an "A Prime" or higher rating from Demotech, Inc. to issue an ALTA Standard Coverage Owner's Policy of Title Insurance for the Purchased Assets (the "Title Policy") written with liability in the amount of the Purchase Price, and free of any monetary liens or encumbrances, except for any liens for real estate taxes and assessments. Buyer may, at its expense, purchase a Title Policy. Buyer may further elect to obtain, at its expense, an ALTA Owner's Extended Coverage Policy of Title Insurance, but a qualified title insurance underwriter's unwillingness to issue the same or any endorsements shall not be grounds for terminating this Agreement or delaying the Closing. Receiver shall be under no obligation to incur any additional liability or indemnities with respect thereto or to make any representations regarding the Purchased Assets beyond those provided herein.

If a qualified title insurance underwriter is not willing to issue a Title Policy on the Purchased Assets free of monetary liens or encumbrances, except for any liens for real estate taxes and assessments, by the Closing Date, the Receiver shall be entitled to up to sixty (60) additional days after the Closing Date within which to remove or cure such exceptions to the Title Policy.

(d) Confirmation Order. Notwithstanding anything herein to the contrary, this Agreement, and Receiver's obligations hereunder, are contingent upon entry of an order, on or before the Closing, by the Court of Common Pleas of Montgomery

County, Ohio (the “Court”) in Case No. 2021 CV 02829 (the “Foreclosure”) which (1) approves of the sale of the Purchased Assets in accordance with this Agreement; and (2) authorizes Receiver to execute and deliver a Receiver’s Deed, Receiver’s Bill of Sale, and any other conveyance documents reasonably necessary to vest title of the Purchased Assets in Buyer free and clear of all monetary liens, except for any liens for real estate taxes and assessments (the “Confirmation Order”).

8. Closing.

(a) Escrow. Upon execution of this Agreement by Buyer and Receiver, and acceptance of this Agreement by the Escrow Holder in writing, this Agreement shall constitute the joint escrow instructions of Buyer and Receiver to Escrow Holder to open escrow (the “Escrow”) for the consummation of the sale of the Purchased Assets to Buyer pursuant to this Agreement. Upon Closing, Escrow Holder shall pay any sums owed to Receiver with immediately available United States funds.

(b) Closing Date. The consummation of the sale of the Purchased Assets through Escrow shall close (the “Closing”) within thirty-one (31) days after the satisfaction of the contingencies in Sections 7(c) and 7(d) (the “Closing Date”) provided that all other conditions set forth in this Agreement have been satisfied or waived in writing by the party intended to be benefitted thereby.

(c) Buyer’s Conditions to Closing. In addition to the conditions set forth elsewhere in this Agreement, the Closing is subject to and contingent on the satisfaction of the following conditions or the waiver of the same by the Buyer in writing:

(i) Accuracy of Receiver’s Representations and Warranties. All of the representations and warranties of Receiver contained in this Agreement shall be true and correct in all material respects as of the date made and, subject to update, as of the Closing.

(ii) Receiver’s Performance. Receiver shall have performed, satisfied, and complied in all material respects with all material covenants, agreements, and conditions required by this Agreement to be performed or complied with by Receiver on or before the Closing Date.

(iii) Title Policy. As set forth in Section 7(c) above, any title insurance underwriter qualified pursuant to that Section is willing to issue a Title Policy written with liability in the amount of the Purchase Price, and free and clear of all monetary liens, except for any liens for real estate taxes and assessments.

(d) Receiver’s Conditions to Closing. In addition to the conditions set forth elsewhere in this Agreement, the obligations of Receiver to consummate the transactions provided for herein are subject to and contingent upon the satisfaction of the following conditions or the waiver of the same by the Receiver in writing:

(i) Accuracy of Buyer's Representations and Warranties. All of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date made as of the Closing.

(ii) Buyer's Performance. Buyer shall have performed, satisfied, and complied in all material respects with all material agreements, covenants, and conditions required hereby to be performed or complied with by Buyer on or before the Closing Date, including without limitation, payment in full of the Purchase Price.

(e) Closing Costs and Charges.

(i) Receiver's Costs. Receiver shall pay all documentary transfer taxes on the Receiver's Deed, if any.

(ii) Buyer's Costs. Buyer shall pay (a) the Escrow Holder's fees in connection with the Escrow (including any cancellation fees); (b) recording fees payable in connection with the transfer of the Purchased Assets to Buyer; (c) the cost of the Title Policy, as well as any extended coverage or endorsements, if the Buyer so elects to purchase them; (d) the cost of any survey of the Real Property. In addition, Buyer shall be solely responsible for (e) all sales, use, and personal property taxes incurred in connection with the sale and transfer of the Purchased Assets; (f) all costs and expenses incurred in connection with the transfer or any licenses, permits, or any escrow fees, deposits, and filing fees with respect thereto; (g) the costs of any due diligence investigation conducted by or for the benefit of Buyer; and (h) the cost of any lender's policy of title insurance obtained for Buyer's lender, if any.

(iii) Other Costs. All other costs relating to the Closing, if any, shall be the responsibility of the Buyer; provided, however, that each party hereto shall be responsible for its own attorney's fees and costs in connection herewith.

(f) Deposit of Documents By Receiver. On or before the Closing Date, Receiver shall deposit the following items into Escrow, each of which shall be duly executed and acknowledged by Receiver where appropriate:

- (i) the Receiver's Deed;
- (ii) the Receiver's Bill of Sale;
- (iii) the Assignment and Assumption of Leases, if applicable;

and

- (iv) an approved settlement statement prepared by the Escrow

Holder.



(g) Deposit of Documents and Funds By Buyer. On or before the Closing Date, Buyer shall deposit the following items into Escrow, each of which shall be duly executed and acknowledged by Buyer where appropriate:

- (i) the Cash Balance;
  - (ii) all other funds and documents as may reasonably be required by Escrow Holder or Receiver to close the Escrow in accordance with this Agreement;
  - (iii) the Assignment and Assumption of Leases, if applicable;
- and
- (iv) an approved settlement statement prepared by the Escrow Holder.

(h) Delivery of Documents and Funds at Closing. Provided that all conditions to Closing set forth in this Agreement have been satisfied or, as to any condition not satisfied, waived by the party intended to be benefited thereby, on the Closing Date, Escrow Holder shall conduct the Closing by recording and/or distributing the following documents and funds in the following manner:

(i) Recorded Documents. Record the Receiver's Deed in the Official Records of Montgomery County, Ohio.

(ii) Purchase Price. Deliver to Receiver the Purchase Price and such other funds, if any, as may be due to Receiver by reason of net credits under this Agreement.

(iii) Buyer's Documents. Deliver to Buyer: (a) the original Title Policy, along with such other extended coverage and endorsements, as the Buyer elects to purchase (if the Buyer purchases the same from the Escrow Holder and as soon as practicable after the Closing); (b) the original fully executed Receiver's Bill of Sale executed by Receiver; and (c) the original fully executed counterpart of the Assignment and Assumption of Leases executed by Receiver, if applicable.

(iv) Receiver's Documents. Deliver to Receiver: (a) the original fully executed counterpart of the Assignment and Assumption of Leases executed by Buyer; and (b) copies of every document delivered to Buyer.

(i) Prorations and Adjustments. The following matters and items pertaining to the Purchased Assets shall be prorated and apportioned between the parties by Receiver, taking into account the extent to which the same are attributable to periods before and after the Closing Date. Net credits in favor of Buyer shall be deducted from the Purchase Price and net credits in favor of Receiver shall be paid to Receiver in cash through Escrow at the Closing.

(i) Rents and Charges. Rents actually collected by the Receiver, including, without limitation, fixed and percentage rents, shall be prorated on a cash basis as of the Closing Date.

(ii) Prepaid Rents. Rents already received before the Closing Date by Receiver to the extent attributable to periods after the Closing Date shall be prorated.

(iii) Taxes and Assessments. All real estate taxes and assessments (including without limitation ad valorem, school, intangible, and use taxes) relating to the Purchased Assets shall be prorated based on the current year's tax bills (or to the extent the current year's tax bill is not available, then on the most recent available actual tax bill), provided that Receiver shall be entitled to the benefit of any pending tax appeals and any refund of or credit to taxes or assessments relating thereto to the extent such credit or refund relates to periods prior to the Closing Date. Buyer shall forward funds equal to any credit applied or funds received with respect to such reductions in taxes to Receiver within ten (10) business days of the credit or receipt, which obligation shall survive the Closing. Any and all such taxes which are due (whether or not then delinquent or payable) as of the Closing shall be paid at the Closing through the Escrow, other than sales taxes on the transfer to Buyer (which shall be paid at Closing by Buyer) and increases in property taxes resulting from the transfer to Buyer (which shall be Buyer's sole responsibility).

(iv) Security Deposits. Receiver shall account for and credit the Purchase Price in an amount equal to all unapplied security deposits from tenants under the Leases (the "Security Deposits") but only to the extent any were actually received by Receiver, Buyer acknowledging that Receiver is in possession of the Purchased Assets as a receiver appointed by the Court pursuant to the Foreclosure and may not have actually received Security Deposits. Upon making such credit, Buyer will be deemed to have received such Security Deposits and shall be fully responsible therefor as if a cash amount equal to the aggregate of the Security Deposits were actually delivered to Buyer. Immediately after the Closing, the Buyer shall give notice to each of the tenants under the Leases of the transfer of the Purchased Assets to Buyer.

9. Possession. Possession of the Real Property and Personal Property shall be delivered to Buyer at Closing.

10. Condemnation. In the event that condemnation proceedings are commenced against all or any part of the Real Property after the Effective Date and prior to Closing, then, at Buyer's option: (a) the parties shall proceed to Closing, in which event the Purchase Price (i) shall be reduced by the amount of the condemnation award or the sales price (in the event of a conveyance in lieu of condemnation), if such amounts are paid to Receiver prior to Closing, or (ii) shall remain unchanged and Buyer shall receive such award in the event such amounts are not paid prior to Closing; or (b) Buyer may terminate

this Agreement by written notice to Receiver and thereafter, neither Buyer nor Receiver shall have any further obligations hereunder or liability to the other except for those obligations which expressly survive termination of this Agreement. If Buyer elects to so terminate this Agreement by written notice to Receiver, Buyer must do so by written notice to Receiver received within seven (7) days after the date that Buyer receives notice of the condemnation proceeding. If Receiver fails to receive written notice of termination from Buyer within such period, then Buyer shall be deemed to have elected to proceed to Closing.

11. Disclaimer. BUYER UNDERSTANDS THAT RECEIVER IS A COURT-APPOINTED RECEIVER, AND CONSEQUENTLY, RECEIVER HAS LITTLE OR NO DIRECT KNOWLEDGE CONCERNING THE CONDITION OF THE PURCHASED ASSETS. BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, SQUARE FOOTAGE, OR CONDITION OF THE PURCHASED ASSETS, INCLUDING, WITHOUT LIMITATION, (A) THE WATER, SOIL, AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PURCHASED ASSETS, (C) THE SUITABILITY OF THE PURCHASED ASSETS FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PURCHASED ASSETS OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PURCHASED ASSETS, (F) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS, (G) THE EXISTENCE OF ANY VIEW FROM THE PURCHASED ASSETS OR THAT ANY EXISTING VIEW WILL NOT BE OBSTRUCTED IN THE FUTURE, (H) THE SUFFICIENCY OF ANY DRAINAGE FOR THE PURCHASED ASSETS, (I) WHETHER THE PURCHASED ASSETS ARE LOCATED WHOLLY OR PARTIALLY IN A FLOOD HAZARD AREA OR ANY SIMILAR AREA, (J) THE AVAILABILITY OF PUBLIC UTILITIES AND SERVICES FOR THE PURCHASED ASSETS, OR (K) ANY OTHER MATTER WITH RESPECT TO THE PURCHASED ASSETS; AND BUYER HEREBY WAIVES ANY RIGHT TO MAKE ANY CLAIM BASED ON ANY OF THE FOREGOING, INCLUDING, WITHOUT LIMITATION, ANY RIGHT TO MAKE ANY CLAIM AGAINST RECEIVER BASED ON THE VIOLATION OF ANY ENVIRONMENTAL LAWS. ADDITIONALLY, NO PERSON ACTING ON BEHALF OF RECEIVER IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF OF BUYER ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY

REPRESENTATION, AGREEMENT, STATEMENT, WARRANTY, GUARANTY, OR PROMISE REGARDING THE PURCHASED ASSETS OR THE TRANSACTION CONTEMPLATED HEREIN; AND NO SUCH REPRESENTATION, WARRANTY, AGREEMENT, GUARANTY, STATEMENT, OR PROMISE IF ANY, MADE BY ANY PERSON ACTING ON BEHALF OF RECEIVER SHALL BE VALID OR BINDING UPON RECEIVER UNLESS EXPRESSLY SET FORTH HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PURCHASED ASSETS, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PURCHASED ASSETS AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY RECEIVER, AND AGREES TO ACCEPT THE PURCHASED ASSETS AT THE CLOSING AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST RECEIVER (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PURCHASED ASSETS OR TO ANY HAZARDOUS MATERIALS ON THE PURCHASED ASSETS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PURCHASED ASSETS WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT RECEIVER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION. RECEIVER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENT, REPRESENTATION OR INFORMATION PERTAINING TO THE PURCHASED ASSETS, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, CONTRACTOR, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PURCHASED ASSETS AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PURCHASED ASSETS IS SOLD BY RECEIVER AND PURCHASED BY BUYER SUBJECT TO THE FOREGOING. BUYER HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS AND DEALING WITH PROPERTIES IN RECEIVERSHIP, THAT ENABLES BUYER TO EVALUATE THE MERIT AND RISKS OF THE TRANSACTION CONTEMPLATED HEREBY. BUYER IS NOT IN A DISPARATE BARGAINING POSITION VIS-A-VIS RECEIVER, AND BUYER HEREBY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS, BENEFITS AND REMEDIES UNDER CONSUMER PROTECTION LAWS WITH RESPECT TO ANY MATTERS PERTAINING TO THIS AGREEMENT AND THE TRANSACTION CONTEMPLATED HEREBY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR ANY TERMINATION HEREOF.

12. Fire or Casualty. If, prior to the Closing, the Purchased Assets are materially damaged or destroyed by fire or other casualty, Buyer, as its sole remedy, shall either: (a) proceed to Closing in accordance with the terms and conditions of this Agreement, in which case Buyer shall be entitled to all insurance awards resulting therefrom and Receiver shall have no repair, restoration, or other obligation in connection with such casualty; or (b) cancel this Agreement, in which event the parties shall be released from all liability hereunder and the Earnest Money Deposit shall be returned immediately to Buyer. If Buyer elects to cancel this Agreement, Buyer shall so notify Receiver in writing within seven (7) days after such fire or other casualty. Failure by Buyer to so notify Receiver shall constitute an election to proceed to Closing.

13. Fees of Brokers or Auctioneers. Receiver represents and warrants that it has not employed the services of a real estate broker or auctioneer in connection with this transaction other than the brokerage arm of Prodigy Properties ("Receiver's Broker"). Buyer represents and warrants that it has not employed the services of a real estate broker in connection with this transaction other than Gerald R. Ellis of Heritage Home Services, LLC ("Buyer's Broker"). Receiver and Buyer agree to indemnify and save and hold the other harmless from and against any claims by any other broker, finder, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Receiver or Buyer with regard to this transaction.

14. Default. If for any reason, other than the Receiver's breach of this Agreement, Buyer fails to complete the Closing on the Closing Date, on the terms and conditions of this Agreement, the Receiver shall be entitled to retain the Earnest Money Deposit and any other funds deposited with the Receiver. In addition, the Receiver shall have all other remedies available to it at law and in equity, including damages and specific performance. If the Receiver shall default in the performance of any covenants of this Agreement, and does not remedy such default within a reasonable period of time following delivery to the Receiver of written notice from Buyer of such default, then Buyer's exclusive remedy shall be to elect to terminate this Agreement upon written notice to the Receiver and to be refunded the Earnest Money Deposit. Buyer shall have no other remedies if the Receiver defaults in the performance of any covenants of this Agreement. Upon any termination of this Agreement hereunder, neither Buyer nor Receiver shall have any further obligations under this Agreement or liability to the other except for those obligations which expressly survive termination of this Agreement.

In the event of a dispute regarding the disbursement of the Earnest Money Deposit hereunder, the parties agree and acknowledge that the Escrow Holder shall retain the Earnest Money Deposit in its escrow account until it receives either (a) written instructions signed by the Receiver and the Buyer specifying how the Earnest Money Deposit is to be disbursed, or (b) a final order from the Court in the Foreclosure that specifies to whom the Earnest Money Deposit should be awarded. Receiver and Buyer agree that the Court sitting in the Foreclosure shall be the exclusive jurisdiction and venue for hearing and deciding any dispute regarding the performance of this Agreement and the distribution of the Earnest

Money Deposit. In any such dispute, the prevailing party shall be entitled to recover from the other any necessary and reasonable costs and expenses incurred in enforcing this Agreement or seeking damages hereunder, including reasonable attorney fees and costs.

15. Notice. Any notice, demand, or request required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by certified mail, postage prepaid and return receipt requested, or on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery, and shall be addressed to the following addresses, or to such other address as any party may request, in the case of Receiver, by notifying Buyer, and in the case of Buyer, by notifying Receiver:

Receiver: Prodigy Properties, solely in its capacity as the court-appointed receiver in possession of certain assets of Frank J. Mattia, et al., in Case No. 2021 CV 02829 of the Court of Common Pleas, Montgomery County, Ohio  
5254 Ridge Avenue  
Cincinnati, Ohio 45213

With a copy to:

Jeffrey M. Hendricks  
Graydon Law  
312 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202

Buyer: HEB Investments, LLC  
812 East Franklin Street, Suite C  
Centerville, Ohio 45459  
Attn: Scott L. Braum

Escrow Holder: Home Services Title, LLC  
4060 Executive Drive  
Beavercreek, Ohio 45430  
Attn: Michelle Pyle

16. Successors and Assigns. Buyer is prohibited from assigning this Agreement to any third parties without the express written consent of the Receiver, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, and permitted successors and assigns.

17. No Reservation of Purchased Assets. The preparation and/or delivery of unsigned drafts of this Agreement shall not create any legally binding rights in the Purchased Assets and/or obligations of the parties, and Buyer and Receiver acknowledge that this Agreement shall be of no effect until it is duly executed by both Buyer and Receiver.

18. Order Appointing Receiver. The terms of the Order Appointing Receiver entered in the Foreclosure on August 18, 2021 (“Receiver Order”) are incorporated herein by reference and the parties agree to be bound by the same. In the event of a conflict between the terms of this Agreement and the terms of the Receiver Order, the Receiver Order shall control.

19. Miscellaneous. This Agreement shall be governed by, and construed in accordance with, the law of the State of Ohio. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. The invalidity or unenforceability of any provision of this Agreement shall not affect or impair the validity of any other provision or term. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The submission of this Agreement for examination does not constitute an offer to purchase. This Agreement may be executed in counterparts, including faxed counterparts, each of which shall be deemed an original. This Agreement shall not be recorded by either party. Time is agreed by the parties to be of the essence of this Agreement.

The date of the later of Receiver’s or Buyer’s signature shall be the “Effective Date.”

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement for Purchase and Sale and Escrow Instructions on the dates set forth below, but as of the Effective Date.

**RECEIVER:**

**Prodigy Properties, solely in its capacity as the court-appointed receiver in possession of certain assets of Frank J. Mattia, et al., in Case No. 2021 CV 02829 of the Court of Common Pleas, Montgomery County, Ohio**



\_\_\_\_\_  
Jeff Lane, Manager

Date: Feb 21, 2022, 2022

**BUYER:**

**HEB Investments, LLC, an Ohio limited liability company**

By:  dotloop verified  
02/14/22 1:19 PM EST  
OQ4O-3PBQ-LW4S-TCAP

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

**ACCEPTANCE BY ESCROW HOLDER:**

**Home Services Title, LLC**

By:  dotloop verified  
02/15/22 10:01 AM EST  
3PJk-NRAQ-FXQO-UQ9X

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT A**  
**(LEGAL DESCRIPTION)**

Situate in the Washington Township, Montgomery County, Ohio, and being in the Northwest Quarter of Section 25, Town 2, Range 6 MRS; being also a part of the 74.812 acre tract, more or less, as conveyed to Blanche C. Turnbull by Charles A. Weaver and Sarah E. Weaver, as recorded in Deed Book 1008, Page 374, of the Records of said County; being more particularly described as follows:

Beginning at an iron pin on the West right of way line of the Dayton-Lebanon Pike and on the South line of the said Blanche C. Turnbull 74.812 acre tract, said point being forty (40) feet West of the Southeast corner of said tract; thence South 84° 2' West for a distance of two hundred (200) feet to an iron pin; thence North 01° 7' West for a distance of one hundred seventy-seven and three tenths (177.3) feet to an iron pin; thence North 88° 59' East for a distance of two hundred (200) feet to an iron pin; thence South 01° 1' East for a distance of one hundred sixty (160) feet to the place of beginning; containing Seventy-Seven-Hundredths (0.77) of an Acre;

EXCEPTING from the above described premises a tract of Eleven-Thousandths (0.011) of an acre as specifically described as follows: Conveyed to Owen M. Stolz and Roma A. Stolz, by Deed, recorded in Volume 1265, page 46, of the Deed Records of said County. Beginning at a point on the West right-of-way line of the Dayton and Lebanon Pike, 155 feet North, from the southeast corner of the northwest quarter section and the true point of beginning, thence North 89° 25' west for a distance of 200.06 feet to an iron pin; thence North 89° 59' East for a distance of 200 feet to an iron pin; thence South 1° 01'; East for a distance of 5 feet to the place or beginning, containing 0.011 acres, more or less.

PIDN: O67 03707 0032  
Property Address: 7491 Far Hills Avenue, Dayton, Ohio

Exhibit "B"

**ASSIGNMENT OF AGREEMENT FOR PURCHASE AND SALE**

This Assignment of Agreement to Purchase and Sale, effective as of this 18th day of March, 2022, is made by and between HEB Investments, LLC, an Ohio limited liability company ("Assignor"), The City of Centerville, an Ohio municipal corporation ("Assignee"), Prodigy Properties, solely in its capacity as the court-appointed receiver in possession of certain assets of Frank J. Mattia, et al., in Case No. 2021 CV 02829 of the Court of Common Pleas, Montgomery County, Ohio Receiver and ("Receiver").

WHEREAS, Assignor is the Purchaser under the real estate Agreement for Purchase and Sale with the Receiver, dated February 21, 2022 (the "Agreement"), for the real estate located at 7491 Far Hills Avenue, Centerville, Ohio, 45459, Montgomery County, Tax Parcel No. 067-03707-0032 (the "Property"); and

WHEREAS, Assignor now wishes to assign all of its right, title and interest under the Agreement to Assignee; and

WHEREAS, Assignee hereby assumes all of Assignor's obligations under the Agreement; and

WHEREAS, Assignor has obtained the express written consent of the receiver, as required under the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee and Receiver hereby agree as follows:

1. Assignor hereby assigns, transfers and conveys all of its right, title and interest in, under and to the Agreement to Assignee. Assignee hereby takes and accepts such assignment of rights and assumes all of Assignor's duties, responsibilities, obligations and liabilities thereunder.
2. Assignee assumes all of Assignor's rights, obligations and liabilities under the Agreement.

**ACCEPTED AND AGREED:**

Assignor:

Assignee:

HEB Investments, LLC

City of Centerville, Ohio

*Scott Braum*  
dotloop verified  
03/18/22 12:26 PM EDT  
A9CR-57j0-PYEUJ5DX

*Wayne Davis*  
dotloop verified  
03/21/22 10:58 AM EDT  
QWdW-1HGR-C3UG-VKZU

By: SCOTT BRAUM  
Its: MEMBER

By: WAYNE S. DAVIS  
Its: CITY MANAGER

APPROVED AS TO FORM:

*Scott A. Liberman*  
dotloop verified  
03/18/22 12:26 PM EDT  
KTEK-DYZ4-KA3M-2R6R

SCOTT A. LIBERMAN  
MUNICIPAL ATTORNEY

**CONSENT OF RECEIVER**

Receiver, Prodigy Properties, solely in its capacity as the court-appointed receiver in possession of certain assets of Frank J. Mattia, et al., in Case No. 2021 CV 02829 of the Court of Common Pleas, Montgomery County, Ohio, hereby consents to the assignment of the Agreement from HEB Investments, LLC, an Ohio limited liability company to The City of Centerville, an Ohio municipal corporation, on the terms and conditions set forth herein.

Receiver, Prodigy Properties solely in its capacity as the court-appointed receiver.

BY:   
JEFF LANE, Manager